



VICTORIA POLICE

**Shane Patton APM**  
**Chief Commissioner of Police**

Our ref: LEX 24555

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Coroner Darren Bracken  
Coroner's Court Victoria  
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Southbank VIC 3006

P.O. Box 913  
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**Subject:** Edward Espino - Finding into death without inquest  
**Case No:** COR 2016 000456  
**Date of recommendation:** 14 July 2021

Dear Coroner Bracken,

***Victoria Police response to recommendation arising from Finding without inquest into the death of Edward Espino***

This document provides Victoria Police's response to your recommendation directed to the Chief Commissioner of Police (**CCP**), arising from your Finding into the death of Edward Espino without inquest delivered on 14 July 2021.

Recommendation:

*"That the Chief Commissioner of Police provide training for recruits, and instructions for extant members, making clear that police members have no power to relieve those who have entered into undertakings of bail fixed by a court of their obligation to comply by pre-emptively agreeing not to prosecute the breach of any such obligation."*

Implementation

This recommendation is accepted and will be implemented.

The recommendation is directed at two cohorts of Victoria Police, namely recruits and extant members, who receive training and/or instruction in different ways.

The People Development Command (**PDC**), who are responsible for the training of recruits, and the Prosecutions Front Line Support Unit of the Legal Services Department (**PFSU**), who are responsible for instructions to extant members in relation to bail, have consulted with each other in relation to the implementation of the recommendation.

Following their consultation, PDC and PFSU have separated the recommendation into two internal recommendations which have been addressed by the relevant Command or Department.

The two internal recommendations are:

1. *"That the Chief Commissioner of Police provide training for recruits making clear that police members have no power to relieve those who have entered into undertakings of bail fixed by a court of their obligation to comply by pre-emptively agreeing not to prosecute the breach of any such obligation" (Internal Recommendation 1).*
2. *"That the Chief Commissioner of Police provide instructions for extant members making clear that police members have no power to relieve those who have entered into undertakings of bail fixed by a court of their obligation to comply by pre-emptively agreeing not to prosecute the breach of any such obligation" (Internal Recommendation 2).*

#### *Implementation of Internal Recommendation 1*

PDC deliver training for recruits regarding bail as part of the Foundation Training Program (**Program**). To address Internal Recommendation 1, PDC have modified the Program to include the following paragraph within the notes provided to recruits regarding bail and warrants under the heading 'Contravene Certain Conduct Conditions':

*"Police members have no authority in legislation or policy to excuse people from bail conditions set by a court. Police must not tell people that they will not be prosecuted for contravention of bail conditions. A person wishing to vary any bail conditions must be instructed to make an application to vary their bail conditions at the relevant court."*

To reinforce this training, recruits are also presented with two brief scenarios which include material facts drawn from the investigation into the death of Mr Espino.

#### *Implementation of Internal Recommendation 2*

PFSU deliver training with respect to bail within:

1. The 'Taking Charge Course' (**Course**). The Course is compulsory for Constables, and is undertaken anywhere between four to six months before confirmation of appointment; and
2. Supervisor training. Bail supervisor training instructs operational supervisors about a supervisor's role and responsibilities, as well as the informant's role and responsibilities, in relation to bail. This training is coordinated by the Regional Training Officer Network and delivered by PFSU as widely as possible to then be passed on by Supervisors to other extant members.

To address Internal Recommendation 2, PFSU have modified presentations delivered in the Course and supervisor training to include the following instructions in amended session plans and a new PowerPoint slide:

*"Once bail conduct conditions are imposed, they can only be varied upon application to the court."*

*"Police must not grant permission to an accused to fail to comply with any conduct conditions, such as being excused from complying with reporting obligations or curfews."*

*"Police must instruct any accused that seeks to vary bail conduct conditions to make a formal application to vary bail at the relevant court."*

To reinforce this training, extant members are presented with a brief scenario in the Course and supervisor training, which includes material facts drawn from the investigation into the death of Mr Espino (similar to the Program).

In addition, PFSU intend to modify the Victoria Police Manual (VPM) titled 'Bail and Remand' to include the above instructions in a new section titled 'Process for variation of bail conduct conditions'. The VPM applies to all members and it is envisaged that a global email will be circulated to ensure all members are made aware of the changes.

#### *Exception*

While Victoria Police accepts the recommendation, and will implement it, it maintains that there may be instances where large scale emergencies or a declared state of emergency event require isolated responses where it may seek, or be asked to suspend obligations for persons reporting on bail.

A recent example of this is the COVID-19 Pandemic. This created an issue with bail reporting conditions ordered by a court in accordance with section 5AAA(4)(a) of the *Bail Act 1977* (Vic). On 24 April 2020, bail reporting at police stations was suspended as a result of the closure of police station counters making it physically impossible for those with reporting obligations to attend and report.

Section 30A of the *Bail Act 1977* (Vic) creates an offence for a person to contravene a conduct condition of bail, however it makes an allowance for *reasonable excuses*, which would likely encompass the operational impacts of a State of Emergency declaration.

In relation to COVID-19, Victoria Police circulated emails outlining why reporting had been suspended, what persons reporting on bail should be told, and suggestions for prosecutors making submissions during applications for bail. Victoria Police also conducted risk assessments and put in place alternative measures for high risk defendants while the pandemic restrictions were in place. Given the CHO restrictions and enforcement that necessitated the counter closures were temporary, individual applications to vary reporting obligations were not lodged because of capacity issues relating to the pandemic.

Yours sincerely,



Shane Patton APM  
**Chief Commissioner**

29 / 11 /2021