



# **CORONERS COURT OF QUEENSLAND**

## **FINDINGS OF INQUEST**

**CITATION:** **Inquest into the disappearance and death of Daniel James Morcombe**

**TITLE OF COURT:** Coroners Court

**JURISDICTION:** BRISBANE

**FILE NO(s):** 2009/1210

**DELIVERED ON:** 5 April 2019

**DELIVERED AT:** Brisbane

**HEARING DATE(s):** 11 – 15 October 2010, 25 – 28 October 2010, 13 – 17 December 2010, 28 March – 1 April 2011, 4 – 6 April 2011, 16 August 2011 & 14 – 15 December 2016

**FINDINGS OF:** Terry Ryan, State Coroner

**CATCHWORDS:** Coroners: inquest, missing child, suspected death, police investigation, compelled evidence from persons of interest, resumption of inquest after murder conviction.

## REPRESENTATION:

Counsel Assisting: Mr Craig Chowdhury and Mr Peter Johns

Commissioner of Police: Mr Alan MacSporran QC and Mr Michael Nicolson  
instructed by QPS Solicitor

Morcombe Family: Mr Peter Boyce, Butler McDermott Lawyers

Sergeant Munn and Senior  
Constable Campbell: Mr Calvin Gnech, QPUE

POI 33: Mr Sam Di Carlo

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## Introduction

1. Daniel James Morcombe was a happy and healthy 13 year old boy who lived with his parents and two brothers on a small rural property at Palmwoods on the Sunshine Coast. The Morcombe family's life was irrevocably changed on Sunday, 7 December 2003. Early that afternoon, Daniel set off alone from his family's home. He had planned to walk 1.3km to a bus stop on the Nambour Connection Road. He would then catch a bus to the Sunshine Plaza shopping centre where he would shop for Christmas presents and have a haircut. He had made this trip many times before.
2. The inquest into Daniel's suspected death commenced on 11 October 2010. The inquest heard evidence from a number of witnesses who saw Daniel waiting for the bus beside the eastbound lanes of the Nambour Connection Road at an overpass where that road is crossed by Kiel Mountain Road. Some of those accounts include the sighting of one or two older males standing nearby and interacting with Daniel.
3. When the inquest commenced in 2010, no account of Daniel's movements from the Kiel Mountain Road overpass had proven sufficiently reliable to locate Daniel, or to commence criminal proceedings against any person. This was despite the unrelenting efforts of Daniel's parents to ensure that his disappearance remained in the consciousness of the nation.
4. But for the actions of Brett Peter Cowan, Daniel would now be a young man aged 29 years. Among other persons of interest, Mr Cowan was called to give evidence on days 18 and 19 of the inquest, on 31 March and 1 April 2011. His evidence at the inquest confirmed that his version of events about his movements on the day that Daniel disappeared was implausible. Subsequently, the police investigation focussed on him as the main person of interest.
5. The Queensland Police Service implemented an operation that resulted in Mr Cowan making admissions about his role in Daniel's disappearance and death in order to ingratiate himself with a "criminal gang" located in Perth, where he was then living. Soon after, he also took police officers to the place he had killed Daniel.
6. Mr Cowan was subsequently arrested and convicted of Daniel's murder. It was established that he lured Daniel to his vehicle on the pretext that he would drive him to the Sunshine Plaza. Instead, he drove Daniel to an isolated property near Beerwah where he sexually assaulted and killed him, and then disposed of his body.

7. These findings set out the circumstances in which Daniel was not collected by the passing bus. They consider the initial report that Daniel was missing, which was made by his parents at the Maroochydore police station, and the police response to that report.
8. The findings outline the eye-witness accounts of persons and vehicles seen in the vicinity of Daniel at the Nambour Connection Road on 7 December 2003.
9. The findings also examine the enormous body of work that constituted the investigation by the Queensland Police Service (QPS) into Daniel's disappearance and murder, particularly those aspects relevant to Mr Cowan. They set out the circumstances in which, more than seven years after his disappearance, skeletal remains belonging to Daniel were recovered at a location around 40km from where he had been waiting for the bus. The findings do not consider evidence that was led at Mr Cowan's trial, apart from his confession.
10. It is clear that Daniel was killed within one hour of his abduction, well before his parents reported him missing on the evening of 7 December 2003. The response to Daniel's disappearance by the Queensland Police Service cannot be said to have contributed to his death in any way. The only person responsible for Daniel's death was Mr Cowan.
11. Mr and Mrs Morcombe have displayed incredible resilience in the circumstances. Initially, they faced many years grieving the loss of their son, who was taken from them at the age of 13. They did not know what had happened to him. Instead of giving in, they strengthened their resolve. They relentlessly pursued answers and sought an inquest into Daniel's disappearance. As Justice Atkinson noted at Mr Cowan's sentencing hearing, their strength was one of the main factors that led to his conviction.<sup>1</sup> The Morcombe family also established the Daniel Morcombe Foundation in an effort to ensure no other family has to experience the same anguish and despair.

### ***Coronial jurisdiction***

12. In early 2010, the former State Coroner was provided with a report from the QPS regarding the investigation into Daniel's disappearance. The police officers who compiled that report made it clear that they suspected Daniel was deceased and that, if this was the case, it was likely to have been a "violent or otherwise unnatural" death within the terms of s8(3)(b) of the *Coroners Act 2003*.

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<sup>1</sup> AM41.18, p25

13. It was in this way that the matter was reported to the State Coroner for the purposes of the Act. After considering the police report, the former State Coroner also came to suspect that Daniel was deceased and that his death was reportable. Accordingly, pursuant to s 11(6) the former State Coroner had jurisdiction to investigate the suspected death. Section 28 of the *Coroners Act* authorised the holding of an inquest into the disappearance. Following submissions from the Morcombe family, the State Coroner formed the view that it was in the public interest that an inquest be held into Daniel's disappearance.

### ***The scope of an inquest and findings***

14. A coroner has jurisdiction to inquire into the cause and the circumstances of a suspected death. The *Coroners Act*, in s 45(1) and (2), provides that when investigating a suspected death, the coroner must, if possible, find:-

- whether the death happened, and if so,
- the identity of the deceased,
- how, when and where the death occurred, and
- what caused the death.

15. After considering all of the evidence presented at the inquest, findings must be given in relation to each of those matters to the extent that they are able to be proved. While this inquest commenced as an investigation into a suspected death, following Mr Cowan's conviction for Daniel's murder there is no doubt that he is deceased.

16. An inquest is not a trial between opposing parties but an inquiry into the death, which a leading English authority has described in this way:-

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

<sup>2</sup>

17. The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, in so far as it is relevant to the death being investigated, the Act authorises a coroner to "*comment on anything connected with a death investigated at an inquest that relates to public health or safety or ways to prevent deaths from happening in similar circumstances in the future.*"<sup>3</sup>

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<sup>2</sup> *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

<sup>3</sup> s46(1)

18. The Act prohibits findings or comments including any statement that a person is or may be guilty of an offence or civilly liable for something.<sup>4</sup> However, I do not consider that this section is offended where reference is made to a person who has been convicted of an offence relating to the death after all avenues of appeal are exhausted.

### ***The admissibility of evidence and the standard of proof***

19. Proceedings in a Coroners Court are not as constrained as courts exercising criminal or civil jurisdiction because s 37 of the Act provides that the Coroners Court is not bound by the rules of evidence and may inform itself in any way it considers appropriate. This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt - an inquiry rather than a trial.<sup>5</sup>
20. 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>6</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>7</sup>
21. A coroner is obliged to comply with the rules of natural justice and to act judicially.<sup>8</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>9</sup> makes clear, that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.

### ***The investigation***

22. The police investigation into Daniel's disappearance commenced on the morning of 8 December 2003. A major incident room was established at the Maroochydore police station on 9 December 2003. Over 22,000 job logs were created as part of the investigation. Each represented a piece of information or a physical exhibit that was investigated and the findings of that investigation recorded. The police report, along with annexures, extended to over 10,000 pages. Over 100 police officers were involved in the investigation and over 10,000 individuals were interviewed.

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<sup>4</sup> s45(5) and s46(3)

<sup>5</sup> *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

<sup>6</sup> *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

<sup>7</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

<sup>8</sup> *Harmsworth v State Coroner* [1989] VR 989 at 994

<sup>9</sup> (1990) 65 ALJR 167 at 168

23. By any measure, the investigation into Daniel's disappearance constituted the largest criminal investigation in the history of Queensland. The police report identified over 33 persons of interest who may have played a role in Daniel's disappearance. The coercive powers of the Crime and Misconduct Commission (CMC) (as it was then known) were engaged by investigators in attempts to find Daniel, and 14 people were summoned to attend hearings at the CMC where they were required to provide evidence.
24. The covert police operation with respect to Mr Cowan<sup>10</sup> was explored during a hearing conducted prior to Mr Cowan's Supreme Court jury trial. The hearing dealt with an application to exclude Mr Cowan's admissions to undercover police officers as well as evidence of his prior offending against children. A ruling of the trial judge was released after Mr Cowan's conviction which details the oral evidence given about the covert operation.<sup>11</sup> Accordingly, while it is not necessary for me to repeat in detail the nature of that aspect of the police investigation, parts of the operation that led to Mr Cowan's confession are referred to in my findings.

### ***The inquest***

25. The inquest into Daniel's suspected death commenced on 11 October 2010. On 13 August 2011 the inquest was adjourned pursuant to section 29(3)(a) of the *Coroners Act*. Up to that point there had been 23 hearing days, and evidence had been taken from over 60 witnesses, including police officers, eyewitnesses, persons of interest and their associates. A total of 760 exhibits were tendered in the course of the inquest.
26. The QPS had identified 33 persons of interest in relation to Daniel's disappearance, and this had increased to 35 by the time the inquest started.
27. After hearing detailed evidence from investigators on each of the primary persons of interest, the State Coroner ruled that six of them should be called to attend and give evidence. One of the four called was Mr Cowan. He was the only person to whom the allegation that he had killed Daniel was put directly.
28. When the inquest was adjourned in 2011, the only further evidence to be called by counsel assisting was in the form of further oral evidence from Mr Cowan. At the time of the adjournment, no final submissions had been sought from the parties in relation to any other additional evidence.

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<sup>10</sup> Implementing the Unsolved Serious Crime Undercover Technique

<sup>11</sup> *R v Cowan* [2013] QSCPR 6



29. The inquest was adjourned again after the former State Coroner became aware that Mr Cowan had been charged with Daniel's murder, indecent treatment and interfering with a corpse. Mr Cowan was subsequently convicted of those offences on 13 March 2014. His application to the High Court of Australia for special leave to appeal was refused on 11 March 2016. Section 29(3)(b) of the *Coroners Act* provides that in these circumstances the coroner can either resume or close the inquest.
30. Subsequent to the inquest being adjourned, the investigation into Daniel's suspected death was transferred to me following the retirement of the former State Coroner. The Act enabled me to continue the existing inquest and to consider any evidence that was before the original coroner.
31. After Mr Cowan was convicted and had exhausted his rights of appeal in 2016, the Morcombe family submitted the inquest should resume to hear further evidence. They submitted a list of 16 matters which they considered were relevant in terms of evidence and/or reviewing evidence. Submissions in response were sought and obtained from the Commissioner of Police and from legal representatives for the two police officers involved in responding to the initial reporting that Daniel was missing.
32. The original settled list of issues for the inquest was as follows:
- Further to the matters set out in s 45(2), the issues for examination at the inquest are –*
1. *Whether Daniel is deceased;*
  2. *The adequacy of the immediate QPS response to the report that Daniel was missing;*
  3. *The circumstances surrounding his disappearance; and*
  4. *The adequacy of the investigation into Daniel's disappearance.*
33. In considering the scope of the resumed inquest, I had regard to the significant events which occurred after that list of issues was settled; namely the identification of Mr Cowan as the person who caused Daniel's death, as well as the location of his remains. This meant all the evidence required to make findings pursuant to s 45 of the *Coroners Act* had been gathered.
34. I did not consider that the resumed inquest should serve as a Commission of Inquiry into the police investigation. It was my view that sufficient evidence had already been heard in relation to the investigation (with the exception of some specific areas referred to below) to identify any investigative inadequacies.
35. I agreed that it was appropriate to call former police officers Kenneth King and Dennis Martyn to give evidence at the resumed inquest as they were the first officers to speak to Mr Cowan after Daniel went missing.

The early contact with Cowan in the investigation took on more significance after the inquest was adjourned. An overview of the initial investigation into Mr Cowan had been provided to the inquest. However, neither Mr King nor Mr Martyn gave oral evidence in 2010 or 2011.

36. The Morcombe family submitted that the resumed inquest should consider why Mr Cowan was not further questioned about his alibi at an earlier time, and why persons at the home of Ms Sandra Drummond were not interviewed initially, and even subsequently, rather than having to wait until the inquest.
37. These issues were more significant than they were prior to the inquest being adjourned, and that there was potential for criticism of the QPS and/or the officers involved with respect to the extent to which Mr Cowan's alibi was challenged and why alibi witnesses were not interviewed prior to the inquest. The way in which Mr Cowan's purported movements on 7 December 2003 were investigated was relevant to the adequacy of the QPS investigation.
38. The inquest resumed in December 2016 with two days of evidence from five witnesses. Counsel Assisting made oral submissions at the conclusion of the evidence. This was followed by written submissions in February and March 2017 on behalf of those granted leave to appear.
39. The inquest findings could not be finalised immediately after receipt of submissions. In December 2016, the Crime and Corruption Commission (CCC) received multiple allegations relevant to possible police misconduct, corrupt conduct and criminal conduct, including perjury relating to the QPS investigation into Daniel's disappearance and subsequent evidence given at the inquest. The CCC initially referred those to the QPS Ethical Standards Command for investigation, subject to the CCC's monitoring role.
40. In September 2017, the CCC assumed responsibility for the investigation of some of the allegations. Those allegations were directly related to Assistant Commissioner Condon's role in the investigation into Daniel's disappearance. The allegations also touched directly upon the evidence that was received at the resumed inquest and issues the inquest was considering. The CCC conducted an exhaustive investigation into those allegations, including interviews with 35 serving and former police officers. In June 2018, I was informed that the CCC had determined there were insufficient grounds for the consideration of any criminal prosecution or disciplinary proceedings in relation to the allegations.

41. I have been assisted in the preparation of these findings by submissions from those granted leave to appear at the inquest, including the Morcombe family. I acknowledge in particular the assistance provided to the family by Mr Boyce, who acted on a pro-bono basis throughout the inquest. I also acknowledge the enormous amount of work done by Coroners Court staff including Counsel Assisting, Peter Johns, and the Manager of the Inquest and Investigations Team, Daniel Grice.

### ***The evidence***

42. I do not propose to cover in detail all of the evidence that was given in the 2010-2011 inquest sittings or in subsequent criminal proceedings involving Mr Cowan. The first tranche of the 2010-11 inquest sittings was concerned with the initial report by Daniel's parents that he was missing and the police response to that report.
43. The inquest also heard accounts of Daniel's movements prior to his disappearance and of persons and vehicles seen with him on 7 December 2003. It heard about the scope of the investigation from the police officers centrally involved with its conduct over the following seven years. The inquest also heard details of the investigation into each of the 35 persons of interest from the police officers with the most detailed knowledge of those persons.
44. The second tranche of sittings in March and April 2011 focussed on particular persons of interest, including Mr Cowan, and his family, friends, associates, and eye-witnesses or informants connected to him. I did not have the benefit of seeing the witnesses give evidence at the earlier sittings, and have relied on the inquest transcript and exhibits.
45. The focus of these findings is the circumstances relating to Daniel's disappearance, the police investigation of his disappearance, and evidence relevant to the identification of Mr Cowan as the person responsible for his disappearance and death.

### **Family background**

46. Daniel was born in Melbourne on 19 December 1989. The family relocated to the Sunshine Coast in 1993. In October 2003, Mr and Mrs Morcombe became successful regional franchisors for Jim's Trees, a business relating to tree pruning and removal. Mr and Mrs Morcombe had the right to sell franchises within Queensland and were responsible for advertising and generating work for franchisees.
47. Daniel attended Siena Catholic College at Sippy Downs along with his brothers, Dean and Bradley. He had completed year nine in 2003. He was approximately 155 cm tall and dark brown collar length hair. His interests included motocross and caring for his pet animals, including a pony. Daniel and his two brothers worked picking passionfruit on a part-time basis for neighbours, the Paxton family. Daniel was described as a

normal 13-year-old teenager from a secure family background. He was quiet in nature and was not troublesome. He was a much loved son, brother and grandson.

### **Events of 7 December 2003**

48. The Paxton family resided at 31 Atkinson Road, Woombye. Daniel and his brothers worked at the Paxton's property picking passionfruit on the morning of 7 December 2003. At 9:45am, Judith Paxton drove Daniel and his twin brother, Bradley, back to their home on the farm quad bike. Dean had already returned home. Daniel was given his weekly pay and received \$90.00.
49. As franchisors for the Jim's Trees franchise system, Mr and Mrs Morcombe had organised a Christmas gathering for franchisees in a park at Mansfield in Brisbane, approximately an hour and a half drive from Palmwoods. The function was organised with a start time of approximately 11:00am and was to be finished by 2:00pm.
50. It had been planned that the three Morcombe boys would start collecting passionfruit at approximately 6:30am. It took approximately two hours for them to collect the fruit at that time of year. Bruce Morcombe's evidence was that he anticipated they would be finished at 8:30am, giving sufficient time for them to be organised to accompany their parents to the Mansfield Christmas function.<sup>12</sup>
51. However, passing showers had resulted in the start to work being delayed until 7:30am. Mr and Mrs Morcombe had a brief discussion with their sons about whether they wanted to travel to Brisbane for the work function, and the boys indicated they were happy to stay at home.
52. Daniel left his home later that day after 1:00pm. His plan was to walk to the Nambour Connection Road in order to catch a bus to the Sunshine Plaza shopping centre. Mr Morcombe's evidence was that Daniel had caught the Sunbus to the Sunshine Plaza at least 15 times before.
53. When Daniel left his home on the afternoon of 7 December 2003, he was wearing a pair of navy blue long shorts, a red Billabong T-shirt, and a pair of Globe shoes. He was carrying a wallet with approximately \$100 in cash, a Commonwealth Bank key card, a student card, a video store card and a phone card.
54. Daniel walked the 1.3km from his home to the Nambour Connection Road where he waited for a bus while standing under the Kiel Mountain Road overpass. Although this was not an officially designated bus stop, Daniel and his brothers had caught buses from this location on previous occasions.

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<sup>12</sup> T1, p12

55. The Nambour Connection Road is a major arterial road that commences at the Bruce Highway north of Forest Glen and continues into Nambour. Kiel Mountain Road has an overpass that crosses over the Nambour Connection Road. On either side of the overpass are roundabouts connecting with the Nambour Connection Road. At the time of Daniel's disappearance, the Christian Outreach Centre was located adjacent to the overpass. The bus stop was a grass and dirt area adjacent to the Nambour Connection Road, directly under the Kiel Mountain Road overpass.
56. Mr and Mrs Morcombe returned from the Christmas function in Brisbane at approximately 4:00pm. The Sunbus operated on an hourly basis on Sundays and Mrs Morcombe drove to the bus stop to collect Daniel at around 4:30pm. As Daniel was not on that bus, Mr Morcombe drove back to the bus stop at 5:30pm as he believed that the last bus left the Sunshine Plaza at 5:00pm.<sup>13</sup>
57. As Daniel had not returned home, Mr and Mrs Morcombe drove to the Sunshine Plaza to look for him. They were able to establish that the last bus departed at 5:05pm. After they could not locate Daniel at the Sunshine Plaza, they followed the bus route home. After unsuccessfully trying to contact Sunbus via telephone, they intercepted a bus on the road. The driver informed them that there was nobody at the Sunbus depot at that time of day to confirm whether the buses had been running to schedule.<sup>14</sup>

### **Daniel is reported missing**

58. Mr and Mrs Morcombe then returned directly to the Sunshine Plaza to make further inquiries in relation to the last bus service and to again look for Daniel. They then decided to go to the Maroochydore police station to report that Daniel was missing. They arrived at the station at approximately 7:30pm and were met at the front counter by Sergeant Robbie Munn. The conversation with Sergeant Munn proceeded for approximately 20 minutes.
59. Sergeant Munn took details in relation to Daniel's physical appearance, family relationships and general well-being, including whether he had any mental health issues.<sup>15</sup> Mr Morcombe said that he told Sergeant Munn that Daniel's disappearance was completely out of the ordinary, and that on previous occasions he had called his parents to inform them that he was running late. He told Sergeant Munn that there had not been any argument at home which would lead to Daniel to stay away. On the contrary, he had gone to the Sunshine Plaza to buy Christmas presents for his family. Mr Morcombe told Sergeant Munn how he and Mrs Morcombe had tried to establish where Daniel was – their own searches, discussions within the family, as well as contacting Sunbus and Buslink.

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<sup>13</sup> T1, p14

<sup>14</sup> T1, p16

<sup>15</sup> T1, p17

60. Mr Morcombe said that Sergeant Munn had advised them to return home and that it was likely that Daniel's disappearance was a misunderstanding in that he was likely running late with his friends. Sergeant Munn informed Mr and Mrs Morcombe that he would not list Daniel as a missing person at that stage.<sup>16</sup>
61. Mr and Mrs Morcombe then returned home and contacted Daniel's school friends, who informed them that they had no contact at all with Daniel on that day. They also searched around their hobby farm's sheds and stables, and conducted a search of the Kiel Mountain Road overpass bus stops with a torch.
62. Mr and Mrs Morcombe received two telephone calls from Sergeant Munn at around 10:00pm and 10:40pm on the night of 7 December 2003 enquiring whether Daniel had returned home. A further call was received from Senior Constable Campbell from the Palmwoods police at approximately 11:00pm informing Mr and Mrs Morcombe to make a formal report when the Palmwoods police station opened at 8:00am the following morning. Mr Morcombe said that he did not protest at this suggestion, but felt that the report of Daniel's disappearance was not being taken seriously by police.<sup>17</sup>
63. At first light on 8 December 2003, Mr and Mrs Morcombe proceeded to undertake their own searches including driving again to the Kiel Mountain Road overpass and into the Sunshine Plaza. They also walked the route Daniel would have taken to the bus stop and back.<sup>18</sup> Mr Morcombe expressed a sense of exasperation that he had to wait a further three hours before he was able to make a formal report to police.
64. At 8:00am Mr and Mrs Morcombe went to the Palmwoods police station after dropping Dean off at work. They were met there by Sergeant Davison. Mr Morcombe said that Sergeant Davison took a very thorough account in relation to the circumstances surrounding Daniel's disappearance, including his movements on 7 December 2003 and the clothing that he was wearing.
65. Sergeant Davison quickly established through calls to Sunbus that a boy matching Daniel's appearance was seen at the Kiel Mountain overpass bus stop wearing a red T-shirt and dark baggy shorts. Sergeant Davison had also established that Daniel was seen in the company of an older male at the bus stop, but did not tell Mr and Mrs Morcombe this fact on 8 December 2003. On leaving the Palmwoods police station Mr Morcombe said that he felt confident that the police investigation was underway.<sup>19</sup> Mr and Mrs Morcombe were visited at their home by Sergeant Davison and several detectives later on 8 December 2003.

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<sup>16</sup> T1, p18

<sup>17</sup> T1, p22

<sup>18</sup> T1, p23

<sup>19</sup> T1, p26

### **Should Daniel have been listed as a missing person on 7 December 2003?**

66. Detective Senior Sergeant Paul Schmidt was the Officer in Charge of the Nambour CIB at the time of Daniel's disappearance. He was an officer with over 20 years' experience as a detective.
67. At the first tranche of inquest sittings in 2010, Detective Senior Sergeant Schmidt was asked to consider whether Daniel should have been listed as a missing person on the evening of 7 December 2003, having regard to the information given by Mr Morcombe to Sergeant Munn when he went to Maroochydore police station. As noted above, this was to the effect that Daniel was a very responsible boy, and that if he was running late, he would telephone and advise his family.
68. Sergeant Munn was informed that Daniel had no psychological or other emotional disturbances that could explain his disappearance, and that he had made plans that morning and invited his brothers to join him on the trip to the Sunshine Plaza. This would tend to discount any prearranged explanation for his failure to return home.
69. It was suggested to Detective Senior Sergeant Schmidt that all of that information would be factored into assessing whether or not his failure to return was a basis for concern about his safety. Detective Senior Sergeant Schmidt agreed, but indicated that there was nothing in the material he had reviewed that would have caused the officers who interacted with Mr and Mrs Morcombe on 7 December 2003 to hold any fears for Daniel's safety, other than the fact that he had not returned home from shopping.
70. Detective Senior Sergeant Schmidt said that it was not until the next morning, when Sergeant Davison became involved, and was able to access information from the Sunbus company which added to the information already at hand, elevating the suspicion. However, he also agreed that the QPS would have been able to contact Sunbus on the night of 7 December 2003 to make inquiries about the bus movements on that day. He also agreed that if Daniel had been listed as missing on 7 December 2003 and inquiries were made of the bus company on that date, it was possible that investigative leads would have been pursued sooner.<sup>20</sup>
71. Detective Senior Sergeant Schmidt said that, from his experience, the fact that Daniel was not recorded by Sergeant Munn on 7 December 2003, when he received the report in person from Mr Morcombe, would not have affected the investigation that ensued.<sup>21</sup>

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<sup>20</sup> T1, p96

<sup>21</sup> T1, p114

72. Detective Senior Sergeant Schmidt outlined significant changes to QPS procedures for missing persons that had been introduced between 2003 and 2010. He said that there was now a requirement that officers assign a risk statement to the matter using a risk assessment guideline for missing persons. Officers are required to make a determination as to whether the concerns are “low, medium or high” and are required to report the incident before the termination of their shift. The supervisor must also sign off on that determination, and that can be overridden by the supervisor, or by the Missing Persons Unit (MPU).
73. Sergeant Munn gave evidence at the inquest on 25 October 2010. Sergeant Munn said that as he spoke with Mr and Mrs Morcombe he made notes which he subsequently transcribed onto the duty sergeant’s occurrence log. Sergeant Munn said that his initial priorities were to put Mr and Mrs Morcombe at ease, to record the matter, and to broadcast within the Sunshine Coast police district to “be on the lookout” for Daniel. He said that he requested the Communications Coordinator, Sergeant Yates, to keep an active “be on the lookout” broadcast throughout the district.<sup>22</sup>
74. Sergeant Munn said that when Mr and Mrs Morcombe left the police station he held no real concerns for Daniel, based on his 25 years of policing experience. He later contacted Mr and Mrs Morcombe at around 10:10pm to see if Daniel had returned home. After he spoke with Mr and Mrs Morcombe he went and informed the Communications Controller, Sergeant Yates that they would like a mobile crew to attend at their home. He left the tasking of this job with Sergeant Yates.
75. Sergeant Munn said that when he was speaking to Mr and Mrs Morcombe it was twilight. There had been no set time for Daniel to be at home, and he was almost 14 years of age. He said that there was no information to give him fears for Daniel’s safety or concerns for his welfare, which were judgements he needed to make to proceed to the formal stage of listing him as missing. He said that at that time he was aware that there would be no staff at the Missing Persons Unit. This meant that a missing person’s report would have had to wait until the following morning before being actioned. Accordingly, it would not have practically assisted on 7 December 2003.
76. Sergeant Munn said that he had tasked the completion of the missing person’s report to a mobile crew, and did not consider it necessary to complete the report personally. He said that if he had been tasked with this request he would obtain photographs and information in relation to clothing worn by Daniel. He agreed that under revised QPS policy he would be required to report that Daniel was still missing at 10:00pm to a more senior officer.

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<sup>22</sup> T6, pp 35-36



77. Sergeant Munn said that Mr and Mrs Morcombe informed him that Daniel was *“a good kid from a good family, from a good background who hasn't caused problems ... who's reasonably independent ... or self-dependent in that he ... could go and take the three kilometre walk to the bus stop then take the bus into town by himself.”* He agreed that they were concerned that they did not know where he was and they expected him to be at home.<sup>23</sup> He said that he did not call Sunbus to follow up on Daniel's whereabouts because at that point of time he *“did not have any concerns for Daniel's welfare. I had no fears for his safety so, I didn't make that call.”*
78. Sergeant Munn had no involvement with Daniel's disappearance after finishing his shift on 7 December 2003.
79. Senior Constable Paul Campbell was based at Palmwoods on 7 December 2003. Senior Constable Campbell told the inquest that he had finished duty at 10:00pm on that day. He had returned home when he received a call from the Maroochydore Police Communications Centre at around 10:30pm. Palmwoods was not a 24-hour station.
80. Senior Constable Campbell said that after taking details from the communications coordinator he called Mr Morcombe from his home. He said that Mr Morcombe told him that Daniel had gone to the Sunshine Plaza by bus but had not returned home. Mr Morcombe told him that he had searched for Daniel and contacted his friends but they were not able to locate him.<sup>24</sup>
81. Senior Constable Campbell said that at the time of the phone call he was satisfying himself in relation to whether a missing person report was required, or whether he should be monitoring the situation. He said that if he had significant concerns which would lead him to believe that something sinister had happened he would instigate a missing person report immediately. However, he noted that there was no capacity for such a report to be disseminated in the early hours of the morning. He consequently made arrangements for Mr Morcombe to see Sergeant Davison at the Palmwoods police station the following morning.
82. Detective Senior Sergeant Damien Powell was an operations leader with the Missing Persons Unit when he gave evidence at the inquest in 2011. Senior Sergeant Powell said that the lead role in relation to the investigation of any missing person remained with the station taking the initial report. The role of the Missing Persons Unit was to review the files of missing persons reported throughout Queensland and support investigators.

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<sup>23</sup> T6, p82

<sup>24</sup> T6, p72

83. Senior Sergeant Powell said that at the time of Daniel's disappearance the Missing Persons Unit operated every day from 7:00am until 10:00pm. On 7 December 2003 an officer was rostered to finish the shift at 10:00pm. However, for medical reasons that officer had worked a day shift and the office was unattended. This meant that any messages would not have been received until the following morning. Notwithstanding, it would have been possible to have information about a missing person inputted by the Information Bureau. After the missing person message had been distributed, the Homicide Investigation Unit would be advised in the event of suspicious circumstances.
84. Senior Sergeant Powell said that had Daniel been reported as missing on the night of 7 December 2003 there was insufficient information available to indicate that a criminal offence had occurred. However, the Missing Persons Unit may have considered risk indicators and provided advice in relation to investigative strategies.<sup>25</sup>
85. Senior Sergeant Powell had reviewed the actions of Sergeant Munn and Sergeant Davison following their discussions with Mr and Mrs Morcombe on 7 and 8 December 2003. He said that at the time there was no mandatory requirement for a police officer to enter any person as missing. It was left to the discretion of each reporting officer to create an official missing person report.
86. When giving evidence in 2011, Senior Sergeant Powell confirmed that a three stage risk assessment had been implemented in relation to each missing persons report. The receiving officer was required to complete a risk assessment which had to be signed off by the shift supervisor. That assessment was then overviewed by the Missing Persons Unit. The Operational Procedures Manual had been amended in 2010 to implement mandatory reporting requirements when a missing person was under the age of 18 years, or fell within another vulnerable category of person. Where parents were concerned for the safety or welfare of their child, an officer has no discretion in relation to completing a report.
87. Senior Sergeant Powell also referred to the Amber Alert system which had been introduced in 2005 and was used for the purpose of locating children and young people the QPS believed have been abducted. He said that once police had a reasonable belief that foul play had occurred a missing person investigation would be escalated to a criminal investigation.<sup>26</sup> The QPS also used other social media platforms to disseminate information about missing children including Facebook and Twitter.

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<sup>25</sup> T22, p36

<sup>26</sup> T22, p55

88. Senior Sergeant Powell said that there were only four other cases involving missing children in Queensland since 1972 who had not been located:

- Marilyn Wallman, who went missing in 1972 in Mackay.
- Chad and Melanie Sutton, who went missing from Inala in 1992.
- Rachael Antonio, who went missing from Bowen in 1998.

### **Other missing person initiatives**

89. Senior Sergeant Powell provided a supplementary statement in February 2017<sup>27</sup> in which he updated improvements and responses implemented by the MPU. Senior Sergeant Powell indicated that the MPU identified as many as 14 missing person cases each year that subsequently led to homicide investigations.

90. Senior Sergeant Powell noted that one of the core functions of the MPU was the risk assessment process which was applied to each missing person case. He noted that the MPU manages approximately 6000 missing person cases per annum and that children aged under 16 years make up almost 50% of the total number reported.

91. Senior Sergeant Powell said that he submitted in 2012 that consideration be given to amendments to the *Police Powers and Responsibilities Act* to support missing persons enquiries. This was in response to the identified issue that police had limited powers of entry and search for missing persons in the absence of a reasonable belief that an offence had been committed. The relevant amendments were enacted in 2017. The amendments enable searches of places for high-risk missing persons. A person is considered a high risk missing person if they are under 13 years of age, or there is reasonable suspicion they may suffer serious harm if not found as quickly as possible. Police officers can now establish a missing person scene at a place to search for the missing person or to search for information about the person's disappearance.

92. The Q-Lite mobile device issued to QPS officers has a missing person application. This enables an officer to create a missing person report at the time they are speaking to an informant. The application then automatically publishes the report to the MPU and the report is also available state wide.

93. Senior Sergeant Powell also noted that Chapter 12 of the QPS OPM is dedicated to missing persons. The Chapter is regularly updated to reflect changes in service policy. A number of updates were made in May 2015, including a definition of a "high risk missing person".

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<sup>27</sup> AM20.1

## **THE POLICE INVESTIGATION**

94. Detective Senior Sergeant Schmidt was informed of Daniel's disappearance on 8 December 2003 and became responsible for the police investigation. His evidence at the inquest was that investigations were well underway on 8 December 2003, and he was of the view that the investigative response was appropriate. He said that there were no suspicions held by police that any criminal conduct had occurred in relation to Daniel prior to 8 December 2003.<sup>28</sup>
95. Detective Senior Sergeant Schmidt gave evidence in relation to the nature of QPS investigations in the first 72 hours following Daniel's disappearance.<sup>29</sup> These included State Emergency Service searches in the incident area. Police divers were also activated for water searches. Investigations were carried out into reported sightings of Daniel before and after his disappearance, as well as into reported sightings of vehicles seen at the Kiel Mountain Road overpass. Daniel's bank account was queried for activity. Forensic examinations were conducted of the overpass, and of the Sunbus vehicles linked to that location. Door knocks of residences and businesses in the area were carried out.
96. The QPS secured closed circuit television footage from Sunshine Plaza security cameras for examination. The QPS also secured CCTV footage from service stations within a five kilometre radius as well as from the Nambour Railway Station. Timings for the Sunbus trips were verified from computerised ticketing machines.
97. The QPS started to interview known sex offenders with links to the area and links to the Christian Outreach Centre immediately behind the overpass location. Inquiries were made with Sunshine Coast Cabs for pick-ups and drop-offs in the area near the incident scene.
98. State Crime Command specialists who dealt with child paedophilia were enlisted to review intelligence on convicted child sex offenders within the North Coast police region, prioritising a list of offenders for interview. Officers commenced interviews with persons linked to the offenders. Searches of 71 second-hand pawnbrokers and dealers throughout the region from Bundaberg to Caboolture were carried out looking for property belonging to Daniel.
99. On the morning of 9 December 2003, the QPS established a Major Incident Room (MIR) at the Maroochydore police station in order to investigate Daniel's disappearance. This operation was codenamed Operation Bravo Vista. Detective Senior Sergeant Schmidt's evidence was that the MIR was the central location from which the investigation was run. There were initially four officers from the Homicide Investigation Unit who managed the electronic storage of information and the

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<sup>28</sup> Exhibit AM2

<sup>29</sup> T1, p50

recording and creation of job logs for investigation. There was also an officer allocated as a "reader" to perform the role of quality control. The reader vetted the information recorded in job logs to see if further follow-up inquiries were required, or whether the information was sufficient to close the job.<sup>30</sup>

100. Detective Senior Sergeant Schmidt's evidence was that first 72 hours after the MIR was established entailed using the entire resources of the Child Protection Investigation Unit and the CIB. This amounted to about 60 police, as well as officers from Tactical Crime Squad, uniformed police and water police. At times the numbers swelled to over a hundred, depending on the strategies being invoked. Four Homicide Investigation Unit officers were dedicated to Daniel's disappearance for approximately 18 months.
101. Sergeant Tracey Barnes was the author of a 71 page police report that provided an overview of the investigation into Daniel's disappearance.<sup>31</sup> Sergeant Barnes became involved in the investigation on 8 December 2003. She was then attached to the Sunshine Coast District Break and Enter Squad. From February 2004, she assumed the role of reader in the MIR. In this role she reviewed job logs and decided whether further action was required. Sergeant Barnes said that Detective Sergeant Mahoney was the initial reader within the MIR. He continued in that role up until January 2004.
102. At the time of the inquest hearings in 2010 approximately 18,000 job logs had been generated. Sergeant Barnes said that over 10,000 people had been interviewed throughout Australia as a result of the investigations under Operation Vista.<sup>32</sup> Sergeant Barnes said that the QPS would generally consider that a large homicide investigation would comprise 500 job logs.
103. Consistent with Detective Senior Sergeant Schmidt's evidence, Sergeant Barnes said that the initial examination of the scene at the Kiel Mountain Road overpass involved photography of the scene, the taking of tyre impressions and gathering of materials such as a cigarette butt.
104. Sergeant Barnes said that the drivers of the buses were located and identified through inquiries that were conducted at Sunbus, and bus passengers came forward as a result of publicity in relation to reports in the media of Daniel's disappearance.
105. Sergeant Barnes described her report as a brief overview to explain different strategies that were implemented in attempts to find Daniel. She noted that certain people were identified as persons of interest, and more detailed investigations were carried out with respect to them due

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<sup>30</sup> T1, p51

<sup>31</sup> Exhibit PR

<sup>32</sup> T3, p91

to the nature of the information received.<sup>33</sup> A major person of interest list was compiled and separate and detailed reports were prepared in relation to those persons.

106. Sergeant Barnes said that there were 84 different eyewitness accounts of either Daniel, persons of interest, or vehicles of interest in addition to the accounts given by persons on the Sunbus’.
107. A re-enactment was carried out on 14 December 2003, in which a mannequin was placed at the roadside wearing clothing identical to that worn by Daniel at the time of his disappearance. All southbound vehicles on the Nambour Connection Road were intercepted and questioned about their movements the previous Sunday. That information was given to investigators and later placed on a job log. All inquiries that were run out were recorded at the MIR.<sup>34</sup> Witnesses were also given the opportunity to return to the scene to clarify where they had seen Daniel, vehicles, and persons of interest.
108. Sergeant Barnes gave evidence in relation to the challenges associated with dealing with the extremely large volume of information that was flowing to the MIR from members of the public, either directly or via Crimestoppers reports. She said that while it was not possible to call back everyone who provided information, this led to duplication of effort as persons called back with the same information. She said that it might assist future large investigations to have an officer tasked to contact people to advise that their information was being considered but they may not be advised of the outcome.
109. Sergeant Barnes noted that a number of witnesses underwent regression therapy with a registered clinical psychologist. However, no information of any evidentiary value was produced as a consequence. Imagery from satellites operating over the area on 7 December 2003 was obtained and reviewed. A “car room” was set up with photographs of 37 different vehicles to enable witnesses to identify vehicles they had seen.<sup>35</sup> However, this strategy failed to produce a specific make or model of a vehicle of interest.
110. Police obtained extensive call records from service providers on the basis that more than one offender might have been involved in Daniel’s disappearance, and calls were made between offenders. It was identified that there were 14 towers transmitting through the area on that day, and data from the carriers revealed that close to 1600 calls were made.

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<sup>33</sup> T3, p68

<sup>34</sup> T3, p69

<sup>35</sup> T3, p74

111. Subscribers were subsequently identified, and intelligence holdings matched from the Sunshine Coast and the Bureau of Criminal Intelligence. Each of the callers whose details were obtained, and whether they had any criminal history or intelligence holdings, were job logged. They were then interviewed in relation to their reasons for being in the area on 7 December 2003.
112. Sergeant Barnes' evidence covered a range of other matters such as the use of covert operatives, the management of exhibits, door knocks, photo board and Comfit procedures. She also gave evidence about the forensic examination of the scene and the taking of shoe impressions at the bus stop at the overpass. Some tyre impressions were located and photographed but were of very poor quality.
113. Sergeant Barnes also described the information management system adopted as part of the investigation - the Investigative Management and Control System. This system was coming into use by the QPS at the time of Daniel's disappearance in order to manage major incidents. The system permitted detailed cross-referencing of the database.
114. Sergeant Barnes said that 200 hours of CCTV footage was obtained from service stations from Tewanin to Caboolture. The footage was reviewed in the MIR to identify whether Daniel was in any footage and whether male persons were obtaining fuel for a square shaped blue vehicle. Other footage was secured from the railway station at Nambour and the Gateway Bridge. A week after Daniel's abduction all vehicles entering and leaving the Christian Outreach Centre church adjacent to the bus stop were filmed. A white Mitsubishi Parejo with Queensland plates 552GLT was among the vehicles captured in that footage.<sup>36</sup> This vehicle was registered to Brett Cowan.
115. Under cross examination from Mr Boyce for the Morcombe family, Sergeant Barnes agreed that there had been some gaps in the initial QPS investigation. For example, a call to Sunbus at around 3:30pm on the afternoon of 7 December 2003 from an unknown woman looking for her son who would have been waiting to catch the bus at Woombye bus stop was not investigated before the 2010 inquest hearings. Subsequent investigations established that this call had no relevance to Daniel's disappearance. In addition, some schools were not included on the list of schools to which questionnaires were sent seeking information about Daniel's disappearance.<sup>37</sup>

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<sup>36</sup> Exhibit PR, appendix S.

<sup>37</sup> T3, p100

116. Sergeant Barnes said that as the reader her role was not to develop investigative strategies. Those were developed within the MIR. It was not part of her duty to sign off on all decisions made by the MIR. Her role was to read job logs, statements and other material coming back through the MIR. Decisions in relation to investigative strategy were taken by the officer in charge of the investigation, in conjunction with other investigators within the MIR.<sup>38</sup>
117. Sergeant Barnes acknowledged in her evidence that there was no one within the QPS who had reviewed the entire investigation to ensure that each piece of evidence obtained had been cross-checked. The limit of the cross-checking of information stopped with her as a reader. She said that she had agreed with the recommendation of Detective Senior Sergeant Schmidt to refer the file to the Cold Case Unit in the Homicide Investigation Unit.
118. Sergeant Barnes said that two homicide detectives had been engaged in 2004 to review the first 2000 or so job logs. The purpose of appointing this review team was to ensure that “things that had been conducted during the investigation were completed to the required level”. That process was not continued. From her perspective, there were problems in that recommendations coming from the officers conducting the review were completed by the time their recommendations were brought to the attention of the MIR. In her view, the review was not effective as it was an ongoing investigation with so much information coming in, and so many job logs still outstanding.
119. At the time of Daniel’s disappearance, Assistant Commissioner Michael Condon was the Detective Inspector in charge of both the Homicide Investigation Unit and the Missing Persons Unit. He was subsequently promoted to the position of Superintendent where he retained line management of the Homicide Investigation Unit.
120. Assistant Commissioner Condon said that he caused a “hot case” review in the early stages of the investigation into Daniel’s disappearance. That review was conducted by Detectives Darryl Johnson and David Hickey, and took approximately 7 or 8 months from July 2004. That review entailed looking at approximately 2100 job logs for the purpose of ascertaining whether the investigation was proceeding in the right direction, and to ensure that there were no lines of inquiry that should be prioritised over others.<sup>39</sup>
121. Assistant Commissioner Condon indicated that the Homicide Investigation Unit operated on a framework that had approximately 72 standard lines of inquiry which formed the basis of an investigation. The case management system in place in the MIR had the capacity to link those processes. Assistant Commissioner Condon also referred to

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<sup>38</sup> T3, p101

<sup>39</sup> T22, p71



external reviews being conducted in relation to particular persons of interest. He said that the investigation relating to Mr Cowan had been subject to a review by members of the Homicide Investigation Unit.

122. With respect to Mr Cowan, Assistant Commissioner Condon referred to the initial investigation in 2003. Further inquiries were prompted by correspondence from the Family Court in May 2006. The investigation into Mr Cowan was managed by the Homicide Investigation Unit from that time. Assistant Commissioner Condon said that there becomes a point where the capacity of the detectives in the MIR to address the number of persons of interest was reached – *“you need to start satelliting some of those investigations to ensure you can maintain the capacity and the intensity, so from there, homicide detectives were committed to investigation of [Cowan]”*.
123. With respect to whether there should have been further major reviews over ensuing years, Assistant Commissioner Condon said at the 2011 inquest sittings that the QPS conducted a number of reviews. The first review was of the first 2100 job logs in 2004. The second review was of the structure in the case management system. Later, he commissioned a model in which 40 detectives were allocated to review the job logs under certain criteria. This led to the identification of 502 persons of interest that he believed required closer scrutiny. In 2011 there were 15 detectives committed to that process.<sup>40</sup>
124. Assistant Commissioner Condon was asked at the 2011 sittings to respond to the suggestion that having regard to Mr Cowan’s history, and the fact he lived on the Sunshine Coast, he should have been interviewed by police before 21 December 2003.
125. Assistant Commissioner Condon said that from the outset members of Task Force Argos within the State Crime Command were deployed to generate a sex offender list. Mr Cowan was brought to the attention of the MIR on 21 December 2003 and was spoken to on that day. He was interviewed again on 22 and 23 December 2003, as was his wife. His vehicle was examined on 24 December 2003. Assistant Commissioner Condon suggested that once Mr Cowan came to the attention of the QPS, there was a reprioritisation of strategies at the time, and *“he was given the level of attention that he warranted”*.<sup>41</sup> Assistant Commissioner Condon said that there were hundreds of people identified as persons of interest and *“it’s a matter of working through that and developing a response where the MIR can be briefed”*.

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<sup>40</sup> T22, p74

<sup>41</sup> T22, p77

126. At the 2011 inquest sittings, Assistant Commissioner Condon was again asked about the review of the investigation into Daniel's disappearance. He said that he had instigated a further desk-top review in late 2010. That review took place in two stages. Part A ran from 17 to 28 January 2011 and Part B from 7 to 17 February 2011. The outcome of those reviews was that there were 502 persons of interest in relation to an identified 647 protracted inquiries.<sup>42</sup> Those 502 persons of interest were unrelated to the 33 persons of interest reviewed for the inquest. At that time, he envisaged the reviews would take a further 6-12 months.
127. In his statement, Assistant Commissioner Condon also referred to a review from January to April 2005 of 469 statements by Detective Sergeant Timms of the Major Crime Unit. This review resulted in a report which was forwarded to the MIR, identifying discrepancies in witness statements which had already been identified by investigators.
128. From October 2005 to January 2006 the National Centre for the Analysis of Violent Crime, Federal Bureau of Investigation, conducted a review of investigative strategies and made recommendations in relation to progressing the investigation. This report included an analysis of strategies that might be pursued in relation to particular persons of interest, including Mr Cowan.<sup>43</sup>
129. When asked about the timeliness of the investigation into Mr Cowan's alibi, Assistant Commissioner Condon said that when Mr Cowan was reinterviewed in July 2005 he did not nominate the alibi that he maintained at the inquest (Ms Drummond). All that could be established was that there was an unaccounted period of time which was between 30 and 40 minutes that did not match the known facts, and his account of where he had been and what he had done. He said that the QPS had no basis or ability to take that information further at that stage.
130. Assistant Commissioner Condon said that soon after the Family Court provided information about the alibi Mr Cowan was reinterviewed on 14 September 2006. At that time Mr Cowan nominated Ms Drummond as his alibi and referred to a person named Kevin (Fitzgerald). Statements were then obtained from Ms Drummond on 15 and 17 September 2006.
131. Among the reviews specifically directed by Assistant Commissioner Condon into particular persons of interest in 2010 was that related to Mr Cowan. This review was completed on 3 March 2011 by Detective Senior Constable Grant Linwood of the Homicide Investigation Unit, prior to Mr Cowan's appearance at the inquest.<sup>44</sup>

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<sup>42</sup> T22, p90, AM28 p21

<sup>43</sup> AM41

<sup>44</sup> AM27

132. Included in Detective Senior Constable Linwood's review was the reinvestigation of Cowan's movements on 7 December 2003 and his alibi witness, Sandra Drummond. The report also referred to Jessiah Cocks statement from December 2003. Mr Cocks saw a white four wheel drive parked at the side of the Nambour Connection Road 50-100m from the Kiel Mountain Road overpass at the time he passed Daniel at the bus stop.<sup>45</sup>
133. A timeline attached to Detective Senior Constable Linwood's report indicated clearly that Mr Cowan had a window of 45-50 minutes in which he could have offended between picking up the mulcher from Mr Davis and his return home. Of critical importance was his reliance on his attendance at Sandra Drummond's home shortly after 2:00pm to fill this window. Detective Senior Constable Linwood's review concluded that Sandra Drummond's movements on 7 December 2003 were unknown. In particular, he noted that enquiries of the Beerwah RSL and the Department of Licensing and Gaming were unable to identify any records or activity associated with Ms Drummond's attendance at the RSL on 7 December 2003.
134. Detective Senior Constable Linwood concluded that *"Sandra Drummond's movements/ location on Sunday 7 December 2003 are still unknown. Given the period of time that has elapsed there are no further reasonable avenues of enquiry available and Cowan's alibi cannot be negated."* It was also concluded that Ms Drummond's partner, Kevin Fitzgerald, appeared to have a very poor memory and was unable to assist the investigation.
135. Detective Senior Constable Linwood concluded that although there was no direct evidence linking Mr Cowan to Daniel's abduction, he remained a key person of interest for the *"simple reason that he is a serious child sex offender and was in the immediate vicinity of the abduction site close to the time of the offence"*. Mr Cowan's alibi was described as "unconvincing" but it was noted that it could not be verified or easily negated. It was also noted that he had a history of violent opportunistic assaults on young boys with a "return to normal" in a very limited time frame.
136. Ms Drummond also provided statements in the lead up to the inquest in January and April 2011, and after the inquest on 26 August 2011, after the inquest had been adjourned. The final statement confirmed evidence she gave at the inquest about the use of an electronic membership card at the Beerwah RSL on 7 December 2003. This evidence was important in establishing a greater timeframe which Mr Cowan could not account for on that date.

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<sup>45</sup> AM27.18

137. Assistant Commissioner Condon said that it was only when Mr Cowan gave evidence at the inquest in 2011 that he referred specifically to his discussion with Mr Fitzgerald about the mulcher on 3 December 2003. A statement was not obtained from Mr Fitzgerald until 4 April 2011, during the second tranche of inquest sittings.
138. Assistant Commissioner Condon acknowledged that although Mr Fitzgerald was regarded as an unreliable witness, “more attention could have been given to him after 2006.”<sup>46</sup>
139. In his statement, Assistant Commissioner Condon emphasised that in order to present a successful prosecution, evidence must be “credible, reliable and admissible”. The initial witnesses to Mr Cowan’s movements on 7 December 2003 (Tracey Cowan and Mr Davis) were only able to provide loose estimations of the relevant times. Notwithstanding, the 45 minutes unaccounted for in his alibi remained a concern to investigators.<sup>47</sup>
140. Assistant Commissioner Condon noted that the first piece of credible, reliable and admissible evidence was Mr Cowan’s admission that he had abducted and killed Daniel to Covert Operative 483 in Perth on 9 August 2011. This was further corroborated after Daniel’s remains and clothing were located in bushland near Beerwah in 2011.<sup>48</sup> Assistant Commissioner Condon said that prior to 9 August 2011 there was “*not a scintilla of direct evidence that implicated Cowan in the abduction and murder of Daniel Morcombe*”.
141. In a statement provided for the resumed inquest sittings Assistant Commissioner Condon set out examples of reviews that were conducted during the investigation into Daniel’s disappearance. These were in addition to the ongoing reviews of information coming into the MIR and the use of information technology to analyse and cross reference the large quantities of data. No formal review of the entire investigation has been conducted by the QPS, nor was it considered necessary.<sup>49</sup> Assistant Commissioner Condon noted that despite the sustained efforts of the QPS and the investigation team there has been some criticism levelled at investigators. He said:<sup>50</sup>

*Hindsight is a wonderful thing and it is much easier to look back once the answers are known as opposed to working through voluminous pieces of information and determining what finite resources should be applied to a legitimate investigative purpose. This will always be a balancing act and a decision made by the investigation management team.*

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<sup>46</sup> AM41, p22

<sup>47</sup> AM41, p21

<sup>48</sup> AM41, p21

<sup>49</sup> AM41, p20

<sup>50</sup> AM41, p20

142. Assistant Commissioner Condon referred to the “blue vehicle” investigation which involved a review of witness statements to identify persons who had provided detailed descriptions of different makes and models of vehicles. He noted that due to the fact that 84 witnesses had described a blue vehicle in the vicinity of Daniel during the period associated with his disappearance it would be “foolish not to commit resources in an attempt to identify both the occupants and the vehicle.” A list of 467,000 registered blue vehicles from states and territories was able to be generated. Enquiries were also conducted in relation to sightings of a green Ford sedan, a white van and a white four-wheel-drive also seen in the vicinity of the Kiel Mountain Road overpass on 7 December 2003.
143. Over 870 homes in the vicinity of the overpass were door knocked with a focus on the main routes that could have been driven by the suspects. This was the largest door knock undertaken in the history of the QPS.<sup>51</sup>
144. Assistant Commissioner Condon also referred to extensive enquiries and resources required to review the possible involvement of six persons of interest who were alleged to have admitted to others that they were involved in the abduction and murder of Daniel. In addition, extensive resources were involved in investigating Douglas Brian Jackway.
145. Mr Jackway admitted that he was on the Sunshine Coast and drove past the scene of Daniel’s disappearance on 8 December 2003 on his way to attend court at Noosa. Mr Jackway was driving a blue Holden Commodore. This car broke down some 500m from the Kiel Mountain Road overpass and Mr Jackway lifted the bonnet to undertake some minor repairs.
146. As Assistant Commissioner Condon noted, had investigators not committed resources to those issues the prosecution of Mr Cowan may have been compromised with a suggestion that other persons were involved in Daniel’s disappearance.<sup>52</sup> In this context it is significant that Mr Cowan alleged at his trial that Mr Jackway was responsible for Daniel’s disappearance and murder, and his knowledge of the offences came from Mr Jackway.
147. Assistant Commissioner Condon said that 33 witnesses provided a total of 34 Comfits and/or drawings of the male person they saw under the Kiel Mountain Road overpass during the time that Daniel was waiting for the bus. During the investigation he had discussions in relation to the most reliable description and the most effective time, if any, to release Comfits to the public.<sup>53</sup> However, this was always a matter for the investigation team to determine.

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<sup>51</sup> AM41, p14

<sup>52</sup> AM41, p17

<sup>53</sup> AM41, p19

## **Eyewitness accounts**

148. At the inquest Detective Senior Sergeant Schmidt summarised that at 1:15 to 1:20pm on 7 December 2003, at least three persons sighted Daniel (or a person matching his appearance) walking along the Woombye-Palmwoods Road towards the bus stop. At least two of those witnesses knew Daniel personally. Several other witnesses saw a blue vehicle around the area of the bus stop. This vehicle was parked with its hazard lights on. Detective Senior Sergeant Schmidt said that Daniel would have been standing at the bus stop between 2:00 and 2:20pm.
149. In his evidence Detective Senior Sergeant Schmidt noted that the eyewitnesses had made the following often conflicting observations, all said to be associated with Daniel:
1. a blue vehicle was parked on the side of the road, and there was a male person standing at the rear of the vehicle with his arms crossed;
  2. a young male, red shirt, was seen standing just behind the blue car, underneath the overpass;
  3. the rear passenger side door was open, and the male was seen near the front driver's side;
  4. there were two unknown male persons talking to Daniel near the rear door of the car;
  5. a blue car was parked in the gravel area just north of the overpass area is, heading from Maroochydore towards Nambour;
  6. at about 1:30 pm a witness saw a blue car parked on the left-hand side of the road, heading from Maroochydore;
  7. at an unknown time that morning, or that afternoon, a blue car was parked on the left-hand side of the road with Daniel standing under the overpass and two males persons in the near vicinity under the overpass;
  8. somewhere between 1.30 and 1.40pm in the afternoon a blue car was on the side of the road with two male persons and Daniel at the front of the vehicle;
  9. at approximately 1.40 pm a blue car was just past the turnoff to Palmwoods with a male person at the front of the vehicle and Daniel near the Palmwoods sign;
  10. at 1.35 to 1.45pm a blue car was parked underneath the overpass with the rear passenger-side door open. Daniel was at the rear of the vehicle and an unknown male person at the rear of the vehicle;
  11. at an unknown time, Daniel was at the rear of a vehicle and an unknown person at the rear of a vehicle with the vehicle parked directly under the overpass;
  12. a blue vehicle was parked on the inbound side, towards Maroochydore from the overpass;
  13. at about 1.30 pm a blue car sped off down Nambour Connection Road towards Shires Road;
  14. at about 1.45 Daniel was near the roadside and a male person was on the embankment up behind him;

15. at 1.45 pm Daniel and an unidentified male person were seen on the embankment;
16. Daniel standing on his own with a stick in his hand, playing in the dirt just on the Maroochydore side of the overpass with an unknown male person just underneath or back towards the Nambour side of the overpass;
17. between 2:00 and 2:05pm an unidentified male and Daniel standing just on the Maroochydore side of the overpass;
18. at 2:06pm Daniel was underneath the overpass and an unidentified male was back near the Palmwoods sign;
19. at 2:05pm Daniel was at the wall underneath the overpass, and an unidentified male person moving in the direction of Daniel.
20. at 2:10pm a blue vehicle was seen on the wrong side of the road, heading up Kiel Mountain Road. The vehicle is being driven erratically.

### **Observations of Sunbus drivers and passengers**

150. Detective Senior Sergeant Schmidt's evidence was the first Sunbus would have passed through the overpass at around 2:15pm. The following accounts (detailed below) were provided by persons on that bus:
  1. The bus driver (Edmonds) observed Daniel just on the side of the road, under the overpass and a male person seated up against the wall at the back of the overpass;
  2. a passenger observed Daniel standing on the edge of the Nambour Connection Road. Daniel was facing south across the Nambour Connection Road but looking towards the Sunbus that approached. Daniel was waving with one of his hands, motioning for the Sunbus to stop;
  3. another passenger observed that Daniel was near the roadside and an unidentified male person was leaning up against the bank with a leg bent and leaning on the actual embankment;
  4. a passenger on the same bus saw Daniel move from the embankment, down towards the road as the bus approached; and attempt to hail the bus with a male person on the embankment at the back;
  5. two other passengers observed Daniel on the side of the road and a male person leaning against the embankment.
151. Detective Senior Sergeant Schmidt agreed that the body of evidence from the passengers on the first Sunbus was consistent, at least in terms of the positioning of Daniel, and the fact that an unknown male was standing behind him. He agreed that attention would have been drawn to him because, on the witness accounts, he tried to hail the bus down. Detective Senior Sergeant Schmidt's evidence was that the second Sunbus passed through the overpass within 10 or 15 minutes of the first bus, possibly much sooner. No passengers on the second bus saw Daniel or the male at the overpass.

152. Further to the evidence of Detective Senior Sergeant Schmidt, the inquest also heard directly from passengers and drivers on the buses that passed the stop at the Kiel Mountain Road overpass. It also heard evidence from persons who reported a blue car in the vicinity of the bus stop on 7 December 2003. I have not recited the evidence of all of those witnesses in these findings. The summary of the evidence below highlights that the witnesses who saw Daniel from the first bus had different memories to those who saw him from passing vehicles. An extensive PowerPoint presentation was in evidence at the inquest which detailed the relevant sightings of Daniel, vehicles of interest and persons of interest.<sup>54</sup>
153. Katherine Bird had taken the train from Brisbane to Nambour with her boyfriend on 7 December 2003. She then caught a Sunbus from Nambour to Maroochydore. Ms Bird said that there were 10 persons on the bus including herself and the driver, Ross Edmonds. However, the bus broke down at 1:40pm and a second bus was called to collect the passengers. That bus arrived at around 2:00pm, and the driver from the original bus, Mr Edmonds, proceeded along the route.<sup>55</sup>
154. Ms Bird's evidence was that Mr Edmonds was told by the driver of the second bus (Jeffrey Norman), not to collect any more passengers as the bus was running late. Ms Bird later overheard a conversation between the two bus drivers requesting that Mr Norman pick up a child that the first bus drove past at the overpass at Palmwoods.
155. Ms Bird recalled that she had castigated Mr Edmonds for not picking up the child. She said that she was then told by her partner to sit down after the bus driver told her she would be removed from the bus. She was also told that a following bus would pick him up in 4 to 5 minutes.
156. Ms Bird said that she saw a child wearing a red shirt and blue shorts trying to wave down the bus, but the bus did not stop. She said the bus slowed momentarily and Mr Edmonds gave the child the "thumbs up" signal. Ms Bird saw a man leaning back against the overpass "pylon" with his arms crossed, one foot against the wall. The man had a tattoo on his calf. This man did not motion to get on the bus. She later saw photographs of Daniel Morcombe in the media and formed the opinion that the child she had seen was Daniel.<sup>56</sup>
157. Ms Bird's version of events was confirmed by her partner, Matthew Finlayson.<sup>57</sup> Ms Bird and Mr Finlayson both told the inquest that they did not recall seeing their police statements until one month prior to the inquest hearing in October 2010. Ms Bird agreed some of the detailed evidence she recalled at the inquest was not contained in her police

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<sup>54</sup> Exhibit G

<sup>55</sup> T2, p3

<sup>56</sup> T2, p8

<sup>57</sup> T2, pp 19-33



statement. Mr Finlayson said that he had never been asked to participate in the preparation of a Comfit drawing of the man he saw standing behind Daniel at the bus stop.

158. Ross Edmonds was the driver of the bus that went past Daniel on 7 December 2003. Mr Edmonds told the inquest that he had been driving buses for around 40 years and had worked for Sunbus for at least 6 years. He recalled that his bus had broken down near the Woombye turnoff due to a problem with the throttle cable. He waited with the passengers for about 40 minutes for the replacement bus driven by Mr Rose. Another bus also arrived which Mr Jeffrey Norman was driving.<sup>58</sup>
159. Mr Edmonds said that he then drove the replacement bus to the Sunshine Plaza. He was told by the controller on duty, Mr Norman, to continue “express” to the Plaza. Mr Norman indicated that he would collect any passengers who might be left waiting at the side of the road. Mr Norman left the broken down bus in situ as it required mechanical attention. He departed on the replacement bus at around 2:11pm and went past the overpass bus stop at around 2:14pm.
160. Mr Edmonds referred to a hail and ride policy that applied at Sunbus. Provided it was safe to stop the bus, a passenger would be collected from the side of the road, including at unofficial stops such as the Kiel Mountain Road overpass. He was aware that the area in the vicinity of the overpass had been used as a stop in the past.<sup>59</sup>
161. Mr Edmonds said that as he approached the overpass he saw a young male, about 15 years of age, standing there. He then called Mr Norman to tell him that someone was waiting there. He tried to alert the child at the roadside to the fact that another bus was coming. He said the person did not seem to be in any difficulty. He also observed another older male under the overpass, seven or eight metres behind the child.<sup>60</sup> The male did not appear to be wanting to catch a bus, and Mr Norman thought he may have been somehow related to the child. He said that he saw no other person or vehicles in the vicinity at the time. He was not asked by police to assist with a Comfit or to look at photo boards.
162. Mr Edmonds denied that any of the passengers on the bus had expressed any concerns about the fact he had not picked up the boy from the bus stop. However, he had no specific recollection of any of the passengers on the bus. Mr Edmonds said the replacement bus was a 28 seater with plenty of room for additional passengers.

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<sup>58</sup> T2, p36

<sup>59</sup> T2, p39

<sup>60</sup> T2, p41

163. Mr Edmonds said that after he returned to the Sunbus depot at Marcoola he asked Mr Norman whether he had collected the boy from the overpass. Mr Norman told him that he had heard the radio request to collect the “chap underneath the bridge” but said that “by the time I got there, there was no-one in sight”.<sup>61</sup> Mr Edmonds agreed that it would only have taken 30 seconds to pick up the boy but he did not stop as he was directed to drive “express” to the Plaza.
164. In his evidence Mr Norman agreed that when he arrived at the broken down bus he said to Mr Edmonds *“Look, just go straight through to the Plaza, drop the people off, because they’ve been here for nearly 40 minutes. And I’ll do the bus route in my spare bus - I’ll do the bus route and pick anybody up and give them a free ride into the Plaza.”*<sup>62</sup>
165. Mr Norman told the inquest that the second bus left within two minutes of Mr Edmonds’ departure and he heard the request that he pick up somebody from under the bridge. He said he confirmed with Mr Edmonds that he would do so, and that it was less than one kilometre from the breakdown spot to the overpass. He said that the bus slowed to 30-40 km/h in the vicinity of the overpass but he saw no persons or vehicles at that location. He tried to speak to Mr Edmonds over the radio to confirm that there was someone under the bridge but was unsuccessful. They had a discussion about the fact the young person was not at the stop when he returned to the depot.
166. Mr Norman recalled that he had received a call at around 3:30pm on the afternoon of 7 December from a woman who was enquiring about her missing child, who would have been waiting to catch a bus at Woombye. He did not recall the details of the conversation, other than that it was brief. He advised the caller that he did not know about a missing child. His evidence was that he had not been given specific details from Mr Edmonds about the age of the person waiting under the bridge. His recollection was that he did not discuss that detail until after the call from the woman. Mr Norman said that after he finished work another controller took over and would have remained on duty until midnight.
167. Sergeant Barnes subsequently gave evidence that the QPS had obtained records in relation to the source of the calls made to Sunbus on the afternoon of 7 December 2003. There were three calls which were identified and each possible caller was interviewed by the QPS. Sergeant Barnes subsequently interviewed Mr Norman again and he provided a statement in which he said he was now unsure whether he received the relevant call on 7 or 8 December 2003.<sup>63</sup>

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<sup>61</sup> T2, p45

<sup>62</sup> T2, p68

<sup>63</sup> T11, pp108-114

168. Mr Norman said that Sunbus had adopted a policy 4 or 5 years prior to the 2010 inquest hearings that bus drivers must always pick up children, regardless of whether they have a fare.<sup>64</sup> Sunbus had also implemented a two week induction program for new drivers.
169. Peter Murchie was a 15 year old boy at the time of Daniel's disappearance. He was travelling on the Sunbus to Maroochydore with three other friends. He recalled that after getting on the replacement bus he saw *"the kid on the side of the road and as we were driving past there was another man standing not far apart from him and - and the bus slowed down a bit and then we just kept driving"*. He recalled few details about the male standing at the bus stop other than his scruffy appearance and the fact he had a beard.
170. Fiona Theuerkauf was also travelling in the back seat of the Sunbus on 7 December 2003 as part of the group with Peter Murchie. She recalled that she saw Daniel waving a stick around as the bus went past the bus stop. She said that he was wearing a red T-shirt and waved at the bus to stop. Ms Theuerkauf recalled looking back after the bus went past the stop and seeing a male standing further back leaning against the back wall at the stop, near a tree. The man was wearing sunglasses and a beanie or a cap, and there was a sports type bag on the ground near where he was standing. Ms Theuerkauf did not recall seeing any other vehicles in the vicinity of the bus stop.<sup>65</sup>
171. Barry Kelsey recalled seeing a well-dressed boy in a red T-shirt and dark coloured shorts under the Kiel Mountain Road overpass at around 2:05pm on 7 December 2003. Mr Kelsey was returning south along the Nambour Connection Road after visiting his daughter in Nambour. He had passed the three buses on the side of the road, one with its bonnet up. He then saw the boy walking an imaginary line with his arms outstretched. He then noticed an older male walking towards the boy. The male was thin with weathered features, around 5'9 to 5'10 in height with dark, shortish hair. Several days after providing his initial statement to police, Mr Kelsey recalled seeing an old blue car on the adjoining slip road. He subsequently provided the QPS with a statement and a Comfit sketch was prepared based on his recollection of the male at the scene.

### **Observations of other motorists**

172. Joan Anderson lived in Woombye at the time of Daniel's disappearance. She was driving with her husband in a northerly direction from Caloundra to Woombye on the afternoon of 7 December 2003 at around 1:30pm. Her evidence was that as they went to go under the overpass there was a boy, aged 10-12 years, standing close to the edge of the road. A blue car was not too far from him, parked on a slight angle. Mrs Anderson had

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<sup>64</sup> T2, p77

<sup>65</sup> T4, p85

a sense that something was wrong, because the boy was dressed neatly and was standing just quietly, and the male standing beside the car looked scruffy and different to the boy.<sup>66</sup> She said that the male was getting out of the vehicle as she passed and turned back into the car as she went past.

173. Katherine Reynolds was a resident of Eudlo in December 2003. On 7 December 2003, she was travelling in a northerly direction on the Nambour Connection Road at around 1:30pm for the purpose of buying a shower screen for her children's cubby house. She said that as she approached the overpass she was slowing down as she went up the hill because she saw a young child on the edge of the road and was concerned he would walk out in front of her vehicle.<sup>67</sup>
174. Ms Reynolds thought the boy, who was wearing a red T-shirt and black shorts, had a strained look on his face. A man with a pony tail and "*evil looking eyes*" leaning on a blue car was watching him but did not appear to be with him. Ms Reynolds, said she pulled over 50 metres further down the road and observed the scene in her rear view mirror.<sup>68</sup>
175. Claude Hamilton was driving south along the Nambour Connection Road on 7 December 2003. At some time between 1:00 and 1:40pm he reached the Kiel Mountain Road overpass. As he approached, he recalled seeing a blue Datsun Bluebird on the right hand side. Mr Hamilton saw a male standing in a fawn brown pair of pants with a creamy off-coloured long shirt. There was a boy in front of him and, at the rear, another thin male with short hair.<sup>69</sup> The adult males were both around 45 years of age.
176. Kaylene Densley gave evidence that on 7 December 2003 she was driving along the Woombye Palmwoods Road between 1:30 and 1:40pm and turned in a northerly direction onto Nambour Connection Road. She saw a car parked near the overpass on the opposite side of the Nambour Connection Road. There was a man and a boy standing in front of the car and another man standing behind the car.<sup>70</sup>
177. Andrew Jackson was driving south along the Nambour Connection Road towards the Big Pineapple on the afternoon of 7 December 2003. At around 1:45pm he saw a young boy wearing a red T-shirt and baggy shorts standing close to the edge of the road, with his head bowed. He saw a man slightly to the right of him and thought that "*the two didn't match*". He was not aware that location was a bus stop, and could not work out why they were there. After he went past he looked in his rear vision mirror and commented to his son, who was travelling with him, that the situation did not seem right. He did not see a blue car at the scene.

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<sup>66</sup> T2, p93

<sup>67</sup> T2, p105

<sup>68</sup> T2, p109

<sup>69</sup> T2, p125

<sup>70</sup> T3, p3

Mr Jackson participated in the preparation of a Comfit sketch of the person of interest he saw at the scene as well as reviewing a photo board of likely suspects, but he was not able to identify any of the persons he saw as the person who was with the child on the roadside.

178. At some time between 1:00pm and 3:00pm on 7 December 2003, Karen Brady set off to the Sunshine Plaza with her two daughters. She was driving south along the Nambour Connection Road. As she approached the Kiel Mountain Road overpass she observed a blue car parked just back from the overpass. She thought the car had broken down and saw a man standing to the back of the car with his arms folded. As she drove past, she saw a boy standing under the overpass, some 2-3 metres in front of the blue car. While Ms Brady was not sure what the boy was wearing she saw that the man was around 180 centimetres tall. He had a medium to thin build, an 'old complexion' and dark hair. The man was aged 35-45 and was wearing a T-shirt and jeans.<sup>71</sup> The man had no beard.
179. Jane Mahoney told the inquest that she had gone to Alexandra Headland on 7 December 2003. She returned to her home at Palmwoods sometime between 1:30 and 2:00pm to meet her sister. Ms Mahoney said that she saw a blue car parked outside the truck and caravan dealership facing in a southerly direction. She did not see anyone near the car.

### **Comfit evidence**

180. Detective Senior Sergeant Schmidt explained that around 20 Comfit sketches were prepared on the basis of the descriptions of the male standing at the overpass when Daniel was waiting for the bus. However, as a result of the large amount of inconsistencies between the Comfits, it was decided to not release any publicly until 12 months after Daniel's disappearance. He said that it was then decided to focus on the descriptions given by the witnesses that provided the "*earliest recollection and the most detail and they came from the witnesses that were on the bus, even though the likenesses were not alike, that was probably our best case for people that had seen the person for the most amount of time*".<sup>72</sup> Photoboards of persons of interest were also used, however, there was no positive identification of any person of interest by an eyewitness.

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<sup>71</sup> T3, p37

<sup>72</sup> T1, p63

## **Brett Cowan as a person of interest**

181. Sergeant Barnes gave evidence in 2010 that related to the initial identification of Mr Cowan as a person of interest in relation to Daniel's disappearance. She noted that before Daniel's disappearance, Operation Butcher had been established as a strategic operation by the Sunshine Coast District Intelligence Office. The purpose of Operation Butcher was to capture data on paedophiles and paedophile networks that were impacting upon the community, including paedophiles living in the Sunshine Coast district with a previous history of sexual offences against children. The operation was to identify the individuals or organisations involved in criminal activities relating to paedophilia and the methods used to target victims.
182. Operation Butcher had already generated a number of names within the database before Daniel disappeared. Those persons were placed on job logs and were interviewed in relation to their whereabouts on 7 December 2003. Task Force Argos officers from State Crime Operations Command assisted in those interviews, as well as local and regional detectives.
183. Sergeant Barnes confirmed in her evidence that the most significant result of this strategy was that Brett Cowan was identified as one of the major persons of interest. She said that set the scene for the extent of the investigation into Mr Cowan. An investigation was mounted in relation to his activities, and his vehicle was seized.<sup>73</sup>
184. As noted above, Mr Cowan's vehicle had been captured in the Christian Outreach Centre footage from 14 December 2003. Despite this, Sergeant Barnes' report indicated that "*checks conducted revealed that there was no further information obtained that warranted further investigation in relation to the blue vehicles at the Christian Outreach Centre on 14 December 2003.*"<sup>74</sup>
185. In October 2010, Detective Sergeant Mark Wright gave evidence in relation to a report he had prepared on Mr Cowan. Detective Sergeant Wright told the inquest that officers from Task Force Argos spoke to Mr Cowan on 22 December 2003. He said that Mr Cowan had volunteered his movements on the day of Daniel's disappearance, including the fact that he had driven along the Nambour Connection Road past the location of Daniel's disappearance on two occasions that afternoon.<sup>75</sup>
186. Detective Sergeant Wright said that Mr Cowan came to police attention because of his previous offending history against a seven-year-old boy and six-year-old boy in 1987 and 1994 respectively. Detective Sergeant Wright was not aware of further sexual offending by Mr Cowan prior to 2003.

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<sup>73</sup> T3, p85

<sup>74</sup> Ex PR, p62

<sup>75</sup> T9, p4

187. Detective Sergeant Wright said that Mr Cowan had told police that around lunchtime on 7 December 2003 he had been working in the garden at his house. Sometime that afternoon, he travelled in his Pajero from his residence in Beerwah to a friend's place in Perwillowen Road, Nambour to borrow a mulcher.
188. Mr Cowan co-operated with police and voluntarily provided a DNA sample. Detective Sergeant Wright said that Mr Cowan was content for QPS officers to inspect his vehicle. Mr Cowan's partner had corroborated his version of events in relation to his movements on the relevant afternoon, including the fact he was wearing shorts, singlet and thongs and the time he had returned from collecting the mulcher. This was not similar to the clothing eyewitnesses reported was worn by the male seen at the bus stop with Daniel.
189. Detective Sergeant Wright said that Mr Cowan's appearance was vaguely similar to one of the Comfits but was dissimilar to others. He said that the person Mr Cowan had obtained the mulcher from had also corroborated his version, indicating that Mr Cowan was at his property for a short period from 1:30pm in his Mitsubishi Pajero.
190. Detective Sergeant Wright noted that inquiries had been made with Mr Cowan's employer, family members and former partner. Mr Cowan's neighbour was also spoken to. The neighbour asserted that he helped Mr Cowan to remove the mulcher from his vehicle at approximately 2:00pm.
191. Detective Sergeant Wright said that Mr Cowan's Mitsubishi Pajero was photographed and scientifically examined. Establishing the timeframe for Mr Cowan's movements was assisted by his telephone records, which established he had called the owner of the mulcher at 12:50pm. Mr Cowan said that he left his house to collect the mulcher 20 minutes later. However, a call was received at Mr Cowan's home from his mobile at 12:58pm, indicating he left earlier. Further calls were made from Mr Cowan's wife to a friend, and then later from Mr Cowan to his employer much later on the afternoon of 7 December 2003.<sup>76</sup>
192. A further interview was conducted with Mr Cowan on 6 July 2005. Detective Sergeant Wright said that as a result of that interview it was established that Mr Cowan had left his residence before 12:58pm and travelled to Nambour along the Nambour Connection Road, which was estimated to have taken between 30 to 45 minutes. Mr Cowan had confirmed that he saw the broken down Sunbus on his return trip to Beerwah, but not the other two buses. This would have placed him in the vicinity of the Kiel Mountain Road overpass at 1:50pm to 2:10pm.

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<sup>76</sup> T9, p5

193. The QPS had estimated that Mr Cowan had returned to his residence between 2:30 and 3:00pm. Detective Sergeant Wright said that while the QPS was concerned about a period of time that could have been unaccounted for based on the vague nature of Mr Cowan's account, he was "fairly satisfied" with Mr Cowan's account of his movements on 7 December 2003.<sup>77</sup> However, he agreed that it was possible that Mr Cowan did not return to his residence before 3:00pm.
194. On 14 September 2006, Mr Cowan was again questioned about his movements on 7 December 2003. When confronted with the possibility that he did not return home prior to 3:00pm on that day Mr Cowan then recalled that he had visited Sandra Drummond's home in Beerwah on that day to purchase marijuana. Ms Drummond lived 5 minutes west of Mr Cowan's residence. When police officers spoke to her she corroborated Mr Cowan to the extent that he would often visit her to have a smoke.<sup>78</sup> However, she was not able to confirm that Mr Cowan had attended at her residence on the afternoon of 7 December 2003.
195. Detective Sergeant Wright agreed that Mr Cowan's Mitsubishi Pajero did not match the description of the blue sedan or white van commonly identified by eyewitnesses. He also agreed that if Mr Cowan was responsible for Daniel's abduction he would have operated within a window of approximately 30 minutes at the very most.
196. Detective Sergeant Wright said that Mr Cowan was associated with the Christian Outreach Centre at Woombye but was not a practising member on 7 December 2003. He had become involved with that church through his aunt and uncle after they had visited him while he was in prison, following his transfer to Queensland from the Northern Territory. Following his release from prison he had moved in with his aunt and uncle and started attending the Christian Outreach Centre, where he met his wife. Although Mr Cowan had separated from his wife in 2004, her version had not changed.
197. With respect to forensic testing, Detective Sergeant Wright said that digital images had been taken of the tyre tread of the Pajero but he had not seen the forensic report in relation to the vehicle. Detective Sergeant Wright's opinion at that time was that there were more factors to exclude Mr Cowan as a suspect than to include him.<sup>79</sup>
198. When asked whether Mr Cowan had been subject to review by the MIR. Detective Sergeant Wright said that the process of reviewing was constant and that *"when a person who stands out like Mr Cowan, based on his history and the fact that he placed himself at the scene of Daniel's disappearance at around the time, ... you do whatever you could to either put him get the evidence to say 'Yes, he's responsible or not'."*<sup>80</sup>

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<sup>77</sup> T9, p5

<sup>78</sup> T9, p5

<sup>79</sup> T9, p14

<sup>80</sup> T9, p20



199. Detective Sergeant Wright said that major decisions about the investigation that had to be made were obviously “up the chain of command” but that a collaborative approach had been taken within the MIR.
200. David Wilkinson was a Detective Sergeant at the Homicide Investigation Unit in December 2003, and was designated as the officer in charge of the MIR for a period of eight months. He had no involvement in the investigation after 2004<sup>81</sup>, and subsequently left the QPS. He gave evidence at the resumed inquest sittings in December 2016.
201. Mr Wilkinson emphasised that operational control of the investigation rested with local police. His role was to provide strategic support and advice to the operation. This included attending daily briefing sessions in the MIR.

### **Sandra Drummond**

202. Sandra Drummond was a long-term resident of Beerwah who was a friend of Mr Cowan. She was called to give evidence at the inquest on 31 March 2011. She was initially interviewed by police in September 2006 in relation to Brett Cowan’s movements on 7 December 2003, after he nominated her as his alibi. She was interviewed again in January 2011.
203. Ms Drummond said that she saw Mr Cowan at least once a week while he was living in Beerwah. Ms Drummond said she had no specific memory of whether Mr Cowan came to her property on the 7 December 2003. At that time, she was living with Kevin Fitzgerald, who had access to his children every second weekend. She said that when the children were there Mr Fitzgerald would spend most of his time engaged in activities with them.
204. Ms Drummond said that a typical Sunday involved a visit to the Beerwah Returned Services League where her daughter worked. She would attend the members’ draw raffle each Sunday between 12:00 to 1:00pm. On average, she would spend two hours at the RSL.
205. Ms Drummond also agreed that Mr Cowan would occasionally purchase small amounts of marijuana from her. She was unhappy that Mr Cowan had used this as an explanation for his movements on the afternoon of 7 December 2003. She was not able to recall supplying him drugs on that date.

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<sup>81</sup> Ex

206. Ms Drummond was recalled to give evidence on 6 April 2011 - day 22 of the inquest. She said that both she and Kevin Fitzgerald were members of the Beerwah RSL in December 2003. This entitled her to a membership card which was inserted into the poker machines. As you played, more points were accumulated and the points would then be exchanged for either a prize from a showcase or cash over the bar. Raffles were also drawn using a digital machine which displayed the winning numbers.

### **Kevin Fitzgerald**

207. Kevin Fitzgerald also gave evidence on day 22 of the inquest on 6 April 2011. He had lived in Beerwah with Ms Drummond for around 8 years at the time of Daniel's disappearance. Mr Fitzgerald agreed that Mr Cowan would visit his residence 2-3 times each week. Consistent with Ms Drummond's evidence he said that they went to the RSL every Sunday for the raffles and to play poker machines. The raffles were drawn at 2:00pm in the afternoon. The draw would generally take around 30 minutes.<sup>82</sup> Mr Fitzgerald said that the members' draw was conducted by reference to a computerised membership card, which was also inserted into the poker machines. Mr Fitzgerald had no recollection of Mr Cowan attending at his home with a mulcher in the back of his Pajero wagon.

### **BRETT COWAN'S EVIDENCE AT THE INQUEST**

208. Mr Cowan gave evidence on 31 March 2011 and 1 April 2011 - days 18 and 19 of the inquest. He was living in Western Australia at that time. He said that he had gone there because his younger son had been removed by the Department of Children's Services because of the nature of Mr Cowan's offending history. He had relocated to help his partner's chances of regaining care of his son, as this demonstrated he would have nothing to do with the child. However, he was having limited supervised access to the child. Mr Cowan said that he was the father of three children, the older two being his children with Tracey Moncrief.
209. Mr Cowan was questioned about his offending history including sexual offences against young children committed in 1987 and 1993. He said that the 1987 offence occurred while he was on community service at a supervised playground. He said that he took a boy aged 7 years into the toilets and molested him.<sup>83</sup> He had tried to sodomise the child but was unsuccessful. The offending took place over a 5-10 minute period.
210. He described the circumstances of his 1993 offending in Darwin as involving a young boy who was his neighbour in a caravan park. The child came looking for his sister. Mr Cowan knew his sister was playing on the other side of the caravan park. Instead of taking him to his sister he took the child through the back fence of the caravan park where he

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<sup>82</sup> T22, p7

<sup>83</sup> T18, p34

placed the child on the body of a wrecked car and molested him. He left the child among the car bodies and then went back to the caravan park. This offence occurred over 15-20 minutes. Mr Cowan asserted that neither offence involved violence.<sup>84</sup>

211. Mr Cowan recalled that he was first spoken to in relation to Daniel's disappearance on around 21 December 2003. He said that police later returned to take his vehicle for forensic investigation and he provided them with a DNA sample.
212. Mr Cowan agreed that after he first spoke with police, they had some concerns in relation to a period of time on 7 December 2003 they were having difficulty accounting for. He agreed that when he was interviewed again in 2005<sup>85</sup> he was able to account for this time period by the fact he had visited Sandra Drummond in Beerwah to "buy pot" and that "I always spend a minimum of half an hour at Sandi's place".<sup>86</sup>
213. Mr Cowan thought that it was *"funny that they still thought that I had something to do with Daniel's disappearance over 30 minutes or 35 minutes, whatever it was..... Just having, like, to do something in half an hour and get rid of or - or, you know, anything like that? I don't think that's possible."*<sup>87</sup> However, he agreed that in the absence of his visit to Ms Drummond being accepted, suspicions would remain in relation to his involvement in Daniel's disappearance.
214. Mr Cowan agreed that he had previously molested two boys in under 30 minutes, and that he could "unintentionally abduct, molest and accidentally kill a boy within 15 minutes."<sup>88</sup> He also agreed that he only confessed to the Darwin offence because he knew police had located his DNA on the victim's clothing, and that the Darwin incident made it clear that he would lie until he had no other choice.
215. Although there was medical evidence that the child he had assaulted in Darwin had been choked, Mr Cowan denied that he done so, or that the child passed out during the assault and he had tried to hide his body in a burnt out vehicle after he thought he had died. Chillingly, the 1993 record of interview for the Darwin offence included the following exchange:<sup>89</sup>

<i>Fensom:</i>	<i>Is it possible that you did strangle him?</i>
<i>Cowan:</i>	<i>Could be, yeah.</i>

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<sup>84</sup> T18, p35

<sup>85</sup> Likely to have been 2006

<sup>86</sup> T18, p38

<sup>87</sup> T18, p38

<sup>88</sup> T18, p92

<sup>89</sup> POI7, J1

*Fensom:* Can you tell me then, why the – the doctors have told me that these injuries are pointing to – are a result of asphyxiation as a result of strangling?

*Cowan:* I can't recall doing it.

*Fensom:* Would you agree it's possible that you did?

*Cowan:* Could be possible, yes.

216. Mr Cowan told the inquest that after arriving in Queensland from the Northern Territory he had also been accused of sexually offending against a 15 month old child and a 12 year old boy, but had not been charged in relation to those matters. He admitted to molesting children aged between 6 and 8 years at his local swimming pool while he was a teenager.
217. Mr Cowan had transferred from the Northern Territory to Queensland to enable him to complete a Sexual Offenders Treatment Program. He was released from prison in 1997 or 1998 and completed parole over 2 ½ years while living on the Sunshine Coast with his aunt and uncle, who were pastors at the Christian Outreach Centre. He met his future wife, Tracey, through the church and they married in September 1999. Mr Cowan had moved to Beerwah in mid-1999 and continued to live there until early 2004.
218. Mr Cowan admitted that he had been using the internet on the night of 6 December 2003 for around 6 hours until around 4:00am on 7 December 2003. He acknowledged that he would have been looking at pornography but denied that any of this was related to children.<sup>90</sup> His internet usage stopped for the week following Daniel's disappearance.
219. Mr Cowan agreed that he had called Frank Davis, his employer's father, at 12:50pm to see whether he could borrow his mulcher. Mr Davis told him he was going out so Mr Cowan would need to come straight away to pick up the mulcher. The distance to Mr Davis' property from Beerwah was 41 km, and Mr Cowan said that it took him 30-40 minutes to complete this trip. He then spoke with Mr Davis for around 10-15 minutes.<sup>91</sup>
220. Mr Cowan said that after leaving Mr Davis' home he went to visit Ms Drummond at Beerwah before going home. He agreed that he saw the broken down bus at the Woombye turnoff on the Nambour Connection Road, and people were standing around the bus. Mr Cowan denied seeing a boy waiting for the bus at the Kiel Mountain Road overpass.

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<sup>90</sup> T18, p66

<sup>91</sup> Mr Davis' recollection was that the process took 5 minutes.

221. When he arrived at Ms Drummond's house, Mr Cowan said that he told her about the mulcher and Kevin Fitzgerald came out and inspected it. He said that he had a cup of coffee, got his marijuana, and left. He said that he arrived home prior to 3:30pm, based on the fact that his wife was watching a television show that ran from 2:30 to 3:30pm.
222. He agreed that the following times were an accurate representation of his movements on 7 December 2003, apart from his asserted visit to the Drummond residence:<sup>92</sup>
- 12:50pm calls Frank Davis re borrowing mulcher, leaves soon after
  - 12:58pm calls home on mobile phone
  - 1:30pm arrived at Frank Davis' home in Nambour
  - 1:45pm departs Frank Davis' home
  - 2:45pm–3:30 pm returns home to Alfs Pinch Road, Beerwah

### **COWAN'S ADMISSIONS AND ARREST**

223. The covert operation that led to Mr Cowan's confession is summarised in the judgment of the Court of Appeal.<sup>93</sup> Thirty-six undercover police officers from Queensland, Western Australia and Victoria were involved in this operation. An undercover police officer befriended Mr Cowan during the plane flight on his return to Western Australia from the inquest on 1 April 2011, and Mr Cowan was introduced to an apparent criminal gang. He participated in a range of scenarios involving the commission of apparent offences and was paid for his efforts. These were planned to culminate in a meeting with the "big boss", Arnold, prior to his involvement in a "crime" which would yield Mr Cowan \$100,000.
224. On 29 July 2011, a further summons was issued for Mr Cowan to be recalled to give evidence at the inquest. On 9 August 2011, Mr Cowan met with Arnold at the Hyatt Hotel in Perth. Arnold told Mr Cowan that he could help with his alibi evidence at the inquest but needed Mr Cowan to be honest so that he knew what had to be sorted out.
225. During that meeting Mr Cowan volunteered that he had abducted Daniel after seeing him at the bus stop soon after he drove past the broken down Sunbus at Palmwoods. He told Arnold that after he saw Daniel he drove into the carpark of the Christian Outreach Centre. He parked behind a stand of trees and walked down to the bus stop. After the first bus drove past the stop he told Daniel that he had been waiting to meet

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<sup>92</sup> T19, p27

<sup>93</sup> *R v Cowan; R v Cowan; Ex parte Attorney-General (Qld)* [2015] QCA 87

someone from that bus. He offered Daniel a lift to the shopping Centre in Maroochydore and Daniel accepted.

226. Mr Cowan said that he then drove Daniel to an abandoned house on King's Road, Glasshouse Mountains. This was on the pretext of needing to tell his wife where he was going. He then invited Daniel into the building at the property to have a glass of water. Mr Cowan told Arnold that once Daniel was inside the abandoned house he attempted to sexually assault him. He said that he had choked Daniel after he resisted and tried to escape.<sup>94</sup> He offered no insight into his actions other than saying that he was an "opportunistic offender". He killed Daniel for no other reason than to avoid detection for his offences.
227. Mr Cowan told Arnold that he placed Daniel's body in the back of his Pajero and disposed of it in thick bushland near an old sandmining site. He had later thrown Daniel's clothing and shoes from a bridge into Coochin Creek. Mr Cowan said that he returned to the property a week later with a shovel to dispose of any evidence. He found a bone fragment which he broke up and buried.
228. On 10 August 2011 Mr Cowan flew to Queensland with undercover operatives. He drove with them along the route he took when he abducted Daniel, from Mr Davis's home in Nambour to the Christian Outreach Centre carpark near the overpass at Kiel Mountain Road, and to the abandoned house at King's Road where Daniel was killed. After pointing out the location Mr Cowan told police:

*And that's where it happened. That's where he, I thought he was going to run and my arm went around his neck and I, choked him out. I actually felt that break in there so.*

229. The latter reference is Mr Cowan's admission that he had felt a bone break in Daniel's neck when he compressed it with his arm. At the sandmining site he pointed out where he left Daniel's body and showed police officers the small bridge where Daniel's clothing was thrown into the creek.<sup>95</sup> Mr Cowan was arrested at the Kings Road site on 13 August 2011.
230. Daniel's remains and items of clothing he was wearing on 7 December 2003 were subsequently recovered from the area identified by Mr Cowan.

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<sup>94</sup> AM41.1, transcript of meeting with Arnold

<sup>95</sup> AM41.1, transcript of recording Brisbane Airport to Sunshine Coast.

## **King / Martyn investigation and report on Brett Cowan**

231. As noted above, the initial investigation into Mr Cowan by officers King and Martyn took on greater significance following Mr Cowan's arrest and conviction, as they were the first police to speak to Mr Cowan after Daniel's disappearance.
232. Mr Kenneth King gave evidence at the resumed inquest sittings on 14 December 2016. Mr King joined the QPS in May 2002 from Victoria Police and left in May 2008. At the time of Daniel's disappearance, he was attached to Task Force Argos. His direct supervisor was Detective Sergeant Peter Jory. He was tasked to attend the MIR to perform duties as required and did so for 10-14 days.
233. Mr King was given a list of persons of interest to carry out preliminary inquiries in relation to, which included Brett Cowan. The list had been generated as part of Operation Butcher. Mr King spoke with Mr Cowan together with Detective Sergeant Dennis Martyn on 21 and 22 December 2003 in relation to his movements on the day of Daniel's disappearance. He also spoke with Mr Cowan's wife, Tracey.
234. Mr King said that in order to get an indication of the travel times, he drove the route that Mr Cowan claimed to have driven on 7 December 2003 when collecting the mulcher. He also took photographs of his vehicle's tyres and made the inquiries to test Mr Cowan's alibi.
235. Mr King said that he formed the view that Mr Cowan was a "strong suspect". Together with Detective Sergeant Martyn they decided to brief the MIR orally on 22 December 2003 and compiled an additional report to collate the information in a coherent fashion. There were 30-40 police officers present at this briefing. Mr King said that he understood that homicide detectives would follow up lines of inquiry that had been generated after the completion of the allocated job logs, and from his report. His role with the MIR ended on 23 December 2003.
236. Mr King stated he prepared a written report in collaboration with Detective Sergeant Martyn by typing it into a QPS computer. The hard copy of his report was submitted to the MIR, but he was not certain of the submission process. Mr King asserted that the report concluded that Mr Cowan was a "very strong suspect" and he was surprised to learn that the report had gone missing when a statement was taken from him by Detective Senior Constable Linwood for the purpose of criminal proceedings against Mr Cowan.

237. Mr King said that he was subsequently shown a document which appeared to be the text of his report without the annexures relating to Mr Cowan's criminal history and the other information that was gathered, including photographs and voice recordings.<sup>96</sup> He was unable to recall whether the report contained any information that was not also contained in the job logs he and Detective Sergeant Martyn had completed.<sup>97</sup>
238. Mr King said that he "got the impression of guilt" from Mr Cowan. While he was not able to attribute that to a particular crime, he seemed to be "too cooperative, a little bit concerned". With respect to his alibi, Mr King thought that Mr Cowan kept his lies close to the truth so that the only inconsistency was the time between his departure from Mr Davis' house to his return home, where there was a gap of 45 minutes that could not be accounted for.<sup>98</sup>
239. When asked about his concerns in relation to the subsequent investigation of Mr Cowan, Mr King stated that Mr Cowan was a sex offender with a history of violent offending, consistent with the type of person who may abduct a child at the roadside. Mr Cowan admitted being in the vicinity of Daniel at time he went missing, and had a white vehicle which was possibly sighted by two witnesses close to the bus stop. Mr Cowan had also recently shaved off his beard and was of similar appearance to a Comfit that had been produced.
240. Mr King said that it was impossible in hindsight to know what different inquiries would have led to. However, he considered that there was an opportunity for surveillance that may have yielded additional locations or vehicles connected to Mr Cowan. He considered that search warrants for premises connected with Mr Cowan should have been sought. He also considered that the forensic examination of Mr Cowan's vehicle and premises should have been extremely thorough and prompt. Mr King was unable to recall whether his report recommended that any of those strategies be pursued. He acknowledged that it was open to him to include specific recommendations in the report.
241. Mr King was not critical of the investigative strategy following up information about the blue vehicle. However, he did not understand why it took on greater significance to the investigation than a white vehicle which had been reported opposite the bus stop by Jessiah Cocks and another witness.<sup>99</sup>
242. Mr King said that he did not take any action in relation to obtaining forensic evidence from Mr Cowan's house or his vehicle on the dates he saw him because he was concerned to give Mr Cowan the impression that he was being questioned as part of routine inquiries being made of

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<sup>96</sup> T1, p11

<sup>97</sup> T1, p30

<sup>98</sup> T1, p16

<sup>99</sup> T1, p22



“every other paedophile on the Sunshine Coast”. He was concerned about creating problems for the investigation.

243. Mr King acknowledged that he was tasked to carry out inquiries through the chain of command. He agreed that the MIR performed well in gathering a very large amount of information quickly. However, he was concerned that his report had gone missing, and that insufficient resources were subsequently directed towards the investigation of Mr Cowan. He said that if he had been responsible for the investigation he would have formulated an approach to get the maximum amount of the evidence at the earliest possible stage. He would have *“gone to the absolute limits of the law, in terms of Queensland's police powers, with the knowledge that the chances are, given the seriousness of the matter, that if perhaps we stepped over the line a bit, the probative value of what we found would have kept it in”*.<sup>100</sup>
244. Mr King acknowledged that he had not applied for any search warrants during the period in which he was involved in the investigation of Mr Cowan. He also agreed that although Mr Cowan was cooperative when interviewed on 21 December 2003, he did not seek to conduct a consensual search of his house or vehicle on that date in an effort to locate Daniel, or evidence relating to his disappearance.
245. Dennis Martyn was also a former detective with the QPS. At the time of Daniel's disappearance, he was a Senior Constable attached to Task Force Argos. He also gave evidence at the resumed inquest hearing on 14 December 2016. The evidence given by him was largely consistent with that given by Kenneth King in relation to the bases for his suspicion that Mr Cowan was a strong suspect.
246. Mr Martyn recalled a hard copy report in relation to Mr Cowan being presented to MIR which contained recommended actions in relation to the future investigation of Mr Cowan. Those included the seizure of computers at Mr Cowan's home, accessing his telephone records, seizure of clothing and investigation of his associates. He said that he considered there would have been a sufficient basis for a warrant based on the information provided by Mr Cowan, including the 45 minutes which he was unable to account for his movements. He said that he was confident that Mr King had given the MIR a full account of the content of their report when he provided the oral briefing on 22 December 2003.
247. Mr Martyn was unaware that other detectives spoke with Mr Cowan on 23 December 2003 and that a forensic examination of his vehicle was carried out on 24 December 2003. He said that he was surprised to subsequently find that Mr Cowan was given time to produce his vehicle for the purpose of the forensic examination.

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<sup>100</sup> T24, p36

248. In his evidence Mr Martyn alleged that he had a conversation with Assistant Commissioner Condon in a hallway at the Maroochydore police station following the briefing given by Mr King. He reported that he said to Assistant Commissioner Condon *“you’ve got Cowan. I think you’ll find he’s your man.”* He said that Assistant Commissioner Condon summarily dismissed his comment and told him to *“fuck off”*. He said that he then walked away from the discussion with Assistant Commissioner Condon and did not raise the matter with him again.
249. Mr Martyn said that he subsequently returned to Task Force Argos after 23 December 2003. When asked what he did then in relation to his report and the investigation of Mr Cowan, he said that he continued to express his concern that Mr Cowan was not being treated as the main suspect. However, he was unable to recall who he had discussed those concerns with.
250. Mr Wilkinson had no specific recollection of receiving the report in the MIR. He also had no specific recollection of the briefing given by Mr King to the MIR in relation to preliminary investigations he had conducted in relation to Mr Cowan. He recalled that the follow up inquiries in relation to Mr Cowan were carried out by Detectives McLean and Wright. He did not consider that there were sufficient grounds to issue a search warrant for Mr Cowan’s premises in the early stages of the investigation in 2003.
251. In his statement, Mr Wilkinson said that little was known about the circumstances of Daniel’s disappearance in the early stages of the investigation, apart from the fact that he went missing from the Kiel Mountain Road overpass at around 2:00pm on 7 December 2003. He said the vast majority of witness statements indicated that 1 to 2 males and a blue sedan were in the vicinity at the time. While the main theory involved a paedophile related action it was necessary to maintain an open mind about alternative possibilities including a death by misadventure or an abduction motivated by another reason.<sup>101</sup>
252. Mr Wilkinson said a three level strategic approach was taken to the investigation which involved suspect generation, a media campaign and a geographical search. Many persons of interest were identified as possible suspects, including Brett Cowan. Mr Wilkinson said it was not only the reader who generated follow-up arising from job logs. The information coming back from the field would be discussed within the MIR and a number of people would have input into the investigative strategy.<sup>102</sup>
253. Mr Wilkinson said that after six months had elapsed since Daniel’s disappearance Mr Cowan remained a person of interest – there was nothing that excluded him from the persons of interest list.<sup>103</sup> He was not able to attribute a hierarchy or pecking order to that list.

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<sup>101</sup> Ex AM42

<sup>102</sup> T1, p72

<sup>103</sup> T1, p62

254. Mr Wilkinson frankly acknowledged that investigations were not perfect. However, the processes in place were standard operating procedures. When followed, they would steer officers through the mass of information that was flowing into the MIR. He said that this was evident in the two days of initial investigation carried out by officers King and Martyn, and the subsequent assignment of experienced detectives to make further inquiries with respect to Mr Cowan including, the seizure of his vehicle.
255. Following the conclusion of the evidence at the inquest, I was provided with a statement from Detective Inspector Stephen Blanchfield.<sup>104</sup> Detective Inspector Blanchfield was the operational coordinator of Operation Bravo Vista from 14 March 2011. He was the arresting officer for Mr Cowan, and had conducted searches for annexures to the King/Martyn Report, including the voice recording of the initial QPS contact with Mr Cowan. The voice recording was not able to be located. Detective Inspector Blanchfield stated that responsibility for the lodgement of the recording rested with the interviewing officer. There were other recordings from interviews conducted by Mr Martyn within the records for Operation Vista. Detective Inspector Blanchfield's statement attached a copy of Mr King's police notebook which contains the entry "*Cowan matter brought up in briefing*" on 22 December 2003.
256. Detective Inspector Blanchfield was not aware of the general report that had been prepared by officers King and Martyn and was unable to locate it. A search was conducted of material held within the MIR at the Sunshine Coast as well as electronic systems. He was able to locate a document just over two pages in length which slightly expanded the details contained in job log 810. This was identified as almost identical to running sheet entry 697.<sup>105</sup>
257. Detective Inspector Blanchfield was also able to locate the images taken by Mr King and Mr Martyn of Mr Cowan, his tattoos, Pajero and the vehicle's tyre tread pattern. Those images were stored on the MIR server on 24 December 2003.
258. In a statement dated 20 January 2017, Mr King indicated that he was unable to recall if the images stored on the MIR server were all the images attached to his report. He was also unsure whether the text contained in the report referred to by Detective Inspector Blanchfield was the same text as the report he submitted. However, he was able to state that the text of the document was substantially the same as the text he recalled from the report. He said that while he was under the supervision of Detective Sergeant Peter Jory, who generally read and discussed the

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<sup>104</sup> AM44

<sup>105</sup> AM44 – Suspect: Operation Vista, Cowan Brett Peter (18/09/1969)

work he completed with Mr Martyn, he was unable to recall whether the report was discussed with Detective Sergeant Jory.

259. Following the conclusion of evidence at the inquest, I was also provided with a further statement from Detective Inspector David Hickey of the Internal Investigation Group, QPS. Detective Inspector Hickey performed the role of operations leader with in the Homicide Investigation Unit in December 2003. His duties involved conducting and managing homicide related and suspicious disappearance investigations throughout Queensland. He was advised of Daniel's disappearance on 9 December 2003 and was directed to deploy to the Sunshine Coast with an investigation team by Assistant Commissioner Condon.<sup>106</sup>
260. Detective Inspector Hickey said that Operation Butcher generated a list of persons of interest who were child sex offenders or prisoners recently released from prison. The list exceeded 700 individuals. Due to the large number of individuals who had to be located, specialist investigators from Task Force Argos and the Child and Sexual Assault Unit were deployed.<sup>107</sup>
261. The job log associated with each person of interest required investigators, including officers King and Martyn, to locate the person of interest, obtain a version of their movements on 7 December 2003, verify any alibi provided, obtain a consensual photograph and DNA Sample and identify vehicles used by the person.
262. Detective Inspector Hickey said that prior to Operation Butcher, Mr Cowan had been identified as a person of interest by Detective Senior Sergeant Daren Edwards of the Homicide Investigation Unit. Detective Senior Sergeant Edwards was a former Northern Territory Detective who was involved in the investigation of Mr Cowan's sexual assault of the six-year-old boy in Darwin.
263. Detective Inspector Hickey recalled the morning and afternoon briefings which were conducted as part of the MIR for Operation Vista. He said that these were chaired by Assistant Commissioner Condon when he was in attendance at the MIR. The briefings provided an opportunity for investigating officers to report on progress and identify suggested investigative strategies. This was followed by a smaller management briefing involving senior members of the MIR and the Officer in Charge of the Sunshine Coast Criminal Investigation Branch, to prioritise strategies and resources and plan for the next day.<sup>108</sup>

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<sup>106</sup> AM46

<sup>107</sup> AM46

<sup>108</sup> AM46

264. Detective Inspector Hickey recalled feedback provided during a briefing at the MIR by Mr Martyn and Mr King relating to their assessment of Mr Cowan as a person of interest. Detective Inspector Hickey recalled that both officers felt “quite passionately” that Mr Cowan’s profile and his admission that he had driven past the location of Daniel’s disappearance made him a significant person of interest. Detective Inspector Hickey said that this assessment was not disputed within the MIR, as Detective Senior Sergeant Edwards had prior involvement with the Mr Cowan in the Northern Territory. He said that Mr Martyn and Mr King had carriage of the Cowan investigation on 21 and 22 December 2003. As they were rotating to rested days the job log was reallocated to another investigative crew, Detective Senior Constable Wright and Detective Sergeant Maclean.
265. Detective Inspector Hickey disputed the assertion that insufficient weight had been given to Mr Martyn and Mr King’s assessment that Mr Cowan was potentially responsible for Daniel’s abduction and murder. He said that the management team including Assistant Commissioner Condon were acutely aware of Mr Cowan’s previous inclination for paedophile conduct involving young boys. He was unaware of any intelligence, evidence or suggestion raised at the time or subsequently to diminish or dismiss Mr Cowan as a person of interest.
266. Detective Inspector Hickey recalled first reading the report authored by officers Martyn and King in December 2004. The report was attached to job log 810. At that time, he was undertaking a review of the investigation with Detective Inspector Johnson. This entailed a review of the first 2100 job logs and the running sheet to establish whether additional enquiries were necessary.
267. Detective Inspector Hickey said that following his reading of the job log he concluded that Mr Cowan could not be eliminated from the investigation and created a new job log to ensure continuation of the investigation relating to him. He said that the legal investigative strategies that could advance a case against Mr Cowan were limited in 2003 and 2004.<sup>109</sup>

### **Forensic evidence**

268. Inspector Darren Pobar, Officer in Charge of the Scientific Section in the Forensic Services Group of the QPS provided a statement overviewing the testing that was undertaken on Mr Cowan’s white Mitsubishi Pajero two weeks after Daniel’s disappearance.<sup>110</sup> He gave evidence at the resumed inquest sittings in December 2016. Inspector Pobar had no direct involvement in the testing of material from Mr Cowan’s vehicle.

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<sup>109</sup> AM46

<sup>110</sup> AM40

269. Inspector Pobar said that an examination of the vehicle included conducting presumptive screening tests to detect the presence of blood inside the vehicle. No blood was detected. Tapelifts were taken using A4 sized adhesive tape to target surfaces within the vehicle to trap hairs and fibres for future analysis. A fingerprint examination of the vehicle located a number of fingerprints but did not match any prints from Daniel.
270. Inspector Pobar said that in 2003 tape lifts were submitted to Queensland Health Forensic and Scientific Services (QHFSS), Forensic Biology, for examination. At that time this was a labour intensive process involving microscopic examinations by a biologist for hairs that contained bulbous sheath material for potential DNA analysis. He said that tape lifts generally contained large amounts of accumulated “shed hair” with low DNA potential with the technology that was available in 2003. Accordingly, they were regarded as a “last resort item” and were often “reprioritised”. With an ongoing investigation the exhibit may be examined for possible evidence to inform the investigation.
271. The tape lifts from Mr Cowan’s Pajero were submitted to QHFSS in May 2004. They were not tested until 2008 when hair was located that was not suitable for analysis as no cell sheath was attached to the hair roots.
272. The Pajero was extensively re-examined between 15 August 2011 and 1 September 2011, following Mr Cowan’s arrest. This included “superglue fuming” for fingerprints. No evidence relevant to Daniel was located.
273. Further analysis of the tape lifts was also conducted in 2011 and 14 hair roots were submitted to QHFSS for testing, following comparisons with hair obtained from two caps belonging to Daniel. There was an insufficient number of hairs on the two caps for a valid morphological comparison.<sup>111</sup> No DNA profiles were obtained from this testing. Samples were also submitted to the Victorian Institute for Forensic Medicine for mitochondrial DNA analysis but no DNA profiles were obtained.<sup>112</sup>
274. Inspector Pobar said that a range of factors affected the lack of physical evidence relating to Daniel being located in the vehicle. These included the two week delay between his abduction and the sampling, the types of surfaces in the vehicle, and the nature of the contact between Daniel and those surfaces. Another factor was the sensitivity of the analytical techniques available at the time. He said that it was not “uncommon or implausible” that physical evidence relating to Daniel was not located within the Pajero, particularly in circumstances where Daniel may have voluntarily entered the vehicle and sat passively in the front passenger seat.<sup>113</sup>

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<sup>111</sup> AM48

<sup>112</sup> AM45 – statement of Melissa Airlie

<sup>113</sup> AM40, p6

275. Inspector Pobar outlined a range of improvements to the QPS' forensic capability since 2003. The Forensic Services Group is now accredited in accordance with the National Association of Testing Authorities. This includes the routine peer review of all major cases. Forensic coordinators now collaborate with investigators in developing the forensic response to a major crime scene and continuously review exhibits for testing. A forensic plan is documented for major crimes in consultation with investigators to ensure clarity around the level of examination. The capacity to detect DNA from trace samples such as hair, saliva and blood has also been improved.
276. In his evidence at the inquest Inspector Pobar said that the hair samples were stored in scientific laboratories from 2003 onwards and the delay in testing would not have affected the capacity to retrieve DNA profiles if they were present on the hairs.

### ***Autopsy results***

277. Daniel's skeletal remains were examined by Professor Peter Ellis, Forensic Pathologist, on 23 August 2011 and 7 and 20 September 2011. Professor Ellis noted no duplication among the bones, suggesting they were from the same individual. The size and development of the bones was consistent with origin in a juvenile, possibly of early teenage years.
278. DNA testing indicated that the bones originated from Daniel Morcombe. There was no evidence of injury that was definitely ante-mortem or peri-mortem. Accordingly, Professor Ellis was unable to establish or comment on the cause of death.

## **Conclusions**

280. As identified previously, the inquest was originally framed as an inquest into a suspected death. Apart from establishing whether Daniel was deceased, the inquest was concerned with three issues:

1. *The adequacy of the immediate QPS response to the report that Daniel was missing;*
2. *The circumstances surrounding his disappearance; and*
3. *The adequacy of the investigation into Daniel's disappearance.*

281. The fact that Daniel is deceased was clearly established at Mr Cowan's murder trial. The circumstances surrounding his disappearance are set out in detail in these findings. The circumstances were also described at length by Mr Cowan in his confession, which was recorded by undercover police officers in Perth, and in his subsequent words and actions while taking officers to the scenes of Daniel's abduction and killing.

### **The adequacy of the immediate QPS response to the report that Daniel was missing**

282. The Morcombe family consider that the initial report of Daniel's disappearance was not investigated satisfactorily by the QPS. The immediate QPS response to the report that Daniel was missing must be assessed having regard to the QPS policies and procedures in place at the time of his disappearance in December 2003.

283. In hindsight, Sergeant Munn should not have treated Daniel's disappearance as that of a teenage boy who had either stayed out too long at the Sunshine Plaza or had run away. However, Sergeant Munn's response was not inappropriate in the context of QPS policy and procedure in 2003. Unfortunately, the QPS policies in place at that time gave officers a discretion in relation to recording a child as missing. Unlike today, that was a matter for the judgement of the relevant officer.

284. I agree with the assessment of the officer in charge of the Missing Persons Unit, Detective Senior Sergeant Powell,<sup>114</sup> that it is highly unlikely that the creation of a missing person message on 7 December 2003 would have altered the QPS response on that evening.

285. Sergeant Munn took information about Daniel's disappearance from Mr and Mrs Morcombe and ordered the broadcast of a "be on the lookout for". I consider that immediate steps should also have been taken to contact the proprietors of Sunbus after hearing about the circumstances of Daniel's disappearance. This was a missed opportunity. Sergeant Davison was able to quickly establish from Sunbus early the following

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<sup>114</sup> AM20



morning that Daniel was seen by a bus driver waiting at the bus stop with an unknown male.

286. Sergeant Munn appropriately contacted Mr and Mrs Morcombe after 10:00pm that evening and established that Daniel was still missing. He arranged for a mobile crew to attend at their residence to take a missing person report. It is unfortunate that a mobile crew was then unable to attend at the Morcombe's home. As a consequence, they were contacted by Senior Constable Campbell at around 11:00pm who asked that they attend at the Palmwoods police station the following morning.
287. It is clear that after Mr and Mrs Morcombe spoke with Sergeant Davison at Palmwoods on 8 December 2003 the QPS response to Daniel's disappearance escalated rapidly and appropriately with the engagement of senior detectives, the establishment of the MIR and the subsequent launch of Operation Bravo Vista.

### **The adequacy of the investigation into Daniel's disappearance**

288. The inquest established that the police investigation into Daniel's disappearance was the largest criminal investigation in the history of Queensland. With respect to the investigative strategy that led to Mr Cowan's arrest, it is sufficient that I reflect the remarks of Her Honour Justice Atkinson on 13 March 2014 following the jury's finding that Mr Cowan was guilty:

*To the police who conducted the investigation: your determination to bring this investigation to a conclusion and to ensure that there was evidence on which Mr Cowan could properly be convicted is absolutely to be commended, and sends a message not just to Mr Cowan, but to anybody who commits a terrible crime and thinks that they're smart enough to get away with it: that you won't give up, and that you will use whatever appropriate techniques are available to ensure that that person is brought to trial and convicted in a proper way after a fair trial.<sup>115</sup>*

### **Submissions from the Morcombe Family**

289. Notwithstanding that Mr Cowan was eventually arrested and successfully prosecuted, the Morcombe family feel aggrieved about aspects of the police investigation after the initial period from 8 December to 22 December 2003. The Morcombe family consider that more could have been done to investigate Mr Cowan at an early stage, having regard to the early interaction with him by officers King and Martyn in late December 2003.

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<sup>115</sup> AM41.18, p25

290. In particular, the family point to the fact that Mr Cowan was identified as a suspect from a list of known paedophiles within two weeks of Daniel's disappearance. His criminal history included two abductions and sexual assaults of young boys. His known modus operandi was to commit those crimes quickly and then casually resume his day to day activities. There was evidence that suggested he had previously attempted to kill a victim to avoid capture. He readily admitted that he drove past the scene of Daniel's disappearance on 7 December 2003.
291. The Morcombe family also point to the 45 minute gap in Mr Cowan's alibi that emerged at an early stage in the investigation. When in 2006 he sought to plug that gap with an alibi involving a visit to his drug dealer, Sandra Drummond, investigators did not interview her partner Kevin Fitzgerald.
292. Although evidence was led at the inquest from the QPS in relation to ongoing reviews of the investigation, it was not until after the inquest commenced in 2010 that the review by Detective Senior Constable Linwood exposed Mr Cowan's alibi as "unconvincing". Previous reviews had concluded that Mr Cowan was unlikely to have had enough time to commit the offence before returning home. His high degree of cooperation with investigators was also identified as a factor tending to suggest his innocence.<sup>116</sup>
293. The Morcombe family consider that the evidence at the inquest in relation to the reviews of the police investigation was at odds with advice they were provided that the matter was being "constantly" reviewed.
294. The Morcombe family also query why the QPS was "obsessed" with locating the "blue car" that was reported at or near the bus stop at the time of Daniel's disappearance. They have submitted that the QPS was blinkered by the "blue car theory" to the detriment of other material. They submitted that it was the clinical examination of the facts at the inquest that led to the obvious and compelling evidence relating to Mr Cowan being highlighted.
295. The Morcombe family submitted that the MIR process failed following the report submitted, and oral briefing given, by officers King and Martyn about Mr Cowan on 22 December 2003. They submit that their report should have led to the following actions:
- a statement should have been taken from Mr Cowan's wife before 1 May 2005 in relation to his clothing and alibi.
  - Mr Cowan's clothing should have been secured and his house searched.
  - Mr Cowan's telephone records should have been obtained at an early stage.

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<sup>116</sup> POI 7 – 7.2

- Statements should have been taken from Mr and Mrs Davis about the time it took for Mr Cowan collected the mulcher.
  - Tapelifts from Mr Cowan's car should have been checked sooner than 2008.
  - Mr Cowan's car should have been identified among the cars attending the Christian Outreach Centre on 14 December 2003.
  - Surveillance of Mr Cowan should have commenced and a covert operation focused on him.
296. An area of particular concern to the Morcombe family was the failure to give more weight to the eyewitness accounts of the driver and passengers on the Sunbus that passed Daniel at the bus stop and saw Mr Cowan standing behind him at that time. They submitted that those witnesses did not identify any cars in the vicinity – just Daniel and a scruffy man whose features were described in a broadly consistent way. They submitted that those witnesses had a better opportunity to see what was happening than drivers and passengers in other vehicles who passed the scene at higher speeds. The family submitted that the bus witnesses should have been shown photo boards in late December 2003 or in early 2004.

#### **Submissions on behalf of the Commissioner of Police**

297. With respect to the delay in forensically testing Mr Cowan's vehicle, and the failure to obtain a search warrant for his house, the Commissioner submitted that there was insufficient evidence to ground a search warrant for either in December 2003. In those circumstances, the only option available to investigators was to obtain Mr Cowan's consent to examine the vehicle and his house. Officers King and Martyn had entered the house with Mr Cowan's consent but it appears they conducted a very rudimentary scan of the house.
298. The Commissioner submitted that officers King and Martyn were the first investigators in a position to secure the clothing Mr Cowan was wearing when Daniel disappeared. However, as there was insufficient evidence to ground a search warrant, consensual seizure was the only option, and the MIR should have followed this up.
299. The Commissioner also submitted that it was possible that the report allegedly prepared by former officers King and Martyn may never have existed. Alternatively, it was submitted that they were mistaken in relation to what they submitted, or misled the inquest due to their belief that their initial concerns were ignored. The Commissioner submitted that whatever the possibilities, despite numerous efforts the alleged report cannot be located.

300. In relation to the suggestion that Mr Cowan should have been placed under surveillance following the MIR briefing from officers King and Martyn, the Commissioner submitted that this criticism is made only in hindsight when all answers are known. It was submitted that the senior management team within the investigation must make decisions to deploy resources relevant to priorities within the investigation.
301. The Commissioner submitted that senior investigators at the time had thousands of pieces of information that had to be prioritised. In particular, as the investigation developed several persons of interest made admissions to the crime which required the investigation to focus on the inculpation or exculpation of those persons. It was submitted that at the early stages of the investigation there was not sufficient evidence to justify the employment of surveillance activities on Mr Cowan. While the resumed inquest sittings had focussed on Mr Cowan, the evidence at the earlier sittings demonstrated that the QPS investigation was extensive, involving many persons of interest.
302. The Commissioner appropriately conceded that more attention should have been given to taking a statement from Mr Kevin Fitzgerald in 2006, following the first interview with his partner, Sandra Drummond. A statement was not taken from him until April 2011.
303. The Commissioner also conceded that the inquest was a valuable process that provided investigators with “an opportunity to advance the covert operation”. However, the Commissioner did not agree that the police missed clues which could have closed the net on Mr Cowan much sooner than 2011. It was submitted that Mr Cowan consistently maintained his version in relation to his alibi up until he made admissions to undercover police officers on 9 August 2011.
304. The Commissioner submitted that it was incorrect to assert that Mr Cowan should have been the main suspect within two months of Daniel being reported missing. It was submitted that Daniel’s disappearance and the subsequent police investigation demonstrated a high level of dedication and professionalism by members of the Queensland police service involved in the matter. Mr Cowan was not the only person of interest. It was submitted that from late 2003 and 2004 there was insufficient information to progress any investigation into Mr Cowan.
305. Following the receipt of information from the Family Court about Mr Cowan, police officers reinterviewed him about his alibi. The Commissioner submitted that the review of Mr Cowan’s alibi conducted by Detectives MacIndoe and Linwood in 2011 led to the breakthrough that Ms Drummond and Mr Fitzgerald were at the RSL on the date of Daniel’s disappearance, undermining Mr Cowan’s alibi.<sup>117</sup>

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<sup>117</sup> AM27 – that report concluded that records could not be located that placed Ms Drummond at the Beerwah RSL on 7 December 2003. Those were identified following evidence by Ms Drummond and Mr Fitzgerald at the inquest.

306. After outlining reasons for the delay in testing of the tapelifts from Mr Cowan's vehicle, the Commissioner submitted that the *"key issue in moving forward is to ensure similar occurrences are not repeated in the future in relation to prioritisation vs resources vs potential yield."* The current process involves items being tested in order of submission regardless of the sample type. It was also submitted that the hair samples did not assist in the prosecution of Mr Cowan.
307. The submission that the QPS was blinkered by the blue car theory to the detriment of other evidence in the investigation was not accepted by the Commissioner. The submission on behalf of the Commissioner noted that 84 witnesses provided a statement to police about a blue car. As such, this part of the investigation could not be ignored. In addition, the evidence of Jessiah Cocks in relation to the sighting of a white four-wheel-drive was not ignored but formed part of the 2011 review by Detective Senior Constable Linwood.

### ***Conclusions on the adequacy of the investigation***

308. As the Commissioner's submissions have identified, it is important to be mindful of both hindsight bias and outcome bias when considering the adequacy of the investigation. We know that Mr Cowan was ultimately found to be responsible for Daniel's disappearance and murder. There is a risk that the assessment of investigative decisions and actions is filtered through that lens. The correct focus should be on what was known to investigating police at the time they were making relevant decisions, and evaluating and responding to the information that was then available, irrespective of the outcome.
309. Having regard to the fact that it is over 15 years since Daniel disappeared, and over five years since Mr Cowan was convicted, I do not consider that it is necessary or helpful to retrospectively evaluate every element of the QPS investigation.
310. It is clear that the QPS devoted very significant resources to the investigation. At times there were over 100 police officers dedicated solely to finding Daniel. Investigators attached to the MIR were required to make judgements in relation to thousands of pieces of information flowing in from the community, and investigators in the field following up specific lines of enquiry. There were over 30 persons of interest, some of whom had confessed to Daniel's murder.
311. I accept that it was not unreasonable for those involved in the investigation to place an emphasis on the matters that were prioritised by experienced officers in the MIR, in conjunction with the Homicide Investigation Unit. For example, I consider that the focus on locating a blue car was justified by the large number of witnesses who claim to have seen a blue car in the immediate vicinity at the time Daniel was at the

bus stop. Similar considerations apply to the judgements made about the timing of the release of Comfits of the persons of interest.

312. Having regard to the fact that Mr Jackway's blue Commodore broke down near the Kiel Mountain Road overpass on 8 December 2003, I also consider it likely that some witnesses conflated the presence of his vehicle with Daniel's disappearance a day earlier.
313. A number of the Morcombe family's concerns appeared to stem from the assertions made by former officers Martyn and King about the report they say was prepared for the MIR in December 2003.
314. I have considered the evidence of Mr King and Mr Martyn, together with the evidence of the QPS about the extent of searches undertaken for the report that was alleged to have been submitted by those officers. I have also taken into account the extensive investigation of this issue by the Crime and Corruption Commission. I agree with the submission on behalf of the Commissioner of Police that there is insufficient evidence to conclude that a report was generated that is more extensive than the three page document (with relevant attachments) found in the MIR records together with job log 810.<sup>118</sup> That document did not contain any recommendations about investigative strategies in relation to Mr Cowan.
315. It is clear that Mr King was given the opportunity to brief the MIR verbally about his concerns about Mr Cowan as a "strong suspect". Mr King and Mr Martyn's evidence was that they were attached to Task Force Argos at the time of their investigations into Mr Cowan. They said that it was possible their report would have been reviewed by a more senior officer within that Task Force. They were relatively junior officers who were attached to the investigation into Daniel's disappearance for less than two weeks. If they had strong concerns that particular lines of enquiry were not being pursued, the appropriate course of action would have been to formally request that their supervising officer take the matter up with the officers in charge of the MIR. Both officers had enough experience to know that the QPS operates through a hierarchical chain of command. There were also formal processes in place to manage any grievances the officers had about the investigation.
316. There is insufficient evidence to find that the alleged hallway exchange took place between Mr Martyn and Assistant Commissioner Condon after the MIR briefing. Mr Martyn also asserted that he took every opportunity to raise his concerns about the investigation into Mr Cowan after he returned to his normal duties following his deployment to the investigation. However, he was unable to identify specifically with whom he raised those concerns or when he did so.

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<sup>118</sup> AM 43

317. Notwithstanding my conclusions in relation to the report submitted by officers King and Martyn and their subsequent steps to escalate their concerns, I agree with the submissions from the family and counsel assisting that more could have been done to focus on Mr Cowan in the early stages of the investigation, particularly having regard to his admissions that placed him at the scene of Daniel's disappearance, the gaps in his alibi, and the specific nature of his offending history. However, it is also important to note that while a greater focus on Mr Cowan may have produced useful intelligence, it is not certain that it would have produced any cogent evidence or led to Mr Cowan's earlier arrest.
318. The Commissioner has submitted that there was insufficient evidence to form the basis for an application for a search warrant in relation to Mr Cowan's house or vehicle in 2003, or to adopt covert strategies in relation to him. However, it is not clear from the evidence that any consideration was given to making such an application, or applying covert strategies, in late 2003 or early 2004.
319. Whether a warrant would have been issued depended on whether, having regard to the information that could be put before a justice or magistrate at the time, it would have been open to him or her to reasonably suspect that evidence of the commission of an offence would be found.<sup>119</sup> While this is now a matter of conjecture, I note that it has been held that the same body of evidence may be capable of sustaining opposite but equally plausible and rational conclusions, neither of which is demonstrably right nor manifestly wrong.<sup>120</sup>
320. The actions of investigators in days after the MIR briefing by Mr King demonstrate that there was immediate follow up in relation to Mr Cowan's vehicle. It has to be remembered that this was two weeks after Daniel disappeared. Mr Cowan had ample opportunity to clean the vehicle in the intervening period. If Mr Martyn or Mr King had formed the view that evidence of the commission of an offence might be found on the day they first met with Mr Cowan, there was capacity for them to request a consensual search of Mr Cowan's house and vehicle, conduct a search without a warrant if the requirements of the *Police Powers and Responsibilities Act* were met, or to seek authority to apply for a warrant.
321. While no DNA evidence was ultimately obtained from the hair samples taken in tapelifts from Mr Cowan's car, I consider that those items should have been prioritised and the subject of much earlier examination. This represented an oversight that had the potential to delay Mr Cowan's arrest had DNA material been located on the tapelifts. I am satisfied that the processes subsequently adopted, and the current capacity of the QPS and QHFSS to examine such materials, are such that delays of this nature are unlikely to occur again.

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<sup>119</sup> *Dobbs v Ward* [2003] 1 Qd R 158

<sup>120</sup> *R v N* [2015] QSC 91

322. Mr Cowan was an accomplished liar and his alibi, although not strong, could not be rebutted. The opportunity to do so first presented in May 2006 with the emergence of the relevant materials from the Family Court. Although Mr Cowan and Ms Drummond were subsequently interviewed in relation to his assertions that he had visited her home on 7 December 2003, the evidence of police officers at the 2010 inquest hearings suggested that the QPS had concluded that he had insufficient time to commit any offences involving Daniel.
323. It is clear from the evidence provided by the QPS that Mr Cowan remained a person of interest throughout the investigation. However, it was not until Detective Senior Constable Linwood's review was completed in early 2011, and evidence was subsequently heard at the inquest from Ms Drummond and Mr Fitzgerald, that it became apparent that both were at the Beerwah RSL at the time Mr Cowan asserted he was visiting their home. This effectively led to his alibi being disproved during his cross examination at the inquest.
324. It is speculative to suggest that this evidence might have been obtained sooner by pressing Mr Cowan for a more precise account his movements on 7 December 2003 before the inquest commenced. Even if the alibi had been disproved at an earlier time, I accept that there was no direct evidence linking Mr Cowan to Daniel's disappearance prior to his admissions to undercover police officers in Perth in August 2011.



### ***Findings required by s. 45***

325. The primary focus of this inquest was to make the findings required under s 45 of the *Coroners Act*. I find under s 45(1) of the Act that Daniel is deceased.
326. Under s 45(2), I am required to find, as far as is possible, who the deceased was, when and where he died, what caused the death and how he came by his death. As a result of considering all of the material contained in the exhibits, the evidence given by the witnesses, and Mr Cowan's confession, I am able to make the following findings in relation to the death:

**Identity of the deceased –** Daniel James Morcombe

**How he died –**

On 7 December 2003, Daniel walked from his family's home at Palmwoods after 1:00pm to catch a bus from the Kiel Mountain Road overpass to the Sunshine Plaza shopping centre at Maroochydore. He intended to get a haircut and buy Christmas presents for his family. Unknown to Daniel, the bus had broken down nearby. Brett Cowan drove past the broken down bus and then saw that Daniel was alone at the bus stop. Mr Cowan concealed his four wheel drive vehicle in the grounds of a nearby church and walked to the bus stop. Daniel tried to hail a replacement bus but it drove past the stop. Mr Cowan told Daniel that he had been waiting to collect someone from that bus. Mr Cowan falsely represented that he would take Daniel to the Sunshine Plaza and Daniel got into Mr Cowan's vehicle. Mr Cowan then drove to an isolated property near Beerwah where he sexually assaulted Daniel. When Daniel resisted and tried to escape he was choked by Brett Cowan.

**Place of death –**

510 Kings Road, Glasshouse Mountains

**Date of death–**

7 December 2003

**Cause of death –**

Asphyxiation as a consequence of neck compression.

## ***Comments and recommendations***

327. Section 46(1) of the *Coroners Act* enables a coroner to comment, whenever appropriate, on anything connected with the death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.
328. The Morcombe family have submitted that recommendations under s 46 should be made in relation to a wide range of matters. Consistent with the submissions of counsel assisting, the Commissioner has submitted that in the circumstances of this inquest, no recommendations should be made.
329. I accept that many positive changes have been made to QPS policies and procedures to respond to missing children and homicide investigations. The community's awareness of crimes against children has also been heightened in the years since Daniel's disappearance. Many of these changes can be attributed to the advocacy and work of Mr and Mrs Morcombe and the Daniel Morcombe Foundation.

## **Mandatory reviews and inquests in missing person cases**

330. The Morcombe family have submitted that reviews of investigations should be carried out each three to six months by independent detectives who would review the whole of the investigation. They have also submitted that a coronial inquest should be mandatory for all murder or long term missing person cases. They submitted that at the three year point, a report should be sent to the coroner and an inquest should commence soon after.
331. As noted in Assistant Commissioner Condon's evidence, the Operational Procedures Manual now requires that formal notice be provided to the State Coroner if a missing person has not been located within a period of 12 months and, in any event, as soon as an officer suspects that the person is deceased. These changes followed recommendations made by Coroner Bentley in the February 2015 findings of the inquest into the death of Jay Anthony Brogden.
332. Assistant Commissioner Condon considered that this notification process was sufficient to inform a coroner in relation to whether an inquest should be conducted into a suspected death. The OPM provides that, where appropriate, a request is to be included for the State Coroner to hold an inquest into the cause and circumstances of the disappearance of such missing person.<sup>121</sup> The Missing Persons Unit and Homicide Investigation Unit now hold biannual meetings with the State Coroner and officers from the Coroners Court of Queensland to review those matters.

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<sup>121</sup> 12.4.3

333. In his evidence at the resumed inquest sittings, Assistant Commissioner Condon also noted that the Missing Persons Unit was located within the Homicide Investigation Unit and its officers work closely to provide an investigative overview to missing persons inquiries across the State.<sup>122</sup>
334. Assistant Commissioner Condon's evidence was that the OPM now requires high risk missing persons to be monitored by a Significant Event Review Panel for a minimum period of six months from the date the missing person investigation was commenced. Significant Event Review Panels are in place across the State and chaired by an officer at the level of Superintendent. Among other things, their purpose is to critically analyse the actions of the police during the relevant significant event.
335. The Commissioner submitted that the QPS had responded to the need for independent reviews of unsolved homicides and suspicious missing person investigations with the issue of State Crime Command Instruction 1/2017. This has since been incorporated into the Operational Procedures Manual in Chapter 2.6.2 – Homicide.
336. The new policy requires that a review be considered in circumstances of a homicide or suspicious missing person investigation remaining unsolved for a period of three months after the commencement of the investigation. The policy does not replace the obligations of officers to report suspicious or suspected deaths to the coroner.
337. Where the Detective Inspector, Homicide Investigation Unit, and the respective Regional Crime Coordinator determine a review is required, suitably experienced investigators, independent to the investigation, will be appointed to review the investigation. The outcomes of the review will be forwarded to the State Coroner as a preliminary briefing and for consideration.
338. The Commissioner submitted that the evidence tendered and heard at this inquest since 2011 demonstrates that since Daniel's disappearance there have been significant positive changes in systems and operations concerning both missing persons and large complex homicide investigations.
339. While the inclusion of a policy for independent reviews of unsolved homicides and suspicious missing person investigations in the Operational Procedures Manual is a positive development, such reviews are not mandatory.

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<sup>122</sup> Ex 41, p3.

340. The reviews completed throughout the investigation into Daniel's disappearance, particularly the review completed in March 2011 by Detective Senior Constable Linwood, demonstrate the value a fresh set of eyes can play in a lengthy and complex investigation. Reviews also mitigate against the risk of investigative bias and can prevent "tunnel vision".
341. Having regard to the fact that over 80% of murders in Queensland are cleared within 12 months, a mandatory review requirement after 12 months would affect fewer than 5 investigations each year.<sup>123</sup> A relatively small number of unresolved high risk missing person investigations would also be affected.<sup>124</sup>

### **Recommendation 1**

*I recommend that the Queensland Police Service's Operational Procedures Manual be amended to mandate an independent review in circumstances of a homicide or suspicious high risk missing person investigation remaining unsolved for a period of twelve months after the commencement of the investigation.*

342. In considering the issue of mandatory inquests, I have had regard to the wide range of strategies available to investigate serious crimes, including the use of coercive hearings before the CCC where the right to silence does not apply and the privilege against self-incrimination is not a basis for refusal to answer questions.
343. Coroners are now informed of a missing person investigation involving a suspected death at an early stage. They are informed immediately of a death involving a suspected homicide. The *Coroners Act* gives a coroner wide powers to conduct and direct investigations, including the issue of search warrants, requiring statements and the production of documents.
344. As noted above, under the *Coroners Act 2003* the primary objective of a coronial investigation (including an inquest) is to determine the facts and circumstances relating to the death and, where appropriate, to make recommendations to prevent similar deaths. The role of the coroner is not to determine whether someone should face criminal proceedings, or to gather evidence for that purpose. A coroner does not have the jurisdiction to commit a person for trial.

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<sup>123</sup> Queensland Government Statistician's Office, Queensland Treasury, *Crime report, Queensland, 2017–18*. Page 9

<sup>124</sup> *When a child is missing - Remembering Tiahleigh - A report into Queensland's children missing from out-of-home care*. Table 1, page 44 indicates a small number of children under 18 are not located each year, noting that the data may include multiple reports for the same child.

345. An inquest is not required in every case, and inquests should not be seen as a substitute for a criminal investigation. I consider it appropriate that coroners retain the discretion to decide whether it is in the public interest for an inquest to be held as part of an investigation in cases involving missing persons and suspected homicides. Those decisions are subject to the review mechanisms in the *Coroners Act*. The Attorney-General also retains a power to direct that an inquest be held.

### **Return of remains**

346. The Morcombe family were understandably distressed that although Daniel's remains were located in 2011, they were not released by the State Coroner until November 2012. This was after the committal hearing had commenced and Mr Cowan instructed his lawyers that he no longer required the remains for testing.
347. The family has submitted that the prosecution and defence should be given three months to carry out testing, after which the family has their loved one's remains returned for burial.
348. The Commissioner's submission noted that as long as Mr Cowan contested that the skeletal remains belonged to Daniel, it was necessary for the remains to be retained in the event that they had to be released for testing. It was also submitted that a provision of the kind sought by the Morcombe family would require legislative amendments.
349. I agree that it is unsatisfactory that families should be required to wait until criminal proceedings are finalised before being able to bury their loved one, particularly when DNA evidence can establish the identity of a deceased person with a high degree of certainty.
350. Section 26(2)(f) of the *Coroners Act* provides that a coroner stops having control of a body when the coroner decides that it is not necessary for the coroner's investigation to keep the body after an autopsy and the coroner orders the release of the body for burial. Section 26(3) provides that the coroner must release the body as soon as reasonably practicable after autopsy.
351. The Supreme Court of South Australia considered this issue in *Haydon v Chivell*,<sup>125</sup> where a murder accused sought to restrain the coroner from releasing a body for burial to enable a second post-mortem examination. Refusing the injunction, the court held that the coroner's functions under the *Coroners Act*, "*are not to assist in the administration of justice in respect of assisting in the prosecution of people under the criminal law*".

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<sup>125</sup> 1999 [SASC] 315

352. The Full Court of the Supreme Court of South Australia also dismissed an application for orders that would have prevented the burial or cremation.<sup>126</sup> The High Court then dismissed an application for leave to appeal. It held that the applicant had not pointed to any circumstance or feature of the case that would suggest that further examinations were necessary for a fair trial.<sup>127</sup>
353. In most cases the autopsy report, photographs taken during the examination, the results of any testing done on samples (including DNA analysis), and the ability to conduct tests on retained microscopic samples will provide an adequate basis for a second opinion by an expert witness for defence purposes.
354. Although this is an issue that arises very rarely, I do not consider that the possibility that an accused wishes to conduct further testing is a matter which should properly delay the release of a body under the *Coroners Act*.
355. If an accused wishes to prevent a burial or cremation for that purpose, the appropriate course would be to seek a direction from a court with jurisdiction under s 590AS of the *Criminal Code*. While the court could impose appropriate time limits to enable testing to occur, it is possible that a family would experience further delays while that occurred.

## ***Recommendation 2***

*I recommend that the Queensland Government amend the Criminal Code to ensure a time limit is imposed on the testing of human remains in circumstances where the prosecution and defence fail to reach agreement on the identity of the deceased.*

## **Other matters**

356. Several of the matters that the family submitted recommendations should be made about were either outside the scope of the inquest or have already been implemented. These included a “no-body no parole” regime which was implemented through the passage of the *Corrective Services (No Body, No Parole) Amendment Act 2017*.
357. The Morcombe family also submitted that “consideration be made for an open and frank debate on the adoption of a publicly accessible sex offenders website”. Prior to the resumption of the inquest I concluded, in a ruling in relation to evidence, that such a proposal could only be properly implemented after considering a wide range of community and expert views. I noted that this would need to canvas how such a website would influence matters such as recidivism, vigilantism and rehabilitation

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<sup>126</sup> 1999 [SASC] 336

<sup>127</sup> (1999) 165 ALR 1

of offenders, and that the merits of a public sex offenders register had been the subject of debate in Queensland since the 1990s.

358. In January 2019, the Australian Government commenced national consultations on a proposal to establish a National Public Register of Child Sex Offenders. While predatory offences involving the abduction of children are very rare, the actions of opportunistic offenders such as Mr Cowan cause a very significant level of fear in the community. In my view, the establishment of such a register should be the subject of broad consultation, having regard to the effectiveness of current mechanisms for the monitoring and supervision of child sex offenders.
359. The Morcombe family also submitted that consideration should be given to the forfeiture of a defendant's right to appeal where the defendant declines to give evidence at their trial. Such a policy would also require detailed consideration and broad public debate. It would represent a fundamental departure from the presumption that an accused person cannot be compelled to give evidence at their own trial. I make no recommendation in relation to this issue.
360. I extend my condolences to Mr and Mrs Morcombe, Daniel's brothers, and his extended family.
361. I close the inquest.

Terry Ryan  
**State Coroner**  
**Brisbane**  
**5 April 2019**