QUEENSLAND COURTS

OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION:	**Inquest into the death of Daniel James Clarke**
TITLE OF COURT:	Coroner's Court
JURISDICTION:	Kingaroy
FILE NO(s):	COR 2234/09(2)
DELIVERED ON:	25 March 2011
DELIVERED AT:	Kingaroy
HEARING DATE(s):	4 November 2010 & 22-24 March 2011
FINDINGS OF:	Mr Michael Barnes, State Coroner
CATCHWORDS:	CORONERS: death in custody; siege

REPRESENTATION:

Counsel Assisting:	Mr Peter Johns
Family of Mr Clarke:	Mr Andrew Kelly (Kelly & Frecklington Solicitors)
Senior Constable Anthony Tragis & Senior Sergeant Troy Pukallus:	Mr Craig Pratt (Gilshenan & Luton Legal Group)
Darling Downs West Moreton Health District:	Mr Andrew Ross (Crown Law)
QPS Commissioner:	Ms Fiona McPhee (QPS Solicitors Office)

Table of contents

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

Introduction

Daniel Clarke was 36 years old when he died on 4 March 2009. He had suffered over many years from a serious psychiatric condition and had been subject to a forensic order on a continuous basis since 1999. Mr Clarke was residing with his mother on her property at Booie, east of Kingaroy. In the weeks leading up to his death his mother became concerned by his behaviour.

On 3 March 2009 Mr Clarke's psychiatrist attended Mrs Clarke's residence. It became immediately clear that Mr Clarke was agitated and he refused a request that he attend hospital. The psychiatrist's attention was drawn to the fact that Mr Clarke had secreted a firearm nearby.

Police were alerted and over the following hours a standoff developed between them and Mr Clarke. The police negotiators in attendance made little progress over the 20 hours that ensued before a gunshot was heard from within the property. Mr Clarke was found to be deceased when officers entered the property.

These findings:-

- establish the circumstances in which the fatal injuries were sustained;
- confirm the identity of the deceased person, the time, place and medical cause of his death;
- consider whether the police officers involved in managing the siege situation acted appropriately, effectively and in accordance with the Queensland Police Service (QPS) policies and procedures then in force;
- examine the adequacy and appropriateness of the ways in which the forensic order applicable to the deceased was managed prior to his death; and
- examine the actions and decisions of mental health staff involved in the immediate lead up to the death of the deceased person.

As this is an inquest and not a criminal or civil trial, these findings will not seek to lay blame or suggest anyone has been guilty of a criminal offence or is civilly liable for the death. As the death followed immediately a series of events involving police and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

The investigation

The investigation was conducted by the QPS Ethical Standards Command (ESC) and a detailed report was prepared by Senior Sergeant Robert Campbell. He had been contacted following the death of Mr Clarke and, with another ESC officer attended the scene late on the evening of 4 March 2009.

The scene of Mr Clarke's death had been initially accessed by officers from the Specialist Emergency Response Team (SERT). In accordance with QPS policy those officers handed over the scene to general duties officers without further interaction with the deceased. The scene was secured until the arrival of forensic officers. On their arrival, those officers undertook a detailed forensic analysis of the scene. This included fingerprint and DNA sampling as well as taking a thorough photographic record of the scene.

A large number of items surrounding the body were seized. A gun shot residue kit was used by forensic officers, with swabs from the kit being applied to the hands of the deceased.

The initial investigations were overseen by the District Officer, Acting Superintendent Van Saane and Inspector Edwards. Although those officers had also been involved in overseeing some aspects of the siege, I accept that their oversight role in the initial stages of the investigation was necessary and did not in fact compromise the integrity of the investigation. It would of course have been ideal to have completely independent senior officers oversee the commencement of the investigation, however, it is difficult to see how this could be applied in practice in circumstances where the outcome (and timing) of the siege is uncertain and the location is relatively remote. The material presented to the inquest establishes continuity of scene management. The weapons and ammunition of each SERT officer was subject to audit which accounted for all rounds of ammunition issued. I am satisfied that in this case the scene was handed over to general duties officers in accordance with QPS procedure and that the forensic officers who initially inspected the scene were allowed to do their job without interference.

The ESC investigation commenced with interviews of those officers who had been most involved in the events leading to the death of Mr Clarke. This included the several police negotiators; SERT operatives and their commander; those senior officers managing the scene, and the Kingaroy officers initially alerted to the concerns about Mr Clarke. The results of the forensic analysis of the scene were collated. This included an analysis conducted on the gun-shot residue (GSR) found at the scene.

Records relating to Mr Clarke's mental health treatment and the management of his forensic order were seized and details relating to his criminal and

mental health history were obtained. This included the results of regular urine screenings to which Mr Clarke was subjected to in the months leading to his death. Interviews were conducted with mental health staff that had treated Mr Clarke. Mrs Clarke also provided a detailed account of her experience of relevant events in an interview with ESC officers.

An investigation into the origin of the shotgun found at the scene saw records being obtained from the Australian Crime Commission. A full *Weapons Act* audit was conducted on the remaining firearms at the property.

In February 2010 Inspector Anthony Montgomery-Clarke, a QPS officer and qualified police negotiator with 15 years experience in that role, undertook a review of the negotiations that had taken place with Mr Clarke. He compiled a report of his findings and this was tendered at the inquest. Inspector Montgomery-Clarke also appeared as a witness at the inquest where his assessment was further explored.

A post mortem examination was conducted on the body of Mr Clarke at the John Tonge centre in Brisbane on 5 March 2009. In the course of that examination bodily fluid samples were taken and later toxicologically tested.

I am satisfied this matter has been thoroughly and professionally investigated and all sources of relevant information have been accessed and analysed. I commend Senior Sergeant Campbell for his efforts.

The evidence

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

Social history

Daniel Clarke was born on 20 June 1972 in Sydney to his mother Joanne Clarke and father Leslie Mitchell. His parents separated when he was very young. Mr Clarke's mother remarried and it seems he formed a positive relationship with his step father but unfortunately, that person died when Mr Clarke was about nine years of age.

He completed schooling on the Gold Coast to year 10 before commencing work for a construction company in which he assembled scaffolding on high rise buildings. In his late teens Mr Clarke had started smoking cannabis and his mother recalls that a psychiatric examination arranged by his employer around this time led to a diagnosis of drug induced psychosis. Mr Clarke received hospital treatment and then commenced work as a landscape gardener in Brisbane.

In the early 1990's Mr Clarke moved to live with his mother at Stanthorpe. The following years were punctuated with hospital stays and a brief periods living by himself in Brisbane and in a unit in Kingaroy where he was based during

early 2009. At the time of his death he was living with his mother at her residence at Booie, approximately 20km east of Kingaroy. Mr Clarke involved himself in maintaining that property when he stayed there. He also enjoyed weight training during his spare time. After so many years together he and Mrs Clarke had clearly formed a very close bond.

I offer my condolences to the family of Mr Clarke, in particular of course, to his mother.

Criminal History and mental health background

Mr Clarke had a limited criminal history although it is notable for the one serious charge of robbery with violence in 1999. The Mental Health Tribunal (as it then was) found that Mr Clarke should be dealt with by the mental health regime in place at that time and he was placed on a forensic treatment order. There were a number of other alleged offences of violence that were similarly not adjudicated upon because of his mental illness.

That forensic treatment order, subsequently termed an Involuntary Treatment Order ("ITO") under the *Mental Health Act* 2000, remained in place up until Mr Clarke's death. The conditions of that order were that Mr Clarke must:-

- reside at an approved address;
- attend the Kingaroy mental health clinic for follow up appointments with his treating psychiatrist at an agreed time that is no more than two weeks apart;
- take his prescribed medications and is not to use any unprescribed medication;
- not use illicit substances or alcohol;
- submit to random urine drug screens; and
- not possess a firearm or other offensive weapon.

Further, approval to continue treatment as a community patient was at the discretion of the authorised psychiatrist.

In accordance with the relevant legislation the ITO was reviewed on a six monthly basis. The records from those reviews show that Mr Clarke was becoming increasingly frustrated with the conditions imposed on him. Despite his opposition, the Mental Health Review Tribunals that conducted those assessments accepted the advice of Mr Clarke's treating mental health team to the effect that the order should remain in place.

In the years leading up to his death, Mr Clarke was hospitalised on a number of occasions on a voluntary and involuntary basis. In July 2008 his regular urine screening revealed the presence of amphetamines. Although clear for a period, the screenings returned the same result in January 2009. The large bundle of mental health records tendered at the inquest point to the understandable frustration experienced by Mrs Clarke in having to deal with the sometimes erratic behaviour of her son. It is, though, clear that Mr Clarke's welfare was consistently at the forefront of her thoughts despite her own medical ailments. Hospital admission documents show that over the

years it was Mrs Clarke who was often responsible for coaxing Mr Clarke into voluntary admission.

In August 2007 Mr Clarke's mental health care was transferred from forensic psychiatrist Dr Greg Weppner based in Toowoomba to Dr Douglas Scott a very experienced psychiatrist and clinical director of the Darling Downs West Moreton Mental Health Service. This arose primarily due to an amalgamation of health districts. The records tendered at the inquest show Dr Weppner going to significant lengths to ensure that all relevant information regarding Mr Clarke's background and treatment were passed on to the new team.

Dr Scott travelled regularly from his main office at Ipswich to Kingaroy to see patients. This had the benefit of allowing Mr Clarke to be seen in his home town rather than his having to make regular trips to Toowoomba. Dr Scott was assisted in the management of Mr Clarke by Stuart Pledger, a case manager at the Community Mental Health Office in Kingaroy.

The specific diagnosis for Mr Clarke's condition appeared to vary amongst his treating psychiatrists. Initially diagnosed with a schizophrenic illness in the 1990s and later with bi-polar disorder, Dr Weppner arrived at a diagnosis of schizo affective disorder. In his interview with police, Dr Scott also noted other recent diagnoses of paranoid schizophrenia and anti-social personality disorder. Mr Pledger says that that bi-polar (type 1) disorder remained the primary diagnosis.

Early 2009

At the time of his death Mr Clarke was taking a number of prescribed medications including Clopixol injections, Aeripapriuzol and lithium carbonate. There is some evidence of a history of non-compliance with his medication regime. However, there is no indication that this was occurring in the lead up to Mr Clarke's death, or that his increasingly concerning behaviour could be attributed to his taking or failure to take prescribed medication.

Although he had seemingly been using amphetamines as recently as January 2009 and was known to drink alcohol, toxicology results from the samples taken at autopsy show he was affected by neither at the time of his death.

The detection of amphetamines in January lead to Dr Scott ordering an in-patient stay for Mr Clarke at the mental health unit of Toowoomba Base Hospital. Records of that admission indicate Mr Clarke was not displaying any active symptoms of mental illness – "*no evidence of any active psychiatric morbidity."*

He was seen by Dr Scott on a regular review on 3 February 2009 and was noted to be reasonably stable. Mr Clarke indicated a willingness to participate in an ATODS program to assist him abstain from illicit drugs. This indicated increasing insight by Mr Clarke of the connection between those substances and his illness.

Mrs Clarke told ESC investigators and the inquest that she had become increasingly worried about Mr Clarke's mental state in the weeks leading up to his death. This had become more acute in the days prior to his death. She says that at Mr Clarke's last interview with Dr Scott in Kingaroy she pressed her concerns and insisted Mr Clarke needed hospitalisation. The clinical notes for the appointment on 3 February make no mention of Mrs Clarke's concerns and her claims are inconsistent with Dr Scott's opinion of Danny's mental state.

I also conclude that she has inaccurately recalled the number of times she expressed her concerns to the members of the treating team, although it does seem likely that she called them a number of times during February.

On 17 February 2009, as a result of a referral made by Dr Scott in November the previous year, Mr Clarke was seen by a multi-disciplinary team from the Community Forensic Outreach Service (CFOS) for a review of his management plan and a specialised risk assessment. This process was prompted by the recognition that as a forensic patient with a history of violence it was crucial for Mr Clarke's risk of relapse to be managed effectively. A report by Doctors Andrew Aboud and Susan Boyce arising from that review was completed promptly although not until 5 March 2009, the day following Mr Clarke's death. There is nothing in that report that would obviously have changed the events of 3 and 4 March 2009 had it been available earlier.

The reviewers noted "*no evidence of formal thought disorder";…"no evidence of psychosis";…* and *"no evidence of other psychological or biological features of current mood disturbance."* In summary, the reviewers detected no evidence of active symptoms of mental illness.

Mrs Clarke says she saw Dr Scott while she was waiting for Danny when he was being interviewed by the CFOS team and expressed her concern that his condition was deteriorating. Dr Scott does not recall this being the case but I find it is likely to have occurred and it is also likely that Mrs Clarke had raised her concerns with Mr Pledger in a telephone call earlier in the month.

Events leading to the home visit by mental health staff

As the CFOS process involved an extended interview with Mr Clarke on 17 February, Dr Scott says that he decided not to press on with Danny's scheduled visit that week for fear it would place too much pressure on the patient. Records show that Mr Clarke had expressed his frustration with the number of appointments associated with his forensic order on earlier occasions.

An appointment was made for Mr Clarke to attend the office of the Kingaroy Mental Health Service on 3 March 2009 for his regular fortnightly review. A letter dated 23 February 2009 had been sent to Mr Clarke confirming this appointment and requiring his attendance. However a number of events transpired in the intervening period.

In the week after the CFOS appointment, on 23 February 2009 Mr Clarke called Stuart Pledger and complained about police harassment. Mr Pledger was concerned enough to ask Mr Clarke if he was having manic thoughts, though this was denied. Mr Clarke told Mr Pledger that he was moving back in with his mother at Booie rather than staying at his Kingaroy unit. He complained about police officers with whom he had been in conflict when he lived in Stanthorpe some years previously. Mr Pledger agreed that this might have been indicative of developing paranoia but he considered that against a long background of obsessive resentment of police it was not particularly concerning.

The following day Mr Clarke presented in person to the office of the Kingaroy mental health service unannounced and asked to see Stuart Pledger. Notes from this meeting indicate that Mr Clarke was initially agitated and again upset with police for unclear reasons. The note taken by Mr Pledger states that he quickly calmed and departed the interview on '*good terms*'. Mr Pledger says that neither of these two incidents (nor their proximity to each other) caused him enough concern to raise the issue with Dr Scott immediately. Mr Clarke did not make any threats to himself or others during these conversations. Mr Pledger said in evidence he was satisfied that he was able to engage with Mr Clarke about other issues indicating that "the grip" of his obsession was not so extreme as to necessitate further intervention.

On Sunday 1 March 2009 Danny's mental state had apparently deteriorated to such an extent that Mrs Clarke came into Kingaroy in an attempt to speak to anyone who could assist her. She said in evidence that she knew the CMHU would not be staffed on a Sunday but she hoped that she could share her concerns with a nurse and ensure that those concerns were passed onto to Danny's case manager first thing Monday morning. Unfortunately, she was only able to speak briefly with someone at the hospital before that person was called off to assist with some emergency.

The next morning Mrs Clarke called the Kingaroy MHU and left a message for Mr Pledger advising that in her opinion Danny was in need of hospitalisation, that he was psychotic and paranoid and that he had said he would not leave the property alive.

Late that day Mrs Clarke attended at the CMHU and spoke with Mr Pledger. She confirmed the deterioration of Danny's mental state. She told him that Danny was restless, sleeping very little, patrolling the property and that she was unable to deal with him.

Mrs Clarke was concerned that her son would not willingly attend the review scheduled for the next day because he wanted to take her to a specialist's appointment in Ipswich. Mrs Clarke believed her son's needs were far more pressing and was happy to cancel that appointment but wanted Mr Pledger to call the home and pretend to be from the Ipswich Hospital advising that they had cancelled Mrs Clarke's appointment.

There was a suggestion that it was going to be more difficult to get Danny to attend because his review had been postponed to allow him to accompany his mother to the Ipswich hospital but there was no evidence to support that other than from his mother. Certainly Dr Scott, who would have had to authorise it, was unaware of it and the review appointment remained in his dairy for the 3rd. I did not find Mr Pledger's evidence on this point at all persuasive, but in any event it is of little relevance. As will become apparent, events moved so quickly that the treating team were left with no choice but to revoke Mr Clarke's LCT.

Mr Pledger agreed to Mrs Clarke's request and called their home at around 9.00am on 3 March pretending to be from the Ipswich Hospital. Mr Clarke was seemingly not fooled by this and Mr Pledger had to return to simply trying to convince him to come into the scheduled appointment in Kingaroy. It seems Danny stated he was unable to attend and that he intended leaving the area. He would not tell Mr Pledger when or where he was going. He did however agree to discuss the review with Dr Scott.

Dr Scott was advised of these developments when he arrived in the Kingaroy CMHU. He agreed to telephone Danny to try and persuade him to come in for a review. He was no more successful than Mr Pledger in this regard but Mr Clarke did agree with the proposal that the two come out to his mother's farm to discus the matter further.

Dr Scott was sufficiently concerned with Mr Clarke's state of mind and by the remote location in case, as he said, "*anything happened"*, that he contacted the local police station to ask for an escort. He also completed the paperwork necessary to record his decision to cancel Mr Clarke's community treatment plan and requiring him to return to an authorised mental health service. On that form he listed among the reasons that the patient was no longer compliant with the conditions of his leave; he was becoming unwell - "*paranoid delusions"* - and was *"a risk to himself and is a high risk to others."*

Senior Constable Anthony Tragis and Constable Courtney Briggs were detailed to assist Dr Scott and Mr Pledger. They discussed the job at the police station and on being advised of Mr Clarke's mistrust of police it was agreed they would not go up to the house with the mental health practitioners but wait nearby, in case they were needed. The officers travelled in a separate car from Dr Scott and Mr Pledger to Mrs Clarke's residence on Barkers Creek Road, Booie, arriving shortly before midday.

Last contact with the treating team

As Dr Scott and Mr Pledger approached the residence they saw Mr Clarke pacing up and down outside the veranda. He was wearing a belt that Dr Scott says contained ammunition and what appeared to be defence force style pouches. He was distant towards the mental health workers but they did not feel threatened by him. This was even the case when they noticed a machete on a table next to where they were eventually seated. Soon after arriving Mrs Clarke surreptitiously handed Mr Pledger a note which informed him that

Danny had secreted a shotgun, covered by a towel, in a bucket near him. He informed Dr Scott.

Dr Scot explained why they were there and that they wanted Danny to come with them to hospital. Mr Clarke was adamant he would not leave the property for the purpose of the review or any other purpose. The family's lawyer submitted his refusal only related to that day but I don't accept that. As the phone message for the day before makes clear, his threat to die rather than leave was not specific to 3 March.

There is disagreement among the three people present as to exactly what was said during the next hour over which the mental health workers were at the Clarkes' home. I don't accept that Mrs Clarke necessarily has an accurate memory of these events, which is entirely understandable having regard to how stressful they must have been. I am also concerned that she told the inquest that she knew well before the mental health workers came to the property that her son had a firearm but did not alert them to this. This demonstrates her preparedness to minimise the risk her son's actions posed. In my view Dr Scott is more likely to have a reliable recollection of what transpired. Mr Pledger on the other hand seems very vague about many aspects of the case.

It is clear there was talk of the potential for police involvement if Mr Clarke continued to refuse to go with the mental health professionals. It is likely that this prompted Mr Clarke to indicate he would resist them with force. Mrs Clarke agrees she attempted to de-escalate this line of speculation by asking her son to consider the human dimension of such actions – the impact on the officers and their families and the impact of his death on her. These attemtps were unsuccessful. I accept Mr Clarke stated he would shoot the police if they came for him and would kill himself. He re-iterated his hatred for police. Mr Clarke made it clear that he was sick of being controlled by others; touching on a recurring theme in his ongoing treatment.

Dr Scott and Mr Pledger discussed the situation with Mrs Clark and she asked them to come again the following day in the hope Mr Clarke's position may have changed. Dr Scott advised Mr Clarke they would leave and discuss the situation with his colleagues. However, he had already decided, correctly in my view, that it was unacceptable to leave Mrs Clark alone at the property given Mr Clarke's state of mind and ready access to a firearm. It was necessary, he thought, that he pass information about the situation at the Clarke residence to police.

Police become involved

There was some confusion between the mental health professionals and the police as to where they would meet after the visit had concluded. As a result when Dr Scott and Mr Pledger left the residence they could not immediately find the officers and so drove to a location from where they could get mobile phone reception to call the Kingaroy Police Station and advise of what Dr Scott considered to be a very dangerous situation at Mrs Clarke's house.

This information was relayed by police radio to Senior Constable Tragis and Constable Briggs just as they had decided to enter the property to check on Dr Scott and Mr Pledgers' welfare. They immediately retreated. The likely outcome had they bowled up to the house unaware of the situation is frightening to contemplate.

Dr Scott and Mr Pledger stressed the importance of police not approaching Mr Clarke in light of the threats that he had made when they took up with Senior Constable Tragis and Constable Briggs. Senior Constable Tragis says he was told by Dr Scott that Mr Clarke was '*dressed up like Rambo*', that he was in possession of a shotgun, ammunition and knives, and that although he was cool, calm and collected, he "*wants his final stand at home and wants to go out in a blaze of glory."* He says Mr Pledger was standing nearby while Dr Scott was relaying these comments and did nothing to question them or dissociate himself from them. Mr Pledger is now uncertain whether he heard the conversation.

Senior Constable Tragis sought to secure the location by blocking the road at the intersection to the east of the property while officers in another car sent to the scene from Nanango did the same in the other direction.

Dr Scott and Mr Pledger were sent back to the Kingaroy police station to explain the situation in more detail to the officer in charge.

The siege – day 1

Acting Senior Sergeant Andrew Holding was the officer in charge of the Kingaroy Criminal Investigation Branch. After receiving further details on the situation involving Mr Clarke he contacted Acting Superintendent Ronald Van Saane who was on duty as the Gympie District Officer. Acting Superintendent Van Saane says he was told Mr Clarke had advised his mental health workers that he "*wanted to* die", that he "*hates coppers*" and that he *"wanted to take out as many as possible*". He ordered the police on the scene (by now this amounted to seven officers) to form an outer cordon well out of sight of the residence. Acting Superintendent Van Saane also ordered that urgent inquiries be conducted in relation to the mental health background of Mr Clarke and then notified the Chief Superintendent of the North Coast police region.

It was suggested that the officers should have separated Dr Scott and Mr Pledger and interviewed them separately to ensure the accuracy of what was being relayed. While there might have been no harm in doing that, I can appreciate why it didn't happen. The officers were not involved in gathering evidence for a criminal prosecution; rather, they were gathering intelligence, as quickly possible, in what might have been a time critical incident. They were entitled to assume that Dr Scott would be an accurate reporter and that Mr Pledger would speak up if necessary. I am not convinced their expectations in this regard were misplaced.

Acting Superintendent Van Saane obtained further details through Acting Senior Sergeant Holding on the extent to which Mr Clarke was armed, his

state of mind and the presence of another person at the property, Mrs Clarke. He says he was not aware at that time whether Mrs Clark was there voluntarily or was being held against her will. Based on the facts known to him Acting Superintendent Van Saane asked for and was granted permission to deploy a Special Emergency Response Team (SERT) to the property. He also assigned the role of primary and secondary negotiator and ordered that they set up in a suitable location and attempt to make contact with Mr Clarke. He also organised for the North Coast negotiators co-ordinator, Senior Sergeant Troy Pukallus, to be briefed on the situation and make arrangements for relief negotiators should they be required.

Acting Superintendent Van Saane arrived at Kingaroy at 5:25pm by which time SERT had arrived by helicopter. All attended a briefing by Acting Senior Sergeant Holding. An Emergency Situation Declaration Certificate was completed pursuant to the *Public Safety Preservation Act* 1996. That certificate proposed boundaries which were set out on the advice of the SERT commander. Acting Superintendent Van Saane then travelled to the scene, initially taking the role as forward commander.

The initial primary negotiator was Sergeant Nick Nitshke from Kingaroy station. He was assisted by Sergeant Rod Venn from Gympie station. Both were trained and experienced negotiators.

Sergeant Nitshke was notified of the incident shortly after 2:00pm and was briefed by officers at Kingaroy station. He then met with Dr Scott and was briefed on the events of that day and on Mr Clarke's mental health history. Sergeant Nitschke says he was told by Dr Scott that Mr Clarke had indicated an intention to kill himself. He arranged, with permission from Acting Superintendent Van Saane and technical assistance from police communications in Brisbane to have the phone line to the Clarke property dedicated to communication with the negotiation cell. After searching for a suitable location for some time he decided to set this cell up in a shed at 195 Wattle Camp Road and gained permission from the owners. It was about 1km from the Clarkes' house.

After his arrival at the negotiation cell, Acting Superintendent Van Saane spoke to Sergeants Nitschke and Venn before moving 500m further towards the Clarke residence where he set up the forward command post (FCP). It was decided that the SERT officers present would form an inner cordon along the boundary of the acreage property containing the Clarke residence. This was completed by 8:37pm. Orders were then developed for way in which the SERT officers were to engage Mr Clarke should it become necessary. At 9:35pm Acting Superintendent Van Saane gave the order to commence negotiations and telephone contact was made with Mr Clarke and his mother at 9:39pm.

The initial half hour of conversation between Mr Clarke mostly consisted of Mr Clarke expressing his frustration with mental health personnel and police as well as the need to take medication. He refused to leave the property. Sergeant Venn recorded the following in his notes at 9:46pm:

> "*Heightened tension between Danny and mum. Mum wants Nick to speak with Danny. Danny keeps saying he wants to die – he won't leave the property alive"*

Shortly after 10:00pm Mrs Clarke made the decision to leave the residence. Although she says she had never been held against her will and did not feel threatened it would no doubt have been an unpleasant and worrying situation.

She said in evidence that she was going out merely to see whether there were in fact large numbers of police present near the property, as had been reported to her by associates monitoring police scanners. This is clearly incorrect as it is evident that before she left she had been speaking with a police negotiator and she was well aware of what was developing. I conclude she left because she was frightened for her safety.

She told Mr Clarke that she was going into town to get him some cigarettes and drove her car away from the house, soon to be met by SERT officers. Mrs Clarke was taken to the forward command post where she was "debriefed" by a SERT officer. It seems it is accepted that she was asked only about the type of weapon her son had, any person who may have influence over him and to draw a plan of the residence. She told them he had a shortened double barrel shotgun, and Danny would listen to a family friend and former police officer, Barry Flanagan.

Acting Superintendent Van Saane suggested in evidence that he may have called Mr Flanagan before passing the phone to another officer but in view of his uncertainly about this, and Mr Flanagan's conviction that he spoke to only one officer, I conclude the Superintendent is mistaken.

Mr Flanagan was contacted by an officer, probably the SERT commander, at around midnight on the evening of 3 March 2009. Mr Flanagan gave evidence at the inquest and says that during that call he was not told of the siege and was only asked if he thought Danny would take his own life. He believes that he would have been in a position to talk Mr Clarke into surrendering peacefully, had he been asked to. That is speculation upon which I will make no comment but I am concerned by the lack of appreciation of the significance of Mr Flanagan as a person well known to Mr Clarke and with a long history of having intervened, or at least assisted, when Mr Clarke's psychiatric illness became more active.

The siege – day 2

Sergeant's Nitschke and Venn remained on duty as negotiators until early on the morning of 4 March 2009. It appears that after his mother left, Mr Clarke took the phone off the hook for an extended period. A brief conversation at 1:53am involved him again refusing to come out from the house and telling police that he wanted to speak to his mother. This demand was repeated many times and with increasing frustration and aggression over the following hours. At 3:07 Mr Clarke told police that he would "*blow his head off before I*

leave this property. These blokes better write their wills". At 3:42am Mr Clarke fired a shot from his gun and told police it was their "*last warning*".

The refusal of Mr Clarke's repeated requests to hear from his mother led him to accuse police of having killed her. At around 4:00am the negotiators played a recorded message from Mrs Clarke. They explained that one of their fears in allowing a live conversation was that Mr Clarke would use it as an opportunity to *"say goodbye*". There is no evidence to suggest that such an approach was mistaken. Over the course of the following day this and another recorded message from Mrs Clarke were played over the phone. They were also played from a loudspeaker attached to an armoured vehicle that was brought to the scene.

At 7:30am on 4 March 2009 three new negotiators arrived to relieve the existing team. Senior Sergeant Pukallus took up with Senior Constable Julie Buckley in the negotiation cell, while Sergeant David Smallbone moved to the FCP and then into the armoured vehicle. In the vehicle he was in a position to play the recorded messages over a loudspeaker within hearing distance of Mr Clarke. He also used the loudspeaker on occasion to call on Mr Clarke to answer the phone and engage with negotiators when he was doing so less frequently.

Dr Scott returned to the scene on the morning of 4 March and was interviewed by Sergeant Smallbone. He told the officer that he did not believe that Mr Clarke was psychotic, rather he was "*fed up*." He also spoke of Mr Clarke's warrior fascination and suggested seeking to persuade him that he had proved his point and that coming out would not involve loss of face. This approach was tried without success.

The process of negotiation throughout the course of 4 March was fruitless. Sergeant Pukallus told the inquest that they tried a number of different approaches with Mr Clarke but that putting any particular tactic into practice was made difficult by Mr Clarke's refusal to engage with them for any substantial period. Mr Clarke continued to make threats to kill himself and continued his demands to speak to his mother. He continued with a variety of accusations against the police including that they had killed his mother and that, more generally, he had been subject to police victimisation. At various periods Mr Clarke was seen to exit the house and walk around with the shotgun. At 4:19pm he was observed to fire another shot near the rear of the house.

Senior Sergeant Pukallus said in evidence that he remained hopeful throughout of a positive outcome as a result of Mr Clarke being willing to discuss which hospital he might be admitted to; discussing the surrender plan; and his getting access to cigarettes. He also described an incident during which Mr Clarke spontaneously threw some of his mother's medication out of the house so that it could be taken to her, indicating his earlier delusion that she had been murdered by police had been dislodged.

The interaction with negotiators over the course of the afternoon increasingly focussed on Mr Clarke's requests to speak to his mother. This was the subject of the last conversation between Mr Clarke and the negotiation cell at 4:40pm. Five subsequent calls to the property went unanswered.

At 4:42pm one of the SERT officers heard a muffled bang from inside the house.

The aftermath

SERT operatives say that the negotiation cell was told of the 'muffled bang' over the radio and that a response was received to the effect that the negotiation cell had just been speaking to Mr Clarke.

No officer in the negotiation cell recalls hearing information about a muffled bang. They acknowledge there could have been a communication from them about having just spoken to Mr Clarke because this is what in fact had occurred minutes before. This communication breakdown has been attributed to the poor radio communication in the area and I have no basis on which to doubt that this was the case. It unfortunately had the effect of the SERT officers forming the belief that Mr Clarke had been speaking to negotiators after the shot had been heard. This meant all police officers at the scene remained in their position over the course of the next 20 minutes without clarifying the situation. At 5:03 it appears the confusion was resolved and the armoured vehicle was sent to inspect the house.

At 5:11pm a SERT operative in the armoured vehicle observed Mr Clarke's legs and saw that they were not moving. Permission was granted to enter the property and shortly after Mr Clarke was found with massive injuries to his head.

Queensland Ambulance Service officers had been in attendance at the scene from the early stages of the siege. Shortly after 5:10pm Paramedic Wood was asked to follow a SERT officer to the Clarke residence and on observing Mr Clarke it was immediately clear that he was dead. Following forensic examination at the scene, Mr Clarke's body was transported to the John Tongue Centre, the Queensland Health Scientific Services facility at Coopers Plains in Brisbane.

The investigation findings

Gunshot residue tests and other forensic evidence taken from the scene were consistent with Mr Clarke having fired the shotgun which was found resting between his legs. The totality of the forensic evidence, including fingernail scrapings and DNA samples indicates that no other person was involved with Mr Clarke at the time of his death. That, of course, is consistent with all of the eyewitness observations.

The shotgun itself was identified through the Australian Federal Police as an Armscor (Bentley) pump action shotgun manufactured in the Philippines and sold to the public via a NSW dealer in 1988. No record of this firearm

appeared on the National Firearms Register. In the aftermath of Mr Clarke's death an audit carried out at the residence of Mrs Clarke identified 13 other firearms. Nine of these were registered to Mrs Clarke and the remaining weapons were seized.

Urine testing of Senior Sergeant Pukallus showed that he was not affected by alcohol or drugs when supervising the negotiations with Mr Clarke on 4 March 2009.

In his review of the negotiation processes and tactics adopted by police in this case, Inspector Montgomery-Clarke came to the conclusion that the negotiations were carried out in a professional manner and in keeping with service policy. He stated that the use of 3rd parties in the course of negotiations is an option to be considered, but would be used sparingly as it is "*fraught with danger*". Inspector Montgomery-Clarke did identify one area of improvement, namely, the need to better document the basis for decision making during the course of the negotiation. Although the content of some of the communications and the actual decisions made during the course of the negotiation were recorded, the basis or rationale for the action taken was not.

The autopsy

A post mortem examination on the body of Mr Clarke was conducted by Dr Beng Ong, an experienced forensic pathologist, at the John Tonge Centre in Brisbane on 5 March 2009.

In the course of that examination samples were taken of a number of bodily fluids and later sent for toxicological testing. An x-ray was performed on the head and chest, small tissue samples were taken for histological testing and fingernail scrapings collected for biological examination. Dr Ong examined photographs of the scene and, when considered in combination with his observations, was able to say that that gunshot wound to Mr Clarke was likely caused at close range. There was no evidence arising from the examination that gave rise to the suspicion of any other person in the direct cause of Mr Clarke's death. Dr Ong completed an autopsy certificate listing the cause of death as:

1.(a) Gunshot wound to the forehead.

Toxicology testing of blood and urine samples revealed no alcohol, amphetamines or cannabinoids. The positive test for opiates was consistent with the contents of some of Mr Clarke's prescribed medication and had shown up repeatedly in ante-mortem urine testing. There were no other findings relevant to the events leading to his death.

Conclusions

Adequacy of mental health care

The inquest focussed on the treatment provided to Mr Clarke and the decisions made with respect to his being admitted to hospital over the three months prior to his death.

The files reflect that, given the seriousness of his condition, Mr Clarke was managed quite successfully as a forensic patient in the community over the preceding 10 years. This credibly reflects on his mother's care and the professionalism of the doctors and staff of the Kingaroy CMHU.

The inquest heard evidence in relation to the aim of Queensland Health Mental Health Services when dealing with patients on ITO's. Those on orders allowing treatment in the community are treated as in-patients only when necessary. The aim is always to allow the individual to live and interact with the community if they are sufficiently well to do so. I accept that this was the framework around which decisions concerning the care of Mr Clarke were made. There is no evidence to suggest that the wider rationale of treatment in the community is fundamentally flawed and it was not an issue explored further at this inquest.

As detailed earlier Mr Clarke was admitted to Toowoomba Base Hospital on 21 January 2009 as a result of having breached the terms of his limited community treatment order by returning a positive result for amphetamines from a routine urine sample. It was suggested that this was purely punitive but having regard to the known impact of illicit substances on his illness, I consider it had a broader purpose.

During this admission there was no evidence of psychosis or affective symptoms. The chart notes "*no evidence of any active psychiatric morbidity."* A risk assessment was conducted and it was determined that he posed no risk to the community. Mr Clarke was given counselling and assisted in developing a relapse prevention plan with respect to his drug use. Mr Clarke was released from his involuntary stay in hospital on 28 January 2009.

Dr Scott saw Mr Clarke at Kingaroy on 3 February. He also noticed no active symptoms of mental illness. Mr Clarke agreed to participate in an ATODS program to assist him abstain from illicit drugs.

On 17 February he was interviewed at length by the CFOS team. They also noted no evidence of any thought disorder. The family's lawyer suggested this assessment was flawed because it relied only on Mr Clarke being interviewed but in my view that grossly understates the sophistication of the process concerned. In addition to a full file review a validated instrument was utilised *"to increase the validity of the assessment, reduce clinician bias and anchor clinical opinion."* That review did not recommend any substantial change in the manner he was being treated. Clearly the reviewers did not detect a need for hospitalisation when they saw Mr Clarke.

I accept that Mrs Clarke may well have been detecting other influences at work in her son's psychopathology that alarmed her. She would certainly have been the most in-tune to subtle changes. I accept also that she may have passed these concerns on to Mr Pledger and/or Dr Scott. In that regard I am not persuaded that Mr Pledger and Dr Scott invariably noted all significant family contact – for example, the notes of the events that occurred on 2 and 3 March were not made until sometime after the events when the crisis was or had already unfolded. Nevertheless, the treating team can only treat what they can detect. Mental illness of the type suffered by Mr Clarke is not like other ailments that can be objectively tested for and measured. Its appraisal is more qualitative; its assessment phenomenological.

It is submitted on behalf of Mrs Clarke that the contact between her son and Mr Pledger on 23 and 24 February should have resulted in more intensive intervention. In hindsight she is probably correct, but any critique of the response needs to consider what was known at the time.

Mr Pledger considered there were a number of more positive aspects to that contact which made an escalated response unnecessary. Those included that by initiating the contact Mr Clarke displayed insight to his condition. Further, Mr Pledger considered he was able to shift Danny away from his obsession about police and engage him in discussion about other matters; he was not fixated by it. Third, by the end of the contact on the second day, Mr Clarke's paranoid obsession seemed resolved. In those circumstances I accept that it was important to maintain the trust in the relationship by respecting Danny's autonomy.

It was suggested that Dr Scott should have been advised of the contact and symptoms. Had this occurred, Mr Pledger would have told him that by the end of the meeting Mr Clarke's symptoms had been resolved. In those circumstances I don't anticipate he would have taken any further action in any event.

It seems clear that Danny deteriorated further over the weekend of 28 February and 1 March. When this was drawn to Mr Pledger's attention on 2 March he willingly agreed to assist and ensure that Mr Clarke was seen by Dr Scott the next day, despite Danny's resistance to this idea.

After being briefed on developments and having himself spoken to Mr Clarke, Dr Scott undertook a home visit on 3 March with a view to getting Danny into hospital. This failed, but there can be no criticism of Dr Scott or Mr Pledger for this. Whether Danny had any basis for his belief that he had been excused from the scheduled review is irrelevant, he clearly needed inpatient treatment and Dr Scott and Mr Pledger sought to affect that without police involvement.

Objection has been taken to the terms used by Dr Scott to describe to police Mr Clarke's statements and state of mind when the doctor came away from the house early on the afternoon of 3 March. I am unable to resolve the conflict in the evidence about exactly what Danny said but for the reasons

detailed earlier, I accept it involved discussion of Danny and possibly police officers being killed. On the evidence before me, I could not find that Dr Scott wilfully or grossly exaggerated what had been said. In any event, even if the comments were not completely accurate I do not accept they in any way influenced the outcome.

The suggestion that Mr Clarke was simply refusing to leave his mother's farm on that day and only threatened to take his life if attempts were made to force him, ignore that his mother had relayed such threats the day before when there had been, presumably, no discussion about police becoming involved.

Conversely, Dr Scott's claim that Mr Clarke was not psychotic but just stressed and frustrated seem inconsistent with the reasons by which he justified the revocation of his community leave and the florid delusions Mr Clarke was articulating during the night of 3 March when he accused police of torturing and killing his mother. However, none of that impacted on the outcome either.

I conclude that Dr Scott and Mr Pledger made appropriate attempts over a lengthy period to assist Mr Clarke lead a relatively normal life despite his chronic, serious mental illness. As a result of their expertise, dedication and collaboration with his mother, they successfully developed a constructive therapeutic alliance that allowed that to occur. Danny's rapid deterioration in the last weeks of his life could not have been anticipated and was not obviously as serious as we now know it to have been. I don't believe that was due to any neglect or departure from appropriate standards by the treating team.

The negotiation

When advised that a person suffering from mental illness who was on a forensic order was refusing the direction of his psychiatrist to return to hospital and was armed with a shotgun, police had to act swiftly to contain the situation. When intelligence checks revealed a history of violence their concerns would naturally escalate. Mr Clarke's mother considers the records exaggerate her son's predisposition for violence but I'm sure she accepts police could not diminish the import of what they read. Advice from his treating psychiatrist that the man was intent on dying and would, if necessary, take police with him, could only have heightened their concern, but it did not in my view change their actions.

They secured the area and brought in trained negotiators who for the next 20 hours utilised the numerous techniques they thought appropriate to try and persuade Mr Clarke to come out and surrender. Their dedication, ingenuity and perseverance were commendable. Sadly, they were unsuccessful.

Section 2.22 of the QPS Operational Procedures Manual (OPM) governs the role of negotiators and the circumstances in which they are deployed. The OPM's themselves are heavily influenced by the *National Guidelines for the Deployment of Police Negotiators*.

The National Guidelines stipulate that the preferred method for the peaceful resolution of high risk situations is negotiation. Neither these guidelines, nor the OPM impose restrictions on the manner in which the negotiations should proceed.

There is little doubt that the resolution in this case was made very difficult by Mr Clarke's reluctance to engage to any substantial degree. The notes tendered at inquest and oral accounts given indicate that he was almost entirely hostile to attempts by police negotiators to speak with him.

The tactic adopted by the negotiation cell to "wait him out" was an appropriate one. This is on the basis of understandable concerns for the safety of the officers who might be required to approach Mr Clarke and on the likelihood this would cause Mr Clarke to immediately attempt suicide. At the time of his death the siege had been underway for around 24 hours. Although a considerable time, the negotiation cell and forward command would not have been criticised by me for continuing the tactic of waiting for Mr Clarke to surrender for many more days if that is what was required.

I am of the view the incident was appropriately managed and executed. I commend the incident commander, the SERT commander and all of the negotiators on their efforts.

It has been submitted their efforts were suboptimal in two aspects: a failure to properly debrief two sources of potential relevant information; and a failure to adequately consider the use of direct contact between Mr Clarke and third parties.

I consider the debriefing of Mrs Clarke when she emerged from her house a couple of hours after the siege commenced was inadequate but I do not consider there was any failure to give adequate consideration to her being allowed to make direct contact with her son. The factors that militated against that occurring were compelling. And further, if she and his psychiatrist could not persuade Danny to go to hospital earlier in the day, there was no reason to believe she would be any more successful as the siege wore on.

I also consider the debriefing of the family friend Barry Flanagan was inadequate. In that case the failure to explore the nature of his relationship with Mr Clarke deprived the negotiators of information relevant to determining whether direct contact between Mr Flanagan and Mr Clarke may have been appropriate. There is now no way of knowing what might have been decided had an adequate debrief occurred, nor whether a third party contact may have succeeded had it been deemed appropriate to undertake such a tactic.

I can understand the frustrations of Mrs Clarke and of Mr Flanagan in not being allowed to speak directly to Mr Clarke. I sympathise with them over the recurring thoughts they must suffer over "what might have been". As I have indicated, the rationale for not allowing third party intervention is one addressed specifically in police negotiator training and the evidence is that there are sound reasons for it. I do not consider I have a sufficient evidence

base to recommend any changes to that policy. I do not accept that merely because the subject was suffering from mental illness and was paranoid about police a third party contact should necessarily have been undertaken more readily.

Findings required by s45

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

Identity of the deceased - The deceased person was Daniel James Clarke.

How he died - He died as a result of injuries sustained when he shot himself after a protracted stand off with police while suffering from mental illness.

Place of death - He died at Booie in Queensland.

Date of death - Mr Clarke died on 4 March 2009.

Cause of death - Mr Clarke died from a gunshot wound to the forehead.

Concerns, comments and recommendations

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

The circumstances of this case raise three issues which warrant consideration from that perspective, namely:-

- The communication breakdown;
- Record keeping of negotiation decision making; and
- De-briefing intelligence sources during sieges

Communication breakdown

A communication breakdown arose primarily because of poor radio reception. It is difficult to identify an obvious solution that could have been implemented, even with hindsight.

The obvious solution is placing the communication cell closer to the scene of the siege. I accept that the site of the communication cell is decided on the basis of many factors and the choice of Sergeant Nitschke in this case should not be criticised. I have no doubt the issue of proximity was and is given careful consideration when choosing a location. Sergeant Nitschke

acknowledged that the negotiation cell location in this case was less than ideal and he had settled on it only after an extensive search. The access to a landline for communication with outside areas made it a desirable location.

I know that the QPS is aware of the importance of this issue of radio reception. It has arisen in many inquests over which I have presided. I am not aware of any recommendation that I can make that would expedite the processes that are no doubt underway to address it.

Record keeping

Inspector Montgomery-Clarke also drew attention to the difficulty he had in comprehensively reviewing the negotiation as a result of an absence of records evidencing the basis of the various operational decisions that were taken during the siege. He drafted new procedures and log books designed to address this issue have been distributed. No further comment is required by me.

Debriefing intelligence sources

This is the third inquest I have undertaken involving a siege during which a person has emerged from the stronghold and has only been cursorily debriefed. In this case another possible source of relevant information was also not adequately de-briefed. This suggests to me that more emphasis needs to be placed on this aspect in the training or procedures used by officers engaged in such activities.

Recommendation – Review of incident management policies

I recommend incident management policies be reviewed to ensure adequate emphasis is placed on the need to comprehensively de–brief witnesses who may have intelligence relevant to the management of a siege.

I close the inquest.

Michael Barnes
State Coroner
Kingaroy
25 March 2011