



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2016 4157

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 63(1) of the Coroners Act 2008

Amended on 14 March 2023 pursuant to Section 76 of the Coroners Act 2008

Taniela Ahokava

Deceased:

Delivered on:

9 March 2023

Delivered at:

Coroners Court of Victoria,
65 Kavanagh Street, Southbank

Hearing dates:

Directions: 13 February and 20 March 2020
Inquest: 20, 23-26, 29 June 2020; 6, 28 July
2020; 28 April 2021;

Findings of:

Coroner Paresa Antoniadis Spanos

Counsel assisting the coroner:

Ms C. Fitzgerald of Counsel, instructed by the
court's In-House Lawyers, assisting the coroner.

Representation:

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Seitata Ahokava, the deceased's mother.

Catchwords:

Police pursuit, police member pinned by vehicle,
police shooting, air wing surveillance, burglary
of factory premises, theft of vehicles to escape,
use of OC foam, capability/use of Canine Unit

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BACKGROUND & PERSONAL CIRCUMSTANCES¹

1. Taniela Ahokava was a 23-year-old man who resided with his siblings in the family home at Deer Park. Mr Ahokava was born in Tongatupa, Tonga, the fifth of nine children born to his parents Setaita Ahokava and Penisimani Ahokava Snr. Mr Ahokava had one sister who was the eldest child and seven brothers. When the family moved to Australia, Mr Ahokava was around 12 months old.
2. In 2013, Mr Ahokava's parents moved back to Tonga to tend to the family farm which they still owned. Thereafter, they lived between Tonga and Australia. Mr Ahokava's older sister was living in Sydney at the time and Mr Ahokava and his brothers continued to live in the family home in Deer Park. The expectation was that the brothers would maintain the home, but it fell into disrepair during this time.² Mrs Ahokava was concerned that in the absence of their parents, her sons had lost their way and were not living in accordance with their Christian upbringing.
3. Mr Ahokava's partner, Daniela Koltovska, gave birth to their son Jordan on 12 October 2015. The couple moved between the Deer Park property and Ms Koltovska's family home in St Albans. In the period immediately preceding his death, Mr Ahokava generally resided at the St Albans property with Ms Koltovska and Jordan.
4. As at the date of his death, Mr Ahokava was the subject of several outstanding warrants: for offences of affray, assault and criminal damage arising from an incident occurring on 2 June 2013, as well as for failure to answer bail relating to those charges; and drug and firearms charges arising from the execution of a search warrant at the Deer Park property in November 2013. Mr Ahokava was also the subject of a Victoria Police issued media release on 15 April 2015 advising that he was wanted.³ It was uncontroversial that Mr Ahokava knew he was wanted by the police, had previously avoided arrest and expressed an intention to avoid apprehension.⁴
5. From 2015 onwards, the Deer Park address was the target of various Victoria Police operations involving alleged "ram-raid" burglaries of commercial premises, theft of motor

¹ This section is a summary of background and personal circumstances and uncontentious matters for context.

² Statement of Daniela Koltovska, page 425 of the brief. Mr Ahokava's partner's name is spelt variably as Koltovska and Koltsovka throughout the brief. I have used Koltovska as it appears in the signature block to her statement and in the formal body release documentation and apologise if this is not the correct spelling.

³ A copy of the media release is at page 1703 of the brief.

⁴ Evidence from diverse sources to this effect as encapsulated in Counsel Assisting, Ms Fitzgerald's final submissions at page 9 without demurrer on behalf of the family.

vehicles, theft from motor vehicles, evading police, involvement in police pursuits, drug offences and handling stolen goods.⁵

6. Between October 2015 and 1 September 2016, 14 stolen vehicles had been recovered by police from the Deer Park address with many of these vehicles having previously been driven at high speed and in a dangerous manner to evade police and cause them to terminate pursuits. During the same period, vehicles connected with the Deer Park address were involved in 14 separate incidents of evading police and/or engaging in police pursuits.⁶ One of the vehicles previously identified as being connected with this offending was a stolen white Mitsubishi Triton utility registration 1EA8RY (**the Mitsubishi**).⁷

OVERVIEW OF EVENTS ON 2 SEPTEMBER 2016⁸

7. At about 0045 hours on 2 September 2016, a white Ford utility (**the Ford**), later identified as stolen, was noticed by a Werribee police unit while patrolling in Leakes Road, Tarneit. The police attempted to intercept the Ford and when it failed to stop, they followed, and a pursuit commenced. Although not known by police at the time, the Ford was being driven by Mr Ahokava with his friend Joshua Iviiti (**Iviiti**)⁹ as the only other occupant.
8. The pursuit ended at about 0104 hours when a police helicopter (**Air 490**) became involved, taking up observation of the Ford and recording its movements. It soon became apparent that the Air 490 crew had mistakenly focused on the wrong vehicle and the Ford was lost to police for about seven minutes. At about 0111 hours, the Ford was found in Glenrosa Court, St Albans and Air 490 maintained observation as it drove through largely residential streets in St Albans.
9. At about 0126 hours, the Ford pulled up in Rhodes Street, St Albans. The stolen Mitsubishi mentioned above pulled up opposite the Ford and occupants of the Ford ran to the Mitsubishi and climbed in. Although not known by police at the time, the driver of the Mitsubishi was Mr Ahokava's brother Penisimani Ahokava Jnr (**Penisimani**)¹⁰ with whom

⁵ Police response included the establishment of Operation Score by Melton Crime Investigation Unit with a view to disrupts and minimise the offending by the occupants of the Deer Park address – page 22 of the brief.

⁶ For the specific dates of these engagements and sources drawn upon, see S/Sgt Horan's Summary of Circumstances at pages 6-161 of the brief, specifically at pages 18-19.

⁷ Operation Suart was commenced on 18 August 2016 by Brimbank Crime Investigation Unit with the aim of proactively targeting the occupants of the Deer Park address to identify the offenders involved in the recent commercial burglaries, theft of motor vehicles and evade police offences; to arrest and prosecute those involved and recover stolen goods with numerous proactive strategies being implemented or planned – page 32 of the brief.

⁸ This section is a summary of the circumstances in which Mr Ahokava's death occurred provided for context. The circumstances will be discussed in more detail below with reference to the relevant evidence.

⁹ As at 1 September 2016, Joshua Iviiti was on bail for dishonesty and driving offences (page 17 of the brief).

¹⁰ As at the 1 September 2016, Penisimani Ahokava Jnr was also wanted by police with an outstanding warrant for failing to appear at Sunshine Magistrates Court on 28 January 2016 for charges including possession of methamphetamine, driving while suspended and other driving related offences, possession of a dangerous article, a

he had been in mobile phone contact before the rendezvous. The pursuit continued through the streets of St Albans and onto the Western Ring Road heading north.

10. At 0136 hours the Mitsubishi turned left onto the Tullamarine Freeway on-ramp and then pulled over onto a grass verge. All three occupants exited the Mitsubishi and fled on foot towards the Tullamarine industrial estate. Police followed but lost sight of the three males as they climbed over the fence at the rear of Factory 17/24-26 Carrick Drive, Gladstone Park (**the factory**),¹¹ broke into the factory and stole a Toyota Hi Ace Van registered OCV930 (**the Toyota HiAce**). They then drove the Toyota HiAce through the factory's garage roller door damaging the door before exiting onto Carrick Drive.
11. Meanwhile, police units arrived at the front of the complex in Carrick Drive and set up a cordon. It appears that when the three males saw a police unit blocking their path, the driver of the Toyota HiAce turned the van around only to encounter "stop sticks" deployed by police in Carrick Drive. These were effective, making the van difficult to drive.¹²
12. The three males abandoned the van within the factory complex and re-entered Factory 17. First Constable Van Neutegem (**FC Van Neutegem**) and **Officer 1**,¹³ exited their vehicle and followed them into Factory 17 on foot, both yelling directions to stop. Those directions were ignored, and the three males continued running into the factory.
13. Once inside Factory 17 again, Mr Ahokava got into the driver's seat of another Toyota HiAce van that had keys in the ignition (**the first van**),¹⁴ while Penisimani got into the driver's seat and Iviiti also* got into a white Ford van (**the second van**). These vans were parked nose to tail fashion and the first van's exit was blocked.
14. FC Van Neutegem approached both vans and deployed police issue OC spray at Mr Ahokava and Penisimani while they were seated in the drivers' seats. Officer 1 discharged several shots at the tyres of the vans to stop them leaving the premises but was ineffective.

prohibited weapon and a controlled weapon and failing an oral fluid test within three hours of driving (pages 16-17 of the brief).

¹¹ See paragraphs 79 and following below for SC Catania's movements and limited observation of the three males that continued into the complex.

¹² Transcript page 209-210 is one witness' (LSC Francis') description of how stop sticks operate.

¹³ On 12 March 2020, I granted an application on behalf of the Chief Commissioner of Police (CCOP) for a pseudonym order protecting the identity of the police officer who fired the fatal shot by referring to him as Officer 1 during the inquest and allowed solicitors representing the CCOP to redact the brief accordingly. The application was unopposed by the family.

¹⁴ To avoid confusion this van being driven by Mr Ahokava will be referred to as the "first van" in the rest of this finding although it was actually the second Toyota Hi Ace van stolen and used by the three males on the night, and the Ford van will be referred to as the "second van" as most of the cross-examination and discussion of the critical incident concerned these two vehicles, the first Toyota Hi Ace van being irrelevant after it was disabled by the stop sticks and abandoned outside Factory 13.

15. Mr Ahokava reversed the first van into the second van which was still stationary. He then reversed the first van under heavy acceleration, forcing the second van behind him out of the roller door entrance, clearing space for him to exit the factory. FC Van Neutegem exited the factory on foot through the roller door.
16. As Officer 1, also on foot, attempted to exit the factory, Mr Ahokava drove forward under heavy acceleration and impacted Officer 1, pinning him to the wall of the roller door entrance. Whilst pinned to the wall, Officer 1 discharged his firearm at the windshield, fatally wounding Mr Ahokava.¹⁵
17. Emergency services were called, and multiple Victoria Police units responded as well as Ambulance Victoria (AV) paramedics who verified Mr Ahokava's death at the scene.

INVESTIGATION AND SOURCES OF EVIDENCE

18. This finding is based on the totality of the material the product of the coronial investigation of Mr Ahokava's death. That is, the brief of evidence compiled by Detective Senior Sergeant Julian Horan from the Homicide Squad of Victoria Police (Det Sen Sgt Horan), updated and reconfigured for the inquest;¹⁶ the statements, reports and testimony of those witnesses who testified at inquest and any documents tendered through them; and the final submissions of counsel.
19. All of this material, together with the inquest transcript, will remain on the coronial file.¹⁷ In writing this finding, I do not purport to summarise all the material and evidence. Rather, I will refer to the evidence only in such detail as is warranted by its forensic significance and the interests of narrative clarity.

PURPOSE OF A CORONIAL INVESTIGATION

20. The purpose of a coronial investigation of a *reportable death*¹⁸ is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the

¹⁵ Penisimani and Iviiti fled the scene in the second van and were apprehended after a further police pursuit. They were subsequently interviewed by police, charged, convicted, and sentenced in relation to their involvement in this incident as well as other criminal offending. Officer 1 sustained crush injuries to the lower body and legs and was transported by ambulance to the Royal Melbourne Hospital for treatment.

¹⁶ In accordance with section 52(2)(a) of the Act, Mr Ahokava's death was subject to the "mandatory inquest" requirement as the word "homicide" in that section is given its broadest/common law meaning in this jurisdiction. See for example Butterworths Australian Legal Dictionary, 1997 edition – "1. A killing, lawful or unlawful, of one human being by another; 2. Unlawful killing with or without intent to kill or do grievous bodily harm..."

¹⁷ From the commencement of the *Coroners Act* 2008 (the Act), that is 1 November 2009, access to documents held by the Coroners Court of Victoria is governed by section 115 of the Act.

¹⁸ The term is exhaustively defined in section 4 of the Act. Apart from a jurisdictional nexus with the State of Victoria (s 4(1)), reportable death includes "a death that appears to have been unexpected, unnatural or to have resulted, directly or indirectly, from an accident or injury" (section 4(2)(a)).

death occurred.¹⁹ Generally, reportable deaths are those that appear to be unexpected, unnatural or violent or appear to have resulted directly or indirectly from an accident or injury.²⁰ It is self-evident that Mr Ahokava's death falls within this definition.

21. The term 'cause of death' refers to the *medical* cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the term 'circumstances in which the death occurred' refers to the context or background and surrounding circumstances but is confined to those circumstances that are sufficiently proximate and causally relevant to the death, and not all circumstances which might form part of a narrative culminating in death.²¹
22. The broader purpose of any coronial investigations is to contribute, where possible, to a reduction in 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.'²²
23. Coroners are empowered to report to the Attorney-General in relation to 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 and safety or the administration of justice.²³ These are effectively the vehicles by which the Coroner's prevention role can be advanced.²⁴
24. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death and are specifically prohibited from including in a finding or comment any statement that a person is, or may be, guilty of an offence.²⁵

¹⁹ Section 67(1) of the Act.

²⁰ See section 4 for the definition of "reportable death", especially section 4(2)(a).

²¹ This is the effect of the authorities – see for example Harmsworth v The State Coroner [1989] VR 989; Clancy v West (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

²² The 'prevention' role is now explicitly articulated in the Preamble and purposes of the Act, compared with the *Coroners Act* 1985 where this role was generally accepted as 'implicit'.

²³ See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

²⁴ See also sections 73(1) and 72(5) of the Act which require 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.

IDENTITY

25. On 5 September 2016, Coroner Phillip Byrne made a formal determination (Form 8) identifying the deceased as Taniela Ahokava, born 15 July 1993, aged 23, based on expert evidence of fingerprint analysis and comparison.
26. Mr Ahokava's identity was not in issue and required no further investigation.

MEDICAL CAUSE OF DEATH

27. Senior forensic pathologist Dr Michael Burke, from the Victorian Institute of Forensic Medicine (VIFM), reviewed the circumstances of Mr Ahokava's death as reported by police to the coroner, post-mortem CT scanning of the whole body performed at VIFM and performed an external examination and autopsy of Mr Ahokava's body in the mortuary.
28. Dr Burke provided a written report of his findings dated 10 November 2016.²⁶ In that report, his key findings were summarised as gunshot injury to the left side of the head, gunshot injury to the right jaw region and injuries to the face in keeping with the presence of an intermediate target (a reference to glass fragments from the windscreen).
29. In the comments section of his report, Dr Burke stated that post-mortem examination showed entry wounds to the right jawline (injury 1) and the left side of the deceased's head (injury 2), the latter was the lethal injury and associated with the presence of glass injuries to the skin being the intermediate target (injury 3). Relevantly, Dr Burke advised that he could not determine on purely pathological grounds, the order of infliction of the injuries.
30. At inquest, Dr Burke was asked to comment on the direction of the bullet that caused the lethal injury. He answered by reference to another part of his report which describes the path taken by the projectile following entry from left to right and acutely downwards towards the base of the skull.²⁷ That is the deceased's left and acutely downwards by reference to the anatomical position. Dr Burke noted that he could not say what position Mr Ahokava was in when he suffered the gunshot injury (or injuries) to the head.²⁸
31. Dr Burke noted the results of routine toxicological analysis in his report and concluded by formulating the cause of Mr Ahokava's death as *1(a) Gunshot injury to the head.*
32. I accept Dr Burke's report and opinion as to the cause of Mr Ahokava's death.

²⁶ Exhibit AA, autopsy report of Dr Burke dated 10 November 2016 at pages 392-401 of the brief.

²⁷ Exhibit AA, at page 398 of the brief – "*Within the depths of the left parietal skull defect, a deformed bullet jacket was visible and retrieved. The projectile had extended acutely downwards, through brain tissue and impacted with the base left middle cranial fossa resulting in a longitudinal "depression" measuring approximately 2.2 x 1 cm.*"

²⁸ Transcript pages 429-430.

Results of toxicological analysis

33. Part of the medical investigation of Mr Ahokava's death involved routine toxicological analysis of post-mortem specimens taken from his body which detected methylamphetamine at a concentration of ~4.4mg/L in blood and >2.5mg/L in urine; and amphetamine at ~0.6mg/L in blood and >2.5mg/L in urine. No alcohol or other commonly encountered drugs or poisons were detected.²⁹
34. The toxicologist's report accompanying the autopsy report advised that *amphetamines* is a collective word to describe central nervous system (CNS) stimulants structurally related to dexamphetamine. One of these, methamphetamine ("speed" or "ice") is a strong stimulant drug used recreationally.
35. One of the main effects sought by amphetamine users is euphoria, the high experienced with the amphetamine rush in the body, which is associated with an elevation in mood and increased alertness, confidence and strength which may last for several hours. Further, amphetamines stimulate the CNS causing hyperactivity and increased arousal. This stimulation lasts while the drug is in the body with greater effects felt closer to the time of administration or use. According to the toxicologist, in drivers, amphetamines can produce aggressive and dangerous driving and even rebound fatigue when the effects of amphetamines are waning.³⁰
36. Mr Alex Kotsos, the senior toxicologist from VIFM who authored the toxicology report was called to give evidence at inquest. Mr Kotsos explained the toxicologist's role and testified about the known immediate and longer-term effects of using amphetamines.³¹ He explained the limitations of analysis and the phenomenon of post-mortem redistribution which impacts the toxicological analysis and interpretation of the effects of drugs found in post-mortem analysis.³²
37. For all the limitations of post-mortem toxicological analysis, Mr Kotsos testified that methamphetamine at a concentration of ~4.4mg/L in blood was high, and that even if halved to ~2.2mg/L to account for post-mortem redistribution, would still be considered a high level.³³ Even allowing for individual variance, Mr Kotsos' evidence was that such a level could not be in a person's bloodstream and not be having an impact on them.³⁴

²⁹ Exhibit BB, toxicology report of senior toxicologist Mr Alex Kotsos from VIFM, dated 15 December 2016, at page 407 of the brief.

³⁰ Exhibit BB, toxicology report, at page 411 of the brief.

³¹ Transcript pages 433 and following.

³² Transcript pages 434 and following.

³³ Transcript page 440.

³⁴ Transcript page 441.

38. I accept Mr Kotsos' report and evidence at inquest about toxicological analysis and the likely impact of the drugs detected on Mr Ahokava during the events the subject of the coronial investigation.

FOCUS OF THE CORONIAL INVESTIGATION

39. The focus of the coronial investigation and inquest into Mr Ahokava's death was on the circumstances in which the death occurred and the appropriateness of the actions of the various Victoria Police members involved with Mr Ahokava from the time he (and Penisimani and Iviiti) came to the attention of police in Tarneit at around 0045 hours on 2 September 2016 until the fatal shooting at about 0145 hours later that morning.

40. Consideration of police pursuit policy more broadly did not form part of the scope of the coronial investigation and inquest into Mr Ahokava's death. This was due to a perceived lack of causal connection between the initial pursuit and the circumstances in which Mr Ahokava was shot, being removed both in terms of time and location.

41. Nor was there any need to critically examine the response of police or emergency responders following the shooting, save to note that police members present at the scene came to Mr Ahokava's immediate assistance, and that despite their ministrations and those of responding Ambulance Victoria paramedics, Mr Ahokava died at the scene.

42. Although the matters examined during the coronial investigation and inquest took place within a relatively short period of time, of about one hour or so, it is convenient to consider the evidence in four discrete phases:

- Initial police pursuit of the Ford.
- Covert surveillance of the Ford and the Mitsubishi.
- Initial events at Carrick Drive, Gladstone Park.
- Circumstances in which the shooting occurred.

INITIAL POLICE PURSUIT OF THE FORD

43. In the early hours of 2 September 2016, Senior Constable Templeton (**SC Templeton**) and Constable Mihael Katolik (**Const Katolik**), call sign Werribee 311 for police communications purposes, were patrolling the Leakes Road area, Tarneit, in a marked police vehicle. SC Templeton who was driving, was the more experienced of the two and more

familiar with the area, while Const Katolik was the observer, principally involved with police radio communications and interface with the mobile data terminal (MDT).³⁵

44. At about 0045 hours, SC Templeton and Const Katolik were travelling west along Leakes Road, Tarneit, when they saw the Ford stationary in the eastbound carriageway just before the intersection with Kulin Drive. The Ford which had no exterior lights on, no rear registration plate and was effectively blocking the eastbound carriageway, matched the description of a vehicle believed to have been involved in recent burglaries in the area as well as an ‘evade police’ when an intercept was attempted within the last couple of days.³⁶
45. As SC Templeton did a U-turn intending to come up behind the Ford for a better look, it drove off, turning right into Kulin Drive and right again into a retirement village. The Ford then slowed almost to a complete stop before doing a U turn and exiting the village. As it did so, the Ford drove past the police vehicle and SC Templeton observed that the driver appeared to be of islander appearance and was wearing a fluorescent vest.³⁷
46. After exiting the retirement village, the Ford retraced its movements, turning left into Kulin Drive and left again onto Leakes Road to travel west with the police following. At around the intersection of Sunset View Boulevard, SC Templeton accelerated up to the Ford with the police vehicle’s flashing blue and red lights operating, indicating an intention to intercept. When Mr Ahokava did not stop, SC Templeton activated the siren. Again, Mr Ahokava did not heed the direction to stop and continued driving west on Leakes Road.³⁸
47. At about this time or shortly before, Werribee 311 came up on the police radio, Const Katolik advising that they ‘have just had a vehicle take off fast, a Ford ute involved in burgs’ and are heading west on Leakes Road approaching the intersection with Derrimut Road’.³⁹ Thereafter, Const Katolik provided updates as to the location and speeds of the Ford and Werribee 311 and other matters as requested. In terms of knowledge of the area and police intelligence, Const Katolik relied on SC Templeton.⁴⁰

³⁵ Exhibit B, statement of Constable Mihael Katolik dated 2 September 2016 at pages 495-501 of the brief and transcript page 48-51. When first seen in Leakes Road, Const Katolik notices there is no rear registration plate.

³⁶ Exhibit A, statement of Senior Constable Haydn Templeton dated 2 September 2016 at pages 503-509 of the brief and transcript pages 22-23, 25. It was Const Katolik unchallenged evidence that he relied on SC Templeton relaying police “intelligence” about the Ford and its possible connection with unlawful activity in the area. Transcript page 50. Note that when the Ford drives past them after exiting the retirement village, Const Katolik notices a front registration plate and believes there is only one occupant. Later investigation indicates that this was a stolen vehicle.

³⁷ Exhibit B at page 504 of the brief and transcript page 24.

³⁸ Exhibit B at pages 504-505 of the brief and transcript page 25. For clarity, I have referred to Mr Ahokava as the driver of the Ford but it is important to note that the identity of Mr Ahokava was not known by the police members at any material time, that is between the Ford coming to the attention of Werribee 311 in Leakes Road, Tarneit, at about 0045 hours until Mr Ahokava’s death about one hour later. Nor were the identities of Penisimani or Iviiti then known.

³⁹ Appendix G, Police Communications Transcript dated 2 September 2016 at page 959 of the brief. The time when the relevant excerpt commences is about 0048 hours.

⁴⁰ Exhibit A at pages 496-497 and Appendix G at pages 959 and following. Transcript pages 54-57, 60-62.

48. While it is now clear the word “pursuit” was not used by Const Katolik in his radio communications, their attempted intercept having failed, they pursued the Ford driven by Mr Ahokava and regarded themselves as being *in pursuit*. This was explicit in SC Templeton’s statement and evidence at inquest. Const Katolik, on the other hand, provided a detailed statement outlining the failure of the Ford to stop and the route it travelled as they followed, but did not refer to a pursuit in terms and had little recollection of events when he testified at inquest. SC Templeton conceded that it was ‘good policy’ and ‘preferable’ that a police pursuit should be called or broadcast unambiguously over the police radio.⁴¹
49. Similarly, although there was no formal announcement or explicit acknowledgement on police communications about who was the pursuit controller, there was no confusion in the mind of SC Templeton and, at least in the transmissions of Const Katolik, that Officer 1 had assumed the role of pursuit controller and remained in command thereafter.⁴²
50. Officer 1’s evidence in his two statements and evidence at inquest was that he did assume the role of pursuit controller.⁴³ During the nightshift 1-2 September 2016, Officer 1 was the nightshift patrol supervisor for the Werribee Police Service Area. This role could have been performed from a stationary position at a police station reliant on police radio communications. However, Officer 1 chose to be on the road, as driver of a police vehicle with FC Van Neutegem as observer utilizing call sign Werribee 251.
51. While he conceded he did not announce his role as “pursuit controller” via the police radio, Officer 1 maintained that it was, in part, inherent in his role as patrol supervisor, and in part, apparent from the tenor of his questions to Werribee 311 at the commencement of the pursuit and his numerous directions broadcast thereafter that made it clear he had assumed the role of and remained in charge as the operation evolved after the pursuit proper ended.⁴⁴
52. Officer 1 characterised the interventions of Acting Sergeant Brett Van Der Vliet (Blue 750) and A/g Sen Sgt Baulch (Melton 265) as evidenced in the police radio communications as assisting him, and in the case of the latter, as assistance and part of normal supervision,

⁴¹ Exhibit B at page 504 and transcript at pages 26-31, 55. SC Templeton’s recollection of events including his state of mind about the pursuit was clearer at inquest than FC Katolik’s who attested as to the accuracy of his statement but had little recollection by the time of the inquest. Relevantly, he had no prior nor subsequent experience of pursuits. See transcript pages 54-56, and 60-62.

⁴² Transcript page 26 and following. Nor did any other police witnesses indicate that they were confused about the chain of command during the incident.

⁴³ Exhibit M, statement of Officer 1 dated 8 September 2016 at pages 510-524 of the brief; Exhibit N, statement of Officer 1 dated 6 November 2016 at pages 525-536 of the brief. I note that Officer 1 sought and was granted a certificate pursuant to section 57 of the Act. To paraphrase, the effect of such a certificate is that the evidence given, and any information, document or thing obtained as a direct or indirect consequence of the evidence, cannot be used against him in any proceeding in a court or before any person or body authorised by a Victorian law to hear, receive and examine evidence. Commonly referred to as a use and derivative use indemnity.

⁴⁴ Transcript pages 265 and following. Note that I have preferred the more neutral and accessible term “in charge” rather than “incident controller” or “forward commander” – see transcript pages 269-270.

rather than indicating they were taking over or assuming the role of pursuit controller/incident commander/forward commander themselves.⁴⁵ A/g Sen Sgt Baulch gave evidence consistent with this at inquest.⁴⁶

53. Similarly, A/g Sgt Van Der Vliet who had significant experience of pursuits and thought there was nothing unusual or different about this pursuit, inferred from the radio communications that a pursuit was taking place and that Officer 1 had assumed the role of pursuit controller.⁴⁷ At inquest, he was taken to the various directions he broadcast and maintained that in doing so he was merely assisting Officer 1 and not assuming the role himself. While he could not speak to the state of mind of other members, he did not believe there could be any confusion about the fact that a pursuit was called, and that Officer 1 was the pursuit controller.⁴⁸
54. The route travelled by the Ford with Werribee 311 in pursuit continued west along Leakes Road to Derrimut Road where the Ford crossed Derrimut Road against a red traffic control signal without appearing to slow. The Ford continued west along Leakes Road before turning right into Tarneit Road against a red arrow to head north. The pursuit continued north with the Ford and the police vehicle reaching and exceeding speeds of 100kph at times. Other police units monitored the pursuit via the police radio and became involved in the pursuit or other police action as directed.
55. While Werribee 311 was the primary pursuit vehicle, the Ford continued north along Tarneit Road until it turned right into Boundary Road to travel east. As they drove east on Boundary Road, SC Templeton became aware via police communications that Officer 1/Werribee 251 was driving east on Doherty's Road, parallel to Werribee 311 and could see their flashing lights.⁴⁹
56. At Derrimut Road the Ford turned left to head north before turning right into Middle Road to head east. Middle Road was a dirt road through open country and the police vehicle had to slow for kangaroos and uneven terrain.⁵⁰

⁴⁵ Transcript pages 269-279 and Appendix G, at pages 970 and following.

⁴⁶ Transcript pages 343-343. I note that A/g Sen Sgt Baulch's role on the night involved ensuring adequate resourcing and supervision of Werribee 251/Officer 1 as well as the Altona North 251, Footscray 251, Sunshine 251 and Caroline Springs 251. See also transcript page 73 where A/g Sgt Van Der Vliet expands on these duties.

⁴⁷ Transcript pages 67-68, 70-71, 97.

⁴⁸ Transcript pages 69, 71-74, 96-97. See also the evidence of Sergeant Troy Rodney Groves at transcript pages 327-328 where he testified that "*As it continued along, it became quite clear to me it was a pursuit, yes... Werribee 251 was quite clearly in charge and controlling it... Just from the calls, um, it was just running like a typical pursuit... at the time it was quite clear to me that it was a pursuit and they were asking the right questions, asking for the right resources, um, trying to put a resolution strategy in place.*"

⁴⁹ Exhibit B at page 505 of the brief.

⁵⁰ Exhibit A at page 497 and exhibit B at page 505.

57. The Ford next turned left onto Christies Road, Ravenhall, and travelled north. SC Templeton's impression was the Ford was prevented from entering the Deer Park Bypass of the Western Highway by another police vehicle situated on the bypass on-ramp.⁵¹ In any event, the Ford continued north on Christies Road until it turned right onto Ballarat Road.
58. Werribee 311 remained the primary pursuit vehicle for a short distance in Ballarat Road until the vicinity of the Deer Park Hotel where a Highway Patrol Unit (HPU) which had been monitoring the pursuit via the police radio, took over with its lights and siren operating. Werribee 311 fell into a secondary or support role in the pursuit.⁵²
59. The HPU comprised Senior Constable Ken Zeffert (**SC Zeffert**) as driver and Senior Constable Daniel Allen (**SC Allen**) as observer utilising call sign Brimbank 600.⁵³
60. At inquest, SC Allen testified that it was in accordance with standard police practice that, when available, Highway Patrol members would assume the primary role in a pursuit, as they are better qualified drivers and have better equipped police vehicles with better brakes and the like.⁵⁴ Radio communications aside, both HPU members testified that when they saw the Ford driving on Ballarat Road at high speed with several police vehicles following* with lights and sirens operating, they had no doubt that what they were observing, and what they soon joined, was a police pursuit in progress.⁵⁵
61. During the two to three minutes that the HPU was the primary pursuit vehicle,⁵⁶ the Ford turned left into Cairnlea Drive to travel at about 100kph, crossed to the opposite side of the road and overtook another vehicle, turned left into Noble Banks Drive, and then drove through other residential streets before heading north on Prospector Drive, Deer Park. At the northernmost end of Prospector Drive, the Ford mounted the kerb and drove over some 20 metres of grassland before entering Edgewater Circuit, Cairnlea.

⁵¹ Exhibit B at page 505.

⁵² I note that this part of the pursuit was in the same general vicinity as Mr Ahokava's family home at 150 Robinsons Road, Deer Park and his general familiarity with the area can be inferred.

⁵³ Exhibit E is the statement of SC Allen dated 7 September 2016 at pages 656-667 of the brief, relevantly at pages 659-660. Exhibit F is the statement of SC Zeffert dated 2 September 2016 at pages 669-677 of the brief, relevantly at pages 671-672. Note that as estimated by SC Zeffert their direct involvement in the pursuit was of some two-three minutes duration only before all units pulled back and deferring to the Police Air Wing helicopter.

⁵⁴ There is ample other evidence that Highway Patrol Units were considered better equipped and qualified to conduct pursuits and would be preferred over general patrol units where possible. See for example SC Zeffert's evidence at transcript page 162.

⁵⁵ Transcript pages 134-135, 161-162. See also Appendix G, Police Communications Transcript dated 2 September 2016 at page 972 of the brief. The whole tenor of the communications from Brimbank 600 is consistent with the expectation that Werribee 311 will cede primary pursuit status to them.

⁵⁶ This is an estimate made by SC Zeffert in his statement, Exhibit F, at page 672 of the brief.

62. The HPU's primary pursuit role and the pursuit proper ended at this location at about 0104 hours as the Police Air Wing helicopter came up on the police radio as being overhead with the Ford in sight.⁵⁷
63. Although not a significant focus of the inquest, I note for completeness, that there was controversy about whether the pursuit fulfilled the Victoria Police Manual – Pursuits⁵⁸ justification criteria at the outset.⁵⁹ There was a range of views expressed by the police members involved on 2 September 2016. Although not involved in the initiation of the pursuit, at inquest, SC Allen and SC Zeffert expressed the view that the justification criteria were not met based on the information broadcast at the time.⁶⁰ Notably, SC Templeton, A/g Sgt Van Der Vliet and A/g Sen Sgt Baulch believed at the time that the pursuit met the justification criteria.⁶¹
64. While Officer 1 testified that the pursuit policy was relatively new in September 2016, he believed at the time that the pursuit met the justification criteria and asserted that 90% of police members would have authorised a pursuit in the circumstances that prevailed.⁶² Consistent with his second statement, Officer 1's evidence at inquest was that with the benefit of hindsight, he was no longer of the view that the pursuit met the justification criteria.⁶³ Similarly, A/g Sgt Van Der Vliet's evidence at inquest was that having reviewed the wording of the pursuit policy, he considered the pursuit was not justified when it commenced, or at any point thereafter.⁶⁴ A/g Sen Sgt Baulch was the outlier, maintaining the view that the pursuit met the justification criteria.⁶⁵
65. Finally, there is ample unchallenged evidence that other aspects of the pursuit policy, namely the requirement for ongoing risk assessments⁶⁶ and the pursuit controller's obligation to formulate a resolution strategy⁶⁷ were met in this instance.⁶⁸

⁵⁷ Exhibit E, at page 660 of the brief. Exhibit F at page 672 of the brief.

⁵⁸ The relevant part of the Victoria Police Manual is at pages 1777 and following of the brief and the "pursuit justification criteria" at page 1780: "*Members may only conduct a pursuit when they reasonably believe a serious risk to the health or safety of a person existed before attempting interception and there is a need to prevent or respond to that risk; and – other means for apprehending the vehicle occupant/s are not practicable; and – the serious risk they are seeking to prevent or respond to is greater than the risks involved in conducting the pursuit at that time...*"

⁵⁹ The family's concerns in this regard are apparent in Ms Khan's cross-examination of various police members and conveniently encapsulated in Ms Khan's submissions on their behalf dated 24 July 2020 at page 3/8.

⁶⁰ Transcript pages 136 and 162.

⁶¹ Transcript pages 28, 31 and 39 for SC Templeton's evidence; pages 83-84 for A/g Sgt Van Der Vliet's evidence; and pages 339-340 for A/g Sen Sgt Baulch's evidence.

⁶² Transcript pages 270-271.

⁶³ Transcript pages 271 and following where Officer 1 attributes his change of opinion to an evolved and better understanding of the justification criteria which were relatively new at the time of Mr Ahokava's death; and transcript page 284 where Officer 1 is re-examined by Ms Khan on this issue.

⁶⁴ Transcript pages 101-102.

⁶⁵ Transcript pages 339-340.

⁶⁶ Victoria Police – Pursuits at pages 1778 and following of the brief.

⁶⁷ Victoria Police – Pursuits at page 1784 of the brief.

COVERT SURVEILLANCE OF THE FORD AND THE MITSUBISHI

66. The police helicopter crew comprised a pilot, Leading Senior Constable Brendon Francis (**LSC Francis**) as the front seat Tactical Flight Officer, and Leading Senior Constable Paul Hunter (**LSC Hunter**) as the rear seat Tactical Flight Officer operating the thermal imaging camera system on board the aircraft.⁶⁹ Aside from this camera and a communication line with the Police Air Wing command centre, the police helicopter crew had access to police radio communications using call sign Air 490.⁷⁰
67. Although not apparent when they announced they were overhead and all other police units disengaged, bringing the pursuit to an end, the Air 490 crew had identified the wrong vehicle and did not in fact have the Ford in sight when the ground units disengaged. The plan had been for Air 490 to take over as an observation platform with all ground units falling back but remaining in the vicinity in case an opportunity presented itself to effect an arrest.⁷¹
68. Air 490 and police ground units commenced searching for the Ford. At about 0111 hours, some seven minutes after having “lost” the Ford, using the thermal scanning capability of the camera, LSC Hunter identified a utility vehicle of interest in Glenrosa Court, St Albans. Air 490 sought information via the police radio that might help confirm that they now had the correct vehicle under observation and were advised, *inter alia*, that the Ford had what appeared to be a milk crate in the rear tray. LSC Francis then formed the opinion that the vehicle under observation was the Ford which had been pursued by ground units earlier.⁷²
69. I note that the location where the Ford was re-located by police is roughly three kilometres from where it was last seen by the HPU in Edgewater Circuit, Cairnlea, and about six minutes away by road.⁷³ This is broadly in keeping with the period the Ford was lost to Air 490’s observation.
70. When first seen by Air 490 in Glenrosa Court, St Albans, the Ford was stationary. A short time later the Ford drove out of Glenrosa Court and into Gillespie Road. Air 490 continued to follow the Ford as it drove along back streets until it reached the St Albans campus of

⁶⁸ This is evident in the statements of, for example, SC Templeton, Officer 1, SC Allen, SC Zeffert and Appendix G, the transcript of the radio communications. See also, transcript at page 318 for Officer 1’s evidence in this regard.

⁶⁹ Exhibit H is the statement of LSC Francis dated 16 September 2016 at pages 325-327 of the brief and his evidence is at pages 200-222. LSC Hunter’s statement is at pages 328-330 of the brief, and he was not required at inquest.

⁷⁰ Transcript pages 202-205.

⁷¹ It is not controversial that this was the plan – see Appendix G, at pages 994 and following.

⁷² Exhibit H, at page 325 of the brief; transcript page 207; and Appendix G, at page 981 of the brief.

⁷³ According to Google maps, the three most direct routes between the two streets are 2.5, 3.0 and 3.8 kms respectively and would take about 6 minutes to drive at normal speeds in each case. Of course, that there is no evidence that the Ford travelled directly from Edgewater Circuit, Cairnlea, to Glenrosa Court, St Albans, or that the Ford was driven at normal speeds.

Victoria University where it drove slowly around the campus before driving to the vicinity of Rhodes Street and Bent Street, St Albans.⁷⁴

71. While following the Ford, Air 490 continued making radio transmissions of its location and the manner in which it was being driven. Police members were of the view that the occupants of the Ford were unaware they were being followed and ground units remained out of sight. The plan was to organise a cordon and to arrest the occupants when an opportunity presented itself with the assistance of the Canine Unit if available.⁷⁵
72. Unbeknownst to police at the time, Mr Ahokava had communicated with his brother Penisimani via mobile phone, and they had arranged a rendezvous.⁷⁶ At 0125 hours, the Ford stopped in Rhodes Street, St Albans, where it was met by a Mitsubishi Triton (registration 1EA 8RY) being driven by Penisimani (the Mitsubishi).⁷⁷ Mr Ahokava and Iviiti were observed getting out of the Ford and into the Mitsubishi. Penisimani continued to drive, travelling out of Rhodes Street, left onto Furlong Road and left onto the Western Ring Road heading north while still being observed by the police helicopter.⁷⁸
73. At 0131 hours, the HPU/Brimbank 600 comprising SC Allen and SC Zeffert were tasked by Officer 1 to attempt an apparently random intercept of the Mitsubishi as it continued northeast on the Western Ring Road.⁷⁹ The rationale for this tactic was that the occupants (whose identities were still unknown by police) were unaware that their change of vehicle and movements had been observed by police and might choose to stop for a routine intercept rather than attract further police attention by refusing to stop.⁸⁰
74. By this time, the Brimbank 600 crew were aware via police radio communications that the Mitsubishi plates indicated it was a stolen vehicle. As directed by Officer 1, they attempted a routine/random intercept in the vicinity of the E. J. Whitten Bridge (part of the Western Ring Road) after the Mitsubishi, which had generally been keeping to the 100kph speed limit, accelerated above the speed limit.

⁷⁴ Exhibit H, at page 326 of the brief and transcript page 220. I note that Ms Koltovska's family home where Mr Ahokava generally resided after the birth of their son was in Rhodes Street, St Albans and his general familiarity with the area can be inferred.

⁷⁵ Appendix G, at page 981 and following indicates the ground units involved and their locations as the cordon was being developed and coordination with and deployment of the Canine Unit. See also page 990 where Air 490 suggest that the Ford may be "dumped" and transcript page 221 to the same effect. This suggestion appears to arise from their observations of the way the Ford was being driven. However, see Officer 1's second statement Exhibit and his interpretation of police radio communications "after the event" – Exhibit N at page 532 of the brief.

⁷⁶ A summary of the analysis of phone records is in the CI's summary at pages 40-42 of the brief.

⁷⁷ This is the same stolen Mitsubishi mentioned in the summary at paragraphs 6, and 9-10 above.

⁷⁸ Exhibit H, at page 326 of the brief, transcript page 220 and Appendix G at pages 992 and following.

⁷⁹ Exhibit M, at page 513 of the brief and Appendix G at pages 996 and following.

⁸⁰ Exhibit H, at page 326 and transcript page 207.

75. SC Zeffert operated the blue and red lights and siren on the police vehicle signifying that the Mitsubishi should pull over, but it continued travelling at 100-110kph. SC Zeffert flashed his high beams and again sounded the siren, but the Mitsubishi showed no signs of slowing or pulling over. SC Allen then sought direction as to whether they should disengage or pursue the Mitsubishi.⁸¹
76. The direction to disengage came from Acting Senior Sergeant Michael Baulch, nightshift Divisional Patrol Supervisor role (**call sign Melton 265**), who had been monitoring the incident via the police radio from the time of the original pursuit of the Ford.⁸²
77. The Mitsubishi continued travelling north on the Western Ring Road and took the off ramp leading to the Tullamarine Freeway to continue outbound. The Mitsubishi was still under the observation of Air 490 and several police ground units that were in the vicinity. By this time, it is likely that the occupants of the Mitsubishi were aware of the police presence. At about 0136 hours, still on the off ramp, the Mitsubishi slowed down and pulled over onto the adjacent grass verge. Mr Ahokava, Penisimani and Iviiti abandoned the Mitsubishi and fled on foot towards the Tullamarine industrial estate.
78. They were initially chased on foot by police members including SC Allen, SC Zeffert (**Brimbank 600**), and Senior Constables Joseph Catania (**SC Catania**) and Adam Licastro (**SC Licastro**) utilising call sign Melton 311. Mr Ahokava, Penisimani and Iviiti were observed to scale the high cyclone fence at the rear of an industrial complex, and the police members then lost sight of them as they moved further into the complex.⁸³
79. SC Catania was assisted by the Brimbank 600 members to scale the cyclone fence referred to in evidence as the “back fence”.⁸⁴ He was the only police member to follow Mr Ahokava and the others into the complex. While he did not catch up to them, as events unfolded, he was uniquely placed to make observations, of what took place within the complex, albeit limited to an extent by sightlines and distance, and to communicate those observations via the police radio.⁸⁵

⁸¹ Exhibit E, at page 661 of the brief, transcript at pages 145-146. Exhibit F, at page 673 of the brief and transcript pages 165-166. The relevant radio communications are at Appendix G, pages 999-1001 of the brief.

⁸² Exhibit R, statement of A/g Sen Sgt Baulch dated 6 September 2016 at pages 643-648, at page 644 in particular; Exhibit T, statement of A/g Sen Sgt Baulch dated 11 November 2016 at pages 649-655 of the brief and transcript 329-357. at page 644 and transcript page

⁸³ Exhibit E, at pages 661-662; Exhibit F, at pages 673-674; Exhibit G, statement of SC Catania dated 2 September 2016 at pages 602-614 of the brief, specifically at pages 606-607; and Exhibit L, statement of SC Licastro dated 7 September 2016 at pages 615-622 of the brief, specifically at pages 618-619.

⁸⁴ Transcript page 186.

⁸⁵ Exhibit G, at pages 607-608 and transcript pages 178-180. SC Catania (Melton 311) sought direction about effecting an arrest and Officer 1 responded over the police radio that anyone who could safely effect an arrest should do so – Appendix G, at pages 1005-1006. SC Catania had two vantage points. From his position atop a second fence at the front of the building, he observed the first van driving towards the corner of the doorway to factory 17 (where

INITIAL EVENTS AT CARRICK DRIVE, GLADSTONE PARK

80. The initial events at Carrick Drive after Mr Ahokava, Penisimani and Iviiti scaled the fence and entered first the complex and then the premises of Jaytee Electrics at Factory 17/24-26 Carrick Drive, Gladstone Park (**factory 17**), were not controversial and rely heavily on the limited observations of SC Catania, Air 490, FC Van Neutegem, Officer 1 and CCTV footage obtained by Det Sen Sgt Horan from Jaytee and several other business premises in the vicinity.
81. Significantly, these initial events all took place within the space of about six and a half minutes.⁸⁶ The police resolution plan at that time was focussed on establishing a cordon of the factory area in the expectation that Mr Ahokava, Penisimani and Iviiti would remain on foot allowing the Canine Unit, which was still enroute, to operate to best effect if other police units on the ground lost sight of them.
82. Next, Mr Ahokava, Penisimani and Iviiti scaled a second cyclone fence and entered the main driveway of the factory complex at 24-26 Carrick Drive, before making their way to the front office area of factory 17 and gaining entry.⁸⁷ Once inside, Penisimani got into the driver's seat of the Toyota HiAce, while Mr Ahokava and Iviiti entered the passenger side of the van. Penisimani reversed the Toyota HiAce out of the partially raised roller door damaging a ladder affixed to the roof of the van and the garage roller door of factory 17 in the process.⁸⁸
83. The Toyota HiAce drove first south along the driveway of the factory complex, then headed north and accelerated crashing through a cyclone fence and gate between factories 15 and 17 and continuing north towards Carrick Drive. Just before 0141 hours, the Toyota HiAce turned left into Carrick Drive and continued west.⁸⁹ Just east of the intersection with Melrose Drive, as part of a cordon attempt, police threatened to deploy stop sticks at the approaching Toyota HiAce. As a result, Penisimani performed a U-turn and continued driving east on Carrick Drive.⁹⁰

Officer 1 was located). I note that to the extent that SC Catania was criticised either directly or implicitly for climbing the fence and entering the complex in apparent disregard for his operational safety, he did not cause or contribute to Mr Ahokava's death, and I make no criticism of him, nor should any be inferred.

⁸⁶ See *Summary of Circumstances* by Set Sen Sgt Horan/Coronial Investigator at pages 55-67 of the brief. Note that based on the time stamping of the Air 490 footage, these events take place between 01:36:51 and 01:43:19 hours. CCTV footage from other business premises provides confirmation of some aspects of the Air 490 footage but I have relied in this finding on the Air 490 date/time stamping for consistency.

⁸⁷ Summary at page 56 of the brief. CCTV footage from factory 21 and the exterior of factory 17 captures the same movement to the front of factory 17

⁸⁸ Summary at page 57 of the brief.

⁸⁹ Summary at page 61 of the brief. Air 490 footage time stamped 01:40:58.

⁹⁰ The police unit involved comprised Senior Constables Joshua Stolk and Timothy Zuehlke, utilising call sign Blue 610 who had been monitoring the incident via the police radio. Summary at page 62 of the brief.

84. In the meantime, Officer 1 and FC Van Neutegem were continually monitoring police radio communications and, on hearing that three offenders had jumped the fence into an industrial estate, took the Mickelham Road exit and made their way to Carrick Drive in a marked police Ford Territory (**the police vehicle**). After hearing that the three offenders had made their way to the industrial estate at 24-26 Carrick Drive and were hiding under a factory awning, Officer 1 and FC Van Neutegem stopped the police vehicle just east of the driveway of 24-26 Carrick Drive facing west and both exited the vehicle. Officer 1 retrieved stop sticks from the rear passenger side of the police vehicle and positioned them on the roadway.⁹¹
85. Just before 0142 hours,⁹² Air 490 footage shows the Toyota HiAce slowing down and then accelerating past Officer 1 and FC Van Neutegem who are standing beside the police vehicle. As the Toyota HiAce passed them FC Van Neutegem attempted to deploy OC foam at the driver's side window which he believed was partially down. The stop sticks were deployed by Officer 1 throwing them onto the roadway just ahead of the approaching Toyota HiAce and were effective in damaging its tyres.⁹³
86. The Toyota HiAce then turned left into the driveway of 24-26 Carrick Drive and continued south down the driveway before stopping outside factory 13 where Mr Ahokava, Penisimani and Iviiti abandoned their vehicle and ran, first towards factory 13, then changed direction to run further south to the open garage roller door of factory 17 and re-enter.⁹⁴
87. I note that these events unfolded rapidly with only about one minute between the time the Toyota HiAce performed a U-turn in Carrick Drive to travel west back to the factory complex and Mr Ahokava's, Penisimani's and Iviiti's return to the garage of factory 17.⁹⁵
88. The Toyota HiAce had been followed down the driveway by the police vehicle being driven by Officer 1 with FC Van Neutegem as passenger. The police vehicle continued passed the abandoned Toyota HiAce following Mr Ahokava and others who were now on foot. Officer 1 parked the police vehicle directly outside the damaged garage roller door of factory 17. FC Van Neutegem exited the police vehicle before it came to a complete stop and ran into

⁹¹ Summary at page 58-63 of the brief. Officer 1 sought and was given authorisation to use the stop sticks. Appendix G at pages 1007-1008 of the brief.

⁹² Summary at page 63 of the brief – the Air 490 footage starts at time stamp 01:41:56 hours.

⁹³ Exhibit M at pages 514-515 of the brief and transcript pages 295-296. Exhibit GG, statement of FC Phillip Van Neutegem dated 6 September 2016 at pages 537-553 of the brief, specifically at pages 546-547.

⁹⁴ Summary at pages 63-67.

⁹⁵ According to time stamping on Air 490 footage, at 01:42:15 the Toyota HiAce performed a U-turn and drove west on Carrick Drive, passed the police Ford Territory (and Officer 1 and FC Van Neutegem), drove over the stop sticks, turned left into the driveway of 24-26 Carrick Drive; at 01:42:42 the Toyota HiAce drove south on the driveway to factory 13 where it was abandoned and Mr Ahokava and others ran first towards factory 13 then towards factory 17; and at 01:43:19 when they are depicted as running into factory 17.

factory 17 holding a can of OC foam. Officer 1 followed FC Van Neutegem into factory 17. The two police officers were only seconds behind Mr Ahokava and others.⁹⁶

CIRCUMSTANCES IN WHICH THE SHOOTING OCCURRED

89. Apart from the accounts of eyewitnesses and the Air 490 footage, the coronial investigation into Mr Ahokava's death was assisted by CCTV footage of the area immediately outside factory 17 and CCTV from cameras inside factory 17. It is salutary to consider what little time passed between Mr Ahokava and others re-entering the factory with FC Neutegem and Officer 1 in "in hot pursuit" on foot and the fatal wounding of Mr Ahokava. While it is difficult to synchronise the available footage and be precise about times,⁹⁷ it is sufficient to note that the events the subject of this part of the finding took place over about 30 seconds.⁹⁸

Criticisms made by Mr Ahokava's family

90. Apart from questioning the legitimacy of the pursuit, the main thrust of Ms Khan's criticisms of the police in general, and Officer 1 in particular, was the assertion that in their determination to apprehend the three offenders they allowed their judgement and considerations of the "safety first" principle to be overborne, and by their actions thereby created a sense of panic in Mr Ahokava, Penisimani and Iviiti which, in turn, influenced their reactions to the police presence and escalated their behaviours.⁹⁹
91. At inquest, this hypothesis was tested by reference to an alleged "failure" by Officer 1 and FC Van Neutegem to wait for the dog squad to arrive before or instead of pursuing Mr Ahokava and others into the factory on foot; a challenge to the threshold appropriateness of a foot pursuit into the factory at all; the inappropriateness of Officer 1's shooting at the tyres of the two vans while inside the factory; and finally, the assertion that Officer 1 and FC Van Neutegem contributed to the fatal outcome by putting themselves in the path of the two vans or proximate to them as Mr Ahokava and others were escaping the confines of the factory.

Failure to wait for the dog squad

92. As is evidenced by the police radio transmissions, part of Officer 1's resolution strategy was to deploy the Canine Unit (**dog squad**). This involved asking the dog squad members to

⁹⁶ Based on footage from Air 490 time stamped from 01:43:19, FC Van Neutegem and Officer 1 enter factory 17 factory two seconds and four seconds respectively behind the last of the three males to enter - Mr Ahokava based on his fluorescent jacket which is distinguishable in the footage. See summary at pages 66-67 of the brief.

⁹⁷ Exhibit O, five CCTV footage clips of incident entitled 38-2, 39, 40, 42, 52-Q. Note that the first and last clips can be disregarded for the purpose of this calculation and the others overlap in time to some extent.

⁹⁸ The relevant Air 490 footage is time stamped 01:43:19 to 01:43:45 – see summary at pages 67-74.

⁹⁹ This is a summary of Counsel's finals submissions dated 24 July 2020 and transcript at pages 608-622 and obviously does not do justice to the details in those submissions.

approach the area but to stay back until the offenders were out of the vehicle and the dogs could then be used to either track them or to subdue them and facilitated their arrest.¹⁰⁰

93. According to Officer 1, there was no expectation that members would simply wait for the dog squad and/or form a cordon but not follow offenders on foot or attempt to arrest them if possible.¹⁰¹ The situation was dynamic and there were many variables impacting whether the dog squad would be deployed ultimately, none the least of which was their ready availability. Moreover, in the circumstances, the window of opportunity to deploy the dog squad was brief and closed once the offenders were back in a vehicle.¹⁰²
94. The two dog squad members involved on the night were Leading Senior Constable Michelle Dench (LSC Dench) and Senior Constable Mark Gray (SC Gray), each in their own vehicles with their own dogs. Both members provided statements about their movements on the night, monitoring the police radio transmissions, and moving into the area as events were unfolding.¹⁰³ At inquest, both were questioned about the capabilities of police dogs, about the different ways in which police dogs could be deployed and about the factors that can affect how successfully they can be deployed.
95. LSC Dench described police dogs as a specialist resource supporting front line members in their duties¹⁰⁴ and her dog Archer, in particular, as a “general purpose” police dog trained in obedience, tracking, searching for persons and property and to subdue on command.¹⁰⁵ According to LSC Dench, offenders sometimes surrender when they encounter a police dog and at other times choose to keep running. As regards a police dog’s ability to track or search for a person, there were many variables which would impact the successful deployment of police dogs including the dog’s abilities, climatic factors and contamination of the scene by other scents.
96. LSC Dench’s evidence was that there is no expectation that police members who are in direct foot pursuit and can see the offender should stop and wait for the dog squad before attempting an arrest. On the contrary, the expectation of police members was that ‘if they can catch the offender by running after them themselves, there’s no need to wait for us. Our

¹⁰⁰ Exhibit G at pages 987 and following.

¹⁰¹ None of the police members cross-examined about this issue at inquest expressed a contrary view, that is that there is an expectation that once called for the dog squad had to be deployed.

¹⁰² Transcript pages 278-283.

¹⁰³ Exhibit J, statement of Leading Senior Constable Michelle Dench dated 29 October 2016 at pages 717-719 of the brief. It is apparent from this statement that LSC Dench was not yet at the 26 Carrick Drive premises before shots were fired. Exhibit K, statement of Senior Constable Mark Gray dated 3 November 2016 at pages 721-723 of the brief.

¹⁰⁴ Note that dog squad assistance may be requested by other members and dog squad members can also initiate their involvement or offer their services, if for example, they felt they could be usefully deployed heard

¹⁰⁵ Transcript page 225. The command to subdue refers to sending the dog after a fleeing offender, the dog biting them, taking them to ground and holding them until police members can take over.

job, I guess, ultimately starts once they've lost sight of the offenders and we need the dog to use his nose, to track them'.¹⁰⁶ SC Gray's evidence was to the same effect.¹⁰⁷

Police pursue Mr Ahokava and others into the factory on foot

97. FC Van Neutegem and Officer 1 were challenged about their rationale for following Mr Ahokava and others on foot and entering factory 17, as well as their actions once inside. They each gave an account of their thinking and there is no evidence of any consultation between them or "common" rationale as events were unfolding.¹⁰⁸
98. FC Van Neutegem entered factory 17 immediately behind Mr Ahokava and immediately ahead of Officer 1. He recalled seeing two vans inside the factory and was concerned they provided the means of escape. However, he did not know where the keys to the vans were or if there was another entry/exit point to the factory. As he entered, FC Van Neutegem held an OC foam canister and was hoping to arrest at least one of the offenders. He did not consider that the threshold had been met for taking his firearm out of its holster but agreed that this is a subjective assessment as is each person's perception of risk.¹⁰⁹
99. In his statement, FC Van Neutegem did not refer to any rationale as such, nor to any discussion with Officer 1 prior to entering the factory about whether they should enter or not. At inquest, he 'assumed they talked a lot, assumed some level of discussion' but could not recall the content.¹¹⁰ He agreed that police training 'relies on intuition and knowing how the other person works because you all have the same training' and testified that 'obviously you would have a 10-point plan if you could plan every incident'.¹¹¹
100. In cross-examination by Mr Lawrie, FC Van Neutegem testified that he would not have pursued the offenders on foot if he did not think he had a chance of running them to ground; that before entering the factory he did not expect that there might be more vehicles in the factory; and, not knowing their actual point of entry, was concerned that they might know of another exit point.¹¹²
101. Once inside, FC Van Neutegem ran to the second van, opened the driver's door, yelled at Penisimani who was seated in the driver's seat 'to get out' and told him he was under

¹⁰⁶ Transcript page 233.

¹⁰⁷ Transcript pages 238-242.

¹⁰⁸ Exhibit GG at pages 547-549 of the brief and transcript pages 511 and following.

¹⁰⁹ Transcript pages 518.

¹¹⁰ Transcript page 518.

¹¹¹ Ibid and transcript pages 532.

¹¹² Transcript pages 530-531. See also, cross-examination by Ms Khan at transcript page 529.

arrest.¹¹³ FC Van Neutegem then tried to remove Penisimani from the van but was shrugged off and deployed OC foam at him, but it did not appear to have the expected effect.¹¹⁴

102. At this point, having seen Officer 1 approach the passenger side of the first van, FC Van Neutegem ran to the driver's door, opened it and yelled at Mr Ahokava that 'he was under arrest' before deploying OC foam into the vehicle. Again, the OC foam did not appear to have the expected effect.¹¹⁵
103. Officer 1's evidence was that he parked the police vehicle within five to ten metres of the garage roller door and followed FC Van Neutegem, who was about two seconds ahead of him, into the factory on foot. He could not recall the precise moment he drew his firearm but recalled having it out by the time he approached the second van.¹¹⁶ He did not recall any discussion with FC Van Neutegem about what they would do next as 'at that point they were simply reacting to what was happening' and he also got out of the police vehicle after them. Officer 1 did consider waiting for further assistance but thought there was likely to be another exit from the factory and thought any delay would allow the three males more opportunity to escape. Officer 1's opinion was that their best opportunity to arrest the offenders was while they were on foot.¹¹⁷
104. In his first statement, initially, Officer 1 did not relate any discussion with FC Van Neutegem about following Mr Ahokava and others into the factory, nor did he offer his own rationale for doing so. When prompted, he recalled thinking that as there were three offenders, they (he and FC Van Neutegem) would probably not be able to get all three; wondered why they would run into a place and corner themselves; wondered if they knew there was another exit; but did not consider that they may have access to other vehicles. However, once inside, Officer 1 gained 'a better understanding of the situation in that they had returned to the factory to access more vehicles' to escape.¹¹⁸
105. When challenged by Ms Khan about the decision to run into the factory after the offenders rather than rely on Air 490 which was overhead at the time, Officer 1 replied "*We still have to get them at some stage, even if the camera was on them, and they weren't in the building, we still have to approach an offender and arrest them at some stage.*"¹¹⁹

¹¹³ Exhibit GG at pages 547-548.

¹¹⁴ Transcript page 521.

¹¹⁵ Exhibit GG at page 548 and transcript pages 521-522. It is tolerably clear that FC Van Neutegem's evidence pertains to both occasions on which deployed the OC foam.

¹¹⁶ Exhibit M at page 515 of the brief.

¹¹⁷ Exhibit M at pages 515, 520-521 of the brief.

¹¹⁸ Exhibit M at page 521 and transcript page 298.

¹¹⁹ Transcript page 301.

Shooting at the tyres of the two vans inside the factory

106. Within seconds of the two attempts to arrest the offenders inside the factory and the deployment of OC foam by FC Van Neutegem at the two drivers, Mr Ahokava started the first van and reversed it into the second van. FC Van Neutegem did not recall hearing either van start up but saw the first van reverse into the second van and the second van exit the factory into the driveway. He recalled hearing the collision between the two vans and seeing Officer 1 about two to three metres from the entrance to the factory, at about the centre of the roller door, with his firearm in his right hand and pointed at the rear tyres of the first van. He recalled seeing two muzzle flashes but not hearing any gunshots. He was not challenged about this aspect of his evidence.¹²⁰ The weight of evidence suggests that the muzzle flashes he recalls seeing were likely from the last shots fired by Officer 1 at the first van's tyres.
107. Officer 1's account is more fulsome. He heard the first van's engine start up, saw the reverse lights come on and the van shoot immediately back into the front of the second van. As the first van was facing a wall and had nowhere to go, he assumed it was trying to force its way out of the factory. The second van's engine then came on and the first van, having moved forward with the little room it had, reversed with force into the second van again. The effect of the first van's movements had been to move the second van backwards.¹²¹
108. At that point, Officer 1 saw and took the opportunity to fire 'he believed twice' into the rear passenger tyre of the second van. The first van continued to move back and forth, into the front of the second van and Officer 1 fired another two shots at the front tyre of the second van. Officer 1 could not recall how many times the first van moved back and forth but could see it was creating an angle to be able to reverse out of the factory. As soon as a clearance had been created, Officer 1 moved out of the way to avoid being struck by the first van and as it was continuing to manoeuvre, he shot one or two shots at the rear passenger tyre of the first van.¹²²
109. The evidence of FC Van Neutegem and Officer 1 about the movement of the two vans within the factory and shots fired at the two vans is corroborated by the CCTV footage taken within the factory¹²³ and the unchallenged ballistics and other crime scene examination evidence.¹²⁴

¹²⁰ Exhibit GG at page 548 of the brief.

¹²¹ Exhibit M at page 516 of the brief.

¹²² Ibid and transcript pages 301-302.

¹²³ Exhibit O.

¹²⁴ The relevant statements are at pages 337-370 of the brief.

110. Officer 1's attempted immobilisation of the vans by shooting at their tyres was ineffective. In cross-examination by Ms Khan Officer 1 was taken to a Victoria Police education package from April 2013 which advised against shooting at a moving vehicle with the intention of stopping the vehicle. Officer 1's evidence was that he was aware of the education package and stressed that the vans while not stationary had only moved a metre or so and were not driving at speed when he fired the shots. Effectively, he sought to distinguish the position he was in based on the speed of the vans, noted that the direction was that members *should not* shoot at moving vehicles and stood by the decision he made at the time. The situation was 'exceptional', and he took the opportunity to bring matters to a resolution. If he had stop sticks available to him, he would have used them.¹²⁵
111. Senior Sergeant Matthew Hargreaves is a very experienced police member and State-wide Coordinator of Operational Safety and Tactics Training (OSTT). In his statement and evidence at inquest he explained the Victoria Police position in relation to shooting at moving vehicles.¹²⁶ As at 2016 members were trained about the likely effect, outcome and dangers associated with shooting at moving vehicles; the reasons shooting at moving vehicles is usually dangerous, ineffective and its hazards; the relevant overarching Victoria Police philosophy and the limitations of handguns.¹²⁷
112. Relevantly, Sen Sgt Hargreaves explained that the training referred to moving, not stationary vehicles, as it was aimed at a specific practice whereby members would stand in the path of a vehicle being driven by someone trying to avoid apprehension. Rather than conduct a suitable risk assessment and move out of harm's way, members would attempt to stop or disable the vehicle using their handgun. This was considered a bad choice by police command and a direction was made for corrective training to be implemented force wide.
113. According to Sen Sgt Hargreaves' statement, a directive or policy that a member shall not shoot at a vehicle was never issued. Rather, members were trained that only in rare and critical circumstances may shooting at a moving vehicle be considered appropriate.¹²⁸

¹²⁵ Exhibit M and transcript pages 302-308, especially at page 307.

¹²⁶ Exhibit V statement of Sen Sgt Matthew Hargreaves dated 15 June 2020 at page 209 of the brief.

¹²⁷ Exhibit V at pages 211-212 of the brief. Note that the risks include ricochet and accidental injury to third parties. As to the limitations of handguns, these include considerations of the laws of physics and the unlikelihood that handgun ammunition would cause a vehicle moving at speed to stop and not just to continue driving on in a damaged/compromised state.

¹²⁸ Ibid and transcript at pages 270-371, 379. Note that Sen Sgt Hargreaves drew a distinction between the more general position that shooting at moving vehicles to stop them is ineffective and the weaponised use of motor vehicles in acts which could be broadly described as terrorism. In the latter case, the objective is not to stop the vehicle directly, but to disable the driver in order to stop the threat/attack or killing of third parties.

Ultimately, Sen Sgt Hargreaves was not critical of Officer 1's actions in shooting at the tyres of the two vans within the factory.¹²⁹

Shooting of Mr Ahokava

114. The movements of FC Van Neutegem and Officer 1 within the factory, immediately before the shooting of Mr Ahokava was criticised by Ms Khan on behalf of the family. It was asserted that they moved close to the two vans in disregard for their own safety. This was part of the hypothesis that judgement and risk assessment were overborne by determination to apprehend the offenders and created/contributed to a heightened atmosphere that escalated the behaviour of Mr Ahokava and others.
115. The evidence of FC Van Neutegem and Officer 1 indicates they were mindful of avoiding the vans and were trying to get out of the way, not attempting to obstruct the vans exiting the factory.¹³⁰ CCTV footage demonstrates the limited space within the factory and is otherwise in keeping with the evidence of FC Van Neutegem and Officer 1 in this regard.¹³¹
116. According to Officer 1's evidence, after the two vans cleared the garage roller door, he presumed FC Van Neutegem was outside as he could not see him. Officer 1 made his way across to the vicinity of the garage door. As soon as he got to the right corner of the garage door (looking from the outside in), the first van became stationary facing him and he made eye contact with the driver. Instantly the van started moving forward 'probably as fast as the van could go'. He realised he was in trouble and thought his best chance was to go back inside but he 'just didn't have time' as the van 'was literally on him in about one second'.
117. Officer 1 described the ensuing impact in the following terms – *"The front of the van smashed into me and pushed me up against the corner of the wall. He looked like he was bracing ...and leant forward as the van impacted. Because the van had a flat front...we were very close I could see the whites of his eyes. I didn't know what part of my body was impacted or what was pinned but I felt tremendous pain throughout my whole body. I've never experienced that level of pain in my life. I was yelling...I thought I was going to die from being crushed from what I thought from the neck down."*
118. In terms of his perception, there was a subsequent impact which he described as follows – *"The van kind of then rocked back but as soon as it did it was like he accelerated forward again and pushed me into the wall. At that point I shot him. I discharged a couple of times at this body. I didn't know if they were having an effect. I could see the shots go through*

¹²⁹ Exhibit V at page 213 and transcript page 381.

¹³⁰ Exhibit M at pages 516-517 of the brief. Exhibit GG and transcript page 314.

¹³¹ Exhibit O.

the windscreen but that wasn't stopping him driving into me. So I aimed a bit higher and clearly hit him in the head."¹³² The van then stopped accelerating but Officer 1 was still pinned against the wall until FC Van Neutegem removed Mr Ahokava from the driver's seat and moved the first van back just far enough to free Officer 1.

Forensic and other evidence relevant to the shooting of Mr Ahokava

119. Expert evidence provided significant corroboration of Officer 1's account of the movement of the first van towards him. Detective Acting Senior Sergeant Jenelle Hardiman (**Dr Hardiman**), Collision Reconstruction and Mechanical Investigation Unit of Victoria Police, holds a doctorate in Mechanical Engineering and is an experienced accident reconstructionist. As well as testifying at inquest, Dr Hardiman provided a 15-page report of her expert analysis and opinion that included photographs of physical evidence observed by her at the scene, primarily skid marks left by the first van in and around factory 17.¹³³
120. Dr Hardiman identified tyre marks inside the factory related to the incident and was able to distinguish between those left by the first van and those left by the second van based on the track width of the respective vehicles.¹³⁴ In terms of its earlier movement, Dr Hardiman described the acceleration* skid marks from the first van as extending for about 15.8 metres in an 'S' shape from inside the factory and out through the roller door to the external parking area.¹³⁵ Once outside, there was a collision between the first van and the second van. After that collision, the first van came to a stop before then accelerating forward towards the wall of the factory on the right side of the entry roller door and did not brake before colliding with the wall (and Officer 1).¹³⁶
121. Dr Hardiman did not identify any tyre marks that confirmed that there was a subsequent or second impact between the first van and Officer 1 as he described in his account. However, it is apparent from her evidence that the absence of tyre marks does not signify an absence of movement, just an absence of movement of the type likely to leave tyre marks.¹³⁷

¹³² Exhibit M at page 517 of the brief. Note that Officer 1 did not describe the van as the "first van" as I have referred to it consistently to avoid confusion. He referred to 'one of the white vans becoming stationary' and facing him. It is clear from other evidence that this is a reference to the van being driven by Mr Ahokava.

¹³³ Her evidence is at transcript pages 411-425 and Exhibit Z is her report/statement dated 6 September 2016. I note that Dr Hardiman attended 24-26 Carrick Drive, Gladstone Park, from about 9.30am on 2 September 2016 and made her own observations of the physical evidence on which she based her opinions.

¹³⁴ Exhibit Z at pages 370 and 374-375. Note that the Toyota HiAce (first van) and the Ford Econovan (second van) were both rear wheel drive vehicles and that it is the drive wheels which leave skid marks whether resulting from heavy acceleration or the application of brakes. See also transcript page 415.

¹³⁵ Exhibit Z at page 372 of the brief. I note that Dr Hardiman also identified scuff marks and debris consistent with collisions between the two vans and the police vehicle outside.

¹³⁶ Exhibit Z at page 379 of the brief and transcript pages 419, 423-425.

¹³⁷ Transcript page 417.

122. Penisimani and Iviiti were the only other potential eyewitnesses to events inside the factory, the impact between the first van and Officer 1 and the shots being fired. At my request, multiple efforts were made either by Det Sen Sgt Horan or by other police members on his behalf to serve a witness summons on Penisimani requiring his attendance at the inquest. All these efforts were unsuccessful.
123. Penisimani was formally interviewed by police members on 2 September 2016 and, in broad terms, answered “no comment” to most questions put to him about earlier events.¹³⁸ Having been advised that his brother had been shot by a police officer and was deceased, he started answering responsively towards the end of the interview. Penisimani recalled hearing gunshots when his brother was reversing into the van he was driving before it was even turned on. The officer pointed a gun at him, the other van reversed into the van he was driving and the officer running to that van in front and then all he heard was gunshots. He was not sure if they were just warning shots, or if the officer was aiming at something. He heard three, four or five shots, just one after the other. He panicked and just drove away.
124. As he did not attend the inquest his evidence was not tested. Taken at face value, it seems tolerably clear that his answers to questions 173 and 204 inclusive, relate to the shots fired by Officer 1 at the two vans while inside the factory and not to the fatal shots fired after the first van collided with Officer 1 and the second van was entirely outside the factory.
125. Iviiti was also formally interviewed by police members on 2 September 2016 and signed a short statement indicating that the answers in his interview were true and correct and represent the evidence he would give if called upon.¹³⁹ At my request, multiple efforts were made either by Det Sen Sgt Horan or by other police members on his behalf to serve a witness summons on Iviiti. Ultimately, he attended court on 28 July 2020 when final submissions had been scheduled and had to be adjourned to hear Iviiti’s evidence. He was given the opportunity to obtain legal advice and applied for and was granted a certificate pursuant to section 57(4) of the Act prior to testifying.¹⁴⁰
126. Iviiti’s evidence at inquest differed in several respects from the account he gave in his formal police interview. Significantly, as to the extent of his cannabis use and its impact on his memory of events;¹⁴¹ the reason why he was in the Ford with Mr Ahokava in the first place;¹⁴² the extent to which the police member entered the second van and brandished a

¹³⁸ The transcript of the interview is Appendix “H” at pages 1059-1093 of the brief.

¹³⁹ The transcript of the interview is Appendix “I” at pages 1095 to 1162 and the statement is at page 461 of the brief.

I note that Iviiti was 18 years old at the time and gave his residential address as 150 Robinsons Road, Deer Park.

¹⁴⁰ As to the nature of this certificate commonly referred to as a “use and derivative use” indemnity see footnote 43.

¹⁴¹ Transcript pages 547-548, 550, 555-556, 573.

¹⁴² Transcript pages 548-549.

firearm right at Penisimani's head;¹⁴³ the number of police members in the vicinity of the two vans when they were immediately outside the factory and the number of them holding firearms;¹⁴⁴ his memory that shots were fired at the tyres of the first van only and then only when that van was outside the factory;¹⁴⁵ and the extent to which he was panicked or afraid as events were unfolding.¹⁴⁶

127. Mr Iviiti was not an impressive witness. His demeanour whilst giving evidence, the extent to which the account he gave to the police within hours of the incident differed from his evidence at inquest and the inconsistency between his more recent account and the forensic, real, and other evidence before me lead to the conclusion that he was not a credible witness.

FINDINGS/CONCLUSIONS

128. The standard of proof for coronial findings of fact is the civil standard of proof on the balance of probabilities, with the *Briginshaw* gloss or explications.¹⁴⁷

129. Moreover, the effect of the authorities is that coroners should not make adverse comments or findings against individuals acting in their professional capacity unless the evidence provides a comfortable level of satisfaction that they departed materially from the standards of their profession and in so doing caused or contributed to the death. The departure from standards must be established strictly without the benefit of hindsight, based on what was known or should have been known at the time, and not from the privileged position of knowing the outcome and perceiving patterns or trajectories that were not and could not have been apprehended at the material time.

130. Having applied the applicable standard of proof to the available evidence, I find that:

- (a) The deceased is Taniela Ahokava, born on 29 November 1994.
- (b) Mr Ahokava died on 2 September 2016 at Factory 17/24-26 Carrick Drive, Gladstone Park.
- (c) The cause of Mr Ahokava's death is gunshot injury to the head.

¹⁴³ Transcript pages 561, 571, 578.

¹⁴⁴ Transcript pages 563-565, 577. He recanted after seeing Exhibit O, the Air490 footage – transcript page 568.

¹⁴⁵ Transcript pages 568, 572.

¹⁴⁶ Transcript pages 564.

¹⁴⁷ *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336, especially at 362-363. “*The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences...*”

- (d) Officer 1's perception was that Mr Ahokava drove the first van at him under heavy acceleration, collided into him and pinned him to the wall of the roller door entrance to the factory.
- (e) Expert evidence based on examination of tyre marks left at the scene establishes that the first van drove at Officer 1 under heavy acceleration without braking.
- (f) When Officer 1 fired the fatal gunshot, he was pinned to the factory wall by the first van, was injured and in extreme pain, and in apprehension of an imminent threat of further injury and/or imminent threat to his life. In the circumstances, Officer 1's actions were reasonable and proportionate.
- (g) Although there is no evidence that the failure to do so in this instance made any material difference to how events unfolded, it is preferable from a best practice perspective that police announce the commencement of a "pursuit" and that the member assuming the role broadcasts they are the "pursuit controller".
- (h) While the initial police pursuit did not cause or contribute to the death, the weight of evidence and a proper reading of the Victoria Police pursuit policy support a finding that the pursuit did not meet the justification criteria when it was commenced.
- (i) That said, I accept that the state of mind of Werribee 311 crew and Officer 1 at the material time, in believing the pursuit policy justification criteria to have been met, was an honest if mistaken belief.
- (j) There is ample evidence that the pursuit policy was otherwise heeded in that ongoing risk assessments were being conducted while the pursuit was underway and the content of those risk assessments as broadcast indicates the pursuit was being conducted with appropriate regard to the safety of Mr Ahokava, Penisimani and Iviiti, police members and the broader public.
- (k) After the pursuit ended, there was a reasonable resolution strategy in place that involved use of the police helicopter as an observation platform and rallying police resources to cordon and arrest when the opportunity presented itself with assistance from the Canine Unit, if available.
- (l) The attempted cordon and use of a tyre deflation device (stop sticks) in Carrick Drive, Gladstone Park, was a reasonable and appropriate tactic in the circumstances prevailing at the time and was duly authorised.

- (m) FC Van Neutegem's attempted deployment of OC foam at Penisimani as he was driving the Toyota HiAce back into the Carrick Drive factory complex was reasonable and appropriate.
- (n) The decision of FC Van Neutegem and Officer 1 to follow Mr Ahokava and others into factory 17 on foot was reasonable and appropriate given the prevailing circumstances as they knew them to be and provided a reasonable prospect of apprehending the three males and bringing about a resolution.
- (o) FC Van Neutegem's attempted arrest of Mr Ahokava and Penisimani and use of OC foam as they sat in the driver's seats of the first and the second van respectively while still inside factory 17 was reasonable and appropriate.
- (p) While Officer 1's actions in shooting at the tyres of the first and second van while inside factory 17 was *arguably* not in accordance with a literal application of Victoria Police training at the time, the rationale for that training is distinguishable here as the vehicles were stationary or near stationary and were not being driven on the open road of at any sort of speed.
- (q) There is no credible evidence that the interest shown by the police in Mr Ahokava over the hour or so preceding his death *probably* created a heightened atmosphere and escalated his behaviour in the sense that it caused him to act otherwise than he would in any interaction with police.
- (r) While it remains *possible* that the interest shown by police in Mr Ahokava over the hour or so preceding his death created a heightened atmosphere and escalated his behaviour, if so, this should more properly be viewed as a consequence of the police doing their duty and Mr Ahokava's determination to avoid apprehension and does not warrant an adverse finding or criticism of police members.
- (s) The available evidence supports a finding that at all material times, Mr Ahokava's judgement and/or behaviour were likely impacted by the methamphetamine he had ingested that was still at a high concentration in his bloodstream when he died.
- (t) In light of the findings and recommendations made by Victoria Police in a Critical Incident Review undertaken by Detective Superintendent Graeme Collins, Professional Standards Command, and the Post Incident Review Team briefing note dated 28 June 2019, I am satisfied that the issues that arose in this incident have been highlighted and are being addressed and there is no need for coronial comments or recommendations.

PUBLICATION OF FINDING

Pursuant to section 73(1) of the Act, unless otherwise ordered by a coroner, the findings, comments and recommendations made following an inquest must be published on the Internet in accordance with the rules. I make no such order in respect of this finding.

DISTRIBUTION OF FINDING

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

Mrs Setaita Ahokava c/o Ms Robyn Dyll, Victoria Legal Aid

Chief Commission of Police c/o Norton Rose Fullbright Australia

Detective Senior Constable Julian Horan c/o O.I.C. Homicide Squad

Signature:



Paresa Antoniadis Spanos

Coroner

Date: 9 March 2023

Amended where indicated by * at paragraphs 13, 60 and 120

Signature:



Paresa Antoniadis Spanos

Coroner

Date: 14 March 2023