

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2010/ 2023

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

I, JUDGE IAN L GRAY, State Coroner, having investigated the death of Sherry Ann Robinson

without holding an inquest:

find that the identity of the deceased was Sherry Ann Robinson

born on 24 August 1971

and the death occurred on 29 May 2010

at 32 Wittenberg Avenue Frankston, Victoria, 3199

from:

1 (a) MULTIPLE STAB INJURIES TO THE CHEST AND ABDOMEN

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

History of Coronial Investigation

1. Sherry Robinson was killed at her home by Bradley Carolus in the very early hours of the morning on 29 May 2010. Mr Carolus was charged with her murder, pleaded guilty and on 18 November 2011 was sentenced by Justice Hollingworth in the Supreme Court of Victoria to 21 years imprisonment with a non parole period of 17 years. Following the completion of those criminal proceedings and the expiry of relevant appeal periods, a copy of the original Victoria Police criminal brief of evidence was provided to this Court so that the coronial investigation, which was effectively suspended for the duration of the criminal proceedings, could resume.

2. It was immediately apparent from my review of the brief of evidence provided, and the sentencing remarks of Justice Hollingworth,¹ that the deceased's death was a family violence homicide in that: Mr Carolus was the deceased's former partner and father of her youngest son; he had history of perpetrating family violence against the deceased; and the death occurred in the aftermath of family law proceedings concerning their son. I therefore directed that further evidence be obtained, in addition to that included in the original criminal brief, about the family violence context within which the death occurred. I was subsequently provided with the following statements and documents:
- a. The complete Family Law Courts file relating to proceedings between the deceased and Mr Carolus, including affidavits filed in those proceedings and the transcript of a hearing which occurred in the Dandenong Federal Magistrates Court on 26 May 2010.
 - b. Statement from Mr David Chalmers who represented Mr Carolus in the family law proceedings.
 - c. Copies of applications and intervention orders relating to the deceased and Mr Carolus provided by the Frankston Magistrate's Court.
 - d. Copies of applications and intervention orders relating to the deceased and Mr Carolus provided by the Dandenong Children's Court.
 - e. Records of prior family violence incidents involving the deceased and Mr Carolus stored on the Victoria Police Law Enforcement Assistance Program ("LEAP").
 - f. Prior criminal record of Mr Carolus.
 - g. Recording of the triple zero calls (and event chronology generated by the Emergency Services Telecommunications Authority) relating to police and ambulance attendance at Mr Carolus's home on 26 May 2010.
 - h. Statements from Senior Constable Ellis, Senior Constable Pearce, Senior Constable Bell, Detective Senior Constable Merifield and Sergeant Booth who attended at Mr Carolus's home on 26 May 2010.
 - i. Extract from the Log Book completed by SC Ellis and SC Pearce relating to their attendance at Mr Carolus's home on 26 May 2010.

¹ R v Carolus [2011] VSC 583 (18 November 2011).

- j. Ambulance Victoria Electronic Patient Care Record relating to ambulance attendance upon and transport of Mr Carolus on 26 May 2010.
- k. Frankston Hospital Records relating to Mr Carolus's admission on 26 May 2010.
- l. Statements of Consultation Liaison Inpatient Psychiatry Service (CLIPS) clinicians Birgit Schaedler and Denise Shallies who reviewed Mr Carolus at Frankston Hospital on 26 May 2010
- m. Statement from Inspector Christopher Large of the Priority Communities Division of Victoria Police.
- n. Statement from Superintendent Rodney Jouning of the Sexual and Family Violence Division of Victoria Police.
- o. Correspondence from David Goldberg, General Counsel, Peninsula Health dated 28 July 2015 and 2 December 2014.
- p. Correspondence from Victorian Government Solicitors Office dated 6 August 2015.

I also had reference to a letter from the mother of the deceased to the Court dated 20 March 2012.

3. Sub-section 52(3)(b) of the *Coroners Act 2008* (Vic) ("the Act") provides that a coroner is not required to conduct an inquest into a suspected homicide where someone has been charged with an indictable offence in relation to the death. Section 71 provides that no findings need be made where an inquest is not held for this reason and the making of findings would be inappropriate in the circumstances. Mindful of those sections, and having reviewed the entirety of the evidence gathered, I had cause to consider the appropriate disposition of this coronial investigation.
4. I determined that given the volume of material already available to me, and the period of time that had elapsed since the death, an inquest was highly unlikely to reveal significant new evidence or issues, or meaningfully clarify the existing evidence or issues, and was otherwise unnecessary. I determined, however, that it remained appropriate to make findings in the matter, particularly as the circumstances of the death indicated potential opportunities to improve the manner in which agencies gather and share information for the purposes of facilitating dynamic family violence risk assessment.

5. Neither Victoria Police nor Peninsula Health, offered any objection to this course, notwithstanding foreshadowed comments about aspects of both agencies involvement with the matter.

Background

6. Sherry Robinson was aged 38 years at the time of her death. She was born in Melbourne, the fourth of four children born to Carole and Geoffrey Robinson. She attended Montery and later Hastings Primary School before commencing her secondary schooling at Hastings High School. She left after two years when her parents' marriage ended and she moved out of the family home with her mother. Over the course of the following years, she moved with her mother a number of times and together they found employment for varying periods at Safeway stores.² The deceased's mother describes a very close, loving relationship with her daughter characterised by mutual respect and interests.³
7. In her late teens or early twenties, the deceased commenced a relationship with Peter Hipwell. They had two sons together, Sabastian Hipwell, born on 22 March 1992 in Morwell, and Nikki-Lee Hipwell born 19 August 1993 in Warrnambool. Their relationship ended when Nikki-Lee was about two years old, at which point the deceased moved backed to Frankston with her sons.
8. In 1999 the deceased commenced a new relationship with Bradley Carolus, whose parents resided in the same street, Pimelia Court, as the deceased. Mr Carolus lived intermittently with the deceased and on 27 March 2000 their son, Nathan Carolus, was born.
9. The evidence indicates that the relationship was highly volatile, and frequently punctuated by angry outbursts from Mr Carolus, during which he would damage property and threaten the deceased and her children. In statements provided to Victoria Police, both Sabastian and Nikki-Lee Hipwell recalled Mr Carolus smashing and destroying property at their home, and feeling frightened of him. Describing the period of time in which Mr Carolus lived with them Sabastian stated:

² Statement of Carole Robinson, Coronial Brief, p145-149.

³ Victim Impact Statement of Carole Robinson, as provided to the Coroner's Court in correspondence dated 20 March 2012.

I could not understand what I had done to deserve having to live in fear. I know my mum also lived in fear of Brad, even though we never really talked about it when I was young. She did however mention some things when I got older. We were forced to sleep in mum's car on occasions, because mum feared that Brad would be waiting for us at home.⁴

10. The deceased's mother was also aware of Mr Carolus's violence toward her daughter. She reported:

On a regular basis Sherry would call me in fear after Brad had abused and intimidated her and the three boys. I have witnessed damaged walls, microwaves, televisions, clothing and bedding inside Sherry's house, which had been destroyed or damaged by Brad when he had gone into a rage. I have myself received obscene and threatening phone calls from Brad after he and Sherry had been in an argument. These arguments often resulted in Sherry having to flee her house with her children due to being in fear of Brad's violent behaviour.⁵

11. The available police and court records reveal intense Victoria Police involvement with the deceased and Mr Carolus between March 2000 and September 2004. During this period, Victoria Police were called to the deceased's residence on at least 10 occasions after Mr Carolus had threatened and abused her and damaged property at her home. On six of these occasions, Mr Carolus was arrested, charged, remanded in custody, and subsequently convicted of offences including intentionally destroying property, breach of intervention order and stalking. In addition to short periods of imprisonment, he was sentenced to serve intensive community corrections orders.
12. The Department of Human Services (DHS), as it was then known, was also involved with the family during this period because of protective concerns arising from the children's exposure to Mr Carolus's violence.⁶
13. Despite these recurring incidents, the relationship between the deceased and Mr Carolus continued on and off until earlier 2004. This was possibly a consequence of the close

⁴ Criminal Brief, p142.

⁵ Criminal Brief, p147.

⁶ Affidavit of Sherry Robinson filed 12 March 2010 in the Federal Magistrates Court of Australia.

proximity of the deceased's house to Mr Carolus's parents' house, which ensured ongoing contact between the pair.

14. On 21 January 2004, in an angry outburst Mr Carolus damaged every room in the deceased house, punching holes through walls and doors, writing obscene messages on the walls, leaving a knife protruding from the toilet door, pouring soft drink through the television and play station, and smashing a bottle of red wine on the master bed.⁷ This incident appears to have been something of a turning point for the deceased. Although an intervention order had already been in place since June 2001, on 23 January 2004 the deceased applied for and obtained a variation of the order. The revised order listed the deceased and her two older sons as affected family members and prohibited Mr Carolus from assaulting, harassing or intimidating them, approaching within 200 metres of them or their residence or contacting them by any means. The order was not time limited and was said to operate "until further order". At this point the deceased also sought assistance to obtain new housing away from Pimelia Court and proactively approached DHS for assistance and referral to support services, including Frankston Integrated Family Services.⁸
15. Two further incidents involving property damage and breaches of the intervention order followed, which resulted in Mr Carolus spending the better part of 2004 and early 2005 in prison. At this point the relationship definitively ended and the deceased, now resident with her sons at Wittenberg Avenue, Frankston essentially made a fresh start. She met an American man, James Lewis, over the internet in 2005 and commenced a relationship with him. She also commenced a course of study at TAFE which included Community Development, Case Management and Community Welfare.
16. Mr Carolus continued to have access to his son Nathan, which was arranged through, and facilitated by, his mother. Documents filed in subsequent family law proceedings would suggest that these parenting arrangements were attended by a degree of ongoing tension and dispute.

⁷ Victoria Police LEAP Record, Incident Number 040022728, p8 of 8.

⁸ Affidavit of Sherry Robinson filed 12 March 2010 in the Federal Magistrates Court of Australia.

Family law proceedings

17. In 2006, the deceased travelled to the United States for nine weeks to spend time with Mr Lewis. During this period Nathan was in the care of Mr Carolus and his family. In late 2006, the deceased sought Mr Carolus's permission to obtain a passport for Nathan, so that she might take him with her and his brothers, on her next trip to visit Mr Lewis in the United States. Mr Carolus refused, and in 2007 when the deceased travelled to the United States for three months with her older sons, Nathan again remained in the care of Mr Carolus and his family.
18. In 2008, the deceased, still unable to secure Mr Carolus's permission to obtain a passport for Nathan, applied to the Federal Magistrates Court for relevant orders which would allow her to take Nathan with her on her next trip to the United States in 2009. The proceedings were quite acrimonious and ultimately resulted in a judgement on 3 April 2009 in which the deceased's application was dismissed and she was restrained from removing Nathan from Australia. She filed an appeal against the Federal Magistrate's decision.
19. On 17 February 2010, the deceased was successful in her appeal and the orders made on 3 April 2009 were set aside. The deceased made a fresh application to the Federal Magistrates Court for an order which would allow her to obtain a passport for Nathan and take him with her on a visit to the United States in the second half of 2010. The application was heard at the Federal Magistrates Court in Dandenong on 26 May 2010. The deceased represented herself. Mr Carolus was also present, represented by David Chalmers of Bayside Solicitors. When it became apparent that the Magistrate was going to allow the deceased's application, Mr Carolus left abruptly before final orders were made.
20. The Federal Magistrates proceedings were conducted in full knowledge of the fact that there had been a history of family violence perpetrated by Mr Carolus against the deceased and that there was an indefinite intervention order in place. In both the deceased's 2008 and 2010 applications, she had filed materials which detailed the history of family violence incidents perpetrated by Mr Carolus against her and her children. On the basis of this history, at least in part, the deceased was not required on either occasion to file a family dispute resolution certificate confirming that an attempt at family dispute resolution was made before petitioning the Court. However, none of the documents filed with the Court, nor the transcript of the 26 May 2010 hearing, indicate that the deceased had expressed any current concern for her

safety or the safety of her children arising from the proceedings. Although the deceased contested the degree to which Mr Carolus (as opposed to his mother) was actively involved in the care of Nathan during his scheduled time with his son, and raised other concerns about Nathan's living arrangements and activities while in his father's care, the deceased did not suggest that Nathan faced a current risk of family violence from Mr Carolus. The proceedings were focussed instead on assessing the risk that the deceased may take Nathan to the United States and not return, and on assessing whether it was in Nathan's best interests to be able to travel with his mother.

21. Nonetheless, following the hearing on 26 May 2010, the deceased immediately approached Mr Carolus's legal representative, Mr Chalmers, and expressed her concern about Nathan spending his scheduled time with Mr Carolus, in view of Mr Carolus's obvious upset at the Court's decision. Mr Chalmers recalled her being fearful that Mr Carolus might "do something to Nathan". Mr Chalmers did not recall the deceased expressing any concerns for her own safety.⁹ The deceased's mother's recollection was that the deceased approached Mr Chalmers and told him that if anything happened to her or her children, she would hold him personally responsible.¹⁰ Mr Chalmers informed the deceased that if he had any concerns about a person's safety, he was entitled to breach lawyer/client confidentiality. However, Mr Chalmers reported that Mr Carolus had not said anything to raise any concerns with him.¹¹
22. Later that afternoon, Mr Carolus's mother, Eileen Carolus, drove to his house to check on her son. In her statement, she recalls that when Mr Carolus returned home she could see that he was enraged and she was scared. Mr Carolus started swearing and punched his fist through the wall. In fear, Eileen Carolus ran next door and could hear Bradley smashing his property. She rang 000 directly, and also contacted her husband and requested that he do the same. In her call, Eileen Carolus, indicated that Mr Carolus was diagnosed with bi-polar, that he was taking seroquel and had been drinking, that he was breaking everything, that he was having a psychotic episode because of something that happened at court and that ambulance and police were required. She stated that he would likely be violent towards police. She advised that she was at the neighbours but would attend when police arrived. Her husband, who was not at the address, conveyed similar information – that is, that Mr Carolus had been to court and

⁹ Statement of David Chalmers dated 26 June 2013.

¹⁰ Letter from Carole Robinson to the Court dated 20 March 2012.

¹¹ Statement of David Chalmers dated 26 June 2013.

something didn't go his way and that he was very upset about the court case and needed ambulance and police. He advised that Mr Carolus was bipolar. Around the same time, a call was also made to 000, from a male inside Mr Carolus's home. The caller was understood by the operator to say something along the lines of "Hugh Robinson will be dead", before terminating the call.¹²

23. Victoria Police and Ambulance Victoria subsequently attended Mr Carolus's address, he was apprehended under section 10 of the *Mental Health Act 1986* and, accompanied by a Victoria Police member, he was conveyed to Frankston Hospital for examination. In her statement, Eileen Carolus recalled:

*The police arrived and Bradley calmed down. I told them that Bradley had not harmed anybody or threatened anybody. Bradley had threatened to harm himself though. The ambulance arrived. Bradley went in the ambulance to the psych ward at Frankston Hospital. The way he was acting I felt terribly threatened and I ran. I hadn't seen him like that for five years and I could see the uncontrolled look on his face. He definitely did not know what he was doing.*¹³

24. Given the proximity and significance of this incident to the death, it is necessary to set out in some detail how it was recorded and recalled by the agencies involved.

Incident involving Mr Carolus on 26 May 2010

25. Five Victoria Police Members attended Mr Carolus's address, at approximately 2.20pm on 26 May 2010, in response to the 000 calls from his mother and father. They were Senior Constable Tom Bell, Detective Senior Constable Matthew Merifield, Sergeant Sam Booth, Senior Constable Stephen Ellis and Senior Constable Matt Pearce.¹⁴
26. The statements provided by Sergeant Booth and Detective Senior Constable Merifield indicate that they understood they had been dispatched to Mr Carolus's address because a man was causing damage to his home and there were concerns for his welfare.¹⁵ Senior Constables Ellis

¹² Recording of 000 calls and Event Chronologies for events P1005072758, P1005072763 and P1005072764 and E1461491 as provided by ESTA on 6 January 2015.

¹³ Statement of Eileen Carolus, Criminal Brief p124 -125.

¹⁴ The Victoria Police members are referred to throughout this Finding by reference to their current rank.

¹⁵ Statement of Senior Sergeant SK Booth 22 October 2014; Statement of Detective Senior Constable Matthew Merifield 29 October 2014.

and Pearce also stated that the purpose of police attendance was in order to conduct a welfare check on Mr Carolus.¹⁶ Senior Constable Pearce noted that he was not made aware of any violence or any history of violence towards any other person.

27. When police arrived they spoke to Eileen Carolus and according to Constable Pearce ascertained from her that she was concerned her son might harm himself, that he was bipolar, smashing things inside his home, had access to knives, had taken an unknown mix of medication plus alcohol and that she had left the house and called 000.¹⁷ Senior Constable Ellis also recalled that Eileen Carolus informed him that Mr Carolus had been at court that day with child custody matters and had since made threats to harm and kill himself.
28. Police approached Mr Carolus's home, knocked on the door and announced their presence. They walked around the property and observed a broken window but did not sight Mr Carolus. As they were convening on the footpath to discuss next steps, Mr Carolus emerged from the house. He was variously observed to be agitated, aggressive, drug effected and upset. He was instructed by Senior Constable Merifield to lie on the ground and put his hands behind his back. He complied, but Senior Constable Merifield stated that he still appeared in a heightened state of anger. Similarly Senior Constable Pearce observed that he appeared irrational and was making comments that he wanted to kill himself.¹⁸ Mr Carolus was then handcuffed for his safety and for the safety of attending members.¹⁹ He gave his name and date of birth to Senior Constable Ellis, who then confirmed his identity on LEAP. As the purpose of the LEAP check was to confirm identity, and the purpose of the attendance was to conduct a welfare check, Senior Constable Ellis stated that he was not made aware of, nor did he request, information on LEAP relating to a history of violence towards the deceased. He stated that the deceased was not present at the address and there was no discussion regarding violence.²⁰
29. Mr Carolus did disclose to Senior Constable Ellis that he had been in court that day in relation to ongoing child custody issues with his ex-partner, and that she had been given full custody.

¹⁶ Supplementary Statement of Senior Constable Ellis 31 October 2014; Supplementary Statement of Senior Constable Pearce 1 November 2014; Statement of Constable Pearce, Brief p130.

¹⁷ Statement of Constable Pearce, Criminal Brief p130; Statement of Senior Constable Ellis, Criminal Brief p133.

¹⁸ Statement of Constable Pearce, Criminal Brief p130.

¹⁹ Statement of Detective Senior Constable Matthew Merifield 29 October 2014.

²⁰ Supplementary Statement of Senior Constable Ellis, 31 October 2014.

Mr Carolus continued talking, much of which was apparently incoherent, however, Senior Constable Ellis recalls him disclosing that he was bipolar, had taken 'seroquel' medication and consumed 16 beers and wanted to kill himself.²¹

30. Mr Carolus was arrested by Senior Constable Ellis under section 10 of the *Mental Health Act 1986* because he believed Mr Carolus to be a "risk to himself and others".²² Senior Constable Pearce's statement records that the reason Mr Carolus was apprehended under section 10 of the *Mental Health Act 1986* was "Carolus appeared to be mentally ill. I believed on reasonable grounds that he was a threat to harm himself and/or others."²³ Senior Constable Bell recorded on his running sheet for the day, which he compiled in consultation with Senior Constable Merrifield, that Mr Carolus was arrested under section 10 of the *Mental Health Act* for making threats of self harm and harm to others.²⁴

31. An ambulance arrived at the address at 2.45pm, after Mr Carolus had been handcuffed and apprehended. The "Case Description" on page 2 of the electronic Patient Care Record generated in relation to the attendance stated the following:

"Pt a 38 y/o male who is in the care of police, pt today been to court and had some bad news and then alcohol +++ and started to smash up his home and police called. Police state patient upset and stated he wanted to harm himself and his partner, pt laid on grass verge in handcuffs, pt appears slightly agitated and not willing to give past hx, conveyed to Frankston ED as has hx under CAT team, police escorted with patient."

32. On page 3 of the electronic Patient Care Record under the heading "Management and Reassessment" it is noted that rest and reassurance provided but "*no further mx [medication] or VSS [vital sign survey] as pt not willing to talk or be assessed by amb crew, pt in cuffs and calm on arrival, did not want to upset patient any more, conveyed to Frankston ED with police escort.*"

²¹ Statement of Senior Constable Ellis, Criminal Brief p134

²² Statement of Senior Constable Ellis, Criminal Brief p134

²³ Statement of Constable Pearce, Criminal Brief p131

²⁴ Statement of Senior Constable Bell, 26 October 2014.

33. Due to Mr Carolus's aggressive and violent behaviour, Sergeant Booth directed Senior Constable Pearce to travel with Mr Carolus in the ambulance to Frankston Hospital.²⁵ Senior Constable Pearce recalls that en route Mr Carolus had his eyes closed most of the time and made a few murmured comments about wanting to kill himself.²⁶
34. The ambulance arrived at the Emergency Department of Frankston Hospital just after 3pm, and Senior Constable Pearce recalls that Mr Carolus was seen by a triage nurse and then moved to a bed. The "Initial Triage Assessment" completed by the triage nurse at 3.05pm recorded the following: "*Aggressive and agitated stating self harm and harm to others.*"²⁷
35. Senior Constable Ellis completed a Mental Disorder Transfer form in which he recorded that Mr Carolus had threatened self harm, damaged property and taken excessive medication Seroquel mixed with alcohol. It is noted that Mr Carolus presented to police semi cooperative but very irrational. It is also noted that he is bipolar. In the section headed "Person Warning Flags", the boxes "Suicidal", "Self Injury" and "Mental Disorder" are ticked. However, the "Violent" box is not ticked. The Form does not refer to the court proceedings earlier in the day, and their possible role as a trigger for Mr Carolus's episode.
36. Senior Constable Ellis spoke with Emergency Department Intern, Doctor Ignatius Soon and a female member of the Crisis Assessment Team and detailed why Mr Carolus had been arrested under section 10.²⁸ Doctor Ignatius Soon signed the Transfer Form, care of Mr Carolus was handed over to him and police left the Hospital. For reasons discussed below, there are no contemporaneous notes of this verbal handover from police. In a retrospective outpatient note completed five days later (i.e. after the deceased's death) and placed on Mr Carolus's Frankston Hospital medical record, Consultation Liaison Inpatient Psychiatry Service (CLIPS) Nurse Bridget Schaedler, who it can be assumed is the female CAT team member referred to, wrote the following:

"BIBP[bought in by police] section 10, who were reportedly called by M^o[mother], whose house he was trashing. While doing this he was verbally threatening self harm and harm to M^o & expartner. Appeared to be very intoxicated on arrival - Police state that he has told

²⁵ Statement of Sergeant SK Booth 22 October 2014.

²⁶ Statement of Constable Pearce, Criminal Brief p131

²⁷ Peninsula Health, Frankston Hospital, Emergency Department Record for Bradley Carolus, 26 May 2010

²⁸ Statement of Senior Constable Ellis, Criminal Brief p135

them he had drunk 16 full strength beers. However, police doubt same as they are unable to smell etho on him. Briefly spoke to patient with Dr Ignatius S present, pt confirms intake.....”

37. In a formal statement provided by Nurse Schaedler on 20 August 2010 she notes that police gave some brief verbal handover information but does not record the content of that conversation.

38. Contrary to what is implied by the Ambulance Victoria electronic Patient Care Record, the initial triage assessment completed on arrival at Frankston Hospital and the retrospective outpatient notes of Nurse Bridget Schaedler, none of the Victoria Police members who attended Mr Carolus’s address on 26 May 2010 have any recollection or made any definitive record of Mr Carolus making threats of harm against another person, including the deceased, in their presence. None of the attending members is able to recall briefing ambulance personnel to the effect that Mr Carolus had made threats against another person. No specific threats are recorded in their contemporaneous records and only Senior Constables Pearce and Ellis provided statements proximate to the incident. In the statements requested and provided some four and half years after the incident, the attending members stated as follows:

- Sergeant Booth: *“Given the passage of time I’m unable to provide accurate content of the conversations had with Ambulance Victoria, formally (MAS) and others. I’m however able to say that sufficient concern was held for the welfare of Carolus hence his detention.”*²⁹
- Detective Senior Constable Merifield: *“I can not recall what threats or comments Carolus made at that time due to the amount of time that has elapsed. However there would have been sufficient cause to arrest Carolus as he was arrested in relation to section 10 and not any other threat related offences.”*³⁰

²⁹ Statement of Sergeant SK Booth 22 October 2014.

³⁰ Statement of Detective Senior Constable Matthew Merifield 29 October 2014.

- Senior Constable Bell: *"I have exhausted my memory and I can not recall anything about the job as it was four years ago and this would have been at the very start of my Victoria Police career."*³¹
- Senior Constable Ellis: *"I can not recall specifically if Carolus made a threat to harm another person. At the time I had sufficient concerns that he was at harm to himself and others because of his mental state. Information at the time was that Carolus had consumed an amount of alcohol teamed with bipolar medication. Carolus stated that he wanted to kill himself and was arrested under section 10 of the Mental Health Act (MHA). I can not recall briefing the attending paramedics in relation to Carolus wanting to specifically harm another person..... The deceased was not present at the address and there was no discussion regarding violence."*³²
- Senior Constable Pearce: *"I can not recall if Carolus made any specific threats to harm any other person.....I can not recall any conversations or briefing with the paramedics, Dr Ignatius Soon or a member of the Critical Assessment Team. Our reason for attendance was to conduct a welfare check on Mr Carolus as he was threatening to harm himself. I was not made aware of any violence or any history of violence towards any other person."*³³

39. At any rate, at 3.50pm, after police had left, Carolus was reviewed at Frankston Hospital Emergency Department by Dr Ignatius Soon, who recorded in his clinical notes that the presenting complaint was *"increasing aggression post court hearing, brought in by police"*. Under history of presenting complaint he recorded the following:

"Had a court hearing today for child custody/protection. Outcome according to patient was that son of 10 years could go with son's mother to the USA for 6 months. Took the news quite badly and went back home, took 300mg seroquel, 16 cans of beer. Also smashed up his home and then police were called. Patient stated that he wanted to hurt himself and his ex-partner (broke up about 3 years ago). Known to CAT team. Has no suicidal ideas. Feels

³¹ Statement of Senior Constable Bell, 26 October 2014.

³² Supplementary Statement of Senior Constable Ellis 31 October 2014.

³³ Supplementary Statement of Senior Constable Pearce 1 November 2014.

that he wants to hit ex-partner with probably a brick. No other thoughts. Does not feel any different at the moment."

Prior mental health history was recorded as bi-polar diagnosed about 16 years ago. He was observed to have his eyes closed, but to be communicative and not agitated. He was physically examined with nothing of significance noted. A full blood count was ordered including blood alcohol level.³⁴

40. Nurse Schaedler was present for some of this review. She was not present when Mr Carolus told Dr Soon that he felt like he wanted to hit his ex-partner with probably a brick. She recalled that Mr Carolus's demeanour during this initial assessment was pleasant and polite. He was tired and wanted to sleep but made an effort to answer her questions in short sentences. According to Nurse Schaedler, when Mr Carolus spoke about having made threats to harm his ex-partner, he was calm, not upset or angry.³⁵
41. Mr Carolus would not give Nurse Schaedler permission to telephone his mother or other possible supports. The telephone number for Mrs Eileen Carolus on Hospital records was incorrect and Nurse Schaedler's search of the White Pages online was unsuccessful. Mr Carolus mentioned that Dr Stone was his private psychiatrist. An attempt was made to contact him but he was overseas and there were no cover arrangements in place except for inpatient cover at Beleura Hospital.³⁶
42. Nurse Schaedler checked CMI, the Victorian statewide computer system for information about mental health contacts. It revealed that Mr Carolus had a variety of past diagnoses including adjustment disorder, harmful substance use, bipolar disorder and schizophrenia. His last recorded contact was while in prison in 2005.³⁷
43. At 6.30 pm, blood results were received and Mr Carolus's blood alcohol level was recorded by Dr Soon in the clinical notes as 0.1089.³⁸ Nurse Schaedler was advised of this by pager.

³⁴ Peninsula Health, Frankston Hospital, Emergency Department Record for Bradley Carolus, 26 May 2010. Clinical Notes.

³⁵ Statement of Birgit Schaedler dated 20 August 2010

³⁶ Peninsula Health, Outpatient Medical Record, Bradley Carolus, retrospective note 31/5/10

³⁷ Peninsula Health, Outpatient Medical Record, Bradley Carolus, retrospective note 31/5/10

³⁸ Peninsula Health, Frankston Hospital, Emergency Department Record for Bradley Carolus, 26 May 2010. Clinical Notes

44. At 8.30 pm, Dr Soon again reviewed Mr Carolus. He recorded in the clinical notes that Mr Carolus was tired and did not want to talk. Dr Soon notified Nurse Schaedler and it was agreed that the CLIPS team would assess Mr Carolus when he was more willing to talk to get a better assessment.³⁹ When Nurse Schaedler's shift finished at 11pm, Mr Carolus has still not had a mental health examination. To Nurse Schaedler's surprise when she attempted to print her notes from the CMI system about her initial screening conversation with Mr Carolus and with police, she discovered that they had not been saved. There appeared to be a broader problem with the CMI system which meant that the notes entered by the CLIPS staff at the Emergency Department that afternoon had not been saved.⁴⁰
45. In the circumstances Nurse Schaedler gave an oral handover to the CLIPS Nurse on the night shift, Denise Shallies. Nurse Shallies recalls that she was informed by Nurse Schaedler that Mr Carolus had been brought to the Emergency Department under section 10 of the Mental Health Act, that his blood alcohol level was 0.108; that he had threatened to harm himself, his mother and his ex-partner; that he had trashed his mother's house; that he had attended court earlier in the day because he had refused to sign his son's passport and give him permission to leave the country; and that contact could not be made with Carolus's mother because the number available was incorrect and Mr Carolus would not provide a correct number.⁴¹
46. Nurse Shallies read the section 10 paperwork (that is, the Mental Disorder Transfer Form) and with Nurse Schaedler again checked Mr Carolus's previous contact with mental health services as recorded on the CMI, noting that his last contact was in 2005 when he had been involved with forensic mental health and had been diagnosed with bi-polar and schizophrenia, which both nurses considered unusual.
47. Nurse Shallies did not have any discussion or handover with Dr Soon or any discussion with Emergency Department nurses who had been assigned to record observations in Mr Carolus's medical record.⁴²

³⁹ Peninsula Health, Frankston Hospital, Emergency Department Record for Bradley Carolus, 26 May 2010. Clinical Notes

⁴⁰ Statement of Birgit Schaedler dated 20 August 2010

⁴¹ Statement of Denise Shallies dated 1 September 2010

⁴² Statement of Denise Shallies dated 1 September 2010

48. At 11pm Nurse Shallies prepared to assess Mr Carolus. She went to the patient file pigeon hole but there was no medical record for Mr Carolus. She looked for Dr Soon's notes but was also unable to locate them. Given that Mr Carolus had not attended Frankston Hospital since 2004, she considered it was possible that his medical record had not yet been delivered from archives and that his notes had been placed in a temporary file. Nurse Shallies resolved to assess Mr Carolus without the file or the Doctor's notes from earlier in the evening.⁴³
49. The Mr Carolus that Nurse Shallies encountered was apparently polite, coherent and cooperative. She commenced by asking him what had led to him being brought to hospital by police. They then discussed the custody hearing earlier in the day, the outcome, and his subsequent fears and concerns, namely that his ex-partner would not return his son to Australia. However, Mr Carolus said that the Courts had made their decision now and if his son was not returned to Australia, the courts would have to find and return him, which was at least something positive.
50. Mr Carolus then recounted that, after leaving court, he had gotten very drunk and angry and threatened to hurt himself, his mother and his ex-partner. When asked whether he had any thoughts to actually harm himself, mother, or ex-partner, he denied any thoughts, plan or intent. He said he was just drunk and angry and it was stupid talk that he now regretted. He was noted to appear remorseful and to volunteer information about the day freely.
51. Mr Carolus was asked about his relationship with his son and his ex-partner. He said he loved his son very much and that his relationship with his ex-partner had always been difficult since they had separated when his son was very young.
52. He was asked about his contact with forensic mental health services in 2005 when he had been diagnosed with bi-polar and schizophrenia. He said that he had been very aggressive at that time and that he used to lose it. He denied having any mental illness or being on any current treatment or medication for any mental illness. He denied that he was currently seeing any doctors or psychologists.
53. Based on his presentation, demeanour, speech, engagement, insight and denial of any suicidal or homicidal ideation, Nurse Shallies concluded that Mr Carolus was not showing any signs of mental illness. She recalled that he displayed distress, sadness and anger over the day's events

⁴³ Statement of Denise Shallies dated 1 September 2010

and that he was somewhat embarrassed about his behaviour, which he put down to alcohol. She recalled that he seemed genuine and that his demeanour was calm and settled and that he was pleasant and polite towards her. In his risk assessment he was assessed as low in all areas except aggression where he was recorded as 1-2 with the annotation “with alcohol”.⁴⁴

54. Although pressed, he again refused to provide the contact details of his mother, claiming that he did not want her woken after a stressful day. He was discharged shortly after midnight. He was twice offered a taxi but declined and left on foot. He was given the CLIPS 24 hour triage number, but based on the understanding that he was not currently under the care of any mental health professionals and that there were no acute mental health issues warranting further attention, no referrals were made.
55. Given the problems with the CMI system, Nurse Shallies wrote up her assessment notes and provided these to the clerk on duty to be filed. Unfortunately, it was discovered after the fatal incident that these too had been misplaced and were not available. Nurse Shallies then made retrospective notes on 1 June 2010.
56. Victoria Police were not advised by anyone at Frankston Hospital that Mr Carolus had stated, soon after his arrival, that he wanted to “hit his ex-partner with probably a brick”. Victoria Police were not advised when Mr Carolus was discharged.
57. The deceased was not advised by Victoria Police or Frankston Hospital of any of the details of the incident or its outcome.

The fatal event

58. Justice Hollingworth set out the details of the events that transpired on 29 May 2010, when her Honour sentenced Mr Carolus for murder.⁴⁵ The agreed facts can be summarised as follows.
59. In the very early hours of the morning of 29 May 2010, the deceased and her son Nikki-Lee were home asleep at their house in Wittenberg Avenue, Frankston. Her other children, Sabastian and Nathan, were spending the night elsewhere. At 3am, Mr Carolus arrived on foot and entered via an unlocked front door. He was heard in the kitchen by Nikki-Lee, where he

⁴⁴ Statement of Denise Shallies dated 1 September 2010

⁴⁵ R v Carolus [2011] VSC 583 (18 November 2011).

obtained a large carving knife from the cutlery drawer. Mr Carolus headed for the deceased's bedroom and, finding her asleep, proceeded to stab her with the knife. Her screaming caused Nikki-Lee to rush to her aid, and he bravely managed to push Mr Carolus off of his mother and into the bedroom window. This provided an opportunity for the deceased and Nikki-Lee to flee the house. However, as they were attempting to escape, the deceased fell in the driveway. Nikki-Lee hid behind a parked car and called emergency services. While on the phone, he could hear Mr Carolus continue to attack his mother. A neighbour later told police that he overheard Mr Carolus swearing at the deceased, calling her a 'slut' and a 'bitch' and saying, "Sherry, I just told you I wanted you to die. I told you I will kill you" and "no one is going to fuck with me." He also called to Nikki-Lee "I am only going to get 7 or 8 years for this, you know, I will be out again, so don't mess with me. Have I got my point across?"

60. Mr Carolus remained at the premises until police arrived. Mr Carolus was taken to the police station and following a forensic assessment was determined to be unfit for interview, for reasons which were unclear.
61. There was some uncertainty at the time of sentencing about the extent to which Mr Carolus was intoxicated at the time of the incident and/or whether his bipolar disorder had contributed to his offending behaviour. Ultimately, Justice Hollingworth determined that there was insufficient evidence to enable her to conclude whether Mr Carolus was intoxicated and/or to what extent, if at all, his bipolar disorder was a contributing factor to his actions that evening.

Medical Evidence – post mortem examination

62. Senior Forensic Pathologist, Dr Matthew Lynch, of the Victorian Institute of Forensic Medicine completed the medical investigation into the death of Sherry Robinson, which included a full autopsy. Dr Lynch recorded 25 incised injuries to the deceased. She was noted to have defensive type wounds to her right hand. There was also a fracture of the thyroid cartilage consistent with some type of compression force being applied to her neck. Dr Lynch formulated the medical cause of death as: 1 (a) stab injuries to chest and abdomen. Toxicological analysis was negative for drugs and alcohol.⁴⁶

⁴⁶ Forensic Medical Investigation into the death of Sherry Robinson dated 12 July 2010.

Findings pursuant to section 67 of the Coroners Act 2008

63. Based on all the available evidence, there is no contest or controversy about the matters I am required to find pursuant to section 67 of the *Coroners Act 2008*. Accordingly, I find:
- a. The identity of the deceased was Sherry Ann Robinson, born 24 August 1971;
 - b. Ms Robinson died from multiple stab injuries to her chest and abdomen inflicted by Bradley Carolus on 29 May 2010 at her home at 32 Wittenberg Avenue Frankston;
 - c. The fatal incident occurred in circumstances where there had been a significant history of family violence perpetrated by Mr Carolus against Ms Robinson, and in violation of a family violence intervention order which was in place prohibiting Mr Carolus from contacting or approaching Ms Robinson or her address.

COMMENTS

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

64. Less than three days before the deceased's death, Mr Carolus, a former partner against whom the deceased had an extant intervention order and who had proven history of family violence offending towards her, was apprehended by police under the Mental Health Act and conveyed to the Frankston Hospital for a mental health examination. In the course of the incident, Mr Carolus, in an alcohol affected rage, had damaged his own property, frightened his mother to extent that she had fled to the neighbours to contact police and ambulance, and threatened to harm himself and the deceased. The impetus for the episode was a decision in the Federal Magistrate's Court earlier that day, allowing Mr Carolus's son to travel with the deceased to the United States to visit her new partner. The decision had been opposed by Mr Carolus and he felt extremely aggrieved by the outcome.
65. The deceased was not advised of any aspect of the incident or its outcome by Victoria Police or the Frankston Hospital. Without knowledge of the incident, the deceased was not in a position, alone or in consultation with police or other agencies, to consider whether it suggested an increased risk to her safety and whether steps might be taken to mitigate that risk. At the time of her death, the deceased was at home alone with her 16 year old son, asleep with the front door unlocked.

66. Bradley Carolus alone bears the responsibility for the deceased's death and he has been sentenced accordingly. Nonetheless, it is valuable to reflect on whether a more considered and proactive approach to information sharing may have had the potential to impact on the outcome in this case.
67. The existence of a family violence intervention order against someone serves notice that the affected family member alleges some history of family violence by that person, fears that it will occur again, and seeks the protection of the police and courts to secure their safety. Such orders may be in place for an extended period, or, as in the present case, indefinitely. Over the period of the order, the risk posed to the affected family member may increase or decrease dependent on a wide variety of factors, and risk assessment and risk management is necessarily a dynamic and ongoing process. The purpose of having a family violence intervention order in place is not only to proscribe certain conduct, with the threat of sanction in the event of breach. The existence of an order may also alert agencies, including Victoria Police, of the need to reassess the risk posed to an affected family member when new and relevant information is received about the person against whom the order was made. The consequence of such a reassessment may be that information is shared with the affected family member in order to allow them to take steps to better safeguard their safety or to seek appropriate assistance.
68. With that general observation in mind, I make the following more specific comments in relation to this case.

Factual uncertainty regarding whether police were aware of threats made against deceased.

69. In commenting on the handling of this matter by Victoria Police, and in making subsequent recommendations, I am mindful that there is considerable uncertainty about whether any of the Victoria Police members who were involved in responding to the incident on 26 May 2010 were aware that Mr Carolus had threatened the deceased on that day.
70. The available evidence indicates that Mr Carolus did make threats against the deceased in the context of his angry and intoxicated episode on 26 May 2010. There is also some evidence that suggests attending police were aware of these threats:
- a. The Ambulance Victoria electronic Patient Care Report generated on 26 May 2010 notes: "Police state patient upset and stated he wanted to harm himself and his partner..."

- b. Mr Carolus was conveyed to the Hospital by ambulance accompanied by Senior Constable Pearce. The Initial Triage Assessment completed by the triage nurse immediately upon Mr Carolus's arrival at the Frankston Hospital states "aggressive and agitated stating self harm and harm to others."
 - c. CLIPS nurse, Birgit Schaedler, to whom police gave a brief verbal hand over before leaving the hospital, recorded in her retrospective notes that police were reportedly called by Carolus's mother whose house he was trashing and that while he was doing this he was verbally threatening self harm and harm to his mother and ex-partner.
 - d. In recalling to CLIPS nurse, Denise Shallies, how he had come to be brought to the hospital, Mr Carolus stated that after court he had gotten very drunk and angry and had threatened to hurt himself, his mother and his ex-partner.
 - e. Senior Constable Bell recorded on his running sheet for the day, which he compiled in consultation with Senior Constable Merrifield, that Carolus was arrested under section 10 of the Mental Health Act for making threats of self harm and harm to others.
 - f. Senior Constable Ellis's original statement records that Carolus was apprehended under section 10 of the Mental Health Act 1986 (Vic) as he was believed on reasonable grounds to be a threat to harm himself and/or others.
71. However, none of the Victoria Police members who attended Mr Carolus's address on 26 May 2010 made any record of Mr Carolus making specific threats of harm against another person, including the deceased. None of the attending members, at this point in time, has any recollection of any threats being made.
72. Superintendent Rodney Jouning, who was asked to provide a statement to the Court addressing certain family violence aspects to this case, commented in that statement that the overwhelming majority of the material provided by the members indicates that they were not aware of Mr Carolus having made threats to harm another person prior to or after their arrival at the scene on 26 May 2010.⁴⁷ Superintendent Jouning further opined that he would have expected that if these police members recalled Mr Carolus making threats to his mother and/or his ex-partner in their presence or had concerns for same they would have recorded this in their contemporaneous notes or statements, particularly given that their descriptions of their

⁴⁷ Statement from Superintendent Rodney Jouning, paragraph 30.

conversations with him are quite specific on other counts (i.e. a reference to him having had 16 beers).⁴⁸

73. Superintendent Jouning also noted that the statements of attending police were consistent with the statement of Mr Carolus's mother who indicated that she reported to police that her son had threatened to harm himself, but had not harmed or threatened harm to anyone else.⁴⁹ (Although I note that almost immediately following in the same statement, Mrs Carolus also stated: *The way he was acting I felt terribly threatened and I ran. I hadn't seen him like that for five years and I could see the uncontrolled look on his face. He definitely did not know what he was doing.*)
74. I invited the Victorian Government Solicitor's Office (VGSO), representing the Chief Commissioner of Police, to respond to the suggestion that, based on the totality of the evidence, the most probable explanation of what occurred was that Mr Carolus did, in police presence, express a desire to harm the deceased. However, the attending members did not record and do not recall this threat because they were primarily focussed on addressing the immediate risk that Mr Carolus posed to himself. As the deceased was not present and therefore faced no imminent harm, any threats made against her were probably viewed as a manifestation of Mr Carolus's significant mental distress, rather than a cause for separate concern, and were probably conveyed to ambulance and hospital staff in that context.
75. The VGSO submitted that such a finding was not open on the available evidence.⁵⁰ In their submission, a number of point were noted which included the following.
- a. The VGSO submitted that the references in police records to Mr Carolus being arrested under section 10 of the Mental Health Act based on his being a threat to harm himself and/or others⁵¹ or being a risk to himself and others⁵²; or for making threats of self harm and harm to others,⁵³ should merely be construed as a reference to the specific wording of section 10 and the threshold for arrest set out therein.⁵⁴

⁴⁸ Statement from Superintendent Rodney Jouning, paragraph 32.

⁴⁹ Statement from Superintendent Rodney Jouning, paragraph 29

⁵⁰ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 4 to 8.

⁵¹ Statement of Constable Pearce, Criminal Brief p131;

⁵² Statement of Senior Constable Ellis, Criminal Brief p134

⁵³ Statement of Senior Constable Bell, 26 October 2014.

⁵⁴ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 6.3.

- b. The VGSO submitted that the notes of CLIPS nurse, Birgit Schaedler, were made five days after the incident and that those notes refer to Mr Carolus having threatened his mother and ex-partner, when no other person claims that Mr Carolus threatened to harm his mother. (I note that this is not entirely accurate, as Nurse Shallies in her statement recalls that Mr Carolus himself told her that he had threatened his mother.) At any rate, it is further submitted that in her formal statement, as opposed to her retrospective outpatient notes, Nurse Schaedler states only that she had a brief verbal hand over from police and, in this statement, she indicated that it was Mr Carolus himself who informed her that he had threatened to harm his ex-partner.⁵⁵
- c. The VGSO submitted that in his supplementary statement, Senior Constable Pearce stated in paragraph four that he was not made aware of that Mr Carolus had made threats of harm to anybody other than himself.⁵⁶ The thrust of this submission appeared to be that, at least in Senior Constable Pearce's case, the evidence was not only that he couldn't recall any threats, but that he was positively not made aware of any. (I note, however, that in paragraph two of his supplementary statement, SC Pearce, like his colleague, states: "I can not recall if Carolus made any specific threats to harm any other person." In paragraph 4, which is relied upon by the VGSO, he notes that the reason for police attendance was to conduct a welfare check because of threats of self harm and that he was not made aware of any violence or any history of violence towards any other person.)
- d. It was acknowledged by the VGSO that the electronic Patient Care Report included the claim that police had informed the crew that Mr Carolus had wanted to harm himself "and his partner". However, it appeared to be submitted that the Record was not definitive on the question of whether attending ambulance personnel may have had the opportunity to gather this information from Mr Carolus himself. It was further noted that no statement had been taken from the relevant ambulance officers.⁵⁷

76. The evidence on this point is difficult to reconcile and given the passage of time, it is not a matter that can now be more definitively resolved, even if the investigation were to proceed to inquest. In the circumstances, although there is evidence that the police may have been aware

⁵⁵ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 6.4.

⁵⁶ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 4.

⁵⁷ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 7.

of the threats made against the deceased, I do not consider that I can positively conclude, even on the balance of probabilities, that they were aware of this matter.

Identifying Family Violence Incidents

77. The police who attended Bradley Carolus's residence on 26 May 2010 did not regard the incident as a family violence incident. Superintendent Rodney Jouning stated that, based on all the information now available, the incident could have been characterised as a family violence incident for police purposes. However, he stated that it was open to police, exercising their professional judgement and based on what they knew at the time, not to treat it as such and, instead, to manage the incident exclusively as a mental health issue, where the only immediate threat Mr Carolus posed was to himself.⁵⁸
78. The following documents were relevantly attached to Superintendent Rodney Jouning's statement:
- Victoria Police Manual Policy – Family Violence
 - Victoria Police Manual Guidelines –Family Violence
 - The Code of Practice for the Investigation of Family Violence as at May 2010 and in its current form.

The documents provide directions and guidance to Victoria Police members on their roles and responsibilities in responding to family violence incidents. The value of the practices and procedures established in these documents is dependent on Victoria Police members correctly identifying a situation as a "family violence incident". These documents do not provide extensive direction on that threshold point.

79. Victoria Police policy as to what constitutes a family violence incident is based on and reflects the provisions of the *Family Violence Protection Act 2008*. Accordingly, the Victoria Police Code of Practice for the Investigation of Family Violence contains a section headed "What is Family Violence?", and states:

Family violence is any behaviour that in any way controls or dominates a family member and causes them to feel fear for their own, or other family member's safety or well-being. It can include physical, sexual, psychological, emotional or economic abuse and any

⁵⁸ Statement from Superintendent Rodney Jouning, paragraph 26 – 27; 39 – 44.

behaviour that causes a child to hear, witness, or otherwise be exposed to the effects of that behaviour.

While only certain behaviours and actions defined as family violence are criminal offences, the approach, as enshrined through the Family Violence Protection Act, is guided by the tenet that any form of family violence is unacceptable.

In Victoria, this means we understand family violence to include violent, threatening, often repeated use of coercive or controlling behaviour that occurs in current or past family, domestic or intimate partner relationships. This can include not only physical assaults but an array of power and control tactics used along a continuum with one another, direct or indirect threats, sexual assault, emotional and psychological torment, economic control, property damage, social isolation and behaviour which causes a person to live in fear.

We also understand family violence to include violence between people in a range of family and family-like relationships. As well as violence between current and separated intimate partners, abuse and violence in our community also occurs amongst family members and those in family-like relationships. It can include violence by young people against their parents or other family members, abuse of elderly people by family members, abuse in same sex relationships and abuse of men.

80. This definition is appropriately broad. However, in practice, without examples of the less obvious ways that a family violence incident may present itself, it may be difficult to apply. The present case is a good example. The following complexities may have directed police away from categorising the incident as a “family violence incident”.
- a. The deceased was not present at the address attended and therefore faced no immediate safety risk and, as she was unaware of Mr Carolus’s violent behaviour and threats, they did not cause her to fear for her safety or well being;
 - b. Based on Mrs Eileen Carolus’s “000” call, police understood that they were attending Mr Carolus’s address for a ‘welfare check’, and not in order to respond to a family violence incident. When they arrived, it was apparent that concerns for Carolus’s welfare were well founded given his level of intoxication, confusion and agitation and threats of self harm.
81. However, even putting to one side the threats against Ms Robinson, there were indications that there may have been a family violence element to the incident. Police were aware that the call for assistance had come from Mr Carolus’s mother who had fled to the neighbours to contact

police, following his property damage and threats of self harm. Police became aware during their attendance that the trigger for the incident was a court custody hearing early in the day.

82. Nonetheless, as the call out was categorised, (based on Mrs Carolus's phone call and briefing), as a welfare check, police did not request or obtain information prior to or after their arrival about Mr Carolus's history of family violence or the existence or terms of the intervention order against him, which would have provided a more complete context to the incident.
83. In his statement, Superintendent Jouning aptly summarised the difficult task that police face in recognising family violence.

Whilst there will be certain cases where it will be manifestly clear to a third party that an incident involves family violence (for example, a physical fight between intimate partners resulting in injury), this is not always the case. Victoria Police acknowledges that family violence is a complex phenomenon and there may be cases where it is not immediately recognisable to police members (or even to the family members involved) in the presenting circumstances. In these cases, whether or not a police member considers a particular incident to be a 'family violence incident' comes down to the application of that member's professional judgment based on their experience, training and the information available to them at the time.

Further, the mere presence of a family member at an incident involving aggressive or irrational behaviour by another family member does not necessarily mean that the incident will be a family violence incident from a police perspective. Ultimately, whether such an incident is considered to involve family violence is a decision for the member using their professional judgment taking into account all the circumstances and information available to them at the time including (amongst other things):

- a. what is reported to them;*
- b. the observed conduct and motivations of the perpetrator;*
- c. any views expressed by the perpetrator's family members;*
- d. their own experience of such matters; and*
- e. any evident family violence risk factors.⁵⁹*

I accept this as a fair characterisation of the issue.

⁵⁹ Statement from Superintendent Rodney Jouning, paragraphs 23 – 24.

84. Consequences flow from identifying a matter as a family violence incident, particularly in terms of ensuring that an informed risk assessment is undertaken with appropriate risk management strategies considered and adopted if necessary. Identifying an incident as a family violence incident will impact the nature of any future engagement with the affected family member and whether any information, assistance and advice is provided to them.
85. The incident which occurred on 26 May 2010 was dealt with exclusively as a mental health issue. In the circumstances, no Family Violence Risk Assessment and Risk Management Report was completed; no assessment of the likelihood of future violence towards the deceased was considered, and no consideration was given to contacting the deceased to discuss her safety with her.
86. The VGSO objected to the suggestion that the incident on 26 May 2010 *ought* to have been regarded as a family violence incident.⁶⁰ However, it was conceded that it could have been so categorised based on all the information now available.⁶¹ It was also conceded that, with the benefit of hindsight, police should have conducted a further risk assessment of Mr Carolus (including LEAP checks as to any history of family violence and the existence of any intervention orders) based on the fact that the prompt for Mr Carolus's angry and distressed behaviour was the deceased obtaining a favourable custody order in relation to their son that day combined with Mr Carolus's violent behaviour at his mother's house and his consumption of alcohol and drugs.⁶²
87. I accept that, in the absence of clear evidence establishing that the attending Victoria Police members were aware of the threats against Ms Robinson, it cannot be concluded that they *should*, rather than *could*, have approached the matter as a family violence incident. However, I consider that the incident suggests that more specific guidance should be added to the Code of Practice for the Investigation of Family Violence about the ways in which family violence might present to police. Accordingly, I have made specific recommendations on this matter below.

⁶⁰ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 10.

⁶¹ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 11

⁶² Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 13.

Information sharing with affected family members about incidents involving a person who is the subject of an intervention order

88. Given the circumstances of this case, I requested from Victoria Police information about the policies and protocols in place to direct members about the circumstances in which information should be shared with someone about a threat against them or an increase in the risk posed to them by another person against whom they have an intervention order.
89. I observed that that the various Victoria Police policies and protocols cited in response were primarily designed to instruct members about the legislative restrictions which circumscribe their collection, use and disclosure of personal and health information. The cited policies appeared to provide little positive guidance to Victoria Police members about their preventative and protective functions; the sort of threats, actions or behaviour which might enliven those functions; and the extent to which, as a result of those functions, information sharing may not only be legally permissible, but in fact recommended.
90. I invited the VGSO to respond to the suggestion that more specific guidance to members on this matter may be warranted, particularly in circumstances which suggest a history and/or future risk of family violence, and specifically, that any guidelines should emphasise that :
- a. whether and to whom information is shared ought to be informed by a prior risk assessment and should acknowledge that the disclosure of information may be an important aspect of mitigating an identified risk;
 - b. whether or not the disclosure of certain information is permitted under the Information Privacy Principles, Health Privacy Principles and other applicable legislation, can only be determined after consideration has been given to the information proposed to be shared and the rationale for its disclosure.

I also invited the VGSO to respond to the suggestion that specific protocols are required to guide police on:

- a. when information gathered in the course of their law enforcement or community policing duties may indicate an increasing risk to a person protected by an intervention order; and
- b. the circumstance and manner in which this information should be shared with the person protected by the order, so that they may plan for their safety accordingly.

91. The VGSO submitted in response that the *Privacy and Data Protection Act 2014* already authorises members of Victoria Police to disclose personal information where:
- a. a member reasonably believes that the disclosure is necessary to lessen or prevent a serious and imminent threat to a third person’s life, health, safety or welfare; and/or
 - b. Where it is reasonably necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences.⁶³
92. It was indicated that where members are aware of a serious and imminent threat directed at a person who is protected by an intervention order, or where they have reasonable grounds for believing that a person’s life or safety is in jeopardy, it is expected that they will conduct a criminal investigation, and where necessary, communicate with a potential victim to address or dispel any ongoing threat that may be posed to their welfare.⁶⁴
93. The VGSO further submitted that the Victoria Police Manual Policy entitled “Family Violence” already instructs and empowers police to respond to family violence incidents in manner which prioritises and maximised the safety and welfare of affected family members. It was therefore suggested that the more pertinent issue in a case like this one, was the accurate identification of family violence incidents.⁶⁵
94. As I indicated in my recent Finding into the Death of Luke Batty⁶⁶, I am not convinced that the staff of the various agencies tasked with responding to family violence in the community share a clear and common understanding of the extent to which they are legally permitted to share information with each other or the public. I am also not confident that the current criteria and/or thresholds for sharing personal and/or health information (particularly to the extent that they require a serious and imminent threat) are appropriately calibrated to allow for dynamic, up to date risk assessment in a family violence context. However, as I have already made recommendations in this regard in the Luke Batty Finding,⁶⁷ and as Victoria Police have advised that they are presently considering whether any changes can be made to enhance its

⁶³ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 15.

⁶⁴ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 16.

⁶⁵ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraphs 17 – 18.

⁶⁶ Finding with Inquest into the Death of Luke Batty, COR 2014 855, delivered by State Coroner Judge Ian Gray on 28 September 2015.

⁶⁷ Finding with Inquest into the Death of Luke Batty, Recommendation 3 to the State Victoria.

policies and protocols in this regard,⁶⁸ I do not propose to make any formal recommendations on this matter in this Finding.

Information provided by police upon transfer for mental health examination

95. Attending police were aware that the trigger for Mr Carolus's mental health episode was a custody hearing earlier in the morning that had been decided in favour of his former partner, the deceased. However, this information was not included in the Mental Disorder Transfer Form completed when Mr Carolus was conveyed to the Frankston Hospital Emergency Department for a mental health examination. Further, no information was conveyed about Mr Carolus's prior history of family violence offending in the context of his relationship with the deceased, nor was any information provided about the intervention order in place against him.
96. In the circumstances, I requested from Victoria Police further information about whether and what information should be provided in the course of a mental disorder transfer, for example, about a person's prior criminal history and/or the existence of any intervention orders against them.
97. In a statement provided in reply Inspector Large⁶⁹ advised that the relevant policy at the time of the incident required members to document in the Mental Disorder Transfer Form (Form L42) sufficient information on the circumstances of a person's apprehension to assist the mental health practitioner in conducting an examination. The L42 Form both at the time of the incident, and now, prompts members to include the following circumstances of the incident: "details of incident, typical behaviours/triggers, effective communication strategies, contact persons, known risks, other mental disorder related information (e.g. subject to a treatment order), source of information and location details if returning a missing person."
98. Part 5 of the Department of Health and Victoria Police Protocol for Mental Health is entitled "Disclosure of Information", and states that police ordinarily only disclose personal information in order to carry out policing functions. It is also recorded that police may disclose personal information where it where it is necessary to lessen or prevent:
- a. a serious or imminent threat to a person's life, health , safety or welfare, or
 - b. a serious threat to public health, public safety or public welfare.

⁶⁸ Statement of Inspector Christopher Large dated 20 March 2015, paragraph 51.

⁶⁹ Statement of Inspector Christopher Large dated 20 March 2015.

It is noted that police must base each decision to disclose on the specific circumstances of a situation but that the disclosure of criminal history information will generally be inappropriate.

99. In a Frequently Asked Questions document produced by the Victoria Police Privacy Unit, there is a specific question: "What can members tell the CAT Team?". The question is answered as follows:

"Health information (mental illness etc) and criminal history (priors for violence) are normally very restricted. In this situation, members will be able to pass on information for the following reasons:

- Serious and imminent risk - to any person. This includes risks to life, health, safety and welfare. Most calls for a CAT Team will involve welfare issues at the very least. To prevent or lessen a serious risk, police may pass on personal information if it is deemed to be reasonably necessary; and*
- Law enforcement functions include[ing] prevention of offences. If it is necessary to pass on information in order for a disturbed person to obtain appropriate treatment, commission of offences by that person may be averted."*

100. Information regarding Mr Carolus's history of family violence was sensitive, personal information. However, given that a custody hearing earlier in the day was the trigger for his intoxication, aggressive behaviour and threats to self and others, I consider that this information may have assisted in Mr Carolus's assessment on this occasion and could have been included in the Mental Disorder Transfer Form. However, I do not consider that this additional information was likely to have impacted on the outcome of the assessment in this case, given the view of Mr Carolus's mental state formed by CLIPS nurse Denise Shallies.
101. The VGSO submitted that what information was or wasn't conveyed in this instance was consequent upon the original categorisation of the incident, and that had it been regarded as a family violence incident, it would have been expected that information pertaining to family violence would have been conveyed to Hospital staff. Again it was reiterated by the VGSO that Victoria Police policy and procedure dictates very clearly that where there is a serious and imminent risk to a person, in order to prevent or lessen that risk, police may pass on personal information.⁷⁰

⁷⁰ Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 19 to 21.

Mental health examination undertaken on Bradley Carolus on 26 May 2010

102. It is not possible to review, in hindsight, whether the examination of Bradley Carolus's mental state by CLIPS nurse Denise Shallies and his subsequent discharge from Frankston Hospital on 27 May 2010 was appropriate. Even if there was clear evidence that Mr Carolus's was in a psychotic or manic episode at the time that he killed the deceased, it would not automatically follow that when he was assessed by Nurse Shallies two days earlier those symptoms were present, or present to such a degree that Carolus met the criteria for a compulsory treatment order.
103. However, a review of the mental health examination undertaken on Bradley Carolus in the Emergency Department of the Frankston Hospital on 26 May 2010 reveals a number of shortcomings in the process. I do not know whether those shortcomings were particular to this case and the result of a confluence of glitches experienced on that evening or indicative of a more systemic problem. In either event, the matter (now some five years old) ought to be, if it has not been already, subject to internal Hospital review, with particular focus on the efficacy of information management systems within the Frankston Hospital Emergency Department and, specifically the CLIPS program.
104. In making that comment, I note the following pertinent facts:
- a. All of the notes recorded by CLIPS Nurse Birgit Schaedler regarding the information verbally provided by police on hand over; her initial screening assessment of Mr Carolus, and her attempts to contact both his mother and treating psychiatrist were recorded electronically on the statewide CMI system. The notes were not printed contemporaneously and placed on the Medical Record/Emergency Department file. It was later discovered that, due to a system error, they had not been saved, and were lost.
 - b. CLIPS Nurse Birgit Schaedler gave an oral handover to the night shift CLIPS nurse Denise Shallies. At the time of handover there were no CLIPS notes for Nurse Shallies to read about the patients waiting to be seen. No written record of this handover was made.
 - c. CLIPS nurse Denise Shallies was informed orally by the Associate Nurse Unit Manager that Bradley Carolus had been medically cleared. She did not discuss Mr Carolus's medical examination with the Emergency Department intern Dr Soon who had earlier assessed Mr Carolus and taken a history from him, nor did she recall discussing Mr

Carolus's presentation with any nurse who had been tasked with recording observations for the duration of his admission.

- d. When CLIPS nurse Denise Shallies was ready to interview Mr Carolus for the purposes of conducting a mental health assessment, she could not locate either his complete medical record (which may not have been received at that point from hospital archives) or even a temporary Emergency Department record containing Dr Soon's notes. Nurse Shallies nonetheless proceeded to interview Mr Carolus.
- e. In the circumstances (i.e. with no medical record and no record of either Dr Soon's or Nurse Schaedler's earlier assessment) Nurse Shallies was unaware of Mr Carolus's earlier expressions of a desire to hit his ex-partner with a brick, was unaware that he was currently under the care of a psychiatrist who was treating him for bi-polar disorder, was unaware that he had been prescribed seroquel, and was unaware that his psychiatrist was currently on leave, could not be contacted and had no cover arrangements in place. Nurse Shallies appears to have accepted the information provided to her by Mr Carolus that he was not, at that time, being treated or medicated for any mental illness.
- f. The number on the CMI database and hospital records for Mr Carolus's mother was incorrect. Mr Carolus would not provide contact details for her and therefore no background information was received from her. Nurse Shallies was told by Mr Carolus that he did not want her to contact his mother because it was very late and he did not want her disturbed.
- g. As a consequence of all the above, Mr Carolus was assessed in a vacuum of sorts.
- h. Nurse Shallies discharged Mr Carolus without any referrals made.
- i. Due to the earlier problems with the CMI system, Nurse Shallies wrote up her notes of Mr Carolus's assessment by hand. No copies were made. The original notes were provided to the administration office clerk for filing, but were misplaced.
- j. The only substantive records of CLIPS assessment of Mr Carolus on 26 May 2010, were made retrospectively after the hospital was notified of the deceased's death.

Communication with police regarding threats made by hospital patients

105. While being assessed by an Emergency Department Intern, Mr Carolus stated that he felt "like he wants to hit his ex-partner probably with a brick". This information was not provided to Victoria Police or to the deceased.

106. In that context, I requested further information from Peninsula Health about whether Frankston Hospital has any policies or protocols in place to direct staff about the circumstances in which Victoria Police or any other party should be notified of a threat to harm a third party made by a patient in care.
107. General Counsel for the Peninsula Health advised that Mr Carolus's threat was information disclosed in the context of the treating relationship and was therefore subject, inter alia, to the Health Privacy Principles. In order to have disclosed this information, Hospital staff would have needed to believe on reasonable grounds that disclosure was necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare or a serious threat to public health, safety and welfare.⁷¹
108. I was further advised that in the years since the event, Peninsula Health has updated their Discharge Planning Policy and Consumer Confidentiality Policy to include a protocol for staff to escalate concerns about the health and safety of a third party (or the public) arising from their treatment of a consumer. Staff are advised that they should do this as soon as a relevant concern arises, and in all cases prior to discharge. Such escalation is to the executive management and General Counsel, who are charged with balancing the right of confidentiality of the consumer against the safety of others. The list of examples included in the policy to illustrate where an individual or the public may be at serious or imminent risk includes the situation where a patient is threatening to commit a violent crime against another person, whether or not the patient is brought in by police under the Mental Health Act.⁷²
109. In this case, given the information available to them, including the Ambulance Record and the Initial Triage Assessment, Hospital staff may well have believed that Victoria Police were already aware that Mr Carolus had made threats against his former partner and that this was part of the reason for his apprehension under section 10 of the Mental Health Act. Further, by the time that Mr Carolus was discharged, he was considerably more sober, professed to be remorseful for his earlier actions and denied any homicidal thoughts, plans or intent. In his risk assessment he was assessed as low in all areas except aggression, where he was assessed as 1-2 "with alcohol". On that basis, it is difficult to envisage how the disclosure of Mr Carolus's health information might have been viewed as necessary to lessen or prevent a serious and imminent risk of harm to any individual or the public more generally.

⁷¹ Letter from David Goldberg, General Counsel, Peninsula Health dated 2 December 2014

⁷² Letter from David Goldberg, General Counsel, Peninsula Health dated 28 July 2015.

110. Based on this further information from Peninsula Health, I do not consider that further comment or formal recommendation on this matter is warranted in this case, except to note again that review may be necessary of whether the current criteria and/or thresholds for sharing personal and/or health information (particularly to the extent that they require a serious and imminent threat) are appropriately calibrated to allow for dynamic, up to date risk assessment in a family violence context.

Notification to Victoria Police of discharge

111. Victoria Police were not notified when Bradley Carolus was discharged from the Frankston Hospital shortly after midnight on 27 May 2010.

112. There was no obligation under the *Mental Health Act 1986*, nor is there any obligation under the *Mental Health Act 2014*, to notify Victoria Police of a person's discharge where the person has been initially apprehended by police. Further, the disclosure of such information, except in limited circumstances, may be prohibited under section 346 of the *Mental Health Act 2014* (which is in similar terms to section 120A of the old Act.)

113. Peninsula Health advised that Frankston Hospital staff would be in a position to notify police of discharge where:

- a. the patient consented, or
- b. the Hospital held the view that a serious or imminent threat to safety remained, or
- c. police explicitly identified at the time of transfer of the client that they wished to be notified of the patient's discharge due to an ongoing concern for a person's or the public's safety.⁷³

114. Victoria Police advised that this is a matter currently under policy review with Victoria Police considering whether, and in what circumstances, Victoria Police should be notified of the discharge from care of a person apprehended under the *Mental Health Act*. It was noted that currently, even if Victoria Police were so notified, there is no available field in LEAP which would allow them to record this information.⁷⁴

⁷³ Letter from David Goldberg, General Counsel, Peninsula Health dated 2 December 2014.

⁷⁴ Statement of Inspector Christopher Large dated 20 March 2015.

115. Conduct or behaviour which provides the basis for a person's apprehension under the Mental Health Act may also necessitate police undertaking a risk assessment process, including, for example, by completing a Family Violence Risk Assessment and Risk Management Report (Form L17). The completeness of any risk assessment undertaken in these circumstances, and the effectiveness of any risk management strategy subsequently employed, may be undermined if police are unaware of the outcome of the mental health examination, including whether the person has been discharged from care.
116. Victoria Police have indicated support for any comment or recommendation that health authorities must notify police as to when a person who has been arrested by police under the Mental Health Act is discharged.⁷⁵ Peninsula Health has indicated that it will be guided by the Court as to whether there ought to be a mandatory notification to police of the discharge of a patient brought in under section 351 of the *Mental Health Act*, noting that at times such a patient may well be discharged only after a substantial period of inpatient treatment.⁷⁶
117. Of course, it is not for this Court to *direct* that such notification must be made. However, in the circumstances, I think it is appropriate that consideration be given to this and that the question of whether and when notification is given should be explicitly addressed in protocols between the Department of Health and Human Services and Victoria Police. I have made a recommendation accordingly.

RECOMMENDATIONS

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

Chief Commissioner of Police

1. I recommend that the Chief Commissioner of Police amend the Code of Practice for the Investigation of Family Violence in order to provide more specific guidance about the manner in which family violence incidents might present to police. In particular, I recommend that consideration be given to specifying the following:
 - a. Family violence incidents may not be categorised as such by the person reporting them to police. This may be because the person making the report does not recognise the family

⁷⁵Correspondence from Victorian Government Solicitors Office dated 6 August 2015, paragraph 22.

⁷⁶ Letter from David Goldberg, General Counsel, Peninsula Health dated 2 December 2014.

violence element of the incident and/or does not want the reported incident to be characterised in that way.

- b. An incident need not be exclusively characterized as “family violence”, in order to enliven the Victoria Police Options Model set out on page 21 of the Code of Practice for the Investigation of Family Violence.
- c. Police may attend an incident, whether reported as family violence or not, and assess, in respect of a person present, that it is necessary to exercise their powers of apprehension under the Mental Health Act 2014. This does not foreclose the incident also being characterised as a family violence incident, with the Code of Practice for the Investigation of Family Violence followed accordingly. This remains the case regardless of whether the incident involves the suspected commission of a criminal offence or some other form of family violence.
- d. In order to determine whether an incident should be categorised as a family violence incident, although not reported as such, it may be necessary to obtain information in addition to that gathered from those present. Where evident family violence risk factors are noted, consideration should be given to conducting LEAP checks to determine, amongst other things, whether any of the relevant parties has a history of family violence or whether there are any intervention orders in place.
- e. The affected family member/family violence victim need not be present in order for a matter to qualify as a family violence incident. For example, threats to harm a family member who is not present should be considered as a family violence incident, notwithstanding that the family member faces no immediate safety risk and, being unaware of the threats, has no consequent fear for their safety or well being.

Department of Health and Human Service and the Chief Commissioner of Police

1. I recommend that the Department of Health and Human Services and the Chief Commissioner of Police address in their shared Protocol for Mental Health the circumstances in which Victoria Police should be notified of the discharge of a person initially apprehended by Victoria Police under the Mental Health Act 2014. Consideration should be given to making such notification mandatory, rather than contingent on an assessment of future or current risk.

I offer my sincere condolences to the family of Ms Robinson. I understand that she was a dedicated, loving mother who was very close to her three sons, and an invaluable support to them. She was also a loving daughter and good friend to her mother. Her premature death has fractured their lives and left them to navigate their futures without the security, guidance and comfort which she had always offered them. I acknowledge the profound impact of her death on them.

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

Sabastian Hipwell, Senior Next of Kin

Carole Robinson, mother of the deceased

Detective LSC Aaron Roche

Chief Commissioner of Police, c/o Victorian Government Solicitor's Office

David Goldberg, General Counsel, Peninsula Health

Secretary, Department of Health and Human Services

Signature:



JUDGE IAN L GRAY

STATE CORONER

Date: 9th November 2015

