



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

CITATION: **Inquest into the death of Malcolm Robert BELL**

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR 530/02

DELIVERED ON: 26 May 2006

DELIVERED AT: Brisbane

HEARING DATE(s): 23-25 May 2006

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: Coroners: inquest, police shooting, self defence

REPRESENTATION:

Counsel Assisting: Mrs Debbie Bell: Sergeant Mark Newton, Constable Emma Taylor, Constable Penny Maloney & Senior Constable Jason Cockett: Queensland Police Service Commissioner:	Mr Craig Chowdhury Mr Nick Dore  Mr Adrian Braithwaite Mr Wayne Kelly
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## Findings of the inquest into the death of Malcolm Robert Bell

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The *Coroners Act 1958* provides in s43(1) that after considering all of the evidence given before a coroner at an inquest the coroner shall give his or her findings in open court. What follows are my findings of the inquest held into the death of Malcolm Robert Bell.

### ***Introduction***

On 11 October 2002, at approximately 4.00pm, two police officers confronted Mr Bell in a lane running between Elizabeth and Queen Streets in the central business district of Brisbane. They had formed the suspicion that he was the person wanted in connection with a number of armed robberies that had been conducted in the city in recent weeks. One of the officers told Mr Bell he was under arrest. Mr Bell did not comply with the instructions given by that officer and produced a weapon. Soon after, he was shot dead.

These findings seek to explain how that happened and determine whether anyone should be charged with a criminal offence as a result of the death.

### ***The Coroner's jurisdiction***

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

#### **The basis of the jurisdiction**

Although the inquest was held in 2006, as the death being investigated occurred before 1 December 2003, the date on which the *Coroners Act 2003* was proclaimed, it is a "*pre-commencement death*" within the terms of s100 of that Act and the provisions of the *Coroners Act 1958* (the Act) are therefore preserved in relation to it.

Because the death was "*violent or unnatural*" the police officers who were summoned to the scene were obliged by s12(1) of the Act to report it to a coroner. Section 7(1)(a)(i) confers jurisdiction on a coroner to investigate such a death and s7B authorises the holding of an inquest into it.

#### **The scope of the Coroner's inquiry and findings**

A coroner has jurisdiction to inquire into the cause and the circumstances of a reportable death.

The Act, in s24, provides that where an inquest is held, it shall be for the purpose of establishing as far as practicable:-

- the fact that a person has died,
- the identity of the deceased,
- when, where and how the death occurred, and
- whether anyone should be charged with a criminal offence alleging he/she caused the death.

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 proven.

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

*It is an inquisitorial process, a process of investigation quite unlike a criminal trial, where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*<sup>1</sup>

The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, the Act authorises a coroner to make preventive recommendations,<sup>2</sup> referred to as “riders” but prohibits findings or riders being framed in a way that appears to determine questions of civil liability or suggests a person is guilty of any criminal offence.<sup>3</sup>

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

Proceedings in a coroner’s court are not bound by the rules of evidence because s34 of the Act provides that “*the coroner may admit any evidence the coroner thinks fit,*” provided the coroner considers it necessary to establish any of the matters within the scope of the inquest.

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt, an inquiry rather than a trial.<sup>4</sup>

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>5</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>6</sup>

Of course, when determining whether anyone should be committed for trial, a coroner can only have regard to evidence that could be admitted in a criminal trial and will only commit if he/she considers an offence could be proven to the criminal standard of beyond reasonable doubt.

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<sup>1</sup> *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

<sup>2</sup> s43(5)

<sup>3</sup> s43(6)

<sup>4</sup> *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625

<sup>5</sup> *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

<sup>6</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.<sup>7</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>8</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***

I turn now to a description of the investigation.

Immediately after the shooting, the officers involved summoned assistance on the police radio and an ambulance and other police attended within minutes.

The officer in charge of the Homicide Investigation Group attended as did detectives from the Crime and Misconduct Commission and the Ethical Standards Command.

The scene was cordoned off and the potential witnesses were identified and later statements were taken from them. The two officers involved in the incident were interviewed later that night and did a “walk through” of the events which was video recorded.

The handguns issued to the officers involved in the shooting were seized and forensically examined as were two other guns found at the scene.

The scene was photographed and items of interest were located and tested.

A lawyer representing Mr Bell’s wife contacted police and indicated that the persons who had been shot could be Malcolm Robert Bell. A fingerprint examination suggested that this was the case.

I am satisfied that the investigation was thorough and carried out in a competent manner.

### ***The inquest***

A directions hearing was held on 9 March 2006. Mr Craig Chowdhury was appointed counsel assisting and leave to appear was granted to Mr Bell’s wife, the officer involved in the shooting and the Commissioner of the Queensland Police Service (the QPS).

#### **A view and the taking of evidence**

On 23 May 2006, a view of the scene was undertaken by the Court and those with leave to appear. The inquest commenced later that day and evidence was given over the succeeding three days. Fifteen witnesses gave evidence and 120 exhibits were tendered.

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<sup>7</sup> *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., “Inquest Law” in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

<sup>8</sup> (1990) 65 ALJR 167 at 168

## ***The evidence***

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

## **Background**

On 12 June 2002, an armed robbery occurred at a Suncorp Metway branch in Stafford, an inner northern suburb of Brisbane. A good description of the offender was provided by bank staff but his facial features were not able to be seen on the security camera film because he was wearing a broad brimmed hat during the robbery. The offender produced a note demanding money and pointed a small handgun at the teller during the offence. He left the scene on foot.

Over the next three and half months, a further four robberies were committed by a single gun man whose stature, age, appearance and behaviour was similar to that described by the tellers who were the victims of the Stafford robbery. Three of those offences were committed on city banks, the fourth was in the same shopping centre as the first robbery. In each case the offender walked in produced a gun and demanded money. In two cases a silver or metallic grey handgun was used. In the other two offences a sawn off rifle with green or red masking tape around the barrel stub was produced.

After each of these offences the usual investigations by scenes of crime officers and detectives were undertaken but insufficient trace evidence or identification evidence was able to be gathered to enable a possible suspect to be formulated.

After the fourth robbery, having regard to the similarities of the description of the offender in each case and his *modus operandi*, the detectives involved concluded that it was likely that the same person was responsible for all of the robberies. Therefore a proactive strategy was devised and implemented in late August and early September. It failed to apprehend the offender and on 26 September another robbery occurred.

After this fifth robbery, detectives again reviewed all of the earlier offences and devised a new strategy which involved a heavy presence of plain clothes officers in and around the city centre on the afternoons of the same days of the week that the other offences had been committed. Those involved in this operation were advised of all information known about the earlier offences. They were shown the comfit photos compiled by the witnesses and the security video tape, advised of the disguises used by the offender and told of his usual movements.

## **Events on the day of the shooting**

In furtherance of this strategy, on 11 October 2002, three pairs of plain clothed officers in unmarked cars were patrolling the inner city from about midday onwards. Just before 4.00pm, two of those officers, Senior Constable Cockett and Constable Maloney<sup>9</sup> were driving slowly down Elizabeth Street between cross streets Edward and Creek. They noticed a man now known to be Mr Bell. Their attention was drawn to him by the obvious wig he was wearing and they recognised the similarities between him the description of the suspect they were seeking. He crossed the road in front of them from the western side adjacent to St Johns Cathedral and entered a lane that runs beside the GPO from Elizabeth through to Queen Street.

The officers drove to the intersection with Creek Street and turned left intending to take the next left into Queens Street with a view to catching up with the suspect when he emerged from the laneway. Before they reached the intersection of Creek and Queen Streets they came upon two of the other officers involved in the operation, Constables Newton and McGinty who were parked in Creek St. After a brief discussion the four officers then drove in the two cars around into Queen Street and parked outside the GPO, very near to the lane the other end of which Mr Bell had been seen entering.

Senior Constable Cockett says he expected that Mr Bell would have come out of the lane by the time the officers got there as the traffic was quite heavy and the lane relatively short. When Constable Maloney looked down the lane she could not see Mr Bell so she and Senior Constable Cockett crossed Queen Street and separated to look in a bank that fronted Post Office Square and in some of the underground walkways.

## **Police confront Mr Bell**

Constables Newton and McGinty went into the lane beside the GPO. They say they went past the newsagent that is about one third of the way along the lane from the Queen Street end when they saw the man we now know was Mr Bell. The wig he was wearing, his similarity to the suspect for the bank robberies and his nervous manner made Constable Newton confident that he was the man they were looking for. He therefore decided to arrest the man. As a result of attempting to put that intention into effect, Constable Newton soon after shot and fatally wounded Mr Bell. There were numerous witnesses in the vicinity and, as one would expect when witnesses recount such a dynamic and traumatic incident, there is some inconsistency in the versions of those witnesses. I will therefore deal with them individually.

Constable Newton says he observed Mr Bell as they were walking towards each other. He waited till Mr Bell had walked past and he then turned and followed. He saw Mr Bell take off his wig which led him to consider it likely that Mr Bell had just committed another robbery and was likely to be armed.

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<sup>9</sup> Some of the witnesses have changed their names or rank since they were first interviewed. To avoid confusion I shall refer to them by the designation used in the earlier accounts.

Constable Newton says he was conscious that Mr Bell might identify as police officers either him, his partner or the other police involved in the operation and react violently. He was also desirous of detaining him within the confines of the laneway if possible. He instructed Constable McGinty to call for back up. Constable Newton advanced on Mr Bell, drew his firearm and called on Mr Bell to stop, while telling him he was under arrest and identifying himself as a police officer.

He says Mr Bell turned to face him but kept backing away as he fumbled to open the briefcase he was carrying. Constable Newton says he saw in it a shortened rifle and that it appeared that Mr Bell was seeking to get it out of the bag when he dropped the briefcase and with it the rifle before he could do so.

Mr Bell at that time had his back to an arcade that runs off the lane at right angles away from the post office. When he dropped the briefcase and everything in it, he turned and ran down that arcade out of Constable Newton's sight. Constable Newton ran after him into the arcade. Both men realised that there was no way out of the arcade other than the way they had entered. Mr Bell stopped and turned to face Constable Newton who says he continued to call on Mr Bell to stop but this direction was ignored.

After going five or so metres into the arcade he saw that Mr Bell was in the process of removing a hand gun from the waist band of his trousers. Constable Newton says he said to Mr Bell "*Don't move or I will shoot you!*" in a loud and commanding voice. He says that Mr Bell continued to withdraw the pistol, that he turned its muzzle in Constable Newton's direction so that the officer could see down the barrel. Constable Newton gave evidence that this led him to believe that he was about to be shot and that there was no way he could preserve his safety other than by shooting Mr Bell. This he did. The first shot seemed to have no effect on Mr Bell and so the officer fired a second time. Mr Bell fell to the ground dropping the pistol. When Constable Newton went to him it was obvious that he was seriously wounded.

### **Eye witness accounts**

Constable McGinty's account is largely consistent with this version. She claims they saw Mr Bell as soon as she and Constable Newton entered the lane. He was at that stage at the far end near Elizabeth Street. Having regard to the distance involved and the change in elevation as the lane rises from Elizabeth Street I suspect she is mistaken in this regard but nothing turns on that.

She agrees that after they had walked past Mr Bell, Constable Newton told her that he was sure that Mr Bell was the man they were looking for and that he was probably responsible for the robberies that had prompted the operation they were involved in. She agrees that she was told to call for assistance and that Constable Newton then tried to arrest Mr Bell near the newsagency. She says he called out "*Stop police!*" on three occasions and that Mr Bell backed away towards Queens Street while reaching into the

briefcase he was carrying. She saw him drop it near the entrance to the telephone arcade and saw, among other things, a shortened firearm on the ground beside the case. She says that Mr Bell then disappeared from her view down that arcade and that Constable Newton followed him. At this point she lost sight of the men but could hear Constable Newton repeatedly yelling "*Drop the gun!*" When she reached the entrance to the arcade she could see Mr Bell towards the far end of it and she could see that he had something silver in his hand. He was facing Constable Newton. Her view of Mr Bell was obscured by the other officer. She says Constable Newton repeatedly told Mr Bell to drop the gun. She then heard two shots and saw Mr Bell fall to the ground. She saw Constable Newton go up to him and she also approached. She saw that Mr Bell was bleeding profusely. Constable Newton told her to summon an ambulance and so she called triple zero.

Bradley Dean, the owner of the newsagency that at the time fronted the lane and also had an entrance from the telephone arcade, was in his office at the back of the shop when he heard shouting coming from the telephone arcade. He says he heard a male voice twice say forcefully "*Put the gun down!*" He then heard two gunshots and when he went to investigate he saw a man lying on the ground in the telephone arcade with another standing over him. The upright man had a gun in his hand.

Nathan Harper says he was in the newsagent's when he saw three people run into the telephone arcade. He heard one of the male shout "*Drop it!*" or "*Drop to the ground!*" This was repeated on a number of occasions. He saw the two people who I accept were officers Newton and McGinty had guns in their hands. He saw that the third person who must have been Mr Bell had something in his hand but Mr Harper could not say what the item was. After the command had been yelled he heard two or three shots fired.

Joanne Berderow was working in the newsagency at the material time. She heard a male shout "*Get down on the ground!*" on a number of occasions and also yell "*I'll shoot!*" She then heard two shots.

John McCafferty was buying a paper and a lotto ticket in the newsagency when he heard a commotion in the lane way and saw three people run past the front of the newsagency and into the telephone arcade. He says when his attention was first drawn to the people they were in the laneway and he heard one of them yell "*Stop, stop, put it down!*" When he saw the people in the telephone arcade, the woman was near its intersection with the laneway and the male officer was further towards the blind end of the arcade. He heard one of the officers repeatedly yelling "*Put it down!*" "*Put it down!*" "*Drop it!*" He thought it was the female. He then heard two shots fired.

Ian Miller was also in the shop as a customer. He didn't hear any of the yelling that other witnesses reported but did hear two gunshots. There was a commotion. When he went out of the shop into the lane he saw on the ground a brief case and a shortened rifle. He also saw a wig. When he looked down the telephone arcade he saw a man on the ground and a woman tending to him in a way that made him realise the man was injured. As he was a medical

practitioner Dr Miller went into the arcade and offered to assist. He says he saw a small grey pistol on the ground near the wounded man's feet. He says Mr Bell was very badly injured and bleeding profusely but still conscious.

Senior Constable Cockett says that after he had checked the bank in Post Office Square he was looking for Constable Maloney and making his way back across Queen Street when he heard shouting coming from the lane. He says he heard a male voice shouting "Stop!" or perhaps "Stop, police!" He then heard two gun shots and ran down the lane. Near its intersection with the telephone arcade he saw on the ground a brief case and a shortened rifle. He also saw a wig and a bundle of banknotes. He looked into the arcade and saw Constable Newton standing over the man he'd seen earlier in Elizabeth Street. Constable Newton told Senior Constable Cockett that he'd just shot the man and to call an ambulance. Senior Constable Cockett saw a silver pistol on the ground near the wounded man's feet.

The time imprinted on Mr McCafferty's lotto ticket indicates Mr Bell was shot soon after 4.03pm. Contact was made with the ambulance at 4.06 and an ambulance was on the scene at 4.13. When first assessed by para-medics Mr Bell was not breathing and had no pulse. After emergency treatment a weak pulse was established and he was intubated. Mr Bell was loaded into the ambulance and taken to the Royal Brisbane Hospital. On the way he was again assessed and found not to be breathing and to have no heart beat. At the hospital he was examined by a medical practitioner in the Accident and Emergency Department and declared dead at 4.52 pm.

### ***The post shooting response***

Notification of the shooting was conveyed over the police communications system and numerous police and the specialist investigators referred to earlier converged on the scene and the investigation described already commenced.

### **Autopsy results**

On 12 October 2002, Dr Olumbe, an experienced forensic pathologist performed an autopsy on Mr Bell's body. He found wounds caused by projectiles entering the chest and abdomen. Both were recovered. One wound commenced in the upper left chest. It passed downwards and showed damage to the upper lobe of the left lung, the aorta and the left side of the heart. Dr Olumbe said in evidence that he considered that this injury would cause almost immediate death. The other projectile had traversed the upper right arm and then entered the trunk at the position of the seventh rib before lodging in a muscle of the abdomen.

Analysis of blood taken from Mr Bell found very high levels of amphetamines, methylamphetamine and morphine. Lower levels of tetrahydrocannabinol were also found.

In Dr Olumbe's opinion, the mechanism of death was internal haemorrhaging caused by gunshot wounds.

Mr Bells's body was identified by his brother and by comparison of fingerprint records.

### **Ballistics**

An examination of the gun issued to Constable Newton showed that it had two less bullets than its capacity. The gun issued to Constable McGinty had a full compliment.

An examination of the projectiles removed from Mr Bell' body at autopsy showed that they were consistent with the type issued to QPS officers and markings on it were consistent with it having been fired by a Glock pistol such as those issued to the officers involved in this incident. However, the markings were not able to connect the projectile to Constable Newton's gun. Such a connection was able to be made with two spent cartridge cases found in the laneway.

The Jennings .22 calibre handgun found near Mr Bell was also examined. It had six bullets in the magazine but none in the chamber. It was capable of being fired but before it could have done so the gun would have needed to have been cocked by drawing and releasing the slide. The gun's serial number had been ground off. The weapon found near Mr Bell's briefcase was found to be a Stirling brand .22 calibre self-loading rifle that had its barrel and stock shortened. It contained 14 rounds in its magazine but none in the chamber. Its serial number had also been removed.

### **Other inquiries**

On the afternoon of Mr Bell's death the Bendigo Bank at the corner of Elizabeth and Edward Street was robbed by a man fitting Mr Bell's description. The alarm was raised at 3.56pm, the same time as Senior Constable Cockett says he saw Mr Bell in Elizabeth Street, about 80 metres from the bank. The money dropped by Mr Bell and recovered from the lane way was the same amount as had been stolen from that bank.

The results of other inquiries undertaken in the days and weeks following Mr Bell's death strongly indicate that he was the offender responsible for all of the robberies referred to earlier in these findings.

### ***Findings required by s43(2)***

I am required to find, so far as has been proved, who the deceased was and when, where and how he came by his death.

As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, I am able to make the following findings.

**Identity of the deceased** – The deceased was Malcolm Robert Bell

**Place of death** – Mr Bell died at Herston, Queensland

**Date of death** – He died on 11 October 2002.

**Cause of death** – Mr Bell died from internal haemorrhaging as a result of being shot by Constable Newton

### ***The committal question***

In addition to the findings concerning the particulars of the death that I have just pronounced, I am also required by s43(2)(b) of the Act to find whether anyone should be charged with murder or manslaughter as a result of the death. That requires me to determine whether a *prima facie* case for such a charge is made out, that is whether a properly instructed jury could convict anyone on such a charge.

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

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

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

In this case there is an abundance of evidence indicating that Malcolm Bell was killed by Constable Newton. There is also compelling evidence that Constable Newton intended to either to kill him or to do him some grievous bodily harm to Mr Bell. The evidence of Constable Newton is that he intentionally shot the deceased intending to incapacitate him. Further, the necessary intention can be inferred from other evidence on the basis that a person is held to have intended the natural and likely consequences of his/her act.

Therefore, the only issue to be further considered is whether the killing was authorised, justified or excused by law. If it was, that is the end of the matter. If not, I must commit Constable Newton for trial and allow the Director of Public Prosecutions consider whether an indictment should be presented.

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

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

person making the threat has an actual or apparent ability to carry out the threat.

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

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

Constable Newton's evidence is that when Malcolm Bell pointed the pistol at him he believed he was about to be shot by Mr Bell and that he would die. This was an unprovoked assault within the meaning set out earlier. Constable Newton further said that he believed that there was no other way he could preserve his life other than by shooting Mr Bell.

If each of these beliefs were held on reasonable grounds Constable Newton is protected by s271 of the Code. I believe that the evidence establishes this to be the case and consider the Crown could not discharge their onus to disprove it if the matter came to trial. I will not repeat all of the evidence summarised above. I note that there are considerable inconsistencies in the various versions but I also note that important aspects of Constable Newtons' account are corroborated by numerous independent witnesses who heard him repeatedly demand Mr Bell stop and put down his gun. Some also heard him warn Mr Bell that he would be shot if he did not comply. A weapon matching the description of one previously seen in Mr Bell's possession was found near Mr Bell after he had been shot.

Police officers are not above the law. They are equally liable to be prosecuted if the evidence is sufficient. Nor does the fact that Mr Bell had committed a series of very serious offences in the months leading up to his death mean that he was liable to summary execution and I am certain that did not happen.

On the other hand, police officers are also entitled to the protection of the law, in this case that afforded by the self-defence provisions. When one has regard to how Constable Newton came to be in the position he found himself in on the afternoon of 11 October 2002, no fair minded person could have any concerns about that. Accordingly, I find that no person should be committed for trial in connection with Mr Bell's sad death. There are also provisions of the *Police Powers and Responsibilities Act 2000* that may exculpate Constable Newton but in view of the conclusion I have reached concerning the Code defence there is no need to traverse them.

The incident that has been the subject of this inquiry harmed numerous people. Malcolm Bell lost his life, his wife lost her partner of more than 20 years. It is clear that Mr Bell did not lead an exemplary life but the fact that their relationship survived his lengthy prison sentences and remained supportive and respectful demonstrates there was much more to his life than the crime that lead to its premature end. The letter of Dr Rosevear indicates that he attempted to get assistance for his drug problem but was

unsuccessful. Some of the civilian witnesses were distressed and the police officers involved were obviously traumatised. I am pleased to see that they have had sufficient resilience to continue with their careers as police officers. I offer my condolences to all those affected.

It was submitted by Mrs Bell's lawyer that the arrest could have been affected by other means that may have lessened the likelihood of her husband dying. I can readily appreciate why she might think that. However, I cannot agree that Constable Newton should be criticised for taking the action he did. It is true that had he simply tackled Mr Bell he may have been able to restrain him without resort to deadly force or if Constable Newton had waited until the other officers involved in the operation arrived they may have been able to surround Mr Bell and subdue him by other means.

However, the evidence makes clear that Mr Bell is unlikely to have surrendered. I have no doubt that he knew that those confronting him in the telephone arcade were police officers and that he would only have needed to comply with their directions to preserve his life. I can easily speculate that the methylamphetamine Mr Bell had ingested made a rational response to the dangerous situation he had created less likely. Had Constable Newton attempted to tackle Mr Bell there was a real risk that Mr Bell could have drawn the pistol from his pants and shot the officer.

Thankfully, only rarely do police officers find themselves in situations as dangerous as that confronted by officers Newton and McGinty on the day in question. Constable Newton analysed the risks of allowing Mr Bell to continue on into an open and more crowded part of the city and for sound tactical reasons decided to apprehend him in the lane. That decision undoubtedly increased the risk to Constable Newton's personal safety. His courage and professionalism are to be commended.

### ***Issues of concern, riders and recommendations***

Pursuant to s43(5) of the Act I am authorised to make riders or recommendations designed to reduce the occurrence of similar deaths to the one investigated by this inquest. I do not consider that this sad death was reasonably foreseeable and therefore there is nothing, in my view, the authorities could have done to prevent it. It follows there are no riders or recommendations I could make.

I order that the documentary exhibits be retained by the Court, that the service handguns be returned to the Commissioner of the Police Service for re-issue and that the firearms carried by Mr Bell be given into the custody of the appropriate police officer for destruction.

This inquest is now closed.

Michael Barnes  
State Coroner  
26 May 2006