IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2010 0820

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)
Section 67 of the ***Coroners Act 2008***

I, AUDREY JAMIESON, Coroner
having investigated the death of LEWIS JOHN MURATORI
without holding an inquest:
find that the identity of the deceased was LEWIS JOHN MURATORI
born on 1 September 1959
and the death occurred on 28 February 2010
at train tracks adjacent to 6 Raglan Street, St Kilda 3182
from:

1 (a) MULTIPLE INJURIES

1 (b) STRUCK BY TRAIN

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

BACKGROUND

1. Mr Lewis John Muratori was 50 years of age at the time of his death. He was born in Cobram to parents Sheila and Giovanni Muratori and had a younger brother, Stephen. After graduating from high school in Geelong, he completed an apprenticeship as a fitter and tuner at General Motors in 1981 and completed a Diploma of Applied Science (Nursing) in 1983. He initially worked at the Box Hill Hospital for approximately four years and then worked in the Intensive Care Unit (**ICU**) at various hospitals from the 1990s onwards. In November 2004, he commenced working in the ICU at Cabrini Health[1] (**Cabrini**) on a permanent part-time basis performing mainly night shift duties. He had a medical history that included depression,

[1] Formerly known as St Francis Xavier Cabrini Hospital.

smoking, a right wrist injury and lower back pain. Mr Muratori lived alone in a rental property at 291 Orrong Road, St Kilda East.

2. Mr Muratori had consulted with his General Practitioner (**GP**) Dr Mathew Soccio since 2000. He had a longstanding history of depression that had been treated with antidepressant medication Aurorix since approximately 2001. In 2003, Dr Soccio referred Mr Muratori to Psychiatrist Dr David Tofler who diagnosed him with a dysthymic disorder and noted a problem with excessive alcohol use which might have been contributing to his then increased irritability and aggression. Dr Tofler noted that he had a history of intermittent use of recreational drugs, and a history of depression dating back to his twenties.

3. In March 2009 Dr Soccio treated Mr Muratori for a depressive disorder, anxiety and poor sleep. Dr Soccio reviewed him in June 2009, when antidepressant medication that was added to his regime was discontinued due to side effects, however he remained stable on Aurorix.

4. On 25 June 2009, an incident occurred at Cabrini when Mr Muratori perceived that the Associate Unit Manager, Ms Meredith Clark, (**ANUM**) raised her voice at him and threatened him. From the ANUM's perspective, Mr Muratori was perceived to have negatively commented when asked to transfer an ICU patient. Apparently, what was described as a heated conversation ensued and Mr Muratori recalled that the ANUM criticised his attitude and his paperwork.

5. On 7 July 2009, Mr Muratori submitted a written complaint regarding the ANUM, and raised a number of allegations of bullying against the ANUM. On 23 July 2009 Mr Muratori, the Nurse Unit Manager (**NUM**), Ms Jill Saville, and the Director of Nursing (**DN**), Ms Anne Zandegu, met to discuss the complaint. A plan was developed for the DN to meet with the ANUM, and Mr Muratori expressed that he did not want to be present.

6. The DN and NUM met with the ANUM and the ANUM raised performance issues in relation to Mr Muratori. For example, the ANUM reported she had asked Mr Muratori to keep patient fluid balances up to date and he consistently did not do this. She said he was not signing the drug chart after giving patients drugs, which she pointed out can lead to mistakes and over-medicating of patients.

7. Mr Muratori's behaviour was noted to appear up and down – he was inconsistent and some months he would work well. A plan was then developed for the ANUM to commence a ward

audit to assess his work, but to cover the entire ICU so that he would not feel singled out. There were no performance management processes in place for Mr Muratori at this time. He was apparently considered "pre-performance management" at this stage. There are annual performance appraisals conducted with each staff member in the ICU, performed by the ANUM. The NUM has a file for each staff member, and notes regarding discussions and meetings with staff members are located in the relevant staff file.

8. The NUM explained that as Mr Muratori did not have Critical Care qualifications, he generally cared for the less complex patients who generally matched his skill level. He was able to care for stable ICU patients with supervision. There is a Critical Care Educator on site Monday to Friday and a Clinical Resource Person who does not have a patient load on every shift who can be approached for information by staff if required.

9. By August 2009, Mr Muratori commenced working afternoon shifts, and from early October 2009 no longer worked under the supervision of the ANUM, when she assumed a new role at Cabrini that took her out of direct contact with Mr Muratori.

10. On 19 October 2009, Mr Muratori was detained by police in relation to allegations of defacing property and was released without charge. He called in sick to Cabrini on that day.

11. On 20 October 2009, Mr Muratori commenced work at 2:00pm and appeared to be under the influence of alcohol and/or medications. He was called into the NUM's office and admitted to having taken a Valium[2] that morning. It also appeared that Mr Muratori was still experiencing the effects of having consumed a six pack of beer the previous evening. He felt that he was not managing at work but attended as he felt he could not call in sick on two consecutive days. He was reviewed by one of the ICU Physicians and arrangements were made for him to be sent home via taxi. Mr Muratori was observed getting into the taxi and travelled a short distance before exiting the taxi. He walked back to Cabrini, picked up his car and drove it home.

12. The day after the incident, the DN asked the NUM to photocopy her notes from their meeting, as the nursing executive team had decided to report the incident to the Nurses Board of Victoria (**NBV**).[3][4]

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[2] Also known as Diazepam, is a sedative/hypnotic drug of the benzodiazepines class.

[3] Coronial Brief, pages 80-81. The NBV no longer exists and has been replaced by the Australian Health Practitioner Regulation Agency (**AHPRA**).

13. On 22 October 2009, Mr Muratori could not sleep and attended the Alfred Hospital at 1:30am, after having not slept for some days. He was advised to consult GP Dr Williams, who he saw that day and obtained a prescription for Valium.

14. On 23 October 2009, Dr Soccio reviewed Mr Muratori in the presence of his mother and noted that he was depressed, and his mood was compounded by attending work while emotionally labile and with apparent impaired judgement following heavy drinking the previous night. Dr Soccio provided a medical certificate to provide to Cabrini for the period 20 October to 2 November 2009. This was Dr Soccio's last consult with Mr Muratori.

15. On 26 October 2009, Mr Muratori was admitted to Mitcham Private Hospital (**Mitcham**) for stress-related matters. He phoned the ICU stating he was "not right" and "in a bad place". The duty associate nursing manager contacted him to check on his welfare and he repeated he was "not right", but that his mother was with him. Later that day, he attended Cabrini's premises with his mother to hand in a medical certificate. Ms Saville telephoned him at 2.00pm to check on his welfare. Mr Muratori advised her he was in hospital.

16. Sometime between 22 October 2009 and 25 November 2009, Ms K Botha, Cabrini Executive Director of Human Resources, telephoned and made an appointment to see Mr Muratori, however he did not attend the meeting. Mr Muratori subsequently made an appointment with Carbini Executive Director Dr Michael Walsh and Ms Botha, but then cancelled it.

17. On 4 November 2009, Ms Saville attempted to contact Mr Muratori to advise him that she had approved his annual leave. He did not return her calls. On the same day, the DN submitted a notification of complain form to the NBV regarding his conduct at work on 20 October 2009.

18. On 9 November 2009, the NUM approved Mr Muratori's annual leave application for the period between 28 October to 30 November 2009.

19. On 12 November 2009, Mr Muratori was discharged from Mitcham. Mitcham Psychiatrist Dr Naomi Elliott provided a discharge summary report to Dr Soccio noting his inpatient stay, in which he presented with major depression in the context of workplace stressors and feeling overwhelmed. The report noted he had been drinking heavily and was not able to function at

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[4] Coronial Brief, pages 80-81.

work at times, with a gradual decline over several months of anhedonia, low mood, irritability, poor appetite, reduced sleep and impaired concentration. He had no active intention of self-harm at this stage, but expressed feeling hopeless. The report explained that Mr Muratori had reached a conclusion that he was experiencing a "mid-life crisis" of sorts and intended to live a simple ethical life upon discharge.

20. On 18 November 2009, the NBV wrote to Mr Muratori and advised him of the notification of complaint made by Cabrini against him and of its determination to investigate the notification. The correspondence further advised that in lieu of suspension, the NBV sought an agreement from him in writing that he will not practise as a Registered Nurse (**RN**) until the investigation was completed. The NBV determined that Mr Muratori was to undergo psychiatric assessment. Mr Muratori was advised of this determination in writing on 23 November 2009.

21. On 23 November 2009, the DN left a message with Mr Muratori to advise him of the complaint. Mr Muratori apparently attempted to telephone the NUM on 24 and 25 November 2009 without success. The NUM alleged that on 25 November, he sent her a threatening text message and reported this matter to Victoria Police. The relevant text message was however deleted. The NUM was instructed by Cabrini to stop contacting Mr Muratori directly on 25 November 2009. On the same day, an ICU Consultant, with authorisation from the DN, contacted security who deactivated Mr Muratori's security access card to minimise the risk.

22. On or around 24 November 2009, Mr Muratori returned the DN's call and was informed that he should contact the NBV. Mr Muratori contacted the NBV and was informed that he was obliged to consult an approved Psychiatrist.

23. On 25 November 2009, Mr Muratori received an information pack from the NBV that contained a list of approved Psychiatrists, a copy of the notification of complaint and a proposed agreement to be signed by him and returned to the NBV. It appears that Mr Muratori became significantly distressed at this point.

24. On 25 November 2009 at approximately 7.30pm, Ms Saville reported that she had received threatening text messages from Mr Muratori. On 27 November 2009, Mr Muratori contacted Cabrini's pay office and was told that Ms Saville had approved his annual leave request.

25. On 29 November 2009, Mr Muratori contacted Cabrini Human Resources (**Cabrini HR**) to confirm that his leave entitlements would continue to be paid until they ran out.

26. By signed agreement dated 30 November 2009, Mr Muratori agreed with the NBV not to practice until the investigation was completed and to attend Psychiatrist Dr Norman Lewis on 4 December 2009 regarding his fitness to practice.

27. On 1 December 2009, a leave application was approved by the NUM. Mr Muratori reported that his leave payments ceased on 6 December 2009, which appeared to place him in a financially stressful situation.

28. On 4 December 2009, Mr Muratori attended independent Psychiatrist Dr Lewis as part of the NBV's requirements. Dr Lewis's report of the same date noted that Mr Muratori enjoyed the nature of his work, but had experienced decreased job satisfaction and issues with senior staff members in the last few months. He disclosed a long history of depression and having resumed antidepressant medication prior to the incident involving the ANUM. He reported he was occasionally non-compliant with his medication and was struggling with the demands of working night shifts.[5] Dr Lewis recommended that he remained suspended but not deregistered. The NBV contacted Dr Lewis to ascertain the length of the suspension and was informed that it would be dependant on Mr Muratori's treatment progress and that a three month suspension would be appropriate in the circumstances. A copy of Dr Lewis' report was provided to Mr Muratori in early December 2009.

29. On 15 December 2009, Mr Muratori's friend Mr Matt Jelicich contacted the Alfred Health (**Alfred**) Crisis Assessment and Treatment (**CAT**) team as Mr Muratori was expressing suicidal ideation. Although he had no formal plan to self-harm, he disclosed that he had began finalising his affairs. The CAT team reviewed Mr Muratori at his home later that day.

30. On 16 December 2009, the CAT team telephoned GP Dr Williams and advised that Mr Muratori had been assessed as "depressed and suicidal".

31. On 17 December 2009, the CAT team further assessed Mr Muratori, and noted that the risks identified such as his demographics and likely further stressors following his interview with the NBV placed him at a general high risk. The acute risk of self-harm at this time appeared to have been alleviated. Mr Muratori stated that he had considered carbon monoxide poisoning but made no attempt or preparatory steps to execute a plan. He had not finalised his affairs and

[5] Night shift duties began at 7.00pm and ended at 7.30am. Mr Muratori was typically rostered for two shifts per week and would take on one to two extra shifts per week.

denied further thoughts of self-harm. The CAT team communicated their interactions with Mr Muratori to Dr Williams on 18 December 2009 and Mr Muratori attended Dr Williams the same day and informed him of the CAT team contact. Dr Williams referred him to a private Psychologist.

32. By letter dated 29 December 2009, Mr Muratori was invited by the NBV to attend an interview on 11 January 2010 with its investigating officer at the NBV's offices. Mr Muratori was invited to attend the interview with either a friend, union representative, Victorian Nurse Health Program representative or solicitor.

33. On 2 January 2010, Dr Williams examined Mr Muratori, who reported feeling worse but not suicidal. Dr Williams reviewed him on 6 January 2010 and referred him to Psychologist Dr Kathleen Troup. Police later located what appeared to be a 'suicide note' and Will dated 6 January 2010.

34. On or around 8 January 2010, Mr Muratori contacted the NBV to cancel the interview scheduled for 11 January 2010. The interview was rescheduled for 21 January 2010.

35. On 10 January 2010, Mr Muratori's dog was euthanized.

36. On 15 January 2010, Dr Williams reviewed Mr Muratori and provided him with a WorkSafe Certificate of Capacity (**COC**) backdated to 25 December 2009 in anticipation of a claim for compensation pursuant to the *Accident Compensation Act 1985* (Vic) (**ACA**)[6] that stated that he had suicidal tendencies in relation to work-related stressors and was unfit for work from 25 December 2009 to 22 January 2010. Dr Williams wrote to Psychiatrist Dr McArdle requesting consultation regarding exacerbation of chronic depression.

37. On 15 January 2010, Cabrini received a COC from Mr Muratori signed by Dr Williams. Cabrini was therefore aware at that time that Mr Muratori remained under medical care, and that he was pursuing financial support under the ACA.

38. On 21 January 2010, Mr Muratori met with NBV representative Mr Andrew Munro, who informed Mr Muratori of the NBV's decision to suspend him from practice for three months (backdated to 4 December 2009, the date he attended Dr Lewis).

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[6] To be referred to as **claim for compensation**.

39. On 27 January 2010, Mr Muratori spoke with Cabrini HR and requested another leave form be filled in for the NUM's approval. Dr Williams reviewed him on this day.

40. On 31 January 2010, Cabrini advised Mr Muratori that he was required to complete a Worker's Injury Claim Form (**WICF**) if he wanted to pursue a claim for compensation. Mr Muratori expressed that he felt stressed by this information as he thought the COC was all that was required for the purposes of a claim for compensation.

41. On 3 February 2010, Dr Williams reviewed Mr Muratori and provided him with sleeping tablets, Stilnox, and assisted with his claim for compensation documentation. This was Mr Muratori's final consultation with Dr Williams prior to his death.

42. On 4 February 2010, the Investigation Committee of the NBV met and considered a report regarding Mr Muratori's ability to practice and determined that it would seek written agreement from Mr Muratori that he not practice as a RN for a minimum three-month period. The Committee also determined that any application for re-registration on behalf of Mr Muratori's following his suspension period be accompanied by a report from a treating Psychiatrist stating he is fit to practice. Mr Muratori was requested to complete and sign an enclosed written agreement setting out this proposal by 22 February 2010. The NBV did not receive a response from Mr Muratori.

43. On 8 February 2010, Mr Muratori submitted his WICF to Cabrini. Mr Paul Eastman from Cabrini contacted to Mr Muratori in relation to his claim for compensation.

44. Cabrini forwarded the WICF WorkSafe approved agent, QBE, on 9 February 2010, stating the date of alleged injury as 20 October 2009. Cabrini communicated its objection to the COC provided due to it being backdated without explanation. On the same day, Psychiatrist Dr McArdle examined Mr Muratori after a referral from GP Dr Williams. Dr McArdle diagnosed Mr Muratori with major depression.

45. On 16 February 2010, QBE sent instructions to the G4S Compliance and Investigation Pty Ltd (**G4S**) to complete a Circumstance Investigation. These instruction included the COC that noted Mr Muratori's suicidal ideation.

46. On 17 February 2010 a QBE claims agent sent Dr Williams a practitioners questionnaire and made an appointment with an independent medical examiner (**IME**), Psychiatrist Associate Professor George Mendelson for 26 February 2010. A Coding and Registration Checklist was

completed[7] and Mr Muratori was certified as High Risk. A G4S private investigator was instructed to make contact with Mr Muratori and obtain a statement for the purpose of a Circumstance Investigation report, which was due under the ACA by 5 March 2010. An employer checklist requesting information regarding the claim and employment was also completed.

47. On 17 February 2010, Mr Muratori received correspondence from the NBV confirming his suspension. Cabrini HR also informed him on this day that his COC was invalid as it was backdated without explanation.

48. On 18 February 2010, Dr McArdle reviewed Mr Muratori and found him to be very distressed and in a suicidal state following news that he has been suspended for a three month period and could not work. His financial situation was troublesome and he expressed feeling overwhelmed by the WorkSafe process. He was noted to be "quite a risk" at that time. Dr McArdle agreed to provide another COC and suggested to Mr Muratori that he should be admitted to an inpatient psychiatric unit, however Mr Muratori refused this suggestion. Dr McArdle wrote to the NBV seeking clarification of the suspension period and proposed action. Dr McArdle also contacted Dr Williams to alert him to Mr Muratori's state and the possible need for CAT Team involvement. A further appointment was made with Dr McArdle for the following week, however Mr Muratori did not attend.

49. On 19 and 20 February 20010, G4S attempted to telephone Mr Muratori and left voicemail messages. On 22 February 2010, G4S sent a text message to Mr Muratori requesting he establish contact. Mr Muratori subsequently telephoned G4S to discuss his claim for compensation. An appointment was made for a Private Investigator (**PI**) to attend Mr Muratori's home on 23 February 2010 for the purpose of obtaining a statement. Mr Muratori was advised that he could have a support person present for the duration of the interview.

50. On 23 February 2010, Mr Christopher Jennings, Compliance and Investigations, attended Mr Muratori's home at 11.00am to obtain a statement. The interview commenced at 11.05am and continued for approximately eight hours before concluding. Mr Muratori's friend, Mr Greg

[7] I assume this was completed by the QBE claims agent, although WorkSafe's submissions are not entirely clear on this point (page 11 of submissions).

Ades was present for the interview from 1.30pm onwards. The interview resulted in an extensive statement on behalf of Mr Muratori.[8]

51. On 26 February 2010, IME Associate Professor Mendelson reviewed Mr Muratori on QBE's behalf and provided a report that stated that Mr Muratori suffered from an Adjustment Disorder with depressed mood. The report also stated that in his opinion, Mr Muratori's absence from work was due to the NBV action rather than from exacerbation of depressive symptoms resulting from work-related factors, but noted that following finalisation of the NBV proceedings, he may require some time to recover from depressive symptoms and return to work.

52. At approximately 10:25pm on 28 February 2010, a Sandringham line train travelling from Sandringham to Flinders Street was adjacent to Raglan Street, St Kilda when the train driver suddenly observed Mr Muratori walking along the train tracks in the path of the oncoming train. The driver immediately sounded the horn and applied the emergency brakes, but was unable to avoid a collision.

53. The train driver immediately notified Metro Trains Melbourne (**MTM**) who notified Emergency Services. Police attended the scene and established that Mr Muratori had died as a result of the impact.

INVESTIGATIONS

54. Dr Paul Bedford, Forensic Pathologist at the Victorian Institute of Forensic Medicine, performed an external examination upon the body of Mr Muratori, reviewed a post mortem CT scan and the Victorian Police Report of Death, Form 83. Anatomical findings were consistent with the known mechanism of injury.

55. Toxicological analysis of blood retrieved post mortem identified the presence of ethanol at a concentration of 0.22g/100mL,[9] Codeine,[10] Morphine,[11] Moclobemide,[12] Zolpidem,[13]

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[8] Coronial brief page 156.

[9] The legal limit for blood alcohol for fully licensed car drivers is 0.05g/100mL. BAL in excess of 0.15g/100mL can cause considerable depression of the central nervous system (CNS). Other drugs capable of depressing the CNS will increase the effects of alcohol.

[10] Codeine is a narcotic analgesic related closely to morphine but having approximately one-tenth the activity. The concentration was found to be within the expected therapeutic range.

Diazepam[14] and its metabolite, Nordiazepam, and Paracetamol. Dr Bedford ascribed the cause of Mr Muratori's death to multiple injuries as a result of being struck by a train.

56. The circumstances of Ms Muratori's death have been the subject of investigation by Victoria Police. Mr Muratori did not have any formal forms of identification with him at the time of his death, however Police discovered information written on various parts of his body that included identification information and directions that he not be resuscitated.

57. Police members attended Mr Muratori's residence and located a box in the lounge room that appeared to have been prepared by him, containing his Last Will and Testament, a suicide note and a camera with photos of himself taken at approximately 9:09pm on 28 February 2010.

58. Police obtained statements from:

    a. the Alfred Psychiatry CAT team;

    b. the AHPRA;

    c. Mr Muratori's mother, Mrs Sheila Muratori;

    d. Mr Muratori's brother, Mr Stephen Muratori;

    e. Mr Muratori's friends, Mr Jelicich, Mr Ades and Ms Elise Allen; and acquaintance Ms Mary Garson;

    f. GPs Dr Soccio and Dr Williams;

    g. Psychiatrists Dr Norman Lewis, Dr David Tofler, Dr Peter McArdle and Dr Elliot;

    h. various co-workers;

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[11] Morphine is a narcotic analgesic used to treat moderate to severe pain. It is also a metabolite of codeine (small amounts of morphine are associated with codeine use, however codeine would also be detectable and would be reported).

[12] Moclobemide is an antidepressant medication belonging to the type A group of monoamine oxidase inhibitors. The concentration was found to be within the expected therapeutic range.

[13] Zolpidem is an imidazopyridine derivative used since 1986 in European countries and since 1993 in the USA as an hypnotic agent. It is available in Australian as Stilnox tablets 10mg. The concentration was found to be within the expected therapeutic range.

[14] The concentrations were found to be within the expected therapeutic ranges.

i. the train driver; and

j. an MTM Investigator.

59. Mr Jelicich explained that Mr Muratori had become suicidal in the weeks prior to his death. Mr Jelicich was aware of Mr Muratori's previous contact with the Alfred CAT team and contacted them to assist with the situation. Mr Jelicich asserts that the CAT team twice refused to attend unless Mr Muratori personally requested their attendance. Mr Jelicich was informed by a mutual friend that Mr Muratori had attempted suicide a few days prior to his death by directing fumes from the exhaust pipe of his vehicle to his car. Mr Jelicich inspected Mr Muratori's car a number of days after his death and observed evidence of this event, with tape remaining over the vents.

60. Mr Ades was present throughout a portion of the QBE interview, arriving at 1:30pm. The interview concluded at approximately 7:30pm. Mr Ades had attended as Mr Muratori had expressed distress in anticipation of the interview. Mr Ades attempted to break up the interview as he observed Mr Muratori to be anxious and irritated. Mr Muratori explained he felt resentful at having to explain the situation to another person in the WorkSafe process.

MTM investigation

61. The collision site is fenced and not readily accessible by pedestrians. There are no designated crossing points in the surrounding area and the eastern side of the rail reserve backs onto residential and commercial properties with no pedestrian access points.

62. The train driver had 10 years experience as an electric train driver and had commenced his shift at 4:20pm. He had slept well the previous night, does not wear prescription glasses and was not taking medication. He returned a negative preliminary breath test and reported that the brakes and horn had been functioning normally prior to the incident. The headlights were on and the maximum line speed is 70kph. There was no lighting at the site of the incident.

63. Telemetry information obtained from the train's datalogger confirmed that the train attained a maximum speed of 78.71kph whilst travelling between Balaclava and Windsor stations. While the MTM investigation noted that the train was travelling eight kilometres per hour above the maximum line speed, it noted that in the context of calculations of relative stopping distances, the additional speed was not considered to have contributed to the outcome.

64. Further analysis of datalogger information identified that the train driver had sounded the horn approximately two seconds prior to the emergency brakes being activated. The datalogger confirmed that the power to the train was shut off approximately six seconds prior to the application of the emergency brake but continued to pick up speed on the downhill gradient. The MTM investigation concluded that the train driver reaction upon seeing Mr Muratori on the tracks was appropriate.

Court proceedings

65. A Mention Hearing was conducted on 10 August 2012 to assist in identifying the issues to be explored during the coronial investigation and to determine whether there was a need to conduct a public inquest.

66. Mrs Sheila Muratori, WorkSafe Victoria, the Alfred Health (**the Alfred**), the Department of Transport/VicTrack, and Cabrini attended as Interested Parties in the matter. I requested that WorkSafe, the Alfred and Cabrini provide written submissions as to whether they respectively considered there was a need to hold an inquest. The three parties were also asked to address specific points in their submissions relevant to their involvement with Mr Muratori. Mrs Muratori advised me that she also intended to provide written submissions.

67. During the Mention Hearing, I clarified that the coronial investigation was not going to focus on whether Mr Muratori's claim for compensation for psychological injury should have been accepted by WorkSafe as I determined that point to be outside my jurisdiction and not relevant to my enquiry.

68. Submissions were received from Mrs Muratori, Cabrini, Alfred and WorkSafe. No party requested that an inquest be conducted.

69. Cabrini submitted that an inquest is not necessary because:

    a. the cause and circumstances of the death are evident on the documentary materials;

    b. I am able to make the necessary factual findings on the documentary materials;

    c. there have been a number of investigations in relation to Mr Muratori's bullying allegations and his death;

d. a public and private interest in protection Mr Muratori's personal and health information; and

e. to the extent that I may wish to comment on systemic matters, or on the management of Mr Muratori, the documentary material is in place to do so.

Alfred Health Submissions

70. The Alfred was asked to provide submissions in relation to discrepancies identified between the statement of Mr Jelicich and the statement of a former CAT team nurse. During the course of the Mention Hearing, a friend of Mr Muratori addressed the court and informed that on one occasion, Mr Jelicich had telephoned the CAT team to say that Mr Muratori was severely distressed (too distressed to himself speak) but was told that due to privacy reasons the CAT team could only speak to Mr Muratori himself.

71. In response, the Alfred Program (Clinical) Director of Psychiatry, Associate Professor Simon Stafrace provided a statement. Mr Muratori's clinical file indicated that following his presentation to the Emergency Department (**ED**) at the Alfred on 22 October 2009, telephone calls were made by an ED nurse at 7.43am to organise a referral for follow-up by the CAT team and by Dr Sciocco.

72. At approximately 4.00pm on 22 October 2009, the CAT team received a telephone call from Mrs Muratori, who expressed her concerns for her son's wellbeing. A CAT team clinician subsequently telephoned Mr Muratori, who seemed stable and denied any plans to self-harm. He agreed to consult with his GP that day to seek assistance for his insomnia and stated that he had an appointment with his private Psychiatrist later that week.

73. On 27 October 2009, a follow-up telephone call was made by the CAT team to Dr Sciocco, who notified the clinician that Mr Muratori had been admitted to Mitcham Private Hospital for management of worsening depression.

74. The CAT team received a letter from Dr Naomi Elliott summarising Mr Muratori's stay at Mitcham Private Hospital, specifying that at no stage during his admission did he communicate suicidal ideation.

75. On 15 December 2009, the CAT team received a telephone call from Mr Jelicich at 2.48pm, expressing concern regarding Mr Muratori's mood and recent emergence of suicidal ideation.

Mr Muratori was subsequently contacted by telephone by a CAT team clinician and stated that although he was experiencing a low mood, he did not specify a plan to commit suicide, but admitted to finalising his affairs. A CAT team assessment was arranged for later that day.

76. Mr Muratori was seen by Nurse Cook on 15 December 2009 at his home. Nurse Cook documented that he reported suicidal ideation, which had decreased in intensity overnight. He had recently changed GPs and had been referred to Psychiatrist Dr Norman Lewis. His social history, including that he lived alone, his recent perceived loss of professional reputation and his alcohol abuse were collectively noted as risk factors demanding ongoing management and attention. Nurse Cook spoke with Mr Muratori about available treatment options, including cognitive behavioural therapy and drug and alcohol counselling. He was provided with the contact details of private clinics for both treatment modalities. Arrangements were made for the CAT team to contact his GP and to communicate with Mr Muratori to ensure follow-up arrangements were in place.

77. Mr Muratori was then contacted by another CAT team clinician on 16 December 2009 to arrange another home visit. Mr Muratori described an improved mood at this stage but admitted to continual daily alcohol consumption.

78. On 17 December 2009, Mr Muratori was seen at his home by CAT team Psychiatric Registrar Dr Tatiana Catanchin and Psychiatrist Dr James Nahamkes. He presented as settled and calm, described feeling a sense of loss of control over his circumstances and perceived the actions of senior staff at Cabrini to be motivated by malice rather than an interest in protecting patient welfare. He stated that the severe distress and suicidal ideation present two days prior had passed. They went over the management plan of handover to his GP and ongoing treatment with specialist Psychologists and Psychiatrists was repeated. A referral was made to the Alfred Community Mental Health Clinic for additional follow-up, however Mr Muratori decided not to pursue this after an initial telephone call.[15]

79. On 29 December 2009, Mr Muratori telephoned the CAT team at 11.17am and requested information regarding therapy options be provided again. He became hostile to the triage clinician initially, however later apologised. He described a low mood and fleeting suicidal ideation, however was assessed as safe as he had plans to engage with a private provider. His

[15] However Dr Stafrace noted that there was no record of this in the clinical file, and obtained the information from a letter from Dr Catanchin to another Psychiatrist dated 31 March 2010.

file was however placed on alert[16] at this stage. Mr Muratori was encouraged to contact the CAT team if he required additional support. There is no further contact recorded between the CAT team and Mr Muratori.

80. Although there was an initial discrepancy identified between the evidence of Mr Muratori's friends and the evidence of a CAT team clinician, I am satisfied from the Alfred's written submission and the thorough recording of contact between the CAT team and Mr Muratori that the CAT team involvement, management and treatment of Mr Muratori was appropriate in the circumstances and I make no adverse comment or finding regarding Alfred Health on this basis.

Cabrini submissions

81. I requested Cabrini provide submissions regarding the support, if any, Cabrini provided to Mr Muratori during his period of suspension pursuant to the complaint made to the NBV. I also requested that Cabrini's provide information relating to Mr Muratori's performance and performance appraisals, and in relation to their response to complaints made by Mr Muratori of perceived bullying and victimisation.

82. Cabrini made reference to the suicide note dated 6 January 2010 located in Mr Muratori's home, which made reference to the loss of his job as being "the last straw" and that he could not imagine being able to continue his nursing role. Cabrini submitted that Mr Muratori had not lost his job - Cabrini had not told him that he would be unable to return to work, nor was there any other objective indication that he would not be able to return to work as a nurse. Mr Muratori was still in receipt of leave payments and Cabrini had not taken any steps to terminate his employment or issue any sort of warning. Cabrini determined that the reason for his suspension was not related to the bullying complaint, rather it related to his attendance at work in a state that rendered him unfit to manage high-risk ICU patients.

83. Cabrini submitted that at the time of death, Mr Muratori must have known that the only barrier to his return to work at Cabrini was obtaining a psychiatric clearance after the three months suspension. Cabrini submitted that for him to say in his suicide note that he had lost his job and that this was the "final straw", Mr Muratori must have thought that he would not be

[16] This is a mechanism which ensures that the client's basic details are passed onto each relieving shift of clinicians at triage in order to ensure that in the event a patient should contact the service, the conversation can progress more rapidly from the collection of identifying information to a therapeutic encounter.

able to obtain such a clearance. I consider it unhelpful to attempt to treat the content of a suicide note as an exhaustive or definitive list, or of Cabrini to attempt to ascertain Mr Muratori's subjective thoughts on this matter, nor do these strategies attempt to answer the questions I asked of Cabrini. I can only assume that Cabrini misunderstood the issues I requested they address in their submissions.

84. Cabrini submitted that to single out his work complaint about the ANUM, or the handling of that complaint, as being connected to his death would be selective and simplistic. Cabrini sought to clarify that the ANUM was not promoted (she was moved to a project team) and the complaint was followed up. Cabrini explained that the complaint (which was received two weeks after the incident) was followed up promptly and a meeting was arranged as soon as the relevant staff were available.

85. Cabrini submitted that Mr Muratori appeared to be in good spirits in early September 2009, prior to the 20 October 2009, and there is no evidence of any specific incident or difficulty at work between 1 September and 20 October 2009. Cabrini pointed to external matters that had changed for Mr Muratori during that period as being illness of his beloved dog and his police arrest.

86. Cabrini further submitted that the ANUM subject of Mr Muratori's complaint no longer worked in the ICU from 5 October 2009, and that incident which caused Mr Muratori to stop working occurred on 20 October 2009. Cabrini therefore submitted that there is no evidence that any conduct by any staff member of Cabrini contributed to Mr Muratori's decline in that period.

87. Cabrini submitted that the allegation of bullying made by Mr Muratori against ANUM Ms Meredith Clark was not, either chronologically or causally, proximate to his death.

88. Cabrini further submitted that Mr Muratori's complaint in July 2009 was dealt with fairly and appropriately. Cabrini explained that it took the complaint seriously and addressed it thoroughly, in accordance with its policies and procedures that were appropriate and reflected prevailing practice for an employer of its size and type. Cabrini highlighted that the complaint was handled in accordance with its grievance procedure and harassment and bullying policy, both of which were subsequently reviewed by WorkSafe.

89. Cabrini responded to Mr Muratori's complaint by:

a. conducting a meeting with Mr Muratori, NUM Ms Saville and DN Ms Zandegu. At that meeting it was agreed that Ms Saville and Ms Zandegu would meet with Ms Clark and convey the issues raised to her;

b. conducting a meeting with Ms Clark, drawing her attention to possible improvements in her communication style and agreeing that as part of Ms Clark's professional development plan, Ms Clark would work on improving her communication style;

c. booking Ms Clark into a leadership course focussed on management styles, communication styles and bullying;

d. offering Mr Muratori access to Cabrini's Employee Assistance Program, which he rejected;

e. changing rosters so that Ms Clark and Mr Muratori generally did not work together (Ms Clark no longer worked with Mr Muratori from on or around 5 October 2009);

f. offering Mr Muratori the opportunity of a mediated meeting with Ms Clark, which he rejected; and

g. following up with Mr Muratori regarding subsequent interactions with Ms Clark.

90. Cabrini explained that Muratori was *not* being formally performance managed at the time he was working at Cabrini. While Ms Saville and Ms Clark held concerns about his performance, and intended to follow those up, they had not directly raised those concerns with him. It appears on this basis that there is no record of performance management issues reflected in his annual performance review.

91. Cabrini submitted that in the circumstances it is not necessary to inquire into Mr Muratori's actual performance, that there is no evidence indicating that Ms Clark unreasonably or capriciously raised issues of concern with Mr Muratori, and that therefore this line of enquiry is unlikely to disclose any bullying conduct. Cabrini further submitted that there is no evidence that Mr Muratori was concerned about being performance managed, and it is

therefore not causally connected with his decision to take his own life. Cabrini therefore submitted that there was no basis for the me to make any comments about the bullying complaint or Cabrini's handling of that complaint as they are not relevantly connected to the death. On the same basis Cabrini submitted there is no justification for an adverse comment in relation to its handling of Mr Muratori's complaint, either in relation to its systemic response to bullying allegations or in relation to the handling of this particular case.

92. Cabrini explained that in August 2010, WorkSafe Inspectors conducted an investigation into workplace bullying at Cabrini. They collected exhibits including:

    a. Cabrini's Mission Values and Code Behaviour document;

    b. Cabrini's Understanding Workplace Bullying seminar;

    c. Cabrini's Grievance Procedure;

    d. Cabrini's Harassment & Bullying Policy;

    e. Cabrini's Staff Support Network documentation; and

    f. Cabrini's Centacare Counselling Service documentation

93. Following the investigation WorkSafe did not issue any improvement notices, and did not lay any charges in relation to its investigation. Cabrini report that the Inspector took the view that Cabrini had adequate measures in place for the prevention and management of workplace bullying.

94. Similarly, in May and June of 2011, a WorkSafe Inspector conducted a health and safety investigation into Mr Muratori's bullying complaint, took statements from six of Mr Muratori's colleagues as well as from Ms Zandegu and Ms Botha, and collected further exhibits. Again, WorkSafe did not issue any improvement notices or lay any charges in relation to that investigation.

Events of 20 October 2009

95. Cabrini submitted that Mr Muratori admitted at various times on or after 20 October 2009 that at the time of that incident he had been drinking and was under the influence of alcohol, that

he had taken Valium, and that his behaviour was out of character and unacceptable. Cabrini submitted that in the circumstances, Ms Zandegu and Ms Saville acted appropriately by ending Mr Muratori's shift and sending him home in a taxi, and that Ms Zandegu was obliged under her professional code of conduct to report the incident of 20 October 2009 to the NBV. While as at October 2009 the relevant legislation did not provide for mandatory notification of such matters, the Code of Professional Conduct for Nurses in Australia issued by the Australian Nursing and Midwifery Council (the Code) imposed on nurses a responsibility and obligation to report unlawful and unacceptable conduct to appropriate authorities. Cabrini noted that although the *Health Practitioner Regulation National Law (Victoria) Act* 2009 introduced uniform mandatory reporting, that Act did not come into force until 1 July 2010, Cabrini was aware of its pending introduction and in this context there was a clear professional, if not statutory, duty to report the incident to the NBV. Cabrini therefore submitted that the referral of the 20 October 2009 incident to the NBV was justified and necessary.

96. While I do not take issue with this submission in general, I am not entirely convinced that a long-time employee who had not previously demonstrated unsafe practices should have been reported to a regulatory body on the first occasion of questionable conduct. While it was open to Cabrini to report the matter to the NBV, it was also open to Cabrini to manage the issues internally and approach Mr Muratori in a manner reflecting underlying concern for his wellbeing and demonstrating support for an employee acting in a way that is, by Cabrini's own admission, out of character.

97. Cabrini also submitted that that the NBV investigation was lengthy and it was not Cabrini's role to communicate with Mr Muratori about the progress of that external investigation. I do not recall suggesting that this was Cabrini's role. What I specifically asked was whether (and how) Cabrini notified Mr Muratori that it had reported the matter to the board. After reading Cabrini's submissions, these points remain unclear. While I make no comment in relation to employer's general statutory obligations, I consider that a process that appears fair would include demonstrable transparency, communication and support. I consider that general procedural fairness would have required Cabrini to formally inform Mr Muratori of their notification to the NGV in a timely way. That Mr Muratori was advised by Cabrini over the telephone to contact the NGV some weeks after it had reported the matter is not necessarily commensurate with the notion of procedural fairness.

Follow up post referral to the Former Board

98. Cabrini pointed to three aspects of Mr Muratori's situation that Cabrini might have followed up: his job status, pay, and personal support.

99. Cabrini submitted that once it had referred the matter to the NBV, it was unable to offer Mr Muratori work as a nurse until his eligibility to work as a nurse was resolved by the NBV. Cabrini submitted that the speed of the process, the steps required to determine the matter, his rights of assistance and representation were all matters for the NBV and matters which Cabrini was not in a position to communicate with him about.

100. Mr Muratori was on leave due to being mentally unwell and an inpatient in the psychiatric ward of a hospital from 20 October 2009 until about 24 November 2009. From approximately 24 November 2009 to 22 February 2010 he was not able to work by agreement between him and the NBV. From approximately 22 February 2010 he was unable to practice as a nurse (as a result of an agreement with the NBV) for three months and subject to a requirement that at the end of that period he was to be cleared by a psychiatrist in order to return to duties.

101. Cabrini submitted that Mt Muratori's complaints about his pay (recorded at paragraph 127 of his statement and in the statements of his friends) were unfounded, or at least exaggerated and that there was no basis for his claim that Ms Saville was blocking his leave payments. Cabrini acknowledged that there may have been some administrative problems, however maintained that Mr Muratori was paid all his sick and annual leave, that Ms Saville made the appropriate arrangements on each occasion as soon as requests were received. As at 28 February 2010, he had received 6 days pay for each of the fortnights beginning 18 January, 1 February and 15 February, 18 days pay for the previous 6-week period over Christmas, and all his leave entitlements for the preceding period since 22 October 2009. Mr Muratori had asserted that his leave payments stopped on 6 December 2009, however Cabrini assert that this is incorrect - his personal leave payments ceased but he received annual leave payments from this date. Cabrini therefore submitted that as at 28 February 2010, Mr Muratori's financial pressures were not as a result of him not being paid by Cabrini.

102. With respect to Mr Muratori's mental health, Cabrini was made aware that he was an in-patient at a psychiatric unit. Cabrini submitted that it was entitled to assume that he was receiving appropriate medical treatment and that it would not have been appropriate in the circumstances for Cabrini, as his employer, to involve itself in his private medical issues.

103. In terms of general welfare, Cabrini maintain that Ms Saville made follow-up calls to Mr Muratori, but was unable to continue doing so after 25 November 2009 due to threatening text messages he apparently sent her. As these text messages were deleted, I am unable to comment in this regard.

104. Cabrini submitted that at all material times, Cabrini had (and continues to have) employee support processes in place that meet or exceed the standard expected of an employer of its size in the health care industry. In particular, Cabrini provided (and continues to provide) a range of counselling and support services to its employees through the Cabrini Health Employee Assistance Programme (**EAP**), which consists of pastoral services, Centacare Counselling Service, and a staff medical clinic.

105. Cabrini noted that nurses may also access the Nursing and Midwifery Health Program Victoria (**NMHP**) which addresses the needs of nurses and midwives experiencing mental health concerns and substance use issues. The NMHP conducts assessments, develops individual management plans and coordinates treatment, including the arrangement of referrals. Employees ordinarily subscribe to the NMHP through self-referral or employer assisted referral. Cabrini, the NB, the relevant union, and the Australian Nurses Federation each support the referral of affected employees to the NMHP. EAP and NMHP brochures were (and continue to be) easily accessible and located in and around the Cabrini workplace. These services were available to Mr Muratori.

106. Cabrini noted that on 20 October 2009, after the incident, Ms Saville and Ms Zandegu offered to make an appointment on Mr Muratori's behalf with his doctor or otherwise to refer him to the Cabrini ED to consult a doctor. Mr Muratori refused both offers of assistance. Ms Saville then called Dr Jason McClure, an ICU Consultant, who spoke with Mr Muratori for approximately 15 minutes before sending him home.

107. Cabrini acknowledged that with the benefit of hindsight, there is always scope to conceive of further or alternative steps that could have been taken, however, that must be considered in the light of Mr Muratori's entitlement to privacy, the NBV investigation, Mr Muratori's claim for compensation and Mr Muratori's alleged text message to Ms Saville. Cabrini submitted that that any further efforts it made would have been unlikely to have made any difference to Mr Muratori's situation as he was in receipt of appropriate medical and psychiatric care, had a sound social support network and did not opt to access assistance from Cabrini's EAP.

108. Cabrini further submitted that no adverse comment in relation to Cabrini's conduct is justified in relation to any matter connected with Mr Muratori's death and that Cabrini had at all relevant times appropriate support mechanisms, systems and procedures in the form of the three pillar EAP process. Cabrini submitted that these systems met or exceeded the standards typically provided by an employer of its nature.[17] Carbrini acknowledged that although the evidence in the materials does not specifically refer to Mr Muratori being provided with brochures for other EAP services, such material was available in the workplace.

WorkSafe submissions

109. WorkSafe was requested to address points in their submissions including what process WorkSafe has in place to manage workers submitting claims for compensation who are psychologically fragile and at high risk. WorkSafe was specifically asked to address whether the conduct of an eight-hour interview was appropriate in the circumstances and what policies and/or procedures are in place in this regard.

110. The VWA noted that WorkSafe had conducted two separate but parallel investigations – one focused on whether Mr Muratori's allegation of workplace bullying constituted an offence under the *Occupational Health and Safety Act 2004* (Vic) (OH&S Act), and the other focused on the conduct and management of Mr Muratori's claim for compensation under the ACA.

WorkSafe claim for compensation process

111. The Accident Compensation Scheme, created by the ACA is a predominately "no fault" compensation and compulsory insurance scheme which provides a range of entitlements to injured workers, including benefits for loss of income (**weekly payments**) and medical and like expenses incurred as a result of a work related injury (**the Scheme**). Other entitlements include common law damages if it is determined that a worker suffered from a "serious injury" as defined by statute and common law and the worker can demonstrate pain and suffering and/or pecuniary loss as a result of the work related injury.

[17] Cabrini noted that it had re-launched the Cabrini Health EAP in April 2012 in order to ensure its continued relevance to the Cabrini workforce.

112. WorkSafe acts as both the regulator and the underwriter of the Scheme and administers it through "authorised agents", who are appointed in accordance with section 23 of the ACA. WorkSafe currently has five appointed agents, with QBE being one of them, appointed for a term of five years commencing 1 July 2011. All agents undertake claims and premium management services on behalf of WorkSafe. The terms, conditions and obligation of the appointment are set out in individual agency agreements between WorkSafe and each agent.

113. The management and processing of claims by WorkSafe through its Agents is conducted in the context of the statutory framework of the ACA. While the ACA provides for a no-fault system of worker's compensation, other considerations are also relevant, as may be seen from an examination of the objects of the ACA and practical matters that arise in the course of accepting and rejecting claims and administering entitlements.

114. The Scheme receives approximately 29,000 claims per annum, and approximately 10% of those claims are for psychological injury. A large proportion of the psychological injury claims relate to allegations of bullying and/or harassment as the cause of the psychological injury. A 2011 WorkSafe study indicated that performance management issues and interpersonal conflicts were the most predominant cause of work-related psychological injury.

115. Most work related psychological injuries are assessed by an IME. The 2011 study's analysis of IME data revealed that the main diagnoses were Adjustment Disorder (60%) with Depression (14%) and Anxiety (5%) ranking behind.

116. WorkSafe's definition of bullying includes "any repeated, unreasonable behaviour directed towards a worker, or group of workers, that creates a risk to health and safety".

Claims management procedures

117. The processes of the ACA are circumscribed by time limits and in reality involve a balancing of the rights of the injured worker with the fairness to the employer, having regard to the financial viability of the Scheme.

118. The worker carries the initial onus in terms of the claim and the injury. The employer then carries an onus if it seeks to exclude liability for a psychological injury pursuant to the defence of, generally speaking, reasonable management action under section 82 (2A) of the

ACA. These are factual matters that usually depend upon thorough investigation in the initial stages of the claim.

119. Where there are pre-existing psychological issues, a worker's entitlements may be further restricted and it must then be demonstrated that their employment was a significant contributing factor to the injury, and that it cause an aggravation of the pre-existing illness.

120. Although the worker has the onus of establishing that their employment was a significant contributing factor to their injury, WorkSafe and its agents in dealing with a claim must verify matters alleged in the claim, and conduct an adequate and timely review of factual matters. A decision must then be made as to whether these matters satisfy certain statutory tests.

121. The trigger for consideration of these matters is receipt of a WICF. The ACA is strict in its requirements that adequate and accurate documentation be submitted. Parliament has placed obligations on workers and their treating medical practitioners in this regard.

122. Section 105 of the ACA similarly requires strict compliance with the form and content of medical certificates and states that the COC is of no effect if it contains a material defect, omission or irregularity.

123. WorkSafe, through its agent, is required to make a decision on liability within 28 days after receiving the claim (employers are obliged to forward claims to WorkSafe within 10 days of receipt of the claim). This creates time pressures to process and investigate the matter. An investigation is usually undertaken where there is a possibility that section 82(2A) of the ACA may apply. The investigation may involve an assessment and report from an IME, a circumstances report and obtaining information from the worker's treating health practitioners, usually through a Medical Practitioner Questionnaire. After these steps are taken, an agent is in a position to make a determination regarding whether to accept liability for the claim.

124. To complement the requirements of the ACA, WorkSafe introduced an "early acceptance process" in 2006, to ensure agents conduct an initial assessment to determine whether an investigation is required in every case (**Work Practice**). The Work Practice requires the Eligibility Officers (**EOs**) to complete a checklist within seven days of receiving the claim, to determine the need for an investigation.

125. The Work Practice means that, if there is sufficient evidence to support the claim, it must be accepted without the need for investigation. This ensures, as far as possible, that workers with a clear entitlement, because they have been subjected to demonstrable stressors at work[18] and have sustained clear psychological injuries are not the subject of unnecessary investigation. Approximately 15% of claims are accepted via this Work Practice within seven days of receipt.

Stress related claims procedures - WorkSafe's use of private investigators

126. Agents engage private investigators (**PIs**) to carry out either surveillance (activity) investigations, or circumstance (factual) investigations, which determine the facts surrounding an injury claim. Agents may only allocate an investigation to an approved provider, who holds appropriate licences under the *Private Security Act 2004* (Vic), has had security checks and holds relevant insurance.

127. Within the Enforcement Group, the External Investigation Management Unit (**EIMU**) works with agents and PIs to administer the Private Investigator Performance Program. The aim of the program is to standardise the procedures agents use when arranging investigations, to ensure better management of private investigations by WorkSafe. Specifically, EIMU's role is to:

    a. manage the private investigation process;

    b. conduct audits of investigators' performance;

    c. investigate complains regarding investigators and investigations;

    d. monitor costs; and

    e. manage and maintain a registration database.

128. The agent's role includes the responsibility for allocating work to approved PIs with appropriate skills, and to ensure the PIs comply with relevant legislation.

129. The *Code of Practice for Private Investigators* (**Code**) sets out the obligations and standards WorkSafe expects of PIs. WorkSafe conducts audits to monitor adherence to this Code. A PI

[18] For example, armed robberies, assaults and so on.

must conduct investigations in a manner that will not detract from or damage the reputation of Scheme, WorkSafe, or its authorised representatives in any way.

Management of High-Risk workers

130. The VWA submissions establish that an on-line Claims Manual has been developed and is maintained by WorkSafe. It establishes the policies and procedures to assist its agents with claims management, and to make decisions in accordance with the ACA. This manual is available on the WorkSafe website.

131. On 1 June 2006, WorkSafe amended the Claims Manual and a new procedure was introduced to deal with the management of "high risk workers" (Chapters 7.8-7.9) (**HR Procedure**). A high-risk worker is defined as a worker "at risk of self-harm or harm to others". The 2006 amendments require claims identified as "high-risk" to be flagged on WorkSafe's claims management system, to ensure the claim is escalated to an appropriate person in the first instance and to ensure the claim is managed sensitively. The flags are reviewed periodically to determine their continued relevance.

132. The 2006 amendments also introduced a policy authorising the payment of inpatient psychiatric treatment for workers in urgent cases, prior to a decision to formally accept liability for the claim, where there is an immediate risk to a worker's life.

133. Prior to the implementation of this policy, WorkSafe conducted extensive search for an experienced provider to develop and deliver training to nominated agent staff that manage high-risk workers, as well as relevant WorkSafe employees.

134. Lifeline Australia was commissioned to run a two-day course to complement the procedures in the Claims Manual. The Course is designed to equip case managers with the ability to identify the warning signs of self-harm, and to respond appropriately and sensitively. This course is followed by a half-day refresher every two years, or as indicated. Since its introduction, over 800 participants have completed the two-day training and 400 have completed the refresher course. Lifeline runs between six and nine workshops and four to six refreshers for WorkSafe each year. WorkSafe keeps a record of staff attendance to ensure an appropriate number of case managers are trained for each agent.

The QBE claims process and Mr Muratori's application for compensation

135. WorkSafe provided the statement of Zaika Raffoul, Service Manager with QBE. QBE received Mr Muratori's claim dated 4 February 2010 on 9 February 2010. It was supported by a COC dated 15 January 2010, signed by Dr Williams. The COC stated that Mr Muratori's injury was "depressed mood, loss of motivation, insomnia, suicidal thoughts in the setting or work place stressors".

136. The claim was assigned to QBE Case Manager[19] Ms Winnie Tjong. Ms Tjong had previously worked for WorkCover in Queensland and for QBE for approximately 15 months at this stage. Ms Tjong had received the Applied Suicide Intervention Skills Training (**ASIST**) and in-house briefings on telephone skills where the possibility of self-harm was apparent.

137. Stress-related claims are (and were at February 2010) elevated to a high value work practice (**HVWP**) process.[20] As part of the expected process, both employers and workers are contacted to obtain relevant information relating to the circumstances of the injury and its cause. The claim must either be accepted or held pending for no more than 28 days to determine liability.

138. In this case, the employer's (Cabrini's) covering lettering enclosing the injury report requested QBE to "deem this claim to be invalid" due to irregularities in the COC.

139. The technical manager responsible for Ms Tjong's team determined to pend the claim but to continue with investigations notwithstanding the apparent invalidity of the COC. According to the HVWP process, the investigation required:

    a. an examination by an IME; and

    b. completion of the medical practitioner's questionnaire by the treating practitioner.

140. These steps must be completed within five days.

141. Section 7.8 of the Claims Manual provides that where there is a claim made by a high-risk worker and liability is yet to be determined, the Case Manager or an Injury Management

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[19] The position is now referred to as Eligibility Officer.

[20] A HVWP is a measure designed to ensure that agents consistently and reasonably comply with the application of key work practices as identified by WorkSafe from time to time. The work practice is usually audited and measured to ensure compliance and can be supported by an incentive payment.

Advisor must immediately contact the treating medical practitioner to discuss their concerns. "High risk" is defined as threatening self-harm or threatening harm to others. Mr Muratori was assessed as satisfying both criteria.[21] The object of this procedure is to decide whether a "real threat to the life of the worker or others exists". The agent can then offer the worker a funded period of hospitalisation.

142. WorkSafe submitted that whilst the HVWP process provided adequate safeguards and was fully operating at this time, the Case Manager did not follow this procedure and failed to contact Dr Williams. WorkSafe submitted that in all other respects Mr Muratori's claim was handled according to the HVWP process.

143. Unfortunately, Dr Williams completed the questionnaire but did not further note Mr Muratori's suicidal ideation.

144. Apparently, neither WorkSafe nor QBE have been able to speak with Ms Tjong about this matter, who has not returned to work after being informed of Mr Muratori's death.

G4S Compliance and Investigation Pty Ltd (G4S)

145. Mr Dan de Leau, manager of HR and IT for G4S states that the operations support team rely upon the information provided in QBE's instructions to note matters such as the risk of suicide. The instructions are then entered into G4S's case management system and the matter is allocated to a Case Manager. All entries (known as case notes) are made electronically. The case manager is responsible for allocating the job to an appropriate investigator. The allocation is made in consideration of the nature and the complexity of the investigation, the location of the worker's home and any specific instructions received from QBE. Once allocated to an investigator, the investigator has access to the full client instructions and any other relevant case files provided by the insurance agent. The investigator is expected to review all instructions prior to proceeding with investigation.

146. The Case Manager for Mr Muratori's matter was Ms Pamela Angelis. Ms Angelis stated that she spoke with Ms Tjong of QBE and Cabrini contact Mr Paul Eastman. It was decided to allocate the file to a male investigator due to the nature of the work conflict. After consulting the G4S investigations trainer, the matter was allocated to Mr Christopher Jennings.

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[21] I assume that this assessment was conducted with the Case Manager having turned her mind towards Mr Muratori's known risks.

147. WorkSafe submitted that Mr Jennings was adequately qualified and had a background suggesting he had the ability to deal with the emotional state of interviewees.

148. WorkSafe acknowledged that when the file was allocated to G4S, and having failed to pick up the reference to suicidality in the COC, Ms Tjong did not alert G4S to the risk that Mr Muratori was suicidal.

149. The conduct of interviews by G4S is 'governed' by two documents:

    a. the G4S compliance and investigations *Investigating Workers Compensation Claims Psychological Injuries Manual* (**the G4S Manual**); and

    b. The VWA Circumstances Investigations Manual (the **VWA CI Manual**).

150. WorkSafe acknowledged that neither document seeks to limit the length of an interview. WorkSafe however submitted that both documents provide very detailed outlines of the requirements of the ACA and emphasise a need for proof of an injury and its causation to satisfy the ACA and any future litigation.

151. WorkSafe pointed out that the G4S Manual clearly recognises that in this process, an investigation has a duty to the worker/claimant. At page 6 it provides:

> Due to the nature of these types of injuries it is important you approach the claimant with care and empathy.
>
> Ensure regular breaks are taken throughout the interview.
>
> If interviewing over an extended period or at any time the claimant becomes emotional or distressed take a break and give them the option to continue on another day.
>
> Stay aware of the claimant's reaction to your questions and their general demeanour.

152. WorkSafe pointed to page 8 of the G4S Manual that states:

> It is important (unless you have been instructed to keep only to the incident which occurred on the claimed date of injury) you allow the claimant to give the full history of what led them to make a claim for worker's compensation.

A further reason is the injury may have been caused by a series of seemingly unrelated events. Australian courts have previously ruled psychological injury cases be 'globally assessed' requiring the entirety of stressors be considered.

153. These requirements are reinforced by the VWA CI Manual, which at pages 35-38 set out the statutory requirements for the ACA to make out a claim for a psychological injury.

154. WorkSafe submitted that together, these two documents reflect the need to take careful and thorough accounts from a claimant to ensure that the claim is properly based and that the statement provides a foundation for the claimant's evidence if the matter is litigated.

The interview

155. Mr Jennings described the interview process in detail in his statement. He described that:

a. prior to the interview commencement, he advised Mr Muratori of the desirability to have a support person present;

b. he warned Mr Muratori that the process was likely to be lengthy (four to five hours);

c. Mr Muratori expressed a desire to complete the interview;

d. the interview was conducted at Mr Muratori's home;

e. the interview commenced without a support person present as Mr Muratori expressed that he did not want to wait for his friend to arrive;

f. the interview was conducted with three or four breaks. Mr Jennings enquired with Mr Muratori at each break whether he wanted to stop the interview altogether, to which Mr Muratori responded in a determined manner that he wanted to continue and complete the interview; and

g. Mr Muratori consistently demonstrated a depressed demeanour throughout the interview.

156. The support person, Mr Ades stated that the interview commenced at approximately 11:00am or 11:30am, Mr Ades attended at 1:30pm and the interview ceased at approximately 7:00pm or 7:30pm. Mr Ades described Mr Muratori as anxious, agitated and resentful of the process.

157. Mr Ades spoke with Mr Muratori on Friday 26 February 2010 and on Saturday 27 February 2010, following his appointment with the IME Professor George Mendelson. Mr Muratori visited Mr Ades on Sunday 28 February 2010, and the two reviewed the statement, made amendments and signed the statement. Mr Ades recalled that Mr Muratori seemed calmer.

158. Mrs Muratori spoke to her son on 24 February 2010, the day after the interview. She stated that her son was "in a shocking state. He could hardly speak to me and was distraught....the nature of the interview had absolutely drained him and badly stressed him". WorkSafe then submitted the IME Professor Mendelson who consulted with Mr Muratori on 26 February 2010 did not observe this demeanour nor made reference to suicidal thoughts in his report. I do not consider that Professor Mendelson's report detracts from Mrs Muratori's more contemporaneous observations.

Changes to the claims procedures to safeguard high risk mental injuries claims

159. WorkSafe noted that changes have been made to the claims management scheme over years and predating Mr Muratori's death. WorkSafe also informed of the specific changes made in response to his death that seek to prevent the recurrence of the apparent failings in the claims process relating to Mr Muratori, and to further safeguard the wellbeing of high risk claimants making mental injury claims.

160. Amendments to the Claims Manual on 1 June 2006 involved:

    a. particular management of high risk workers who were to be flagged and escalated in the claims process;

    b. sensitive management and periodical review;

    c. authorisation of early psychiatric treatment if required;

    d. maintenance and enhancement of the ASIST course. The scenarios used in training now include examples drawn from recent cases, in order to ensure that the training is as close to the real experience as possible; and

    e. the use of an early acceptance process for mental injuries.

161. WorkSafe as the regulator conceded that an interview extending over a continuous eight-hour period is generally excessive and further that the interviewer rather than the interviewee must control the interview process.

162. After Mr Muratori's death, WorkSafe sent a circular to PIs dated 20 September 2012 detailing new requirements for and limits imposed upon the conduct of interviews with claimants. The circular was also distributed to agents in October 2012 and incorporated into Chapter 15 of the Claims Manual.

163. The circular established that while it will be realised that each claim involves an individual in particular circumstances, a time limit of **four hours** beyond which an interview must not continue has been imposed.

164. At the same time of this circular, a copy of WorkSafe's handbook entitled *Fatigue Prevention in the Workplace* was also distributed to each PI firm on the panel to highlight those considerations while conducting investigations. The handbook identifies the factors causing and symptoms of fatigue in the workplace. WorkSafe submitted that the handbook provides a valuable reference for investigators when they are conducting interviews with claimants, especially those suffering stress related injuries.

165. Following Mr Muratori's death, WorkSafe extensively reviewed the WorkSafe HR Procedure to ensure it was still relevant and that agents had appropriately trained staff managing relevant claims (**HR Review**). The HR Review included consultation with WorkSafe's Mental Injury Clinical Advisory Panel[22] in May and October 2011. The panel endorsed the WorkSafe HR Procedure as still valid and best practice in the industry.

166. Other relevant minor policies and procedures (not contained in the Claims Manual) were also reviewed to ensure they were consistent with the procedures set out in the Claims Manual.

167. With the appointment of the five agents on 1 July 2011, WorkSafe also introduced a new claims management model (**Claims Model**). One aspect of the Claims Model is the establishment of specialist roles to manage the receipt, assessment and decision-making on new claims. Under the Claims Model, specialist case managers are referred to as EOs whose roles were fully implemented on 1 January 2012, across all agents.

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[22] A panel comprising two Psychiatrists, a Clinical Psychologist, and Occupational Physician and an occupational rehabilitation provider).

168. The introduction of EOs has resulted in focusing the initial claims assessment and decision-making function to approximately 45 dedicated case managers. Previously, the function was spread across approximately 200 case managers, who were also responsible for a wide variety of case management responsibilities – assisting with rehabilitation, returning workers to work, and so on.

169. WorkSafe submitted that the introduction of specialised EOs will result in improved claims decision-making. Additionally, WorkSafe submitted that the claims management process will benefit from the following:

    a. provision of specialist training to EOs. WorkSafe has already completed the first round of training, focusing on understanding and applying the legal tests in the ACA;

    b. provision of guidance material;

    c. measurement of workers' customer service experience with the EOs with a biannual survey – the findings will be used to inform the training and level of support provided by WorkSafe to the EOs at each agent;

    d. bi-annual audit of agent decisions – feedback is provided to each agent and systemic issues are addressed;

    e. measurement of performance; and

    f. bi-monthly meeting/forums with the Senior managers of the EOs at each agent.

170. In anticipation of the introduction of EOs, in late 2009 WorkSafe also established a central 'Eligibility Team' to support the implementation of the EOs across all agents, oversee the performance of the EOs, provide ongoing advice and support to them, improve the capability of the EOs and resolve complaints.

171. Since mid-2010, the Eligibility Team has worked with the Workplace Bullying Inspectorate (**WPI**), establishing a referral process that ensures that all claims that identify a real possibility of bullying in the workplace are referred to the WPI team.

172. Whilst WorkSafe has maintained the ASIST course for agent employees, it is now in the process of providing ASIST training PIs employed by each approved private investigator firm

on its panel. The training for the PIs will be specifically tailored to the issues confronted by them when dealing with claimants with a mental injury.

173. The training for the PIs will involve using lifelike scenarios that seek to draw learnings from actual claims situations and their potential ramifications. WorkSafe highlighted that one of the training scenarios is not dissimilar to the facts and issues surrounding Mr Muratori's interview.

Summary of WorkSafe's position

174. WorkSafe acknowledged in their submissions the importance of conducting the initial investigation of a claim in a sensitive, compassionate and speedy manner.[23] It also acknowledged that all considerations relating to a claim operate in the context of WorkSafe's commitment to acting as a Model Litigant and refers to its guidelines in this respect.[24]

175. WorkSafe asserted that the initial process of claim management and investigation is one where there are "safeguards in place to ensure the welfare of a psychiatrically compromised claimant"[25] and that it is essential that there be a balance between early identification of high-risk claimants and responsible caring and handling of their files.[26] This occurs in the context of a thorough, yet timely examination of the facts and circumstances of these claims. A valid statutory entitlement must be determined as rapidly and safely as possible from circumstances involving often complicated workplace relationships and personalities.[27]

176. WorkSafe submitted that it maintains oversight and control of the claims process by the maintenance and modification of control systems and audits of these systems. The oversight and control extends to both the insurance agents and the PIs employed by agents to investigate claims.

177. The principal control document by which claims are to be processed by the agent is the WorkSafe Claims Manual. At the relevant time, it provided (and still provides) appropriate procedures and safeguards to ensure that claims made by high-risk workers with mental

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[23] Page 19, paragraph 36.

[24] Page 19, paragraph 38.

[25] Page 19, para 39.

[26] Page 20, para 29.

[27] Ibid.

injuries are processed in an efficient, balanced and timely manner, having regard to both the worker's rights and the interests of the employer, the agent and the need to maintain the viability of the scheme.

178. WorkSafe noted that case manager Ms Tjong was appropriately experienced and qualified, however WorkSafe allege that she did not complete the following in accordance with the manual and with her training in that:

    a. Ms Tjong viewed the COC and did not identify the information contained in it relating to Mr Muratori's suicidality;

    b. Ms Tjong failed to contact Mr Muratori's GP Dr Williams to discuss how to best proceed; and

    c. Ms Tjong did not complete the diagnosis required in the letter to the IME Professor Mendelson.

179. It is unclear why WorkSafe assert that Ms Tjong failed to identify information relating to Mr Muratori's suicidality as it appears that she has assessed him as high-risk.

180. WorkSafe has changed the Claims Management Model and now the processing of such claims are handled by specialist EOs. WorkSafe submitted that these changes should significantly reduce the likelihood of human failings such as overlooking critical information in a high-risk claim.

181. WorkSafe submitted that the changes to the Claims Management Model made in the Claims Manual and the introduction of EOs are not filling gaps that were apparent in the Claims Management Model, rather they represent the enhancement of a model that is under continuous review and development.

182. WorkSafe further submitted that notwithstanding the human failings in Mr Muratori's matter, it is nevertheless difficult to measure the consequences of the failure without speculation. WorkSafe explained that it is not clear that the interview process would not have occurred if they had known about his suicidal ideation, nor is it clear whether Professor Mendelson may have reported differently had he been informed of Mr Muratori's suicidal ideation. WorkSafe highlighted that Mr Muratori was under the care of Dr Williams and Dr McArdle, both of

whom were aware of his suicidal ideation. WorkSafe also highlighted that Dr Williams did not bring this matter to QBE's attention by way of the practitioner's questionnaire.

183. WorkSafe submitted that it is possible that Ms Tjong's failing to contact Dr Williams may be explicable because the COC and the Claim for Compensation were not submitted together or simultaneously. WorkSafe however acknowledges that at the time Ms Tjong wrote to Professor Mendelson, the entire file had to be reviewed for the purpose of providing instruction to Professor Mendelson. WorkSafe acknowledges that this file review does not appear to have occurred.

184. WorkSafe submitted that the failing in this instance was not attributable to WorkSafe's failure to have appropriate policies and systems in place, rather, it was a result of an unfortunate omission by the case manager and an unexplained failure by Mr Muratori's medical practitioners to highlight and reinforce any concerns for his welfare.

185. WorkSafe submitted that the conduct of the interview was governed by appropriate systems control – the G4S Manuals required a level of enquiry into detail, and thoroughness commensurate with the ACA's requirements and the rigour expected by lawyers. WorkSafe further submitted that the G4S Manual called for vigilance of rights and frailties of the claimant to be interviewed.

186. WorkSafe conceded that the Manuals and their procedures did not provide any arbitrary time limit for the conduct of interviews, and the fact that this interview was so long was in this case most likely compounded by the QBE omission to advise that Mr Muratori was or had been a suicide risk. WorkSafe however conceded that, with the benefit of hindsight, the interview duration represents an element of human failing, however the investigator's decision to continue with the interview for such a lengthy period was influenced by:

    a. the presence of Mr Ades;

    b. the fact that they took three or four breaks over the course of the interview; and

    c. Mr Muratori's expressed determination to complete the interview when asked if he wanted to stop for the day.

187. WorkSafe acknowledged that the course of the interview would probably have changed if the investigator had been properly instructed by QBE (and G4S) about Mr Muratori's suicidality.

188. WorkSafe has recognised the need to set a time limit on the interview process in light of Mr Muratori's matter, as reflected in its circular dated 20 September 2012, and the new four hour limit on the interview process, together with other 'appropriate' qualifications on the time limit.

189. WorkSafe submitted that these changes are not simply reactions to Mr Muratori's case, rather reflective of continuous review of the Claims Management Model on behalf of WorkSafe. WorkSafe submitted they have developed sophisticated procedures for dealing with high risk claims, resulting from constant vigilance of the model and the ACA.

190. WorkSafe submitted that the failing in Mr Muratori's case were instances of human frailty rather than overt systems failures, and that system controls cannot eliminate human frailty, rather only serve to restrict and minimise the instances in which that frailty may occur.

191. WorkSafe submitted that I should not make adverse comment against WorkSafe. WorkSafe explained that as the regulator, and in the context of the volume of claims received annually, and the complex interactions between employers, workers, medical and legal practitioners, WorkSafe can only oversee the system, and that it cannot reasonably monitor, let alone second guess the conduct and omissions of every individual who works for the contracted agents and investigators within the compensation scheme.

192. WorkSafe submitted that there is insufficient evidence to find that the interview process with Mr Jennings on 23 February 2010 was a precipitating factor in Mr Muratori's death, and pointed to other possible precipitating factors such as his financial situation, the suspension of his practice as a RN and a relapse of his depression.

193. On the bases of the submissions and the totality of the evidence, I determined not to hold a public inquest.

COMMENTS

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

The circumstances leading up to Mr Muratori's death highlight the need for employers to be vigilant in the performance reviews of employees, to document performance issues and react accordingly.

Whether Mr Muratori had demonstrated the need for performance management is questionable – he had worked in the Cabrini ICU for a period of over four years without any documented performance management issues. He was permitted to care for critically unwell patients without restriction.

I am unable to determine whether there were any significant performance issues. I consider though that the lack of documented performance issues may weaken an assertion of performance issues, particularly when the assertion is made after the relevant employee complains of bullying by his supervisor.

Mr Muratori was not in the habit of attending work in an alcohol or drug affected way. What occurred on 20 October 2009 was, by all accounts, out of character. Mr Muratori had been a long serving employee and arguably deserved the demonstrable support of his employer when it was observed that perhaps he was mentally unwell. He also arguably deserved formal notification from Cabrini that his behaviour had been reported to the NBV, an indicia of procedural fairness in an employment context. Employers providing clear and timely communication to employees regarding their employment status (or matters that are within the employer's knowledge that may affect it) could also be viewed as a risk minimisation strategy.

I accept that Cabrini did make attempts to contact Mr Muratori to enquire about his wellbeing following the 20 October 2009 incident, however I am unsure whether the level or nature of the contact was such that could reasonably be said to have left Mr Muratori with a feeling of support from his employer.

FINDINGS

I accept that Alfred Health responded to contact from Mr Muratori and his family and friends in an appropriate and timely way and provided Mr Muratori with reasonable treatment and management, including appropriately liaising with other practitioners involved in his care and accordingly make no adverse finding.

While I recognise that WorkSafe has conducted thorough investigations of the Claims Management Model and its agent and investigator, and that WorkSafe appears to have taken all reasonable steps to reduce and minimise a recurrence of those failings, it is still baffling that the WorkSafe process as it was in February 2010, and indeed up until September 2012, permitted eight-hour interviews. Mr Muratori's interview can only be described as oppressive, and lacking the sensitivity required when handling people claiming psychological workplace injury.

I accept that WorkSafe have made a number of changes to their claims for compensation process of a restorative nature and am satisfied that these changes are aimed at preventing a similar incident from occurring in the future and I accordingly make no additional adverse finding or comments.

I accept that Cabrini Health were placed in an inherently difficult situation in needing to balance the safety of critically ill patients with the rights and expectations of their employees. While there are a number of aspects of Cabrini's communications that were arguably not ideal, I accept that on the totality of the evidence it was open to Cabrini as Mr Muratori's employer to adopt the cause of action of reporting his behaviour to the Nurses Board of Victoria and make no adverse finding in this respect.

The investigation identified a number of apparent precipitating factors that appear to have contributed to the course of action that Mr Muratori ultimately adopted. These included longstanding and worsening depression, his suspension from practice and associated loss of professional reputation, the loss of his dog, financial stressors, the stress related to an eight hour interview regarding his claim for compensation and possibly his perceived abandonment by his employer. While no one precipitating factor can necessarily be isolated or ranked as being more troublesome to Mr Muratori than the other, I accept that in combination, they functioned to exacerbate Mr Muratori's mental ill health.

I accept and adopt the medical cause of death as ascribed by Dr Paul Bedford and find that Lewis John Muratori died from multiple injuries as a result of being struck by a train in circumstances where I am satisfied that he intended to take his own life.

In light of the circumstances and the restorative actions taken on behalf of WorkSafe, I make no recommendations in this matter.

I direct that the Finding be published on the internet.

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

Mrs Sheila Muratori

Ms Emma Purdue, Lander & Rogers Lawyers on behalf of the Department of Transport and VicTrack

Mr Henry Skene, Arnold Bloch Liebler, on behalf of Cabrini Health

The Enforcement Group, WorkSafe

Mr Patrick McQuillen, WorkSafe Victoria

Dr Ruth Vine, The Chief Psychiatrist

Ms Carol Geyer, Australian Health Practitioner Regulation Agency

Mr Campbell Anderson, Alfred Psychiatry, Alfred Health

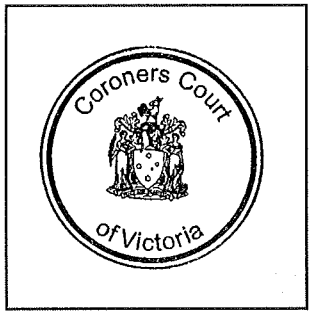
Ms Diana Battaglia, Manager, Legal Support Services, Alfred Health

Metro Trains Melbourne

Transport Accident Commission

Constable L Doherty

Signature:



AUDREY JAMIESON
Coroner
Date: **30 June 2014**