



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

**CITATION:** **Inquest into the deaths of Julie-Anne LEAHY and Vicki ARNOLD**

**TITLE OF COURT:** Coroner's Court

**JURISDICTION:** Brisbane

**FILE NO(s):** COR91/1768

**DELIVERED ON:** 1 March 2013

**DELIVERED AT:** Brisbane

**HEARING DATE(s):** 19 July 2011, 14-18 November 2011, 28-30 November 2011, 15 March 2012 & 20 March 2012

**FINDINGS OF:** Mr Michael Barnes, State Coroner

**CATCHWORDS:** CORONERS: Re-opened inquests; principles applicable; circumstantial evidence; flawed investigations

**REPRESENTATION:**

Counsel Assisting:	Mr Ralph Devlin SC with Mr Mark Le Grand
Family of Vicki Arnold:	Mr Philip Bovey (O'Reilly Stevens Bovey Lawyers)
Alan Leahy:	Mr Anthony Collins (instructed by Lilley Grose & Long Solicitors)
QPS Commissioner:	Mr Wayne Kelly (QPS Solicitors Office)

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## **1. Introduction**

At about 8:00am on 26 July 1991, Alan Leahy reported to police in Atherton that his wife, Julie-Anne Leahy, and her friend Vicki Arnold had gone fishing in the early hours of that morning and had not returned. Over subsequent days extensive searches were undertaken by police and others with no positive result.

On 9 August 1991, youths riding trail bikes in bushland between Atherton and Herberton came across the Leahy's four wheel drive containing the decomposing bodies of Ms Arnold and Ms Leahy.

Police officers arrived at the scene just as it was getting dark. Both women appeared to have suffered gunshot wounds. There was a shortened rifle in the car. Without any specialist forensic examination, the senior officer quickly concluded Ms Arnold had killed Ms Leahy and then taken her own life.

That assumption was accepted by the findings of two inquests and a number of administrative inquiries that occurred in the years following the deaths.

Widespread rejection of the murder-suicide finding led a former Attorney-General to order the matter be re-opened.

These are the findings of that third inquest. In view of the tortured history of the matter, I have set out in some detail the steps that have led to this point and the various legal tests and principles I have applied.

## **2. Issues**

There has been no challenge to the earlier findings as to the identities of the deceased women, where they died and when they died.

Neither was there a challenge to the earlier findings that Vicky Arnold died from a gunshot wound to the head. The precise medical cause of Ms Leahy's death is less clear and will be explored later in these findings. It is inextricably tied into the wider consideration of how she met her death.

This inquest has focussed on how each of the women died: and in particular whether Ms Arnold killed Ms Leahy and herself or whether some third party was involved.

In accordance with s. 41 of the Act, I am also required to find whether anybody should be committed to stand trial for the murder or manslaughter of the women.

### 3. Legal principles

#### 3.1 Jurisdiction

Because the deaths investigated by this inquest occurred in 1991, before the commencement of the *Coroners Act 2003*, this inquest was conducted in accordance with the provisions of the *Coroners Act 1958*.

Under s. 47(1) of that Act, if the Minister for Justice and the Attorney-General considers an inquest ought to be re-opened he or she can direct that it be re-opened before any coroner. As detailed below, such a direction was given to me in relation to this case.

#### 3.2 The admissibility of evidence

Proceedings in a coroner's court are not bound by the rules of evidence because s. 34 of the Act provides that 'the coroner may admit any evidence the coroner thinks fit' provided the coroner considers it necessary to establish any of the matters within the scope of the inquest.

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt:<sup>1</sup> an inquiry rather than a trial. In view of the very different character of the various outcomes that can result from an inquest, such versatility is probably essential. A coroner is not likely to need evidence of such precision or weight to justify making a recommendation for review or change as would be required to make a finding of a cause of death for example. On the other hand, when considering whether to commit a person to stand trial, a coroner will only consider evidence that would be admissible in criminal proceedings because the test applied to resolve that question is whether a properly instructed jury could convict the person.

#### 3.3 Standard of proof

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.<sup>2</sup> 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.<sup>3</sup>

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.<sup>4</sup> 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*<sup>5</sup> makes clear,

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<sup>1</sup> *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, unreported but quoted by Freckelton I. in *Expert proof in the coroner's jurisdiction* in *The Aftermath of Death*, Selby H ed., Federation Press 1992

<sup>2</sup> *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

<sup>3</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

<sup>4</sup> *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

<sup>5</sup> (1990) 65 ALJR 167 at 168

that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.

However, at the end of the process it is for the coroner to reach conclusions on questions of fact. The Victorian Supreme Court described the process when a coroner's intimation that he was inclined to find electrocution as a cause of death was challenged by the deceased's employer:

*That is, his Honour accepted that he actually had to be persuaded that the deceased was electrocuted having regard to the consequences of such a determination. In his ruling, the Coroner referred to the relevant evidence that had been called to date. He analysed it and correctly concluded that the medical evidence was not determinative – it remained a matter for him, based upon the whole of the evidence.*

*It was well within his Honour's province to conclude (based upon the observations of the eye witnesses and the inherent probabilities) that the deceased was electrocuted.*

*Whilst different views may have been open on the facts involving either natural causes or an inability to determine the cause of death, ultimately the question was a question of fact to be determined by the Coroner having weighed all the evidence. Reasonable minds might come to different conclusions (or indeed conclude that a particular determination was wrong in fact). However, that is not to say that a particular conclusion (in this case, electrocution) was not open.<sup>6</sup>*

That approach followed that enunciated by the Queensland Court of Appeal in *Hurley v Clements & Ors*<sup>7</sup> which unanimously declared that a finding by a coroner was valid if it was reasonably open on the evidence. The requirements of *Briginshaw v Briginshaw* for a level of satisfaction on the balance of probabilities appropriate to the gravity of the consequences of a finding does not necessarily involve the exclusion of all reasonable competing possibilities.

### **3.4 Scope of the inquiry**

The Act in s. 24 sets out the scope of the inquest in terms of what matters should be the subject of findings. In determining how far back along the chain of events culminating in death the inquiry should go, the observations of Lord Lane about the nature of an inquest are apposite:

*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*

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<sup>6</sup> *Thales Australia Limited v The Coroners Court of Victoria & Anor* [2011] VSC 133 (11 April 2011)

<sup>7</sup> [2009] QCA 167

*and record as many of the facts concerning the death as the public interest requires.*<sup>8</sup>

The Act in s. 43(6) prohibits a coroner's findings being framed in such a way as to appear to determine any question of civil liability or so as to suggest that a person is guilty of a criminal offence. However, that does not prevent me from naming the person(s) who killed either woman if the evidence is sufficient. Only an explicit statement reflecting on a person's guilt or liability is prohibited. There is no impediment to coroners providing a full and complete narrative of the circumstances of death nor stating their conclusions as to the responsibility of individuals or organisations for the death provided they refrain from using language that is applicable to decisions made by criminal and civil courts when they adjudicate upon the same issues. For example, in *Perre v Chivelle*<sup>9</sup> the Supreme Court of South Australia held that the then state coroner of South Australia did not offend the equivalent provisions of the S.A. Act when he said in his findings of an inquest into the death of an NCA officer:

*Accordingly, I find...he died when he opened a parcel bomb, sent to him by Domenic Perre, and the bomb exploded in his hands.*

Nylands J explained that the provision only prohibited the drawing of legal conclusions from findings of fact. As long as a coroner limits herself to the first step – finding facts – the provision will not be breached.

### **3.5 Impact of previous Inquest findings**

As already mentioned, these deaths have been the subject of two previous inquests. Counsel assisting and counsel for Mr Leahy submitted that these two previous sets of findings, in effect, constrain the findings that can be made in this inquest.

Counsel assisting submitted there is a general principle that the findings of previous tribunals should not be overturned or set aside unless there is good reason to do so. They submitted that; 'If those findings are open on the facts now known to this Court, then there is much to be said for the proposition that they should remain undisturbed.'

This in turn is said to impose on counsel assisting an obligation to ensure the Court is apprised of any evidence which would support the previous coronial findings.

This approach is adopted by counsel for Mr Leahy and labelled the principle of consistency.

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<sup>8</sup> *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

<sup>9</sup> [2000] SASC 279

I am not persuaded any such principle is apposite to this case, although for the reasons detailed below I suspect my rejection of it will have little impact on how I proceed to reach the findings required by the Act.

The rule that a court should avoid a *scandal of conflicting decisions* recognises the undesirability of conflicting rulings as to the rights, entitlements and liabilities between the same legal entities on the same issue previously determined by the exercise of judicial power. It is based upon the doctrine of the incontrovertibility of judicial decisions **which have not been challenged or set aside.**

In this case, as a result of submissions made by individuals with a special interest in the matter, the Attorney-General has exercised the power conferred on him by s. 47(1) to order that the inquest be re-opened. That amounts to a setting aside of the previous findings.

The principle of incontrovertibility involves what have been termed the rules of preclusion which are comprised of:

- *res judicata*;
- issue estoppel; and
- abuse of process.

Two policy reasons are commonly invoked in support of the doctrine of *res judicata*: the public interest in the finality and conclusiveness of judicial decisions and the right of an individual to be protected from a multiplicity of suits. The doctrine precludes re-litigation of causes of action already judicially determined **between the parties.**

There is no public interest in finality of inquest findings that are not accepted by significant sections of the relevant community. No one involved in an inquest is the subject of a suit. An inquest is not litigation between parties. Adams J in *Fairfax Publishing v Abernathy* observed; *It is trite that an inquest is not a litigation in the sense that it gives rise to any res judicata ...*<sup>10</sup>. Accordingly, the concept has no application to these circumstances.

Issue estoppel precludes the re-litigation of issues of fact or law that have already been **determined between the parties.**<sup>11</sup> It has no application to an inquiry in which there are no parties.

The principle of incontrovertibility may also support an order to stay proceedings as an abuse of process. However, the authorities indicate it is only attempting to litigate in the same forum or for the same relief which should be prevented:

*It is a proposition which has not been held to preclude persons other than the prosecution asserting in later proceedings that the*

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<sup>10</sup> *Fairfax Publications Pty Ltd v Abernathy* [1999] NSWSC 820 at [14]

<sup>11</sup> See *R v Wilkes* [1948] HCA 22; (1948) 77 CLR 511, 518-9; *Brewer v Brewer* [1953] HCA 19; (1953) 88 CLR 1, 14-15; and *Port of Melbourne Authority v Anshun Pty Ltd* [1981] HCA 45; (1981) 147 CLR 589, 597.

*person committed the crime of which he or she was acquitted at trial.*<sup>12</sup>

While the categories of cases giving rise to an abuse of process are not closed, they generally fall into one of three broad categories: where the court's procedures are invoked for an illegitimate purpose; where the use of the court's procedures is unjustifiably oppressive to one of the parties; and, where the use of the court's procedures would bring the administration of justice into disrepute.<sup>13</sup>

In my view none of those characteristics apply to this case. In ordering the re-opening of the inquest the Attorney-General exercised the power conferred on him by s. 47(1) of the Act. Absent any evidence that he did this for an improper purpose there could be no challenge to his order or my obligation to re-open the inquest.

The Act in s. 47(3) provides the coroner presiding over the re-opened inquest *may accept such of the findings and of the evidence given at the previous inquest as appears to the coroner to be correct.* There is no suggestion in the Act or the authorities that the earlier findings should be given any precedence.

The NSW Court of Appeal described the role of a coroner presiding over a re-opened inquest this way:

*Upon a fresh inquest, the coroner conducting that inquest would be obliged to make his own finding as to the cause of death and if, in his opinion, the evidence given before him established a prima facie case against any known person for an indictable offence, then he would be bound to act in accordance with s. 28(2) and transmit the relevant statement to the Attorney-General.*

*In the present case, the Court would not wish to express any view on the facts, but it is proper to observe that, as a matter of procedure, if the coroner in the fresh inquest formed the opinion that there was a prima facie case established against some identified fellow prisoner or some identified police officer, whether one or other of the appellant police officers or some other person, it would be his duty to proceed under s. 28(2), despite the conclusion come to in the earlier proceedings.*<sup>14</sup>

And that was in a case where two persons had been charged with murder but discharged at the conclusion of committal proceedings.

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<sup>12</sup> *R v Carroll* [2002] HCA 55; (2002) 213 CLR 635 at [45]

<sup>13</sup> See *Rogers v The Queen* (1994) 181 CLR 251, 286 (McHugh J); *Batistatos v Road Traffic Authority (NSW)* [2006] HCA 27; (2006) 226 CLR 256, 267; *Jago v The District Court of New South Wales* [1989] HCA 46; (1989) 168 CLR 23, 46-47 (Brennan J); *Walton v Gardiner* [1993] HCA 77; (1993) 177 CLR 378, 392-4 (Mason CJ, Deane and Dawson JJ), 411 (Brennan J).

<sup>14</sup> *Bilboa v. Farquhar* [1978] 1 N.S.W.L.R. 528 at 541

Having regard to these various observations, I conclude I am obliged to make findings based on my view of all of the evidence with no presumption that the findings of the earlier inquests can only be disturbed if some ill-defined higher than usual threshold is met.

I do not accept the submission made on behalf of Mr Leahy that he is in *quite a different position to that which he stood before the first inquest* if that is meant to assert that there is a legal presumption that the earlier inquest findings are correct and that a higher level of satisfaction than would usually be required for a coroner's findings is necessary for me to come to a different conclusion.

While I conclude there is no legal rule or reason that constrains my assessment of the evidence, the passage of time means that much of the evidence heard by the earlier inquests could be expected to be more reliable than that given so long after the events to which it relates.

I readily accept the force of the submissions by counsel for Mr Leahy and the authorities quoted, drawing attention to the increasing fallibility of memories over time. For that reason, the conclusions reached by the coroners who presided over the earlier inquests will be given due weight. However, I do not accept the tenor of the submissions of Mr Leahy's counsel that whenever a witness' evidence differs from evidence given by that witness or another witness previously, the earlier version should be preferred. As will become apparent when I traverse the evidence, I accept that changes to the circumstances of some of the witnesses could readily explain changes to their evidence. I also accept that witnesses' memories of important events may well remain reliable despite the passage of time.

### **3.6 Procedural fairness**

Counsel Assisting helpfully set out in their submission, the manner in which the rules relating to procedural fairness apply to an inquest. The authorities they cite support the following propositions:-

- Although not bound by the rules of evidence, coroners are obliged to ensure that the principles of procedural fairness are applied.
- Those rules require a fair hearing for those likely to be adversely affected by a decision, report or recommendation, and impartiality on the part of an inquirer.
- Personal reputation is an interest which should be protected in this way.
- Such a person must be given an opportunity to deal with matters adverse to his or her interests that the coroner proposes to take into account and to show why a critical finding should not be made.
- Any person who may be adversely affected by a coroner's findings or comments should be alerted to the risk of that and given an opportunity

to adduce additional material of probative value which, had it been placed before the decision-maker, might have deterred him/her from making the finding.

In this case much of the focus of the inquiry has been on ascertaining whether Mr Leahy may have been in some way responsible for the deaths. The protection of procedural fairness was afforded Mr Leahy by the following mechanisms:-

- Mr Leahy's counsel was given access to all investigation documents before the inquest commenced.
- At the pre-inquest conference, the issues likely to be explored at the inquest and the witnesses proposed to be called to give oral evidence were outlined by counsel assisting.
- Mr Leahy's counsel was invited to make submissions in response.
- Mr Leahy's counsel was able to cross examine all witnesses who gave evidence.
- When Mr Leahy was giving evidence, counsel assisting put to him a theory as to how he may have been involved in the deaths, contrary to his evidence, and invited a response.
- Counsel assisting set out in detail in their written submissions the basis on which findings could be made against him.
- Mr Leahy's counsel made a detailed written response to those submissions.

Counsel for Mr Leahy submitted that the hypothesis inculpating his client contained in the submissions of counsel assisting differs from that put to him during the inquest and that it is unfair because his client was not given an opportunity to respond to aspects of that new hypothesis. I do not accept that Mr Leahy has been treated unfairly because:-

- The differences between the hypothesis put to him in evidence and that contained in counsel assisting's submissions are relatively minor.
- They arose in part because some witnesses whose evidence is said to support the new hypothesis had not been called when Mr Leahy gave evidence and his counsel did not seek to have him recalled.<sup>15</sup>
- Other differences arose as a result of counsel assisting having the opportunity to review all of the evidence at the conclusion of the hearing process.

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<sup>15</sup> Indeed at the conclusion of oral evidence counsel for Mr Leahy indicated he would respond to the evidence of those witnesses by way of a further statement which was never received.

- In any event, Mr Leahy has repeatedly denied any involvement in the women's deaths and explicitly rejected all of the primary elements of the hypothesis advanced by counsel assisting during the hearing and in their written submissions.
- His counsel's submissions in reply provided Mr Leahy with another opportunity to challenge the hypothesis and the evidence on which it is based.

Counsel for Mr Leahy also contended his client was treated unfairly in the submissions of counsel assisting because they did not, in sufficient detail, explore evidence that was exculpatory of his client nor rigorously test evidence implicating him in the deaths. I shall deal with the specifics of that submission when making findings in relation to the evidence in question. As a general proposition, it is rejected.

Counsel for Mr Leahy has represented him since the first inquest and noted in his submissions that he continues to do so on a *pro bono* basis. Such commitment to a client is in keeping with the noble traditions of the bar. However, the shrillness of some of his submissions denouncing the submissions of counsel assisting suggests other hallmarks of his profession, such as independence and objectivity, may have been leached away by the duration of this professional relationship.<sup>16</sup>

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<sup>16</sup> See for example Exhibit I 4 para 99 where resort is had to underlining, capitalising and bolding of text to emphasize the point sought to be made.

## **4 Previous inquests and investigations**

Two inquests and a number of administrative reviews or investigations have been held into the deaths of Ms Arnold and Ms Leahy. An overview of their conclusions follows.

### **4.1 The first inquest**

The first inquest was conducted by Mr Trevor Spicer, Stipendiary Magistrate, between 30 July 1992 and 3 September 1992. His findings included the following:

*On the whole of the evidence presented to the Court, the Coroner was satisfied that the injuries to Julie-Anne Leahy were inflicted by Vicki Serina Arnold.*

The coroner concluded that after Ms Arnold had fatally injured Ms Leahy, she took her own life by shooting herself in the head.

### **4.2 The second police investigation - the Kruger Report**

As a result of concerns raised in the media by family and friends of the two women, in May 1993, Detective Inspector Stanley Kruger of the QPS Homicide Investigation Squad was instructed to conduct further investigations into fresh allegations that had been raised in relation to the circumstances of the deaths.

He re-interviewed some of the witnesses involved in the earlier investigation and inquest and interviewed some other witnesses for the first time.

In his report dated 17 May 1994, Inspector Kruger concluded in part:

*As a result of my investigation I am satisfied that the findings of the original investigation team and ultimately the Coroner are a correct assessment of what occurred. That is, Vicki Serina Arnold murdered Julie-Anne Leahy and then took her own life. There is absolutely no evidence to suggest the involvement of any other person.*

*I recommend that no further action be taken in respect to these deaths unless some credible evidence is forthcoming in the future which would show that these deaths were caused by another person or by means other than what has been found at this time.*

The 'Kruger Report' was forwarded to Mr D.W. Morton, Stipendiary Magistrate who by that time had assumed the role of coroner for the relevant area. In a letter to the Director General of the Department of Justice and Attorney-General dated 27 July 1994 Coroner Morton recommended that *no further proceedings be taken other than to file this further investigative report with the original inquest file.*

### **4.3 The Bullock Review**

Following continued criticism of the police investigation in the media and widespread questioning of the coroner's findings, in August 1995, the Honourable M.J. Foley MLA, then the Attorney-General for Queensland, gave the Director of Public Prosecutions, Mr Royce Miller QC, a direction pursuant to section 1(f) of the *Director of Public Prosecutions Act 1984* to review the evidence in the investigation of the deaths and recommend whether there were grounds upon which the Attorney should order the re-opening of the inquest. He was required to do so within two months.

Mr Miller assigned the task to Mr David Bullock, Consultant Crown Prosecutor, who reviewed the evidence and spoke to some of the witnesses. He reported his conclusions in the following terms:

*None of the matters raised in this report in my opinion raise a question about the reliability of the Coroner's conclusion that Vicki Arnold killed Julie-Anne Leahy and killed herself.*

*It follows in my submission that there is no evidence to satisfy you that the inquest be reopened.*

### **4.4 Criminal Justice Commission investigations**

In October 1994, Coroner Morton was advised that the police still had possession of the hands of both women which had been removed from the bodies to facilitate the obtaining of their fingerprints. He sought advice from the families of the women as to whether they wished to inter those remains with the women's bodies. The families were understandably shocked that the hands had been removed and retained without their knowledge. They raised their concerns with the Opposition Spokesman for Police and Corrective Services, the Honourable Russell Cooper MLA, who referred the matter to the Criminal Justice Commission (the CJC) for investigation.

The CJC's investigation was limited to suspected police misconduct rather than the adequacy of the investigation. In a letter to the families of the dead woman it advised:

*The Commission has not re-investigated the deaths which were the subject of a coronial inquest as it has no basis on which to suspect any misconduct in relation to the original investigation other than the extent raised in the correspondence.*

It recommended the police officer involved in the removal of the hands of the deceased be corrected for exceeding his authority. This leniency was based on the Commission's acceptance of his claim that he had been authorised by the local acting coroner to remove the hands. The acting coroner concerned was apparently not aware that such an order was inconsistent with the provisions of the Coroners Act.<sup>17</sup>

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<sup>17</sup> I was the chief officer of the complaints section of the CJC at the time and thus supervised the investigation of the complaint. I disclosed this to the families of Ms Arnold and Ms Leahy before commencing the investigation that

By June 1996, Mr Cooper had become the Minister for Police and Corrective Services and Minister for Racing. In this capacity he wrote to the then chair of the CJC, Mr Frank Clair and requested the CJC conduct an independent review of the police investigation into the deaths of Ms Arnold and Ms Leahy.

The CJC sought the advice of experienced criminal barrister, Mr Marshall Irwin, as to whether the manner of the police investigation into the deaths gave rise to a reasonable suspicion of misconduct on the part of any police officer which was necessary to give the Commission jurisdiction to look into the matter.

Mr Irwin advised the alleged inadequacies of the investigation did not raise a suspicion of misconduct or official misconduct within the statutory definitions of those terms. Accordingly, in his view the CJC did not have jurisdiction to review the matter further. The Commission accepted this advice. It also considered that while there was evidence which might establish that police had been tardy or sloppy, in view of the passage of time, the inconsistencies in the evidence and the inexperience of the officers involved, there was little utility in recommending disciplinary action. It advised the Minister of its conclusions in this regard in May 1997.

#### ***4.5 The Mengler O’Gorman Report***

Presumably in repose to the CJC advice that it could not look at the merits of the families’ concerns, on 31 July 1997, Minister Cooper announced that he had commissioned a re-investigation of the deaths of Ms Arnold and Ms Leahy by Mr Carl Mengler and Mr Frank O’Gorman, both former Assistant Commissioners of the Queensland Police Service.

They conducted a comprehensive and professional re-investigation of the circumstances surrounding the deaths, including a review of all previous investigations coupled with further interviews of the primary witnesses. These witnesses included Mr Alan Leahy and Ms Vanessa Stewart.

The investigators obtained significant additional evidence which was not available to the coroner in 1992, and noted that should the inquest be reopened, an ‘open finding’ might well result. Their report was sent to the Minister on 14 May 1998.

Minister Cooper referred the report to the Hon. Denver Beanland MLA, the then Attorney-General and Minister for Justice, for consideration as to whether grounds existed for the re- opening of the inquest.

#### ***4.6 The second inquest***

On 7 June 1998, Minister Beanland ordered the reopening of the inquest. It was conducted by Magistrate Gary Casey in 1999. He called 24 witnesses to give evidence, some of whom had given evidence at the first inquest and

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culminated in this inquest. None of them submitted that my involvement in the CJC investigation created a conflict or raised a suspicion of apprehended bias such as should cause me to refrain from conducting this inquest.

some who had not. Surprisingly, neither Mr O’Gorman nor Mr Mengler gave evidence.

Mr Casey delivered his findings on 21 February 2000. In them he indicated he did not consider he needed to address the various concerns that had prompted the inquest being re-opened, nor did Coroner Casey attempt to identify any motive which could have explained how or why Ms Arnold would have engaged in such apparently out of character and extreme behaviour.

The findings were broadly in agreement with the findings of Mr Spicer at the original inquest, namely that the injuries to Ms Leahy were inflicted by Ms Arnold, who then took her own life. Mr Casey found there was no evidence indicating another person was involved in the deaths. He also concluded that no police officer who examined the scene jumped to a conclusion without a proper investigation having been completed.

#### ***4.7 CMC investigative hearings***

On 18 September 2005, the television program ‘Sixty Minutes’ broadcast a segment during which a sister of Ms Leahy, Vanessa Stewart, indicated she had further relevant information, including that she had been ‘coached’ by Alan Leahy as to the version of events she should give to police when asked about the night the women disappeared.

On 15 October 2005, Ms Stewart wrote to the then Queensland Attorney-General and Minister for Justice, the Honourable Linda Lavarch MP, complaining about the adequacy of the police investigation, alleging that Mr Alan Leahy had never been investigated, and stating that she had fresh evidence. The minister requested that I arrange for the matter to be reviewed by members of the Homicide Squad.

Police interviewed Ms Stewart and obtained the assistance of the CMC to conduct hearings into her allegations. The Commission held investigative hearings between 7 July and 10 July 2008 in Cairns. These focused on the suggestion that Mr Leahy had both a motive and an opportunity to kill both women. Ms Stewart, Mr Leahy and a number of others gave evidence.

#### ***4.8 What went wrong?***

As detailed later in this report, within about an hour of the first police officer arriving at the place where the two women’s bodies had been found, it was declared the deaths were a murder suicide. This assumption was made by the acting officer in charge of Atherton police station and his district officer, neither of whom were detectives, neither of whom had ever investigated a homicide. It was made without the benefit of any specialist examination of the scene or the bodies. Because the assumption was acted upon, vital evidence that may have been collected at the scene was lost when the district officer ordered the bodies and the car removed forthwith.

Once the initial assessment of murder-suicide was made, some of the other ‘facts’ subsequently gathered were contorted to fit that theory. Evidence that could not be made to fit was ignored.

It is abundantly apparent the district officer was motivated in part by a desire to save money. Only a few days after the women went missing he was already being quoted in the local news media itemising the costs of the search and noting that the bills would *keep rolling in*.

Had the matter been handled correctly, the scene would have been guarded overnight pending the arrival of various forensic experts and the district overtime budget would have borne the impost of that. Paradoxically, the district officer's efforts to save a few hundred or a thousand dollars resulted in evidence being lost which significantly contributed to the uncertainty that now three inquests and a number of other inquiries have struggled to clarify. Many millions of dollars have been expended as a result. Of course a cost can't be put on the unnecessary added distress the uncertainty has caused for the families of the dead women and the reduction in public confidence in the police service and the coronial system.

When, a trained detective became involved in the investigation, he attempted to look at the incident more objectively. He obtained no support from more senior detectives in the region and did not enlist assistance from the specialist homicide squad in Brisbane. It also must be acknowledged that this detective also made basic blunders that caused more evidence to be lost. A list of the obvious inadequacies in the way the matter was handled is in appendix 1.

Messrs Mengler and O'Gorman noted that the more senior police who should have been supervising Sergeant Hayes, failed to recognise or respond to the complexity of the crime scene. They noted that expert assistance was available through the Homicide Squad in Brisbane but was not sought due to the cost involved<sup>18</sup>, and that the supervising police should have recognised at an early stage that Detective Sergeant Hayes, the principal investigator, was not experienced in the investigation of homicide, particularly complex homicides such as this case. Sergeant Hayes was given little assistance and guidance in carrying out the investigation.

Messrs Mengler and O'Gorman were not critical of the late Detective Sergeant Hayes whom they considered to be a regional police officer doing his best but who was out of his depth. Rather, they pointed out that Sergeant Hayes' superiors should have seen the need for expert assistance from the Homicide Squad at an early stage. I agree with their assessment.

Regrettably, the coronial system failed to redress this growing problem. At that time, the practice was for coroners to remain aloof of the investigation of reportable deaths until the final police investigation report was provided and an inquest was convened.

The findings of that inquest left many people dissatisfied and the various administrative inquires referred to earlier, proceeded *ad hoc* in an attempt to quell the growing dissatisfaction. They failed to do so because they either focussed on a very narrow aspect of the matter without reviewing the ultimate findings, or they

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<sup>18</sup> Exhibit D5, page 2

sought to artificially support the findings of the first inquest by distorting the evidence to make it fit within unlikely explanations when far more reasonable conclusions that challenged those findings were ignored or dismissed.

When Police Minister Cooper at last ordered a detailed and comprehensive re-examination of the evidence by appropriately qualified experts, serious doubt was cast on the findings of the first inquest and a second was necessary. Confusingly, that inquest failed to engage with the result of the detailed re-investigation and without adequately explaining why. It simply confirmed the original findings which were quite discredited in the minds of most of those with a detailed knowledge of the case and so the agitation for a further inquest commenced.

The law is a social construct. Its practice and procedures are designed to satisfy society's need for the explanation of aberrant events and the holding to account, those found to be responsible. Unlike the hard sciences, its proofs are not certain and consistent because humans are immensely variable in judgment and in action. Its eagerness to apply syllogistic reasoning or deductive logic to explain complex situations where not all of the relevant information is available can, as in this case, lead to frustration and rejection of the outcome.

There is no evidence that any official deliberately sought to obscure the truth. Rather it seems the initial mistakes, after a too hasty assumption of murder-suicide set the course which the various inquiries adhered to. Two days after the women's bodies were discovered, the local newspaper quoted local police as saying *the post mortem examination made it fairly obvious what had happened*. It might be that the palpable relief felt by community members when they were able to dismiss the idea of a cold blooded double murderer living among them, infected what should have been more rigorous impartial inquiries. Under a headline; *Murder-suicide pact suspected, mystery solved when bodies found in forest*, the same paper quoted another officer as saying; *I think the people around the town are feeling relief, more than anything, because there were a lot of theories going around about their disappearance. At least now they know what happened and the mystery is over.*

Of course, if the official explanation was discounted, shown to be wrong, such was the state of the evidence due to its mishandling, prosecuting the murderer could have been difficult. That may have given impetus for the underpowered administrative reviews to shy away from that conclusion. The criminal justice system protected itself by denying anything had gone amiss.

Those to suffer most acutely from these failures were the families of the dead women. They have my sincere condolences for their loss and my apologies for the way in which the coronial system failed to adequately search for the truth.

## **5. Current investigation and inquest**

A copy of the report prepared as a result of the further police investigation and the CMC hearings prompted by Ms Stewart's allegations was provided to the then Attorney-General and Minister for Justice, the Honourable Cameron Dick MP, who, by a letter dated 23 November 2010 directed the inquest be re-opened.

I assumed responsibility for the matter and arranged for all existing evidentiary material to be gathered, collated and analysed.

Messrs Ralph Devlin SC and Mark Le Grand were engaged as counsel assisting. They and in-house lawyer, Peter Johns, case co-ordinator, Daniel Grice and the officer in charge of the Coronial Support Unit, Detective Inspector Smith managed the extensive further investigations undertaken before and during the inquest. I am greatly indebted to them for their assistance.

A pre-inquest conference was held in Brisbane on 19 July 2011. Leave to appear was granted to the family of Ms Arnold and to Mr Alan Leahy. An application for leave to appear by the widow of former Detective Sergeant Michael Hayes was foreshadowed but after counsel assisting outlined the issues to be explored at the inquest, this was withdrawn. During the hearing of evidence leave to appear was granted to the Commissioner of the Queensland Police Service.

The inquest heard evidence in Atherton on 14 November 2011. The inquest then moved to Cairns and heard evidence over two sittings: the first for four days commencing 15 November 2011, and the second for three days commencing 28 November 2011. The court also heard evidence in Brisbane on 15 March 2012 and 20 March 2012. Evidence was heard from 35 witnesses and 304 exhibits were tendered. After the conclusion of the evidence, helpful submissions totalling over 500 pages were received from those granted leave to appear.

Some of the most important exhibits from the earlier inquests were not available, either because they had been lost soon after the deaths occurred - as happened with two bullets or bullet cases found jammed in the breach of the gun - or because they were disposed of after the second inquest on the basis they were no longer needed - the gun itself, four discharged casings, a box of .22 ammunition, a serrated knife and a rock with human hair and blood that was found in the car, are examples of what was destroyed on 30 July 2003. Indeed, the court was initially informed that no physical exhibits were available. However, during the inquest further searches were made and important items such as the shoes worn by Ms Arnold on the night she disappeared and some of the parts of the gun used in the killings were located.

Prior to and during the inquest numerous further inquiries were carried out. They are summarised in appendix 2.

Regrettably, some of the serious errors made during the course of the initial investigation detailed above hindered the further effective investigation of these deaths.

## **6. The social context**

### **6.1 Vicki Serina Arnold**

Vicki Serina Arnold was born on 3 October 1963 at Cairns to Vida and Richard Steven Arnold. She was 27 years of age at the time of her death. Ms Arnold spent most of her youth in Cairns with her parents and two siblings from her mother's previous marriage. She was very close to her father, she being his only natural child. Her father died of lymphatic cancer when she was only 13 years of age.

Vicki Arnold does not appear to have been as close to her mother as she was to her father, perhaps due to the fact that her mother needed to share her time between Vicki and her two children from her previous marriage. Regardless, throughout her life Ms Arnold kept in close contact with her mother with whom she had quite a loving relationship in her latter years.

Several persons close to Vicki, including her mother, Vida Arnold, her half-sister, Gail Woodbridge, her step-brother, Edwin Veivers and Sergeant Bernard Wilce, state that the death of her father had a deep and lasting effect on her. Vida Arnold recalled that for some months after her father's death, Vicki spent many hours alone in her room, only coming out for meals when ordered to do so.

After leaving school Vicki gained employment in an office where she remained until 18 years of age, at which time she was dismissed, the reason being, in her view that she had qualified for an adult wage. She then applied to join the military but was rejected due to her poor eyesight. From this time onwards she wore spectacles both for reading and when driving a car.

In 1982, Ms Arnold obtained employment with an accountancy firm based in Cairns that was part of the Hall Chadwick group. She commenced part-time study toward an accountancy qualification and at the time of her death was well advanced, although not qualified in this field. Her employers regarded Vicki as a reliable and competent employee who was well versed in her work. When they decided to open a branch office at Atherton, they selected her to take charge of that office.<sup>19</sup>

On 2 May 1984, at 21 years of age, she opened the branch office of Hall Chadwick at Atherton where she supervised the work of up to five other young women as time progressed. Ms Arnold commuted between Cairns and Atherton during the first few months and then leased a unit at Atherton where she lived alone. Over the following years, both her mother and her half-sister moved to Atherton where each lived in separate residences.

After taking up residence at Atherton, Vicki Arnold sought to become involved in the local community. She joined a church group and other community activities. Additionally, she began close associations with a couple of the families with whom she had contact.

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<sup>19</sup> Exhibit B42 and transcript 16/11/2011, pages 79 to 81

During the course of her work she met John and Birgit Wilkinson who owned and operated a large and successful spring works and engineering workshop at Atherton. She became quite close to the Wilkinson family over time and frequently visited them outside work hours. At one time she lived in the Wilkinson home and cared for the children while the parents were overseas. However, John Wilkinson was quite adamant when interviewed by Messrs Mengler and O’Gorman that Vicki Arnold was nothing more than a friend and he was confident that is what Vicki perceived their relationship to be.

Ms Arnold met Sergeant Bernard Wilce of Atherton Police through his wife Jane, with whom he was then living in a de-facto relationship. Jane worked at a florist shop situated in the same arcade in Atherton as Hall Chadwick. Ms Arnold began to visit the Wilce home, at first by invitation; later she became a constant visitor who simply called at the Wilce home, at times several nights per week, when she often shared meals with the family.

As this friendship grew, Vicki was invited to go camping with the Wilce family which she did on several occasions. At times she cared for the Wilce children during the absence of their parents.

On 18 November 1989, Ms Arnold was confirmed in the Anglican Church and the Wilces agreed to be nominated as her ‘Godparents’. A large party, financed by her, followed this event. According to disclosures made by Bernard and Jane Wilce to Mengler and O’Gorman, she enjoyed scotch whisky, but was not a regular or heavy drinker.

As this friendship grew, Ms Arnold and the Wilces made plans together to build a new home which was to incorporate a self-contained unit for her. According to her banking records, Arnold in fact bore the cost of the architectural plans. However this proposal did not go forward.

Sergeant Wilce claimed to Messrs Mengler and O’Gorman that during this period, Ms Arnold began to take more than a passing interest in him personally<sup>20</sup>. Jane Wilce was aware of this interest and, together with her husband, discouraged close contact while at the same time maintaining their friendship with Vicki Arnold.

The Wilces were aware Vicki was also very friendly with Julie-Anne and Alan Leahy and frequently visited their home.

In evidence, Sergeant Wilce agreed that the constant visits of Ms Arnold to their home became overwhelming and at one point they tactfully asked her to desist which she did for several months, although she was apparently very hurt by that request<sup>21</sup>.

Bernard and Jane Wilce described Vicki to Mengler and O’Gorman as perhaps shy, sometimes introverted, not at ease in the presence of strangers, lonely, and often depressed. She sometimes cried when telling the Wilces of problems associated with her family and work. However, they say she was very confident when talking about her work and was capable of standing her

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<sup>20</sup> Exhibit B55

<sup>21</sup> Exhibit B55, page 3

ground when the need arose. They both say she yearned for a husband and family and consider this was the reason she formed such a close association with both themselves and the Leahy family.

After her death, the Wilces became aware that at times Ms Arnold had told them some untruths. For example, she had told them she suffered from a kidney complaint and frequently showed symptoms of illness. Jane Wilce would cook her special meals.

In June 1989, the Wilces drove her from Atherton to the Cairns airport so she could travel to Brisbane to attend a specialist to undergo a kidney biopsy. Approximately one week later, they picked her up on her return from Brisbane at which time she told them she had not needed a biopsy and her kidney problem was not as bad as she had thought. However, up until the time of her disappearance, she continued to complain of kidney problems. After her death the Wilces were surprised to learn that the autopsy on Ms Arnold's remains showed no sign of kidney disease. Enquiries with her doctor at Atherton after her death revealed she had never sought medical attention for any form of kidney complaint.

Another untruth which Ms Arnold told the Wilces concerned James Flett, one of the two males with whom she is known to have had a sexual relationship. On an uncertain date in 1989, Ms Arnold had visited the Wilces extremely distressed telling them Mr Flett had been killed in a car accident. After Ms Arnold's death the Wilces learned that, in fact, he was alive and well and then living in Cairns. Much the same untruth was told early in 1991 by Ms Arnold to Sandra McCarty, with whom she worked at Hall Chadwick.<sup>22</sup>

On another occasion, Ms Arnold is said to have told Colleen Murray, a friend with whom she had worked at Hall Chadwick, Cairns, that Mr Flett had a tumor behind his eye and didn't have long to live.<sup>23</sup>

In February 1991, Ms Arnold was involved in a short sexual relationship, lasting three to four weeks, with Roy Whalen, a friend Alan Leahy had met in prison. She did not visit the Wilces during this period. Although the Wilces became aware she was involved with a male, she did not introduce Mr Whalen to them, nor did she ever speak of him to the Wilces.

On 8 February 1991, Vicki borrowed \$2,000 from her mother which she used to fund a loan of \$2,300 to Mr Whalen, the purpose being unknown. He only repaid the sum of \$381.00, with the balance being outstanding at the time of her death.<sup>24</sup>

An original letter dated 28 June 1991 was found in Ms Arnold's unit after her death addressed to 'Mr Roy A Whalen Brisbane 4000' from 'Vicki S Arnold' and witnessed by a Justice of the Peace advising legal proceedings would be taken for recovery of the amount due plus costs unless payment was made within 14 days. The letter further advised that the action was being taken *after several telephone conversations and discussions regarding arrangements for*

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<sup>22</sup> Exhibit D5.6 - AJL38.

<sup>23</sup> Exhibit D5, page 29 (TPM57)

<sup>24</sup> Exhibit D5.3.1 - DM02.

*payment*. Mengler and O’Gorman concluded the letter was never sent to Whalen.<sup>25</sup>

Bernard and Jane Wilce and members of Vicki Arnold’s family described her as a meticulous person who wrote many notes and kept diaries and receipts. Colleen Murray, Vicki Arnold’s long time friend from the Cairns office of Hall Chadwick, after Vicki’s death remarked; *It used to fascinate me about Vicki, how she’d write everything down and keep a record of everything - how much money she had, what she’d spent it on, just incredible detail.*<sup>26</sup> However, her diaries, found after her death, were not all complete. At times she would maintain her diary for several months at a time then suddenly make no further entry for quite a long period after which she would again make regular entries.

Ms Arnold was to develop much the same relationship with the Leahy family as she did with the Wilce family. She first met Alan Leahy through her work at Hall Chadwick. She later met Julie-Anne Leahy with whom she became very friendly. It would appear that Vicki and Julie-Anne were quite different: Arnold was introverted and quiet, whereas Julie-Anne Leahy was loud and brash. The relationship with the Leahys was also tested due to the frequency of the visits by Ms Arnold to the Leahy household. At one time, Julie-Anne appears to have discouraged her visits, although after a short period, she renewed the relationship, again commencing her frequent visits.

In their report, Messrs Mengler and O’Gorman suggest Vicki Arnold had at one time shown more than a passing interest in Alan Leahy and that both he and Julie-Anne were aware of it. When they interviewed Mr Leahy, he was adamant that nothing had come of Vicki Arnold’s approaches.<sup>27</sup> However, Pamela Fox told them Ms Leahy was concerned about the relationship between her husband and Vicki Arnold.<sup>28</sup>

One issue that caused temporary conflict in the Arnold and Leahy relationship resulted from Vicki Arnold guaranteeing a bank loan for the Leahys to purchase a carpet binding machine. Although the loan was finally paid out by the bank, there had been a scene one day in the Atherton arcade where Hall Chadwick was situated, witnessed by Jane Wilce, when Vicki Arnold took Julie-Anne Leahy to task due to the slow repayments.<sup>29</sup>

From their own inquiries and from reviewing all the available material, Messrs Mengler and O’Gorman were confident Vicki Arnold had no involvement with illegal drugs. No evidence has been found to contradict this conclusion. Apparently, after the two women disappeared, ‘small town gossip’ suggested they may have been in a lesbian relationship. There is no evidence of this.

## **6.2 Julie-Anne Margaret Leahy**

Julie-Anne Margaret Martin was born on 3 February 1965 to Nina Gwen and Sidney Leslie Martin. She was 26 years of age at the time of her death. I

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<sup>25</sup> Exhibit D5.3 - *DM04(f)*

<sup>26</sup> Exhibit D5, page 30 (*TPM72*)

<sup>27</sup> Exhibit D5.3 – *DMO88 (TM020)*

<sup>28</sup> Exhibit B17.3, page 3

<sup>29</sup> Exhibit D5.3 – *DMO20*.

know little of her early life, but from her teens she was raised in and around Brisbane. She had two older brothers and one younger brother.

The second eldest brother, Raymond Paul Martin, has spent a considerable time in prison serving sentences for dishonesty. Her younger brother, Peter Andrew Martin has also served terms of imprisonment for unlawful killing and grievous bodily harm.

Julie-Anne's mother had a later marriage with James Hugh Stewart with whom she had two further daughters, Margaret Tracey Louise Leary (nee Stewart) and Vanessa Ina Stewart. These two daughters of Nina Stewart (nee Martin) are Julie-Anne's half-sisters.

Nina Stewart was unsettled and at an early age Margaret and Vanessa Stewart were sent to their grandmother in NSW, who nurtured them until their teens when they went to live with their half-sister, Julie-Anne Leahy at Atherton, as the grandmother's health was failing.

When she was 17 years of age Julie-Anne Martin married Gregory Graham with whom she had two daughters, Anitra Ryatere and Sandra-Sue Gwendoline Graham. This marriage failed and Julie-Anne and Gregory Graham parted.

In June 1986, when her brother Peter Martin was in prison, Julie-Anne met Alan Noel Thomas Soutter (Leahy) when she attended a court hearing in Brisbane. Mr Soutter was on parole at that time having served a term of imprisonment for dishonesty.

Julie-Anne Graham commenced a de-facto relationship with Mr Soutter (who in 1988 changed his name back to his birth name of Leahy). They lived in Brisbane together with a woman named Tanya McIntyre, who had been the girlfriend of Peter Martin prior to his going to prison. Ms McIntyre and Julie-Anne Graham were apparently very close during the time they lived in Brisbane.

Given her background and relationships, it is reasonable to suggest that Julie-Anne Leahy had been brought up in a 'hard school'. She was said to be loud and brash and a person who would stand up for herself. She appears to have had quite the opposite personality to Vicki Arnold. However, nearly all who knew her say she was a loyal wife and an excellent mother to her own children and to her half-sisters whom she had taken into her home.

### **6.3 Alan Noel Thomas Leahy**

Alan Noel Thomas Leahy was born in Atherton on 30 May 1963. The Leahy family had been in the Atherton area for quite some time. Alan Leahy's grandfather was the surveyor for the Palmerston Highway.<sup>30</sup>

His father was involved in a company involved in the oil industry so the family moved around. They lived in Papua New Guinea for about two years and then Singapore for a couple of years. His parents broke up when he was about

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<sup>30</sup> Exhibit B35.3, pages 13,14 & 22.

eight years old. He then lived with his maternal grandparents in Townsville where he did the majority of his schooling.<sup>31</sup>

His father moved to Aberdeen, Scotland in about 1974 and has lived there since. However, he regularly communicated with Alan by telephone and letters.

Mr Leahy has just one full brother, Michael, who is five years younger and was born in Papua New Guinea.<sup>32</sup>

He left school after Grade 9 and gained employment laying floor covering. There was no indentured instruction at the time when he started with that industry.<sup>33</sup>

When he was 18, Mr Leahy changed his surname to Soutter, the same as the man to whom his mother was married at the time. He later resumed using Leahy.

When he was 20 and 21, Mr Leahy, got into trouble with the police. In 1983 and 1984 he committed numerous criminal offences, involving the breaking and entering of dwelling houses and commercial premises and the unlawful use of motor vehicles.

On one occasion he was found with a replica pistol under the seat of his car when stopped by police in Mount Gravatt. He claimed he had found it in the bush near Wellington Point. He told a CMC hearing he had found it in a prime mover he illegally used at Clermont. On another occasion he stole a rifle and ammunition, among other things, from a camping goods store in Clermont.

He was charged with fraud offences for using credit cards he had stolen from the homes he broke into and pawning stolen items.

On one occasion, he escaped from lawful custody when he pushed a police officer while being led back to a cell in a watch house and ran off.

None of the offences involved personal violence. It is noteworthy however, that some of the break and enters involved considerable deception during which Mr Leahy secreted himself inside shops until they were closed or climbed in through roof cavities and the like. Further, he told Vanessa of his plan to commit the 'perfect crime' – a bank robbery involving a vehicle with a hidden compartment.

He spent approximately two years in prison in total.

He was paroled in 1986 when he was 23. He met Julie-Anne not long after. Julie-Anne was about 18 months younger.<sup>34</sup>

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<sup>31</sup> Ibid, page 14

<sup>32</sup> Ibid, page 15

<sup>33</sup> Ibid, page 15.

<sup>34</sup> Ibid, page 17.

During the CMC hearing in 2008, Mr Leahy was asked about his knowledge of, and interest in, firearms. In summary his responses were:

- When he was a teenager, they lived out on the farm and he had a firearm *just for vermin and stuff*.<sup>35</sup>
- His brother Michael, when he was staying with them, bought a gun from a local gun place in Atherton, a .22 rifle, which he was told he had to remove. Julie-Anne did not like firearms.<sup>36</sup>
- When asked whether he was capable of pointing and pulling the trigger, he said he didn't do too badly at the shows getting stuffed toys for the kids and Julie-Anne.<sup>37</sup>

Mr Leahy's competency with guns was demonstrated just a few days before the women went missing. He, Julie-Anne and some of their children went to the home of an aunt of Vicki's to deliver some carpet. She lived on a rural property. While there the aunt asked him to test fire a .22 rifle. According to Vanessa Stewart, both she and Anitra Graham were encouraged by Alan Leahy to take part in shooting the rifle. Vicki Arnold was in attendance but did not participate, instead staying indoors talking to Julie-Anne and her aunt.<sup>38</sup>

When he gave evidence to the CMC in 2008, Alan Leahy had been married to Phillipa Lorene Leahy for 11 years. She had three children, namely Peter, Amber and Michael.<sup>39</sup>

Alan Leahy's son, Alan, from his marriage to Julie-Anne, at that date worked with him and they had a base in Alice Springs where he spent a lot of time.

## **6.4 The Leahy family**

Soon after they met in 1986, Julie-Anne and Alan became partners. They rented a house in Brisbane and Tanya McIntyre, Peter Martin's girlfriend, lived with them. Julie-Anne's two daughters from her marriage to Greg Graham, Anitra and Sandra-Sue, also lived with them.<sup>40</sup>

In late 1986 or early 1987, Alan, Julie-Anne and the two girls, Anitra and Sandra-Sue, moved to Atherton where he took up a job as a carpet layer. They rented a house in Victoria Street and lived as a family.<sup>41</sup>

About a year after moving to Atherton, Alan decided to go into business for himself. From 20 January 1988 until the company was wound up on 6 July 1994, Alan Noel Thomas Leahy and Julie-Anne Margaret Leahy were registered as the directors of the company, Aljuleahy Pty Ltd, which carried

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<sup>35</sup> Exhibit B35.3.1, page 10

<sup>36</sup> Ibid, page 11

<sup>37</sup> Ibid, page 12

<sup>38</sup> Exhibit B51.8, pages 48 & 49

<sup>39</sup> Exhibit B35.3, page 13

<sup>40</sup> Ibid, pages 20, 21

<sup>41</sup> Ibid, pages 21, 22

on the business of laying floor coverings. They were also the principals of the registered business name 'Da-Slop' whose business was registered as *flooring and carpet manufacturing*. That business name was registered from 1 October 1988 until the 14 January 1992.<sup>42</sup>

The Leahys engaged local accountants, Hall Chadwick, to incorporate their private company and register the business name. This is how they became associated with Vicki Arnold: she was the manager looking after the Atherton office.

Their son, Alan Christopher Leahy, was born on 18 April 1988.

On 24 September 1988, Alan Leahy married Julie-Anne Martin at Atherton. Vicki Arnold was the bridesmaid.

As mentioned earlier, Julie-Anne's mother was unable to care for two of Julie-Anne's half sisters and so they lived with their maternal grandmother. By the time those girls were in their early to mid teens they had become too great a burden for the grandmother and Julie-Anne and Alan agreed the girls could come and live with them.

Vanessa moved in with the Leahys at Atherton when she was 13 years of age, soon before her 14<sup>th</sup> birthday on 2 July 1989. Margaret joined them later that year in about December. She was 16.

The Leahy marriage appears to have been reasonably stable until then. Conflict then arose because Julie-Anne thought her husband was paying too much attention to Margaret.

Some three months later, in March 1990, Margaret Stewart moved out of the house after a serious disagreement with Julie-Anne and moved in with Ty Leary, an employee of Alan Leahy, whom she has since married. At this time Julie-Anne temporarily separated from Alan and moved with the children to another house in Atherton. She applied for a single mother's pension which was granted, but within days Alan moved back with the family when the conflict abated.

In late 1989, the Leahy's commenced building a new house at 20 Danzer Drive, Atherton after Alan's biological father gave his son \$160,000 for this purpose. That was insufficient to complete the project so the couple took out a \$100,000 mortgage on the home.<sup>43</sup>

On 10 February 1991, Kathleen Anne Leahy was born.

Julie-Anne was generally at home caring for the children and did some day care work; she looked after other children and took them to school. This was the situation that prevailed when she went missing.

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<sup>42</sup> Exhibit D5.2 – RUN 29.5.3

<sup>43</sup> *ibid* – RUN 27.6

There is some evidence that Mr Leahy was familiar with the area in which the bodies of the women were found. Messrs O’Gorman and Mengler made a note of a conversation with Sergeant Wilce about his early contact with the family, it reads:

*First met Julie-Anne, apart from seeing her in the street, when called around to her house in Alice or Beatrice Street when he [Wilce] was working. She was a gibbering wreck. Alan and the children had gone on a bush expedition in the 4WD and had not come back – well and truly dark. Bernie [Wilce] went up Mt Baldy with Mark Hobnel in Hobnel’s vehicle. Drove along a few of the tracks and about a hundred metres from a timber cutters camp where there was a small mill in operation, they found them walking. They were fine and there was another male with them – not known to Wilce.<sup>44</sup>*

When questioned about his knowledge of the area Mr Leahy initially claimed to be unfamiliar with it, but when the evidence in this note was put to him he conceded he may have spent some time in the bush in the area.

### **6.5 Vicki and Julie-Anne’s relationship**

The relationship between Vicki Arnold and Alan and Julie-Anne Leahy necessarily has been described in some detail in reviewing the backgrounds to both Vicki Arnold and Julie-Anne Leahy above. However, there is some additional material which provides some further insights.

In his evidence to the CMC on 10 July 2008, Alan Leahy described the relationship between Vicki Arnold and himself, his deceased wife, Julie-Anne, and the Leahy family after his wife and Vicky had become friends as a result of their meeting when Vicky was providing accounting services for their new business.

Alan Leahy said that for a period of about nine months Vicki Arnold became a regular visitor every day or every night at the house. Eventually Julie-Anne had to ask Vicki to give them some space and, at that point, the relationship was abruptly terminated by Vicki for a period.<sup>45</sup>

He said the relationship with Ms Arnold wasn’t really on bad terms, although she had some idiosyncrasies. When they asked her to give them some space, they never intended to not have any relationship with her at all, that was her decision, she *just cut it off*.<sup>46</sup>

Mr Leahy said Ms Arnold resumed visiting their house about two weeks, a month or something like that before the women disappeared.<sup>47</sup> He said he found out the same situation was happening with a police officer, Sergeant Wilce and his wife.<sup>48</sup>

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<sup>44</sup> Exhibit D5.3 – DMO18, page 2

<sup>45</sup> Exhibit B35.3, page 25

<sup>46</sup> Ibid, page 26

<sup>47</sup> Ibid, page 25

<sup>48</sup> Ibid, page 26

Julie-Anne's daughter Sandra-Sue, who was nine years old when her mother died told the inquest Vicki Arnold and her mother were *close friends/best friends*. They would have lunch together and Vicki Arnold was frequently at their house. Vicki Arnold was known as *Aunty Vicki*.<sup>49</sup>

Anitra recalled an earlier time when the family lived in Victoria Street when her mother had asked Vicki Arnold to leave the family alone as she was always coming over. This request had led to a fight between Julie-Anne and Vicki, which the family had overheard. However, by the time of the disappearance, Vicki Arnold was again welcome in the house.<sup>50</sup>

## **6.6 The allegations by Julie-Anne's sisters**

Both of Julie-Anne's half-sisters, Margaret Stewart and Vanessa Stewart, have alleged they had sexual contact with Alan Leahy while they were in his care.

Vanessa Stewart said Julie-Anne and Alan Leahy had temporarily separated on or about 10 March 1990 after Julie-Anne had confronted Alan Leahy over his relationship with Margaret.<sup>51</sup> Alan Leahy denied anything untoward had occurred.<sup>52</sup> According to him, they separated for a week or two but it had nothing to do with the perception he was too close to Margaret. He suggested it was to do with hassles over the building of the house in Danzer Drive. He said the events of Margaret moving out, and Julie-Anne and he separating, had nothing to do with each other.<sup>53</sup>

Margaret Leahy gave evidence at the inquest that early in 1990, before her 16<sup>th</sup> birthday on 11 April 1990, she was driving with Alan Leahy from Lismore to Atherton, bringing the rest of her possessions from her grandmother's house to the Leahy's house. They stopped overnight in Rockhampton and in the morning she was awoken by Alan Leahy having intercourse with her. She said she did not voice an objection at the time as; *I guess I just froze and had to think of survival mode...* Alan Leahy did not say anything to her. This incident was not repeated.<sup>54</sup>

In the cross-examination of Mr Leahy, it was put to him he in fact had raped Margaret Stewart in the circumstances indicated in her evidence. Mr Leahy responded; *I did not rape Margaret or anybody else*.<sup>55</sup>

It is very common for the victims of sexual assault not to report them to authorities. It is also not uncommon for victims of sexual assault to 'freeze'. It is not the coroner's role to adjudicate upon allegations of criminal conduct or events not related to the death. However, in this case allegations that Mr Leahy sexually exploited Margaret's sister when she was about the same

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<sup>49</sup> Transcript 16/11/2011, page 91

<sup>50</sup> Transcript 17/11/2011, page 40

<sup>51</sup> Exhibit B51.8, page 23

<sup>52</sup> Exhibit B35.3, page 41

<sup>53</sup> Ibid, page 41

<sup>54</sup> Transcript 30/11/2011, pages 16 to 18

<sup>55</sup> Ibid, page 67

age, may well be relevant to findings I have to make about Julie-Anne's death. I consider the allegations made by Margaret may corroborate Vanessa's allegations. I have had regard to them for that purpose.

According to Vanessa, Mr Leahy had an ongoing sexual affair with her while she was living at the matrimonial home. According to her, sexual activities pre-dated her 16<sup>th</sup> birthday on 2 July 1991. Her version of what occurred has changed over time.

In her statement dated 23 August 1991, given less than a month after the women disappeared, there is no mention of a sexual relationship with Mr Leahy.

Unsurprisingly therefore, when she gave evidence at the first inquest before Coroner Spicer, there was also no mention of a sexual relationship by either Vanessa or any of those who questioned her.

Vanessa was next interviewed as part of the Bullock Review on 28 August 1995. The possibility of a sexual relationship with Alan was not mentioned.

It seems the first mention Vanessa made of such a relationship is in her statement of 16 March 1998 to Messer's Mengler and O'Gorman. In that statement Vanessa said of her first statement to police that some matters need to be *further considered in order to fully establish and broaden some of the matters which were raised in the statement.*

Vanessa then claimed that when Kathleen was two to three months old (she was born in February 1991) Alan made sexual advances towards her. She claimed the first occasion this occurred was in the main bedroom when Alan started touching her neck *in a more than an affectionate manner.*

She went on to say that over the next few months the intimacy shown to her by Alan gradually progressed to touching all over her body and then to oral sex. She said in the weeks prior to Julie-Anne and Vicky disappearing this may have been as frequent as two or three times a week. Vanessa claimed Alan tried to progress to full sexual intercourse in the period before the women went missing but she resisted.

She said intercourse occurred possibly four or five days before her sister's body was found.

Vanessa said the relationship continued until mid 1992 when Alan met Michelle Black, who he married and moved to Western Australia with. However, the marriage did not last and Alan persuaded Vanessa to move to be with him in Western Australia where they were in a sexual relationship for about 18 months. Vanessa states this ended and she returned to Queensland two days before the 1995 State Election.

In her evidence at the second inquest before Mr Casey on 22 April 1999, Ms Stewart was asked why she had not mentioned anything about her sexual

relationship with Mr Leahy before the provision of her statement in 1998. Ms Stewart responds by saying, *I was afraid of getting in trouble I guess..with whoever, the police, with mum, with anybody finding out.*<sup>56</sup>

At this inquest Vanessa told the court the first advances by Alan to her were whilst Julie-Anne was in hospital giving birth to Kathleen.<sup>57</sup> She confirmed that on the first occasion this occurred in the main bedroom.

*Alan came up and began touching me, firstly on the neck and that and it kind of progressed from there with wandering hands, I guess.*

She went on to say:

*At first it was just him touching me in that way, but not very long after that it was where he began instructing me in how to please him, basically.*

She said she could not accurately recall when she first performed oral sex on Alan but thinks it would have only been a month or so after the touching began. Vanessa went on to explain that this first act of oral sex occurred at a house Alan was working at.

She maintained sexual intercourse first occurred about a week after the two women went missing.

At this inquest Vanessa confirmed that her original statement given to police was false. She was asked why she did not say anything about the sexual relationship then and responded:

*Because Alan had told me not to tell him (sic) about how I'd actually woken up because that would have revealed the fact that he'd come into my room and that sexual activity had taken place. He told me to tell them this story instead as to why I woke up, about going to the toilet and about seeing the lights on and that's why I didn't go straight back to bed; that's why I stayed up and hunted him out and ended up having this conversation about Scotland.*

*Right. But your memory today is that you don't know what time you woke up; correct?-- That's right, because I was - I didn't actually wake up. I was woken up.*

*All right. So that you say that you were counselled by Alan to give a different account?-- Yes. I was actually counselled by Alan before the police even first questioned me, as I was telling you before, and he told me to expect them to tell me lies about him being in gaol and things like that. He told me, no matter*

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<sup>56</sup> .Exhibit B51.5, page 445

<sup>57</sup> Transcript 29/11/2011, page 13

*what, I was to not mention anything about what had been happening between me and him. And that was before I even went to do this statement. That was when I was first questioned at the house, when police came around the house, and they'd already, I think, talked to him and talked to Margie before.*<sup>58</sup>

*Do you have any recollection of Alan counselling you to give a time when you woke up, to give an actual time? You didn't give one, but were you ever counselled in that way?-- I - I have some vague recollection of the 12.30/1 o'clock timeframe, but I - I didn't tell the police that, so I wonder if that's actually what he told me to tell them, if that's actually what he told me as to when he'd told me that that's when I woke up. So-----*

*Can you be any more accurate than that?-- No, I don't - I can't help you on the time I woke up, I'm sorry. The 12.30/1 o'clock thing was what I believed was when I'd woke up, but that's not because I saw the time.*

*Well, what is it because of?-- Like I said, it's - it's either when he was telling me that's when I woke up or when he was telling me that's what to tell the police when I woke up.*

*So, the only place that 12.30 comes from in your mind is from Alan?-- That's correct.*<sup>59</sup>

The cogency of her testimony is necessarily diminished to some extent by its variation. However, the following circumstances make this less damaging to her credit than might otherwise be the case.

- Ms Stewart was a child at the time she first fell under Alan Leahy's influence. He was in a position *in loco parentis*. It is clear that she lost her virginity to him and that she was deeply in love with him when she was called upon to give her original accounts. Her vulnerability to the pressure which she says he brought to bear on her can be readily acknowledged as a natural human response by any innocent young girl placed in such circumstances.
- Vanessa told Messrs Mengler and O'Gorman, the CMC, and this Court that she suspected Julie-Anne became aware of her relationship with Alan Leahy in the week prior to her disappearance, although she had not raised this with Vanessa prior to her disappearance on the evening of 25 July, 1991.<sup>60</sup>

She said in evidence at this inquest that the day before Vicky and Julie-Anne went missing, Julie-Anne asked her to stay home from school.

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<sup>58</sup> Ibid, page 49

<sup>59</sup> Ibid, page 50 -51

<sup>60</sup> Exhibit B51.8.1, page 7

Vanessa was concerned Julie-Anne intended to confront her about the relationship and so she made up that she had an examination that required her to go to school. This is not something likely to be fabricated – it is too complicated and would be unnecessary if her intention was merely to harm Mr Leahy with lies. It indicates that Vanessa had been involved with Mr Leahy in a way she knew to be wrong and was scared of being confronted about it.

- Mr Leahy admits for the two years after the women went missing he used Vanessa for sexual purposes while requiring her to do the bulk of the house work and attending to her school work. He would have the court believe that Vanessa is not lying about the sexual relationship, only its timing.
- Mr Leahy's denials have also been inconsistent and conditional. After initially denying there had been any sexual contact, the position adopted by Alan Leahy before the CMC was as follows:
  - Vaginal intercourse with Vanessa started after Julie-Anne was found on 9 August 1991;<sup>61</sup>
  - He cannot exclude absolutely vaginal intercourse with Vanessa between 26 July 1991 and 9 August 1991, in the period in which the women were missing;<sup>62</sup>
  - He denied having vaginal intercourse with Vanessa prior to 26 July 1991;<sup>63</sup>
  - He said that other types of sexual conduct including, but not necessarily limited to oral sex, either that he performed on Vanessa or Vanessa performed on him, or other types of intimate touching whereby he touched her sex organs or she touched his, he is not able to exclude beyond a shadow of a doubt in the period between 26 July 1991 and 9 August 1991, while the women were missing;<sup>64</sup>
  - He absolutely denied that type of sexual conduct from May 1991 to 26 July 1991<sup>65</sup>; and, critically
  - On the evening of 25/26 July 1991 when Julie-Anne and Vicki did not return, he is not able to exclude beyond a shadow of a doubt that some type of sexual contact occurred on the night. He does not think that it did but he can't exclude it.<sup>66</sup>
- Mr Leahy's counsel submits that Vanessa is lying to cause harm to his client whom she blames for her sister's death. Were this the case, she is more likely to claim he was having intercourse with her before she turned 16.

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<sup>61</sup> Exhibit B35.3.3, page 3

<sup>62</sup> Ibid, page 3

<sup>63</sup> Ibid, page 3

<sup>64</sup> Ibid, page 3

<sup>65</sup> Ibid, page 4

<sup>66</sup> Ibid, page 4

- Vanessa's claim that the sexual contact became more intimate and invasive over months culminating in intercourse when the women were missing is more consistent with common experience than Mr Leahy's claim that intercourse occurred spontaneously without grooming over a period of time.
- Vanessa presented as a mature young woman who, with professional help, has ameliorated the damage done to her by the child sexual abuse she suffered at the hands of her step father. She is more creditworthy than Alan Leahy, a convicted criminal who admits to sexually exploiting her for years after his wife died.

Further, Vanessa's account is corroborated by another witness, Ms Emma Bryant, whose daughter was a friend of Sandra-Sue. She went to the Leahy house on the night of 26 July and frequently thereafter while the women were missing in order to help the family through that very difficult period.

She said she was alarmed by familiarity between Alan and Vanessa. She said in her statement; *At times Alan Leahy and Vanessa would go into the main bedroom and shut the door and they would remain in there for quite long periods.*<sup>67</sup>

At the inquest, Ms Bryant said on that first night Mr Leahy and Vanessa were hugging and cuddling and Sandra-Sue said, *Youse look like - more like boyfriend and girlfriend or husband and wife than sister-in-law and brother-in-law.* She agreed with that characterisation.<sup>68</sup>

Ms Bryant also corroborated Vanessa's claim that Mr Leahy sought to influence her evidence to police. Ms Bryant said that on a number of occasions she heard Alan say to Vanessa; *Just keep your cool, it will be alright, everything will be alright.*<sup>69</sup>

Accordingly, I find it is more likely than not that Mr Leahy began grooming Vanessa for sexual purposes in the months before her sister went missing and that this incrementally progressed to indecent sexual touching before her sister went missing. I find that intercourse first occurred while the women were missing and before their bodies were found. I also find that Mr Leahy coached Vanessa not to disclose the nature of their relationship and that they had had sexual contact on the night the women disappeared.

### **6.7 The Leahys financial difficulties**

On the 5 September 1989, the Leahys paid a deposit of \$3,100 on the land at 20 Danzer Drive, Atherton. On 18 October they paid \$32,453, being the final payment on the land.

On about 6 November 1989, they applied for a loan of a \$100,000 from the National Australia Bank to build a house on the land.<sup>70</sup>

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<sup>67</sup> Exhibit B7, page 6

<sup>68</sup> Transcript 17/11/11, page 29

<sup>69</sup> Ibid, page 30

<sup>70</sup> Exhibit B35.3, page 30

Mr Leahy told Sergeant Wilce that his father had given him *quite some money* to build a house and they built this *massive* house but before it was finished, it was condemned because of the foundations.<sup>71</sup>

Mr Leahy said the house cost about \$200,000, being the \$100,000 odd that they had, plus the \$100,000 from the bank to finish it off.<sup>72</sup>

They also bought a truck which was \$25,000 - \$30,000 to help with the business.<sup>73</sup> Records show a withdrawal on 2 August 1989 of \$25,800.

On the day following the disappearance, in a conversation had at the Atherton Police Station, Alan Leahy explained to Sergeant Wilce that the family was having some financial difficulties at that time. Their residence was the subject of extensive maintenance due to a builder error, and due to other pressing matters, both Alan and Julie-Anne had agreed to dispose of Alan's truck and also Julie-Anne's four wheel drive – the latter being the vehicle the deceased were found in.<sup>74</sup>

Because of the family debt crisis, Alan was considering the sale of his truck – his truck was valued for sale on 22 July 1991.<sup>75</sup>

Alan Leahy told Sergeant Wilce that the monies obtained from the sale of the vehicles was to be used to pay the accounts until the new financial year when persons owing them money would make payment of outstanding accounts.<sup>76</sup>

On Monday 22 July 1991, four days prior to their disappearance, both Julie-Anne and Vicki travelled to Cairns where Julie-Anne visited car yards and obtained valuations on the Nissan 4WD. A price was agreed and the vehicle was to be transported to Cairns on 26 or 27 July 1991 for disposal.<sup>77</sup>

On 25 June 1991, the National Australia Bank (NAB), which held the mortgage on the Leahy's Atherton residence, threatened to foreclose due to arrears<sup>78</sup>.

Messrs Mengler and O'Gorman interviewed the Manager of the NAB in Atherton who advised, that according to the bank file, on 25 June 1991, the then bank manager spoke to the Leahys regarding arrears and advised them if they did not bring their loan up to date an official demand would be made.<sup>79</sup>

Sergeant Wilce said he had served on the Leahy household a number of complaints in relation to outstanding debts.<sup>80</sup>

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<sup>71</sup> Exhibit B55.2, page 3

<sup>72</sup> Exhibit B35.3, page 32

<sup>73</sup> Ibid, page 31

<sup>74</sup> Exhibit B55, page 8

<sup>75</sup> Exhibit D5, page 157

<sup>76</sup> Exhibit B55, page 8

<sup>77</sup> Ibid, page 9

<sup>78</sup> Exhibit D5, page 157

<sup>79</sup> Exhibit D5.2 – RUN 27.6

<sup>80</sup> Exhibit C2.1, pages 172, 173

The Mengler and O’Gorman Report referred to Detective Sergeant Hayes providing the investigators with nine bankbooks and one notebook relating to the accounts of Alan and Julie-Anne Leahy. These bankbooks provided mute testimony to the financial plight of the Leahy household at the time of the disappearance of the women. Very little money was left in these accounts as at that date.<sup>81</sup>

As at the date closest to the disappearance of the women on 26 July 1990, the following balances are recorded:

- Northern Building Society Account in the name of Mrs J M Leahy as at 31 March 1991 had a balance of \$5-34.<sup>82</sup>
- National Australia Bank Savings Account No: 075569672 in the name of Mr Alan Noel Thomas Leahy as at the final balance on 25 January 1990 stood at the sum of \$21-59.<sup>83</sup>
- National Australia Bank Savings Account No: 338166622 in the name of Mr Alan Noel Thomas Leahy as at 17 May 1991 had a balance of \$541-31.<sup>84</sup>

It was put to Alan Leahy that as a result of getting involved in building the house in Danzer Drive, they had been in financial difficulty. Leahy responded: *I wouldn’t suggest financial difficulty.*<sup>85</sup>

He said they had a mortgage but after Julie-Anne had passed away he made arrangements with the bank to do interest only repayments. When asked about the period leading up to Julie-Anne’s disappearance he said he can’t recall that much: Julie-Anne used to look after the paperwork.<sup>86</sup>

It was put to Mr Leahy that they were unable to complete the construction of the house at Danzer Drive, to which he replied; *It was the case that we were going to do work in the house ourselves regardless.*<sup>87</sup>

When asked if he fell out with the builder he said the builder had caused some problems on the house. They weren’t happy with his work. The builder wanted the completion payment for work he hadn’t done – *he stuffed the house up.*<sup>88</sup>

It was put to Mr Leahy that it was known from a letter written by Julie-Anne in about October 1990 that there were problems with the builder, and he replied that at that time he had no cash to take away with him overseas; he went on to explain: *Only because I had family to support and a house.*<sup>89</sup>

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<sup>81</sup> Exhibit D5.2 - RUN 8.2.6 & , Exhibit D5.3.1 - DM05, DMO 63.1 to DMO 63.5

<sup>82</sup> Exhibit D5.3.1 - DMO 63.1

<sup>83</sup> Ibid - DMO 63.2

<sup>84</sup> Ibid - DMO 63.3

<sup>85</sup> Exhibit B35.3.2, page 4

<sup>86</sup> Ibid, page 4

<sup>87</sup> Ibid, page 4

<sup>88</sup> Ibid, page 4

<sup>89</sup> Ibid, page 5

He conceded he had employed a painter to do some work and the painter had initiated a civil action to recover some money. He also conceded it was *probably* the case that his company records showed his business was running at a loss.<sup>90</sup>

Alan Leahy said he had *no idea* that on about the 25 June 1991 the manager of the National Australia Bank contacted him in relation to being in arrears of mortgage payments.<sup>91</sup>

He was read a notation in relation to a file note from the National Australia Bank Manager at Atherton *That the National Australia Bank Manager in Atherton spoke to Leahys re arrears on their mortgage, advised if they did not bring the loan up to date a notice of demand would be served.*

Mr Leahy replied: *I don't have any recollection ..... I'm not saying he didn't, but I can't recall if he did or when he did. But it's all there anyway.*<sup>92</sup>

It was put to Mr Leahy that on 24 July 1990, Julie-Anne had taken the four wheel drive to a car dealer with a view to selling it. He responded that *it's very possible she took it to a car yard to appraise it to get a new car.*<sup>93</sup>

It was put to Mr Leahy that before Mr Casey, the Coroner hearing the second inquest he said: *We weren't desperate but we weren't, you know, things were tight. The interest rates were very high and we had a large mortgage on the house. ... The house had problems for sure.*<sup>94</sup>

It was again put to Mr Leahy that at the time his wife disappeared he was under a great deal of financial pressure. He replied *No.*<sup>95</sup>

At this inquest Mr Leahy would not commit to or outright reject the proposition the family were in dire financial straits, relying, perhaps genuinely, on his memory having faded over time. He continued to try and down play the position, suggesting for example that they were not intending to sell the 4WD outright but instead were planning to trade it for a better car. When challenged he abandoned this suggestion.<sup>96</sup>

Over many years and before many tribunals<sup>97</sup> Mr Leahy has persistently and stubbornly refused to acknowledge the pressing financial situation he was in at the time of his wife's death against overwhelming evidence to the contrary.

I am of the view there is no doubt at the time the two women went missing, the Leahys were in significant financial difficulties and risked losing their house. Their problem was made more severe by the faults in the house that

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<sup>90</sup> Ibid, page 6

<sup>91</sup> Ibid, page 6

<sup>92</sup> Ibid, page 7

<sup>93</sup> Ibid, page 7

<sup>94</sup> Ibid, page 7

<sup>95</sup> Ibid, page 8

<sup>96</sup> Transcript 30/11/2011, page 48

<sup>97</sup> Exhibits B35.1, B35.2, B35.3.2 & Transcript 30/11/2011, page 47

would have made it very difficult to sell for an amount equal to what they had spent on it. So tight were their financial resources that they had made arrangements to sell two of their three motor vehicles even though that would likely have impacted upon their ability to earn an income.

I reject Mr Leahy's suggestion that things were not so bad and/or that he did not know how bad they were. I find he has deliberately and persistently sought to understate the extent of their financial problems because he is aware they might be construed as a motive for him to murder his wife.

## **6.8 Life insurance**

On 2 February 1990, mutual life insurance policies had been taken out with the AMP covering the lives of both Alan and Julie-Anne Leahy with \$120,000 being payable to Alan Leahy upon the death of Julie-Anne and vice versa.<sup>98</sup> The premium paid was \$66.04 per month. After her death, an amount of \$121,785.22 was paid by AMP to the executor of Julie-Anne Leahy's estate, Alan Noel Thomas Leahy.<sup>99</sup>

Inspector Stan Kruger interviewed insurance agent, Geoffrey Choveaux on 24 May 1993. Mr Choveaux stated that it was originally Julie-Anne Leahy's idea to take out the policy on her life. Initially, Alan Leahy was very much against it for financial reasons but relented and the policies were purchased.<sup>100</sup>

The NAB bank file records that Alan Leahy called at the bank on 23 August 1991, two weeks after the women's bodies were found, and told the manager he had not worked for four weeks. He sought a loan of \$10,000 advising that he expected an insurance payout of \$12,000 from AMP regarding the Nissan four wheel drive and a life insurance payout of \$120,000 on his wife's death.<sup>101</sup>

The file notes at the NAB reveal that Alan Leahy did receive the \$120,000 life assurance payout, and that he told the bank most of the payout was swallowed up in legal costs.<sup>102</sup>

Both in evidence before this inquest and in evidence before the CMC in 2008, Alan Leahy dissembled and feigned ignorance about the insurance policy and its details – see, for example, his answers in evidence to this inquest at page 9-50 of the transcript of 30 November 2011, and his responses to the CMC during a hearing in Cairns on 10 July 2008.

Alan Leahy told the CMC the only recollection he had of knowing about the AMP life insurance was after Julie-Anne had already done it. He said although he didn't agree with wasting money on insurances, as she was part owner of the business she had every right to use the money as she chose.<sup>103</sup>

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<sup>98</sup> Exhibit D5, page 158

<sup>99</sup> Exhibit D2, page 17

<sup>100</sup> *Ibid*, page 17

<sup>101</sup> Exhibit D5.2 - *RUN 27.6.1*

<sup>102</sup> *Ibid* - *RUN 27.6.1*

<sup>103</sup> Exhibit B35.3, page 36

Alan Leahy said the catalyst for the insurance was the house. He said he recalled at the time just thinking it was a pointless waste of money. He said the value of the policy he believed now to be about a hundred thousand dollars.<sup>104</sup>

When asked whose life was insured, he said he assumes it was hers. When asked if his life was also insured he said *I – there may have been, I don't know. There may have been because of the mortgage, I don't know.*<sup>105</sup>

Ms Michelle Black, Alan Leahy's second wife, stated that Alan Leahy paid for a car out of the insurance from Julie-Anne's death and told her she wasn't to mention that to anyone.

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<sup>104</sup> Ibid, page 36

<sup>105</sup> Ibid, page 36

## 7. The gun and ammunition

Found with the bodies of the two women was a .22 calibre rifle that had been shortened by most of its barrel and stock having been cut off so that it was only 33cm long compared to its original length of 94cm. When tests confirmed it had been used to kill both women, the questions which demanded answers were: who owned it? who had shortened it? and where had the ammunition come from?

### 7.1 The acquisition of the .22 Ruger rifle

Investigations established the gun used to kill both women, a .22 calibre Ruger rifle, belonged to Vicki Arnold. It was bought for her by her client and friend John Wilkinson, a blacksmith who ran an engineering shop in Herberton Road, Atherton.

He said that on 12 June 1991 he walked from his workshop into the office where he found his wife talking to Vicki as she worked on the firm's computer. In general conversation she asked him if he could get her a rifle.

She told him it was for a male friend who worked on a cattle station.<sup>106</sup> She stipulated the gun she wanted: a .22 rifle. When Mr Wilkinson told her that was too light for use on a cattle station, she responded that was what her friend wanted. She said he intended to put it behind the car seat, a common practice in the country.<sup>107</sup> She also told Mr Wilkinson that she wanted to spend about \$500 on the gun.

He looked in a periodical that advertised items for private sale, located a suitable weapon, contacted the seller and arranged to buy a Ruger .22 calibre semi-automatic rifle with a 10 shot magazine for \$300.

There is some uncertainty as to whether Mr Wilkinson gave Vicki the rifle on 5 or 10 July 1991<sup>108</sup> but it is of little importance. He deliberately kept back the two and a half boxes of ammunition which came with the gun.<sup>109</sup> The gun came with a telescopic sight which could be removed using an Allen key.<sup>110</sup> Mr Wilkinson told Ms Arnold to tell her friend to remove the telescopic sight before he put it behind the seat, to avoid damage or inaccurate sighting.<sup>111</sup> A few days later Mr Wilkinson asked Ms Arnold if her friend liked the rifle, she replied with words to the effect that he thought it was *great* or that he was *ecstatic*.<sup>112</sup>

Ms Arnold arranged with Mrs Wilkinson to pay for the rifle on 26 July 1991. Sergeant Wilce told this inquest that various friends knew of the purchase of the rifle. He said he had learned that she had told them she needed it for her

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<sup>106</sup> Transcript 14/11/2011, page 24

<sup>107</sup> *Ibid*, page 24

<sup>108</sup> *Ibid*, page 25

<sup>109</sup> Transcript 14/11/2011, page 25 & Exhibit C1, page 73

<sup>110</sup> Transcript 14/11/2011, page 25

<sup>111</sup> *Ibid*, page 26

<sup>112</sup> *Ibid*, page 25

own protection because of prowler-related problems, although she apparently also told others she was having a box made to carry the weapon in her car.<sup>113</sup>

After obtaining the rifle Vicki told Sandra McCarthy, her work mate at Hall Chadwick, that she had bought a gun to hunt kangaroos, to join a gun club and that she was having a case made up to carry it in her car.<sup>114</sup>

On 23 July 1991, Vicki told relatives, David and Sonia Tschumy while visiting their home, that she had bought a rifle through Mr Wilkinson but had given it back to him to sell. She implied that Mr Wilkinson was then in Brisbane selling the rifle, which was untrue.<sup>115</sup>

The evidence indicates that Vicki Arnold knew nothing about guns. The manner of her approach to John Wilkinson provides some indication she may have been acting on behalf of another:

- she nominated the sum of \$500 for the acquisition;
- she insisted on a .22 rifle even after being told that it was a *bit light* for use on a cattle station; and
- her story that the gun was to be kept behind the seat of the car.

The answer to the question whether Ms Arnold was acting on behalf of another when she purchased the rifle requires consideration of other evidence dealt with elsewhere in this report. I shall provide my resolution of it in the 'Conclusions' section.

## **7.2 The acquisition of ammunition**

The evidence summarised below establishes that Vicki bought ammunition for the gun soon after acquiring it, indeed on the day she acquired it, if that was 10 July.

Sergeant Wilce and Constable Hogenelst went to Vicki's flat at about 4.30pm on Friday 26 July 1991, the day the two women went missing. A staff member at the Atherton Police Station, Kerry Heenan, kept a contemporaneous 'Log of Events' commencing on 26 July 1991 which she wrote up from various handwritten notes provided to her by various police officers involved in the investigation;<sup>116</sup> Entry 4 on page 1 records – *1630 WILCE/HOGENELST - Locate box of .22 ammunition on floor in second bedroom – unusual for VS to have same. 10 shots missing from box of 50. Locate telescopic sight on M.P. duchess. No rifle located. Locate spare key to M.P. vehicle.*<sup>117</sup>

During a search of Vicki Arnold's residence on Saturday 27 July, Atherton Police took possession of an 'Olympic' brand invoice book amongst other items.<sup>118</sup> On page one was a handwritten entry in printed script identified by a QPS document examiner as *probably Ms Arnold's* which read; *10/7/1991*

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<sup>113</sup> Ibid, page 56

<sup>114</sup> Exhibit D5.6 - AJL38

<sup>115</sup> Exhibit D2, KRS page 15.

<sup>116</sup> Exhibit D5.2 - RUN 40.2

<sup>117</sup> Ibid - RUN 40.2

<sup>118</sup> Exhibit D5, page 130

*PELICAN BILLS ATHERTON 50 .22 RF LONG RIFLE ELEY STANDARD FOR SPORTING AND TARGET RIFLES SHELLS. LK437 \$4-25.*<sup>119</sup>

On 12 March 1998, Messrs Mengler and O’Gorman contacted the persons who had operated Pelican Bills for the previous 23 years, Mr and Mrs Di Lai. It was a gift store which in 1991 also sold ammunition. They had known Vicki Arnold. Neither could recall selling ammunition to her, although they acknowledged that such a sale could have occurred.<sup>120</sup>

The answer to the question whether Ms Arnold was acting on behalf of another when she purchased the ammunition requires consideration of other evidence dealt with elsewhere in this report. I shall provide my resolution of it in the ‘Conclusions’ section.

### **7.3 Who shortened the rifle?**

Much effort has been expended in seeking to determine who cut down the firearm acquired by Vicki Arnold and found at the crime scene.

It has been generally accepted that Ms Arnold would not have had the strength or manual dexterity to do the task herself. I am also of that view.

Mr Wilkinson came under suspicion early in the investigation because he purchased the gun for Vicki, he had an engineering shop and he was very familiar with guns. However, on closer examination of the known facts, for the reasons detailed below, the second and third of those considerations militate against his being responsible. He certainly has always denied it.

In September 1998, another local resident, Anton de Witte, who knew Mr Wilkinson and Ms Arnold, provided a statement to police alleging that soon after the women’s bodies were found, he was in Mr Wilkinson’s workshop when the subject of the deaths came up. He claimed that Mr Wilkinson said; *I cut the bloody gun down for her boyfriend.*<sup>121</sup>

Mr de Witte was called to the Casey inquest and his statement was tendered but no counsel asked any question of him reflecting on the truth or accuracy of his claim. He died in March 2007 and so this inquest could not explore this matter properly.

In giving evidence to the second inquest, Mr Wilkinson said that he had seen the statement by Mr de Witte and described the allegation that he had confessed to modifying the gun as; *absolutely ridiculous ... a total untruth.*<sup>122</sup>

Mr Wilkinson repeated his denial at the CMC and to this inquest and suggested Mr de Witte may have been motivated to make the allegation because of a disagreement they had about a job Mr Wilkinson had done for Mr de Witte.

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<sup>119</sup> Ibid, page 131

<sup>120</sup> Ibid, page 131

<sup>121</sup> Exhibit B13

<sup>122</sup> Exhibit C2.1, page 227

A significant indicator of who did the work on the gun is the standard to which it was done.

Mr Wilkinson said the rifle looked as if it had been cut down *extremely well*, although it looked as though it had been cut down with a hand hack saw as it had been cut on several different angles.<sup>123</sup>

Scientific Officer Senior Sergeant Alan Piper said the cut on the stock was a straight cut with no major irregularities; it was quite a good cut.<sup>124</sup> In responding to a question about the professionalism of the cut down rifle Sergeant Piper said he has seen numerous sawn-off firearms and it was about as professional as you can get with a hacksaw cut. He said you can tell there are random anglings of the various cuts where, whoever had been doing it, had altered the angle of the cut through the material.<sup>125</sup>

On the rifle there was blue paint on both the metal end of the barrel as well as the wooden end of the butt and he was provided with a blue hacksaw blade found with the gun parts.<sup>126</sup> He subjected the paint to an electron microscope examination. The paint from the wooden pieces and the rifle was quite a good match.<sup>127</sup> In respect of the paint on the hacksaw and on the gun, it is possible it may have come from the same source.<sup>128</sup>

A QPS ballistics officer, Senior Sergeant Michael Keller said the barrel of the rifle had apparently been cut with a hacksaw. In his view, it was a rough cut and an unsophisticated job performed by a person possessing only rudimentary knowledge of firearms and skills in the use of tools.<sup>129</sup>

In my view, if Mr Wilkinson had cut the rifle down he would not have used a hand held hacksaw. He had at his disposal all the tools of an engineering workshop that would have enabled him to easily and very neatly cut through the barrel in seconds.

Further, Mr Wilkinson was highly knowledgeable and experienced in many aspects of firearms. He had participated in international shooting competitions and had restored and rebuilt firearms.

He knew that shortening the barrel to any great extent, risked compromising the functionality of the gun. He also knew it was illegal to do so.

As detailed in section 10.3 of this report, the parts cut from the gun and other paraphernalia connected to it were placed in Ms Arnold's carport two weeks after the bodies were found. They were in a Leahy family pillowcase that Mr Wilkinson is unlikely to have had access to.

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<sup>123</sup> Exhibit C1, page 78

<sup>124</sup> Exhibit C2.1, page 210

<sup>125</sup> Exhibit C1.2, page 36

<sup>126</sup> Exhibit C2.1, page 209

<sup>127</sup> Exhibit C1.2, page 10

<sup>128</sup> Exhibit C2.1, page 209

<sup>129</sup> Exhibit D5, page 108

Had Mr Wilkinson cut down the gun at Ms Arnold's request, there is no reason he would keep the parts for a month or more and then sneak them into her carport. It is far more likely he would have disposed of them as he could easily have done.

The gun found with the bodies of the women closely resembled the one used for comparison purposes in this inquest which had been cut down by a criminal to make it more concealable for use in crimes. Criminals do that because they cannot readily gain access to handguns.

I am satisfied Mr Wilkinson would not participate in such a process. Somebody who would not give ammunition to Vicki Arnold because of safety concerns is most unlikely in my view to hack off the butt and barrel of the gun to enable it to be concealed.

The only evidence that he did so came from Mr de Witte who, over seven years after the event, said Mr Wilkinson was upset when he confessed to cutting down the gun for Vicki's boyfriend. In my view, if this conversation did occur, it is more likely Mr Wilkinson expressed his dismay that the gun he had *got for Vicki's boyfriend* had been used in the crime. At that time, the few words of difference between that and what was later reported by Mr de Witte would have been inconsequential.

I conclude Mr Wilkinson did not cut down the gun.

Mr Leahy denied that he cut down the gun but his prevarication about matters associated with it creates suspicion. For example, there is ample evidence he had possession of a vice and tools in a storeroom under the house at Danzer Drive. His former employee and the boyfriend of Margaret Leary, Ty Leary, told the Mengler/O'Gorman investigation that Mr Leahy had a vice and several hacksaws in his garden shed.<sup>130</sup>

Sandra-Sue confirmed there was a vice in the workshop she used to play in,<sup>131</sup> as did Vanessa Stewart and Nina Stewart.<sup>132</sup>

Mr Leahy told this inquest that *very possibly* he had a vice in his workshop.<sup>133</sup> He also acknowledged he had several hacksaws for use in his carpet business<sup>134</sup>. However, his answers on this occasion contrast starkly with the answers he gave to Frank O'Gorman on this topic during the Mengler-O'Gorman Inquiry when he stated in a tape recorded interview that he did not recall having a vice in the storage area under the house but that he may have had a workbench. When advised that three people had told Messrs Mengler and O'Gorman that there was a vice in the shed he said, *It's possible. I can't recall*. However, he did agree he did have hacksaws.<sup>135</sup>

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<sup>130</sup> Exhibit D5.2 - RUN 8.1.22

<sup>131</sup> Exhibit B21, page 3

<sup>132</sup> Exhibit D5, page 110

<sup>133</sup> Transcript 30/11/2011, page 41

<sup>134</sup> *Ibid*, page 41

<sup>135</sup> Exhibit D5, page 101 & Exhibit D5.3 - DMO88

The answer to the question: Who cut down the gun? requires consideration of other evidence dealt with elsewhere in this report. I shall attempt to provide my resolution of it in the 'Conclusions' section.

## 8. The day before the disappearance

Contemporaneous reports from Vicki Arnold's employers and her closest friends and colleagues indicate she was a committed, organised and hard-working employee.

Importantly, in the days prior to the disappearance of the women, she was her usual pleasant self.<sup>136</sup> All witnesses agreed she appeared normal, and had made numerous plans for the day on which she went missing. She was punctilious and organised and had taken a number of steps indicating she expected Friday 26 July to be a normal work day:

- She had arranged to meet her god parents, Mr and Mrs Wilce at her office at 6:00am on the Friday morning to sign their income tax returns.<sup>137</sup>;
- She had withdrawn \$500 from her savings account to make a pre-arranged payment to Mrs Wilkinson the following day for the rifle;<sup>138</sup>
- She had arranged to drive with her work colleagues to the head office of Hall Chadwick in Cairns, for a training seminar which she was excited to attend<sup>139</sup>;
- She had called a partner of Hall Chadwick, Bruce Peden, asking that he locate some files she wished to discuss with him while she was in Cairns for the training seminar<sup>140</sup>; and
- She had bought a present for Julie-Anne Leahy's child, Anitra whose birthday was on Saturday 27 July 1991, and which was left in her car at the Leahy residence when she went there on the evening of 25 July.

Sandra-Sue Graham, Julie-Anne's daughter, was a precocious nine year old child at the time. She told the inquest that she was home from school on the 25 July 1991 when 'Aunty Vicki' came for lunch bringing sticky buns.

Sandra-Sue said this was not unusual but she was surprised when Vicki Arnold and her mother had an in depth conversation and she was sent to her room so she could not overhear. This had never happened to her before.<sup>141</sup> When she emerged from her room and interrupted the conversation she was told by her mother to *Get back to your room.*<sup>142</sup> Sandra-Sue could shed no light on what they may have been discussing.

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<sup>136</sup> See exhibits B24 and B42.1 and the evidence of Sergeant Wilce and her mother, Vida Arnold.

<sup>137</sup> Transcript 14/11/2011, page 49

<sup>138</sup> Ibid, page 54

<sup>139</sup> Ibid pages 49, 50

<sup>140</sup> Exhibit B42

<sup>141</sup> Transcript 16/11/2011, pages 92, 93

<sup>142</sup> Ibid, page 92

After work Vicki went to her aunt's house in Atherton where she had dinner with her aunt and her mother. She prepared her aunt's tax return after dinner, and they watched television. Ms Arnold then took her mother home. She went into her house to see some new cupboards and flicked through a magazine before leaving at about 9.00pm.

Her mother said Vicki's demeanour was entirely normal. She neither said nor did anything that was in any way unusual.

Counsel for Mr Leahy submits it was suspicious that Vicki insisted her mother sit in the back seat of the car because there was a box of documents on the front seat. He goes on to rely on comments from her brother that he had been told by Detective Sergeant Hayes that when the police took possession of Vicki's car after the women went missing, the box of documents was in the back seat. This is not mentioned in Detective Hayes statements and was never put to him for comment. In any event, in my view it is largely irrelevant. The suggestion the box may have contained the weapon used in the killings and that Vicki did not want it disturbed or discovered is unconvincing. Had she secreted a gun in the box, it would have been a simple matter for her to have put the box in the boot.

Soon after she left her mother's house, Vicki arrived at the Leahy residence, where she found Ms Leahy cooking dinner for the children. Ms Arnold denied having had dinner and accepted an offer to share what was being cooked, after which Vicki and Julie-Anne played scrabble at the dining room table.<sup>143</sup>

Julie-Anne's elder daughter, Anitra, who was 11 years old at the date of her mother's disappearance, told the inquest she recalled Vicki being at the Leahy house in Danzer Street on the evening of 25 July 1991. She had come over that night, had a meal, and spent time with the family. According to her, everything was completely normal.<sup>144</sup>

Vanessa Stewart gave evidence to the inquest that she had gone to school on Thursday 25 July 1990 even though Julie-Anne had wanted her to stay home, because she feared that Julie-Anne knew about her sexual activities with Alan Leahy and wanted to confront her. While there is no other evidence of this, in my view it would be unwise to dismiss it out of hand. It is quite likely Vanessa would be very much in tune with her sister's moods and apprehensions. Vanessa may well have been right. This raises the possibility that Julie-Anne confronted Alan about it after the children went to bed and while she had Vicki for support through what would undoubtedly be a distressing confrontation. However, I conclude there is insufficient evidence to make this more than speculation.

Mr Leahy came home from work early that day. It was Anitra's birthday in a couple of days so Alan and Julie-Anne then went out shopping to get the groceries and to get some birthday presents for her. The children stayed home till they returned, and Vanessa was responsible for tending to baby

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<sup>143</sup> Ibid, page 94

<sup>144</sup> Transcript 17/11/2011, page 41

Kathleen in their absence. The baby had been weaned and was being bottle fed at the time.<sup>145</sup>

When they returned the children were hungry and Julie-Anne and Alan had already eaten while shopping. Julie-Anne made them some scrambled eggs which she had just finished cooking when Vicki Arnold arrived. Julie-Anne asked Vicki if she had eaten, and when Vicki said no, she served Vicki scrambled eggs at the table with the children.<sup>146</sup> The suggestion that a chubby young woman telling a fib so as not to appear greedy when accepting food indicates the woman is a pathological liar is risible.

Mr Leahy was on a beanbag in the lounge room, and while the others were eating, Julie-Anne went into the bedroom to wrap some presents. When she finished eating, Ms Arnold followed her into the bedroom to help. Notably, Vicki brought a present for Anitra that the other children knew about, but she left it in the car, presumably, so as to not spoil the surprise.

Julie-Anne and Vicki were alone in the parental bedroom with the door closed. Vanessa has no sense of how long the two women were in there.<sup>147</sup>

After dinner, the children washed the dishes and put them away.<sup>148</sup>

After the women emerged from the bedroom, the children went to bed. Alan Christopher first, followed by Anitra and Sandy-Sue. Vanessa, as the older child, was allowed to stay up a bit longer. She remembered sitting down in a beanbag in the lounge room, not quite next to Alan, who was closer to the television. Julie-Anne was on the couch while Vicki was sitting on the floor with the coffee table between them playing scrabble. They used to play scrabble quite a bit. Alan appeared to be asleep. Everything appeared normal.<sup>149</sup>

Sandra-Sue was ordered to bed by her mother soon after the television show, 'Jake and the Fat Man' commenced. There is some uncertainty as to whether this was at 8:30pm or 9:30pm but nothing turns on that.

Vanessa said Alan was still in his work clothes sitting in the beanbag in front of the television which was a normal occurrence. Julie-Anne used to like the show 'Jake and the Fat Man' which she thinks started at 9:30pm. Julie-Anne asked Vanessa to go to bed soon after this because it was getting late. She made Julie-Anne and Vicki a cup of tea before she went to bed. There was no talk of fishing.<sup>150</sup>

Mr Leahy does not disagree with any significant aspects of these versions. He said in his statement made on Monday 29 July 1991 that Vicki arrived at about 8:30pm. She, Julie-Anne and the kids were at the kitchen table.

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<sup>145</sup> Transcript 29/11/2011, page 28

<sup>146</sup> Ibid, page 30

<sup>147</sup> Ibid, page 31

<sup>148</sup> Ibid, page 30

<sup>149</sup> Ibid, page 31

<sup>150</sup> Ibid, page 32

*During this time we were joking with them and everything seemed normal. I sat on the beanbag in front of the television and fell asleep. I woke up about 12.25 a.m. on Friday the 26th of July 1991. I was still on the beanbag and I got a smoke and was watching the television and I saw that Julie-Anne and Vicki were playing scrabble at the coffee table.*

*I saw that a movie came on the television then about Frankenstein and watched a little bit of it and Julie-Anne and I talked about the type of movie that it was and Julie-Anne said that she wasn't interested in it and her and Vicki decided to go fishing.<sup>151</sup>*

In evidence at this inquest, Mr Leahy agreed that on everyone's account the activities of the women in the house that night were utterly normal.<sup>152</sup>

After the children went to bed, they never saw Julie-Anne or Vicki again. All accounts of the women's actions from that time are sourced from Mr Leahy only.

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<sup>151</sup> Exhibit B35, page 2

<sup>152</sup> Transcript 30/11/2011, page 28

## 9. The women go missing

### 9.1 Mr Leahy's accounts

Until recently, the only person who claims to have seen the two women alive after the children of the Leahy household went to bed on the night of 25 July 1991 is Alan Leahy. I shall recite the material parts of his evidence first.

His first detailed recorded version of what happened is contained in a statement Mr Leahy made on 29 July 1991.<sup>153</sup> He did not give any account of any activity in the period after the last of the children went to bed at about 10.30pm because according to him, he was asleep. In respect to the departure of the women from the house, he said:

*I sat on the beanbag in front of the television and fell asleep. I woke up about 12.25 a.m. on Friday 26 July 1991. I was still on the beanbag and I got a smoke and was watching the television and I saw that Julie-Anne and Vicki were playing scrabble. I saw that a movie came on the television then about Frankenstein and watched a little bit of it and Julie-Anne and I talked about the type of movie that it was and Julie-Anne said that she wasn't interested in it and her and Vicki decided to go fishing.*

*I then heard the car leave and then I settled the baby down and I think the time was about 12.45am when Vicki and Julie-Anne left. After they left I had to reset a circuit breaker that had tripped out and to then reset the clocks in the house I looked at the time and saw that it was 1.03am. Vanessa woke shortly after this and we talked for a while.*

*I expected that the women would be away for a few hours as that was the usual amount of time that they would go anywhere. I went to bed and eventually went to bed at about 3.00am and then Vanessa came in and woke me at about 6.50am and asked me where Julie-Anne was. I got out of bed and got dressed and went to Vicki's flat. There was no answer at the door and I woke up the next-door neighbour and asked her. Her name is Pamela FOX and she told me she hadn't seen anything.*

*I then went back home and Anita and I went out to the dam and had a look at a couple of places that I thought they might have gone and then it was getting late and I had the other children at home getting ready so we turned around and went home. I told the others that I hadn't found anything and then*

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<sup>153</sup> Ex B35

*Anitra and I came down to the police station and asked if anyone had seen or heard about the women or the vehicle.*<sup>154</sup>

There was however an earlier informal account apparently given by Mr Leahy to an employee of an Esso service station in Tolga Road, Atherton. Sharon Daley first made a statement to police on 15 April 1999.<sup>155</sup> On 24 February 2012 she was again interviewed by police. She signed a short addendum statement confirming her earlier statement indicating that she retained a clear memory of those events despite the effluxion of time.<sup>156</sup> She gave evidence at this inquest in accordance with her statements.

She said that on the day Julie-Anne went missing she was rostered from 6:00am to 12 midday and 3:00pm to 9:00pm. She is adamant that between 6:00am and 6:30am Alan Leahy drove onto the driveway in his white van. She fixed this time by saying that when Mr Leahy arrived she was still involved in the various activities required to open the service station. She is sure this would not have taken more than 30 minutes.

He came into the shop section of the business to purchase something; she can't recall what. He asked her if she had seen Julie-Anne earlier that morning and told her that Julie-Anne had gone missing. He said she had gone fishing at Tinaroo at 2.00am. He also said she quite often went fishing very early in the morning. Alan Leahy then said he was going out to Tinaroo to look for Julie-Anne, and left alone in his white van.

Ms Daley was adamant there was no one else in the front seat of the van, although she could not see into the cargo area.

I am sure Ms Daley has done her best to recall events, but she did not make a statement to police about her recollection of the events until 1999, by which time she had read numerous media articles about the deaths and no doubt discussed it with various people. I am of the view there is too great a risk that Ms Daley has either by now confused some of the finer details of events, or had her memory corrupted by other sources.

There is no evidence available as to the particulars Mr Leahy reported to the police when he first went to the station that morning.

## **9.2 New eye-witness - Feeney**

On 26 July 2011, Shane Feeney attended the Mackay Police Station stating he had information relevant to this case. Arrangements were made for a statement to be taken from him by an officer of the homicide squad. In it Mr Feeney stated he had met the women at a bar-be-cue some years before they went missing. His father worked in the building industry and invited other trade contractors to a function convened when a project had been completed. He claimed Mr and Mrs Leahy and Ms Arnold attended, although at the time he was still at school and did not speak to any of those adults.

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<sup>154</sup> Ex B35

<sup>155</sup> Exhibit B80

<sup>156</sup> Exhibit B80.1

By the time the women went missing Mr Feeney had left school and was working as a cadet surveyor for the Mareeba Shire Council. On the night they went missing he was off work with a knee injury and had gone to visit a friend in Atherton. He said on leaving his friend's place he drove along Tolga Road which turns into the main street of Atherton at a roundabout. In his statement he estimated this to have occurred between 9:00 and 9:30pm on the basis his friend had to work the next day but in the inquest he said it could have been as late as 10:30pm.

Mr Feeney said as he approached the roundabout on the northern end of Main Street, he saw a white short wheel-base Nissan four wheel drive he recognised as the one driven by the Leahy's, approaching the roundabout from his left. He says that vehicle pulled into the roundabout in front of him and continued down Main Street through town until he turned off. The four wheel drive continued on towards Herberton Road.

He said that:

*As the vehicle drove in front of me I saw the silhouettes of two women in the driver's seat and front passenger seat. I got a better view of the driver's side of the vehicle as it came onto the roundabout. I could see Julie-Anne Leahy was driving and Vicki Arnold was in the passenger seat. I also saw a figure sitting in the back seat of the vehicle, but leaning forward through the middle of the front seats. I believe that figure was a male but cannot be sure as it was just a silhouette. I followed relatively closely behind the vehicle as it went through town. I thought it strange that the figure in the back did not move at all while I followed the vehicle. I recall there was nothing unusual about how the vehicle was being driven.*<sup>157</sup>

In an addendum statement made in October 2011 Mr Feeney said he approached a Sergeant Hayes a few weeks after he had seen the vehicle and told him what he had seen. He said Sergeant Hayes *listened to what I said but assured me it was a murder suicide and told me not to worry about it.*<sup>158</sup>

I am sure Mr Feeney did not deliberately fabricate his evidence but I am concerned that it would be unsafe to place credence on it having regard to the short period he had the vehicle in question under observation, the circumstances in which that occurred and the length of time before he was questioned about it.

### **9.3 The search**

The township of Atherton was then a close-knit community and as the day of 26 July unfolded, news of the missing women, who were quite well known, quickly spread. Friends and work mates, together with other townspeople,

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<sup>157</sup> Exhibit B59, page 2

<sup>158</sup> Exhibit B59.1

joined Mr Leahy in searching Tinaroo Dam and its environs and the surrounding roads where it was postulated the women might have been stranded by a motor vehicle break-down. As the day progressed and no sign of the two women had been found, Alan Leahy officially reported the women missing to Atherton Police at close to 4:00pm.<sup>159</sup> He there saw Constable Hogenhelst and Sergeant Wilce whom he told the women had left to go fishing between 12:30 and 1:00am.

As detailed earlier, Sergeant Wilce was a close personal friend of Vicki's. As night began to close in Sergeant Wilce became seriously concerned as in his view this behavior was quite out of character and the weather was not conducive to being outside at night. The Bureau of Meteorology (BOM) records indicated Thursday 25 July 1991 - Herberton minimum temperature minus 1.1 degrees; Friday 26 July 1991- Herberton minimum temperature minus 1.7 degrees.

Of considerable significance was the finding in Ms Arnold's flat of a box of .22 calibre bullets and a telescopic sight from the Ruger rifle. Unfortunately, there are multiple inconsistent versions of by whom and when these items were found.

A Log of Events was kept by Kerry Heenan, a civilian staff member at the police station. She told Messrs Mengler and O'Gorman that each day she wrote up the log from handwritten notes which were provided to her by the various police officers who were involved in the investigation.

An entry for 16:30, 26 July reads:

*WILCE/HOGENELST –To residence of Arnold. Entry through side window. Speak with back neighbour. Has not seen missing person today. Nothing appears amiss inside. Locate box of .22 ammunition on the floor in 2nd bedroom - unusual for VS (sic) to have same. 10 shots missing from box of 50. Locate telescopic site on M.P. duchess. No rifle located. Locate spare key to M.P. vehicle.<sup>160</sup>*

In his statement made before the first inquest Sergeant Wilce said he went to the flat and found the items on the following day, Saturday 27 July. However, when shown the log entry by Messrs Mengler and O'Gorman he said he had more confidence the entry would be correct because the information was compiled at a time when the matters were then fresh in his memory.

Sergeant Hayes also said in his statement that he searched the flat on Saturday 27 July and found the ammunition and the telescopic sight.

In my view, it is likely the log entry is correct having been made closer to the time than Mr Wilce's statement. It seems clear he did not take the items away when he first discovered them and so it is entirely possible they were there

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<sup>159</sup> Exhibit B26

<sup>160</sup> Exhibit D5.6 - AEL

when Sergeant Hayes took over the investigation and searched Vicki's flat on the Saturday.

This find caused Sergeant Wilce concern because he knew Vicki had no interest in firearms. On seeking further information from her friends he came to learn from Mr Wilkinson the circumstances under which he had bought a gun for Vicki.<sup>161</sup>

On either the Friday evening or the next day, Sergeant Wilce went to the Leahy's residence and drove Vicki's car back to the police station. When he searched Ms Arnold's car he found her purse containing \$500, her reading and driving glasses, a box of client files and a birthday present for Anitra.

The next night, Saturday 27 July, Mr Leahy again went to the police station and again spoke with Sergeant Wilce. A summary of that conversation is contained in the Mengler and O'Gorman report:

*Leahy said that he was fairly sure about the time that the girls had left because he either had the clothes dryer or the washing machine on and it tripped the overload or power surge switch and he had to get up and re-set it. He said that he had been asleep in the beanbag and when he woke up he remembers the end of some particular movie that had been on TV. When he went to sleep in the beanbag the two girls were playing scrabble. The girls had gone and he then went to bed after he had checked on the baby. He had an early start in the morning. He woke up about 4.30am. Went and had a shower. Was coming out of the shower dressed in a towel. Went to open the door and saw Vanessa standing at the door. She asked him where Julie-Anne was and Alan said Julie-Anne and Vicki had gone fishing. He said he then got dressed and went to work. Wilce was positive concerning this conversation.<sup>162</sup>*

That notation is consistent with the statement Sergeant Wilce made before the first inquest.

In evidence to this inquest, when questioned about the timing of the women's departure, Alan Leahy said there was a digital clock radio in the master bedroom, Anitra had a clock, and there was a wall clock in the living area, kitchen area or dining area.<sup>163</sup> He conceded that the wall clock was battery operated and suggested that the master bedroom clock was probably flashing indicating it required resetting.<sup>164</sup> He was not sure about the use of the plural 'clocks' in his statement, and suggested it may have been a reference to the stove or microwave.<sup>165</sup>

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<sup>161</sup> Exhibit D5, page 34

<sup>162</sup> Exhibit D5.1 – RUN 20.2.42

<sup>163</sup> Transcript 30/11/2011, page 29

<sup>164</sup> Ibid, page 29

<sup>165</sup> Ibid, page 29

As to Alan Leahy telling Sergeant Wilce that the clothes dryer or the washing machine had tripped the overload or power surge switch and that he had to get up and reset it, he said he did not recall saying that but it was possible.<sup>166</sup>

In response to similar questioning before the second Inquest, Mr Leahy had replied *...If that's the reason it tripped then it's very possible.*<sup>167</sup>

He said Sergeant Wilce was mistaken in his claim that Mr Leahy had told him he got up and went to work at about 4.30am.

A concern about Mr Leahy's evidence was raised by the evidence of a subsequent owner of the Danzer Street house which suggested a power surge in the laundry would not stop clocks in some of the rooms nominated by Mr Leahy because the rooms were on different power circuits. Mr Leahy's counsel rightly points out that this witness only took possession of the house in 1997 and can therefore not say what the position was in 1991. While it is unlikely further circuits were added so soon after the house had been built, it can not be ruled out. When he gave evidence at this inquest, Mr Leahy would commit to nothing about this aspect of the case.

On Saturday 27 July, Atherton Police, under the authority of the District Officer, commenced a far more structured search utilising the Emergency Services helicopter and other resources available to them. By Monday 29 July, the search for the two women had been declared a police 'major incident investigation' and a full-scale ground and air search, utilising both fixed wing aircraft and helicopters, was in progress. This air search continued for several days and was quite wide ranging, both around Lake Tinaroo and the Herberton Range as far as the adjoining township of Herberton. Neither the women nor their vehicle were located.<sup>168</sup>

In their report, Messrs Mengler and O'Gorman state that ground and air searches in mountainous scrub country are extremely difficult at any time. They maintained that even though the search was not successful, that fact alone should not found criticism of what they described as the *genuine, sustained and costly effort that was put in by all those involved.*<sup>169</sup> I accept that once the search of the area around Tinaroo Dam did not reveal anything, the police were faced with a very challenging task. The missing persons were in a vehicle that could have taken them hundreds of kilometers in any direction by the time they were reported missing. The possible search area, therefore, was huge. I accept the search was dedicated and appropriately managed.

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<sup>166</sup> Ibid, page 29

<sup>167</sup> Exhibit C2.2, page 341

<sup>168</sup> Exhibit D5, page 34

<sup>169</sup> Ibid, page 34.

## 10 The bodies are found

### 10.1 The discovery and initial response

At approximately 4:00pm on Friday 9 August 1991, five youths were riding trail bikes in the Herberton Range when they came upon the missing Nissan Patrol 4WD in light scrub country, 800 metres west of the Atherton-Herberton Road at a place known as Cherry Tree Creek<sup>170</sup>.

The trail bike riders told police they did not approach the vehicle closer than approximately 10 to 15m, nor did they interfere with the vehicle. Upon realising the vehicle contained human remains, probably those of Ms Arnold and Ms Leahy whose disappearance they were familiar due to the ongoing media coverage, they quickly departed the scene. One of the youths reported the finding to Sergeant Michael Morrison at the Herberton police residence. At that time Sergeant Morrison was relieving as the officer in charge of the Atherton police station. He attended the scene shortly after, arriving there at about 5:00pm.<sup>171</sup>

Sergeant Morrison walked around the vehicle several times. It was immediately apparent to him the vehicle the youths had discovered was the white Nissan Patrol owned by the Leahys which had left from 20 Danzer Drive, Atherton on the evening of 25/26 July 1991. It contained the bodies of Vicki Arnold and Julie-Anne Leahy which were both in an advanced state of decomposition.

It was also obvious to Sergeant Morrison that Ms Arnold and Ms Leahy had suffered violent deaths. He called for the assistance of detectives.

Shortly after, Detective Sergeant Michael Hayes and his assistant, Senior Constable Willem Hendrikse of Atherton Police, attended the scene and began the task of gathering evidence. Sergeant Hayes said when he first attended the crime scene it was windy, raining and just becoming dark.<sup>172</sup>

As daylight was fading, the District Officer, Inspector Francis Wagner of Mareeba and Detective Senior Sergeant Neil Campbell of Mareeba CIB, who, at that time, was responsible and accountable for supervising the day to day duties of the Atherton detectives, also arrived at the scene.<sup>173</sup>

Arrangements were made for flood lights to be supplied by local SES crews.

A scenes of crime officer arrived and took photographs and attempted without success to take fingerprints.

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<sup>170</sup> Exhibit B27

<sup>171</sup> Ibid

<sup>172</sup> Exhibit D3.2 - BSM40/3

<sup>173</sup> Exhibit D5, page 35

The now retired Mr Wagner conceded in evidence to this inquest that almost as soon as he arrived at the scene he was told by then Sergeant Michael Morrison that it was a murder-suicide.<sup>174</sup>

Former Senior Constable Hendrikse told this inquest that Sergeant Morrison also told him and Detective Sergeant Hayes that it was a murder-suicide soon after they arrived on scene.<sup>175</sup> He also recalls that when Inspector Wagner arrived, there was a discussion about 'budgetary overtime' whereupon they were told it was obviously a murder-suicide, that the bodies should be moved, and that *things should be cleaned up*.<sup>176</sup>

The senior detective in the region, Detective Inspector Churchill, does not appear to have played any particularly decisive role in the investigation. For example, it seems he never went to the crime scene because he did not drive to Atherton from Cairns until after the bodies and the car had been removed.

The evidence overwhelmingly supports the conclusion that not only was the view expressed at the crime scene by police managers that it was a murder-suicide before any real investigation had been undertaken, but that view was almost immediately acted upon.

Sergeant Bernard Wilce told the inquest that at about 8:00pm on the day the women's bodies were found, he was telephoned and told by Sergeant Hayes that it was a murder-suicide. Shortly after receiving that telephone call he imparted that information to the Leahy family.<sup>177</sup>

## **10.2 The crime scene**

As befits two very experienced and highly credentialed police officers with substantial homicide investigation exposure, Messrs Mengler and O'Gorman, very carefully analysed the state of the crime scene as far as recovered evidence and recollections would allow. In reviewing the crime scene, the Court has relied significantly upon their work.<sup>178</sup> Unless otherwise acknowledged, this is the source of what follows.

The vehicle in which the women's bodies were found was approximately 800 metres from the Atherton-Herberton Road along a dead-end bush track, in undulating medium cover scrub country. The property comprised Crown Land under lease to a Herberton man, who used it for low intensity cattle grazing. It was not fenced, little visited, and some considerable distance from the nearest habitation. There was nothing to attract a passerby.

The entrance was not easily identifiable and set back from the road. The vehicle track comprised a roughly graded route to a creek bed a little more than 100 metres further on from where the Nissan Patrol vehicle was located. This track had originally continued on through the creek bed and joined up with a number of tracks further up the eastern side of Mt Baldy. However, the lessee had bulldozed the creek bed less than six months before these events

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<sup>174</sup> Transcript 14/11/2011, page 92

<sup>175</sup> Transcript 15/11/2011, page 38

<sup>176</sup> Ibid, page 38, 39

<sup>177</sup> Transcript 14/11/2011, page 74

<sup>178</sup> Exhibit D5 - pages 35 to 43.

to form a cattle dam and the track had become impassable at the creek bed due to fallen or strategically placed logs.

The newly constructed dam contained little more than a few inches of water and mud. It was not then capable of being considered a fishing hole and there was no other recognised fishing hole within some kilometres of this location.

The track to the dam consisted of a bulldozed access track constructed by the lessee and suitable for either 4WD vehicles, or farm vehicles. The track would not have been of interest to the driver of a conventional motor vehicle as there were wet patches in which conventional motor vehicles may have become bogged. The bulldozing had uncovered rocks of varying sizes, some of which had been pushed to the edge of the track by the bulldozer blade.<sup>179</sup>

The lessee had last visited the property to check his cattle on the afternoon of 22 July 1991, three days prior to the disappearance. He had then left the district for some four weeks to follow the western Queensland rodeo circuit.

The Nissan Patrol short wheel base four wheel drive, registered number 371-ADM was white with distinctive red markings down either side. It had one door on either side. At the rear, it had one glass door spanning the width of the vehicle that hinged up from the centre and one metal door that hinged down from the centre. The driving and front passenger seats were 'bucket style' seats. A bench seat, accessible by folding either of the front seats forward, spanned the cabin of the vehicle behind them. A baby capsule was fitted at approximately the centre of the bench seat. Behind the bench seat was an open storage compartment accessible through the rear doors or over the back of the bench seat.

When it was found, the back glass door was open and there were two buckets with some fishing tackle and bait in them and two fishing rods in the luggage compartment.

Detective Sergeant Hayes conducted a search of the crime scene and reported that motor vehicle tracks, which he stated were the tracks of the Nissan Patrol, had completed a three point turn on the creek bank near to the logs that blocked the track and then commenced to travel east, back along the track from whence it had come. He said he was unable to locate any other marks, such as tire tracks belonging to a separate vehicle, or any foot prints at all, at or near the crime scene.<sup>180</sup>

After travelling approximately 100 metres east of that creek bed, back towards the Atherton Herberton Road, the Nissan had come to a stop, about two vehicle lengths off to the north or left of that bush track where it appeared to have knocked over a small casuarina which was then partly under the car with the top protruding between the front wheels. The front driver side wheel was slightly off the ground, the front undercarriage sitting on a stump.

The Nissan vehicle contained the bodies of Vicki Arnold and Julie-Anne Leahy. It was obvious they had suffered violent deaths.

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<sup>179</sup> Ibid, page 36

<sup>180</sup> Exhibit B23

The following observations were made concerning the bodies of and the injuries to, the deceased women.

The body of Vicki Arnold was seated in the front passenger side foot well with her legs outside the vehicle, touching or nearly touching the ground, with her upper torso leaning well back and to her left, with her head lying on the front right hand corner of the seat or the centre consol. Because of the severe decomposition of her body, the location and extent of her injuries were not immediately apparent and were not known until an autopsy was conducted.

The body of Julie-Anne Leahy was seated in the driver's seat, in a more or less driving position. It was clear she too had suffered head injuries but because of the severe decomposition of her body, the location and extent of her injuries were not immediately apparent and were not known until an autopsy was conducted.

Indeed, until the government undertaker began removing the bodies from the car, it was not realised the driver's seat belt was looped twice around Julie-Anne's neck.

A shortened .22 calibre Ruger 10/22 self-loading rifle, serial no. 118 53680 was found inside the vehicle lying on the front passenger seat with its left side down and the barrel pointing toward the seat back. The right hand of Ms Arnold was resting on the firearm with the index finger in close proximity to the trigger. A ten shot magazine was fitted to the rifle; there was what appeared to be hair caught in the gun sight.

There was a lot of dried blood and body fluids, both inside the vehicle and on the ground under the feet of the body of Ms Arnold;

There was a lot of insect larvae activity (maggots), both inside the vehicle and on the bodies of both Ms Arnold and Ms Leahy;

Both bodies were fully clothed and the clothing was not disarranged although Ms Arnold's feet were bare.

Two white women's shoes, later identified as belonging to Ms Arnold, were found 17 and 21 metres from the rear of the vehicle, on the track and to the west toward the creek bed and the dam.

Both side doors were open, with the window being wound down on the passenger side. The rear glass door was up and propped open with the catch.

Sergeant Hayes had reported to the first inquest that the headlight switch had been 'off'. Not confident regarding the position of both the ignition and the headlight switches, Messrs Mengler and O'Gorman caused photographs of the Nissan's interior to be enlarged and then sought expert evidence from Sergeant Kerry Carlton of QPS Transport Section who provided an expert opinion that the ignition switch was on, and the headlight switch was on.<sup>181</sup> I

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<sup>181</sup> Exhibit B9

agree with these conclusions. There appeared to be blood on the ignition keys.

The heater was switched 'on' and at setting '3' - as noted previously, the minimum temperature in the area was minus 1.7 degrees on the night the women went missing.

The vehicle was 'in gear', but it was not determined which gear. The state of the fuel volume was not determined – the vehicle was removed from the crime scene using a recovery vehicle and no subsequent test was made.

The battery is believed to have been flat, but this was not accurately recorded.

There were four 'scratch it' lottery tickets on the front passenger seat near the gun and a spent cartridge case. Two further spent cartridge cases were found on the back seat, one behind the front passenger seat and one in the middle of the back seat, next to the baby capsule.

It is possible there was a cigarette lighter, either on the back seat or in a plastic bucket in the rear compartment, but this was not recorded. Detective Sergeant Hayes stated he believed a cigarette lighter was found in the fishing bucket and it may have been used to start a fire when persons went fishing.<sup>182</sup>

There were two fishing rods, two plastic buckets and other fishing gear in the rear compartment.

There was a rock, about the size of a large grapefruit on the floor well underneath the frame of the front passenger seat. Adhering to this rock amongst dried blood was a number of hairs. Messrs Mengler and O'Gorman noted the crime scene was scattered with rocks of a similar composition. One of the crime scene photographs<sup>183</sup> shows what appears to be an indentation in the ground. Mengler and O'Gorman raised the possibility that this could be the indentation left by the rock found on the floor of the Nissan vehicle. If this is correct then that rock would have been located virtually underneath the passenger side front door sill of the Nissan.

There was a wooden handled serrated bladed knife, a common type of steak knife, jammed between the left upper thigh of the body of Ms Arnold and the bottom of the passenger seat squab. The blade had been bent just short of 90 degrees and there was dried blood on the blade.

When interviewed by Mengler and O'Gorman in 1998, Vanessa Stewart recalled that the family owned a set of steak knives much the same as the crime scene knife of which she had seen photographs.<sup>184</sup> Mr Leahy also agreed the family had owned a similar set of steak knives when they lived in Atherton.<sup>185</sup>

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<sup>182</sup> Exhibit D5.2 - *RUN44.3*

<sup>183</sup> Exhibit F2, photo 47

<sup>184</sup> Exhibit D5.5 - *TM016*

<sup>185</sup> *Ibid* - *TM020*

No torch or lantern was found in the vehicle or at the scene.

On 9 September, Senior Constable Hendrikse conducted a search by himself at the crime scene where he found a spent cartridge case which he believed would have been located a few inches beneath the vehicle.<sup>186</sup> He described the position it was found as being a few inches toward the underside of the Nissan from the body fluids then still remaining on the ground, at the point at which Ms Arnold's feet had been situated at the time the bodies were found.<sup>187</sup>

He said they were still, at that stage looking for three spent cartridges.<sup>188</sup> A grid search conducted the next day by a host of police, including Detective Sergeant Hayes, failed to find anymore bullet cases. A grid search using a metal detector had also been undertaken in the day after the crime scene was discovered.

### **10.3 The discovery of the gun parts**

Two weeks after the bodies of the women were found, the parts that had been cut from the Ruger rifle, other accessories that came with it and a hacksaw were found in Vicki Arnold's carport by her neighbour, Pamela Fox. Unfortunately, Ms Fox has given differing accounts of some events connected with the find that has made it difficult to be sure exactly what occurred.

The find was reported to police by Ms Fox on the afternoon of 23 August 1991. In a statement made a week later she said that on that day she had been called by her landlady and asked to collect or secure the lawnmower the landlady had lent to Vicki.

Ms Fox said in response she went into Ms Arnold's carport. The mower was easy to locate as there was nothing else in the carport other than a wooden wardrobe, a step ladder and an outdoor furniture set. Ms Fox's statement goes on:

*I then walked into the car port and saw the lawn mower with a white bag on top of the rear left wheel of the mower. I went to lift the bag from the mower wheel and it felt heavy, I then looked into the bag and saw the butt and barrel of a gun, I also saw what looked like a saw.*

For reasons she has never properly explained, Ms Fox then called Mr Leahy. He said he was too busy to speak to her as he was rushing to get to the bank before it closed. She called back a few minutes later and the telephone was answered by Julie-Anne's mother who advised Ms Fox to call the police, which she did. An officer attended and took the 'white bag', which turned out to be a pillowcase, and its contents away for examination. She also said that in the pre-dawn hours of the day she found the bag, she had been woken by

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<sup>186</sup> Exhibit C1, page 57

<sup>187</sup> Ibid, page 58.

<sup>188</sup> Ibid, page 57

a noise she thought was made by someone trying to get into her flat. She turned her lights on and looked through the window but saw no one.

She gave evidence consistent with her statement at the first inquest.

When Ms Fox was interviewed by Messrs Kruger and Bullock during their respective reviews of the case, her evidence was consistent with her original account. She also denied the suggestion that her eight year old son had in fact found the pillowcase. She pointed out he was at school when she found it. Mr Leahy had claimed Ms Fox had told him her son had found it – a claim she rejected.

Messrs Mengler and O’Gorman also interviewed Ms Fox. They gave her a copy of her original statement and took another from her dated 30 January 1998. In that statement she said:

*I have read that statement again tonight and the statement is correct with the exception (1) that I did see a person at the flats in the early hours of Friday 23 August 1991 and that (2) that on 23 August 1991 I only rang the LEAHY household on one occasion after I had found the pillow slip and contents. That has always been clear in my mind and I cannot explain how it appears from my statement of 02.09.91 that I rang more than once. Additionally, there is other information known to me which may be helpful and which I am prepared to provide in more detail.*

*On the night of 22 August 1991 my recollection is that I went to bed about my usual time which then was approximately 10:30pm. As previously stated I do sleep lightly and intermittently. At very close to 3:00am on the morning of 23 August 1991 (I know the time because I looked at the clock in my bedroom when I awoke) I heard an unusual noise which I believed to come from the door which leads from my lounge room into my carport. The noise was like a rattle and lasted for a couple of seconds and my immediate thought was someone was trying the door handle of the door which I have referred to. I was very frightened and I jumped out of bed and immediately turned on my bedroom light and then the bathroom light and I went quickly to my lounge window which is approximately 12 to 15 feet from my bedroom door where I had turned on the light. The same curtains covered the window as they do today and comprise one continuous length of pattern lace curtain. I pulled back the corner of the curtain closest to the front door and looked out. At that time there were no shrubs impeding my view through the lounge room window and the shrubs on the property line of the footpath then were approximately 2 to 3 feet tall.*

*I saw the figure of a grown man running. He was running on the grass of the footpath between the shrubs and road in front of my house. When I first saw the man he was to the right of where I was standing at the window and he was actually running. This person was only in my view for approximately 1 or 2 seconds and he went out of my view at the fence line between my flat and the adjoining house, and he was travelling in the direction of Parkview Street but still on my side of Tower Avenue.*

*I saw that this person was of average height and build and that he was wearing what I thought to be a shirt and trousers of dark colour. I did only have a fleeting glance of this person.<sup>189</sup>*

When she gave evidence at the second inquest, Ms Fox was warned of her right to refuse to answer questions that might incriminate her. This was explicitly done with reference to the inconsistency between her earlier evidence and the statement given to Messrs Mengler and O’Gorman.

Notwithstanding that warning, she insisted she had seen someone as described in her 1998 statement. She said she had not told the first inquest of that because she was frightened. She explained she had been receiving ‘hang up’ calls on her silent number and she believed them to have been made by Alan Leahy because Julie-Anne had the number saved in the Leahy family phone. She said she suspected him because he had tried to ‘incriminate’ her son by falsely suggesting she had told Mr Leahy her son had found the pillowslip with the gun parts.

Ms Fox intimated that the person she saw running away was Alan Leahy, but agrees she can’t be certain.

Ms Fox gave a similar account when she was called to investigative hearings convened by the CMC in 2008. She said the person she saw was the same shape and size as Alan Leahy but agreed she only saw him for two or three seconds and could not say she recognised him.

When she gave evidence at this inquest, Ms Fox gave evidence consistent with what she had said to Mengler and O’Gorman, the second inquest and the CMC.

Ms Fox’s son Andrew denied at the second inquest, before the CMC and at this inquest that he had found the pillowcase.

Sergeant Hayes said when the pillowcase was brought to the station he examined its contents. The pillowcase was damp and it contained the items listed above, the longest of which were metal rods used for cleaning the rifle that were 47cms long. The items were not weighed but collectively they would have weighed in excess of two or three kilograms.

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<sup>189</sup> Exhibit B17.3

Mrs Fox's evidence is corroborated to some extent by the owner of the mower, Mrs Woodcock who also owned the flats. When she was interviewed by Mr Bullock in 1995, she said she went to the premises after the women's bodies had been found. Although she said she thought it was three weeks after that had occurred, she indicated police were present searching when she attended, indicating it must have been sooner. She said she looked at the mower and noticed nothing on it. She also confirmed that sometime later, after she asked Ms Fox to move the mower, Ms Fox rang and told her she'd found a bag on the mower. Although the interview does not go into the specifics of what was found it is consistent with it being the gun parts –as soon as she realised what it was she just rung the police so she was a bit upset..<sup>190</sup>

Mrs Woodcock confirmed this evidence in a statement taken recently. She said:

7. *I went to the unit and spotted the mower in the car port. Police were actually in the unit at the time I arrived. I did not notice anything unusual about the mower it did not have a pillow case on it or the catcher or any other item for that matter. I am sure that at the time I saw it the catcher was attached to the mower.....*
8. *I phoned Pam the other duplex tenant later on that day and asked her if she would take the mower to her side of the units.*
9. *She phoned me back a short time later to tell me that "I have found a pillow case on the mower and it has saw off pieces of a gun in it." She told me she had rung Atherton Police and told them of this as well.<sup>191</sup>*

The earliest police searches of Ms Arnold's premises were conducted separately by Detective Sergeant Hayes and Sergeant Wilce a day or two after the women disappeared.<sup>192</sup> Both Detective Sergeant Hayes and Sergeant Wilce expressed complete confidence that the gun parts and accessories were not located at the premises or in the carport at that time.

The theory postulated in cross-examination at, and in submissions to the previous inquests, that the items had been secreted in the catcher of the lawn mower all along and had been overlooked during the initial searches, was rejected in the findings of both of the previous hearings. Both courts were satisfied with the veracity of the evidence that the items were secreted there on or about 23 August 1991. I am of the same view.

Sergeant Wilce said the pillow slip containing the gun parts was not on top of the lawn mower when he searched the unit, and if it had been in the catcher

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<sup>190</sup> Exhibit B84.1

<sup>191</sup> Exhibit B84

<sup>192</sup> Transcript 14/11/2011, page 54, 55

of the lawn mower, the weight differential would have made its presence obvious when he moved the lawn mower and re-attached the catcher.<sup>193</sup> It is highly unlikely the long cleaning rods could have been secreted inside a grass catcher and I readily accept the submission that the combined weight of the items would have been noticed by anyone handling the catcher.

Counsel for Mr Leahy had made veiled submissions about the reliability of Sergeant Wilce's evidence and submitted it was possible he was involved in cutting down the gun and surreptitiously returning the spare parts to Ms Arnold's carport after her body had been found. Those attacks on the former officer's creditworthiness are made without any justifications and are rejected. For example, it is submitted that it is suspicious Sergeant Wilce drove Ms Arnold's car to the police station on Friday night before he had searched her unit. In fact the contemporaneous log of events kept by an administrative officer at the police station records that Sergeant Wilce collected the spare car key from Vicki's unit on Friday afternoon when he first searched it. In any event the submission goes no further than to suggest that care should be taken with Mr Wilce's evidence unless it is corroborated by others. As his evidence relating to the gun parts not having been in the carport when earlier searches were made, is supported by Sergeant Hayes and Mrs Woodcock, this attack on the integrity of Mr Wilce goes nowhere.

Attempts to find fingerprints on the rifle parts found in the pillow case were unsuccessful. It is likely because the parts were wrapped in a wet or damp pillowcase the recovery of fingerprints was made more difficult. Alternatively, they had been wiped clean by whoever put them in there.

A QPS document examiner, Kulanehavelu Selvakumar, examined the pillow case and deciphered faded and barely legible handwriting on it to be '6 Rose Street Anitra Graham'. Ms Graham was interviewed and she recognised the faint writing on the pillow case as hers. She explained she and the other children quite often stayed at Vicki Arnold's residence and sometimes took pillows with them and so may have left it at the flat. Alternatively, it could have come from the Leahy household.

I will attempt to adjudicate on the significance of the placement of these items in Ms Arnold's car-port in the analysis and conclusions section of this report.

#### **10.4 The crime magazines**

In his statement to the first inquest,<sup>194</sup> principal investigating officer, Detective Sergeant Michael Hayes, said at page 9:

*At a later date, I saw Human Services Officer Kindt at the Atherton Police Station. Following a conversation with her, I handed to her a number of diaries, personal writings and poetry under the hand of Vicki Arnold. I also handed to her a magazine titled "Murder Casebook", investigations into the Ultimate Crime, the Whitehouse Farm Murders, issue number 7 in a series. This*

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<sup>193</sup> Ibid, page 58

<sup>194</sup> Exhibit B23

*magazine, along with others, had been brought to me by Alan Leahy, who informed me that Vicki Arnold had once borrowed these books from him.*

The magazines are significant because the issue referred to by Sergeant Hayes contained an article about a multiple murder in which the perpetrator had manipulated the scene to make it appear that one of the deceased had killed the others and then herself.

Mr Leahy was not asked about the magazines until this inquest. When questioned he denied he had ever owned them.<sup>195</sup> He denied ever discussing the articles in them with other family members. He could not explain the endorsement 'Leahy' written on five of the eight magazines.<sup>196</sup>

Conversely, Vanessa Stewart told the inquest she remembered going to a local newsagent with Julie-Anne to collect one of them that they were frequently discussed among members of her household.

It was put to Mr Leahy:

*She also said that they were often discussed in the house, that you and Julie-Anne would discuss some of the scenarios in the magazines and the children were horrified, scandalised by them, you don't recall that happening? No.*

*So, you say you didn't own those magazines? No, I didn't own them.*

*How did you come into possession of them? I don't recall, sir.*

*I'm sorry? I don't recall.*

*MR DEVLIN: You agree that you gave them to Detective Hayes? I would imagine that if the account says that then yes.*

*So, are you saying now you have no recollection of ever having any contact with those magazines? I recall about the magazines, but I don't know whether it's because I recall it back then, or it's because they've come up since.*

*STATE CORONER: Well, what do you recall about the magazines? I was of the understanding that Vicki owned them.*

*And how did you get that understanding? I don't know, sir.*

After some further questions about the magazines, Sergeant Hayes' statement was again read to Mr Leahy and he was again asked if he accepted it as a true account. He again prevaricated and went so far as to suggest his wife may have brought the magazines into the house and he had no knowledge of them because he wasn't interested in such things.

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<sup>195</sup> Transcript 30/11/2011, page 31

<sup>196</sup> Ibid, page 31

STATE CORONER: So, that suggestion is that you did own them and that Vicki Arnold had borrowed them from you? It would suggest that, yes.

Do you accept that's the case? That I owned them? I don't recall owning them or me subscribing to them, no.

So, you couldn't say that Vicki had ever borrowed them either then? I can't recall that, no. I mean Julie-Anne may have subscribed to the - the article or whatever, but I don't recall being

So, you think Julie-Anne might have subscribed to the magazine ? I have no idea, sir.

Well, you just suggested that she might have subscribed to the magazine? That's the only possible way if it was subscribed to the household, yes.

And then she brought them to the house and kept them from you? No, it wouldn't have been the case of keeping them from - from me, it would be the case of me probably not being interested in it, but I don't recall the surroundings around those magazines.

So, it's quite possible that you did subscribe to them and you don't remember them? Yes, it's possible.<sup>197</sup>.

Mr Devlin asked Mr Leahy directly about the murder suicide article referred to above:

*I feel bound to ask this, however, volume 7 in that series refers to the Whitehouse Farm murders in England, do you know anything about that? No.*

*You don't know the story? No.*

*Well, the story, just very briefly, is that a man murdered his wife, his mother, father, his two nephews and then took the rifle and positioned his sister, who had a psychiatric background, in a suicide position. He made one mistake, in order for the suicide-murder scenario to work, the sister had to be able to shoot herself. The rifle was too long with the silencer on it that he'd employed, so he threw it away and then positioned the rifle in a suicide position. Does any of that ring a bell from your contact with these magazines? No.*

*It was a murder-suicide exposed as a mass murder, do you see what I'm saying? Yes.*

*Why did you give these to the police, do you know? No.*

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<sup>197</sup> Ibid, pages 32 to 35

*Where did you get them from, do you know? I have no idea, apart from, obviously, they were in my house.*

In July 1991, Denise McGimpsey was employed as a shop assistant in the Phillips Newsagency in Main Street, Atherton. She made a statement and gave evidence at this inquest that was in all material respects consistent with it. In summary her evidence was as follows.

There was a store practice to write customers' names on newspapers and magazines that had been ordered. The newspaper or magazine would be kept in pigeon holes and it was easy to locate the newspaper or magazine if the customer's name was on the top right hand section.

She said Atherton was a small town where you get to know almost everybody by sight. She knew Vicki Arnold to look at, but not personally, as a person working in an accounting business in Atherton. She also knew the Leahy family through her work at the newsagency, although she was not friends with them. Julie-Anne was a regular customer; Alan would come into the newsagency from time to time.

The Leahys used to order magazines from the newsagency but she cannot remember what type of magazines.

She was shown photocopies of the fronts of the crime magazines Sergeant Hayes said he was given by Mr Leahy. She remembered the magazines as coming into the newsagency every fortnight as 'part works', that is, a number of issues building to a library.

The name 'Leahy' was endorsed on the seven copies, and she can identify numbers one, two and three as her handwriting. She thought that number four might also be her writing but she can't be sure. She could not read the writing on number five well enough to make an assessment, while she could say six and seven are not her handwriting. She believed the magazines were ordered from the newsagency by either Julie-Anne or Alan Leahy; but she could not say which of them.<sup>198</sup>

Ms Michelle Black is the former wife of Alan Leahy. They married approximately two years after Julie-Anne died after he broke off his relationship with Vanessa. Ms Black said they separated after four months of marriage after she became frightened and depressed at his controlling behaviour.

Ms Black stated that Mr Leahy had crime magazines in a wardrobe in their home.

As detailed earlier, Mr Leahy had been convicted of crimes that involved elaborate deception. Vanessa Stewart gave evidence he boasted of planning

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<sup>198</sup> Exhibit B79

the 'perfect bank robbery'.<sup>199</sup> It is clear he had a perverse interest in matters criminal.

I conclude Mr Leahy did have access to the magazines and it is more than likely he was aware of the article referred to by Sergeant Hayes. I will deal with my perception that he lied about that later.

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<sup>199</sup> Transcript 29/11/2011, page 23

## 11 Expert evidence and investigation results

### 11.1 Autopsy results

Autopsies were conducted on the both bodies by a specialist pathologist, Dr A J Ansford, on 10 August 1991. In the absence of any eye witness accounts of what happened at the crime scene, this evidence assumed critical importance in attempting to unravel what occurred. As noted, both bodies were in an advanced stage of decomposition and severely infested with insect larvae. This caused the examination to be deprived of evidence about the gun shot wounds.

#### 11.1.1 Ms Vicki Arnold

The autopsy of the body of Ms Arnold revealed the following:

- The body was clad in a pale black and light grey windcheater jacket and pale yellowish coloured trousers. Underneath the jacket was a blouse with vertical blue stripes and a brassiere.
- It was the body of a moderately obese adult female in an advanced stage of decomposition, particularly the face and neck.
- A bullet entry wound 0.7cm in diameter was located underneath the jaw, about 3.0cm behind the point of the chin. The projectile had passed upwards and to the left, through the tongue and destroyed part of the left side of the jaw in which projectile fragments were located.
- A circular bullet entry wound 0.8 in diameter was located 4.0cm behind the tip of the right ear, with a corresponding wound in the skull. The projectile had passed to the left and slightly downwards, and was found fragmented in the bone of the base of the skull on the left. The brain, though liquefied, appeared haemorrhagic.
- A gunshot wound to the upper left thigh that was not detected during the initial post mortem was discovered by the government medical officer, Dr Bernays, after an x-ray examination of the lower body regions of both deceased. The entry wound was two thirds of the way up the leg between the hip and the knee. It was 2cm deep. The bullet had entered the outer aspect of the thigh and tracked upwards at an angle of 45 degrees to that surface. The projectile had penetrated approximately two centimetres *barely to the depth of the fat or perhaps slightly into the muscle.*<sup>200</sup>
- No evidence was found of pre-existing disease, but Dr Ansford could not confirm or deny that Vicki Arnold suffered from kidney disease because of the state of decomposition.<sup>201</sup>

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<sup>200</sup> Transcript 28/11/2011, pages 4 & 5

<sup>201</sup> Ibid, page 4

Dr Ansford was of the opinion that death was due to a gunshot wound to the head. He found it very difficult to give an estimate of the range from which the gun was fired for any of the gunshot wounds on either body due to the action of insect larvae and the effects of decomposition. The best preserved wound was that on the back of the head of Ms Arnold and this showed only a small amount of carbon raising the possibility that it was not a contact wound but could have been inflicted from up to a metre away.

Dr Ansford noted it would not have been possible for Ms Arnold to inflict this wound on herself from anything other than contact or near contact.

During his evidence at the first inquest, Dr Ansford gave further detail as to whether the wound behind the right ear of Ms Arnold could have been a contact wound:

- He raised the possibility that it was not a contact wound. Although the wound was better preserved than any of the other wounds, there was still decomposition present. It may be that the carbon had been there and had been lost in either the decomposition process or removed by insects or insect larvae.
- As far as the other wounds were concerned, there was so much damage to them with decomposition, it was absolutely impossible to offer any sort of comment as to the range from which the bullet was fired.
- If the wound behind the right ear had been in well preserved skin and a non-decomposed body, one would have said that it was probably inflicted a metre or more away.
- If it had been a fresh wound, it would not have been possible to fire the shot from less than a metre away; but because of the insect and decomposition process a contact wound could not be excluded.

Dr Ansford made a number of additional points during his evidence at the first inquest:

- Although the chin injury to Ms Arnold would have been very painful, he did not think it would cause unconsciousness and would only cause death due to prolonged bleeding.
- The indications were that Ms Arnold was alive at the time the shot behind the right ear was inflicted. It would have been rapidly fatal.
- The direction of both gunshot wounds was from the right.
- It was unusual to get a suicide wound in the position of the one suffered by Ms Arnold behind the right ear.

- There was no injury on Ms Arnold's head consistent with being struck by a rock.
- The wound under Ms Arnold's chin would produce a lot of blood, but there may have been less bleeding from the wound behind the right ear.
- He would have expected observable amounts of blood being left around if the firearm injuries had been inflicted outside the vehicle, but that was outside his expertise.
- A person in a suicidal frame of mind can often produce the most horrendous injuries on themselves.
- The state of decomposition of the bodies was consistent with the deaths having occurred on 26 July 1991. He thought they would have been dead longer than a week.

Dr Ansford was interviewed by Consultant Crown Prosecutor David Bullock when he reviewed the matter<sup>202</sup>. Dr Ansford commented:

- The wound suffered by Ms Arnold behind the right ear would cause almost immediate death.
- A person could not cock a rifle after receiving such a wound.
- The blood may just have welled out of Ms Arnold's chin wound.
- A contact wound behind the right ear would cause no brain splatter and little blood spray.
- The assessment of the wounds was made by processing formalin preserved tissue, embedding it in wax, cutting very thin slices, staining the sections, mounting them on a microscope slide and examining them for burnt powder [carbon or soot]. The rule of thumb using this method is that soot visible on the skin with the naked eye indicates a contact or near contact wound; soot seen microscopically but not with the naked eye indicates a range up to one metre; and little or no soot seen indicates a range greater than one metre.
- A review of the slides prepared from the skin behind Ms Arnold's right ear showed some apparent insect damage although there was still some relatively well preserved skin. There was some partially burnt powder embedded as well as a small amount of carbon in the depths of the wound. This is consistent with either discharge at contact or near contact, *although a discharge at up to a metre or so cannot be excluded.*

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<sup>202</sup> Exhibit D3, page 33

- The thigh wound would be painful but the victim would still be able to walk, probably with a limp.

In his evidence to the second inquest, Dr Ansford made some further points:

- The wound behind the ear of Arnold was unusual for a self-inflicted gunshot wound.<sup>203</sup>
- Suicides are almost always brought about by a single shot.<sup>204</sup>
- There was no great enlargement of the wound behind the ear of Ms Arnold and the epidermis (the skin) was relatively intact. The insect larvae action was relatively minor compared with the other wounds on the two bodies.<sup>205</sup>
- If the wound is a contact wound, most of the discharged residue will go into the wound.<sup>206</sup>
- Dr Ansford has done a large number of post mortems on gunshot suicides, and usually one can see the carbon under the microscope because it gets tattooed into the skin. Even after surgeons have cleaned the wound one can still see a deposition around the entry wound with near contact wounds. In this case there was not much there at all. One has to consider the possibility that the wound was inflicted at greater than contact or near contact range.<sup>207</sup>
- He agreed that if the wound was inflicted at greater than contact range it would be impossible for Ms Arnold to inflict the injury on herself.<sup>208</sup>
- He did not do any tests to try to locate any firearm residue on the hands of Ms Arnold. This is normally done by the police scientific people.<sup>209</sup>
- He agreed with the proposition that the position of Ms Arnold's arm doesn't support the proposition of a self-inflicted injury if she was sitting in the upright position that is shown in the photograph – one would expect the gun to just fall straight down rather than move across her body onto the seat. It is a finding which should be considered seriously in terms of whether another party was involved in the death. Television footage shows people falling straight to the ground.<sup>210</sup>

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<sup>203</sup> Exhibit C2.5, page 21

<sup>204</sup> Ibid

<sup>205</sup> Ibid

<sup>206</sup> Ibid

<sup>207</sup> Ibid, page 22

<sup>208</sup> Ibid

<sup>209</sup> Ibid, page 23

<sup>210</sup> Ibid, pages 25,26 & 29

- In re-examination, Dr Ansford made the point that because a wound is atypical, it doesn't mean it's not suicide.<sup>211</sup>

### 11.1.2 Ms Julie-Anne Leahy

The autopsy of the body of Mrs Leahy revealed the following:

- A pair of thongs was present with the body. The legs were bare. The upper torso was clad in a windcheater which is stained with bodily fluids and what appears to be blood. Beneath this there is a short grey/yellow shirt, the lower part of which is blood-stained and a pair of underpants with corresponding blood stains were present in their correct position on the body. Beneath the jacket there was an off-white coloured singlet and a grey and pink skirt.
- It was the body of an adult female in an advanced stage of decomposition, particularly the face and neck.
- A bullet entry wound was located 4.0 cm behind the corner of the mouth on the left. The bullet passed through the left side of the jaw and damaged the voice box, with the remainder of the bullet's track being difficult to identify due to decomposition and wounds on the front of the throat, one of which communicated with the bullet track. No projectile fragments were found. No carbon could be found on microscopic examination but there was severe decomposition.
- A 1.0 cm circular wound containing insect larvae was located at the outer aspect of the left eye. Beneath this wound was a corresponding bullet entry wound in the skull. A lead projectile fragment was found in the liquefied brain. There was apparent haemorrhage into the membranes on the left of the brain. The trajectory was to the right. No carbon could be found on microscopic examination.
- There were three incisions on the neck. The first of the bottom two cuts consisted of a horizontal, superficial wound 2.0 x 1.0 cm at the base of the neck, just to the left of the midline. The second was level with and to the right of this first cut, being a deeper wound 2.0 x 0.5 cm. Above these cuts was a third superficial wound 4.0 x 1.0 cm just to the right of the midline.
- A motor vehicle seat belt with buckle attached was looped twice around her neck. The two ends crossed under the left ear but were not tied. Dr Ansford was of the view the wounds on the neck could not have been caused by the seat belt, but most likely by a knife.
- There was bruising of the back of the left hand with deformity of a ring on the ring finger, but no broken bones.

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<sup>211</sup> Ibid, page 26

- Given the state of decomposition, Dr Ansford found it difficult to assess the relative contributions of the cuts to the neck, the apparent strangulation and the gunshot wounds to the head or the order in which they were inflicted. However, Dr Ansford concluded that the apparent haemorrhage associated with the bullet wound behind the left eye indicated that this was the fatal wound.
- Dr Ansford noted that the other bullet wound was unlikely to have been immediately fatal and the cuts appeared too superficial to have caused rapid death although they could potentially have caused death due to haemorrhage over a longer period of time.
- The state of decomposition precluded an assessment of the degree of neck compression applied by the seat belt, although the circumstances as understood by Dr Ansford at the time indicated it could have contributed to the death.
- Taking everything into account, Dr Ansford formed the opinion that death was due to a gunshot wound to the head with strangulation contributing.
- There was no apparent existing disease.

In his evidence to the first inquest, Dr Ansford made a number of additional points:

- There was a ring on the right hand which was undamaged.
- The gunshot to the area of the left eye would be fatal fairly quickly. It would have been possible for a person with a wound like this to have made some attempts at respiration for some seconds or even a minute or two.
- It is impossible to say whether or not the seat belt contributed to the death because of the decomposition. The wounds on Ms Leahy's neck could not have been caused by the seat belt, but most likely by the knife.
- There was a possible injury to the bottom part of the lobe of the left ear, but it could have been due to insect larvae.
- Moderate force was necessary to inflict the injury to the left hand – there was enough force to bend the rings on her fingers.
- Ms Leahy was alive when the wound in the vicinity of her left eye was inflicted.

In his evidence to the second inquest, Dr Ansford made some further points:

- Because of the state of decomposition, there was no evidence one way or the other that the gunshot wounds to Ms Leahy were fired with the gun in contact or near to contact with her head.<sup>212</sup>
- With respect to Ms Leahy's hair on the gun, there were no injuries consistent with having been struck by the gun.<sup>213</sup>

## **11.2 Review of the pathology evidence**

As part of this inquest, additional expert opinion was obtained from Dr David Ranson, the Deputy Director of the Victorian Institute of Forensic Medicine. Dr Ansford was also invited to review all of the autopsy evidence and he also gave evidence again.

A critical factor to determining whether Ms Arnold had committed suicide or had been killed by another was the range at which the shots had been fired – that is, how close was the muzzle of the gun to her head.

A central indicator of range is the deposition of carbon from the firing of the bullet onto the surrounding skin and into the wound.

Microscopic and naked eye examination of the wound under Ms Arnold's chin showed no carbon deposits in the wound or associated wound track. However, the problem encountered by the pathologists in this case was the extent to which the bodies had decomposed, in particular there was advanced decomposition of the relevant area<sup>214</sup>.

The best preserved wound was the one behind the right ear of Vicki Arnold. It was relatively well preserved with some skin visible around the wound, perhaps because the skin there is closer to the scalp and less susceptible to tissue gas forming, perhaps also because it was covered in hair;<sup>215</sup>

If that wound had been a contact wound, one would expect a lot more carbon in the depths of the wound and on the surface of the skin. Although it is a bit problematic because of insect larvae and decomposition, Dr Ansford expressed the view that *this is not a contact or near contact wound*.<sup>216</sup>

According to Dr Ranson the wound behind Vicki Arnold's right ear was an intermediate distance wound; it was not a hard contact wound but it could be a close proximity wound<sup>217</sup>

Ms Leahy's body was even more affected by decomposition, making consideration of this issue even more difficult in her case.

No soot or carbon was found in the wound on Ms Leahy's cheek on microscopic examination, but there was severe decomposition. The second

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<sup>212</sup> Ibid, pages 24 & 25

<sup>213</sup> Ibid, page 24

<sup>214</sup> Transcript 28/11/2011, page 3

<sup>215</sup> Ibid, page 12

<sup>216</sup> Ibid, page 13

<sup>217</sup> Ibid, page 60

bullet wound was just at the outer aspect of the left eye, and this had insect larvae in it, so estimation of range at which the bullet was fired was vitiated by the action of the insect larvae. Beneath this wound was a bullet entry wound in the skull. A lead projectile fragment was found in the decomposed brain. Haemorrhage into the membranes of the brain on the same side as the entry was discerned, indicating that the circulation was intact when that injury was inflicted.

The cheek wound would not have killed Ms Leahy immediately. The wound near the corner of the left eye was fatal but may not have stopped the circulation straight away.<sup>218</sup>

The three cuts on Ms Leahy's neck were to the left of the midline. They were not very long: two centimetres, two centimetres and four centimetres. One was very superficial, one was moderately superficial, and the lower one had gone through the full surface of the skin. There was a lot of damage due to the bullet wound and insect larvae decomposition, so it was difficult to assess how significant the wounds were. The exit of the bullet may have gone through one of those wounds, if they had been inflicted prior to the bullet wound near the mouth; if later, the cutting of the wound might have become incorporated with the bullet exit wound, or the exit of a piece of bone. The incised wounds had not cut any major blood vessels.<sup>219</sup>

The injury to Julie-Anne's left hand involved definite bruising with some swelling. Upon incising the skin, haemorrhage into the soft tissues was observed. Neither the skin nor the bones of the fingers were broken. Fairly significant force would have been required to deform the rings. The hand must have been up against something firm. If the hand was in the air when hit, it would move away from the object striking it. It was consistent with a blow being struck to the hand. If the hand had been used to punch somebody or to give them a 'backhander', the rings would not have become deformed.<sup>220</sup>

Dr Ansford was shown and commented upon photographs of Ms Leahy's left hand and noted that at least three of the rings were deformed. The photographs appear to show the deformity resulting from a sideways force, not from the top of the hand, because the tops of each of the rings, including where gemstones were set, do not appear to have suffered any impact damage.

During the course of his further examination, Dr Ansford gave the following opinions arising from his autopsy examinations, the other evidence he had read and his participation in the two 're-enactments' using a similar cut down gun and a car of the same make and model:

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<sup>218</sup> Ibid, pages 7 & 8

<sup>219</sup> Ibid, page 8

<sup>220</sup> Ibid, pages 10 & 11

- He could not give an accurate date of death, but he considered it had occurred closer to when the women were last seen alive than to when they were found;<sup>221</sup>
- As a result of viewing the re-enactment he considered that if the gun was not in contact with Ms Arnold's head when the fatal shot was fired, and *was significantly pulled back from the head*, then the suicide scenario might not be viable;<sup>222</sup>
- It is possible for Ms Arnold to have sustained her fatal injuries outside the vehicle and to have been lifted back into the vehicle as demonstrated during the re-enactment;<sup>223</sup>
- No injuries were found on Ms Leahy's head which would account for her hair being found on the gun sight;<sup>224</sup>
- The trajectory of the projectile that killed Ms Arnold would have resulted in damage to the vital centres in the brain stem, rendering her incapable of any controlled activity after the infliction of the wound;<sup>225</sup>
- It is unusual but it does occur for a person suiciding to administer more than one shot to their head;<sup>226</sup>
- The shot administered 4cm behind the right ear of Vicki Arnold is an unusual occurrence but sometimes people committing suicide go to unusual lengths to shoot themselves or destroy themselves in unusual places;<sup>227</sup>
- The wound under Ms Arnold's chin had the potential to produce a lot of bleeding because the tissues of the mouth and other areas are very vascular. It had the potential to produce blood spray if the mouth was open. Dr Ansford expressed the view that it was probable blood spray was created.<sup>228</sup> The wound behind Vicki Arnold's right ear would not necessarily produce much blood splatter;<sup>229</sup>
- The wound in Vicki's left thigh was a flesh wound and would not compromise her ability to attempt to escape by running away;<sup>230</sup>
- The gunshot wound near Julie-Anne's left eye was difficult to trace where inside the brain it had gone because the brain was liquefied. It is

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<sup>221</sup> Ibid, page 6

<sup>222</sup> Ibid, page 15

<sup>223</sup> Ibid, page 19

<sup>224</sup> Ibid, page 19

<sup>225</sup> Ibid, pages 19 & 20

<sup>226</sup> Ibid, page 20

<sup>227</sup> Ibid, page 20

<sup>228</sup> Ibid, page 20

<sup>229</sup> Ibid, page 21

<sup>230</sup> Ibid, page 21

likely to have immediately incapacitated her, but it may not have, depending on where it went inside the skull.<sup>231</sup>

- To an untrained observer, to a non-medical person, there could be the appearance of Julie-Anne still surviving, even though she had sustained a fatal wound to the head. This would be manifested by rough breathing or induced breathing or gasping or gurgling, making semi-purposeful movements, twitching, otherwise showing some signs of movement, but just reflex movements, particularly gurgling, intermittent respiration. Depending on where the projectile went into the brain, what part of the brain was damaged, it could have been for a matter of minutes.<sup>232</sup>
- After she sustained the gunshot wound near her left eye, it would not have been possible for Ms Leahy to attempt to turn the ignition keys. This would, however, have been possible after the cheek wound.<sup>233</sup>
- Dr Ansford was not able to offer an opinion based on the pathology as to the sequence in which the blow to the hand, the incised wounds to the neck, the apparent attempted strangulation using the seat belt and the two gunshot wounds suffered by Ms Leahy occurred.<sup>234</sup>
- The finding of the projectile in the base of Ms Arnold's skull on the side opposite the entry wound suggests it would have gone through the vital centres at the base of the brain which may have meant that there was virtually instant loss of control. Dr Ansford did not think *the gun is normally found gripped in the person's hand* in such circumstances<sup>235</sup>
- Dr Ansford said he had always considered that there was a third party involved in the deaths of the women:

*I've held the - held the view that this was a highly unusual case and that my view has always been that it was likely that there was a third party involved.... But I've never been able to scientifically exclude that it was a murder-suicide.*<sup>236</sup>

Dr Ranson was present in court during Dr Ansford's evidence in this inquest. He said in evidence he was, in general terms, in agreement with Dr Ansford over most major issues and his general conclusions.<sup>237</sup>

Some additional observations made by Dr Ranson were:

- It is highly unlikely Ms Leahy could have protected herself against the rock strike after she had received the gunshot wound to her brain;<sup>238</sup>

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<sup>231</sup> Ibid, page 21

<sup>232</sup> Ibid, pages 21 & 22

<sup>233</sup> Ibid, page 22

<sup>234</sup> Ibid, page 22

<sup>235</sup> Ibid, page 17

<sup>236</sup> Ibid, page 24

<sup>237</sup> Ibid, page 43

- The pathology allows for scenarios that include murder-suicide, but it clearly also allows for scenarios that include involvement of a third party;<sup>239</sup>
- Significant force has hit the rings on Julie-Anne's hand. The resistance force back from the surface is unlikely to be a face; it would mean an injury to the cheek. It needs to be something more solid such as a steering wheel, or a firm area inside the vehicle;<sup>240</sup>
- When witnessing the first re-enactment and when viewing the video of the second re-enactment, it was apparent to him the person taking the role of Ms Arnold found it very difficult to get sufficient free space for her right arm to bring the gun back to the 4cm position behind the right ear;<sup>241</sup>
- As a result of having watched the re-enactment he concluded that Ms Arnold could have been put in the position she was found or could have collapsed into that position.<sup>242</sup>

### **11.3 The ballistic evidence**

#### **11.3.1 Test firing**

On 13 August Sergeant Hayes handed to the then Senior Constable Alan Piper, a QPS scientific officer stationed in Townsville, four projectiles recovered from the bodies of the women, three unspent rounds and three spent cartridge cases. He was also given possession of the cut down Ruger rifle.

He later tested the rifle and found it operated appropriately. He used a microscope to compare the cartridge cases he received from Detective Hayes with cartridges he had fired. This led him to conclude that the Ruger rifle had fired the cartridge cases found at the scene.

Senior Constable Piper gave evidence at the first inquest and said that the Ruger 22 was a semi automatic that discharged fired cartridge cases to the right hand side of the weapon. When it ejected the spent cartridges through automatic cycling, it did so to an average unobstructed distance of one metre or more, to some degree both forward and back from a 90 degree angle to the barrel. He explained that shortening the barrel by sawing it off meant that there was less length of barrel available for the build up of pressure in the ejection process so that a shortened barrel results in the cartridge cases not being flung as far as would usually be the case. He fired 50 bullets through the gun and on each occasion the cartridge was ejected about a metre.<sup>243</sup>

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<sup>238</sup> Ibid, page 46

<sup>239</sup> Ibid, page 50

<sup>240</sup> Ibid, page 53 & 54

<sup>241</sup> Ibid, page 61

<sup>242</sup> Ibid, page 63

<sup>243</sup> Exhibit B44.1, page 8

In 1993 when Detective Inspector Kruger was reviewing the case, another scientific officer, the then Sergeant Michael Keller, also examined the Ruger rifle. He too fired 50 rounds of ammunition with it and found that on three occasions the discharged cartridge case failed to eject. This caused the action of the gun to jam open in a similar fashion to the weapon used to kill the women was found. However, when the discharged cartridge failed to eject, it did not end up with the head or base facing outwards from the ejection port. It ended up with the mouth sticking out.<sup>244</sup>

Indeed the evidence indicates the vast majority of jams are with the mouth pointing out of the ejection port, because that is the design intention, that the case is rotated to the right.<sup>245</sup>

Sergeant Keller indicated in his statement that shortening the barrel of a self loading rifle will have *some adverse affect on its ability to cycle*.

### **11.3.2 The jammed breach**

When found, the receiver of the Ruger rifle – that part of the breach which receives a bullet fed from the magazine and from which the bolt then introduces the bullet to the firing chamber - was jammed with two cartridges. The bullet that was in the process of being fed into the chamber when the jam occurred is clearly seen in photographs to be a live round. The other bullet that was in the process of being ejected when the jam occurred can not be fully seen. A crucial question which has challenged many of the inquirers who have looked into this case is whether that bullet had been fired and was an empty shell or whether it was an unfired round, complete with projectile.

This is significant because if the rounds in the chamber were both live rounds, Ms Arnold could not have taken her own life. A misfiring would not result in the gun's mechanism automatically ejecting the unfired live round and jamming it with another taken from the magazine. Sergeant Keller said that if a round of ammunition failed to discharge, the action would just remain stationary, nothing would happen. The cocking lever would have to be manually operated to extract a misfired round of ammunition and allow another round to be loaded.<sup>246</sup> Neither woman could have done that after they had suffered a second head wound that the evidence indicates led to their immediate loss of an ability to control their actions and a quick death. If there were two live rounds jammed in the receiver of the Ruger, a third person must have attempted to reload the rifle after both women had been fatally shot.

The contemporaneous photographs are equivocal. They show a live round in the receiver part of the open breach and another round partially ejected jammed above it and at 90 degrees to it but the head, bottom, or base of the bullet is facing outward with the mouth directed into and across the chamber. Consequently, it can not be seen whether that second bullet is an empty case or a live unfired round.

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<sup>244</sup> Exhibit B30.5, page 489

<sup>245</sup> Exhibit B30.6, page 505

<sup>246</sup> Ibid, page 503

In his statement tendered to the first inquest, Detective Sergeant Hayes said:

*I saw that the breach of the rifle being a semi-automatic was jammed mid-action with a live projectile being loaded and a **live cartridge** being ejected.*<sup>247</sup>

It seems none of those involved in the first inquest realised the significance of this evidence and it was not challenged until Crown Prosecutor Bullock undertook his review. At that time Sergeant Hayes said he had made a mistake in his first statement and that he wished to amend it to read:

*I saw that the breach of the rifle being a semi-automatic was jammed mid-action with a live projectile being loaded and a **spent cartridge** being ejected.*<sup>248</sup>

Detective Sergeant Hayes told the Mengler-O’Gorman investigation in 1998:

*To the very best of my recollection I established at the crime scene that the weapon was jammed with two separate items of ammunition. I could plainly see the cartridge rim of the cartridge, being extracted, had been struck with the firing pin. I assumed that this cartridge had been fired whilst I recall that it could be seen that the second cartridge was a live projectile. At the Atherton Police Station ...I confirmed that the cartridge being ejected was in fact a ‘spent cartridge’ (one which had been fired) whilst the second cartridge was in fact a ‘live projectile’.*

.....  
*I recall the breach was well and truly jammed and it was necessary for me, not being a gun expert, to forcefully remove the ‘spent cartridge’. At the point when the spent cartridge was removed the breach cleared and the weapon reacted by loading the live cartridge. I then cleared the weapon by removing the live projectile.*<sup>249</sup>

Mr Bullock also explored this issue with Senior Constable Henriske who said in his statement made on 31 August 1995:

*I also noticed that the breach of the weapon, a semi automatic with the magazine in place. I can recall noticing a live projectile in the process of being loaded and that a further cartridge was in the process of being ejected. To the best of my recollection, the cartridge that was in the process of being ejected and appeared to have jammed was a spent cartridge.*<sup>250</sup>

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<sup>247</sup> Exhibit B23, page 5

<sup>248</sup> Exhibit B23.2, page 2

<sup>249</sup> Exhibit D5.3.1 – DMO95.2

<sup>250</sup> Exhibit B24.2

The ballistics officer initially involved in the investigation was Senior Constable Alan Piper from the Townsville scenes of crime office. The items delivered to him for examination were the gun, three rounds of .22 ammunition and three discharged cartridge cases.<sup>251</sup>

Senior Constable Piper recorded in his note book; *13 August 1991 7:30pm received from Detective Hayes bag containing cloth and foam, three rounds of ammo 0.22 long, full (four) damaged projectiles, three cartridge cases, sawn off 0.22 calibre Ruger.*<sup>252</sup>

He agreed that if Detective Sergeant Hayes' amended recollection was correct he should have been given a fourth discharged cartridge case when he was given the other three.<sup>253</sup>

The fourth discharged cartridge case found by Senior Constable Hendrikse on 9 September was never sent to him in Townsville.<sup>254</sup>

When Sergeant Piper gave evidence at the first inquest, Mr Houston of counsel put to him: *If the police theory of a murder/suicide is correct, you would expect to find five spent cartridges, either in the vehicle or very close to the vehicle wouldn't you?* to which he replied Yes. Mr Houston went on to ask; *But only four spent cartridges were found, three in the vehicle and one close to the vehicle* to which he also assented.<sup>255</sup>

When asked for an explanation for the missing spent cartridge his response was *Well, basically I think either our search wasn't exhaustive enough or that the gun may have been discharged at another spot.*<sup>256</sup> It would appear clear from these responses by Senior Constable Piper no consideration was being given at that time to there being a spent cartridge in the breach of the firearm.

All four recovered spent cartridge cases were examined by Sergeant Keller, after the first inquest when he was assisting Inspector Kruger with his review. None of them had any areas of damage which would be expected to result from the sort of jamming represented in the photographs.<sup>257</sup>

Even more puzzling was the evidence of the now Superintendent Keller to this inquest that one of the four cartridge cases he received for examination showed areas of damage on the rim which was flattened indicating the cartridge case failed to be ejected and was compressed between the bolt and the back of the barrel.<sup>258</sup>

Messrs Mengler and O'Gorman were told that when Detective Sergeant Hayes cleared the jammed breach, the live round which was partly into the

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<sup>251</sup> Exhibit C2.1, page 211

<sup>252</sup> Ibid, page 212

<sup>253</sup> Ibid, page 212

<sup>254</sup> Ibid, page 212

<sup>255</sup> Exhibit C1.2, page 15

<sup>256</sup> Ibid, page 15 - 16

<sup>257</sup> Transcript 16/11/2011, page 70

<sup>258</sup> Ibid, page 69

firing chamber was deformed to some extent as a result of the jamming, and that the discharged cartridge case was also deformed.<sup>259</sup>

When Sergeant Hayes organized a further search of the crime scene the day after Senior Constable Henrikse had found a spent shell while searching the scene alone on 9 September, police then already had four spent shells – three from the Nissan and one found by Mr Hendrikse. If one of the shells Sergeant Hayes had removed from the jammed Ruger was also a spent shell they had five shells accounting for the five shots they believed had been fired, and there was nothing to be searching for.

Immediately prior to his appearance before the current inquest, Superintendent Keller undertook an exercise at the request of Counsel Assisting to determine whether using a live standard long round it was possible to place that round in the breach of the .22 calibre Ruger rifle in such a way as to replicate the apparent situation of the breach as shown in the crime scene photographs and the later photographs taken by Detective Sergeant Hayes back at the Atherton Police Station before he freed the breach. The question was: could a standard live round of ammunition fit comfortably across the chamber as illustrated in the photographs or would it sit proud? The result of that exercise was that the live round sat across the breach in a way which was indistinguishable from the photographs.<sup>260</sup>

In an attempt to resolve this vexed issue, which had the capacity to determine conclusively whether Vicki Arnold took her own life or was killed by a third party, the opinions of two additional experts were obtained: Mr Lucas van der Walt, a ballistics expert employed by the New South Wales Police, and Mr Ken Gunaydin, a master gunsmith.

Mr van der Walt told the court that the depth of the breach of a .22 Ruger rifle could accommodate an un-discharged long round width wise.<sup>261</sup>

He also said that a firing pin mark on the cartridge as seen in the photograph of the jammed Ruger did not mean that it was a discharged round. It might mean that the primer did not ignite or that it was a light firing pin strike. He said that based upon his experience of testing weapons of this calibre and type, it was quite common for a round of ammunition to fail, especially with older ammunition or dirty firearms.<sup>262</sup>

Mr van der Walt also said that if a cartridge does not fire, the only way to reload to fire the weapon is to manually manipulate the cocking mechanism.<sup>263</sup>

Contrary to the views previously expressed by Senior Sergeant Piper and Superintendent Keller, Mr van der Walt did not consider that a breach could be jammed solid as described by Detective Sergeant Hayes. He said the

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<sup>259</sup> Exhibit D5.2 - RUN 61.3

<sup>260</sup> Transcript 16/11/2011, pages 70, 77 & 78

<sup>261</sup> Transcript 28/11.2011, page 70

<sup>262</sup> Ibid, page 71

<sup>263</sup> Ibid, page 72

breach could simply be cleared by manually pulling the bolt to the rear and turning the breach downwards.<sup>264</sup>

Mr Ken Gunaydin is a master gunsmith of 23 years experience. He owns and operates a firearms business in Brisbane which sells, buys and repairs firearms and manufactures ammunition. He was interviewed by Detective Inspector Brendan Smith, the officer in charge of the Coronial Support Unit. A written statement from him was tendered in evidence.<sup>265</sup>

He stated that in his experience a .22 calibre Ruger model 10/22 rifle can jam tight requiring force to extract a round from the chamber.<sup>266</sup> He stated that on occasions he has needed to use a hammer to un-jam a weapon. This may be caused by an extremely dirty action, a bent ejector or other internals that have been damaged including the breach face, a gun modified by the user including by cutting it down, by being assembled dry and improperly and because of ammunition.<sup>267</sup>

Mr Gunaydin was shown the photographs of the jammed crime scene weapon. He expressed the view that the cartridge with its head facing out was expended. He reached this conclusion because of the strike mark on the rim and the view that a live cartridge would have protruded further out. He demonstrated his view using the breach of a pistol.<sup>268</sup>

Mr Gunaydin's observations that a live cartridge would have protruded further out, do not appear to be valid. As noted above, both ballistics experts, Superintendent Keller and Mr van der Walt, undertook the exercise and were able to demonstrate that a long .22 bullet would fit transversely in the breach without sitting proud.

In summary, the indications that the breach contained two live projectiles are:-

- The statement and evidence to the first inquest of Detective Sergeant Hayes that there were two live rounds which was accepted until the inquiry by Crown Prosecutor Bullock in 1995;
- The continued searching for discharged cartridge cases by police even after the finding of a fourth discharged cartridge case by Senior Constable Hendrikse at the crime scene. If Sergeant Hayes had taken a spent cartridge from the jammed gun police would have had five spent cartridges in their possession matching the five shots fired at the scene – there would have been no need for the extensive searches that continued.

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<sup>264</sup> Ibid, page 74

<sup>265</sup> Exhibit B83

<sup>266</sup> Ibid, para 4

<sup>267</sup> Ibid, para 4

<sup>268</sup> Ibid, paras 5, 6 and 7

- It was uncommon for the head of a discharge case to be jammed facing out – the rifle was manufactured to eject the expended cartridge case mouth first; and
- The concession made by then Superintendent Keller that a badly jammed breach may be the result of a manual jam with two live projectiles.

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The indications that the breach contained a live projectile and an expended cartridge case are:-

- The amended statement and sworn evidence to the Second Inquest of Detective Sergeant Hayes;
- The corroboration of Senior Constable Hendrikse;
- The firing pin strike on the head of the transverse cartridge case; and
- The opinions expressed by Senior Sergeant Piper, Superintendent Keller and Mr van der Walt, based upon the photographic evidence, that the breach was likely to contain an expended cartridge case jammed against a live projectile.

### **11.3.3 Deformed cartridge case**

Another matter which arises from the evidence of Superintendent Keller is his discovery that one of the spent cartridge cases displayed marks on its rim consistent with it having been jammed between the back of the barrel and bolt of the rifle. He was adamant these marks could not have been caused by a cartridge being jammed as shown in the crime scene photographs – it is not the missing shell.<sup>269</sup>

This suggests the weapon also jammed at an earlier stage during the shooting spree at the crime scene and was cleared to enable it to continue shooting.

Several critical conclusions can be drawn from this discovery.

- The operator had the ability to clear a jam which demonstrates some level of familiarity with the operation of a firearm.
- From the photographs taken at the crime scene it is clear that the deformed cartridge case was not one of the three discharged cartridge cases found in the vehicle, and therefore it must have been the cartridge case recovered by Senior Constable Hendrikse on 9

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<sup>269</sup> Exhibit C2.4, page 519

September 1991. This fourth cartridge case was found on the ground close to where the front passenger door had been located.

- The clearing of a cartridge jammed between the back of barrel and bolt of the rifle at this location suggests that the person doing so was outside the vehicle. The breach would have been operated manually and the cartridge would have been ejected with the force of the gun cycling.
- It suggests the subsequent jam could not be freed in the same manner and may explain why, if Julie-Anne was still showing signs of life after being shot a second time as Dr Ansford has said may have occurred, resort was had to the rock and the seat belt to 'finish her off'.

#### ***11.4 The psychological evidence***

The magnitude of the intentional and extreme violence which obviously caused the deaths of both women could only be explained by the perpetrator either having a powerful motive or suffering from significant mental disturbance, either temporary or chronic.

There is no evidence Ms Arnold had any rational reason for killing her best friend and herself – she had nothing to gain from her death and nothing to fear from her remaining alive. For that reason attempts have been made to investigate the psychopathology of Vicki Arnold on the basis that if one of the women was responsible for the deaths, the physical evidence found at the death scene shows it must have been her.

The first attempt to do this was undertaken by Detective Sergeant Hayes during the initial investigation. He provided to the local QPS Regional Human Services Officer, Ms Lynette Kindt, various documents recovered from Ms Arnold's flat.

Those documents included diaries from when Ms Arnold was a child and diaries with various daily entries apparently recorded between 1977 and 1991. It is apparent Ms Arnold was not an assiduous diarist as there are either no diaries or no entries for the majority of the time between those two dates. For example, in the 1991 diary, the last daily entry was made on 27 March, some four months before the women went missing. Ms Kindt was also given two manila folders containing sundry handwritten and typed notes and jottings, some on undated loose pages, others dated and fixed together.

Ms Kindt held a Bachelor of Social Work from the University of Queensland. Before being employed by the QPS she had worked in the Department of Family Services and at the Cairns Base Hospital. Apparently in that latter role she worked as a therapist with victims of sexual and other abuse.

It is not clear what instructions were given to her but the report she produced was relied upon by the coroner to form an opinion as to the likelihood of Ms Arnold killing Ms Leahy and then herself. With all due respect, she was completely unqualified to undertake such an assessment and to provide any

reliable opinion. It is surprising that Detective Sergeant Hayes asked her to do so. It is even more surprising that a court admitted her report into evidence. I am of the view no regard should be had to the opinions offered by Ms Kindt, even though they were no doubt provided with the best of intentions.

It seems clear that when he was undertaking his review of the case, prosecutor David Bullock came to a similar conclusion and accordingly sought an opinion from a consultant psychiatrist, Dr Frank Varghese.

Dr Varghese reviewed the same collection of person papers taken from Ms Arnold's flat and a video tape of a television program which cast doubt on the murder-suicide finding.

In his report dated 29 August 1995, Dr Varghese said he could find no evidence that Ms Arnold suffered from a major depression at the time of the deaths or in the weeks preceding them. He also said there did not appear to be any evidence of any major mental disorder such as schizophrenia or manic depressive psychosis.

However, he did conclude there were a number of factors that suggested Ms Arnold had a significant personality disorder. He suggested the diary entries and poems written by Ms Arnold indicated she may have been suffering from long term lack of self esteem. He also suggested there was evidence that the grief flowing from the death of Vicki's father in 1977 had not been resolved. Dr Varghese referred to *a very highly ambivalent relationship with the mother with Vicki feeling that she was not understood by her mother and perhaps not wanted.*

He made reference to a paucity of meaningful heterosexual relationships and evidence that two relationships of which he has been made aware *indicate some problems in judgement of suitability.*

Dr Varghese thought it relevant that Ms Arnold developed rather intense and dependant relationships with the Leahys and the Wilces. His report also made reference to stories of tragedy that Vicki seems to have invented. He suggested she has done so to seek sympathy and care from others. Two examples – a kidney disease of which there is no evidence, and the death of an ex-boyfriend – led Dr Varghese to suggest *I would regard as evidence of major psychopathology.*

As a result of considering these matters, Dr Varghese said he would be *inclined to make a diagnosis of personality disorder.* He suggested that she has attempted to cope with her poorly developed sense of self by *an almost desperate search for secure attachments.* He suggested that people with these tendencies can invest disproportionately in social attachments and *imagine themselves fulfilled by finding such a relationship.*

However, *the potential loss of a relationship is catastrophic in that it threatens the person's very existence, they can often respond to such a threat with intense rage. Violent fantasy is also not uncommon, and in this regard her*

*interest in magazines about murder is of interest.* This led Dr Varghese to conclude:

*The personality disturbance is such that the murder suicide scenario as concluded by the coroner is definitely not out of the question, however I would hesitate to say that on the basis of her psychopathology murder-suicide was highly likely, if other forensic evidence was not in keeping with this.*

*In conclusion I would say that the evidence of psychopathology supports the theory of murder suicide, but is insufficient to prove it if there was evidence to support an alternative hypothesis.*

Dr Varghese acknowledged the limitation of the evidence base on which he had offered an opinion. He goes on to observe:

*It would be very useful indeed for me to interview people who knew Vicki Arnold well in order to obtain collateral information. In the absence of such interviews my report must be regarded as somewhat incomplete. Collateral data could provide both confirming and negating data.*

It seems he was never offered an opportunity to obtain that data, nor was he called to give evidence at the second inquest. Indeed Coroner Casey said that he did not place value on such material. He said; *I have not considered evidence which may have been considered by others to have provided a post-humus psychological profile or analysis of either of the two decedents.* Coroner Casey did not attempt to identify any motive which could have explained how or why Ms Arnold would have engaged in such apparently out of character and extreme behaviour.

Dr Varghese gave evidence at this inquest that was substantially consistent with his report.

This inquest also obtained expert evidence from a world-renowned suicidologist, Professor Diego de Leo, a professor of psychiatry and the Director of the Australian Institute for Suicide Research and Prevention (AISRAP) at Griffith University, Brisbane. AISRAP was designated as the Commonwealth's National Centre of Excellence in Suicide Prevention in 2008. At Griffith University, Professor de Leo also directs the World Health Organization (WHO) Collaborating Centre for Research and Training in Suicide Prevention. He continues to undertake clinical practice in the area in Queensland and Italy.<sup>270</sup>

Unfortunately, counsel for Mr Leahy failed completely to appreciate the significance of his evidence. His submission that because those close to people who take their own lives *often have no idea such an event was to occur* and therefore Professor de Leo's evidence can provide *little guidance* is

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<sup>270</sup> Exhibit D8

akin to suggesting a person who is surprised to suffer a heart attack might not have avoided it had he earlier consulted a cardiologist. In effect, counsel for Mr Leahy seems unwilling to accept there is a well recognised discipline of suicidology that specialises in assessing the risk of suicide, both before and after death. It is a particularly surprising submission to come from a lawyer who made no objection when a social worker purported to give opinion evidence on the same topic in the first inquest.

In addition to the writings taken from Ms Arnold's unit, Professor de Leo was briefed with the autopsy reports; selected photos of the scene of the deaths, rings and fishing gear; a statement of Vida Arnold; transcript of an interview with Vida Arnold and Ed Veivers; a statement of James Flett; all statements and transcripts of evidence of Bernard Wilce; statements and transcripts of John Wilkinson and the report and transcript of the evidence of Dr Varghese

He was asked to apply his expertise as a suicidologist, along with relevant empirical data recognised within that field, in order to assess the likelihood that Vicki Arnold killed Julie-Anne Leahy and then herself.

In his report and evidence at the inquest, Professor de Leo strongly disagreed with many of the principle findings on which Dr Varghese had based his conclusions. He said: *I do not see evidence of a 'personality disorder' of any type.*<sup>271</sup>

Professor de Leo stated that the factors mentioned by Dr Varghese as supporting his hypothesis do not fulfil any criteria for personality disorders:

*The possible lack of self-esteem (as shown in poems), the unresolved bereavement from her father's death, the 'ambivalent relationship' with her mother, the 'paucity of meaningful heterosexual relationships', the 'intense, unusual and dependent relationships with at least two couples', and the making up 'stories of tragic events and circumstances', as picked up and underlined by Dr. Varghese, do not fulfil any criteria for personality disorders.*<sup>272</sup>

Professor de Leo did not agree with Dr Varghese that the misstated death of Vicki's boyfriend demonstrated *a significant vulnerability in personality.*<sup>273</sup> Rather, he thought the response given once only by Vicki Arnold to a male acquaintance about her 'dead' boyfriend could simply have been a way to cut short a conversation over being single.<sup>274</sup>

The feigned illness was also of little consequence in his view:

*Importantly, there is not evidence that she particularly dramatized her condition or that she gained much from her supposed sick role, and this would make her possible diagnosis*

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<sup>271</sup> Ibid, page 4, para 3

<sup>272</sup> Ibid, page 4, para 4

<sup>273</sup> Ibid, page 3, para 3

<sup>274</sup> Ibid, page 3, para 3

*of factitious disorder – if really present – a very mild condition.*<sup>275</sup>

With regard to the possible indications of a morbid interest in suicide or other matters emerging from Ms Arnold's poems, Dr Varghese accepted the possibility that the writings were selected by Ms Kindt and/or the police to fit in with *certain hypotheses*.<sup>276</sup>

Professor de Leo also eschewed the suggestion that Ms Arnold was suffering from depression:

*Dr Varghese rightly excludes the presence of depression (and other major psychopathologies commonly associated with suicide) and accepts the hypothesis that a 'selection' of Vicki Arnold's poems could have been created with the intent of providing support to the possible presence of some form of chronic depression. Other non-professional witnesses have indicated that in (at least) the two weeks preceding the death of M. Arnold, the latter appeared as non-depressed.*<sup>277</sup>

Professor de Leo testified that while a significant number of people die by suicide every year, a very small percentage of them kill somebody else. Among those cases, the percentage of female perpetrators is negligible. Further, there are no recorded cases in Australia in which a female has murdered her partner/lover of the same sex and then taken her own life.<sup>278</sup>

He said the implicit assumption in the murder-suicide theory is that a suicidal person may easily become also homicidal, which in fact is very rarely the case.<sup>279</sup>

He said research shows women are rarely engaged in murder-suicide cases. Men perpetrate some 90% to 95% of such cases. In an American Report (Violence Policy Centre, 2008) of 234 cases of suicide involving the prior murdering of other people (partner, children, relatives), no cases concerned the killing of a female subject by a female partner. In 80% of cases, murder-suicides occurred in the home, and more often in the bedroom than any other room.<sup>280</sup>

In the Queensland Suicide Register [QSR] database for the period 1990-2008, there are 9,932 'Beyond Reasonable Doubt and Probable' suicide cases. These were searched by Professor de Leo to identify murder-suicide cases to enable a review of those cases where the perpetrator was a female subject. That review identified 68 cases of murder-suicide, excluding suicide pact cases where one person first killed the willing other and then proceeded to kill themselves. Of these 68 cases, nine involved a female perpetrator, and

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<sup>275</sup> Ibid, page 5, para 2

<sup>276</sup> Ibid, page 3, para 4

<sup>277</sup> Ibid, page 5, para 5

<sup>278</sup> Ibid, page 3, para 5

<sup>279</sup> Ibid, page 4, para 1

<sup>280</sup> Ibid, page 8 para 5, page 9 para 1

mostly child/children as victim(s). There were no cases where a female had used a firearm to murder her victim before suicide. There were no cases where a female subject killed a same sex partner.<sup>281</sup>

Professor de Leo could not find any evidence of an intimate or sexual relationship between Vicki Arnold and Julie-Anne Leahy.<sup>282</sup> In any event, even by consulting electronic libraries world-wide, he could locate no reports of the murder-suicide of a lesbian couple.<sup>283</sup>

In the absence of an intimate relationship, evidence of unfaithfulness, history of impulsiveness, aggression and violence, psychiatric conditions, child custody issues, financial difficulties, or recent bereavement, Professor de Leo judged as highly improbable the occurrence of a murder-suicide in the case of Vicki Arnold and Julie-Anne Leahy.<sup>284</sup>

Speaking of risk factors for suicide, he said:

*... personality disorders are acknowledged to increase the risk of suicide particularly in the case of 'borderline personality disorders' or – to a lesser extent – 'antisocial personality disorder' (Krysinska et al, 2006). There is no evidence that Ms Arnold possessed any of the characteristics that typify those clinical pictures or other Cluster B personality Disorders (histrionic or narcissistic, see Table 1 for an updated list of currently identified risk factors for suicide)<sup>285</sup>.*

Professor de Leo also eschewed unresolved grief about Ms Arnold's father's death as a factor indicating suicide:

*The hypothesis of 'unsolved grief' towards her father is also out of the question, in my view. In fact, I could not identify any actual symptom of 'prolonged grief disorder' or 'pathological bereavement'<sup>286</sup>.*

He also dealt with the suggestion by Dr Varghese of some morbidity in the intensity of Vicky's friendship/relationship with the Wilces and the Leahys:

*Whilst the 'excessive' intrusion in the life of the Wilces was accompanied by an invitation by them to lessen the frequency of contact, (followed by an appropriate behaviour from Vicki's side), then it is unclear why, in the hypothesis of a similar invitation from the Leahys, this would have triggered such a violent murder.<sup>287</sup>*

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<sup>281</sup> Ibid, page 9, paras 2, 3; page 10, para 2

<sup>282</sup> Ibid, page 13, para 3

<sup>283</sup> Ibid, page 15, para 5

<sup>284</sup> Ibid, page 15, para 6

<sup>285</sup> Ibid, page 5, para 4

<sup>286</sup> Ibid, page 8, para 2

<sup>287</sup> Ibid, page 14, para 2

He noted Vicki had definite plans for the day of her disappearance which did not indicate a pre-meditated suicide act on her part:

*It is worth noticing that Vicki had specific plans for the day of her death, such as helping her friends (at 6.00am) with their tax declaration, and a work and training session for her company (as testified by the presence of files in her car, as well as a gift for Julie-Anne's children). Clearly, all of that does not indicate a pre-meditated suicide act, but only leaves open the possibility of an impulsive, sudden and extremely violent suicide, a type of reaction – apparently - out of character in the case of Vicki Arnold.<sup>288</sup>*

He responded to the question posed in the brief sent by those assisting me, *How likely is it that someone with the psycho-pathology of Vicki Arnold would commit murder-suicide?*, that he could not find elements testifying to 'severe' or even 'significant' psychopathology that could justify or be associated with an increased risk of suicide. In fact, there were elements which pointed away from suicide:

*In conclusion, in my review of the available evidence, I could not find elements testifying to 'severe' or even 'significant' psychopathology that could justify or be associated with an increased risk of suicide (murder-suicide will be discussed in the following section), as compared to the general population. On the contrary, there are elements in Vicki Arnold's history that could point to a lower risk of suicide than that of the general population. In fact, she had stable work; she was appreciated in what she did and gratified by that; she appeared also as a 'stable' personality, ordered, organized and conscientious; she did not present aspects of impulsiveness or aggression; she was not a heavy drinker or a drug user (not even a cigarette smoker, from what I can gather, which was far more uncommon at the beginning of the Nineties than nowadays). In addition, she did not appear to be dealing with life events of particular impact; there is no evidence that she was particularly distressed.<sup>289</sup>*

Professor de Leo also drew attention to the unnatural position in which Ms Arnold was found:

*If Vicki had killed Julie-Anne, she was not in a hurry to commit suicide thereafter. She could have been sitting normally in the front seat of the car (the most logical position for a murder-suicide) or outside the car, but not in the foot well of the vehicle. I can not see any reason for doing so.<sup>290</sup>*

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<sup>288</sup> Ibid, page 8, para 4

<sup>289</sup> Ibid, page 8, para 3

<sup>290</sup> Ibid, page 19, para 2

### **11.5 Other forensic evidence**

Soon after 5:00pm on 9 August, the day the women's bodies were found, Senior Sergeant David Bird, the District Scenes of Crime Officer, was asked to attend the Cherry Tree Creek scene where the Nissan Patrol had been located.

He there took up with Detective Sergeant Hayes and took photographs and commenced fingerprinting the exterior and the rear internal section of the four wheel drive. No latent fingerprints were located during this examination.

On 12 August he completed an internal examination of the driver's and front passenger area of the Nissan Patrol at the Yungaburra Police Station holding yard.

In his statement he says that the inside of the vehicle was wet due to the vehicle having been kept under a tarpaulin in the intervening period. There was also a significant quantity of bodily fluids on the floor and seats of the vehicle and insect larvae living on the floor. He was again unable to locate any latent fingerprints.

On 13 August, another QPS scientific officer, Senior Sergeant David Morris, examined the vehicle. He too was unsuccessful in locating any fingerprints. Sergeant Morris expressed the view that it was likely that no fingerprints were found in the car because it had been stored for a couple of days under a tarpaulin leading to extensive condensation forming inside it. He said that this had a tendency to wash fingerprints away.

He later went to the Atherton Police Station where he examined the cut down rifle. There were two areas on the butt end of the rifle which showed bloody fingerprint impressions. There were insufficient points of identity in the blood impression on the rifle to make positive identification but what characteristics were present were similar to those of Ms Arnold.

The partial fingerprints found on the gun were on the wooden butt end on the right hand side. Sergeant Morris expressed the view that one was made by the middle phalange of a finger the other appeared to him to be another phalange of the same finger. Neither had enough distinguishing characteristics to enable the positive identification of the person from whom they had come. He could not say which finger they were left by. On the left hand side of the butt there was a thumb print but it too could not be identified.

On 28 August Detective Hayes handed to Senior Constable Piper the sawn off piece of the rifle barrel stock and butt together with the other rifle accessories that had been found in the pillow slip in Ms Arnold's carport. He found on the sawn off barrel and the sawn off butt small areas of blue paint which he compared with paint found on the hacksaw that had also been in the pillow case. He examined it using a scanning electron microscope which disclosed that the paint on the blade and the cut off bits were of similar chemical composition.

As detailed earlier, during the course of this inquest two attempts were made to recreate the crime scene by using a 4WD of the same make and model, a police woman of similar proportions to Ms Arnold and a cut down gun of the same type as that used to kill the two women.

As a result, it became clear, that it was very difficult or almost impossible for the model to position the gun so that it could fire a shot into the same position behind her right ear as was found in Ms Arnold if the model sat upright in the foot well. Conversely, it was reasonably achievable, although according to the model uncomfortable, to position the gun appropriately, if the model lay her head on the car seat in a similar position to that in which Ms Arnold was found. Whether it is likely she would have done so when her chin and jaw had already been shattered by an earlier shot is doubtful, but not impossible, in my view.

## **12. Analysis, conclusions, findings and committal**

### **12.1 Introduction**

This sad and confronting case has confounded numerous previous inquiries. As I have detailed in section 4.8 of this report, mistakes made by police when the women first went missing, during the initial scene examination and in the days following the discovery of the women's bodies, made more difficult what was always going to be a complex case. Those involved in the early stages of the investigation failed to gather, lost or corrupted evidence that may have established the truth of what happened at Cherry Tree Creek on the night of 26 July 1991.

They then set about squeezing what evidence was left into an explanation that required no further action, avoiding having to confront the potential prosecution their carelessness had compromised. In my view, the coronial system and numerous administrative inquiries were complicit in too readily accepting a theory that depended upon the agent cast as the principal perpetrator, being unable to defend herself.

Reconstructing past events relying on the memory of witnesses is always fraught: people make mistakes; memories are tainted by hearing versions of other people; recollections fade with time; and people have various reasons for withholding the truth. On occasions however, lies may enable conclusions to be drawn contrary to the interest of their teller. Nor is scientific evidence necessarily a panacea: scientists make mistakes in the way data is gathered and interpreted; and the analysis of such material can rarely occur free of contextual considerations which may be based on false assumptions. This inquest has struggled with these impediments, aggravated by the passing of more time. It has been aided by more expert evidence, the results of further inquiries and perhaps more rigorous analysis of the evidence. These findings are the court's best effort to overcome the challenges and utilise the new evidence.

Counsel for Alan Leahy submitted that unless there was compelling evidence to do so, the findings of the previous inquests, that Ms Arnold was the killer, should not be disturbed; in effect that his client was entitled to shield behind those findings. That is wrong in law and logic. For reasons detailed in section 3.5 of this report, that submission is rejected. To proceed on a presumption that the previous inquest findings should have privileged status would defeat the very purpose of re-opening the matter and suggest the interests of Mr Leahy should have precedence over a search for the truth.

### **12.2 Was Ms Arnold the killer?**

However, when considering who killed Julie-Anne Leahy and Vicki Arnold, three key facts make it reasonable to first consider whether the evidence indicates Ms Arnold was responsible: she purchased the gun that killed both of them; Julie-Anne died before Vicki; and Ms Arnold's finger was on the trigger when the women's bodies were found.

I will therefore consider the sequence of events that led to the deaths, although it is also necessary to take an overview that has regard to the sequence of events more globally. I will rely on the evidence set out in detail in the earlier parts of this report and only repeat those aspects which are contentious or essential to the final findings.

### **12.2.1 The acquisition of the gun**

Compelling evidence set out in section 7.1 indicates Ms Arnold requested a client and friend, Mr Wilkinson to buy the gun that was used to kill her and Ms Leahy. She gave numerous untrue explanations as to her reason for acquiring it:-

- She told Mr Wilkinson she was buying it for a boyfriend who worked on a rural property. It seems clear she had no such boyfriend.
- She told some friends she was buying it for her own protection.
- She told others she was intending to join a gun club.
- She told others she was going to go kangaroo hunting.

These inconsistencies and other evidence which indicates she had no familiarity with or interest in guns suggests there must be another explanation for her acquiring the gun.

What are the possible explanations for Mr Arnold to openly acquire a firearm but to give false reasons for doing so? There are four possibilities:-

- She could have bought it intending to commit a crime – that would certainly be consistent with the way the gun was modified to make it concealable. However, a criminal plan is inconsistent with her telling friends of the acquisition. Further, Ms Arnold had no criminal history and there is no evidence she was about to commence one. Police checks found no money missing from her employer's business and no other frauds perpetrated on her clients that may have prompted a desperate attempt to rob. There is no evidence she had enemies she may have been planning to harm or needed to protect herself from. This explanation is rejected.
- Ms Arnold made arrangements to buy the gun six weeks before she and Ms Leahy disappeared. She had no history of any violence and conducted herself entirely normally in the intervening period. She made no attempt to conceal her acquisition of the rifle. In the circumstances, it is impossible to conclude she purchased it with the intention of killing Ms Leahy and herself and then put her plan into action by persuading Julie-Anne to go fishing in the early hours of one weekday morning.
- Counsel for Mr Leahy submitted she may have bought it intending to take only her own life. However, she already had access to multiple other less violent mechanisms of suicide that were more in keeping

with methods used by women, especially those unfamiliar with firearms. A female gun owner might impetuously take up her gun against herself, but I am not persuaded a naive gun user with no indications of suicidality would go through the convoluted steps taken by Ms Arnold to get a gun, if her only purpose in doing so was to take her own life. Nor would she involve others in shortening the barrel and stock if suicide was the gun's only intended use – there would be no need. I reject that explanation.

- The only other reasonable possibility is she acquired it at the request of another who could not him or herself do so and who had reason for wanting to keep its acquisition secret or who had wanted it known she had bought a gun. Her nominating a purchase price and insisting on a .22 calibre rifle despite Mr Wilkinson's advice that such a gun would be too small for her stated purpose, supports this explanation.

Counsel for Mr Leahy submitted that had Ms Arnold been prevailed upon by someone else to buy the gun she would have disclosed this to *her circle of friends, or to her family, or to Julie-Anne*. In so far as it relates to disclosure to friends and family, that submission is not accepted. It is quite plausible that whoever asked her to get the gun convinced her that his/her identity had to be kept secret. In so far as it relates to disclosure to Julie-Anne, that may well have occurred.

I am satisfied it is more likely Ms Arnold acquired the gun in response to a request from another person than any of the other possibilities.

### **12.2.2 Who bought the ammunition?**

The evidence makes clear that Ms Arnold purchased the ammunition from a local supplier two weeks before the women went missing. However, as with the acquisition of the gun, that does not exclude the possibility of her acting at the direction of another.

### **12.2.3 Who modified the gun?**

I readily conclude Ms Arnold did not modify the gun. The barrel was cylindrical, hardened steel. She did not have the manual strength, dexterity or familiarity with tools to enable her to do it. The butt was cut off square, also indicating proficiency with hand tools that she simply did not have.

Suspicion fell on Mr Wilkinson, the man who acquired the gun for her, because he was familiar with guns and machinery. He has repeatedly denied it under oath and has been cross examined about it at length.

Seven years after the deaths, another local man claimed Mr Wilkinson had at the time admitted shortening the rifle. That witness gave evidence at the second inquest but he was not asked about this issue and his version was not challenged by any of the counsel who participated. Mr Wilkinson again denied doing it and denied telling the other witness he had. As detailed in section 7.3, I am of the view this witness could easily have been mistaken and that Mr

Wilkinson expressed understandable regret at buying the gun for Ms Arnold, rather than shortening it.

Unfortunately, the witness died before this inquest and so his claims could not be properly tested.

Although I have found the work done on the rifle was beyond the competency of Ms Arnold, it is far below what would be expected of a blacksmith with a modern engineering workshop at his disposal. The numerous planes on the cross section of the barrel corroborate the evidence of scientific officers that it was cut with a hand-held hacksaw. Mr Wilkinson had power hacksaws, large metal cut off wheels and grinders, any of which could cut cleanly through the barrel in one direction, in seconds.

Further, Mr Wilkinson was highly knowledgeable and experienced in many aspects of firearms. He had participated in international shooting competitions and had restored and rebuilt firearms. He knew that shortening the barrel to any great extent risked compromising the functionality of the gun. He also knew it was illegal to do so.

In his workshop Mr Wilkinson also had an industrial incinerator which would render the off cuts unrecognisable. As detailed in section 10.3 of this report, the parts cut from the gun and other paraphernalia connected to it were placed in Ms Arnold's carport two weeks after the bodies were found. They were in a Leahy family pillowcase that Mr Wilkinson is unlikely to have had access to.

Had Mr Wilkinson cut down the gun at Ms Arnold's request, there is no reason he would keep the parts for a month or more and then sneak them into her carport. It is far more likely he would have disposed of them as he easily could have done, or taken them to police and explained what had occurred.

The gun found with the bodies of the women closely resembled the one used for comparison purposes in this inquest which had been cut down by a criminal to make it more concealable for use in crimes. Criminals do so because they cannot readily gain access to handguns.

I am satisfied Mr Wilkinson would not participate in such a process. Somebody who would not give ammunition to Vicki Arnold because of safety concerns is most unlikely in my view to hack off the butt and barrel of the gun to enable it to be concealed.

I conclude Mr Wilkinson did not cut down the gun.

The ballistics officers who gave evidence indicated it was likely the gun was held in a vice while being cut. Mr Leahy acknowledged that he had hacksaws for use in his work. He prevaricated when asked if he had a vice but when confronted with the evidence, he conceded he may have. His false denials

attract suspicion, but are insufficient, by themselves, to prove he made the modifications to the gun.

#### **12.2.4 The events leading to the women going missing**

In the day prior to her disappearance, Ms Arnold appeared entirely normal. She went to work, had lunch with Ms Leahy at her house, and returned to the office. Before leaving work she made arrangements with a colleague in Cairns to go over some client matters the next day when she was due to be there for an office training course. She had previously also arranged to meet clients at her office at 6.00am the next morning.

She had an early dinner with her mother at her aunt's place, did her aunt's tax return, watched some television and then took her mother home. After dropping her mother home, Vicki went to the Leahy's house at about 8.30 – 9.00pm where she found Ms Leahy cooking dinner for the children. She accepted an offer to share what was being cooked.

After dinner the women wrapped presents for Anitra's birthday two days hence. Notably, Vicki brought with her a present for Anitra that the other children knew about, but she left it in the car, presumably, to not spoil the surprise.

After the children went to bed nobody saw the women alive again, other than Mr Leahy. He claims that between 12.30am and 1.00am they decided to go fishing and left soon after.

Nothing occurred in the days before the woman went missing that suggested Ms Arnold was planning to kill herself and/or Ms Leahy. On the contrary, right up until members of their families last saw them, both women seemed completely normal.

#### **12.2.5 The crime scene**

As detailed in section 10.1 of this report, 14 days after they were last seen, the women's bodies were found in the Leahy family's Nissan four wheel drive on a little used bush track, 800 metres off the Atherton to Herberton road. It had run off the track and careered through the scrub a short distance before crashing into a sapling with sufficient speed to knock it over and lift the front right side wheel off the ground as a result of the car passing over a stump.

Ms Leahy was sitting behind the steering wheel. She had two gunshot wounds to the left hand side of her face. She had a seat belt looped twice around her neck. The autopsy report suggested this may have contributed to the death but Dr Ansford also agreed the gunshot wound near Ms Leahy's eye would have quickly, although not necessarily immediately, caused her death.

There were three horizontal superficial lacerations on Ms Leahy's neck, to left of the midline. They were probably made with the steak knife found in the front passenger foot well. The knife, although small, was capable of causing much more serious injury or even death. The fact the cuts were so minor

suggests the knife was more likely to have been held against Ms Leahy's neck in order to make her comply with directions or demands of the knife's wielder.

The middle fingers of her left hand had been struck with something hard, possibly the rock that was found under the passenger side front seat of the vehicle. No convincing explanation as to why and when this rock was used has been put forward.

Ms Leahy was wearing a windcheater, a short sleeved shirt and singlet, a short skirt and thongs on her feet. Her clothes were not disturbed.

The driver's door was open and the window was down. The ignition and light switches were on. There was dried blood on the ignition key.

The body of Vicki Arnold was seated in the front passenger side foot well with her legs outside the vehicle, touching or nearly touching the ground, with her upper torso leaning back and to her left, with her head lying on the front right hand corner of the seat or the centre consol.

Ms Arnold had three gunshot wounds: one under her chin; one to the right hand side of her skull 4cm behind her ear that would have instantly disabled her and immediately led to her death; and one in the lateral aspect of her left thigh.

Vicki was wearing a windcheater, a cotton blouse and cotton slacks. Her clothes had not been disturbed. Her shoes were found 17 and 21 metres respectively behind the vehicle, on the track.

The gun purchased by Mr Wilkinson and cut down by an unidentified person was found inside the vehicle lying on the front passenger seat with its left side down and the barrel pointing toward the seat back. The right hand of Ms Arnold was resting on the firearm with the index finger in close proximity to the trigger.

Ms Leahy could not have killed Ms Arnold and then herself because had she done so the gun could not have ended up where it did. On the other hand, I strongly doubt the gun would have come to rest on the seat with Ms Arnold's index finger next to the trigger with the other three clenched tight, had she been sitting upright with the muzzle behind her ear when she fired the fatal shot into her own head. The gun is more likely to have fallen outside the car. Even had it remained within it, the recoil of the weapon and the spring in the seat, make it most unlikely her hand and the gun would have come to rest in such close juxtaposition as they fell. It raises a strong suspicion that the scene has been manipulated or 'staged'. This is added to by the paucity of fingerprints on the gun: those that were found are not consistent with what would be expected from normal use. A third party may have wiped his or her finger prints from the gun. Conversely, the weapon had been exposed to the weather for two weeks which may have caused some to be lost.

The re-enactment showed it was possible, although very difficult, for a person sitting upright in the foot well between the seat and the dashboard to position the gun so as to inflict the shot behind her ear. However, if she lay her wounded head down against the seat in the position she was found, it was distinctly possible, albeit, that position was decidedly unnatural.

Because of the length of the weapon, Ms Arnold could not have fired the fatal shot with the muzzle of the gun more than a few centimeters from her head because the trigger would then have been beyond her reach.

As discussed in section 11.2 of this report, the evidence of two eminent forensic pathologists was to the effect that normally a contact or close contact shot leaves traces of burnt gunpowder and other residue on the skin around the wound and in its entry to the body. That was not found in the wound that led to Ms Arnold's death. It is possible this could have been the result of the severe decomposition that had occurred between the death and the women's bodies being found – although both pathologists doubted this would fully explain the absence of such artifacts. However, having carefully reviewed their evidence I am unable to be satisfied to the requisite standard to find the wound in question could not have been a contact or near contact wound, although it is unlikely, in my view.

#### **12.2.6 Ballistics evidence**

Three spent cartridges were found inside the car - one on the front seat and two on the back seat. It is submitted by counsel for Mr Leahy that the position of these shells indicates the shooter must have been in the front seat when Ms Leahy was shot to explain the empty shells ejecting from the right sided breach opening towards the rear of the car. I don't accept that the trajectory of the ejected cartridges could be calculated with sufficient certainty to make this assumption. I am of the view the gun would have been similarly positioned in relation to Ms Leahy whether the shots were fired from a person sitting in the front seat, or leaning between the front seats from the back seat. The trajectory of the ejected shells would depend upon how the gun was orientated along its longitudinal axis. Rotating the gun along this axis would mean the empty shells could eject in various directions and ricochet off various surfaces.

A month after the women's bodies were found, another spent cartridge was found on the ground near where the passenger door opening had been.

The Ruger rifle found in the Nissan had fitted to it a ten shot magazine. It had three bullets in it; and there was what appeared to be hair caught in the gun sight. Two bullets were jammed in the chamber of the gun rendering it inoperable.

Regrettably, because the bullets that were removed from the chamber were not properly accounted for or examined, there has been on-going uncertainty as to whether the bullet which was first chambered and was in the process of being ejected when the gun jammed was spent or live. This is of utmost significance because all of the relevant experts agreed that if both were live, unspent rounds Ms Arnold could not have taken her own life. A misfiring

would not result in the gun's mechanism automatically ejecting the unfired live round and jamming it with another taken from the magazine. The cocking lever would have to have been manually operated to extract a misfired round and allow another round to be loaded. Neither woman could have done that after they had suffered a second head wound. If there were two live rounds jammed in the receiver of the Ruger, a third person must have attempted to reload the rifle after both women had been fatally shot.

The contemporaneous photographs are equivocal. They show a live round in the receiver of the open breach and another round partially ejected jammed above it and at 90 degrees to it but the head, bottom, or base of the bullet is facing outward with the mouth directed into and across the chamber. Consequently, it can not be seen whether that second bullet is an empty case or a live unfired round.

The controversy was set alight by Sergeant Hayes, the officer who cleared the bullets from the gun, saying in his statement tendered to the first inquest that the gun was jammed *with a live projectile being loaded and a live cartridge being ejected*. The significance of this went unnoticed at that inquest. Sergeant Hayes wasn't asked about it until Mr Bullock reinvestigated the case in 1995. He then said his statement was in error: that the bullet sitting across the breach, the one that must have been ejected first, was in fact spent.

The language in his statement gives some support for that to the extent that it seems to distinguish between a projectile and a cartridge but despite the issue being considered by a number of independent experts who gave evidence at this inquest, there is no objective, compelling evidence that is dispositive of the question. It is physically possible for either a live or a spent cartridge to jam in the manner seen in the photograph and which it is, cannot be ascertained from the photograph.

The arguments for and against both cartridges being live are set out in section 11.3.2 of this report. I am left uncertain, but inclined to conclude the weight of the evidence indicates the partially ejected cartridge was spent. That leaves open the possibility of a third party being involved or the shots being fired by Ms Arnold.

One of the spent cartridges which was examined had damage to it which suggested it also had been jammed in the breach, although not in the manner shown in the photograph of the breach when the gun was found. For the reasons set out in section 11.3.3 of this report, this suggests the gun had jammed at an earlier stage in the shooting spree and had been cleared and used again. This suggests the shooter had familiarity with guns and was able to clear it on the first occasion it jammed but could not do so on the second occasion. This is consistent with Detective Sergeant Hayes' evidence that, when found, the gun was jammed very firmly and needed the application of significant force to clear it – something someone involved in a murder in the dark may well not have been in a position to affect. A second jamming could also explain the killer resorting to other means of force such as the rock, and

the seat belt, if Ms Leahy was still showing signs of life, despite being mortally wounded, as Dr Ansford suggested she might.

A hole through the lower left hand side of the front passenger seat back was shown by traces of lead found on the wire frame inside the seat to have been caused by a bullet. That bullet was found in the lateral aspect of Ms Arnold's left thigh.

The re-enactment showed it was possible for the shot to have been fired if a person sitting in the front passenger seat opened the door and swiveled to their left to allow their upper left leg to align with the hole. A person in that position could then lean back and reach their left hand around the right hand side of the front passenger seat to attempt to pick up the gun from the back foot well. This would require the person to place their head and upper torso into the space usually occupied by the driver. While in this position if the person snatched at the gun and pulled it towards themselves, their thumb or finger could activate the trigger and discharge the shot through the seat.

It is unlikely this could/would happen while the vehicle was in motion – the door would need to be open. From the other evidence already summarised, this suggests the shot is likely to have been fired after the vehicle ran out of control and came to rest, either because Ms Leahy had been shot at least once, or because she panicked when the knife was put to her throat.

While it may have been physically possible for a person in the front seat to have accidentally fired the shot through the seat, in my view it is far more likely the shot was fired accidentally when a person sitting in the back picked up the gun from the floor, either to produce it for the first time, or to re-gather it after having dropped it when the vehicle crashed. In their haste, in the dark, the gun may have gone off as Ms Arnold was attempting to alight. The evidence indicated she would not have been immobilized by the thigh wound, but undoubtedly slowed. If there was a shooter in the back seat, he would have had to fold the front seat forward before exiting through the same door. He could then be expected to catch the wounded Ms Arnold not too far from the car. Her shoes could have been dislodged at any stage between where she was caught and where they were found, if she were dragged back to the car in a struggle.

The failure of the police at the scene on the night the bodies were found, to notice drag marks or blood stains on the ground does not rule this out: it was two weeks after the events that police first came upon the scene; it had rained on that night at least; and numerous officers walked around the car before it was taped off. Indeed the area between where the shoes were found and the car was never searched in daylight or secured before a tow truck was brought in to drag the vehicle away. The group of trail bike riders who found the car said they rode to within 10 to 15 metres of it and apparently police saw no evidence of that either, only a few hours later.

### 12.2.7 Motive - psychopathology

The magnitude of the intentional and extreme violence which obviously caused the deaths of both women could only be explained by the perpetrator either having a powerful motive or suffering from significant mental disturbance, either temporary or chronic. There is no evidence that Ms Arnold had any rational reason for killing her best friend and herself. For that reason attempts have been made to investigate the psychopathology of Vicki Arnold on the basis that if one of the women was responsible for the deaths, the physical evidence found at the death scene shows it must have been her.

Attempts to undertake what is sometimes referred to as a psychological autopsy involved consideration of the evidence of Ms Arnold's behaviour in the days leading up to the killings, a review of what is known of her upbringing and background and analysis of some diaries and other personal writings.

Two eminent psychiatrists, Dr Frank Varghese and Professor Diego de Leo, produced reports and gave evidence.

Dr Varghese said he could find no evidence that Ms Arnold suffered from a major depression at the time of the deaths or in the weeks preceding them. He also said there did not appear to be any evidence of any major mental disorder such as schizophrenia or manic-depressive psychosis. However, he did conclude there were a number of factors that suggested Ms Arnold had a significant personality disorder that could indicate she was responsible for the deaths. He did however, express that view as being subject to a significant caveat. He said:

*In conclusion I would say that the evidence of psychopathology supports the theory of murder suicide, but is insufficient to prove it if there was evidence to support an alternative hypothesis.*

In my view, the reservations I have outlined above concerning the acquisition of the gun, its modification and the crime scene, provide ample evidence to support an alternative hypothesis. That is confirmed by Professor de Leo's analysis of the relevant data.

He also agreed there was no evidence of any underlying mental illness but in his report and evidence at the inquest, Professor de Leo strongly disagreed with many of the principle findings on which Dr Varghese had based his conclusions. He said: *I do not see evidence of a 'personality disorder' of any type.*

In the absence of a failed intimate relationship, evidence of unfaithfulness, history of impulsiveness, aggression and violence, psychiatric conditions, child custody issues, financial difficulties, or recent bereavement, Professor de Leo judged as highly improbable the occurrence of a murder-suicide in the case of Vicki Arnold and Julie-Anne Leahy.

He noted Vicki had definite plans for the day of her disappearance which contra indicated a pre-meditated suicide. He considered her history and background made her less at risk of suicide than the general population.

Professor de Leo reviewed the records of all suicides known to have occurred in Queensland between 1990 and 2008 – nearly 10,000: none involved a female perpetrator killing a female adult and then herself.

On the night she died, Ms Arnold, a caring committed Christian, who by all reports was acting perfectly normally, brought to the Leahy household a birthday present for one of the children but did not bring it inside, presumably to avoid spoiling the surprise. Yet at that time, if the murder-suicide theory is correct, she must have been planning to murder the birthday girl's mother.

Professor de Leo also drew attention to the unnatural position in which Ms Arnold was found. He pointed out that generally when people are about to take their lives they sit or lie somewhere secure and if possible comfortable. It would be inexplicable for Vicki to cram herself into the foot well and contort the gun behind her head when she could have much more easily sat in the seat or sat leaning against the side of the car.

### **12.2.8 Conclusion**

In considering whether the evidence supports a finding that Ms Arnold was responsible for the deaths, I have had particular regard to the following aspects of this case:

- The doubt as to whether Ms Arnold purchased the gun on her own accord;
- The absence of any explanation for her to have it made concealable;
- Her completely normal behaviour in the days and hours before the women went missing and the many plans she had made for the following day;
- Her unfamiliarity with guns and the availability of other mechanisms to end her life and Ms Leahy's, were she so inclined;
- The likelihood that the gunshot fired from the back floor well was fired by a person seated in the rear of the vehicle;
- The inability of Ms Arnold to clear the gun when it became jammed on the first occasion as seems indicated by the damaged cartridge case;
- The absence of any explanation as to why the shooter would resort to strangling Ms Leahy if he/she had possession of a functioning firearm, suggesting this was done after the gun became inoperable, after both women had been fatally shot;
- The unlikely position of the fatal gunshot wound to Ms Arnold's head, if it was self-inflicted;
- The lack of any reasonable explanation for Ms Arnold's shoes being found so far from the vehicle and apart, if no third party was involved;
- The unlikely position of Ms Arnold's hand in relation to the gun;
- The unlikely position of Ms Arnold's body had she taken her own life;

- The persuasive evidence of an internationally renowned suicidologist that Ms Arnold showed none of the traits associated with suicide, and was in fact, on all of the available evidence less at risk of doing such a thing than a person in the general population;
- The absence of any of the usual triggers or motives for Ms Arnold to commit suicide or to murder Ms Leahy; and
- The absence of any records of a woman on woman murder-suicide ever being committed in Queensland or referenced in academic literature;

All lead me to conclude it would be unsafe and unreasonable to find Ms Arnold killed Ms Leahy and herself.

### ***12.3 Was a stranger responsible?***

If Mr Leahy's account of their leaving to go fishing after midnight is correct, no one else could have known Ms Arnold and Ms Leahy were going to Tinaroo Dam and so for them to have been killed by a stranger, the killer would have had to come across them by chance and then discovered and taken from them the firearm, which on this scenario, they would have had no reason to be carrying. The women were not raped or robbed. Only a seriously deranged person would kill for no motive and with such violence. The chances of the women stumbling across such a person after midnight in Atherton and the person never coming to police attention before or since is too remote to warrant any further consideration. It is dismissed.

### ***12.4 Was Mr Leahy responsible?***

So far as the available, plausible evidence indicates, Mr Leahy was the last person to see the women alive. The explanation for their leaving the house late at night, never to return, is provided solely by him. A number of factors detailed below could provide a motive for him to kill his wife. He has a criminal history that could indicate he is less than law abiding. His conduct towards his wife's juvenile sister calls into question his morality. Women are more often killed by an intimate partner than anyone else.<sup>291</sup> Inevitably, therefore suspicion has fallen on Mr Leahy.

#### **12.4.1 Mr Leahy's criminal history**

In 1983 and 1984 Mr Leahy committed numerous criminal offences, involving the breaking and entering of dwelling houses and commercial premises and the unlawful use of motor vehicles. These are detailed in section 6.3 of this report. On one occasion he was found with a replica pistol under the seat of his car. On another he stole two replica pistols, blank cartridges, knives and handcuffs. He served about two years in prison.

None of the offences involved personal violence. It is noteworthy however, that some of the break and enters involved considerable deception during

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<sup>291</sup> Virueda, M., & Payne, J. (2010). Homicide in Australia: 2007-08 National Homicide Monitoring Program Annual Report, Australian Institute of Criminology, Canberra. Fifty-five per cent of female homicide victims were killed by an intimate partner.

which Mr Leahy secreted himself inside shops until they were closed or climbed in through roof cavities and the like. Further, he told Vanessa of his plan to commit the 'perfect crime' – a bank robbery involving a vehicle with a hidden compartment.

#### **12.4.2 The family's financial position**

There is no doubt the Leahy family were in a parlous financial state when the women went missing. The bank had threatened to foreclose on their home unless their mortgage arrears were cleared and arrangements had been made to sell the Nissan four wheel drive in which the women died. In the months before the deaths, local police served a number of complaints seeking to recover debts. His business was running at a loss and they had next to nothing in the bank.

Over many years and before different courts and tribunals, Mr Leahy has persistently and stubbornly refused to acknowledge the pressing financial situation he was in at the time of his wife's death against overwhelming evidence to the contrary. I reject Mr Leahy's suggestion that things were not so bad and/or that he did not know how bad they were.

#### **12.4.3 Life insurance policies**

On 2 February 1990, mutual life insurance policies had been taken out covering the lives of both Alan and Julie-Anne Leahy with \$120,000 being payable to Alan Leahy upon the death of Julie-Anne and vice versa.

It is clear that Julie-Anne was the one who pushed for the policies to be taken out.

Both in evidence before this inquest and in evidence before the CMC in 2008, Alan Leahy dissembled and feigned ignorance about the insurance policy and its details.

#### **12.4.4 Mr Leahy's involvement with his step daughter**

Both of Julie-Anne's juvenile half-sisters have alleged Mr Leahy initiated sexual contact with them while they were in his care.

One of the girls alleged he raped her when she was 16. So far as I am aware she had disclosed that to no one until this inquest. Mr Leahy denied it. It is not part of my role to adjudicate on the veracity of the claim. However, it may corroborate allegations made by her sister which are relevant to findings I have to make.

Mr Leahy admitted establishing a sexual relationship with his wife's other half sister, Vanessa. He claimed no sexual contact occurred until after the women went missing but conceded it may have progressed to sexual intercourse before the women's bodies were found. Vanessa said it started with apparently innocuous touching a few months before her sister went missing, rapidly progressed to sexual touching and oral sex and culminated in sexual intercourse when the women were missing and before their bodies were found.

Vanessa's description of the grooming and increasingly intimate touching over a number of months is far more in keeping with human experience than Mr Leahy's claim that the relationship went from completely proper to full blown sex in the days after his wife went missing.

Vanessa has given different accounts over the years from total denial of any sexual involvement to the most fulsome description at this inquest, which included a claim that Mr Leahy came into her bedroom and engaged in protracted sex acts with her in her bed on the night the women went missing. She explained her initial denials as being the result of pressure from Mr Leahy and fear of getting into trouble. Mr Leahy's counsel submits that Vanessa is lying to cause harm to his client whom she blames for her sister's death. Were this the case, she is more likely to claim he had intercourse with her before she turned 16, which she did not do.

For the numerous reasons I have detailed in section 6.6 of this report I accept Vanessa's explanation and her evidence.

Accordingly, I find it is more likely than not that Mr Leahy began grooming Vanessa for sexual purposes in the months before her sister went missing and this incrementally progressed to indecent sexual touching. I find intercourse first occurred while the women were missing and before their bodies were found. This may indicate Mr Leahy knew his wife was not returning.

I also find that Mr Leahy coached Vanessa not to disclose the nature of their relationship to the first inquest.

#### **12.4.5 Mr Leahy's accounts of the night**

Mr Leahy has always maintained the women went fishing by themselves in the early hours of the morning and did not return.

There are a number of aspects of his account that cast doubt on its veracity.

##### **12.4.5.1 The timing.**

There is conflicting evidence concerning Mr Leahy's version of the time the women left the house. When he made the official missing person report at about 4.30pm on Friday 26 July, Mr Leahy said the women left to go fishing between 12.30 and 1.00am. While that might usually be a reasonable span or range of time to estimate when an event occurred earlier in the day, it does not sit well with his claim that he knew the time because he had to re-set clocks in the house at 1.03am after an appliance in the laundry tripped a circuit breaker. Surely, if he had 1.03am as a reference point he could be more precise than to suggest the women left 33 or three minutes before that time?

Doubt about this aspect of Mr Leahy's evidence was raised by the evidence of a subsequent owner of the Leahy house that a power surge in the laundry would not stop clocks in some of the rooms nominated by Mr Leahy because

the rooms were on different power circuits. Mr Leahy's counsel rightly points out that this witness only took possession of the house in 1997 and can therefore not say what the position was in 1991. While it is unlikely that further circuits were added so soon after the house had been built, it can not be ruled out. When he gave evidence at this inquest, Mr Leahy would commit to nothing about this aspect of the case.

The next day he told Sergeant Wilce they had left at about 12.45am, a time he repeated in his only written statement made on 29 July.

This estimate of the time is contradicted by a local service station employee, Ms Daley, who said Mr Leahy came into the service station between 6.00 and 6.30am on the morning of 26 July and told her Julie-Anne had gone fishing at 2.00am. Not only did Mr Leahy's estimate of the time of the fishing trip differ, but, according to Ms Daley, there was no mention of Vicki Arnold and the conversation is said to have occurred about an hour to a half an hour before Mr Leahy said he left his house to commence looking for the women.

Further, a Mr Feeney has recently come forward and reported seeing the two women driving the Nissan through Atherton heading towards Cherry Tree Creek with a third person in the back seat between 9.00 and 10.30pm on Thursday 25 July.

However, for the reasons set out in section 9.1 and 9.2 of this report, I do not think these accounts are sufficiently reliable to form the basis of the findings that would follow from their acceptance.

I am of the view the concerns about Mr Leahy's versions of when the women left the house cannot be resolved and should not be used against him.

#### **12.4.5.2 Frequency of fishing trips**

Since very early on in the investigation Mr Leahy has asserted it was *not unusual* or even *quite common* for the women to go fishing after mid-night. When challenged on this he could point to no other occasion when it had occurred and Vanessa, when she gave evidence, denied it ever occurred.

However, Julie-Anne's mother, Nina Stewart, told Mr Bullock and Messrs Mengler and O'Gorman that it was not unusual for Julie-Anne to go fishing late at night. I have concerns about her reliability based on other matters: she was unable or unwilling to care for her daughters, Vanessa and Margaret, leaving that to her aging mother and her daughter, Julie-Anne, and she told Mr Kruger that after her daughter disappeared she was concerned that Vanessa was sleeping in Alan Leahy's bed but did nothing about it. As she did not give evidence at any of the inquests it is difficult to assess her creditworthiness.

Notwithstanding Ms Stewart's evidence, I consider it inherently unlikely that Vicki would have agreed to go fishing after midnight on the evening before she had arranged to meet clients in her office at 6.00am and to then travel to Cairns for an all-day work function.

#### **12.4.5.3 Other concerns**

Further aspects of the events as alleged by Mr Leahy create doubt. For example:-

- It was a very cold night – below freezing according to BOM records – yet when found the women were lightly dressed: Julie-Anne in a short skirt and thongs;
- Ms Arnold is said to always wear glasses yet they were found in her handbag. Conversely it seems she didn't need them to play scrabble so perhaps she was not as dependent upon them as some of the witnesses have suggested;
- Julie-Anne was a heavy smoker but took no cigarettes with her;
- No torches or other light source was found with the women, which would have made fishing very difficult, even though the moon was near full.
- Alan Leahy spent considerable time in his wife's sister's bed on the night the two women disappeared. A possible interpretation for what would seem cavalier behaviour is that he knew his wife would not be returning.

#### **12.4.6 The return of the gun parts**

As detailed in section 10.3, there is compelling evidence the parts which had been cut from the Ruger rifle used to kill the women, the hacksaw used to cut it, an instruction manual that came with the gun and some cleaning rods were placed in Ms Arnold's carport, in a pillowslip from the Leahy household, two weeks after the women's bodies were found.

In my view, a person who had cut down the gun but had nothing else to do with the deaths would either have disposed of the parts, which would have been very easy to do, or they would have taken the parts to police and explained what had occurred. There is no obvious explanation for them to have risked being seen taking the parts to Ms Arnold's flat. There would have been no benefit or advantage for them in doing so. In my view the only plausible explanation for the parts being planted in Ms Arnold's carport after the deaths was to increase suspicion that Ms Arnold was responsible for the deaths. Only someone who had themselves been involved in the deaths had a motive to do that.

Mr Leahy had access to a vice and a hacksaw and he had had the capacity to cut down the gun. He had access to such a pillowslip. However, as there is no evidence he cut down the gun, it could not be proven he returned the parts.

### **12.4.7 The crime magazines**

Although he tried to distance himself from them, there is persuasive evidence that Mr Leahy was at the relevant time a consumer of so called 'true crime' magazines, some of which he gave to Detective Hayes early in the investigation, claiming that Ms Arnold had borrowed them.

He can only have done so because he believed they were relevant to the investigation. That was not unreasonable when, as detailed in section 10.4, one of the magazines contained an account of a multiple domestic murder in which the murderer sought to avoid detection by setting up the crime scene to make it look like a murder-suicide. That attempt failed because the rifle involved was too long to have been used for suicide. That obstacle was overcome in this case by the gun being cut down, but it is nonsensical to suggest Ms Arnold took her lead from the article when she ended up dead and in a position that appeared to indicate she was the killer. Only a third party could benefit from the mistakes made by the Whitehouse Farm murderer. Mr Leahy's attempt to use the magazines to inculcate Ms Arnold draws suspicion to him, as does his repeated attempts to distance himself from the magazines.

### **12.4.8 Motive**

When considering whether Mr Leahy may have killed the women, it is appropriate to consider whether he had a motive to do so. The law has long recognised that motive can be used to prove a person did an act even if he or she denies it and even if there is no direct eyewitness or other physical evidence to prove the case.

In this case there are in my view a number of aspects that could be considered to indicate Mr Leahy had a motive to kill his wife.

In the months before the women were killed, he was engaging in sexual activity with his wife's juvenile sister. It is likely that some of the indecent touching occurred when Vanessa was 15 placing him at risk of prosecution if his wife discovered it. Additionally, and even if the indecent touching did not commence until after Vanessa's 16th birthday, it is likely that Ms Leahy would have terminated her relationship with Mr Leahy if she became aware of it. In view of their family situation that would almost certainly have meant he would have been excluded from the house and any subsequent property settlement would certainly have favoured his wife in view of the number of young children she would have been responsible for.

Of course this only provides a motive if Mr Leahy apprehended his wife was aware of his actions or was likely to become aware.

As detailed in section 8, Vanessa believed her sister had become aware of the situation and was going to challenge her about it on 25 July, the day before she disappeared. While there is no other evidence of this, in my view it would be unwise to dismiss it out of hand. It is quite likely Vanessa would be very much in tune with her sister's moods, signals and suspicions. Vanessa may well have been right. Even if Mr Leahy did not think his wife already

knew about his improper dealings, the risk she would find out was ever present. Further, he certainly took advantage of her absence to install Vanessa in his bed as his sexual partner very soon after the women went missing, a situation which prevailed until he found someone else two years later. I conclude that Mr Leahy's sexual relationship with Vanessa could provide him with a motive to kill his wife.

The Leahy's were in very difficult financial circumstances. Their business was losing money, the bank was threatening to foreclose and at least one supplier had taken legal action to recover money owed. Things were so bad they had taken steps to sell the Nissan 4WD, the only vehicle available to Ms Leahy to run the children around and do the shopping, etc when her husband was at work. Mr Leahy knew he stood to gain \$120,000 on the death of his wife. In my view, this could constitute a motive for him to kill her. It may also have combined with concerns that his wife would/could discover his infidelity with her sister to make her death something he desired and was prepared to cause.

#### **12.4.9 Consciousness of guilt**

Another aspect of Mr Leahy's conduct which attracts suspicion is his unwillingness to admit matters that might reflect adversely upon him. For example, I consider he has been less than candid in relation to:-

- his possession of a vice that could have been used to cut down the gun;
- the financial difficulties facing the family at the time the women went missing; including:-
  - the plans that had been made to sell the Nissan 4WD; and
  - demands by the bank to bring their home loan arrears up to date.
- the existence of a life insurance policy on Julie-Anne's life of which he was the beneficiary;
- his sexual exploitation of Vanessa, and
- his ownership of the crime magazines he attempted to associate with Ms Arnold.

The courts have repeatedly warned of the care that needs to be taken when drawing inferences from a finding that a witness has been untruthful. In most cases, the telling of lies by a witness can be used to suggest the witness' evidence on other matters may also be unreliable, but not that he necessarily committed the crime in question – there may be other explanations for the lie. However, in limited circumstance, lies told by a witness can be used to prove allegations against the witness. So called 'probative lies' are those for which the most likely explanation is that the witness knows the truth would implicate him in the matters alleged against him.

In this case, Mr Leahy's lies about his dealings with Vanessa could be explained by his fear of being prosecuted for child sex offences and/or his fear of losing his marriage and his house. Those lies and that conduct allow the drawing of an inference that he is a dishonest and disreputable person, but that is not directly relevant to the determination of whether he murdered Ms Arnold and Ms Leahy. Conversely, there are no explanations for his untruthfulness on the other issues listed above, other than he was conscious that to admit them built the case for his being responsible for the deaths.

For example; I find he deliberately and persistently sought to understate the extent of their financial problems and the existence of the insurance policy on Ms Leahy's life because he is aware to admit the truth about those issues might be construed as a motive for him to murder his wife. Similarly, to admit he owned and had read an account of a notorious crime that closely resembled the crime scene in this case, may have led to a conclusion he imitated that criminal.

#### **12.4.10 Conclusion**

If a finding is to be made that Mr Leahy caused both deaths it would necessarily depend upon circumstantial evidence: he has denied it and there are no eyewitnesses or conclusive scientific evidence linking him to the crimes.

The aspects of the evidence that support such a case are:

- Mr Leahy had motives for killing his wife.
- He has been untruthful about key aspects of closely related issues that could involve a consciousness of guilt.
- He was the last witness to see them alive and the only person to attempt to explain when and why they left the house.
- Aspects of the crime scene strongly suggest a third party was involved.
- His conduct towards Vanessa on the night the women went missing and in the days following are consistent with his knowing his wife was never returning.
- For the reasons detailed earlier, it is unlikely Ms Arnold caused the deaths and even less likely another third party was responsible.
- He owned 'true crime' magazines that detailed an incident where a murderer had manipulated a multiple murder scene to look like it was a murder-suicide.

The aspects of the case which militate against a finding that Mr Leahy was responsible are:

- Julie-Anne's mother supports his claim it was not unusual for her daughter to go fishing late at night;
- It can not be shown Mr Leahy cut down the gun or planted the parts in Ms Arnold's carport after the women were dead, although he had the opportunity to do both and only the murderer had any motive to put the parts there;
- It is unlikely he could have forced the women to leave the house at gun point – the risk of one screaming or their being seen was too high, and it is unlikely they would have left with him voluntarily or under some subterfuge when there was a young baby in the house to be cared for, unless the baby went with them in the baby capsule;
- As a matter of logic, if there are only two possible killers and one is excluded the other must be responsible. However, while I am satisfied the evidence does not allow a finding that Ms Arnold caused the deaths that is not the same as proving that she did not do so. The case against Mr Leahy could only be framed against the background that it is not impossible that Ms Arnold was the killer; in those circumstances there may be room for doubt as to whether Mr Leahy was responsible.

In theory I am obliged to consider whether Mr Leahy may have been responsible for the deaths from two different perspectives: namely, does the evidence support a finding under s. 43(2)(ii) that he caused the deaths; and second, should he be committed for trial on a charge of unlawfully killing the women. The first finding is made on the civil standard, the second on the criminal, albeit only a prima facie case is needed.

As detailed in section 3.3, even though coronial findings need only be made to the civil standard, when such a serious issue as the responsibility for two violent killings is under consideration, only clear and reliable evidence will suffice - not inexact proofs, indefinite testimony, or indirect inferences. However, the authorities also make clear that it is not necessary for a coroner to conclude that no reasonable hypothesis other than the finding proposed is open, even if the coroner is relying on circumstantial evidence. It is only necessary that the finding is reasonable having regard to all of the evidence – all competing possibilities do not need to be excluded.<sup>292</sup>

On the other hand, when determining whether to commit a person for trial, a coroner must consider whether a properly instructed jury could convict, and must of course apply the criminal standard of proof. In cases dependent upon circumstantial evidence, that requires that all hypotheses reasonably consistent with innocence are able to be dismissed.

In my view, it could be unsafe and unfair to consider these questions in sequence and separately because it could result in a finding that Mr Leahy

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292 *Briginshaw v Briginshaw* (1938) 60 CLR 336; *Hurley v Clements* [2009] QCA 167; *Thales Australia Limited v The Coroners Court of Victoria & Anor* [2011] VSC 133

caused the deaths but that there was insufficient evidence to commit him for trial. Alternatively, were I to make a finding under section 43 that he killed the women and I committed him to stand trial, it could be suggested that I had intruded into the jury's province. Accordingly, I only intend to deal with the second question which requires me to consider whether a properly instructed jury could convict. If I conclude it could, then I am obliged to commit Mr Leahy for trial.

When considering whether a criminal charge can be proven by circumstantial evidence, it is not necessary that every link in the chain connecting the accused to the crime be proved beyond reasonable doubt - indeed there may not be any direct evidence of some actions that have led to the death – that is why it is called a circumstantial case. The authorities make clear that when a prosecution is based on such evidence, it is the weight of all of the evidence that the jury must be satisfied by, not its constituent parts, necessarily. In *Shepherd v R* the majority High Court justices agreed that:

*For example, with most crimes it is a necessary fact that the accused was present when the crime was committed. But it may be possible for a jury to conclude that the accused was guilty as a matter of inference beyond reasonable doubt from evidence of opportunity, capacity and motive without expressly identifying the intermediate fact that the accused was present when the crime was committed.*<sup>293</sup>

...

*As I have said the prosecution bears the burden of proving all the elements of the crime beyond a reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact – every piece of evidence – relied upon to prove an element by inference must itself be proved beyond reasonable doubt.*

...

*Indeed, the probative force of a mass of evidence may be cumulative making it pointless to consider the degree of probability of each item of evidence separately.*<sup>294</sup>

In *Plomp v the Queen* Dixon CJ observed:

*I cannot think however, that in a case where the prosecution is based on circumstantial evidence any part of the circumstances can be put to one side as relating to motive only and therefore not to be weighed as part of the proofs of what was done.*<sup>295</sup>

In this case, there are gaps in the evidence and areas of uncertainty, some brought about by the passing of time, other by flaws in the original investigation and still others that just remain a mystery. However, I consider a

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<sup>293</sup> [1990] HCA 56 at [4]

<sup>294</sup> Ibid, at [6]

<sup>295</sup> [1963] HCA 44

jury could conclude the killer was only either Ms Arnold or Mr Leahy. Indeed, no one involved in the case has ever suggested any other possibility.

For a jury to convict Mr Leahy, it would be necessary that his guilt should not only be a rational inference, but that it be the only rational inference that could be drawn from all of the circumstances. If there is any reasonable possibility consistent with his innocence, the jury's duty would be to find him not guilty.

That means a jury would need to exclude beyond reasonable doubt the possibility the killings were carried out by Ms Arnold. If the jury members concluded she may have done it, they would be obliged to acquit Mr Leahy. But they would not be required to do that without having regard to the evidence indicating Mr Leahy might have been responsible – they would be expected to have regard to all of the evidence.

If looked at in isolation, a jury might not be able to find whether someone had induced Ms Arnold to buy the gun and if so who that person was. Similarly, the evidence relating to who cut the gun down and who planted the parts in Ms Arnold's carport after her death, might not of itself enable a jury to reach a safe conclusion.

But a jury would not be required to look at the evidence in relation to those issues in isolation. Rather, they would be entitled to have regard to the evidence indicating Ms Arnold was most unlikely to have taken her own life and had no interest in or reason to acquire a gun and to modify it. They would be entitled to draw an inference that the person who induced her to acquire the gun did so to ensure she was known to be associated with it and was probably the same person who cut it down and who planted the gun parts in her carport after she was dead. They could infer that person was also the murderer. A jury could combine that evidence with the evidence that demonstrates Mr Leahy had the motive, the opportunity and the capacity, inspired by a story he'd read, to gestate a wicked plan to kill the women and falsely inculpate or frame Ms Arnold. Such a process would not involve speculation, but rather inferences open to the jury having regard to the evidence.

These are questions to be determined after the jury has considered all of the circumstances and has received the necessary warnings and directions from a trial judge. I am required to consider the possible Crown case at its highest. As the evidence stands, I consider a properly instructed jury could exclude beyond reasonable doubt that Ms Arnold carried out the killings and determine that no one other than Mr Leahy did. Accordingly, I am obliged to commit Mr Leahy to stand trial.

It is appropriate to acknowledge however, this does not mean he will necessarily go to trial. The limited availability of witnesses, the loss of important physical exhibits and the fading of witnesses' memories could all work to frustrate a prosecution. The question of whether a person actually proceeds to trial is for the Director of Public Prosecutions to determine. His published guidelines make clear that should only occur if there are

reasonable prospects of a conviction. The doubts I have expressed in relation to the state of the evidence and the practical difficulties in prosecuting a case could conceivably impact on that.

### **13 Findings required by s. 43 – particulars of deaths**

I am required to find, so far as has been proved, who the deceased persons were and when, where and how they came by their deaths.

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.

<b>Identity of the deceased</b>	The dead women were Vicki Sarina ARNOLD and Julie-Anne Margaret LEAHY
<b>Date of death</b>	Both women died on 26 July 1991
<b>Place of death</b>	Both women died at Cherry Tree Creek, via Herberton, Queensland
<b>How they died</b>	Ms Arnold and Ms Leahy both died of intentionally inflicted gunshot wounds to the head.

Pursuant to s. 41(1)(a), I also find Alan Noel Thomas Leahy should be committed to stand trial at the next sittings of the Supreme Court in Cairns on a charge of unlawfully killing Vicki Arnold and Julie-Anne Leahy and accordingly I direct that a warrant be issued for his arrest. However, I order that the warrant lie in the registry of this court for 14 days in order to allow Mr Leahy to surrender himself to Queensland police and, if he is so inclined, to make application to the Supreme Court for bail.

## 14. Riders

Section 43 (5) authorises a coroner conducting an inquest to make riders designed to prevent recurrences of similar occurrences. The effective investigation of criminal offences is key to preventing their recurrence. Accordingly, I have considered whether changes could be made to improve the way that might happen in connection with violent homicides.

### 14.1 Mengler O’Gorman recommendations

In these findings I have referred to the litany of failures that marred the police investigation into the cause of these deaths. Notwithstanding the passage of time I have given consideration to whether a rider should be made addressing those failures. During the inquest I considered the extent to which the investigation had already been critiqued and sought evidence on the extent to which steps have been taken by the QPS to prevent a repeat of such a calamitous investigation in so serious a matter.

Not until the Mengler O’Gorman report was a comprehensive critique of the police investigation attempted. That report appropriately identified the major failures and, importantly for the consideration of any rider I might make, set out four recommendations aimed at preventing any repeat. Those recommendations were:

1. *That QPS using expertise available within QPS, decide and publish a consistent and standardise policy for the description by police of both firearms and ammunition and additionally published this policy widely amongst those involved in the administration of justice;*
2. *That QPS regularly reinforce with police members the importance of accurate note taking, together with strict accountability concerning the recording, labelling and continuity of identification of potential exhibits;*
3. *That QPS decide and implement a policy whereby all inquest briefs prepared by police members are carefully considered by a police prosecutions branch officer or a separate experienced senior officer as to the adequacy and satisfactory state of the available evidence prior to such breach is being forwarded to the coroner;*
4. *That QPS consider instituting the policy that the expertise and resources of the Homicide Investigation Squad are to be used to assist the investigation of any death within any Region where the circumstances of the death indicate that such additional expertise and resources would benefit the particular investigation.*

At the inquest Assistant Commissioner of State Crime Operations Command, Michael Condon, gave evidence in relation to the steps taken by the QPS to address these recommendations.

He told the inquest that in relation to recommendation 1, he had made enquiries with the Superintendent in charge of QPS Forensic Services. On this basis he was able to say that officers within that service now use consistent language when addressing evidence relevant to the examination of firearms. Although it is not clear whether this extends beyond the realm of forensic services officers, for reasons I will set out below, it is now far more likely than in 1991 that forensic services officers will be the ones involved in the examination of firearms at an early stage.

Recommendation 2 covers areas where the expected conduct of officers is now set out in the QPS Operational Procedures Manual (OPM). The expectation of officers in relation to note taking was little different in 1991 than today. Assistant Commissioner Condon acknowledged that in this case lack of accurate note taking and recording of events had, in some instances, become problematic in terms of the current investigation. Significant steps have been taken to address this problem, assisted by advances in technology, to improve the management of exhibits. Forensic registers now use barcodes which correspond to those which remain attached to the exhibit until an order is given for destruction or disposal.

In relation to recommendation 3, Mr Condon told the inquest that in 1991 the then *Policeman's Manual* provided a requirement for a completed Coronial report to be forwarded via the District Officer and, if within the jurisdiction of the then Brisbane Coroner, to the Inspector in Charge of the Prosecution Corps. The requirements currently in place also require an examination of the brief by the District Officer although the OPM imposes more stringent requirements on that officer to ensure the quality of the brief than was the case in 1991. The QPS Coronial Support Unit now fulfils the role previously held by police prosecutions in Brisbane.

As to recommendation 4, the inquest heard that in 2007 the QPS implemented a set of guiding principles known as 'Rules of Engagement'. These provide for an investigation to be led by the Homicide Investigation Unit rather than local investigators if certain criteria are met. Factors militating in favour of the Homicide Unit acting as the lead agency include the presence of multiple victims or where an investigation is protracted, complex or unusual. The rules also envisage the Homicide Unit acting in partnership or at least taking an over-viewing role if they do not act as the lead agency. The OPM sets out in detail the investigative responsibilities imposed on officers in the case of homicides whether they are from the Homicide Investigation Unit or are local investigators. It should also be noted that the *Police Powers and Responsibilities Act 2000* sets out a legislative framework for the way in which crime scenes should be managed and includes the issue of how evidence is to be preserved.

It was also clear from the evidence of Mr Condon that there has been a significant increase in forensic services personnel and equipment available to investigators in remote regions of Queensland since 1991. When the bodies of Ms Arnold and Ms Leahy were found, there was one part-time scenes of crime officer in Mareeba. That officer was one of 67 scenes of crime officers

and 22 scientific officers stationed throughout Queensland. The nearest scientific officer was then based in Townsville. Currently there are 209 scenes of crime officers and 43 scientific officers in Queensland with some of the latter now stationed in Cairns.

The process of reviewing evidence collected in 1991 draws attention to the extent of technological advance since. I accept that the availability of mobile telephones, email and digital photography, all unavailable in 1991, serve to decrease the risk of the investigative failures evident in this case being repeated today. Other failures; poor note taking for instance, cannot be addressed by technology but I accept the QPS is mindful of them. On this basis I do not consider that, 22 years later, the making of a rider addressing the technical investigative failures would serve a useful purpose. But the issue can also be looked at from a more fundamental perspective.

### **14.2 Active theorising - suspending judgment**

It seems clear that a major problem with this case stemmed from the first response police officers leaping to a conclusion and acting on it without sufficient reflection. It is easy to understand how this can occur: it is something we are all guilty of from time to time. It is also something that might be more commonly engaged in by police officers of necessity. An officer who challenges a known violent criminal who sees the criminal reach under his jacket has very little time to consider whether the criminal might be about to pull out a gun, a knife or his handkerchief before diving for cover. But on other occasions careful reflection and evidence based decisions are essential. The challenge is working out when speedy, intuitive decisions and actions are appropriate and when slower more deliberative thinking is needed.

In his recent book *Thinking, fast and slow*,<sup>296</sup> Nobel prize winner Daniel Kahneman discusses how we can teach ourselves to know when we should rely on our quick, intuitive responses and when we need to put the brakes on. Kahneman's work focuses on general decision making and people's response to statistical information. He acknowledges that experienced practitioners in many fields can, through extensive application of professional skills, develop accurate intuition – or more accurately they develop huge data banks of memory they can quickly access in similar situations. But when that fails to provide the answer they can fall into error by relying on premises that are usually right, but not always so or may simply be influenced by subconscious bias. Undoubtedly police do lots of great work when relying on “a copper's hunch” or a gut feeling, but they can also be led into irrecoverable error as this case shows. They should perhaps consider information arising from other disciplines to reflect upon how they can avoid the pitfalls of over reliance on professional instincts.

In an even more recent work, *Crucial errors in murder investigations*,<sup>297</sup> the author examines how police jumping to conclusions can miss vital evidence as a result of what he terms the “*theory - dependence of observations*.” Mr

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<sup>296</sup> Farrar, Straus and Giroux, New York, 2011

<sup>297</sup> Duhs T., *Crucial Errors in murder investigations*, Bond University Press 2012

Duhs' central thesis is that if investigators too quickly fix on or commit to a theory explaining a crime they risk failing to see evidence that may disprove it and are liable to subconsciously distort evidence they do find to make it fit into the framework of their favoured theory. I consider there are indications that happened in this case.

He recommends police services examine their detective training courses to assess whether they teach their officers rational criteria to equip them choose between contending theories and to continue to gather and analyse all evidence that might be relevant until it is shown not to be. Of course competing theories have to be abandoned as evidence disproves them but it is essential that not be done precipitously. I commend that recommendation to the QPS.

I close this inquest.

Michael Barnes  
State Coroner  
Brisbane  
1 March 2013

## **Appendix 1 - Failures and mistakes in the investigation**

- Not effectively securing the crime scene against contamination (numerous police officers walked up to, and around, the vehicle).
- Not leaving the bodies and the vehicle in situ until the forensic investigation of the crime scene had concluded.
- Covering the vehicle removed from the crime scene with a tarpaulin and not further examining it for three days thus negating through condensation any further fingerprinting of the internal surfaces.
- Not photographing the tyre imprints found on the track at the crime scene.
- Not photographing any footprints found at the crime scene.
- Not properly recording or photographing the state of the jammed breach of the murder weapon found at the crime scene.
- Failing to secure items found at the crime scene, including the two cartridge cases located in the jammed breach of the murder weapon which were never brought to account.
- Failing to undertake gunshot residue testing on the clothing of the deceased.
- Failing to take samples of the blood found at the scene.
- Failing to secure the clothing of the deceased.
- Failing to record the searches of the premises of the deceased Ms Arnold and to immediately secure and photograph in situ the items found there.
- Failing to properly record and investigate the circumstances of the alleged surrender of crime magazines by Mr Alan Leahy.
- Failing to trace the source of the ammunition located at the premises of Ms Arnold and to interview the supplier.
- Failing to formally interview Mr Alan Leahy after the finding of the bodies.
- Widespread failure by investigating and assisting police officers to take contemporaneous notes of relevant police actions.

The full list of defaults and errors is much longer – see the discussion contained in the Report of Messrs Mengler and O’Gorman under the heading ‘Perceived inadequacies’ from pages 77 to 84.

## **Appendix 2 - Further investigations undertaken for this inquest**

I was assisted by the coronial support unit's Detective Inspector Brendan Smith and Detective Acting Senior Sergeant Kate Pausina in conducting a number of further investigations.

Some of the further investigations conducted as part of this inquest included:-

- Investigations of allegations made in an article that appeared in the Australian's Woman's Day magazine. Witnesses Isobelle Francis Anderson, Terry Murray and Brenda Murray were interviewed and records of the Department of Families were analysed;
- Investigations of allegations raised in a letter by Alan Candlish to the AG prior to the decision to re-open the inquest alleging that a known drug dealer was responsible for the deaths;
- Investigations of allegations contained in correspondence received from Mr Patrick Kelly in relation to the weapon used;
- Investigations into information received by Shane Feeney in relation to the sighting of the vehicle on the night of the disappearance;
- Investigations into information provided by Angela McKeown in relation to Julie-Anne's movements on the day she went missing;
- Test firing on a similar model weapon, with a report noting results;
- Two re-enactments of positioning of persons in a vehicle of the same model and year as the Leahy's;
- Investigation into information provided by Emma Bryant;
- Investigation into information and projectile provided by Peter Martin;
- Investigations into the location of the original physical exhibits;
- Investigations into information provided by Neville Kelso in relation to Alan Leahy being at the local rubbish tip a number of days before the women were located;
- Investigations into the wiring of the residence at 20 Danzer Drive;
- Investigations into the Queensland Police Service Forensic register in relation to the position of the deceased's hand in gunshot suicide cases;
- Interview with Alan Leahy's ex-wife, Michelle Black;

- Investigation into information relating to the initial search and investigation;
- Investigation to locate and interview employee's of the newsagency as to who owned the 'real crime' magazines given to police by Mr Leahy;
- Investigations of allegations that Alan Leahy had engaged in sexual misconduct with respect to two juvenile relatives of his wife;
- Investigations into the provision of oral contraception to Vanessa Stewart;
- Investigations into who may have cut down the weapon used in the killings;
- Provision of communications between Robert Reid and Vanessa Stewart;
- Request for technical assistance from gun manufacturer;
- Investigations as to when the gun parts were placed in Vicki Arnold's carport;
- Investigations into claims that the initial investigation was hampered for financial reasons;
- Review of autopsy reports by Dr David Ranson; and
- Review of material by expert suicidologist, Professor Diego De Leo.

In addition to the documents already tendered from the previous inquests and following the additional inquiries, a number of additional statements, transcripts or reports were provided. Below are some of the persons who provided such documents:-

- Detective Inspector Brendan Smith;
- Lucas Van der Walt (Ballistics Examiner);
- Kerry Johnston;
- Inspector Lawrence Sturgess;
- Hubert Murray;
- Maxwell Lewis;
- Isobella Anderson;
- Robyn Fuss-Hammond;
- Marie Galloway;
- Anita Graham;
- Angela McKeown;
- Peter Martin;
- Brenda Murray;
- Terry Murray;
- Russell Wamsley;

- Stephen Miller;
- Detective Superintendent Daryl Johnson
- Margaret Leary;
- Assistant Commissioner Michael Condon;
- Denise McGimpsey;
- Sharon Daley;
- Michelle Black
- Ken Gunaydin (Gunsmith);
- Emma Bryant;
- Colleen Dunella;
- Francis Wagner;
- Simon Holt;
- Edwin Vievers; and
- Carol Woodcock.

In addition to the above, I viewed the Leahy and Arnold households along with other places of interest in and around Atherton and the road taken to where the women were found.