CORONERS FINDINGS

PLACE INQUEST HELD: Brisbane
DATE: 6 & 7October 2005

This is the inquest into the death and circumstances of death of **Adam Anthony Fernandez.**

1. I must deliver my findings pursuant to the provisions of the *Coroners Act 1958.* I do so, reserving the right to revise these reasons should the need or the necessity arise.

2. The purpose of this inquest, as of any inquest, is to establish, as far as practicable –

- The fact that a person has died:
- The identity of the deceased person; and
- Whether any person should be charged with any of those offences referred to in section 24 of the Act.
- Where, when and in what circumstances the deceased came by his death

3. It should be kept firmly in mind that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence suitable for a criminal trial are not suitable for an inquest.

4. In an inquest there are no parties; there is no charge; there is no prosecution; there is no defence; there is no trial. An inquest is simply an attempt to establish facts. It is an inquisitorial process, a process of investigation: These observations were confirmed by Justice Toohey in *Anetts v McCann* ALJR at 175.

5. A Coroner's Inquest is an investigation by inquisition in which no one has a right to be heard. It is not inclusive of adversary litigation. Nevertheless, the rules of natural justice and procedural fairness are applicable. Application of these rules will depend on the particular circumstances of the case in question.

6. In making my findings I am not permitted, under the Act, to express any opinion, on any matter which is outside the scope of this Inquest, except in the form of a rider or recommendation.

7. The findings I make here are not to be framed in any way which may determine or influence any question or issue of liability in any other place or which might suggest that any person should be found guilty or otherwise in any other proceedings.

8. All proceedings before this Court are sad proceedings. At this stage I express my sympathy and condolences, and that of the Court, to the family of the deceased in their sad loss, in the tragic death of dam Anthony Fernandez.

Summary of the evidence.

In the early hours of the morning of 4 December 2001 Adam Anthony Fernandez was at his home when he telephoned emergency services. The operator thought that he was intoxicated in some way because his speech was slurred and he was hard to understand. The operator understood from his call that he was injured and bleeding and that he was threatening further self harm.

The ambulance was dispatched and also the police due to the circumstances.
The ambulance officers were told to wait in close proximity until the police had evaluated the situation and ensured that it was safe for the ambulance to attend.

Two local police officers from the Boondall station knew the address at 64 Miller Street Chermside. They had both attended that address only days before around midnight on 1 December 2001. They knew that Adam Fernandez lived at the address with Scott Riordan. On 1 December they had been notified to attend the premises after Scott Riordan had telephoned for the ambulance. He was fearful that Adam would self harm because he had returned home heavily intoxicated, was "depressed" and then armed himself with a knife. When he found out that Scott had telephoned the ambulance, Adam ran outside.

Constable Carmody and Senior Constable Roach attended and spoke with Scott Riordan. They located Mr Fernandez in a nearby back yard. On this first occasion they were able talk to him sufficiently to reach a situation where they could take hold of him without violent resistance or the need for any overt force. Mr Fernandez appeared to be disorientated and was very agitated. Officer Carmody though that he was showing signs of intoxication of some sort. The knife was not located. The police officers took him to the police vehicle. He became more agitated and was talking in a manner that was not rational. He had even called out for another police officer, Acting Sergeant Ryan to shoot him. The police decided that the appropriate course of action was to transport him to the nearest hospital with mental health assessment facilities at the Prince Charles Hospital. During the journey, Acting Sergeant Ryan accompanied Mr Fernandez in the back seat. Adam was talking about dead people looking at him and was agitated.

He was escorted to a seclusion room at the mental health unit and left in the care of the hospital.

On 4 December at about 3.30am the same two officers received a call over the radio via police communications to attend 64 Miller Street. They recognised the address and surmised that the call may involve Adam Fernandez. They were told that a male person had called for an ambulance reporting that he had cut his wrists and was contemplating further injury. They were told he sounded like he was intoxicated. As they arrived at the scene another police crew from Hendra also arrived. The officers who had previously attended at that address briefed the Hendra police to back them up as they approached the house to assess the situation. There were lights on in the house and music could be heard.

Constable Carmody and Senior Constable Roach approached the front of the house. The door was slightly open allowing officer Carmody to see inside. He recognised Mr

Fernandez who was seated and holding a number of knives. He also appeared to have blood on him. The police called out and Mr Fernandez came out to the top of the short flight of steps and stood on the landing. He was holding a number of knives including a large one and he appeared to have a lot of blood over his hands, body and face.

The officers tried to engage him in conversation and to persuade him to sit down and put the knives down. They identified themselves as the same people who had taken him to hospital just days before. Mr Fernandez did not obey or respond in any way to suggest that he understood what was asked of him, or that he intended to comply. He was verbally abusive and upset. He was waving the knives around causing the police to back off. Constable Carmody was so close that he felt sufficiently fearful to draw his gun. But this was replaced in his holster. Mr Fernandez rushed back inside and then came out very soon again and threw a small carton in the direction of Officer Roach. She manoeuvred away from it not knowing what it was. She pushed it over with her foot and discovered that it contained a quantity of blood.

The officers were concerned that Mr Fernandez was not putting the knives down. He was gesturing with the knives with motions to indicate he would cut himself on the wrists, the body and the back of his neck. They were fearful he might do himself further harm, or attack them. They were concerned that the flat mate, Scott Riordan might be in the house and might be injured or at risk of harm. They wanted to keep Mr Fernandez outside where they could see him and decide how best to approach and disarm him whilst still maintain their safety.

The officers explained their training with a range of ten possible responses to such a situation. They were authorised to use any of these tactics depending on;

- their assessment of the person or other people at the scene,
- -the situation unfolding and
- the physical locality.

Maintaining the safety of everyone was the primary motive.

They had to make a quick decision because of the circumstances. They knew they had back up from the Hendra crew and also their supervising officer, Sergent Wells. They knew the ambulance was standing by. There was brief but effective communication between the two officers that one would attempt a capsicum spray to disable Mr Fernandez while the other backed up with drawn pistol. Senior Constable Roach drew her weapon and prepared to shoot if necessary. Constable Carmody got closer to Mr Fernandez, yelled out “spray” to alert other officers and depressed the spray into Mr Fernandez’ face. The spray was immediately effective. Mr Fernandez was hit with spray into his eyes, nostrils and mouth. As he ducked his head and turned away he moved into secondary spray aimed by Constable Carmody. He stumbled back into the house. Senior Constable Roach replaced her weapon in the holster and officers Carmody and Wells entered the house. Mr Fernandez fell onto a coffee table dropping the knives which were pushed away. He was secured by the two male officers and Senior Constable Roach applied hand cuffs behind his back.

Mr Fernandez was yelling out in reaction to the pain caused by the spray into his eyes, nose and mouth. He was immediately taken out of the house and led to a garden tap where he was continually doused with water to relieve the symptoms. Meanwhile the ambulance had been notified to attend. They had been very close by up the street and

arrived to find Mr Fernandez being decontaminated with water. They were told that he had been sprayed with capsicum spray. Mr Fernandez was still yelling and no doubt due to the impact of the spray, was even less inclined to be co-operative at this time. He was still in handcuffs. The evidence is quite clear and consistent that there was no sign at the house that his breathing was in any way adversely affected by the spray. Although capsicum spray is known to have a greater impact and may trigger an asthma response in people who suffer asthma, there was no evidence that this happened in relation to Mr Fernandez. He was wearing a Ventolin puffer on a shoestring around his neck at the time. It was confirmed later that he did suffer from asthma.

The other officers searched the house and yard to check that there were no other people injured or affected by Mr Fernandez' actions. They were satisfied that no-one else could be found at the scene and therefore left a note to indicate that Mr Fernandez had been taken to hospital.

The police assisted to transfer Mr Fernandez into the ambulance. Because he was still not calm or co-operative he remained with his hands cuffed behind his back. This meant that he was first placed on to his front (so that the ambulance officer could check to see if he had any injuries on that side,) before turning him onto his side. Mr Fernandez was still abusing people verbally and resisting physically as well as spitting out. There was evidence that capsicum spray caused an increase in saliva. Mr Fernandez was spitting before and after he was put into the ambulance. It was possible he was clearing his mouth due to the capsicum spray and it was also possible that he was spitting at people in anger and as a reaction to his distress.

A preliminary assessment of Mr Fernandez' condition indicated that he needed to be transported to a medical facility to receive attention for physical injuries. Therefore the ambulance took him to the Royal Brisbane Hospital. Police officers Carmody and Bainbrigge accompanied Mr Fernandez in the back of the ambulance to assist ambulance officer Skreczynski to treat and monitor Mr Fernandez during the journey. They assisted with irrigating his eyes with saline solution and placing the device to monitor blood oxygen levels. The evidence from the Ambulance officer was that the police officers remained calm and professional during the journey and that no force was applied other than to maintain him on the stretcher. He had been secured with the two standard belts. There was nothing to suggest that Mr Fernandez was in any way compromised in his breathing during the journey.

He arrived at the hospital where security and medical staff met the ambulance. He was assisted into a room, still in handcuffs because he was still thrashing around.

Constable Carmody went to the psychiatric ward so that he could complete a form required to have Mr Fernandez assessed under the Mental Health Act. Senior Constable Roach went into the treating area to remove the hand cuffs when requested. Mr Fernandez was lying on his side and again, there was no indication of any compromise to his breathing. In the course of entering the hospital Senior Constable Roach remembers speaking to one of the hospital security officers to explain that Mr Fernandez was wet because he had been sprayed. She does not recall whether she explained this to mean that he had been sprayed by capsicum spray.

The ambulance officer provided a brief verbal handover to the hospital staff indicating the patient was apparently intoxicated with alcohol and had cut himself. She could not recall whether or not she informed the staff about capsicum spray although the doctor's statement appears to indicate she was informed by someone, possibly by police or ambulance communication in advance of the arrival of the patient.
One ambulance officer went out to clean up the ambulance while the other wrote out the report to hand over to the hospital. Before it was completed, that officer was shocked to hear that the patient was in cardiac arrest and then died.

I remark that I am satisfied that the police officers and ambulance officers acted lawfully, appropriately and in the best interests of Mr Fernandez. He could not have been left to his own devices at the scene. He needed to be medically reviewed regarding his self inflicted injury before then being assessed psychiatrically.

Dr Butler was the senior medical officer on duty in the emergency ward at the time Mr Fernandez was admitted. She provided a detailed sworn statement to the inquest but was unable to attend the inquest due to illness. Her attendance was excused after consideration of all other evidence. She said Mr Fernandez arrived at the hospital at 4.13am.. She knew to expect a patient who was physically and verbally abusive, who was threatening suicide and who had slashed his wrists. Her statement also indicates that she had been informed that the patient had been sprayed with capsicum spray.

Unfortunately, Mr Fernandez was still acting in an aggressive and verbally abusive manner when brought into the hospital. Initially when Dr Butler saw him he was lying face down with hand cuffs on but still thrashing around. He was being restrained by security officers and he was still spitting, kicking and threatening both himself and the people who were trying to help him.

It was necessary to continue to restrain him, so that the doctor could examine him. It is importance to note though that this restraint did not adversely impact on Mr Fernandez as it is documented that he was breathing spontaneously, alert and with large reactive pupils. He was moving all limbs and was well perfused with rapid heart beat and good oxygenation saturation. He was however, irrational, unable to be calmed and still expressing suicidal and homicidal intent. It was therefore considered necessary to sedate him.

I note an independent review of the treatment by Dr Butler was performed by Dr Elcock, an emergency medicine specialist practising in Townsville. He reviewed all medical material at the request of the coroner's office. The administration of the sedation, its type and dosage was considered appropriate.

The sedation had the desired effect as Mr Fernandez settled down and became drowsy but still responded to verbal stimuli by opening his eyes, but then speaking incoherently. It was at this point that the hand cuffs were removed. He was placed onto his left hand side with his head tilted down to protect his airway in case he vomited.

Dr Butler said it was about five or six minutes after the administration of the sedatives, that Mr Fernandez started to vomit. Initially this was liquid vomit and able to be suctioned away. Maxolan was given via the drip to reduce nausea. Mr Fernandez

stopped vomiting and the oxygen mask was reapplied. He was calm and stable and observation of his vital signs was able to be recorded. They were all acceptable with oxygen saturation at 99 percent, blood pressure at 130 / 55 and heart beats at 125 per minute. His respiration was 20 breaths per minute. He was still lying in the left lateral position.

But a very short time later Mr Fernandez suddenly started to vomit copiously including large semi solid chunks of food. Suctioning efforts continued but after thirty seconds it was apparent his airway was blocked and he was in respiratory distress. Dr Butler's first method to assist was to establish a nasopharyngeal airway. This was chosen as the first method because Mr Fernandez had a tightly shut jaw. The tube was unable to be passed from nasal passage to pharynx. Dr Butler then tried to intubate him by passing a tube into his mouth and down his windpipe. Again, there were difficulties when he started to vomit copiously. He was turning blue and his oxygen levels were decreasing rapidly. The emergency medicine consultant was called as well as registrars from anaesthetics and from the intensive care unit.

To be able to attempt to pass a tube down the back of the throat and into the windpipe it was necessary that Mr Fernandez be given medication to be unconscious and relaxed. The independent emergency specialist, Dr Elcock agreed that these medications were appropriate. Again, Dr Butler tried to intubate by first inspecting the mouth but she could not see the voice box due to vomit. Suctioning and manual clearing was performed but there was still more semi solid material further down the throat, out of reach and blocking the airway. An attempt to intubate was unsuccessful with the tube passing into the oesophagus and more vomit issued up the tube, requiring its immediate removal.

Oxygen was administered by a bag valve mask but was not effective due to the obstruction.

Mr Fernandez then suffered a cardiac arrest. External cardiac compression was commenced and adrenalin administered.

The remaining option was to attempt a surgical intubation via a tracheostomy. The doctor had difficulty in finding the anatomical landmarks. (Subsequent autopsy examination revealed a very small incision had been made into the correct area of the trachea but had not gone right through the tissue to establish an opening to admit a tube.) An attempt was then made to insert a cannula into the trachea between the cartilage rings. At this time Dr Gillis, from intensive care arrived and took over the airway. Dr Gillis also could not achieve intubation initially but subsequently believed that the tube had passed in the wind pipe. During this period Mr Fernandez had become asystolic with no heart beat. He remained hypoxic with no pulse. Further drug support was administered but without any positive result. Resuscitation attempts were ceased at 4.55am.

An autopsy was performed by Professor Naylor. He also took specimens for toxicology testing. The most crucial finding was that there was abundant partially digested food material, similar to the stomach contents that was found in the pharynx, entrance to the larynx, in the trachea and bronchi. The food particles extended all the way into the pulmonary bronchi confirming the obstructions to the airway as

encountered by the treating doctors. Dr Naylor observed that the particles were present and obstructing air but the airways themselves were not unduly reddened or otherwise affected by either the food particles or the possibility of the effect of capsicum spray. There was no evidence of any pressure or injury to any part of the airways.

The coronary artery vessels were narrowed due to coronary artherosclerosis disease process, reducing the passageway for circulation of blood by about 50 %. On microscopic examination this was seen to be more extensive to the extent of a sixty % narrowing of the arteries. There was some information from various sources in the inquest which raised the issue of a possible brain tumour. The neuropathologist Dr Tannenberg examined the brain and found it to be normal.

The other significant finding at autopsy (apart form confirmation of the food obstruction of the airways) was in the toxicology results. Mr Fernandez' blood alcohol level was .276mg / 100ml of blood, which is extremely high.

Dr Naylor considered all of the information, including the history of Mr Fernandez from the time he was taken into police custody. He considered the possibilities that Mr Fernandez' death could be related to capsicum spray, aspiration of food contents, the presence of extreme levels of alcohol, and the possibility of epileptic fit, cardiac explanation and the failure of the tracheotomy. Toxicity from the drugs administered was also considered as well as postural asphyxia in the course of him being restrained.

The most significant finding was the food particles into the airways in the context of the history of vomiting which occurred after the patient had been stabilised. The most likely cause of death was aspiration. Coupled with this was the extreme level of alcohol which the pathologist considered to be sufficient in itself to have caused vomiting and aspiration. The pre-existing narrowing of the arteries then exacerbated the hypoxic impact of lack of oxygen.

There was no evidence to suggest that epilepsy had triggered a fit that had been involved in the death. No brain tumour was discovered although Dr Naylor and Dr Tannenberg were alert to the possible existence of one. The toxicology results showed that drugs were all within therapeutic range.

Finally, the history of the timing of events and the physical findings at autopsy did not support a hypothesis that exposure to capsicum spray, or possible physical restraint had any causative impact in Mr Fernandez' death.

I accept the evidence of all the witnesses who gave evidence. I accept the expert opinions of Dr Naylor and Dr Tannenberg concerning their findings at autopsy and their conclusions regarding the cause of death.

Finally I accept the medical evidence tendered of the treatment at the hospital as documented. Dr Elcock independently reviewed these records and considered the situation that unfolded to be an extremely difficult one. He did not make any criticism of any of the decisions made by the medical personnel in treating Mr Fernandez. He concurred with the difficulty faced by a doctor in trying to clear and maintain an airway in a heavily intoxicated person who was vomiting copiously. He agreed that

the choices of techniques to re-establish the airway once it had become obstructed with vomit were correct and appropriate. He conceded that not even specialist emergency airway doctors could guarantee success in trying to intubate a patient in these circumstances. He agreed that the surgical attempt at tracheostomy was required in the events that unfolded, but that the situation was by this stage unlikely to be retrievable. The situation was always potentially fatal given the level of intoxication which precipitated the vomiting. Once a tracheostomy was required after the airways had been physically obstructed there was no other option but to continue to attempt the procedure, even thought this involved deep sedation which removed the patient's involuntary responses to spontaneously clear the airways by gag reflex or coughing.

I accept Dr Elcock's evidence and rely on his opinion concerning the medical treatment provided to Mr Fernandez.

There remains one further issue, namely the background situation of Mr Fernandez' overall mental health. Could or should this have been managed in some other way to prevent the sequence of events arising which lead to his tragic death? Dr Purrsey was the psychiatric registrar at the Prince Charles Hospital who saw Mr Fernandez on 1 December 2001. This was when the police first attended Mr Fernandez' house and brought him to hospital for psychiatric assessment. Dr Purssey was still completing his training when he saw Mr Fernandez but he had a lengthy history in psychiatric work going back to the early nineties in Victoria. He was subjected to some stern cross examination directed to the issue of defending his decision that Mr Fernandez was not suffering a mental illness requiring him to be detained under the mental Health Act on 1 December 2001. No doubt counsel assisting was concerned because the evidence was that Mr Fernandez was taken to the hospital after an incident when he was intoxicated, aggressive, abusive, threatening self harm but also indicating to police that they should shoot him. He was also irrational and saying that dead people were watching him. Although Dr Purssey conceded that this could be described as a hallucination he resisted all suggestions that this could be categorised as an indication of psychosis or that Mr Fernandez was suffering a mental illness requiring detention. He had lengthy notes made at consultation and he explained his diagnosis. He concluded that Mr Fernandez was suffering from personality disorders which were exacerbated by alcohol and possible substance abuse. Coupled with this was a feeling of sadness. He would not agree with Mr Isdale's proposition that the events indicated more than sadness and that Mr Fernandez was suffering from depression. He said that sometime s a person who was merely "sad" may consider suicide, but the overall presentation was that Mr Fernandez was subject to a personality disorder which manifested itself in anti social behaviours, exacerbated by alcohol, rather than a mental illness requiring mandatory detention.

The history as indicated by the police (which commenced in July 2001) coupled with the personal history recounted in Scott Riordan's statement, backed up the significance of excessive alcohol intake with episodes of aggression and attempts at self harm.

As to what might have assisted Mr Fernandez, unfortunately there are no quick panaceas. The police had no option but to intervene in the situation they were called out to. They had to prevent Mr Fernandez from self harming or possibly harming

other people who could have been at the address. He was injured and he could not have been left alone in his condition, clearly armed and dangerous. The situation was dealt with as best they could by employing capsicum spray and then providing first aid as expeditiously as possible. The ambulance officers followed through with first aid and monitoring while transporting him safely to the nearest medical facility to have his physical and mental situation assessed and treated. His condition and behaviours required the involvement of security officers at the hospital to enable medical attention to be given to him. His condition was assessed and sedation was required to provide him proper care. He was stable with no problem with breathing or reaction to capsicum spray when he suddenly began vomiting so profusely that his airways were obstructed despite all precautions and interventions being taken. Attempts to save him were prompt and appropriate. Although not successful, the medical treatment does not call for criticism.

Mr Fernandez death was tragic but I cannot see that there are any matters which warrant coronial comment aimed to prevent deaths occurring in similar circumstances.

I am satisfied on the balance of probability and find accordingly that:

(a) The identity of the deceased was Adam Anthony Fernandez

(b) His date of birth was 18 April 1968.

(c) His last known address was 64 Miller Street Chermside.

(d) At the time of death his occupation was disability pensioner.

(e) The date of death was 4 December 2001

(f) The place of death was Royal Brisbane & Womens Hospital, Herston

(g) The formal cause of death was:

Aspiration , due to
Alcoholic intoxication.

Coronary atherosclerosis contributed to the cause of death.

This Court has jurisdiction in appropriate cases to commit for trial any person or persons which the evidence shows may be charged with the offences mentioned in section 24 of the Coroners Act 1958. The evidence is not sufficient to put any person or persons upon any trial.

There are no recommendations made pursuant to section 43 in this matter.

Chris Clements

Deputy State Coroner