

SOUTH



AUSTRALIA

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Coober Pedy and Adelaide in the State of South Australia, on the 10th, 11th and 12th days of June 2003, the 4th, 28th and 29th days of July 2003 and the 29th day of October 2003, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Geoffrey Douglas Nicholls.

I, the said Coroner, find that, Geoffrey Douglas Nicholls aged 41 years, late of 17 Barnett Way, Derby, Western Australia died at Oodnadatta, South Australia on the 20th day of July 2001 as a result of a shotgun wound to the chest.

1. Introduction

- 1.1. Geoffrey Douglas Nicholls was born on 19 July 1960. He died on 20 July 2001 as a result of being shot by a police officer, Senior Constable Mark Sutton, during the course of an incident outside the Transcontinental Hotel at Oodnadatta.
- 1.2. This incident has been the subject of an extensive investigation by a team lead by Chief Inspector Brian Fahey of South Australia Police (SAPOL) at the direction of the Commissioner of Police. This process is known locally as a ‘Commissioner’s Enquiry’.
- 1.3. It is arguable whether Mr Nicholls’ death constitutes a ‘death in custody’ within the meaning of Section 12(1)(da) of the Coroner's Act 1975. A protocol for investigation of deaths in custody has been developed between my office and the Commissioner of Police, and this treats such cases as deaths in custody. Since I decided that an inquest into the death was desirable in the public interest, the strict definition is somewhat academic in the circumstances of this case.

2. **Background**

- 2.1. Mr Nicholls had a medical history going back to January 1989 where he was treated in the Royal Perth Hospital for a condition known as Bartters Syndrome, a rare kidney disorder which results in low potassium levels leading to weakness and lethargy.
- 2.2. Mr Nicholls was treated at the Canterbury Hospital in Campsie, New South Wales in May 1989 for this condition when he was placed on an intravenous drip, but before his condition could be fully investigated he removed the drip and discharged himself from hospital (see the statement of Dr Briggs, Exhibit C30a).
- 2.3. Mr Nicholls first saw Dr Craig Raeside, Forensic Psychiatrist, in December 1993 at James Nash House, the South Australian Forensic Mental Health Service Secure-Care Facility. Dr Raeside described:

'Situational crisis precipitated by a recent escape from Long Bay Gaol in New South Wales with subsequent arrest on a day prior to his admission. He was detained under the South Australia Mental Health Act by a police doctor because of expressions of wanting to die.'

(Exhibit C29a, p2)

Mr Nicholls was discharged to the Adelaide Remand Centre on 23 December 1993.

- 2.4. A statement of Mr Alan Melman, an employee of the New South Wales Correctional Health Service based as Long Bay Gaol, records:

'Geoffrey Douglas Nicholls has extensive history with the New South Wales prison service from 20/8/91 until 30/7/00, having served time in Long Bay Gaol, Grafton Gaol and Broken Hill Gaol.

...

He often presented with anger problems and had suicidal and self-mutilation tendencies. On 2/4/92 he lacerated his left arm causing a 4 centimetre cut and requiring two sutures. He often suffered depression and talked of 'Joining his son' who had died at an early age.'

(Exhibit C31a, p1-2)

- 2.5. Senior Constable Bruce Wyborn was stationed at Broome in Western Australia, on 14 October 1996. On that day, Senior Constable Wyborn stopped a vehicle driven by Mr Nicholls and his son Troy to question them about larceny of petrol when, after refusing to get out of the car, Mr Nicholls splashed petrol from a jerry can over

himself and Troy and throughout the inside of the vehicle and then began brandishing a match and matchbox, saying:

'Give me the key or I'll set this thing on fire, I'll kill us all.'
(Exhibit C49a, p2)

Senior Constable Wyborn wrestled with Mr Nicholls through the driver's window of the car, and at one stage Mr Nicholls attempted to take the policeman's firearm from its holster. Senior Constable Wyborn eventually restrained Mr Nicholls by placing him in a headlock until a backup police vehicle arrived (see Exhibit C49a, p3).

- 2.6. After Mr Nicholls was removed from his car and handcuffed, he said to Senior Constable Wyborn:

'You're only picking on me because I'm black.'
(Exhibit C49a, p4)

Senior Constable Wyborn commented that Mr Nicholls had not appeared Aboriginal to him.

- 2.7. There was another incident in Western Australia on 13 July 2001, in which Mr Nicholls was charged with possession of cannabis as a result of him attending the Derby Police Station offering information about illegal drug activity. Apparently in order to establish his bona fides he produced five small plastic bags of cannabis but did not divulge anything further. After he was charged and had left the police station, police heard a single gunshot from the vicinity of the police station but they were unable to find the source of the noise. Both police officers who dealt with him on that occasion described his behaviour as 'excessively paranoid' and 'abnormal' (Exhibit C46a) and 'paranoid and agitated' (Exhibit C47a).
- 2.8. There were several other examples of such behaviour in the materials before me. For example, the statement of Adam Ecenarro records that he was concerned about his reaction after he told Mr Nicholls of his grandmother's death (he had received a telephone call from Shane Nicholls asking him to pass the information on). He said:

'When I told him he became very upset and I heard him say he might as well hang himself. I told him not to be so stupid. A few days later I heard him saying he would have to get to Sydney for the funeral which is in about one weeks time on a Friday. This occurred about three weeks before he actually left Derby. The funeral would have been well over before he even left.'
(Exhibit C6a, p2)

2.9. The statement of Veronica Ecenarro (Exhibit C26a) records that Mr Nicholls had told her on a number of occasions that he wanted to hang himself, and the statement of David Damon (Exhibit C9a) also mentions that Mr Nicholls had told him at one stage that he felt like ‘chucking the towel in’.

2.10. The statement of Donna Jane Damon gives some further information about a particularly distressing event in Mr Nicholls’ life:

‘During the time that Geoffrey lived with us he seemed really depressed about his son Troy dying. I’m not exactly sure but I think he died last year or the year before. Geoffrey told me that he died from petrol sniffing. He used to say that he was sick of living and wanted to chuck the towel in. I was aware that he was taking a large amount of medication but I am unsure what for.

...

When he moved into Aunty Judy’s house he told me that his Grandmother had died and it was also the anniversary of his son’s death. Geoffrey just seemed to want to be by himself and he just walked around a lot.’

(Exhibit C10a, p2)

2.11. The investigators in this matter have produced a large number of medical records relating to Mr Nicholls including clinical records from South Australia (Glenside Hospital), New South Wales (Canterbury Hospital, Royal Prince Alfred Hospital, Nepean Hospital, Long Bay Gaol Corrections Health Service) and Western Australia (Sir Charles Gairdner Hospital and Corrections Medical Service).

2.12. The investigators have also produced voluminous criminal records from every state in Australia and the Northern Territory and from the Australian Federal Police.

2.13. Last known medical intervention

On Sunday, 4 March 2001 Mr Nicholls was arrested by Constables Gibson and Ackland at Ceduna on the far west coast of South Australia. In behaviour remarkably similar to the incident in Broome in October 1996, Mr Nicholls had driven off from a service station without paying for petrol and was stopped by police about 30 minutes later. He then drove off and police pursued him and, before his car had stopped, Mr Nicholls set fire to the interior of the vehicle before stopping and alighting. After he was arrested, the vehicle was then totally destroyed by fire. It transpired that the vehicle had been hired from Redcliffe, Western Australia on 27 February 2001.

2.14. After he was arrested, Mr Nicholls became agitated, saying that he wanted to kill himself. He was detained pursuant to the Mental Health Act 1993 at Ceduna Hospital where he was medicated and transported to Adelaide the following day.

2.15. Dr Raeside reports that Mr Nicholls was admitted to Glenside Hospital in Adelaide on 5 March 2001 having been detained from the Ceduna Hospital where he had been taken by police following a car chase. He said:

'He allegedly set the vehicle alight using a cigarette lighter in a suicide attempt, in an impulsive act. On admission he reported a number of recent stressors and losses including the death of his 14 year old son two years previously from petrol sniffing and a niece the previous year. He described chronically low mood since that time, frequently moving around Australia.'

(Exhibit C29a, p3)

2.16. Mr Nicholls was found to be suffering from hallucinations and paranoia and he was admitted to the Glenside Hospital for further assessment. He was transferred to the Royal Adelaide Hospital to receive intravenous potassium supplementation, but absconded from there. I have no record of any contact with the mental health system since that time.

2.17. Conclusions

Dr Raeside summarised Mr Nicholls' condition as follows:

'In summary, Mr Nicholls was an aboriginal man with longstanding disturbed behaviour since his childhood with some evidence of depressed mood at times associated with suicidal ideation. He was diagnosed as suffering from Bartter's Syndrome, a chronic disorder of kidney functioning leading to low potassium levels. At times of suicidal thoughts he has refused supplementation. It is evident from the case notes that his behaviour has been impulsive and disturbed at times, particularly in relation to police. It is therefore possible that at the time of his death he may have been likewise disturbed and in company with police acted in a manner likely to cause him harm. This would be consistent with previous behaviour.

There is no contemporary information as to Mr Nicholls' mental state at the time of his death, but the indications are that his conditions were longstanding and chronic and therefore likely to have been similar to previous presentations. '

(Exhibit C29, p3-4)

2.18. I appreciate that most of this background information is negative and does little to describe Mr Nicholls as his family and friends knew him. Mr Bleechmore, counsel for Shane Nicholls, brother of the deceased, told me that he had attempted to obtain a

statement from his client detailing some of the more positive aspects of the deceased as a person, but such a statement has not been forthcoming.

3. The trip to South Australia

3.1. Mr Nicholls began living with Ms Judy Rose, David Damon's aunt, in Derby, Western Australia for about a month or so before 13 July 2001, which was the day that Mr Nicholls was arrested for cannabis possession. On that day they left Derby for Kununurra in Ms Rose's white Ford Falcon station wagon. She said that they were going to Kununurra to meet Ian Whitehurst but he was not there so, after waiting for a couple of days, they decided to travel to Sydney to go to Mr Nicholls' grandmother's funeral. As I have already commented, the funeral would have been long over by then. Also travelling in the vehicle were Ms Rose's two children, Lance who was then 8 years old and Marcus who was then 2 years old.

3.2. Ms Rose told me that Mr Nicholls brought a gun with him in the car:

'... to shoot some fresh meat along the way and for protection in the Northern Territory because of that fella at Barrow Creek who shot the other fella.'

(Exhibit C66a, p2)

This is a reference to the alleged murder of British tourist Peter Falconio at Barrow Creek on 14 July 2001. Ms Rose said that the gun had been borrowed from a friend, Mr Jacky Dann from Derby, on the basis that Mr Nicholls was going pig shooting (Exhibit C11a, p2). He had purchased ammunition from Mr Jeffery Ryall of the West Kimberley Guns and Ammo store in Derby, telling him that the ammunition was for Jacky Dann (Exhibit C12a, p1).

3.3. When they were near Katherine, Ms Rose described a rather bizarre incident in which Mr Nicholls killed a cow. She said:

'I remember Geoffrey stopped the car and was talking to these people who were Aboriginals. They wanted Geoffrey to shoot this cow so they could get some meat. Geoffrey got his rifle from out of the car and he walked right up to the cow and shot it in the front of the head. The cow ran off and Geoffrey and Lance chased it into the bush. The other people that wanted Geoffrey to shoot the cow then just got into their car and drove off. Geoffrey and Lance were gone for about an hour. When they returned to the car Geoffrey told me that he had shot the cow about twenty times but he couldn't kill it. He also told me that he had hit the cow on the head with the rifle and broke the stock. I saw that the main section of the rifle stock was broken. We then continued on to Katherine.' (Exhibit C66a, p3)

3.4. Just before they reached Katherine, the car was stopped at a police roadblock which had been set up as part of the investigation into Mr Falconio's disappearance. Ms Rose said that the police asked them where they were going and whether they had any guns. Ms Rose told them, untruthfully, that they did not. Mr Nicholls had the gun down by his side in the front passenger seat.

3.5. They continued south through Alice Springs into South Australia. Ms Rose described another rather bizarre incident involving the gun:

'I'm not exactly sure where it was but I'm pretty sure it was when we got into South Australia that the rifle discharged and the bullet went through the floor near the accelerator and punctured the front right hand tyre. I'm not sure why the rifle went off, but I think it was just an accident.'

(Exhibit C66a, p4)

3.6. When they arrived at Marla, Mr Nicholls said that they would go to Oodnadatta to get a hot meal. This was a rather odd suggestion, since there were hot meals available at Marla, and the road to Oodnadatta, which is unsealed, was closed because of recent rains.

3.7. While on the way to Oodnadatta, another incident occurred which illustrates Mr Nicholls' mental state. Ms Rose said:

'Not that far out of Marla, Geoffrey pulled up the car. As he stopped he had a gun in his right hand, he was driving and he had gun on the side of the driver's seat next to him. As we stopped he pulled the gun out. It was a rifle but the butt end was broken off it. At first he wanted to point it at me but I said not in front of my kids and we had a bit of a wrestle over the gun. He got out of the car and was standing near it and he put the gun under his chin. He had his back to us. He turned around after a while and told me not to muck around as he had one bullet in it, he said that he could do it anytime, as he had no family. I don't know why Geoffrey was doing that, he had been stressed out ever since we left Derby and he had been drinking beer the whole trip over; we didn't have an argument or anything he just did this. After he had said that he jumped back in the car and we continued on over to here (Oodnadatta). We got going again, I don't know how long it took to get to Oodnadatta, and I just ignored him all the way. The kids weren't upset then.'

(Exhibit C66, p2-3)

3.8. When giving oral evidence, Ms Rose described how her children had been 'screaming' earlier during the incident, when Mr Nicholls had produced the gun while he was still inside the car (T29).

3.9. The group arrived in Oodnadatta at about 4pm on Friday, 20 July 2001. Mr Nicholls, Ms Rose and the two children went to the Transcontinental Hotel to get something to eat. They walked in through the front door and spoke to the licensee, Mr Alan Wilson. Mr Wilson told me that it is a condition of the liquor license that no-one under the age of 18 years should be permitted in the front bar. For that reason, there is a separate entry to the hotel, further north from the front entrance. Mr Wilson described what transpired as follows:

'As the male came through the front door I advised him that no children were allowed in the front bar area. I said,

“Mate no children are allowed in the front bar.”

The male asked if they were allowed in the pool table area which is still within the front bar, and I replied,

“No the pool table is part of the front bar, you will have to take them around to the lounge area.”

The lounge has a separate entry from the front of the hotel.

The male didn't reply and I noticed he looked agitated. He then left the bar area with the female and the children via the front door and entered the lounge area. The male then entered the bar area through the internal door and approached the bar and asked if we served meals.

I informed him that no meals were being served at that time however meals would be served later on. Our normal meal timings for dinner is between 6.00 p.m. to 8.00 p.m.

The male then said,

“Are you sure about that?”

The male said this in a sarcastic tone of voice which I interpreted as a smart arse comment. I thought he had a problem of some sort with me. I asked him what the problem was and he informed me that he had heard that I didn't like to serve Aboriginals. I remember being slightly abrupt with the male and I explained that I worked for Aboriginals and if he didn't like it he could leave the hotel. I remember he was muttering some comments and I heard him use the term racist. I then asked him to leave the hotel and he continued to mutter under his breath and appeared to be more agitated. I then walked to the phone with the intention of contacting the police if he had not left the hotel. I heard him say,

He said, “Go on then ring the police.”

He then walked back into the lounge and he left the hotel with the Aboriginal woman and the two children. I then did not bother to ring police. I would describe his demeanour as being slightly irrational and agitated. He didn't appear to be intoxicated. As I normally do when I ask someone to leave the hotel that appears hostile, I went out the back to make sure he was not damaging my vehicle and that in fact he was leaving the area. I saw the front of the Ford Station Wagon parked at the southern end of the hotel. I could not see the male and I assumed he was sitting at the table at the front of

the hotel at the southern end where a lot of locals normally sit. I then returned inside the hotel.'

(Exhibit C67, p2-3)

3.10. There is a suggestion that as Mr Nicholls walked out of the Transcontinental Hotel following this exchange, he made a sign with his hand in the shape of a gun at Mr Wilson. Lance Rose, then aged 8, told Detective Senior Constable Niblett that he did not see this happen, and that his mum had told him that she had seen this (Exhibit C64b, p9). Ms Rose told police in her statement that she did not see Mr Nicholls make the sign, and that Lance had told her that he had (Exhibit C66, p4). Having regard to this conflict, I will discount this piece of evidence.

3.11. After they left the hotel, Mr Nicholls, Ms Rose and the children walked back to the car and drove down the main street of Oodnadatta, and turned a corner so that they were parked on the southern side of the Transcontinental Hotel. Mr Nicholls got out of the car with the gun. The gun no longer had a stock, and the remnants left close to a pistol-grip behind the trigger. Ms Rose said that as Mr Nicholls left with the gun, she said:

'Don't be silly, put the gun away.'

And that Mr Nicholls replied:

'Don't worry the welfare will look after you.'

(Exhibit C66, p4)

He walked through a gateway into the rear of the hotel premises. Ms Beverly Kemble, the co-manager of the Transcontinental Hotel, was in the backyard of the hotel when she saw Mr Nicholls on the other side of a wooden fence. She asked him to leave, whereupon he lifted the gun and pointed it at her saying:

'I'm not going anywhere.'

She said:

'He was as calm as can be, and looked me straight in the eye, his hands weren't shaking or anything.'

(Exhibit C68, p2)

3.12. Ms Kemble dropped down behind the fence and Mr Nicholls turned to his right. Ms Kemble turned and ran back into the hotel in the opposite direction. She reported to Mr Wilson that Mr Nicholls had a gun and then proceeded to lock all the doors at the

front of the hotel. A few minutes later Mr Nicholls approached the front door. Ms Kemble said:

'The man came to the front door of the hotel while we were in the bar and he shook the door, I could hear it rattling, the door has four small plastic panes in it, which you can see through. A second or two later I heard a loud bang outside near the door, I knew straight away it was a gunshot. On hearing the shot we all ducked, I didn't see where the bullet came into the pub, but later I found out it was in the side of the door he had rattled.'

(Exhibit C68, p4)

4. First contact with police

4.1. Mr Wilson said that he was just about to telephone the police when the telephone rang, and he recognised the voice of Senior Constable Mark Sutton, one of the local police officers. Sutton had intended to advise Mr Wilson about the state of the road between Oodnadatta and Coober Pedy. Mr Wilson said:

'I advised him straight away that there's a guy at the hotel with a gun and he had just fired a shot. I don't remember what Mark said but I remember repeating myself to him with some urgency.'

(Exhibit C67, p4)

4.2. There is a suggestion that Sutton did not believe Mr Wilson at first, thinking that it was a practical joke. Sutton admits that he initially said to Mr Wilson:

'Are you kidding?' (T265)

However, when Mr Wilson repeated himself, Sutton said that he would attend 'straight away' (T265).

4.3. Sutton said that he told Senior Community Constable John Coombe that 'there is a man with a gun at the pub', and that he should get his firearm and they would attend immediately. Sutton went into the Sergeant's office, unlocked the cupboard, put on his gun belt, unlocked a cupboard, took a pump-action shotgun and loaded it with four rounds. Taking the rest of the contents of the box with him, he indicated to Coombe that he was ready to go but Coombe told him that he had a problem with his accoutrement belt in that it had not been reassembled after a recent assignment.

- 4.4. In any event, the two officers attended at the hotel without Coombe's firearm, and without ballistic vests. I will discuss this issue in more detail later. For brevity, and without disrespect, I will refer to the police officers by their surnames.
- 4.5. The police officers immediately attended in the vicinity of the General Store from where Sutton could see several people milling around the store and the telephone box in the immediate vicinity, and a man standing at the southern end of the Transcontinental Hotel, perhaps 50 to 60 metres away, holding what looked like a rifle. Sutton said that the man was waving his arms around in an agitated state. He gave Coombe his revolver, alighted from the police vehicle and walked towards the hotel. As to the general public, Sutton said:

'.. there were people standing on the verandah they would have been 25 metres away I suppose but protected by the building. There was people on, behind him on the other side of the side road standing next to the fence, now they only would be 20, 15 to 20 metres away from him. There was people, children in the playground which was on the left-hand side of me. I could hear them and see them as we were approaching and there was definitely people in the store which was what I - 50 to 60 metres away.'

(Exhibit C74a, p6)

- 4.6. Sutton approached the hotel from the northern side. He said:

'MS Right my primary concern was the safety of the people in the vicinity of and I make no qualm about that that was my primary concern. There were people who I know to be locals who are alcoholic abusers in the vicinity and were wandering around aimlessly. I was telling, as I was approaching, the minute I got out of the car I identify put the gun down, police put the gun down put the gun down, police put the gun down. Now I've shouted out as loud as I can in deep voice as I can so it was audible for two reasons, one to identify to the man that I was who I was and to see me to put the firearm down and I wanted to deal with the situation and also so the local people there could understand in plain English as I can instead of saying move that there is a situation here. I wanted them to be conscious of what's happening to look at my voice and to hear my voice and to move out of the way which I believe happened so that's. I wanted to keep the gentleman in sight the whole time now if I'd gone to cover which was the building I would have lost vision or sight of him.

BF And why did you want to keep him in sight the whole time?

MS Because of the amount of people that were around, the way that he was behaving, jumping up and down waving his arms around. He had gun in his hand and I believe that there was a potential for danger.

BF Had he been doing any actions with the firearms from the time you first observed him till this point to indicated that he was going to fire that gun?

MS Um, as I was walking towards his location along the pine parking barriers about the third parking barrier from the north in to the south one two three from the north I observed him to lift the firearm and point it at me and sighted me with that firearm. I have pumped my shotgun and put a round into the chamber. I have raised that firearm up to sight him and I have sighted him but at the same time I have moved towards diagonal towards the hotel to gain at least some sort of cover. Still yelling out put the gun down put the gun down, put the gun down police put the gun down it wasn't police every time but police was used in between.'

(Exhibit C74a, p6-7)

4.7. Sutton moved towards the verandah at the front (eastern) side of the hotel, continually asking Mr Nicholls to put the gun down. He said:

'BF But is it case that you're still walking towards this person?

MS Yes

BF With the gun out?

MS Yes I walked to where the word hotel is painted on the front of the hotel around roughly where the 'E' was and I again verbal this man put the gun down, put the gun down, let's talk, put the gun down. He is then sighted me again and fired a shot.

BF Why were you continuing to walk towards this person?

MS Because of the amount of people that were still in the area I wanted to get the situation where I could control and speak to him at a closer stage at a closer basis. Now I believe I was in cover in a certain extent not the ideal cover there's no doubt about that but I was within cover but I could still speak to this man and see him. I wanted him to put the gun down, I really – that's what I wanted him to do, I wanted him to put the gun down and I wanted to put myself in a situation where I could tell him to do that.

...

MS I began 'put the gun down put the gun down' um now he is agitated is put the gun down from the sighted position but is still holding the firearm. He said something along the lines I've got a rifle and you've got a shotgun I can shoot you you can't shoot me which in all honesty he was right. I have not I've kept my firearm down I've kept within the reasonable relevant cover of the corner of the building, I've yelled put the gun down, put the gun down. He's then sighted the rifle again and fired another shot. I recall ducking and leaning back to the right. I wasn't leaning out there talking to him the whole time, I was sort of moving in and out.

...

MS I've then kept this man in eyesight again I've walked backwards slowly and this man has gone behind the fence the southern fence. Now I lost sight of him but I saw the barrel of the firearm the whole time even though it was above his head. I've stepped out as he's walked down suppose to the west along that fence I've I kept an eye on him and moved out. He's then walked back around at that stage I was level with the entrance of the verandah.' (Exhibit C74a, p9-10)

- 4.8. After Mr Nicholls fired the second shot, Sutton retreated to the alcove formed by the front verandah which gave him cover, while Mr Nicholls was still on the southern side of the hotel.
- 4.9. At one stage, after Mr Nicholls fired the second shot, Nellie Stewart, a local woman, walked between Mr Nicholls and Sutton told her urgently to get out of the way.
- 4.10. Soon afterwards, a group of tourists in a four wheel drive vehicle towing a trailer drove down the main street and Sutton gesticulated urgently to them to get out of the way as well.
- 4.11. At one point Coombe put his head out to urge Nellie Stewart to get out of the way and must have been seen by Mr Nicholls. Sutton said:

'... when John must have put his head around the corner to move Nellie out of the way, that gentleman has asked is that man that cop aboriginal. I said he is, he said I want to speak to him, I said 'mate put the gun down and we could organise something, put the gun down' and he said the gun's unloaded, so I've said 'put the gun down and clear the magazines' or something along those lines and he didn't and that's when he ducked behind the fence.'

(Exhibit C74a, p13)

- 4.12. Coombe's recollection of this incident is slightly different to that of Sutton. He said that after he and Sutton had taken refuge in the verandah area, Sutton instructed him to get the cordless telephone from inside the hotel, and to ring the Coober Pedy Police to get assistance. He knocked on the front door and Ms Kemble opened it for him. He retrieved the telephone and went back outside, and Ms Kemble bolted the door behind him. He said:

'I had the phone in my hand and I sort of peered around the corner at that stage and the offender actually said, Mark was actually talking in a, he actually, well he wasn't yelling any more he was talking to the offender and I peered around the corner and he said, I clearly heard him say who's that? And Mark said he's another police officer. And he said is he Aboriginal and Mark said yes, and I clearly did hear this, he said um, well bring him out here and I'll shoot him as well. And that, when I heard that, that actually scared me.'

(Exhibit C73a, p11)

- 4.13. Coombe telephoned Coober Pedy Police and advised them of the situation.
- 4.14. Sutton said that he remained in the verandah area, until Mr Nicholls began walking in an arc in an anticlockwise direction, until he was standing almost due east of their

position. When he commenced walking, Sutton and Coombe retreated to the 'alcove' formed by the eastern verandah of the hotel, which had been built in at the northern and southern ends. By the time Mr Nicholls had arrived at the point due east of their position, this 'alcove' provided no cover for them whatsoever.

4.15. Mr Nicholls took up a position which Sutton estimated was 'about 5 to 7 metres' away (T278). In fact, Mr Nicholls' position was between a point indicated by a pool of blood labelled '1' in photographs 7 to 10, and a tiny splash of blood on a discarded cigarette butt indicated as '4' in photograph 13 of Exhibit C59b. These positions were 7 metres east of the front door of the hotel, and 5.6 metres east of the front door of the hotel respectively, according to measurements taken by Senior Constable Peter McKenzie (Exhibit C59a, p4). From the statement of Sergeant Maiden, the ballistics expert, the size of the wound to Mr Nicholls was replicated in test firing at a distance of not less than 3 and not more than 4 metres and close to 3.5 metres from the muzzle of the shotgun (C57a, p22).

4.16. Sutton said that as Mr Nicholls walked around to that position he was lifting the firearm and levelling it for a second or so and then dropping it back to his side again. Sutton and Coombe were trapped in their position because, in Sutton's words:

'The hotel door was locked. There were people inside. This gentleman had already fired two rounds at me and I was concerned that if the door had been opened it would have exposed the people within the hotel to more danger.' (T279)

4.17. Sutton said that he continued to tell Mr Nicholls to 'put the gun down' throughout the incident. Mr Nicholls gave no indication that he was prepared to do so. At one stage he did reply to Sutton as follows:

'After if he asked if John was an Aboriginal police officer I said 'can you put the gun down' and he said 'it's unloaded' and I said 'well can you clear the firearm, empty the magazine and put it on the ground' but he just held the gun and continued to keep lifting it and acting in an agitated manner.' (T280)

4.18. Sutton said that once Mr Nicholls took up his position between labels '1' and '4' described above, he levelled the firearm at him. He said:

'I could see down the barrel of the firearm.' (T280)

Even with the gun pointed straight at him, Sutton again directed Mr Nicholls to put the gun down, and when he did not do so, Sutton pulled the trigger on the shotgun. He said:

'And nothing happened. I knew straight away that the safety was on the shotgun. I rolled the firearm ... to the right in a clockwise direction, released the safety, levelled it back at the gentleman, asked him again to put the gun down. He had the firearm still levelled at me and I fired three shots.' (T282)

4.19. It can be seen from this passage that Mr Nicholls had ample opportunity to shoot Sutton at that stage, but did not do so. In fact, he did fire one round from the gun he was holding which went above Sutton's head and to the left, through the window of the hotel, ricocheted around the front bar and came to rest within a mural painted on the western wall (the passage of the bullet is depicted in photographs 59 to 67 of Exhibit C59b). It is not clear when that shot was fired, but it is most likely that it was fired when, or shortly after, Sutton fired.

4.20. Sutton explained the sequence of the three shots as follows:

'A The first shot I fired because the gun was levelled at me. The round hit the gentleman, the firearm was still levelled at me, it pushed him back slightly. I fired a second round, the firearm was still pointing in my general direction and I fired a third round, which subsequently pushed the man to the ground.

Q Why did you shoot him at the first instance?

A I felt that my life was in imminent danger. I believed John's life was in danger and that this situation needed to be controlled.

Q Why did you shoot the second and the third time?

A The three rounds were fired in rapid succession and they were done to stop the threat - from posing a threat.

Q At the occasion of the second shot did you believe the threat was still imminent?

A Yes.

Q At the stage of the third shot did you believe the threat was still imminent?

...

Q Immediately prior to shooting?

A Yes, I did.' (T282-283)

4.21. Sutton explained that because the shotgun he was using is a 'pump-action', he was able to eject the spent shell and then cock the weapon again without lowering the weapon and losing aim. He said that the three shots would have been fired rapidly, within a period of 1 to 1½ seconds. The firearm was capable of carrying five shells,

four in the magazine and one in the breech, but in this occasion carried only four shells. There was one shell left in the breech after the third shot (T283-284).

- 4.22. Coombe said that he also fired the police revolver when he realised that Sutton was having a problem with the safety catch on the shotgun (T250).
- 4.23. Coombe thought he had only fired two shots, whereas the scene investigation established that he had in fact fired three. None of these shots hit Mr Nicholls.
- 4.24. After Mr Nicholls fell to the ground, Sutton kept the firearm in the raised position while Coombe approached Mr Nicholls and moved the gun away from his right hand with his foot. Coombe then picked up the firearm and took it to the southern part of the hotel verandah. He removed the bolt from the weapon.
- 4.25. The ambulance attended the scene very soon afterwards. Registered Nurse Janine Connell had heard the gunshots. She drove the ambulance to the hotel and saw Mr Nicholls lying on his back on the ground. She noted his wounds, which were still bleeding, and that he was unconscious, cyanosed (from lack of oxygen) and his breathing was irregular and gasping. His pupils were dilated.
- 4.26. RN Connell inserted an airway and administered oxygen, the wounds were dressed. Mr Nicholls was intubated and ventilated and she attempted defibrillation and intravenous medication, but all these attempts were unsuccessful. Resuscitation attempts were discontinued at 5:15pm, and RN Connell pronounced him deceased. She said that by this time they had been working on him for 'a good twenty five minutes' (see Exhibit C24a, p4).

5. Other witnesses

- 5.1. The evidence of Sutton as to the circumstances in which Mr Nicholls was shot was not seriously challenged during the inquest.
- 5.2. Sutton's evidence was corroborated in almost every material respect by the evidence of Coombe. What clearly arises from Coombe's evidence is that Sutton remained calm and in control of himself throughout the incident notwithstanding the danger of their situation. He had the presence of mind to direct Coombe to collect the telephone and contact Coober Pedy Police, he reminded him to tell the people inside the hotel to lock the door because he was concerned about their safety (T213-215), and he told

Coombe on several occasions to get back under cover while continually putting himself at risk (T216). All the while, he continually and repeatedly asked Mr Nicholls to put the gun down.

- 5.3. Ms Judy Rose's evidence confirms that Mr Nicholls was behaving in an agitated manner that day, he had already pointed the gun at her in the presence of the children and then threatened to shoot himself, he had been drinking beer throughout the journey to Oodnadatta, and that he was agitated as a result of his conversation with Mr Wilson in the hotel.
- 5.4. Ms Rose said that when Mr Nicholls collected the gun from the car before going to the back entrance of the hotel where he confronted Ms Kemble, she said to him 'don't be silly put the gun away', and that he replied 'don't worry the welfare will look after you' (Exhibit C66, p4). The clear implication of this statement is that Mr Nicholls was contemplating his own death at that point.
- 5.5. Ms Rose also corroborates the fact that Mr Nicholls fired a shot from the corner of the fence, that she could hear someone from the front of the hotel shouting out 'put the gun down, put the gun down' on several occasions, and that 'while doing that Geoffrey took a second shot at them' (Exhibit C66, p5).
- 5.6. Mr Wilson, the manager of the hotel, confirmed that Sutton said 'police put the gun down' repeatedly throughout the incident, and that Sutton was trying to keep the local people away from the area and communicate with Mr Nicholls at the same time. He said that he heard Sutton's voice become more and more urgent as the incident progressed, and described his voice as 'clear and concise and authoritative' (T105). Mr Wilson said:

'Mark was screaming at the male over and over again and I remember thinking for God's sake shoot him before he shoots you or someone else. I was of the opinion that Mark had been more than fair with him and he was not going to put the gun down. Mark's voice was becoming more and more urgent and I knew the male must be getting close to him and then I heard a loud volley of shots.'

(Exhibit C67, p5)
- 5.7. Ms Kemble also confirmed that Sutton repeatedly asked Mr Nicholls to put the gun down (T120). Ms Kemble actually suggested that Mr Nicholls fired at the police officers before they fired at him (T122). She said she heard the bullet come through

the window and ricochet around the room and hit the back wall. Ms Kemble was alone in making that suggestion and, having regard to the stressful situation and the fact that there was a loud volley of shots during which it has been established that Mr Nicholls fired one shot, it may be that what Ms Kemble actually heard was Coombe's revolver being fired initially, and that she associated that with the sound of the bullet from Mr Nicholls' gun coming through the window. In any event, I am not prepared to make a finding on the basis of her evidence that Mr Nicholls fired first. In fairness to her, Ms Kemble conceded:

'Look, I'm not really sure.' (T126)

- 5.8. Mr Lennie Stuart, one of the patrons at the hotel, confirmed that he heard Sutton tell the man to drop the gun (T137).
- 5.9. Community Constable Anna Lennon, who was off duty at the time, saw Mr Nicholls come out of the hotel, go to his car and collect the gun, then return to the front of the hotel, push the door and then shoot through the door (T153). She saw Sutton and Coombe arrive, she heard Sutton repeatedly ask the man to 'put the gun down' (T159), she saw Mr Nicholls point the gun at Sutton and Coombe and she could hear the man 'mumbling' (T161). She saw Mr Nicholls lift the gun up and point it at the two police officers, and then she heard gunshots and saw Mr Nicholls fall over (T164). She confirmed that Sutton and Coombe had no avenue of escape, and that she was afraid that they would be shot (T166).
- 5.10. Ms Christine Hunt, who was with Community Constable Lennon at the time, also saw Mr Nicholls fire his rifle through the front of the hotel (T181), and she also heard the police officers shouting 'put the gun down' before the firing started (T185).
- 5.11. Mr William Bailes, an Aboriginal Health Worker at the Oodnadatta Hospital, saw Mr Nicholls come out of the hotel and go to his car and then return carrying a gun, approach the front doors of the hotel yelling, and then fire a shot at the front door (T190). He saw the man retreat to the tin fence at the southern end of the hotel premises, he saw Nellie Stewart and Lennie Stuart outside the hotel (he said they were both drunk - T191). He saw the police arrive, and he heard Sutton yelling at Mr Nicholls to drop his gun (T192). He saw Mr Nicholls standing in front of the hotel, but he had retreated into the store to look after the children who were screaming inside, and did not see the fatal shots.

- 5.12. The statement of RN Connell relates that she was 150 to 200 metres away from Mr Nicholls when he was standing at a point east of the hotel, and that she heard Sutton yell 'stop' and 'drop it' before she heard shots fired (Exhibit C24a, p3). Similar statements were given by Richard Carmody (Exhibit C5a), Lyle Warren (Exhibit C14a), Wayne Stapleton (Exhibit C15a), Francis Dunne (Exhibit C17a), Ronnie Lennon (Exhibit C18a), Maxine Marks (Exhibit C19a), Douglas Walker (Exhibit C22a) and Donald McDonald (Exhibit C23a).
- 5.13. I found no reason to disbelieve any part of Sutton's evidence, corroborated as it is in so many respects not only by the evidence of Coombe, but also the evidence of the civilian witnesses I have mentioned.

6. Professor Byard's evidence

- 6.1. A post-mortem examination of the body of the deceased was performed by Professor R W Byard, Forensic Pathologist, on 22 July 2001.
- 6.2. Professor Byard described a number of injuries suffered by Mr Nicholls as a result of the shotgun blasts and these can be summarised as follows:
- Injury 1 was to the left side of the chest surrounded by numerous pellet holes in an area measuring in total 140 x 110mm. The wound was associated with fractures of the 6th, 7th and 8th ribs and laceration of the pericardium and the right and left ventricles of the heart. There were associated injuries to other internal organs.
 - Injury 2 was to the upper left arm measuring in total 150 x 100mm. The injury consisted of a number of defects, the largest of which was associated with an underlying track which showed a slightly upwards direction. This wound was associated with a laceration of the auxiliary vein and artery and a fracture of the left humerus.
 - Injury 3 was a wound of the left wrist associated with a fracture of the left radius and ulna with transection of the radial artery and vein. The direction of the injury was from the back of the wrist to the front.
 - Injury 3b was a scatter of wounds in an area measuring 280 x 190 mm over the anterior aspect of the right upper chest. The direction of the pellets was from left to right with occasional horizontal abrasions.

- Injury 4 was a series of pellet wounds on the thumb side of the right index finger and in the web space between the index finger and thumb.

6.3. Professor Byard commented:

1. Death was due to a shotgun wound to the left side of the chest (Injury 1) with laceration of the heart and filling of the sac around the heart with blood (haemopericardium). These injuries would have been immediately incapacitating and would have resulted in collapse and rapid death. There were also injuries to the ribs, lungs, diaphragm, liver, stomach and omentum, which although non-lethal in themselves would have required urgent medical attention. The deceased was shot in the chest with a shotgun from close range (see separate ballistics report for further details) and from the left side. With the deceased standing upright the shotgun could have been held at approximately the level of the wound i.e the mid chest.
2. The shotgun wound to the left upper arm (Injury 2) would not necessarily have been immediately incapacitating, or associated with significant blood loss, as severed muscular arteries may go into spasm and thus prevent haemorrhaging. The deceased was shot in the arm from close range (see separate ballistics report for further details), again from the left side. With the deceased standing upright the shotgun could have been held slightly below the level of the wound, given its slightly upward track.
3. The wounds to the left wrist (Injury 3), right chest wall (Injury 3b) and right hand (Injury 4) were also not life threatening. They could have been sustained if the deceased had been shot from the front and slightly to the left side, while he was standing and holding his rifle to his shoulder with his left hand, with his right index finger and thumb exposed and further back near the trigger. This position would have caused his left wrist, right index finger and thumb web, right side of chest and inner aspect of his right upper arm to line up. Lifting of the right arm in this manner would have also exposed the inner upper aspect of the arm to pellet injury ie the pellets would have firstly entered the back of his left wrist, scattered as they passed through bone and soft tissue and then sprayed his exposed right index finger and thumb web and then the right side of his chest and the inner aspect of his right upper arm.
4. It is likely that injuries Number 3, 3b and 4 were sustained with the first shotgun discharge, as it would not have been possible for the deceased to lift his left arm after injury Number 2 had occurred (due to fracturing of the humerus), or injury Number 1 (due to laceration of the heart).
5. It is not possible to determine the sequence of delivery of injuries 1 and 2 as the wound to the upper arm may have occurred before or after the lethal injury to the chest.
6. No projectiles from other weapons (other than shotgun pellets), were identified at autopsy or on Xray.

7. The deceased did not show any evidence of trauma to indicate that an assault or fight had occurred prior to the shooting.
8. The condition of the body was not inconsistent with death occurring approximately 40 hours prior to the autopsy.
9. No underlying organic diseases were present which could have caused or contributed to death.
10. The results of blood alcohol analysis and blood drug and toxin screenings were not available at the time of this report.'

(Exhibit C1a, p3-4)

6.4. When he gave oral evidence, Professor Byard made the following points:

- Following the injury to the heart, death would have occurred quite rapidly - within seconds (T411). It is very doubtful that any medical treatment could have saved Mr Nicholls' life - I infer that nothing could have been done in Oodnadatta, where there is no medical practitioner.
- Injuries numbered 3 (left wrist), 3b (right chest wall) and 4 (right hand) were all likely to have been caused by one shot and the pattern of the injuries suggests that Mr Nicholls' left arm was extended and the right arm was back against the shoulder.
- Injuries 3, 3b and 4 were likely to have been incurred first, because injury 2 would have incapacitated the left arm so that he would not have been able to extend it to hold the gun after it had occurred (T396).
- Similarly, it is unlikely that Mr Nicholls would have been able to hold the gun in such a way as to incur injuries 3, 3b and 4 after he had been shot in the chest (injury 1) (T396).
- The wounds to the chest (injury 1) and left upper arm (injury 2) would both have permitted Mr Nicholls to continue standing for a short period so that it is not possible to determine which of those injuries occurred before the other (T398).
- After the injury to the left wrist (injury 3) it is doubtful that Mr Nicholls would have been able to continue to hold the rifle with his left hand, but the injuries to the right hand were not very significant so it is possible that he could have continued to hold the rifle with his right hand (T406-407).

- The injury to the upper left arm (injury 2) would have created very severe pain, but it is difficult to predict the response to that having regard to the amount of alcohol in Mr Nicholls' bloodstream (T409).
- If Mr Nicholls was in a psychotic rage, it is possible that he was still capable of activity notwithstanding having suffered quite significant injuries that one would think would slow him down but do not (T419).
- If all three shots were discharged within one to two seconds it is quite possible that all three shots could have been discharged at a time when Mr Nicholls had the weapon in an elevated position (T418).
- The high blood alcohol concentration in Mr Nicholls' blood (0.203%), even in a person like Mr Nicholls who was obviously tolerant to high doses of alcohol, would have resulted in slow responses including both a delayed and reduced response to pain.
- Other factors which may have further complicated Mr Nicholls' response to the injuries included high adrenalin levels as a result of an extremely stressful situation (T414).

7. Issues arising at inquest

7.1. As I have already said, this incident was the subject of a Commissioner's Enquiry. The enquiry was led by Chief Inspector Brian Fahy and the principal investigator was Detective Senior Constable Geoffery Rodda of the Major Crime Investigation Section.

7.2. The Commissioner's Enquiry addressed the following issues:

'Issue 1 Was the use of firearms justified in these circumstances?

1.1 Were any other tactical options available to the police officers?'

Issue 2 Did Geoffrey Nicholls suffer some form of mental/medical condition?

Issue 3 What was the state of mind of the police officers involved?

Issue 4 What was the state of mind of the deceased?

Issue 5 Is there evidence of a criminal offence by any person?

(Exhibit C63a, p7)

7.3. As to issue 1, the justification for use of the firearm, the report refers to General Order 3375(2) which states:

'Members will not resort to the use of firearms, including sighting or levelling them, except in the following circumstances:

- When the member believes on reasonable grounds it is necessary to protect life or prevent serious injury and only then when satisfied no other means are available; or
- To lawfully destroy animals and birds.

A police officer must take every practicable precaution to minimise the risk to innocent persons.'

(Exhibit C63a, p8)

7.4. The report concluded that both Sutton and Coombe were in fear for their lives, and also refers to the fact that Sutton was concerned for the safety of members of the public in the vicinity. The report concluded:

'The use of police firearms in this situation was entirely justified. Circumstances raised a belief on reasonable grounds it was necessary in order to protect human life and there was no other means available. '

(Exhibit C63a, p9)

7.5. The report also concluded that there were no other tactical options available to Sutton and Coombe. They were not able to 'cordon and contain' the situation because Mr Nicholls had them pinned down in front of the hotel. Further, Mr Nicholls was not responsive to their communication with him. They were unable to withdraw because the door to the hotel was locked behind them. They were unable to use 'empty hand tactics' because Mr Nicholls was armed with a firearm and they were not close enough to use this option. The same difficulties prevented the use of capsicum spray which is only effective within three metres, and is ineffective against an offender armed with a firearm in any event. The same argument applied to the use of a baton. There were no other police resources available to Sutton and Coombe in Oodnadatta at the time. The closest police station, at Coober Pedy or Marla, was two hours away.

7.6. Mr Bleechmore, Counsel for Mr Shane Nicholls, the next of kin, submitted that Mr Nicholls was clearly mentally disturbed at the time of the incident. He pointed to the history of mental illness, the incidents in Ceduna, Broome, the reports from New South Wales and South Australia, and Mr Nicholls' behaviour in threatening suicide on the Oodnadatta Track earlier that day, his behaviour in deliberately exposing himself to danger when he walked out into the open in front of the Oodnadatta Hotel

in front of Sutton and Coombe, both of whom he knew were armed. Mr Bleechmore pointed out that Mr Nicholls could have shot Sutton at the time when Sutton attempted to fire and the safety catch was still on, but he did not do so. Mr Bleechmore suggested that Mr Nicholls' behaviour was consistent with the suggestion that he was provoking or inviting the police to shoot him (T460).

7.7. Mr Bleechmore submitted that in all those circumstances, Sutton was 'absolutely justified' in preparing to fire, and justified in firing the first shot which, according to Professor Byard, probably resulted in the injuries to Mr Nicholls' left wrist, right chest wall and right hand. However, he was critical of the fact that Sutton then fired two further shots, and suggested that he failed to assess the results of each shot before firing again. He suggested that Sutton 'blazed away' until Mr Nicholls dropped to the ground (T475), rather than making the assessment that Mr Nicholls' left arm would have been substantially disabled after the first shot, and totally disabled after the second shot, since it shattered the humerus.

7.8. With respect to Mr Bleechmore, I think his submission overlooks two important points:

- Professor Byard was unable to say with any certainty whether the wound to Mr Nicholls's chest (injury 1) occurred before or after the injury to the left upper arm (injury 2) since both would have permitted him to continue standing for a short period (T398). Even if Sutton ceased firing after the second shot, Mr Nicholls may still have suffered lethal injuries by then.
- Sutton's evidence is that he was concentrating on the weapon in Mr Nicholls' possession, which was raised and pointed at him and did not drop until after he fired the third shot. Whether Mr Nicholls' left arm was disabled at some stage in the process is irrelevant - so long as the weapon was still levelled at him and Mr Nicholls' right forefinger was around the trigger, it still presented a threat to his life, and he was entitled to continue firing until that threat was extinguished.

7.9. As to whether Sutton had other 'tactical options' available to him, Mr Bleechmore argued that he could have shot at Mr Nicholls with the intention of disabling him, rather than aiming at the centre of the chest where any injury was likely to be lethal (T486). This argument has been ventilated in several previous inquests (see the

findings following the inquests into the deaths of Luke Francis Donaghey 29/00, Grant Alistair MacLeod 47/00 and Grant Andrew Wanganeen 8/02). In each of those inquests, I heard detailed evidence about the Incident Management Operational Safety Training ('IMOST') given to all police officers annually, and the fact that in relation to the use of firearms, police officers are trained to aim at the 'centre of the seen mass'. For example, evidence of Sergeant John Hardwick given in the Wanganeen inquest, explains why officers are trained not to aim at peripheral parts of the body:

'... because they might miss and the other thing is they are responsible for wherever the bullet goes, so if they do miss and they hit someone, they are responsible for that ... (even if that person were hit in an arm or a leg) they wouldn't be incapacitated (so that the situation might continue) ... they can fire one shot, assess; two shots, assess; three shots, assess; fourth shot, assess. Every time they fire a shot they have to continue to assess, and that assessment might take milliseconds ... the assessment is when they fall down ... and the threat's negated.' (T773)

7.10. At the time of giving evidence, Sergeant Hardwick was the Supervisory Sergeant attached to the Operational Safety Training Unit and was intimately involved in the development of IMOST. Having regard to that evidence, it seems to me that Senior Constable Sutton's actions in this case were entirely consistent with those principles, and that there is no cause for criticism of him in that regard.

7.11. As to the other issues addressed by the Commissioner's Enquiry;

- Issue 2 - It is clear that Mr Nicholls was suffering from a mental illness at the time of his death, a conclusion with which Mr Bleechmore agreed;
- Issue 3 - As to the state of mind of the police officers, the enquiry concluded that Sutton and Coombe both believed that they were in imminent danger and that it was necessary to fire at Mr Nicholls in self-defence and to protect the safety of other members of the public. Having regard to the findings I have made above, I agree with this conclusion;
- Issue 4 - As to the state of mind of the deceased, the enquiry concluded that Mr Nicholls intended to use his firearm to kill or seriously injure someone, and that he was displaying 'clear recklessness and disregard for the consequences of his actions'. It is not apparent to me that Mr Nicholls' primary intention was to kill or seriously injure someone else - I think his primary motive was to bring about his

own death, in the context of the severe mental illness from which he was suffering at the time;

- Issue 5 - As to whether there is evidence of a criminal offence, the enquiry concluded that there was no evidence to support any criminal charges against Sutton or Coombe. Although it is not my province to comment upon such matters (see Section 26(3) of the Coroner's Act 1975), I agree with this conclusion.

7.12. Other issues

Mr Bleechmore criticised the police officers, and Sutton in particular, for their failure to properly prepare for the incident before they left the police station. He pointed to the fact that Sutton took the wrong ammunition and Coombe did not take a weapon at all and neither took ballistic vests for their own protection. He also criticised their failure to seek out an appropriate degree of 'intelligence' before engaging with Mr Nicholls at the scene. I agree with Mr Bleechmore that there is some evidence to justify the conclusion that the police officers did not entirely believe Mr Wilson's report initially, and that they may not have realised how serious the incident was until they arrived at the hotel.

- 7.13. In relation to the non-wearing of ballistic vests, the vests issued by SAPOL to the Oodnadatta Police Station were all too small, and the officers were waiting for new ones, which had been ordered, to arrive. Having regard to the nature of the community, it is understandable that the matter was not treated with greater urgency, and no criticism can be placed upon the officers concerned for deciding not to use the vests which were unsuitable.
- 7.14. As to Coombe's firearm, this problem occurred because he had failed to reassemble his accoutrement belt following an incident the day before, when he had removed his firearm to attend a community function. Again, the relatively quiet nature of the Oodnadatta community perhaps led to a degree of complacency in this regard, and I accept that a reminder to remain at operational readiness was all that was required.
- 7.15. As to Sutton selecting incorrect ammunition for the shotgun, the ammunition selected was 'training shot' which was less powerful than the operational ammunition. This placed Sutton and Coombe at greater danger, but did not affect the outcome in relation to Mr Nicholls. Again, Sutton's mistake has been addressed at operational level, and I agree that no further action is called for.

- 7.16. As to Mr Bleechmore's criticism about the failure to collect further intelligence, it is difficult to know what further significant intelligence was available. The information received from Mr Wilson was that there was someone at the hotel who was armed with a gun, that there was a danger to the public, and that the matter called for the intervention of the police. Once police officers arrived at the scene, they intervened immediately. When Mr Nicholls fired the gun into the front bar of the hotel, the seriousness of the incident escalated in their presence. They were in just as good a position to see what had happened as was anyone else. I do not see that hesitating to speak to other witnesses at the scene would have helped them, and it may have hindered their response.
- 7.17. Mr Bleechmore's further criticism was that Sutton failed to effectively communicate with Mr Nicholls, in that his only form of communication was to shout at him to put the gun down, and that he failed to try and create a dialogue with Mr Nicholls in an attempt to diffuse the situation (T469).
- 7.18. Whilst I accept that the techniques Mr Bleechmore referred to are the standard practice for trained negotiators in these situations, it is not appropriate to criticise Sutton for any failure to adopt such techniques. The techniques being referred to are adopted by negotiators during the course of an operation when a 'stalemate' has been achieved, the situation has been cordoned and contained, and the negotiator is not in a position of direct physical danger. In this situation, Sutton and Coombe did not have control of Mr Nicholls' movements, he had not been cordoned or contained, and they were both in a position of extreme physical danger. They were not in a position to 'negotiate' with Mr Nicholls, particularly after he decided to walk around towards the front of the hotel and confront them directly with his firearm. As soon as that occurred, the urgent priority for Sutton and Coombe was to protect their own lives and the safety of other members of the community, and it is unrealistic to suggest that they should have attempted to communicate with Mr Nicholls in any different way. Accordingly, I reject that criticism.

8. Conclusions

- 8.1. Having regard to the totality of the evidence before me in this matter, it is clear that Mr Nicholls created a situation of extreme physical danger when he confronted Sutton and Coombe with his loaded firearm, after he had fired shots both at the hotel (which

he knew to be occupied), and at them after they arrived. After Mr Nicholls moved to a position where he was directly confronting the police officers with his firearm, they were entirely justified in concluding that their lives were in danger, as were the lives of other members of the community. There were no other tactical options available to them, and in those circumstances they were justified in firing at Mr Nicholls thereby causing his death. I can see no grounds for criticism of either Sutton or Coombe. It seems to me that they both acted with considerable courage in confronting Mr Nicholls, thereby placing their own lives in danger, because they knew that there was no backup available to them, and little cover. They proceeded in any event, realising that as police officers they had a duty to do so.

9. Recommendations

- 9.1. I am empowered by Section 25(2) of the Coroner's Act, 1975 to make recommendations that might, in my opinion, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest.
- 9.2. In the circumstances of this case, I can make no recommendations which may prevent a death similar to that of Mr Nicholls. There is nothing before me to suggest that the outcome could have been affected by any other response on the part of the police officers concerned. The situation was brought about by Mr Nicholls' behaviour, no doubt the result of his severe mental illness, and I can think of nothing to recommend which might prevent a similar outcome in future.

Key Words: Death in Custody; Police (shooting); Mental Health/Psychiatric Issues

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 29th day of October, 2003.

Coroner