IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2011 2865

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the ***Coroners Act 2008***

Amended pursuant to *Section 76 of the Coroners Act 2008* on 17 July 2018[1]

I, CAITLIN ENGLISH, Coroner having investigated the death of JAMES TOMLINSON

without holding an inquest:
find that the identity of the deceased was JAMES COLIN TOMLINSON
born on 8 April 1930
and the death occurred between 3 and 4 August 2011
at 44 Centenary Street, Seaford
from:

1 (a) HANGING

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances**:

1. Mr James Tomlinson, who was known as Colin, was 81 years of age when he died. In 1957, Mr Tomlinson immigrated to Australia from England. At the time of his death, he resided on his own at 44 Centenary Street, Seaford.

2. A police investigation was conducted into the circumstances of the death.

3. A brief was prepared by Victoria Police for the coroner which includes statements from Mr Tomlinson's friend, his treating doctor, police officers and the investigating officer. The brief also includes medical records and a copy of Mr Tomlinson's diary. I have drawn on all of this material as to the factual matters in this finding.

[1] This document is an amended version of the finding into James Colin Tomlinson's death dated 20 April 2015, made pursuant to section 76 of the *Coroners Act 2008* (Vic). A name has been redacted in accordance with a suppression order made by Coroner Susan Jane Armour on 13 September 2012.

Background

4. After leaving the British Navy and arriving in Australia, Mr Tomlinson worked as a carpenter. At the time of his death he was retired.

5. Mr Tomlinson's wife died of renal failure in 2009 and he was estranged from his three adult children.

6. Mr Tomlinson had a medical history of depression and had been prescribed anti-depressant medication by general practitioner, Dr Anthony Hura, at Belvedere Park Medical Centre. He was also taking medication for hyper-tension. He also suffered from angina, ischemic heart disease, hypercholesterolaemia, coronary artery by-pass grafts and was an ex-smoker.

Events proximate to death

7. On 3 August 2011 at approximately 3.30pm, Mr Tomlinson was last seen alive by his friend Mr Tom Creaser.

8. On 4 August 2011, Mr Tomlinson was due to attend the Melbourne Magistrates' Court to answer criminal charges involving child related sex offences; however he failed to do so.

9. On that day at approximately 9.00am, Mr. Creaser observed Mr Tomlinson's car parked outside his home. Since Mr Creaser was aware Mr Tomlinson was due to be at Court, Mr Creaser knocked on Mr Tomlinson's front door and bedroom window. There was no response. Mr Creaser then went about his daily activities.

10. At approximately 10.15am, Detective Senior Constable Reed who was at the Melbourne Magistrates' Court requested that a police unit attend Mr Tomlinson's home address to enquire as to whether he would be attending Court.

11. At approximately 10.28am, police arrived at Mr Tomlinson's address, knocked on the front door, but there was no answer. Police members observed the rear garage door was open and upon entering the garage, found Mr Tomlinson, deceased, hanging by a rope.

12. Police located a note in Mr Tomlinson's bedroom indicating an intention to take his own life.

Post Mortem Examination

13. A post mortem external examination was conducted by Forensic Pathologist, Dr Matthew Lynch, at the Victorian Institute of Forensic Medicine on 5 August 2011. Dr Lynch formulated the cause of death. I accept his opinion. He commented:

I have made an external examination of the body and there is a ligature about the neck.

I have reviewed the post-mortem CT scan which reveals an intact larynx with cerebral atrophy and some calcific coronary artery disease.

FINDING

I find that James Tomlinson died from hanging in circumstances where he intended to end his life.

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment connected with the death:

As Coroner, I have a mandate to contribute to the reduction of the number of preventable deaths as well as to promote public health and safety and the administration of justice.

Mr Tomlinson's death was one of five cases[2] identified by the Coroners Court involving deceased who, at the time of their death, were under investigation by the police for alleged child related sex offences. In one case, the deceased suicided directly after being arrested, charged and bailed. In the other three cases, the deceased suicided, as Mr Tomlinson did, in the days leading up to a court appearance. In one case the deceased suicided between court dates.

In August 2012, Coroner Susan Armour published her finding with recommendations in the death of XY[3] (2010/4056). XY suicided the day after he was questioned by police regarding child related sex offences. Coroner Armour recommended as follows:

> That Victoria Police consider whether it should develop guidelines for the welfare management of suspects charged or interviewed in relation to child sexual offences which might also include information about appropriate support and crisis assistance services available to them in their locality.

As a result of this recommendation, the Victoria Police Manual was updated on 31 March 2014 to include the addition of offender welfare management considerations. The Procedures and Guidelines for Sexual Offence Investigation includes assistance for investigating police members regarding how to discuss welfare and mental health considerations with suspects, as well as a

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[2] The other four cases are COR 2013 1130 Wilfred Martin, COR 2012 4324 Lewis Tankard, COR 2013 5600 Philip Reynolds and COR 2013 498 Stephen Wite.

[3] XY's name has been redacted in accordance with a suppression order made by Coroner Susan Jane Armour on 13 September 2012.

requirement that members provide suspects with support and referral information. Police members who work in specialist Sexual Offences and Child Investigation Teams (SOCIT) also undertake a training course which includes a component relating to welfare management for suspects. The course manual is available to all Victoria Police members on-line via a link on the SOCIT website. A copy of a welfare pamphlet is given to all suspects and it lists counselling services, specialist services, support services for family members, legal support services and crisis services.

Victoria Police has also placed on the SOCIT website Practice Notes for Suspect Welfare Management (February 2015). I have been recently advised that the Code of Practice for the Investigation of Sexual Assault – Suspect Welfare Management, is under review and a stand alone policy for Suspect Welfare Management is proposed for the Victoria Police Manual.[4]

In four of the five cases under investigation, the death occurred in the lead up to a court date which was months removed from the initial police interview. This suggested the period leading up to a court date is a time of particular suicide risk and raised the question as to whether measures other than initial information provision at police interview are needed to reduce the suicide risk among those being investigated for child related sex offences.

I sought advice from the Coroners Prevention Unit (CPU)[5] regarding other Victorian suicides occurring in similar circumstances. CPU identified 24 deaths investigated by coroners between 1 January 2009 and 31 December 2010 where the deceased suicided while under investigation for alleged sex offences.[6] All of the deceased were men, and most were over 35 years old. In half the cases, the deceased had no history of any prior criminal offending, and all the suicides occurred in close proximity to significant legal events. Although many of the deceased suffered from mental ill health, in some cases the deceased presented with no mental health issues or (other than the criminal investigation) life stressors. In the majority of cases, the deceased explicitly linked their suicide to the sex offence investigation.

The literature suggests that suspects questioned regarding alleged sex offences are at an elevated risk of suicide for a number of reasons including shame, loss of reputation, and the collapse of relationships with family and friends. In addition, suspects may become overwhelmed through their

[4] Detective Sergeant Nick Densley, Project and Policies, Sex & Family Violence Unit, Victoria Police

[5] The Coroners Prevention Unit is a specialist service created for coroners created to strengthen their prevention role and provide them with assistance on issues pertaining to public health and safety.

[6] 'Sex offences' was not defined to only include child victims and also included offences of posses and or distribute child pornography. Of the 21 deceased whose offences included sexual assault, 17 were being investigated for alleged offences against children.

contact with the criminal justice system and not know how to respond to this stressor. For these reasons, health service providers and health care professionals should always regard a person under investigation for sex offences as being at risk of suicide.[7]

Whilst health services education around suicide risk for alleged sex offenders is important, the key opportunities for prevention are within the legal rather than the health system.[8]

The research supports that all investigating officers, as well as lawyers providing advice, should treat any person who is regarded as a suspect and being investigated or questioned for sex offences as an increased suicide risk. All suspects should be provided with a welfare referral or information upon first contact with police. If the charges are historical in nature, the person charged may be placed on summons rather than bailed. Given that many suicides take place before the first court date, there is an opportunity for follow up by police and lawyers as that date approaches.

As part of my coronial investigation into these five deaths, an expert opinion was obtained from Dr Rachel MacKenzie, clinical & senior psychologist, Forensicare, Community Forensic Mental Health Service. Her opinion was sought to determine the best practice for providing support for people being investigated by police for child related sex offences.

The coronial investigation also sought the views of the Law Institute of Victoria and Victoria Legal Aid regarding supports that should be provided by lawyers to clients who are under investigation or charged with child related sex offences.

RECOMMENDATIONS

Pursuant to section 72(2) of the **Coroners Act 2008,** I make the following recommendations connected with the death:

Recommendation 1

Victoria Police is to be commended for the measures implemented following Coroner Armour's recommendation in the finding of XY[9] (COR 2010/4056).

In light of Dr MacKenzie's report, Victoria Police should consider reviewing the training provided to officers involved with the interviewing of persons suspected of child related sex offences.

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[7] J Brophy, 'Suicide outside of prison settings among males under investigation for sex offences in Ireland during 1990to 1999', Crisis, vol 24, no 4, 2003, p 159.

[8] Among the 24 deaths, only 11 of the deceased had seen a health care professional between the time that they had become aware of the sex offence allegations and the time of death.

[9] XY's name has been redacted in accordance with a suppression order made by Coroner Susan Jane Armour on 13 September 2012.

Training should encompass an understanding of the psychological reactions of individuals arrested or interviewed for these types of offences. These reactions include, the loss of psychological defences, difficulties dealing with arrest, isolation, effects on those with children, community attitudes, ignorance of the criminal justice system, and cultural, linguistic and mental health issues. For further details about reactions see Attachment 'A' Excerpt from Dr Rachel MacKenzie's Report to the Coroners Court of Victoria dated 3 October 2014. The purpose of training is to increase police awareness regarding the ongoing risk of self-harm among this cohort of alleged offenders while an investigation is in process.

Recommendation 2

A pamphlet is currently provided by Victoria Police to suspects regarding support information. This pamphlet should also include information about the police investigation, the judicial process regarding police charges, the potential involvement of other agencies, and how to seek appropriate assistance for well being and mental health.

Victoria Police is the obvious point of dissemination for such a pamphlet; however the material should be prepared in conjunction with relevant bodies, such as the Law Institute of Victoria, Victoria Legal Aid, and agencies such as Suicide Prevention Australia and Beyondblue.

Recommendation 3

Victorian lawyers who act for persons who are investigated and charged with child related sex offences have an important role to play to prevent their clients from self-harming. Lawyers should also receive training to understand the psychological reactions of individuals arrested or interviewed for these types of offences. These reactions include, the loss of psychological defences, difficulties dealing with arrest, isolation, effects on those with children, community attitudes, ignorance of the criminal justice system, and cultural, linguistic and mental health issues. For further details about reactions see Attachment 'A' Excerpt from Dr Rachel MacKenzie's Report to the Coroners Court of Victoria dated 3/10/2014. The Law Institute of Victoria and Victoria Legal Aid should consider the provision of specific training for lawyers acting for this cohort of clients.

Lawyers should be aware that the risk of self-harm does not necessarily abate after initial questioning regarding alleged offences but can develop over time. Many suicides occur before the first court date, therefore follow up contact should take place as that date approaches. The likelihood of self harm may build as the court date approaches which can be months or years after the commencement of an investigation.

Lawyers acting for those clients should reinforce the role of mental health professionals and encourage their clients to seek advice from their general practitioner. With a referral from their GP for a mental health plan, they can receive six sessions with a psychologist, and, if approved after review, a further four sessions.

I note the concerns expressed by the Law Institute of Victoria and Victoria Legal Aid that clients will sometimes either not act on a referral or attend appointments if a mental health plan is developed. Mandatory requirements as bail conditions can be problematic and not all people charged with child sex related offences are placed on bail. Services such as the Court Integrated Services Program (CISP) are utilised by lawyers for clients who are on bail, however CISP is not available once a matter proceeds beyond the Magistrates' Court.

Recommendation 4

Magistrates and all judicial officers should be made aware that any person who is regarded as a suspect and being investigated or charged with child sex offences is an increased suicide risk.

Many suicides take place before the first court date, and in this cluster, one took place after a court date. Judicial officers should be aware of the psychological reactions of individuals arrested or interviewed for these types of offences. These reactions include, the loss of psychological defences, difficulties dealing with arrest, isolation, effects on those with children, community attitudes, ignorance of the criminal justice system, and cultural, linguistic and mental health issues. For further details about reactions see Attachment 'A' Excerpt from Dr Rachel MacKenzie's Report to the Coroners Court of Victoria dated 3 October 2014.

I direct that a copy of this finding be provided to the following for their action:

Mr Tim Cartwright, Acting Chief Commissioner, Victoria Police

Mr Bevan Warner, Managing Director, Victoria Legal Aid

Mr Geoff Bowyer, President, Law Institute of Victoria

Chief Magistrate Peter Lauritsen, Magistrates Court of Victoria

I direct that a copy of this finding be provided to the following for their information only:

Ms Lisa Hill, Senior Next of Kin

Senior Constable Glenn Michie, Coroner's Investigator

Ms Samantha Burchell, Chief Executive Officer, Judicial College of Victoria

Mr Alan Clayton, Chief Executive Officer, Court Services Victoria

Ms Sue Murray, Chief Executive Officer, Suicide Prevention Australia

Ms Georgie Harman, Chief Executive Officer, Beyondblue

Signature:

CAITLIN ENGLISH
CORONER
Date: 17 July 2018

Attachment 'A'
Excerpt from Dr Rachel MacKenzie's Report to the Coroners Court of Victoria dated 3 October 2014

Problems
In gaining an appreciation of potential suicide risks and how to reduce them, it is necessary for police to have an understanding of the psychological reactions of individuals arrested for child sexual offences.

1) Loss of psychological defences
Those who engage in sex offences often employ cognitive distortions that enable them to deny, minimise or rationalise their behaviour to themselves and others (Lanning 2010; Ward, 2000). These cognitive distortions serve as a defence mechanism against the internal conflict that can arise from the juxtaposition of the individual behaving in a manner that goes against acceptable social mores and the immediate gratification they obtain from their actions (Houtepen, Sijtsema, & Bogaerts, 2014; Howitt & Sheldon, 2007). Having such thoughts as 'I'm not really hurting anyone', 'I'm only looking at what's already there' and 'being abused didn't hurt me' enables individuals to overcome their inhibitions against offending. When police question such individuals about alleged offences, they are obliged to face the reality of the situation, as a result of which the self-protective cognitions they have been using may lose their efficacy and may be replaced by shame and self-loathing (Hoffer, Shelton, Behnke & Erdberg, 2010). The stigma and public condemnation attached to such crimes intensifies the experience. What we do know from earlier studies is that suicide rates among those accused of child sexual offences is significantly higher than is found in the general population (Brophy, 2003; Pritchard & King, 2005).

2) Difficulty in dealing with arrest
Being accused of a serious crime and interviewed by police can be an extremely intimidating and distressing experience. For those accused of child sex offences, the initial reaction to being questioned by police is often one of shock and of being overwhelmed. This is particularly so for the substantial proportion who have no prior offending history and no experience of the criminal justice system. Commonly, these individuals describe their first contact with the police as being a blur and their going through the process in a haze, with little awareness of what they were saying or doing. They remember little of what they were told at the time of the interview and are ignorant as to what to expect as the investigation and judicial process unfolds. As the reality the situation sinks in, many report a mixture of emotions including guilt, fear, shame, embarrassment and humiliation that their secret has been exposed.

3) Isolation
Many sex offenders experience intimacy problems, loneliness and low self-esteem (Middleton et. al., 2006; Ward & Siegert, 2002). Whilst some are already isolated, others have the often realistic fear that they will be rejected and ostracised when others become aware of what they have done (Hoffer & Shelton, 2012). These

factors both reduce the availability of support and the likelihood of the accused reaching out for assistance.

4) Effects on those with children

For those who live with or have access to their own or others' children, the ramifications of the allegations that have been made against them are rarely understood by the accused. It is a common finding that individuals have been unaware that the police would be reporting the matter to the Department of Human Services Child Protection Services (CPS) and that their current or ex-partners would be contacted and interviewed. For some, their partners were made aware of the allegations made at the time that the warrant was executed or the accused was questioned. In a few cases it was actually their partner who had made the complaint to the police. However, others had kept their behaviour and the allegations from their partners. In some cases, the accused has only become aware of CPS involvement after their partner had been contacted and before they had the opportunity to disclose the allegations to their partner personally. In some cases the mother of the children has been told that, if she does not break off her relationship with the accused, she will lose custody of her children. Accused individuals are often ignorant of the possibility that they would be prohibited from living in the family home or having access to their or their partner's children during the course of the investigation. At times, this has devastating consequences as the accused is effectively left homeless, denied access to their children or, in some cases, is faced with their partner ending the relationship abruptly through a telephone call or text message.

In some cases, the partner of the accused has been referred for counselling through the Centre Against Sexual Abuse (CASA). Not uncommonly, those partners have reported that they have been urged to 'hate' and leave the accused by the counsellor. In being torn by their feelings for the accused, they subsequently ceased seeking support. In one case of interfamilial abuse, the mother of the victim, who was 19 years old at time the abuse was disclosed, reported that both she and her daughter felt pressured to extend the allegations to behaviours that had not occurred.

5) Police attitudes

The attitude of the police at the time of executing the warrant and during the first interview has an important role in setting the tone of what follows. Whilst most of my clients have reported that the police were usually sensitive and respectful at the time of the first interview, others have reported that the officers were abrupt, unapproachable and 'clearly disgusted by what I had done.' Whilst this may reflect the accused's feelings about themselves being projected onto police or the misinterpretation of the situation as they assume this is how they will be perceived by others, it is apparent that some police officers find working with child sex offenders particularly challenging and have difficulty suppressing their hostility.

Some clients have reported that they have had various threats made against them by police, if they did not fully co-operate with the investigation. For example, some

were told that the police would 'go public' with the alleged offences, or that business computers that had been seized would not be returned despite containing no incriminating evidence, therefore effectively preventing the businesses from operating and risking the ongoing employment of their workers. Being naive as to the actual powers of the police and whether they would act on such threats, increased the individuals' distress significantly.

6) *Ignorance of the criminal justice system*
Many of those who are accused of sex offences against children will have had little or no experience of being the suspect in a criminal investigation. The uncertainty as to what will happen next feeds the fear, distress and sense of shame that individuals may be suffering. Individuals will be legally represented from an early stage. However, lawyers are not necessarily in a position to help their clients in this respect. For instance, it is not unusual for lawyers to advise their client to give a 'no comment' interview until they have had the opportunity to become familiar with the actual or proposed charges and the evidence against their client. This can place pressure on the accused as they may be torn between a desire to co-operate fully and being compelled to follow their lawyer's advice. Irrespective of whether the accused is or is not guilty of the alleged offences, going through the investigative process is distressing.

7) *Cultural, lingulstic and mental health issues*
The difficulties described above are exacerbated in those who have difficulty understanding what is happening, either through a poor knowledge of the English language, intellectual disability or mental illness (including those with high functioning autism, previously known as Asperger's disorder). For those with limited or no English, the need for interpreters can be problematic in that it means revealing information in front of a stranger who may come from the same cultural community. This may be distressing or inhibit them from being open during the interview process if they fear that that what they say may get back to their community. There may also be issues related to discussing sexual matters using an interpreter of the opposite gender.