

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2011 4558

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: ANTHONY JOHN KING**

Delivered On: 7 September 2012

Delivered At: Coroners Court of Victoria  
Level 11, 222 Exhibition Street  
Melbourne 3000

Hearing Dates: 27 August 2012

Findings of: JUDGE JENNIFER COATE, STATE CORONER

Counsel Assisting the Coroner Ms Sarah Gebert

I, JUDGE JENNIFER COATE, State Coroner having investigated the death of

**ANTHONY JOHN KING**

AND having held an inquest in relation to this death on 27 August 2012

at MELBOURNE

find that the identity of the deceased was Anthony John King

born on 17 December 1945

and the death occurred between 2 and 3 December 2011

at 27 Forest Street, Yarra Glen 3775

**from:**

1 (a) HANGING<sup>1</sup>

**in the following circumstances:**

**Background**

1. Mr Anthony John King (herein referred to as Tony<sup>2</sup>) was 65 years of age at the time of his death. He was married to Margaret King and resided at the abovementioned address. He was the father of four children from his previous marriage. His children are Anthony (Junior), Sharon, Dianne and David. At the time of his death, Tony was employed as a professional bus driver by McKenzies Tourist Services in Healesville and had worked there since 30 January 2007. Tony and Margaret had been married for 7 years at the time of his death.
2. On Friday 2 December 2011, Tony drove Margaret to the home of her ex-husband, Andrew William Whiteside (known as 'Bill'), in Doncaster East, so she could get ready for her daughter's "hen's night".
3. Margaret said that she and Tony enjoyed a normal conversation before leaving home, including his plan to have Chinese food in her absence.
4. They arrived at Bill's house after 6pm, at which time Tony chatted with those present. Nothing was reported as out of ordinary with these discussions. According to those present,

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<sup>1</sup> Forensic pathology report of Dr Yeliena Baber

<sup>2</sup> Family confirmed that this was the name he was known by and wanted him to be referred to in this way.

Tony did not drink alcohol whilst at Bill's house. Margaret and her daughter Emma left just after 6.30pm with the plan that Tony would pick up Margaret from Emma's home the following morning.

5. Tony left separately a short time later.

#### **The police intercept**

6. At approximately 7.34pm, Tony's vehicle (a silver commodore Sedan registration KINGY4) was intercepted at a preliminary breath test site established outside the St Paul's Yarra Glen Anglican Church in Bell Street, Yarra Glen by Sergeant Richard Coulson, Sergeant in charge of the Yarra Glen Police Station and Senior Constable Paul Roberts.
7. Tony initially indicated that he had not consumed any alcohol but later admitted that he had consumed port about 10 minutes before being intercepted. Records show that Tony purchased a bottle of port at approximately 4.29pm that day.
8. A further breath test was conducted which also indicated a positive reading for alcohol. Tony agreed to accompany the police to the Healesville Police Station and his vehicle was securely parked. He had Chinese takeaway food in the vehicle at that time.
9. The drive to Healesville Police Station took about 15 minutes. The evidence of the two police members is that Tony conversed with them along the way. He told the police his wife was away at a hen's night and he did not want anyone notified as no-one was at home at his place.
10. Tony was processed and found to have a blood alcohol concentration of 0.118, which ordinarily would have been dealt with by of a penalty notice and an immediate loss of licence for 11 months. Tony's explanation for his drink driving was "*I don't know. I didn't think.*"
11. In the course of processing Tony at the police station, the members did a routine check on any relevant history held by the police. Upon conducting this inquiry, they found a "suicide flag" for Tony as a result of an attempt Tony had made on his life in 2002.<sup>3</sup>
12. Rather than an immediate suspension, the police decided that Tony's licence suspension would take effect after 28 days, which would allow him to drive over the Christmas period,

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<sup>3</sup> The police had been involved in this attempt on his life in 2002 as it had involved a single motor vehicle collision.

and reduce the immediate impact of his licence loss. Tony was told by the members that they would proceed in this way.

13. The police also offered to drive Tony home and to ferry his stranded vehicle home too. Tony accepted that offer.
14. At 9.15pm, Sgt Coulson, S/C Roberts and Tony left the police station in the police vehicle. During this part of the trip, Tony was asked whether he wished to be dropped anywhere else or whether he wanted someone to be contacted to get his car. The evidence of the police is that he did not want anyone to be contacted and that he wished to go home. About 15 minutes into this trip, they reached Tony's car. S/C Roberts and Tony then got into his car and S/C Roberts drove Tony home with Sgt Coulson following behind.
15. The evidence of S/C Roberts is that Tony joked with him on the way home about a world trip in order to pass the time during the period he would be unable to drive.
16. Upon arrival at his home, Tony opened the gates to enable S/C Roberts to drive his car into the driveway. Tony approached Sgt Coulson whilst this was happening and shook hands with him and thanked him for driving him home. By that time, S/C Roberts had parked Tony's car. He handed him his keys, and after Tony said "goodbye," S/C Roberts saw him enter the front door of his home. That was at about 9.35pm.
17. On the evidence available, that was the last time any person appears to have seen Tony alive.

#### **The next morning (3 December 2011)**

18. Between approximately 8.00-9.18 am, Saturday 3 December 2011, Margaret rang her husband approximately 11 times to let him know that she was ready to be picked up from her daughter Emma's home in South Morang. As Margaret was unable to get a response from her husband, Emma drove her home.
19. They arrived in Yarra Glen at approximately 10.07am, at which time Tony was discovered hanging from the porch in the rear of their home. An ambulance was called, but Tony was unable to be revived.
20. Following the discovery of Tony on the morning of 3 December 2011, his wife Margaret located the infringement notice Tony had received the night before. It was inscribed with the following words, apparently in Tony's handwriting:.... '*I'm sorry I love you Tony*'.

### **Medical investigations**

21. A post mortem external examination of Tony was undertaken by Dr Yeliena Baber, Forensic Pathologist with the Victorian Institute of Forensic Medicine. Dr Baber reported following that examination, in her opinion Tony's cause of death was as a result of 'hanging'. A toxicology analysis was conducted which was negative for both alcohol and drugs.

### **Conclusion as to intentional taking of life**

22. On the basis of the above, I am satisfied on the balance of probabilities, given the method used by Tony and the words he wrote on the infringement notice, that he has intentionally engaged in the acts he did to bring about the end to his life.

### **The "triggers" for Tony deciding to take his own life**

23. Det L/S/C Phelan from Yarra Ranges CIU was the *investigating member* for the coroner in this investigation. He has provided a Brief which contains a number of statements touching upon the immediate circumstances in which Tony's death occurred. Included in the Brief<sup>4</sup> are 21 statements from a range of persons touching upon various aspects of the investigation. I have also received statements from Laurel Ann King (daughter in law of Tony), Tony King Jnr (son) and Sandra Vojtisek (sister).
24. Margaret stated that she thought the 'trigger' for Tony's actions was the loss of his licence. She said Tony would have had to face '*his colleagues, his family and he would have lost his job. He probably would have thought I would have thrown him out as well.*' In addition, Margaret noted various other issues which may have contributed to his actions including the effects of his time in Vietnam as well as alcohol and gambling related issues. Tony also had his prostate removed several years ago and this may have played a role.
25. Tony was otherwise in good health, aside from Diabetes type II which was controlled by diet alone.
26. Margaret said that he was happy in his job and enjoyed the company of those he worked with as they were older and had a similar sense of humour. His employer reported that he always presented himself well and they did not have any issues with him. The Operations Manager, Mr Jurgen Swoboda, said they were aware that he had served in Vietnam, and

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<sup>4</sup> Exhibit 1

that he was anxious when helicopters flew overhead. He reported that Tony acted normally in the week leading up to his death, apart from an incident where he went to the local RSL with work colleagues for a drink and presented a colleague with a picture of him kissing Lorrae Desmond from his time in Vietnam service. This was noted to be unusual as he seldom shared a drink with work colleagues and did not ordinarily talk about personal issues.

27. Other members of Tony's family, including his son, Anthony Junior and his sister, Sandra Vojtisek said that Tony was very proud of his service in Vietnam and that he marched in the Anzac parade every year. They did not accept that his death was associated with his Vietnam service. They were of the view that there was tension in the marriage which affected Tony. Sandra said that Tony hated failure and would withdraw when faced with disappointment.
28. Tony had one previous recorded incident of self-harm in 2002 where he cut his wrists and was involved in a single vehicle collision. Margaret said that this incident related to '*money/gambling*' issues at that time. Apart from this matter, there was no evidence that Tony had a mental health history or that he had received medical treatment for any mental health issues in the past. His medical records from his treating GP do not record any indication that he was experiencing lowered mood or seeking help for depression or suicidal thoughts.
29. The material that has been placed before me demonstrates that there is some disagreement amongst family members as to the triggers for Tony's actions. It is neither appropriate nor necessary to examine the underlying tension and disagreement amongst the surviving family members in these circumstances.

#### **Alternative scenario with respect to Tony's death**

30. The hypotheses offered by various persons as to Tony's reasons or the "triggers" for his tragic actions, have been based on an assumption that Tony's intention to take his life was formed following being charged with drink drinking and the consequent loss of licence. Another possible scenario however, consistent with some of the evidence, is that Tony formed the intention to take his life (and a plan) at some earlier time.
31. Tony had no prior convictions for drink driving. At the age of 65, a driver by profession, to be driving at twice the legal limit appears to have been completely out of character for him. The evidence is that Tony was a careful and restrained person and responsible in

many aspects of his life, yet the evidence is that he consumed a significant amount of alcohol in a short period of time, when he knew he would be driving. Tony would have been aware that this was risky behaviour with catastrophic consequences if he was detected by police, in view of his occupation. There is evidence from some family members that Tony had not been in a good frame of mind in recent times. On one view therefore, his excessive consumption of alcohol in a short space of time could have been a way of fortifying him to carry out a decision he had already made, on an evening he knew his wife would be away.

32. This alternative scenario could also explain why he appeared so calm and reasonable and even “buoyant” with the police. That is, he had made up his mind before the “interception”. He knew he had the means and the capacity to carry out his plan. He had purchased the alcohol at 4.30 that afternoon. This phenomena of appearing happy and calm in such circumstances is well known to the mental health profession and provides an enormous complexity to the work they confront in the area of assessing suicide risk.
33. Ultimately, whatever was troubling Tony at the time, he has left his own last words on his note.

#### **Should the police have taken any other action in these circumstances?**

34. This question is raised, given the circumstances in which Tony’s death occurred. During the course of the inquest, at the close of the evidence, the partner of Tony’s sister Sandra, Julio Mirabella, made oral submissions on the question of what actions police should take in the wake of a “suicide flag” in someone’s police history. It was the position of Tony’s sister Sandra and her partner that the police should have done *something more* in response to that “suicide flag”. I understood from their submissions, both in the statements received and in their oral submissions in the Court, that they believed that the police should have called Tony’s wife, or someone else, notwithstanding Tony making it clear to police he did not want them to do that. I shall return to this issue.

#### **The “suicide flag” on the Victoria Police LEAP system**

35. I requested Victoria Police to provide background information about the “person warning flag” system used by the organisation. From the material provided I have gleaned that there are several categories of Victoria Police ‘person warning flags’<sup>5</sup> including *violent*,

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<sup>5</sup> Victoria Police Manual – Procedures and Guidelines

*carries weapon, custody risk, medical condition, suicide/self injury and mental disorder. A suicide/self injury flag means a person who has: attempted or threatened suicide or inflicted injury intentionally to themselves. It was on this basis that Tony had a “flag”.*

36. When a person is taken into police care or custody, police assume a responsibility for their safety, security, health and welfare.<sup>6</sup> Victoria police members are guided by principles for the management of persons in their care or custody.<sup>7</sup> Relevant principles which **must** be applied in relation to a person in care or custody include:
- a. The overarching consideration is the safety, security, health and welfare of the person in care or custody.*
  - b. Each person in police care or custody must be treated as an individual, having regard to their specific risks and needs. It must not be assumed that all persons need to be managed as high risk.*
  - c. Decisions about how a person is managed and what amenities they are given access to must balance the person’s welfare, dignity and human rights against any risk to their safety and security, or the safety and security of others, including police members.*
  - d. Persons must be continually monitored and assessed, particularly in respect of their medical condition, risk of self-harm, risk of harming others and security risk. When medical or safety risks are identified, they must be responded to promptly and the appropriate assistance or advice must be obtained.*
37. It would be appropriate to presume that these principles apply in relation to decisions regarding a person’s *release* from the care of police. Victoria Police do not have a “formulaic response” to what should happen or what should be done when a member notes such a “flag.” Rather, the Victoria Police material leads me to conclude that the “flag” is to serve as a warning to the members who are dealing with an individual, to understand that it is necessary to make careful and on-going assessments of any risks with the benefit of that warning.
38. In relation to the training provided to police members with respect to these principles, I am advised by the Victorian Police Operational Tactics and Safety Training Unit that an ‘all

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<sup>6</sup> Victoria Police Manual – *Policy Rules – Persons in police care or custody*

<sup>7</sup> Victoria Police Manual – *Policy Rules – Persons in police care or custody*



hazards' approach to training members is adopted, with continuing risk assessment and risk management as important components incorporated throughout all training.

#### **Facts on this night and risk assessments by the police members**

39. Both members spent about 2 hours on this night with Tony. They were in close quarters during that time. They knew that he was employed as a professional bus driver and was married and lived at home with his wife.
40. They knew he had a "suicide warning" flag, as they had been alerted to that by the LEAP check on Tony. The evidence is that they assessed his demeanour throughout their contact and stated they had no issues in regard to his welfare. Both Sgt Coulson and S/C Roberts reported that Tony joked and talked about ordinary matters, despite believing that he would lose his job as a result of losing his licence.
41. There is evidence in the Brief as to Tony's demeanour earlier in the evening which is consistent with the police evidence. That is, Tony was described by those who saw him earlier in the evening as "his normal self."<sup>8</sup> Indeed, his wife Margaret stated that when she kissed her husband goodbye the night before when he dropped her off, she had "no reason to worry about him at all".
42. In his statement, S/C Roberts stated that he had no concerns for Tony's welfare.<sup>9</sup> His statement sets out exchanges between himself and Tony as comfortable and appropriate. Similarly, Sgt Coulson stated that throughout his entire dealings with Tony he found him to be stable and level headed, other than showing some effects of alcohol. He gave Sgt Coulson "no cause for concern".
43. Indeed, Sgt Coulson completed his statement by describing Tony as "*lucid and relatively buoyant in the circumstances*". The evidence of Det. L/S/C Phelan at inquest was that in his opinion it was clear that, despite the circumstances, Tony made a comfortable connection with the members and that they were relaxed and friendly and cordial with each other.
44. The police offered to notify someone at the beginning and end of their contact, but Tony declined, indicating that his wife was away at her daughter's hen's night.

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<sup>8</sup> For example, Statement of Margaret King 9.1.2012

<sup>9</sup> Statement to Coroner 3 December 2011

45. S/C Roberts has made 3 entries on the Vicpol Attendance Register noting “nil apparent mental impairment or incapacity” twice in the Register. I accept that this is evidence that, consistent with the guiding principles of Victoria Police, S/C Roberts continued to turn his mind to Tony’s welfare in the context of knowing of the existence of the “flag”.
46. There was no evidence of any hostility or lack of empathy toward Tony on the part of these two members. Indeed, the evidence is quite to the contrary. They appear to have been somewhat sympathetic to his situation in terms of allowing him to continue to drive over the holiday period and not only driving him home but also collecting his car for him and getting it home. The evidence as to the atmosphere during this couple of hours was that it was comfortable and without difficulty. There is no evidence that the police disregarded or were cavalier about Tony’s welfare. The evidence is that they appeared to be mindful of his history and making an assessment about his condition and circumstances. The evidence is that their conduct towards Tony was above and beyond what would normally occur on a routine interception of a drink driver, consistent with both members being concerned to take extra care to return Tony home safely given his history, his blood alcohol reading and the fact that Tony did not want anyone to come and get him.

### **Options available to the police**

#### **Section 10: *Mental Health Act***

47. In considering what options the police had in the circumstances, I have turned my mind to what powers or responsibilities police would have in such circumstances. Section 10 of the *Mental Health Act 1986* allows police to apprehend a person for the purpose of taking them to a registered medical practitioner for examination. This section can only be enlivened where two conditions are met. First, the police must form the opinion that the person is ‘mentally ill’,<sup>10</sup> having regard to the behaviour and appearance of the person. The legislation does not require a clinical judgement to be made by the police. Second, there must be reasonable grounds to form a belief that the person is likely, by act or neglect, to harm or attempt to harm himself or others.
48. Det. L/S/C Phelan gave evidence that in his opinion there was no basis upon which the members could have used this power to detain Tony. In his submissions to the Court on

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<sup>10</sup> As defined by the *Mental Health Act 1986*.

behalf of Tony's sister, Mr Mirabella<sup>11</sup> agreed with this opinion stating there was "no way known" that Tony would have fitted the criteria under the *Mental Health Act*.

**Conclusion re: Section 10 *Mental Health Act***

49. There is no evidence to suggest that Sgt Coulson and/or S/C Roberts could or should have exercised their powers under this section of the *Mental Health Act*.

**Making contact with a "third party".**

50. In both the written statements provided by some of Tony's family and in the submissions made to the Court at inquest, the issue was raised as to whether or not the police should have called a "third party" despite Tony stating that he did not want that to happen.

51. The police were faced with a man who they knew to be employed as a professional bus driver. The police would be entitled to infer that this would mean that his health and stability and maturity were such that he was currently a healthy, level headed person, holding down a very responsible position driving passengers for a private company for the last three years.

52. The police knew that Tony was married and that he and his wife were living together in their home. The police also knew that Tony's wife was out that night at a family function and Tony did not want her to be contacted. Over the two hours that the police spent with him, Tony presented as calm and reasonable and stable and on the evidence was even able to muster a joke about his situation. He was delivered to his home by the police and seen inside.

53. The submission from Tony's sister Sandra and her partner Julio was that the police should have made a call to Tony's wife anyway, notwithstanding that this was against Tony's express wishes. This submission was based on the existence of the "suicide flag". That is, that the suicide warning exists should weigh against concerns about privacy or the wishes of the individual and should result in a mandatory call being made to the next of kin, regardless of the wishes of the individual or the way in which he is presenting.

54. Gathered at the inquest into the tragic death of Tony in these circumstances, it is understandable that this issue is being raised and pressed in this way by some members of the family.

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<sup>11</sup> Mr Julio Mirabella stated that he was a former member of police and had served as such for 17 years.

55. Mr Mirabella, in his submission to the Court on behalf of some of the family did agree that even making that proposed phone call was an exercise of judgment.
56. The sad reality of this situation, demonstrating the complexity of situations such as this is that the written materials provided to me by Tony's Daughter –in-law and sister do not support their submission that a decision to call his wife would have necessarily been in Tony's best interests. Without in any way making any assessment about the truth or otherwise of these assertions, but rather to demonstrate the difficulty in police deciding to make calls against someone's wishes, according to this part of Tony's family, had the telephone call been made despite Tony's protestations, his wife's response was likely to have exacerbated his state of mind given their opinions about her behaviour towards Tony. This amply demonstrates the complexity of the judgment call police have to make. Had the police made the call, and Tony took his life after that call, part of the family may be sitting at an inquest submitting that the police should **not** have exposed Tony in this manner, given that he had asked them not to make that call. This only serves to demonstrate the complexity of the situation and the need to have police making a judgment call based on a considered assessment rather than a formula.

## CONCLUSIONS

58. Having considered all the evidence, I find that Mr John Anthony King born on 17 December 1945 died as a result of hanging in circumstances where he intended to take his own life.
59. I find that Tony, a professional bus driver, died sometime after 9.30pm on 2 December 2011 and the early hours of the morning of 3 December 2011, having been intercepted hours earlier by police, and after breath testing, producing a reading of 0.118.<sup>12</sup>
60. I further find on the evidence that Sergeant Richard Coulson and Senior Constable Paul Roberts both turned their minds to Tony's welfare, took reasonable steps to satisfy themselves that he was safe including driving him home and inquiring as to whether they could or should notify any other person of his interaction with them. The evidence is that Tony made it clear he did not want such contact to be made. Whilst the police members could have overridden this request for no contact if the circumstances were such that they had a reasonable basis to fear for Tony's welfare or state of mind, there is no evidence that

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<sup>12</sup> In excess of double the legal limit for driving in Victoria

they did have such material. Further, on the basis of the evidence before this inquest, I do not find a basis for concluding that the police should or could have contacted a third party without Tony's consent. I consider that the actions of the two members were responsive to the welfare of Tony in that they drove him and his car home, sought to contact someone on his behalf or to deliver him elsewhere. They had a considerable time to monitor his mood, state of mind and listen to what he was saying and watch what he was doing. There was no evidence upon which it would have been reasonable to exercise a judgment to act contrary to his wishes.

62. Tony was variously described as being a private person, with a *wicked* sense of humour and a *non-confrontational* nature. It is apparent that he was a dear family member to many and a valued employee and he has left many grieving in the wake of his death.

## COMMENTS

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

1. Previous attempts to take one's life must continue to be flagged by Victoria Police and always considered as part of any risk assessment conducted by Vicpol members who have any member of our community under their control. A history of a previous attempt on one's life should always heighten the awareness of a police member to think through how he or she should handle the particular circumstances they are in. Individual judgment making needs to be both well informed and well supported institutionally.
2. Having a requirement to make an entry in the Attendance register which demonstrated an acknowledgment of the "suicide flag" and a short response to the actions taken to address any perceived risk would ensure that members had not only seen and acknowledged the flag, but satisfied themselves that the risk had been addressed.
3. I have directed that a copy of this Finding be directed to the Chief Commissioner of Victoria Police and request that he consider distributing a copy of this Finding to members via the VICPOL intranet as well as to the Academy for initial training and on-going training purposes.

Pursuant to section 73(1) of the **Coroners Act 2008**, I order that this Finding be published as part of the Court record.

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

Margaret King

Anthony King (Junior)

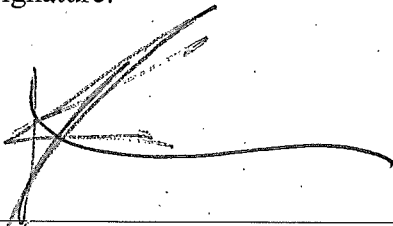
Laurel Ann King

Sandra Joan Vojtisek

Det L/S/C Mathew Phelan, Investigating Member

Chief Commissioner of Police, Ken Lay

Signature:



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JUDGE JENNIFER COATE  
STATE CORONER  
Date: 7 September 2012

