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**JURISDICTION** : CORONER'S COURT OF WESTERN AUSTRALIA  
**ACT** : CORONERS ACT 1996  
**CORONER** : PHILIP JOHN URQUHART  
**HEARD** : 7-9 December 2020  
**DELIVERED** : 10 AUGUST 2021  
**FILE NO/S** : CORC 63 of 2017  
**DECEASED** : MARTIN, SCOTT WILLIAM

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*Catchwords:*

Nil

*Legislation:*

Nil

**Counsel Appearing:**

Ms S Tyler assisted the Coroner

Mr T Pontre appeared on behalf of the Western Australia Police Force

**Case(s) referred to in decision(s):**

Nil

Coroners Act 1996  
(Section 26(1))

## RECORD OF INVESTIGATION INTO DEATH

*I, Philip John Urquhart, Coroner, having investigated the death of **Scott William MARTIN** with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 7 - 9 December 2020, find that the identity of the deceased person was **Scott William MARTIN** and that death occurred on 14 January 2017 at Peel Health Campus, Mandurah, from penetrating wounds to the chest in the following circumstances:*

### Table of Contents

INTRODUCTION .....	4
THE DECEASED .....	6
THE OFFENDER .....	6
THE EVENTS OF 13 & 14 JANUARY 2017 .....	7
The offender's encounter with Cora Holmes ' .....	7
Calls to emergency services .....	8
The police response .....	10
Attendance by police at 11 Truarn Street .....	11
Detaining of the offender at Mandurah Police Station .....	12
The incident at the Blue Bay Apartment complex ' .....	13
CAUSE AND MANNER OF DEATH .....	14
Cause of death .....	14
Manner of death .....	15
ISSUES RAISED BY THE EVIDENCE .....	16
The decision to charge the offender by summons at a later date.....	16
Accounts of the altercation given by Constable Harris & Senior Constable Lochrie .	18
Police inquiries at the address .....	23
Lack of information being conveyed to police at the address .....	26
Prior complaints against the offender .....	28
The decision to release the offender .....	30
The decision by police not to interview the offender .....	40
Failure by police to complete the custody questionnaire for the offender .....	41
The decision to take the offender to the Blue Bay Apartment complex.....	41

The offender’s comment: “It’ll end badly” ..... 43

IMPROVEMENTS SINCE MR MARTIN’S DEATH..... 44

Police communications..... 44

The creation of the Mental Health Co-Response model..... 45

Body-worn cameras ..... 49

RECOMMENDATIONS ..... 50

CONCLUSION ..... 51

## INTRODUCTION

- 1 The deceased (Mr Martin) died in the early hours of 14 January 2017 at Peel Health Campus from two stab wounds to his back. Sadly, Mr Martin was the random victim of an unlawful homicide committed by a man who was having a drug-induced psychotic episode at the time. That man was Damian Eric Maxfield (the offender), who had never met Mr Martin before. A short time before he stabbed Mr Martin, the offender had been released from the Mandurah Police Station.
- 2 Although Mr Martin's death was a reportable death within the meaning of section 3 of the *Coroner's Act 1996* (WA) (the Act), an inquest into his death was not mandatory as it did not fall within any of the circumstances set out in section 22(1) of the Act.<sup>1</sup>
- 3 Pursuant to section 24(1) of the Act, Mr Martin's father asked that an inquest be held into his son's death by letter dated 23 May 2019. On 30 December 2019, the State Coroner determined that an inquest into Mr Martin's death was desirable within the meaning of section 22(2) of the Act so that a coroner was able to (i) gain a full understanding of the circumstances attending Mr Martin's death and (ii) consider what could have been done better in connection with the police interactions and decision-making that involved the offender.
- 4 I held an inquest into Mr Martin's death at Perth on 7-9 December 2020. The following witnesses gave oral evidence:<sup>2</sup>
- i) First Class Constable Benjamin Millar;
  - ii) Constable Abbi Carter;<sup>3</sup>
  - iii) Acting Sergeant Aaron Wilkinson;
  - iv) Acting Sergeant Majid Graham;
  - v) Cora Holmes;

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<sup>1</sup> The State Coroner considered whether the circumstances of Mr Martin's death fell within section 22(1)(b) of the Act. It was decided that the actions of police in releasing Mr Maxfield did not have the necessary nexus for a conclusion to be drawn that those actions appeared to have "caused, or contributed to," Mr Martin's death.

<sup>2</sup> I have used the rank of the police officers as at 14 January 2017, except for Inspector Woods and Acting Inspector Newton whose cited ranks were at the time of the inquest.

<sup>3</sup> At the inquest, this witness had the surname Schonberger.

- vi) Senior Constable Neil Paterson;
- vii) Constable Sam Harris;
- viii) Senior Constable Ian Lochrie;
- ix) Detective Senior Sergeant Gary Williams;
- x) Inspector Narelle Woods; and
- xi) Acting Inspector Brendon Newton.

5 The documentary evidence at the inquest comprised of two volumes that were  
tendered as Exhibit 1 at the commencement of the inquest and a further seven  
exhibits (Exhibits 2-8) that were tendered during the inquest.

6 At the conclusion of the inquest, I asked Mr Pontre, counsel for the  
Western Australian Police Force (WAPF), for further information from the  
WAPF regarding the standard custody questions asked of police detainees and  
whether those questions were asked of the offender. Superintendent Dene Leekong,  
WAPF Divisional Officer for Custodial Services and Mental Health, responded with a three-page  
memorandum dated 11 January 2011 that had 11 pages of appendices  
attached.

7 My primary function has been to investigate Mr Martin's death. It is a fact-  
finding function. Pursuant to section 25(1)(b) and (c) of the Act, I must find,  
if possible, how Mr Martin's death occurred and the cause of his death. Given  
the known circumstances in this matter, those findings can be made without  
difficulty.

8 Pursuant to section 25(2) of the Act, I may comment on any matter connected  
with Mr Martin's death, including public health or safety or the administration  
of justice. This is an ancillary function of a coroner.

9 Section 25(5) of the Act prohibits me from framing a finding or comment in  
such a way as to appear to determine any civil liability or to suggest a person  
is guilty of an offence. It is not my role to assess the evidence for civil or  
criminal liability and I am not bound by the rules of evidence.

10 As identified by the State Coroner, the focus of the inquest was a  
consideration of the dealings that police had with the offender, from when

they first interacted with him shortly before 12.30 am on 14 January 2017, to approximately one hour later when police released him outside an address in Halls Head that he had given as his residence.

11 In making my findings, I have applied the standard of proof as set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361-362 (Dixon J), which requires a consideration of the nature and gravity of the conduct when deciding whether a matter has been proved on the balance of probabilities.

12 I am also mindful not to insert any hindsight bias into my assessment of the actions by police in their dealings with the offender.<sup>4</sup>

### THE DECEASED

13 Mr Martin was born on 27 December 1976. He was 40 years old at the time of his death. He was a qualified welder and was very fit and active, enjoying cycling and kayaking. Mr Martin lived with his partner, Erelle Mason, in the Blue Bay Apartment complex at 6A Valley Road, Halls Head. They were renting unit 37 together, which was on the 10<sup>th</sup> floor.

14 Mr Martin had two children from a previous relationship and he and Ms Mason had a boy, Mason Martin, who was born on 8 January 2015. Tragically, he died when he was only several weeks old.

### THE OFFENDER<sup>5</sup>

15 The offender was born on 11 August 1978 and was 38 years old at the relevant time.

16 The offender began using methylamphetamine as a teenager; a usage which escalated significantly after he lost his job and a relationship with a partner ended in 2016. He also had issues with alcohol and cannabis dependency.

17 Prior to 14 January 2017, the offender had a criminal history which included adult convictions; beginning when he was 20 years old for offensive behaviour, assault and obstructing a railway officer. He had a further conviction of assault in 2009 and a conviction for doing an act that

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<sup>4</sup> Hindsight bias is the tendency after the events to assume the events are more predictable or foreseeable than they really were: Dillion H and Hadley M, *The Australasian Coroner's Manual* (2015) 10

<sup>5</sup> Exhibit 1, Volume 1, Tab 11, *The State of Western Australia v Damian Eric Maxfield* [2018] WASCSR 242

endangered the life, health, or safety of a person in 2016. He also had convictions for criminal damage, disorderly behaviour, stealing and numerous traffic-related offences.

18 All these convictions were recorded in the Magistrates Court and he was fined for each offence. However, prior to 14 January 2017, he had not been sentenced to a term of imprisonment.

19 The offender was using methylamphetamine heavily in the first two weeks of January 2017. That amount was between a gram and 1.7 grams per day.

### THE EVENTS OF 13 & 14 JANUARY 2017

#### *The offender's encounter with Cora Holmes*<sup>6,7</sup>

20 On the night of 12 January 2017, the offender was at the casino. He met another man there and they both gambled, drank alcohol and smoked methylamphetamine throughout the night and into the early hours of the following morning.

21 On the morning of 13 January 2017, the offender and the other man boarded a train to Mandurah. The offender met Cora Holmes and her daughter, Chantelle Money, on the train. The offender had known Ms Holmes for many years, although they had not seen each other for some time. He told Ms Holmes that he was using methylamphetamine and had not slept for five days.

22 Ms Holmes invited the offender and the other man to a house where she and her daughter were living with a third person, Arron Brown. The address for this house was 11 Truarn Street, Mandurah (the address). The offender and the other man stayed at the address for some time, drinking alcohol and smoking cannabis before the other man left.

23 Later that evening, the offender began behaving aggressively towards Ms Holmes and Ms Money. At one point, he grabbed a knife and threatened to kill Ms Money. He then began talking irrationally about a package being delivered to the address. At one stage, he grabbed Ms Holmes by the throat

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<sup>6</sup> Exhibit 1, Volume 1, Tab 11, *The State of Western Australia v Damian Eric Maxfield* [2018] WASCSR 242

<sup>7</sup> Exhibit 1, Volume 1, Tab 42A, Statement – Cora Holmes dated 14 January 2017

and asked her if she wanted “*life or death*”. After further threats and confrontational behaviour by the offender, which caused Ms Holmes to use pepper spray on him in self-defence, he tore off some guttering from a patio before leaving the address on foot shortly after midnight.

***Calls to emergency services***<sup>8</sup>

24 Between midnight and 12.23 am on 14 January 2017, at least seven telephone calls were made to the triple zero emergency services number regarding the disturbance at the address. The first call was made 16 seconds after midnight from a nearby house. The caller said:

Over the road there’s a domestic going on and doesn’t sound too good. Sounds like someone’s going to get hurt, and there’s smashing of doors and abusive language between a woman and a guy that are over there.

...

And they are really going off.

25 At about midnight, Mr Brown had returned home to the address. He rang emergency services at 12.06 am, stating that someone was trying to force entry into his house, and they had “*smashed a window*”. After giving the address details, he told the operator that the offender “*has got weapons*”. During the call, Mr Brown became annoyed at the operator’s questions regarding his own personal details, which he regarded as an unnecessary waste of time. At one point he said, in a manner which I find was sarcastically made, “*Really, wish there was not gunshots and shit.*” When he was asked how he knew the offender had a gun, Mr Brown ambiguously answered, “*I don’t know what he has got.*”

26 Another neighbour made an emergency services call shortly after Mr Brown, just before 12.07 am. This caller informed the operator that there was “*a huge domestic going on down the street where I live*”. She stated there was “*a lot of screaming*” and “*smashing noises*”.

27 At 12.07 am, the household that had rung emergency services the first time rang again. The caller reported that, “*It sounds like two blokes are against one woman. Sounds pretty serious. There’s a lot of banging and yelling and everything you can imagine going on.*” The caller urged, “*Get here as quick as you can because it sounds like the lady is in distress.*”

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<sup>8</sup> Exhibit 1, Volume 2, Tab 10A-G, transcripts of triple zero calls



28 Also, at 12.07 am, Ms Holmes made the first of two telephone calls to emergency services. During her first call she identified the offender by name and told the operator that, “*he’s mentally out*”, “*he’s trying to smash all the house up*” and “*he had just pulled a knife on me*”. She gave the details of her address.

29 The caller who rang emergency services just before 12.07 am, called again at 12.10 am to give the address of where the disturbance was occurring. She advised the operator that the situation at the house “*seemed a little quieter*”. The caller repeated that she had heard a lady screaming and things smashing.

30 The final call to emergency services occurred at 12.23 am. This was Ms Holmes’ second call to emergency services. At this stage, police had not attended the address. As the offender had already left the address, Ms Holmes was able to provide greater detail to the operator as to what had taken place. In this conversation, Ms Holmes stated, amongst other remarks, the following:

He has grabbed me around the throat and just really throwing me and my daughter around.

He was a top bloke. But someone told me he has some mental illness like bipolar, schizophrenia.

And then just, next minute, he just went there’s drones and there’s this and that, and he has got a package here for me. “I want my money.” “I’m going to kill you.” “I’m going to kill your daughter.”

And then he tried to go break into my friend’s, that I live with, room. That he believes there is this big bad person in there.

And then he has jumped our big gate and torn the fence down.

He just grabbed me by my throat and threw me. I hit my head against the fence.

31 After repeating that the offender had grabbed her by the throat, Mr Holmes then said, “*he pulled a knife on my daughter.*” After telling the operator that her daughter was 20 years old, Ms Holmes advised the operator that the offender was in “*whatever medical psychosis he has got.*”

32 When the operator asked her how long ago the offender had left, Ms Holmes said it was when she was making her first phone call.

33 After she was advised by the operator that there was going to be a job put on for police to attend, Ms Holmes stated:

And if you find him, take him to the hospital and get him, you know, antipsychotics or something. He's a very good friend. It's just, like, I have never seen him like that. I have never seen anyone like that.

34 Ms Holmes agreed with the operator that she believed the offender had been taking drugs and that was why he was reacting in this way. She also said he had been drinking alcohol.

*The police response*<sup>9</sup>

35 On 14 January 2017, Acting Sergeant Majid Graham and Acting Sergeant Aaron Wilkinson were on duty and assigned to police vehicle VL405. At 12:04 am, they were dispatched to the disturbance at the address. Two other police vehicles were also dispatched to assist: police vehicle VS106, which was assigned to First Class Constable Ben Millar and Constable Abbi Carter, and police vehicle VL103, which was assigned to Senior Constable Ian Lochrie and Constable Sam Harris.

36 As one caller had indicated that shots had been fired,<sup>10</sup> Acting Sergeant Graham arranged for the three police vehicles to meet on Dower Street, Mandurah to discuss how the address would be approached. At this location, Acting Sergeant Graham decided that he and Acting Sergeant Wilkinson would drive past the address in their unmarked police vehicle and conduct a risk assessment, before requesting the other police vehicles to approach.

37 The remaining four police officers then drove their vehicles closer to the address and parked on Allnutt Street. As they were waiting for the call to approach, they encountered the offender at a nearby vacant block. The offender had no shirt on and had a cut to his chest. The police officers suspected that he may have had some involvement in the disturbance at the address. As the offender was being spoken to, First Class Constable Millar and Constable Carter left the area as they had received the call from Acting Sergeant Graham to attend the address. Senior Constable Lochrie and

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<sup>9</sup> Exhibit 1, Volume 1, Tab 18, WAPF Investigation Final Report by the Internal Affairs Units dated 5 May 2017

<sup>10</sup> This appears to be the call made by Mr Brown that has already been referred to in this finding.

Constable Harris remained with the offender. Given the offender's behaviour, which included talking to himself, it was apparent to the two police officers that he was affected by drugs and/or alcohol. The offender admitted that he had come from the address where the disturbance had occurred. When asked his name and address, the offender provided his correct name and the address of unit 36, 6A Valley Road, Halls Head. Constable Harris conducted a name check on the computer database located within his police vehicle and noted that the offender had an alert against him for a stealing offence. By that stage, the two police officers had decided that the offender was to remain with them until they became aware of what had occurred at the address.

38 When advised that he was required to stay, the offender became aggressive and an altercation with the two police officers ensued. He was subsequently handcuffed and arrested for behaving in a disorderly manner. He was secured in police vehicle VL103 and taken to Mandurah Police Station.

*Attendance by police at 11 Truarn Street*

39 Acting Sergeants Graham and Wilkinson initially went to a wrong address on Truarn Street, which was also numbered 11 but was facing an adjacent street. They eventually arrived at the correct address at about 12.30 am. By this stage, First Class Constable Millar and Constable Carter had joined them.

40 At the address, police spoke with Ms Holmes at the front door. When asked, Ms Holmes stated that no shots had been fired and that the offender had already left. Her demeanour was noted to be excitable and upset. Attending police were also of the view that she was affected by drugs and/or alcohol. Constable Carter conducted most of the questioning of Ms Holmes who gave an account of what had taken place. Those present have given varying versions of what Ms Holmes had said the offender had done. I have considered the more significant variations later in my finding.

41 What is not in dispute is that Ms Holmes decided not to make a complaint that night, advising the police she would consider that option the next day. It is also not in dispute that police saw damage to the guttering of the patio roof and that a freestanding bamboo bar in the patio area had been turned over.

42 Shortly after speaking to her, police advised Ms Holmes that they had apprehended the offender. By the front gate, police also observed the can of

pepper spray that Ms Holmes had used on the offender. However, they took no action regarding the pepper spray, other than advising Ms Holmes to dispose of it. A t-shirt the offender had been wearing was given to police. No police officer entered the house.

***Detaining of the offender at Mandurah Police Station***<sup>11</sup>

43 At 12.54 am on 14 January 2017, the police vehicle containing the offender arrived in the sally port at Mandurah Police Station (the police station). After Senior Constable Lochrie requested the attendance of other police officers, the offender was taken out of the police vehicle at 12.57 am. He was compliant as he was taken into a holding cell in the charge room. However, a short time later, he began to intermittently either call out to police officers or talk to himself.

44 At 1.00 am, Police Officers Lochrie, Harris, Millar and Carter had a conversation at the police station about what had taken place at the address. First Class Constable Millar advised there was no statement or complaint arising from the disturbance at the address.

45 Following that conversation, Senior Constable Lochrie and Senior Constable Neil Paterson (the police officer in charge of the lockup) had a conversation regarding the stealing alert for the offender. An examination of the WAPF Information Management System on the computer screen located in the charge room indicated that the matter has been “*filed*”. It was therefore decided that no action was required for that matter and the offender could be released, and then later charged by summons with respect to the altercation with Constable Harris and Senior Constable Lochrie at the vacant block. As police records indicated that the offender had the same address that he had verbally given police (unit 36, 6A Valley Road, Halls Head<sup>12</sup>), it was determined that Constable Harris and Senior Constable Lochrie would drive him the short distance to that address. At 1.15 am, the police vehicle taking the offender to this address left the sally port.

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<sup>11</sup> Exhibit 7, CCTV footage (with date and time stamp) from Mandurah Police Station

<sup>12</sup> This unit was on the 10<sup>th</sup> floor (the same floor as Mr Martin’s and Ms Mason’s unit).

*The incident at the Blue Bay Apartment complex*<sup>13,14</sup>

46 The offender was dropped off by police at the entrance to the driveway of the Blue Bay Apartments complex shortly before 1.30 am on 14 January 2017.

47 Mr Martin and Ms Mason had spent the day and evening together and had arrived home at unit 37, just before midnight. After they both had showers, Mr Martin went to sleep on a couch in the lounge-room. Ms Mason, instead, decided to go for a walk. CCTV footage from the apartment complex showed Ms Mason leaving shortly before 1.00 am and returning at about 1.30 am.

48 CCTV footage showed the offender in the foyer of the apartment complex entering a lift just before 1.28 am. Ms Mason entered the foyer about one minute later. She took the lift to level 10, entered her unit, and locked the door behind her. After going to the kitchen, she went to the main bedroom of the unit, closed the door behind her and settled down to sleep.

49 The offender was able to gain access to unit 37 shortly after Ms Mason and without being detected by her. Mr Martin was still asleep on the couch in the lounge-room. After obtaining two knives from the kitchen, the offender, without warning, stabbed Mr Martin twice in his back as he slept.

50 Ms Mason heard the disturbance and got up. She saw the offender standing near the front door and when she challenged him, he punched her to the face. The offender then grabbed her by the throat and squeezed it whilst he repeatedly punched her to the face. The offender also struck her with a step ladder and another solid object. He made threats that he was going to kill her.

51 Ms Mason was able to escape through the front door and run down the stairs to the floor below. A female occupant from a 9<sup>th</sup> floor unit saw Ms Mason and took her into her unit. Ms Mason called emergency services at 1.49 am from this unit.

52 The offender left unit 37 by climbing over the balcony and down onto the balcony of unit 33 on the floor below. The occupant of that unit saw the offender walk down the hallway of his unit and observed him getting into the

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<sup>13</sup> Exhibit 1, Volume 1, Tab 11 *The State of Western Australia v Damian Eric Maxfield* [2018] WASC SR 242

<sup>14</sup> Exhibit 1, Volume 1, Tab 8, St John Ambulance Patient Care Record

shower. The offender was later arrested by attending police when he was still in the shower.

53 Other police officers entered unit 37 and found Mr Martin lying on the floor behind the couch in the lounge-room. He was conscious, and the two knives were still in his back.

54 Acting Sergeant Wilkinson and Constable Carter were two of the police officers in attendance. When Constable Carter asked Mr Martin, what had happened and who had done it, he answered with words to the effect, “*I don’t know. I was asleep, and I woke up to someone stabbing me in the back.*”<sup>15</sup>

55 Police officers provided first aid to Mr Martin until ambulance officers arrived at 2.00 am. Unfortunately, the ambulance officers encountered delays removing Mr Martin from his unit. Given the small size of the elevators, they initially attempted to convey him by wheelchair. However, Mr Martin lost consciousness once he was placed in the wheelchair and only regained consciousness once he was taken from the wheelchair and laid back down. Mr Martin’s condition continued to deteriorate as he was being conveyed to the ambulance, which was not able to depart until 2.48 am.

56 Mr Martin was still alive when he arrived at Peel Health Campus at 2.58 am and medical staff were able to perform emergency surgery to remove the two knives. However, Mr Martin subsequently died a short time later and an emergency doctor certified his death at 3.48 am on 14 January 2017.<sup>16</sup>

## CAUSE AND MANNER OF DEATH

### *Cause of death*<sup>17</sup>

57 Dr Gerard Cadden, a forensic pathologist, conducted a post mortem examination of Mr Martin’s body on 18 January 2017. Understandably, the most significant findings from this examination were the two stab wounds.

58 The upper wound to Mr Martin’s back had a total depth of 145 mm (14.5 cm) and penetrated the right chest cavity, causing a blood clot within that cavity. The right lung was also deeply penetrated.

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<sup>15</sup> Exhibit 1, Volume 1, Tab 49, Statement – Constable Abbi Carter dated 6 February 2018, p.5

<sup>16</sup> Exhibit 1, Volume 1, Tab 4, Peel Health Campus Death in Hospital Form

<sup>17</sup> Exhibit 1, Volume 1, Tab 5B, Post Mortem Report by Dr Gerard Cadden dated 18 January 2017

59 The lower wound to the back penetrated the left chest cavity and the left lung.  
There was blood present in the left chest cavity and the total depth of that  
wound measured 80 mm (8 cm).

60 At the conclusion of the post mortem examination, Dr Cadden expressed the  
opinion that the cause of Mr Martin's death was penetrating wounds to the  
chest.

61 I accept and adopt the conclusion expressed by Dr Cadden as to the cause of  
Mr Martin's death.

*Manner of death*<sup>18</sup>

62 Prior to the inquest, the offender was convicted in the Perth Supreme Court on  
his guilty plea of Mr Martin's murder.<sup>19</sup>

63 On 28 September 2018, the offender was sentenced to life imprisonment for  
the murder of Mr Martin.<sup>20</sup>

64 Based on the reports from two psychiatrists who had examined the offender,  
the sentencing judge was satisfied that the offender was experiencing a  
psychotic episode at the time he killed Mr Martin and attacked Ms Mason.

65 I have considered the outcome of the above criminal proceedings and had  
regard to section 53(2) of the Act, which requires that my finding not be  
inconsistent with any earlier proceedings where a person has been charged on  
indictment in which the question whether the person caused the death is in  
issue.

66 Accordingly, I find that the manner of Mr Martin's death was unlawful  
homicide.

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<sup>18</sup> Exhibit 1, Volume 1, Tab 11, *The State of Western Australia v Damian Eric Maxfield* [2018] WASC SR 242

<sup>19</sup> The offender also pleaded guilty to the offence of aggravated burglary and, with respect to his attack on Ms Mason, the offence of doing an act, with intent to harm, the result of which the life, health or safety of a person was, or was likely to be endangered.

<sup>20</sup> The sentencing judge was also satisfied that the offender had not just intended to cause grievous bodily harm to Mr Martin but had intended to kill him.

## ISSUES RAISED BY THE EVIDENCE

67 The matters outlined below all had a bearing on the decision by the police to release the offender from their custody. Although I have identified mistakes made by certain police officers, after careful consideration of all the available evidence before me, I have determined no criticism can be made of the decisions by police officers that were related to the offender's release.

### *The decision to charge the offender by summons at a later date.*

68 I am satisfied that the offender's altercation with the two police officers at the vacant block (the altercation) not only warranted his arrest, but also a charge. However, the questions that arise are (i) when, and what charge should have been laid and (ii) whether the offender would have been kept in police custody if he had been charged that night with an offence arising from the altercation.<sup>21</sup>

69 From the evidence at the inquest, it emerged there were three potential offences the offender could have been charged with regarding the altercation. One was the offence of disorderly behaviour in public under section 74A of the *Criminal Code*. That was a summary offence and carried a maximum fine of \$6,000. Another offence was obstructing a public officer in the performance of their functions pursuant to section 172 of the *Criminal Code*. That too was a summary offence, however it carried a maximum term of imprisonment of 18 months and a maximum fine of \$18,000.

70 The most serious offence open was assaulting a public officer performing a function of their office under section 318(1)(d) of the *Criminal Code*. This offence was an indictable one, carrying a maximum term of imprisonment of 7 years. The summary conviction penalty was imprisonment for 3 years and a maximum fine of \$36,000.

71 Although the offender was arrested for disorderly behaviour in public, I accept the evidence of Constable Harris and Senior Constable Lochrie that this did not mean the offender would be ultimately charged with this offence. That evidence was reassuring to hear as the description of the behaviour

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<sup>21</sup> Mandurah Police Station did not have the facilities to keep a detainee in custody overnight. Detainees who were not released would be taken to the Perth Watch House: ts 8.12.20 (Paterson), p.217



included in “*behave in a disorderly manner*” does not reflect what took place during the altercation.<sup>22</sup>

72 In contrast, the offence of obstructing a public officer expressly includes physical behaviour as it defines “*obstruct*” as including “*to prevent, to hinder and to resist*” the performance of the public officer’s functions.<sup>23</sup>

73 I am of the view a charge of disorderly behaviour in public would have been a woefully inadequate charge given the gravity of the altercation.

74 During the inquest, Constable Harris was played the CCTV footage from the charge room at the police station when he and other police officers discussed the altercation. He gave evidence that he heard Senior Constable Paterson ask, “*Is it not an assault?*” and heard himself reply, “*It’s more of an obstruct.*”<sup>24</sup> Although it is difficult to make out what is being said in this part of the conversation, I am prepared to accept Constable Harris’ account.

75 Constable Harris’ evidence at the inquest was that he would normally favour the charge of obstructing a public officer when a person is resisting police officers violently enough for police officers to be taken to the ground. With respect to the altercation, he stated, “*If, down the lines, we had gone to a summonsing or a charging phase we might well have discussed upgrading to an obstruct.*”<sup>25</sup> Senior Constable Lochrie gave similar evidence on this point. He said that he “*probably was leaning towards obstruction...*”<sup>26</sup>

76 Neither officer was of the view that the circumstances of the altercation warranted a charge or charges of assaulting a public officer. Constable Harris testified that he regarded the charge of assaulting a public officer as appropriate when there is an intent to harm the police officer.<sup>27</sup> Senior Constable Lochrie was of the view that for a charge of assaulting a public officer to be laid, it would involve assaults such as a punch, a bite or a

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<sup>22</sup> Section 74A(1) defines “*behave in a disorderly manner*” as including “*to use insulting, offensive or threatening language; and to behave in an insulting, offensive or threatening manner.*”

<sup>23</sup> Section 172 (1) of the *Criminal Code*

<sup>24</sup> ts 8.12.20 (Harris), p.278

<sup>25</sup> ts 8.12.20 (Harris), p.283

<sup>26</sup> ts 9.12.20 (Lochrie), p.336

<sup>27</sup> ts 8.12.20 (Harris), p.258

kick. He also agreed that a prolonged chokehold on a police officer would justify that charge.<sup>28</sup>

77 The Internal Affairs Unit (IAU) investigator, Detective Senior Sergeant Gary Williams, was of the view that he would have been more inclined to consider the charge of obstructing a public officer as being the most appropriate.<sup>29</sup>

78 Given what subsequently happened after the offender's release, he was not charged with any offence arising from the altercation with police officers.<sup>30</sup> That decision was entirely understandable, given the severity of the offending at the Blue Bay apartment complex.

79 After considering all the evidence, I find that the decision by police officers not to charge the offender with an offence arising from the altercation when he was detained was acceptable. I also find that the circumstances of the altercation did not mean that a charge (or charges) of assaulting a public officer was the only appropriate course of action. A charge of obstructing a public officer would have also been appropriate, although in my view a disorderly conduct charge would not have been. I accept that had a charge of obstructing a public officer been laid that night then it would have been appropriate to release the offender on bail with a personal undertaking to attend court.

80 I also accept the evidence of Senior Constable Lochrie that had the offender been charged that night with the more serious offence (or offences) of assaulting a public officer, it still would have been appropriate for him to be released from custody on a personal undertaking.<sup>31</sup>

***Accounts of the altercation given by Constable Harris & Senior Constable Lochrie***

81 Although I am satisfied that Constable Harris and Senior Constable Lochrie were entitled to charge the offender by summons later (thereby releasing him), I am not satisfied either police officer gave a completely accurate

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<sup>28</sup> ts 9.12.20 (Lochrie), pp.336-337

<sup>29</sup> ts 9.12.20 (Williams), p.378

<sup>30</sup> ts 8.12.20 (Harris), p.278

<sup>31</sup> ts 9.12.20 (Lochrie), pp. 362-363. Senior Constable Paterson gave evidence that had the offender been charged with assaulting a public officer then he could have been refused bail if it was believed he was a danger to police. However, this witness also pointed out that once he was in custody, the offender was not making threats to police or "anything like that.": ts 8.12.20 (Paterson), pp.217-218

description of the offender's actions during the altercation in their evidence at the inquest or in their type-written statements or in their interviews with police officers from the IAU. The descriptions given by both police officers that are heard on the CCTV cameras at the police station are at odds with these later versions. I regard those differences as telling.

82 The altercation was not a minor one. Both police officers and the offender ended up on the ground and it took some time before the offender could be handcuffed. Both police officers had damage done to their shirts. Constable Harris was adamant in his evidence at the inquest that there would be no reason for him to exaggerate what had happened when he was back at the police station.<sup>32</sup>

83 When Constable Harris was in the charge room, he said the offender had "*me around the throat at one point*". He then said "*he had me up there*" as he touched the right-hand side of his neck. As he did that, he noticed one of his buttons was missing and stated, "*there you go, he's ripped one of my buttons*".<sup>33</sup>

84 Five minutes later, Constable Harris and Senior Constable Lochrie had a conversation with Constable Carter and First Class Constable Millar. During that conversation, Senior Constable Lochrie said the offender "*tried to choke us*".<sup>34</sup> I note that this is similar to the description that he wrote in his notebook at some time during his shift after the altercation: "*he grabbed me by the throat*".<sup>35</sup>

85 Constable Harris was interviewed by police officers from the IAU on 18 January 2017. In describing the altercation, he stated, "*he's grabbed me by the chest and he's ripped the shirt and he's – done, he's done the same to Ian [Senior Constable Lochrie], I think, but I wasn't really watching Ian...*"<sup>36</sup>

86 Senior Constable Lochrie was also interviewed by officers from IAU on 18 January 2017. In his description of the altercation, Senior Constable

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<sup>32</sup> ts 8.12.20 (Harris), p.268

<sup>33</sup> Exhibit 7, CCTV footage (with date and time stamp) from Mandurah Police Station, camera 3 at 2017-01-14, from 00:56:16

<sup>34</sup> Exhibit 7, CCTV footage (with date and time stamp) from Mandurah Police Station, camera 5 at 2017-01-14, at 01:01:02

<sup>35</sup> Exhibit 1, Volume 1, Tab 52, Notes – Senior Constable Lochrie, p.40

<sup>36</sup> Exhibit 1, Volume 2, Tab 6, Transcript of IAU interview with Constable Harris dated 18 January 2017

Lochrie did not mention the offender grabbing his throat or trying to choke either him or Constable Harris.<sup>37</sup>

87 In his evidence at the inquest, Constable Harris described the altercation as “*a scuffle*”.<sup>38</sup> When asked if, at any point, the offender had grabbed him, Constable Harris responded that he had “*ripped the top of my shirt with his hand*”.<sup>39</sup> He was then asked the following questions:<sup>40</sup>

Did he ever grab you by the throat? --- I don't recall ever being grabbed by the throat, your Honour.

You're quite certain about that? --- Yes. I am.

Quite certain you can't recall? --- I think I would have made a bigger deal out of it, your Honour, if I was choked.

Okay. There would be no reason for you to exaggerate what happened---? --- Absolutely ---

--- to your fellow officers? --- Absolutely not, your Honour.

88 When he was shown the footage of what he said in the charge room (referred to above), Constable Harris stated in evidence, “*In hindsight there were better words to use, of course.*”<sup>41</sup> At the inquest, Constable Harris maintained that the offender had grabbed him by the shirt collar, as distinct from his throat.<sup>42</sup> Although this is the same description that appeared in Constable Harris' typewritten statement dated 17 January 2017,<sup>43</sup> I am satisfied that by then he was attempting to moderate the extent of the altercation.

89 In his interview with IAU officers, Constable Harris described the start of the altercation as, “*The next bit where he's turned around and pretty much started swinging.*”<sup>44</sup> In his evidence at the inquest, Constable Harris was asked:<sup>45</sup>

Did he start swinging at you? --- No, at no point did he swing at me, your Honour.

Started swinging at anyone? --- No, your Honour.

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<sup>37</sup> Exhibit 1, Volume 2, Tab 7, Transcript of IAU interview with Senior Constable Lochrie dated 18 January 2017

<sup>38</sup> ts 8.12.20 (Harris), p.261

<sup>39</sup> ts 8.12.20 (Harris) p.264

<sup>40</sup> ts 8.12.20 (Harris) p.266

<sup>41</sup> ts 8.12.20 (Harris), p.274

<sup>42</sup> ts 8.12.20 (Harris), p.276

<sup>43</sup> Exhibit 1, Volume 1, Tab 51, Statement – Constable Sam Harris dated 17 January 2017, p.5

<sup>44</sup> Exhibit 1, Volume 2, Tab 6, Transcript of IAU interview with Constable Harris dated 18 January 2017, p.7

<sup>45</sup> ts 8.12.20 (Harris) p.262

90 After Constable Harris was taken to the above transcript of his interview, he was asked the following:<sup>46</sup>

Does that help jog your memory? --- Yes.

Alright. So was he swinging punches at you? --- No, your Honour.

What was he doing? --- Swinging his body in an effort to get away from us.

...

Are you saying swinging his body? --- Yes, I am, your Honour.

Not swinging punches? --- At no point, your Honour, did I feel like he threw a punch at myself or Senior Constable Lochrie.

When people use the term “swinging” it suggests they are swinging punches, but you’ve used it in the context of swinging his body around? --- Yes, I have, your Honour.

91 I do not accept that interpretation given by Constable Harris. When the entire sentence is read in context, it is clear he had already described the offender as having turned his body around, and after that action the offender began “*swinging*”. There are clearly two different actions described and the logical inference to draw, bearing in mind the extent of the altercation which immediately followed, is that Constable Harris was describing what the offender was doing with his arms after he had turned around.<sup>47</sup>

92 As Constable Harris had done immediately before him, Senior Constable Lochrie’s evidence at the inquest also minimised what the offender did during the altercation when it is compared to his description heard on the CCTV at the police station.

93 At the inquest, after stating that he had got on top of the offender, Senior Constable Lochrie said, “*at one point he sort of went for my neck, my belief in that was that he was trying to like get me off.*”<sup>48</sup>

94 After that evidence, Senior Constable Lochrie was reminded he had written that the offender had “*grabbed me by the throat*”<sup>49</sup> in his police notebook. He was then asked what was the more accurate description? That question had to

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<sup>46</sup> ts 8.12.20 (Harris) p.263

<sup>47</sup> This inference is strengthened by Constable Harris’ use of the word “*swinging*” in his type-written statement dated 17 January 2017. In that statement he said: “*MAXFIELD was on his back and was swinging and grabbing with his right hand, whilst I held the handcuffed attached to his left wrist*”: Exhibit 1, Volume 1, Tab 51, Statement – Constable Sam Harris dated 17 January 2017, p.5

<sup>48</sup> ts 9.12.20 (Lochrie), p.327

<sup>49</sup> Exhibit 1, Volume 1, Tab 52, Notes – Senior Constable Lochrie, p.40

be repeated before he stated, “*I will go by ‘grabbed by the throat’. That’s my memory of it.*”<sup>50</sup>

95 At the inquest, Senior Constable Lochrie was shown the CCTV footage at the police station where he was heard telling other police officers that the offender “*tried to choke us*”. He explained that what he meant by that was, “*for one or two seconds that’s what it feels like. You know, for a split second, and that’s what I was basically meaning by that.*”<sup>51</sup>

96 When asked at the inquest why he made no reference to being grabbed by the throat in his type-written statement made on 17 January 2017, or in his interview with the IAU officers the next day, Senior Constable Lochrie answered, “*My answer to you would be I really couldn’t answer that.*”<sup>52</sup>

97 When it was suggested that he was downplaying what the offender did to him, Senior Constable Lochrie denied that.<sup>53</sup> He was then asked:<sup>54</sup>

If you’re not downplaying it, why haven’t you told the IAU officers that he grabbed you by the throat, why didn’t you say that in your statement that he grabbed you by the throat, and why didn’t you say that in your evidence when you were first asked about it? --- I can’t answer that question. I honestly do not remember why I wouldn’t have said that. I have no reason not to say it. So that’s – that’s my answer to that question. I really cannot answer that, honestly.

98 It is simply too coincidental that both these police officers did not describe the grabbing of their throats by the offender in any of their three accounts following the death of Mr Martin. I am satisfied this was done to escape any potential criticism for their decision to not charge the offender that night with an offence regarding the altercation, and/or their decision to release him from police custody when they did. There was no need to do that, as I have not found the offender should have been charged that night and I have not found it was inappropriate to release the offender.

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<sup>50</sup> ts 9.12.20 (Lochrie), p.328

<sup>51</sup> ts 9.12.20 (Lochrie), p.343

<sup>52</sup> ts 9.12.20 (Lochrie), p.329

<sup>53</sup> ts 9.12.20 (Lochrie), p.330

<sup>54</sup> ts 9.12.20 (Lochrie), p.330

*Police inquiries at the address*

99 It was not in dispute amongst the four police officers who attended the address that Constable Carter performed the bulk of the questioning of Ms Holmes. As Constable Carter had graduated from the Police Academy on 3 June 2016, she only had just over six months experience at the relevant time. I agree with the finding made in the IAU report into this matter that in those circumstances, Constable Carter was, “*not expected to take the lead role in an inquiry without adequate supervision.*”<sup>55</sup>

100 I accept Constable Carter’s account that Ms Holmes was very agitated and exhibited “*high energy*” during the questioning of her at the address.<sup>56</sup> Having listened to the two emergency calls that Ms Holmes made on the night,<sup>57</sup> it is clear she was very excitable and spoke very quickly.<sup>58</sup> Those characteristics were also evident when she appeared at the inquest. In the circumstances, I accept it may have been difficult for Constable Carter and the other police officers to decipher, at times, exactly what Ms Holmes was saying.

101 Nevertheless, Constable Carter did recall that Ms Holmes had told her the offender had a knife.<sup>59</sup> At the inquest, Constable Carter showed how Ms Holmes demonstrated the offender was holding the knife. That simulation was with the elbow bent at 90 degrees and with the knife being held in the right fist at about shoulder height.<sup>60</sup> Constable Carter admitted that she did not ask any follow up questions about the knife, such as what exactly did the offender do with it and where it might have been discarded.<sup>61</sup> When asked why she did not do that, Constable Carter provided the following explanation:<sup>62</sup>

I guess, your Honour, it was because it, kind of – there was no – she didn’t say what had happened and why – and what he had a knife for and what he was doing. It wasn’t really clear on what had happened or, you know, what he was

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<sup>55</sup> Exhibit 1, Volume 1, Tab 18, WAPF Investigation Final Report by the Internal Affairs Units dated 5 May 2017, p.23

<sup>56</sup> ts 7.12.20 (Carter), p.49

<sup>57</sup> Exhibit 3

<sup>58</sup> At the inquest, Ms Holmes agreed that she was speaking very quickly to the police and accepted that she had been drinking alcohol and smoking marijuana: ts 8.12.20 (Holmes), pp.167-168

<sup>59</sup> Exhibit 1, Volume 2, Tab 8, transcript of IAU interview with Constable Carter dated 19 January 2017, p.30; ts 7.12.20 (Carter), p.50

<sup>60</sup> ts 7.12.20 (Carter), p.52

<sup>61</sup> ts 7.12.20 (Carter), p.52

<sup>62</sup> ts 7.12.20 (Carter), p.53

planning on doing or anything like that. All she had said is that he had had one and completely just moved on from that. So, it's not something that crossed my mind at that time.

102 Constable Carter was then asked whether she felt the demonstration Ms Holmes had given to her as to how the knife was held, indicated it was being held in a “*threatening manner*”. Constable Carter answered:<sup>63</sup>

I wouldn't – I wouldn't have taken it as a threatening manner because she wasn't really, like, she wasn't doing, like, a stabbing. She was just holding her fist up saying that he had one. So, I didn't take it like that at all, your Honour.

How did you take it then? --- Just – she was just saying that he had a knife. That's how I took it.

Yes. Holding a knife though, not for an innocent purpose? --- I couldn't – I couldn't get that out of her.

Are you sure she didn't say to you that he had threatened either her or her daughter with the knife? --- I'm sure she did not say that to me.

103 In her evidence at the inquest, Ms Holmes initially testified she did tell the female police officer that the offender had a knife, although she could not remember exactly what she had said.<sup>64</sup> When she was later questioned by Mr Pontre, counsel for the WAPF, she agreed that she might have only spoken about the fact there was a knife and “*perhaps nothing more*”.<sup>65</sup> However, when Mr Pontre returned to this topic, the following exchange took place:<sup>66</sup>

But because you are moving from topic to topic, you had so much to say, you might not have said anything much more about the knife than the fact that he had one; is that fair? --- The knife and the fact that he had one. No, I said about he had the knife and he had pulled the knife on my daughter.

Okay. Is it ---? --- and I pulled it off of him and that I clearly told them that and that wasn't – to them that wasn't important because it was all hearsay.

104 Considering that conflicting evidence from Ms Holmes, I am not prepared to find that she told police at the address that the offender had pulled the knife on her daughter (or words to that effect).

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<sup>63</sup> ts 7.12.20 (Carter), p.53

<sup>64</sup> ts 8.12.20 (Holmes), p.151

<sup>65</sup> ts 8.12.20 (Holmes), p.165

<sup>66</sup> ts 8.12.20 (Holmes), p.167



105 However, as I have already noted, Constable Carter does recall that Ms Holmes told her that the offender had a knife. I do not accept Constable Carter's evidence that the way Ms Holmes demonstrated the offender held the knife did not indicate it was being held in a threatening manner. It clearly was. Therefore, it should have been followed up with further questioning by the police at the time.

106 I am satisfied that Constable Carter was not adequately supervised by any of the more experienced officers who were present at the address. I find that this supervision ought to have been conducted, or arranged, by Acting Sergeant Graham, who was leading the inquiry. This lack of supervision of Constable Carter was borne out by the other police officers' accounts of whether they heard Ms Holmes say anything about a knife. Acting Sergeant Wilkinson told IAU investigators in his interview on 19 January 2017, that he did not remember any mention of a knife.<sup>67</sup> He repeated that account in his evidence at the inquest.<sup>68</sup> Similarly, Acting Sergeant Graham told IAU investigators in his interview on 19 January 2017 that he was not aware of Ms Holmes mentioning a knife when he was at the address.<sup>69</sup> He gave the same account in his evidence at the inquest.<sup>70</sup> First Class Constable Millar did not recall hearing any reference to a knife at any time during his attendance at the address.<sup>71</sup>

107 I find that there was a lack of attention given to Ms Holmes' account that the offender not only had a knife but that he had brandished it in a threatening manner. The responsibility for conducting further inquiries with respect to that matter was Acting Sergeant Graham's. Acting Sergeant Graham properly acknowledged at the inquest that Ms Holmes' account regarding the knife "*raises the seriousness*" of what had happened at the address.<sup>72</sup> It also meant Acting Segreant Graham's view, "*it appeared there had been very minor*

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<sup>67</sup> Exhibit 1, Volume 2, Tab 5, Transcript of IAU interview with Acting Sergeant Wilkinson dated 19 January 2017

<sup>68</sup> ts 7.12.20 (Wilkinson), p.79

<sup>69</sup> Exhibit 1, Volume 2, Tab 4A, Transcript of IAU interview with Acting Sergeant Graham dated 19 January 2017

<sup>70</sup> ts 7.12.20 (Graham), p.110

<sup>71</sup> ts 7.12.20 (Millar), p.24

<sup>72</sup> ts 7.12.20 (Graham), p.119

*offences at best – well, if any offences”*<sup>73</sup> committed by the offender at the address was completely flawed.

108 Accordingly, with respect to Ms Holmes’ account regarding the knife, I agree with the finding made by the IAU investigation into this matter that Acting Sergeant Graham neglected his duty by failing to provide an adequate supervision of the inquiries that were conducted by police at the address.<sup>74</sup> I am satisfied that had Constable Carter received better guidance from Acting Sergeant Graham, “*a more comprehensive investigation may have ensued.*”<sup>75</sup>

109 As found by the IAU investigation, I too stress that this oversight by Acting Sergeant Graham did not directly cause or contribute in any way to the murder of Mr Martin. I am of the view that any further investigation on the night regarding the offender’s possession of a knife at the address would not have had a bearing on Ms Holmes’ decision not to pursue a complaint that night.

***Lack of information being conveyed to police at the address***

110 Evidence emerged at the inquest regarding the lack of access to relevant information through the computer-aided dispatch system (CAD)<sup>76</sup> by police officers who were conducting inquiries at the address.

111 A summary of the account given by Ms Holmes in her second call to emergency services at 12.23 am, which lasted for approximately seven minutes, was uploaded to the CAD system at 12.32 am.<sup>77</sup> That summary stated:

CALLER NOTIFIED POLICE AT MIDNIGHT (UNABLE TO FIND ORIGINAL JOB) REPORTING THAT SHE WAS ASSAULTED BY DAMIEN MAKFIELD [sic] (FRIEND OF HERS) CALLER THINKS HE HAS BEEN TAKING DRUGS AND DRINKING HE GRABBED HER AROUND THE THROAT AND PULLED A KNIFE ON HER DAUGHTER (20YRS) DAMIEN LEFT THE HOUSE ON FOOT APPROX 0000HRS CALLER SOUNDS VERY DISTRAUGHT BUT ALSO MENTALLY UNSTABLE

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<sup>73</sup> ts 7.12.20 (Graham), p.107

<sup>74</sup> Exhibit 1, Volume 1, Tab 18, WAPF Investigation Final Report by the Internal Affairs Units dated 5 May 2017, p.3

<sup>75</sup> Exhibit 1, Volume 1, Tab 18, WAPF Investigation Final Report by the Internal Affairs Units dated 5 May 2017, p.24

<sup>76</sup> CAD is the WAPF software program that manages and dispatches tasks to police vehicles.

<sup>77</sup> Exhibit 1, Volume 1, Tab 25, WAPOL Incident Report – LWP 17011400034899, p.1

112 First Class Constable Millar gave evidence at the inquest that if he had this information then it probably would have changed his approach to his attendance at the address. He said that if he was questioning Ms Holmes, he would have directly asked questions arising from the information contained in this summary.<sup>78</sup>

113 However, the evidence from Acting Sergeant Graham and Acting Inspector Newton (who is attached to the WAPF State Communications Division) was that the above CAD information was not available to the police officers; either when they attended the address<sup>79</sup> or after they had returned to their police vehicles.

114 As Acting Inspector Newton explained,<sup>80</sup> to connect this entry to the parent (or original) job the District Control Centre had summarised the above CAD description at 12.35 am as follows:<sup>81</sup>

COMPLAINANT FROM ASSOCIATED TASK – 34899 FROM 11 TRUARN ST ALLEGING THAT SHE WAS ASSAULTED BY DAMIEN MAKFIELD [sic]

115 Acting Inspector Newton testified that this was the summary the police would have received from their computer screen in their police vehicles, not the more comprehensive summary entered by the operator who took the call.<sup>82</sup> Acting Inspector Newton correctly stated that the mention of a knife was “*a key piece of information*” which he regarded as “*a missed opportunity*” in this summary.<sup>83</sup> I agree with this observation made by Acting Inspector Newton. The fact that the offender had armed himself with a knife should have been included in the summary. I also agree with Acting Sergeant Graham’s evidence that he had a legitimate expectation this information, regarding the knife, should have been conveyed to the attending police officers by radio as quickly as possible. As he said:<sup>84</sup>

... because there’s an officer safety risk. How can you send officers into an address and mention a knife and not put that on the radio, especially when we’re away

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<sup>78</sup> ts 7.12.20 (Millar), pp.29-30

<sup>79</sup> From the evidence before me, I can find that at 12.32 am the four police officers were already at the address.

<sup>80</sup> ts 9.12.20 (Newton), pp.414-415

<sup>81</sup> Exhibit 1, Volume 1, Tab 25, WAPOL Incident Report – LWP 17011400034899, p.1

<sup>82</sup> ts 9.12.20 (Newton), p.419

<sup>83</sup> ts 9.12.20 (Newton), p.418

<sup>84</sup> ts 7.12.20 (Graham), p.132

from that CAD system? You know, we could be walking to the front door and that needs to be put over the radio.

116 However, as Acting Inspector Newton explained, the radio dispatch operator would have only got the summary provided by the District Control Centre as the earlier description had been closed once it had merged with the earlier parent job via the summary provided by the District Control Centre.<sup>85</sup>

117 There were deficiencies in the police communication systems that existed as at January 2017. Acting Inspector Newton outlined the changes that have been made since then. These changes are addressed later in my finding.

***Prior complaints against the offender***

118 Within a short space of time after making contact with the offender, Constable Harris and Senior Constable Lochrie became aware that the offender had an alert against him for a stealing offence. That matter was subsequently followed up by police officers at the police station before the offender was released.

119 The stealing complaint was just one of two outstanding matters that concerned the offender. The other involved the possession of a controlled weapon which arose from the same complaint. The narrative of these allegations was contained in the relevant WAPF Incident Report.<sup>86</sup> The complaint had been made just two days earlier on 12 January 2017. It involved an allegation that the offender had stolen \$1,440 from a person that he was renting a room from (the landlord). This amount had been the rental money the offender had paid to his landlord. There was also an allegation that the offender was in possession of a black-handled, silver revolver that had been seized by police, who assessed it to be an imitation firearm. The Incident Report also indicated that on the afternoon of 12 January 2017, the landlord had told the offender that he was no longer welcomed in the house, “*due to his drug affected erratic behaviour*”.<sup>87</sup>

120 Senior Constable Paterson, Constable Harris and Police Auxiliary Officer Dean Turner all examined the WAPF Information Management System on the computer screen in the charge room regarding these two complaints. For

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<sup>85</sup> ts 9.12.20 (Newton), pp.418-419

<sup>86</sup> Exhibit 2, Incident Report 12017 2230 16114

<sup>87</sup> Exhibit 2, Incident Report 12017 2230 16114, p.1

reasons that are not entirely clear, Senior Constable Paterson and Constable Harris did not recall seeing the complaint regarding the possession of the controlled weapon.<sup>88</sup>

121 The conversations of the three police officers can be heard from CCTV camera 3 that was located in the charge room.<sup>89</sup> It can be heard that one of the police officers asked, “*How old is it?*” and another answers, “*Yesterday*”.<sup>90</sup> At 1.10 am Police Auxiliary Officer Turner pointed to the screen and said words to the effect, “*It looks like it’s filed anyway*”.<sup>91</sup> Constable Harris was asked at the inquest:<sup>92</sup>

What does being filed mean to you? --- It means that there’s no action to be taken right now. There could be a number of reasons why it’s filed. There’s insufficient evidence, somebody else has already dealt with it and just not removed the alert, or even that they are still looking for the person. Given that it’s yesterday it wouldn’t be filed pending him being found, it’s just too soon.

122 Constable Harris was later asked:<sup>93</sup>

What was your view then, after you looked at this? --- My view was that there was no action to be taken by us tonight.

That action could be something else at a later date? --- Yes, absolutely. Filed doesn’t necessarily mean we can’t act on it. It just means that we – we don’t necessarily have to.

123 A screenshot of the WAPF Information Management System page that the police officers viewed on the night was subsequently tendered as an exhibit by Counsel Assisting at the inquest.<sup>94</sup> It confirmed that the box marked “Filed” had been ticked.

124 Accordingly, I am satisfied that police officers were entitled to not take any further action with these complaints. The Running Sheet for this Incident Report was also tendered as an exhibit. The contents of that Running Sheet show that although the complainant regarding the stealing matter withdrew

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<sup>88</sup> ts 8.12.20 (Patterson), p.210; ts 8.12.20 (Harris), p.292. Senior Constable Lochrie also had no recollection about this matter: ts 9.12.20 (Lochrie), p.339

<sup>89</sup> Exhibit 7, CCTV footage (with date and time stamp) from Mandurah Police Station

<sup>90</sup> ts 8.12.20 (Harris), p.287

<sup>91</sup> ts 8.12.20 (Harris), pp.287-288

<sup>92</sup> ts 8.12.20 (Harris), p.288

<sup>93</sup> ts 8.12.20 (Harris), p.290

<sup>94</sup> Exhibit 6, Screenshot of Information Management System page viewed at Mandurah Police Station on 14 January 2017

his complaint, that did not take place until 31 May 2017.<sup>95</sup> I am therefore satisfied the entry that ticked the matter as being “filed” had been made in error by another police officer, prior to when officers at the police station began examining the matter on 14 January 2017.

125 Constable Harris gave evidence that an entry should have been made in the Running Sheet of the Incident Report indicating that the police officers on 14 January 2017 decided to take no action with respect to these complaints. However, no such entry appears in the Running Sheet.<sup>96</sup>

126 Considering the above, I am satisfied that it was appropriate for officers at the police station not to take any further action regarding the complaints made against the offender on 12 January 2017. It follows that I also find there would have been no basis for detaining the offender overnight because of those matters.

***The decision to release the offender***

127 For the reasons I have outlined above, there was no basis for the police to detain the offender because of any alleged prior offending. The question then arises: was there any other basis on which the offender should have been lawfully detained?

128 Provided certain circumstances exist, police have the right to detain a person in their custody under the *Protective Custody Act 2000* (WA) or the *Mental Health Act 2014* (WA). The first Act allows for intoxicated people to be taken into protective custody and the second Act permits a police officer to apprehend a person with a mental health illness. When questioned at the inquest, no police officer was of the view the provisions of either Act applied to the offender.

129 The *Protective Custody Act 2000* (WA) permits a police officer to apprehend a person who is in a public place, if the officer reasonably suspects the person is intoxicated and is required to be apprehended to protect the health or safety of that person or any other person, or to prevent the person causing serious damage to property.<sup>97</sup> A person is regarded by this Act as intoxicated if they

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<sup>95</sup> Exhibit 5, Running Sheet for Incident Report 12017 2230 16114, p.1

<sup>96</sup> Exhibit 5, Running Sheet for Incident Report 12017 2230 16114, p.2

<sup>97</sup> Section 6(1) of the *Protective Custody Act 2000* (WA)

are affected by alcohol or a drug to such an extent that there is a significant impairment of their judgment or behaviour.<sup>98</sup>

130 There are strict limitations under this Act as to the period the apprehended person may be detained. The person must not be detained if they are no longer intoxicated.<sup>99</sup> Nor is the apprehended person to be detained any longer than is necessary to protect the health or safety of the person or any other person or to prevent the person causing serious damage to property.<sup>100</sup>

131 Section 7(4) of this Act states:

If an apprehended person is detained in a police station or lockup, then, despite subsections (2) and (3), a police officer may decide not to release the person between the hours of midnight and 7.30 a.m. if release during those hours is not in the best interests of the person.

132 Otherwise, the provisions of section 12 of the Act apply; which stipulate that as soon as is practicable after the person is apprehended, the person must be released into the care of another person who has applied for the person to be released, or the person must be released into the care of a person in charge of an appropriate facility.

133 I find that the offender was clearly an intoxicated person under this Act. He was obviously affected by methylamphetamine to the extent that there was a significant impairment of his behaviour. The description of the offender given by Constable Harris in the custody log entry confirmed that:<sup>101</sup>

Heavily under the influence of drugs. Ranting constantly and aggressive. Hostile. States people are pumping drugs into the air and watching him. In no way fit for interview. Already fought with officers for no apparent reason.

134 When questioned about using the *Protective Custody Act 2000* (WA) to detain the offender, police officers gave the following evidence at the inquest. Senior Constable Paterson was of the view that as the offender was no longer a danger to himself or to others, it was appropriate to release him.<sup>102</sup> Constable Harris believed it was okay to release the offender because he was capable of

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<sup>98</sup> Section 3 of the *Protective Custody Act 2000* (WA)

<sup>99</sup> Section 7(2) of the *Protective Custody Act 2000* (WA)

<sup>100</sup> Section 7(3) of the *Protective Custody Act 2000* (WA)

<sup>101</sup> ts 8.12.20 (Paterson), p.219

<sup>102</sup> ts 8.12.20 (Paterson), p.230

looking after himself.<sup>103</sup> Senior Constable Lochrie did not turn his mind to exercising the powers under this Act.<sup>104</sup> First Class Constable Millar gave the following answers to questions asked of him at the inquest:<sup>105</sup>

In terms of when you encounter an intoxicated person, I am anticipating that would be a part of regular duties in the course of a midnight shift in particular; is that fair enough? --- Yes.

When do you make the call that it's appropriate to take a person who is intoxicated into custody for their own welfare under the *Protective Custody Act*? --  
- Into police custody?

Yes? --- Very, very rarely does that happen just because it puts a – it's a high risk to the agency to keep intoxicated people in custody. It's – it's looked at as a last resort if we can't find their address and somebody that can look after them. Only then will I consider [it] ... whoever is running the lockup will generally be very reluctant to accept somebody that's intoxicated who hasn't committed an offence who's purely there because they're intoxicated.

And is that because you're trained to focus on people having a right to liberty? Is there a focus on their freedom or is it simply the risk of keeping a drunk person in a prison cell is dangerous? --- My opinion would be probably a bit of both.

135 I am of the view that the above evidence from First Class Constable Millar accurately sets out the reasons why the provisions of the *Protective Custody Act 2000* (WA) were not used for the offender. I would not be surprised if these are the reasons why the provisions of this Act might not be used by police officers in other instances to detain an intoxicated person.

136 I am satisfied that as the offender did fit within the provisions of this Act, police could have detained him, either at the police station or the Perth Watch House, under section 7(4) of this Act until 7.30 am on 14 January 2017. Nevertheless, given the practicalities as outlined by First Class Constable Millar, I can appreciate the reasoning behind the decision to release the offender. In those circumstances, and being mindful not to insert hindsight bias, I do not find that the offender should have been detained under the *Protective Custody Act 2000* (WA).

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<sup>103</sup> ts 8.12.20 (Harris), p.297

<sup>104</sup> ts 9.12.20 (Lochrie), pp.359-360

<sup>105</sup> ts 7.12.20 (Millar), pp.18-19



137 Division 1 of Part 11 of the *Mental Health Act 2014* (WA) deals with the apprehension powers of a police officer with respect to a person suspected of having a mental illness. Section 156 of this Act entitles a police officer to apprehend a person if the officer “*reasonably suspects*” the person has a mental illness and, because of that illness, the person needs to be apprehended to protect the health or safety of that person or the safety of another person or to prevent the person causing, or continuing to cause, serious damage to property.

Section 6 of the Act defines when a person has a mental illness. The relevant provisions in that section are:

- (1) A person has a mental illness if the person has a condition that –
  - (a) is characterised by a disturbance of thought, mood, volition, perception, orientation or memory; and
  - (b) significantly impairs (temporarily or permanently) the person’s judgment or behaviour.
- (2) A person does not have a mental illness merely because one or more these things apply –
  - ...
  - (i) the person uses alcohol or other drugs;
  - ...
- (3) Subsection (2)(i) does not prevent the serious or permanent physiological, biochemical or psychological effects of the use of alcohol or other drugs from being regarded as an indication that a person has a mental illness.

138 The ability for a police officer to actually detain an apprehended person under the *Mental Health Act 2014* (WA) is very limited. Section 156(3) of this Act requires the police officer, as soon as practicable after apprehending the person, to arrange for the person to be assessed by a medical practitioner or authorised mental health practitioner for the purpose of deciding whether or not the person is to be referred for an examination by a psychiatrist under section 26(2) or (3)(a).

139 In most cases, a person apprehended under this Act will be taken by police to the emergency department of the nearest public hospital.

140 It is not up to police to make a diagnosis as to whether a person has a mental illness. However, the *Mental Health Act 2014* (WA) grants the power for a police officer to apprehend a person that the officer “*reasonably suspects*” has a mental illness. Accordingly, police are required to identify mental health issues within the context of an incident.<sup>106</sup> When listening to the police officers give evidence at the inquest, it became readily apparent that part of their reasoning in not using their powers under this Act was because the cause of the offender’s behaviour was drug-induced; and more precisely, methylamphetamine-induced. That was undoubtedly correct.

141 However, section 6(3) of this Act explicitly states that the serious or permanent effects of drug usage that are cited in this subsection<sup>107</sup> does not prevent those effects being regarded as an indication that the person has a mental illness. I find that the police officers involved in this matter did not have proper regard to this provision.

142 ANZPAA<sup>108</sup> has issued a useful training document for police officers titled “A Practical Guide for Police Responding to Mental Health Outcomes”.<sup>109</sup> This publication listed eight behavioural indicators of a person with a mental health issue. During Inspector Woods’ evidence at the inquest, it was identified that the offender exhibited five of these eight behavioural indicators on 14 January 2017 when in the presence of police officers.<sup>110</sup> Those five behavioural indicators were:<sup>111</sup>

- Delusions
- Hallucinations
- Disordered thought
- Impulsivity or recklessness
- Unregulated or extreme emotions<sup>112</sup>

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<sup>106</sup> Exhibit 1, Volume 2, Tab 11E, ANZPAA – Practical Guide for Police Responding to Mental Health Incidents, p.7

<sup>107</sup> Those effects being “*physiological, biochemical or psychological*”.

<sup>108</sup> Australia New Zealand Policing Advisory Agency

<sup>109</sup> Exhibit 1, Volume 2, Tab 11E, ANZPAA – Practical Guide for Police Responding to Mental Health Incidents

<sup>110</sup> ts 9.12.20 (Woods), pp.401-403

<sup>111</sup> Exhibit 1, Volume 2, Tab 11E, ANZPAA – A Practical Guide for Police Responding to Mental Health Incidents, pp.7-9

<sup>112</sup> The other three behavioural indicators that the offender did not exhibit on the night were (i) imminent risk of physical harm; (ii) disturbance of orientation, memory or perception; and (iii) perception of being a burden or isolation or hopelessness.

143 I accept that police officers in 2017 did not have access to this document.<sup>113</sup> However, it ought to have been evident to the police officers who dealt with the offender on 14 January 2017, that there was every likelihood he had a mental illness, albeit one that was drug-induced. At the inquest, the police officers gave the following evidence with respect to their powers under the *Mental Health Act 2014* (WA).

144 When asked what his understanding of the test was for police officers to take someone into custody if they were concerned about the person's mental health, First Class Constable Millar answered:<sup>114</sup>

They have to be exhibiting bizarre, irrational or violent behaviours that lead us to believe they are affected by a mental disorder. It – there's a very blurry line between the way somebody behaves when they are under the influence of methamphetamine or any other intoxicating drug to someone who is perhaps suffering from a schizophrenic episode or something similar to that. So, in my brief exposure to him led me to believe it was more an intoxicating drug than a mental health type episode.

145 First Class Constable Millar illustrated the practicable problem in taking an apprehended person to hospital with a drug-induced mental illness, stating:<sup>115</sup>

There's not really too many places you can take somebody who's drug effected. You know, if somebody is affected by drugs ... we can't take them to the emergency department every single time because then if there's no medical reason for them to be there that – all it does is clog up ED.

146 When Constable Carter was asked whether the offender's presentation gave her concerns with respect to a suspected underlying mental health issue as opposed to a drug issue, she answered, "*No, I would have said drug issue*".<sup>116</sup>

147 Senior Constable Paterson initially gave evidence that, "*I had no reason to believe he was suffering any mental health issues*".<sup>117</sup> However, when he was reminded of the contents of Constable Harris' custody log entry, he agreed that did suggest there were some mental health issues with the offender.<sup>118</sup>

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<sup>113</sup> ts 9.12.20 (Woods), p.403

<sup>114</sup> ts 7.12.20 (Millar), pp.17-18

<sup>115</sup> ts 7.12.20 (Millar), p.32

<sup>116</sup> ts 7.12.20 (Carter), p.47

<sup>117</sup> ts 8.12.20 (Paterson), p.226

<sup>118</sup> ts 8.12.20 (Paterson), pp.226-227

148 In making his decision to release the offender, Senior Constable Paterson relied on the compliant and calm behaviour the offender was exhibiting at the police station.<sup>119</sup> The offender’s behaviour in talking to himself at the police station was described by Senior Constable Paterson as not being “*odd-odd*”, and was behaviour that he did not believe was “*due to a mental aspect of things*”.

149 As to the behaviour being exhibit by the offender that he believed was drug-induced, Senior Constable Paterson stated:<sup>120</sup>

But it wasn’t to such a degree where he was a danger to himself or others, we thought at the time. And then, like I say, I thought his behaviour was due to drugs and not mental health. It was an intoxication as opposed to a mental health episode, hence why I didn’t contemplate mental health.

150 Senior Constable Paterson was later asked the following questions:<sup>121</sup>

So, are you making the distinction between someone who is having psychotic episodes that are drug-induced, and someone who is having psychotic episodes because of a clinically diagnosed psychiatric disorder? --- On that note, then yes, I suppose I was.

And why are you making the distinction between the two? --- You’re going just by your experience of dealing with people in relation to that. Generally, we would get people who were drug-induced, and dealing with people who are on drugs, and to me, I got the impression that he may – he was suffering mildly from drugs.

...

--- But on the night in question I’ve made the distinction that he was on drugs and not having a mental health episode, yes.

151 Senior Constable Paterson stated that for him the threshold of behaviour required before a person will be detained under the *Mental Health Act 2014* (WA) was, “*if he has acted in such an erratic manner, he is a danger to others and himself.*”<sup>122</sup>

152 It is clear from the evidence of Senior Constable Paterson that he based his decision to release the offender solely on the offender’s behaviour when he

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<sup>119</sup> ts 8.12.20 (Paterson), p.229

<sup>120</sup> ts 8.12.20 (Paterson), p.230

<sup>121</sup> ts 8.12.20 (Paterson), pp.245-246

<sup>122</sup> ts 8.12.20 (Paterson), p.250

was in custody at the police station. In my view, that was an unduly narrow approach.

153 It is also clear from his evidence cited above that Senior Constable Paterson had not considered the provisions of section 6(3) of the *Mental Health Act 2014* (WA). Nevertheless, it is evident that even if he had, then he still would not have detained the offender under this Act as he was not of the view the offender needed to be protected for his own health or safety, or the health and safety of another person.

154 Constable Harris' evidence indicated that he had a general understanding of the relevant provisions in the *Mental Health Act 2014* (WA). He said:<sup>123</sup>

Whether or not somebody is drug-effect or mental-health effected, they've still got to be – I use a system where they've got to be a risk to themselves or others. Whether that's, you know, actually going out of their way to hurt somebody or say they're going to do that, or they're incapable. In my eyes at this point [at the police station] he was none of those things.

155 Constable Harris also described his own personal experiences when he has taken an apprehended person to hospital for a mental health assessment:<sup>124</sup>

I know in my experience if I take someone to hospital for a mental health assessment and the first thing they say to the hospital is, "I've used meth", the hospital will say take them home. They will not mentally assess someone who is currently under the influence of drugs, because they're not then treating the mental health issue, they're treating the drug issue. And that's not what the Mental Health Act is for.

And your experience is the hospitals say take them home, not take them back to the police station? --- Yes, yes.

156 Senior Constable Lochrie did not consider taking the offender for a mental health assessment under the *Mental Health Act 2014* (WA). He said:<sup>125</sup>

I didn't because – I think it's hard for members of the public to understand that (indistinct) it's not unusual for us for people to be mumbling or saying things or acting strangely. As soon as they start behaving – threatening self-harm or harming themselves then I've no hesitation as I said earlier, you're off to the hospital.

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<sup>123</sup> ts 8.12.20 (Harris), p.296

<sup>124</sup> ts 8.12.20 (Harris), p.302

<sup>125</sup> ts 9.12.20 (Lochrie), p.360

...

I didn't feel there was enough to detain him under the Mental Health Act.

157 After giving examples of self-harming behaviour that Senior Constable Lochrie would regard as requiring a person to be taken for a mental health assessment, he was asked the following questions:<sup>126</sup>

But comments of, "I think I'm being watched", "I think drones are following me", "I think drugs are being pumped into the air" don't cause that same reaction? --- And to me that was more a drug situation than a mental health situation.

Okay? --- Which we come across often. If I took every person to the hospital I felt was on some sort of substance, we would never be away from the hospital. We would be there – the hospitals would be overflowing, sadly.

158 Like other police officers, it appeared Senior Constable Lochrie did not properly consider the provisions of section 6(3) of the *Mental Health Act 2014* (WA).

159 Inspector Woods, who is attached to the Custodial Services and Mental Health Division of the WAPF, was well aware of hospitals simply discharging persons taken there by police for a mental health assessment because of drug-related mental health issues.<sup>127</sup>

160 Fortunately, the WAPF has made improvements in this area with the formation of the Mental Health Co-Response (MHCR) model. This is an initiative involving police officers and mental health practitioners working together and co-responding to calls made to the WAPF for assistance with respect to mental health-related incidents. I have addressed this initiative in more detail later in my finding.

161 I am satisfied that the offender's behaviour at the address, and then in the presence of police officers, would have entitled police to reasonably suspect he had a mental illness as it is defined in the *Mental Health Act 2014* (WA). I am also satisfied that because of that mental illness, his behaviour was such that police would have been entitled to reasonably suspect he needed to be apprehended to protect the safety of other persons and/or to prevent him causing serious damage to property. Hence, I would not have been critical if

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<sup>126</sup> ts 9.12.20 (Lochrie), p.361

<sup>127</sup> ts 9.12.20 (Woods), p.394

police did in fact apprehend the offender using their powers in the *Mental Health Act 2014* (WA).

162 However, it does not necessarily follow that criticism can be made of the failure by police to apprehend the offender for the purpose of a mental health assessment. I accept that the experiences of frontline police using their powers under this Act for drug-affected persons has often been that the apprehended persons are discharged from hospital back into the care of the police so that they can simply be taken home. Those experiences would naturally come into play when a police officer is considering the usefulness of a mental health assessment.

163 Sadly, the interaction between police and those with methylamphetamine addiction is so prevalent in the community that Senior Constable Harris made the following observation in his interview with IAU officers on 23 January 2017 when he was asked whether the offender should have been detained for a mental health assessment:<sup>128</sup>

I don't know how familiar you are with Mandurah, but the majority of our clientele down here are meth-affected, so we would be taking people to Peel Health Campus all the time.

164 In those circumstances, I understand why the police decided not to apprehend the offender under the *Mental Health Act 2014* (WA).

165 Finally, I am of the view the offender could not have been legally detained at the police station so that the police could wait to see if Ms Holmes wanted to make a complaint. The provisions of the *Criminal Investigation Act 2006* (WA) permit a suspect to be held for up to six hours, and for another six hours if it is justified and is approved by a police officer with the rank of sergeant or above.<sup>129</sup> However, those provisions were unlikely to have applied to the circumstances of this matter as there were insufficient reasons for the offender to be detained for those lengths of time.<sup>130</sup> As stated by Constable Harris:<sup>131</sup>

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<sup>128</sup> Exhibit 1, Volume 2, Tab 3, Transcript of IAU interview with First Class Constable Millar dated 23 January 2017

<sup>129</sup> Section 140(3)(a) and (b) of the *Criminal Investigation Act 2006* (WA)

<sup>130</sup> Section 140(2) of the *Criminal Investigation Act 2006* (WA)

<sup>131</sup> ts 8.12.20 (Harris), p.300

I'm not going to hold somebody in custody so that somebody else can have a nap and later give a statement, your Honour. If they don't want to give one there and then, I have nothing to action.

***The decision by police not to interview the offender***

166 As already referred to above, Constable Harris recorded in the police station custody log that the offender was, “*in no way fit for interview*”.

167 In my view, the decision not to interview the offender regarding the altercation at the vacant block was a correct one. In accordance with well settled case law, police are trained not to conduct interviews with suspects who may be so impaired by alcohol or drugs, that they would not understand their rights to participate in an interview. In those circumstances, the interview ought not take place. Should an interview in those circumstances take place, then any admissions made during it would be ruled inadmissible by a court should the matter proceed to a hearing. As stated by Senior Constable Paterson at the inquest:<sup>132</sup>

Well, they have to be fit for interview, i.e., not drunk through alcohol, not on drugs, so far, to speak, that they can't comprehend what's going on, yes, and, obviously, mentally stable. They have to be on a mental capacity to have an interview.

168 If, as I have found, the offender was not fit to be interviewed, does it necessarily follow that he was not in a fit condition to be released? The answer is “no” as two different thresholds apply. A consideration of whether it would be unfair to interview a suspect, who is clearly affected by drugs, is different to a consideration whether that same person is able to look after himself if taken home by police to his supposed place of residence. As stated by Constable Harris at the inquest,<sup>133</sup> “*He gave us no cause for concern that he couldn't get himself into a house and, you know, put his head down for the night*”.

169 In those circumstances, I am satisfied there was no inconsistency in the decisions made by police not to interview the offender and then release him from police custody.

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<sup>132</sup> ts 8.12.20 (Paterson), p.239

<sup>133</sup> ts 8.12.20 (Harris), p.297



***Failure by police to complete the custody questionnaire for the offender***

- 170 There is a standard list of questions to be asked of detainees who are being admitted into WAPF lockups. These questions are designed to facilitate a risk assessment of the detainee to ensure they are properly cared for when in custody. They are not designed to profile the detainee's state of mind or his risk to the community.<sup>134</sup>
- 171 The responsibility for completing the custody questionnaire for detainees at the police station on 14 January 2017 was Police Auxiliary Officer Turner.<sup>135</sup> These questions were not asked of the offender after he was taken into a holding cell just before 1.00 am.<sup>136</sup>
- 172 However, there is a distinction between a person being admitted to the lockup of a police station and a person who is in the custody of attending police who are deliberating on what action they should take in relation to the person's ongoing arrest and detention.<sup>137</sup> In his interview with IAU investigators, Police Auxiliary Officer Turner stated he did not complete the custody questionnaire for the offender as the conveying officers were discussing whether they were going to hold him or release him.<sup>138</sup>
- 173 The time from when police vehicle VL103 arrived in the sally port of the police station to when it drove out to take the offender to his stated home address was less than 22 minutes.<sup>139</sup>
- 174 In those circumstances, I am of the view that it was not necessary for the custody questionnaire to be completed.

***The decision to take the offender to the Blue Bay Apartment complex***

- 175 As already outlined above, the offender was taken to the Blue Bays Apartment complex in Halls Head by police. That was the address he first

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<sup>134</sup> Memorandum from Superintendent Dene Leekong, Superintendent of Custodial Services and Mental Health, dated 11 January 2021

<sup>135</sup> Memorandum from Superintendent Dene Leekong, Superintendent of Custodial Services and Mental Health, dated 11 January 2021, Appendix B, p.6

<sup>136</sup> Memorandum from Superintendent Dene Leekong, Superintendent of Custodial Services and Mental Health, dated 11 January 2021, p.2

<sup>137</sup> Memorandum from Superintendent Dene Leekong, Superintendent of Custodial Services and Mental Health, dated 11 January 2021, p.2

<sup>138</sup> Memorandum from Superintendent Dene Leekong, Superintendent of Custodial Services and Mental Health, dated 11 January 2021, p.2

<sup>139</sup> Exhibit 1, Volume 1, Tab 26, IAPro 2017 Mandurah Lockup CCTV dated 14 January 2017

gave to Senior Constable Lochrie and Constable Harris at the vacant block. It matched the address that was listed as the offender's residence in the WAPF Information Management System.<sup>140</sup>

176 However, the narrative in the WAPF Information Management System for the stealing complaint made it clear that for approximately five months prior to 12 January 2017, the offender was residing at another address.<sup>141</sup> Prior to that, the offender had been a tenant at unit 36 between February 2015 and August 2016.<sup>142</sup>

177 When questioned about this at the inquest, Senior Constable Paterson agreed that questions should have been asked of the offender about this before he was taken to the Halls Head address. However, he said that he was not aware of this other address.<sup>143</sup>

178 Senior Constable Paterson was then asked:<sup>144</sup>

Shouldn't you have personally looked at it, being the officer in charge [of the lockup]? --- Yes, I should have.

Making a determination as to whether someone should be released from custody? --- Yes, I should have looked at it, yes.

179 Senior Constable Lochrie gave similar evidence that if he was aware the offender had been renting a room at another address, a day and a half earlier, he would have asked the offender more questions about his current address.<sup>145</sup>

180 It is unfortunate the police officers who were examining the computer screen at the lockup regarding the stealing matter did not pay more attention to the details on the screen regarding the offender's place of abode just two days earlier. It is apparent that if they had, the offender would have been questioned further. Those questions may have alerted police to the fact that the offender had not lived at the Blue Bays Apartment complex since August 2016. Whether that would have ultimately changed the course of events is

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<sup>140</sup> Exhibit 2, Incident Report 12017 2230 16114, p.2

<sup>141</sup> Exhibit 6, Screenshot of Information Management System page viewed at Mandurah Police Station on 14 January 2017; see also Exhibit 2, Incident Report 12017 2230 16114

<sup>142</sup> Exhibit 1, Volume 1, Tab 11, *The State of Western Australia v Damian Eric Maxfield* [2018] WASC SR 242, p.7

<sup>143</sup> ts 8.12.20 (Paterson), pp.211-212

<sup>144</sup> ts 8.12.20 (Paterson), p.212

<sup>145</sup> ts 9.12.20 (Lochrie), pp.352-353

entirely speculative. However, in my view, it is unlikely to have done so; particularly if the offender had simply told police he had returned to live in the same unit.

***The offender's comment: "It'll end badly"***

181 After the offender was placed into the police vehicle to be taken to the address he gave as his place of residence, he can be heard saying, "*It'll end badly*".<sup>146</sup>

182 None of the police officers in the vicinity (Senior Constable Paterson, Senior Constable Lochrie and Constable Harris) said they heard that remark. I am prepared to accept that evidence from each of these officers for the following reasons. First, immediately before the offender's remark, Constable Harris had been talking with one of the other officers. Second, as the offender's comment did not arise from speaking to one of the officers, it is more likely little, or no attention was being made to what he said (it is evident from the CCTV footage that no police officer reacted to the remark). Third, the acoustics within the sally port were apparently poor. I also note that it was one of many spontaneous and odd remarks the offender had made when in the presence of police that night.

183 Senior Constable Paterson said that if he had heard that comment, he would have asked the offender what he meant.<sup>147</sup>

184 Constable Harris was asked that even if he had heard it whether he would still ask the offender about it, given he had been ranting for most of the time. Constable Harris answered, "*Potentially not*".<sup>148</sup>

185 Senior Constable Lochrie initially said that if it had been heard, the offender would have been asked what he meant by that.<sup>149</sup> However, he stated it was a "*possibility*" that he would not have paid much attention to it because of the ranting the offender had been doing all night.<sup>150</sup>

186 Detective Senior Sergeant Williams' evidence at the inquest was that this remark alone would not have been enough to detain the offender in custody

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<sup>146</sup> Exhibit 7, CCTV footage (with date and time stamp) from Mandurah Police Station, camera 1 at 2017-01-14, at 01:14:49

<sup>147</sup> ts 8.12.20 (Paterson), p.228

<sup>148</sup> ts 8.12.20 (Harris), p.298

<sup>149</sup> ts 9.12.20 (Lochrie) p.357

<sup>150</sup> ts 9.12.20 (Lochrie) p.358

without a question as to what the offender meant by that.<sup>151</sup> I agree with that. As I have found that this remark was not even heard, let alone deliberately ignored, by any of the police officers present, I do not make any criticism of the lack of a response by those officers.

## IMPROVEMENTS SINCE MR MARTIN'S DEATH

### *Police communications*

187 As I have already outlined, the police officers who attended the address at Truarn Street were not able to acquire all relevant information about the incident there, either through the CAD system or by radio. The most notable piece of information missed was that Ms Holmes had said in her second call to emergency services that the offender had “*pulled a knife*” on her daughter.<sup>152</sup> I am satisfied that the WAPF has made three improvements to its communications system that should reduce the likelihood of the issues that arose in this inquest.

188 In 2017, WAPF had four Metropolitan Police Districts. Only one of these Metropolitan Districts (the South Metropolitan Police District) covered the Fremantle and Peel regions and only one Perth Operations Centre (POC)<sup>153</sup> radio dispatcher was assigned to each of these four districts, together with a support officer.<sup>154</sup>

189 In July 2018, the WAPF moved to a model comprising of eight smaller Metropolitan Police Districts. The South Metropolitan Police District has become two separate districts, Peel and Fremantle, with a radio dispatcher allocated to each one.<sup>155</sup>

190 In 2019, another improvement was made when the responsibilities of the District Control Centre (DCC) were transferred to the newly created Task Vetting Unit (TVU) that is now co-located with POC and the Police Assistance Centre (PAC).<sup>156</sup> Previously, the DCC was located within each

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<sup>151</sup> ts 9.12.20 (Williams), p.383

<sup>152</sup> Exhibit 1, Volume 2, Tab 10G – transcript of recording of 000 call made at 12:23 am on 14 January 2017

<sup>153</sup> POC is responsible for communications via radio dispatches and management of critical incidents: ts 9.12.20 (Newton), p.410

<sup>154</sup> Exhibit 8, Memorandum from Acting Inspector Brendon Newton dated 8 December 2020, p.1

<sup>155</sup> Exhibit 8, Memorandum from Acting Inspector Brendon Newton dated 8 December 2020, p.2

<sup>156</sup> PAC comprise of sworn and unsworn staff who answer triple zero calls and calls to the general police number: ts 9.12.20 (Newton), p.411

Police District and was not part of the State Communications Division.<sup>157</sup> Although PAC and POC had been co-located at the same facility in Midland prior to 2017, the attachment of the TVU to the same facility (and on the same floor) has meant there are better communication lines between the three units.<sup>158</sup> As stated by Acting Inspector Newton,<sup>159</sup> “*Communications between all areas have been simplified and enhanced under the single command of the State Communications Division.*”

191 In 2017, the CAD system did not have a “cut and paste” function. This meant the DCC had to create new CAD descriptions that summarised information from other CAD tasks.<sup>160</sup> As already noted, the summary by the DCC with respect to this matter failed to include the information that the offender had had a knife at the address.

192 In October 2020, the CAD system was upgraded. It now allows for a “cut and paste” function, which enables comments to be transferred word for word to the new CAD description, rather than the DCC officer typing a summary.<sup>161</sup>

193 I am of the view that this is a significant improvement to what existed in January 2017. As Acting Inspector Newton testified at the inquest, the TVU now uses this facility as an opportunity to copy the whole text across and paste it into the new job.<sup>162</sup> Acting Inspector Newton agreed that the deficiency which existed with the detail of the summary provided by the DCC on 14 January 2017 would be addressed if the same situation happened today, as the TVU would essentially just pick up the summary and copy it straight into the main CAD job.<sup>163</sup> I would also think this option would accelerate the process at a time when the relay of all relevant information needs to be conveyed as quickly as possible to frontline officers.

### ***The creation of the Mental Health Co-Response model***

194 I have earlier referred to the MHCR which is a partnership between the WAPF, the Western Australian Mental Health Commission and the Department of Health. I will state at the outset that I fully endorse this

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<sup>157</sup> ts 9.12.20 (Newton), p.421

<sup>158</sup> ts 9.12.20 (Newton), pp.421-422

<sup>159</sup> Exhibit 8, Memorandum from Acting Inspector Brendan Newton dated 8 December 2020, p.2

<sup>160</sup> Exhibit 8, Memorandum from Acting Inspector Brendan Newton dated 8 December 2020, p.2

<sup>161</sup> Exhibit 8, Memorandum from Acting Inspector Brendan Newton dated 8 December 2020, p.2

<sup>162</sup> ts 9.23.20 (Newton), p.422

<sup>163</sup> ts 9.23.20 (Newton), p.422

initiative, which I regard as a vital component in an improved procedure by the WAPF when dealing with people afflicted with, not just drug-induced mental illnesses, but mental illness generally.

195 Following a two-year trial from January 2016 to January 2018, the MHCR was implemented in late 2018. As outlined by Inspector Woods in her memorandum,<sup>164</sup> there are currently four components to the MHCR model.

196 There is the MHCR Co-ordination Unit which consists of WAPF and Department of Health officials and is responsible for the overall management and co-ordination of the model. It operates from 7.00 am to 3.00 pm, Monday to Friday.

197 The second component is that a mental health practitioner is now located at POC, from 2.00 pm to midnight, Monday to Saturday. This practitioner is tasked with reviewing high priority mental health/welfare matters arising from CAD tasks. To support frontline police officers, the practitioner can add clinical information from the Department of Health database to the CAD task.

198 The third component is that a mental health practitioner is now co-located at the Perth Watch House from 2.00 pm to midnight, Tuesday to Sunday. This practitioner can conduct screening and risk assessments of detained persons admitted to the Perth Watch House. These assessments facilitate more effective management of detainees who are demonstrating signs or symptoms of mental illness. This assists the WAPF in the management of such detainees and provides the opportunity for early intervention and diversion.

199 The final component of the MHCR model has been the creation of four mobile teams, each consisting of two police officers, with specific training in mental health, and a mental health practitioner. These teams operate from 1.00 pm to 11.00 pm, Monday to Saturday and provide a first response to police-initiated incidents where a person is experiencing a mental health crisis. Each mobile team covers particular districts within the Perth metropolitan area and each team is based at a police station within its respective districts.

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<sup>164</sup> Exhibit 1, Volume 2, Tab 11A, Memorandum from Inspector Narelle Woods dated 4 December 2020

200 The benefits of these mobile teams and other components of the MHCR are obvious. As set out by Inspector Woods in her memorandum, they provide:<sup>165</sup>

- Increased community care and safety when responding to incidents involving mental health crisis due to interagency collaboration throughout the program.
- Early mental health triaging and assessment of persons during initial contact with police to determine if the incident requires police intervention or practitioner engagement.
- Expertise to frontline police to better manage persons believed to be experiencing a mental health issue, either in the community or in custody.
- Risk assessment information shared with police to assist in the resolution of mental health incidents.
- Advice on the need for police to transport detained persons to emergency departments – MHCR has resulted in a significant decrease in the number of people transported to emergency departments.
- Effective transition pathways at emergency departments which has reduced the time police spend in hospital waiting rooms with persons requiring a mental health assessment.

201 With respect to the last dot point, Inspector Woods said at the inquest that when police attend hospitals with a detainee requiring a mental health assessment there is, *“a much better relationship when we’ve got a mental health practitioner accompanying police in that situation.”*<sup>166</sup>

202 As at 14 January 2017, MHCR was undergoing a trial period. There were only two mobile teams operating: one team covering the Joondalup and Mirrabooka districts and the other covering the Cannington district. The trial did not include Mandurah.<sup>167</sup> Since late 2018, the South mobile team located at Cannington Police Station now covers the Fremantle and Mandurah districts.<sup>168</sup>

203 However, even if the incident involving the offender were to occur today, MHCR would not become involved as the mobile teams cease operating at 11.00 pm and the mental health practitioners at POC and the Perth Watch

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<sup>165</sup> Exhibit 1, Volume 2, Tab 11A, Memorandum from Inspector Narelle Woods dated 4 December 2020, p.2

<sup>166</sup> ts 9.12.20 (Woods), p.396

<sup>167</sup> ts 9.12.20 (Woods), p.389

<sup>168</sup> Exhibit 1, Volume 2, Tab 11A, Memorandum from Inspector Narelle Woods dated 4 December 2020, p.2

House complete their duties at midnight.<sup>169</sup> When asked if she thought there was merit in the mobile teams operating 24/7, Inspector Woods responded, “*I see merit in it being a 24/7 model. I also feel that even a day shift/afternoon shift, so a 6.00 am to midnight would be beneficial as well*”.<sup>170</sup>

204 I, too, see considerable merit in extending the service hours that the four mobile teams are currently operating in.

205 The evidence of Inspector Woods regarding the creation of the MHCR model was very reassuring. What was less reassuring was her evidence regarding the amount of training frontline police officers receive regarding mental health issues. Inspector Woods stated, “*Our officers don’t receive a great deal of training with regard to the Mental Health Act. They’re provided with three hours of training during their recruit course as part of their recruit training.*”<sup>171</sup>

206 It was disconcerting to hear that although the police officers attached to the mobile teams receive further compulsory training in identifying behavioural indicators of a mental health illness and how to deal with that, frontline police officers do not.<sup>172</sup>

207 I have already referred to the ANZPAA training document that provides a useful guide for how police should respond to persons with mental health issues.<sup>173</sup> Although all police officers have access to this document, it is up to the individual officer as to whether or not they use it and/or refer to it.<sup>174</sup>

208 In October 2020, Inspector Woods completed a review of the WAPF response to Persons at Risk police-initiated tasks (the review). These tasks included persons who were experiencing a mental health crisis and those who were under the influence of alcohol or drugs. The review identified several areas that could be improved which would have a significant impact for frontline

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<sup>169</sup> Even if the mobile team was operating, as there was evidence of “shots fired”, it would have only attended once it was determined it was safe for the mental health practitioner to engage with the offender: Exhibit 1, Volume 2, Tab 11A, Memorandum from Inspector Narelle Woods dated 4 December 2020, p.3

<sup>170</sup> ts 9.12.20 (Woods), p.397

<sup>171</sup> ts 9.12.20 (Woods), p.399

<sup>172</sup> ts 9.12.20 (Woods), p.403

<sup>173</sup> Exhibit 1, Volume 2, Tab 11E, ANZPAA – Practical Guide for Police Responding to Mental Health Incidents

<sup>174</sup> ts 9.12.20 (Woods), p.404



officers when dealing with Persons at Risk. One of those areas was a comprehensive review of police training.<sup>175</sup>

209 It was clear from listening to the evidence of Inspector Woods that she has a focussed and driven commitment to improving the way that police interact with those members of the community afflicted with drug-induced mental illnesses.

210 Shortly before I completed my finding in this matter, I requested that the State Solicitor's Office obtain instructions from the WAPF regarding the response by its Corporate Board to the review. It is evident from the reply I received that the WAPF is committed to implementing a consistent approach when dealing with Persons at Risk which included maximising assistance from not just the Western Australian Mental Health Commission and the Department of Health, but also the Department of Communities when dealing with adolescents.

### ***Body-worn cameras***

211 As already noted, there were discrepancies from those who were present as to precisely what Ms Holmes told the attending police officers at the address. Such discrepancies would have been resolved if the police officers had access to body-worn cameras during Ms Holmes' questioning. Body-worn cameras issued by the WAPF were not in operation in January 2017. That has now changed.

212 In March 2019, the Police Minister announced stage 1 of a State-wide rollout of body-worn cameras to frontline police officers, with the delivery of such cameras to all frontline police officers scheduled to be completed by June 2021.<sup>176</sup> The Police Minister's expectation that body-worn cameras will "*improve transparency and accountability in police interactions with the public*" has already proved to be accurate with respect to the availability of this evidence at recent coronial investigations.

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<sup>175</sup> Exhibit 1, Volume 2, Tab 11A – Memorandum from Inspector Woods dated 4 December 2020, p.5; ts 9.12.20 (Woods), p.400

<sup>176</sup> <https://www.mediastatements.wa.gov.au/pages/Mcgowan/2019/03/body-worn-cameras-to-be-deployed-to-frontline-officers.aspx>

**RECOMMENDATIONS**

- 213 I am firmly of the view that the MHCR model will greatly enhance police responses to incidents involving persons with mental health issues. I would fully endorse its expansion, not just within the Perth metropolitan area but also into regional Western Australia. I am aware that its introduction into regional centres will require additional considerations, due to the size of the State and the availability of mental health clinicians in regional areas.
- 214 The expansion of the MHCR model has already been considered by the State Coroner in the inquest of Andrew John Key.<sup>177</sup> In delivering her findings on 4 November 2020, the State Coroner made three recommendations in support of the continuation and expansion of MHCR.<sup>178</sup> I fully support those recommendations and incorporate them into my finding:

**Recommendation No. 1**

*That the Mental Health Co-Response continue to be funded, and that consideration be given to providing the Western Australia Police Force and the Western Australia Mental Health Commission with additional, external funding in order to support expansion of the programme in a way that meets demand.*

**Recommendation No. 2**

*That consideration be given to providing the Western Australia Police Force and the Western Australia Mental Health Commission with additional, external funding in order to support the expansion of the Mental Health Co-Response in metropolitan areas of Perth.*

**Recommendation No. 3**

*That work continue on the planning of the Mental Health Co-Response in regional areas of the State, and consideration be given to providing the Western Australia Police Force and the Western Australia Mental Health Commission with additional, external funding in order to support the expansion of the Mental Health Co-Response into regional areas.*

<sup>177</sup> Inquest into the death of Andrew John Key [2020] 36

<sup>178</sup> Inquest into the death of Andrew John Key [2020] 36, p.41

**CONCLUSION**

215 Every person has an expectation that when they go to sleep, their home will offer them sanctuary and protection from the violent behaviour of strangers. The sudden and unexpected attack on Mr Martin as he slept in the early hours of 14 January 2017, from which he died a short time later, has undoubtedly caused indescribable grief amongst his loved ones.

216 I can understand the frustration, and even anger, felt by Mr Martin’s family that the man who had murdered Mr Martin and then attacked Ms Mason had exhibited eerily similar behaviour less than two hours earlier; and yet he had been detained and then released by police during the intervening period.

217 There were striking parallels between the offender’s behaviour at the address in Truarn Street (albeit with far less serious outcomes) and then at Mr Martin’s and Ms Mason’s unit. At the address, he refused to go after being told to leave by an occupant. At the unit, he had entered uninvited. At the address, he brandished a knife that was from the house. At the unit, the two knives he used to stab Mr Martin were from the unit. At the address, he had threatened to kill Ms Holmes. At the unit, he had threatened to kill Ms Mason. At the address, he had grabbed Ms Holmes by the throat. At the unit, he had grabbed Ms Mason by the throat.<sup>179</sup>

218 On those bare facts, if someone was then told that police had apprehended the offender shortly after the events at the address, one would expect the obvious question to be asked: “Why did the police release him?”

219 Bare facts, with no additional details, do not give the full story. Over the course of the three-day inquest, that full story emerged. It is only upon “*a full understanding of the circumstances attending Mr Martin’s death*” that I have made the findings that I have in this matter and identified “*what could have been done better in connection with the police interactions and decision making that involved the offender.*”<sup>180</sup>

220 I have also identified the improvements that have been made by the WAPF since Mr Martin’s death. It is clear to me that the changes made to the police

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<sup>179</sup> The offender had also carried out similar actions towards Constable Harris and Senior Constable Lochrie during the altercation at the vacant block.

<sup>180</sup> These italicised phrases were the reasons why this inquest was deemed desirable within the meaning of section 22(2) of the Act.

communications system will better equip frontline police officers to have more information when attending an incident. Likewise, the creation of the MHCR initiative will certainly provide better assistance to police officers attending incidents involving persons with mental health issues.

- 221 With the ongoing scourge of methylamphetamine addiction that shows no signs of abating, it is inevitable that police will continue to encounter people experiencing drug-induced psychotic episodes. It is important that the WAPF, the Western Australian Mental Health Commission and the Department of Health not only continue, but broaden, their collaborative approach. Every effort must be made to lessen the prospect of persons with drug-induced mental health issues becoming a danger to themselves or to other members of the community.
- 222 Tragically, Mr Martin was an innocent victim of the dreadful consequences of the offender's methylamphetamine addiction. It is my hope that the changes made by the WAPF since Mr Martin's death, together with the recommendations I have made regarding the MHCR, will provide some small solace to his family and friends for their sad loss.

PJ Urquhart  
**Coroner**  
10 August 2021