



OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: **Inquest into the death of Alan Kent DYER**

TITLE OF COURT: Coroner's Court

JURISDICTION: Southport

FILE NO(s): COR 3053/08(3)

DELIVERED ON: 29 September 2010

DELIVERED AT: Southport

HEARING DATE(s): 27 August 2010; 27 – 29 September 2010

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police shooting, self defence, mental illness, Tasers

REPRESENTATION:

Counsel Assisting:	Ms Julie Sharp
Senior Constable Mark Woitowitz Constable Matthew Damaro:	Mr Adrian Braithwaite (Gilshenan & Luton Legal Practice)
QPS Commissioner:	Mr Greg Obst (QPS Solicitors Office)

Table of Contents

Introduction	1
The investigation	1
The inquest	3
The evidence	3
Family and social background	3
Medical history	4
The day of the shooting	5
The shooting.....	7
The aftermath	10
Investigation results.....	10
Conclusion as to “how” the death occurred	10
Findings required by s45	11
Identity of the deceased.....	11
How he died.....	11
Place of death.....	12
Date of death	12
Cause of death	12
Referral to DPP pursuant to s48	12
Concerns, comments and recommendations	14
Tasers	14
Responding to mental illness.....	15
Incident management.....	15
Recommendation 1 – Incident management training.....	16

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 organisations granted leave to appear at the inquest and to various officials with responsibility for the justice system. These are my findings in relation to the death of Alan Kent Dyer. They will be distributed in accordance with the requirements of the Act and posted on the website of the Office of the State Coroner.

Introduction

On 31 May 2008, Alan Dyer's former partner called 000 to report he had set a fire inside the house they still shared in Pacific Pines.

Shortly after police arrived, Mr Dyer emerged from the front door brandishing a large knife, shouting threats to kill. He moved quickly towards the two officers who were standing in the front yard. The officers retreated down an embankment in front of the house but one of them tripped and fell. Mr Dyer continued to approach and the other officer drew his service weapon and shot Mr Dyer once in the stomach.

He died at the scene.

These findings confirm the identity of the dead man; explain how the death occurred, establish the time and place of the death and its cause. The findings also consider –

- whether the police officers involved acted in accordance with the Queensland Police Service (QPS) policies and procedures then in force;
- whether the death could have been prevented or the likelihood of other reduced by changes to police policies or procedures; and
- whether the conduct of the officer who shot Mr Dyer should be referred to the DPP pursuant to s48 of the Act for determination of whether a criminal charge should be preferred.

The investigation

As can be readily appreciated, whenever a death is connected with police action it is essential the matter be thoroughly investigated to allay any suspicions that inappropriate action by the officers may have contributed to the death. The family and friends of the deceased person are entitled to expect a thorough investigation and an account of how the death occurred. It is also desirable that the general public be fully apprised of the circumstances of the death so they can be assured the actions of the officers has been appropriately scrutinised. The police officers involved also have a right to have an independent assessment made of their actions so there can in future be no suggestion there has been any "cover up" of inappropriate action.

The investigation of this matter was conducted by the QPS Ethical Standards Command and a detailed report was prepared by Inspector C D Byram. A team of senior investigators were assigned to the task which was overviewed

by a Superintendent from Internal Investigations. Police officers from Brisbane and the Gold Coast, including specialist forensic officers assisted in the investigation.

The scene of the shooting in Elkin Street, Pacific Pines was treated as a crime scene and a log of events kept throughout the ensuing hours. Senior police officers, the Crime and Misconduct Commission, the Ethical Standards Command were notified of the incident within the hour. I was notified and attended at the scene where police re-enacted the incident.

Prior to that other police officers had responded to the report of a shot having been fired and Senior Sergeant Goldsworthy arrived to take control of the scene at 7.19pm. He took possession of Constable Damro's and Senior Constable Woitowitz's weapons and both officers were breath tested. Urine samples taken later showed that neither officer had consumed drugs or alcohol. The officers were isolated from the crime scene and separated prior to them participating in formal records of interview.

Door knocks of the local area were conducted immediately and the scientific and forensic officers attended the scene. A detailed forensic examination of the house and the front yard was then conducted. An extensive set of photographs of the scene and all potential points of interest were taken on the evening and the following morning and an interactive DVD was prepared to allow the scene to be viewed from a variety of angles both in motion and static.

ESC investigators conducted extensive interviews and video re-enactments with both of the officers involved. Records of interview or statements were obtained from the police officers, civilian witnesses who saw and heard aspects of the incident, persons who had been in recent contact with Mr Dyer, and members of Mr Dyer's family.

A QPS ballistics expert examined Constable Damro's service weapon and determined that one bullet had been fired from the pistol which was found to be in good working order. Biological examinations revealed that blood found on the couch in the lounge room (next to where the sheath of the knife was located) and inside the front door was Mr Dyer's.

Hospital records were obtained from the Gold Coast Hospital where Mr Dyer had previously been treated for depression. He had attempted suicide in 2003 and those records are included. A statement was also taken from Dr Rupnarain of the Labrador Medical Centre. Mr Dyer regularly attended that practice in connection with his depression.

An autopsy examination was conducted by an experienced pathologist, Dr Olumbe, during which blood and urine samples were taken from the deceased and subsequently analysed.

I am satisfied that this matter has been thoroughly and professionally investigated and that all relevant sources of information have been accessed

and analysed. I thank Inspector Byram for his considerable efforts in compiling the detailed report and well set out brief of evidence. I also acknowledge the assistance of Mr Obst of the QPS legal services unit in obtaining further material in advance of the hearing.

The inquest

A pre-hearing conference was held in Brisbane on 27 August 2010. Ms Sharp was appointed Counsel Assisting. Leave to appear was granted to the representatives for the police officers and the Commissioner of the QPS.

The inquest proceeded over three days commencing on 27 September 2010. Sixteen witnesses gave oral evidence and 109 exhibits were tendered.

I take this opportunity to express my condolences to Mr Dyer's family and friends. In particular his daughter Silka who was obviously dearly loved by her father, whose affection she returned. He is obviously also sadly missed by his siblings, one of whom helpfully provided a more positive picture of his life than was till that point before the court.

The evidence

I now turn to the evidence. Of course I cannot 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.

Family and social background

Mr Dyer was born in New Zealand. He was the eldest of three children and according to his sister, Tracey, had a happy childhood.

When Mr Dyer was in his early 20s, he attempted suicide by overdose. He had apparently become entangled with a crowd of drug users and during that period he was scared and depressed.

Mr Dyer became interested in selling Herbalife products and he was ultimately chosen to establish a distributorship in Italy. That business was a successful and Mr Dyer worked his way to the upper echelons of the company. Mr Dyer met Jolanta Kuzak through his work in Europe and the couple had a daughter, Silka, in 1991. When Silka was 4 years old the family moved to Australia.

Ms Kuzak describes a tumultuous relationship with Mr Dyer who it seems developed a problem with alcohol and cannabis during their time in Europe. There were periods of separation on account of those problems and Mr Dyer again attempted suicide in 2001. Ultimately the couple acrimoniously divorced in 2005.

He maintained a close and loving relationship with his daughter; they met regularly and she told the inquest they spoke on the telephone every other day. Mr Dyer called her shortly before his death.

In 2004 or 2005, Mr Dyer commenced a relationship with Chantal Rodriguez which was also quite volatile. From the accounts of a number of Mr Dyer's friends, I have formed the view that she was a demanding and manipulative woman. They separated for a short period at the beginning of 2008 but recommenced cohabiting shortly before Mr Dyer's death. In the days preceding his death that relationship had again deteriorated and Ms Rodriguez was seeing another man, although she and Mr Dyer continued living together at 19 Elkin Street. Also living at the house was Ms Rodriguez's daughter Crystal Sheppard, and her boyfriend, Julian Willie.

Medical history

Mr Dyer had a history of depression that resulted in two suicide attempts. After Mr Dyer attempted to drown himself in the ocean in February 2003 he was diagnosed with suffering from a major depressive disorder.

Mr Dyer had regular contact with general practitioners at the Labrador Park Medical Centre. Dr Rupnarain of that practice gave evidence in the proceedings and confirmed that Mr Dyer was referred to the Gold Coast Mental Health service by his colleague Dr Indrajit on 15 March 2006. The letter of referral notes that Mr Dyer was suffering depression, was under a lot of stress, and was having suicidal thoughts.

Gold Coast Mental Health records show that Mr Dyer engaged with that service on a regular basis throughout March and April 2006. There were regular home and telephone attendances during that period in which Mr Dyer disclosed suicidal ideations but the desire to resist them. He had insight into his illness and was grateful for the support of the service. Mr Dyer was referred to counselling services and was medicated on Prozac.

Dr Rupnarain first had contact with Mr Dyer on 15 December 2006. He was depressed about his divorce and lack of contact with his daughter and had been having thoughts of suicide. Mr Dyer reported that he was already in consultation with the Gold Coast Mental Health Unit, although the records do not show contact since April 2006. Dr Rupnarain changed Mr Dyer's medication to Luvox since it did not appear that the Prozac was dealing effectively with the illness.

On 27 March 2007, Mr Dyer was again referred to counselling although there is no evidence that he engaged in that process. Dr Indrajit referred Mr Dyer to a psychologist on 27 March 2007. Again, there is no evidence that Mr Dyer followed-up that referral.

Mr Dyer's last contact with the medical centre was on 17 January 2008 when he was given a prescription for Luvox. Dr Rupnarain's evidence was that Mr Dyer's supply of that medication would have depleted after 30 days. Since there is no evidence that Mr Dyer had obtained a script from elsewhere, it is

likely that he was not medicated for some months prior to his death on 31 May 2008.

The day of the shooting

On Saturday 31 May 2008, Mr Dyer left the house at about 9.45am telling Ms Rodriguez he was going to work. Instead, he went to the house of his close friend Laurie Henderson. By the time he arrived there at about 10.00am, Ms Rodriguez had already called Mr Henderson and been abusive and threatening about Mr Dyer.

Mr Henderson said that his friend seemed happy and they sat out the back chatting and drinking scotch and coke as they did regularly on a Saturday. When Mr Henderson told Mr Dyer of his conversation with Ms Rodriguez, Mr Dyer laughed it off, appearing unfazed. During the morning, Mr Dyer telephoned a woman from whom he'd rented a room when he and Ms Rodriguez had separated previously. He told her he wanted to move back in and they came to an arrangement about that.

Mr Dyer left Mr Henderson's house about 1.00pm. It is not clear where he went then but his former landlady says he dropped some packing cartons to her house, in her absence, at some stage during the afternoon.

It has been established that between 2.00 and 3.30pm, Mr Dyer went to the Pacific Pines Tavern to socialise with Crystal Sheppard and Julian Willie. Ms Sheppard thought they met at 3.30pm and Mr Willie thought it was closer to 2.00pm

While at the Tavern Mr Dyer consumed a vodka drink and four or five large glasses of VB. There was domestic unrest with Ms Rodriguez calling Mr Willie's phone and asking to speak with Mr Dyer. Using numerous profanities, she told Mr Kent she wanted him to move out. She also sent a text message reiterating the demand. Mr Willie said that Mr Dyer brushed off the animosity saying words to the effect of "*Come on, we're at the pub, the sun is out, let's enjoy a nice day together.*"

Ms Sheppard recalls that by the end of the session Mr Dyer was "*pretty drunk*". She said that Mr Dyer told her that he was "*over everything*" and that he was sorry that he was not going to be here to see her baby (she had recently discovered she was pregnant). Mr Dyer told Ms Sheppard that he loved her like a daughter but that he was not going to be here much longer. It seems that while he was portraying a lack of concern about the situation with Ms Rodriguez, he was becoming melancholy.

Despite his intoxication Mr Dyer attempted to drive home from the hotel when they left at about 5.30pm. However, after travelling a short distance he damaged his vehicle when he sped over a speed bump. He then got into Mr Willie's car which Ms Sheppard was driving and the three together went back to the Elkin Street premises.

They found Ms Rodriguez in the tv room at the front of the house, to the left of the main entrance. Upon entering, she immediately began badgering Mr Dyer. The other two say he did not respond but simply sat on a two seater couch in that room. Ms Rodriguez soon left the room and went upstairs. Ms Sheppard and Mr Willie soon followed, as they were preparing to go out for dinner. However, before doing so they accompanied Mr Dyer outside while he smoked a marijuana cigarette and Mr Willie smoked tobacco. Mr Willie says that after this Mr Dyer resumed his seat in the tv room and seemed calm and accepting of the breakdown of his relationship with Ms Rodriguez. Ms Sheppard thought he just seemed “stoned”.

It seems Ms Rodriguez may have been moving around the house because she claims that at one stage Mr Dyer said to her repeatedly, “*You will lose everything tonight, you’ll have nothing.*” The other two did not hear this and I found Ms Rodriguez to be an unconvincing and unreliable witness so I have doubts about the accuracy of this claim.

What is clear is that the three occupants of the house other than Mr Dyer were upstairs when they heard a smoke detector alarm. As they rushed down stairs to investigate they variously smelt smoke and observed the glow of flames. They found that Mr Dyer had lit newspaper in and around a built in wardrobe in the tv room. They quickly extinguished the fire and the photographs later taken by police show it had done little or no damage. Understandably, however, it shocked and distressed the other occupants of the house.

Mr Willie recalls Mr Dyer sitting in the lounge chair emotionless. He asked him why he had started the fire. Mr Dyer’s only response was “*It’s over*”.

The two women were rushing around the house in a distressed state. Ms Rodriguez was apparently concerned that her caged birds might be affected by the smoke. She told Mr Dyer she had called the police.

Soon after this Mr Dyer became agitated. He retrieved a large ornamental knife or dagger from a cupboard in the tv room and sat on the couch slumped backwards with the knife against his stomach. He asked Mr Willie to roll him a cigarette. Mr Willie asked Mr Dyer go outside to smoke the cigarette but he refused again saying “*It’s over, it’s over.*” Mr Willie says that Mr Dyer also said that if police came he would stab them, or words to that effect.

In an effort to defuse the situation Mr Willie asked Mr Dyer what he thought his daughter, Silka, would think of his behaviour. It did not have the desired effect. Rather, Mr Dyer pounded the glass coffee table with the butt of the knife, causing it to break. Mr Dyer then started brandishing the knife in dangerous slashing motions clearly intended to frighten the other occupants of the house. It did that and more, as one flourish struck Mr Willie’s arm causing a minor laceration. Ms Sheppard may also have suffered a minor abrasion. Mr Dyer was yelling “*Get out!*” repeatedly. Sensibly, they did. Mr Dyer chased them out the front door and slammed and locked it behind them.

Ms Rodriguez' 000 call was logged at 6:03pm. In it she told the operator that her flat mate had set fire to the house or at least a wardrobe and is trying to set more fires. She also reports the arsonist has mental health problems and that she has suffered minor injuries extinguishing the fire. The 000 operator passes on this information to the Queensland Fire Service (QFS), the Queensland Ambulance Service (QAS) and Nerang Police Beat. All three services detail crews to respond. All crews are given much the same information.

After being chased out of the house, Ms Rodriguez, Ms Sheppard and Mr Willie clustered on the driveway near the front door. One neighbour reports hearing a woman demanding to be allowed in; others heard screaming and went outside to investigate. As a result there were numerous witnesses to what next unfolded. Understandably, their accounts vary in some respects. Notwithstanding that, they enable me to describe what transpired with some confidence.

The residents of 21 Elkins Street included Stephen Karekare and Matiu Irwin who gave evidence in the inquest. They heard Mr Willie calling out for help saying that the man in the house was threatening to kill him and the two females. He also told them the man was armed with a knife. The victims were told to come over to number 21 which they did. They and a number of the occupants then stood around on the driveway of that premises waiting for the emergency services to arrive.

Other neighbours heard the commotion and describe a female screaming calls for help as well as statements to the effect that the man inside the house was crazy and was attacking and threatening the occupants. Mr Pratt at number 22 heard references to a knife.

It seems after he had chased the others from the house, Mr Dyer called his daughter Silka, told her how proud he was of her and how much he loved her. He repeated these sentiments and told her to remember them.

The shooting

A fire truck under the command of Shane Cody was logged arriving at the scene at 18:18:06. They approached the people outside number 21 and were told the fire was next door at number 19. Mr Cody walked towards that residence but just as he reached the door he was told the man inside has a knife. Mr Cody believes he was told this by a woman matching the description of Ms Rodriguez.

Senior Constable Mark Voitowitz and Constable Matthew Damro were detailed the job while on a meal break at the Nerang Police Beat. They had trouble locating the address but when in the vicinity, they came across Mr Cody's fire truck and followed it to Elkin Street. The police communications system records them booking off the air at that address shortly after 18:17.¹

¹ As usual, the clocks used by the various services are not synchronised and so can not be used for accurate cross referencing. They do however enable the time between events to be measured.

On arrival the officers were approached by Mr Willie, Ms Sheppard and possibly Ms Rodriguez. They told Constable Damro that Mr Dyer was armed with a knife and that he had threatened to stab or kill police if they attended. The officers say it was they who told the QFS officer, who were at that point approaching the front door of number 19, to pull back.

On being informed that Mr Dyer had a knife, Constable Damro took out his canister of O.C. spray and radioed for assistance from an officer who had a Taser. This request is logged at 18:18.

The officers did not withdraw while waiting for the further assistance; instead they tried to confirm Mr Dyer was still in the house and that he indeed did have a knife. Senior Constable Weitowitz approached the front of the house and shone his torch into the tv room. He saw Mr Dyer sitting on a couch. This caused Mr Dyer to pull down the blind on the window through which the officer was looking. Constable Damro also tried to look into the house. One of the officers and one of the fire fighters recall seeing Mr Dyer come to the front door briefly before disappearing back into the house They could see him through glass panels in the door. Ms Rodriguez also saw this and called out "*There he is at the door!*"

Having regard to the evidence of the police officers, the fire fighters, and occupants of number 19 it is clear that they were spread across the front lawn outside the house. This is confirmed by various neighbours. The police officers were almost directly outside the front door, three to five metres from it and down the hill which sloped towards the street. The fire fighters were to the left of the door and the occupants of number 19 were to the right, nearer or on the driveway.

Suddenly, the front door of the house was flung open and Mr Dyer emerged holding the knife in his hand and yelling loudly. All of the witnesses describe him advancing very quickly towards the police officers – some say running, others say walking quickly or striding. Most witnesses say he was holding the knife above his shoulder with the blade facing forwards and downwards; some say he had his arm outstretched in front of him with the blade of the knife pointing upwards. Most agree they heard Mr Dyer yelling words like "*I'm going to kill you all!*" as he rushed towards the police officers.

Senior Constable Weitowitz was directly in front of the door, about 5 metres from it. He immediately dropped the canister of OC spray and reached for his firearm as he tried to retreat backwards down the slope away from the house. He had only taken a couple of steps when he came up against a large real estate "For sale" sign which was held in place by two wooden stakes.

He explained in evidence that not realising what it was, he tried push through it, and after initially providing resistance, the stakes broke and the officer fell over backwards. He says that just before he fell, Mr Dyer was about 2 metres from him and that as he fell, he saw Mr Dyer veer off to the officer's left.

Senior Constable Woitowitz momentarily lost sight of Mr Dyer as he struggled to regain his feet, and then he heard a gun shot. He looked to his left and saw Mr Dyer lying on the ground and his partner Constable Damro a metre or so away and slightly behind him, up against a shrub or small tree growing adjacent to the gutter.

Constable Damro was bent forward or crouching trying to look through a gap in the window blind when he heard the door slammed open. When he looked up Mr Dyer was already out of the house and advancing towards him brandishing the knife.

Constable Damro was also about 5 metres from the house and to the left of Senior Constable Woitowitz. He immediately began retreating backwards and reaching for his firearm. He very quickly came up against a shrub or small tree growing on the footpath and knew he could not retreat further. Mr Dyer was by this time only about two metres from him. He drew his fireman and fired one shot. He did not have time to prepare the trigger and take the gun in two hands as he had been trained to do but simply drew it, pointed and fired in one motion.

He later told investigators that he feared Mr Dyer was about to stab him and that he believed he had no other means of protecting himself.

Mr Dyer fell backwards dropping the knife as he did so.

One of the neighbours reported she heard one of the police officers yelling "Stop!" but Mr Dyer continued to advance. Constable Damro does not remember issuing a warning and gave evidence that the initial gap of between him and Mr Dyer closed to 1 to 2 metres within a second or two. Officer Damro's perception was that Mr Dyer had pin-pointed him and was coming directly at him as he back-pedalled down the slope. Senior Constable Woitowitz corroborated that, saying that Mr Dyer made a 'bee-line' for his colleague and that as Officer Woitowitz hit the sign and fell, Mr Dyer went straight for Constable Damro.

Numerous independent eye witnesses largely corroborate the versions provided by the officers.

Constable Damro went straight to where the knife had fallen and then looked to Mr Dyer and saw he no longer posed a threat. The officer re-holstered his firearm and moved away.

Senior Constable Woitowitz checked that his partner was uninjured and then attended to Mr Dyer. He felt a rapid, weak pulse and heard some gurgled breathes. Two of the fire fighters quickly took over the first aid.

Officers from both services reported the incident over their radios and called for an ambulance. The QFS system logged the transmission at 18:20:54; the QPS system at 18:19. It is apparent that from the arrival of the officers to the firing of the fatal shot less than three minutes elapsed, probably only two.

The aftermath

When QAS officers arrived at 6.31pm there were no signs of life. Notwithstanding that they continued resuscitation at the scene and en route to the Gold Coast hospital where Mr Dyer was pronounced deceased at 7.05pm.

Constable Damro was shaking and visibly upset immediately after the event. He apologised to Ms Sheppard, thinking the dead man was her father. She responded that he had no choice as Mr Dyer was going to kill him.

Investigation results

The investigation that I have earlier detailed commenced shortly afterwards.

Soon after the shooting Ms Rodriguez called Mr Dyer's ex-wife. His daughter Silka went to the Southport Hospital to see if it was true that her father was dead. After waiting a number of hours the death was confirmed. She was then asked to identify her father's body. As she was only 17 at the time, and as other more appropriate witnesses could have done that, I consider that was inappropriate.

An autopsy was conducted on 1 June 2008 by Dr Olumbe who has prepared a comprehensive post-mortem report. Dr Olumbe describes the trajectory of the projectile as moving from front to back, slightly left to right and then slightly downwards. Along that path the bullet caused catastrophic injury to major internal structures including the distal abdominal aorta which was lacerated and the lumbar vertebra (at L3) which was penetrated. The bullet was retrieved from that position.

The laceration to the major abdominal artery led to substantial blood loss with 1000mL of blood seen in the abdominal cavity and retroperitoneal haematoma containing 600g of blood clot. Death would have been swift for Mr Dyer on account of that blood loss. The cause of death, as expected, was the gun shot would to the stomach.

Analysis of blood taken from Mr Dyer indicated a blood alcohol concentration of 0.215%. Metabolites of cannabis were also found.

Examination of the firearms seized from the officer showed that only one shot had been fired from Constable Damro's gun.

Both officers were found to have no alcohol or other drugs in their system.

Conclusion as to "how" the death occurred

It is clear Mr Dyer died as a result of being shot by Constable Damro. For the reasons set out below I have come to the conclusion that Mr Dyer intended that to happen. "Suicide by cop" is a term used to describe deaths that result from the deceased person deliberately taking action intended to cause a

police officer to kill them. It is an explanation for police related deaths that is frequently proposed but rarely substantiated.²

The factors supporting such a conclusion in this case are these:-

- Mr Dyer had a history of previous suicide attempts.
- He also had a lengthy history of depression that his treating doctor described as severe.
- At the time of his death his illness was no longer being treated and he was taking no medication for it.
- He was very intoxicated. Most suicides are impetuous or impulsive; many are associated with alcohol.
- Mr Dyer being “*strangely calm*” after he had lit the fire is consistent with the relief some suicide victims exhibit after they have made a decision to take their life and perceive the imminent end of their suffering.
- His comments in the telephone call to his daughter shortly before his death were consistent with a belief he would not speak to her again.
- He had no criminal history and no history of conflict with or animosity towards police.
- There are reports of domestic violence but in this case the person with whom he had recently shared a failed domestic relationship was not harmed despite the opportunity and her offering significant provocation.
- He did not attempt to prosecute his attack on the officers with any stealth or guile. On the contrary he told someone he correctly assumed would pass on his intention.
- He armed himself with a weapon that was most ostentatious but not most effective. He brandished a souvenir dagger when far more dangerous knives were undoubtedly at hand in the kitchen.
- When he ran at the officers, one fell to the ground and was at that moment defenceless. Rather than attacking that officer, Mr Dyer diverted this attention to the other officer who then shot him.

Findings required by s45

I am required to find, as far as is possible, who the deceased person was, how he died, when and where he died and what caused his death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, the material parts of which I have summarised above, I am able to make the following findings.

Identity of the deceased - The deceased person was Alan Kent Dyer.

How he died - Mr Dyer died as a result of being shot by a police officer he attacked with the intention of causing the officer to kill him.

² In my experience the motivation for suggesting a suicide by cop has occurred when the evidence does not support it is the desire to assuage the guilt or regret officers understandably feel after being involved in such incidents.

Place of death -	He died at Pacific Pines in Queensland.
Date of death -	Mr Dyer died on 31 May 2008.
Cause of death -	Mr Dyer died as a result of a single gunshot wound to the abdomen.

Referral to DPP pursuant to s48

The Coroners Act in s48 requires a coroner who, as a result of information obtained while investigating a death, “*reasonably suspects a person has committed an offence*” to give the information to the appropriate prosecuting authority. However, when determining whether such a referral is to be made, a coroner is not to have regard to evidence given after a witness has claimed that the answer to question may incriminate the witness and has been directed by the coroner to nevertheless answer.³

I take “*committed an offence*” to mean that there is admissible evidence that could prove the necessary elements to the criminal standard. That would include the evidence necessary to rebut any defence reasonably raised by the evidence.

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 relevantly 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 abundant admissible evidence indicating Alan Dyer’s death was caused by Constable Damro shooting him. The evidence of Senior Constable Woitowitz and the neighbours in Elkin Street detail the circumstances in which that occurred.

The only direct evidence of the intention of Constable Damro when he fired the fatal shot is found in his interviews and his evidence to this court, but neither account would be admissible against the officer in criminal proceedings because they were not made voluntarily.

However, intention can, and usually is, inferred from the circumstances of the act in question with the presumption that a person intends the likely and natural consequences of their actions.

³ s48(1)

In this case, I am confident it could be proven the officer intended to kill or do grievous bodily harm to Mr Dyer when he shot him.

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 information to the Director of Public Prosecutions to enable him to determine whether an indictment should be presented.

Section 271 (2), 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 believes on reasonable grounds 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.

I should perhaps point out for non legal readers that "assault" includes a threat do apply force as well as the actual application of it.

That subsection has been exhaustively analysed by the Court of Appeal in *R v Wilmot*.⁴ Most relevantly, the Court adopted observations from earlier cases to the following effect: it is sufficient if the person using the force believed on reasonable grounds that only by using the deadly force employed would he preserve himself even if objectively, there were other non fatal options. It is the belief of the actor that is critical, provided it is based on reasonable grounds.

In this case I have found that Mr Dyer was most likely expecting to be shot by police and may well have had no intention of harming them. However, that could not possibly prohibit the officers taking steps to protect themselves for an immediate and apparently deadly threat. My conclusions are based on hindsight, and the calm consideration of extensive evidence not known to the officers. They had just seconds in which to assess the situation and to act.

It is sometimes suggested that officers coming under attack can "shoot to wound" – that is disable an assailant by shooting at his or her legs. Having heard expert evidence about the difficulty of precision shooting when the target and the shooter are both moving, I can easily dismiss the feasibility of that proposition.

I also accept that in this case it would not have been safe for the officers to have turned and ran. Mr Dyer was already moving towards them when they became aware of the attack and he was coming down hill. It is likely he could have caught them and stabbed them in the back were he minded to do so. Further the officers would have been conscious that tactic could have left other people vulnerable to attack.

⁴ [2006] QCA 91

In my view, Constable Damro reasonably apprehended his life was at risk and reasonably concluded that he could only avert that risk by shooting Mr Dyer.

Police officers are not above the law. They are liable to be prosecuted if the evidence is sufficient but 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 Constable Damro came to be in the position he found himself in on the evening of 31 May 2008, no fair minded person could have any concerns about that. He was acting lawfully and reasonably. He did not create the danger that prompted him to shoot the person who did.

In the circumstances I am of the view the preconditions to a referral under s48 (2) are not met.

Concerns, comments and recommendations

Section 46, in so far as it is relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

The circumstances of this case raise three issues that may warrant consideration from that perspective. They are:-

- Did the QPS policy in place at the relevant time concerning Taser deployment contribute to the death or should changes be made to otherwise improve safety?
- Was the QPS policy concerning dealing with people suffering from mental illness adhered to and is it adequate?
- Did the officers involved in the incident appropriately manage it?

Tasers

Taser is a brand of conducted energy weapon – a hand held neuromuscular disruptive device designed to temporarily incapacitate a person through the application of electrical current.

In May 2008 these devices had only been provided to some senior officers in each police district. That calls into question whether the death might have been avoided had the officers involved in the incident had immediate access to a Taser.

As a result of hearing from the officers involved and considering the statement of Sergeant Damien Hayden of the QPS Policing Skills Program, I am persuaded deployment of a Taser would not have been feasible. The need for a high level of accuracy in the placement of both barbs in the body of the target mandates that the weapon be deployed when the target is only 3 to 5 meters away. To allow a person attacking with a knife to get so close would

be unreasonably dangerous. Further the likelihood of one of the barbs becoming displaced as target fell down the sloping ground was high. Once that happened the device would cease to have any effect.

Since this incident, Tasers have been made available to most first response officers. That policy is still under evaluation. No comment for me is needed in relation to that process.

Responding to mental illness

Since 2005 the QPS has been collaborating with Queensland Health and other agencies in the Mental Health Intervention (MHI) Project. An important part of the project is the training of first response officers in de-escalation of mental health incidents through enhanced tactical communication skills. It is anticipated these officers will have the ability to identify, provide support and effectively intervene in situations which may otherwise result in mental health incidents. It also provides for the appointment of more intensively trained regional and district MHI Coordinators and the dissemination of medical information from Queensland Health that may assist resolve crises involving persons suffering mental illness.

I am satisfied that in this case that there was no opportunity to involve a MHI Coordinator or take any other steps under the MHI Project that may have de-escalated the incident. The identity of the person with the mental illness was not known and, in any event, no information on any of Mr Dyer's medical files would have indicated he was likely to act in the way he did.

Incident management

I have already found the use of deadly force in this case as justified. I should add that in my view the officers involved acquitted themselves commendably. They reacted to a volatile and deadly emergency with admirable precision. I accept that the death of Mr Dyer distressed them both and I am relieved that it has not prevented them from continuing in the QPS: what I have seen of them indicates they have the qualities to make a valuable contribution to policing. None of the comments that follow should be construed as criticism of them. I accept the evidence of the former Inspector Turner, who is well known to and respected by this court, that they appear to have complied with their training when dealing with the situation that suddenly confronted them.

However, in order to contribute to the continuing improvement of policing skills and tactics I raise for consideration the following analysis.

When they were detailed the job the officers were told the subject suffered from mental illness and had lit a number of fires within the house. Soon after they arrived they were told he was armed with a knife and had expressed an intention to attack police if they attended.

In those circumstances I would have thought the first priority would be to clear the area of all bystanders by telling all of the on-lookers to go inside and lock their doors. Then next or simultaneous step would presumably be to call for

back up. Thirdly, the officers would retreat behind a barrier offering some safety such as a motor vehicle while, if possible continuing to observe all exit points from the house.

I acknowledge the officers in this case took the second step and had only a minute or so to consider what else to do. They warned the fire fighters not to enter the house and refrained from doing so themselves. However, they remained in close proximity to the house, as did a number of others, and approached it attempting to see the offender. I readily acknowledge that even were the steps I have suggested taken in this case the outcome may well have been the same. One of the officers candidly acknowledged that reports of armed offenders are so frequent he may have become complacent. I expect this incident dislodged any such complacency from that officer but query whether more needs to be done to ensure the issue is addressed service - wide.

Mental illness, drug induced and otherwise, is continuing to proliferate in the community, as is resort to edged weapons. The risk these factors pose to first response police officers needs to be constantly managed and planned for.

Recommendation 1 – Incident management training

In view of the inherent danger in managing incidents such as this, the increasing frequency with which they are likely to occur and the tendency for officers to become desensitized to such risks, I recommend officers in the Operational Skills and Tactics Program review this incident with a view to utilizing it as a training scenario. The officers involved in the incident might also make a valuable contribution by participating in such training, were they minded to do so.

I close this inquest.

Michael Barnes
State Coroner
Southport
29 September 2010