



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2013 0934

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of:** ANTONIO CHRISTOPHER LOGUANCIO

Findings of: **AUDREY JAMIESON, CORONER**

Delivered On: 30 March 2017

Delivered At: Coroners Court of Victoria at Melbourne  
65 Kavanagh Street, Southbank, Victoria 3004

Hearing Dates: 27, 28, 29, 30, 31 July 2015, 3, 4, 5, 6, 7, 10, 11, 17, 18  
August 2015 and 6 November 2015

Appearances: Mr Simon Moglia of Counsel instructed by the  
Aboriginal Legal Service for Mrs Lesley Gilmour  
Mr Ron Gipp of Counsel instructed by the VGSO for  
the Chief Commissioner of Police  
Mr Paul Holdenson QC with Mr David Sexton of  
Counsel instructed by Minter Ellison for Corrections  
Victoria

Counsel Assisting the Coroner: Ms Fiona Ellis of Counsel instructed by Ms Jessica  
Wilby, Principal In-House Solicitor

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## **ACKNOWLEDGEMENT**

## **FINDINGS**

I, AUDREY JAMIESON, Coroner, having investigated the death of **ANTONIO CHRISTOPHER LOGUANCIO**

and having held an Inquest in relation to this death on 27, 28, 29, 30, 31 July 2015, 3, 4, 5, 6, 7, 10, 11, 17, 18 August 2015 and 6 November 2015

at the Coroners Court of Victoria at Melbourne

find that the identity of the deceased was ANTONIO CHRISTOPHER LOGUANCIO

born on 1 February 1963

and that the death occurred on 3 March 2013

at 38 Justin Avenue, Glenroy Victoria

**from:**

1 (a) GUNSHOT WOUND TO THE HEAD

**in the following summary of circumstances:**

Antonio Christopher Loguancio died on 3 March 2013 at a time when he was armed and under siege (for approximately 43 hours) in the presence of police at premises located in Glenroy.

The death of Antonio Christopher Loguancio was *reportable*<sup>1</sup> as defined in the *Coroners Act 2008* (the Act), as immediately before his death, Antonio Christopher Loguancio was a *person placed in custody*<sup>2</sup> as defined in the Act, and specifically he was in the custody of police or a person who the police were attempting to take into custody at the time of his death.

## **BACKGROUND CIRCUMSTANCES**

1. Antonio Christopher Loguancio<sup>3</sup> (Tony) was born on 1 February 1973 to Mrs Lesley Gilmour and her first partner Gregorio Loguancio. On the date of his death, Tony was 40 years of age.
2. During his early years, Tony lived in Northcote with his parents and went to primary school in Thornbury. Tony's mother describes him as a friendly, clever kid who really enjoyed school, often coming home with awards.

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<sup>1</sup> Section 4 *Coroners Act 2008* (Vic).

<sup>2</sup> Section 3(1)(f) & (j).

<sup>3</sup> Mrs Lesley Gilmour, Antonio Loguancio's mother, requested that her son be referred to as "Tony" during the course of the Inquest in place of the more formal reference of "Mr Loguancio". For consistency, I have, in most part, avoided formality and also referred to him only as Tony throughout the Finding.



3. When Tony was in primary school his parents separated and he went to live with his father and his sister, Rachel. Tony returned to live with his mother when he was thirteen and around this time commenced secondary school at Northcote Technical School. At the age of about 14, Tony was involved in an incident where he caused a fire at the school. As a result of this incident he received significant burns and required treatment at the Austin Hospital. During that time he befriended Shelia Archer, who worked at the hospital as a cleaner. Tony formed a lifelong friendship with Ms Archer and her family, who he referred to as his adopted family. He referred to Ms Archer as his “foster mum”.
4. Tony subsequently lived between his father and mother and proved difficult to manage. Tony left school at the age of 16 to work at his grandfather’s scrap yard.

### **Forensic background**

5. Tony had an extensive forensic and criminal history which commenced in or around 1991 at the age of 18 years. He spent seven months in pre-detention, leading to conviction at the Melbourne County Court on 7 July 1992, on a charge of arson, upon which he received a two year community based order. At Box Hill Magistrates’ Court on 14 October 1993, Tony was convicted of theft, unlicensed driving, assault, carry dangerous article and other offences, resulting in imprisonment for a period of four months, before being granted parole on 15 March 1994. In 1998 he was jailed for approximately 12 years, with a non-parole period of eight years and six months for sexual and assault offences including rape of his former partner. On 3 December 2007, Tony was released on parole. On 5 March 2008, his parole was cancelled by the Adult Parole Board (**APB**). Tony was released on parole for a second time on 29 October 2008 but this was again cancelled by the APB on 9 October 2009. Whilst in prison Tony was diagnosed with dissocial (anti-social) personality disorder.<sup>4</sup> He attended for treatment with Clinical Psychologist, Dr Rachel MacKenzie and was also assessed by Consultant Forensic Clinical Psychologist, Dr Michael Davis. Following Tony’s release from prison, Dr MacKenzie continued to treat him, in the period between September 2012 and February 2013.
6. Having served the entirety of his sentence, Tony was released from prison on 18 March 2012 on a five year Supervision Order, with discretionary conditions in respect to his management, due to the risk he posed. The conditions imposed related to residency; attendance for treatment and rehabilitation; abstinence from drugs and alcohol; testing to ensure such abstinence; and reporting for supervision and monitoring purposes with Corrections Victoria.

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<sup>4</sup> Inquest brief (IB) @ p 409 – Statement of Dr Rachel MacKenzie dated 4 April 2013.

7. While subject to the Supervision Order, Tony was alleged to have committed breaches, including positive tests for cannabis; failing to attend appointments at Forensicare; and failing to attend for drug testing.
8. On 31 October 2012, Tony reportedly attended a supervision session at Heidelberg Community Corrections Centre in possession of a knife, and acted aggressively towards staff.
9. On 8 January 2013, Tony was arrested for drugs and weapons offences and was due in court in April 2013, in relation to these offences and the breach of the Supervision Order.

## **SURROUNDING CIRCUMSTANCES**

### **Alleged assault on his partner**

10. On 21 February 2013, Tony attended a treatment appointment at Forensicare, in the company of his partner, Julie Kocoski (**Ms Kocoski**). Tony expressed his distress and anger over the manner in which his case was being dealt with by Corrections Victoria and the attention focused upon him by police. He acknowledged that he had a combination of stressors that had put him on edge and had caused strain in his relationship with Ms Kocoski. The risk of violence toward Ms Kocoski was discussed as well as 'strategies to reduce the tension between them.'<sup>5</sup>
11. On 23 February 2013, Tony allegedly assaulted Ms Kocoski, by dragging her out of a parked car, kicking, slapping and threatening her. Ms Kocoski left the house they were living in and sought refuge with a friend.
12. On 24 February 2013, Ms Kocoski made a complaint to Constable Craig Russell (**Constable Russell**), at Craigieburn Police Station, that Tony had assaulted her, and informed police that she had seen him in possession of a double barrel sawn off shotgun, as well as some other kind of rifle with a scope attached.<sup>6</sup>
13. Due to the assault allegation, an after-hours application for a Complaint and Warrant for an Intervention Order was made and granted on the day of the report. This was forwarded to the Heidelberg Police Station for execution on behalf of Craigieburn Police, and forwarded to the Sex Offenders Registry Unit.
14. Acting Senior Sergeant Justin Goldsmith (**A/S Sgt Goldsmith**) of Heidelberg Police became aware of the family violence complaint and determined that as Tony was reporting on bail,

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<sup>5</sup> Exhibit 41 – Statement of Dr Rachel McKenzie dated 4 April 2013.

<sup>6</sup> Transcript of Proceedings (TP) @ p 56, IB @ p 447 - Statement of Craig Russell dated 5 March 2013.

the safest course of action was to arrest him when he reported to the police station on 25 February 2013. Tony, however, failed to report for bail.

15. Later on 25 February 2013, Detective Senior Sergeant Kevin O'Connell (**D/S/S O'Connell**) of the Banyule Crime Investigation Unit (**Banyule CIU**), received information that Tony was possibly heading to Craigieburn in an attempt to find Ms Kocoski.<sup>7</sup> As a consequence, arrangements were made for Ms Kocoski and her mother to go to Shepparton so that Tony could not find them.
16. On 26 February 2013, Detective Sergeant Andrew Beames (**D/S Beames**) and D/S/S O'Connell attended a factory in Heidelberg West which Tony was known to frequent. Business owner and friend of Tony's, Mick Collett (**Mr Collett**), stated that Tony told him on 25 February 2013 that the police were after him; he had been in a panic, running scared and had been seen cutting a further length off a double-barrelled shotgun in his possession.<sup>8</sup>
17. On 27 February 2013, police arranged to be present for Tony's Corrections Victoria appointment at 10.30 am to arrest him, but he did not attend.
18. At 12.26 pm A/S Sgt Goldsmith managed to contact Tony on his mobile phone. Tony made it clear that he would not surrender and that he would go into hiding.
19. An attempt to locate Tony's phone through analysis indicated the phone was in Glenroy.<sup>9</sup> Tony had by this stage taken refuge in the bungalow located at the rear of 38 Justin Avenue, Glenroy; the residence of a friend.

### **Warrant for arrest**

20. The Sex Offenders Management Branch (SOMB), Corrections Victoria, is involved in the management of persons subject to Supervision Orders. On 26 February 2013, Detective Senior Sergeant Scott Colson (**D/S/S Colson**) of the Sex Offenders Registry Unit liaised with Corrections Victoria to arrange for a warrant to be issued for Tony's arrest, for breaching the Supervision Order. The concerns that formed the basis of seeking the warrant included the alleged assault, alleged drug use, and concern regarding any possible escalation in the risk of sexual offending.<sup>10</sup>
21. Ms Jennifer Hosking (**Ms Hosking**) General Manager of the SOMB, was informed that Tony had been named by his girlfriend as the aggressor in a family violence report to the police. This information to Ms Hosking 'raised a significant and immediate concern, given

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<sup>7</sup> IB @ p 481 – Statement of Kevin O'Connell dated 17 June 2013.

<sup>8</sup> Exhibit 25 – Statement of Michael Collett dated 5 March 2013, IB @ p 194.

<sup>9</sup> IB @ p 460 – Statement of Justin Goldsmith dated 15 March 2013.

<sup>10</sup> IB @ p 374 - Statement of Sarah Miles dated 6 March 2014.

that the alleged assault replicated the circumstances of index offending, which had involved Tony (sic) being violent against an intimate partner'.<sup>11</sup> Subsequently, Ms Hosking, together with Deputy Commissioner Andrew Reaper (**Deputy Commissioner Reaper**), briefed Corrections Victoria Commissioner Jan Shuard (**Commissioner Shuard**). It was resolved to recommend to the Acting Secretary of the Department of Justice Victoria, Dr Claire Noone (**Dr Noone**) that she exercise her discretion to dispense with the required 14 days' notice and issue a warrant immediately for Tony's arrest.

22. The warrant for Tony's arrest was issued in the Melbourne Magistrates' Court by Deputy Chief Magistrate Ms Jelena Popovic, on the basis that Corrections Victoria no longer had contact with Tony and were no longer able to manage the risk posed by Tony to the community, given his whereabouts were unknown.<sup>12</sup> The warrant for arrest was forwarded by Ms Hosking to Victoria Police on the same day.
23. As Tony had still not been located by 27 February 2013, then Detective Acting Superintendent Anthony Glenane (**D/A/Supt. Glenane**), State Intelligence Division, consulted with Commander Doug Fryer (**Commander Fryer**) about a possible media conference. Commander Fryer asked D/A/Supt. Glenane to ascertain if a media conference would jeopardise any avenues of enquiry that local detectives were undertaking.<sup>13</sup> Subsequently, D/A/Supt. Glenane spoke with Detective Inspector Richard Read (**D/I Read**), Divisional Investigation and Response Manager for North West Metro Region, to confirm a media release would not interfere with the ability of local police to locate and arrest Tony. As police had checked on known addresses and not located Tony, D/I Read was of the view that the decision to go to the media was not an operational impediment to locating him.<sup>14</sup>
24. Commander Fryer decided to task the decision to search for Tony to the Fugitive Taskforce, to issue a media release and conduct a media conference to appeal for information that may assist in locating Tony.<sup>15</sup>
25. On 28 February 2013 at approximately 10.00 am, a media conference was held. It was conducted by Commander Fryer and Commissioner Shuard.
26. Tony was, following provision of intelligence, considered to be at an address which was subsequently determined to be incorrect.

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<sup>11</sup> Exhibit 22 – Statement of Jennifer Hosking dated 28 February 2014.

<sup>12</sup> IB @ p 366 and 450.

<sup>13</sup> IB @ p 444.

<sup>14</sup> Exhibit 47 – Statement of Richard Read dated 5 August 2015.

<sup>15</sup> IB @ p 494.



27. By approximately 2.03 am on 1 March 2013, Victoria Police Communications Centre had made certain requests of a telephone service provider. Information was being sought on the basis that Tony was a 'male involved in a siege with police is suicidal (sic)'.
28. By approximately 3.30 pm, police confirmed that Tony was in a bungalow located in the rear yard of a residential property in Justin Avenue, Glenroy.

#### **Police attendance at Justin Avenue, Glenroy**

29. Acting Senior Sergeant Jason Goddard (**A/S Sgt Goddard**) with the approval of Superintendent Peter Ross Guenther (**Supt. Guenther**) ((OIC) – Security Services Division (SSD)) initiated the deployment of the Special Operations Group to the Glenroy address, to effect Tony's arrest.
30. After a safe perimeter around the premises and surrounding location was established, a call was placed by police to Tony at 7.12 pm in an attempt to facilitate his peaceful surrender. In a later call, at approximately 7.20 pm, Tony stated that 'he had a gun to his head and would shoot himself if the police came anywhere near him' and that 'he would shoot anybody near the fence line.'<sup>16</sup>
31. A stand-off was now evolving into a full siege situation, invoking a critical incident response from police. This situation continued into Sunday 3 March 2013, with no significant headway towards a peaceful resolution. Without warning, at 12.57 pm a volley of gun shots were discharged from the bungalow. This was followed by expressions of self-harm, and harm directed towards police, by Tony. At 1.46 pm multiple shots were discharged from the bungalow in rapid succession, totalling thirty eight. Police incident commanders were of the view this posed an unacceptable risk, on the basis that some of the shots appeared to have been aimed high and represented a potential threat to police and residents nearby.
32. On 3 March 2013 at approximately 1.53 pm, incident commanders convened and authorised the deployment of gas, as part of a preapproved plan to utilise a non-lethal option to deal with such a situation. As this decision was reached, a further seven rounds were discharged from the bungalow.
33. At 1.58 pm, 15 rounds of gas were fired into the bungalow, upon which Tony could be heard saying he was going to shoot himself, followed by the discharge of a single gun-shot. Soon after, a second volley of gas rounds were discharged into the bungalow. Police negotiators attempted to contact Tony by phone, but received no response. A fire ensued,

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<sup>16</sup> IB @ p 522 - Statement of Michael Gunn dated 26 February 2014.

possibly caused by the heat generated by the gas canisters coming into contact with combustible material inside the bungalow.<sup>17</sup>

34. After the fire had been extinguished, Tony's body was located in the bungalow. At the time of his death at approximately 2.00 pm on 3 March 2013, Tony had been involved in the siege with police, at the premises in Glenroy, for approximately 43 hours.

## JURISDICTION

35. The Coroners Court of Victoria is an inquisitorial jurisdiction.<sup>18</sup> The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.<sup>19</sup> The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.<sup>20</sup>
36. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by Coroners, generally referred to as the "prevention" role.<sup>21</sup> Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.<sup>22</sup> These are effectively the vehicles by which the prevention role may be advanced.<sup>23</sup>
37. It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation. Nor is it the Coroner's role to determine disciplinary matters.

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<sup>17</sup> IB @ p 1112 - Statement of Justyn Brennan dated 16 May 2013.

<sup>18</sup> Section 89(4) *Coroners Act 2008*.

<sup>19</sup> Section 67(1) of the *Coroners Act 2008*.

<sup>20</sup> See for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

<sup>21</sup> The "prevention" role is explicitly articulated in the Preamble and Purposes of the Act.

<sup>22</sup> See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

<sup>23</sup> See also sections 73(1) and 72(5) of the Act which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.



38. Section 52(2) of the Act provides that it is mandatory for a Coroner to hold an Inquest into a death if the death or cause of death occurred in Victoria and a Coroner suspects the death was as a result of homicide, or the deceased was, immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.

## STANDARD OF PROOF

39. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining whether a matter is proven to that standard, I should give effect to the principles enunciated in *Briginshaw v Briginshaw*.<sup>24</sup> These principles state that in deciding whether a matter is proven on the balance of probabilities, in considering the weight of the evidence, I should bear in mind:

- a. the nature and consequence of the facts to be proved;
- b. the seriousness of any allegations made;
- c. the inherent unlikelihood of the occurrence alleged;
- d. the gravity of the consequences flowing from an adverse finding; and
- e. if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect inferences.

40. The effect of the authorities is that Coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

## PRE-INQUEST INVESTIGATIONS

### The scene

41. I attended the scene on the afternoon of 3 March 2013, together with Dr Linda Iles (**Dr Iles**), Forensic Pathologist at the Victorian Institute of Forensic Medicine (VIFM). Tony was located face down in an apparent kneeling position, behind the entry door to the bungalow and a long-barrelled weapon was located underneath his body.

### Identity

42. The identity of Tony was confirmed through fingerprint comparison<sup>25</sup> and required no additional investigation.

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<sup>24</sup> (1938) 60 CLR 336.

<sup>25</sup> IB @ pp 106 – 113.

## Medical Cause of Death

### Post mortem examination

43. Dr Iles performed an autopsy on the body of Tony on 4 March 2013. In her report dated 3 July 2013,<sup>26</sup> Dr Iles noted that the remains of Tony's body were extensively heat affected, with burning over the anterior and posterior aspects of the body.<sup>27</sup> There was no evidence of soot in his airways, or carboxyhaemoglobinaemia,<sup>28</sup> to indicate Tony was alive whilst the fire was burning. Dr Iles retrieved three metallic fragments from the cranial cavity that were consistent with a projectile. There was no evidence of a gunshot entry wound under the chin or in the soft or hard palate. After re-construction of the skull, the only cranial defect identified was located in the left temporal region, thus presumed to be the site of entry. The bullet entered Tony's head above the left ear. As there was no exit wound it was not possible to ascertain the direction of the bullet.
44. No other significant injuries were identified, however, Dr Iles commented that examination was limited by extensive burning to the body. Natural disease in the form of chronic hepatitis was identified, but no evidence was identified at autopsy of natural disease contributing to death. Dr Iles ascribed the cause of Tony's death to a gunshot wound to the head.

### Toxicology

45. Toxicological analysis of post mortem blood samples demonstrated evidence of methylamphetamine use prior to death. Cannabis metabolites, quinine,<sup>29</sup> paracetamol and amphetamine were identified within urine. There was no alcohol detected in samples. Dr Iles was unable to opine with any precision how long before Tony's death he had ingested<sup>30</sup> the illicit drugs.

### **Ballistics**

46. Leading Senior Constable Alan Pringle (**L/S/C Pringle**), attached to the Ballistics Unit at the Victoria Police Forensic Services Centre, Macleod, examined metal fragments that were removed from Tony at the time of autopsy. L/S/C Pringle noted that the copper and lead fragments had the same class of characteristics produced by the Marlin type firearm that was found with Tony's body on 3 March 2013.<sup>31</sup> L/S/C Pringle identified this firearm as a .17

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<sup>26</sup> Exhibit 1 – Autopsy Report of Dr Linda Iles dated 3 July 2013.

<sup>27</sup> Ibid @ p 3.

<sup>28</sup> Excessive concentration of carbon monoxide in the blood

<sup>29</sup> Used for the treatment of muscle cramps

<sup>30</sup> TP @ p 38.

<sup>31</sup> Exhibit 8 – Statement of Leading Senior Constable Alan Pringle dated 17 March 2014.

calibre Marlin brand bolt action repeating rifle, which was located in a fired position with a spent cartridge present in the chamber. Furthermore, all of the fired cartridge cases found at the scene and examined by L/S/C Pringle, were likely fired by the same firearm; that is, the one located with Tony.<sup>32</sup>

### **Conduct of my investigation**

47. The circumstances of Tony's death have been the subject of investigation by Victoria Police on my behalf. The Coroner's Investigator,<sup>33</sup> Detective Sergeant Robert Nazaretian, prepared a very comprehensive coronial brief of evidence, comprising a range of evidentiary material including witness statements and visual material.
48. This finding is based on the entirety of the investigation material, including the file, coronial brief of evidence, the statements and evidence of those witnesses who appeared at the Inquest.

### **INQUEST**

49. In accordance with section 52(2)(b) of the Act, a mandatory Inquest was held.

### **Directions Hearings**

50. A Directions Hearing was deemed appropriate to be held within 28 days of Tony's death in accordance with Coroners Court of Victoria Practice Direction 1 of 2012, and this was conducted on 19 March 2013. The purpose of the Directions Hearing was to:
- I. Confirm the investigating member for the Coroner;
  - II. Fix delivery of the Inquest brief to the Coroner; and
  - III. Any other directions considered appropriate at the time touching on the investigation.
51. Further Directions Hearings were held on 27 October 2014, 6 March 2015 and 23 April 2015. Interim Suppression Orders were made pursuant to section 20 of the *Open Courts Act 2013*, regarding the police internal incident review and in respect to the operational tactics, procedures, capabilities, methodology and equipment of the Special Operations Group, the Critical Incident Response Team, the Canine Unit and the Technical Surveillance Unit of Victoria Police, and the Specialist Response Group of the Federal Police, including training

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<sup>32</sup> TP @ p 113.

<sup>33</sup> A coroner's investigator is a police officer nominated by the Chief Commissioner of Police or any other person nominated by the coroner to assist the coroner with his/her investigation into a reportable death. The coroner's investigator takes instructions directly from the coroner and carries out the role subject to the direction of the coroner.

practices and methodologies, and investigative tactics and practices. A Proceeding Suppression Order was issued on 23 April 2015 pursuant to section 18(2) of the *Open Courts Act 2013*, in relation to the contents of the report by Victoria Police titled ‘Corporate Strategy and Governance Department, Operational Incident Review Report – Siege – Associated with Police Presence Justin Avenue, Glenroy 1-3 March, 2013’ dated May 2013.

52. The Inquest was held from 27 July 2015 to 31 July 2015, 3 August 2015 to 7 August 2015, 10 August 2015 to 11 August 2015, and 17 August 2015 to 18 August 2015. A Proceeding Suppression Order was issued at the outset of the Inquest, in respect to the operational tactics, procedures, capabilities, methodology and equipment of the Special Operations Group, the Critical Incident Response Team, the Canine Unit and the Technical Surveillance Unit of Victoria Police, and the Specialist Response Group of the Federal Police, including training practices and methodologies, and investigative tactics and practices.
53. At the conclusion of the Inquest, I received written outlines of submissions from Counsel Assisting and all interested parties. On 6 November 2015, Counsel Assisting and Counsel acting on behalf of the interested parties, made oral submissions in accordance with their respective outlines. I have considered all of this material for the purpose of this Finding.

#### **Issues investigated at the Inquest**

54. A number of issues were examined in the course of the Inquest, including but not limited to:
- a. Tony’s medical cause of death;
  - b. Events leading up to Tony’s death including the involvement of Corrections Victoria, the response of Victoria Police to a warrant issued in respect to breach of the Supervision Order, and the summons issued in respect to a complaint made by his then girlfriend, Ms Kocoski;
  - c. The search for Tony, including who had primacy of the investigation and the decision to go public;
  - d. The involvement of the media following the joint media conference held on 28 February 2013, and during police negotiations;
  - e. The immediate circumstances in which Tony’s death occurred, including the management of the siege, operational tactics, negotiations, intelligence and command; and
  - f. Matters relevant to the investigation subsequent to Tony’s death.

## **Witnesses and expansion of circumstances from the Inquest**

55. *Viva voce* evidence was obtained from the following witnesses:

- Dr Linda Iles, Forensic Pathologist VIFM
- Mrs Lesley Gilmour
- Ms Sheila Archer
- Ms Julie Kocoski
- Mr Julian Laffey
- Mr Chris Elston
- Leading Senior Constable Alan Pringle, Firearm and Toolmark Examiner, Ballistics Unit
- Detective Inspector Anthony Glenane, Intelligence and Covert Support<sup>34</sup>
- Ms Jennifer Hosking, General Manager, Sex Offenders Management Branch
- Dr Rachel MacKenzie, Clinical Psychologist, Forensicare
- Dr Alexandra West, Police Psychologist<sup>35</sup>
- Detective Senior Sergeant Jason Goddard, Professional Standards Command<sup>36</sup>
- Detective Sergeant Andrew Beames, Banyule CIU
- Detective Senior Sergeant Kevin O'Connell
- Detective Senior Sergeant Scott Colson, Sex Offenders Registry Unit
- Dr Karla Lopez, Senior Forensic Psychologist, Sex Offenders Registry Unit
- Commander Doug Fryer
- Deputy Commissioner Andrew Reaper
- Mr Michael Collett<sup>37</sup>

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<sup>34</sup> At the time proximate to Tony's death, Detective Inspector Anthony Glenane's title was Detective Acting Superintendent Anthony Glenane, State Intelligence Division. For consistency, I have referred to him in this Finding by his previous title.

<sup>35</sup> A successful application was made pursuant to section 57 of the *Coroners Act 2008* for Dr Alexandra West to be granted a certificate pursuant to section 57(1)(b) of the Act. The certificate enables the witness to give evidence at the Inquest without that evidence being used in any proceeding against her.

<sup>36</sup> At the time proximate to Tony's death, Detective Senior Sergeant Jason Goddard's title was Acting Senior Sergeant, managing the Fugitive Taskforce. For consistency, I have referred to him in this Finding by his previous title.



- Ms Adriana Corera
- Sergeant Alex Jackson, Critical Incident Response Team (CIRT)
- Assistant Commissioner Stephen Fontana
- Ms Kate McGrath, News Chief of Staff, Nine Network Australia
- Detective Sergeant Michael Gunn, Fugitive Taskforce
- Senior Constable Jeffrey Nickel, CIRT Negotiator
- Senior Constable Steven Field, CIRT Negotiator
- Sergeant Scott Tomlinson, CIRT Negotiator
- Inspector Mark Langhorn
- Superintendent Peter Ross Guenther
- Operator 41
- Operator 34
- Operator 121
- Operator 33
- Operator 14
- Inspector Geoffrey Kedge<sup>38</sup>
- Superintendent Dean Stevenson
- Superintendent Peter O'Neill
- Mr Justyn Brennan, Forensic Chemist
- Assistant Commissioner Andrew Crisp
- Detective Senior Constable Tony Harwood
- Mr Adam Gelfe, Telstra
- Commander Terry Purton
- Detective Sergeant Robert Nazaretian, Coroner's Investigator

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<sup>37</sup> A successful application was made pursuant to section 57 of the *Coroners Act 2008* for Mr Michael Collett to be granted a certificate pursuant to section 57(1)(b) of the Act. The certificate enables the witness to give evidence at the Inquest without that evidence being used in any proceeding against him.

<sup>38</sup> At the time proximate to Tony's death, Inspector Geoffrey Kedge's title was Acting Divisional Commander. For consistency, I have referred to him in this Finding by his previous title.



## Corrections Victoria

56. Victoria's sex offenders registration scheme was established by the *Sex Offenders Registration Act 2004* (SORA) and came into effect on 1 October 2004.<sup>39</sup> The SORA established the register of sex offenders to be administered by Victoria Police, which reports on and monitors individuals subject to conditions of the SORA, through the Sex Offenders Registry Unit. The Sex Offenders Management Branch (SOMB) of Corrections Victoria, involves the management of all sex offenders subject to the jurisdiction of Corrections Victoria. This includes offenders serving a term of imprisonment, parolees, those subject to Community Corrections Orders, and those subject to Supervision Orders pursuant to the *Serious Sex Offenders (Detention and Supervision) Act 2009*. This Act came into force on 1 January 2010. The Act provides for the ongoing supervision or detention of an offender, at the completion of a custodial sentence, where the Court considers that an offender poses an unacceptable risk of committing a relevant offence if a Supervision Order is not made and the offender is in the community.<sup>40</sup> All Supervision Orders are subject to conditions to reduce the risk of the offender re-offending.

57. Tony was subject to a five year Supervision Order pursuant to the *Serious Sex Offenders (Detention and Supervision) Act 2009*. When the Supervision Order was made on 16 March 2012 in the County Court of Victoria, Her Honour Judge Patrick relied upon Tony's criminal antecedents, together with an assessment made of Tony while in prison by Dr Michael Davis, Consultant Clinical Forensic Psychologist, that he presented a high risk of sexual re-offending if he was in the community without a Supervision Order. It was believed the most likely risk would be contact offending against a romantic female partner.<sup>41</sup> The conditions imposed on the Supervision Order had the primary purpose of reducing any risk of re-offending and included conditions relating specifically to Tony's risk, including drug abstinence.

58. Tony was treated by Dr Rachel MacKenzie, a Clinical Psychologist. Dr MacKenzie had assessed that Tony was at a high risk of engaging in recidivistic general violence and he was diagnosed with an antisocial personality disorder. Dr MacKenzie continued to treat Tony following his release from prison, between September 2012 and February 2013.

59. On approximately 25 February 2013, the General Manager of the SOMB, Ms Hosking, was informed that Tony had been reported by his girlfriend as the aggressor in a family violence incident. Ms Hosking, together with Deputy Commissioner Reaper from Corrections

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<sup>39</sup> Exhibit 26 - Statement of Scott Colson dated 17 April 2013.

<sup>40</sup> Exhibit 22 – Statement of Jennifer Hosking dated 28 February 2014.

<sup>41</sup> Outline of submissions on behalf of Corrections Victoria, p 1

Victoria, briefed Corrections Victoria Commissioner Shuard, indicating that Tony was an unacceptable risk to the community. Those at the briefing determined to recommend to the Acting Secretary, Dr Noone, to exercise her discretion to dispense with the required 14 days' notice and seek an immediate warrant for Tony's arrest on the grounds that the risk Tony posed to Ms Kocoski had escalated and his whereabouts was unknown. The combined consequences meant that Corrections Victoria were no longer able to manage the risk Tony posed.

### **The media conference**

60. Victoria Police requested Corrections Victoria to participate in a joint media conference, the purpose of which was to seek the help of the public in locating Tony.
61. Deputy Commissioner Reaper briefed Commissioner Shuard in respect to matters to be dealt with by Corrections Victoria at the media conference. D/S/S Colson, Manager of the Sex Offenders Registry Unit, assisted in the preparation of media talking points for Commander Fryer. D/A/Supt. Glenane, State Intelligence Division, prepared relevant information for the Victoria Police Media Unit and briefed Commander Fryer. It was planned that Commissioner Shuard was to respond to questions about the Supervision Order, while Commander Fryer from Victoria Police was to cover matters in relation to Tony and the warrant.
62. The media conference was held at approximately 10.00 am on 28 February 2013, and conducted by Commander Fryer and Commissioner Shuard. The content of the media conference resulted in a high level of media interest and reporting in relation to Tony.

### **The police operation**

#### 28 February 2013

63. On 28 February 2013 between approximately 1.00 pm and 3.30 pm, a police briefing was conducted at Banyule CIU.
64. Following discussion with Acting Superintendent Daniel Campbell (**A/Supt. Campbell**) it was determined that the Fugitive Task Force would have primacy of the matter. A/S Sgt Goddard, of the Fugitive Task Force, briefed Detective Sergeant Michael Gunn (**D/S Gunn**), also of the Fugitive Task Force, who subsequently took control of the search for Tony.
65. D/S Beames from Banyule CIU contacted Tony by telephone and also conversed with Ms Amelia Beech, Tony's solicitor from Victoria Legal Aid. D/S Beames was informed by Ms

Beech that Tony was concerned he would have to return to jail for approximately five to ten years; he was emotional and agitated about the media reports and publicity concerning his criminal history and criminal risk; and he was possibly in possession of firearms.

66. D/S/S O'Connell, head of the Banyule CIU, heard over the radio that morning that his unit had been tasked, together with the Fugitive Task Force, to hunt for Tony, who was described as a 'dangerous fugitive'. D/S/S O'Connell requested a [REDACTED] for Tony's telephone and was informed there had been difficulty in obtaining information about the phone.
67. Meanwhile, D/S Beames queried the delay that was being experienced in locating Tony.
68. Later that afternoon when Tony visited his friend, Julian Laffey, he was in possession of a double barrel shotgun and a full pallet of 14 rounds.
69. At approximately 4.30 pm, still without knowledge of Tony's whereabouts, D/S Gunn spoke with Tony on the phone. D/S Gunn tried to reassure Tony by telling him that the matters he was being sought for were not significant, and might not attract the jail term that Tony believed they would.
70. Later that evening, following a briefing at Fawkner Police Station, A/S Sgt Goddard applied to the State Surveillance Unit (SSU) for assistance and two Critical Incident Response Team (CIRT) negotiators arrived at Fawkner Police Station.
71. The plan was for D/S Gunn to continue negotiating with Tony, with the calls being audio recorded and later transcribed.<sup>42</sup>
72. During the early calls with D/S Gunn, Tony repeatedly referred to not coming out of the situation alive, his distress about the reports in the media, and expressed concern about the time he would have to spend in jail following the alleged assault on Ms Kocoski (which he denied), given his criminal history.
73. At approximately 10.30 pm that evening, the Special Operations Group were deployed to assist in locating Tony, with Operator 41 in the role of tactical commander.

#### 1 March 2013

74. On 1 March 2013, the overall responsibility as police commander/incident commander moved between Superintendent Peter O'Neill (**Supt. O'Neill**) Specialist Operations

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<sup>42</sup> Recordings of these calls were made available to me during the investigation.

Division, North West Metro Region and Sergeant Alex Jackson (**Sergeant Jackson**) (Security Services Division).

75. Police communications continued to make enquiries to try to locate Tony's mobile phone and at approximately 3.30 pm that afternoon, Tony was sighted at a premises in Glenroy.
76. The Special Operations Group was subsequently deployed to the Justin Avenue, Glenroy address and local resources were requested to provide support in an arrest plan. A ballistics and canine unit were also deployed.
77. At approximately 5.50 pm D/S Gunn recommenced negotiating with Tony by phone, requesting that Tony come out with his hands up above his head. Tony responded by saying he had two phones, he was talking to Ms Kocoski and that he had a gun pointed to his head. Tony also said that he wasn't going to do 10 to 20 years in jail.
78. By 6.00 pm plans were being put in place to secure the perimeter and the immediate surrounding area by the Special Operations Group.

#### *Negotiation - Phones used by Tony*

79. During the first few hours of negotiation, it became apparent to D/S Gunn that Tony was talking to third parties including his friends Adriana Corera and Mr Collett. D/S Gunn received the impression that the calls with people outside of Victoria Police were having the effect of confusing and agitating Tony. Irrespective of this, D/S Gunn continued negotiation attempts with Tony.
80. By approximately 10.45 pm, Inspector Langhorn was advised that the four telephones<sup>43</sup> that Tony was believed to be utilising [REDACTED] following approval from Assistant Commissioner Fontana. Unfortunately however, the [REDACTED] that was thought to have been achieved had failed, a matter that was not known to the police involved at the time.
81. Dr Alexandra West, a Clinical Psychologist who had been involved in Tony's treatment between 2007 and 2008 was working as a Police Psychologist at the time of the siege. Dr West contacted Assistant Commissioner Fontana with background information and insights about Tony she considered might be helpful for the purpose of negotiation.

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<sup>43</sup> Michael Collett refers to knowing that Tony had 4 phones and that he had personally telephoned him on two of them – Exhibit 25 – Statement of Michael Collett dated 5 March 2013. S/C Steven Field refers to Tony telling police he had three phones at the address – Exhibit 44– Statement of Steven Field dated 3 March 2013.



82. At approximately 11.04 pm D/S Gunn put Mr Collett on the phone to assist him in trying to negotiate Tony's surrender. During the conversation, Tony told Mr Collett he was going to pull the trigger and said 'come to my funeral'.<sup>44</sup>

### 2 March 2013

83. At approximately 12.45 am on 2 March 2013, Tony, who had been refusing to answer D/S Gunn's calls, rang him and asked to speak with Ms Kocoski, who had arrived at the scene. D/S Gunn was not aware that Ms Kocoski had arrived and it became evident that someone in the outer perimeter had informed Tony of this. D/S Gunn told Tony that Ms Kocoski was not present, which may ultimately have had an adverse impact on the rapport that had been developing between D/S Gunn and Tony prior to this.

84. When D/S Gunn was made aware of Ms Kocoski's presence at the scene, he arranged for her to speak to Tony, but Tony became agitated at her because she had involved the police by reporting the assault, knowing it would have consequences for him. During two telephone calls Ms Kocoski had with Tony, at approximately 12.28 am and 3.50 am, she was unable to persuade Tony to come out.

85. At approximately 1.40 am and 3.05 am that morning, gunshots were heard from the rear of the premises and from inside the bungalow.

86. By 4.00 am it was determined to relieve D/S Gunn as the negotiator, and he was replaced by S/C Jeffrey Nickel.

87. S/C Nickel used various themes during his attempts at negotiation with Tony, including possible impending fatherhood,<sup>45</sup> the uncertainty about a possible conviction or imprisonment consequent to the siege, and the terms of surrender.

88. At approximately 7.00 am L/S/C Mick Gatti took over from S/C Nickel as the primary negotiator.

89. Tactical command of the inner perimeter was first managed by Operator 37 and then Operator 94. Under the command of Operator 94, an emergency action plan was developed which incorporated the deployment of gas if Tony used firearms.

90. Assistant Commissioner Andrew Crisp arrived at the scene that morning to provide assistance, if necessary.

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<sup>44</sup> T @ p 517.

<sup>45</sup> Police had been informed by Ms Kocoski that she was pregnant.

91. Unfortunately, the Police Emergency and Event Control (PEEC) log, a computer system enabling those involved in planning, operations, logistics, investigation, intelligence, public information, safety advice and command to make entries all within one incident activity log, was not functioning, and so emails were used to provide updates.<sup>46</sup>
92. Later that morning Tony's sister attended the scene, adamant that she could resolve the situation. As she had not had contact with Tony for over 10 years, police determined it was best not to involve her.

#### *Contact with the media*

93. At approximately 9.00 am on 2 March 2013, Tony contacted Kate McGrath, News Chief of Staff at the Nine Network. Ms McGrath had a number of telephone conversations with Tony. One call, initiated by Ms McGrath to Tony, lasted approximately 54 minutes. During this call a third person whom Ms McGrath believed was named "Tanya", was also talking to Tony on speaker on another telephone.<sup>47</sup> Tanya was pleading with Tony to hand himself in and Ms McGrath also told him that would be the best possible result from here.<sup>48</sup>
94. Tony told Ms McGrath, during one of the calls he had with her that he had a loaded rifle, and he threatened to shoot himself.
95. By approximately 9.40 am, Sergeant Scott Tomlinson (**Sergeant Tomlinson**) took over as primary negotiator and Banyule CIU commenced liaison with the Tactical Surveillance Unit regarding the application for, and [REDACTED]. Once this occurred, audio was available of the phone calls between Tony and the negotiators, of his conversations within the bungalow, and of him talking if he left the bungalow. Video footage captured the rear of the premises and the door and window to the bungalow.<sup>49</sup>
96. Shortly after 11.00 am, Supt. Guenther attended the scene and spoke with Supt. O'Neill and Dr West about alternative negotiator options available to the police.

[REDACTED]

[REDACTED]

[REDACTED]

<sup>46</sup> Numerous emails between the police involved in the scene and siege management were provided to me as part of my investigation of the incident.

<sup>47</sup> Exhibit 31 – Statement of Kate McGrath dated 7 March 2013.

<sup>48</sup> *ibid.*

<sup>49</sup> All of the audio and video footage that was captured was available to me during my investigation.



98. At approximately 1.00 pm, Supt. Guenther spoke to Tony and offered to let him surrender standing up rather than lying down.
99. Sergeant Tomlinson continued as the primary negotiator and was also the CIRT team leader. At approximately 2.00 pm, Tony emerged from the bungalow, with two firearms up against his body with the barrels facing up towards his chin.<sup>50</sup>
100. At the same time a police dog was released at the rear of the premises. No contact was made between the dog and Tony. It remained unclear whether the Canine Unit were aware that Tony was armed at the time the dog was released.
101. Tony remained outside the bungalow for approximately one minute and then re-emerged approximately 12 minutes later for a period of seconds. Tony was extremely agitated after his second emergence from the bungalow. He appeared angry about how police had responded to him; he believed police had pointed their guns towards him which he felt was unnecessary because he had his own guns pointed at his head. Tony retreated back into the bungalow.
102. Sometime after 3.30 pm, following several unsuccessful attempts to make contact with Tony, the decision was made to send in a robot to provide him with a telephone, so that dialogue with the police negotiators could recommence. Between 6.00 pm and 7.00 pm the robot was deployed and it smashed the window to the bungalow and dropped the telephone in. During this time, police informed Tony over a loud speaker what was occurring, and the intention. Tony fired shots at the robot and threw the phone out again, resulting in the withdrawal of the robot.
103. At approximately 8.00 pm Supt. Guenther, Operators 121 and 22, and Superintendent Dean Stevenson (**Supt. Stevenson**) considered whether to deploy a gas canister inside the bungalow in an attempt to force Tony out. However, neither Assistant Commissioner Crisp nor Supt. O'Neill approved the adoption of this approach.
104. Throughout 2 March 2013, Tony also spoke on several occasions with Sheila Archer, his "foster mother". Tony told Ms Archer that he was a real mess, that he did not know what to do and that he couldn't go back to jail.<sup>51</sup> He also told her that he had a loaded gun and if the police tried to come in and get him, he was planning on killing himself. Ms Archer told Tony to give himself up to police and face the consequences, or to take his own life. They spoke of funeral arrangements, and Tony told Ms Archer he wanted to speak to Ms Kocoski one last time.

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<sup>50</sup> Exhibit 43 – Statement of Operator 22 dated 6 June 2013.

<sup>51</sup> Exhibit 33 - Statement of Sheila Archer dated 12 March 2013.

105. At approximately 10.20 pm Acting Divisional Commander Geoffrey Kedge took over from Supt. Stevenson as the Incident Controller.

3 March 2013

106. At approximately 3.00 am on 3 March 2013, discussions occurred between Acting Divisional Commander Kedge and the Tactical Commander about [REDACTED] [REDACTED] as there had been no contact with Tony for approximately eight hours.

107. At 4.00 am S/C Nickel took over as negotiator, [REDACTED] at 4.48 am and negotiations with Tony resumed. Tony also recommenced talking to third parties on his other mobile devices.

108. Victoria Police had still not ascertained what mobile telephones Tony had available to him and [REDACTED]

109. At 10.30 am Senior Constable Steven Field (S/C Field) assumed the role of negotiator. Tony had become very agitated, he was upset about the police cameras and the constant noise from the long range acoustic device that had been operating all night.<sup>52</sup> Negotiations with Tony had deteriorated further, which police believed to be due to Tony's ongoing ability to talk with individuals other than the police negotiators.

110. Tony told S/C Field that he wanted to talk with his family and that if the police kept going they would be picking up a corpse.<sup>53</sup> Tony said he was going to start pumping bullets into everything and that he was going to die today.

111. Tony's mother Lesley Gilmour attended the scene later that morning and offered to speak to Tony, which was refused by police.

112. At approximately 12.00 pm further gunshots could be heard. S/C Field heard Tony keep asking to speak to Ms Kocoski and threatening to keep shooting until she was put on the phone.

113. Just prior to 12.00 pm Supt. O'Neill and Assistant Commissioner Crisp arrived at the scene. Supt. O'Neill noted that the number of phones that Tony had access to was a concern, as he would become easily distracted talking to others, which impacted on the negotiators' ability to negotiate with him.

114. Shortly afterwards Operator 121, the Tactical Commander, heard shots fired outside the bungalow and Operator 22 ordered that [REDACTED]

<sup>52</sup> Exhibit 44- Statement of Steven Field dated 3 March 2013.

<sup>53</sup> IB @ p 4225 - Appendix 'P'.

115. Tony continued to fire numerous shots out of the bungalow and as Operator 94 observed, it was obvious the situation had changed, and that Tony's actions were putting everyone at significant risk.<sup>54</sup>
116. Operator 94 together with the Special Operations Group Tactical Commander prepared members with the gas plan, agreed to by Assistant Commissioner Crisp and Supt. O'Neill. The purpose of the plan was to disperse gas into the bungalow, to prevent Tony from firing more shots and to possibly cause him to leave the bungalow.
117. Operator 94 gave the command and gas rounds were dispensed into the bungalow.<sup>55</sup> Tony could be heard moaning over the open line to S/C Field.
118. Tony's last recorded words heard over the audio were 'I'm gonna shoot myself.'
119. Within a short period white gas could be seen coming from the bungalow just before the bungalow erupted in flames. Tony's body was later located just inside the doorway of the bungalow.

## **ASSESSMENT OF THE EVIDENCE**

### **The search for Tony**

120. The evidence indicates a lack of clarity between the North West Metropolitan Region and Crime Command, as to who was primarily responsible for initially locating Tony.
121. According to A/S Sgt Goddard, the Fugitive Task Force took over primacy in locating Tony on 27 February 2013, whereas D/S Beames was of the opinion the file was handed over to the Fugitive Task Force on the afternoon of 28 February 2013. D/S Beames gave evidence that according to a [REDACTED] from the Glenroy area, and he and D/S/S Connell spent the morning of 28 February 2013 driving around Glenroy in an attempt to locate Tony's car.<sup>56</sup>
122. D/S Beames and D/S/S O'Connell both expressed the view that the decision to go to the media could have been deferred, but both acknowledged that this was a decision that was not for them.
123. As outlined by Counsel Assisting, the issue of primacy in locating Tony assumed some relevance at the Inquest, but ultimately represents a background feature in the circumstances

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<sup>54</sup> IB @ p 757 – Statement of Operator 94 dated 3 March 2013.

<sup>55</sup> IB @ p 758 - Statement of Operator 94 dated 3 March 2013.

<sup>56</sup> Exhibit 15 – Statement of Andrew Beames dated 6 June 2013.



leading up to the siege. Furthermore, the decision as to whether or not to go to the media was not a decision that rested with Banyule CIU.<sup>57</sup>

### **The decision to go to the media**

124. On 27 February 2013 Corrections Victoria were contacted by Victoria Police and invited to participate in a joint media conference regarding Tony. D/A/Supt. Glenane raised the media conference idea with Commander Fryer and discussed the matter with D/I Read to ascertain the status of the investigation as to Tony's whereabouts, and if there was any opposition to going to the media.<sup>58</sup>
125. D/A/Supt. Glenane made the recommendation for a media conference based on information that Tony had committed an assault on his domestic partner, he had breached his Supervision Order, and the police were looking for him. D/A/Supt. Glenane was aware of Tony's significant criminal history, the nature of his prior offending, and that he had recently been in possession of knives, a metal pole and had recently committed drug and assault offences.<sup>59</sup> D/A/Supt. Glenane was aware that Corrections Victoria were concerned about the escalation of Tony's risk that might cause him to lapse into further re-offending and he was also aware from D/S/S Colson that attempts to locate Tony had been unsuccessful.<sup>60</sup>
126. The decision to hold the media conference and make the matter public was made by Victoria Police. After consideration, Corrections Victoria decided to participate in a limited capacity, envisaging there could be questions from the media regarding the Supervision Order.<sup>61</sup>
127. The representatives for the Chief Commissioner of Police submitted that in determining whether it was appropriate to seek public assistance to locate Tony through the media, it is necessary to consider his antecedents and the level of risk that he posed to the community.<sup>62</sup> They further submitted that police have no control over media outlets and whilst it was clear the media reporting in relation to Tony was sensational, many of the labels used to describe him such as "mad dog" had been utilised before.<sup>63</sup> Irrespective of this, Victoria Police were concerned at the time that the media reporting was overly sensational and Assistant Commissioner Fontana instructed the Victoria Police Media Unit to approach the media to

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<sup>57</sup> Submissions of Counsel Assisting @ p 3.

<sup>58</sup> TP @ p 136.

<sup>59</sup> TP @ p 155.

<sup>60</sup> T @ p 146.

<sup>61</sup> Outline of submissions on behalf of Corrections Victoria @ p 4.

<sup>62</sup> Outline of submissions on behalf of the Chief Commissioner of Police @ p 2.

<sup>63</sup> Outline of submissions on behalf of the Chief Commissioner of Police @ p 11.

request that they not sensationalise the search for Tony, and tone down the reporting.<sup>64</sup> Further to this, Assistant Commissioner Fontana also conducted a radio interview with 3AW on 1 March 2013, saying the same.

128. Assistant Commissioner Fontana wanted the various media outlets to focus on delivering a personal plea to Tony to remain calm and surrender to police without anyone getting hurt.<sup>65</sup> Counsel for the Chief Commissioner of Police submitted that the issuing of the media release and conducting the press conference was entirely appropriate in the circumstances, and that the way he was described in the media was not the primary cause of his refusal to surrender: *'The primary reason for not surrendering himself was his concern about going back to jail. Being angry at the media description of him had minimal impact on his decision not to surrender. It merely aggravated him.'*<sup>66</sup>
129. As highlighted by Counsel for the Chief Commissioner, the police members who believed the media conference was unnecessary did not fully maintain this view during the inquest, when apprised of all of the relevant facts.

#### **The role of Corrections Victoria in the decision to utilise the media**

130. At the media conference, Corrections Victoria's primary role was to talk about the broader supervision scheme. Deputy Commissioner Reaper gave evidence that Victoria Police had already made the decision to go public, and that they were doing so regardless of Corrections Victoria's participation.<sup>67</sup>
131. Corrections Victoria had sought a warrant pursuant to section 172 of the *Serious Sex Offenders (Detention and Supervision) Act 2009*, due to Tony breaching the Supervision Order. Once a warrant is issued, it is a criminal matter and for Victoria Police to determine the urgency with which the warrant is to be executed.<sup>68</sup>
132. On 27 February 2013, D/S/S O'Connell spoke with D/I Read, advising that Tony had not been located and that they did not know where he was. Irrespective of this, D/I Read did not appreciate that there was opposition within the Banyule Region to a media release and the matters raised by D/S/S O'Connell were not relayed to D/A/Supt. Glenane or Commander Fryer.<sup>69</sup>

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<sup>64</sup> TP @ p 1620.

<sup>65</sup> IB @ p 497.

<sup>66</sup> Outline of submissions on behalf of the Chief Commissioner of Police @ p 8.

<sup>67</sup> TP @ p 401.

<sup>68</sup> TP @ p 396.

<sup>69</sup> TP @ p 1197.

133. D/S/S O'Connell was of the belief that Tony would be found by Banyule CIU and taken into custody, and that there was therefore no need to go to the media.<sup>70</sup> D/S/S O'Connell was unaware that Tony had had a conversation with A/S Sgt Goldsmith on 27 February 2013, in which Tony clearly stated he would not be handing himself in and he would go into hiding.<sup>71</sup> After learning of this, D/S/S O'Connell maintained the view that he would not have approached the media.
134. Commander Terry Purton (**Commander Purton**), who reviewed the decision-making of police during the siege, described leaving someone in the community - in the hope you will find them - as a judgment call.<sup>72</sup>
135. D/I Read conceded that the approach to the media conference did not take into account the possible distress the media coverage might cause Tony.
136. No consideration was given to obtaining information from Tony's treating psychologist.<sup>73</sup>
137. In all the circumstances it would have been open and appropriate for Corrections Victoria to approach Dr MacKenzie to inquire about the potential effect of any media reporting on Tony's psychological state. In saying this, I acknowledge that the extent of the information Dr MacKenzie may have actually been able to divulge about Tony due to confidentiality considerations is unclear. Furthermore, even if Dr MacKenzie had been contacted and subsequently conveyed any concerns, I am unable to conclude with any degree of certainty whether any such information would or should have altered the decision by Victoria Police to go to the media. However, any additional information about Tony from Dr MacKenzie would have ultimately added value and rigor to the decision to go to the media.
138. In addressing the differing positions about whether the initial search for Tony was likely to be effective, Counsel Assisting submitted that there may have been some value in continuing the concerted search for him in the short term, without seeking media assistance on 28 February 2013, however, the media coverage that subsequently ensued could not have been anticipated.<sup>74</sup> What followed was a quite remarkable and pointed media saturation coverage of the fact there was a warrant for Tony's arrest and police were seeking assistance from the public to locate him. From the evidence gathered during this investigation, including the transcripts of Tony's conversations with police and third parties, it was apparent that he was greatly distressed by the media's portrayal of him. The evidence is also

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<sup>70</sup> TP @ p 472.

<sup>71</sup> IB @ p 458.

<sup>72</sup> TP @ p 1588.

<sup>73</sup> TP @ p 1182.

<sup>74</sup> Outline of final submissions of Counsel Assisting @ p 5.



indicative that the media coverage had the undesired effect of making Tony “go to ground”, and potentially more difficult to negotiate with.

139. Victoria Police’s risk assessment for serious sex offenders wanted for breaching Supervision Orders includes consideration of the status of current investigations; the welfare of victims; the impact on perceptions of community safety and welfare; and the likely impact on the offender. Representatives for the Chief Commissioner of Police have highlighted that as a result of the incident with Tony, amendments to the Victoria Police Manual, to include identification of these risk factors in the risk assessment process, would be implemented shortly.<sup>75</sup>
140. In similar circumstances, it has been outlined that instructions will be given to the Director of Media and Corporate Communications in Victoria Police to contact media outlets in an effort to ‘tone down’ reporting, to avoid unnecessarily inflaming a situation.<sup>76</sup>
141. Mrs Gilmour’s representatives have submitted that the decision to go to the media was premature and without proper consideration of its detrimental impact to the investigation and to Tony’s mental health.<sup>77</sup> They have proposed that Victoria Police should introduce or review policy, to ensure the decision to release the details of a suspect to the media be taken after full consultation with operational members and after consultation with any professionals currently engaged in the individual’s treatment, about the likely impact and potential increased risk of any media coverage.<sup>78</sup> While I consider that there is merit to this submission, its ability to be applied may be limited because the scope of the submission specifically arises from the perceived shortcomings in Tony’s case. The reference above to a greater emphasis on identification of specific risk factors in the risk assessment process to include consideration of current investigations; the welfare of victims; the impact of perceptions on community safety and welfare; and the likely impact on the offender, are analogous to those suggested by Mrs Gilmour’s representatives but likely to have greater general application. As I was also told that the Victorian Police Manual was to be amended to reflect these improvements to the risk assessment process, I thus consider it unnecessary to make any further recommendation in this regard as I am satisfied that this identified shortcoming has been attended to.

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<sup>75</sup> Outline of submissions on behalf of the Chief Commissioner of Police @ p 12.

<sup>76</sup> TP @ p 1623 and Exhibit 55(2) – Statement of Commander Terry Purton dated 18 August 2015.

<sup>77</sup> Submissions on behalf of Lesley Gilmour @ p 1.

<sup>78</sup> *Ibid* @ p 3.

## Nature of the media reporting and involvement

142. I agree that police have no control over how the media outlets choose to depict the information provided by them to the public. The submissions made on behalf of the Chief Commissioner sought to emphasise that the name “Mad Dog” used by the media to describe Tony had been used by the media previously in 2007 and 2011,<sup>79</sup> and could not be attributed to the media release or the media conference. Victoria Police do, however, have a dedicated Media Unit and it should have come as no surprise to police that the media sensationalised the information provided to them at the media conference. Nevertheless, I have been asked to accept that they did subsequently become concerned that the reporting was *overly sensational*,<sup>80</sup> such that it was agitating Tony and potentially stopping him from coming forward.<sup>81</sup> This prompted the proactive involvement of Assistant Commissioner Fontana who asked the Victoria Police Media Unit to contact the media outlets with a request to *tone down* their coverage. Assistant Commissioner Fontana also did a radio interview on 1 March 2013, where he sought to emphasise that police needed the support from the community to locate Tony and that they really wanted the media outlets *to focus on delivering a personal plea to Tony (sic) to remain calm and to surrender to police, without anyone getting hurt*.<sup>82</sup>
143. The attempts by Assistant Commissioner Fontana to diffuse the adverse effect the media reporting was having on Tony’s resolve not to “come in” was an appropriate attempt at damage control. Unfortunately, it did nothing to influence Tony’s grievances about how the media were depicting him or his behaviour and mindset about what the future held for him.
144. As indicated above, Victoria Police have acknowledged they wish to *attempt to avoid a repeat of this situation*<sup>83</sup> such that amendments to the Victoria Police Manual were anticipated, to ensure that there is identification of critical risk factors in the risk assessment process for serious sex offenders wanted for breaching Supervision Orders. These will include consideration of:
- a. The status of any investigations currently being conducted;
  - b. The welfare of victims;
  - c. The impact of perceptions of community safety and welfare; and
  - d. The likely impact on the offender.<sup>84</sup>

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<sup>79</sup> Outline of Submissions on behalf of the Chief Commissioner of Police @ p11.

<sup>80</sup> Exhibit 56 – Statement of Assistant Commissioner Stephen Fontana dated 4 March 2014, T @ pp 1619-1620.

<sup>81</sup> T @ p 1620.

<sup>82</sup> Exhibit 56 – Statement of Assistant Commissioner Stephen Fontana dated 4 March 2014.

<sup>83</sup> Outline of Submissions on behalf of the Chief Commissioner of Police @ p 12.

<sup>84</sup> Exhibit 55 – Statement of Commander Terry Francis Purton dated 18 August 2015.

145. In addition, I am informed that the Victoria Police Director of Media and Corporate Communications is under instruction to contact relevant media outlets to correct false and misleading reports, and in an attempt to avoid a situation such as occurred in Tony's case, to contact media outlets requesting a change to the reporting style where it is deemed to be unnecessarily inflaming a particular situation.<sup>85</sup>
146. I commend Victoria Police for their concessions in this regard and for their endeavours to address an identified shortcoming.

### **Psychological assessment and related communications**

147. Dr West, a psychologist with Victoria Police, contacted Assistant Commissioner Fontana and also spoke to a negotiator and Supt. Guenther at the scene on 2 March 2013. Dr West conveyed that in her opinion, Tony would not surrender, and the most likely scenario would be that he would come out of the bungalow firing, or shoot himself in front of police.<sup>86</sup> Supt. Guenther was of the view that the information Dr West provided had great utility in assisting the police.
148. Mrs Gilmour's legal representatives have highlighted Dr West was not in an ongoing treatment relationship with Tony, having spent time with him in a group setting in prison, where he threatened her. When Dr West contacted the police, she did not disclose the limitations to her experience with Tony, nor that the professional relationship between her and Tony had been terminated some time ago and because he had threatened her. Police notes tendered during the inquest indicate that the police believed Dr West was Tony's treating psychologist.
149. The *bona fides* of Dr West's initiation of communication with police came into question because she did not disclose that she was neither treating Tony nor that she had been threatened by him. I agree with the submission from Mrs Gilmour's legal team that Dr West should not have conveyed her opinions as to the likely scenario of Tony's actions without disclosing the full context of her contact and relationship with him. However, police bear some responsibility in not checking the veracity of Dr West's gratuitous offer of information.
150. Dr MacKenzie, Tony's treating psychologist, gave evidence at the Inquest as to Tony's dissociative personality diagnosis which encompassed difficulty in dealing with authority,

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<sup>85</sup> *ibid*

<sup>86</sup> Exhibit 16 – Statement of Dr Alexandra West dated 6 March 2013.



impulsivity and engaging in antisocial acts. Dr MacKenzie noted that in her opinion Ms Archer, Tony's so-called foster mother, was the best person to challenge Tony's mindset.<sup>87</sup>

151. Dr MacKenzie had been treating Tony in the weeks leading up to the siege and had the view that the media reporting would be an aggravation to Tony, and that her recent experience with Tony could potentially have assisted during the conduct of the siege. Corrections Victoria did not disclose the treatment relationship to police, irrespective that Tony had signed a waiver of confidentiality in circumstances of there being a risk to himself or others.
152. Mrs Gilmour's legal representatives have submitted that had Dr MacKenzie been consulted prior to the media conference, they would have been privy to expert advice from someone who was well placed to understand the potential effect on Tony. Furthermore, had Dr MacKenzie been consulted during the siege, information about Tony's history of self-harm could have been conveyed.
153. Dr MacKenzie gave evidence during the Inquest that she had discussed whether to approach police with her colleagues, once she had seen media reports. Her employer, Forensicare, determined that this was not an appropriate approach. Mrs Gilmour's legal representatives submitted that this prevented a full consideration of the available facts,<sup>88</sup> and proposed that I make a recommendation that Forensicare review its policy and procedure pertaining to circumstances in which professional staff have information that may assist authorities to avoid harm.<sup>89</sup>
154. There are inherent difficulties for clinicians in a forensic therapeutic environment to uphold their duty of confidentiality, in the context of a critically unfolding situation, where there is a risk of harm to their client and / or others, such as was occurring in Glenroy. In this context there was real and emerging evidence that Tony was at risk to himself and potentially to others, and as such, a more in depth analysis by Forensicare was warranted.
155. Forensicare denied police an opportunity for communication with Dr MacKenzie, by denying her request to contact them with contemporaneous information about Tony's psychological state and likely responses to the events that were unfolding. Tony's signed waiver of confidentiality should have been sufficient to grant Dr MacKenzie's request. In addition, Forensicare also had their own opportunity to ascertain the surrounding circumstances of Dr MacKenzie's unusual request, which would have better informed them before they made that decision.

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<sup>87</sup> TP @ p 1021.

<sup>88</sup> Submissions on behalf of Lesley Gilmour @ p 6.

<sup>89</sup> *ibid*



156. Corrections Victoria initiated and monitored Tony's attendances with Dr MacKenzie. Dr MacKenzie held a considerable wealth of knowledge about Tony that would have helped to inform police about the probative value of proceeding with the media conference and possibly about their dealings with him during the siege. Police were not aware of Dr MacKenzie's existence and this equates to an opportunity lost to better equip them to deal with Tony, a man in a desperate and vulnerable state. While police were denied this opportunity by the failure of Corrections to provide them with this information, police should have again been specifically seeking out contemporaneous information about Tony's psychological state, as soon as he made threats to harm himself.
157. Dr MacKenzie's views were not, however, conveyed so the effect they may have had upon strategies engaged in by police during the siege is only speculative.

### **Strategies utilised during the siege**

#### Tony's contact with third parties

158. Police allowed both Ms Kocoski, Tony's girlfriend, and Mr Collett, his close friend, to talk to Tony during the siege, but did not allow Tony's mother or sister to speak to him as they had concerns about their relationship. Tony's sister, as outlined earlier, had not spoken to Tony for over 10 years.
159. Some of the third parties that have been identified as speaking to Tony during the siege include Adriana Corera, Kate McGrath (Nine Network), Julian Laffey and Chris Elston.
160. D/S Gunn gave evidence that the effect of the third party conversations not facilitated by negotiators, was that Tony became confused because he was receiving contradictory messages.<sup>90</sup> Ms Corera's act of telling Tony that Ms Kocoski was at the scene before D/S Gunn was himself aware of this information - and thus able to convey it to Tony - was in his view '*..catastrophic in the scheme of things*', demolishing the rapport he had built with Tony.<sup>91</sup>
161. Operator 121, who had been involved in negotiating with Tony, agreed with D/S Gunn's assessment of Ms Corera's negative impact on negotiations and gave evidence that Tony's conversations with third parties not only interfered with the good process and progress of negotiations, but potentially put the lives of operators within the cordon in danger.<sup>92</sup>

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<sup>90</sup> TP @ p 566.

<sup>91</sup> TP @ p 568.

<sup>92</sup> TP @ p 954.

162. Sergeant Jackson, CIRT, gave evidence of his negotiation attempts with Tony and explained that the police tried to keep Tony awake, [REDACTED]  
[REDACTED]. Sergeant Jackson described that what was achieved with Tony was not rapport, but that they were getting general conversation *'...whether we would have been – what I would term rapport is, to get it to a point where we would get some trivial compliance. I don't think we were ever at that stage.'*<sup>93</sup>
163. Ms Corera gave evidence that she believed Tony was more likely to listen to his friends than the police. Ms Corera had a personal knowledge of Tony which entitled her to have this opinion. The weight of the evidence, however, indicates that Tony was not listening to the advice of his friend Mr Collett, or any other person who had a personal relationship with him and who was speaking to him during the siege, including Ms Kocoski and Ms Archer.
164. The decision to involve lay persons in any negotiations in like circumstances must remain in the domain of police negotiators, who already have a difficult task in attempting to assess the nuances of the individual they are negotiating, or attempting to negotiate, with. Police are best placed to make the assessment at the time, based on contemporaneous information available to them about who and what information may be of assistance during the negotiation process. Police should be receptive to information being offered by family and friends or associates but ultimately it must be the decision of the trained negotiators as to who, if anyone, outside their own negotiators, should be utilised. In this case, police did have information that Tony had been estranged from his sister Rachel for approximately 10 years, and that he had made some very disparaging comments about his mother. Police thus rightly had to consider the likely value of enabling them to speak to Tony.
165. On the evidence, I have not identified a need to make adverse comment and/or recommendation for change or review in respect of this domain of operational police work.
166. Complicating the ability of police to effectively discern which persons may have provided assistance to the negotiating process by speaking directly to Tony in the presence of police negotiators, was the fact that they did not know who Tony was talking directly with, on his other mobile telephones.

#### The role of Channel 9 (Nine Network Australia)

167. I accept that the involvement of Ms McGrath, News Chief of Staff, with Tony was not at her initiation but at his. Nevertheless, it ultimately amounted to an opportunistic exploitation of

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<sup>93</sup> TP @ p 667.



a significant police incident, executed by Ms McGrath without any consideration for the fact that she may be compromising police endeavours to have Tony surrender himself.

168. Ms McGrath's contact with Tony, including but not limited to, a 54 minute telephone conversation, was conducted to the exclusion of negotiators and limited their already precarious ability to engage and negotiate with Tony. To Ms McGrath's credit, she did contact police after her extensive conversation with Tony and spoke to Sergeant Tomlinson, who was one of the designated negotiators at the time. Ms McGrath did inform police, amongst other things, that Tony was threatening suicide and sought advice on what to tell him. Sergeant Tomlinson's advice to Ms McGrath was that police should be the only ones talking to him and that multiple input sources were not helping them. Sergeant Tomlinson's view was:

*I felt at this stage that the intervention by the media was detrimental to any positive outcome that I was trying to obtain. I could not believe that they were speaking to him for that long and the fact that they were even speaking to him in the first place.<sup>94</sup>*

169. Contrary to Ms McGrath's evidence that she was not told that police should be the only ones talking to Tony, Sergeant Tomlinson stated that he had *an extremely positive recollection of* (telling her) *that.*<sup>95</sup> Ms McGrath telephoned Tony again after her conversation with Sergeant Tomlinson.

170. I attach more weight to the evidence of Sergeant Tomlinson in this regard.

171. I note that the Australian Press Council in the preamble to its Statement of General Principles emphasises the importance of freedom of the press to a democratic society but then qualifies this by stating:

*Freedom of the press, however, carries responsibilities to the public. Liberty does not mean licence, and due regard must be given to other important freedoms, rights and values which are in the public interest.<sup>96</sup>*

172. The Statement of General Principles does not deal specifically with the reporting of or interfering with police operations *per se* but there is reference to avoidance of harm unless it is in the public interest. The explanatory notes contained within the Statement only provide greater scope to the media to determine what they consider to be sufficiently in the public interest and are clearly intended to be open to interpretation rather than to be prescriptive.

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<sup>94</sup> Exhibit 46 – Statement of Scott Tomlinson dated 11 June 2013, T @ p 1147 - 1148.

<sup>95</sup> T @ p 1147.

<sup>96</sup> See: Australian Press Council, Statement of General Principles, available online at: <http://www.presscouncil.org.au/statements-of-principles/>, accessed on 9 March 2017.

173. The involvement of the media in this matter has demonstrated the capacity of the media to disrupt an active police operation, and warrants a review by the Australian Press Council of its Statement of General Principles.

[REDACTED]

174. Tony was able to make and receive telephone calls from third parties [REDACTED]  
[REDACTED]  
[REDACTED]

175. It was evinced that the failure to control Tony's contact with individuals other than negotiators caused significant adverse impact on the progress steadily being made by negotiators. Information about the phones identified to be in Tony's possession, the actions taken in respect to each telecommunications service, and the status of each, was not recorded in a way that permitted others access to it. Similarly, the status of the attempts to maintain control of Tony's telecommunications ability was not effectively communicated within the inner perimeter or to the incident controller. There was a marked flow-on effect that caused [REDACTED] and call charge records (CCRs) and reverse call charge records (RCCRs) to be duplicated, in turn causing serious delay in controlling Tony's ability to converse with third parties.

176. Inspector Langhorn was informed by Victoria Police Communications on 1 March 2013 that [REDACTED] This information was, however, ultimately lost, causing residual confusion for Victoria Police members as to what had been done, and what needed to be done to curtail Tony's ongoing telephone communications.

177. The PEEC log would have allowed for minutes of meetings and decision making to be documented and easily accessed, but it was not able to be utilised during this siege with Tony. Counsel Assisting submitted that the failure to utilise the PEEC contributed to ongoing confusion at the scene about the telephones being utilised by Tony, and subsequent communications about the same.

178. In final submissions it was stated that the Chief Commissioner of Police accepts that further steps should have been made earlier to implement the PEEC log, rather than resort to an email log to record events, however, whilst this approach made the review of the siege contact difficult, it did not impact on the eventual outcome of the siege.<sup>98</sup>

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[REDACTED]  
<sup>98</sup> Submissions on behalf of the CCP @ p 20.



[REDACTED]

[REDACTED]

The gas plan

181. The first gas plan was developed on 2 March 2013 and [REDACTED]. During his *viva voce* evidence Operator 22 said that larger gas canisters have a number of limitations, including that [REDACTED].
182. Operator 41 outlined that larger canisters release a greater amount of gas, and are explosive.
183. On 2 March 2013, Operator 41, who was the tactical commander at the time, made an amendment to the initial gas plan. Smaller gas canisters, which have the feature of releasing a lower level of gas and are not pyrotechnic were introduced as it was anticipated that they were more likely to cause Tony to emerge from the bungalow, rather than potentially being overwhelmed by the gas that the larger canisters deploy.<sup>100</sup>
184. Supt. O'Neill stated the purpose of deploying the gas plan was to prevent Tony from discharging any further rounds of ammunition, so others would not be harmed. This was to be achieved through the disorientating effect of the gas, so that he could be overpowered by police. It was accepted by Supt. O'Neill that the gas plan had its risks.<sup>101</sup>
185. The smaller gas rounds were deployed and at or about the same time, Tony could be heard by the negotiators saying he was going to kill himself. Tony did not, however, emerge from the bungalow as hoped and the order was given for the second round of larger gas canisters to be deployed. A few minutes later, dark smoke was seen coming from the roof line and through the front window of the bungalow.<sup>102</sup>

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[REDACTED]

<sup>100</sup> TP @ p 1500.

<sup>101</sup> TP @ p 1478.

<sup>102</sup> IB @ p 758.

### Breakdown in communications

186. When Tony came out of the bungalow on 2 March 2013 it was evident to those watching the camera feed that Tony had weapons strapped to himself. Unfortunately, at this point there was a breakdown in communication between negotiators who were assuring Tony it was safe to exit the bungalow, and the dog squad who released the dog.
187. Submissions made on behalf of Mrs Gilmour state that this incident put Tony in a position of being encouraged to do one thing, while being attacked simultaneously. This in turn hampered the establishment of trust and control, which they described as a significant contributor to the failure to end the siege peacefully.<sup>103</sup>
188. There was also no live stream between the negotiators and the Special Operations Group. When Tony said 'I'm going to kill myself' it was not heard by the Special Operations Group. Mrs Gilmour's legal representatives have submitted that if this had been heard it may have stopped the deployment of the larger gas canisters, which ultimately caused the fire.

### The police approach to dealing with Tony

189. Mrs Gilmour's legal representatives submitted that the effect of the deployment of the bright lights, the loud noises, the repetitive phone calls and the police dog significantly reduced Tony's capacity to remain calm and make rational decisions: *'By Sunday he was sleep deprived, compromised and cornered. This for a man who was armed, known to have an anger problem and lowered capacities to deal reasonably with authority.'*<sup>104</sup> They submitted that in all the circumstances the methodology adopted in this siege with this man was inappropriate as the police were 'poking the bear' and as such, problems were escalated rather than brought under control.<sup>105</sup>
190. It has also been submitted the failure of Corrections Victoria to provide Victoria Police with details about Tony's current treating psychologist contributed to police potentially being misled about his state of mind and how best to engage with him during the siege.<sup>106</sup>
191. It is submitted that Tony's death was the detrimental consequence of police tactics adopted in this siege. No expert opinion was provided to me to support these submissions and although I do not dismiss them outright, similarly I do not support them, because it cannot be concluded that in isolation of other factors, the tactics adopted alone caused the outcome.

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<sup>103</sup> Submission on behalf of Lesley Gilmour @ p 9.

<sup>104</sup> Submission on behalf of Lesley Gilmour @ p 8.

<sup>105</sup> Submission on behalf of Lesley Gilmour @ p 8.

<sup>106</sup> Submission on behalf of Lesley Gilmour @ p 6.

## Public confidence in Police

192. In the course of the lead up to the commencement of the Inquest a considerable amount of time was spent considering the Chief Commissioner's Public Interest Immunity (PII) applications in respect of certain documents, names and associated materials resulting ultimately in the redaction of appropriate material within the coronial brief, and the issuing of Suppression Orders in respect to other material. I made some comments about this process which I now repeat here:

*I note the numerous references to public confidence and how that is maintained by the suppression of certain internal working documents, and in particular the internal reviews. I also note the significant referencing to the Inquest to the death of Tyler Cassidy, and Her Honour Judge Coate's ruling on the same. I note with interest a section of the ruling on p.15 of the submissions, at what appears to be a cut-and-paste of paragraph 50 of Her Honour's ruling, where she says, and I quote, 'The public benefit or interest is obvious. The public interest is in having the agency respond as quickly and fully as possible to fatality, to ensure the ongoing protection of the public is as thorough and as immediate as possible to address any public health or safety issues, in a more timely way than a coronial investigation can achieve.'*

*I concur with Judge Coate in her reasoning for her general commentary on public interest issues in general, leaving aside the discrete circumstances of Tyler Cassidy's death, which has no bearing on this matter. But I would also say that the public is entitled to seek to have its confidence in its police force reinforced through transparency, as far as possible. Transparency about its processes, but in particular about the findings of their internal review, which becomes a subject of the suppression application. In particular, the public are entitled to expect to hear some modicum of acknowledgement from Victoria Police, without the need for a lengthy Inquest, that they may have been able to do; should have been able to do; or could have done things in a particular, critical, incident in a different way. The timely pronouncement of what has been learnt through your own, timely internal review of what is being learned, will greatly assist in the maintaining of the public's confidence in policing per se.<sup>107</sup>*

193. The application of PII to certain operational documents and personnel is without question appropriate in any public hearing involving police in the coronial jurisdiction. However, I

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<sup>107</sup> Transcript of Proceedings for Directions Hearing No.4 – 23 April 2015 @ p 23.

have noted that it is the adversarial approach or the delivery of the Chief Commissioner of Police's legal team in these applications, that potentially lacks regard to the additional distress caused to family members and potentially raises their irk and suspicion.

## CONCLUDING COMMENTS

194. There were numerous impediments to the management of the siege in Justin Avenue Glenroy. There was a lack of resources available to operational members including the PANTEC, the mobile and control vehicle which provides sufficient technical and computer support appropriate for such critical incidents. The PANTEC was otherwise being utilised at the Avalon Air Show and a specific decision was made by Deputy Commissioner Tim Cartwright that it should remain at the Air Show. This decision left the operation of the siege to be managed through the police caravan (no. 4 Division Mobile Police Facility) which did not have the computers necessary to implement the PEEC log keeping system. Perhaps a lack of familiarity with the system at that time led Supt. O'Neill whilst he was in the position of Incident Controller, to implement an email log of events as an alternative. No proactive steps to implement the PEEC were taken until the night of 2 and 3 March 2013. In addition, due to the lack of availability at the time of technology, that allowed for the direct feed of information to and from the specialised units involved in the siege, information was having to be conveyed verbally from the TSU optical and audio equipment to the CIRT negotiators by the Tactical Commander and at times from the CIRT negotiators directly liaising with TSU members. Communication even within the perimeter of the police operation was compromised on this occasion.
195. Adding to the depiction that this siege had less than ideal communication and information sharing resources, was the evidence that not all of the Units involved in assisting in the attempts to resolve the siege were involved in the Incident Management Team (IMT) meetings. Members of the Technical Surveillance Unit (TSU), Dog Squad and Critical Incident Response Team (CIRT) were not included at these meetings which denied the opportunity to these members to *contribute relevant information and receive updates on the operation and any action to be taken.*<sup>108</sup>
196. Having considered the numerous impediments to the management of this siege, the failure to [REDACTED] and maintain control of his communication ability with others, outside of the negotiators, was the most significant impediment to achieving the desired outcome of a lawful arrest of Tony, by him peacefully surrendering himself.

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<sup>108</sup> Exhibit 55 – Statement of Commander Terry Purton dated 18 August 2015.



197. By comparison, much reference was made to the running of a siege in Melbourne's northwest in mid-2012 involving Christopher Binse (**Mr Binse**). After 44 hours police ended this siege when they successfully forced the armed Mr Binse out of the home he was holed up in, after they fired gas canisters into the building. By all accounts the siege involving Mr Binse had no comparable impediments, it was both resource rich and procedurally compliant.
198. The Operational Incident Review undertaken by Commander Purton identified shortcomings in the response to the siege involving Tony and made numerous recommendations as to ways in which Victoria Police could improve its response to critical incidents such as this one. The Operational Incident Review did not, however, identify a connection between the shortcomings and the outcome, but more so identified issues where efficiencies and other resources available to the attending officers could be improved on. I understand that save for some factual errors contained within the Critical Incident Review, that were subsequently acknowledged by Commander Purton both in his statement<sup>109</sup> and his *viva voce* evidence, Police Command has responded positively to the Review and implemented many of the Recommendations.
199. I have considered the range of proposed recommendations and the option of constructing other possible recommendations, pertinent to issues raised in the evidence. Having considered all of the evidence, in particular the responses of Forensicare and Victoria Police, I am satisfied that Forensicare and Victoria Police, through the Purton review, have addressed those matters which could have formed the basis of coronial recommendations, had they not been attended to.

## ACKNOWLEDGEMENT

200. I acknowledge and thank Mrs Gilmour for the respectful manner in which she conducted herself during the course of the Inquest. I suspect that much of the evidence would have been distressing to her and in particular during evidence that made reference to Tony's attitude and relationship with her, his biological mother.
201. I also acknowledge that it would have caused considerable distress to Tony's family and friends that despite their proximity to Justin Avenue at the time of Tony's death they first heard their sad news through the media. Given the media's saturation coverage of the siege, it is not surprising, but it certainly highlights that it is desirable that police have prompt

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<sup>109</sup> *ibid*

liaison with next-of-kin in like circumstances. It also again highlights that the media should examine their reporting standards.

## **FINDINGS**

I find that the identity of the deceased is Antonio Christopher Loguancio, born on 1 March 1973 and died on 3 March 2013.

I find that any confusion or perceived confusion about which Unit had primacy of the investigation to locate Tony was a background feature to the circumstances of the siege and was not a contributing factor to the outcome.

I accept and adopt the cause of death as ascribed by Dr Linda Iles and I find that Antonio Christopher Loguancio died from a gunshot wound to the head in circumstances of a siege situation involving Victoria Police at Justin Avenue, Glenroy in the State of Victoria.

AND I find that the gunshot wound was self-inflicted by Antonio Christopher Loguancio and done with the intention of taking his own life.

AND the forensic evidence supports a finding that Antonio Christopher Loguancio died from the self-inflicted injury sometime before the bungalow, in which he was holed up, caught fire.

I accept the evidence of Forensic Chemist Justyn Brennan, and I find on the balance of probabilities that the larger gas canisters deployed by police were the most likely source of ignition for the fire in the bungalow.<sup>110</sup>

I find that the failure of police to successfully obtain control over Tony's communication abilities with third parties was a significant impediment to achieving a non-fatal outcome. This failure was multi-faceted but involved a poor understanding of the processes involved to achieve knowledge of, [REDACTED] and significantly, involved poor communication and understanding about who had responsibility for the same. I am not, however, able to definitively find on the evidence, when consideration is given to Tony's commentary from the outset of the siege, whether police control over his communication abilities would have altered the outcome. It was however, a significant opportunity lost.

I make no adverse finding against the decisions of police to deny the requests of family members and friends or associates of Tony to speak directly to him as part of the negotiating process and I further find that the denial by police to these family members and friends or associates to speak directly to him was not causal to the outcome.

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<sup>110</sup> TP @ p 1060.

I find that the Nine Network's direct communication with Tony during the siege was inappropriate and disruptive to the police operation but was not of itself, causative to the outcome.

And I find that the failure of police to achieve a peaceful surrender of Tony was not caused by any of the identified impediments or shortcomings but by Tony himself. I accept that he was given every opportunity to surrender peacefully and that the action of police in firing gas canisters into the bungalow was forced upon them due to Tony's escalating behaviour, such that I find that Anthony Christopher Loguancio posed a risk to the welfare and safety of other members of the public.

To enable compliance with section 73(1) of the *Coroners Act 2008* (Vic), I direct that the Findings will be published on the internet.

I direct that a copy of this finding be provided to the following:

- Victorian Aboriginal Legal Service on behalf of Mrs Lesley Gilmour
- Ms Sheila Archer
- VGSO on behalf of the Chief Commissioner of Police
- Minter Ellison solicitors on behalf of Corrections Victoria
- Detective Sergeant Robert Nazaretian, Coroner's Investigator

Signature:



AUDREY JAMIESON  
Coroner  
Date: **30 March 2017**

