



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Jamie HEWSON**

TITLE OF COURT: Coroner's Court

JURISDICTION: Murgon

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FINDINGS OF: Mr Michael Barnes, State Coroner

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REPRESENTATION:

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|---|-----------------------|
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Findings of the Inquest into the death of Jamie Hewson

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The *Coroners Act 2003* provides in s45 that when an inquest is held into a death in custody, the coroner's written findings must be given to the family of the person who died, each of the persons or organizations granted leave to appear at the inquest and to various specified officials with responsibility for the justice system including the Attorney-General and the Minister for Police and Corrective Services. These are my finding in relation to the death of Jamie Hewson. They will be distributed in accordance with the requirements of the Act.

Introduction

On the afternoon of 8 April 2004 Jamie Hewson was on his family's farm near Kilkivan in south east Queensland when a neighbour advised local police that he had threatened her with a rifle.

The police went to investigate and a siege developed. It ended eighteen hours later when police shot and killed Mr Hewson.

These findings seek to explain how that happened and consider whether any changes to police policies or practices could reduce the likelihood of deaths occurring in similar circumstances in the future.

The Coroner's jurisdiction

Before turning to the evidence, I will say something about the nature of the coronial jurisdiction.

The basis of the jurisdiction

Because Mr Hewson, died while attempting to avoid being taken into police custody his death was a "*death in custody*"¹ within the terms of the Act and so it was reported to the State Coroner for investigation and inquest.²

The scope of the Coroner's inquiry and findings

A coroner has jurisdiction to inquire into the cause and the circumstances of a reportable death. If possible he/she is required to find:-

- whether a death in fact happened
- the identity of the deceased;
- when, where and how the death occurred; and
- what caused the person to die.

There has been considerable litigation concerning the extent of a coroner's jurisdiction to inquire into the circumstances of a death. The authorities clearly establish that the scope of an inquest goes beyond merely establishing the medical cause of death but as there is no contention around that issue in this case I need not seek to examine those authorities here with a view to settling

¹ See s10

² s8(3) defines "*reportable death*" to include deaths in custody and s7(2) requires that such deaths be reported to the state coroner or deputy state coroner. Section 27 requires an inquest be held in relation to all deaths in custody

that question. I will say something about the general nature of inquests however.

An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:-

*It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*³

The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, the Act authorises a coroner to make preventive recommendations concerning public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in future.⁴ However, a coroner must not include in the findings or any comments or recommendations statements that a person is or maybe guilty of an offence or is or may be civilly liable for something.⁵

The admissibility of evidence and the standard of proof

Proceedings in a coroner's court are not bound by the rules of evidence because s37 of the Act provides that the court "*may inform itself in any way it considers appropriate.*" That doesn't mean that any and every piece of information however unreliable will be admitted into evidence and acted upon. However, it does give a coroner greater scope to receive information that may not be admissible in other proceedings and to have regard to its provenance when determining what weight should be given to the information.

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt: an inquiry rather than a trial.⁶

A coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the *Briginshaw* sliding scale is applicable.⁷ This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.⁸

³ *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

⁴ s46

⁵ s45(5) and 46(3)

⁶ *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625

⁷ *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.⁹ This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann*¹⁰ makes clear that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.

The investigation

I will now say something about the investigation of Mr Hewson's death.

As soon as it was apparent that Mr Hewson was dead appropriate scene preservation procedures were adopted. The area was cordoned off and guarded until it could be searched by ballistics and scenes of crime officers. I was notified and expert investigators from the homicide investigation group were flown to the scene. Later on the day of the shooting, the officers involved were interviewed and undertook a "walk through" re-enactment that was video taped.

On 10 April 2004 an autopsy was conducted by Dr Guy Lampe, an experienced forensic pathologist from the John Tonge Centre.

In the weeks following the death all witnesses with any involvement in the operation which proceeded it were interviewed or provided statements.

As can be readily appreciated, whenever a police officer shoots and kills a citizen suspicions may arise in the minds of those close to the deceased that the death was avoidable or unnecessary. It is also desirable that the general public be fully apprised of the circumstances of such a death so that they can be assured that their police service takes such drastic action only when it is absolutely necessary. The police officers involved also have a right to have an independent assessment made of their actions so that there can in future be no suggestion that their actions have not been subjected to appropriate scrutiny. It is therefore essential that all fatal police shootings are thoroughly and rigorously investigated and that the results are made public. I am satisfied that this has happened in this case. Senior Sergeant Hickey undertook an intensive investigation and compiled a report of great utility. He is to be commended.

The Inquest

A pre-hearing conference was held in Brisbane on 9 May 2006. Mr Smith was appointed Counsel Assisting. Leave to appear was granted to the three SERT operatives directly involved in the shooting and the Commissioner of the

⁹ *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

¹⁰ (1990) 65 ALJR 167 at 168

Police Service. Mr Hewson's family were not legally represented but they conferred before and during the inquest with those assisting me.

A list of witnesses was settled and the issues to be examined during the inquest was agreed upon.

A view of the scene was conducted on 5 June 2006 and the inquest then proceeded later that day and the succeeding three days. Twenty four witnesses gave evidence and 84 exhibits were tendered.

At the commencement of the evidence the lawyer representing of the Commissioner of the QPS and the representative of the SERT operatives involved in the shooting sought orders allowing those officers to give evidence without disclosing their correct names or addresses and prohibiting access to exhibits which identified the officers or disclosed training, tactics and methods employed by SERT operatives and the police negotiators. They also sought orders prohibiting the publication of any information or likeness that could lead to the SERT officers being identified. These orders were sought on the basis that the disclosure of operational information could reduce its effectiveness in future deployments and thus hinder law enforcement and/or reduce public safety. The restrictions in relation to evidence that could lead to the SERT operatives being identified was sought on the basis that such disclosures could endanger them or their families. Few reasons were articulated and less evidence was provided in relation to this concern.

Although there is a strong presumption that all coronial proceedings will occur in public and be available for public scrutiny via the media, I was persuaded that the orders sought impacted on this principle only minimally. As it was claimed personal safety was at stake, and as the submission that disclosure of procedures and tactics could compromise their effectiveness had obvious merit, I granted the applications.

The Evidence

I turn now to the evidence. Of course I can not even summarise all of the information contained in the exhibits and transcript but I consider it appropriate to record in these reasons the evidence I believe is necessary to understand the findings I have made.

Background

Jamie Hewson was the youngest of six brothers all of whom were raised on Springdale Farm on Old Boonara Road Cinnabar.

Jamie and his brother Scott remained living on the farm after they grew up and with their father, they worked the grazing property. Indeed Jamie lived on the farm for his whole life except for a short period he spent working in Western Australia

He supplemented his income by driving trucks at a local gold mine. A few years ago Mr Hewson went to Western Australia and did the same for some

six months but then returned to live on the farm and again drove trucks with the local gold mine.

In 1998 he was involved in a major traffic accident but his family considers he made an almost complete recovery. The accident caused some organic brain injury and it is easy to speculate as to whether that may have contributed to the events surrounding Mr Hewson's death.

In October 2003, Mr Hewson was charged with drink driving which resulted in him losing his licence. The loss of his licence negatively impacted upon Mr Hewson in a number of ways. For the few months before this happened Jamie had been driving his father to the Nambour hospital for radium treatment for cancer that was soon to kill him. After he lost his license he could no longer do this. When his father died later in the same month, Jamie could not drive the roads on the farm nor go into town to do all the odd jobs required of a farmer. His family say that Jamie's grieving for the loss of his father was deep and prolonged.

In January 2004 Mr Hewson's driving problems were compounded when he was caught driving whilst under disqualification and he again appeared in court. Mr Hewson's brother says that he thought that he was being persecuted by the local police and also considered that he did not get a fair hearing when he went to court on the disqualified driving charge. He had prepared a statement that he wanted to read out but the presiding magistrate cut him off, not doubt due to the need to progress a busy court list. It does seem he was developing an unhealthy fixation that he was being treated unfairly but I have no expert diagnosis on which to base any further assessment of that.

There is no evidence that Mr Hewson abused alcohol or other drugs nor did he have any history of psychological problems. His brother Ashley said he had a few beers with him a few days before the shooting and Jamie seemed quite stable and relaxed.

There is no evidence that Mr Hewson had, on any previous occasion, attempted suicide.

The events of 8 April 2004 – the siege commences

On the morning of 8 April 2004, Jamie Hewson was moving large cylindrical bales of hay from the paddock behind the farm house and stacking them near a barn. At some stage for reasons still unknown he placed two of them across a cattle grid that is on the road that passes the farm house, effectively blocking the road to all through traffic.

At about lunch time, a woman who kept house for one of the Hewson's neighbours came to the house to enquire about the bales being on the road. Mrs Hewson told her to talk to Jamie about it. He was under the house at the time. It seems she did this and Mr Hewson opened a gate that was beside the grid and let her through. A little later in the afternoon, Mrs Hewson noticed

that the bales had not been moved and she complained to Jamie about it and told him that she would ring his older brother Ashley and involve him if Jamie didn't rectify things.

Mrs Shirley McGill lives with her husband and extended family on a farm adjoining the Hewson property. Her husband has lived on the property all his life and grew up with Jamie Hewson's father. Mrs McGill has lived on the property for nearly fifty years and has known Jamie Hewson since he was a baby. There have never been any problems between the families and Mrs McGill says she always got on well with Jamie.

On Thursday 8 April 2004 at approximately 2:40pm, Mrs McGill was driving on Old Boonara Road from her property to Kilkivan. This took her through the Hewson farm. As she came to a cattle grid across the road she noticed two large cylindrical hay bails were blocking the grid. She went to drive around them by accessing the gate referred to earlier but then she noticed that, unusually, it had a large shiny padlock preventing it being opened.

The grid is on the road immediately adjacent to the Hewson's farm house which is set back some 100 to 150 metres from the road. She therefore decided to drive to the Hewson's house to see if they knew that the hay bails were blocking the road. She assumed that they had fallen from a truck.

The house is a highset wooden building with the underneath closed in with concrete block walls. On the road side of the house there is a door leading from the yard to the area under the house. Mrs McGill drove quite close to the house expecting to see Jamie's mother Norma come out as had happened on numerous previous occasions when she had gone to the Hewson home.

On this occasion however, she saw Jamie Hewson appear in a doorway on the ground level of the home. She said he had a rifle raised against his shoulder pointing at her. He said "*Get out of here Shirley.*" She said, "*What's up Jamie?*" He replied, "*Just get out of here Shirley*". Mrs McGill says Mr Hewson kept the gun pointed at her during this exchange. Understandably she was very scared and complied with his direction. She drove straight back to her home and went and found her husband in the cattle yards and told him what had happened. They went into their house and Mrs McGill rang the Kilkivan Police Station and told Sergeant Reeves of the incident. The officer told her to stay at her house and that he would go to the Hewson property and investigate. Mrs McGill sensibly rang others she knew to be living in the vicinity and told them of the situation and suggested they stay indoors.

Mrs Hewson says she woke from an afternoon nap as Mrs McGill was driving away from the farm. She says that she asked Jamie why he didn't wake her when Mrs McGill came but he was non responsive. None the less she says that there was still nothing unusual or alarming about her son's behaviour and a little later in the afternoon she walked the 300 - 400 metres down to their post box to check for mail.

As a result of being contacted by Mrs McGill, Sergeant Reeves interrogated various police electronic databases and established that Mr Hewson was the holder of a current weapons licence and had two .22 calibre rifles and one twelve gauge shotgun registered in his name.

Sergeant Reeves and Sergeant Lohmann then drove to the Hewson property. When they got to the cattle grid that was blocked by hay bails they had a clear view of the Hewson residence some 150 meters away from them. They could not see any movement at the residence. They activated the siren on the police vehicle to see if it would cause anyone to come out of the house. Sergeant Reeves was standing beside the police vehicle when he saw the silhouette of a male person standing in a doorway on the ground level of the residence. He says he yelled out, "*Jamie it's the police. Come on out. I just want to have a yarn with you.*" The male person said something in response but the officer could not understand it. Sergeant Reeves then yelled, "*Jamie come out where I can see you*". He says that the position the male was standing in concerned him as he appeared to be leaning against the door frame as someone might to steady himself while aiming a rifle. Sergeant Reeves started to walk back toward the police vehicle and the male person moved. The officer could then see that he was indeed holding a rifle to his shoulder and it was pointed directly at the officer.

Sergeant Reeves therefore quickly got back into the vehicle and they drove off to a safe distance where he used the police radio system to advise others of the situation.

They then returned to the Kilkivan Police Station to better plan their response. Whilst there Sergeant Reeves contacted the district officer and all available officers were mobilised to participate in the response.

Negotiators are utilized

The officer in charge of the Murgon Police Station in consultation with the Gympie District Officer decided the most appropriate next response was to use negotiators to try to secure the surrender of the armed man.

The District Officer, Inspector Burke, declared an emergency situation pursuant to the provisions of the *Public Safety Preservation Act*. He also contacted his regional assistant commissioner and the Special Emergency Response Team (SERT) in Brisbane were advised that their assistance may be required. An officer of that unit commenced preparing an intelligence profile of Mr Hewson.

A contingent of police from Kilkivan and surrounding stations set up two road blocks on Cinnabar Road, on each side of its intersection with Old Boonara Road. As this later road was thought to be a dead end, similar action was not able to be taken in relation to it. A forward command post was established in a farm house a kilometre or so from the Hewson's house.

Jamie's brother Ashley was asked to come to the Kilkivan police station and he provided the officers with information about the layout to the family home and landline and mobile telephone numbers for Jamie Hewson. Two officers then went with Ashley to observe what was happening at the property and to identify vantage points.

As they approached the farm they saw Mrs Hewson, Jamie's mother walking on the road toward the farm house. Police and Ashley tried to speak to her through a megaphone to persuade Mrs Hewson to come away from the property but she did not respond to their calls. She said in evidence that she had heard somebody calling but because of her poor eyesight and the distance she did not recognize them and went into her house.

At about 6pm, two police negotiators were brought to the property. They and the other police positioned themselves at the cattle grid using the large hay bales and the vehicle they drove there as cover. The female negotiator attempted to make contact with Mr Hewson by calling to him using a megaphone. Shortly after this Mr Hewson came to the doorway on the ground floor of the house. He appeared to be holding something and a shot was heard to ring out. A short time later second shot was heard. Mr Hewson was then seen to run from the house to a large shed just to the north of it. Soon after, a dog came up to the officers where they were positioned behind the hay bales and the four wheel drive. After the second shot, the female negotiator had crouched down to withdraw her firearm from its holster. She raised her head sufficiently to see in the direction of the house looking through the windows of the vehicle. Immediately she did so she saw the person we now know was Mr Hewson pop up out of the long grass. He had a firearm and it was pointed at the officers. She says he was about half way between them and the house. Mr Hewson was then heard to call, "*The next one will be right at you!*" The officers quickly left the area on foot. As they were retreating they heard two more shots. They left the four wheel drive they had arrived in at the cattle grid.

SERT is deployed

When the District Officer was advised that the negotiators and the officers with them had been fired upon he made a request that SERT be deployed. From this point on, the local general duty officers and detectives concentrated on merely trying to maintain road blocks on Cinnabar Road and on keeping a general watch on movement around the house while keeping themselves out of range.

At about 7 o'clock the Chief Superintendent approved a contingent of 18 SERT officers commencing travel to the scene and at 7.50 the Deputy Commissioner (Operations) gave the necessary formal approval for their deployment. As usual, officers with advanced para-medical training formed part of the team.

The SERT officers arrived at the Kilkivan Police Station at about 9.50pm and were briefed on the physical characteristics of the incident scene and what

had transpired since the incident commenced earlier that day. They were also given all of the information that had been gleaned about Jamie Hewson's personal circumstances.

At about 10.40 the SERT officers went the scene. They first established a new police forward command post closer to the Hewson home and undertook a reconnaissance of the area. In conformity with the QPS SERT Siege Management Plan the SERT commanders formulated a number of tactical priorities. These were the containment of Mr Hewson within an area that minimised the risk to the SERT operatives, the members of the public and Mr Hewsons; the development of an emergency action plan to get Mrs Hewson out of the house; the establishment of road blocks east and west of the house on Old Boonara Road; the ascertainment of the precise location of Mr Hewson and the negotiation of a peaceful resolution of the incident.

Throughout the night various reconnaissance activities were undertaken and when it was deemed appropriate officers were repositioned to provide a more effective cordon. Marksman/observers were positioned around the house at distances ranging from 150 to 300 metres depending upon the topography. Shots were heard on a number of occasions and later in the night it discovered that the four wheel drive left near the grid had been damaged by gunshot and other violence.

During this period, three negotiators continually tried to make contact with the house by telephone. It seemed to the callers that the phone was ringing but it was never answered. It was later ascertained that the telephone handset had been removed for the outlet although on one occasion it seemed to the caller that the phone was answered but the receiver did not speak and the phone was quickly hung up.

Further face to face negotiation attempts

From shortly before midnight, for the next three hours, no movement was observed and no noise emanated from the house. The SERT operatives used this time to cut the lock on the gate next to the grid and to position observers closer to the house. One officer, at considerable risk to his safety, crept to within 25 metres of the house to place a karaoke speaker.¹¹

A negotiator then attempted to engage Mr Hewson by calling to him via the remote speakers. When she was advised that the distance between the microphone and speakers was causing her voice to be distorted, the negotiator was brought closer so that when she recommenced speaking she was sheltering behind the hay bales and the four wheel drive at the cattle grid. Shortly after this began, Mrs Hewson came out of the house. She followed the instructions given by the officers who saw her and walked down the drive way to the cattle grid where she was met and driven away from the house.

¹¹ This is a speaker that amplifies sound broadcast from a remote microphone enabling the broadcaster to operate at up to 100 metres from the speaker without the need for any connecting wires.

After ensuring she was in need of no medical attention, attempts were made to extensively debrief Mrs Hewson as to what was happening in the house and the motivation of her son. Although she seemed reluctant to be entirely frank she gave a SERT intelligence officer significant information about strategically important aspects of what had and was occurring.

She told the officer that she did not believe that her son was suffering from any mental illness nor was he drunk or affected by prescription or illicit drugs. She confirmed that he had access to a number of firearms and three motor vehicles. She advised that he was antagonistic towards police and the authorities generally as a result of believing he had been unfairly treated in connection with the traffic prosecutions some months earlier. Mrs Hewson told the intelligence officer her son's daily routine was to leave the house at about 6.00am to feed the weaners held in some cattle yards situated further west long Old Boonara Road. He would then check the various windmills on the property. She also told the officer that Mr Hewson was asleep when she left the house but understandably the operational officers did not have sufficient faith in the accuracy of this report to enter the house. All of this information was broadcast over the SERT radio system to all SERT officers involved in the operation.

Mrs Hewson was taken back to the Kilkivan Police Station and her daughter-in-law came and collected her.

At approximately 4:25am more shots were fired from the residence and loud music was heard. Mr Hewson could be heard yelling from the residence and seen leaning out of the windows. Further shots were fired in the direction of the negotiators and SERT officers who then withdrew from their position near the front of the property as dawn was imminent and they feared they would be too exposed in the daylight. Some of the marksman/observers also drew back for the same reason.

At about 6:10am a commercial news helicopter was seen hovering over the house. Police later ascertained that shots were fired at the aircraft. It remained above the containment area for some 20 minutes. Its hovering above some of the marksman/observers lying in the field with little camouflage was such that they considered that their "*cover had been blown*" that is that the movement of the aircraft could have alerted Mr Hewson to the location of those officers putting them in greater danger. Attempts by senior officers to make contact with the managers of the TV channel concerned with a view to having the helicopter removed from the area met with limited co-operation.

At about 7.40am it was decided that a team consisting of SERT operatives 6, 7 and 8 would be deployed on the western perimeter of the containment area. That boundary to the incident site had until that stage been manned by local officers who went there overland on foot. After receiving assistance from locals that enabled vehicle access to that area without passing the front of the Hewson house, the SERT team secreted the blue four wheel drive they were using underneath the curtain-like foliage of a tree growing on the roadside,

about 50 to 100 metres west of the cattle yard referred to earlier. They were also about 200 metres west of a tyre deflation device that had been placed on Old Boonara Road closer to the Hewson residence. They reported they were in position at 9.30 am

At approximately 10:30am one of the SERT officers with line of sight to the Hewson house saw Mr Hewson enter a white utility and drive away from the house in a westerly direction along old Boonara Road. The information was broadcast to all SERT operatives.

The vehicle soon came within the sight of operatives 6, 7 and 8. They saw it drive up to a shed on the eastern side of the cattle yards and the driver alight. Their view was obscured by the cattle yards and the slope of the ground so that they could only see the top of the vehicle and the head of its driver as he moved about the shed. He was seen to load bales of hay into the back of the light truck.

The SERT operatives 6 and 7 advanced a short distance on foot to better observe Mr Hewson and assess whether he could be apprehended. They determined that the number of obstacles between them and him made a foot approach too difficult and the circuitous route they would need to drive ruled out a vehicular interception. A further complicating factor was that neither those officer nor others observing from an adjacent hill had a sufficiently clear view of Mr Hewson to see whether he was carrying a firearm.

Mr Hewson got back into his truck and drove out from the shed, and turned left onto or parallel to Old Boonara Road and began travelling in a westerly direction. With this, SERT operatives 6 and 7 re-entered their vehicle which was still under the tree, beside the road, about 50 to 60 metres from the western side of the cattle yards and observed Mr Hewson. They saw him drive only 20 or 30 metres along or next to old Boonara Road before he stopped and went around to the back of the vehicle, perhaps adjusting the load. When he then re-entered it, Mr Hewson reversed away from the position of the officers, that is in an easterly direction back towards his house. The SERT operative gave evidence that their instructions were not to attempt to intercept Mr Hewson if he remained within the inner cordon; he was to be left to go about his business provided he was not posing an immediate threat to anyone. They therefore merely kept him under observation at this time, although it is obvious that they were anticipating an intercept as the driver started the vehicle and instructed a colleague in the back to prepare a distraction device. After travelling in reverse for only a short distance, some 10 to 20 metres, Mr Hewson again drove forward in a westerly direction parallel to Old Boonara Road.

SERT operatives 6, 7 and 8, for various reasons came to the view that Mr Hewson was going to leave the area that had been delineated as the inner cordon and that he would also come into close contact with them.

SERT operative 6 therefore broadcast over the radio channel the operation was using that his team were going to attempt to intercept the vehicle. SERT

operative 6 then instructed SERT operative 8 who was the driver of the SERT four wheel drive to undertake the interception. It was their intention to bring their vehicle into collision with Mr Hewson's to disorientate him and make his apprehension easier.

The fatal shooting occurs

As they drove the 50 to 80 metres towards his vehicle, Mr Hewson stopped and alighted. When this happened, the driver of the SERT vehicle, operative 8 says he momentarily revised his plan to collide with Mr Hewson's truck as he thought they may be able to apprehend Mr Hewson with less violence when he was out of the vehicle. However, Mr Hewson immediately reached back into the cabin of his truck and withdrew a long arm which he then levelled at the approaching police vehicle. The officers vary in their estimations of how far they were from Mr Hewson when this happened from 40 metres to 20 metres but all say that it took only seconds for the gap to close and for their vehicle to strike his.

SERT operative 6 says as their vehicle approached Mr Hewson's he called loudly "Police" several times. The SERT vehicle was deliberately driven into the front left mudguard of Mr Hewson's truck. Just prior to impact operative 7 threw a distraction device or smoke grenade from the rear driver's side window towards the deceased's position. Neither the collision nor the device seemed to distract Mr Hewson. As a result of Mr Hewson continuing to point the firearm at them, SERT operative 7 in the back seat of the four wheel drive came to the conclusion that they were in immediate danger of sustaining life threatening injuries and he therefore fired a number of shots through the windscreen at Mr Hewson. He saw Mr Hewson spin and fall to the ground. He saw Mr Hewson maintain a grip on his firearm. Later examination of the vehicle showed that he had fired five times.

After the SERT vehicle came into contact with Mr Hewson's utility, SERT operatives 6 got out of the front passenger seat and swivelled to face Mr Hewson. SERT operative 6 says he observed Mr Hewson sitting on the ground pointing the weapon directly at him. SERT operative 6 says he believed that he was about to be shot and was in fear of his life and so he immediately shot at Mr Hewson. He says he thought the first few shots hit the ground in front of where Mr Hewson was sitting between his legs. He also thought he saw some of his bullets strike Mr Hewson in the lower body. SERT operative 6 was not sure how many shots were fired by him. Examination of his weapon and the shells recovered at the scene, suggest he fired 7 times. SERT operative 6 saw Mr Hewson fall into a prone position; he rushed up and kicked the rifle away from Mr Hewson's hand. He then went to handcuff Mr Hewson but quickly realised he was too badly injured to remain a threat and so desisted.

Advice of the shooting was conveyed over the police radio and a number of SERT operatives with advanced first aid training quickly attended. The shooting seems to have occurred at 10.38am.

At 10.40am the QAS ambulance and crew who were at the forward command post were advised that they were needed at the scene of the shooting. They arrived there at 10.43 and immediately took over the emergency first aid from the SERT operatives. It was apparent that Mr Hewson was still alive but very seriously wounded. The para-medics worked on him, attempting to stabilise him to be helicopter evacuation. The EnegeX helicopter arrived at 11.44am but by that stage it was clear that Mr Hewson was not going to survive. He died soon after.

The investigation commences

Senior police were immediately advised of the outcome of the engagement and the area was secured as a crime scene. All SERT equipment was left *in situ* and the officers taken back to Kilkivan and then Gympie. Homicide Investigation Group detectives quickly attended and commenced investigating at around 3.10pm. A video taped walk through re-enactment was undertaken with the two shooters later that day. The rest of the investigation outlined earlier in these reasons then proceeded.

The autopsy examination

An autopsy was conducted by an experienced forensic pathologist, Dr Guy Lampe on 10 April 2004 at the John Tong Centre Brisbane. He found two major bullet wounds to Mr Hewson's body. One projectile had entered Mr Hewson's left temple and travelled through his head and part of his brain in a slightly downward and slightly left to right trajectory. It caused extensive subarachnoid haemorrhage. The path of the wound enabled Dr Lampe to say that Mr Hewson must have been facing almost square on to the shooter when he was wounded. He also said that while it was a very serious wound that would almost certainly lead to death, that outcome would not have been instantaneous as the crucial and deep structures of the brain had not been damaged and that it was therefore quite conceivable that even after suffering that injury, Mr Hewson may still have been able to take purposive action. The other injury site was the thighs and pelvis. Numerous minor wounds were found on the anterior side of both thighs and the buttocks, many had fragments of projectile embedded in them. One in particular involved a larger fragment of such a projectile that was damaged and irregular in shape. It had entered the body via the upper anterior thigh, had struck a bone in the pelvis and then deflected up through the organs of the abdomen, causing tearing and puncture wounds to various arteries, veins and organs. It resulted in considerable loss of blood. These findings led Dr Lampe to suggest that cause of death was gunshot wounds to the head and pelvis. Analysis of blood taken from Mr Hewson's body showed no alcohol, therapeutic levels of morphine, a remanent no doubt for the morphine administered by the ambulance officers, and metabolites of tetrahydrocannabinol indicative of not recent cannabis use.

No pigment residue around any of the wounds suggesting that the weapons had been fired from a distance greater than one meter.

Ballistics investigations

A ballistics expert established that the projectile in Mr Hewson's head was likely to have been fired from the machine gun issued to SERT operative 7. A projectile fragment located in his pelvis was likely to have been fired by the machine gun issued to SERT operative 6. Two rifles were found in the Hewson home. Both were capable of firing the ammunition found there and had been used to fire the numerous spent cartridge cases found in and around the home. The shotgun found at the scene of the shooting was also examined. It was found to be operable although it malfunctioned on numerous occasions during testing. One of the defects resulted in the firing pin striking the shell primer with insufficient force to discharge the shell. An undischarged shell found in the gun at the scene of the shooting showed markings suggesting that may have happened to that shell.

Findings required by s45

I am required to find, as far as is possible, who the deceased was, when and where he died, what caused the death and how he came by his death. I have already dealt with this last issue, the manner and circumstances of the death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses I am able to make the following findings in relation to the other aspects of the death.

- Identity of the deceased** – The deceased person was Jamie Hewson
- Place of death** – He died at Springdale Farm, 47 Old Boonara Road, Cinnabar, near Kilkivan, Queensland
- Date of death** – Mr Hewson died on 9 April 2004
- Cause of death** – He died from gunshot wounds to the head and pelvis.

Referral for criminal charges

In so far as is relevant to this matter, s48 provides that if information obtained by a coroner while investigating a death leads him/her to reasonably suspect that a person has committed an offence, the coroner must give the information to the director of public prosecutions. In this case it is appropriate to consider whether such a referral should be made in relation to an offence of unlawful killing.

Section 291 of the Criminal Code provides that it is unlawful to kill another person unless that killing is authorised, justified or excused by law.

Section 300 Criminal Code states that *“any person who unlawfully kills another person is guilty of a crime, which is called murder, or manslaughter, according to the circumstances of the case.”*

There are various definitions of murder provided by s.302 of the Code. Most relevant to this case, s.302(1) provides that a person who unlawfully kills another person with the intention of causing the death or doing grievous bodily harm is guilty of the crime of murder.

In this case there is an abundance of evidence indicating that Jamie Hewson was killed by SERT operatives 6 and 7 acting in concert. There is also compelling evidence that those officers intended to either to kill him or to do some grievous bodily harm to Mr Hewson. The evidence of the officers concerned is that they intentionally shot the deceased intending to incapacitate him. Further, the necessary intention can be inferred from other evidence on the basis that a person is held to have intended the natural and likely consequences of his/her act.

Therefore, the only issue to be further considered is whether the killing was authorised, justified or excused by law. If it was, that is the end of the matter. If not, I must refer the material gathered during the investigation and inquest to the Director of Public Prosecutions to enable her to consider whether an indictment should be presented.

There are two statutory provisions relevant to that issue in this case, namely s271 and s283 of the *Criminal Code*.

Section 271, short-titled "*Self-defence against unprovoked assault*," provides that if a person is assaulted in such a way as to cause reasonable apprehension of death or grievous bodily harm, and the person reasonably believes that he can not otherwise protect himself from that, it is lawful for the person to use such force as is necessary for his defence even though that force may cause death or grievous boldly harm. So far as is relevant to this case, "assault" is defined in s245 to include not only the application of force but also the threatened application of force in circumstances where the person making the threat has an actual or apparent ability to carry out the threat.

It is also important to note that s283, short-titled "*Excessive force*", provides that "*(i)n any case in which the use of force by one person to another is lawful the use of more force than is justified by law under the circumstances is unlawful.*"

I will now attempt to apply that law to the facts of this case.

SERT operatives 6, 7 and 8 say that when they attempted to apprehend Mr Hewson as they were lawfully entitled to do, he pointed a shot gun directly at them. In view of his conduct over the preceding 16 hours they say that they concluded that he was intending to apply force to them that was likely to cause their death or grievous bodily harm and that he had the immediate capacity to do so. They say further that they believed that they could not protect themselves other than by shooting Mr Hewson as Operatives 6 and 7 then did.

If each of these beliefs were held on reasonable grounds the officers are protected by s271 of the Code. I believe that the evidence establishes this to be the case and consider the Crown could not discharge its onus to disprove it if the matter came to trial. I will not repeat all of the evidence summarised above. However I accept that the officers were, right up until the time that Mr Hewson pointed the shotgun at then attempting to resolve the incident by the use of less lethal force and that if at anytime up until he was shot Mr Hewson had put down his weapon it is likely that he would not have been killed.

Police officers are not above the law. They are equally liable to be prosecuted as any other citizen if the evidence is sufficient. On the other hand, police officers are also entitled to the protection of the law, in this case that afforded by the self-defence provisions. When one has regard to how the SERT operatives 6, 7 and 8 came to be in the position they found themselves in on the morning of 9 April 2004, no fair minded person could have any concerns about that. Accordingly, I find that there is no reasonable basis to suspect any person of a criminal offence in connection with Mr Hewson's sad death.

Concerns, comments and recommendations

Section 46, in so far as is it relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety or ways to prevent deaths from happening in similar circumstances in the future. I consider there are three issues that warrant comment from that perspective in this case; the attempted negotiation, the overflying of the scene by a news helicopter and aspects of the performance of the SERT operatives.

Negotiation

As a result of reading the material tendered by the QPS and hearing evidence from Senior Sergeant Ringuet, I am persuaded that the QPS has a sophisticated negotiation capacity led by the State Negotiator Co-ordinator, an officer who has been qualified and practising negotiations since 1988.

He gave evidence that since 2000, his officers have been involved in nearly 1000 negotiations and in only three has a death occurred. The accredited negotiators who undertake these activities adhere to research based national guidelines. An aspect of these guidelines concerns the use of third person interventions – most often a relative of the subject of the negotiations. The tactic is fraught. Senior Sergeant Ringuet says that although it may be contra intuitive, family members have a significant potential to escalate distress in the subject with negative consequences.

Senior Sergeant Ringuet and three other negotiators were involved in attempting to negotiate with Mr Hewson. In common with the two other matters in which death was not able to be avoided, despite making numerous and repeated attempts to negotiate face to face and by telephone at no stage were the negotiators able to engage Mr Hewson in conversation.

Mr Ashley Hewson stayed at the forward command throughout the evening. At dawn it was decided that he could be of no further assistance and so he

was advised to go home. Through counsel assisting, Mr Ashley Hewson queried why he was not allowed to approach the house in an attempt to reason with his brother. He believes that Jamie would not have harmed him. While I can appreciate why Ashley wishes he could have been given such an opportunity, I note that he acknowledges that his brother was acting completely out of character. I accept that the experienced negotiators were best placed to consider how Ashley may have contributed to the negotiation attempts. I also accept that the police officers involved could not have taken the risk of allowing Ashley to approach the house.

Control of air space

The *Public Safety Preservation Act* authorises a commissioned officer of the QPS to declare an emergency situation to facilitate protection of the public and or the environment when an emergency poses a threat of death or serious injury, property damage or damage to the environment. Such a declaration provides police dealing with the emergency with additional powers to direct, evacuate and exclude people from the area to which it relates. It also enables the officers to take control of any resources in the area to assist their response.

An emergency situation was declared in this case on the evening of 8 April. Its operation extended for 5 kms from the Hewson farm house. It enabled police to insist on neighbours evacuating their houses, to use some of those properties for command posts and holding positions and to commandeer vehicles for transporting officers. It may well be that the occupiers or owners of those properties and vehicles would have complied with police requests for such assistance but in any event it is obviously preferable that these things do not depend upon the vagaries of human nature and that police can be sure that they can exercise the control of the situation that they might reasonably need.

An example of the folly of relying on people acting responsibly was demonstrated by the media helicopter that hovered low over the area for an extended period from soon after dawn on the day of the shooting. As detailed earlier in these findings, that action not only placed at risk the occupants of the aircraft but it also had the potential to compromise the operation and the safety of individual officers by disclosing their secreted positions. A number of those managing the operation report having contacted the news organisation in question in an effort to have the helicopter removed. They were unsuccessful. When a senior commissioned officer in Brisbane became aware of the situation he was quickly able to have Air Services Australia declare the air space above the incident site a restricted area pursuant to the Air Services Regulations which made it an offence for any aircraft to fly over the site at less than 1000 metres.

In hindsight, such an order should have been sought when the emergency situation was declared. These orders are referred to in the Operations Procedures Manual at paragraph 17.3.2 *Major transport incidents* but are not

mentioned in the ready reference cards dealing with incident command and control.

Recommendation 1. Air space closure orders

I recommend that the QPS review the information provided to incident commanders to ensure it gives sufficient prominence to the need to seek air exclusion or restriction orders for air Services Australia in appropriate cases.

SERT siege management performance

After the initial local response by uniformed officers and negotiators failed to resolve the situation, the police response to this incident was undertaken in accordance with the SERT Siege Management Strategy (the SMS), an operational policy that outlines a response template for SERT deployments incorporating roles, responsibilities, tasks, a command structure and tactical planning arrangements and protocols.

The SMS advises officers that phases of the QPS policy to respond to siege incidents can be summarised as isolate, contain, evacuate, negotiate, resolve, investigate, report and evaluate.

I have already commented on the attempts to negotiate an end to this situation and the investigation of it. I have also found that the resolution of it was lawful.

The other aspects that warrant some comment are the isolation and containment activities and the evaluation of the operation.

The SMS advises officers that the isolation and containment of the subject are the key to being able to safely manage the incident. He/she must be isolated from victims and resources that add to his/her capacity to commit further acts of violence. It is also necessary to physically contain an incident to the minimal area possible to further reduce the subject's ability to impact upon the surrounding community.

It is essential that an inner cordon is established to "*contain the (subject) in a prescribed area by the strategic placement of members or resources to prevent or limit his movement.*"

The SMS recognises that when containing the subject there is the potential for a confrontation with police if the subject seeks to leave the inner cordon. However it advises officers that their objective is to contain the subject with a covert presence wherever possible and cautions that "*(a) confrontation should only occur when an offender attempts to breach the inner cordon or tries to leave the stronghold and when called upon by police to stop he/she refuses to comply.*"¹²

Further in recognition of the potential danger that can result from the subject leaving the inner cordon in a vehicle the SMS instructs that SERT officers are

¹² SMS p3

to ensure that any vehicle leaving a stronghold is intercepted prior to leaving the inner cordon.

The application of these instructions in this case was undoubtedly very challenging. The SERT contingent arrived after dark, the incident site was unlit and unfolding in reasonably rugged terrain that the subject knew well. The stronghold was isolated and had a commanding view over its surrounds. The subject was heavily armed and had shown a propensity to use those weapons. He was refusing to negotiate.

On the other hand, the officers had access to two relatives who had an equally good knowledge of the location and could provide information about the subject's usual movements. Further, although the subject had fired numerous shots in the direction of the officers he had not done violence to individuals when he had the opportunity. It seems the first person to confront the barricade the subject had erected was simply let around it, the second was told to go away, albeit while having a gun pointed at her and the third, his mother, was allowed to leave. It is noteworthy that while many shots were fired, no witnesses say they came close to being hit. For example, on a number of occasions, officers were sheltering behind the hay bales and the motor vehicle at the grid in front of the house. None of those officers report bullets striking these objects. That is unlikely to have been the result of poor marksmanship. There is little doubt that had Mr Hewson wanted to leave the area on foot he could have easily done so during the night. There was no suggestion that he was intent on escaping into the community and causing mayhem or taking hostages. All of the evidence was to the contrary.

However, I readily accept that Mr Hewson was acting in a very dangerous way that demanded a strong police response.

SERT operative 6 gave evidence that he selected the location in which they concealed themselves and that then became the western boundary of the inner cordon. He and other SERT operatives explained that it was necessary to make tactical decisions about where to delineate the inner cordon by having regard to the activity of the subject, the topography of the area in which he was and the capacity of other officers to support them and provide urgent assistance if that became necessary and for his team to go to the aid of the other teams in a similar situation. Operative 6 says that these operational reasons and the topography which provided no other suitable cover for approximately another 400 – 500 metres further west along Old Boonara Road, made the location he chose the best available. I defer to his judgment and experience in relation to that.

However, it led to some lack of clarity in how the matter was to be managed. SERT operative 2 said that he instructed those in the field that if the subject went about the property tending to the farming duties they had been told were part of his usual routine, he was not to be intercepted. That was only to happen if "*he's leaving the property.*" That instruction was inconsistent with the placement of operatives 6, 7 and 8 so close to the cattle yards. There were some unpersuasive attempts to suggest that because the time when Mr

Hewson usually fed the cattle had passed, that was no longer in contemplation. The SERT operatives knew he had not fed the cattle and when he went to hay shed and loaded bales on the back of his truck an obvious inference was he was attending to that task.

I accept also however, that because of their position the officers may then have had little choice but to intercept Mr Hewson. I accept that if he had seen them and was deliberately driving in their direction intending on a confrontation their actions increased the chances of the situation being resolved with the minimum of injury or death. It may be that had they remained under cover of the tree Mr Hewson may not have seen them and may have continued with his farming activities. No one can be sufficiently sure and in the circumstances the operatives should not be criticised for not taking that chance. And, as I have already said, when the interception was executed, the force used was necessary and lawful.

I do however have some concerns about how the decision to intercept was taken. The evidence summarised above indicates that after reversing for a short distance, Mr Hewson drove forward for about the same distance before it was decided to intercept him. That distance was variously estimated to be between 10 and 30 metres and took place at a point between 80 and 120 metres from the western boundary of the inner cordon where Operatives 6, 7 and 8 were secreted. Operatives 6 and 7 say it was “the manner” of this driving that enabled them to deduce that Mr Hewson was intending to leave the inner cordon. Operative 8 says he wasn’t interested in Mr Hewson’s intentions, nor whether he was feeding the cows: he was just concentrating on containing him. He claims that he could tell that Mr Hewson had seen the SERT vehicle that he had already started and so, as soon as Mr Hewson moved in a westerly direction, he was anticipating the order to intercept. The decision was, according to those involved in the intercept, not discussed among them. Operative 8 said he didn’t even need to think about it, so highly trained and experienced were he and his team members. A number of the officers gave evidence about the extent of their training and their technical capabilities which I am sure are considerable.

As mentioned previously the SMS says that the final phase of the strategy is evaluation. I could find no guidance in the policy as to how that was to be done although SERT operative 2 says he undertook it. He also says that he didn’t know where the boundary to the property was when he was giving orders that Mr Hewson not be intercepted if he remained within it nor after he had purported to have evaluated the operation. He also hadn’t discovered whether Mr Hewson drove on the road from the house to the point of interception and gave as the reason for the intercept the imminent discovery of the officers by Mr Hewson. He seemed very ready to uncritically accept that all that was done was done as best as could be. I saw no evidence of critical reflection.

Undoubtedly the QPS needs a SERT like capability but it also needs to recognise the dangers of allowing to develop within such a unit a perception that the actions of its members are not able to be externally critiqued. Many of

those who gave evidence were of low rank but had been in the SERT unit for many years. On occasions, during this inquest the supercilious self confidence of some members bordered on over confidence or even arrogance. It is easy to conceive of such attitudes resulting in a lack of attention to the human characteristics of those they interact with leading to unnecessarily violent responses. I don't imagine these comments will resonate with the officers whose conduct they describe. I would hope that the commissioned officers with responsibility for the unit who have had far broader police experience consider them constructive as they are intended.

This inquest has, as far as possible, established what happened: unfortunately, it has not been able to resolve the bigger question, why did it happen? However, I hope it has provided some of the answers the family of Mr Hewson have been seeking. They undoubtedly suffered greatly as a result of the incidents described here in and they have my sincere condolences.

I am advised that the family have decided that they do not want Mr Hewson's guns returned to them and accordingly I order that Senior Sergeant Hickey cause them to be delivered to the appropriate officer within the QPS for destruction.

This inquest is closed.

Michael Barnes
State Coroner
Brisbane
8 June 2006