CORONERS ACT, 2003

SOUTH *AUSTRALIA*

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 30th and 31st days of August 2016, the 1st and 2nd days of September 2016 and the 11th day of May 2017, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Daniel Peter Scoleri.

The said Court finds that Daniel Peter Scoleri aged 31 years, late of 19a Bridgman Road, Findon, South Australia died at Findon, South Australia on the 24th day of July 2014 as a result of acute neck compression due to hanging. The said Court finds that the circumstances of his death were as follows:

1. Introduction and cause of death

1.1. Daniel Peter Scoleri was 31 years of age at the time of his death on 24 July 2014. An autopsy was carried out by Dr Charlwood of Forensic Science South Australia and her post-mortem report[1] gave the cause of death as acute neck compression due to hanging, and I so find.

2. Reason for Inquest

2.1. At the time of his death Mr Scoleri had been a patient at the Royal Adelaide Hospital and was detained under the Mental Health Act 2009 with a requirement that he remain at the hospital. Accordingly, Mr Scoleri's was a death in custody within the meaning of that expression in the Coroners Act 2003 and this Inquest was held as required by section 21(1)(a) of that Act.

[1] Exhibit C19a

2.2. The Inquest examined the circumstances surrounding Mr Scoleri's treatment at the Royal Adelaide Hospital and how he came to be permitted to leave the hospital, despite the fact that he was subject to detention under the Mental Health Act 2009.

3. Background

3.1. Mr Scoleri was living independently and he had work as a tiler. He had a history of depression which was exacerbated by his use of cannabis and methamphetamines. It was reported that he had also used both cocaine and ecstasy. Mr Scoleri had stated that he had ceased to use methamphetamine some four months prior to his death and had last used cannabis approximately five days before his death.

3.2. Mr Scoleri's drug use meant that he was often short of money and his personal life was chaotic. His drug use affected his mood and he would often be unpredictable and aggressive. He had made suicide attempts previously.

3.3. Mr Scoleri had a number of presentations to hospitals for his mental health problems over the years. Often he would abscond from hospital or discharge himself against advice and prior to completion of his treatment. On 21 July 2014 Mr Scoleri consulted his general practitioner, Dr Crowley. Dr Crowley recommended a hospital admission to assist with drug detoxification but Mr Scoleri refused his advice. Dr Crowley prescribed oxazepam to assist him with cannabis withdrawal and his associated anxieties. Mr Scoleri did not express any suicidal ideation to Dr Crowley.

4. The events leading to Mr Scoleri's attendance at the Royal Adelaide Hospital

4.1. On 23 July 2014 Mr Scoleri failed to attend work. His brother was alerted and found Mr Scoleri lethargic and apparently under the influence of a drug. Mr Scoleri said that he was not going to attend work on that day.

4.2. On the afternoon of 23 July 2014 Mr Scoleri had a serious motor vehicle accident which involved being removed from the vehicle and taken to the Royal Adelaide Hospital by ambulance. He had no obvious injuries and X-rays and CT scans were carried out which did not reveal any internal injuries. However, he was complaining of a sore back and was provided with painkillers and was asked to remain at the hospital for observation. However, between 9pm and 9:30pm he left the Royal Adelaide Hospital with his mother and girlfriend contrary to medical advice.

4.3. When he returned home he found that his garage door was open and a number of belongings had been moved around. He formed a belief that a family member had done this and then he attended at the family member's home where he committed several acts of property damage, including the smashing of an outdoor table. After this Mr Scoleri asked his girlfriend to take him to a psychiatric hospital because he was feeling the need for admission. While this was occurring his girlfriend received a message on her mobile phone from the treating doctor at the Royal Adelaide Hospital from the admission earlier that evening. The doctor was asking that Mr Scoleri return as he had left while a jelco was still in his arm and that it had to be removed under medical supervision. Accordingly, Mr Scoleri's girlfriend took him to the Royal Adelaide Hospital where they arrived at the Emergency Department at approximately 10:35pm.

4.4. Mr Scoleri was seen by the doctor who had contacted Mr Scoleri's girlfriend and he asked if he could speak with a mental health nurse because he was feeling suicidal.

5. Mr Scoleri's detention under the Mental Health Act 2009

5.1. Dr Humphrey is an emergency physician and she was the senior registrar in the Emergency Department on the night of Mr Scoleri's attendance. Dr Humphrey was supervising an intern called Dr Nandal. She said that Dr Nandal conducted an assessment of Mr Scoleri sometime after 3:30am on 24 July 2014. Having carried out that assessment Dr Nandal then presented the case to Dr Humphrey. She told Dr Humphrey that Mr Scoleri had been involved in the motor vehicle accident and she mentioned that he had previous drug issues. Dr Nandal said that he was feeling quite suicidal and hopeless about life. Dr Humphrey said that she and Dr Nandal had quite a long discussion and it was their view that they needed to keep Mr Scoleri safe in the Emergency Department. They discussed two options, the first being the imposition of a Level 1 Inpatient Treatment Order and the second being the exercise of the power of an Authorised Officer under section 56 of the Mental Health Act 2009 to take Mr Scoleri under the Authorised Officer's care and control. It was decided to detain Mr Scoleri using the powers that were available under section 56 of the Mental Health Act 2009. For my purposes nothing turns on this particular choice. On any view it was clearly appropriate for Mr Scoleri to be detained for further examination by a psychiatric doctor, whether a registrar or a consultant, which could not happen until sometime after 9am that day.

5.2. Dr Humphrey asked Dr Nandal to speak to a mental health nurse to further assess Mr Scoleri. She also asked registered nurse Ms King, a clinical nurse in the Emergency Department, to take Mr Scoleri under care and control under section 56. According to Ms King that happened at approximately 4:15am[2]. Ms King said that patients who are taken under care and control pursuant to section 56 of the Mental Health Act 2009 are not permitted to leave the Emergency Department at all, including for a cigarette[3].

5.3. Ms King said that after completing the paperwork for detaining Mr Scoleri under section 56 she asked Dr Humphrey whether Mr Scoleri would require a 'patient minding guard'[4]. She said that the hospital's policy was that they could be used if clinically indicated, in other words it is a discretionary but not a mandatory process. She wanted to see whether Dr Humphrey felt that the circumstances warranted the use of a guard. Dr Humphrey said that she felt that Mr Scoleri's girlfriend was present and that Mr Scoleri had her support and that he was at low risk of leaving without treatment being complete. They made a decision that at that time they would leave him without a guard.

5.4. Dr Humphrey's evidence in relation to the discussion about a guard with Ms King was consistent with Ms King's account. In particular, both Dr Humphrey and Ms King both said that neither of them was at any time told that Mr Scoleri's girlfriend might intend to leave the Emergency Department at any time, or that there was any doubt about her reliability as a support person.

5.5. Dr Humphrey's next involvement in the case was when she had a conversation with registered nurse Clarke. Ms Clarke was an agency mental health nurse who had conducted a further assessment of Mr Scoleri. Ms Clarke approached Dr Humphrey and informed her that she was of the opinion that Mr Scoleri was at low risk and that he could go home[5]. Dr Humphrey did not agree with this assessment and said that she had a 'fairly animated discussion' with Ms Clarke[6]. She said that Dr Nandal had assessed that there were a number of factors that made Mr Scoleri a suicide risk and that he needed to stay and see a psychiatric registrar in the morning. Dr Humphrey said that the conversation was terminated fairly abruptly, but that it was her understanding

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[2] Transcript, page 149
[3] Transcript, page 150
[4] Transcript, page 152
[5] Transcript, page 218
[6] Transcript, page 218

that Mr Scoleri would be waiting in the Emergency Department until he could be seen by a psychiatric registrar[7]. Dr Humphrey said that Ms Clarke did not appear to be happy with the outcome of their discussion, but that she walked away and that from Dr Humphrey's point of view she made it 'abundantly clear' that Mr Scoleri was to remain in the Emergency Department for assessment later in the day by a psychiatric doctor[8].

5.6. Dr Humphrey said she had two conversations with Ms Clarke. The initial conversation was prior to Ms Clarke assessing Mr Scoleri. In both of the conversations Ms Clarke made reference to the need for Mr Scoleri to have a guard present. In the first conversation, which was before Ms Clarke saw Mr Scoleri, Dr Humphrey said that she did not think a guard was required and explained the reasons why she and Dr Nandal had reached that conclusion. In the second conversation with Ms Clarke the latter had returned to say that she considered that Mr Scoleri was at low risk and could go home, but in the same conversation said that she thought he needed a guard because he was being detained pursuant to section 56. Ms Clarke did not say anything about Mr Scoleri intending to leave or that his girlfriend was in anyway unreliable. Dr Humphrey said that if she had heard those claims she would have looked at Mr Scoleri herself.

5.7. Dr Humphrey said that she was not told that Mr Scoleri had left the Emergency Department until after her shift. She said that if she had been told that she would have arranged to bring him back. She said that if she had seen him walking out the door she would have called a Code Black. She said that when she found out he had left she was surprised because she thought he was waiting.

5.8. Ms King said that she spoke to Ms Clarke very soon after 4:33am about the need for a guard. This was before Ms Clarke had seen Mr Scoleri for her assessment. Ms King told Ms Clarke that a guard was not mandatory, but she could order one if she wanted. This was acknowledged by Ms Clarke who then went to assess Mr Scoleri. Ms King said that Ms Clarke never asked her whether Mr Scoleri could leave the Emergency Department. She said that if Ms Clarke had told her that Mr Scoleri wanted to leave she would have told Ms Clarke that he was not allowed to and that if he was going to leave they would need to get security to make him stay.

[7] Transcript, page 219
[8] Transcript, page 220

5.9. Ms King said that at around 7am she spoke to Ms Clarke and asked where Mr Scoleri was. Ms Clarke said that he had gone out to say goodbye to his girlfriend. Ms King was very surprised to learn that because section 56 patients are not permitted to leave under any circumstances. Ms King did not believe that any other staff member apart from Ms Clarke was aware that Mr Scoleri had left.

5.10. Ms Clarke gave evidence at the Inquest. She said that she assessed Mr Scoleri in the presence of his girlfriend. She said that he had suicidal ruminations but that they were chronic and no worse than usual. She said that he had by then been in the Emergency Department for many hours and was feeling tired, and was open to going home with support in the community. She said that she would need to speak to a doctor about that and said that Mr Scoleri was cooperative. Ms Clarke said that because Mr Scoleri was not under an Inpatient Treatment Order she was confused about why he was there[9]. She said that he had been out several times for cigarettes during the night without a guard[10]. She was aware of that from the Emergency Department notes and speaking to the shift coordinator[11]. Ms Clarke said that she went to 'the head nurse' and said 'he is under a care and control and why isn't there a guard?' and she said 'he doesn't need a guard' and I said 'well what's the point of a care and control if he doesn't have a guard?'[12]. She said that she was quite uncertain as to why he had been put under what she described as a 'care and control'[13]. Ms Clarke asserted that Mr Scoleri should not have been detained pursuant to section 56 and rather there should have been an Inpatient Treatment Order if they wanted him to stay in the Emergency Department[14]. Ms Clarke said that she spoke with Ms King about the need for a guard and following that discussion it was her understanding that Ms King did not think a guard was necessary, but that a guard could be placed upon Mr Scoleri if Ms Clarke instigated it herself[15]. In that respect her evidence is consistent with that of Ms King.

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[9] Transcript, page 116

[10] The evidence showed that this was true, but these 'cigarette breaks' all occurred before he was formally taken under care and control pursuant to section 56 of the Mental Health Act 2009

[11] This was an event prior to the exercise of power under section 56 of the Mental Health Act 2009 to detain Mr Scoleri

[12] Transcript, page 118

[13] Transcript, page 118.

[14] Transcript, page 119

[15] Transcript, page 121

5.11. Ms Clarke then asserted as follows:

> 'I went to the guard room and I asked them if they knew anything about the client being in ED all night without a guard under care and control and they said no, so I gave them a sticker with all his details and I said 'When he comes back he needs to have a guard'.' [16]

Ms Clarke said that Mr Scoleri and his girlfriend had said that the girlfriend needed to go to work and that Mr Scoleri was hungry and that they wished to go to the café across the road to have breakfast before the girlfriend left[17]. Ms Clarke then saw Mr Scoleri leave the Emergency Department. She then made a note in the medical records as follows:

> 'If returns put guard on him.' [18]

She was asked whether that indicated that she had doubts about whether he would return, and she replied:

> 'Well, you can't say 'When he returns' because it's unknown whether he returns, so you can't say 'when' because I don't know whether he's going to return or not. So 'if' is the obvious thing to say because if I say 'When he returns' I don't know if he's going to return.' [19]

5.12. Ms Clarke said that she did not see Mr Scoleri again before she finished her shift and that just prior to finishing her shift, which was just before 7am, she spoke to another nurse and handed her the notes and said 'when or if he comes back can you please ensure the guard is placed on him'[20].

5.13. In cross-examination Ms Clarke was asked whether she discussed her decision to permit Mr Scoleri to leave the Emergency Department with any other staff members. She replied that she thought she spoke to Ms King and informed Ms King that he was leaving to have breakfast and that when he returned a guard would need to be placed on him. She said that she thought that this occurred at about 6am, but could not be certain that it was Ms King she spoke to[21].

5.14. Ms Clarke's evidence was combative and unreliable. It was fundamentally inconsistent for her to assert that she was maintaining that there was a need for a guard while at the same time she was permitting Mr Scoleri to leave for breakfast. If she thought there

[16] Transcript, page 121
[17] Transcript, page 121
[18] Transcript, page 123
[19] Transcript, page 124
[20] Transcript, page 124
[21] Transcript, page 127

was a need for a guard prior to permitting him to leave for breakfast, it beggars belief that she would have permitted him to leave for breakfast as she did. Her decision to permit him to leave was perverse. Things were not being done the way she thought they should be done. It was her view that he should not be detained pursuant to section 56, but instead pursuant to an Inpatient Treatment Order under the Mental Health Act 2009. That in itself would have made no difference if she was going to permit him to leave for breakfast. Her thinking was muddle-headed and illogical. I find that Ms Clarke did not tell any other staff member about her decision to permit Mr Scoleri to leave. Her action in permitting him to leave was unpredictable and could not have been foreseen by Dr Humphrey, Ms King or any other responsible staff member.

6. Conclusions

6.1. I accept the submissions of counsel for Central Adelaide Local Health Network that Mr Scoleri's assessment by Dr Nandal was comprehensive. I accept the evidence of Dr Humphrey and Ms King. Dr Humphrey formed the view that Mr Scoleri should remain in the Emergency Department for further assessment by a psychiatric doctor the following morning. She decided that section 56 of the Mental Health Act 2009 afforded the appropriate mechanism to achieve that outcome. Dr Humphrey and Ms King had a conversation about the need for a guard and on the information known to them they reasonably concluded that one was not necessary at that time. At no time were they told that Mr Scoleri intended to leave, that his girlfriend was an unreliable support person, or that the girlfriend need to go to work. Mr Scoleri was duly detained pursuant to section 56 by Ms King at 4:32am. It was then that Mr Scoleri fell into the hands of Ms Clarke who was supposed to undertake a mental health assessment of him. Ms Clarke questioned both Dr Humphrey and Ms King in relation to the issue of a guard and both of them explained that a guard was not mandatory. They advised of their reasons why they considered a guard was not necessary at that time. Ms King said that she made it expressly clear to Ms Clarke that if the latter considered a guard was necessary she could and should order one. Ms Clarke conceded that in her own evidence. Ms Clarke did not order a guard and proceeded to conduct her own assessment of Mr Scoleri. She then assessed him as being at low risk and considered that it was appropriate for him to leave the Emergency Department for follow-up in the community. She approached Dr Humphrey and proffered that opinion and Dr Humphrey disagreed with her. Dr Humphrey stated that Mr Scoleri was to remain

for psychiatric review. Ms Clarke again raised the issue of a patient minding guard and was again told that it was not in the opinion of Dr Humphrey necessary.

6.2. For reasons best known to herself Ms Clarke then permitted Mr Scoleri and his girlfriend to leave the Emergency Department at around 5:45am. She did so in the knowledge that Mr Scoleri was detained under section 56 of the Mental Health Act 2009 and she did not discuss her plan with any other staff members. Bizarrely, she then attended at the security desk and requested that a guard be arranged for Mr Scoleri if he returned.

6.3. When the Emergency Department staff did become aware that Mr Scoleri had left that morning, appropriate action was taken to alert the necessary authorities. I accept the submission of counsel for the Central Adelaide Local Health Network that all of the medical and nursing staff, apart from Ms Clarke, acted appropriately and there was no confusion among them that Mr Scoleri was not to leave the Emergency Department once he was subject to detention under section 56 of the Mental Health Act 2009.

6.4. If it had not been for Ms Clarke's unpredictable behaviour in permitting Mr Scoleri to leave, and making no attempt to prevent him from doing so, Mr Scoleri would not have been able to go home and harm himself as he did.

7. <u>Recommendations</u>

7.1. I have no recommendations to make in this matter.

Key Words: Death in Custody; Psychiatric/Mental Illness; Care and Control Order

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 11th day of May, 2017.

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State Coroner