

IN THE CORONERS COURT
OF VICTORIA
AT WARRNAMBOOL

Court Reference: COR 2008 4023

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: ANTHONY GERARD MOONEY

Delivered On: 28th January, 2015

Delivered At: Coroners Court of Victoria,
Southbank,
Melbourne

Hearing Dates: At Warrnambool:
30th May to 1st June, 2012;
4th June to 8th June, 2012;
12th June, 2012 to 15th June, 2012.

At Melbourne:
18th June, 2012 to 20th June 2012
10th to 14th December 2012;
18th to 21st December, 2012;
7th January, 2013.

Findings of: JACINTA HEFFEY, CORONER

Representation: Mr Chris Winneke (of Counsel) assisting Coroner;
Mr A Marshall (of Counsel) on behalf of Deborah Mooney
and Travis Mooney;
Mr Greg Hughan (of Counsel) on behalf of Jeremy
Johnson;
Ms Elizabeth Mooney (Johnson) representing herself.

I, JACINTA HEFFEY, Coroner having investigated the death of ANTHONY GERARD MOONEY
AND having held an inquest in relation to his death on the before-mentioned hearing dates at both
Warrnambool and Melbourne Coroners Courts,

FIND that the identity of the deceased was ANTHONY GERARD MOONEY

born on the 28th December 1961

I FIND that his death occurred on the 7th September 2008

at Arrandoovong, Branhholme in the State of Victoria

AND I FIND that he died from acute strychnine poisoning.

I FURTHER FIND that Mr Mooney deliberately self-administered the poison in order to end his
own life.

INTRODUCTION

1. The inquest into Mr Mooney's death occupied 25 days in the course of which evidence was heard from numerous witnesses. A large number of additional statements from other witnesses were contained in the Inquest Brief. All these statements along with various other documents and exhibits were tendered into evidence in the course of the Inquest and/or at its conclusion as part of the Inquest Brief. Investigations continued after the inquest was concluded. These investigations centred on the deceased's financial situation at the time of his death and also were in respect of evidence given by Jeremy Johnson, the deceased's stepson, on the last day of the Inquest, in relation to his access to strychnine at the place at which he was employed during the second half of 2008. This evidence had not been contained in any of the statements provided earlier in the investigation. All parties were advised of the outcome of these investigations ahead of filing formal Submissions.
2. Due to the complexity of the factual material and the various areas of enquiry pursued in the course of the investigation, I propose to divide this Finding into sub-headings as follows:
 - A. The circumstances immediately surrounding the death;
 - B. The forensic investigation and outcome;
 - C. The source and location of the strychnine;
 - D. Family dynamics;

- E. Personality of the Deceased;
- F. Financial history of Anthony Mooney;
- G. The Mooney marriage;
- H. The two weeks preceding the death;
- I. 48 hours preceding death;
- J. Competing theories as to circumstances of the death;
- K. The likelihood of homicide;
- L. The likelihood of suicide; and
- M. General comments.

A. THE CIRCUMSTANCES IMMEDIATELY SURROUNDING THE DEATH

3. At 6.43 PM on Sunday the 7th September 2008, the deceased called his son Travis on his mobile phone. The phone records show that the call lasted 30 seconds. He placed another call at 6.44 PM. Travis, then aged 19 years, recognised the caller identification and when he pressed his phone to answer heard only heavy breathing. He told the court “It just sounded like he was struggling to breathe. It didn’t sound right. Something was wrong”.¹
4. Travis was living in a cottage on the property known as “Arrandoovong” Chrome Road, Branhholme. He shared the cottage with Jeremy Johnson, who is the son of the deceased’s second wife, Elizabeth Mooney. The cottage is situated about 150 to 200 metres from the large blue-stone homestead in which the deceased was living. At that time, he was living there on his own as his wife, Elizabeth, had taken their two daughters, aged 12 and 10 respectively, on a 2 and a half month cruise. They had left on the 14th July and were not due back until the 27th September.
5. Travis headed off to the homestead, followed by Jeremy. Upon entering the house, they heard the deceased scream out from the master bedroom upstairs. When they arrived in the bedroom, they found him lying on the bed, apparently convulsing, with his arms and legs rigid. He urged them to hold his arms and legs down.

¹ Statement of Travis Mooney dated 22/9/2008. Exhibit AF1. (IB P393.)

6. According to Travis' statement, his father asked him to call an ambulance. Jeremy Johnson, however, has no recollection of the deceased asking them to call an ambulance.² His evidence was that when they arrived, the deceased "wanted us to hold his arms and legs". He said that:

Travis (was) holding his arms, I was holding his legs and then I think we've both realised he was in trouble obviously, he was obviously in pain and then Travis - I think I've said to Trav "Call an ambulance" and Dad's like, no, hold my arms and I'm like "No, Trav, fuck his arms, call an ambulance", I think that's what happened. So Trav stopped holding his arms at that point and called an ambulance.

7. He was asked further about this and about Travis' reaction by Mr Winneke. He replied:

...I think he was - what I recall is he was kind of torn between what Dad was telling him to do, like, "No, Dad wants me to hold my arms, I won't", "Just fuck him he's just going to have to deal with it, we need an ambulance because we can't deal with this, whatever it is."³

8. Jeremy was clear that he did not hear the deceased saying *not* to call an ambulance. He maintained, however, that he did not at any time *ask* them to call an ambulance.⁴ Travis called "000" and requested an ambulance. At the inquest hearing, all parties had available to them the audio disc of that call.
9. In the course of the ambulance call, the operator asked Travis a number of questions. He was clearly concerned about the yelling he could hear in the background as he asked if the deceased was violent (and, indeed, subsequently arranged for police to attend with the ambulance crew). Significantly, he asked Travis if the deceased had "taken anything". Travis is heard to ask his father "have you taken anything?" to which his father screams out in one breath "No. Hold me legs down tight".
10. Aspects of this account were regarded as highly significant by the Homicide Squad in ruling out suicide. The argument being along the lines that, firstly, the deceased had called his son on the phone and secondly, upon being asked about it by his son, he denied having taken anything.
11. Travis left the homestead to open the gates for when the ambulance arrived. It seems that the deceased suffered a cardiac arrest in those few minutes. According to Jeremy, he said "I'm

² Transcript P3066.

³ Evidence of Jeremy Johnson, Transcript P2951.

⁴ In the order of witnesses, Travis Mooney gave his evidence ahead of Jeremy Johnson. He was not recalled to be cross-examined on this point.

fucked” and became unconscious. At page 2954 of the Transcript, Jeremy told the court that “He said “I think I’m having a heart attack” I think”.

12. Travis again called “000” and together both boys administered CPR following the instructions given over the phone, which they put on speaker phone. The ambulance arrived and the crew took over. The deceased, however, was unable to be revived.
13. Given his age (46) and the absence of any known medical history, the death was deemed a coronial death and his body was conveyed to the Victorian Institute of Forensic Medicine for full autopsy and toxicological analysis. The death, however, was not regarded as suspicious in the sense that homicide or suicide were considered. Hence, the scene was not preserved as a “crime scene”. However, as it was a coronial case, a police member did take photographs of the scene. In one of those photographs, a large bottle of coke is seen on the floor beside the deceased’s bed.
14. The deceased’s wife and their two daughters arrived home at Arrandoovong on the 11th September, having disembarked at Hong Kong upon hearing the news of the death and flown to Melbourne.

B. THE FORENSIC INVESTIGATION AND OUTCOME

15. An autopsy was conducted by Dr Paul Bedford on the 10th September. There were no anatomical features identified that could be said to have contributed to death, other than congestion noted in the lungs. Accordingly, initially the presumed cause of death was pneumonia.
16. On or about 29 October 2008, results from the toxicological analysis became available which identified high levels of strychnine in the blood, liver and stomach with strychnine also being identified in hair segments. Accordingly, Dr Bedford revised his initial diagnosis and ascribed Mr Mooney’s cause of death to acute strychnine poisoning.
17. The inquest heard evidence from Professor Olaf Drummer, Head of Forensic Science Services, Department of Medicine, Monash University. He told the court that strychnine was a highly poisonous substance with doses of only 30 mg capable of causing death in an adult. In this case, 362 mg were found in the deceased’s gastric contents, along with smaller amounts in leg blood, liver and urine. It was also found in all seven 1 cm hair segments and large amounts in all the washings of his head hair. Whilst the dose cannot be estimated,

Professor Drummer told the court it would have been greater than 400 mg and possibly over one gram (1000 mg).

18. The symptoms following large doses include paralysis of breathing and seizures. Initial effects may produce stiffness that can lead to muscular seizures. Convulsions can involve tonic extensions of the body, arms and legs. Breathing stops due to effective paralysis of the diaphragm.
19. Strychnine is a fine crystalline powder (like castor sugar). Upon ingestion it goes from the stomach to the small bowel and then in the blood to the liver and finally to the rest of the body.
20. With respect to the strychnine found in the hair segments, this does not indicate prior ingestion over time. Professor Drummer said that strychnine is likely to absorb into hair from the outside, as distinct from incorporation from the growing follicle under the skin. He said: "This means that sweat and other secretions containing strychnine will absorb into hair from the outside".⁵
21. He said that the onset of symptoms from strychnine poisoning usually occurs within 10-20 minutes.
22. Professor Drummer told the court that strychnine is one of the bitterest substances known, "hence if it is to be used surreptitiously, the bitter taste would need to be disguised with flavouring agents in a drink or mixed with food with strong flavours."⁶ In evidence, he said that it was not possible to say how much coke, for example, would be required to mask the flavour.⁷ (For obvious reasons, no clinical trials on humans can be conducted to establish this). He said that the larger the dose the quicker the death.⁸
23. He said that of the 9 cases of strychnine poisoning found to be the cause of death in Victoria in the past 22 years, he believed that all were cases of suicide. A review of the cases in Victoria shows this not to be entirely correct as two of the deaths were of young men who were using strychnine to achieve a "high" and they overdosed in that endeavour.

⁵ Statement of Olaf Drummer IB P 53.

⁶ Statement of Olaf Drummer IB P 52.

⁷ Transcript Pp 46 and 47.

⁸ Transcript P 57.

C. THE SOURCE AND LOCATION OF THE STRYCHNINE

24. Given that strychnine poisoning caused Mr Mooney's death, it was necessary for me as part of my investigation to enquire into how and in what circumstances, the deceased had come into contact with strychnine. It is to this issue that I now turn my mind.
25. The deceased had complained to various people in the district about problems he was having with possums in the ceiling of the homestead. Neil Cameron, a Condah pub friend from Myamyn, supplied him with an old bottle of strychnine, which he had found underneath the shearing shed on his property. This occurred on the 31st July, 2008. He described it as a small brown bottle with half a label on it. You could see half the word "strychnine" on it. He said it was about a quarter full of powder. He told Anthony Mooney about how dangerous it was and that it should always be kept under lock and key. He also said that you should use protective gloves when handling it and wear a protective breathing screen over your mouth and nose.⁹ The deceased had called into Mr Cameron's home to collect it, but once Mr Cameron learned that he was proposing to take it in his car to Port Fairy where he was working on a job, he refused to give it to him and instead delivered it himself to Arrandoovong that day, leaving it above a fridge in a shed, texting the deceased as to its whereabouts.
26. He told the court that he subsequently had discussions with the deceased about it and he reported that it had been effective. He said: "the reason why Tony chose to use the strychnine was because of the fact that it's a very rapid poison, it kills-kills very quickly. And it meant that once the possums had ...taken the control compound, they would die close to where the baits were put and you could access them out of the roof cavity of his house. It was the reason why Tony chose to use that poison."¹⁰
27. I regard this as a significant piece of evidence tending to show that the deceased believed that death from strychnine poisoning was quick.
28. Senior Detective Ian Owen of the Hamilton CIU was asked by the Homicide Squad to attend Arrandoovong on the 22nd September 2008 for the purpose of taking statements in relation to a reported "skuffle" in which the deceased had been involved at a night club on the evening

⁹ Transcript P291.

¹⁰ Transcript P299.

before his death.¹¹ Travis had heard about it but had not been present. At this time, strychnine had not been identified as the cause of death and indeed would not be identified until late October of that year. Nonetheless in the course of making his statement, Travis mentioned that one of the people who had phoned after his father's death, later established to be Paul Callinan, had told him that his father had bragged to him about how many possums he had killed with strychnine. Travis recalled a discussion with his father in which he had said he was using a poison to kill possums and had shown him the bottle. "He told us it was really strong stuff and we were not to touch it. He told us he had to wear gloves when he used it". Travis stated that after speaking with Paul Callanan, he went looking for it on the property but could not locate it.¹²

29. Senior Detective Owen also took a statement from Jeremy Johnson at the Hamilton police station later that day. In that statement located at P362 of the Inquest Brief, Jeremy described his step-father's last moments. He then volunteered: "I don't know what the cause of my father's death was however I know dad had a banned poison in his possession". He went on to say that he did not know where it was kept or how he had obtained it. He said:

I don't know what caused Dad's death. He told me he had had the flu for a while before he died. But I didn't think he would have died from the flu, the only thing I could think of was the strychnine.¹³

30. On the 28th December 2008, Detective Senior Constable Owen was contacted by Elizabeth Mooney. She told him that the bottle of strychnine had been found by her son Jeremy. He and another police officer, Detective Senior Constable Ann Farrer, attended the property and statements were taken from Mrs Mooney and Jeremy Johnson. The strychnine had been found on the shelf at the top of the interior of a steel locker, (known as the "gun cupboard"), in one of the sheds on the property. Photographs were also taken. During his evidence, Mr Cameron was shown for the first time a photograph of the bottle that had been found and he identified it as appearing to be the same bottle he had provided to the deceased, save that the plastic in which it was wrapped was different. The bottle in other respects, such as the shape, age and half torn label, fits the description that Mr Cameron had previously given in his statements. Travis had left Arrandoovong and returned to Melbourne by this stage. When

¹¹ Detective Senior Constable Owen's notes taken at the time support that this was the purpose of the taking of the statement. He also took statements from others who had been with the deceased the evening before his death, for example, statement taken from Brendan Bell dated 26th September 2008. P.318 Inquest Brief.

¹² Statement of Travis Mooney IB P398

¹³ Statement of Jeremy Johnson P366 of Inquest Brief.

shown this photograph whilst giving evidence to the inquest, Travis stated that he did not believe that the bottle depicted was the same bottle that the deceased had shown him. I consider that he was mistaken, having only seen it briefly on one occasion when his father had shown it to him across the room.

31. Some time was devoted during the inquest to the circumstances in which the bottle had been found on that day and questions were raised as to why it had not been located earlier, particularly as both Jeremy and Travis had purposefully set out to find the poison and the gun cupboard was the only lockable cabinet outside the two homes on the property. In evidence,¹⁴ Jeremy told the court that after the call from Paul Callinan, he and Travis had searched for the strychnine. He recalls looking in the tool shed and a tool box in front of the quad bike. He said they had just looked visually, "just on the bottom of the trusses in that shed".¹⁵ He said that the gun cupboard was only locked if the gun was inside. The gun was actually in a linen cupboard, which was not locked. He said he had gone to the gun cupboard in the months following the death and had not noticed the plastic bundle.¹⁶
32. In fairness to Jeremy, the police photograph taken of the item in the gun cupboard is misleading in that it is exposed to flash light, and is therefore much more noticeable, and he told the court that the item had been moved to the front of the shelf so that it could be picked up by the camera. The bottle was small and wrapped in plastic and was unlikely to excite any interest even if sighted by chance. The shed was very untidy as can be seen in the photos. Jeremy surmised that the only reason he had noted it when he did was that they were cleaning up at that time, due to Mrs Mooney's imminent move to Perth.
33. Mrs Mooney told the court that she recalled going to the gun cupboard with Jeremy and Travis *earlier* than the 28th December and locating only some parts of a gold chain on the same shelf on which the strychnine was later found.¹⁷ She told the court "I say that the strychnine came back into that gun safe after Anthony's death and I am convinced of that"¹⁸. When asked why she had not divulged this either to police on the 28th December 2008, when the strychnine had been located there, or in her later statement that she wrote to the Investigating Member, Detective Senior Constable Adam Davey, she said she had been

¹⁴ Transcript P2966.

¹⁵ This is not the shed in which the gun cupboard was located.

¹⁶ Transcript P2968.

¹⁷ Transcript P1889.

¹⁸ Transcript P1903.

having memory difficulties due to stress and for this reason had even undergone a brain scan. She was not retaining things. She referred to it as “my goldfish memory”.¹⁹ She said she had only remembered it about a year later when she was talking to a friend Kathy McCallum about Anthony having had a gold chain.²⁰ This conversation had sparked her recollection of having searched the gun cupboard with Travis and Jeremy prior to the 28th December. Nevertheless, she did not mention it to investigating police until she emailed Adam Davey on the 6th March, 2010.

34. This alleged earlier search of the shelf of the gun cupboard prior to the 28th December and the location of the gold chain was put to both Travis and Jeremy in the inquest. Travis told the court “I don't remember seeing any gold chain in the gun cabinet or looking in the gun cabinet... with her”.²¹ Jeremy recalled going to the gun cupboard with his mother to show her the gold chain pieces that he had put there. He said he had found them in fragments at different times on the ground and had put them there to the left of the shelf. He took her to see them as she had been talking about the deceased's gold chain. He believed that this had happened shortly after she returned home and before the funeral. He said that they were not searching for strychnine, or even for the gold chain pieces. He knew they were there, as he had put them there.²²
35. Mrs Mooney said she recalled that Kath McCallum and she had gone to the gun cupboard after their conversation in 2009 and the gold chain links were still there. She said she has a clear picture of Travis holding the gold chain fragments at the time they had previously gone there. Mrs Mooney did not put to Kath McCallum when she was in the witness box any questions about their conversation in 2009 nor of their having gone to the gun cabinet at that time. Mrs McCallum had been called as a witness because she had made a statement about attending the homestead on the evening of the 7th September after receiving a call from Elizabeth Mooney about her husband's death. She and her husband had gone there to offer support for the boys. In her own evidence, given later to the hearing, Mrs Mooney said that Kath McCallum had even gone to the police to make a statement about it. She said she had regarded it as critical evidence.²³ Notwithstanding this, she had not emailed the investigating

¹⁹ Transcript Pp1890 and 1905.

²⁰ Transcript Pp1999-2000

²¹ Transcript P2524.

²² Transcript Pp2968-2970.

²³ Transcript P2204.

police about it until 2010 and she did not examine Ms McCallum about it in the witness box. She said that she had not sought to raise it with Travis as she did not want to “taint” his memory.²⁴

36. I do not accept her evidence in this respect as reliable. In the absence of any other evidence of this nature, I am satisfied that the strychnine is likely to have been in the gun cupboard all along and concealed at the back of the shelf.
37. The bottle was forwarded to the Victorian Institute of Forensic Medicine and was found to contain strychnine.

D. FAMILY DYNAMICS

38. By way of background and to provide context to the circumstances of his death, I investigated the deceased’s close interpersonal relationships specifically the dynamics of his immediate family.
39. Anthony Mooney was the youngest of five children born to Dulcie and Frank Mooney on the 28th December 1961. According to the evidence of Mr Mooney’s siblings, he was much loved in the family.
40. In November 1986 he married Deborah Watt. They had two children, Travis (born 14/10/1988) and Jessie (born 26/6/1990). They separated in March 1994. Mr Mooney’s family had been upset about the break-up of his first marriage. Gary Mooney, the eldest sibling told the court that in respect of the break-up of the first marriage, “he did it tough. He really did it tough”.²⁵ Bernard Keenan, married to the deceased’s sister Donna, and who had known the Mooney family since he was a child said that “Anthony was devastated about the separation and then the divorce”.²⁶
41. Later that year, Anthony Mooney met and became engaged to Elizabeth Johnson, a solicitor. They married in Las Vegas, in May 1995. They had two daughters who were aged 12 years and 10 years respectively at the time of the death. Elizabeth had two sons from an earlier marriage, Jeremy (born 7/6/1986) and Lachlan (born 8/6/1989).

²⁴ Transcript P1941.

²⁵ Transcript P1368.

²⁶ Transcript P824.

42. From all accounts all six children of the combined families got on very well together and co-habited at various times, both at Eltham, where Mrs Mooney was living at the time of their marriage, and later, at the next home they lived in at Marathon Drive, Mt Eliza whence they moved in 1999. Subsequently, after they had bought Arrandoovong at Branhholme (2004-5), Travis moved up there and started an apprenticeship with his father. This happened in 2007. Jeremy took a GAP year during his university course and went to live at Arrandoovong in 2008. He was hired by the deceased as a labourer. They both lived in the cottage. Jeremy told the court that he wanted to live in the country for a while and also had a debt to clear. His step-father paid him \$20 per hour. He told the court that “at \$20.00 per hour he was definitely overpaying me”.²⁷ Throughout his evidence, statements and telephone intercepts, Jeremy unfailingly referred to Anthony Mooney as “Dad”.

43. Jeremy told the court that his first memory of the deceased was in Grade 5 or 6:

It was like a father/son sex ed day and that was a bit of an awkward first memory but that’s how it is. And growing up, he taught me how to drive, he taught me how to build....Yeah, we just – we got along well, he was like a father to me.²⁸

44. Jeremy said that he never felt “like a second-class citizen” in relation to the deceased’s biological children and that his mother often commented that he got on better with the deceased, than with her. It was clear from observing Travis and Jeremy sitting together in the body of the court that they have a warm and relaxed relationship.

45. Jessie Mooney also moved up to Arrandoovong for a time, in 2006. This arose out of an arrangement between Deborah Mooney and the deceased, as the former was concerned at the company Jessie was keeping and felt she should live with her father for a while away from these influences. At that time, unknown to Deborah or Jessie, the Mooneys were separated, with Mr Mooney spending a lot of time at the Mt Eliza home which had still not been sold, whilst he wound up his business in Melbourne. Jessie subsequently complained to her mother that she never saw her father and she wanted to leave. Deborah Mooney drove up the next day and removed her daughter from school, collected her belongings from the homestead and took her back to Melbourne. Shortly before this, Elizabeth Mooney had approached the Child Support Agency (CSA) in an effort to have Deborah pay child support for Jessie. She could

²⁷ Transcript P3005.

²⁸ Transcript P2904.

not recall whether she told her husband of her intention to do this. She said that he was very upset when Deborah phoned him and told him she had taken Jessie home.

46. When she was cross-examined about why she went to the CSA to have Deborah Mooney contribute to Jessie's support, she gave different answers. Initially she said that it was because Anthony was continuing to pay the CSA for Jessie and she was now living with them. When she was asked why she simply did not speak to Anthony and Deborah about it instead of going to the CSA, she answered:

I guess I wasn't happy that Deborah –was ignoring her obligations. She ignored her daughter, wasn't ringing her daughter. I thought she was completely irresponsible.²⁹

47. At page 2414 of the Transcript, she said:

The money wasn't the issue. The lack of responsibility and the lack of accountability – I felt this child had been abandoned by her mum.

48. This evidence was objected to by Counsel for Deborah Mooney on the basis that it had not been put to Jessie in cross-examination and his client would deny it. (Also Mrs Mooney later omitted to raise this allegation in her later cross-examination of Deborah Mooney). The objection raised by Mr Marshall was a valid one. I refer to this incident here because it demonstrates the long-standing antagonism that Mrs Elizabeth Mooney harbours towards Mrs Deborah Mooney. This would not be necessarily significant were it not for the fact that Elizabeth Mooney alleges that Deborah Mooney murdered her husband.

E. PERSONALITY OF DECEASED

49. In considering whether a person may have suicided, it is important to form a view about that person's personality in order to assess any observed or apparent mood changes in the days prior to death. Various witnesses gave evidence about their experiences in the deceased's company. What emerges is the picture of a complex person presenting a face to the world that was, until a few days before his death, invariably cheerful and happy. He did not divulge to anyone the true state of his financial affairs and rarely talked about his marriage.³⁰
50. It was known "on the grape vine" by a few locals that at times the Mooneys were living in the separate residences on the property but the deceased never elaborated on this with his friends

²⁹ Transcript P2413.

³⁰ Evidence of David Gordon Transcript P85.

at the Condah pub or anyone else. Steve Daniels, employed by the deceased's company, Opalstone Constructions Pty Ltd, as a supervisor from September 2007 said that the deceased "was like a father to me". Travis described his father as being very much "a glass half full".³¹

51. Heather Builth, co-owner of the Condah Hotel who had struck up a friendship with the couple and visited them on occasions, told the court that "Tony always put on this front that everything was going really well.....Tony would not have wanted anyone to know that they were separated or even having problems." Elizabeth Mooney had, however, told her a different story.³² In evidence, Dr Builth³³ said that the deceased "was always bright and jovial and ...never let anything else be shown other than that...."³⁴ She contrasted this with the conversation she had with him the evening before he died, which will be referred to later in this Finding.

52. Rowan Wallis was a drinking friend of the deceased's who described Anthony Mooney as:

a very friendly generous person always shouting other people drinks and food. It was his nature. Everyone liked him. He was a likeable sort of bloke and was very happy go lucky.³⁵

53. Notwithstanding he was a new-comer to the area it did not take long for him to meet lots of people, through the girls' school events and the local football club for which Travis played. Mr Col McLean, who lived on the adjoining property told the court that his family had lived in the area for five generations. I asked him "In this area, like you read sometimes, that when new people come from the city it takes them a long time to settle in?" Mr McLean replied: "Yes, sometimes. Took Tony only about five minutes"³⁶.

F. FINANCIAL HISTORY OF ANTHONY MOONEY

54. In terms of his working life, during his first marriage and, for a while during his second marriage, the deceased had been employed by Madison Homes earning a reasonable income.

55. He left there in 2003 and set up his own building company, Orbit Marketing Pty. Ltd. That year he bought three properties in the company's name with a view to re-development. They

³¹ Transcript P2589

³² Statement of Heather Builth IB P119.

³³ Dr Builth has a PhD in Archaeology.

³⁴ Transcript P1013.

³⁵ Inquest Brief at P113

³⁶ Transcript P974.

were situated at Bamber Close Mordialloc, The Esplanade Corinella and Dava Drive Mornington. Other than the Dava Drive property, which had a rented house on it, they were vacant blocks. Mrs Mooney told the court that the Corinella property was a cliff-top property ripe for redevelopment.

56. In June 2005, the deceased had engaged in a re-financing exercise via the National Bank taking out on behalf of Orbit Marketing Pty Ltd, as Trustee for the Orbit Unit Trust, a fully drawn loan of \$670,000 secured against the three properties referred to above. Under the terms of the fully drawn loan, the company was to pay \$4414.33 each month. In October 2005 he sold one of the properties. According to the National Bank records, an amount of approximately \$192,000 was recorded as "Proceeds of settlement".³⁷ The terms of the loan taken out by Orbit Marketing with the National Bank required that the bank receive all net proceeds from any sale and that, notwithstanding this, the borrower was required to continue payments at the fixed rate.
57. The previous year, in July 2004, Elizabeth Mooney had decided to buy Arrandoovong in Branhholme near Hamilton. This was an historic bluestone homestead situated on 160 acres. Gary Mooney told the court:

I recall Anthony was a little worried about this as he still had a number of jobs to go in Melbourne and was concerned if he moved down there a lot of travelling would be involved.³⁸

58. The travel time to Arrandoovong from Melbourne is about 4 hours. Nevertheless, he did this apparently for some time, ultimately moving down there permanently and trying to start a business. The family commenced some farming activities and from all accounts, the deceased took to this with great enthusiasm. Settlement on the purchase of Arrandoovong occurred in January 2005. Elizabeth Mooney was the sole registered proprietor. Most of the purchase price was borrowed by way of an interest-only loan on the security of both that property and

³⁷ It is assumed this relates to Dava Drive but if this is the case, it is difficult to reconcile Mrs Mooney's dates contained in the statement of financial history that she provided to the court-Exhibit AG. According to Mrs Mooney, Dava Drive was sold for \$290,000 and she was expecting the profit of some \$100,000 to be available to assist in the paying the balance of deposit on Arrandoovong, the purchase price for which was around \$1.2 million. Having stated in her financial history summary that Dava Drive had been sold, she then, a few paragraphs further on, talks about being upset about the "refinancing" of Dava Drive and one of the other properties, at Corinella. It is hard to reconcile these facts. Furthermore, Dava Drive was sold after she completed the purchase.

³⁸ Transcript P812.

the property they had previously lived in at Marathon Drive, Mount Eliza since 1999 which had been put on the market.

59. Marathon Drive, however, failed to sell at auction. Mrs Mooney was trying to sub-divide the block there but was having to deal with objections from a neighbour which required an application to VCAT-(ultimately successful). She stated in Exhibit AG that they sold a beach box and another property at Main Road Research, which reduced the “mortgage stress” during 2005.³⁹ Ultimately, the Mt Eliza property, now subdivided, was sold in August, 2007.
60. It would seem that the deceased suffered two financial set-backs in terms of his business during 2006. He was not paid in full for two building projects in Melbourne. This clearly impacted on the company’s liquidity.
61. Mrs Mooney in her statement of financial affairs states that the deceased told her of his business difficulties in 2007 and she advised him that his company was trading whilst insolvent and that was a criminal offence. Orbit Marketing Pty Ltd was placed into liquidation in 2007. According to documents lodged at ASIC, it had unsecured debts of \$258,066.
62. The deceased then became a director of a debt free, asset-less company organised by his wife and registered as JCP Solutions Pty. Ltd. trading as Opalstone Constructions. He operated this as his new building company. It will be seen from Appendix A attached to this Finding that in the space of a year, new business debts totalling \$159,000 had mounted up. Most of these debts related to creditors whose ongoing involvement with the building company was critical. In particular, he owed Hamilton Hardware \$39,000 and Walkers Hardware \$18,593 at the date of his death. Stephen Johnson, Mrs Mooney’s brother, who was a painter often engaged by the deceased said that when he had been doing a job for Anthony Mooney in the summer of 2008, he had gone to buy paint at Mitre 10 Hamilton and had been told there was a “flag” on the account. He said Anthony had then moved the account to Heywood Hardware. Steve Daniels, who worked for the deceased along with Travis, told the court that whilst they were working on Macarthur Library, he had gone to buy some materials from Heywood

³⁹ In relation to the refinancing arrangement with the National Bank, the deceased appears to have made the monthly payments of \$4,414.33 until August 2006, when the second property was sold. After this the balance due was \$338,817. Thereafter he made no further payments. There was no provision for reducing payments under the terms of the loan facility following lump sum payments. There was no redraw facility. He had personally guaranteed the performance of the company, which by then was in liquidation, to the tune of \$775,000.

Hardware and had been told they would stop supplying goods if their bill was not paid. He said this was roughly about July 2008.⁴⁰ The deceased also owed money to numerous local contractors and tradesmen. Once again, Mr Mooney found himself acting as the director of a company actively trading whilst insolvent. Any judgement against the company could see it out of business and the deceased stripped of any prospect of starting again.

63. Enquiries were made of the Registrar at Hamilton Magistrates Court post the inquest hearing. As noted in Appendix A, judgement was going to be entered against the company in the Hamilton Magistrates Court on the 12th September for \$12,395. Mr Mooney had no prospect whatsoever, based on the state of his financial affairs, of paying this debt before that date. Furthermore, Walkers Hardware, referred to above, had now issued a Complaint on the 2nd September, 2008 claiming their debt of \$18,593.43 together with interest of \$784.49 plus costs. It is not known whether the deceased had been served with this Complaint before his death, but, even if that were not the case, there would have been correspondence and a letter of demand from the Complainant's solicitors threatening proceedings.
64. It can be seen from Appendix A, that there were a number of personal debts owed by the deceased to various persons, including his wife. She had purchased a second car. She told the court that Anthony's car was not functioning – so he took over her first car (referred to in later emails as “the green car”) and assumed responsibility for the monthly AMEX repayments of \$558. At p2397, she told the court “Anthony could not get credit to go and get a loan to buy a car”, so she let him use the car (still in her name) so long as he made the repayments. “And then he didn't have to go and try and qualify for finance, etc., etc., which he wouldn't have got”. Otherwise, she told the court, she could have sold the car. Comments of this nature strongly suggest that Mrs Mooney was aware of the deceased's parlous financial situation with no feasible or saleable financial strategy to persuade any credit provider to advance him funds. The deceased was already paying \$525 per month for his own work car, which needed a new motor. It is noted that he spent \$5942.60 on a new motor on the 28th July, 2008.
65. It is possible that Mr Mooney's plan was to sell Mrs Mooney's second car now that his own car was repaired and, in that way, no longer have to worry about a second lot of monthly repayments. (In an email to her dated 5th August, he states that he has been looking on ebay at prices for the green car and that hopefully it would sell there). Alternatively, he may have

⁴⁰ Transcript P228.

been planning to sell his own car. Ownership of that car was transferred to Travis after Anthony Mooney's death. Deborah Mooney told the court that Travis had shown her a repossession warning issued by ESANDA claiming arrears, interest on overdue payments and costs. This was dated the 17th September 2008.

66. The last deposit recorded in his only extant business bank account was \$2400, on the 6th September. It was common ground that this was the balance of \$6000 in cash he had been paid for a job he had done at Port Fairy, after paying Travis' wages and those of Steve Daniels, the only other employee, Jeremy having left his employment there by this stage. From this balance, he paid two Telstra bills. He paid into Elizabeth Mooney's account two amounts: \$558 (which is the amount of her AMEX instalment for her second car) and \$100, (Travis' board). He withdrew \$200 cash on the 6th September and \$200 cash on the 7th September and paid for petrol at Portland on the same day. There was an automatic deduction after his death to Ascot Premium Finance of \$297.30, leaving a balance at the date of death of \$771. This amount, along with his encumbered car and tools of trade were his only assets at the date of his death.
67. Thomas Galligan, whom the deceased knew from their working days in Melbourne, had been owed \$70,000 for many years. He had lent him \$50,000 in 2002 on the basis that it would be paid back at the end of the month. Two weeks later, the deceased had asked him for a further \$20,000 which was lent on the same basis. Mr Galligan told the court that he would periodically contact the deceased about payment, every two or three months. He had never raised his voice. He told the court that the deceased was well-liked in the building industry but he had been informed that he could get no further credit from Bunnings or Boral.
68. More significant, perhaps, is the debt that the deceased owed his elder brother, Gary. He had borrowed money from Gary on two occasions: \$15,000 in June 2006 and a further \$6000 in August 2007. Gary had not received anything by way of repayment and he, himself, was paying interest on the loan he had taken out to lend the money to the deceased. There was email correspondence between the brothers in 2007 and 2008 in which Gary is asking the deceased when he might expect payment. One response from Anthony in February 2008 states that he has 3 blocks at Corinella for sale and one contract had already been signed and he was waiting for the subdivision to come through to then start working on them. It is possible that there was such a sale and that it fell through. No subdivision appears to have taken place however and what actually occurred was that settlement of the mortgagee sale of

the land at Corinella did not take place until February 2009, whereupon, as required in the Loan agreement, all proceeds were paid to the National Bank, leaving still a large amount outstanding under the loan.

69. The court heard evidence from brother Chris Mooney that he had also been asked for a loan from the deceased, and this had been refused. Both brothers gave evidence that they were certain he would also have borrowed money from his mother. (Due to her advanced years, I made a decision not to involve Mrs Mooney senior in the investigation). Mrs Elizabeth Mooney told the court that she would not have been surprised if his mother had lent him money.

70. When asked whether it would have been difficult for Anthony to ask people for a loan, she replied:

I think Anthony was very proud and I don't think he would like to go cap in hand to ask anyone for money, and in terms of asking me.....I'd be the last person he would want to tell if there was some new drama with his business.⁴¹

71. She said he was always suggesting that "This next big job is around the corner..."⁴² and that "in terms of his prospects and income he expected to receive, he'd talk that up".⁴³

72. Elizabeth Mooney told the court⁴⁴ that:

Anthony held himself out to his family as being hugely successful. He had to portray himself as more than that (just a working guy) and give that impression."

73. She was unaware that he had borrowed money from Gary or from Tom Gallagher and she said "It would have cost him a lot to ask Chris for a loan". She was asked whether he ever confided in her about his debts, to which she replied, "I think his personality make-up made it hard for him to come to me".

74. In fact, the deceased asked her for a loan prior to her going on the cruise. In an email dated 26th May, 2008, when they were, according to Mrs Mooney, reconciled, the deceased asks Elizabeth for money. He writes:

Hi Elizabeth, I need an overdraft or loan to keep up with everything, as you mention you could help at one stage I am asking you if you still can I require a 30K loan of

⁴¹ Transcript Pp 2158-9

⁴² Transcript P2160 Line 9

⁴³ Transcript P2160 Lines 22-24.

⁴⁴ Transcript Pp 1767-1769

which should be paid back in full over a six month period or earlier if possible, please advise if you can, Thanks, Anthony.

75. Mrs Mooney emails back “Hi Anthony, is \$30,000 enough or would you like more just in case”. He replies “50K would be better but I will settle for thirty”. She replies “and where do I get this money from? And he answers “I don’t know really but sure you can help in some way”.
76. When asked by Mr Winneke “what did you think his request for \$30,000 was all about?” she replied “I thought is was ridiculous”. She agreed, however, knowing now how dire his financial predicament was that neither \$30,000 nor \$50,000 would have gone anywhere near paying off his debts at that time.⁴⁵
77. The deceased also had a commitment to pay money to the Child Support Agency (CSA) for the maintenance of both Jessie and his two daughters by Elizabeth Mooney. In respect of the latter, under the Child Support Agreement, he was required to pay \$106.67 per child per week, approximately \$924.47 per month. However, according to his wife, the separation that gave rise to this obligation was over at the end of December 2007. The arrangement between them thereafter was that he was to contribute to the mortgage and living expenses and be under no obligation to make payments to CSA for their two daughters.
78. Mrs Mooney told the court that there were two expectations that she had of him in terms of their reconciliation. One was that:
- he could not drink at all, and the other one was that –just to be financially responsible without me having to try and pay for everything and him not contribute...⁴⁶
79. When asked by Mr Winneke “What did you expect of him financially? She answers: “To pay a sum a month- about \$3300 and \$100 per week for “incidentals”. And to hand over Travis’ rent of \$100 per fortnight”.⁴⁷
80. She said that she expected him to pay any arrears to the CSA up to date of reconciliation- December 2007 and thereafter to contribute to the mortgage debt directly. From their later email correspondence, it is clear that Mr Mooney believed this was the deal.

⁴⁵ Transcript P2384.

⁴⁶ Transcript P2382.

⁴⁷ Transcript P2382.

81. From his company's bank statement it can be seen that he had paid arrears amounting to \$8847.03 by cheque to the CSA on the 6th August, 2008. On his cheque butt, he has written "Paid Dec." Elizabeth, however, had not informed the CSA of their reconciliation and the arrears continued to mount as the deceased was now applying the monthly funds to the mortgage rather than to CSA. The Inquest Brief "Email Brief" contained all the emails exchanged between the two of them about this topic whilst Elizabeth Mooney was on the cruise.
82. In evidence, Mrs Mooney told the court that "we agreed that it would get discharged once the payments had been made up to December of 2007", however, she regarded his monthly contributions to the mortgage as "spousal maintenance" and he had, according to her, ceased any payment on the mortgage as at April 2008. In August, the CSA had disbursed \$7189 to her, slightly less than the amount she considered she was owed (presumably because the amount due to Deborah was deducted). He asks her several times by email to write to CSA discharging his monthly commitment but she, in reply, disputes that the payment has been made as her bank account shows "details not available" in terms of a deposit made and she did not know that the amount actually deposited in her account was, in fact, from the CSA.⁴⁸
83. She subsequently writes that she is not prepared to discharge the CSA commitment beyond the end of April "which is when you ceased payments to me of anything. Then it will start up periodically after that, I assume." He replies "What do you mean it will start up again?" to which she responds "please tell me dates of your payments if you want me to fix it with CSA". He replies "You have no intention of fixing anything. All you want is money, money, money". Shortly after, on the 12th August, he writes:

These emails are going nowhere...I have had enough...if I get one more letter from CSA I will bite the bullet. You have pushed this too far.

84. On the 13th August, Elizabeth Mooney wrote to him:

I know you are enraged at the thought of supporting the children but that is your mental health issue, not mine. Please provide Travis' email address as I have not received any board from him at all. I DO NOT WANT YOU TO COLLECT IT AS YOU WILL NOT GIVE IT TO ME".⁴⁹

⁴⁸ Email Brief P 958.

⁴⁹ Travis was required to pay \$50 per week by way of board. These emails regarding CSA are contained at pages 910-988 of the Email Brief.

85. On the 15th August, he writes to her:

I have heard you have not discharged our arrears from CSA as agreed from December to now so as from the 15th September litigation will commence. Thanks.

86. The response Mrs Mooney sent the same day was as follows:

stop harassing me. I sent the message to csa as I said I would and I attach a copy so fuck off. And no, I did not agree that it would be discharged forever. Why on earth would I do that?????????????. You are an idiot. Do you think I am too. So is it your grand plan that I discharge the agreement and receive nothing as per the last three months??? Gee that sounds fair. And now would you mind telling me when you are going to start paying off the AMEX I incurred for your company??? When is your first payment going to be and how much is it going to be so I can monitor it. You cannot stop sending me your psycho emails....

87. In evidence, as stated in paragraph 80 above, Mrs Mooney acknowledged that they had agreed that the CSA payments would cease once he had made up payments to the end of December.⁵⁰ The confusion in the mind of the deceased was therefore understandable. On the 18th August, he sent her details of all payments made to her since the beginning of the year 2008, listing 5 payments of \$3300 and one of \$3500.

88. It is noted that all the payments made by Mr Mooney in terms of the mortgage and the CSA came out of his business account. He no longer had any credit available to him personally, all his credit cards having been closed by the various banks. In effect, his wife was using the CSA as a vehicle to enforce what she regarded as her right to have Mr Mooney pay his share of the mortgage and other outgoings- which she described as "spousal maintenance". In this way, she could utilise this agency to apply pressure to her husband and threaten him with enforcement proceedings. As noted above, this was contrary to the deal (which she acknowledged had been made on their "reconciliation") namely, that he need only pay child support to the agency to the end of December.⁵¹

89. In terms of her own working history, Elizabeth Mooney had gone to the Victorian Bar whilst they were living at Mt Eliza. She left the Bar in November 2005 and obtained employment as a solicitor in a law firm in Warrnambool. She left this firm in August 2007. She told the court that she had two years of tax refund entitlements owed to her of some \$60,000 and she decided to apply this to pay for a cruise with their two daughters. It was booked in June/July

⁵⁰ Transcript P 1801.

⁵¹ Transcript P 1801.

2007, at a time when she and the deceased were living apart. She said that her income during 2008 was from their cattle sales and that these proceeds were applied towards their living expenses. She said she was living off capital whilst on the cruise. She said she had already “parked” money in the mortgage loan account from the sale of other properties purchased by her, which also reduced the interest. During the cruise, Elizabeth Mooney was trading in options, futures and currencies. She also purchased numerous art pieces.⁵² However, in an email to her husband, dated 5th August, she says that she has had to cancel various tours because of the “three month drought”. She says “I feel as if you have deliberately tried to sabotage my holiday. Anyway hope you enjoy your 1.37 million”⁵³. The latter is a reference to a the price of a job the deceased had told her in a previous email that he was hoping to successfully tender for, of which more will be said later.

90. It is complicated to decipher all the material Mrs Mooney provided and the evidence she gave about her various ventures into real estate, buying and selling blocks of land, shops, etc. Certainly, the deceased derived no financial benefit at any time from these ventures. Indeed, he was expected to work on any buildings that required attention and was to be paid accordingly. It would seem that they spoke on the phone only twice during the time Mrs Mooney was on the cruise. On one occasion, the deceased phoned her. He later told somebody the call (about 40 minutes) had cost \$250. She apparently phoned him on one occasion to ask him to contact a stock broker on her behalf as she thanks him in an email for doing this and there is no previous reference to this in any email. The only other call between the ship and Australia was when the deceased called on the morning of his death to speak to his daughters. Mrs Mooney was unaware as to whether he spoke to one or both of his daughters.
91. She had advanced the deceased \$11,000 in 2007, using her AMEX account, to acquire a franchise with Hotondo – an agency that finds building jobs for contractors- and he was to assume responsibility for the monthly repayments to AMEX. Enquiries made of Hotondo post inquest revealed that the 5 year franchise agreement with JCP Solutions had been signed in February 2007. It was terminated by the franchisor (due to breach of the franchise agreement) on the 30th May, 2008. The Hotondo file provided contains entries of the

⁵² According to the ship’s accounts, the prices paid for art works were in excess of \$10,000. It is noted that Mrs Mooney received a substantial refund on the 14th September when the pieces, or most of them, it is difficult to tell, were handed back.

⁵³ Email Brief P879.

communications with the deceased regarding outstanding accounts. Some of them refer to prior promises of payment by the deceased which were not honoured.⁵⁴ There was money due to Hotondo at the time of the death, as appears in Appendix A.

92. When it was put to Mrs Mooney by Mr Winneke that in 2008 her husband was in dire financial difficulties, she disagreed.⁵⁵ Mr Winneke later exhaustively trailed through the deceased's credit card debts that had come to light in the course of the investigation. Mr Winneke then asked her:

If you add the debts that we've talked about, those debts, the matters that you have thought about, it is possible that he may have taken his own life, isn't it?

93. The Transcript records that there was no audible response and I noted for the Transcript that the witness was nodding. Mr Winneke's cross-examination finished at that point.⁵⁶

G. THE MOONEY MARRIAGE

94. A live issue in the inquest was the state of the deceased's marriage. According to Mrs Mooney, there had been two clear separations after they arrived at Arrandoovong, in the course of which Mr Mooney went to live in the cottage and Mrs Mooney remained in the homestead. According to Mrs Mooney, the parties separated from May, 2006 to January 2007 and from June 2007 to early December 2007. However, whether, after the last separation, there was any real reconciliation is another issue. The more important question is whether the deceased believed they had reconciled or whether the marriage was still on trial. Given his financial circumstances, he was never going to satisfy the requirement that he be financially responsible. From several accounts, he was also drinking quite a lot.

95. Mrs Mooney told the court that she felt that the first separation of six months had not been long enough to sort out their matrimonial problems.

⁵⁴ It did not emerge in the evidence as to whether Mrs Mooney was aware that the Hotondo franchise was no longer held.

⁵⁵ Transcript P1764

⁵⁶ Transcript P2434.

96. During their first separation in 2006, Mrs Mooney had explored taking up employment in Perth. She had applied for a Tribunal job and ticked boxes and Perth had come up. She said that her husband was:

really upset that I would have even considered it so it had caused...a bit of angst between us...Look anything which involved his children being on the other side of the country he's not going to be happy about.⁵⁷

97. Her later evidence contradicts this when she told the court "our going to WA would not have upset him." She referred to when she had been short-listed in 2006 and said he had started to consider Fly-in/ Fly-out or moving to Perth. Of course, moving to Perth would have entailed separation from Travis and Jessie. Given his clear affection for them, it is difficult to imagine that he would have enthusiastically embraced the idea of moving to Perth.⁵⁸

98. That this weighed on her husband is clear from an email he sent to her on 18th February 2008 when they were supposedly re-united and living together. In it, the deceased states:

I was looking forward to the weekend, and you took off to Melbourne and arrive home hours after you said you would. Why you went in the first place I don't really know, I was there the day before. There does not seem to be any push from your side. This living apart and getting together on weekends has rocks on it. I am after the same as you are, to feel you're appreciated, to feel the love, to feel someone is backing you as you build things together, not applying for a job in Perth. I never know what you are doing, or what direction you are taking. It's like sitting on the edge of a cliff waiting for the earth to move under you?

99. Mrs Mooney responds: "There is no point in discussing reconciling when you won't change" and ends the email with "Anyway one thing we both agree it is not working".
100. On any analysis, it is difficult to categorise this as indicating a state of reconciliation at that time. It suggests that they were living apart except at weekends. Mrs Mooney told the court that her husband did not have any basis for the perception, if he had it, (which she disputed), that she had any plans to go to Perth to live. The fact that she ultimately went to Perth following his death was more a product of the better salaries paid there and her financial situation. In support of this, she produced evidence of applying for jobs in Melbourne after the death. However, this does not really address what her intention was prior to the death or what the deceased's perception may have been in that respect. Certainly, she made it clear in

⁵⁷ Transcript P2169.

⁵⁸ Transcript P2417.

emails from the ship that she intended to sell Arrandoovong immediately upon her return. However, she told the court that this was because they both wanted to go into farming commercially and this was not possible on 160 acres. The deceased was going to give up building and they would devote themselves to farming. As evidence of this plan, she told the court that she had booked their elder daughter into Monivae College.

101. Support for an alternate plan, which did involve moving to Perth, was provided from an unlikely source. Cheryl Broadbent and her partner Allan King from Queensland were passengers and table companions on the cruise with Mrs Mooney. Mrs Mooney in an email home had described them as “a really nice couple”.⁵⁹ They offered her support when the news came through that Mr Mooney had died suddenly.
102. By extraordinary co-incidence, Ms Broadbent and Mr King found themselves standing next to Brendan and Donna Keenan at the races in Hong Kong the following year. Donna is Mr Mooney’s sister. The two couples got on well and continued to communicate by phone after they returned home to their respective states. Cheryl had been diagnosed with breast cancer and Donna would phone her periodically from Melbourne to cheer her up. One day Alan took the phone from his partner and offered to pay their fares to the Gold Coast so they could stay a few days with them. This they did. During dinner one night, Donna mentioned that her brother Anthony, a builder, aged 46 had died suddenly the year before. Alan asked her “His wife wasn’t called Elizabeth was she?” And the connection was made.
103. Cheryl Broadbent made a statement to police in October 2010 in which she described various conversations she had had with Mrs Mooney on the cruise. As I indicated at the Directions Hearing, I am not attaching any significance to any evidence of witnesses’ observations of Mrs Mooney upon hearing of her husband’s death. However, conversations about other matters are in a different category. Ms Broadbent said in evidence that she had heard Mrs Mooney say that she was separated from her husband and that they lived in separate dwellings on a farm. Later during the cruise, Mrs Mooney had approached her in an excited way and announced that she “had finally figured it out. She had decided to sell the farm and move to Perth where she had been offered a job”.⁶⁰

⁵⁹ Email Brief P941.

⁶⁰ Transcript P1069.

104. Ms Broadbent told the court that, after hearing of her husband's death, Mrs Mooney had told them that she and the deceased had been having conversations about possibly getting back together after she got home.⁶¹ Mrs Mooney in cross-examination of Ms Broadbent suggested that she had been "influenced" by Donna Keenan⁶². However, Mrs Broadbent was adamant. When she was further cross-examined about later conversations with Donna in Australia, she was vague about dates and number of phone calls and blamed this on memory problems associated with the intensive chemotherapy and steroid therapy she was undergoing at the time. Mrs Mooney, when challenged by Mr Winneke about the relevance of her questions of Ms Broadbent about the extent and nature of her chemotherapy, defended her line on questioning, saying "It's highly relevant if a witness says they have memory problems".⁶³ When it was put to Ms Broadbent by Mrs Mooney that she was "attention-seeking," she responded: "I would rather this not be in my life. It's just an inconvenience to be here today".
105. Mr King gave similar evidence. He recalled Mrs Mooney coming up to his wife on the deck (although he placed them in a different part of the ship). He said that although he was there, he did not actually hear what was said, but as they walked away he recalled his partner saying to him "Oh, Elizabeth's going to WA".
106. I accept the evidence of Ms Broadbent and Mr King. If, as Mrs Mooney suggested, they had conspired with Donna Keenan, one would have expected that they would have matched their stories. But Mr King placed them in a totally different part of the ship. That Mrs Mooney announced she was going to WA may not have been memorable in itself, given that she had already told them she was separated, had it not been for the conversation after she learned of her husband's death in which she suggested that they had been planning to get back together again. There was no support for this latter proposition either, if one has regard to the emails between them. In view of the email (dated 26th August, 2008) that Mrs Mooney tendered (Exhibit AE7) addressed to her sister in which she talks about getting a job when she gets home without any reference to Perth, I accept that this does suggest that this was not her plan *as at the 26th August, 2008*, the date of that email. The conversation with Cheryl Broadbent and Alan King may have occurred later. Apart from it being "later in the cruise", neither Ms

⁶¹ Transcript Pp 1070 and 1085.

⁶² She did not, however, apply to further cross-examine Donna Keenan who was in court every day.

⁶³ Transcript Pp1097-8. It will be recalled that Mrs Mooney had told the court of her own memory problems and her "goldfish memory". See paragraph 33 above.

Broadbent nor Mr King could put any date on the conversation they had with Mrs Mooney about her plan to go to Perth.

107. Accepting their evidence, it follows that it is possible that the children became aware of the plan. The deceased spoke with at least one of his daughters on the day of his death when he phoned the ship for Father's Day. Mrs Mooney was not in the cabin at the time. The one daughter with whom he definitely spoke later told her mother that he had been crying on the phone⁶⁴. He had told her that she had won a netball trophy at school (a fact that he had learned the evening before). It could be that he was crying due to missing them. However, they were due home in only two weeks. The girl told her mother that she also had cried on the phone.
108. There is another explanation for the deceased's tears. If, as I will suggest, he had planned to take his own life, he was aware this was the last time he would be speaking with his girls.
109. Returning to the question of the state of the marriage, Mrs Mooney was cross-examined at length about this, with Counsel relying on the emails exchanged between them, both in Braxholme and when she was on the cruise. She told the court that they would email each other notwithstanding they were living under the one roof as they did not want to argue in front of the children. I shall refer only to the emails exchanged during the period in which Mrs Mooney maintained that they were back together, namely January 2007 to June 2007 and from January 2008 to the date of death.
110. After the conclusion of evidence, Mrs Mooney forwarded to the court a copy of her Visa Card account for March 2007, which supports the evidence she gave that she was having fertility treatment for which, it is noted on the account, she paid \$1560 on the 14th March 2007. She had told the court that they wanted to have another baby and she was 46 and too old to qualify for IVF. She said she had been very hopeful the reconciliation would last. I do not doubt that this was the case and that this was strong evidence of it.
111. At page 1733, Mr Winneke referred to the following: Anthony Mooney writes to her 10 days later on 24th March 2007. He says "Is it all over, I need to know". In evidence, Mrs Mooney

⁶⁴ Mrs Mooney's evidence about whether her husband spoke to both daughters or only one changed in the course of her evidence. At Transcript P 2196 she says that she believed he had spoken to both girls. At P. 2426, she raises doubt that maybe only the older daughter had spoken to him. She was not sure if the younger daughter had been in the cabin at the time. She did not agree with me when I commented to her that surely this was a significant thing to know given it was the last contact between them. P2428.

agreed this is a reference to their relationship. She replied to this email: "Our marriage was over when we separated last May".

112. She writes to him:

I let you back in the house in February so the cottage could be let, but you have abused this including going into my bedroom and hunting for cash and taking it... How dare you start telling people we are together?

113. This is perplexing as it suggests that the only reason the deceased had been restored to the matrimonial home was so that the cottage in which he had been living could be let.

114. Mrs Mooney told the court that at that time they had resolved a lot of issues. The deceased's drinking had been a major one. "Anthony told me he would never drink again at all, ever...".⁶⁵

115. On the 29th May, 2007, the deceased writes to her:

Hi, all our property settlements have taken place and everything is now rightfully yours and the children's it just leaves the divorce procedure to be completed.. ...I am to believe that it can be done after 12 months of separation of which we have now reached.... I now just need to get out of your life.

116. And this email was written during the period Mrs Mooney said they were reconciled. Ultimately, they "separated" again in June 2007 and Mr Mooney went back to living in the cottage.

117. More relevant is the state of their reconciliation post January 2008, which she told the court was the second attempt. She instanced a happy event on Valentines Day 2008 when the girls served them dinner. However, it was only 4 days after this that the deceased wrote the email contained in paragraph 79 above. The next email Mrs Mooney writes is dated 15th March and starts with the words "Anthony, there is no point in discussing reconciliation when you won't change".⁶⁶ On the 31st March, she wrote "Why should I consider re-uniting when you behave like a moron".⁶⁷ On 1st April, she complains about his not sharing in their expenses and says "this is why I cannot see how we could ever reconcile".⁶⁸ There follow numerous exchanges, largely about money and what she considers he owes her etc. Then there is the email in which he asks her for a loan, to which I have already referred in paragraph 61 above.

⁶⁵ Transcript P1743.

⁶⁶ Email Brief P790.

⁶⁷ Email Brief P799.

⁶⁸ Email Brief P802.

118. I am prepared to accept Mrs Mooney's evidence that there were some lighter moments, such as Valentine's Day and Jeremy's 21st birthday. However, it is hard to escape the conclusion that the marriage was at best on a knife-edge and the chances of further and final separation were very high throughout the time they were living at Arrandoovong.
119. In terms, finally, of their legal relationship, Minutes of Consent Orders had been filed at the Hamilton Magistrates Court dated 1 June 2006 at a time when the Mt Eliza property was still unsold. Upon its sale, the proceeds were to be entirely applied towards repayment of mortgage loans. Elizabeth Mooney was to remain the sole proprietor of Arrandoovong until end of 2009 after which time Anthony Mooney, "the husband", can call for a transfer to him of 50% interest. There follow provisions for payment to the husband of \$200,000 less any arrears and interest on his monthly payments, in the event that:
- Arrandoovong is sold prior to 2009; or
 - if he ceases to live there for more than 2 months; or
 - if he is more than 60 days late on more than four occasions for his monthly loan payment; or
 - if he wishes, within 120 days from settlement of the sale of Mt Eliza.
120. Thereafter "the wife" was to be entitled to sole beneficial ownership of both of the properties, (at least until Mt Eliza was sold). The husband was to have the sole use and occupation of the cottage in the meantime, and the wife, the sole use and occupation of the homestead. The husband agreed to enter an agreement to pay \$200 per week for the maintenance of the two children.
121. This Order was amended by consent on the 2nd November, 2006 after Mrs Mooney drew up Amended Orders. The amendments provided that of the 100% interest held by the wife in both properties, 50% was to be held in trust for the six children of the three marriages. The wife indemnified the husband from all debts, bank loans etc. Effectively, Mr Mooney's future entitlements were to be transferred to the children. This would relieve him of the obligation to keep up the payments. Rather than seek his entitlement under the original Order to be paid out \$200,000 by Mrs Mooney, he transferred his interest to the children. At this time, Mrs Mooney was still working as a solicitor and mortgage payments were deducted from her salary. Mrs Mooney said in evidence that she was "not sure" that they had a discussion in

which she said she could not afford to pay him \$200,000.⁶⁹ She believed he had received legal advice about it. In evidence, Mrs Mooney said that, in hindsight, she realises that he was concerned about creditors chasing him.⁷⁰ Given that he had no immediate registrable interest in either property at that or any other time, it is hard to imagine how creditors were going to be able to get access to any money from him that way.

122. Mrs Mooney told the court that when the parties “got back together a year later” (sic) financial responsibility was “one of the issues” and she thought he should be contributing to the family. She had left her job as a solicitor, which she said, he had wanted her to do, and, notwithstanding he no longer had any equitable interest in the property, she expected him to pay his share of the mortgage.

H. THE TWO WEEKS PRECEDING THE DEATH

123. In the two weeks preceding his death, it was observed by a number of people that Anthony Mooney was “looking grey”. David Gordon saw him on Thursday, 4th September at the Condah pub and described him as looking and seeming tired. Neighbour Col McLean told the court that he had seen the deceased three days before his death and said that he was “very grey-looking and quiet. Normally he was very exuberant. On this occasion he wasn’t”. The deceased had told him that he was “not too good” and that he “had a wog”. Steve Daniels who was the supervisor in the company told the court that he had gone around to Arrandoovong after work on Friday, 5th September to collect his wages. He described him as lethargic and lacking energy.
124. Travis described his father as “a hyperactive type of person. He would usually only sleep four to five hours a night and would be up and ready to go again. Two weeks before he died, he became really lethargic. He seemed to have hardly any energy. He seemed to have 'flu-like symptoms. He was coughing a lot and was complaining of being cold. He was working - when he was working, he'd be rugged up with a couple of jumpers and even would say that he was cold. A couple of times in that period I had to rouse him out of bed to get him going.”⁷¹
125. Bernard and Donna Keenan paid a surprise visit to Arrandoovong a few weeks before the death (on the weekend of the 16th August). The three of them had all gone to a ball together

⁶⁹ Transcript P1727

⁷⁰ Transcript P1768.

⁷¹ Exhibit AF -1st Statement of Travis Mooney dated 22/9/2008

and Bernard described Anthony as being in great form, "meeting people drumming up business at the ball". The next day, the deceased said to him:

" "I don't know how to get out of it" And I said, "What, your marriage?" He goes, "Yeah," and I read between the lines, he was - I assume he was in debt because of the property. He established his business. It wasn't obviously - it wasn't bringing in the money he needed to cover his costs, I assume. One was outbalanced by the other. "

126. In cross-examination Bernard Keenan was asked if the deceased was "outwardly happy" to which he replied "yes". Cross examination proceeded as follows:

What do you say - did you have an impression about whether that outward appearance of happiness masked something on the inside?---It did mask something on the inside, yes.

What do you think? What is your impression?---He was happy on the outside.

Yes?---But he wasn't on the inside.⁷²

127. It was clear from the evidence that the image the deceased presented to outsiders was that of a successful builder. About 2-4 weeks before his death, he had expressed interest in buying the Condah Pub for \$250,000 with Dave Gordon. This offer was made to Heather Builth's co-owner of the pub. He also spoke of buying Elizabeth a house at Cape Bridgewater and taking her and the girls to Ireland as a surprise trip at Christmas that year. Dr Builth believed this was either the Saturday night before he died, or the weekend before.⁷³ All this I imagine could have seemed very believable to the local people. He was living in an historic mansion, a wife a qualified solicitor who was not working but on an extensive cruise with their daughters. He was generous in buying meals and drinks for people. All this was about to come unstuck in a very public way.

128. He was telling people that he was about to sign a large contract to refurbish Monivae College. He told Peter Clyde, electrician, and his brother in law Stephen Johnson, painter, that they would be working on this large project and that the moneys he derived from this job were going to pay them what he owed for previous work. It is not known whether he told other creditors the same story.⁷⁴

⁷² Transcript Pp 844-5.

⁷³ Transcript P1014.

⁷⁴ Peter Clyde had quoted for the Monivae project. He told the court he had quoted about \$165,000. When the figure mentioned in the tender document was quoted to him by Mr Winneke as being \$178,000, he replied "yeah, something like that" P607. In fact the tender document named another electrician altogether, a Ken Creek. Enquiries were made of him (and outcome notified to all parties) and he advised the Coroners Court that he had

129. He had previously successfully tendered to build the library at Macarthur Primary School. The Tender documents (Exhibit P1) reveal that there had been three tenderers. Opalstone won the tender as their quote (\$103,445) was substantially less than the other two (\$152,150) and (\$267,701). This job had been completed and the last payment made to Opalstone of \$20,766.15 on the 17th July, 2008. The same day the deceased swore a statutory declaration that all monies due and payable to sub-contractors and workers had been paid. Of course, this was not true as the cheque butts listed in Appendix A1 reveal numerous debts associated with the Macarthur Primary School project including Peter Clyde. A defects notice was later furnished to Mrs Mooney. The estimated cost of rectification amounted to \$13,270.
130. Similarly, Opalstone's tender for the building of an ablution block and dormitory at Monivae College, Hamilton, was substantially lower than the next highest tender (by \$220,000). Even the original amount quoted by Opalstone had been negotiated down by \$60,000 to \$1,166 million when the scope was reduced.⁷⁵ The court heard useful evidence from builder Craig Collins, whose company had also tendered for the Monivae Project. His tender was, he believed, about \$1.5 or \$1.6 million. He explained the tender process in detail. He said he would have had no profit margin at the price quoted by Anthony Mooney, which was \$200,000 to \$300,000 less than the price he had quoted. At that price, he said, there would have been no profit margin and the labourers would have been required to work for nothing. He told the court:

Had I not had any profit margin and asked my carpenters to work for 12 months for the love of building, we still probably wouldn't have ...got anywhere near it.⁷⁶

131. In particular, he explained the way payments are made to the builder. There is no initial deposit cheque paid to commercial builders. The builder puts in a claim to the owner for each job sub-contracted, to the extent that each job is completed. This means, he said that for the first month, you "subsidise" the job but are re-imbursed at the end of the month from the client. Everyone works on turnaround of 30 days. He said this job was nearly 12 months worth of work. It involved asbestos removal. He said you still have substantial costs even if you work "on the tools" yourself. He said you have to get rid of all the demolition material.

no recollection of putting in a quote or having any dealings with Anthony Mooney or his company or involvement in the Monivae Project.

⁷⁵ Evidence of John Nissan, property manager Monivae. Transcript P563.

⁷⁶ Transcript P179

132. The reference to the “deposit” cheque is significant, as Mrs Mooney clearly believed that this was going to be paid to her husband at the start of the job and that the amount paid would have paid his outstanding business debts. The unremitted cheques referred to in Appendix A were all found in envelopes on Mr Mooney’s desk after his death. At Transcript P1603, she states that “he had a lot of envelopes with cheques in them all ready to post, as he was expecting a large cheque on Monday from a new contract”. In an email dated 1 February 2010 to the Investigating Member, Detective S/C Adam Davey she wrote:

I am scared you are thinking Anthony took his own life but I am telling you with everything I know about him that that did not happen. I know he was in a buoyant mood and the fact he was about to be paid a large sum of money would have lifted him no end....⁷⁷

133. In another email to Mr Davey she lists all the reasons to support her belief that her husband did not commit suicide. At the top of the list she writes:

He was due to receive a cheque for \$137,000 the following day and had written out various cheques in anticipation of receipt.

134. What emerged in the course of the investigation was that, not only was he not going to get such a cheque or any large funds in the foreseeable future, he was about to have judgement entered against his company for \$12,295 the following Friday. Mr John Nissan, the Property Manager at the school, told the court that the school expected some demolition work to start over the September school holidays. He said the first claim for payment would have been lodged on the 15th October with a week or so to clear, so that the first money the building company would have received would have been on about the 22nd October.⁷⁸ Furthermore, the demolition and removal of asbestos may well have raised significant problems for Mr Mooney’s company, given that he already owed money to at least two asbestos removal companies.⁷⁹

135. The Tender document –Exhibit N1- includes as part of the price, the estimated cost of the building permit of \$4051.20. Presumably, payment of this fee would be required to be made up-front before any works could begin and there would also need to be satisfaction that there was adequate insurance cover.

⁷⁷ Inquest Brief P562

⁷⁸ Transcript P574.

⁷⁹ See Appendix A1: Andrews Asbestos \$1480 and DC Potter \$291.50

136. Stephen Johnson, whose name is on the tender documentation as the proposed painter with a price next to his name, told the court that he had no idea that his name had been attached to the painting component of the job. He had never quoted on it. He had never even seen the plans. The figure quoted for his estimated work of \$54,280, when he heard of it, was a complete surprise. He was unable to say, not having seen the plans, whether this was a reasonable price or not.⁸⁰
137. It is clear that Mr Mooney was presenting this “successful” tender to the world as evidence of his solvency and as a basis for holding off his creditors. This was as unrealistic as his feigned interest in buying the hotel and flying his family to Ireland.
138. The email correspondence with his wife continued in the same acrimonious vein that had characterised it in the main for the entire cruise to the date of death. There were emails from Mr Mooney in which he expressed tenderness for his wife and complained that her emails were all about jobs he had to do on the farm and in relation to her stock animals, his collection of Travis’ rent, ensuring Jeremy worked on the garden etc. On the 2nd August, he wrote to her:
- I have sent you only nice emails and I get is this from you we one (sic) the Monivae job which is \$1.37 mill and was very excited until I get this email from you have meet someone else on your travels...(sic).
139. There are references in later emails to the Monivae project, but Mrs Mooney never expresses any interest in it or congratulates him on it. Indeed, apart from a few slightly newsy emails about side trips they have taken and the girls’ enjoyment of various outings, all her emails relate to getting Arrandoovong ready for putting on the market immediately she gets home. There is no mention of future prospects in relation to buying a commercial farm. There is no mention, indeed, of their future plans together or as a family.
140. Mr Winneke took Mrs Mooney through these emails at length and her responses are all recorded in the transcript. She argued in evidence that the emails were being taken “out of context” and that they were being recited selectively. I have endeavoured to approach my re-reading of them with this in mind, however, the picture that still emerges is that of a couple in crisis with a very uncertain future. Mrs Mooney was unaware of the extent of her husband’s indebtedness and the financial crisis he was facing. He, however, *was* aware of it and of her

⁸⁰ Transcript P752.

injunction that for their marriage to have any future he would have to demonstrate that he was financially responsible and ready and willing to pull his weight in terms of their mortgage repayments, repayments on her car loan, AMEX debt to Hotondo and other household expenses.

141. I consider that this would have weighed heavily on his mind in the 48 hours preceding his death, with the prospect of signing a contract on the 8th September, the conditions of which he was not going to be able to fulfil, having won the tender in quite a public way against several other local building companies.

I. 48 HOURS PRECEDING DEATH

142. In my view, Mr Mooney decided at about this time, to take his own life. He owned a gun and could have chosen that method, however, I believe he decided to make his death look like it had been caused by a heart attack and that he decided to take strychnine to achieve this effect. There is ample evidence of his efforts in this regard.

The movements of Anthony Mooney

143. The deceased spent the whole of Saturday, 6th September at the football. He arrived at the Heyward Football ground at about 11.30 AM in the company of Neil Fisher (known by all as "Cookie"). Mr Fisher, who took his own life in May 2009,⁸¹ made a statement to police in which he said that the deceased had told him on that day that:

he had pains across his chest and he thought he was going to die. He appeared to be OK as he was saying this though...Tony wouldn't go and see a doctor. He was too stubborn. He looked fine. Really good.

144. Steve Daniels, who had seen the deceased looking lethargic the evening before⁸², said that the next day when he saw him at the football he was in good spirits and full of energy. He said they would have had 8-10 beers during the match and then went to the club rooms with David Gordon and continued to drink. After that they went to the Condah pub and from there back to Arrandoovong from where, ten minutes later, Travis drove them to the Commercial Hotel in Hamilton for the Braxholme Footy Club Presentation Night. They continued drinking with the deceased drinking both beer and chardonnay. Fisher's statement goes on to say that there

⁸¹ Suicide note of Neil Fisher contained as Appendix to Inquest Brief P 748. This note is not relevant to the inquest and makes no mention of anything remotely connected with it.

⁸² See Paragraph 123 above

was a bit of a brawl at one time and the deceased told him he had been hit on the back of the head. They then went to a nightclub known as Mojo's but only stayed there a short time, drinking Kahluas, as the same group who had been involved in the earlier brawl were there. They finally went to another nightclub "the Attic" where the deceased had a couple more glasses of chardonnay. They left there at about 4 AM and took a taxi back to Arrandoovong where Fisher stayed the night "in the guest bedroom". The deceased had paid for all the drinks and food.

145. Later that morning, Fisher said got up at 8 AM but the deceased told him to go back to bed and he did so until 11 AM. At that time, Anthony Mooney had suggested that they travel to Cape Bridgewater for breakfast. They spent about an hour breakfasting in a small kiosk and watching the ocean.
146. Sadly, because of his death, the opportunity to cross-examine Fisher was lost. It is not known what they talked about whilst sitting in the kiosk. According to the statement of Allan Duffield with whom Fisher boarded for a time, Fisher told him that he believed Anthony Mooney had committed suicide. Duffield described Fisher and the deceased as being "as thick as thieves." He said that Fisher really believed he had committed suicide but "he did not elaborate on it though".⁸³
147. After the time spent at the kiosk, the deceased got a call to go and interview a young potential football player, Liam Gardiner, who was looking for work as a labourer in the district and club member David Gordon had suggested that Mooney might employ him. The deceased and Fisher travelled to Portland and met Gardiner in a pub. They discussed possible work over a few beers and the deceased seemed fine. He then dropped Fisher off at the Condah pub where he worked and went home, collecting Kentucky Fried Chicken and Pepsi cola on the way.
148. Dr Builth told the court of a disturbing episode at the Condah Pub the night before his death. She said that the deceased had left the pub in his car and then she saw him reversing back. He re-entered the pub and went up to her at the bar and grabbed her hands and said: "I don't know if I will make it through the next two weeks." She said he stared her full in the eyes and described him as looking "desperate, very desperate...and it was almost like he was admitting

⁸³ IB Page P296.

to himself that there was something wrong, seriously wrong". She said this was entirely different from his usual self, that "he was always so bright and jovial."⁸⁴

149. Arriving home with the KFC, the deceased went to the cottage to share it with Travis and Jeremy. Travis had a bad hangover from the Football Club presentations the night before and was lying on the couch watching TV. Jeremy was working on his car outside but came in briefly whilst the deceased was there. There was little conversation and Travis and his father just watched the TV. At Transcript P3012, Jeremy stated:

it was unusual for him to sit for an extended period on the couch in the cottage and he was just- it was just him and Trav and they were just both completely silent... it was just a bit odd, because.... Usually like Dad would come in, he might sit on the couch and then say "How are you going?" this, that and the other and he'd have a conversation and then he'd get up and walk away.....

150. Neither Travis nor Jeremy could remember any particular conversation whilst he was there. After a time, at about 4.30 PM, he got up and said he was going to the homestead to lie down. Nobody watched him leave or saw what direction he went in. It would seem that as soon as he got in, he got the message that had been left on his phone by Mrs Mooney at 11 AM and he sent her the email asking her not to call at 7 PM. He had no further contact with anyone until the phone call to Travis at 6.43 PM.

151. David Gordon gave evidence that he believes he phoned the deceased at around 5 PM and discussed the chances of employing Liam Gardiner. There is no record of this call. There had been 3 telephone calls between them that day at 12.40 PM, 1.35 PM and 2.20 PM. On each occasion, the deceased had called Mr Gordon. The last call lasted 2 ½ minutes and was just after the interview with Liam Gardiner had concluded. It seems likely that Mr Gordon is mistaken about the times.

Anthony Mooney's email and telephone contact

152. It can be seen from phone records obtained in the course of the investigation that Mrs Mooney phoned the deceased at 9.40 AM on the 7th September. In a later email she explains to him that she had misjudged the time difference when they had called (to wish him a happy Fathers Day). The call lasted 43 seconds and there was no answer. The deceased made contact with all his children that morning, apart from Travis. At 7.36 AM he sent an SMS to Jessie. She phoned him back at 11.01 AM and they spoke for just over a minute. (Lachlan Johnson, Mrs

⁸⁴ Transcript P1013.

Mooney's other son, called him at 2.28 PM for just over a minute-possibly to wish him a happy Father's day).

153. The deceased phoned his daughters on the ship at 10.34 AM and spoke for 4½ minutes. About 20 minutes later, Elizabeth Mooney called him from the ship at approximately 11.02 AM. This call is shown as lasting 1 1/2 minutes. It seems that it co-incident with the deceased's call-back from Jessie on his mobile. On every occasion that she phoned that day, Mrs Mooney phoned the landline at Arrandoovong. She telephoned again at 11.06 AM. The call concludes immediately, according to the records. It would appear, however, that a message was left in the earlier call she made at 11.02 as the deceased sent her an email at 4.30 PM as follows:

Did get your message today at 11 but I didn't think you'd call back after the first time you called, hence me calling the girls. Don't ring back at 7 as I'll be in bed and won't here (sic) the phone save you money, I have got an appointment on Wednesday at the doctors. I have just been feeling weak and had pains in my chest and upper body. Think I might be just worn out, ready for the bin, as most things are when they have had it. Tell the girls I love them too. I love you all.

This was the last communication from Mr Mooney.

154. On the 4th September, the deceased had emailed her about a business venture with Paul Callanan called Incredavision Pty Ltd. He says that they are going to meet with Google next week and that Paul had mentioned \$625 million. He concludes with the words:

...anyway if I am not around you are the share holder 50% and Paul has the other 50%-keep your eyes and ears open. It will set you and the girls up forever. All the information is on my computer under (and he names the website) the password I will leave with Travis, but hope I will be well on your return.

This was the second last communication from the deceased to his wife.

155. There had been an earlier exchange of emails towards the end of August in which Mrs Mooney mentioned that one of their daughters had been sick with a cold. The deceased responds appropriately and mentions that he also had not been well and had spent two days in bed but is feeling better. This correspondence was on the 25th August. Mrs Mooney responds that he must have been really ill to stay in bed and says that she is glad to hear he is up and about and tells him that their daughter is fine now. On the 27 August, she asks him in a one line email- "Are you still sick?" He replies in a one line email "yeah not the best". She responds "so what is wrong. Have you been to the doctor?" He answers (by now it is the 28th

August) “No, there is no need its just stress with everything I have to do, sometimes I think is it all worth it, I will be OK.” She writes an email that day warning him to pay a judgment order on time, otherwise “the first thing they will do is enter judgement and garnishee you and you don’t want that to happen...She concludes the email with “you get better soon”⁸⁵

156. Mrs Mooney wrote to her husband on the 4th September saying:

I have just bought more internet time but this will have to last me til home. This is it. It took me thirty minutes to download the 63 emails I had this morning, which were mainly junk. The girls will keep writing to you each day or two but I won’t download any letters to me, except once a week starting this Saturday...in other words you will get mail every day or two but I won’t get any except once a week. I will call fathers day at eleven o’clock Melbourne time. It will be about 8 AM our time....

157. The deceased responds on the same day giving her some information about the lambs and adding:

Its disappointing you don’t want to hear from me re emails but if that’s what you want I cannot do anything about it, anyway I will contact the girls- every day would be nice but I will restrict it to every 3 days to save you credit on emails.

158. He then goes on to give more information about the cattle, the attempts to sell her second car, and makes reference to the cream tiles on one of her investment properties. He concludes:

I have not got a cold. My body is telling me it doesn’t want to do much, and am tired and worn out I am hoping I will be around when you all get home but something tells me my body is worn out. Anyway I will push on. As for the fathers day it’s better for the girls and yourself to send me a nice email. It would mean more to me in writing and in that way you can save on the call...⁸⁶

159. Mrs Mooney next writes to him at 1.16 PM on the 7th September as referred to in paragraph 152. She said in the email that after the call (at 9.40 AM Melbourne time) they had gone to breakfast and that the girls had later returned to the cabin and received his phone call whilst she remained at the breakfast table. She makes no reference to the remarks in his last email (extracted at paragraph 158 above) which clearly she had received as it is linked and appears at the bottom of hers. She explains in more detail why she has chosen to get his emails only once a week, about cost of downloading as it is so slow etc.

⁸⁵ The reference to a judgement presumably relates to earlier email correspondence in mid-July in which she advises him about how to fill out a Defence to proceedings instituted in the Hamilton magistrates court. It is presumed these were the proceedings in which Finchetts Plumbing was the complainant.

⁸⁶ I have added punctuation to make sense of this email. As written it stated “I will push on as for the fathers day...” which is misleading in view of what happened on Fathers day.

160. This email is quite a pleasant one. She chats about people on the ship and says that she is looking forward to coming home. She says they are going to call him again at 7 PM Melbourne time. She concludes the message with “anyway, talk soon, love from Elizabeth”⁸⁷ (She had already left a message on the home phone at 11 AM Melbourne time with the same message about calling him at 7 PM). In her statement, Mrs Mooney said that she called Arrandoovong at 6.30 PM. (The record shows 6.43.52- this is between the deceased’s two mobile phone calls to Travis at 6.43 and 6.44). In the meantime, Anthony Mooney had sent her the email extracted at Paragraph 153 above.

161. When asked in cross-examination by Counsel assisting why she had phoned earlier than the appointed time, she acknowledged that she had been a bit worried about the report of him having cried. (Mrs Mooney in one of her statements to the court said that “Anthony was not the sort to cry normally”⁸⁸). She added “It might have been that I was a little bit worried about the emails he’d sent. ...My recollection is it was to have a chat but whether it was influenced by the fact that I’d read those emails from him I can’t say”. She agreed that they were “a bit concerning”.

162. She was asked:

Why not speak to him after the girls had spoken to him given the plan was to speak to him at 7 PM?

163. She answered:

Well maybe I was anxious because of the emails I’d got. I don’t know...”.

164. And then when asked again, she replied:

I suppose I just wanted to have a chat with him without the girls there... look, Anthony and I had been having.. a few arguments and I presume I just wanted some time to have... a conversation with him without the girls”.

You say you presume? --- I presume.⁸⁹

165. I asked Mrs Mooney why, given the cost of phone calls and that the girls had already spoken to him for Fathers Day would she call him again? She replied that she presumed that the emails had bothered her. She did not “think” she got his email telling her not to call later. She

⁸⁷ This was the only email that ends with the words “love Elizabeth” throughout all the email correspondence on the ship.

⁸⁸ Transcript P1550.

⁸⁹ Transcript P2198.

was then asked “You don’t think or you didn’t?” and she replied “I didn’t get it until later. I got it that night”.

166. It is put to her by Mr Winneke that she was “reconstructing” as, according to her own evidence, she wasn’t sure she had even downloaded the emails she now says are so concerning. She responds: “I’m presuming that I must have downloaded those emails and that made me want to speak to him”,⁹⁰

167. Whether her presumption is correct or otherwise, it is reasonably clear that something had raised alarm bells to make Mrs Mooney break from habit and make so many efforts to phone her husband from the ship that day, in the absence of the girls, after they had already spoken to him when he called them at 10.34 AM. It was on the 4th such call that Travis answered and told her what had happened and that the ambulance was on its way.

J. COMPETING THEORIES AS TO THE CIRCUMSTANCES OF THE DEATH

168. I consider that, taking into account the evidence of Professor Drummer, any theory that Mr Mooney ingested 400-1000 mg of strychnine by accident is not tenable. From all accounts, he was careful with it and told Travis that he always wore gloves when he handled it. It had clearly been impressed upon him by Neil Cameron how dangerous it was. This was not a case of possibly inadvertently licking his hand after handling it. It was clearly a purposeful swallow of a reasonable amount.

169. If accidental ingestion is eliminated, that leaves only two possibilities. Either he swallowed it after it had been deposited by another person in a substance that disguised its taste or he swallowed it knowingly in order to end his life.

K. THE LIKELIHOOD OF HOMICIDE

170. Two candidates were put forward as being persons who might have been responsible for the death of the deceased:

- Jeremy Johnson; and
- Deborah Mooney.

⁹⁰ The cross-examination extracted in the last four paragraphs are found in the Transcript Pp 2197-2200

The case against Jeremy Johnson

171. Jeremy Johnson was the prime suspect investigated by the Homicide Squad. The basis for any suspicion was the fact that he had access to the strychnine and the homestead. He knew where the key to the gun cupboard was kept. He had the opportunity to “lace” something with it, (and, according to this theory, it was suggested the “something” was the bottle of coke) as he had been alone on the property the night before when the deceased and Travis were out at the Football Presentation. After the visitors to the homestead on the night of the death had either gone home or gone back to the cottage to sleep, Jeremy had remained in the homestead for a few hours drinking. This would have given him the opportunity to dispose of the coke bottle (which, according to Donald Johnson, the father of Elizabeth Mooney, was not there in the main bedroom when he cleaned it out the next day). Finally, there was evidence that he and the deceased had had an argument a few weeks before, following which they did not speak to each other and this had resulted in Jeremy looking elsewhere for employment.
172. The cause of death was known by the homicide squad at 2 PM on the 29th October, 2008.⁹¹ Arrangements were made to get an order enabling police to place intercepts on the mobile phone of Jeremy Johnson. By this time, he had returned to Melbourne and was living at the home of his grandfather, Donald Johnson. Once this was arranged, Detectives Adam Davey and Paul Tremain travelled to Perth on the 26th February 2009 to inform Mrs Mooney of the cause of death and of the fact that both Travis and Jeremy were suspects.
173. I have listened to the entirety of the telephone intercepts that were later extracted (in terms of relevance) and reduced to writing and made available to all parties’ legal representatives. I am satisfied that the extract provided is fair and contains all relevant material. The calls mainly are between Jeremy and his mother. What emerges is a picture of a young man incensed that he is a suspect in the murder investigation and a sense of powerlessness given some of the factors that might be seen as suggesting his possible involvement and which he is unable to deny. He continually says “I’m fucked” and that this will ruin his life. The police had told Mrs Mooney that both Travis and Jeremy were the main suspects because of their living on the property where the strychnine was stored. In one of the early calls, Jeremy says to his mother “I can tell you for a fact Travis didn’t do it, which is bad for me”. He tells his mother that he didn’t even know where the strychnine was stored and neither did Travis.

⁹¹ Transcript P61.

There are lengthy discussions about the dosage that would have been necessary, based on Jeremy's researches on the internet. On a number of occasions, Jeremy erroneously refers to the poison as arsenic and there is a perception by both of them that whoever did it had been administering small doses to him over a period of time. When quizzed about details of the death, such as how long it took to die, Jeremy responds that he does not want to think about it.

174. He says at one point:

If it was me, I would bury it in a hole down by the creek somewhere. That's what I would do. I'm not an idiot. If I was going to kill someone I would do a far better job and cover my tracks.

175. I am quoting from the earliest calls between them and before they began to suspect that the calls might be being monitored, which, from comments made they began to do. Jeremy is appropriately distressed when his mother asks him in the first call "You didn't do it did you Jeremy?" When he denies this, she persists "You didn't do it like as a joke that you thought he would get a bit sick or because you were annoyed with him?" He immediately denies it. Later in the call, he says to his mother "I can't believe that you would think that I would do something like that". She replies "not to kill someone but I thought maybe." Jeremy interrupts "... that I would kill someone with arsenic as a joke? I'm not an idiot". Mrs Mooney later maintained that she had only asked Jeremy this because the homicide squad had asked her to. This was totally denied by both Homicide detectives in sworn material. Even if I were to accept Mrs Mooney's account in this regard, the fact that she suspected Jeremy might have been capable of doing it, is not evidence to which I attach any weight. She told Jeremy in one call that the only way he was going to challenge the charge was by using "the pig's head defence". Jeremy replied "I think the thing that is going to save me is that I haven't done it".

176. They talk about the "argument" Jeremy had had with his step-father. There was evidence about this in the course of the inquest. It would seem that whilst on a job, Jeremy had been sent in Mr Mooney's car to collect some items and had been expected to return to the building site within a short period. In fact he took much longer. He had wanted to phone Mr Mooney to ask some questions about precisely what he was to collect but could not do this as the latter's phone was in the vehicle. This meant that the workers were idle for a number of hours. Accounts varied about whether the deceased fired Jeremy or whether Jeremy quit. In

any event, Jeremy soon obtained another job with Dunkeld Pastoral company which was more suitable to his University course of landscape architecture.

177. In evidence, Jeremy told the court that there were no residual "hard feelings" about any of this at the time of Mr Mooney's death. He described an incident in which his car had broken down on the way to his work in Dunkeld and he had been picked up by another worker. When he went back to pick up his car it was gone and he believed it had been towed away by police. Someone from his work gave him a lift all the way home:

and lo and behold, there was my car sitting in - in the middle of all those sheds, Dad'd - I can't remember if I told Dad about it or if he'd just seen it and just - got the car trailer from the bloke down the road and picked it up and I was thankful for that and he - that was effectively the end, I think, of me having the shits with him.

178. He thought, reflecting on it, that he may have contacted the deceased after his car broke down and "he's helped me out and that ended our dispute".⁹²

179. He instanced the fact that he and Travis had bought the deceased a wrist watch for Fathers Day. They had given it to him the week before by mistake and that he had been very touched by it. That this was the case is recited in an email from the deceased to Mrs Mooney on the 31st August in which he says: "Jeremy got home late last night from Melb ...and is coming over for tea tonight...He and Travis thought it was Fathers Day this weekend and came over on Friday and presented me with a watch for fathers day I thought it was just fantastic and had a tear in my eye it meant so much to me miss u heaps talk soon Anthony".

180. I am satisfied that any dispute between the deceased and Jeremy was well over at the time of the death. There was evidence that Anthony had proudly told people about Jeremy's new job and the fact that he had found it by himself.

181. Jeremy first learned about the cause of death on the media before he got the call from his mother. He was very angry about learning this news this way and phoned Victoria police to complain. This would not seem to be an action typical of a guilty murderer.

182. The telephone intercepts and Jeremy's evidence, and the absence of any direct evidence connecting him to the deceased's ingestion of the poison have persuaded me that he was not in any way involved in causing the death of the deceased.

⁹² Transcript P2908.

The case against Deborah Mooney

183. The only person alleging the involvement of Deborah Mooney in the death of the deceased was Elizabeth Mooney. This arose out of her discovery that Deborah Mooney had maintained a life policy over the life of Anthony Mooney post their separation and divorce.
184. It is true that there was such a policy and Deborah (or Ms) Mooney had kept it alive to provide financial support for her two children in the event that Mr Mooney died. The premiums were payable twice yearly and increased over the years, some years by a larger margin than others. Mr Winneke pointed out that in respect of the year 2008, the premium had only gone up by \$8 for the entire year, which was less an increase than in previous years. The AMP file was produced and it was clear that Ms Mooney had over the years always been late in payment of the premium and a payment had in fact been due on the 25th August, 2008. The policy had remained on foot notwithstanding this and historically a grace period had been allowed.
185. Mrs Mooney put to Ms Mooney the following at page 2835 of the transcript: “What I’m saying to you is that at the time of the premium being due, on August 25, 2008, you were well aware that if you were late paying, it wouldn’t matter because there was a grace period...and you had that idea in fact because your history of being late had shown you that there was a grace period?----But no-one had died”.
186. In my view, Ms Mooney satisfactorily answered this question. Apart from the fact that she had an unassailable alibi provided by her partner for that weekend, (and they live in Melbourne, four hours away), the fact remains that to commit a crime of this nature for such a motive, one would need to be confident that there would be the certainty of pecuniary “reward”. Steve Carey, Ms Mooney’s partner, gave evidence that Deborah had raised the subject with him about a week after the death and told him she had not paid the premium, to which he had replied “Well, you can kiss that goodbye.” In any event, she appears to have paid the premium at that time and received over \$300,000.
187. Ms Mooney told the court that she had never heard of strychnine before she learnt about the cause of death.
188. Elizabeth Mooney was clearly unaware that her husband and his first wife had resumed a friendly relationship over the years and indeed, on one occasion they had met for drinks in a bar in the district when Deborah and her partner Steve Carey had visited the area to watch Travis play football. This was during the time Mrs Mooney was on the cruise. Indeed, Mr

Carey had driven the deceased home. They talked regularly on the phone, Mr Carey said “pretty often” and some of them (the telephone conversations) went for a while.”⁹³ Ms Mooney described the deceased visiting her home in Melbourne on one occasion to see her pool and her extensions. Given the antagonism felt by Mrs Mooney towards his ex-wife, it is not hard to understand that Mr Mooney would have kept these meetings and conversations to himself.

189. Deborah Mooney told the court that her former husband was aware that she still had the policy and had asked her to transfer it to him (although the policy had no intrinsic value until the life insured died) and she had refused, instead handing over to him another policy that had some surrender value which he accepted.

190. I do not propose to deal with Mrs Mooney’s concerns that the policy proceeds when received by Deborah Mooney allegedly were not spent on her children as this is not in any way probative of her contention that Deborah Mooney had any involvement in her husband’s death.

191. I note also, that Mrs Mooney at no stage put to Deborah Mooney in cross-examination that she had caused or organised the death of her husband.

192. I note finally, that Mrs Mooney acknowledged in the witness box that she did not have any adequate proof that Deborah Mooney had murdered her husband. She blamed this on the quality of the police investigation, of which more will be said later.

Conclusion as to likelihood of homicide

193. For the following reasons I consider the likelihood of the deceased having been the victim of homicide is negligible:

- Poisoning as a means of murder is unusual in itself.
- The type of poison used is extremely bitter and difficult to disguise.
- The quantity found on toxicological analysis was far in excess of that required to kill someone. The extent to which the taste of that quantity can be disguised by any medium in which it is mixed is not ascertainable, even to a highly qualified toxicologist.

⁹³ Transcript P1482.

- The risk any “murderer” ran was that the bitter taste would cause the victim to spit it out, rinse his mouth and potentially investigate it further.
- Unless the “murderer” was someone very unlikely to be associated by the victim with the poisoning attempt, he/she ran the risk of being identified.
- Even if the “murderer” did fall into the “unlikely” category, what satisfaction would he/she derive from causing an agonising death that he/she did not witness?
- Nobody stood to gain financially, or in any other identifiable way, from the death of Mr Mooney, leaving the only possible motive that of revenge or hatred. In common experience, criminals wanting to achieve that end would want the satisfaction of knowing that the person dying was aware of their involvement in the death.
- Strychnine is such a rare, illegal poison in Victoria, it is unlikely that it was brought onto the premises from outside the property.
- Had Mr Mooney survived, and were he to have investigated it further, the identity of the poisoner would have been likely to emerge, given that the location of the poison on the property was known only to Mr Mooney (and any other person he may have told).
- Lacing any food or drink substance with strychnine was accompanied by the risk that somebody else might consume it. The residents of the cottage had access to the homestead kitchen. A house guest like Fisher may have ingested it.
- The poisoner had to have access to the gun cupboard, which was generally locked, and know how to access the homestead dwelling. This would have involved entering onto the property and walking along a very open area, (a property on which there was a dog), then, accessing the strychnine from the gun cupboard in one of the sheds, entering the house to lace food or drink with it, and then returning the poison to the gun cupboard, all the time at risk of being encountered, with strychnine in their possession, by someone returning home or visiting. There is no evidence of anybody fitting this description being seen that weekend and Jeremy Johnson was at home most of the weekend.
- There is no evidence of any written threats found amongst the deceased’s paperwork.

- The homicide investigators traced all recent phone calls received by the deceased and all were accounted for as being personal or associated with business or football.
- There is no evidence that the deceased confided in anybody that he was being threatened with physical harm or that he felt he was at risk of harm.

L. LIKELIHOOD OF SUICIDE

194. Notwithstanding my view that the likelihood of homicide is negligible and accidental death has been ruled out, courts have historically held that a finding of suicide requires a high standard of proof.

195. In most cases, a finding of suicide is usually competing with a finding of accidental death. As I have stated, that is not the case here. However, I propose to list the reasons I consider that the deceased took his own life. These reasons persuade me to a very high degree of satisfaction that this was the case and that this is the appropriate finding in the case of Anthony Mooney.

196. Suicide has been defined as:

Voluntarily doing an act for the purpose of destroying one's life while one is conscious of what one is doing. In order to arrive at a verdict of suicide there must be evidence that the deceased intended the consequence of his act.⁹⁴

197. The appropriate standard of proof to apply is articulated in *Briginshaw v Briginshaw*⁹⁵ which requires me to be satisfied on the balance of probabilities. Notwithstanding my view that the likelihood of homicide is negligible and unintentional death has been ruled out, the effect of this authority is that I should not make a finding of suicide unless the evidence provides a comfortable level of satisfaction.

198. At common law, there has been a presumption against suicide: *R v Huntbach*; *Ex parte Lockley* [1944] KB 606. This dates from times in which persons deceased by their own hand could not be buried in consecrated ground and when suicide was regarded as a crime. This is no longer the case. Instead it is a "serious and weighty finding" that requires proper evidentiary foundation.⁹⁶

⁹⁴ *R v Cardiff City Coroner, Ex parte Thomas* [1970]1 WLR 1475.

⁹⁵ (1938) 60 CLR 336

⁹⁶ Judge Coate in the Finding - Inquest into the Death of Tyler Cassidy (COR 2008 5542 at [245]).

199. However, I am conscious that there is still somewhat of a stigma attached to a finding of suicide, which as noted by my colleague Coroner Byrne:

[...]can impact upon both the memory of the deceased and his then surviving family. I believe the standard of proof required to make such a finding is something a kin to the degree a coroner must be satisfied, by the evidence, before making a finding of contribution against a person acting in a professional capacity.⁹⁷

200. For this reason, it would be inappropriate to nominate suicide as the cause of death by means merely of eliminating all other possibilities. Therefore, I consider below the extent and strength of evidence both in support and in contradiction of a finding that the death was a result of suicide.

Evidence that might weigh against a finding of suicide

201. The following factors might provide support for the contention that Mr Mooney did not intend to take his life:

- The painful method chosen;
- The call to Travis at the time of his dying;
- His response to the query by the ambulance co-ordinator that he had not “taken anything”;
- The deceased adored his children and would not have wanted to leave them;
- His apparent enthusiasm about the Monivae project;
- The imminent return of his family from the cruise;
- His apparent future plans such as employing Liam Gardiner;
- The investment in Incredavision Pty Ltd; and
- The absence of a suicide note.

⁹⁷ Coroner Byrne in the Finding - Inquest into the death of Anthony Albert Swaffield, COR 2001 1616.

Evidence in support of a finding of suicide

202. I have weighed the above evidence against the following evidence in support of a finding of suicide:

- Historically, and as has been demonstrated by the statistics kept by the Victorian Institute of Forensic Medicine, death by strychnine poisoning is usually found to be due to the deliberate intention to take one's life.
- Whilst it is a painful method, the deceased had told Neil Cameron that he liked using it on possums because it was a very rapid poison that kills very quickly, with the animals dying close to where the bait was left.
- That he was a proud man who liked to give the impression that his business was successful but his financial situation was horrendous and incapable of recovery, hence the following up of the prospect of employing Liam Gardiner;
- The Monivae project was never going to resolve his financial crisis and he was unlikely to be able even to commence it;
- Judgement that was going to be entered against his company the following week which would have made him liable to being charged with trading whilst insolvent with the consequential embarrassment;
- He had no personal assets;
- He had run out of credit and there were no further sources available from which to borrow money;
- The investment, such as it was, in Inceadavision Pty Ltd offered no prospect of relieving his financial problems in the immediate or even long term, a view that Mrs Mooney shares.
- His marriage was almost certain to disintegrate within weeks as, due to the state of his financial affairs, he had not been able to fulfil the condition precedent of being financially responsible;
- The evidence of his distress at the break-down of his first marriage suggests strongly that he would have found it difficult to cope with another marriage breakdown.

- The last two emails to his wife suggest he will not see her or the children again; The last email in particular, could be interpreted as a suicide note.
- His behaviour in the days and hours leading up to his death in talking to Fisher and others about thinking he was having a heart attack and his comments to Heather Builtth are likely to have been for the purpose of suggesting a natural cause of death;
- The fact that he told his wife and Paul Callanan that he had made an appointment to see a doctor (see paragraph 153 above) the following week also suggest that he was attempting to avert any suggestion that his death would be other than from natural causes. (Enquiries made by Mrs Mooney and the police revealed that no evidence could be found of such an appointment either in Hamilton or at any clinic in the district).
- The strongest evidence against suicide is that he called his son's mobile a few minutes before he died and then responded to the ambulance query that he had not "taken anything". However, taking into account all the matters listed immediately above, I do not consider that this evidence rules out suicide. The man was dying and in great pain. He was very much alone. It is entirely understandable that he would want help in such a state. I accept the evidence of Jeremy that he did not ask them to call an ambulance. He was capable of speaking, as the audio tape showed. But what he was speaking about was relieving his immediate pain. As to his not acknowledging that he had taken anything, this was consistent with the impression he had been at pains to give to others in the preceding days to the effect that he was at risk of sudden death by heart attack.
- There was evidence from Steven Carey that on the evening of the 7th September when he accompanied Deborah and Jessie down to Arrondoovong, upon hearing the news of Mr Mooney's sudden death, that no sugar, or even sugar bowl, had been found in the kitchen. This was inexplicable because there was evidence that the deceased took sugar in his tea/coffee. The court had heard that strychnine has the appearance of castor sugar. I consider it is not impossible that the deceased mixed the strychnine with the sugar before taking it and then threw out the sugar bowl and its remaining contents into the dumpster outside. The other possibility, namely that the strychnine was mixed in the coke bottle, I think unlikely, as I do not believe, from all the

evidence about him, that Mr Mooney would have risked the lives of his children by leaving a bottle containing strychnine available to be drunk.

M. GENERAL COMMENTS

Comments on submission by Elizabeth Mooney

203. I do not propose to deal with the multiple complaints made by Elizabeth Mooney in her Submission. This document reiterated the complaints contained repeatedly in her numerous emails to the Coroners' Court since the hearing finished.
204. Any reference to her Submission is problematic given the strange pagination and absence of transcript references or even the dates of purported extracts of evidence. It consists in the main of generalised comments about evidence without specific identification and quotes selective extracts without context. Furthermore, it purports to introduce new evidence throughout. At times, this is introduced to challenge evidence given by witnesses whom Mrs Mooney was free to cross-examine in the course of the inquest. At other times, it is evidence that she was able to give herself and be cross-examined upon. These criticisms apply also to her multi-page Response (which was not paginated at all).
205. I attach no weight to any "new evidence" that Elizabeth Mooney "incorporated" into the Submission and Response. In particular, I ignore efforts to introduce evidence to denigrate other witnesses.
206. Furthermore, I ignore material in her submission relating to her observed reaction on hearing of her husband's death. I made it quite clear, at both Directions Hearings, that I was not going to attach any weight to evidence contained in statements in the Inquest Brief indicating either that she was sad or that she showed no emotion on hearing of her husband's death, citing the Lindy Chamberlain case. The witness list was compiled to reflect this and to the extent that any witnesses called (for other reasons) made reference to these matters, I re-assured Mrs Mooney that I would not be attaching any weight to such matters.
207. In terms of the Findings I am required to make pursuant to Section 67 Coroners Act 2008, Mrs Mooney's Submission was silent save that at page 2094 (sic) she states:

...I do not think any finding should be made, open or otherwise. [...]

The coroner should excuse herself from the further conduct of the hearing (sic) on the basis of reasonable apprehension of bias.

208. I was unable to find any reference anywhere in the transcript to Mrs Mooney foreshadowing such a “submission” during the inquest hearing which went for 25 days. Nor did she at any time complain that she was being denied a fair hearing. She was treated courteously at all times and was never precluded from voicing any reasonable concerns. She was allowed to pursue various avenues which only fractionally bore on the matters being enquired into, such as allegations against the Mooney siblings of disturbing her husband’s grave, and allegations that Deborah Mooney had left a plastic bag full of used tampons hanging at eye level in her home in 2006. It is not unusual for some leeway to be given to next of kin in coronial inquests and Mrs Mooney was no exception in this regard.
209. As to her submission that she should have been allowed to read out her submission in open court, (a submission also made by Mr Hughan on Counsel on behalf of her son Jeremy), such an application was never made in the course of the Inquest when there were discussions at length about written submissions, on both the 21 December 2012 and the 7th January 2013. These discussions revolved around the time-table for written submissions and the time-table for any written responses to those submissions.
210. No objection was made by either Counsel at that time to the requirement that Submissions be in writing, nor was there any discussion about reconvening the inquest for the purpose of “reading” the written Submissions in open court, and, it follows, no discussion about suitable dates for reconvening.
211. Indeed, on the 30th June, 2014, Mr Hughan circulated an email in which he requested an extension of time to prepare his submission (which was granted) and this application was made in the knowledge that Counsel for Deborah Mooney was then overseas. He gave no indication that he would be asking to read out his submission in open court. Had he done so, this would have impacted on the time-table for written replies to submissions and he made no reference to this.

Quality of the police investigation

212. Mrs Mooney complained to the Inquest that her suspicions in relation to Deborah Mooney’s involvement in her husband’s death were unable to be supported due to her view of the quality of the police investigation. Having read the multiple emails that she wrote to Detective (now) Sergeant Adam Davey and his courteous and prompt actions and responses, I do not consider that this criticism is fair. Speaking personally, I was entirely satisfied with the assistance provided to the court by the Investigating Member.

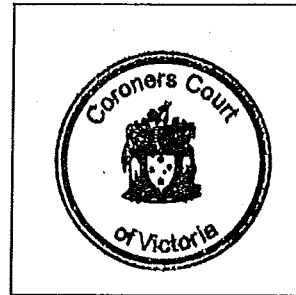
Signature:

Jacinta M Heffey

Jacinta M Heffey

CORONER

Date: *28th January 2015*





**APPENDIX A
A G MOONEY DEBT POSITION AS AT 6/9/2008.**

ASSETS

- Tools of trade of unknown value.
- Motor vehicles (on which various debts due).
- Balance in Bendigo Bank Account 13002858: \$770.

DEBTS

FIXED DEBTS

American Express – Blue. Account 376071510132001 in name of A Mooney. No further credit available	15,488.74
American Express – Gold. Account 376011784783006 in name of A Mooney. Account cancelled due to being “seriously overdue”. No further credit available	16,503.34
ANZ Mastercard –Account 546827-9014912822. Credit limit \$7500. No further credit available.	5458.56
NAB Account 083-168-463656284 in name of A Mooney. No payments at least since April 2008. Monthly interest accruing at average of \$44.00 per month.	2,850.19
NAB Visa Card in name of A Mooney on which credit limit is \$17000 but nil credit available. Final indebtedness not known.	
Business debts owed to various creditors for which cheques written but not remitted - dating back to 26/8/2008. See list attached (See appendix A1)	38,361.27
Business debts leading to proposed class action against the estate for \$89,000: of which largest creditor is Heywood Hardware (owed \$39,000). The list of complainants includes Clydesdale Electrics, Hamilton Carpets and Bob Bowden – whose debts are included in item immediately above and these amounts have been deducted from this item. Action never proceeded on advice about lack of assets in estate.	73,000
Steven Johnson- Painter (and brother-in-law) for work and labour done.	9,000
Ted Finchett Pty Ltd (Finchett’s Plumbing). Consent order made on 14/8/2008 at Hamilton Magistrates’ Court that Opalstone pay \$12,395 by <u>12th September 2008</u> failing which Judgement in that amount to be entered.	12,395
Leonard Andrew Walker – Hardware Store Hamilton issued a Complaint on the <u>2nd September 2008</u> claiming recovery of debt of \$18,593.43 plus interest of \$784.49 and costs of \$788.41.	20,166.33
Personal debts: Gary Mooney	21,000

\$15,000 owed since 30//2006; \$ 6000 owed since August 2007.	
Thomas Gallagher (a friend). Owed since 2002. No interest charged.	70,000
Gary Smalley (see Statement of Michael Barrett IB P 67- details not known)	22,000
Elizabeth Mooney – repayment of loan advanced by her to finance Hotondo franchise- payable to her American Express account.	11,000
Hotondo Debt outstanding for fees and other charges	6,084.99
Ongoing Monthly Periodical Payments due: <ul style="list-style-type: none"> • Ascot Premium \$297.30 • Esanda payments @\$525 in respect of his work car. • Car repayments taken over when acquired Elizabeth Mooney’s car @\$558 • National Australia Bank: \$4414.33 • National Australia Bank 083-168-463656284: \$44 	Total periodic payments per month: 5838.63
Amount due and payable to National Australia Bank pursuant to Personal Guarantee. See history and details below.	400,799

On 2/6/2005- Orbit Marketing P/L took up a “Facility Limit” loan with a limit of \$670,000 including fees and establishment charges. (Nett balance \$669,596.81). This was a re-financing exercise and included fees to discharge existing mortgage(s). It was secured over 3 properties in the name of the company. Pursuant to the deal, Orbit obliged to pay monthly amounts of \$4414.33 (over 360 months- so a 30 year loan). Periodical payment authority – repayments to come from A/C 083-214-563215726 in name of Orbit Marketing P/L. Two properties sold pre-death reduced the principal but there was no provision for reducing payments under the Loan Agreement. Payments were made regularly until the sale of the 2nd property in August 2006, after which no further payments were made. The balance owed grew from \$338,817 to \$400,799 at the date of death.

The balance continued to grow until this 3rd property sold for \$258,821 in February 2009. Notwithstanding Orbit went into liquidation in SXXXX, Mr Mooney had personally guaranteed payment on behalf of the company. There were also outstanding Council rates of \$2193.06. Neither the Council nor the National Bank pursued the Estate post-death as there were no assets in the Estate.

APPENDIX A1
A G MOONEY LIST OF PAYEES OF UNREMITTED CHEQUES

CHEQUE NUMBER	DATE OF CHEQUE	PAYEE	AMOUNT
320	31/7/2008	National Tiles	1112.11
321	26/8/2008	Hamilton Hire (Scaffold)	320.00
322	26/8/2008	Andrews Asbestos Solutions	1480
323	26/8/2008	West – Pest (Pt Fairy)	275.00
324	26/8/2008	Lowe Engineers (Pt Fairy)	540.00
325	26/8/2008	CG Garner Refrigeration (McCarthur)	924.00
326	26/8/2008	West Coast Windows (McCarthur)	1199.00
327	26/8/2008	Stika Guru	154.80
328	30/7/2008	Grange Concrete (McCarthur)	1443.75
329	14/8/2008	Bob Bowden (McCarthur)	3230.65
330	26/8/2008	Just Waste Management- (McCarthur)	624.00
331	26/8/2008	D C Potter (Audits and Clearances- Asbestos (McCarthur)	291.50
332	21/7/2008	Viewbank Joinery (Mymar)	2051.50
333	26/8/2008	OK and TN Dark –Port Fairy	701.25
334	22/8/2008	Hamilton Carpets	4727.28
335	26/8/2008	Temporary Fencing	75.66

336	26/8/2008	Finnegan Plumbing (George Street air-con)	1100
337 & 338	26/8/2008	D & J Kenny	572
339	26/8/2008	Hamilton Sheetmetal (McCarthur- Flashing)	45.00
340	22/8/2008	Hamilton Doors and Glass – (McCarthur)	13,863.41
341	26/8/2008	DB and ML Martin –Bob cat	316.25
342	27/8/2008	Clydesdale Electrics (McCarthur)	8041.39