



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 9th, 10th, 11th, 12th, 15th, 16th, 17th, 18th, 19th and 22nd days of August 2016, the 5th day of September 2016 and the 17th day of February 2017, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Lewis Mike McPherson.

The said Court finds that Lewis Mike McPherson aged 18 years, late of 11 Eton Avenue, Warradale, South Australia died at the Flinders Medical Centre, Flinders Drive, Bedford Park, South Australia on the 31st day of December 2012 as a result of a gunshot wound to chest. The said Court finds that the circumstances of his death were as follows:

1. Introduction, cause of death and reason for Inquest

- 1.1. Lewis Mike McPherson was 18 years of age when he met his death on the evening of 31 December 2012. As he walked with his two male companions in Sixth Avenue, Warradale he was shot once to the chest with a projectile from a small calibre handgun. People in the street rendered assistance. Ambulance officers arrived at the scene. By then Lewis McPherson was unresponsive with absent pulse and respirations. Resuscitative measures were administered at the scene by ambulance officers. He was transported to the Flinders Medical Centre (FMC) Emergency Department where resuscitation efforts continued but which were ultimately unsuccessful. Lewis McPherson's life was certified extinct at 8:50pm that evening.
- 1.2. Autopsy findings supported the clinical view that death had resulted from uncontrolled haemorrhage as the result of gunshot injuries to the lungs. In his post-mortem report, the examining pathologist, Dr John Gilbert of Forensic Science South Australia

(FSSA), expresses the cause of death as gunshot wound to chest. I find that to have been the cause of Lewis McPherson's death.

- 1.3. The person who inflicted the fatal gunshot wound was Liam Patrick Humbles who at that time was 17 years of age. His date of birth is 7 January 1995. Although Humbles and Lewis McPherson were known to each other at that time, there is no evidence that there was any animosity between them. The same applies in respect of Lewis McPherson's two friends who were with him at the time of the shooting. At that time Humbles was residing at premises situated at 26 Railway Terrace, Warradale which was immediately around the corner from the location in Sixth Avenue where Lewis McPherson was shot. That evening, which was New Year's Eve, Humbles had been at the Railway Terrace address along with a number of other youths. During the course of that day those present at that address, including Humbles, had consumed alcoholic beverages in significant quantities. Cannabis had also been smoked. This activity appears to have habitually constituted the behaviour of choice of those who congregated at this premises. Humbles in particular was intoxicated during that day and evening having consumed alcohol, cannabis and MDMA (ecstasy). The gun and ammunition that he would use to shoot and kill Lewis McPherson had been in his possession for some time. As a person under the age of 18, he was not lawfully permitted to possess the firearm. Prior to the shooting Humbles had irresponsibly caused the weapon to discharge on two occasions of which the Court is aware, one time in a public park and the other inside a house. At that time of his existence Humbles was a complicated individual being paranoid, erratic and angry. Even his peers and his own father shared that view, believing that his character was the product of illicit drug consumption. There is little doubt that this was the case. Regardless, this naturally provided neither excuse for nor mitigation of his conduct. It is difficult to think of an individual who could be less trusted with a firearm and ammunition.
- 1.4. At that time Humbles was estranged from his parents who lived at Seaview Downs. The circumstances of that estrangement will be mentioned during the course of this finding. For some months during the course of 2012 Humbles had been maintaining an erratic lifestyle, living at different places and, it is said, occasionally couch surfing. He did not go to school and he did not have a job. He dealt in cannabis and possibly other harder substances as well. He associated with a dubious crowd. His attitude towards his parents was disgraceful and his general behaviour was as appalling as it was

unrestrained. It was as a result of bail conditions that had been imposed on Humbles that he was residing at the Railway Terrace address at the time of the shooting. He kept the gun there and had dealt in cannabis from there. The principal resident of that premises was an adult whose three young sons also resided there together with other sundry hangers on who came and went. The adult person did nothing to check the behaviour of those who would frequent the premises, including Humbles. Mrs Allison McGillick who with her family occupied the premises next door to 26 Railway Terrace, described for the Court the aggressive behaviour that took place in the rear yard of number 26 and which would frequently spill into the street. This behaviour was perpetrated by very intoxicated and apparently drug affected individuals which she said clearly occurred under the gaze of the female adult occupant. She described a constant stream of vehicles pulling up and strangers coming to the door which naturally made her suspicious that drug dealing was taking place out of the premises. The truth was that this was a place that was totally unsuited to accommodate a person on bail, let alone an otherwise homeless youth on bail.

- 1.5. At the time of the shooting neither Lewis McPherson nor his two male companions had any connection with the premises at Railway Terrace. That they were brought into close proximity to the premises was purely fortuitous. Lewis McPherson and his two companions were travelling on foot from Lewis McPherson's premises on Eton Avenue, Warradale to a party being held at premises just off Sturt Road. They had no intent or desire to have any contact with Humbles nor the associates of Humbles.
- 1.6. The statements of Lewis McPherson's two companions make it plain that the shooting was no accident. Liam Trewartha¹ states that when they encountered Humbles in the street he had an extremely angry expression and was yelling; at the same time he was holding a small gun in his hand. It is clear from the statements that there had been nothing about Lewis McPherson's behaviour nor that of his friends that could have provoked such an extreme reaction from Humbles. Humbles fired a number of shots, one of which was fired in Trewartha's direction. He then fired at Lewis McPherson and Liam Trewartha saw one shot strike him. James Lamont² in his statement said that Humbles called them '*fucking cunts*' and appeared to be very agitated and aggressive. He too saw the firearm and witnessed Humbles fire at Lewis McPherson striking him

¹ Exhibit C7a

² Exhibit C8a

in the chest. It is clear from their statements that Humbles pointed the weapon at them and fired more than one shot, deliberately at Lewis McPherson. The one shot struck and killed him. Humbles also fired a shot at or near a passing car that was there fortuitously. Nobody was injured as a result.

- 1.7. Toxicological evidence established that at the time of the offending Humbles' blood alcohol level would have been in the range of between 0.252 to 0.284 grams of alcohol in 100 millilitres of blood. This is a significant blood alcohol concentration. At the time of the shooting there was also a level of tetrahydrocannabinol, the active component of cannabis, in Humbles' blood. There was also a level of MDMA in Humbles' bloodstream. I should add here that at post mortem Lewis McPherson was also discovered to have a blood alcohol concentration at a significant level as well as a level of tetrahydrocannabinol in his blood. However, I am satisfied that in Lewis McPherson's case this had nothing whatsoever to do with the shooting which was unprovoked.
- 1.8. How Humbles came to be in the street with a loaded handgun was the subject of statements that were tendered at the Inquest as well as oral evidence from witnesses. Those circumstances were also naturally the subject of extensive evidence taken in the Supreme Court trial of Humbles that occurred in 2013. To summarise, a disturbance had taken place involving one of the young male residents of the premises at Railway Terrace and possibly other unidentified persons in the street. The disturbance may have involved drugs. There the evidence becomes somewhat confused, possibly due in part to the intoxication of those present. On one version of events the young male occupant of the premises wanted Humbles' gun in order to settle the disturbance outside whereupon Humbles himself, whose behaviour that afternoon in the house had already been less than exemplary, and who was overtly affected by alcohol and other substances, took the gun outside into the street and started shooting. There is a suggestion in the evidence that Humbles may have formed a belief that those outside were individuals who had supposedly been responsible for having previously ripped him off in a drug deal. The precise details are only of peripheral materiality to the issues that this Court had to grapple with and so I make no finding in relation to those matters, except to say that neither Lewis McPherson nor his companions had any connection with such an issue. Humbles was arrested at the scene on the day of the shooting.

- 1.9. On 22 November 2013 in the Supreme Court Humbles was found guilty of the murder of Lewis McPherson as well as the attempted murder of both Liam Trewartha and James Lamont. The basis of the verdicts of Justice David who tried Humbles without a jury was that despite Humbles' gross intoxication, and allowing also for the fact that Humbles' behaviour was in many ways bizarre, Humbles had intended to kill Lewis McPherson, Mr Trewartha and Mr Lamont at the time he fired the shots. On 13 August 2014 Justice David's verdict and underlying findings of intent were upheld by the Court of Criminal Appeal. In the event Humbles was sentenced to life imprisonment with a non-parole period of 17 years.
- 1.10. Humbles did not give evidence at his trial. He was not called to give evidence in this Inquest. Humbles exercised his right to silence at the time of his arrest and subsequently. There is thus no material before this Court that consists of Humbles' own version of the events of 31 December 2012, nor of relevant events preceding that date. For the purposes of this Inquest and having regard to the issues that were ventilated during it, it has not been necessary to hear from Humbles. I am satisfied that Humbles has been delivered natural justice and procedural fairness at all times.
- 1.11. The firearm in question was seized by police after the shooting. It was a Jennings J-22 .22 LR calibre semi-automatic pistol. It had a linear detachable box style magazine. The magazine had capacity for six .22 long rifle rounds. The firearm had an unloaded weight of 0.38 kilograms with a barrel length of 64mm and an overall length of 141mm. Photographs of the weapon tendered to the Inquest suggest that it was quite compact. Its overall length of 141mm bears out that impression. The relatively small dimensions of this weapon would mean that it would not have been difficult to conceal. Having regard to the fact that Humbles was only 17 years of age, he could not have been lawfully issued with a licence pursuant to the Firearms Act 1977. Thus it would not have been lawful for Humbles to have been in possession of this firearm or of any firearm in the circumstances in which Humbles possessed this firearm³. This circumstance would have rendered the firearm liable to seizure by police had it been located prior to the shooting⁴. The evidence established that Humbles had been in possession of this firearm for several months during the course of 2012. The means by which Humbles came into possession of this firearm have been widely reported and the

³ See sections 11(1) and 12(3) of the Firearms Act 1977 – there are immaterial exceptions to the general prohibition.

⁴ Section 32(1) of the Firearms Act 1977

person who placed him in possession of it has been dealt with by the courts. That person was Charles Alexander Cullen. When Cullen was sentenced for the offence of supplying the gun to Humbles the sentencing judge made it plain that he could not sentence Cullen on the basis that he had responsibility for the act of Humbles in shooting Lewis McPherson. It is not this Court's place to comment on the accuracy of that statement as a matter of law. However, it is worth observing that save for trivial or technical transgressions, the man and woman in the street would unhesitatingly attach moral culpability to an individual who unlawfully supplied a handgun to another person who subsequently used it to kill a person, and would do so regardless of whether the supplier intended or foresaw that outcome. And the ordinary person would not ponder long to conjure up or listen to facile excuses. The commission of an offence with an illegally supplied handgun could hardly be regarded as an unexpected consequence of its supply.

- 1.12. There was also a suggestion on the evidence that was heard in this Court that Cullen had also supplied Humbles with ammunition for the gun, a separate offence or at least a clear circumstance of aggravation if proven, but a matter that does not appear to have been a facet of Cullen's prosecution. It is not mentioned in the sentencing remarks for instance. I mention this aspect below in another context, but I make it plain that I make no finding or suggestion that Cullen was responsible for the supply of ammunition to Humbles.
- 1.13. The Firearms Act 2015 which has yet to come into operation is intended to repeal the Firearms Act 1977. I intend making a recommendation that the possession of a category H firearm, i.e. a handgun, should be unlawful unless it is possessed by a dealer, maintained in a gun club or range or is possessed in connection with a person's legitimate occupation. There may be other legitimate exceptions. It is difficult to think of them. I also intend making a recommendation that when dealing with the offence of unlawfully supplying a firearm contrary to section 22 of the Firearms Act 2015, that the legislation make it clear that it should be regarded as an aggravating circumstance where the firearm was subsequently used in the commission of an offence, regardless of whether or not the supplier intended or foresaw the commission of that offence. Further, I intend making a recommendation that the offence of unlawful supply of a firearm, particularly a handgun, knowingly or recklessly to a minor be separately categorised with a maximum penalty that significantly exceeds the maximum penalties

under the new Act, the longest of which is 15 years imprisonment for one firearm⁵. Further, I intend making a recommendation that the new Act specify that where ammunition is unlawfully supplied in conjunction with the unlawful supply of a firearm, that the penalties for each offence be served consecutively. Further, I intend making a recommendation that the new Act specify that where ammunition is unlawfully possessed in conjunction with the unlawful possession of a firearm, that the penalties for each offence be served consecutively.

- 1.14. It is not necessary for this Court to closely examine the circumstances in which Humbles came by the gun except where it might be necessary to establish the time or times at which, and the locations at which, Humbles possessed the firearm. I should add here that the evidence suggested that for a brief period in 2012 Humbles returned the gun to Cullen, but I was satisfied that he had it at times at which appropriate and vigorous police intervention should have resulted in its removal from him.
- 1.15. On 21 June 2012 SAPOL received anonymous information that Humbles and another youth were engaged in the sale of drugs and that Humbles carried a firearm. The source of this Crime Stoppers information has not been established. At around the same time, similar information, very possibly from the same anonymous source, was imparted to senior staff of the Brighton Secondary School. That information was then passed on to police. Since Lewis McPherson's death the information that Humbles sold drugs, in particular cannabis, has been confirmed. That Humbles was in possession of the firearm during the course of 2012 has also been established since these events. There is no doubt that the information that was anonymously imparted to police in June 2012 about Humbles' activities in respect of the sale of drugs and in respect of the suggestion that he carried a firearm has been proved to be correct.
- 1.16. During the course of 2012 further information about Humbles, either by name or by description, was imparted in confidence to police by members of the public whose identities have not been revealed to this Court. This information related to Humbles' drug selling activities. It would all prove to be uncannily accurate. However, other than the initial information of June 2012, none of that further information included reference to the suggestion that Humbles either carried or was otherwise in possession

⁵ See section 22(10) of the Firearms Act 2015 – the maximum term of imprisonment in respect of a category H firearm offence is 10 years for one firearm

of a firearm. But in my assessment there is no doubt that he had the firearm at the time the information was variously received.

- 1.17. Apart from the information that police received about him, Humbles in person came to the attention of police on a number of occasions during the course of 2012. While on two such occasions cannabis was located in Humbles' physical possession, a firearm was not found on his person. He was not arrested on either occasion. The only search of an environment that was connected with Humbles occurred in August 2012 when police made a belated and cursory search of the Railway Terrace premises at which Humbles had recently been residing but had since left, and nothing of interest was located. Humbles would return to reside at that same premises as part of bail conditions in respect of a non-drug related arrest in December.
- 1.18. On the two occasions in 2012 when Humbles was found in possession of cannabis he was subjected to a process known as drug diversion which does not involve either arrest or prosecution, but which results in a person in his position and of his age attending a meeting. It was revealed during the course of this Inquest that prior to Humbles' eventual arrest and release on bail in December 2012, the circumstances of which I will describe, Humbles had been the subject of five such drug diversions. Two of those diversions had occurred in 2012 and at a time after police had received the information that Humbles was dealing in cannabis and 'pills' and that he carried a firearm, at least inferentially, in connection with that activity. At no stage had Humbles been arrested or prosecuted in respect of his activities in connection with cannabis or any other illicit substance.
- 1.19. Accordingly, the firearm that Humbles possessed and which he ultimately used to kill Lewis McPherson was never detected. This was in spite of the fact that his possession of this handgun was widely known among Humbles' associates. Indeed, it was revealed during the course of the Inquest that during 2012 a number of parents of Humbles' associates were told that Humbles was in possession of a firearm and that for whatever reason those individuals chose to keep that information to themselves and not share it with anyone in authority. Those of Humbles' associates who had seen the weapon, or who otherwise knew of its existence, shared a common belief that Humbles possessed the firearm in connection with his cannabis trafficking activities as a form of protection from being ripped off. As I say, there is a suggestion that Humbles had been the subject of a rip-off in the past and that his behaviour on the night of Lewis McPherson's death

had a connection, albeit one bordering on the paranoid, with that issue. Lewis McPherson had nothing to do with any issue such as that. He was simply in the wrong place at the wrong time in Sixth Avenue when Humbles went into the street with the firearm and started shooting.

- 1.20. Having regard to the duration over which Humbles had possessed the firearm that he ultimately used to kill Lewis McPherson, and the information that was available in connection with his possession of the firearm over that period, the Court examined whether the course of events that preceded Lewis McPherson's death could in anyway have been altered for the better. In particular, the Court examined whether there had been opportunities for Humbles to have been lawfully dispossessed of the firearm. The Court also examined the question as to whether in all of the circumstances Humbles should, as a drug abusing juvenile to the knowledge of the authorities, have been residing at the premises at Railway Terrace, Warradale where his behaviour was completely unchecked if not actively encouraged. The core question for the Court's consideration was whether Lewis McPherson's death could have been prevented. One matter that would require consideration in this regard is a theoretical possibility that Humbles may have re-armed himself even if he had been lawfully dispossessed of the firearm in question. However, there is no doubt that if Humbles' possession of the firearm had been discovered, and appropriate action had been taken to remove it from his possession, the chain of events that led to Lewis McPherson's death would have been significantly altered. If Humbles had been found by the authorities to be in possession of the firearm, the weapon would have been seized and Humbles himself would very likely have been processed through the juvenile justice system. Whether this circumstance, and the imposition of whatever restrictions on his behaviour may have resulted from an arrest, would have altered Humbles' behaviour for the better, and whether it would have prevented him from reacquiring a firearm, cannot be forensically answered with complete certainty. However, his reacquisition of a firearm in those circumstances seems to this Court to be unlikely such that on the balance of probabilities Lewis McPherson on the night of his death would not have been confronted by a youth with a loaded firearm in the form of Humbles.
- 1.21. In short, for the reasons that follow, the Court is of the opinion that Lewis McPherson's death could and should have been prevented.

- 1.22. The other matter that this Inquest highlights is the undue tolerance that this community exhibits in respect of the possession and consumption of illicit substances by minors as well as the level of tolerance to antisocial behaviour that is displayed by the same people. The Court has come to the conclusion that society's responses to important issues such as those are woefully inadequate.

2. Liam Humbles

- 2.1. In this section of the Court's findings I will discuss the lifestyle and movements of Humbles during the year 2012. It is necessary to do this in order to set the scene for a proper evaluation of the effectiveness of police activity in respect of Humbles during the course of that year. It is necessary for the Court, as far as is possible, to identify opportunities that police may have had to establish Humbles' whereabouts from time to time thereby providing opportunities to have divested him of the firearm in question and to have brought an element of accountability to his behaviour.
- 2.2. In addition, in the course of this section I shall identify those persons, being associates or the parents of associates of Humbles, who knew that, or at least had good reason to believe that, Humbles possessed the firearm and who would have been in a position to have alerted the authorities.
- 2.3. Humbles was born on 7 January 1995. He is the son of Lee and Elizabeth Humbles who at the material time resided at Hume Street, Seaview Downs. Humbles has two younger sisters and a younger brother.
- 2.4. Humbles was educated at the Brighton Secondary School. He left school at or near the end of 2011. He was in Year 11 at that time. He was formally cleared from the Brighton Secondary School in May 2012, although it does not appear that he attended school at any time during that year.
- 2.5. Tendered to the Court was Liam Humbles' Child and Adolescent Mental Health Service (CAMHS) file⁶. The file contains a closure summary dated 7 March 2011. The final consultation between CAMHS and Humbles is recorded as having occurred on 21 December 2010. It appears from the file that Humbles saw CAMHS from approximately September 2010 to December of that year. There is extensive reference in the file to Humbles' problematic marijuana usage. The closure summary refers to

⁶ Exhibit C90

his *'range of behavioural and vocational issues almost certainly mostly related to his heavy marijuana use'* and his hesitancy about his commitment to decrease his marijuana use. The contact file notes make it plain that Humbles had a serious marijuana addiction having started smoking it in Year 8, that he became enraged when denied access to marijuana placing himself and others *'at risk'*, that he had experienced mood swings, psychotic episodes, agitation, dangerous threatening rage and paranoia and that he remained ambivalent about engagement with CAMHS and drug support services. He denied use of drugs other than marijuana. In a file note relating to a contact on 27 September 2010 there is reference to involvement with police finding a bong in his pocket and the fact that he had to see a counsellor about this at the Marion Youth Centre. This is no doubt a reference to Humbles' first police drug diversion in March 2010 that I will discuss in due course. Apart from four further police drug diversions, I do not know of any other assistance that Humbles may have sought or obtained from any other support service. The reason for his disengagement from CAMHS is unclear, but the closure summary states *'A number of different approaches were offered to the family for follow up including family therapy, parenting support or individual sessions with Liam, but the family failed to recontact CAMHS with a decision. Therefore file to be closed'*.

- 2.6. Humbles' school reports for 2011⁷ reveal that he did poorly during that year. He exhibited decreasing rates of attendance as the year progressed, with nil attendance recorded in respect of all subjects in Term 4.
- 2.7. Until early 2012 the Humbles family resided at premises at Pemberton Street, Oaklands Park. Humbles had occupied a structure in the rear yard of the premises where from time to time he would associate with his friends and smoke cannabis. After the family moved from Oaklands Park to the Hume Street address at Seaview Downs, Humbles resided with them but only until about 28 March 2012 when his parents asked him to leave due to his increasingly unsatisfactory behaviour towards them. I take this date from an affidavit that Lee Humbles ultimately signed in respect of an application for an intervention order that he would apply for in respect of Humbles. In that affidavit Mr Humbles states that in March 2012 Humbles was *'kicked out of the family home due to his ongoing behaviour'*⁸. In the affidavit Mr Humbles described escalating poor

⁷ Exhibit C92

⁸ Exhibit C75, paragraph 5

behaviour on the part of Humbles and a fear that such behaviour would continue. The behaviour had consisted of aggression towards Mr Humbles himself and the members of his family of a physical, verbal, psychological and emotional kind.

- 2.8. From about 28 March 2012 until New Year's Eve that year Humbles resided at two addresses of which the Court is aware. One of those addresses was the premises at 26 Railway Terrace, Warradale which is the premises involved in the fatal shooting on New Year's Eve. The evidence demonstrated that Humbles resided at that address during two distinct periods in 2012. The other address was a premises in Dalkeith Avenue, Dover Gardens. The evidence demonstrated that his period of residence at Dalkeith Avenue occurred in the intervening period between his two occupancies of 26 Railway Terrace. It is possible that Humbles couch surfed at other places during the periods under discussion.
- 2.9. The Court received into evidence the statements of a number of persons who were associates of or otherwise known to Humbles during 2012, and in some cases before that. Some of those individuals gave oral evidence in the Inquest. Virtually all of those witnesses spoke of a decline in Humbles' wellbeing, demeanour and behaviour during the course of 2012 that for the most part they related to his consumption of illicit substances that were not limited to cannabis.
- 2.10. Anastasia Machairas, then 15, who knew Humbles during his time at the Dalkeith Avenue address, told the Court that Humbles took methamphetamine and ecstasy⁹. She knew that Humbles possessed a gun and she saw it at Dalkeith Avenue. She was aware that at one point he had relinquished it and was determined to get it back. It is known that Humbles did relinquish it one stage and ultimately had it returned to him. I have found that this occurred when he was residing at Dalkeith Avenue, that is to say at a time after his first period of residence at 26 Railway Terrace.
- 2.11. Another witness who knew Humbles, Melissa Jupp, then 15, described him during the relevant period as scary and angry¹⁰. She was aware that Humbles dealt in drugs that included liquid and crystal methamphetamine and ecstasy¹¹. She observed that Humbles would flip and become violent when on drugs¹². This individual told the Court

⁹ Transcript, page 27

¹⁰ Transcript, page 48

¹¹ Transcript, page 51

¹² Transcript, page 53

that she had known of Humbles' possession of the gun and that she had told her mother about that.

- 2.12. Matthew Richmond, then 16, who I will mention in another context below, noticed that Humbles would experience mood swings when he did not have access to cannabis¹³. He asserted that Humbles used methamphetamines. Richmond had things to say about Humbles' use of the gun which I will refer to in another context.
- 2.13. Another associate by the name of Kris Matthew, then 18, spoke of Humbles' temperament when on drugs. He said that Humbles was heavily into drugs and that he was not happy when he did not have them. Matthew knew about the gun. He spoke of an incident in which Humbles, in an agitated frame of mind, held the gun to his own head. Matthew asserted in his evidence that he had told his parents about Humbles' possession of the gun¹⁴.
- 2.14. Mitchell Egger, then 17, told the Court that Humbles took and dealt in drugs. He said that when Humbles had taken drugs he exhibited a range of emotions from anger to happiness to sadness. Egger told the Court that he knew that Humbles had a gun and that he was present when Humbles fired the gun at a park near Dalkeith Avenue.
- 2.15. Louise Woollard, then 16, asserted in evidence that she knew Humbles as well as anybody. She occupied premises at Dalkeith Avenue at the same time as Humbles. She told the Court that Humbles used cannabis and ice and also dealt in drugs. She asserted that Humbles would exhibit violent behaviour when on drugs. Woollard also spoke of his possession of the gun. She told the Court of an incident inside the Dalkeith Avenue premises when Humbles discharged the gun while in an hysterical mood. She believed it was an accidental discharge.
- 2.16. Woollard's brother, Dylan Woollard, then 18, also told the court that Humbles took ice and methamphetamine and that '*he was a mess*'¹⁵. He spent time at Dalkeith Avenue. He denied that he ever saw the gun, but it is clear that he was on the premises when the gun discharged. To my mind it is also clear that he knew that Humbles had a gun. This had prompted him to tell his sister Louise to leave the address.

¹³ Transcript, page 85

¹⁴ Transcript, page 119

¹⁵ Transcript, page 183

- 2.17. Three boys habitually occupied premises at 26 Railway Terrace, namely John Tilly-Griffin, then 18, Joseph Tilly-Griffin, then 16, and their younger male sibling. John and Joseph told the Court that Humbles resided at the Railway Terrace premises on two occasions in 2012.
- 2.18. John Tilly-Griffin spoke of Humbles' personality change over time. He became angrier and a lot more paranoid. John Tilly-Griffin knew that Humbles had a gun and had seen it at 26 Railway Terrace where it was kept. John Tilly-Griffin believed that he had seen the gun for the first time during the first occasion during which Humbles resided there.
- 2.19. Joseph Tilly-Griffin, who in many respects was the most informative previous associate of Humbles, asserted that to his knowledge Humbles took ice and methamphetamine and sold cannabis and pills. He asserted that Humbles was addicted to methamphetamine. He spoke of Humbles change in personality. Joseph Tilly-Griffin also gave evidence about Humbles' habit of selling drugs at Railway Terrace, and in particular his behaviour in relation to the sale of drugs in the vicinity of the railway station that will feature in another section of these findings. This witness mentioned Humbles' noticeable loss of weight and that in the last few weeks prior to Lewis McPherson's death he was angry and freaking out because he had no money. Joseph Tilly-Griffin knew that Humbles had the gun. He had seen it.
- 2.20. As seen from the evidence of these witnesses Humbles was not merely a cannabis user. He was a user of other substances said to include methamphetamine, ice and ecstasy which had an adverse effect on his behaviour and demeanour. When in 2012 Humbles was detected by police in possession of an illicit substance, the only substance located was cannabis for which he was subjected to the drug diversion process on two separate occasions. There is no evidence that those administering the diversion process knew about the consumption of any other illicit substance in conjunction with cannabis.
- 2.21. As to Humbles' accommodation during 2012, I have already referred to the fact that from late March 2012 he was no longer welcome within the family home. As will be seen, that did not stop him from occasionally attending at the premises. This ongoing unwelcome attendance at the family home culminated in Humbles' arrest in December 2012. On foot at the time of that arrest was an application by Humbles' parents for an intervention order preventing him from attending at the premises and harassing members of his family. This was based on behavioural issues that presented themselves

during 2011 and 2012. Although the Court was unable to establish Humbles' accommodation arrangements during 2012 by reference to specific dates, I have found that Humbles resided at the premises at 26 Railway Terrace on two separate occasions during 2012 and that in the intervening period between those two periods of residence he resided at premises at Dalkeith Avenue. It can safely be concluded, and I so find, that from about 21 June 2012 when the first piece of information was imparted to police about Humbles' drug dealing and his carrying a firearm, that he had possession of the firearm. The evidence was clear that during 2012 he had possession of a firearm for all of the time except for a period during which it was temporarily returned to the person who provided it to him in the first place. I was satisfied that this did not occur until later in 2012. At other times it seems clear enough that Humbles had possession of the firearm and, although he did not have it on his person, had control of it at times when he came into contact with police and at times at which police received information about him.

2.22. I have referred to the witness Joseph Tilly-Griffin. Joseph Tilly-Griffin was 16 years of age at the time with which this Inquest is concerned. He resided at 26 Railway Terrace with his two brothers, his mother and her partner, although I am not certain that the partner was residing at the premises on a fulltime basis. I accepted Joseph Tilly-Griffin's evidence that Humbles resided on two separate occasions at that premises and that his occupation of that premises was interrupted by Humbles moving to premises at Dalkeith Avenue. Joseph Tilly-Griffin knew of the gun. He asserted that he knew of the circumstances in which Humbles acquired it in the first instance. He asserts that he saw the gun at both Railway Terrace and at Dalkeith Avenue. He told the Court that he first saw the gun at 26 Railway Terrace during the first period in which Humbles resided there¹⁶. I accepted that evidence.

2.23. Joseph Tilly-Griffin told the Court of Humbles' drug dealing activities whilst he was residing at Railway Terrace on the first occasion. He told the Court that Humbles would make the necessary arrangements on the phone and that he would then go to the vicinity of the Warradale railway station to meet the purchasers. Joseph Tilly-Griffin stated that he would see Humbles at the railway station and on a few occasions he actually observed him doing drug deals at that location. As well, he told the Court that young

¹⁶ Transcript, page 529

people would come to the Railway Terrace premises and hang out and take drugs¹⁷. Joseph Tilly-Griffin told the Court that he would see Humbles selling drugs to those other young people actually in the house. He himself bought cannabis from Humbles. He told the Court that Humbles kept his bike at the premises at 26 Railway Terrace when he was living there.

- 2.24. As will be seen, the evidence that Joseph Tilly-Griffin gave about Humbles' modus operandi in respect of selling drugs conformed very closely with information that police received on 19 July and 1 August 2012 and also with what police observed themselves in respect of Humbles' activity on 31 July 2012. I go into this in greater detail below, but to summarise, the information was that Humbles, either by description or by name, was dealing in drugs both in the vicinity of the Warradale railway station, which is on Railway Terrace, and from the premises at 26 Railway Terrace where he was said by the informant to reside at the time. The assertion that he resided at this premises was made by an informant on 1 August 2012. The information also contained assertions that Humbles would enter into a number of transactions during the course of a day which was consistent with Humbles at that time having a close association with that particular location. That association of course would be provided by his residing in very close proximity to the location where he was said to be dealing in drugs in the street. Then there was an occasion on 31 July 2012, as will be seen, when police actually observed Humbles in the process of what they believed to be the conduct of a sale and where Humbles was found in possession of cannabis.
- 2.25. When one considers all of that material, and even allowing for the fact that much of the information received by police about Humbles either by name or description is hearsay, and when one considers the evidence of Joseph Tilly-Griffin, the conclusion that I have arrived at on the balance of probabilities is that Humbles was residing at 26 Railway Terrace on the first occasion at least between and including 19 July 2012 and 1 August 2012. By 12 August 2012 he had left 26 Railway Terrace. Police attended at that premises on that day and were told that he had left that premises. The inference from the evidence overall is that by then he had moved to Dalkeith Avenue where he would remain for a number of weeks.

¹⁷ Transcript, page 535

- 2.26. There is no evidence that police had specific information that Humbles was residing at 26 Railway Terrace until the information to that effect was received by police on 1 August 2012.
- 2.27. To my mind there was an opportunity for police to have located Humbles residing at 26 Railway Terrace on or shortly after 1 August 2012 when the information was received to the effect that he was residing at and dealing in drugs from that premises. There is little doubt also that Humbles was in possession of the firearm at that time if one accepts the evidence of Joseph Tilly-Griffin which I do. To my mind it is more probable than not that Humbles kept the gun at 26 Railway Terrace. I add here that the suggestion that he may have relinquished possession of the firearm at that point in time is to be rejected because the evidence of Louise Woollard, which I accept, was to the effect that his relinquishing of the gun was around the time of her birthday in November of that year. Obviously he received it back at some point prior to the end of December.
- 2.28. All this means that if police had established that Humbles was residing at 26 Railway Terrace in July and in part of August 2012 and had lawfully searched the premises using police powers, or had searched it with the consent of the principal occupier, they probably would have found the gun. In particular, if a police attendance on or after 1 August 2012 had occurred at 26 Railway Terrace when that address was specifically identified to them, they probably would have found the gun.
- 2.29. None of Humbles' associates told anybody in authority about Humbles' possession of the gun even though they all knew that he had it. A number of them were asked in evidence, and I put aside Matthew Richmond for the moment, whether they would have told the police about the gun if they had been asked. Some of them said yes, some of them said no. Louise Woollard who was one of the more impressive witnesses told the Court that she would have told police that he had a firearm if she had been asked¹⁸.
- 2.30. I have mentioned that the witnesses Jupp and Matthew had told one or both parents about the gun. I called Melissa Jupp's mother, Mrs Sharon Jupp, to ask her whether she had been told about Humbles' possession of the gun and, if so, why she never told anybody about it. Mrs Jupp told the Court that in 2012 she and her daughter had a fractured relationship and that Melissa would frequently run away. Mrs Jupp said that she went to the Railway Terrace address on a number of occasions to find her daughter.

¹⁸ Transcript, pages 164, 173 and 174

Ms Jupp told the Court that her daughter had told her what she described as a '*fractured story*' of an event that had involved somebody who had a gun¹⁹. She said that Melissa did not mention the name of the person involved. She believed that she was told that there were no bullets with the gun and that the person was being silly with it, meaning that he was being brazen with it, moving it around and showing people the gun²⁰. Mrs Jupp told the Court that when her daughter told her about this she went into panic mode and started asking her daughter questions, but that her daughter never told her who had the weapon. She told the Court that a few days later when she again asked Melissa about the gun, her daughter had spoken about it in dismissive terms as if to say that the incident involving the person showing the gun around had not really happened. Mrs Jupp told the Court that she was relieved at this information. Asked as to whether she thought her daughter had made up the story about the gun, she said:

'I wasn't 100% sure but I thought it might have been just another thing that she told me just to worry me which was often the case that she would do.'²¹

Mrs Jupp did not tell any other person about this issue saying that she just hoped to god that it was not true. Mrs Jupp told the Court that she did not connect the information about the gun or the person who supposedly had it with 26 Railway Terrace.

- 2.31. Kris Matthew's parents were called to give evidence. Mrs Yvonne Matthew told the Court that in 2012 her son Kris told her that Humbles had a gun²². Mrs Matthew told the Court that she did not believe it to be true, but she discussed it with her husband who opined that the gun would only be a replica and that it could not possibly be a real gun. Mrs Matthew had endeavoured to place her son's assertion into the context of her son's then personal difficulties. She said that a lot of their conversations at that time were quite heated because she and her husband were angry at the fact that he was very often not present at the house, meaning that much of what was said was uttered in anger and frustration in a volatile situation. She stated that her son was endeavouring to disassociate himself from Humbles because he felt that Humbles was going out of control and that he did not want to be around him anymore. She said that her son had said that Humbles' behaviour was getting totally out of control. She said that she did not know what to do about the information, or whether it was true, but she agreed that

¹⁹ Transcript, page 650

²⁰ Transcript, page 651

²¹ Transcript, page 652

²² Transcript, page 671

she was concerned about the information. She said that when she spoke to her husband he had doubted how a boy of that age could have a real gun. He was quite dismissive of the suggestion. Asked as to whether she considered calling the police she told the Court that they did think about that, but did not in the event call the police. Asked as to whether there was anything else apart from the age of the boy in question that would militate against the truth of the assertion that he had a gun, she said that Humbles had been to their house on a couple of occasions and that he had always been polite and courteous. In cross-examination Mrs Matthew asserted that as her son was using drugs he was not reliable, but did not think that he would lie to her. For instance, she acknowledged that he had been open about his own consumption of cannabis. As far as other information about Humbles' drug consumption and reported irrationality was concerned, she acknowledged that her son would have had no reason to lie about any of that. But to the suggestion that there was in reality no reason to disbelieve her son about the gun, she stated that Kris had been very unreliable with everything at that time. Mrs Matthew agreed with the proposition that if her son were to have recommenced the relationship with Humbles even after the relationship were to end, the fact that Humbles possessed a gun would still remain as a worrying circumstance. Mrs Matthew told the Court that she would have reported Humbles' possession of a gun to police if she had believed that it was true²³.

- 2.32. To my mind Mrs Matthew was unduly influenced by her husband's assertion that it was unlikely that Humbles was in possession of a real gun.
- 2.33. Mr Brian Matthew was called to give evidence. He spoke of his son's behavioural change and his smoking of marijuana and that he had associated those circumstances with the fact that he spent time with Liam Humbles. That said, he told the Court that he had always regarded Humbles as polite and pretty normal. On the other hand, he said that he learnt through his son Kris that Humbles was doing drugs and actually dealing. Mr Matthew knew of both the Railway Terrace address and the Dalkeith Avenue address. Mr Matthew told the Court that he tried to persuade their son not to associate with Humbles. Kris himself had said that he no longer felt comfortable hanging about with Humbles because Humbles was '*going off the rails*', was

²³ Transcript, page 677

'completely losing the plot through drugs' and was having mood swings both when on drugs and when he could not get drugs²⁴.

2.34. Mr Matthew acknowledged that his wife told him that Kris had told her about the gun.

He said:

'Yes. He had told her again - I can't say for definite when that time period was when he said, but he had told her, and again I can't remember how it came up in conversation, that Liam had a gun, and I came home that night and my wife said something to me about it, and she said 'Kris says Liam's got a gun' and I kind of dismissed it and I went - I said 'Don't be stupid, where would a 17-year-old boy get a gun and why would he have a gun?' you know and basically it was kind of left at that, and it was - I don't think we spoke about it again, and I don't think Kris mentioned it again, and the next we heard about it was actually after obviously Lewis had got shot, you know, that on 1 January we heard about that, and that's when we went 'My god, he did have a gun!'²⁵

2.35. Asked as to whether he had himself spoken to his son about Humbles having a gun he said that he believed that at some point he did later speak to his son about the issue and that his son had said that Humbles did not have the gun anymore and had given it back.

2.36. To summarise, Mr Matthew's position was that he did not believe that a 17 year old would have access to a firearm. Mr Matthew agreed that he could have asked pointed questions of his son about the gun including about the source of it, its appearance, whether there was any ammunition with it and the reason why Humbles would have a gun. He acknowledged that he could have asked all of those questions but did not do so. Some might say that to refrain from asking such questions would be to remain wilfully blind to the obvious. It has to be said that they were questions that could easily have been asked and the answers may have been revealing and persuasive.

2.37. One matter that has troubled the Court is whether Humbles' own parents at any stage knew that he had a gun. They both denied in their evidence that they had any such knowledge. Evidence was given by two members of the household next door to 26 Railway Terrace. They were Mrs Allison McGillick and her daughter Katherine. Their evidence was to the effect that immediately after the shooting, when they were in the street, they heard the principal occupier of 26 Railway Terrace, Ms Susanna Tilly, state that the boy responsible for the shooting had been kicked out of home for pointing a gun at his father. Such an utterance would be consistent with Mr Lee Humbles having

²⁴ Transcript, page 685

²⁵ Transcript, page 686

known that his son had a gun at the time Humbles had been forced out of the home in March of that year. While I accept that these witnesses were telling the truth about what they heard, I do not believe that this could be relied upon as establishing that Mr Lee Humbles either knew about the gun or that it had been pointed at him by his son. For a start it is rank hearsay. It is true that the assertion that Humbles had been removed from the family home was accurate, and that Ms Tilly would have known this, but according to Mr Lee Humbles this was not in any way part of the reason Humbles had been asked to leave the home. What the utterance is possibly indicative of is Ms Tilly's own knowledge or belief that Humbles had a gun at some point in time, a matter that she also denied in her evidence before the Court. It may well be that by 31 December it was widely believed that Humbles had been removed from the family home for pointing a gun at his father, part of which was true and part of which was legend built on a common understanding among those who knew Humbles that Humbles possessed a gun.

- 2.38. But there was one other piece of evidence on this topic that troubled the Court. This was evidence given by Detective Brevet Sergeant Buck, one of the detectives from Sturt CIB who was responsible for the investigation of Lewis McPherson's death. Detective Buck gave evidence that on the evening of Lewis McPherson's death, Mrs Humbles at the Sturt police station angrily asserted that police had known that her son had been in possession of a gun but had done nothing about it. I accept Detective Buck's evidence that this was said by Mrs Humbles. Mrs Humbles' evidence as to whether she said this or not was imprecise and uncertain. At one point she appeared to acknowledge that she had in fact said this²⁶. But attempts to establish through her how she may have come to the belief that police knew about the gun were fruitless. Much of Mrs Humbles' evidence became difficult to follow. She is a woman who understandably remains deeply disturbed by the events surrounding McPherson's death, her son's role in it and his resulting incarceration. My impression was that she was prepared to answer questions carelessly if it would serve to truncate her ordeal in the witness box. The assertion as heard by Detective Buck is consistent with a number of things including that Mrs Humbles had known for some time that Liam Humbles had been in possession of a gun, or it could mean that she had heard that others had told the police that Humbles had a gun but that she had no personal knowledge in this regard. The utterance of Mrs

²⁶ Transcript, page 250

Humbles is also a strikingly prescient forecast of what would become one of the principal issues in this Inquest, namely whether police indeed knew about the gun and had done nothing about it. I entertain a suspicion that Mrs Humbles, at a time before the shooting, either knew about the gun or had heard it said that Liam had a gun. However, the one thing that is completely certain is that when Mr Lee Humbles swore his affidavit in support of an intervention order against Humbles, an affidavit dated 20 November 2012, he asserted in the affidavit that ‘*Liam does not have any firearms or a firearm licence*’²⁷. As will be seen this affidavit contained detailed descriptions of a number of aggressive behaviours on the part of Liam Humbles, particularly towards Mr Lee Humbles, including an argument in which Liam Humbles had produced a knife. The orders sought by Mr Lee Humbles were that Liam Humbles not assault, threaten, harass or intimidate himself or members of his family, or even come within 50 metres of them. If Mr Lee Humbles knew that his son had a firearm you would have expected this to be front and centre in an affidavit that had his own protection and that of the members of his family as its sole purpose. Its absence from the affidavit would make no sense. It would also not make sense that if Mrs Humbles knew about a firearm she would not have told her husband about this. It is theoretically possible that after 20 November 2012 when the affidavit was sworn that the Humbles’ came to know that Liam had a gun. However, there is no evidence of this and when regard is had to the restraining order application which was still on foot, one would have thought that if they had come into that knowledge during that period they would have shared it with police. They called the police when Liam came to their home on 14 December 2012 and it is evident that they mentioned nothing about a gun to police on that occasion.

- 2.39. I make no finding about whether or not Mr or Mrs Humbles knew about a firearm in the possession of their son.
- 2.40. There is one other matter relating to Mr and Mrs Humbles. It is clear from their evidence that at various times in 2012 they knew, or at least one of them knew, that Humbles was residing at the Railway Terrace address or the Dalkeith Avenue address. There was a suggestion from their respective cross-examinations on behalf of the Commissioner of Police that they had been less than helpful in enabling police to locate their son at any given time. The suggestion was not fully developed in the Inquest. It has not been demonstrated that on an identifiable occasion police unsuccessfully

²⁷ Exhibit C75, paragraph 16

attempted to establish an address through Mr and Mrs Humbles at a time when either of them knew how to locate their son. I make no finding about this issue.

2.41. I have mentioned Ms Susanna Tilly, the principal occupant of 26 Railway Terrace and the mother of John and Joseph Tilly-Griffin. To my mind it is clear that Ms Tilly knew of the fact that cannabis and alcohol were being consumed by minors in her house and that she did little or nothing to curtail the activity. I am not certain about her knowledge of the consumption of harder drugs and make no finding about that. She denied that she ever knew that Humbles possessed a gun at her premises or at all. She denied that she had stated at the scene, as heard by the McGillicks, that the individual who shot Lewis McPherson had been kicked out of home for having pointed a gun at his father. Such an utterance in any event is consistent with Ms Tilly having believed that Humbles' banishment from the family home in the first instance had involved a gun but it would not demonstrate in the absence of direct and convincing evidence that she knew that Humbles kept a gun on her premises as at 31 December 2012 or at any time before. There was no such evidence. Any evidence that may have pointed to knowledge of the gun on Ms Tilly's part was insubstantial and based on supposition. On the other hand, I found myself unable to rely on much of what Ms Tilly told the Court unless it was corroborated by others. There is also the fact that I accept the evidence of the McGillick's as to Ms Tilly's utterance at the scene of the shooting and I am mindful of what it might imply. Accordingly I am not in a position to make a finding as to whether or not Ms Tilly knew about the gun at any time in 2012.

2.42. I find that the following persons knew that Humbles possessed a gun and told nobody in authority about that prior to the shooting. Anastasia Machairas, Matthew Richmond, Mitchell Egger, Louise Woollard, Dylan Woollard, John Tilly-Griffin and Joseph Tilly-Griffin. There are possibly others. I find that Melissa Jupp knew that Humbles possessed the gun and told her mother that a person whom she knew possessed a gun. I am unsure as to whether Humbles was identified as that person. I find that Kris Matthew told his parents that Humbles possessed a gun.

3. The Controlled Substances Act 1984

3.1. The activities of Humbles need to be examined against the law relating to the possession and trafficking of illicit substances in particular cannabis. In doing so, I make no finding or suggestion of criminal liability on Humbles' part. Whether Humbles during

2012 would ultimately have been found guilty of any drug offences in a court of law is not the point. The point is whether Humbles could have been lawfully dealt with for matters that had attracted police attention in a different and more effective manner.

- 3.2. It is an offence for a person to possess, smoke or otherwise consume cannabis. The maximum penalty for any such offence is a fine of \$500²⁸, a maximum that has existed since the mid-1980s, thereby fuelling the argument that in reality society cares so little about the deleterious effects of the abuse of that substance, particularly on the young, that it is prepared to allow its criminality to be eroded practically out of existence.
- 3.3. It is an offence for a person to traffic in cannabis. Trafficking is defined as selling a controlled drug, having possession of a controlled drug intending to sell it or taking part in the process of the sale of a controlled drug. The maximum penalty for a basic offence is \$50,000 or imprisonment for 10 years or both, and for an aggravated offence it is \$75,000 or imprisonment for 15 years or both²⁹. An offence of trafficking in cannabis must be prosecuted in and dealt with by the Magistrates Court as a summary offence unless the Court determines that the person found guilty of such an offence should be sentenced to a term of imprisonment exceeding the jurisdiction of that Court³⁰ in which case the person must be committed to the District Court for sentence³¹. However, a prosecution of a person under the age of 18 would take place in the Youth Court.
- 3.4. Pursuant to Section 45A(1) of the Controlled Substances Act 1984 a prosecution for a simple cannabis offence such as possession of cannabis (but not the trafficking of cannabis) cannot be commenced except by the Director of Public Prosecutions, a police officer or a person authorised in writing by the Director of Public Prosecutions to commence the prosecution. However, in the case of an adult who is alleged to have committed a simple cannabis offence, an expiation notice must be given to the alleged offender under the Expiation of Offences Act 1996 before a prosecution can be commenced. In the case of a child, that is to say a person under the age of 18 years, an expiation notice prior to prosecution is not required. The default position for the commencement of a prosecution of a child for a simple cannabis offence, namely that it must be commenced by the DPP or his authorised person or a police officer, applies. Again, such a prosecution would take place in the Youth Court. Therefore, police have

²⁸ Controlled Substances Act 1984, Section 33L(2)

²⁹ Controlled Substances Act 1984, Section 32(3)

³⁰ At that time 2 years imprisonment, now 5 years

³¹ Controlled Substances Act 1984, Section 32(4)

power to commence a prosecution of a child for simple possession of cannabis. Naturally the police have a discretion whether to prosecute. There is no guidance within the Act itself as to the criteria upon which that discretion would or would not be exercised.

- 3.5. It is worthwhile noting that pursuant to Section 33H of the Controlled Substances Act 1984 it is an offence for a person to procure a person under the age of 18 years to commit an offence contrary to Part 5 of the Act, which Part includes the offences of trafficking in and possession of cannabis. The maximum penalty for such an offence is \$1 million or imprisonment for life or both. A child caught trafficking in an illicit substance would naturally invite the question as to whether an adult had put him or her up to it.
- 3.6. I have already referred to the process known as drug diversion. Drug diversion is a process that has legal recognition pursuant to Part 5 Division 6 of the Controlled Substances Act 1984. Part 5 Division 6 in its current form came into operation on 1 October 2001. It replaced a different regime of diversion that had existed since the mid-1980s. The process of drug diversion does not have any applicability to alleged offences of trafficking. Section 40 of the Act creates the diversion. It stipulates that a prosecution for a simple possession offence alleged to have been committed by a person cannot proceed unless the person has been referred to an assessment service and a referral has been terminated by the service³². The assessment service may require the person to enter into written undertakings in respect of treatment, education and other related matters. Section 34 of the Act specifically states that the diversion regime does not apply to a child who is alleged to have committed a simple possession offence³³. The predecessor of the current legislative regime also contained that same limitation. When the current legislative diversion scheme was introduced into Parliament, the then Attorney General the Hon. K.T. Griffin referred to the fact that ‘*While the legislation governing the apprehensions and available dispositions for young offenders is sufficiently flexible and amenable to a police diversion initiative under the Young Offenders Act 1993, that dealing with adults is not*’³⁴. To my mind the existing diversion process has no de jure application, and was never intended to have application, to anything other than adult persons who are alleged to have committed

³² Controlled Substances Act 1984, Section 40(1)

³³ Now section 34(1)

³⁴ Parliamentary Debates SA Legislative Council 1999-2000 Vol 2, 49th Parliament Third Session, Second Reading Speech, page 1125

simple possession offences, which by definition do not include simple cannabis offences in any event.

3.7. How then are simple cannabis offenders to be dealt with? In the case of an adult, as already indicated, a prosecution cannot be commenced unless an expiation notice has been given to the alleged offender. In the case of a child, where in respect of cannabis the Act does not contemplate either diversion or expiation, the child may be prosecuted in the usual way provided the prosecution is commenced by certain individuals including the DPP or a police officer. Any such prosecution would be undertaken in the Youth Court. The prosecution of children for any offence in respect of any illicit substance including cannabis, be it for trafficking or possession for the child's own use, appears to be reserved for the Youth Court subject of course to the exercise of the prosecuting authorities' discretion to commence a prosecution in any given case. The expiation regime for adults in respect of simple cannabis offences was created by the Controlled Substances Act Amendment Act 1986³⁵. The regime is established by section 45A(2) of the principal Act. It is specifically stated not to apply to a child. Indeed, when the legislation that created the expiation scheme was introduced in Parliament, the then Minister for Health, the Hon. J.R. Cornwall stated '*I draw honourable members' attention particularly to the exclusion of children from the expiation scheme. Children will continue to be dealt with in terms of the Children's Protection and Young Offenders Act. The Government is adamant that this is the appropriate manner of dealing with children in this area.*'³⁶

3.8. Therefore, the Controlled Substances Act as a whole does not appear to apply the drug diversion process to children regardless of the nature of the offending³⁷. It excludes children from the expiation process. All this may well owe itself to the therapeutic nature of the various forms of legislation concerning young offenders which has governed the prosecution and correction of youths who offend against the criminal law. This legislation does not specifically and in terms recognise the existence of drug diversion schemes such as the one that exists within the Controlled Substances Act for adults, but it does establish corrective regimes that do not necessarily stigmatise the youth including the administration of informal and formal cautions by police, family

³⁵ Act No 64 of 1986

³⁶ Parliamentary Debates SA 1986-1987, Vol 1, 46th Parliament Second Session, Legislative Council, Second Reading Speech, 28 August 1986, page 733

³⁷ Controlled Substances Act 1984, Section 34 as amended

conferences that are overseen by Youth Justice Co-ordinators who are responsible to the Youth Court and in which police participate, and if necessary prosecution in the Youth Court.

- 3.9. The administration of drug diversion under the Controlled Substances Act is governed by what is known as the Police Drug Diversion Initiative (the PDDI) and in particular by its Clinician Manual³⁸. The Clinician Manual correctly asserts that according to the Controlled Substances Act all adults committing simple possession drug offences must be diverted for a health intervention except where the drug involves cannabis, which as seen attracts an expiation notice in the first instance. In the case of children, the Clinician Manual asserts that the police drug diversion initiative diverts young people detected for simple possession drug offences, including but not limited to possession of cannabis, to a health intervention. Further, it asserts that there are *'no limits to the number of times a young person may be diverted'*. The document then goes on to assert that *'all young people detected in possession of drugs or equipment pursuant to Section 33L(1)(a) & (2) and 18(3) of the Controlled Substances Act 1984 are diverted for assessment as an opportunity to address their offending by an alternative to the Youth Justice process. The youth model is not established through the Controlled Substances Act 1984; however, the diversion process is consistent with Division 6 of that Act'*.
- 3.10. Police General Order - Drug Diversion also reflects the above notion. Specifically it repeats the observations from the PDDI Clinician Manual that youth drug diversion is consistent with Division 6 of the Controlled Substances Act and that there is no limit to the number of diversions a youth can receive. However, the General Order makes it plain that in determining eligibility for diversion, the drug in question must be for personal use only but that where there is suspicion that the drug is possessed for some other purpose diversion is not appropriate. The Order states:

“Drug must be for personal use only – before issuing a Drug Diversion Referral Notice a member must be satisfied that the drugs detected are for personal use only. In most cases it should be clear whether the quantity is for personal use. When the member suspects the amount of drug is for anything other than personal use a diversion will not be appropriate and more serious charges should be pursued using the processes available within the Justice System.”

³⁸ Exhibit C84f

This General order was in force at the time with which this Inquest is concerned and remains the same today³⁹.

- 3.11. Both the Clinician Manual and SAPOL General Order state that the PDDI conforms with a nationally agreed approach to illicit drugs that arose out of a COAG initiative in the late 1990s. The General Order asserts that the PDDI is consistent with the principles contained within the National Drug Strategy. It is true, as both the PDDI Clinician Manual and the General Order assert, that the youth model of diversion is not established through the Controlled Substances Act, but the assertion that the youth model is '*consistent with Division 6 of that Act*' is questionable having regard to the fact that, as already seen, Section 34 of that Act specifically states that the Part 5 Division 6 diversion regime does not apply in relation to a child who is alleged to have committed a simple possession offence, and as well by necessary extension, a simple cannabis offence. Certainly there is nothing in the Act that specifically warrants the diversion of children on a limitless number of occasions. And as seen, Parliament never intended Part 5 Division 6 diversion to apply to children. That such diversion occurs in respect of a child is, in essence, simply an exercise of the police prosecutorial discretion not to prosecute or otherwise subject the child to the youth justice process. Certainly from a policing perspective, diversion is very much the path of least resistance when compared to the more salutary measures contained in the Young Offenders Act 1993, most if not all of which require police participation. And so it was with Humbles.
- 3.12. In any event, as seen, diversion has no applicability to offences involving trafficking of illicit substances including cannabis.
- 3.13. It was this drug diversion process that Humbles was subjected to on five occasions. This despite the fact that on at least one of those occasions a suspicion was entertained on reasonable grounds that Humbles was trafficking in cannabis.

4. Humbles' serial drug diversions

- 4.1. Humbles first drug diversion occurred in respect of possession of equipment for smoking cannabis, possession of cannabis and possession of cannabis resin allegedly committed on 25 March 2010. The equipment in question was a bong. Humbles attended a meeting at the Marion Youth Centre on 30 March 2010. It was an assessment

³⁹ Refer SAPOL General Order Drug Diversion date of issue 15 June 2011, and SAPOL General Order Drug Diversion date of issue 7 December 2016

only. A letter from Drug and Alcohol Services South Australia to SAPOL indicated that Humbles had been compliant with the police drug diversion initiative guidelines⁴⁰. This diversion is referred to in Humbles' CAMHS file.

- 4.2. Humbles second drug diversion occurred in respect of possessing equipment for smoking cannabis, possessing cannabis and possessing cannabis resin allegedly committed on 16 February 2011. The equipment in question was a pipe. Humbles attended a meeting at the Marion Youth Centre on 21 February 2011. The treatment was completed. Another compliance letter from Drug and Alcohol Services South Australia was sent to police⁴¹.
- 4.3. Humbles third drug diversion occurred in respect of possessing equipment for smoking cannabis allegedly committed on 27 August 2011. The equipment in question was a bong. Humbles attended another meeting at the Marion Youth Centre on 31 August 2011. The file was endorsed as treatment completed. Another Drug and Alcohol Services South Australia letter was sent to police.
- 4.4. The fourth drug diversion occurred in respect of an offence of possessing cannabis allegedly committed on 31 July 2012. The circumstances in which Humbles was located in possession of cannabis on this occasion are the subject of discussion in another section of this finding. It was on this occasion that the police officer concerned entertained a reasonable suspicion that Humbles was trafficking in cannabis. Humbles was diverted notwithstanding. Humbles was required to attend a meeting at the United Communities Marion Shopping Centre on 9 August 2012. The file was endorsed as treatment completed. The usual Drug and Alcohol Services South Australia letter was sent to police. The file⁴² does not record an address for Humbles other than the address of 11 Hume Street, Seaview Downs which was the current address of his parents but at which he was not residing at that time. His actual place of living as at 31 July 2012 was not established by police. There is no evidence that it was established by anyone else at the time of and in connection with this diversion. However, police would be provided with an address for Humbles the following day together with further information that he was dealing from that address. I note that the SAPOL General Order – Drug Diversion allows for a drug diversion to be withdrawn in appropriate circumstances and

⁴⁰ Exhibit C84a

⁴¹ Exhibit C84b

⁴² Exhibit C84d

that proceedings can then be commenced under the justice system. That could easily have occurred here in light of the further information regarding Humbles.

- 4.5. The fifth and final drug diversion occurred in respect of possession of cannabis allegedly committed on 14 September 2012. The circumstances in which this event occurred are also the subject of discussion in this finding. Humbles was required to attend another meeting at Marion which he apparently did on 20 September 2012. The file was endorsed that there was compliance with the diversion, and the usual Drug and Alcohol Services South Australia letter was sent to police. There is no evidence that Humbles' actual place of living as of that date was established by police at the time of and in connection with this diversion. Humbles' father would include reference to this particular drug diversion in his intervention order supporting affidavit. On that day Mr Lee Humbles had a chance encounter with his son in the Marion carpark. Humbles was yelling and swearing. It appears that Humbles had ripped off a door handle of Mr Lee Humbles' car. He held it up saying words to the effect that '*you might need this*'.
- 4.6. It is apparent from all of Humbles' drug diversion files of which there are five that all of his diversions occurred at the initiation of police following the detection of the various cannabis offences allegedly committed by him. The documentation reflects a repeated pattern of diversion referral to the entity at Marion, followed by an 'assessment' of an unspecified nature and the rote reporting to SAPOL by Drug and Alcohol Services of the outcome of the assessment, reporting that contains no hint of diagnosis, prognosis or recommendation in respect of action that might be taken if there was a further instance of alleged drug offending. As seen earlier, there was no legislative or other requirement that police should in this indiscriminate and limitless fashion have issued serial diversions to a person such as Humbles. If anybody was to interpret the reference to there being '*no limit to the number of diversions*' as contained within either the PDDI Clinician Manual or in the SAPOL General Order as mandating limitless and indiscriminate serial diversions as distinct from enabling repeated diversions to occur in appropriate circumstances, such an interpretation would have to be regarded as patently perverse. I intend making a recommendation that the stipulation within both the PDDI and SAPOL General Order – Drug Diversion that there is no limit to the number of diversions that a child can undergo be deleted.
- 4.7. As an alternative to prosecution or to the subjection to other measures connected with the youth justice system, an exercise of the prosecutorial discretion not to prosecute but

to implement drug diversion might be an entirely appropriate course of action for some youths and have efficacy in a number of cases. But it is difficult to see how repeated drug diversions that clearly have done nothing to curtail an individual youth's substance abuse could be supported, and this is especially so when there is a powerful indication that the individual is also trafficking in the substance in question. And, as seen from Hansard, Parliament seems to have an historical and legislative preference that child drug offenders be subjected to the rigours of the youth justice system as distinct from other diversions. And to those who might say '*it's only cannabis*', it is also worthwhile observing that the evidence is that cannabis was not Humbles' sole drug of choice at the time of his penultimate and final diversions in 2012. And I also note in all five diversion files that apart from tobacco and alcohol the only '*drug of concern*' recorded is cannabis. If that was a conclusion based solely on an acceptance of what Humbles himself said from time to time, it was a naïve conclusion. The question that therefore would need to be asked is whether a diversion that acts on the false premise that cannabis is the only illicit substance being used by the diverted person is a flawed and uninformed exercise in any event. The diversion process failed miserably in relation to Humbles. He fell through what appear to be some very wide cracks. He was never truly held accountable for his involvement with illicit drugs and as a measure of this both ecstasy and the active ingredient of cannabis were in his bloodstream at the time he shot and killed Lewis McPherson.

- 4.8. That drug ingestion and intoxication played a role in this act seems to be an irresistible conclusion. In this regard, I refer to the statement of Professor Jason White⁴³, the Head of the School of Pharmacy and Medical Sciences, University of South Australia, who prepared an analysis of the possible effects on Humbles of the substances that he had ingested at the time of the shooting. In respect of MDMA (ecstasy), Professor White reports that this substance can adversely affect aspects of behaviour. It can impair the ability to maintain attention, particularly in complex situations and to think clearly. It also increases impulsivity and risk-taking. That said, Professor White expressed the view that due to the relatively low concentration of MDMA in Humbles blood sample, it is possible that he was not under the influence of it at the time of the shooting. However, in respect of cannabis, Professor White states that cognitive function is impaired by cannabis and that the ability to concentrate is diminished and memory and

⁴³ Exhibit C6a

learning are impaired. This can result in difficulties engaging in mentally demanding activities. Although in general cannabis does not produce the same degree of risk-taking and impulsive behaviour that is produced by alcohol, nevertheless the impairment in thinking and decision making can result in people making inappropriate choices about their behaviour. This results from their lessened ability to weigh up the various consequences of different actions. When alcohol is consumed with cannabis, aggressive behaviour may occur due to the increased impulsiveness and risk-taking induced by the alcohol together with the generalised impairment of thinking produced by both cannabis and alcohol.

- 4.9. I have referred to the fact that at the time of Humbles' fourth and fifth diversions that his place of living was not established by police. What was established was that he was not living at the address of his parents. I intend making a recommendation that a drug diversion not be permitted in respect of a juvenile unless the persons true place of living at the time of the diversion is established by police and that the SAPOL General Order – Drug Diversion reflect that.

5. **Police powers of arrest and investigation**

- 5.1. The general power of arrest without warrant is governed by Section 75 of the Summary Offences Act 1953. This provision is set out as follows:

'75 – Power of arrest

A police officer, without any warrant other than this Act, at any hour of the day or night, may apprehend any person whom the officer finds committing, or has reasonable cause to suspect of having committed, or being about to commit, an offence'.

- 5.2. It will be observed that any police officer may exercise the powers of arrest under Section 75 of the Summary Offences Act 1953 and may do so without a warrant. Thus any police officer may apprehend any person where the officer has reasonable cause to suspect that the person has committed or is about to commit an offence. It is clear that as a matter of law the Section 75 power of arrest applies to all offences⁴⁴. This would include an offence contrary to the Controlled Substances Act 1984 such as trafficking in cannabis. This in turn would mean that any police officer is lawfully entitled to apprehend any person whom the officer has reasonable cause to suspect is in possession of a drug intending to sell it or is taking part in the process of the sale of the drug. It is

⁴⁴ Bennett v Police [2016] SASC139 per Doyle J at paragraph 95

to be acknowledged that the circumstances in which a person would be arrested for simple possession of cannabis, especially in the case of an adult who must be expiated in the first instance, would be limited. That consideration does not apply to trafficking, however.

- 5.3. The powers of arrest are not confined to the arrest of adults. The powers may be exercised in respect of persons under the age of 18 years. In the case of a child found in possession of cannabis, where the expiation process has no application, there would be no lawful impediment to arrest especially in circumstances where drug diversion might not be appropriate having regard to an extensive previous history of diversion and where the place of living of the offender was not clear. Naturally, if there was reasonable cause to suspect the commission of a trafficking offence, the likelihood of arrest would be much greater.
- 5.4. The power of arrest that Section 75 provides may be exercised not only on the basis of a police officer's own observations but on information received from others⁴⁵. To make out 'reasonable cause' it must be shown that a reasonable person would have sustained the same suspicion on the facts presented. It is clear that the facts which can reasonably ground a suspicion may at the same time be quite insufficient to reasonably ground a belief, yet some factual basis for the suspicion must be shown⁴⁶. The question as to the existence of reasonable cause to suspect is not to be determined by reference to the rules of evidence or on the test of the balance of probabilities. For these purposes a police officer may have regard to information that may not necessarily be admissible in a court. A well-founded suspicion or belief may be developed on information which could not be advanced as proof of facts suspected⁴⁷. Thus, in order for the Section 75 power of arrest to be enlivened, it is not necessary that there objectively be in existence, nor even in the view of the arresting police officer, a prima facie case of guilt based on admissible evidence nor indeed even a reasonable prospect of conviction.
- 5.5. I appreciate that arrest is regarded by police as a matter of last resort and that the conventional approach is that an arrest is not effected unless there is good reason to suppose that a prosecution of the arrested person will follow. Nevertheless, reasonable cause to suspect the commission of an offence is all that is required for a lawful arrest

⁴⁵ Feldman v Buck [1966] SASR 236

⁴⁶ George v Rockett (1990) 170 CLR 104

⁴⁷ Iskra v Police (2003) 84 SASR 586

of be effected, and this is so regardless of whether or not the arresting officer has a belief that a prosecution will succeed or even ensue.

- 5.6. In the case of Humbles, as will be seen, when he was found in possession of cannabis in late July of 2012 there was lawful authority pursuant to Section 75 to arrest him for trafficking in cannabis. In the event he was not arrested, but was issued with another drug diversion. To my mind, this course of action was contrary to the relevant SAPOL General Order which stipulates that drug diversion should not be utilised unless the member is satisfied that the drugs detected are for personal use only.
- 5.7. Section 78 of the Summary Offences Act 1953 stipulates that a person who is apprehended without warrant must, as soon as reasonably practicable, be delivered into the custody of the police officer in charge of the nearest custodial police station or to a police officer at a designated police facility⁴⁸. However, if a person is apprehended without warrant on suspicion of having committed a 'serious offence', a police officer before delivering the arrested person into the custody of police, may for the purposes of investigating the suspected offence detain the person for a period that is necessary to complete the immediate investigation of the suspected offence or for four hours whichever is the lesser⁴⁹. Such investigation would enable police to take the person to places connected with the suspected offence⁵⁰. For these purposes a 'serious offence' is an indictable offence or an offence punishable by imprisonment for 2 years or more. Trafficking in cannabis is such an offence. Section 14 of the Young Offenders Act 1993 stipulates that the law of the State relating to criminal investigation applies to youths. Thus the power to detain a person for the purposes of investigation that section 78 of the Summary Offences Act 1953 provides applies to persons under the age of 18 years and who have been apprehended without a warrant.
- 5.8. Police officers also have powers of search. Section 67 of the Summary Offences Act 1953 empowers the Commissioner of Police to issue general search warrants to such police officers as the Commissioner thinks fit⁵¹. A general search warrant enables the officer to whom it is issued to enter into, break open and search any house, building, premises or place where the officer has reasonable cause to suspect that an offence has been recently committed, or is about to be committed, or there is anything that may

⁴⁸ Summary Offences Act 1953, Section 78(1)

⁴⁹ The period of 4 hours may be extended by a magistrate

⁵⁰ Summary Offences Act 1953, Section 78(2)

⁵¹ Summary Offences Act 1953, Section 67(1)

afford evidence as to the commission of an offence, or there is anything that may be intended to be used for the committing of an offence⁵². Not all police officers are issued with a general search warrant. Relevantly in this case TAC Team 2 of the Sturt Criminal Investigation Branch, which was the SAPOL unit that had carriage of the investigation of the information received relating to Humbles, contained one member who was issued with a general search warrant. That person was Detective Brevet Sergeant Christopher Bonython who is no longer a police officer. I describe the composition and functions of this SAPOL unit in the following section.

- 5.9. Section 52 of the Controlled Substances Act 1984 also provides police with the power of search in the context of investigations in relation to offences contrary to that Act. The fact that there is a power of search within the Controlled Substances Act 1984 itself does not derogate from the power of the general search warrant. Accordingly, the general search warrant may be used to search premises where the officer to whom the general search warrant is issued has reasonable cause to suspect that, say, cannabis is present. This would be so because the officer would have reasonable cause to suspect that there was present within the premises a thing that may afford evidence as to the commission of an offence.
- 5.10. The deployment of the general search warrant by the person to whom it is issued does not as a matter of law require the authorisation of any other authority such as a more senior police officer, magistrate or justice.
- 5.11. Section 52 of the Controlled Substances Act 1984 also provides police with power to search persons and vehicles⁵³.
- 5.12. Section 32(3) of the Firearms Act 1977 stipulates that a police officer may break into, enter and search any premises in which the police officer suspects on reasonable grounds that there is a firearm liable to seizure pursuant to that provision of the Firearms Act 1977, or that a firearm is being kept contrary to the security requirements of the Act. Section 32 also contains powers of search in relation to persons and vehicles. A firearm that is unregistered or in the possession of the person who is not authorised to possess the firearm would be a firearm liable to seizure. If the possessor was a juvenile, that of itself would make it liable to seizure. Police powers under the Firearms Act

⁵² Summary Offences Act 1953, Section 67(4)(a)

⁵³ Controlled Substances Act, Section 52(6)(9)

1977 are additional to the powers that a general search warrant provide. Section 32 of the Firearms Act empowers all police officers and is not restricted in its application to those officers in possession of a general search warrant.

6. Sturt Criminal Investigation Branch Tactical (TAC) Team 2

- 6.1. TAC Team 2 was a unit within the Sturt CIB. The officer in charge of that unit was at all material times Detective Brevet Sergeant Christopher Bonython. I understood that he had taken over this role in an acting capacity and had therefore assumed the rank of acting sergeant. In his team there were a number of officers who were not designated detectives. Mr Bonython told the Court that there were approximately five officers under his management that included Senior Constable First Class Rosemary Thiele (now Simper), Senior Constable Brent Anderson and Senior Constable Tyson Mobbs. In his evidence Mr Bonython explained his role which consisted of general management of the team, including rostering. He would receive matters that required investigation from a Detective Senior Sergeant in control of the TAC Teams overall, and his responsibility would be to allocate those investigations to members of his TAC Team. He would also assist those officers in the conduct of some of those investigations. This might involve going into the field with those officers. He also had responsibility in respect of the documentation that resulted from those investigations. In particular, Mr Bonython had responsibility in relation to the vetting of draft ancillary reports as compiled by the members of his team prior to the uploading of those reports onto the Police Incident Management System (PIMS). Detective Chief Inspector Trevor Lovegrove was in overall charge of the Sturt CIB.
- 6.2. Mr Bonython was the only member of TAC Team 2 who had been issued with a general search warrant.
- 6.3. In July and August of 2012 a number of the members of the Sturt CIB TAC Team 2 were involved in the investigation of the information that had been received by police in respect of Humbles and his alleged drug trafficking activities. The involvement of TAC Team 2 in respect of those investigations effectively ceased as of 12 August 2012 on which day Mr Bonython and Senior Constable Mobbs attended at premises at 26 Railway Terrace, Warradale and searched the premises. They did not locate Humbles there or any incriminating items.

- 6.4. As will be seen it is the opinion of this Court that TAC Team 2 failed to function as it should have, suffering from a lack of cohesion and effective leadership. In respect of the matter of Humbles, there were a number of significant departures from what would be regarded as standard investigatory practice. Obvious lines of inquiry were not pursued, persons who had material information were not approached and proper records were not kept. The investigations that were carried out in respect of Humbles suffered from a conspicuous absence of coordination, classically exemplified by an instance in which one officer claims to have failed to realise that he was investigating the same person, ie Humbles, who only a matter of two or three weeks before had been the subject of an investigation in respect of the same subject matter and in which the officer had participated.
- 6.5. The senior officer of TAC Team 2, Mr Bonython, is no longer a member of South Australia Police. Mr Bonython, however, did give oral evidence in the Inquest. Mr Bonython told the Court that he resigned from the police force in May 2013 following his arrest in December 2012. Mr Bonython pleaded guilty in the District Court to abuse of public office and possession of an illicit substance. He received a suspended prison sentence and was placed upon a bond to be of good behaviour for three years. It is evident from Mr Bonython's evidence before this Court that during the second half of 2012 in which he exercised a supervisory function in respect of Sturt CIB TAC Team 2 he was functioning as a police officer at an unsatisfactory level. There had been a number of matters that in recent years had adversely affected Mr Bonython's mental health. Included in this was the suicide of a colleague whose position in the police force Mr Bonython took over. That was the supervisory role of TAC Team 2 which Mr Bonython assumed in June or July of 2012. In the latter part of 2012 Mr Bonython had been under the care of a psychologist and in that period had experienced issues involving consumption of an illicit substance and alcohol. Asked by counsel assisting as to whether or not those matters affected his performance in his job as a police officer, Mr Bonython acknowledged that this was a probability and indicated in this context that during the period in question he was only able to manage about two or three hours of sleep in a 24 hour period.
- 6.6. When Mr Lovegrove gave evidence he indicated that as the officer in charge of the Sturt CIB he would not routinely be kept informed about developments and operative actions connected with an investigation as it unfolded. He also stated that the Senior Sergeant

in charge of TAC Teams overall would probably also not be kept informed unless additional resources were required to carry out the investigation or where a matter under investigation had gone beyond the normal capabilities of the TAC Team 2. I intend to make a recommendation that would alter such an alleged arrangement, at least insofar as it might apply to the investigation of allegations of unlawful possession of firearms.

- 6.7. Mr Lovegrove told the Court that he did not have an independent recollection of Mr Bonython being the relieving sergeant within the TAC Team 2. He was aware that in December 2012 Mr Bonython was arrested and that following his arrest he became aware of the level of impact that the death of Mr Bonython's predecessor had on Mr Bonython. Mr Lovegrove said that having been made aware of the nature of Mr Bonython's difficulties, in hindsight Mr Bonython would not have been his first choice to be supervisor of the TAC Team 2⁵⁴.

7. **The information of June 2012**

- 7.1. On 21 June 2012 SAPOL Crime Stoppers received information from an anonymous caller. The information was that a 'CLOSE RELATIVE' of the caller had purchased cannabis from Humbles and from an associate, Matthew Richmond, both of whom were said by the caller to be 17 years of age. The caller stated that Humbles attended Brighton Secondary School and that Richmond attended Hamilton Secondary School. The caller also said that friends of the caller's close relative had reported that they had purchased cannabis from 'THE TWO' and had mentioned that pills were available as well. The caller said that it was known that from time to time they would sell outside Marion KFC and that they also sold within school grounds. The record of this conversation⁵⁵ states as follows:

'SEVERAL PEOPLE CONNECTED TO THE CALLER HAVE INDEPENDENTLY SAID THAT HUMBLE (sic) CARRIES A FIREARM BUT IT IS UNKNOWN WHAT TYPE.'

The caller then went on to state that the Principal of Brighton Secondary School was also aware of the information and would welcome contact from police about the matter. A search of police information systems at that time revealed an ancillary report dated 30 November 2011 in relation to a Matthew Luke Richmond, date of birth of 10 January 1996, of 6 Parslow Road, Marion. The report stated that in respect of the incident which

⁵⁴ Transcript, page 1124

⁵⁵ Exhibit C68, page 2

was the subject of the report, police had attended at that address to check on the welfare of Richmond's mother because Richmond had been displaying violent behaviour and was threatening suicide. Richmond had then been detained under the Mental Health Act 2009. There was also a CIB Case Management System entry⁵⁶ in relation to Richmond that suggested that Richmond and his brother were both drug dealers. The date of that entry is 2 August 2011.

- 7.2. It will be noted that the anonymous information of 21 June related to both Humbles and Richmond. It essentially suggested that Humbles and Richmond conducted a joint enterprise in respect of the sale of cannabis, and possibly pills. The only distinguishing feature between the two was that it was Humbles who was said to carry the firearm. It is noteworthy that although this information came from the one unknown source, the source suggested that the information about Humbles and Richmond dealing in cannabis was known more widely than the caller and the caller's close relative, and that several people had independently stated that Humbles carried a firearm. This to my mind added some weight to the caller's information both in respect of drug dealing and Humbles' possession of a firearm.
- 7.3. This information made its way into the Case Management System of the Sturt Criminal Investigation Branch.
- 7.4. Ms Angela Richards is the Deputy Principal at Brighton Secondary School. Ms Richards held that same position in 2012. Ms Richards provided a statement to police⁵⁷ and she gave oral evidence in the Inquest. In June 2012 Ms Richards was the Acting Principal of Brighton Secondary School. She told the Court that she received a call from an anonymous female caller. The caller told Ms Richards that a student from the school, Humbles, was selling drugs and had a firearm. The caller also mentioned Richmond, but that it was Humbles who had the firearm. The caller said that she was the mother of a student, but not from Brighton Secondary School. Ms Richards subsequently had a phone conversation with Senior Constable First Class Rosemary Thiele of Sturt CIB, as she then was. Ms Thiele is now Ms Rosemary Simper and she is a patrol sergeant stationed at Adelaide. In the phone conversation Ms Richards repeated to Sergeant Simper what she had been told by the anonymous female caller. Ms Richards prepared a handwritten note in relation to the information that she had

⁵⁶ Exhibit C68, page 3

⁵⁷ Exhibit C76

received. The note is dated 23 June 2012 which is two days after the information was imparted to SAPOL Crime Stoppers. I am not completely certain whether that was the date of the conversation or whether the caller had rung the school before the police or vice versa. It does not matter. There is every indication that the caller in both cases was the same person.

7.5. Police therefore knew in late June 2012 that the anonymous information had come to both the attention of police and of senior staff at Brighton Secondary School and that it had probably come from the same source which would suggest that the caller entertained some significant and genuine concern about the matter of Humbles and Richmond, and no doubt in respect of the firearm said to be carried by Humbles, and was determined that the matter should have police intervention.

7.6. In her oral evidence before the Court Ms Richards was asked about the level of credence she had given to the information that she received, particularly having regard to what she already knew about Humbles and his background. She said:

'I think that I would have thought that it was fairly likely.'⁵⁸

She added that Humbles' alleged involvement with drugs was not a huge surprise but stated that she had no reason to suspect to that point that he had a firearm. As to her belief that the information about Humbles and drugs was likely true, Ms Richards said that she did not recall whether she had shared her view about the credibility of the information with Sergeant Simper, but that she would have reported the information in a matter of fact way. I do not doubt, however, that if Sergeant Simper had asked Ms Richards for her view as to the veracity of the information, Ms Richards would have shared her view with her.

7.7. The address for Humbles that is recorded in the case management system, namely 11 Hume Street, Seaview Downs, was the current address of his parents. By 21 June of that year Humbles was no longer living at that address. The evidence is not entirely clear as to where Humbles was residing at that point in time. Ms Richards told the Court that Humbles had left school by that time.

⁵⁸ Transcript, page 332

- 7.8. Matthew Luke Richmond gave oral evidence to the Court. He had already given a statement to police⁵⁹.
- 7.9. In his evidence Richmond confirmed that his date of birth was as stated in police records, namely 10 January 1996. He was 20 years of age when he gave evidence in this Court. Thus in June 2012, when SAPOL came into possession of the information about him and Humbles, he was 16 years of age. The ancillary report that related to his detention under the Mental Health Act 2009 had involved an incident when he was 15 years of age.
- 7.10. Matthew Richmond's demeanour in the witness box gave no hint of a troubled past. He struck me as a person who had moved on from the events of 2011 and 2012. He demonstrated candour in the course of his evidence. I asked him whether anyone had ever purchased marijuana from him and advised him that he did not have to answer that question. He voluntarily answered and admitted that at the time at which this Inquest is concerned he would sell to friends. He confirmed that Humbles had a gun and that he knew about it at the time.
- 7.11. I was convinced that at all material times in 2012 Richmond did in fact live at 6 Parslow Road, Marion which was the address of his family and which was the address that police had in their records for him.
- 7.12. Matthew Richmond told the Court that in June 2012 he had not been attending the school mentioned in the information police had received about him, namely Hamilton Secondary School, but had attended there in the past. He had also attended at Brighton Secondary School. As will be seen, he was never approached by police about the anonymous information that had been provided to police about him and Humbles and their activities in 2012. I will come back to Richmond's evidence in a moment.
- 7.13. I have already mentioned the existence of Sturt CIB TAC Team 2 and the manner in which it was constituted. On 9 July 2012 the officer who had spoken to Ms Richards at the Brighton Secondary School, namely Sergeant Rosemary Simper, and a number of other members of that TAC Team attended at the address that police had for Humbles, namely 11 Hume Street, Seaview Downs. It will be remembered that according to his father's affidavit Humbles had left the Hume Street address towards

⁵⁹ Exhibit C18b

the end of March 2012. However, police were not to know that until their attendance at the address.

7.14. Sergeant Simper gave oral evidence in the Inquest and her statement was also tendered⁶⁰. As at the date on which Sergeant Simper gave evidence she had been a member of the South Australia Police force for 16 years. As indicated earlier, her supervisor in 2012 was a detective, in this case Detective Brevet Sergeant Christopher Bonython of the Sturt CIB. As a detective, Mr Bonython possessed a general search warrant. The officers who attended 11 Hume Street, Seaview Downs were Sergeant Simper, Mr Bonython, officers Conlan and Paynter and another officer, Senior Constable Brent Anderson. Later that month Senior Constable Anderson would have personal contact with Humbles in the vicinity of the Warradale railway station on Railway Terrace, Warradale.

7.15. Sergeant Simper told the Court that their intention was to speak to Humbles regarding the information that had been obtained about him. Sergeant Simper said:

'I believe we would have searched using the general search warrant.'⁶¹

That is a reference to Mr Bonython's general search warrant. She added that it would have been the detective's decision as to whether there was enough information to search or not. In the event no search was conducted because there was insufficient connection between the premises in question and Humbles at that point in time. The observation made by Sergeant Simper that she believed that they would have used a general search warrant to search the premises had there been a sufficient nexus between it and Humbles to my mind is a good illustration of the fact that police believed that the information that had been anonymously provided by the caller had given rise to a reasonable suspicion that Humbles was in possession of a firearm and that his immediate domestic environment would be lawfully liable to search. For his part Mr Bonython in his oral evidence stated that when they went to the address police were looking for firearms and drugs. He agreed that the priority for him and his team was to try and locate the firearm and/or drugs⁶².

7.16. When the five police officers attended at 11 Hume Street, Seaview Downs on the evening of 9 July 2012 they were told by Mr Lee Humbles that Humbles no longer

⁶⁰ Exhibit C86

⁶¹ Transcript, page 826

⁶² Transcript, page 989

resided at that address. Mr Humbles was agitated and said words to the effect that he did not care where his son was, but thought he might be couch surfing at that time. He indicated that none of his son's property was on the premises and that he had not lived at the address for three to four months. He asked police to leave. Mr Lee Humbles indicated that Humbles was not welcome at that address. No search was conducted.

- 7.17. Sergeant Simper indicated to the Court that they had no other address for Humbles at that time. I accept that evidence.
- 7.18. Save for the preparation of documentation, this attendance would be the only action taken by police in respect of the anonymous information imparted on 21 June 2012 and of the information that had been provided by Ms Richards from Brighton Secondary School. Sergeant Simper prepared an ancillary report in relation to the attendance. This entry was placed onto PIMS and became available to police in the field. The ancillary report recorded the following information:

'ATTENDED 11 HUME STREET, SEAVIEW DOWNS TO CONDUCT SEARCH AS A RESULT OF INFORMATION RECEIVED THAT HUMBLER MAY BE SELLING DRUGS AT BRIGHTON HIGH SCHOOL. SPOKE TO LEE HUMBLER WHO STATED THAT HE WANTS NOTHING TO DO WITH HIS SON AND HAS NO IDEA WHERE HE CURRENTLY LIVES (AND DOES NOT CARE). UNKNOWN WHERE LIAM IS CURRENTLY RESIDING.'⁶³

- 7.19. The original typed ancillary report that existed before the report was uploaded to the PIMS system and which described the police action in the same manner as that eventually uploaded, was prepared by Sergeant Simper and was vetted by Mr Bonython. Reference to the firearm in either iteration of the ancillary report is conspicuous by its absence. The report did mention the information that Humbles may be selling drugs at Brighton Secondary School, information that to that point had neither been confirmed nor refuted. But the information about the firearm had also not been confirmed nor refuted. So it is that the failure to mention anything about the firearm is a glaring omission. There is also no mention within the ancillary report of any police action taken in respect of the other person mentioned in the anonymous information, namely Richmond, but that is not surprising because no police action was ever taken.
- 7.20. The fact that Sergeant Simper's ancillary report neglected to mention anything about the firearm prompted counsel assisting, Ms Kereru, to question both Mr Bonython and

⁶³ Exhibit C86a

Detective Chief Inspector Trevor Lovegrove, the person then in charge of Sturt CIB, on that issue. Counsel assisting asked both officers, without leading, whether in their professional opinion anything was absent from the ancillary report. Both officers immediately identified the lack of any reference to the firearm as an obvious and significant omission from the report. It was this observation, as made by Mr Bonython, that gave rise to the production to the Court of Sergeant Simper's original typed ancillary report as it had existed prior to its loading onto the system, that is to say the document that had been vetted by Mr Bonython. Mr Bonython naturally had to acknowledge that the absence of any reference to the firearm in the ancillary report was an oversight, not only on the part of Sergeant Simper, but also on the part of himself. Regardless, the point is that in the opinion of officers who had been in supervisory capacities within the Sturt CIB at the time, the failure to reference the alleged possession of the firearm by Humbles is a significant omission from the ancillary report and is a matter that should have been clearly identified within it, just as the allegation of drug trafficking was so identified. The Court agrees with the opinion of those two witnesses. The ancillary report was an important document that might have come to be relied upon by other officers not familiar with the investigation to date but who might encounter Humbles in the field. Those officers would need to have known not only that Humbles was the subject of information in respect of drug dealing, but also that he was possibly in possession of a firearm, the extension of that being the possibility that he actually carried a firearm in connection with his drug dealing activity. For instance, if Humbles were to have been located in the possession of illicit drugs, the possibility that he had a firearm would need to be taken into consideration. As well, if a search of his living environment was to ensue, then clearly police would need to know that they should be looking for a firearm. The possibility that Humbles was in possession of a firearm would also be a relevant consideration in the event that Humbles' candidacy for release on bail came to be an issue. In fact, it would as will be seen.

- 7.21. I have mentioned Matthew Richmond. Richmond was never investigated in respect of the 21 June information as it related to him. As indicated earlier Richmond gave oral evidence in the Inquest. He confirmed that he lived at the Parslow Road, Marion address which was mentioned in police information systems. Richmond provided two statements to police subsequent to the shooting. Richmond's original witness statement was provided to police on 31 December 2012 and signed on 19 February 2013. His

second statement is dated 9 January 2013⁶⁴. An analysis of his statements reveals that in 2012 Richmond knew much about Humbles that would have been of great assistance to police. In those statements Richmond asserted that he had known Humbles for about three years. Richmond was present at the Railway Terrace premises prior to the shooting. He indicated that at the beginning of 2012 he was in the bedroom of one of the occupants of 26 Railway Terrace when a person called Charlie, came to the premises and gave Humbles a gun cleaning kit and several boxes of ammunition. At that time Humbles was already in possession of the gun. Richmond himself handled the gun on this occasion. Richmond was aware that the person Charlie had originally supplied the weapon to Humbles. We know that person to be Charles Cullen. As I stated earlier, in mentioning this alleged aspect of Charles Cullen's activity I do not make any finding or suggestion of criminal liability on his part regarding the supply of ammunition. The issue of the supply of ammunition is relevant to the nature and quality of the information that Richmond may have been able to provide had SAPOL attempted to tap it.

- 7.22. Among other things, Humbles told Richmond that he had acquired the gun because he had been getting ripped off by older people with whom he had been dealing drugs. In his second police statement Richmond asserts that in the time between the person Charlie providing Humbles with ammunition and the occasion of Lewis McPherson's death, he saw the gun another eight times. The statement also asserts that he saw the gun about three or four times at the Dalkeith Avenue premises. The gun was in the possession of Humbles on all those occasions. Richmond stated that the gun was kept in a black square metal 'safe' that had a handle and opened with a key. I pause in Richmond's narrative to indicate that evidence from other witnesses confirmed that this was where Humbles kept his gun. The cleaning kit and the ammunition were also in that safe. Other evidence suggested that this is where Humbles also stored drugs and money.
- 7.23. In his second statement Richmond describes an element of recklessness surrounding Humbles' possession of the gun. He provided examples. He describes an occasion at Railway Terrace in which Humbles pointed the gun at Richmond's head. On an occasion at Dalkeith Avenue Humbles kept pointing the gun at him which prompted Richmond to tell him to 'fuck off'. Richmond believed that the gun was loaded when

⁶⁴ Exhibit C18b

this occurred. Richmond also saw Humbles spinning the weapon around his finger using the trigger guard.

- 7.24. The statements taken from Richmond shortly after Lewis McPherson's death indicate that even Richmond had thought that Humbles' behaviour in respect of the gun was irresponsible and reckless. It is clear that Richmond had regular contact with Humbles in 2012 and that Humbles possessed the gun at all material times. Richmond's oral evidence was also consistent with that scenario.
- 7.25. In his oral evidence Richmond suggested that the assertion in his first statement that it was at the start of 2012 that he witnessed the person Charlie provide Humbles with the cleaning kit and ammunition was an error and that it was probably halfway through that year that this incident had occurred. He did confirm that the incident had taken place at 26 Railway Terrace⁶⁵. I preferred his oral evidence as to that issue. Asked to elaborate on the reason that Humbles had the gun, he said that he had believed that Humbles had been beaten up and had money stolen from him. He seemed unsure in his evidence as to whether he had heard that from sources other than Humbles or whether he had heard it from Humbles himself. It was in any event a commonly held belief among Humbles' peers.
- 7.26. I accept Richmond's evidence as to what he had seen and what he knew about Humbles in 2012.
- 7.27. Richmond told the Court that he was always concerned about the gun but that he did not really know what to do. He suggested that Humbles was '*not really the right type of person to have one*'⁶⁶. Asked as to Humbles' personality in the second half of 2012, Richmond suggested that Humbles would behave as if he was '*some sort of gangster or something*'⁶⁷. He suggested that when Humbles did not have access to cannabis he was especially angry and that he experienced mood swings. He said Humbles '*was very, very uncomfortable to be around*'⁶⁸.

⁶⁵ Transcript, pages 75-76

⁶⁶ Transcript, page 85

⁶⁷ Transcript, page 85

⁶⁸ Transcript, page 85

7.28. Richmond told the Court that he could not recall ever telling his parents about Humbles' possession of a gun. Asked as to whether he had told the police at any stage about Humbles having a gun at first he said:

'Not to my memory, no. I'd be too scared to dob him in, you know, don't know what would happen if I were to dob him in, I can't remember if I even thought about it or not.'⁶⁹

He had no recollection of the police ever approaching him and asking him whether Humbles had a gun. It is known that no such approach ever took place. When asked as to what his reaction may have been if police had approached him prior to the events of 31 December 2012 and had asked him in the presence of his parents whether he knew Humbles had a gun, he said:

A. Hypothetically I would have, in front of my parents, I definitely would have said - you know, I can't really lie to my parents, I'm not the best at lying to my mum and dad, but yes, I would have.

Q. So, if the police questioned you about that in the presence of your parents, what are you saying, you're saying that you probably would have told the police about Liam having a gun.

A. Yes, I would have, I'm pretty sure, mind you I was a little stupid idiot when I was 16, excuse my language.'⁷⁰

In cross-examination by Mr Keane, counsel for the Commissioner of Police, Richmond said that he could not be certain as to what he may have told the police if asked about the gun as he was '*not that guy anymore*'⁷¹. He conceded that the answer to that question was a '*maybe*'⁷². Richmond also told the Court that he had known of the two addresses that Humbles frequented, namely 26 Railway Terrace and the premises at Dalkeith Avenue. He also said he could have given the police a general location for Humbles if asked. Certainly from his evidence and his two statements it appears that Richmond and Humbles had regular contact during 2012. Richmond also knew a number of Humbles' associates in 2012. I have no doubt that Richmond could have provided police with sufficient information to have enabled them to have identified Humbles' place or places of living in 2012.

7.29. When it is borne in mind that Richmond's alleged behaviour was also an issue for investigation and that he may have perceived that his own interests would have best

⁶⁹ Transcript, page 88

⁷⁰ Transcript, page 90

⁷¹ Transcript, page 93

⁷² Transcript, page 33

been served by silence, one cannot be completely certain what his attitude towards handing Humbles up would have been if he had been spoken to by police in, say, June or July of 2012. It is a fact though that Richmond certainly had valuable information that could have confirmed that Humbles was in possession of a gun and he certainly knew of Humbles' associates and premises that he either lived at or frequented. What Richmond's evidence does tend to indicate in my view is that if he had been approached by police in the presence of his parents, it is possible that he would have disclosed the means by which Humbles could be found and have mentioned the gun. This was a line of inquiry that police could and should have pursued. Mr Bonython told the Court that he would have instructed Sergeant Simper to conduct further checks on PIMS to see whether Humbles had been recorded recently with any other associates for whom police had an address. When it was pointed out that an address for Richmond, a Humbles associate, was indeed available and that in fact this address had been established from police records, he seemed to suggest that this would probably have been an old address *'because we haven't gone and searched an address for Richmond, that she was unable to come up with a current address for him'*⁷³. As seen, it was not an old address. Mr Bonython did say that he would have had an expectation that Sergeant Simper would in any event attempt to contact Richmond and to speak to him about the information that had been imparted to police about him and about Humbles' whereabouts⁷⁴. Specifically, he would have had an expectation that she would speak to Richmond not only about drugs but also about the existence of a gun in Humbles' possession⁷⁵. Mr Bonython suggested that if the address of 6 Parslow Road, Marion was the only address that police had for Richmond, or it was the most recent address that was known for Richmond, that an attempt would need to be undertaken to find Richmond at that address⁷⁶. As to Mr Bonython's interaction with Sergeant Simper about her conducting all possible checks and pursuing all possible lines of inquiry, Mr Bonython could not recall the exact conversation but told the Court that he knew that he had asked her whether she had conducted all possible checks and whether she had spoken to anyone that may have been able to provide an address for either Humbles or Richmond. He said that she had advised that she had done this and that there was no

⁷³ Transcript, page 994

⁷⁴ Transcript, page 994

⁷⁵ Transcript, page 994

⁷⁶ Transcript, page 997

current address for either of them. If this was given as a reason for not pursuing Richmond, then it was a reason that was invalid and simply not true.

7.30. In his oral evidence Mr Lovegrove, the former head of the Sturt CIB, made it plain that he would have had an expectation that inquiries about Richmond should be undertaken and that attempts would be made to contact him if they could locate him⁷⁷. He could not think of any reason why police would not follow through on such a line of inquiry⁷⁸. The Court cannot think of any reason either. Mr Lovegrove himself did not have any direct supervisory role in respect of the activities of TAC Team 2.

7.31. For Sergeant Simper's part, in her evidence she said that following the attendance at Humbles' parents' residence she and Mr Bonython discussed the information that had been given to police and basically came to the conclusion that there was insufficient evidence for them to justify further inquiries in order to locate Humbles. Although the matter of Richmond was discussed with her supervisor Mr Bonython, Sergeant Simper stated that she did not believe that they considered looking for Richmond,⁷⁹. She said:

'... we didn't think that we'd be able to elicit any truthful information from Matthew either, so we did not follow up at that address - or sorry, with Richmond.'⁸⁰

That was her evidence-in-chief. In cross-examination by Ms Kereru of counsel assisting Sergeant Simper reiterated that they did not think that they would elicit any truthful information from Richmond. She also said that '*they*' had made an assessment that further inquiries were not necessary, a position reached because of the vagueness of the original information and its lack of detail⁸¹. When asked as to who '*they*' were, she said that the decision to file the matter would have been made in consultation with Mr Bonython. When asked by counsel assisting whether she agreed that at the very least she should have spoken with Richmond, Sergeant Simper said '*given what I know now, yes, of course*'⁸². That was followed by an assertion by Sergeant Simper that they should have contacted Richmond '*in hindsight*'⁸³. I took both of those answers to indicate a view on her part that the operational need for Richmond to have been approached and spoken to could be recognised only with the wisdom of hindsight,

⁷⁷ Transcript, page 1102

⁷⁸ Transcript, page 1103

⁷⁹ Transcript, page 828

⁸⁰ Transcript, page 828

⁸¹ Transcript, pages 868-869

⁸² Transcript, page 871

⁸³ Transcript, page 872

having regard to the tragic outcome of Lewis McPherson's eventual shooting, but that at the time the original information was received there was no obvious operational need. When challenged as to the nature of the operational need Sergeant Simper conceded, as she must, that Richmond could have been asked about Humbles' whereabouts and about whether Humbles possessed a firearm. When asked as to whether she agreed that she should have asked Richmond about those matters Sergeant Simper again resorted to hindsight and said '*given what we know now, of course*'⁸⁴. This ex post facto view of the matter manifestly has to be rejected. The operational need for Richmond to be approached and spoken to was objectively obvious at the time. No reasonable police officer could have thought otherwise.

- 7.32. There are a number of observations that ought to be made about Sergeant Simper's approach to the issue. Firstly, one could only know whether further inquiries would or would not elicit any further truthful information unless and until those inquiries were actually made. Secondly, the notion that the information about Humbles and Richmond lacked sufficient detail for further inquiries to be made is incorrect. The information contained not only enough detail, it was information that was of considerable importance insofar as it identified a juvenile as a person unlawfully in possession of a firearm and a person who possessed it possibly in connection with other illegal activity. Thirdly, the position after Humbles' parents' residence was visited was no different from the situation before that attendance, in the sense that the attendance had not borne any fruit and had neither confirmed nor, equally as importantly, refuted any aspect of the information that had been imparted about Humbles and for that matter Richmond. To that extent, the information that police had received about Humbles and his possible carrying of a firearm was still extant, as was the information about his drug dealing, as was the information about Richmond. Fourthly, the notion that Richmond may have been able to impart important information only when considered in hindsight is patently absurd. Richmond lived at the address that existed in police records. Richmond's parents lived at that address. Richmond was 16 years of age and could have been questioned in the presence of his parents. Although according to Richmond's evidence his relationship with his father was somewhat fractured, there is no reason to conclude positively that Richmond in the presence of his parents would have refused to provide further information either about himself or Humbles or have misled police about the

⁸⁴ Transcript, page 873

issues at hand, namely Humbles' whereabouts and his possession of a gun. It is simply idle to suggest that in June or July 2012 there was an inevitability that approaching Richmond would not result in any further information being elicited and that the obvious operational need for him to be approached could be dismissed.

- 7.33. There was another added possible complication to this in that if Humbles and Richmond were, as the information tended to suggest, trafficking in drugs as part of a joint enterprise, the possibility that the gun was interchangeably in the possession of either person needed to be considered. In her evidence Sergeant Simper acknowledged this possible scenario and conceded that it followed that she would have needed to investigate whether Richmond himself had the firearm⁸⁵.
- 7.34. Finally, when I put it to Sergeant Simper that as of 9 July 2012, when she filed her ancillary report about the attendance at Humbles' parents' residence, the investigation had by no means concluded, she maintained her insistence that more could have been done only in hindsight⁸⁶. As I say, this view of the matter has to be rejected.
- 7.35. As to the failure to include in her ancillary report reference to the information that Humbles was possibly carrying a firearm, Sergeant Simper stated that in her view information that goes on an ancillary report needs to be factual. She asserted that she did not believe that Crime Stoppers information from an anonymous caller had sufficient weight for her to flag the information on the system⁸⁷. She suggested that the information that Humbles had a firearm had to be substantiated before a warning in relation to weapons could be placed on the system. She said that if Humbles had been stopped with a firearm in his possession, information could have been added to the system to the effect that he is known to carry firearms. However, on this occasion she thought that in these circumstances the information was too flimsy⁸⁸. I have given careful thought to that issue. I was informed that SAPOL General Order – Crime Reporting states that a warning must only be associated to a person if there is substantiating evidence. No doubt this is what Sergeant Simper had in mind. However, that would not mean that information that a person carried a firearm but which to date had not been substantiated should not be the subject of documentation such as an ancillary report. Clearly it should be. I preferred the evidence of both Mr Bonython

⁸⁵ Transcript, page 877

⁸⁶ Transcript, page 878

⁸⁷ Transcript, page 830

⁸⁸ Transcript, page 832

and Mr Lovegrove that the failure to make reference to the firearm in the ancillary report was an obvious and significant omission, an omission that Mr Bonython himself admittedly contributed to when he carelessly vetted the ancillary report before its uploading onto the system.

- 7.36. Sergeant Simper did agree that after the visit to the parents' address Humbles' possession of a firearm remained an open question, and that it was a question that was never answered. She nevertheless continued to insist that she did not believe that reference to the firearm should have been included in her ancillary report⁸⁹. The difficulty with this line of thought was that the information that Humbles had been selling drugs at the Brighton Secondary School had also not been substantiated. Sergeant Simper obstinately disagreed with the obvious and valid observation that it did not make sense to make reference to information about drug dealing but not to the information about the firearm when both pieces of information remained unsubstantiated. Mr Lovegrove stated in evidence that if Sergeant Simper attended a house to search for a firearm and drugs, and then put in an ancillary report after the event, one would expect that she would mention both the drugs and the firearm⁹⁰. I accept that evidence.
- 7.37. The conclusion that the Court draws is that there was no reason not to include the reference to the firearm in the ancillary report when reference to the possible drug dealing had been included, and that indeed there was every reason to include his possible possession of a firearm in an ancillary report that may be read by other officers who might come into contact with Humbles in the future.
- 7.38. Neither of those two shortcomings in Sergeant Simper's handling of this information concerning Humbles and Richmond were acknowledged by Sergeant Simper in her oral evidence. She gave explanations for those omissions that in the Court's opinion are unsupportable. All of this prompted counsel assisting Ms Kereru in her final submission to make the observation that Sergeant Simper had a propensity to defend the indefensible. It is hard to disagree.
- 7.39. The failure to investigate Richmond and the omission in the ancillary report of the information relating to Humbles carrying a firearm were matters that simply should not

⁸⁹ Transcript, page 873

⁹⁰ Transcript, page 1106

have been allowed to occur. The failure to approach Richmond meant that there was a lost chance to have established Humbles' whereabouts and to have located the firearm as early as June or early July of 2012. There is no doubt in the Court's mind that Humbles had possession and control of the firearm at that point in time and that in all likelihood he would have kept it at the place at which he then currently resided. The Court is not completely certain as to where Humbles was residing at that point in time, but the regularity with which Richmond saw Humbles in 2012 very much suggests that as of June or early July Richmond either would have known himself where Humbles was residing, or alternatively would have known people who knew that.

- 7.40. In the event, the only documented reference to Humbles possibly carrying a firearm was that within the Sturt CIB case management system where it recorded the information that had come from Crime Stoppers. Consequently when police again encountered Humbles in late July, August, September and December, documentation that would have been available to the police population as a whole would not have made reference to the firearm. That said, other members of the Sturt CIB TAC Team, one of whom already had familiarity with Humbles' matter, encountered Humbles on 31 July 2012 in circumstances that I will describe in a moment.
- 7.41. The other matter worthy of comment is that there was a delay of some 18 days approximately between the receipt of the Crime Stoppers information and the police attendance at 11 Hume Street, Seaview Downs. While appreciating that there are other priorities in police work, one would have thought that some priority would be given to the investigation of information that a juvenile was unlawfully in possession of a firearm and which suggested that this possession had a connection either with illegal substance abuse or illegal trafficking in that substance. That said, it has to be acknowledged that if the police had attended at 11 Hume Street even as early as 21 June 2012 when the information about Humbles was first received it is unlikely that they would have encountered him at the premises. He had been asked to leave that premises in March. So the delay probably did not make any difference. As will be seen, however, in August 2012 there was a similar delay in acting upon further information received about Humbles, a magnitude of delay that could have made all the difference.

8. **The information of July 2012**

- 8.1. On 19 July 2012 information about a person, who on investigation turned out to be Humbles, was received by police. This information was also recorded in the Sturt CIB case management system⁹¹. The information also appears to have come via Crime Stoppers. The information is recorded as having been provided by a '*KNOWN CALLER*' who had imparted the information in the '*STRICTEST CONFIDENCE*'. The identity of that caller has not been disclosed to the Court. The information from the caller was that a Caucasian 17 year old male was observed dealing drugs around the Warradale railway station. The male was described by the caller as 178cm, of thin build, with red hair and was usually wearing a hoodie and hat. The caller also stated that the male person most often was alone either riding a pushbike or a skateboard. The caller stated that the male was observed to approach stationary cars bearing P plates. The engines of the cars would remain idling and the male was observed to put his hand in through an open window and to then pull the arm out of the window. The cars would then drive off. The male was said to then continue riding up and down Railway Terrace near the railway station. The caller said that the male was most commonly seen between 4:30pm and 5pm at least three times per week. The male was not identified by name.
- 8.2. The Warradale railway station is situated diagonally across from 26 Railway Terrace, the address at which from time to time in 2012 Humbles was said to reside and which he was residing at on the night of Lewis McPherson's death.
- 8.3. The investigation of this information was tasked to Sturt CIB TAC Team 2 that was managed by Mr Bonython. Senior Constable Brent Anderson was assigned to this task. On the evening of 31 July 2012 he and another officer, Senior Constable Tyson Mobbs, attended in the vicinity of the Warradale railway station to investigate the information.
- 8.4. It will be remembered that Senior Constable Anderson was in the party of police officers who on 9 July, acting on the original information that Humbles dealt in drugs and carried a firearm, had attended at 11 Hume Street, the premises occupied by Humbles' parents. Senior Constable Mobbs was not involved in the search on 9 July 2012. It appears that Senior Constable Mobbs had only recently joined TAC Team 2.

⁹¹ Exhibit C78c

- 8.5. Senior Constable Anderson's witness statement given on 7 March 2016 was tendered to the Court⁹². Senior Constable Anderson also gave oral evidence on two occasions during the course of the Inquest. Senior Constable Anderson's witness statement deals only with the incident in the vicinity of the Warradale railway station on 31 July 2012 and an attendance that same day at the Hume Street address where he spoke with Humbles parents in relation to the drug diversion that he had earlier issued to their son. The statement does not mention Senior Constable Anderson's involvement in the earlier attendance at that address on 9 July 2012. Nor did Senior Constable Anderson's evidence-in-chief, as led by his counsel, deal with that earlier attendance. In fact during the course of his evidence on the first occasion, Senior Constable Anderson was not questioned at all about his involvement in the earlier attendance at 11 Hume Street. It was only when it was later revealed in the inquest that he had been present at that earlier attendance that it became necessary for Senior Constable Anderson to be recalled to deal with that issue.
- 8.6. In his evidence on the first occasion Senior Constable Anderson announced that he had a reasonably clear recollection of his dealings with Humbles on 31 July 2012. He confirmed that he was in possession of the information regarding the activities of the unnamed youth in the vicinity of the Warradale railway station. He told the Court that he and Senior Constable Mobbs positioned themselves covertly in an unmarked vehicle and did so at around the time of day mentioned in the information as being the time when the youth typically conducted his business. Thereupon an incident occurred which Senior Constable Anderson without prompting said '*was almost exactly as described by the complainant*'⁹³, the complainant being the person who on 19 July had provided this latest piece of information to Crime Stoppers.
- 8.7. The description of the incident as given in evidence by Senior Constable Anderson is indeed a replication of the information imparted by the caller. Senior Constable Anderson told the Court that the two officers observed a male person who matched the description of the person mentioned in the information appear at the Warradale location riding a push bike. He was observed to approach the window of a vehicle with P plates and to speak with the occupants through the window. The two officers then approached the male person and identified themselves as police officers. The male person was

⁹² Exhibit C78

⁹³ Transcript, page 440

established as being Liam Humbles. Searches were conducted of Humbles, of the two occupants of the vehicle and of the vehicle. Humbles was in possession of one street deal of cannabis which was contained in a resealable bag. Senior Constable Anderson said that if Humbles had been in possession of a firearm they would have found it. They did not find a firearm. Nothing of significance was located either in the car or in the physical possession of its occupants. When Senior Constable Anderson was asked by his counsel Mr Keane whether he had been aware that police had received an earlier Crime Stoppers tip-off that Humbles possibly had a firearm he said in response:

'I wasn't aware at the time, I am aware now obviously but at that point in time, no, I wasn't.'⁹⁴

This answer will have to be examined in the light of the subsequent revelation during the Inquest that Senior Constable Anderson had been involved in the attendance on 9 July 2012 at 11 Hume Street, Seaview Downs in connection with the original information that Humbles dealt in cannabis and pills and carried a firearm. In his evidence-in-chief Senior Constable Anderson was asked by Mr Keane what difference it may have made in his dealings with Humbles if he had been able to interrogate the police systems and had obtained the information about the firearm, and he said:

'Probably none and the reason for that is this information specifically says that Humbles carries a firearm. If we had searched him and not found a firearm, I don't see that we would have any grounds under the law to search any other properties or anything like that, take it any further.'⁹⁵

Senior Constable Anderson also stated that in his opinion, based on the original information about the firearm, he would not have had reasonable cause to suspect that the firearm may have been in existence at some location connected to Humbles⁹⁶. Others in the Inquest also sought to draw a distinction between Humbles carrying a firearm on the one hand and on the other his possessing a firearm at some other location. To my mind this distinction is immaterial. The fact that Humbles would at a particular moment in time not physically be in possession of a firearm could not discount the possibility that he had control over one at another location. The point is moot in any case because to my mind police would have had lawful cause to search a place connected to Humbles for drugs. I return to that issue in a moment.

⁹⁴ Transcript, page 441

⁹⁵ Transcript, page 443

⁹⁶ Transcript, page 444

- 8.8. Senior Constable Anderson told the Court that he was convinced that Humbles was the person who was the subject of the most recent information of 19 July. In this Senior Constable Anderson was absolutely correct. Moreover, notwithstanding the fact that no cannabis could be shown to have changed hands between Humbles and the occupants of the vehicle, that the amount and value of cannabis found in Humbles' possession was minimal and that the amount of cash found in his personal possession was equally modest, Senior Constable Anderson told the Court that the officers had a reasonable suspicion that the two individuals in the car were going to buy drugs from Humbles. For instance, this was the basis upon which the car was searched⁹⁷. He also said that the same consideration applied to the search of the two occupants of the vehicle. All this he said was premised on reasonable suspicion based on the information that had emanated from the Crime Stoppers action⁹⁸. Added into that mix was the scenario that had unfolded in front of him, a scenario that on any view was on all fours with the information that the informant had imparted⁹⁹. Senior Constable Anderson told the Court that all this was reinforced by the fact that a perusal of data on Humbles' mobile phone suggested that he was dealing in drugs¹⁰⁰. That evidence consisted of messages that were consistent with the use of code that people typically use when dealing in drugs. Senior Constable Anderson told the Court that he was satisfied in his own mind that some of those mobile phone messages related to drugs¹⁰¹. Specifically, on questioning by counsel assisting Ms Cacas, he acknowledged that the phone data did not merely contain messages relating to drugs in general, but constituted evidence of setting up deals or arranging transactions in particular¹⁰².
- 8.9. Senior Constable Anderson acknowledged the possibility that in effect he and Senior Constable Mobbs had moved too soon in that it may have been the case that any drug transaction that was contemplated between Humbles and the occupants of the vehicle had yet to take place. It was not as if the interaction between Humbles and those occupants had concluded by the time that Humbles was approached and searched. Senior Constable Anderson agreed with counsel assisting that it was possible that any deal or transaction that was going to happen simply had not had an opportunity for it to happen by the time the officers approached the vehicle. Senior Constable Anderson

⁹⁷ Transcript, page 463

⁹⁸ Transcript, pages 463-464

⁹⁹ Transcript, page 464

¹⁰⁰ Transcript, page 466

¹⁰¹ Exhibit C24

¹⁰² Transcript, page 467

said '*I believe that to be the case*'¹⁰³. Thus Senior Constable Anderson agreed that the fact that nothing had been found in the vehicle did not assist in determining whether this had been a situation of sale¹⁰⁴.

- 8.10. There was also the matter of the previously received information in June 2012 that Humbles was in the habit of dealing in drugs, information that Senior Constable Anderson said he did not avert his mind to on this occasion. I put that to one side for the moment.
- 8.11. Naturally, Humbles was asked by the officers about his address. There is no doubt that in respect of this aspect of the matter Humbles was evasive. Section 74A of the Summary Offences Act 1953 empowers a police officer who has reasonable cause to suspect that a person has committed, is committing, or is about to commit an offence to require that person to state all or any of the person's personal details which by definition include the address of where the person is living and the address of where the person usually lives¹⁰⁵. At the time at which this Inquest is concerned a person who refused or failed without reasonable excuse to comply with a police officer's requirement to state personal details or who stated a personal detail that was false was liable to a fine of \$1250 or imprisonment for 3 months. On finding cannabis in Humbles' possession, Senior Constable Anderson was empowered to demand from him the address of where he was living and/or the address of where he usually lived. Evasiveness on Humbles part as to that would have given Senior Constable Anderson cause to believe that Humbles was failing or refusing without reasonable excuse to comply with his requirement to divulge a relevant address. Senior Constable Anderson told the Court that Humbles provided his parents' address as his address, namely 11 Hume Street, Seaview Downs. However, Senior Constable Anderson added that Humbles '*voluntarily*' stated that he was not actually living there at the time but that he was living between '*mates houses*' and was couch surfing between different addresses. When asked for an address Humbles had replied with words to the effect '*such and such's house, something like that*'¹⁰⁶. Senior Constable Anderson said that he could not remember exactly what Humbles had said but that he had claimed not to know the address. Senior Constable Anderson told me in evidence '*I suspect that he didn't want*

¹⁰³ Transcript, page 459

¹⁰⁴ Transcript, page 459

¹⁰⁵ Summary Offences Act 1953, Section 74A(1)(a), Section 74A(5)(c)(d)

¹⁰⁶ Transcript, page 469

*to give us someone else's address*¹⁰⁷. These responses would naturally have invited reasonable inquiry by police as to where Humbles had spent the previous night, where he intended to stay that night and where his things were situated at that point in time. Senior Constable Anderson told the Court that he did ask Humbles where he had spent the previous night. To this Humbles was very vague and did not provide an address. Senior Constable Anderson agreed in evidence that he had suspected that Humbles was being evasive about where he had spent the previous night, although Senior Constable Anderson believed that this was mitigated by Humbles volunteering that he was not living at his parent's house. Senior Constable Anderson believed that he would have asked Humbles where he was going to spend that night, but he could not be sure that he had so asked. He agreed that Humbles could appropriately have been asked questions about the general vicinity of the premises, and whether it was close by, whether in the next street and he could have assumed that the premises was within cycling distance and not an extraordinary distance away from where they were then situated.

- 8.12. To my mind Humbles' current place of living was not satisfactorily explored by police. His avoidance of the issue was met with undue tolerance. Regardless of whether the correct procedure was to issue Humbles with a drug diversion, which ultimately did occur, the fact was that police had reasonable cause to suspect that Humbles had at least committed an offence of simple possession of cannabis and was obliged for that reason to state to the officers an address where he could be located if necessary. I do note that a police officer's power to require a person to state all personal details is discretionary, but one would think that the discretion would be exercised in favour of compelling a person to provide personal details where police believe from what they have seen with their own eyes that the person has committed an offence and where that person is a juvenile as was the case here. In this regard the fact that Humbles was not going to be arrested for possession of cannabis was really neither here nor there. Police were still entitled to know where he lived, and they could have forced the issue.
- 8.13. Following this incident, and after Humbles was allowed to go with a drug diversion, Officers Anderson and Mobbs attended at 11 Hume Street, the home of his parents. Senior Constable Anderson at first told the Court that he did not believe that his parents knew where Humbles was currently living except that it was possibly at *'a mate's*

¹⁰⁷ Transcript, page 469

*house*¹⁰⁸. Senior Constable Anderson later said in evidence that he was not sure whether he had asked the parents where Humbles was staying. He said that he had asked them why Liam was not living with them to which they had said that they were not getting along at that time and that Liam had moved out for a bit¹⁰⁹.

- 8.14. The amount of cannabis and money located on Humbles person was not substantial. The amount of money was about thirty dollars and the cannabis consisted of one bag which Humbles claimed was for his own personal use. Nevertheless, Senior Constable Anderson stated on more than one occasion during the course of his evidence, either in terms or impliedly, that he had reasonable cause to suspect that Humbles on that day was trafficking in cannabis¹¹⁰. As well, the ancillary report that Senior Constable Anderson would file in respect of this incident stated in unambiguous terms that Humbles had been located at Railway Terrace on 31 July conducting a sale of drugs. It needs to be borne in mind that trafficking does not necessarily consist of a completed transaction, but can be constituted by possessing cannabis with an intent to sell it¹¹¹. Senior Constable Anderson also asserted that having considered all the options, the only option available to him was to issue Humbles with a drug diversion. That prompted the following questions of Senior Constable Anderson:

‘Q. How many drug diversion can be administered to a juvenile.

A. Unlimited.

Q. So they can be found in possession of cannabis in circumstances where they’re reasonably suspected of trafficking in it multiple times, and on each and every occasion they are likely to be issued with a diversion notice.

A. Unfortunately that’s the case, yes. I’m not saying I agree with it but I’m here to enforce the law, it doesn’t matter whether I agree with it or disagree with it.

Q. And in that series of events people can then continue ignoring the obvious, and that is that the person is trafficking in drugs.

A. Yes.¹¹²’

- 8.15. The Court finds that Senior Constable Anderson had reasonable cause to suspect that Humbles had intended to sell the small quantity of cannabis located in his possession to the occupants of the vehicle that he approached. And it is clear, and I so find, that

¹⁰⁸ Transcript, page 491

¹⁰⁹ Transcript, pages 493-494

¹¹⁰ Transcript, page 463 (line 13-16), Transcript, page 464, Transcript, page 465 (line 8), Transcript, page 487 (line 23), Transcript, page 489 (line 12) and Transcript, page 495 (line 17)

¹¹¹ Transcript, page 487

¹¹² Transcript, page 488

Senior Constable Anderson himself did so suspect. Such a suspicion was created by the nature of the information that had been received on 19 July 2012 about a male person dealing in drugs around the Warradale railway station, by the fact that Humbles matched the description of that person, by the fact that Humbles' activity that day matched the activity of the unidentified person mentioned in the original information, by the data on his phone and by the fact that Humbles was in possession of cannabis that would be in a saleable quantity at least as far as one transaction is concerned. And that is leaving to one side the information that police had earlier received in June, information that would have heightened the suspicion that Humbles was intending to sell cannabis on the 31 July 2012. However, Senior Constable Anderson asserted that he did not draw any connection between Humbles and the person who had been the subject of police inquiry earlier in the month, a matter I will return to in a moment. Suffice to say at this point Senior Constable Anderson should have had that information about Humbles also at his disposal on the occasion that he found Humbles in the vicinity of the Warradale railway station.

- 8.16. In the event, Humbles was issued with the drug diversion notice which in this case obliged him to attend the meeting at United Communities Marion Shopping Centre on 9 August 2012. Humbles apparently did attend as police were informed by way of letter from Drug and Alcohol Services South Australia. Senior Constable Anderson said this in evidence:

'I did have reasonable cause to suspect, however, I know what evidence I need to even present someone to the charge sergeant in a police station, if I presented with one bag of cannabis, someone for trafficking, he wouldn't be charged.'¹¹³

While it may have been the case that Humbles would not ultimately have been prosecuted for trafficking, he could at least have been charged with simple possession of cannabis. And the point is, if Humbles had been arrested police had the power to further investigate the allegations that Humbles was trafficking. It is worthwhile examining more closely the information that police had to that point about Humbles. The information of 19 July 2012 was that the male person's activity in respect of drug dealing was repetitive and not confined to one isolated observation. The information was that the male person would approach cars and was commonly seen in that location a number of times during the week. The information was to the effect that the male

¹¹³ Transcript, page 487

person habitually dealt in drugs. It is not being wise after the event to say that once it was established that Humbles was that person and that the activity as alleged in the original information was replicated and observed by police on 31 July 2012, the conclusion available then was that Humbles may have had a supply of cannabis at another location. At the very least, there was reasonable suspicion that this was so, a suspicion that could only have been reinforced by Humbles' evasiveness as to his current place of living. It was an obvious line of inquiry to pursue. Asked as to why in the event of Humbles being arrested police would not be able to carry out the necessary investigations to establish whether or not Senior Constable Anderson's reasonable suspicion of trafficking was correct, investigations that might include a search of premises to which he was connected, Senior Constable Anderson said '*Because I wouldn't have been able to get a search warrant based on what I actually had on that day.*'¹¹⁴ The search warrant that Senior Constable Anderson was referring to there no doubt would be a warrant pursuant to Section 32 of the Controlled Substances Act 1984. But such a warrant would not have been necessary. Mr Bonython's general search warrant, or that of another holder made fully aware of the facts, would have been sufficient for these purposes. A general search warrant can be executed when the holder has reasonable cause to suspect that an offence has been recently committed, that there is anything that may afford offence as to the commission of an offence or where there is anything that may be intended to be used for the purpose of committing an offence. As seen, police have four hours in which to conduct investigations, a period of time that may be extended depending upon the circumstances.

- 8.17. It is therefore incorrect for it to be asserted that police had no option other than to administer a drug diversion to Humbles on this occasion. To my mind he should have been arrested and investigated having regard to all the information that police had gathered about him to date. This was his fourth drug diversion. Now that Humbles was established as being the subject of the information received on 19 July, there was now information, received as it had been on two discrete occasions, that he was trafficking. It was said that he carried a firearm. He was evasive as to his place of living. He had cannabis in his possession, and possessed it in circumstances that mirrored the information about him.

¹¹⁴ Transcript, page 487

- 8.18. The other consideration, of course, is whether by arresting Humbles he would have divulged an address that would be the subject of search. I have found that as of 31 July 2012 Humbles was probably an occupant of the premises at 26 Railway Terrace, Warradale. It is uncertain whether police would have secured that information as a result of arresting Humbles on 31 July 2012. But as will be seen shortly, the very next day police received further information that Humbles resided at 26 Railway Terrace, Warradale and that he sold drugs from that address as well as the from the vicinity of the railway station.
- 8.19. None of the information that was imparted to police on 19 July 2012, nor any of the circumstances in which Humbles was identified as the person who was the subject of that information, gave rise to any suggestion that Humbles was in possession of a firearm at that time. It will be remembered that the information about the firearm only arose from the June 2012 information. The possession of a firearm was a matter that in June 2012 had neither been confirmed nor refuted. As seen, in his evidence-in-chief on the first occasion, Senior Constable Anderson was asked by his counsel Mr Keane whether on 31 July 2012 he had been aware that police had previously received Crime Stoppers information in relation to the possibility that Humbles had a firearm. Senior Constable Anderson told the Court that he was not aware of that at the time he attended at Railway Terrace. Following Senior Constable Anderson's evidence, the Court was made aware for the first time that Senior Constable Anderson had taken part in the police attendance at Humbles parents address at 11 Hume Street, Seaview Downs on 9 July 2012. He had been one of five officers that had included Sergeant Simper and Mr Bonython. As a result of that revelation Senior Constable Anderson was recalled to give further evidence. When recalled, Senior Constable Anderson made the somewhat startling assertion that he had no memory of attending at 11 Hume Street, Seaview Downs on 9 July 2012. This despite the fact that on 31 July 2012 he and his partner attended at 11 Hume Street, Seaview Downs to inform Humbles' parents of their son's latest encounter with police, an address that had been attended by Senior Constable Anderson only three weeks earlier. Senior Constable Anderson's partner on the occasion on 31 July 2012, Senior Constable Mobbs, who had not attended at 11 Hume Street on that first occasion, told the Court in his evidence that at no point was he made aware of the information that Humbles to carried a firearm. He could not recall this topic ever coming up in conversation with Senior Constable Anderson and he thinks this would be something that he would have remembered if it had. As well, Senior

Constable Mobbs told the Court that he had no recollection of Senior Constable Anderson saying to him that he had been to the Hume Street address on a previous occasion.

8.20. Accepting as I do that it is possible that Senior Constable Anderson made no mental connection between Humbles and the attendance at 11 Hume Street, Seaview Downs earlier in July, and that he had no conscious awareness of the firearm allegation on 31 July at Warradale, it nevertheless remains a remarkable instance of a lack of cohesion between the various officers of TAC Team 2 and of a general lack of awareness of ongoing matters requiring investigation within that unit. I allow for the fact that the matter of Humbles would have been but one of many cases that the Sturt CIB were required to investigate, but this matter was one that involved the alleged possession of a firearm by a juvenile who possibly possessed it in connection with drug trafficking. Furthermore, credence could be given to the allegation because there was evidence that tended to confirm the aspect of the information involving alleged drug trafficking. This was a matter that required ongoing vigilance and continuity. It required professional oversight by an officer in authority. I intend making a recommendation that any investigation involving the alleged unlawful possession of a firearm be brought to the attention of an officer of the rank of Inspector or above and that the investigation be overseen by that officer.

8.21. Senior Constable Anderson prepared an ancillary report which was uploaded onto the Police Information System the report was in the following terms:

‘Other Information :

RECEIVED INFO DRUG DEALING AT WARRADALE RAILWAY STATION. LOCATED HUMBLE CPNDUCTING (sic) A SALE. STOPPED AND SEARCHED, 1 X BAG CANNABIS LOCATED. EVIDENCE OF DEALING ON MOBILE PHONE BUT NIL SUPPORTING EVIDENCE. D/D ISSUED.’¹¹⁵

This computerised document would have been available to any other officer following its uploading onto the system.

¹¹⁵ Exhibit C78a

9. The information of 1 August 2012

- 9.1. On 1 August 2012, which was the day following the incident at Railway Terrace, further information this time identifying Liam Humbles by name was received by police. This information was recorded on the Case Management System as having been uploaded at 1352 hours on 01/08/2012¹¹⁶. The information is recorded as having been received from a 'KNOWN CALLER'. The document records that the caller stated that he or she had recently reported to police suspected drug dealing conducted by a male approximately 17 years of age known as 'LIAM HUMBLE' (sic). The text of this report tends to suggest that this caller may have been the same caller who had earlier informed police about the activities in the vicinity of the Warradale railway station which had led to the police attendance there of 31 July but that on that earlier occasion the caller had not been able to provide police with an address for Humbles. On 1 August, however, the caller is recorded as having stated that Humbles was then dealing drugs both from the Warradale railway station and also from 'HIS HOME ADDRESS' of 26 Railway Terrace, Warradale. The caller could not identify the type of drug Humbles was dealing in. The caller then described the person believed to be Humbles as having characteristics quite consistent with those of Humbles. The caller asserted that Humbles conducted three to four deals a day at the railway station and there were a lot of vehicles coming and going at the property at 26 Railway Terrace, Warradale. It is recorded that the caller believed that Humbles was 'ALSO DEALING FROM HIS RESIDENTIAL ADDRESS'. The Case Management System entry goes on to assert that the information was provided in the strictest confidence and that the identity of the caller may be subject to a claim of public interest immunity. The identity of this caller has not been revealed to this Court.
- 9.2. It is noteworthy that this information was received the very day after Humbles had been located by Senior Constable Anderson and Senior Constable Mobbs of Sturt TAC Team 2 in the vicinity of the Warradale railway station in circumstances that Senior Constable Anderson believed were indicative of cannabis trafficking. What distinguished this latest piece of information from earlier information was that it mentioned a place of living for Humbles. The receipt of this latest information represents the first occasion on which police demonstrably had information to link Humbles with the premises at 26 Railway Terrace, Warradale. As it happens, this premises is diagonally opposite the

¹¹⁶ Exhibit C82

Warradale railway station. To the extent that on the previous day any further police investigation had been hampered by a lack of knowledge of any address to which Humbles was connected, on 1 August 2012 police as a corporate entity were now made aware of such an address. Furthermore, this was an address which was in very close proximity to the location at which Humbles had been found the day before. Accordingly, there would have been good reason to suppose that this was possibly a location where Humbles kept the supply of cannabis out of which he dealt, a supposition made all the more credible by the suggestion that Humbles dealt in the vicinity of that address as often as three or four times a day.

- 9.3. I am not certain as to the police unit that received this information in the first instance, but the probability is that it was received on 1 August 2012 and it may well be that it was received in the first instance at the Sturt Criminal Investigation Branch as distinct from it having been received as a Crime Stoppers report on that date. The Sturt CIB Case Management System documentation¹¹⁷ would bear that out. Police would take no action in respect of this information until 12 August 2012 when Mr Bonython and Senior Constable Mobbs attended at 26 Railway Terrace, Warradale and failed to locate either Humbles or any item connected with Humbles including drugs or a firearm. An inference is available that Humbles had left the address between 1 August and 12 August 2012.
- 9.4. There are two other dates in August that are relevant to this issue. Firstly the Sturt CIB Case Management System documentation signifies that the task of investigating the information was assigned to Senior Constable Mobbs on 6 August 2012. The other relevant date is 7 August 2012 which was the date on which Humbles had borrowed some cleaning products from Ms Susanna Jane Tilly, the principal occupant of 26 Railway Terrace. When Senior Constable Mobbs and Mr Bonython attended at that address on 12 August, Tilly told them that Humbles had been staying at the address but was no longer there. She said that she did not know where he was currently staying but indicated that he had borrowed cleaning products from her on 7 August. Tilly herself gave evidence about this matter. She told the Court that Humbles borrowed a mop, bucket and broom to clean the house that '*they were going to move into*' or had already moved into. I accept that evidence. It is supported by what she said to police on 12

¹¹⁷ Exhibit C83, page 1

August 2012. To my mind this is consistent with Humbles having moved out of 26 Railway Terrace only quite recently.

- 9.5. Senior Constable Mobbs told the Court that when they attended at the Railway Terrace address he bona fided four males who emerged from the house into the street. He recorded their particulars, but he no longer knew who they were and any note made at the time as to their identities is now lost. I can infer that none of them was Humbles as Senior Constable Mobbs had seen Humbles on 31 July. The individuals stated that they did not know Humbles or his whereabouts at that time.
- 9.6. The delay in police acting upon the most recent piece of information before 12 August 2012 represents another missed opportunity to have found Humbles and/or the firearm. The Court has found on the balance of probabilities that Humbles was staying at the premises at 26 Railway Terrace, Warradale as at 1 August 2012. In his evidence Mr Bonython told the Court that the fruitless search of the premises on 12 August 2012 had been consensual, but he also told the Court that if the search had been resisted by the occupant, Ms Tilly, he believed he would have had justification to use his general search warrant to search the premises. I agree with that assessment having regard to the information that police had about Humbles to date. Naturally, this justification would have been even stronger on 1 August 2012, the date of the receipt of the latest piece of information, particularly having regard to the events of the day before. However, by 12 August 2012 the trail had gone cold and there is no evidence that police had any other lead for the whereabouts of Humbles. There, as far as the Sturt CIB were concerned, the matter of Humbles rested. No further action was undertaken by that SAPOL unit.
- 9.7. There is one further matter about the attendance at the Railway Terrace premises that is of concern. While the outcome of the investigation of the information of 1 August 2012, including the police attendance on 12 August, was recorded within the Sturt CIB Case Management System, no ancillary report was ever raised or placed onto PIMS. This was unfortunate. The information of 1 August specifically identified 26 Railway Terrace, Warradale as the 'home address' of Humbles and was to the effect that Humbles was dealing in drugs out of and in the vicinity of that premises. In the event, when Humbles was eventually arrested in the December, he provided this address as a place to which he could be bailed. Police acquiesced in this. The fact that Humbles was said to have been dealing in drugs from this address would have been a relevant

fact for the police bail authority to have known when exercising the discretion as to whether Humbles should have been bailed at all or whether he should have been permitted to reside at that location as a condition of bail. The bail authority did not know of Humbles' previous history in respect of that address or general locale. More of that later.

10. The bike incidents of 30 August 2012 and 14 September 2012

- 10.1. At about 7:25pm on 30 August 2012 a uniform mobile police patrol observed a male person riding a pushbike on Scarborough Terrace, Dover Gardens with no lights. Police stopped that person who produced a student card in the name of Liam Humbles of 11 Hume Street, Seaview Downs. Constable Christopher Holmes was one of the officers. He issued Humbles with a caution.
- 10.2. Constable Holmes gave oral evidence at the Inquest. Constable Holmes could not recall the nature of checks that he performed in respect of Humbles if any. He told the Court that he would not have conducted a criminal record check or ancillaries check. He would not have queried the address on the student card as being Humbles' place of residence. He suggested that any checks in a situation such as this would have been confined to a check for active warrants. Asked as to what action he may have taken if he had been made aware of the information contained in the first Crime Stoppers report concerning drug dealing and the carrying of a firearm, Constable Holmes stated that he may have searched for the same. I do not believe any search was conducted of Humbles on this occasion. He was allowed to go on his way.
- 10.3. Scarborough Terrace where this incident occurred is only a block away from Dalkeith Avenue where Humbles by then was probably residing at that time.
- 10.4. At about 1:35am on 14 September 2012 a uniform mobile police patrol observed a male person riding a bicycle without lights on the southern footpath of Seacombe Road, Seaview Downs. Again, Humbles. He was on his own. One of the officers, Constable Samuel David Royans, gave oral evidence in the Inquest. Constable Royans told the Court that they stopped Humbles and obtained his details. Humbles gave his address as 11 Hume Street, Seaview Downs. Police believed him to be acting in a suspicious manner and they searched him. In a black waist bag they located a small bag of dried cannabis which Humbles said was for his own use. Constable Royans told the Court

that he suspected that Humbles was affected by cannabis at that time. No weapon was found during the search.

- 10.5. Constable Royans told the Court that a PIMS check was conducted that would have revealed ancillary reports in respect of previous events involving Humbles. Constable Royans said that as far as he recalled the check only revealed information about an incident involving his parents.
- 10.6. Constable Royans told the Court that he would not have had access to the Sturt Criminal Investigation Branch Case Management System. He suggested that if he had seen any reference to a firearm in connection with Humbles, he would have spoken to Humbles about that.
- 10.7. As to Humbles' place of living Constable Royans told the Court that Humbles said he was couch surfing but still lived with his parents. Constable Royans said that he was suspicious of this because the information from PIMS suggested that he was not in fact living at that address. In cross-examination by counsel assisting Ms Cacas, Constable Royans was unsure as to whether he had asked Humbles where he was intending to stay the night. He also revealed that when he was stopped, Humbles was heading in the opposite direction to Hume Street, Seaview Downs. He did not recall whether he asked Humbles where he was currently going at that time of the night. As seen earlier, as a matter of law police could have insisted that Humbles be more forthcoming about where he was actually living.
- 10.8. Constable Royans also stated that he did not know anything about the information of 19 July 2012. He did not know of the previous drug diversion on 31 July 2012.
- 10.9. Constable Royans did not believe that there was any evidence of dealing as far as Humbles possession of cannabis was concerned. So he issued Humbles with another drug diversion that required him to attend at an assessment on 20 September 2012. This was his fifth such diversion. I do not know why Constable Royans or his partner would not have seen the police ancillary report that had been raised by Senior Constable Anderson in respect of the Warradale railway station encounter on 31 July 2012, a report which asserted that Humbles had been located conducting a sale, that there was evidence of drug dealing on his mobile phone and that a bag of cannabis had been located in his possession on that occasion. Suffice it to say, Constable Royans should have seen this report.

10.10. As already seen, Humbles apparently attended the required drug diversion assessment as the usual standard letter made its way back to police from Drug and Alcohol Services South Australia. Therefore, there was nothing more for the police to do in respect of this incident.

11. Liam Humbles is arrested

11.1. Humbles was arrested by police on Friday 14 December 2012. He was charged with the offence of damaging property. He was released by police on bail on conditions that included that he reside at 26 Railway Terrace, Warradale. He did not have to attend court before he was released.

11.2. It is necessary to refer to the background leading to this arrest. That background is encapsulated in some detail in the affidavit sworn by Mr Lee Humbles on 20 November 2012 and in a further affidavit made on 26 November 2012¹¹⁸. As seen earlier, these affidavits were sworn in connection with an application for an intervention order seeking to prevent Humbles from assaulting, threatening, harassing or intimidating the members of Humbles' family and from attending at the family home or places of employment. This application was precipitated by an incident on 20 November 2012 when Humbles attended at the family home, helped himself to breakfast and demanded money from his parents which was refused. Humbles then verbally abused members of his family and smashed their laptop computer by throwing it onto the road. The affidavit of 20 November 2012 sworn at the Sturt police station describes that event as well as earlier events in the years 2011 and 2012. In that affidavit Mr Lee Humbles asserted that Humbles had become erratic and unpredictable due to his cannabis use which had been escalating since he started using it in about 2009. His behaviour had since that time consisted of aggression, the breaking of items and the uttering of threats towards his father and his mother, and general aggression towards his siblings. Other incidents are described in some detail in the affidavit that included an incident on 10 November 2012 when he unsuccessfully demanded money, became aggressive and threw a brick at the family car causing damage. On another occasion Humbles had attended at the home, had unsuccessfully demanded money and had swung the pole of the vacuum cleaner towards his father. On a day in September 2012, now believed to be 20 September 2012 because that was the day on which Humbles apparently attended

¹¹⁸ Exhibits C75 and C75a respectively

Marion Shopping Centre in connection with his latest drug diversion, he encountered his father by chance and damaged his father's car. I am not certain whether this incident occurred before or after his drug diversion meeting that day, but it may well have been after because the drug diversion appointment was for 9am that day.

- 11.3. According to Mr Lee Humbles' affidavit¹¹⁹ police attended at the Hume Street premises on 28 March 2012 when Humbles smashed a lounge room window and left the family premises not to return. On 10 February 2012 Humbles produced a knife during an argument with his father. On 22 April 2012 Mr Lee Humbles had to restrain Humbles after Humbles had threatened him.
- 11.4. I do not believe that the intervention order that was applied for was granted prior to Humbles' arrest on 14 December 2012. There is no evidence that Humbles had come to the attention of police between 20 November 2012 and 14 December 2012.
- 11.5. On the morning of Friday 14 December 2012 Humbles attended at the family home at 11 Hume Street, Seaview Downs. The police were called and officers Rogers and Burnett attended. The officers were aware that Humbles was wanted by police in connection with the damage of the laptop computer. On arrival Humbles was using the shower at the premises. When he emerged he was arrested in connection with the property damage matter. The statement of Senior Constable Rogers¹²⁰, who also gave oral evidence, states that he arrested Humbles on this occasion for the purpose of placing bail conditions upon him to prevent him from re-attending at the family home and causing disturbances. Senior Constable Rogers' statement also indicates that at that time the information that had been supplied to him was that Humbles was at that stage couch surfing and had no fixed place of abode.
- 11.6. Upon his arrest Humbles was taken by police to the Sturt police station where he was charged with damaging property. His release on bail meant that he was not required to attend Court that day. Rather, he was bailed to attend the Youth Court in Adelaide on 24 January 2013. Had Humbles not been bailed by police that day he would have been required to appear before the Youth Court and it is clear that there would have been sufficient time on that Friday afternoon for that to have occurred.

¹¹⁹ Exhibit C75

¹²⁰ Exhibit C85

- 11.7. As arresting officer, Senior Constable Rogers had a responsibility to complete a prisoner screening form that required him to interrogate PIMS for various items of information about the prisoner Humbles, including General Enquiries, Warnings, DCS Warnings and relevant 'At Risk' Ancillaries (Self-Harm/Attempt Self-Harm). Senior Constable Rogers was also required to signify an attitude to bail. The responsibility for considering whether Humbles should be released on bail fell to Senior Constable Mark Wheelhouse who that day was the bail authority under the Bail Act.
- 11.8. It is to be acknowledged that as far as the offence with which Humbles was charged was concerned, it was not a serious charge that would intrinsically require a remand in custody. The property concerned was the family laptop computer. It is conceivable that the matter would have been dealt with in the Youth Court at the first appearance on 24 January 2013, after which the bail agreement would have lapsed. In any event Humbles was bailed on 14 December. The bail conditions included an agreement by Humbles that he not attend at 11 Hume Street, Seaview Downs, the premises of his family, nor approach or communicate either directly or indirectly with his parents or his three siblings. When one momentarily suspends one's world-weariness and stands back from this scenario with detached reflection, what an extraordinary thing it is for a child, even of 17 years of age, to be banned by the processes of the law from having anything to do with the members of his immediate family. You would think that for the sake of the child and for the sake of the public interest in general, this circumstance would necessarily trigger a considered and robust protective response on society's part. In my view, a bail condition or intervention order that prevents a child from associating with the child's natural family should require the closest scrutiny. I intend making a recommendation that such a condition or such an order should only be considered and imposed by the Youth Court and that when such a condition is so considered, the relevant authority responsible for child protection are to be involved in the process with a view to ensuring that the child is properly protected not only for the child's sake, but also in the public interest. Although a police bail authority would not have the power to impose such a bail condition, they would still have a clear role to play in the Youth Court process. I will also discuss below the possible application of the Children's Protection Act 1993 to Humbles' circumstances.
- 11.9. Naturally the bail conditions that were imposed raised a question as to where Humbles as a bailed person would reside. There are a number of reasons as to why the place of

residence of a bailed person is a relevant matter. Firstly, it is relevant as to whether the bailed person's life circumstances are stable enough to warrant the conclusion that he or she will probably attend Court when required to do so. Secondly, it is relevant as to whether it is likely or unlikely that the bailed person will continue to commit offences. Thirdly, in the case of Humbles the suitability of the address at which he would reside was relevant to the likelihood or otherwise of him staying away from his family home and his family members. These considerations would naturally be all the more acute in a case such as Humbles, a youth who to date already had a history that included behavioural issues, unstable personal circumstances and an involvement with drugs. If any credence could have been given to Mr Lee Humbles' affidavit where it asserted that his son's behaviour was significantly influenced by cannabis consumption, there was a need for Humbles to be placed in an environment where cannabis consumption was less likely and not more likely. The idea that 26 Railway Terrace could have provided that environment is ridiculous.

11.10. A number of SAPOL database documents were produced in evidence that concerned activity previously recorded in respect of the premises at 26 Railway Terrace and which had involved police¹²¹. These included an event in March 2011 in connection with a missing 14 year old female. There was also an event in April 2011 where a mother had reported intoxicated juveniles in connection with the premises and where the mother had expressed concern about her son being involved in this. The mother had indicated that she wanted the incident reported '*in case history of similar or occurs again in the future*'. It is clear that at that time the occupants of 26 Railway Terrace were the same as in 2012. There was also a police ancillary report dated 16 July 2012 relating to information concerning 26 Railway Terrace to the effect that four males residing at this address often walked up and down the street looking for something and that cars would often pull up in the street whereby one of the males would walk out to the car where a transaction of some kind would be conducted. That information is quite reminiscent of other information that was received involving Humbles himself. However, on this occasion no person had been identified either by description or name.

11.11. It is pertinent here to reflect upon what SAPOL as a corporate entity knew about Humbles and 26 Railway Terrace by 14 December 2012. SAPOL knew (a) that Humbles' was said to be a drug dealer who carried a firearm, (b) that Humbles'

¹²¹ Exhibit C83b

behaviour in the last 12 months had been erratic, unpredictable and at times aggressive, said by his own father to be the product of cannabis consumption, (c) that Humbles had been the subject of no less than five drug diversions which had no impact in altering his behaviour, (d) that he was said to deal in drugs in the vicinity of the Warradale railway station on Railway Terrace, (e) that in the opinion of an officer attached to the Sturt CIB he had been found conducting a sale of drugs in the vicinity of the Warradale railway station in almost perfect accordance with information that SAPOL had about Humbles' activities in that area, (f) that he was said to deal in drugs from 26 Railway Terrace when he resided there, (g) that 26 Railway Terrace was said to have had a connection with a missing 14 year old girl, (h) that underage intoxication occurred at 26 Railway Terrace, (i) that suspicious street transactions and other suspect activities that had 26 Railway Terrace as their focal point were regularly seen to occur and that (j) Humbles had no fixed address having been excluded by his own family.

- 11.12. The difficulty is that when Humbles came to be bailed, the information that he had allegedly dealt in drugs from and in the vicinity of 26 Railway Terrace while residing there was not taken into consideration. Further, the suggestion that earlier in 2012 Humbles was carrying or was in possession of a firearm also was not taken into consideration. Although the question of Humbles' bail was considered within the four walls of the Sturt police complex, as I understood the evidence there was no cross fertilisation of information in the hands of the Sturt CIB with information that Humbles had been arrested and was being considered for release on bail by another police entity within the same building. The information that Humbles had allegedly carried a firearm, and the information that he dealt in drugs out of 26 Railway Terrace and its environs remained within the Sturt CIB case management system and, as seen earlier, had not made its way into any ancillary report that could be made generally available to police in the field including officers who had responsibility for considering bail. Naturally when Senior Constable Rogers and Senior Constable Wheelhouse were called to give oral evidence in this Inquest they were questioned about these matters and the impact that information such as that could have had in respect of their tasks.

11.13. Senior Constable Rogers told the Court that he was not aware of any information that 26 Railway Terrace was a place that had involved drug taking by visitors or residents¹²². On this topic Senior Constable Rogers was asked the following questions by the Court:

Q. Can I ask you this, would you consider bailing a juvenile to a premises where it was likely that he would be able to access cannabis.

A. If I was aware that he could access it, probably not, I would try to avoid that.

Q. What if the juvenile had his own personal history of cannabis use, would you be inclined to bail that individual to a premises where cannabis use was prevalent and cannabis was available.

A. No, no.

Q. Now did you know that Humbles had five previous drug diversions for cannabis.

A. I was not aware of that at the time, no.

Q. Would that have been information that you would have considered relevant in considering whether or not you would bail that individual to a premises that had a connection or history - connection with or history of cannabis use.

A. Yes, I would.

Q. You would what.

A. I'd consider that a factor whether it's a suitable address, yes.

Q. It would be a factor militating against bailing him to that address, wouldn't it.

A. Yes.¹²³

Senior Constable Rogers also said that if a person such as Humbles had an extensive personal history of drug use, and he was considering bailing such a person to an address where heavy drug use was taking place, that would be a matter of concern for him¹²⁴.

11.14. I was uncertain from Senior Constable Rogers' evidence whether or not he had actually seen and properly evaluated the ancillary reports regarding Humbles that would have been available to him such as the ancillary report filed by Senior Constable Anderson following the 31 July 2012 incident at the Warradale railway station. However, it seems clear enough from the charge and custody management record that was compiled, and in particular the prisoner screening form that Senior Constable Rogers compiled and signed, that ancillary reports were at least examined in order to determine whether they contained any material relevant to the risk of self-harm. In addition, Senior Constable Rogers indicated that he would have at least had access to the ancillary report of 31 July

¹²² Transcript, page 718

¹²³ Transcript, pages 720-721

¹²⁴ Transcript, page 737

2012. He said he could not recall whether he had looked at it or not¹²⁵. Senior Constable Rogers agreed that the contents of Senior Constable Anderson's ancillary report were relevant to Humbles' candidacy for bail on 14 December 2012¹²⁶. There was also mention of the Railway Terrace vicinity at least contained within that report. Senior Constable Rogers agreed that with the benefit of hindsight, 26 Railway Terrace as an address to which Humbles could be bailed was not an appropriate address¹²⁷. In the event Senior Constable Rogers appeared to agree with counsel assisting that had he looked at the ancillary reports and read them, then based on the contents of the reports that had been filed in relation to Humbles he would not have considered him to be a suitable candidate to be bailed to the 26 Railway Terrace premises¹²⁸.

11.15. Senior Constable Rogers was asked about this information and what impact it might have on the question of bail and the suitability of the premises at 26 Railway Terrace if an inquiry had been made specifically about that address on police systems. Senior Constable Rogers was asked by counsel assisting, Ms Kereru:

'Q. And if that had occurred and you'd read what you've just read today what would your impression be of the suitability of this address for Liam Humbles in December of 2012.

A. Yes, I believe I would have probably taken that more into consideration as a suitable address - with the benefit of hindsight. ' ¹²⁹

11.16. As to the question of the suggestion that Humbles possessed a firearm, information that did not make its way past the Sturt CIB case management system, Senior Constable Rogers agreed that the possibility that a firearm might be at 26 Railway Terrace would be a possibility that would need to be considered¹³⁰, particularly if on questioning Humbles had revealed that he had already spent some time at that address. Senior Constable Rogers made an interesting observation in this regard in that he suggested that if the possibility that Humbles was in possession of a gun had been mentioned in the original ancillary report of Sergeant Simper, it would have come up as a warning¹³¹, meaning that he himself would have been alarmed and made further inquiries about that possibility. I am not certain that this is correct. As I understood the evidence, if the information regarding the firearm was worthy of a warning, it would have needed to be

¹²⁵ Transcript, page 742

¹²⁶ Transcript, page 742

¹²⁷ Transcript, page 742

¹²⁸ Transcript, page 745

¹²⁹ Transcript, page 751

¹³⁰ Transcript, page 761

¹³¹ Transcript, page 764

placed on the system as a warning. However, there was no reason why it could not have been mentioned in the text of an ancillary report as both Mr Bonython and Mr Lovegrove asserted.

11.17. Senior Constable Rogers told the Court that 26 Railway Terrace was the only address that Humbles gave as a place where he could reside. If that place had been deemed unsuitable then Humbles would have had to have been taken before the Youth Court that afternoon. Naturally it is unclear as to whether or not in due course Humbles may have been bailed, or maybe even dealt with by the Youth Court expeditiously but it is difficult to imagine that a properly informed court would have bailed Humbles to 26 Railway Terrace.

11.18. A point was made in the Inquest that if Humbles had been bailed to a more suitable address he could still have attended and dealt in drugs from 26 Railway Terrace with little hindrance. Coupled with that is the suggestion that even if Humbles was bailed to reside at another address, he could lawfully have been at 26 Railway Terrace on 31 December 2012 in any event. As indicated earlier, one matter that is relevant to the question of bail is the likelihood of the person bailed committing further offences. Humbles being bailed to 26 Railway Terrace would invite a very strong likelihood that he would commit further offences out of that location. I therefore reject the contention in effect that it did not matter where Humbles was bailed to. And if anything, in all of the circumstances known to police, an appropriate additional bail condition could have been imposed that he not attend at 26 Railway Terrace. In any event, there is no evidence that there was another address that would have been suitable. In addition, if he was not actually residing at 26 Railway Terrace, the chain of events may have been sufficiently interrupted such that even if Humbles himself was present at the address on 31 December, there is no certainty that he would have had the gun with him.

11.19. Senior Constable Wheelhouse, the bail authority, was also called to give evidence. Senior Constable Wheelhouse suggested that although he could not remember exactly what inquiries he made, there would have been a phone call to the occupier or the person who resided at 26 Railway Terrace and the person would have been asked whether or not they were happy for Humbles to reside there as a condition of bail. In her evidence Ms Tilly confirmed that she was called by police and was asked whether her address could be used for the purpose of Humbles' bail. She agreed. She told the Court that she was not informed of the circumstances that had led to Humbles being arrested.

11.20. Senior Constable Wheelhouse acknowledged that as a bail authority they are able to check individuals and addresses on the police database. Senior Constable Wheelhouse was asked similar questions that had been asked of Senior Constable Rogers in relation to information that was available on the police database. In this regard Senior Constable Wheelhouse agreed that he would have been more inclined to check the suitability of 26 Railway Terrace if he had been aware of Humbles' past drug dealings, particularly if they had been connected with that address¹³². That, with respect, seems to be something of an understatement.

11.21. As to other police information about the actual address at Railway Terrace not connected with Humbles specifically, Senior Constable Wheelhouse was asked by counsel assisting whether that would have impacted upon the suitability of that address as a bail address for Humbles and he said:

'Yes, the information there I'm not sure whether it was looked at at the time, I can't remember that. But that's something to certainly bear in mind with regards to the address, yes.'¹³³

Senior Constable Wheelhouse also suggested that had he known much of the information about Humbles or the premises he may have asked a patrol to attend the address to conduct further checks with the occupiers¹³⁴.

11.22. As to the suggestion that earlier in the year Humbles possibly possessed a firearm, and had that information been contained in an ancillary report available to Senior Constable Wheelhouse, Wheelhouse admitted that he would have looked at the information and considered whether further checks needed to be undertaken. He suggested that there would be '*an understanding that he would need to be spoken to about that*'¹³⁵. He probably would not have granted bail while those inquiries were being conducted. He suggested that the person enlisted to speak to Humbles about the gun may have been an officer from the Intelligence Section or an officer from one of the Criminal Investigation Units¹³⁶. Senior Constable Wheelhouse agreed that had he seen, say in Sergeant Simper's ancillary report, reference to the possibility that Humbles had a firearm, and had coupled that with what was also known about Humbles' alleged drug dealing, he would have taken steps to see whether or not Humbles was in possession of a firearm¹³⁷.

¹³² Transcript, page 794

¹³³ Transcript, page 804

¹³⁴ Transcript, page 809

¹³⁵ Transcript, page 811

¹³⁶ Transcript, page 811

¹³⁷ Transcript, page 816

- 11.23. The difficulty was of course that neither Senior Constable Rogers nor Senior Constable Wheelhouse had access to any information about a firearm and had an imperfect, to say the least, grasp of Humbles' background in respect of the address to which he was going to be bailed.
- 11.24. With all of the information that SAPOL corporately had at its disposal, there was no way that Humbles should have been bailed to 26 Railway Terrace. Ironically, it should have been a condition of his bail that he stay away from that address.
- 11.25. I have given consideration as to what may have transpired if police had refused Humbles bail on the basis that he had no suitable address at which to reside. In that event he would have been brought before the Youth Court that afternoon. The question of bail would have been a matter for that court. As indicated above, to my mind it is highly unlikely that the court would have permitted Humbles to reside at 26 Railway Terrace if the court had been properly and fully informed about Humbles and his known connection with, and alleged activities within and from, that address. Equally unlikely is a properly informed court granting bail without a residence condition at all, especially when regard is had to the need for other conditions to be imposed that would have prohibited him from attending at his family's home or from approaching members of his family. If Humbles had not been able to provide an address, it is possible that police would have persuaded the court to refuse bail. However, in that event the possibility that the court would have dealt with Humbles on the spot and not have imposed a sentence of detention cannot be entirely dismissed.
- 11.26. Perhaps more to the point, however, is the distinct possibility that if the bailing police officers had a greater awareness of Humbles' past, and specifically in relation to the information about his drug activities and the suggestion of his possession of a firearm, Humbles may at the time have come under greater scrutiny from other arms of SAPOL, namely the Sturt CIB.

12. The application of the Children's Protection Act 1993

- 12.1. The Children's Protection Act 1993 provides for the care and protection of children. A child is a person under the age of 18 years. Humbles was 17 years of age in 2012. His 18th birthday occurred on 7 January 2013, approximately a week after he was arrested for the killing of Lewis McPherson. However, at various times during 2012 and at all

times at which he came into contact with police, he was a person of the age of 17 years and was thus amenable to the provisions of the Children's Protection Act 1993.

- 12.2. The Children's Protection Act 1993 provides for the protection of children who are the subject of abuse or neglect, are in danger or who are at risk.
- 12.3. There are obligations to notify the relevant Department where there are reasonable grounds to suspect that a child has been or is being abused or neglected and where the suspicion is formed in the course of the person's work or of carrying out official duties¹³⁸. Those persons are referred to as mandated notifiers.
- 12.4. As well, children may be removed from premises or places where there are reasonable grounds to believe that a child is in a situation of serious danger and that it is necessary to remove the child from that situation in order to protect that child from harm¹³⁹.
- 12.5. There are also provisions within the legislation that are designed to protect children who are '*at risk*'. Section 6(2) of the Act stipulates that a child is at risk if:
- '(aa) there is a significant risk that the child will suffer serious harm to his or her physical, psychological or emotional wellbeing against which he or she should have, but does not have, proper protection; or
 - (a) the child has been, or is being, abused or neglected; or
 - (b) (not relevant); or
 - (c) the guardians of the child—
 - (i) are unable to care for and protect the child, or are unable to exercise adequate supervision and control over the child; or
 - (ii) are unwilling to care for and protect the child, or are unwilling to exercise adequate supervision and control over the child; or
 - (iii) are dead, have abandoned the child, or cannot, after reasonable inquiry, be found; or
 - (d) (not relevant); or
 - (e) the child is under 15 years of age and is of no fixed address.'
- 12.6. It will be seen from that definition that for a child to be at risk it is not necessarily the case that the child has been or is being abused or neglected or is in immediate serious danger.

¹³⁸ Section 11 of the Children's Protection Act 1993

¹³⁹ Section 16 of the Children's Protection Act 1993

- 12.7. Section 19 of the Children's Protection Act 1993 stipulates that if the Chief Executive of the relevant child protection authority suspects on reasonable grounds that a child is at risk and believes that the matters causing the child to be at risk are not being adequately addressed, the Chief Executive must cause an assessment of or an investigation into the circumstances of the child or must effect an alternative response which more appropriately addresses the potential or actual risk to the child¹⁴⁰. It is worthwhile observing that where the Chief Executive entertains the reasonable suspicion and the belief that enlivens these powers, the Chief Executive has no discretion but to act, and this is so regardless of whether the child is approaching his or her 18th birthday. The Chief Executive's powers are mandatory. In the case of Humbles, it therefore would have been no answer to assert that there was insufficient time to act before he turned 18. But in the case of Humbles, there is no evidence to suggest that the Chief Executive was aware of his plight.
- 12.8. I have seen recent media material lamenting the possibility that proposed legislation that would replace the existing Children's Protection Act 1993 would alter the mandatory nature of the exercise of the Chief Executive's powers that exist under section 19 of the current Act and would provide the Chief Executive with a discretion to cause an investigation and assessment of a child at risk. This does appear to be the case when one peruses clauses 30 and 31 of the Children and Young People (Safety) Bill 2017. This alteration would be a clear error. From the analysis below it is highly probable that in respect of Liam Humbles, the exercise of the Chief Executive's mandatory powers under section 19 of the existing legislation would have saved Lewis McPherson's life, and would have done so by virtue of the fact that they are mandatory. A prompt and effective section 19 intervention by way of a mandatory investigation and assessment at least would have had the effect of keeping Humbles away from 26 Railway Terrace, Warradale. There are other links in the chain of events that led to Lewis McPherson's death that probably would have been broken had there been a section 19 intervention. The mandatory nature of these powers would have prevented anybody from asserting that there was no point in exercising those powers because Humbles was nearly 18. I intend making a recommendation that in the proposed new children's protection legislation that the powers of the Chief Executive in relation to children at risk be maintained as mandatory powers.

¹⁴⁰ Section 19(1) of the Children's Protection Act 1993

- 12.9. I also intend making a recommendation that in circumstances where police have reason to believe that the Chief Executive might exercise the powers under section 19 of the Children's Protection Act 1993, there be an obligation to notify the Chief Executive of the child's circumstances.
- 12.10. In cases where a child should be protected while the child's matter is being investigated, the Chief Executive may apply to the Youth Court for an appropriate order. The Youth Court is empowered to make orders authorising examination and assessment of a child and may grant an order granting custody of the child to the Minister, an order that has effect for a period not exceeding 6 weeks¹⁴¹.
- 12.11. Family care meetings may also be convened in respect of a child where the Minister is of the opinion that the child is at risk¹⁴².
- 12.12. The Act provides for the making of applications by the Minister to the Youth Court for the granting of custody of children to the Minister or the placement of the child under the guardianship of the Minister for a specified period not exceeding 12 months, or until the child attains the age of 18 years, where the Minister is of the opinion that the child is at risk and that such orders should be made to secure the child's care and protection¹⁴³.
- 12.13. It is fair to say that none of these protective mechanisms were considered in respect of Humbles' circumstances in 2012. At various times during the course of 2012 there was adequate reason to believe that Humbles was at risk in the terms of the Act. At various times he did not appear to have a fixed place of abode, or at least a place that he was prepared to divulge, and information was received on multiple occasions that he was dealing in drugs, and in particular dealing in drugs from the place at which he was residing, namely 26 Railway Terrace, Warradale. There was also the matter of his possible possession of a firearm. There was also the fact that in 2012 he had been the subject of two drug diversions against a background of three previous diversions. It was also readily apparent that his parents had deemed Humbles persona non grata as far as the family and the family home was concerned, a circumstance that was lawfully recognised by the bail conditions imposed upon him, and not forgetting that there was

¹⁴¹ Section 21(1)(c) and (2)(a) of the Children's Protection Act 1993

¹⁴² Section 27 of the Children's Protection Act 1993

¹⁴³ Section 37 of the Children's Protection Act 1993

also the family's application for an intervention order against him. Humbles was no longer at school and had no legitimate visible means of support.

- 12.14. Humbles was also at risk in terms of the definition simply by virtue of the fact that it was self-evident from his father's intervention order affidavit and from the bail conditions that were imposed on him in December that his guardians, that is to say his parents, were unable or unwilling to care for and protect Humbles, or were unable or unwilling to exercise adequate supervision and control over him, which brought him within section 6(2)(c)(i) and/or (ii) of the Act. To my mind this was also arguably enlivened even as early as July when police attended at Humbles' family home and were told that he was not welcome there and that they did not know his whereabouts.
- 12.15. This is not the occasion to mitigate Humbles' actions in killing Lewis McPherson, but in 2012 there was good reason to believe that there was a significant risk that Humbles would suffer serious harm to his physical, psychological or emotional wellbeing against which he should have but did not have proper protection. He needed protection and society needed protection from him. That his psychological and emotional wellbeing was already harmed was evident from his father's affidavit. It was clear from that affidavit that his guardians were unwilling to care for and protect him or to exercise adequate supervision and control over him. If Humbles had been under 15 years of age he would automatically have fallen within the definition of child at risk by virtue of the fact that he was of no fixed address. This does not mean to say that if a child of or above the age of 15 years has no fixed address his plight is to be ignored. The fact that he has no fixed place of abode is another matter which, together with other circumstances, would in any event be relevant as to whether he is at significant risk of a harm of the kind contemplated by the Act. In short, Humbles was for most of 2012 at risk in terms of the Act.
- 12.16. To my mind the fact that Humbles was 17 years of age and was approaching his 18th birthday early in 2013 was neither here nor there to the question as to whether or not he was at risk and whether or not he did not have, but required, proper protection. His 18th birthday was hardly going to result in an improvement in him or of his circumstances. And as indicated above, the Youth Court was empowered to order authorising examination and assessment of a child and to grant at least temporary custody of a child to the Minister. I intend making a recommendation that in

exceptional cases the protection that the Children's Protection Act affords can be extended beyond a person's 18th birthday.

12.17. If Humbles' circumstances had been viewed holistically by those who in 2012 knew about those circumstances, there was little doubt that he would have and should have attracted the attention of the Chief Executive or Minister pursuant to the provisions of the Children's Protection Act 1993.

13. Counsel's submissions on behalf of the Commissioner of Police

13.1. In his final submissions counsel for the Commissioner of Police, Mr Keane, stated to the Court that the Commissioner acknowledged that there were steps that could have been taken in an attempt to determine whether Humbles had a gun and if so to seize it. Mr Keane acknowledged that those steps were not taken. Mr Keane exemplified this by acknowledging the failure on the part of police to approach Matthew Richmond.

13.2. Mr Keane on behalf of the Commissioner was highly critical of the failure of those who knew about Humbles' possession of a gun in 2012 to have notified police. One infers from this submission that the Commissioner is of a view that had any one or more of those persons notified police about Humbles' possession of the firearm the necessary action would have been taken to investigate that matter and if necessary seize the firearm when found. The difficulty with this submission, of course, is that as early as June 2012 an unidentified member of the public did in fact notify police that Humbles was widely believed to carry a firearm and to deal in drugs, the available conclusion being that the firearm had a connection with drug dealing. The same person in all probability, notified senior staff at the Brighton Secondary School, the Deputy Head of which also notified police. To suggest that this information was insufficient for police to investigate, or that it was in the nature of third hand hearsay that could be dismissed unless easily substantiated at the first opportunity, suggestions that were widely reported in the media and were to a lesser extent advocated in this Court, therefore have to be roundly rejected.

13.3. Other submissions made by Mr Keane troubled the Court. This is no reflection on Mr Keane who was no doubt acting upon instructions. Mr Keane's assistance to this Court is well known and well regarded. Mr Keane argued that in respect of the 31 July 2012 incident at the Warradale railway station there would have been a pointlessness in

arresting Humbles on suspicion of drug trafficking and in then taking him to a police station. He based that submission on a perceived unlikelihood of Humbles confessing to trafficking. Mr Keane went so far as to say that speculation that this might happen was at the '*outer limits of reasonableness*'¹⁴⁴. This prompted me to ask Mr Keane whether there is a philosophy within SAPOL whereby police refrain from exercising their lawful powers of investigation simply because they do not think that a person will answer questions or provide information that might lead to some other line of inquiry. In answering, Mr Keane reiterated that it was unlikely that Humbles would depart from his stance that the cannabis had been for his own personal use and would admit to being a drug dealer. He suggested that Humbles, being the street savvy drug dealer he was, would hardly hand himself up by indicating that he had a drug supply and a gun at Railway Terrace. To my mind there are two things that should be said about that. Firstly, it misses the point, the point being that if Humbles had been arrested police could have used their powers of investigation quite apart from their right to question a suspect. It needs to be repeated that Humbles was under a lawful obligation to disclose where he was living. If he had failed to do that, he could have been charged and it has to be remembered that the very next day police were supplied with an address for him, namely 26 Railway Terrace, Warradale, an address that could have been immediately investigated. Secondly, to suggest that police could or should legitimately refrain from conducting an investigation simply because they do not believe that they will succeed would represent a rather defeatist attitude not in accordance with community expectation.

¹⁴⁴ Transcript, page 1210

14. Conclusions

- 14.1. The Court reached the following conclusions.
- 14.2. Lewis Mike McPherson died of a gunshot wound to chest inflicted by a round from a .22 calibre pistol that was fired by Liam Humbles. Lewis McPherson met his death on 31 December 2012.
- 14.3. The firearm in question had been possessed by Liam Humbles for several months in 2012. I find that Liam Humbles possessed the firearm at least as early as 21 June 2012 when anonymously provided information that Liam Humbles and Matthew Richmond dealt in drugs and that Liam Humbles carried firearm was imparted to SAPOL Crime Stoppers.
- 14.4. I find that the investigation of the Crime Stoppers information received on 21 June 2012 was assigned to Sturt Criminal Investigation Branch TAC Team 2 which was led by Detective Brevet Sergeant Christopher Bonython as he then was. Mr Bonython has since left the police force. The investigation that was carried out was flawed and inadequate in two significant respects, namely the failure to approach and question Matthew Richmond regarding alleged drug dealing both in respect of himself and Liam Humbles and the alleged carrying of a firearm by Liam Humbles. Secondly, although the former home address of Liam Humbles was attended by members of the Sturt CIB TAC Team 2, and that Liam Humbles was not located, inadequate documentation was created following that attendance insofar as it neglected to identify the allegation that Humbles carried a firearm. This information should have been recorded in an ancillary report that was created by Senior Constable First Class Rosemary Thiele (now Simper) and vetted by Mr Bonython.
- 14.5. On 19 July 2012 Crime Stoppers received information from a member of the public to the effect that a person was dealing in drugs in the vicinity of the Warradale railway station. The person was not identified by name in the information. There was no mention in this information of a firearm.
- 14.6. Members of Sturt CIB TAC Team 2 attended in the vicinity of Warradale railway station on the afternoon of 31 July 2012 to investigate the information received by Crime Stoppers on 19 July. The officers there saw Liam Humbles engaging in activity that gave rise to a reasonable cause to suspect that he was trafficking in cannabis. One

of the officers did so suspect and later filed an ancillary report to the effect that Liam Humbles was located conducting a sale at that location. Liam Humbles was searched and a bag of cannabis was located in his possession. A firearm was not located in his possession. Liam Humbles was issued with a drug diversion and was neither arrested nor prosecuted in respect of any cannabis offence. This was Liam Humbles' fourth such drug diversion. The Court has found that Liam Humbles should have been arrested on suspicion of trafficking in cannabis and that he should have been investigated in respect of that suspected offence. The issuing of a drug diversion to Humbles on this occasion was inappropriate and not in accordance with SAPOL General Order – Drug Diversion having regard to the suspicion that he was trafficking in cannabis. At the scene Liam Humbles was questioned in relation to his residence and place of living. Liam Humbles was overtly evasive in relation to that issue. The questioning police officer was unduly tolerant of Liam Humbles' evasiveness. Consequently, Liam Humbles' actual place of living was not established by police on this occasion. Police at this scene failed to identify Liam Humbles as the person who had been the subject of the information originally received on 21 June 2012 to the effect that he carried a firearm in connection with the alleged activity of drug dealing. Liam Humbles was free to leave the vicinity. This occasion represented a missed opportunity to properly investigate the original allegation that Liam Humbles carried a firearm.

- 14.7. On 1 August 2012 police received further information from a member of the public that Liam Humbles was dealing in drugs from the vicinity of the Warradale railway station and as well, the premises at 26 Railway Terrace which was said by the informant to be Liam Humbles' home address. There is no evidence that until this information was received that police had information that Liam Humbles was residing at 26 Railway Terrace or had any connection with that specific premises. The premises at 26 Railway Terrace is diagonally opposite from the Warradale railway station where Liam Humbles had been located in possession of cannabis on the previous day. I find on the balance of probabilities that as of 1 August 2012 Liam Humbles was in fact residing at 26 Railway Terrace. I also find on the balance of probabilities that as of 1 August 2012 Liam Humbles maintained the firearm at that address.
- 14.8. I find that the information imparted to police on 1 August 2012 was received within the Sturt CIB on 1 August 2012. The information was not acted upon by police until 12 August 2012 when Mr Bonython and Senior Constable Tyson Mobbs attended at 26

Railway Terrace, Warradale. The officers did not locate Liam Humbles at that address. The officers were informed that Liam Humbles had left that address. I infer that Liam Humbles had ceased residing at that address sometime between 1 August 2012 and 12 August 2012. Mr Bonython and Senior Constable Mobbs performed a brief search of the house at 26 Railway Terrace on this occasion and found nothing of interest either in the way of drugs or a firearm. Police action on this occasion was flawed. Firstly, the attendance at 26 Railway Terrace, Warradale was unduly delayed having regard to the fact that the most recent piece of information identifying Humbles' home address as at 1 August was received on 1 August and also having regard to the fact that the original information that had been in the possession of Sturt CIB TAC Team 2 since 21 June 2012, information that included the allegation that Liam Humbles carried a firearm and dealt in drugs, had not been thoroughly investigated. It was also unduly delayed having regard to the fact that the information of 1 August 2012 was received the very day after police had located Liam Humbles in the vicinity of 26 Railway Terrace in possession of cannabis, a circumstance that clearly called for further expeditious investigation. Secondly, no documentation was maintained within Sturt CIB in relation to the attendance of police at 26 Railway Terrace on 12 August 2012 except within the Sturt CIB case management system. No ancillary report was created in relation to that matter.

- 14.9. I find that if police had acted upon the information of 1 August 2012 on or about that date, and had searched the premises at 26 Railway Terrace, Warradale on or about that date, either with the consent of the principal occupier or by virtue of the deployment of Mr Bonython's general search warrant, there is a likelihood that they would have found the firearm. The failure to act upon the information of 1 August 2012 expeditiously represents a significant missed opportunity to have located Liam Humbles and/or the firearm.
- 14.10. Liam Humbles came to the attention of police on three occasions following 12 August 2012. The first two occasions involved Liam Humbles being located at night time riding a pushbike without lights. He was searched by police on the first occasion. On that occasion cannabis was found in his possession. Liam Humbles claimed that the cannabis was for his own personal use. No firearm was located in his possession on this occasion. Liam Humbles was issued with a drug diversion in respect of his possession of cannabis. Liam Humbles was neither arrested nor prosecuted for possession of cannabis on this occasion. He was allowed to go. This was Liam

Humbles' fifth drug diversion in respect of cannabis. On the second occasion that Liam Humbles was located by police riding a pushbike without a light he was not searched and was cautioned in respect of the failure to have lights on his pushbike. He was allowed to go. On neither occasion that Liam Humbles was stopped by police for not having a light on his pushbike was his place of residence established.

- 14.11. I find that for a period sometime between early August 2012 and December 2012 Liam Humbles resided at premises at Dalkeith Avenue, Dover Gardens. The date on which he left that address has not been established. He maintained the firearm at that address. At one point during the period I have just identified he relinquished the firearm back to the original supplier, but subsequently retrieved the firearm.
- 14.12. On 20 November 2012 Liam Humbles' father, Mr Lee Humbles, swore an affidavit in support of an application for an intervention order that his son Liam not attend at the home address of his family, nor approach any member of his family. As I understood the evidence, this application was still undetermined as at the date of Lewis McPherson's death.
- 14.13. I find that Humbles' father and mother knew that Liam was living at Railway Terrace and at Dalkeith Avenue at different times in 2012. In Mr Humbles' affidavit of 20 November 2012, he identified '*a place on Dalkeith Street DOVER GARDENS*' as a place that Liam Humbles had moved into after he was asked to leave the family home in March 2012, and Mr Humbles stated that he had driven past it. However, there is no reliable evidence that after July 2012 he or his wife had been asked about Liam Humbles current whereabouts in connection with an investigation into Liam Humbles' alleged drug dealing nor his alleged possession of a firearm. Liam Humbles may have been residing at the Dalkeith Avenue premises as at 20 November 2012, but there is no evidence that would establish this with certainty. There is no evidence that could demonstrate that in 2012 Mr or Mrs Humbles at any time deliberately misled police as to the whereabouts of Liam Humbles. I would add that if Sturt CIB really wanted to locate Humbles after 31 July 2012, all they had to do was attend at Uniting Communities, Marion Shopping Centre Level 8 at 1:00pm on Thursday 9 August 2012 which was the place and time for Humbles' appointment for his then most recent drug diversion, an appointment that Senior Constable Anderson of the Sturt CIB had set up.

- 14.14. On 14 December 2012 Liam Humbles attended at his family's home address in circumstances where he was not welcome. The police were called to attend at the premises. There they arrested Liam Humbles in respect of an alleged offence of property damage relating to a laptop computer belonging to the family.
- 14.15. On 14 December 2012 Liam Humbles was taken to the Sturt police station. He was there bailed by the police bail authority on conditions essentially that he not associate with his family and that he reside at 26 Railway Terrace, Warradale. Inadequate inquiry was made in relation to the nature of the premises at 26 Railway Terrace, Warradale and in particular inadequate inquiry was made as to whether in all of the circumstances this was an address suitable to accommodate Liam Humbles as a condition of bail. I am prepared to infer that Sturt CIB were not made aware of the arrest of Liam Humbles' at that time.
- 14.16. If the bail authority had not acquiesced in the address at 26 Railway Terrace as an address to which Humbles could be bailed, it is difficult to determine what may then have transpired. If he had been refused bail, the possibility that he may have been dealt with by the Youth Court that day or very shortly thereafter cannot be completely discounted in which case Humbles would have been free to live where he desired.
- 14.17. Liam Humbles was released from police custody on 14 December 2012. At no stage during that day was he the subject of any investigation in relation to alleged drug possession or trafficking or in relation to the information that had been received earlier that year that he carried a firearm. Neither drugs nor a firearm were located in his possession on 14 December 2012.
- 14.18. Liam Humbles resided at 26 Railway Terrace, Warradale between 14 December 2012 and 31 December 2012 on which day he shot and killed Lewis McPherson. I find that it is more probable than not that during that period Humbles kept the firearm at that address. There is no evidence that members of Sturt CIB knew that Liam Humbles was residing at that address in that period. There is no evidence that members of the Sturt CIB gave any attention to the matter of Liam Humbles during that period.
- 14.19. A number of persons identified in the body of these findings either knew from their own personal knowledge or believed from information received by them that Liam Humbles possessed a firearm during the course of 2012. Save and except for the unidentified person who contacted police on 21 June 2012, who was probably the same

person who contacted senior staff at the Brighton Secondary School on or about that date, there is no evidence that any other person informed police that Liam Humbles either carried or was otherwise in possession and control of a firearm in 2012. In most cases the failure to make any report to police that Liam Humbles possessed a firearm is mitigated by the young age and immaturity of the individual involved. Any report by any of these individuals would naturally have added weight to the information that was imparted to police about the firearm in June 2012. However, the information of June 2012 in its own right was worthy of vigorous investigation.

14.20. The Court has concluded that the information provided on 21 June 2012 to the effect that Liam Humbles carried a firearm and dealt in drugs was more than adequate for police to have investigated that information with vigour. It was not so investigated. The matter of Liam Humbles throughout 2012 was met by police with a lack of vigour, leadership and cohesion. When the matter of Liam Humbles and his activities are examined in the round, and the information that was received about him and his observed activities on 31 July 2012 are all taken into consideration, there is no question but that Liam Humbles should have been located and identified as a person who required close investigation in respect of his alleged activities. In the Court's opinion there is no question but that the firearm that Liam Humbles maintained in his possession during the course of 2012 could have and should have been located by police at some point in time prior to 31 December 2012.

14.21. I find that no consideration was given during 2012 as to whether or not the mechanisms within the Children's Protection Act 1993 could be invoked in respect of Liam Humbles. The Court finds that it is probable that this issue simply did not occur to any person in authority in 2012. There is no evidence that the Humbles' circumstances were brought to the attention of authorities responsible for the administration of the Children's Protection Act 1993. The Court finds that during 2012 Liam Humbles was a person at risk in terms of the Children's Protection Act 1993. I have identified within the body of these findings the reasons why he could have been viewed as a child at risk. This fact should have triggered a mandatory intervention pursuant to section 19 of the Children's Act 1993. If that had occurred, it is highly probable that Lewis McPherson's life could have been saved. The fact that in 2012 Liam Humbles was approaching his 18th birthday should have made no difference as to whether or not the provisions of the Children's Protection Act 1993 could have been invoked.

14.22. None of Lewis McPherson's behaviour nor that of his companions in any way contributed to Lewis McPherson's death.

14.23. There were a number of opportunities to have prevented Lewis McPherson's death. I am not certain that all of them if taken singly would have prevented his death, but when examined collectively there seems to be little doubt about it:

- i) If Matthew Richmond had been spoken to by police in June or July 2012;
- ii) If information relating to the allegation that Humbles carried or may have otherwise been in possession of a firearm had been properly documented;
- iii) If Senior Constable Anderson on 31 July 2012 had associated Humbles with the individual who had been the subject of a TAC Team 2 investigation earlier in the month and had identified him as a person in respect of whom an allegation that he possessed a firearm still needed to be investigated;
- iv) If Humbles had been arrested on 31 July 2012 for suspected trafficking in cannabis and had been properly investigated in relation to that suspicion as well as in relation to the information that he possessed a firearm;
- v) If the premises at 26 Railway Terrace, Warradale had been attended and searched by police on or about 1 August 2012, the day on which police received information that this was Humbles' home address and that he dealt in drugs from that address;
- vi) If Sturt CIB TAC Team 2 had operated in a cohesive manner and had been effectively led or its activities effectively overseen;
- vii) If Sturt CIB had been brought into the matter upon Humbles' arrest on 14 December 2012;
- viii) If consideration had been given to the application of the Children's Protection Act 1993 to Humbles' circumstances during 2012;
- ix) If persons who knew of Humbles' possession of a firearm during 2012 had shared that knowledge with police.

15. Recommendations

15.1. Pursuant to Section 25(2) of the Coroners Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.

15.2. The Court makes the following recommendations directed to the attention of the Commissioner of Police, the Minister for Health, the Attorney-General and the Minister for Child Protection Reform:

- 1) I recommend that SAPOL accord appropriate priority to the investigation of allegations of unlawful possession of firearms, especially handguns. It would be wise for police to operate on the basis that an allegation that a person is unlawfully in possession of a firearm, especially a handgun, is correct until shown otherwise;
- 2) I recommend that any investigation involving the alleged unlawful possession of a firearm be brought to the attention of an officer of or above the rank of Inspector, and that the investigation be overseen by that officer;
- 3) I recommend that police information management systems consistently contain clear warnings in relation to allegations of the unlawful possession of firearms and specify whether in a particular case the allegation has been substantiated. A warning should be placed on such systems irrespective of whether the allegation is substantiated or not. In appropriate cases the warning may be removed when an allegation is refuted, but not before;
- 4) I recommend that police bail authorities in considering bail should have regard to all information about the bail candidate that is held within all police holdings;
- 5) I recommend that when considering bail in relation to a child, a police bail authority should give conscious consideration to whether in the circumstances the Children's Protection Act 1993 might apply to that child;
- 6) I recommend that the possession of a category H firearm, ie a handgun, should be unlawful unless it is possessed by a dealer, maintained in a gun club or range, or is possessed in connection with a person's legitimate occupation;

- 7) I recommend that when dealing with the offence of unlawfully supplying a firearm contrary to section 22 of the Firearms Act 2015, yet to come into operation, that the legislation make it clear that it should be regarded by the sentencing court as an aggravating circumstance where the firearm was subsequently used in the commission of an offence, regardless of whether or not the supplier intended or foresaw the commission of that offence;
- 8) I recommend that the offence of unlawful supply of a firearm, particularly a handgun, knowingly or recklessly to a minor be separately categorised with a maximum penalty that significantly exceeds the maximum penalties currently set out within the Firearms Act 2015, yet to come into operation;
- 9) I recommend that the Firearms Act 2015, yet to come into operation, specify that where ammunition is unlawfully supplied in conjunction with the unlawful supply of a firearm, that sentences of imprisonment for both offences be served cumulatively;
- 10) I recommend that the Firearms Act 2015, yet to come into operation, specify that where ammunition is unlawfully possessed in conjunction with the unlawful possession of a firearm, that sentences of imprisonment for both offences be served cumulatively;
- 11) I recommend that all police officers be reminded of the provisions of the Children's Protection Act 1993 that relate to children at risk;
- 12) I recommend that in a the proposed new children's protection legislation, currently contained within the Children and Young People (Safety) Bill 2017, that the powers of the Chief Executive in relation to children at risk be maintained as mandatory powers;
- 13) I recommend that where existing mandated notifiers, including but not limited to police, have reason to believe that the Chief Executive's mandatory powers regarding children at risk as set out in section 19 of the Children's Protection Act 1993 might be exercised, there be an obligation to notify the Chief Executive or Minister of the child's circumstances. It is acknowledged that this obligation appears to be contained within clauses 27 and 28 of the Children and Young People (Safety) Bill 2017.

- 14) I recommend that in exceptional cases the protection that children's protection legislation (either currently existing or as proposed) affords can be extended beyond a person's 18th birthday;
- 15) I recommend that a condition of bail the effect of which is to prevent a child from associating with the members of the child's family, or which prevents a child from attending at the home address of the child's family, should only be considered by the Youth Court and that when such a condition is so considered, the relevant authority responsible for child protection is to be involved in the process with a view to ensuring that both the child and the community in general are protected;
- 16) I recommend that the drug diversion process in relation to children be re-evaluated in its entirety. I recommend that in any diversion process police play a role. I recommend that the process should be overseen by the Youth Court. I further recommend that there be a limit to the number of drug diversions that a child may undergo. I further recommend that undertakings be introduced into any drug diversion regime in respect of children. I further recommend that a drug diversion should not occur in relation to a child unless the place of living of the child has been established to the satisfaction of police. I recommend that any drug diversion process in respect of cannabis take into account the possibility that the person diverted may be using other illicit substances apart from cannabis;
- 17) I recommend that the maximum monetary penalty for the offences of possession, smoking and consumption of cannabis, cannabis resin and cannabis oil be increased from \$500 to a figure that reflects the deleterious effects that the consumption of those substances can have on the individual, especially the young.

Key Words: Homicide; Gunshot Wound; Firearms; Child Protection; SAPOL

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

Seal the 17th day of February, 2017.

Deputy State Coroner