

IN THE CORONERS COURT  
OF VICTORIA  
AT BENDIGO

Court Reference: 2009 / 5931

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*  
*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: STEPHEN ARTHUR NIIT**

Delivered On: 18 March 2014

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

Hearing Dates: 18 November – 21 November 2013

Finding of: JACINTA HEFFEY, CORONER

Representation: Mr B. M. Ihle of Counsel for Chief Commissioner of  
Police (instructed by Victoria Government Solicitor)  
Ms Karina Popova of Counsel for Lodden Campaspe  
Community Legal Centre  
Ms Fiona Ellis of Counsel for St John of God Health Care  
(Pinelodge Clinic)  
Mr Rob O'Neill of Counsel for Police Members O'Dea,  
Naismith, Kervin and Kavanagh

Counsel Assisting the Coroner Sebastian Reid of Counsel

I, JACINTA HEFFEY, Coroner having investigated the death of STEPHEN ARTHUR NIIT

AND having held an inquest in relation to this death on 18 November 2013 – 21 November 2013  
at Bendigo Coroners Court

find that the identity of the deceased was STEPHEN ARTHUR NIIT

born on 13 September 1964

and the death occurred on 23 December 2009

at Police cells at Echuca, 3565

**from:**

1 (a) HANGING

**in the following circumstances:**

1. Mr Niit was aged 45 years old at the time of his death having been born on the 13<sup>th</sup> September 1964. He was a married man with two children, Amy and Thomas, and had worked for Ambulance Victoria since 1995. In July 2000 he became a qualified paramedic. From 2006 onwards, however, due to health problems, chief amongst which was alcoholism, he ceased roadwork and worked in an office capacity for the organisation. He had worked hard at addressing his alcohol problems and had had a number of admissions to Pine Lodge Clinic, whence he had last been discharged on the 16<sup>th</sup> December. It was not within the scope of the Inquest to enquire into whether his alcoholism was related to his work or whether he suffered from post-traumatic stress disorder arising from his work.
2. On the 22<sup>nd</sup> December, in circumstances described hereunder, he was placed in a cell at the Echuca Police Station and lodged for being drunk at 8.10 PM. He had been allowed to take his dog into the cell. His dog was wearing a collar. Closed circuit monitors capture him removing the dog collar and his shirt and fashioning a noose at about 8.19 PM. After trying one location, he ultimately tied the shirt to a hinge on the open door leading from the cell to the exercise yard at 8.31 PM and hanged himself. He was found deceased by Sergeant David O’Dea at 9.41 PM.
3. The investigation of Mr Niit’s death requires a mandatory inquest pursuant to Section 52 (2) (b) in that at the time of his death, Mr Niit was a “person placed in custody”.

### BACKGROUND TO EVENTS ON THE DAY

4. On the morning of the 22<sup>nd</sup> December, 2009 at his home in Doncaster, Mr Niit received a phone call from his mother in Canberra advising that his father was in hospital. He decided to drive to Canberra with his daughter Amy, then aged 19 years, taking the family dog, Tilly. Amy was to be the driver of the Ford Territory and Mr Niit the navigator. At approximately 11.30 AM, they left Doncaster. After four hours, however, they had only arrived at Bendigo and Amy was concerned that they would not get to Canberra that night. Mr Niit kept telling her to “drive north” and that they would arrive. An hour or so later, it was clear they were lost and an argument broke out as a result of which Mr Niit got out of the car and walked off, taking the dog with him. Amy phoned her mother in distress and, after she handed the phone over to her father, he got back into the car. Half an hour later, they came to a T intersection cross-sign pointing to Melbourne and Bendigo. Anxious now that they were indeed lost, Amy got out of the car and phoned her mother again, whereupon Mr Niit climbed into the driver’s seat and told Amy to get in. She refused and he took off without her.
5. Amy walked in a distressed state to a nearby farm-house. Her mother was again contacted and she told Amy to wait for her there until she could reach her from Melbourne. Mr Niit apparently had a change of heart and drove around trying to re-locate Amy. In the course of his search, he drove to a function centre named “Coriander” and told the occupants that he had lost his daughter. The lady at the farm went in search in the direction he had indicated without success. Shortly after she returned, Mr Niit took off again in his car.
6. Mr Niit was next sighted at the Harvest Hotel in Echuca. He ordered a beer, double vodka and a steak. He told the barman he had been disowned by his family and that the police were going to take him away. Whilst there, at 6.25 PM, he telephoned Pine Lodge and spoke with Nurse Plunkett, a member of the staff that he knew well from his various admissions to the Clinic. He recounted the story of his father being ill in Canberra; that he and his daughter had been travelling to Canberra but that his daughter had refused to continue to travel with him. He then said, according to Ms Plunkett, in a “matter of fact tone,” “I’m going to hang myself” and that the police were coming to get him. He said that his family was better off without him. Notwithstanding these pronouncements, Ms Plunkett said that he had been very “flippant” in his responses to her. In evidence, she told the court that she did not consider he was exhibiting any significant suicidal ideation compared with an earlier occasion about a year before when he had phoned from a park sounding desperate.

She could hear the sounds of knives and forks; he told her he was eating a steak. She said that he had frequently called her over the years. In any event, given that the police were apparently on their way to get him, she felt they would be in a better position to assess him. She then informed the after-hours co-ordinator at Pine Lodge, Adriana Lakic, about the call.

7. When leaving the Harvest Hotel, Mr Niit asked directions to the police station. He then walked towards the Dock Hotel and asked some patrons directions to the police station commenting, "If I don't find the police station I will kill myself." He was described as crying and very emotional. He walked off, with a staggering gait, in the direction given.
8. He was next seen walking along the middle of High Street Echuca, crying, with cars swerving to avoid him. Deborah Pell was driving along High Street when she saw him. She performed a U-turn and came back, got out of her car and coaxed Mr Niit off the road to a bench on the footpath. Shortly thereafter, an off-duty police officer from Shepparton, Cherrie McCaig, joined her. Both women described Mr Niit as being very intoxicated. Ms McCaig made contact with Mr Niit's wife, Lisa and was able to tell him that Amy was safe and that his wife was on her way to pick her up. He seemed relieved to hear this. Ms McCaig kept trying to arrange for the Echuca police to come and pick Mr Niit up but was told that all units were busy and to hold tight.
9. Ms McCaig told the court that Lisa Niit told her that in terms of suicidality there had been "a couple of incidents".<sup>1</sup>
10. In her statement, Ms McCaig said that at one point, Mr Niit made his hand into the shape of a gun and pointed it to his head, saying something like "Just shoot me". Just before the Echuca police arrived, Mr Niit said to Ms McCaig, "Leave me here and I'll just hang myself from the rafters" and pointed to the verandah of the nearby shops. Ms Pell told the court that by the time the police had arrived Mr Niit was no longer talking about suicide and had definitely calmed down. He "even laughed at one stage" and he was "more than willing to go with the police."<sup>2</sup> In terms of relaying to the attending police the concerns that Ms Pell had entertained when first speaking with Mr Niit, she felt that Ms McCaig, being a police officer, was better equipped to do this. Accordingly, she told the court, she continued to talk to Mr Niit whilst Ms McCaig handed over to the Echuca police.

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<sup>1</sup> Exhibit E page 152 Inquest Brief.

<sup>2</sup> Transcript P121 Lines 15-28.

## POLICE INVOLVEMENT IN HIGH STREET

11. As indicated above, Ms McCaig was off-duty on the day from Shepparton and was in Echuca on private business. The four uniformed members rostered on duty at Echuca that evening were Sergeant David O'Dea, Leading Senior Constable Anthony Kavanagh, Senior Constable Shane Kervin and, on duty as watch house-keeper, Leading Senior Constable Robert Naismith.
12. Of this crew, the first police officer on the scene was Sergeant David O'Dea. Ms McCaig told the court that her conversation with Sergeant O'Dea was very brief. She reported to him that she had seen Mr Niit walking along the centre of High Street narrowly avoiding cars; that whilst later talking to him, he had held his hand in the shape of a gun to his head; and, further, that he had mentioned hanging himself from the rafter. She said that Sergeant O'Dea was making notes at the time but she did not know how expansive they were. She agreed with a suggestion of Mr O'Neil appearing for Sergeant O'Dea that he was taking "extremely limited notes". In evidence, she said that she did not tell Sergeant O'Dea that she thought Mr Niit was suicidal. She just outlined her observations.<sup>3</sup> However, in her second written statement which she adopted in evidence, she had stated that she told Sergeant O'Dea that she was concerned for Mr Niit as she had spoken to his wife "who had confirmed previous suicide attempts".<sup>4</sup> In evidence, she said she spoke to O'Dea only briefly as she was running late for an appointment. Indeed, she did not see Sergeant O'Dea speaking with Mr Niit as "I had left by then".<sup>5</sup>
13. Ms Pell told the court that she did not speak at any length with Sergeant O'Dea. In evidence, Sergeant O'Dea said he did not speak with Ms Pell and that he only spoke with Ms McCaig.<sup>6</sup>
14. Inspector Neil Thomas had arrived at the scene at High Street Echuca at about the same time as Sergeant O'Dea. He spoke briefly with Cherrie McCaig and then left. He did not speak with Mr Niit. He said in evidence that Echuca is a tourist town and it is not uncommon to see inebriated people. He said that as he drove off, Mr Niit waved to him.

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<sup>3</sup> Transcript P134 Lines 21-23.

<sup>4</sup> Exhibit E1 page 155 Inquest Brief.

<sup>5</sup> Transcript P143 Lines 1-2.

<sup>6</sup> Transcript P 288 Lines 23-4.

15. Sergeant O’Dea, immediately before arriving in High Street, had been concerned about two other incidents in the area. One was a suspicious fire at Victoria Park attended by a number of fire engines; the other was the report of a possible domestic violence incident in a house in Eyre Street Echuca. At this same address a few weeks earlier, a male had attacked police with knives “in an attempt to make them shoot him”. Hearing about Mr Niit on the car radio, Sergeant O’Dea proceeded towards High Street but he told the court that his concerns about this other incident were at the forefront of his mind as he drove along. As he approached, he saw Leading Constable Chris Sutton whom he had asked to attend the Eyre street incident and was told that it had already been investigated and found to be of no consequence. In evidence, Sergeant O’Dea said that he believed that he was waving Mr Sutton down and talking to him about the Eyre Street incident at about the same time as he was being told by Cherrie McCaig about her dealings with Mr Niit. He then made a radio broadcast using a hand held radio to call off attendance at Eyre Street. He did not recall Ms McCaig mentioning the “gun gesture to the head” nor the reference to hanging himself from the rafter. He did remember her saying that she had seen Mr Niit walking in the way of the traffic. None of this was written down by him.<sup>7</sup> He did not dispute that these things were mentioned to him but said that he was not giving her a hundred per cent of his attention “due to the other factors”.<sup>8</sup>

Sergeant O’Dea also agreed that his failure to fully attend to what Ms McCaig was telling him “impacted on the quality of the information” he later was able to provide to Leading Senior Constable Naismith, the watch house keeper.<sup>9</sup>

16. Mr Niit then spoke to him. Sergeant O’Dea’s recollection of Mr Niit was that he did not seem distressed in any way. He was not crying. He said “I’m just a broken down old ambo”. He asked Sergeant O’Dea to call his wife using the police phone as he did not believe his wife would answer if she saw his own phone contact details on her phone, which O’Dea did. The divisional van arrived crewed by Officers Kavanagh and Kervin. Mr Niit was concerned about his dog who was still in his Ford Territory. He was loaded into the van

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<sup>7</sup> Support for the combination of distracting events is found in the transcript of the second call McCaig made to D24 when the operator told her “Look, unfortunately Echuca’s, it must be going nuts over there at the moment but, um, they’ve just had to go to a violent domestic ...and they had a fire previous to that...”

<sup>8</sup> Transcript P289 Lines 16-22.

<sup>9</sup> Transcript P 290 Lines 13-18.

and they proceeded to his car and collected Tilly. Mr Niit placed a leash and muzzle strap around the dog's nose and they both climbed into the back of the police van.

### **LODGEMENT AT ECHUCA POLICE STATION**

17. Prior to the commencement of the inquest, a view was held at the Echuca police station in the course of which the locations of all relevant areas were identified. The charge counter is at an external sliding window facing the exercise yards adjacent to the cells. In this outside area, Mr Niit was searched by Senior Constable Kervin who handed the removed items to Leading Senior Constable Kavanagh who was inside recording them on the Property Sheet.<sup>10</sup> Significantly, included in the list was "one x dog leash".<sup>11</sup> Senior Constable Naismith, the watch house keeper entered Mr Niit's details in the computer.
18. Leading Senior Constable Kavanagh described Mr Niit as being in a conversational mood; he was jovial and relaxed<sup>12</sup>. Senior Constable Kervin told the court that Mr Niit was "*very compliant, very easy going, very relaxed*." He went on to say that most "*drunks are usually aggressive and abusive and resisting and fighting*".<sup>13</sup> At the Station when told his wife was going to pick him up Mr Niit said "*I'm happy if she's happy to*" and expressed concern about her seeing him in a cell. He was reassured that they could meet in the foyer. Officer Kervin said that Mr Niit was talking about family members in the fire service and Federal police and his own experiences as an ambulance officer.
19. Mr Kavanagh led Mr Niit through the door of the external exercise yard attached to Cell 3. The external door was locked but the door between the cell and the exercise yard remained unlocked. From the view conducted, the area of that particular exercise yard is visible from the charge counter if the window to the latter is slid open. Senior Constable Kervin gave evidence that even when the window is closed, provided one is standing in that position, the cell area is visible. It is not visible from the area of the computers and monitors.<sup>14</sup>
20. Effectively, two decisions were made at this point that were unusual, but also contrary to the standard procedures. I am satisfied, however, that in each case those decisions were motivated by concern for Mr Niit. It had been a very hot day (35 degrees) and the cells were

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<sup>10</sup> Exhibit F1.

<sup>11</sup> In evidence, Senior Constable Kervin said that he also asked Mr Niit to remove a drawstring from his shorts.

<sup>12</sup> Transcript P 164.

<sup>13</sup> Transcript P. 180.

<sup>14</sup> Transcript P219 Lines17-24.

oppressively hot, hence a decision was made to keep the cell door open onto the exercise yard, allowing Mr Niit access to fresh air and water. The only water in the cell was in the toilet. Secondly, his dog was allowed to accompany him to stay with him for company. Nobody searched the dog; hence, his collar was not removed. Both Officers Kavanagh and Kervin acknowledged in evidence that this was an oversight.<sup>15</sup>

### SERGEANT O'DEA'S ENQUIRIES

21. In the meantime, Sergeant O'Dea made some enquiries. He believes he spoke to Lisa Niit on about four occasions by phone. In her statement, Mrs Niit said that she told Sergeant O'Dea that she did not believe that her husband was a suicide risk but that he should confer with Pine Lodge. He said that on no occasion did she mention previous suicide attempts. He telephoned Pine Lodge at about 8 PM. In evidence, he said that he did this in order to investigate whether he should be treating Mr Niit as a "Section 10" client.<sup>16</sup> In the circumstances, notwithstanding that Sergeant O'Dea had paid little attention to what he had been told by Cherrie McCaig, he stated that he had taken up the suggestion of Mrs Niit to enquire further into Mr Niit's psychological history and to seek some guidance.
22. The Court heard evidence from Adriana Lakic who was the After Hours co-ordinator at Pine Lodge. Her recollection of the conversation with Sergeant O'Dea is markedly at odds with his. According to Ms Lakic, Sergeant O'Dea was calling solely to enquire as to whether the Clinic could accept Mr Niit as a patient later that night. She also said that she recalled very little of the conversation she had with Sergeant O'Dea that particular night. However, she said that she remembered clearly asking O'Dea if Mr Niit was suicidal to which he responded "No" and then she went on to say that Sergeant O'Dea "*basically reported to me how Stephen Niit had been behaving on the streets of Echuca*".<sup>17</sup> Shortly afterwards, however, Ms Lakic, when asked by Counsel assisting what other information, apart from being disorderly and intoxicated, had been provided by Sergeant O'Dea she replied " I

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<sup>15</sup> An unusual aspect of this was the fact that, as stated above, Mr Niit had placed a leash *with a muzzle* around the dog's head when it was transferred to the police van. A leash attached to a collar would be the more normal situation and had this been the case, the collar may well have been removed as a matter of course.

<sup>16</sup> Section 10 Mental Health Act 1986 enables police to apprehend a person who appears to be mentally ill if the police officer has reasonable grounds for believing that that person has recently attempted suicide or attempted to cause himself serious bodily harm or is likely by act or neglect to attempt suicide or cause himself serious bodily harm. In the case of such an apprehension, the police officer must as soon as practicable arrange for examination or assessment of the person by a medical practitioner.

<sup>17</sup> Transcript P 60 Lines 11-20.



*haven't information about how they found Mr Niit on the streets of Echuca. I was not privy to that information ...*<sup>18</sup>

23. Ms Lakic's entry in the notes makes no reference to any request by Sergeant O'Dea that Mr Niit be given admission either that night or the following day. She simply states "David O'Dea contacted hospital (Sergeant of Echuca Police Station) seeking advice re Stephen care (or could be "case")". It raises the question, if this was the main purpose of the call, as to why this was not noted.
24. Ms Lakic denied that she had told Sergeant O'Dea that Mr Niit had not been suicidal in the past and that he was a non-violent person. She said in evidence that she told Mr O'Dea that Dr Tolen was Mr Niit's doctor. She retracted this evidence immediately afterwards.<sup>19</sup> Ms Lakic could not recall if she told Sergeant O'Dea that Mr Niit had phoned the Clinic an hour and a half previously and spoken to Nurse Plunkett, expressing suicidal thoughts. This is extraordinary particularly in view of the fact that she had made an entry at 6.25 PM, the time of Mr Niit's call to Ms Plunkett, in the Triage form, summarising the information provided by Ms Plunkett and ending with the comments after the word "Risks": "Suicidal thoughts/reported he feels like hanging himself (to Gail P)". She was, however, certain, that she told Dr Tolen about the earlier call to Ms Plunkett when she phoned him 15 minutes after hanging up from Sergeant O'Dea. Dr Tolen's statement does not refer to his having been told this by Ms Lakic.
25. I consider it highly likely that Ms Lakic failed to mention the earlier call to Sergeant O'Dea. If this is correct, it throws into doubt her evidence that she specifically asked Sergeant O'Dea if Mr Niit was suicidal, as it beggars belief that in those circumstances she would not have referred to the earlier call from Mr Niit, only an hour and a half earlier, which had prompted her to make a note in the records in which she had written the words: "Risks: suicidal thoughts".
26. Sergeant O' Dea told the court that he phoned Pine Lodge clinic after a phone conversation he had had with Lisa Niit in which she mentioned that Mr Niit was suffering from post-traumatic stress. He said that although he was fairly comfortable about Mr Niit's presentation, he had "some lingering doubt" in view of this information and that was the purpose of his call to Pine Lodge. He said that he specifically mentioned Section 10 to Ms

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<sup>18</sup> Transcript P 63 Lines 14-20.

<sup>19</sup> Transcript P 67 Lines 4-13

Lakic and asked her advice and that this was the sole purpose of the call. He believed that Ms Lakic misunderstood his purpose as she started talking, without prompting, about the impossibility of an after-hours admission and that he waited for her to finish so that he could re-iterate the advice he was seeking. He said that he was told that there had been no history of self-harm or suicide attempts. He denied that she asked him about Mr Niit's suicidality and said *"I think I would remember if she'd asked me about suicidality because the purpose of my call was to get that information from her..."*<sup>20</sup> He said he was phoning to see if there was any such history in Mr Niit's past. <sup>21</sup>On several occasions he told the court *"I was ringing to get advice from her as to whether I should be treating him as a s.10 mental health psych issue, or as just as a drunk"*. He was adamant that Ms Lakic told him Mr Niit had never evidenced suicidality.

27. I prefer Sergeant O'Dea's account of this telephone conversation.<sup>22</sup> Ms Lakic's account has inconsistencies that I have endeavoured to identify above. Either way, the failure to inform Sergeant O'Dea about the earlier telephone call to Nurse Plunkett was an error, whichever account is preferred. The question of potential suicidality was raised in both accounts by reference to Section 10 by O'Dea or by Ms Lakic asking Sergeant O'Dea whether Mr Niit was suicidal. A phone call in which Mr Niit had talked about taking his life had warranted noting in the clinical notes. It should have been communicated to Sergeant O'Dea. This omission, along with the other omissions identified in this case, in isolation or in combination, potentially contributed to the fatal outcome.

#### **EVENTS POST-LODGEMENT AT ECHUCA POLICE STATION**

28. At 8.10 PM, Mr Niit was placed in the cell/exercise yard to Cell 3. CCTV footage captures images of what occurred subsequently. By 8.19 PM he has removed his shirt and attached the dog's collar to it thereby fashioning a noose which he puts around his neck and attaches the shirt to the exercise yard grill and appears to lie down. Two minutes later he gets up and removes it and wanders around the cell with the noose clearly visible dangling from one arm and then at 8.31 PM goes and ties the shirt to the hinge of cell door 3 and puts on the collar

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<sup>20</sup> Transcript P346 Lines 13-17.

<sup>21</sup> This is consistent with the statement made by Lisa Niit that when asked by Sergeant O'Dea about whether Mr Niit was a suicide risk, she had responded that they needed to confer with Pine Lodge Clinic. IB P 83.

<sup>22</sup> It is supported by notes entered in the police computer system at 21.19 hours-(as evidenced by time stamp) before Mr Niit was found deceased, at which time, Sergeant O'Dea would have had no motive to make a false entry.

and sits down. In this way he hangs himself whilst appearing on the monitor to be almost sitting on the ground, leaning against the door jamb. He appears to die shortly thereafter.

29. Mr Niit was not approached until 9.41, wholly an hour after he hanged himself, when Sergeant O'Dea entered the exercise yard and raised the alarm. It has to be said that the area where the hanging occurred is not captured with great clarity by the CCTV camera and it would be possible on viewing the screen to believe that Mr Niit was merely seated at the corner of the doorway. However, the operating procedures, for good reason, do not allow visualizing a prisoner on a screen to take the place of physical visualisation and approach.
30. The situation at Echuca police station is governed by the Victoria Police Manual (VPM) and the Echuca Standard Operating Procedures (Echuca SOP).

In terms of the VPM, there are numerous sections that govern the management of intoxicated prisoners, vulnerable and highly stressed prisoners. The Watch-house Keeper is responsible for checking prisoners and ensuring that they are safe and well. In this case, this role was required to be performed by Leading Senior Constable Naismith, a police officer with 39 years experience. The Echuca Standard Operating Procedures for Watch-house keepers set out the minimum standards of custodial care to assist watch-house keepers in performing their duties.

31. At page A212 of the Inquest Brief are listed the provisions relating to prisoner checks. There are special requirements in relation to "drunks". They are to be checked at least every half hour and these checks recorded in the Register of Prisoners. These checks are to be conducted personally and not via video monitors. Drunks are to be roused every half hour and also questioned for coherent answers. The Operating procedures comment "Don't just hope that 'he'll sleep it off". This is, in effect, what LSC Naismith did- in the sense that he took the view that Mr Niit should not be disturbed as "he needed a bit of quiet time". At no time before Sergeant O'Dea entered the exercise yard to Cell 3 was Mr Niit physically checked or roused. LSC Naismith stated that he checked the monitors at 8.30 and 9 PM. He said Mr Niit was moving around. Whilst one has the benefit of hindsight observing the footage taken from the CCTV cameras, Mr Niit, whilst walking around at times clearly is carrying his shirt with the noose attached, dangling from his arm as he gazes up and around. All officers were familiar with the requirements to check and get a verbal response from intoxicated prisoners every 30 minutes.

32. In my view the standard operating procedures governing custody of intoxicated persons are adequate, provided they are followed to the letter. *There is no room for discretion.* They have been formulated relying on histories of often- fatal events and near-misses occurring over the years in prison cells. If to the exclusion of these rules, reliance is had on “hands-on experience” over, in many cases, many years experience of dealing with intoxicated persons, there is a real risk that this can lead to complacency and “bending the rules”. It only needs the relaxation of one of these rules to potentially have fatal consequences.
33. In this case, a long list of “but-fors” can be tabulated.

**But for:**

- Sergeant O’Dea being distracted by other matters in High Street, he may have paid better attention to the disturbing communications and observations of Cherrie McCaig with follow-up and closer assessment. Had this been the case, the information conveyed to Adriana Lakic at Pine Lodge may have been different and a further assessment recommended.
- The fact that Mr Niit was apparently jovial and good-humoured once the police arrived, “an unusual drunk”, he was not seriously considered to be a suicide risk;
- The fact that the cell door opening onto the exercise yard had been left open to provide some relief from the heat in the cell, the hanging point constituted by the hinge would not have been accessible;
- The fact that the dog’s leash was attached to a muzzle rather than the collar the dog was wearing, all the equipment may have been removed including the collar as it would have been more noticeable;
- The fact that the dog was allowed into the cell with Mr Niit, out of compassion, her collar would not have become available;
- Mr Niit’s family was on the way to collect him and he was expecting them, any apprehension that he might do something to frustrate that, was less likely;
- The failure to communicate to Sergeant O’Dea the recent call made by Mr Niit to Pine Lodge in which he had expressed the intention to hang himself, Sergeant O’Dea might have been more alive to the risk of suicidality and monitored the risk more closely;

- The failure to perform half-hourly checks as required by the operating procedures, Mr Niit may have been able to be resuscitated in a timely fashion.

## **COMMENTS AND RECOMMENDATIONS**

I have read the submissions of all Counsel following the hearing. The bulk of these related to conflicts in the evidence. I have endeavoured to deal with those conflicts above.

### **COMMENTS**

#### **1. ELIMINATION OF HANGING POINTS.**

The Statement in the Brief prepared by Senior Sergeant Dermot Avon sets out the history of alterations to Echuca police station, constructed in the late 1960s. Echuca was included in a list of police stations, compiled in 1995, in which hanging points were to be removed from all cells. Exercise yards were not included in the proposal.

The Statement of Superintendent David Cowan <sup>23</sup>describes a review undertaken in mid-2010 to mid-2011 “The Persons in Custody Review”. The death of Mr Niit was a contributing factor in the decision to conduct the Review.

As a result of this review, 37 exercise yards were physically de-commissioned to prevent future use, including Echuca. Amongst alterations made was the replacement of hinges on cell doors with specific styled anti-ligature point design. In the case of Echuca, the exercise yards are not by design secure and are no longer in use.<sup>24</sup>

Land in Echuca has been purchased for the purpose of building a new police station. As at the date of Superintendent’s statement in November 2013, funding had not been finalised.

#### **2. RECOGNITION OF VULNERABILITY**

A large portion of the evidence heard in this Inquest related to the alleged failure of the police members to identify Mr Niit as a vulnerable person. As I have stated, this arose from a number of factors, which I have outlined above. That he was intoxicated was very apparent and Sergeant O’Dea had a “lingering doubt” about his mental state which prompted his call to Pine Lodge.

This situation raises the whole issue of capacity to recognise vulnerability when it is complicated by a degree of intoxication. Mr Niit was an “unusual drunk”. He was pleasant and accommodating, unlike the majority of drunks encountered by police who are frequently aggressive.

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<sup>23</sup> Inquest Brief P. 342

<sup>24</sup> Inquest Brief P. 351.

Protocols between Victoria Police and the Department of Health have sought to assist police and mental health officers to help each other when dealing with vulnerable people. At the time of Mr Niit's death, the relevant Protocol was operative since 2004.<sup>25</sup> The document recites Section 10 Mental Health Act and states:

*The member of the police force is not required to exercise any clinical judgment as to whether a person is mentally ill, but need only make a lay judgment that the person appears to be mentally ill based on the behaviour and appearance of the person.*

Assessing suicidality is an extremely difficult skill. Every year, in Victoria, mental health patients on day-leave from psychiatric institutions commit suicide notwithstanding that they had been recently assessed by mental health professionals as being suitable for unsupervised day-leave.

Add to that the complicating factor of intoxication and non-familiarity with the person being assessed, and the process is even more fraught with risk. The suggestion of 24 hour phone or on-line access to forensic mental health nurses / doctors as suggested by the Submission of the Loddon Campaspe Legal Centre is superficially attractive but I wonder at its usefulness. Mr Niit gave no indication to the Echuca police that he was intending to kill himself. He expressed concern that his wife not see him in the cell when she arrived and was re-assured on this point. Making an assessment by phone, as suggested, might be suitable in the case of a person who is floridly psychotic or deeply sad, but, in the same way as Nurse Plunkett failed to pick up any real sense that Mr Niit was suicidal (and she had known him for a long time as a vulnerable person) reliance on a phone assessment is not, in my view, the answer.

The answer, in my view, lies in applying the monitoring and checking practices as set out in the Standard Operating Procedures and the Victoria Police Manual, and removing all hanging points and any item that could be used to self-harm. No exceptions should be made, even if motivated by compassion. A departure from the rules may, as in this case, lead to totally unexpected outcomes. If there is any sense of concern, or a "lingering doubt", make the appropriate enquiries, keeping in mind that recognition of suicidality over the phone can be problematic, especially by one unfamiliar with the person, and then institute *more frequent* monitoring and checks. Half-hourly checks are a *minimum requirement*.

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<sup>25</sup> Protocol between Victoria Police and the Human Services Mental Health Branch, 2004

If the doubt is more substantial, assessment by a mental health professional is clearly to be arranged and transfer to a psychiatric facility organised. I note that in its Submission, the Office of the Chief Commissioner of Police contained the statement: “*Mr Niit’s state of intoxication alone disqualified him for (sic) any transfer to a psychiatric facility.*” The source of this pronouncement is not provided.

In my researches, I found nothing to suggest that being intoxicated was a bar to transfer to a psychiatric facility. Indeed in the revised 2010 Protocol for Mental Health between Department of Health and Victoria Police at Page 4 under the heading: “**Apprehending a person who is also drug or alcohol-affected**” it is written:

*“Police can apprehend a person under Section 10, who, along with appearing to be mentally ill is also drug or alcohol-affected, as intoxication is not a barrier to commencing an assessment. Police therefore do not need to detain the person in a police cell until the person is no longer under the influence of either substance for assessment or examination.....”<sup>26</sup>*

I consider it is important to make this very clear to dispel any misunderstanding about the police role when they make a Section 10 apprehension in relation to an alcohol-affected person.

### 3. TRAINING

This latter point leads naturally onto the issue of police training. Most of the police officers who gave evidence were familiar in a general way with the requirements in relation to apprehension and holding an intoxicated person in custody.

The real flaw in this case was not lack of knowledge of the rules, so much as complacency about applying them. The extent to which information about a case like this, about the dire consequences that might flow from non-application or relaxation of the rules, is disseminated to police members is not clear. Such information should be part of on-going training and widely disseminated. It would be reasonable to de-identify parties and await outcomes of court and coronial proceedings before doing this. However, all police members should be aware that a tragedy like this one can happen in the course of their daily duties and that the rules are to be complied with, no exceptions.

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<sup>26</sup> See Inquest Brief P. 241

**I recommend** that Victoria Police institute an “alert” process to be widely broadcast and disseminated amongst members providing information about both deaths and “near-misses” in respect of persons in custody in police cells. Such information should list the specific failures to observe the rules, thereby re-enforcing the importance of compliance, leaving nothing to discretion. The exact mechanism for this to be achieved, I leave to Victoria Police to work out.

Furthermore, to remove any doubts, it should be stressed that the fact that a person in custody is intoxicated is not a barrier to exercising powers under Section 10 where appropriate and conveying that person to a mental health facility. Whilst this misapprehension did not arise in the circumstances of this case, it was contained in a submission on behalf of Victoria Police and it should be clarified with members so that there is no misunderstanding.

Pursuant to section 73(1) of the **Coroners Act 2008**, I order that the following is be published on the internet.

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

Lisa and Amy Niit

The Hon. Robert Clark, MP  
Attorney-General of Victoria  
Level 26, 121 Exhibition Street,  
Melbourne Victoria 3000.

The Hon. Mary Wooldridge, MP  
Minister for Community Services  
Minister for Mental Health  
Level 22, 50 Lonsdale Street,  
Melbourne Victoria 3000

Mr Ken Lay  
Chief Commissioner of Police,  
Level 7, Yarra Tower,  
632 Flinders Street,  
Melbourne Victoria 3000



Signature:

*Jacinta Heffey*  
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JACINTA HEFFEY  
CORONER

Date: 18 March 2014

