



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Brandon Clark
<b>Hearing dates:</b>	30 May to 1 June 2023
<b>Date of findings:</b>	16 June 2023
<b>Place of findings:</b>	Lidcombe
<b>Findings of:</b>	Magistrate Kennedy Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – Death in police operation, stop and search, Section 21 LEPR, exercise of power to arrest, Section 77 Bail Act 2013, breach of bail, decision to engage in foot pursuit, availability of flotation devices to assist police officers near large bodies of water, availability of training to assist officers when a person enters water to evade police
<b>File number:</b>	2022/20548
<b>Representation:</b>	Mr J Harris, Counsel Assisting, instructed by Ms T Bird of the Crown Solicitor's Office  Mr R Hood for the NSW Commissioner of Police (and Detective Senior Constable Tony Crameri, Detective Senior Constable Peter Shedden and Sergeant Dane Poole), instructed by S Robinson of the Office of the General Counsel, NSW Police Force  Ms H Donaldson of the Aboriginal Legal Service for Catherine (Kate) Leyland, instructed by C Huxley of the Aboriginal Legal Service

<p><b>Findings:</b></p>	<p><b><i>The identity of the deceased</i></b> The deceased person was Brandon Clark</p> <p><b><i>Date of death</i></b> 22 January 2022</p> <p><b><i>Place of death</i></b> Manning River, Taree, New South Wales</p> <p><b><i>Cause of death</i></b> In keeping with drowning</p> <p><b><i>Manner of death</i></b> Misadventure (in the course of a police operation)</p>
<p><b>Recommendations</b></p>	<ol style="list-style-type: none"> <li>1. That the NSW Commissioner of Police (“the Commissioner”) conduct a review of available water rescue equipment at Manning Great Lakes Police District, and give consideration as to whether any further equipment should be made available to police.</li> <li>2. That the Commissioner give consideration as to whether any policy or training should be developed to guide police in relation to engaging in water rescues.</li> </ol>
<p><b>Non-Publication Orders</b></p>	<p>Non-publication orders prohibiting publication of certain evidence pursuant to the <i>Coroners Act 2009</i> have been made in this Inquest. A copy of these orders can be found on the Registry file.</p>

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**Introduction:**

1. Brandon Clark died on 22 January 2022, in the Manning River at Taree, NSW. He was a 23 year old Aboriginal man. He was referred to as Brandon at the request of his family.
2. At about 2.30am on 22 January 2022, Brandon was travelling in the rear seat of a car that was stopped by police. He initially gave police a false name. Checks revealed his true identity, and that he was potentially in breach of his bail conditions. Police returned to the vehicle and attempted to arrest Brandon, however he ran from the police. There was a foot pursuit, which ended when Brandon entered the Manning River. He initially appeared to police to be able to swim, but after a short while he was in danger. Two police officers entered the water and began to swim out towards him. He sank beneath the surface before they reached him. Police were unable to locate him and called in further assistance from emergency services. Brandon's body was located by police divers some 10 hours later.

**Introductory remarks**

3. The coroner's primary function is set out in s. 81 of the *Coroners Act 2009*. It is to make findings as to the identity of the person who has died, the date and place of their death and the manner and cause of death. The inquest is not adversarial, but inquisitorial. The focus is to determine what happened without attributing blame, guilt or making findings of liability.
4. In this case, there is no controversy as to identity or the date and place of death. The manner and cause of death were the subject of the inquest. This included the circumstances directly leading up to when Brandon entered the water.

**The Inquest:****A. Reflection on the life of Brandon**

5. It is important to reflect on the life of the young man who was lost. He was dearly loved by his family, evident by the many people who attended the inquest. His mother generously shared stories about her son, who she described as a kind and giving young man. She said he would give the shirt off his back to anyone who needed it without hesitation. Brandon was described as a person who brought joy to his friends and family, someone who had a wonderful sense of humour, and was very close to his family, particularly his brother Ben. They had a great deal of fun together, and her sadness was that he would not have time with his niece, to whom he would have been a wonderful uncle. She also reflected that it was his intention to get well enough to form a relationship with his own child. This was something he never got the chance to do.
6. An inquest such as this one is often focused on a very narrow snap shot of a life. Here the focus was dealings with police leading up to 22 January 2022, and the last few hours and minutes of decisions that were made. In no way does this reflect on who Brandon really was, nor who he was to his family.

## **B. Background**

7. Brandon was born on 8 August 1998. His father, Raymond Clark, died in 2010. He spent most of his life in Taree with his mother, Catherine and brother, Ben. Brandon identified as Aboriginal.
8. He left school in Year 10 and worked in casual labouring jobs, including fencing.
9. He had a diagnosis of ADHD and Autism, and may have later developed a mood disorder. On 7 October 2021, he was prescribed an antidepressant, Endep (amitriptyline) and an antipsychotic, Seroquel (quetiapine). It is unclear if he took these prescriptions.
10. Brandon had a history of drug use. His mother says he became addicted to ice in about 2018. He impressively spent 6 months in a drug rehabilitation program known as Balund-a.
11. After leaving rehabilitation, Brandon formed a relationship with a woman and they moved to Queensland. They had a child [REDACTED]. That relationship came to an end and he returned to living in the local area of Taree.
12. About a month prior to his death, Brandon formed a relationship with another young woman and his friends reported she was a positive influence, because Brandon stopped or at least reduced his ice use.
13. Several people told police that Brandon had a fear of water. His mother says he had a fear of water, and she was unsure if he had ever had swimming lessons. Police could not find any evidence that he had. Brandon's friend and employer recalled that Brandon was afraid of water, and had refused to enter a shallow dam at work. Another friend said Brandon would refuse to go swimming, and did not like water.

### **Events leading up to 22 January 2022**

#### ***Criminal History***

14. The criminal history of Brandon is necessary to set out because it gives a proper context to the events that led to him running from police on 22 January 2022. It must be noted however that a number of the matters listed below were allegations only, and did not proceed to hearing so remain unproven allegations. He had relatively limited criminal antecedents.
15. Brandon however had a number of previous interactions with police. Brandon was stopped and searched on multiple occasions. He often attempted to run from police.
16. Brandon sometimes had a troubled relationship with his family. There are some alleged assaults and other incidents recorded.
17. On 16 March 2020, a 2-year final ADVO was issued against Brandon, protecting his mother. There was a condition that he must not attend her address, in Spence Street, Taree. That order was still in force at the time of his death.

18. On 6 November 2020, an incident occurred involving Brandon and his brother, Ben, and Ben's partner Iesha. A Court Attendance Notice ("CAN") was issued on 19 November 2020, requiring Brandon to attend court to face charges on 16 February 2021. He failed to attend Court that day, and a warrant was issued.
19. On 3 April 2021, Brandon was arrested on the outstanding warrant from February 2021. He was bail refused. On 6 April 2021, he was granted conditional bail at Taree Local Court, with conditions to comply with all ADVOs, be of good behaviour, and reside at the address of a friend in Taree called James or Jack Charlton.
20. On 16 November 2021, an incident occurred where Brandon attended Spence Street to pay his mother some money. While there, he got into an argument with his brother. The allegation was that Brandon had produced a knife and a steel pole, and smashed the windscreen of Ben's partner's car.
21. Brandon was arrested and charged and granted conditional bail. A provisional ADVO was issued. A condition of the ADVO was that he not go within 50 metres of the Spence Street address.
22. On 21 December 2021, police observed Brandon in the company of his brother and his brother's partner, despite the AVO in force. Brandon ran from police, who pursued him. He is alleged to have wrestled with police, and OC spray was used. He was arrested and charged with contravening the ADVO and other matters. He was initially bail refused, but granted conditional bail on 22 December 2021 at Forster Local Court.
23. Brandon's bail conditions were later varied, on 18 January 2022. At the time of his death, they included requirements that he comply with his AVOs, not go within 1 kilometre of the Spence Street address, and comply with a curfew from 10pm to 6am. A hearing date was set for the charges, for 25 July 2022.

#### ***The police "business as usual" operation***

24. In the days prior to Brandon's death, local police had decided to take action in response to an increase in property offences.
25. Detective Inspector Timothy Bayly was acting as the Crime Manager for Manning Great Lakes Police District. On 17 January 2022, he began to plan what he described as a "business as usual" operation, to target property offences. The operation was intended to run for a week, from 18 to 25 January 2022. It would require police to perform their ordinary duties, but with an increased focus on patrols of crime hotspots, engagement with "wanted" persons, and increased coverage of staff.
26. He prepared a document called a "Concept of Operations". The document was not approved by the commander until after Brandon's death. It describes the rationale for the operation and the manner in which police were to approach it.
27. Information about the operation was circulated to all staff in the Command by Detective Inspector Bayly by email at 7.25pm on 19 January 2022. The email included

a list of persons of interest, styled a *“Wanted & Suspect List”*. That list included Brandon.

28. The email also identified key areas of focus, including the following instruction:

*“No mercy rule. If you detect an offence when engaging offenders/suspects: take action”*. It included a reference to putting a person in the “bin” and “burn the bridges”.

### **The events of January 2022**

29. Brandon was detected by police two days prior to his death. At 9.15pm on 20 January 2022, he was the front seat passenger in a Toyota Yaris travelling in High Street, Taree. Police stopped the vehicle, and asked the driver to perform an RBT. No further action was taken, although police later realised Brandon had an enforceable AVO against him.

30. The following day, 21 January 2022, Brandon was at his partner’s home in Frances Street, Taree. A friend, Larry Scott, told him that police had been looking for him. According to Larry, Brandon appeared happy that day. He lent Brandon some money to get food from the bakery.

31. During the evening, Brandon was at his partner’s unit. According to her, he smoked some cannabis. He left at about 9.30pm and returned at 1.30am the following morning. When he returned, he told his partner that he was due to receive his payment from Centrelink at about 2am. He wanted to go to the bank to withdraw his money.

32. Brandon and his partner asked Darren Russell, a friend who was visiting other people at Frances Street, to give them a lift to the bank. They left Brandon’s partner’s home at about 2am.

33. While this was happening, an unrelated incident had occurred at the United Petroleum service station in Taree. Police observed two vehicles interacting, and one of those vehicles, a Toyota Camry, had driven away at speed. Police radio was contacted, and advised that drug intelligence was known about the vehicle. Police were asked to keep a lookout for it.

### **Police attend Frances Street**

34. A short while later, a separate unit, comprising Leading Senior Constable Tom Richards and Probationary Constable Rachel Savage located the Toyota Camry in the parking spaces at Frances Street. The vehicle was unoccupied. They called for other units to attend, and some did, including Detectives Tony Cramer and Peter Shedden.

35. Leading Senior Constable Richards saw a red Holden Astra that was parked a few spaces along from the Camry, in which Darren, Brandon and his partner were sitting. At 2.09am, Leading Senior Constable Richards approached the car and asked Darren to perform an RBT, which was negative. Leading Senior Constable Richards also spoke briefly with Brandon and his partner. Brandon gave police a false name, saying he

was Jack, with his partner saying Jack Charlton. That was the name of one of the occupiers of his bail address. However, no further checks were made at that point, and the police units withdrew.

36. After this, Darren drove Brandon and his partner to the Westpac ATM. At 2.22am, CCTV captured Brandon trying to access his account. The money from Centrelink had not yet been deposited. He obtained a receipt and went back to the car.
37. Darren, Brandon and his partner then decided to go to McDonalds to get a frozen Coke. On the way there, they encountered Detectives Crameri and Shedden, who were in an unmarked police car. They followed the Astra along High Street, Flett Street and Albert Street, and then turned right onto Commerce Street.
38. Detective Senior Constable Crameri performed a vehicle check. The COPS computer system recorded that check at 2.27am. He noted that there was intelligence known about the vehicle. The police decided to perform a vehicle stop.

### ***Vehicle stop***

39. The police illuminated their lights and stopped the Astra on Commerce Street, near to the junction of Victoria Street. The two detectives spoke with the occupants.
40. Darren provided Detective Senior Constable Crameri his licence. He indicated that he was intending to buy drugs that evening. He was asked to exit the vehicle. On being told he would be searched, he produced a folding knife from his pocket, and said there was another knife in the driver's door.
41. Detective Senior Constable Crameri seized the knives and informed Darren he would be given a Field CAN for a future court appearance.
42. Meanwhile, Detective Senior Constable Shedden spoke with Brandon and his partner. Brandon said his name was "Jake Charlton". Police attempted to perform checks, but could not confirm his details. Brandon was asked to spell his name, and he misspelled the surname.
43. Detective Senior Constable Crameri made phone calls to Leading Senior Constable Richards. The first one was made at 2.33am. He asked about the occupants of the red Astra that had been stopped at Frances Street. He asked whether Leading Senior Constable Richards had searched the Astra.
44. Detective Senior Constable Shedden was suspicious about Brandon's identity, and asked Brandon if he had social media. Brandon denied it, but police obtained his phone, which when opened had a Facebook profile in the name "Brandon Clark". He told Brandon he would take the phone to make further checks.
45. About this time, it began to rain heavily. Brandon, his partner and Darren got back into the vehicle, and the detectives returned to theirs. The detectives continued their checks, now searching about Brandon. They discovered he was subject to bail conditions. A further call was made to Leading Senior Constable Richards, who



confirmed Brandon had been present at Frances Street. The detectives formed the view that Brandon had breached his bail conditions, and they decided to arrest him.

46. At about this point, the duty officer Acting Inspector Dane Poole was driving back to the police station. He saw the detectives' vehicle and drew alongside it to check what was happening. The detectives told him that the passenger in the Astra was Brandon Clark, that he was in breach of bail, and that they were going to arrest him.
47. At 2.52am, Detective Senior Constable Cramerer made a fourth call to Leading Senior Constable Richards, asking him to bring a caged vehicle to the location. Leading Senior Constable Richards and Probationary Constable Savage left the station to do so.
48. Detectives Cramerer and Shedden then approached the Astra at the rear passenger door. They asked Brandon to open the door, and then told him they knew his true identity, and that he would be arrested for breach of bail. Brandon continued to maintain he was "Jake".
49. Detective Senior Constable Shedden attempted to take Brandon's wrist to apply handcuffs, but Brandon moved away. Brandon then slipped across the rear seat to the driver's side. Brandon's partner told him to stop resisting. Brandon then opened the driver's side passenger door and exited the vehicle.

### ***Foot pursuit***

50. Brandon commenced running away from police, passing between the Astra and Acting Inspector Poole's vehicle. Acting Inspector Poole had already left his vehicle to assist. All three police began to run after Brandon.
51. Detective Senior Constable Cramerer was in front, and got within about a metre or so, before Brandon accelerated away. Brandon ran south along the eastern footpath of Commerce Street, across Victoria Street, and towards Martin Bridge and the Manning River.
52. Acting Inspector Poole also ran after Brandon, initially staying out wide, and then running across the car park of the Taree Motor Inn, aiming to cut Brandon off to the east.
53. Detective Senior Constable Shedden had dropped his handcuffs. He decided to return to the police vehicles, to retrieve the handcuffs and to call radio for assistance. At 2.55am, he made a broadcast over police radio, stating that police were pursuing Brandon along Commerce Street towards the Martin Bridge. He said Brandon was wanted for breach of bail.
54. Detective Senior Constable Cramerer continued following Brandon. He told Brandon to stop. Brandon ran towards the bridge, and just prior to the bridge he turned left, down a ramp to River Street.

55. Detective Senior Constable Crameri was about 10 to 15 metres behind Brandon. He says he observed Brandon run across River Street, a grass verge and straight off the edge of the river bank, into the Manning River, without stopping.
56. Detective Senior Constable Crameri says he approached the water's edge. He told Brandon to return to the shore, saying that there were bull sharks in the river. Brandon swam out until he was about half way to a small island called Little Goat Island. He then appeared to tread water. He did not seem to be in distress at this point.
57. Acting Inspector Poole had continued through the back of the Taree Motor Inn, negotiating a fence with a door in it. This took about 30 seconds in total. When he emerged onto River Street, Brandon was already in the water. He also did not think Brandon appeared to be in trouble.
58. Soon afterwards, Leading Senior Constable Richards and Probationary Constable Savage arrived in Taree 16. They manoeuvred down to the water's edge, and then moved the vehicle so that the headlights were partly illuminating the water. The conditions at this point were dark, the river was murky and it had just reached high tide, at 2am.
59. Soon after officers Leading Senior Constable Richards and Probationary Constable Savage arrived, Brandon appeared to move upright. Within a few seconds, police saw splashing near his head, and he seemed to be in difficulty. Acting Inspector Poole said words to the effect, *"you're going to have to get in"*.
60. Probationary Constable Savage and Detective Senior Constable Crameri began to remove their appointments. Probationary Constable Savage entered the water first, still fully dressed and wearing her boots. She began to swim towards Brandon.
61. Detective Senior Constable Crameri then entered the water. As he did so, Brandon disappeared under the surface. Both officers swam to the area where Brandon was last seen. They attempted to feel around with their hands and feet for Brandon, and Detective Senior Constable Crameri tried to dive under the water to locate him.
62. Tragically, neither officer was able to find Brandon. They then returned to the shore. Both officers were fatigued, and Probationary Constable Savage needed assistance getting out of the water.

### ***The search for Brandon***

63. At 3.05am, Acting Inspector Poole made a radio broadcast, and called the SES. He later asked for Marine Rescue and the Water Police to attend. The SES arrived at about 3.45am and commenced searching the river. Marine Rescue began searching with radar about an hour later. The Water Police attended later in the morning. They used sonar, which located an area of interest near to the point where Brandon had gone missing, and placed a weighted buoy to mark the spot.
64. At 11.45am, police divers attended.

65. At 1.00pm, Brandon's body was discovered. He was found in about 4.2m of water, 8m from the buoy and 26m from the riverbank.

### **Coroner's investigation:**

#### **The autopsy report**

66. An autopsy was conducted by Dr Alison Ward on 27 January 2022 (day 5). She gave the cause of death as "*in keeping with drowning*". There were no external injuries, other than a yellow bruise on the left upper arm.

67. Toxicology revealed the presence of a "*significant*" level of methylamphetamine. The level was consistent with the drug having been consumed a short time prior to death. Cannabinoids were also detected.

68. A toxicologist, Dr van Nieuwenhuijzen, has provided a report. She notes that methylamphetamine is known to undergo post-mortem redistribution. However, even accounting for this, she considers that Brandon would have been significantly affected by the drug. She suggests that the effect of that drug may have contributed to Brandon's decision to enter the water.

### **Issues:**

69. A list of issues was prepared, to identify the primary areas of focus for the inquest. These were as follows:

- a. Was the police operation that was held within Manning Great Lakes Police District from 18 to 25 January 2022 planned and executed in accordance with NSW Police Force policy?
- b. Was information distributed in furtherance of that operation known to police involved in the attempt to arrest Brandon, and the subsequent foot pursuit? If so, did it contribute to the decision to arrest Brandon?
- c. Were police acting reasonably and in exercise of lawful powers when:
  - i. they decided to stop the vehicle driven by Darren Russell,
  - ii. they decided to search the vehicle, and seize items of property (including a phone),
  - iii. they decided to arrest Brandon.
- d. Was it appropriate to pursue Brandon? What alternatives were there?
- e. In what circumstances did Brandon enter Manning River?
- f. Did police take appropriate steps to render aid, after Brandon entered the Manning River? What options existed? Was there unreasonable delay?

- g. Was the search for Brandon conducted appropriately?
- h. Were police acting in compliance with applicable policy in relation to Body Worn Video?
- i. Is it necessary or desirable to make any recommendations in relation to any matter connected with the death?

**Factual findings:**

Issues:

- a. Was the police operation that was held within Manning Great Lakes Police District from 18 to 25 January 2022 planned and executed in accordance with NSW Police Force policy?
- b. Was information distributed in furtherance of that operation known to police involved in the attempt to arrest Brandon, and the subsequent foot pursuit? If so, did it contribute to the decision to arrest Brandon?

**The police operation and its effect on the stop, search and arrest of Brandon**

70. Detective Inspector Bayly explained that there was a decision to actively attempt to prevent property and other crime in the area, a problem that had recently escalated. What he described in this operation was an increased rostering of police, and very active police work being undertaken for a short period of time. The relevance of that operation to the inquest was ultimately contextual. It explained why such large numbers of police, including senior police, were working that night. Prior to the evidence given at the inquest it had been suggested that there may have been a direct link to Brandon as a result of the operation, in that he was specifically nominated on at least one of the operations' suspect lists. However the evidence ultimately showed that none of the police involved had Brandon in their minds when they were performing their duty that night.
71. It should be said from the outset that in accordance with issue A, there were no NSWPF policies identified that underpinned the operation.
72. The instruction to officers used some unfortunate terminology, such as *"No mercy rule. If you detect an offence when engaging offenders/suspects: take action"*. It included a reference to putting a person in the "bin" (custody) and "burn the bridges".
73. This instruction (which was not sent by any officer mentioned herein) was explored with witnesses and was undoubtably distressing language for family and the community to hear. I was satisfied that the nature of this instruction had no effect on the officers involved, and that they went about their duties as per their usual obligations, understanding that they still maintained a discretion in accordance with their powers. It is an opportunity to consider however the effect such language could or might have.

74. Detective Senior Constable Crameri described that night being different to his normal shifts, and that more coverage was being provided by the detectives. He knew that crime was up at the time, and he understood that he was being asked to be proactive, be visible and be out and about. As a detective he does not usually wear Body Worn Video. He explained that his reasoning for making that decision was because information he receives is often through interpersonal communication, where he can obtain information from people that he comes into contact with while undertaking his duties. In his view the wearing of Body Worn Video could detract from his ability to undertake his role effectively. He therefore was not using Body Worn Video on 22 January 2022. He was not aware of Brandon nor any connection with the operation. It played no part in his decision to stop the car.
75. Detective Senior Constable Shedden also gave a similar account of the operation. He was expected to be actively out in the community instead of attending to station duties, demonstrating a presence and undertaking active police work. He also made a decision not to wear a body worn camera. He made that decision as a detective working out in the field, but he was reflective on that fact. After hearing some of the other officers give accounts of why they find the camera useful, and following these events he said he may now change his practice. That was impressive evidence, in that he was listening to the reasoning of other officers and considering the value of their opinions. He also impressed as a thoughtful witness, who was able to articulate his analysis of various situations and explain to the court his independent decision making processes. He also was not aware of Brandon as being any focus of the operation, nor did the operation play a part in the stopping of the car.

### **Stop, search, arrest and foot pursuit**

#### Issue:

- c. Were police acting reasonably and in exercise of lawful powers when:
- i. they decided to stop the vehicle driven by Darren Russell,
  - ii. they decided to search the vehicle, and seize items of property (including a phone),
  - iii. they decided to arrest Brandon.

76. The issue of why Detective Senior Constable Crameri decided to stop the vehicle that Brandon was travelling in was explored with him. He recalled that night he had earlier come across information that the town of Forster had run out of its supply of illicit drugs. As a result, people may be coming in from surrounding areas to try and source drugs in Taree. Knowing this, and seeing that there were three occupants, using backroads, in a car that came from out of the Taree area was concerning to him. He also had intelligence that the usual driver of the car had previous offences for manufacture of illicit substances, and it was 2.00 am. He had also seen the car earlier in Taree.

77. After the vehicle was stopped, he spoke to the driver who said words to the effect of “we were trying to get on” or “we were chasing” which Detective Senior Constable Cramer understood to mean that they were looking to buy illicit drugs. He took this comment to confirm his suspicion even further in relation to the car, and he decided to search the vehicle. The driver indicated that he had a knife on his person, and a further one in the car. The three people sat down on the gutter while they performed searches on them.
78. Detective Senior Constable Shedden was having trouble identifying Brandon, and Brandon was using the name Jack Charlton. The detective realised that this was not his name, particularly when he spelled the name incorrectly. Detective Senior Constable Shedden recalled that Brandon used the letter “v” when spelling Charlton. Detective Senior Constable Shedden asked Brandon for his date of birth and where he lived, any details of previous interaction with police and after being given insufficient information he formed the view that he wasn’t being told the correct name by Brandon.
79. It started to rain at a point when Detective Senior Constable Shedden had asked Brandon to show him a Facebook profile on his phone. His evidence was that as Brandon opened the phone, his Facebook page came up with his true identity. Detective Senior Constable Shedden asked to look at the phone and then took it with him. His account was that the rain started heavily just then, and he went back to the car and sent the three people to the other car to stay out of the rain. He still had the phone in his possession.
80. The detectives performed searches on Brandon, and after discussions with Leading Senior Constable Richards they confirmed that he was the same person that they had seen in the car earlier in the night. They discovered that the location where Brandon was first spoken to by Leading Senior Constable Richards put him in breach of his bail, and that he had given a similar false name when questioned previously. That is, Brandon earlier in the night when questioned by police had been within the 1 kilometre radius of an address that he had been bailed to avoid.
81. After speaking several times to Leading Senior Constable Richards and checking the records, the detectives made a decision that they would arrest Brandon for breach of bail.
82. Somewhat surprisingly neither officer knew or perhaps realised the importance of the issue that Brandon was also in breach of his curfew. I accepted both detectives’ account on that point, and therefore that potential breach did not influence the decision to arrest him. Equally the potential fresh offence of breach of the ADVO had no part to play in the decision to arrest, because at that point in time that information was not readily accessible to the detectives.
83. Both detectives gave evidence that the decision Brandon made to run from them was a complete surprise. He had cooperated up until that point, and they did not anticipate that he would flee.
84. Each detective was asked whether they considered taking other steps instead of arresting him, and then engaging in a foot pursuit.

85. Submissions were made on behalf of the family that perhaps the police had failed to consider other options available to them. It was submitted that pursuant to sections 36 and 21 of the *Law Enforcement (Powers and Responsibilities) Act 2002* ("LEPRA") the decision to stop the car was not open to the officers in these circumstances. It was submitted that the search of Brandon was equally not in accordance with proper exercise of powers pursuant to LEPRA, the taking of his phone was in breach of police power and that the proper application of the *Bail Act 2013* should have led to a decision to issue a Field CAN or use a detention or variation application to bring him back before the court. Further, it was submitted that the foot pursuit was unnecessary.

### **The legality of the stop, search and arrest**

86. It is very important to explore the reasoning behind the stopping of the car and subsequent police decisions. The use of any power to affect an individual's liberty should be exercised appropriately and with caution, knowing that, as seen in this jurisdiction, the exercise of power can have significant consequences.

87. Section 36(1) of LEPRA provides:

#### **36 Power to search vehicles and seize things without warrant**

(cf *Crimes Act 1900*, ss 357, 357E, *Police Powers (Vehicles) Act 1998*, s 10, *Drug Misuse and Trafficking Act 1985*, s 37)

(1) A police officer may, without a warrant, stop, search and detain a vehicle if the police officer suspects on reasonable grounds that any of the following circumstances exists—

- (a) the vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, anything stolen or otherwise unlawfully obtained,
- (b) the vehicle is being, or was, or may have been, used in or in connection with the commission of a relevant offence,
- (c) the vehicle contains anything used or intended to be used in or in connection with the commission of a relevant offence,
- (d) the vehicle is in a public place or school and contains a dangerous article that is being, or was, or may have been, used in or in connection with the commission of a relevant offence,
- (e) the vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, a prohibited plant or prohibited drug in contravention of the *Drug Misuse and Trafficking Act 1985*,
- (f) circumstances exist on or in the vicinity of a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers may lessen the risk.

88. Sections 21 and 36 of LEPR required (on the current facts) that the detectives firstly form the view that they suspected on reasonable grounds that the car and people in it were in possession of a prohibited drug. I was directed to *R v Rondo* [2001] NSWCCA 540 in which the following propositions were stated at [53]:

- a. A reasonable suspicion involves less than a reasonable belief but more than a possibility. There must be something which would create in the mind of a reasonable person an apprehension or fear of one of the state of affairs covered by s.357E. A reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.
- b. Reasonable suspicion is not arbitrary. Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material or materials which may be inadmissible in evidence. The materials must have some probative value.
- c. What is important is the information in the mind of the police officer stopping the person or the vehicle or making the arrest at the time he did so. Having ascertained that information the question is whether that information afforded reasonable grounds for the suspicion which the police officer formed. In answering that question regard must be had to the source of the information and its content, seen in the light of the whole of the surrounding circumstances.

89. I was also taken to the authorities of *Streat v Bauer; Streat v Blanco* (unreported NSW Supreme Court 16 March 1998) and *R v Yana Orm* [2011] NSWDC 26.

90. Taking first the vehicle stop, it was submitted that Detective Senior Constable Crameri came up with some additional reasons for the stop for the first time in his evidence in the inquest, which he did not provide when he was interviewed closer to the event. Indeed he did give additional evidence of what had been in his mind that night at the time of the search. This is not unusual, as it is often the case that initial police statements do not focus on or include specifically in great detail the thought processes that they had undertaken to exercise a power. Often that nature of evidence is adduced once it is specifically challenged.

91. What was impressive about Detective Senior Constable Crameri was that he did turn his mind to his decisions. It was obvious in his decision making in relation to the use of body worn, and it was evident in his explanation of his thought process about this stop. He had the intelligence about Forster running out of drugs, the fact that this car was from out of area, the time of night and the backroads in which the car was travelling, and the number of passengers in the car. There was further intelligence on the usual driver of the car being linked to drug activity. He recalled seeing this car at an earlier stop. There is nothing to suggest in the evidence that the stop was improper. He turned his mind to those factors and I accept that a decision was made after he had formed a suspicion based on a multitude of factors to exercise those powers. I accept that the suspicion would be so held by a reasonable person looking at those factors.



92. Detective Senior Constable Shedden said in his initial statement that it was his decision to make the stop. In evidence he went into further detail. He said that he and Detective Senior Constable Crameri worked together regularly and it would have been a joint decision. He said if one of them did not agree they would voice those concerns. He said he was from the area, that he had policed the area for 17 years and that although to a person from outside the area it might look as though the path the car was on was harmless and close to the main road, in his experience of policing many years this was a route that would draw his attention. He also formed a suspicion based on factors which I accept were reasonable.
93. The next decision that was made was to search the car. Again, as well as the information they already had, the driver made an initial comment consistent with admitting that he was there to obtain drugs, consistent with their suspicion. When it was announced that the car would be searched the driver then admitted to carrying a knife on his person and having an additional one in the car.
94. This combination of growing factors informed the nature of the investigation. On that additional set of facts, the car and individuals were searched, with nil find. Brandon was consistently giving a false name and detectives were conscious that he was not who he said that he was. At that point they had an admission that at least one of the parties was there to source drugs and they had found two knives.
95. The fact that Brandon's phone ended up in the hands of Detective Senior Constable Shedden seemed to be an event that transpired without much thought, Brandon handing him his phone and the rain then taking each group back to their respective cars. By that time however Detective Senior Constable Shedden had already been made privy to Brandon's true identity, and was aware of it.
96. Once they had Brandon's name they were able to determine that he was the same person who was seen earlier, in an area that would breach his bail.
97. It was submitted that Detective Senior Constable Shedden could then have made a decision to issue a Field CAN, and using the principles of least restrictive measures could have sent the group on their way. Detective Senior Constable Shedden said that this was difficult because Brandon would not accept who he was and continued to deny his identity.
98. Submissions were made that the detectives did not specifically consider the factors in section 77 (3) of the *Bail Act*, and had they done so they would not have arrested Brandon. Section 77 provides:

**77 Police officers may take actions to enforce bail requirements**

- (1) Unless section 77A applies, a police officer who believes, on reasonable grounds, that a person has failed to comply with, or is about to fail to comply with, a bail acknowledgment or a bail condition, may—
- (a) decide to take no action in respect of the failure or threatened failure, or
  - (b) issue a warning to the person, or

- (c) issue a notice to the person (an **application notice**) that requires the person to appear before a court or authorised justice, or
  - (d) issue a court attendance notice to the person (if the police officer believes the failure is an offence), or
  - (e) arrest the person, without warrant, and take the person as soon as practicable before a court or authorised justice, or
  - (f) apply to an authorised justice for a warrant to arrest the person.
- (2) However, if a police officer arrests a person, without warrant, because of a failure or threatened failure to comply with a bail acknowledgment or a bail condition, the police officer may decide to discontinue the arrest and release the person (with or without issuing a warning or notice).
- (3) The following matters are to be considered by a police officer in deciding whether to take action, and what action to take (but do not limit the matters that can be considered)—
- (a) the relative seriousness or triviality of the failure or threatened failure,
  - (b) whether the person has a reasonable excuse for the failure or threatened failure,
  - (c) the personal attributes and circumstances of the person, to the extent known to the police officer,
  - (d) whether an alternative course of action to arrest is appropriate in the circumstances.
- (4) An authorised justice may, on application by a police officer under this section, issue a warrant to apprehend a person granted bail and bring the person before a court or authorised justice.
- (5) If a warrant for the arrest of a person is issued under this Act or any other Act or law, a police officer must, despite subsection (1), deal with the person in accordance with the warrant.

**Note—**

Section 101 of the *Law Enforcement (Powers and Responsibilities) Act 2002* gives power to a police officer to arrest a person in accordance with a warrant.

- (6) The regulations may make further provision for application notices.

99. It was submitted that the matter was trivial, and there was an alternative course to arrest, such as a CAN or an application notice. Further it was submitted that the detectives must consider the factors in subsection (3), and they failed to do so here.

100. The problem with that proposed course, as identified by Detective Senior Constable Cramer, was that Brandon maintained he was not that person. Detective Senior Constable Cramer questioned whether Brandon's identity could be made out in the Local Court, keeping in mind the high standard of beyond reasonable doubt.

Detective Senior Constable Shedden considered the bail breach relating to a distance exclusion zone to likely be significant, given that usually those conditions are placed on bail for the protection of witnesses. He was correct in that thinking.

101. Turning to Brandon at this point, he had been having trouble with the law generally, and there were a number of escalating matters of a domestic nature. He had spent some short time in custody. In his previous interactions with police he had tried to escape apprehension, and that seemed to be one mechanism he would use. Brandon was a young Aboriginal man who knew that he was out in breach of his curfew. He had been apprehended a number of times previously, and as such on this occasion he used a false name. It is such a sad story given that he was simply out with friends, wanting to access his money, wanting to go to McDonalds, but knew that to disclose his identity would result in likely arrest.
102. He was not in a clear-thinking headspace, he had a significant blood concentration of methylamphetamine. He had also consumed cannabis. This would, on expert opinion, have affected his thinking and decision making.
103. I can see no evidence that police in this case inappropriately used the powers given to them to exercise this particular stop, search and ultimate arrest. There is always a spectrum of choice available to the officers, and a range of appropriate courses available. Although other decisions could have been made as there was a discretion available, these officers I am satisfied did turn their minds to the exercise of their power, and the course taken was open to them on the facts before them.
104. I accepted that independently and working together the two detectives had come to the same view, based on slightly different grounds, however both valid. They were both able to articulate their thought processes.
105. From the family perspective this is difficult evidence to hear. This evidence by no means suggests that with the benefit of hindsight that things would not have been done differently if the tragic outcome was known. Everyone would have wished to avoid the ultimate outcome for Brandon, but this is a position that is sadly only known to us all now. This process of analysing the stop, search and arrest is a legal analysis of the application of LEPR and the *Bail Act* and is based on facts known to the officers at the time.

Issue:

d. Was it appropriate to pursue Brandon? What alternatives were there?

106. Brandon had run from police on 8 or 9 occasions in the past, however this history was unknown to these police officers. Again, in hindsight as a young Aboriginal man it is perhaps unsurprising that he may have actively avoided arrest and although his fear of water was great his fear of arrest was evident, together with the fact that his thinking was drug affected. These matters were unknown to the officers.
107. When Brandon suddenly ran the arrest had been attempted and was underway, and once that arrest was announced the detectives said that they would normally follow through with a chase. The crucial decision that they made was the

one as to whether or not to arrest, and once made they would affect the arrest. The police maintained that they still had a difficulty at that point with proving his identity, and had concerns about a breach of bail that may have related to witnesses' protection.

### ***Events at the Manning River***

#### Issues:

- e. In what circumstances did Brandon enter Manning River?
- f. Did police take appropriate steps to render aid, after Brandon entered the Manning River? What options existed? Was there unreasonable delay?

108. Brandon did not like water, nor swimming. The fact he entered the water at all is evidence of the state of mind he was in while affected by illicit substances. He wanted to get away from the police, and he was significantly drug affected. Even the fact that he appeared to initially not be demonstrating trouble in the water can in part be explained by the effect the drugs were having on him, in that he may not have been conscious of the danger the water presented to him.

109. Detective Senior Constable Crameri gave a compelling account of what happened next. He came within arms reach of Brandon, when Brandon suddenly sped up and created distance. He watched in shock as Brandon entered the water, and tried to convince him to come back out. He told him of the bull sharks, and told him to swim back to shore. He was then joined by Acting Inspector Poole, who also observed that at that point Brandon did not appear to be in difficulty.

110. Acting Inspector Poole arrived and agreed that the conditions were dangerous. He did not initially suggest water entry. The water was murky, flooding had just occurred in the area and the tide was high. The current was strong. It was 2.30am in the morning and was very dark.

111. Probationary Constable Savage and Leading Senior Constable Richards arrived in their car. Acting Inspector Poole directed that the lights be shone on the water. Initially these officers did not see Brandon in trouble, and then all of a sudden they saw splashing and it was clear that he was in danger.

112. Acting Inspector Poole then said words to the effect "he is struggling, get your gear off and get in the water".

113. He himself took his belt off. Probationary Constable Savage, who was all of 7 months in the job, took her jacket off and went to take her boots off. He said words to the effect of "there isn't time, get in".

114. This young, junior officer of slight build then got into the Manning River while fully clothed with her boots on at 2.30am. There was obvious danger to her being placed in that situation. What she could have done, even if she had reached Brandon who would have been fighting for his life, is unknown. Her evidence was in effect

that she did not think through the danger. She said, “someone needed help so I just went in”. She described swimming out on adrenaline, soon becoming fatigued and weighed down by her boots and police clothes. She swam out to where Brandon was last seen and she was feeling around in the water to try and find him. She started getting tired, when Detective Senior Constable Crameri suggested they go back. She was swimming slower, and was getting tired. Leading Senior Constable Richards was calling to her to check if she was alright. Coming back in was a little hard, and she recalled that it was not easy to swim in boots. Senior Constable Richards got into the water to help her physically get out. She said in evidence that she was struggling. She acknowledged that it was dangerous to her own safety in hindsight.

115. Leading Senior Constable Richards gave an account that he could see she was struggling, by her strokes and her manner in the water.
116. She was physically exhausted and cold when she got out and made her way back to the police station.
117. She was asked if having had that experience, a flotation device would be of any use. She gave the very practical response that anything that can assist will assist, but whether it is available is another thing.
118. Leading Senior Constable Richards gave evidence that when Acting Inspector Poole said they were to get in the water, he had concerns about all officers entering the water and leaving their weapons on the riverbank exposed. He immediately took off his weapons and ran to the car, to safely secure them and then returned initially with the intention of entering. When he got to the riverbank Detective Senior Constable Crameri and Probationary Constable Savage were already in the water, swimming. He gave evidence of his concern for both officers and for Brandon. He recalled using his torch to try and provide more lighting on the area. He then believed Probationary Constable Savage was struggling, and so entered the water to assist in getting her safely out.
119. Detective Crameri gave very moving evidence. It was evidence that made the moments Brandon entered the water very real, and he by his words and demeanour told Brandon’s family of his devastation at the loss of Brandon. He was very concerned about the presence of bull sharks amongst the other dangers, however, he also didn’t hesitate to enter the water, and did so following Probationary Constable Savage. It was clear that he was the stronger swimmer, looking for Brandon but also looking out for his fellow officer, encouraging her to swim back in with him.

Issue:

- g. Was the search for Brandon conducted appropriately?

120. There was no issue raised nor apparent with the search undertaken for Brandon following these events.

Issue:

h. Were police acting in compliance with applicable policy in relation to Body Worn Video?

121. No one activated body worn camera during the stop nor at the river. Detective Senior Constables Crameri and Shedden explained their reasoning behind a decision not to use it. Leading Senior Constable Richards gave evidence that he always uses it, in fact he had captured footage of a very appropriate interaction with Brandon and his friends earlier in the night. When he was called to take a truck and pick up Brandon he was about to sign off for the night. He had used it all shift, and believed this would be a duty where he would have little interaction with persons at the scene. He had already removed the body worn and so did not collect it. Probationary Constable Savage gave the same account. Acting Inspector Poole also gave evidence that he was mostly at the station that night, and so did not avail himself of body worn on this occasion. He gave evidence that he will use it where appropriate and when available.
122. Therefore, although it is noted that body worn is a very efficient tool, each officer had reasoned through the process as to why they did not have it on. It was submitted that in the dark or during a chase it is not necessarily useful. The use of the body worn can still be a very important piece of evidence to depict what is taking place, even if it is sound or movement, and it can also give comfort to families because it is a tool of transparency. However, I accept in this case that each officer turned their mind to its use, and had reasons for not carrying it at the time of interaction with Brandon.

**Concluding Remarks:**

123. Acting Inspector Poole gave evidence that he was alert to the dangers in the water when he arrived at the water's edge. He agreed that he noted the following dangers: the water was murky, the water level was higher, it was flowing more quickly than usual and it was dark. There were flood conditions and he made a decision that the police would not initially go in the water, because there were too many risk factors in that water. He also was aware of the possibility of bull sharks. There was a further risk that given Brandon was trying to flee police, that he may be a concern to police safety in the water. He thought this while he and Detective Senior Constable Crameri were together on the bank of the river and at a time Brandon appeared to be managing in the water.
124. It was only when Brandon became distressed that Acting Inspector Poole directed officers to "get your gear off and get in the water". When asked why he said words to that effect, his evidence was "that is what we do". It was somewhat concerning to hear that even in hindsight, reflecting on the danger to those two officers, he would not with the benefit of hindsight have reconsidered his decision to give that direction.
125. He acknowledged that a person fleeing police was a danger to police officers in the water. He also acknowledged that a drowning individual poses serious risks to a rescuing swimmer. It therefore was difficult to see what the two swimmers might have achieved had they reached Brandon. Acting Inspector Poole was acting out of a

desire to save Brandon, and he weighed up the risks to the officers and asked them to enter the water. At that time he was unaware of the swimming ability of either officer in the water.

126. He himself took his belt off and intended to get into the water also. The other officers got into the water faster, so he decided to supervise from the shore as the senior officer.

127. The direction given by Acting Inspector Poole was given with the intention of saving Brandon. Although this direction was given to preserve the life of Brandon, it also put at risk the officers. It did not impact the result for Brandon. If anything it was a comfort to his family to know at that point everything possible was done to try and save Brandon's life. It is however evidence that those patrolling around large bodies of water, particularly rivers, might be aided by specific training to better understand the risks of entering water in these circumstances.

128. The purpose of the inquest is to explore the issues surrounding the cause and manner of Brandon's death, not to criticise or apportion blame. The actions of the officers are actions that must be viewed as being made in dire circumstances, in the middle of the night. There was not much time for thought and careful analysis, and it must be reiterated that all were acting to try and save the life of Brandon, and that was the primary focus.

129. However, this is an example of where potentially two further lives were at risk of serious harm or death, and there seems little in the way of policy or procedure to help guide this type of operation around water. It is another opportunity to consider whether, considering the recent recommendations made by the State Coroner in another regional area, waterway safety in areas where large bodies of water are present, water safety is something to spend some time reflecting on.

130. It was submitted that it is unrealistic for an officer to retrieve a flotation device from a car in a situation like this. There were two such devices back at the station. However, the point seems to be more one of officer safety and community member safety. If there was an option of a flotation device available in a car, perhaps the decision could then be made with a choice, as to whether to enter only after obtaining the assistance of a flotation device, to immediately enter without retrieving such device, or not to enter at all.

131. The direction given and danger presenting itself does not detract from the action and bravery of the two officers who did not hesitate to get into the water to attempt to save Brandon. The family expressed gratitude to both of them, and particularly to a very new and young officer who put the life of Brandon before her own personal safety.

132. Detective Senior Constable Crameri was brave, and devastated that he had not reached Brandon before he reached the water. His evidence touched everyone in the court room, as did his evident sympathy for the young man lost. He thought little of getting into the water, and although he could not locate Brandon he called Probationary Constable Savage back with him into shore.

133. Probationary Constable Savage has started her career with great courage. She did all she could in the sudden circumstances that she found herself in, and has left a family knowing that all that could be done was done.
134. The actions of Leading Senior Constable Richards were measured and sensible. He determined that there were enough people in the water, that the danger was now to all in the water and he gave aid where he could by lighting the area and wading in as soon as he could to assist Probationary Constable Savage out of the water. It was clear that as her senior and training officer he felt responsible for her safety in particular. He equally was affected greatly by the loss of Brandon that night, and it was very clear that his priority also became one of ensuring the safety of the two officers in the water.
135. Equally Detective Senior Constable Shedden worked as part of the team, returning to his vehicle, securing his dropped handcuffs and the two police vehicles left behind and importantly calling for assistance and then returning to the banks to scan for Brandon. As a team they worked together to get the best result for Brandon, but he could not be saved.
136. It was important to carefully consider the tragic circumstances surrounding the death of Brandon. The public investigation into the loss of a loved one is a further burden for a family to have to bear after such a tragic loss. This analysis of the events is little comfort to his family, who now live their lives forever feeling the loss of a treasured and loved family member.
137. However, this family immersed itself into the process. The inquest commenced with a beautiful welcome to country, the family engaged in the coronial process, asked questions through their representative and took the opportunity to thank certain officers personally after evidence had been given. They used the opportunity to listen and hear details from those who were present as to what they did and how they felt when they could not save Brandon, and learn what actually happened during the course of the police operation. I hope this was some opportunity to heal, even in a very small way. I extend to them my deepest sympathy for the loss of Brandon.
138. From these events where Brandon went into dangerous water at night, a senior officer formed the view that officers should enter the river and two officers did in fact enter the water, it seems appropriate to draw these matters to the attention of the Commissioner for her consideration as to whether safety measures should be explored to better improve safety for police and the community.

**Recommendations:**

139. I make the following recommendations:
1. That the NSW Commissioner of Police (“the Commissioner”) conduct a review of available water rescue equipment at Manning Great Lakes Police District, and give consideration as to whether any further equipment should be made available to police.



2. That the Commissioner give consideration as to whether any policy or training should be developed to guide police in relation to engaging in water rescues.

140. Non-publication orders prohibiting publication of certain evidence pursuant to the *Coroners Act 2009* have been made in this Inquest. A copy of these orders can be found on the Registry file.

**Acknowledgments:**

141. To the Officer in Charge for a thorough and careful preparation of the brief, and gathering of relevant evidence.

142. To the family and friends of Brandon who attended the inquest and contributed to the important review of the circumstances surrounding his death.

143. To all the legal representatives who explored relevant matters to assist the coronial process.

144. To Ms Nicolle Lowe for her attendance, support of family and of culture. Her presence as an ACISP was of great assistance to the entire process, and placed a focus on the process of healing.

145. To the team assisting, Ms Bird and Mr Harris. Ms Bird organised and managed the brief, the witnesses and assisted with a smooth presentation of the case. The comprehensive analysis of the brief of evidence allowed Counsel Assisting to present a very careful and targeted exploration of the evidence. I thank them both for the attention to detail and assistance.

**Findings required by s81(1):**

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

***The identity of the deceased***

The deceased person was Brandon Clark

***Date of death***

22 January 2022

***Place of death***

Manning River, Taree, New South Wales

***Cause of death***

In keeping with drowning

***Manner of death***

Misadventure (in the course of a police operation)

I again extend my most sincere condolences. I close this inquest.

A handwritten signature in black ink that reads "E. Kennedy". The signature is written in a cursive style with a large, prominent "K" and a long, sweeping underline.

Magistrate E Kennedy

Deputy State Coroner