



STATE
CORONER
VICTORIA

CORONERS REGULATIONS 1996

Form 1

State Coroners Office
57-83 Kavanagh Street
Southbank 3006
Telephone: (03) 9684 4380
(All Hours)
Toll Free: 1300 309 519
(Only Country Victoria)
Fax: (03) 9682 1206

Case No: 2959/06

RECORD OF INVESTIGATION INTO DEATH

I, JUDGE JENNIFER ANN COATE, State Coroner,

having investigated the death of PAUL WAYNE CARTER with Inquest held at the Mildura Court on April 21,22,23,24,28,29,30 and May 1,2,5,6,7 and 8, 2008

find that the identity of the deceased was PAUL WAYNE CARTER and that the death occurred on August 7 2006 on the Sturt Highway Mildura from:

1(a) Multiple injuries consequent upon being struck by a truck

in the following circumstances:

INTRODUCTION

1. Paul Wayne Carter ("Paul")¹ was 33 years old at the time of his death. He was an aboriginal man with a cognitive impairment, a problematic mental health history and a long standing substance abuse history. He died just after midnight on August 7, 2006 after being struck by a truck on the Sturt Highway about 12 kilometres out of Mildura. On post mortem toxicological examination, he was found to have a blood alcohol content of .17. Traces of the active ingredient of cannabis were also detected.

2. Paul had been left on the Sturt Highway by two members of Victoria Police, Senior Constable Nigel Hoyle and Constable Steve Ritchie². In a statement made to the investigators, S/C Hoyle stated that Paul changed his mind along the way to his father's home and requested to be taken out past the airport and left there to walk back. About 20 minutes after being left at the Sturt Highway, Paul put himself in the path of a truck which struck and killed him. Hours earlier on the same day Paul had learned that his brother Brian had died suddenly and unexpectedly from an epileptic seizure.

¹ Upon my enquiry, the family requested that Paul Carter be referred to as "Paul" or "Paulie" throughout the Inquest.

² I am advised that Steve Ritchie now has the rank of Senior Constable. I have referred to him throughout the finding as Constable Ritchie(C/Ritchie) as that was the rank he held at the time of these events.

3. In the lead up to his death, Paul had spent much of the day (August 6, 2006) gathering with family and friends to mourn the passing of his brother, Brian.

4. After leaving the family gatherings sometime in the early evening, Paul went to the home of his girlfriend, Dulcie Sampson³, at 1/180 Ontario Avenue Mildura. Police were called to attend a disturbance there shortly before midnight on that Sunday, August 6. Paul was the subject of the complaint at Dulcie's home. Four Mildura police travelling in two vans attended the call. Paul travelled away from Dulcie's residence in the van driven by C/ Ritchie with S/C Hoyle as his partner on that shift.

5. When Paul left Ontario Avenue in the back of that police van, it was understood by all present that he was being taken to his father's home at 3 Hornsey Park, Mildura. However, during the journey, the route changed from delivery to this address at Hornsey Park, to delivery at the Sturt Highway past the airport about 13 kilometres from his father's home.

6. There were a number of contentious issues canvassed during the Inquest. I have endeavoured to distill the essence of the issues which, in my judgment, are sufficiently proximate to the circumstances surrounding Paul's death and therefore should be addressed.

7. The Inquest extended over three weeks and ran into hundreds of pages of transcript and many volumes of documents. I have not endeavoured to summarise all of the evidence. Suffice to say my analysis of the issues and my findings are based upon all of the material provided to me throughout the coronial investigation including the Inquest brief, all of the documents tendered during the Inquest, the evidence of witnesses contained in the transcript and the submissions of Counsel.

8. Before turning to those matters, however, I shall address the preliminary requirements of the *Coroners Act 1985 (Vic)*.

JURISDICTION

Reportable death

9. Deaths required to be reported to the coroner are set out in the *Coroners Act 1985 (Vic)*.⁴ There was no question which arose before me that Paul's death was not a **reportable death**.⁵ The question of whether or not Paul was in the legal custody or care of the police at any time on the evening of his death was very contentious. It was no doubt properly accepted by all members of Counsel that even if Paul was not in police custody, care or control at the time of his death, his death was sudden and unexpected and unnatural and the direct result of injury and therefore a **reportable death** on that basis without need to go to any other grounds to found jurisdiction.

³ Ms Dulcie Sampson was asked how she wished to be referred to during the Inquest and requested to be addressed as "Dulcie".

⁴ See Sections 3 and 15 Coroners Act 1985 (Vic)

⁵ See Section 3 Coroners Act 1985 (Vic) for definition of "reportable death"

Mandatory Inquest

10. The *Coroners Act 1985* sets out a number of circumstances in which an Inquest into a reportable death is mandatory.⁶ In this case, the relevance of this issue is that if Paul was, immediately before his death, in the custody of a member of the police force, then the holding of an Inquest was mandatory. Again, no submissions were made against the holding of an Inquest and thus no ruling was made on this issue in that context. As to the issue of "*in custody*" generally I have dealt with this issue at some length below.

Mandatory Findings

11. S.19(1)⁷ of the *Coroners Act 1985* sets out the matters a coroner must find if possible when investigating a reportable death. These provisions contained in S.19(1) are generally referred to as the mandatory or compulsory requirements upon a coroner.

Section 19(1) of the Act provides as follows:

(1) A coroner investigating a death must find if possible -

- (a) the identity of the deceased; and
- (b) how death occurred; and
- (c) the cause of death; and
- (d) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act 1996.

12. S.19(1)(a) is clear and needs no interpretation in this context. S.19(1)(b) is usually interpreted to mean "*the circumstances surrounding the death*" and S.19(1)(c) is generally interpreted to mean the medical cause of death. The focus of a number of Inquests is paragraph (1)(b) of S.19. This investigation and Inquest fits that category. For this reason, I have dealt with S.19(1)(a) and (c) first and very briefly, as they were not contentious and then S.19(1)(b), as the bulk of the investigation and Inquest focused upon the circumstances surrounding Paul's death.

S.19 (1)(a) Identity of the deceased

13. No issue was raised during the course of this investigation as to Paul's identity. There was no evidence other than he was Paul Wayne Carter.⁸

⁶ See Sections 3,15 and 17 *Coroners Act 1985 (Vic)*

⁷ References to sections throughout the remainder of this Finding and Comments and Recommendations shall be to the *Coroners Act 1985 (Vic)* unless otherwise stipulated.

⁸ Proof of identity was established by a fingerprint report of 9.8.06 from Victoria Police Forensic Science Department, obtained by D/S/C Tim Moreland and further, a report of Alan Atchison, Molecular Biologist of the Victorian Institute of Forensic Medicine dated 11.08.06 which matched a DNA sample from Paul Carter's sister Jan Carter with a 99.99% probability of sibship.

S.19 (1) (c) Cause of death

14. This paragraph is usually interpreted as meaning the "medical" cause of death. No issue was raised in this Inquest as to the medical cause of Paul's death as it is recorded above.

15. Associate Professor David Ranson, Deputy Director of the Victorian Institute of Forensic Medicine, conducted an autopsy and provided a detailed report of his findings and provided a medical cause of death as noted above.⁹

S.19(1) (b) How death occurred

16. As stated above, it is this paragraph which has been the focus of this investigation and Inquest. It is generally interpreted as requiring the coroner to find the facts and circumstances surrounding the death whilst ensuring that the coroner contains the investigation and subsequent findings to those matters which fall within a description of being proximate to and connected to the death.¹⁰

17. What is sufficiently proximate to and connected to the death is sometimes a difficult judgment to make in the running of an Inquest, as from time to time it is only at the completion of the investigation (which incorporates the Inquest¹¹) that the coroner will be able to decide these issues finally. However, the authorities are clear that a coroner must balance these limits with a duty to find the facts surrounding the death as far as possible.

18. In this case, I have divided up the various aspects of the circumstances surrounding Paul's death as :

A: PAUL'S GENERAL BACKGROUND **page 5**

- (i) Criminal offending history
- (ii) Intellectual disability
- (iii) Mental health history
- (iv) Family and friends

B: PAUL'S LAST DAY: The facts **page 10**

- (i) Brian Junior's death
- (ii) Paul's arrival at Dulcie's place at 1/180 Ontario Ave Mildura
- (iii) The police attendance at Ontario Ave
- (iv) Paul's departure from Ontario Ave
- (v) Change of destination to the Sturt highway
- (vi) Independent accounts from the Sturt highway

⁹ Autopsy report of Associate Professor Dr David Ranson of 24.10.06 at Inquest Brief p.119

¹⁰ *Militano v State Coroner* [Unreported 18.12.92 SC Vic 10162/1991 per Hayne J]; *Chief Commissioner of Police v Hallenstein* [1996] 2 VR 1; *Clancy v West* [1996] 2 VR 647; *Harmsworth v The State Coroner* [1989] VR 989

¹¹ See section 3 (1) *Coroners Act* 1985 (Vic)

C: THE POLICE INVESTIGATION

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- (i) Police attending the scene
- (ii) Discussion between members
- (iii) Chinese whispers
- (iv) The Homicide Squad investigation

D: PAUL'S LAST DAY: The questions

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- (i) Was Paul in police custody at any stage on that evening?
- (ii) Did Paul ask to be taken out past the airport that night?
- (iii) Was Paul's death suicide?
- (iv) Should Paul have been taken out past the airport?

F: COMMENTS / RECOMMENDATIONS

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Comments

Recommendations

A: PAUL'S GENERAL BACKGROUND

19. Paul was born on the 11th of September 1972 in Wilcannia in New South Wales. His parents were Esther Rogers, an aboriginal woman and Brian Carter. There were three other children to that relationship being Brian Junior, Ronald and Jan (Marie) Carter. Paul's mother Esther Rogers passed away when Paul was very young. Brian Carter senior was assisted by May Johnson to care for the Carter children after Esther passed away. Brian Carter and May Johnson thereafter commenced a relationship and remain together. May Johnson brought seven children into that relationship, many of whom live in and around Mildura and whom considered Paul as family.

20. It was difficult to get a clear picture of where Paul grew up and in what circumstances. Some records indicate that he was placed in a boy's home between the ages of 6 and 16. However a perusal of the Mildura Base Hospital records reveal that Paul had a series of attendances at that hospital throughout his childhood and he appears to have been taken to the hospital by his father on each occasion.¹² The report of Nita Quick¹³ in setting out Paul's early history stated that although Paul would visit his father and new family on weekends he remained in Wilcannia. Kay Tulloch, a drug and alcohol counsellor with whom Paul had a professional relationship, gave evidence that her understanding of Paul's history was consistent with the report of Nita Quick.

21. A compilation of Paul's early history reveals problems with petrol sniffing and frequent incarceration in various institutions as both a youth and as an adult for a range of criminal offending. Paul struggled with substance abuse problems and in particular with alcohol abuse. In his later years, Paul was making endeavours to battle his alcoholism. For example, in 2004 he commenced attending Ms Kay Tulloch, drug and alcohol counsellor at the Mildura Aboriginal Co-operative.

¹² Appendix K Mildura Base Hospital records

¹³ Appendix N

(i) Criminal offending history

22. During his years in Mildura, Paul was regularly jailed for being drunk and committing a range of criminal offences, some of them violent offences against police. As at 7.8.06, his LEAP¹⁴ history contained warnings for violence, carrying weapons, use of force and suicide and self harm.

23. Paul's criminal history in Mildura dates back to 1989 and appears to contain about 30 court appearances. There were a number of serious incidents recorded in his LEAP history. The following is a snapshot of some of his more recent history:¹⁵

2002: He was involved in an incident on 20.7.02 in which a police member pulled a firearm on him after he had brandished a knife. Paul was subdued by O/C spray. On 15.8.02, there was an incident in the police station where he was recorded as being so aggressive he had to be sprayed twice before being wrestled to the ground and subdued. On the 21.9.02 there was an incident at his father's home in Mildura where he held a litre bottle of petrol to his father and was flicking a lighter, threatening to harm his father. His father called the police and Paul did throw petrol on his father and set light to the petrol. The police attended and Paul was subdued by O/C spray on that occasion.

2003: On 30.10.03, he was attended to in the street in Mildura for yelling and making threats. Two members sprayed him with O/C spray to place him in the van. On 13.11.03 he is recorded as having pushed police and threatened them with his fists.

2005: On 5.4.05 whilst appearing before the court in Mildura, Paul became so threatening to the police member securing him that, at the request of the prosecutor to the Magistrate, he was placed in handcuffs and the court stood down to enable Paul to calm down. He was later so threatening and violent back at the police station that he was not able to be further interviewed. On 9.12.05 Paul was arrested in Langtree Mall in Mildura after being found to be drunk and abusive. He was handcuffed and continued to yell abuse at passers by.

¹⁴ Electronic system used by Victoria Police to record and retrieve information about individuals after contact with police. LEAP stands for Law Enforcement Assistance Program and is used inter alia to record information about a person's pending charges, prior convictions and issues police need to know about how to deal with that person including information about a propensity for violence or a self harm risk. The warning system has been developed over many years and in response to a range of issues including assisting police in confronting difficult situations and to assist police to avoid deaths of persons in their custody or care.

¹⁵ See Appendix R.

(ii) Intellectual disability

24. During an admission to Mildura Base Hospital as an involuntary patient in August 1996, a query was raised as to whether or not Paul was intellectually disabled. Paul was not formally assessed until 2003. I note that it was Mildura police that took Paul to Mildura Base Hospital on that occasion in 1996 after an episode in which police intervened.

25. The evidence is that Paul was assessed as eligible for a Commonwealth Disability Pension in 2003. His eligibility for that pension was based on an assessment that he fell within the range of intellectual disability accepted to qualify for such a pension. The material before me reveals that his intellectual disability may well have been at least in part as a result of his long and damaging history of petrol sniffing.

26. As to what the police knew of his intellectual disability, his LEAP history contained an entry as follows: *"petrol sniffing problem and requires treatment. Appears to have some brain damage/deficiency."*

27. L/S/C Baldock, the first police member to give evidence in the Inquest, when asked about what he knew of Paul's intellectual disability stated he knew that Paul Carter was intellectually disabled.¹⁶ He stated that he knew this from his LEAP history. S/C Giles, who had been stationed at Mildura considerably longer than L/S/C Baldock, stated he was unaware of Paul's intellectual disability or history of solvent abuse. It is not clear from the evidence what S/C Hoyle or C/ Ritchie knew of Paul's intellectual disability as their statements contain no reference to this issue.

28. Kay Tulloch, his drug and alcohol counsellor, gave evidence that she knew Paul was illiterate.¹⁷ In trying to describe working with Paul, she said she found it difficult to get Paul to take things seriously. She stated his acquired brain injury was evident when talking to him. She gave an example in this way: *"...quite often I used to have to ask Paul to listen to what I was saying because he would start talking about something else or he would start laughingand then I would ask him what I was just talking about and he would sayI don't know ..."*

29. Kay Tulloch's evidence suggests that Paul's presentation in 2006 would raise a concern to the reasonable lay observer that he was struggling intellectually or that at the very least there was something *"wrong"* with him.

(iii) Paul's mental health history

30. The material¹⁸ in the evidence reveals that Paul had a long history of mental health problems. The LEAP record of Victoria Police about Paul is detailed and lengthy. In the Thin Blue Line *"Attendance Module"*¹⁹ section there is a comprehensive set of remarks and warnings. The first page of that document contains a warning for suicide/self injury with a

¹⁶ Transcript p.104-5

¹⁷ Transcript 1174-5

¹⁸ See Appendix K

¹⁹ Exhibit 40

summary beside it as follows "threatened to hang himself". There are three separate recorded incidents of threats of self harm in Paul's LEAP history.²⁰

31. As to the source of much of the remainder of the evidence as to Paul's mental health history, it comes largely from medical records. Whilst none of the documents were specifically or individually tested during the Inquest, given the source, I consider the information reasonably reliable in general terms.

32. The records document inter alia that in 1994 in the Northern Territory, Paul was taken to hospital by NT police for multiple self inflicted lacerations. In August 1996 the Mildura Base Hospital records reveal that he was taken there by police after he doused himself in petrol and threatened to set himself alight.

33. Mildura police referred him to Mildura Base Hospital again in December, 1996 after petrol sniffing and poly-substance abuse. At this time he was involuntarily detained. His hospital record describes him during that admission as - "*Laughing/smiling/incongruent with grandiosity/hypomanic but friendly.*" He was recorded as having suicidal ideation at that time. He was released after one day. The discharge summary records that the police had stated to the hospital that Paul had come to their attention 2 to 3 times in the past 24 hours and they were keen for him to be admitted to the unit for his protection and that of others.

34. The following entry is recorded in the Mental State Examination of the discharge summary of this admission to Mildura Base Hospital in 1996:

"Paul presented as a small built, malnourished, neglected, laughing, smiling to reveal broken, poorly cared for teeth. Friendly co-operative, euphoric, overactive young man with multiple healed scars and superficial lacerations on forehead looking older than his 24 years and smelling strongly of petrol fumes. During the interview he was co-operative, vague historian, euphoric and overactive but not disinhibited smiling and laughing throughout. He had hypomanic effect, was oriented in time, place and person, with memory of past events vague and some reduction in recent memory; no current hallucinations despite past visual and auditory hallucinations under the influence of drugs with increased speed of speech, without pressure or flight of ideas but containing paranoid ideas that rejected by others (including parents/females) plus grandiose themes including increased ability to withstand pain, to win gang fights, brave, drug seeking behaviour for elevated effect and sudden lowering of mood with suicidal ideas when not on drugs, appeared to be of lower than average intelligence"

35. On 26.3.1997, Mildura Base Hospital records reveal that they received a phone call from Mildura police asking if the hospital was still treating Paul as he had been sniffing petrol although was not suicidal.

²⁰ One in 1995 of threatening to hang himself in his cell, one in 1996 when he threatened to set himself alight and one contained in an entry for 29.4.97 stating that Paul had told police that he intended to hang himself. In this entry the notes state: "*Carter is well known to local police in Mildura and has a history of sniffing petrol and previous attempts at committing suicide.*"

36. On 21.11.04 Paul was again admitted to Mildura Base Hospital and involuntarily detained after spraying blood over people in Jaycee Park in Mildura after he cut his forearm. Mildura police (including C/ Ritchie at some stage) and a Crisis Assessment and Treatment Team were involved in both his original apprehension and his transfer into seclusion when he was at the hospital. The hospital notes during this admission reveal that he was loudly insisting he was going to kill himself and reporting three previous hanging attempts and a history of self harm by cutting and cigarette burns. He was held involuntarily for two days before being released.

(iv) Family and friends

37. As at August 2006, Paul was in a relationship with Dulcie who lived at 1/180 Ontario Avenue Mildura. He had been in this relationship for about 8 months. Paul's relationship with Dulcie was the subject of some evidence during the Inquest. The police evidence was that they were regularly called to Dulcie's home to intervene in various forms of dispute between the two of them. Kay Tulloch gave evidence²¹ that she would often see Paul and Dulcie walking along the street holding hands and seeming quite happy. However, Ms Tulloch was also aware that the relationship was violent from time to time and characterised by binge drinking.

38. Ms Tulloch's evidence²² was that in the months leading up to Paul's death he had commenced attending the gym and returning to his painting. Ms Tulloch also gave evidence that Paul and Dulcie were pursuing literacy skills together and Paul was hoping to be able to get a driver's licence, although Ms Tulloch accepted he would have had little prospect of being able to pass the necessary requirements for a driver's licence.

39. The essence of the evidence from Paul's family and friends and community was that they supported and accepted him despite all of these difficulties and problems. His sister Colleen Johnson, perhaps summed up the family's attitude best when she said: *"To me, Paulie was normal ... like he'd always been normal to me ... Paulie was always the same to me ..."*²³

40. Understandably, many of the witnesses who were Paul's family or friends or community, when giving evidence, minimized Paul's substance abuse and associated behaviour, his past criminal offending and mental health problems and focused on his positives and the happy times with friends and family. He was repeatedly described by these witnesses as a *"happy go lucky person"* giving no indication of self harm.²⁴ Kay Tulloch also spoke of his infectious grin and described him as a humorous and cheeky fellow.²⁵

21 Transcript 1160

22 Transcript 1156

23 Transcript 169, 174

24 For example Brian Carter Snr (Ex 10) ; Jan Carter (Ex 11) Dennis Johnson (Ex 13) Transcript 245 and 251

25 Transcript 1157

41. In summary, there was considerable evidence that Paul had a long criminal history, a history of substance abuse, a history of self inflicted injuries and episodes of self harm and mental health problems together with a cognitive impairment.

42. In spite of these difficulties, Paul's life was not without its pleasures for him. As noted above, all of his family spoke of him with emotion and affection, remembering his cheeky grin and his love of and attachment to his family, his enjoyment of nature and his pleasure and achievement in painting. Such was the pride his family took in his painting, the family brought some of his paintings to show me during the Inquest.

B: PAUL'S LAST DAY : the facts

(i) Brian Junior's death

43. Paul's brother Brian, who also lived in Mildura, died suddenly and unexpectedly on the morning of Sunday August 6, 2006 apparently in the wake of an epileptic seizure.

44. Paul had been visiting his sister, Colleen Johnson that Sunday morning, but had left before the news of Brian's death had reached her. Somewhere between 11am and 1pm on that day, Paul was told this news by a family member. In the wake of this news, Paul joined his family who were gathering at his father's home at 3 Hornsey Park, Mildura. There were various family gatherings at various homes throughout the afternoon and earlier evening and Paul moved around to a few of them. No family members who saw Paul during the day described Paul as distressed beyond the normal grief of such a loss.

(ii) Paul's arrival at Dulcie's place at 1/180 Ontario Ave Mildura

45. The evidence is that Paul arrived at Dulcie's place at about 8pm on that Sunday evening. When he arrived at Dulcie's place that night, also present there were Joyce Thorne, an old friend of Paul's and sisters Dianne and Jackie Jones, who were Dulcie's old friends. Each of the adults at Dulcie's that night gave evidence about Paul's emotional state and his state of sobriety. They either knew or understood soon after Paul arrived that Paul's brother Brian had died earlier that day. There was evidence that Dulcie was having difficulty comprehending what Paul was telling her about his brother's death and this became a source of frustration and anger for Paul.

46. Dulcie's evidence was that she thought when Paul arrived he seemed sober.²⁶ (However, there was evidence that Dulcie's recollection of events and her own level of sobriety were such that not much weight should be placed on her assessment.)²⁷

²⁶ Ex 15

²⁷ Dianne Jones said Dulcie was a bit "*under the weather*" and was finding it hard to grasp what Paul was telling her about his brother having passed away and this was upsetting Paul. Dianne said she and Dulcie had been drinking beer during the day and moselle in the evening (Ex 21; Transcript 368-370). Margaret (Joyce) Thorne described Dulcie as "*really out of it*" by about 11.00pm that evening. (Transcript 290). Jackie Jones (Ex 22 described Dulcie by the time the police came as "*full as*" (Transcript 403). This was consistent with

47. Dulcie gave evidence, consistent with a number of the other witnesses, that Paul was crying and upset and ripping pictures off the wall during the time he was at her place that evening. Dulcie said that Paul was saying things like - *Coomba is gone and I'm going too and that he was going to leave this world.*"²⁸

48. Joyce Thorne, described Paul as seeming "*a bit charged*" when he arrived. During her oral evidence she stated that Paul was "*a bit loud*" and a bit "*charged up*" but not causing any trouble. She went on to say he was "*upset, he was crying, crying and crying a lot, he just wanted a cuddle more or less*"²⁹

49. Dianne Jones, said when Paul arrived he was so upset "*she had never seen a man cry so much.*"³⁰ She described Paul as yelling at Dulcie and she saw him rip a picture off the wall.

50. Jackie Jones, said Paul smelt of alcohol when he arrived.³¹ She said he was behaving in such a way that she had not seen him behave before and she thought that was because he had lost his brother. She too stated he started crying after he arrived. She stated that he threatened to throw a saucer at Dulcie and he was ripping pictures off the wall. She said he got upset because Dulcie told him to go.

51. It was Jackie Jones' evidence that she initiated a call to police asking them to come to the flat in Ontario Ave because **she** became scared about Paul's behaviour **and** concerned for Dulcie's safety.³² She went on to say that once the police arrived, Paul quietened down.³³

(iii) The police attendance at Ontario Ave

52. Approximately 3 minutes after Jackie Jones initiated that call, at about 11.25pm,³⁴ the D24 operator requested Mildura 310 to attend. Mildura 310 was the call sign given to Senior Constable Nigel Hoyle and Constable Steve Ritchie on that Sunday night. It was clear from the evidence that S/C Hoyle was familiar with the address he was being requested to attend because upon hearing the address and the name "*Dulcie*" over the radio, he replied "*That'll be Dulcie Sampson.*"

what the S/C Giles said (at Transcript 640) that Dulcie Sampson appeared to be quite heavily intoxicated and was slurring her words and having to concentrate to formulate her words. S/C Bruhn said she appeared to have had a few drinks "*but she wasn't the worst I've seen her*". L/S/C Baldock had responded to a complaint from Dulcie Sampson at 7.20am on the morning of the 6 August that she had been assaulted by Paul. He formed the opinion she was too alcohol affected to make a statement at that time and arranged for her to come in at 1pm that day. She did not keep that appointment. (Ex 7).

²⁸ See Ex 15; "*Coomba*" is a family nick-name for the late Brian Carter Junior

²⁹ Transcript 285

³⁰ Transcript 367 -368

³¹ Transcript 397

³² Upon listening to the tape, one can hear the female caller saying she is scared and a raised male voice was quite audible throughout much of the call. (Appendix C)

³³ Ex 22; Transcript 404-7

³⁴ Appendix F

53. Senior Constable Scott Giles and Senior Constable Jason Bruhn were on duty in the police station at Mildura that Sunday night (call sign Mildura 311). They heard the job being dispatched to S/C Hoyle and C/ Ritchie. Upon hearing the job being dispatched to Ontario Avenue they both stated they surmised that Paul Carter may have been involved at that address and therefore thought "backup" may be required.³⁵

54. Both Mildura 310 and Mildura 311 arrived outside Dulcie Sampson's flat a few minutes after the request for police attendance was received by D24. All four members, were in police uniform and in marked police divisional vans. All four police members having parked their two vans outside Dulcie's flat at Ontario Avenue, got out of their vehicles and approached Dulcie's place.

55. S/C Hoyle states that he knocked on the dining room window as he was walking towards the front door. There is varying evidence about whether Dulcie came to the door first to greet the police or Paul. The police evidence is consistent with Paul coming to the door initially. Paul would have seen four uniformed police and two police vans in attendance. The four police were all close enough to the front door of the flat to hear various parts of the initial conversation between S/C Hoyle and Paul. S/C Giles heard S/C Hoyle ask Paul what was going on. S/C Hoyle states he asked Paul how he was going and then asked for Dulcie.

56. The weight of the evidence is that S/C Hoyle spoke to Dulcie who said that she wanted Paul to leave.³⁶ She gave her reasons for wanting him to go as he was being noisy and there were children at her home who needed to sleep. There is no clear evidence of how Dulcie's request for Paul to leave was conveyed to Paul, but it is clear from the evidence that Paul understood that Dulcie wanted him to leave.

57. C/ Ritchie states that either S/C Hoyle or S/C Giles then offered Paul a lift and suggested he grab his things. S/C Giles³⁷ states S/C Hoyle asked Carter if there was anywhere else he could stay. Both S/C Giles and S/C Bruhn thought that S/C Hoyle offered to take Paul to his parent's place. S/C Bruhn states "*[i]t was decided that we, the police, would give him a lift home but first he wanted to go inside and collect some belongings.*"

58. After this offer of a lift, S/C Hoyle and S/C Giles went into the unit with Paul. S/C Hoyle states he went in because Dulcie invited him in and it was inside the flat that Dulcie again confirmed that she wanted Paul to leave. C/Ritchie states he took a step inside the doorway and S/C Bruhn remained on the front lawn. The evidence is that Paul and Dulcie exchanged words inside the flat including S/C Giles hearing Paul tell Dulcie if she did not want him he would not be back and S/C Giles confirmed he understood this to mean that their relationship was ended.

59. S/C Hoyle in his statement agrees that Paul and Dulcie exchanged some words once back inside Dulcie's flat. S/C Hoyle in his statement says:

³⁵ Transcript 1010: Senior Constable Giles had been stationed at Mildura for approximately 4 years at that time and his evidence was that Paul Carter was well known to police and, when intoxicated, could be abusive, aggressive and violent. It was on that basis he thought Mildura 310 may need assistance.

³⁶ Statement of S/C Giles and S/C Hoyle

³⁷ Statement of S/C Giles

"Carter said with his voice slightly higher than before, "Do you want me to stay or what?" He kept saying to Dulcie "Do you want me...do you want me?" At some stage either Scott Giles or myself tried to talk him into leaving, saying that things will sort themselves out in the morning. Carter went on a little bit about taking his clothes and a painting with him. I would not say that he was upset. I said it will sort itself out in the morning. He basically started to make his way out of the door voluntarily. I did not take hold of him but I did lightly place my hand on his upper arm to guide him. He walked to the rear of the divisional van and I opened the door for him. He got inside and sat on the passenger side seat and placed his feet up on the opposite side wall. He seemed more than happy to get a free taxi ride."

60. C/ Ritchie in his statement described what took place inside Dulcie's flat in this way:

"I was able to hear the conversation between Hoyle and Carter. This was normal and of no concern. Carter was co-operative but did say, "Where's my key card and if you (meaning Sampson) take any money I'll sue you". After this comment, Hoyle or Giles said to Carter not to be silly and guided him by the arm out of the unit. No force was used and no struggle occurred. Carter willingly left the premises and walked to the divisional van outside."

(iv) Paul's departure from Ontario Ave

61. There was considerable concentration on the detail of how Paul left Dulcie's flat and got into the back of the police van. Both C/ Ritchie and S/C Hoyle describe it as Paul being "guided" out. S/C Bruhn originally stated that Carter was "lead out" by S/C Hoyle and S/C Giles. S/C Giles in evidence agreed with the description of S/C Hoyle as "guiding" Paul out of the premises.³⁸ He had stated that he and S/C Hoyle had walked Paul back out of the unit, walking on either side of him but not touching him. S/C Giles' original words to describe this were that "we guided him towards the front door and then walked him along the driveway and to the divisional van."³⁹

62. C/ Ritchie stated he walked in front of Paul, as S/C Hoyle and C/ Giles escorted or guided Paul out of the flat and he opened the van door and Paul got in.

63. Jackie Jones gave evidence that she observed one of the police touch Paul on the back of the upper arm as they were leading him out.⁴⁰ Dulcie stated that Paul went with the police and got into the back of the van "steady and calm."

64. There is no dispute, that Paul climbed unassisted into the back (pod) of the divisional van operated by S/C Hoyle and C/ Ritchie and that the van was driven away along Ontario Avenue with Paul sitting in the pod, agreeing to being taken to his father's place in Hornsey Park.

³⁸ Transcript 1026

³⁹ Exhibit 30: Statement of S/C Giles

⁴⁰ Transcript 424

65. On the estimate of S/C Hoyle that entire transaction took about 9 minutes from the arrival of the van to the departure with Paul seated in the pod. The van left Ontario Avenue at about 11.42pm.

66. S/C Giles and S/C Bruhn drove away first from Dulcie's place. They stopped their vehicle just down the road in Ontario Ave, over Thirteenth Street. Both S/C Giles and S/C Bruhn were cross-examined about why they stopped a few hundred metres down the road. Each stated the reason for stopping was to check with S/C Hoyle and C/Ritchie if there was any further assistance they needed. S/C Giles was asked by Counsel Assisting, Ms Ellis, what further assistance was it anticipated that S/C Hoyle would have required in transporting Paul home that night given their description of his condition, as calm and co-operative, not affected by alcohol and willingly getting into the back of the van ... S/C Giles answered as follows:

"Well probably nothing in his - in the state he was in. But we stopped and checked just to make sure they were fine with that. We'd backed them up to the initial job, we were just making sure they were fine to continue with the job on their own from there."

67. S/C Bruhn was asked the same question, given that Paul was not intoxicated on their assessment, he was not emotionally upset, he was willing to accept a lift home to his father and he got into the back of the van willingly, what other assistance would be needed? He answered - *"We didn't know, that's why we pulled over."*⁴¹

68. C/ Ritchie stopped their van beside S/C Giles and S/C Bruhn in Ontario Avenue over Thirteenth Street. C/ Ritchie states⁴² that they left Ontario Ave with Paul Carter with the intention of taking him to his father's place but quickly realised they did not know the detail of the address. C/ Ritchie states that he heard S/C Giles and S/C Bruhn radio in Paul's father's address as the destination for Paul but neither he nor S/C Hoyle heard the actual number. They then saw S/C Giles and S/C Bruhn pull over after Thirteenth Street. They pulled up beside them, both S/C Hoyle and C/ Ritchie maintained, to get the street number in Hornsey Park for Paul's father.

69. S/C Hoyle states⁴³ that they drove away from Dulcie's place and then realized they were not sure of the number and then saw S/C Giles and S/C Bruhn pulled up in Ontario Ave over Thirteenth Street and pulled up opposite them to get the number for Hornsey Park. Neither S/C Hoyle nor C/ Ritchie expressed any surprise about why S/C Bruhn and S/C Giles would just pull up in Ontario Ave, a short distance away from Dulcie's place and beyond Thirteenth Street. That is, there was no communication to S/C Giles and S/C Bruhn that S/C Hoyle and C/ Ritchie did not know the number and no reason for S/C Hoyle and C/ Ritchie to expect them to pull up to answer questions that had not been communicated.

70. Questions were raised about why C/ Ritchie drove over Thirteenth Street in the first place and then even after pulling up and getting confirmation of the address, why he did not then perform a U turn to go down Thirteenth Street, being the most direct route to Hornsey

⁴¹ Transcript 1030

⁴² Inquest brief 80

⁴³ Inquest Brief p70

Park. C/ Ritchie states he drove away with the intention of turning into Fourteenth Street and then going across to Paul's father's place via that route.⁴⁴

71. After that conversation happened in Ontario Avenue, S/C Bruhn and S/C Giles drove away. They then radioed in what S/C Hoyle and C/ Ritchie were doing as follows:

*"Yeah, both of us are Code 1 from um Walnut, they're just gonna run Paulie Carter to an alternate address in Hornsey Park, it's all correct."*⁴⁵

S/C Giles confirmed that this was done because the radio operator needs to know where each of the vans are at all times.⁴⁶

72. S/C Hoyle states he heard this radio communication confirming what he and C/Ritchie were doing.⁴⁷

(v) Change of destination to the Sturt highway

73. Both S/C Hoyle and C/ Ritchie state that shortly after they took off from S/C Giles and S/C Bruhn, on their way to Hornsey Park, they stopped again. S/C Hoyle states that as their van passed the hospital still in Ontario Avenue, Paul knocked on the window to the passenger compartment of the van. C/Ritchie pulled over the van. S/C Hoyle states he got out of the van and opened the rear door.

74. S/C Hoyle stated that he had the following conversation with Paul:⁴⁸

Paul: *"Don't take me out to Hornsey Park, they won't have me at this hour."*

Hoyle: *"Where do you want us to take you? We can't take you back there"* (meaning the Ontario address)

Paul: *"Just take me out past the airport. I'll clear my head and I'll walk in".*

Hoyle: *"O.K if you want to do that"*

C/Ritchie states he did not get out of the van or hear the conversation, but observed a *"casual conversation"* in the rear vision mirror.⁴⁹

75. According to S/C Hoyle, after this conversation they drove Paul out past *"Ash Avenue into the right hand bend"* on the Sturt Highway. After they had chosen where they were going to let Paul out, they did a U turn so were on the side of the road facing back to Mildura. S/C Hoyle got out of the van and opened the back and let Paul out. S/C Hoyle in his statement describes the parting exchange between Paul and himself thus:

⁴⁴ It was submitted by Mr Lawrie that this route would only take a minute or two longer than Thirteenth Street and thus nothing should be made of it.

⁴⁵ Exhibit 31 and 16 (Ex 16 records "1 (m) taken home to Hornsey Park").

⁴⁶ Transcript 736

⁴⁷ Inquest brief p.70

⁴⁸ Inquest brief p71

⁴⁹ Inquest brief p80

"I explained to Paul where we were, pointing out the airport lights to him. He thanked me, repeating that he wanted to clear his head on his walk back to town. He even joked that he would bring a jumper next time. I told him to take it easy." 50

76. C/ Ritchie stated that he got out of the van too at this stage and he heard Paul say something like - *"Thanks boys"* or *"Thanks bros."* C/ Ritchie stated that as they drove away Carter waved to them and he appeared *"unconcerned and happy with being dropped off as requested."*

77. After S/C Hoyle and C/ Ritchie drove away from the spot where they had dropped Paul by the side of the road, approximately 13 kilometres from his father's home and about 11 kilometres from where they have picked him up, S/C Hoyle advised the communication centre over the radio as follows - *"male dropped off - all correct."*

78. The evidence is that Paul was dropped off on the Sturt Highway by S/C Hoyle and C/ Ritchie somewhere between about 11.50pm and 11.54pm that Sunday night.

(vi) Independent accounts from the Sturt Highway

79 As at August 6th, 2006, Ms Val Cook ran a boarding facility for cats and dogs called *"Paws Resort"* which was located on the corner of Oak Ave and Sturt Highway. Ms Val Cook, made a statement⁵¹ in which she said she got up at about midnight on that Sunday night to let one of her dogs out. Whilst standing at her front door she stated that she heard a truck horn tooting frantically and thereafter she heard a male person who sounded intoxicated saying*"Fuck off, piss off"*..... She estimated this was just after midnight.⁵²

80. Ms Cook stated that she heard a male yelling and swearing. She said he sounded very angry and loud and was using the same swear words frequently. She described him as moaning. She said she heard him say - *"I just fucken buried my brother yesterday. My brother's deadI haven't even got a fucken shirt."* She said he repeated these statements a number of times in a loud and angry voice. She also stated she could hear a person dragging his feet in the dirt on the side of the road. In evidence she said she could hear the *"cry"* and *"anger"* in this person's voice. She stated that the person *"was clearly feeling a lot of emotional anguish"*.⁵³

81. There was no attempt at any time by any party to raise the possibility that the person Val Cook heard was anyone other than Paul. Given the timing of Val Cook's observations, that is shortly after midnight, the location of her residence proximate to where Paul was said to have been left and the contents of what she heard, that is not surprising.

82. There were three truck drivers who travelled the Sturt highway that night who gave

⁵⁰ Inquest brief p72

⁵¹ Exhibit 28

⁵² This would appear to be another truck driven by an unknown person as none of the three drivers in evidence before this inquest indicated they had sounded their horns in this way.

⁵³ Transcript 530-5).

statements to the police and evidence in the Inquest. The first of those was Vito Bozzi⁵⁴ who was driving his semi-trailer out of Mildura to Adelaide that Sunday night shortly after midnight. He stated he saw a male running down the road along the centre white line straight towards his truck. He had to brake heavily and swerve to miss him, which he did. Vito Bozzi got on his truck radio and warned his employee Trent Larkin who was driving behind him to beware of the male on the road. Mr Bozzi then rang the police and reported that he had nearly hit a man who had run out in front of him. That call was received by the police radio communications at 12.14am, about 20 minutes after Paul was left by S/C Hoyle and C/Ritchie.

83. Trent Larkin⁵⁵ stated he saw Mr Bozzi brake heavily and swerve and saw smoke coming from his tyres. He stated he slowed right down and could see a man on the road walk in front of Vito's truck. He described the male as aboriginal with shaggy hair and unshaven and wearing dark clothes. He stated he saw the male walk pretty much directly to the front of the truck like he wanted to be hit. Mr Larkin went on to describe the man's movements as follows:

"As I came to a stop, the male stood directly in front of my truck near the front right headlight. He was so close he was leaning up against the front of my truck. He threw his arms up in the air. He didn't say anything or yell anything, just looked up in the cabin towards me."

84. Mr Larkin described the man as *"looking crazy"* and walking up the middle of the road in the middle of the night trying to get himself killed. He stated that the man tried to open his driver side door and he drove away slowly because he was concerned as to what the man was trying to do. Mr Larkin too got on the radio to warn other drivers of what they saw. I am satisfied the man being described was Paul.

85. The third identified truck driver coming along the Sturt Highway that night was Peter McLintock.⁵⁶ He was driving a truck out of Mildura to the Riverland of South Australia on the Sturt Highway just after midnight. He heard some chatter on the radio about *"some lunatic trying to kill himself."* He slowed to about 80 to 90 kph because he could see trucks ahead of him, with brake lights on. He described suddenly seeing some light coloured runners and grey coloured trousers running towards him *"dead centre"* in front of him in the lane he was travelling. He states that he drove over the centre line of the road to avoid him but the man *"lunged to the left in a deliberate action to get hit by the truck"*⁵⁷ and indeed did get hit and sustained the injuries which killed him. That man was Paul Carter. He was struck by the truck Peter McLintock was driving on the Sturt highway between 12.14am and 12.17am on August 7, 2006.

86. Mr McLintock stopped his truck and rang 000 for an ambulance. He got a torch from his truck and jogged back to where Paul was lying on the road, face down. He checked his pulse but found none.

⁵⁴ Exhibit 24

⁵⁵ Exhibit 25

⁵⁶ Exhibit 26

⁵⁷ Exhibit 26 p.91 Inquest Brief

87. At 12.17pm an ambulance was called by Mr McLintock. The ambulance arrived at 12.22am. No resuscitation was attempted as Paul's condition was assessed as incapable of resuscitation. Mr McLintock was breath tested at the scene and tested negative.

88. From the time the call was made to police for assistance at Ontario Avenue by Jackie Jones to the arrival of the ambulance at the scene of Paul's death out on the Sturt Highway, just less than one hour had passed.

C: THE POLICE INVESTIGATION

C.(i) Police attending the scene

89 There were issues raised about the conduct of the police in the wake of the collision which took Paul's life. Specifically, questions of whether or not the scene was appropriately secured to preserve evidence, whether or not the members involved with Paul that evening should have been allowed to be at the scene engaged in the securing of it and communicating with each other, how and when the Carter family were informed of what happened and how the coronial investigation by police was performed generally.

90. At about 12.13am after receiving Mr Bozzi's call, the radio controller, unaware of any connection between the report of the man out on the highway running in front of trucks and S/C Hoyle and C/ Ritchie, sent those two to attend out at the Sturt Highway. S/C Hoyle stated, when he heard that dispatch, he *"immediately thought it was Paul Carter."* Why he thought so is not explained in his statement. Before S/C Hoyle and C/ Ritchie got to the scene they received another radio communication telling them the man had been hit by a vehicle.

91. Neither member indicated to the radio operator when they got that first dispatch at 12.13am that they knew anything about the situation. S/C Hoyle and C/ Ritchie were the first two police to arrive at the scene after Paul was struck and killed. S/C Hoyle stated that as soon as he arrived at the scene he could tell from the clothing of the man lying on the road that the deceased was Paul.⁵⁸ S/C Hoyle rang Sergeant Mason using his mobile phone on the way to the scene to tell Sergeant Mason he had dropped Paul out there and he believed that it would be Paul running in front of trucks. Again, there is no evidence as to why S/C Hoyle thought Paul would be running in front of trucks.

92. The evidence of Sergeant Mason is that S/C Hoyle contacted him at 12.22⁵⁹ by mobile phone and informed him of the circumstances leading up to Paul's death. Sergeant Mason stated that after hearing this from S/C Hoyle he told S/C Hoyle that the matter would be treated as a *"death in custody/police presence"* and that he and C/Ritchie should remain separate from each other.⁶⁰

⁵⁸ Ibid P73

⁵⁹ Exhibit 53

⁶⁰ Senior Sergeant Downes stated that when he was contacted by Sgt Mason it was 12.15am and Sgt Mason told him what had been conveyed to him by Hoyle

93. S/C Giles and S/C Bruhn were also directed to attend at the scene. They arrived sometime between 12.21 and 12.30am.⁶¹ Although Sergeant Mason did not give specific directions to S/C Giles and S/C Bruhn not to discuss the matter with S/C Hoyle and C/ Ritchie, he gave evidence that he made the assumption that S/C Giles and S/C Hoyle would understand they should not communicate.⁶²

C.(ii) Discussions between members

94. S/C Giles' evidence was that he spoke to C/ Ritchie and then S/C Hoyle at the scene but only to get directions about where to go to assist. His evidence was that he did not know the deceased person was Paul Carter until some hours later and neither S/C Hoyle nor C/ Ritchie had told him.⁶³ In S/C Hoyle's statement he says that S/C Giles stayed with him and conducted a breath test on Mr McLintock the truck driver.

95. S/C Bruhn also stated that S/C Hoyle did not tell them it was Paul that had been killed in the collision, but that the conversation with S/C Hoyle was only about giving him directions about where to go.⁶⁴ Both S/C Giles and S/C Bruhn stated they could not recall anything of those discussions other than getting directions about where to go.

96. Despite the direction given to him by Sergeant Mason, S/C Hoyle later made a call on his mobile phone to S/C Giles at 1.32am that morning. S/C Giles, when asked questions about any further contact he had with S/C Hoyle and C/ Ritchie that night and in particular about a mobile phone call made by S/C Hoyle to him at 1.32am, stated that he had no recollection of the call.

97. There is no evidence as to why that call was made or the content of it. Senior Sergeant Downes gave evidence that it was acceptable for members to use mobile phones as long as it was "*reasonable*" and "*in the course of their duties*".⁶⁵ There was no evidence of this call being any part of the duties of either member and no explanation for how or why it could be.

Conclusion

C.(i)&(ii) Police attending the scene / Discussion between members

98. Sgt Mason readily conceded that it was clearly not consistent with the procedure laid out in the Victoria Police Manual for police related deaths, to have police involved in the earlier transport of Paul thereafter involved in securing the scene of his death. However, he explained that the reality was the highway had to be secured immediately, traffic diverted and the scene preserved and in the country regions pragmatic and urgent operational decisions have to be made using the police resources available until "*back up*" members can be called in.

⁶¹ Appendix 1

⁶² Transcript 949

⁶³ Transcript 623-4 ; 19

⁶⁴ Transcript 1032

⁶⁵ Transcript 853

99. It was clearly undesirable for those four members to be together at the scene for some hours. I accept that explanation as a reasonable one in the circumstances. Urgent control of the highway and diversion of traffic had to take place. Further, Sgt Mason's assumption that S/C Hoyle and S/C Giles would know not to communicate with each other was a reasonable assumption to make, given the advice that he had already given S/C Hoyle. Senior Sergeant Downes agreed that it was undesirable to have S/C Hoyle, C/ Ritchie, S/C Giles and S/C Bruhn at the scene but the situation required the highway to be cut off⁶⁶ and they had to use the members they had until they could call in replacements.

100. In the circumstances, given that less than an hour before the death of Paul, all four members had been with Paul Carter and S/C Hoyle knew Paul's identity when S/C Giles and S/C Bruhn arrived back at the scene, I did not find it credible that S/C Giles and S/C Bruhn were not told by S/C Hoyle that it was Paul Carter who had died. I did not find S/C Giles to be a frank or forthright witness on this issue.

101. It was most unfortunate that S/C Hoyle chose to communicate with S/C Giles by mobile phone at such a critical time. It was submitted by Counsel on behalf of S/C Hoyle that it was preferable to communicate this way to avoid open communications on the radio, capable of being heard by a "scanner" or to "clog up" the radio and deprive others of being able to use the radio at this time.

102. Whilst one can see the merit of this in general circumstances, this is not an acceptable explanation in these circumstances. The higher need to be served in these circumstances, given the involvement of S/C Giles and S/C Hoyle in the earlier interaction with Paul, was to ensure that any necessary communication between the two of them for the purposes of securing or controlling the accident scene be over the radio and therefore in public and recorded and that there be no other communication, and definitely not by mobile phone. Further, the aforementioned submission does not make sense of the evidence. That is, the submission that it is not good to discuss highly sensitive information over the police radio for fear of "scanners" does not match with the evidence of S/C Giles that he did not know the deceased pedestrian was Paul Carter until about 4am that morning. Given this call took place at about 1.32am, on S/C Giles' evidence the call could not have been about the identity of the deceased person and thus not "sensitive information".

C.(iii) "Chinese whispers"

103. During the early hours of Monday morning in the wake of Paul's death, two quite distinct versions of the events got out into the community. Some considerable time was spent during the investigation and Inquest in elucidating evidence about how and why these two quite different versions of events got into the public arena. Understandably, it raised the suspicions of family and community about a potential "cover up" by police, or at the very least that the police were not in control of the facts. For this reason, this issue required some consideration by me.

104. This part of the events, when dealt with in the Inquest was referred to as the "Chinese whispers" and hence I have used that language. The source of the different version was

⁶⁶ Transcript 839

Superintendent Inghard Ehrenberg. In a statement he made on 4.6.2007⁶⁷ he stated that he took a call from Senior Sergeant Downes at 1.14am on the morning of August 7 and in that conversation Superintendent Ehrenberg states he was told that Paul Carter, whilst being transported away from a family violence incident in a divisional van, asked to be let out of the van because he was feeling unwell and then when let out, Paul ran in front of a truck and was killed instantly whilst the van crew were standing there. It was this version which was then passed via Superintendent Ehrenberg to Sergeant Greg Chandler, Victoria Police Aboriginal Liaison Officer and thereafter to other senior members of the Koori community.

105. The evidence was that when Superintendent Ehrenberg arrived at Mildura police station early that morning, he was briefed by Inspector Loison and Senior Sergeant Downes. It was after this briefing that Superintendent Ehrenberg contacted Sergeant Greg Chandler and his version of events started to move into the community. Sergeant Chandler called Inspector Geddes and Mr Andrew Jackomos, the Director of the Indigenous Issues Unit in the Department of Justice and told them the "*Ehrenberg*" version.

106. At the Inquest, Mr Loison (now retired as an Inspector of police) gave evidence that was quite scathing of Superintendent Ehrenberg's conduct on this night, stating that when he arrived at the station his questions of them were not "*logical*" such as he was asking if the "*firies*" and "*ambos*" had been called in circumstances where it was one and half hours after the collision had been called in to D24. Mr Loison was adamant that Superintendent Ehrenberg gave no indication on that night that he had a different version of events to the one everyone else had.

107. Senior Sergeant Downes denied telling Superintendent Ehrenberg the version of events which appeared in Superintendent Ehrenberg's statement. Both Mr Loison and Senior Sergeant Downes gave evidence they had no inkling that Superintendent Ehrenberg had a different version until Superintendent Ehrenberg's statement emerged after June 2007.

108. Most significantly, the eye witness accounts from the collision scene provide no support for the "*Ehrenberg version*". Neither Mr Bozzi, Mr Larkin nor Mr McLintock saw a police car that night out on the Sturt Highway. They gave graphic descriptions of Paul running out onto the road in front of them. They are all independent witnesses who gave forthright testimony which not only I accepted, but was effectively not questioned by any of the interested parties.

109. The tape of Mr Bozzi's call to D24 was played during the Inquest. Mr Bozzi was clearly moved again by listening to both the tone and content of his call. He made that call at a time he had no thought about any Inquest or anything other than getting Paul Carter off the road. There was no suggestion then, or indeed thereafter from any eye witness account, that there was a police car by the side of the road at the time that Paul ran onto the road. Val Cook does not hear a car driving away. Mr McLintock gave evidence that he saw the ambulance arrive first and then a police car arrive about 2 minutes later.⁶⁸ The ambulance driver gave evidence that there were no police vehicles at the scene, or that he saw leaving

⁶⁷ Ex 50

⁶⁸ Transcript 512

the scene, when he first got there.⁶⁹

Conclusion

C.(iii) "Chinese whispers"

110. Ultimately, it simply remains both an inexplicable and most unfortunate aspect of these events that this happened. The evidence does not support the "*Ehrenberg*" version of events at all but that it got into the community and to Paul's family would have been most disconcerting and distressing for those involved (see Recommendation section).

C.(iv) The Homicide Squad investigation

111. In circumstances where a death occurs in police presence or custody or care or is sufficiently proximate to the last contact with police to put police behaviour under scrutiny, the procedure required by Victoria Police is that the Ethical Standards Department of Victoria Police will be called in to oversee an investigation to be conducted by the Homicide Squad. That happened in this case.

112. Various concerns were raised by Counsel for the family about the standard and quality of the investigation conducted by Detective Sergeant Daly of the Homicide Squad. Some of the concerns raised issues such as a failure to call in the Major Collision Investigation Unit to investigate the scene, a failure to perform a video reconstruction of the scene, a failure to interview S/C Hoyle and C/Ritchie on video or to put out a call over the radio for eye witnesses to the collision.

Conclusion

C.(iv) The Homicide Squad investigation

113. In my view, the contentious issues in this investigation were not about the scene of the collision which was sadly straightforward. Submissions that MCIU should have attended or a video reconstruction of the accident scene should have been performed do not seem justified in these circumstances. Had the death occurred in the circumstances of an event like a police pursuit that would warrant an investigation by MCIU. However, there was no dispute about the circumstances of this collision.

114. I received a satisfactory brief with a large number of assembled documents as Appendices to that brief. I found Detective Sergeant Daly and the Homicide Squad members supervising him responsive to requests made by me for further material. Counsel assisting was appointed early into the investigation and the former State Coroner had initial oversight of the investigation until I took over. It is always open to a Coroner to request further statements if not satisfied that all issues have been addressed. It is for this reason that the Royal Commission into Aboriginal Deaths in Custody (RCIADC) recommended that both a

⁶⁹ Transcript 519

Coroner and Counsel assisting be appointed early in the investigation. That was done in this case.

115. That being said, the on-going concern when police investigate police is that there will always remain a perception that the investigation may be less rigorous as a result of potential sympathy for a colleague. Both S/C Hoyle and C/Ritchie made written statements which were included in the Inquest Brief. The taking of the statements was not audio or video recorded. They were not interviewed using the standard procedure for suspects for indictable criminal offences. An explanation was given for not adopting this procedure which was basically that they were not suspects for indictable offences and hence such a procedure was not adopted. That explanation is acceptable as far as it goes. It does not address the need for absolute transparency and scrupulous documentation.

116. Clearly, an understanding of what happened as between Paul and S/C Hoyle and C/Ritchie on this night lay at the heart of this investigation. Predictably, both members exercised their right to apply to be excused from giving evidence at the Inquest and their application was granted. In these circumstances, having at least an audio recording of the interview, if not a video recording would have served two purposes. It would have provided a transparency to the police investigation in particular, in the first 24 hours and that would assist in addressing the perception of a potential lack of rigour **and** be of real assistance to a coroner in these circumstances endeavouring to make an assessment of the members involved. (See Recommendation section).

D: PAUL'S LAST DAY:

117. Having set out the basic facts, this next section contains the central questions which arose in the circumstances of Paul's death and my Findings in relation to those questions.

D.(i) Was Paul in the custody (or care) of the police at any time on the evening of 6th August 2006 or early morning of 7 August?

(a) Relevance of the issue

118. As noted above, generally, whether or not a death is characterised as "*in police custody*" is immediately relevant to a coroner for two reasons. The first is to decide whether or not the death is **reportable** within the meaning of section 3 of the *Coroner's Act* and thus found the jurisdiction. The second is to decide whether or not an Inquest is mandatory. The two questions are quite distinct and the definitions for each ground differ.

119. There was no submission or even suggestion that Paul Carter's death was not **reportable** as noted above. His death fitted a number of possible categories of reportable death including that his death was unnatural and resulted directly from injury.

120. The second issue of statutory relevance to a coroner relates to whether or not an Inquest is mandatory. If Paul Carter was immediately before his death a person held *in care* within

the meaning of S.17(1)(b) then the coroner must hold an Inquest.⁷⁰ As stated above neither of these points as to jurisdiction or whether or not an Inquest should be held were taken.

121. Ms Dixon SC on behalf of the family raised another basis upon which she submitted the question of whether or not Paul Carter was in police custody was relevant. She submitted that Paul was in police custody on that night and as he was an aboriginal man, the special requirements of coronial investigations into deaths in custody arising from the recommendations from the Royal Commission into Aboriginal Deaths in Custody⁷¹ would therefore apply and this would also establish the nature of the duty of care owed to Paul.

The position of each of the interested parties on the question of "in custody":

S/C Hoyle and C/ Ritchie and the Chief Commissioner of Police

122. Mr Lawrie and Mr Dennis of Counsel, submitted that Paul was not in any form of police custody at any stage on that evening pursuant to any piece of legislation or at common law. In summary, it was the position of both Mr Lawrie and Mr Dennis that when Paul Carter left Ontario Ave with S/C Hoyle and C/ Ritchie and got into the back (pod) of the police divisional van, he did so voluntarily after he agreed to accept an offer of a lift home. This action was characterized by both Mr Lawrie and Mr Dennis and many of the police members who gave oral evidence in the Inquest as giving Paul a "*free taxi ride*."

123. It was the submission of both Mr Lawrie and Mr Dennis that there was no police power to arrest Paul Carter on that evening. Moreover, Paul had not been under arrest or in custody at any time and was therefore free to go at any time. It was submitted that Paul got into the police van voluntarily to avail himself of a "*free taxi ride*". After a short time into the ride, Paul changed his mind about wanting to be taken home and requested to be taken out near the airport so he could walk to his parent's place. It was submitted that once he requested to

⁷⁰ A person held in care includes (S.3(1)) "*a person in the custody of a member of the police force*". It is a narrower test as to whether or not an inquest is mandatory in that it does not include persons defined as "*under the care or control of a police member*" but only those defined as "*in custody*."

⁷¹ The Royal Commission into Aboriginal Deaths in Custody was established in 1987 by the Commonwealth of Australia. It investigated the deaths of Aboriginal and Torres Strait Islander people which occurred in custody throughout Australia during the period 1 January 1980 to 31 May 1989, and the social, cultural and legal factors which had a bearing on those deaths. During this period, 99 such deaths occurred in police, prison and juvenile detention centre custody. No individual custodial officers were found to have caused any of the deaths by deliberate violence or brutality, but many of the deaths were found to have been the result of system failures and, especially, the failure of many custodial officers to exercise their duty of care to people in their custody. The Royal Commission made 339 Recommendations in its final National Report. These cover both the criminal justice system and the underlying issues relating to Aboriginal disadvantage and the gross over-representation of aboriginal people in custody. A central conclusion of the Royal Commission was that the immediate causes of the deaths did not include foul play, in the sense of unlawful, deliberate killing of Aboriginal prisoners by police and prison officers. The findings were critical of the standard of care afforded to all prisoners, concluding there was "*little appreciation of and less dedication to the duty of care owed by custodial authorities and their officers to persons in custody*", and that that had contributed to the deaths. (National report Vol.1 Ch 3) The Royal Commission also criticized the system for not investigating each death fully, noting that most investigations were perfunctory and from a narrow focus and thus the coronial inquest mirrored the faults in the investigations. To this end a number of recommendations were made which specifically address the coronial system. In all the circumstances, I have endeavoured to apply the recommendations as far as possible in this case.

be taken to this location the police were therefore *compelled* to take him wherever he requested to be taken as he was a voluntary passenger, not under arrest and simply getting a "free taxi ride."

124. Indeed, Mr Lawrie submitted⁷² that once Paul Carter said that he did not want to go to his father's place and requested to be taken out past the airport, the members only had two options: either they could terminate the journey and put Mr Carter out of the vehicle, or take him to the destination he demanded and to do anything else would be **false imprisonment**.

125. On the question of whether or not Paul was "*in police custody*" at any time on that night, Mr Lawrie submitted (submissions which were adopted by Mr Dennis) I should adopt a statutory definition of "*in custody*" from either the *Crimes Act 1958 (Vic)* or the *Summary Offences Act 1966 (Vic)*. Upon this basis it was submitted that Paul Carter had not been in police custody within the meaning of S.464 of the *Crimes Act*; that is, he had not been under arrest, he had not been detained or questioned within the meaning of S.464, he was not found drunk in a public place within the meaning of the *Summary Offences Act* and he was not apprehended for any offence including an apprehended breach of the peace.⁷³

126. Mr Dennis of Counsel submitted that the only other basis for determining that Paul Carter was in police custody at the time of his death "*would be that such a determination might be seen as a justification for more expansive comments or recommendations being made by the Coroner than might otherwise be made.*"⁷⁴

127. Mr Dennis also submitted that it was "*misconceived*" of Counsel for the family to rely upon the numerous references the police made, both on the night and during the investigation to the death of Paul Carter as a "*death in custody*" as if that were an admission that could later be relied upon as determinative of the issue. Mr Dennis sought to describe the expression of "*death in custody*" as one "*loosely*" used by police on the night to address the requirements of their own procedures as set out in the Victoria Police Manual.

The Family

128. Ms Dixon SC on behalf of the family submitted that Paul Carter was in police custody in the strict sense up until the point that he was dropped off on the Sturt Highway. His death in her submission should be defined or categorized as an indigenous death in custody.

129. Ms Dixon SC submitted that in all of the circumstances of this case, I should find that Paul Carter was in police custody within the meaning of the common law when he was taken from Ontario Ave on that evening. Ms Dixon SC further submitted that whilst he was no longer in police custody after he was left on the Sturt Highway the events which killed him were in such close spatial and temporal connection that I should find that he was "*technically*" in police custody at the time of his death.

⁷² P.4 Written submissions of Mr Lawrie

⁷³ Mr Lawrie for Hoyle and Ritchie did submit that Paul's death was a "*death in police presence*" given that he had been in the presence of the police some 20 minutes or so prior to his death

⁷⁴ Written submissions of Mr Dennis p.5

Counsel Assisting

130. The submission of Ms Ellis, Counsel Assisting, was that Paul Carter was not under any form of statutory arrest on that evening, but that it was open for me to find that he was in police custody in a common law sense rather than simply getting a "free taxi ride." Ms Ellis further submitted that ultimately whether or not Paul was in police custody in the strict sense on that night did not extricate S/C Hoyle and C/ Ritchie from their obligation to Paul to deliver him to a place that was "safe and reasonable."⁷⁵

(c) How to interpret "in police custody"

131. There is no statutory definition of police custody in the *Coroners Act 1985 (Vic)*; neither s.3 (1)(a)(ii) nor 3(1)(ia) of the *Coroners Act* states that for the purposes of determining this question, "in the custody of a member of the police force" has the same meaning as it does in s.464 of the *Crimes Act*. Given the number of times references to other Acts are made in S.3 of the *Coroners Act*, I conclude that if Parliament had intended "custody" to be used as it is defined in the *Crimes Act* it would have stated so clearly. It does not. For this reason, I find no basis to assume that I should interpret that term only as defined by s.464 *Crimes Act*.

132. It was submitted that Paul Carter was not under any form of statutory arrest on this evening. There is no evidence that he was being questioned or about to be questioned or otherwise being investigated to determine his involvement in the commission of any offence.⁷⁶ It is not necessary to analyse this point further as I accept this to be so. That is, he was not under any form of statutory arrest on that evening.

133. That leaves me to consider the common law.

134. At common law the term "in custody" has been held to have a much wider definition than relating solely to situations in which an arrest has been made. I was referred to several authorities on this issue.

135. In *Smith v The Queen* (1957) 97CLR 100 it was held at 129 (per Williams J) that "any person who is taken to a police station under such circumstances that he believes that he must stay there is in the custody of the police if the police act to make him think that they can detain him he is in their custody." In *R v Amad* [1962] VR 545 Smith J supported the view taken in Smith ruling (at 546 -547) that "a person is to be regarded as in custody not only after formal arrest, but also where he is in, say, a police vehicle ... and the police by their words and conduct have given him reasonable grounds for believing, and caused him to believe, that he would not be allowed to go should he try to do so."

136. In *Norton v The Queen* (2001) 24 WAR 488, Roberts-Smith J. held at 515 that a "person will be relevantly arrested or in custody if police, by words or conduct, have caused him to believe that he would not be allowed to leave and that belief is reasonable in the circumstances. It does not matter that the police do not intend to convey that impression."

⁷⁵ See the evidence of Senior Sergeant Downes

⁷⁶ See s.464 *Crimes Act 1958*

In *R v Trotter, Sutherland and Jordan* (1992) 60 A Crim and R 1, it was noted that "*when people are confronted in their own home by a number of armed police officers, unless the police officers make it clear that those present are not under arrest, the occupiers may well have a reasonable belief that they are under arrest, in the sense that they would not be free to leave the house or premises.*"

137. It would seem the current state of the common law is that in order to assess whether or not Paul Carter was in "*common law custody*" at any time it is necessary to attempt to examine Paul's state of mind and belief (the subjective part of the test) and then examine whether the factual matrix would have given rise to him having held that state of mind or belief on reasonable grounds⁷⁷ (the objective part of the test).

138. Sadly, of course it is not possible to examine Paul's state of mind or belief on this night to get his account. It is possible however to examine the evidence to consider whether or not there are any inferences that can be drawn about what Paul would have believed on this night.

139. The objective evidence is that Paul had been arrested and taken into custody by police many times and thus was well used to the exercise of police arrest powers. There is evidence that he was cognitively impaired at the time of his death such that he qualified for a Disability Pension based on his intellectual disability. On this night he had a blood alcohol reading of .17 at the time of his death which both Dr Odell and A/Prof. Ranson assessed as such that it would interfere with his cognitive ability. Further, on the evidence of some of the witnesses at Ontario Ave he had been visibly very distressed by his brother's death when he had arrived there.

140. Paul saw four police arrive in uniform at Ontario Avenue in two divisional vans and by their conduct made it clear to him that he had to leave. He quietened down when the police arrived and left calmly in their company as they escorted him to and into the van.

(d) Characterisation of the police intervention at Ontario Avenue on August 6

141. The police attended at Ontario Avenue that night in response to a call to D24 from the premises and intervened between Dulcie and Paul to enforce Dulcie's request that Paul be removed from her premises and taken home. The police were clearly aware of the potential for a volatile and difficult situation with Paul, given what they knew about Paul. They knew enough about Paul for S/C Giles and S/C Bruhn to immediately provide back up to the two members called to attend as soon as they heard the address and the nature of the complaint.

142. On the evidence, Paul's departure from the premises at Ontario Avenue was one in which the police either held, guided or led him out into the divisional van and he thereafter hopped into the rear of the van. He did not struggle or resist.

⁷⁷ The expression "*believes on reasonable grounds*" has been judicially considered as requiring an objective construction. It should be capable of determination as a positive fact by a third party and not merely the belief of the person unchallenged that the fact or state of facts existed; see *Hoobin V Samuels* (1971) 2 SASR 238 per Walters J. at p 245.

143. In drawing an explanation from the two members who attended that night and gave evidence, S/C Giles agreed that the intervention of police on that night was to prevent a possible breach of the peace or a domestic violence incident. He also agreed that he had some doubt that if police just drove away that Paul would then follow through and leave.⁷⁸ S/C Bruhn⁷⁹ agreed that the task of diffusing the situation was not going to be achieved by leaving Paul at Ontario Avenue or even outside Dulcie's place. He also agreed that the reason the police went back into the flat with Paul was because the police were responsible for ensuring that the situation did not "flare up" again.

(e) The "free taxi ride"

144. As noted above, a number of police witnesses during the Inquest characterised the police action in transporting Paul away from Ontario Ave as a "free taxi ride".

145. There was evidence that it was common practice in Mildura⁸⁰ for police to provide transport to people who are not "in police custody". The evidence was that this was seen as a good local policing strategy to diffuse tense situations, to prevent the escalation of disputes, to transport intoxicated people to safety or to provide safety to potential victims of domestic violence or other disturbances.⁸¹

146. There was no evidence from any police member before this Inquest that he had ever delivered a person anywhere other than a residential address when giving them a "free taxi ride". For example, Sergeant Mason gave evidence that in his considerable years at Mildura he had never heard of anyone being delivered to a rural location during the free taxi ride program. Similarly, Sergeant Greg Chandler, Victoria Police Aboriginal Liaison Officer gave evidence⁸² that in his 12 years stationed at Mildura it had never been brought to his attention that people had been dropped at locations other than a residence. S/C Giles, S/C Bruhn and L/S/C Baldock all gave similar evidence both as to their practice and their knowledge.

Conclusion:

D. (i) Was Paul in the custody (or care) of the police at any time on the evening of 6th August 2006 or early morning of 7 August, ?

147. I concluded that the circumstances surrounding how Paul came to meet his death on the Sturt Highway and the investigation into the police actions on that night necessitated making a finding about whether or not Paul was in police custody or care at any time on that night. The question permeated a number of areas including how the investigation was conducted, and the procedures adopted for the scene and for the investigation itself. In essence, a

⁷⁸ Transcript 758

⁷⁹ Transcript 1041, 1050

⁸⁰ See Ex 62 This exhibit contains a summary of people transported by police van crews during routine duty. Each entry gives a residential address as the destination.

⁸¹ Transcript 969

⁸² Transcript 1058

requirement that I find the "*circumstances surrounding his death*" required me to make a finding on this issue.⁸³

148. What the police did at Ontario Ave that night was to ensure that Paul left the premises. They made an appropriate assessment as to the best way to deal with the situation. This was a sensible policing decision. S/C Hoyle and C/Ritchie did not attend as citizens of Mildura or a taxi service on that night, free or otherwise. They attended to a job dispatched to them through D24 and made an operational decision to defuse the situation by ensuring the removal of the subject of the complaint.

149. The language and characterisation of the transport of Paul as a "*free taxi ride*" seemed to be directed to two things. First, to endeavour to establish that Paul was neither in police custody or care, and second to endeavour to establish that once the police agreed to give Paul a "*free taxi ride*", they were compelled to take their passenger wherever he requested to be taken as if the police were the exact equivalent of taxi drivers but not claiming a fare. S/C Bruhn was the only police witness who gave evidence that whilst he had not personally experienced someone changing their mind about where they wanted to go on their "*free taxi ride*", he was the one member of the view that you could say no to a request if someone changed their mind.⁸⁴

150. In reading the statements of S/C Hoyle and C/ Ritchie there is no suggestion that such a concept occurred to them on the night. Neither S/C Hoyle nor C/ Ritchie at the time of making their statements, stated they felt **compelled** to comply with Paul's request.

151. S/C Hoyle, in his version of the conversation between Paul and himself, once Paul told him he did not want to be taken to his parent's place, S/C Hoyle asks him where he wanted to go, but pointed out he could not take him back to Ontario Ave. Indeed in S/C Hoyle's statement he makes it clear that he is choosing a location to drop Paul that he feels is not "*in the middle of nowhere*."⁸⁵

152. The concept of the possible offence of false imprisonment being committed by S/C Hoyle and C/Ritchie failing to comply with Paul's wishes did not get developed by Mr Lawrie. Having briefly considered the submission and looked at the law, I cannot find a

⁸³ Notwithstanding the limits on a coroner to keep the investigation contained, the family and the community are entitled to (and the RCIADC recommends) a thorough, impartial and independent public examination of the circumstances surrounding a death such as this. The community needs to have confidence that the police, in exercising their powers have acted in accordance with their own rules. Any suggestion of a less than thorough coronial investigation does not serve the interests of any person or agency.

⁸⁴ Transcript 1050. I note of course that there were also a number of police witnesses that, when pressed on this issue, agreed that the destination should be "*safe and reasonable*" as set out above under "*safe and reasonable*"

⁸⁵ Inquest brief p71

basis in law for such a submission.⁸⁶

153. Notwithstanding the submission of Mr Dennis about the "loose" use of language, Senior Sergeant Downes very succinctly explained why he had described the death of Paul Carter as a death in custody:

*"That the divisional van had picked up Mr Carter, taken him out to the highway and dropped him off, out to the highway near the airport, dropped him off and came back to town, and probably a couple of minutes later he was deceased. Because of the short time frame, that's what I would include as a death in custody."*⁸⁷

"Custody" at common law

154. There can be no direct evidence from Paul as to what he thought or believed on this night. However, there are strong public policy reasons for not allowing that to be a bar to an examination of the subjective belief of a deceased person using inferential reasoning if that is available.

155. It was the submission of Mr Dennis⁸⁸ that the only inference open was that Paul understood he had a choice about where he could go because he knocked on the window to request a different location. To draw such an inference I would have to be satisfied on the balance of probabilities that it **was** the **only** reasonable inference to be drawn. Given what the evidence reveals as to Paul's cognitive impairment and state of intoxication, I cannot draw an inference that, in knocking on the window and making such a request, he was exercising a choice consistent with his understanding that he was not in custody.

156. There is nothing in the evidence to leave open the inference that Paul Carter may have thought he could stay at Dulcie's that night, or indeed that he could stand on the footpath. The evidence is that he walked over to the police van and hopped straight in apparently without question. He quietened down when the police arrived and went willingly with them to the van and got in.

157. The issue of whether or not he was in police custody at the time of his death was not really developed in detail. Ms Dixon SC did refer to the recommendations of the RCIADC to submit that undue technicality should not defeat the coronial process. She also submitted that Paul's death was so proximate to him being "*in custody*" that I should find that he was still "*technically*" in custody at the time of his death.

⁸⁶ **False imprisonment:** The common law offence of false imprisonment consists in the unlawful and intentional or reckless restraint of a victim's freedom of movement from a particular place. In other words it is unlawful detention which stops the victim moving away as he would wish to move: *R v Rahman* (1985) 81 Cr App R 349 at 353. The elements of the offence are that the accused intentionally or recklessly and **without lawful excuse restrained** the victim against his or her will. The mens rea necessary to constitute the crime of false imprisonment is the intention to deprive the victim of his liberty. *Macpherson v Brown* (1975) 12 SASR 184 at 197. I note that consent is a defence to unlawful imprisonment (*R v Vollmer* [1996] 1 VR 95 at 187-8.)

⁸⁷ Transcript 818

⁸⁸ Written submission of Mr Dennis of Counsel: p2

158. I find on the balance of probabilities that when Paul left Ontario Ave that night attended by four police members in uniform, three of whom came into the house and two of whom "*guided*" him out and into the van, Paul would have believed on reasonable grounds that he had to leave with the police and was in their "*custody*" at that point within the meaning of the common law. I find therefore that he was in their custody up until he was left on the Sturt Highway. In the circumstances I do not find he was in their custody at the time he was struck by the truck. Whilst the facts demonstrate that his death was not whilst S/C Hoyle and C/Ritchie still had him in their common law custody or were still with him or in his presence, I do find that his death occurred not more than about 20 minutes after he was left in the location where S/C Hoyle and C/Ritchie delivered him.

"In the care of the police"

159. Whilst the question about Paul being in the "*care*" of the police was not directly addressed or discussed at any length, it was the subject of some evidence, including the evidence and submissions about the "*free taxi ride*". S/C Hoyle in his statement stated that if he had any concerns about Paul's welfare, he would not have driven him out to the Sturt Highway. C/ Ritchie also stated that he had no concerns about Paul's welfare when he left him out at the highway.

160. Snr Sgt Downes expressed the view that when police convey someone away from a scene that they have attended, regardless of whether or not they are in custody, the destination where police deliver that person must be "*safe and reasonable*". This was a view that was adopted by each police witness it was put to who gave evidence after Senior Sergeant Downes.

161. Thus, notwithstanding my conclusion that Paul was "*in custody*" when he was delivered out to the highway, even if I am wrong on this issue, I am satisfied that he was in the "*care*" of the police once they transported him away from Ontario Avenue in the sense that they were still required to make decisions about him consistent with his welfare.

D. (ii) Did Paul ask to be taken out past the airport that night?

162. This question was very much in issue during the Inquest. The family did not accept that Paul would have asked the police to take him out to the Sturt Highway. It was the position of the family that Paul was taken out there and left there against his wishes, rather than in compliance with them. The only evidence about what Paul did or did not say on this night to S/C Hoyle after he got into the police van at Ontario Ave is contained in the statements of S/C Hoyle and C/ Ritchie. The statements of S/C Hoyle and C/ Ritchie remain untested because they sought from me and were granted by me the right to remain silent in the exercise of their privilege against self incrimination.

163. There were a number of pieces of evidence introduced into the Inquest on the basis that they may be of relevance to the above question. Those pieces of evidence are discussed below.

(a) The movement of the police van

164. The evidence from all witnesses is that when S/C Hoyle and C/Ritchie left Ontario Ave with Paul in the back of their van, Paul was being taken to his father's place. Paul's father lives at 3 Hornsey Park, Mildura. The evidence set out above in B(iv) and (v) is that the van Paul was in, stopped twice after it left Ontario Ave. The first stop was only a couple of hundred metres away from Dulcie's place, but over Thirteenth Street which would have been the most direct route to Hornsey Park from Ontario Avenue. The reason given by S/C Hoyle and C/Ritchie for the stop was to confer with S/C Giles and S/C Bruhn about the actual street number in Hornsey Park where Paul was to be taken. The evidence is that when the van takes off again after the first stop, C/Ritchie does not perform a U turn to go down Thirteenth Street but continues up Ontario Avenue. The second stop, based on the statements of S/C Hoyle and C/Ritchie was in response to Paul knocking on the window during which time he makes his request to be taken out to the airport.

(b) Paul going for walks

165. There was a considerable amount of evidence collected during this investigation and introduced into the Inquest as to how Paul Carter used to love walking, being out in the bush and walking everywhere. The evidence was relevant on the basis that it may or may not provide weight to the statements of S/C Hoyle and C/Ritchie that Paul did ask to be taken out to the airport that night to walk back to his father's place.

166. There was considerable evidence from family members that Paul liked to go walking and would often walk from one end of the town to the other to visit family and friends.⁸⁹ Dulcie gave evidence that she and Paul enjoyed going for walks together and would go down to the river and walk through the bush. Kay Tulloch gave evidence that she encouraged Paul to use walking as a strategy during her drug and alcohol counselling sessions with him.⁹⁰

167. There was no evidence of Paul ever expressing or exhibiting an inclination to go walking along the highway at midnight to "*clear his head*" or de-stress.

(c) Paul's criminal history and aboriginality

168. There was a mixture of evidence about Paul's history with the police. The potential relevance of the evidence was to raise the prospect that what happened on this night was the culmination of some on-going targeting of Paul Carter by the Mildura police members or a systemic problem in Mildura with police/indigenous relations generally or both.

169. First, as to Paul and his history with police, there was evidence from Sid Clarke and Barry Stewart that Paul had complained to them about being assaulted by the police. Paul's

⁸⁹ Colleen Johnson, Brian Carter Snr

⁹⁰ Ex 58 The effect of this evidence was that she encouraged Paul if angry or frustrated to "*walk it off*" as a strategy. Kay Tulloch gave evidence that Paul used to walk a couple of kilometres down along the river and find a quiet and comfortable place to sit down. (transcript 1155-6) She also gave evidence that she had never heard of him doing this at night and that she had not known him to walk 11 kilometres in one day.

father's evidence was that Paul did not bear a grudge against the police and that he had not mentioned any particular problems to his father about the police or any particular member.⁹¹ The police witnesses all gave evidence about what a difficult person Paul could be to deal with but that he was also capable of being affable and co-operative when not affected by alcohol.

170. Mr Barry Stewart, having lived in Mildura since 1956 stated⁹² that he had known Paul since he was a young child. He noted that Paul had had problems since he was a child and was involved in petrol sniffing which Mr Stewart believed had affected his behaviour. He also stated that over the last 5 to 6 years Paul would come into the co-operative and complain that he had been assaulted by the police. In his statement Mr Stewart noted that Paul had made such a complaint to him about 2 weeks before he died. Mr Stewart also stated that Paul had never followed through with such a complaint.

171. Mr Clarke, who has lived in Mildura for 41 years at the time of making his statement had also known Paul for most of his life. He stated that Paul was always getting drunk and into trouble with the police. He also stated that Paul was "*always coming into the co-op complaining about getting picked on by the police. He never specifically named any police.*"

172. Kay Tulloch stated that Paul had discussed with her his relationship with the police. She stated that Paul had told her he had been "*pushed around*" by the police in the cells but he wasn't going to do anything about it. She also stated that Paul did not seem to have a problem with the police and would say that he got on fine with them and that they were just doing their job. She stated, as did Paul's father, that Paul did have a good respect for the police.⁹³

(d) Radio communication

173. After S/C Hoyle and C/Ritchie delivered Paul out on the Sturt Highway, on their version of events because that is what he requested they do, S/C Hoyle radioed back into police communications centre as follows : "*Male dropped off - all correct.*" The last radio communication about their destination had been from S/C Giles advising that C/Ritchie was driving Paul to Hornsey Park. Both S/C Hoyle and C/Ritchie state that they heard that radio communication. No explanation was offered for the failure of S/C Hoyle and C/Ritchie to tell the radio operator they had changed their destination and Paul had requested to be taken out past the airport and that was where he was dropped off. Despite being 13 kilometres off course and despite the evidence of S/C Giles that the radio operator needed to know where the vans on the road were at all times, S/C Hoyle and C/Ritchie did not let the radio operator know where they were and what they had done. S/C Hoyle put the fact and content of the communication in his statement but does not explain what he meant by the communication. C/Ritchie makes no reference to it at all.

174. When S/C Hoyle got a call from the communications centre to attend the Sturt Highway near the airport regarding a male with long hair running in front of trucks, he

⁹¹ Brian Carter's statement (Inquest Brief p19)

⁹² Inquest Brief p164

⁹³ Transcript 1160

acknowledged receipt of the call but did not state over the radio that he thought he knew who that would be. Neither officer volunteered that they knew who the subject was likely to be even though both say in their statements that they thought it would be Paul.

(e) Observations of Paul as he left Ontario Ave and the accounts from the Sturt Highway

175. All of the witnesses who saw Paul leaving Ontario Ave that night describe him as calm and co-operative with the police when he left Ontario Avenue. When Val Cook heard Paul outside her premises on the Sturt Highway about 15 to 20 minutes later, she painted a very different picture. I have already set out the observations of the three truck drivers who saw Paul that night in Section B above under Paul's Last Day.

176. The accounts of Val Cook and the truck drivers as to Paul's condition are in marked contrast to the descriptions of Paul given by S/C Hoyle and C/ Ritchie as he was when they left him at the Sturt Highway. He is described by S/C Hoyle and C/Ritchie as happy, joking and unconcerned as they left him on the highway. A very short time later, he is described by Val Cook as moaning in anguish and yelling swear words over and over again and the truck drivers as running down the road looking like a "lunatic".

(f) Leon Jones

177. Another piece of evidence introduced into this Inquest that potentially went to the question of whether or not Paul asked to be taken out past the airport was from Leon Jones, an aboriginal man who lives in Mildura. He made a statement⁹⁴ to the Ethical Standards Department of Victoria Police in the wake of hearing about the death of Paul Carter.

178. Mr Jones stated that when he heard about Paul being left out in the bush he thought he should tell someone about what happened to him. He stated that about a month before Paul's death, he had been collected from his ex-partner's home in the early hours of the morning because he was drunk. He thought he was either going to be locked up or taken to his mother's home in Merbein. He stated that he was quite happy to get into the back of the van. He stated that the police drove him around for a while, maybe 10 minutes. The van then stopped and the back door opened. He stated he got out and looked around and did not know where he was. He said he asked the policeman where he was (the members being one male and one female) and the policeman said "home" and laughed. He stated that the police then drove away. He stated he could see the lights of the airport and thereafter endeavoured to make his way home.

179. As stated above, the evidence is that no serving member at Mildura who gave evidence in this Inquest has ever taken a person, not in custody and being transported away from a scene where police have intervened, to anywhere other than a residential location or ever heard of anyone driving some one to other than a residential location.⁹⁵

⁹⁴ Exhibit 59

⁹⁵ For example, S/C Giles stated that in four years serving in Mildura he did not know of any instance when such a thing had been done. Transcript 630

(g) Father's home

180. Some focus was placed upon whether or not Paul's father's home would be available to him if he was affected by alcohol. I understood the relevance of this to be that if that were so, that is that his father would not have him at his home affected by alcohol, that lent weight to the version of events relied upon by S/C Hoyle and C/Ritchie.

181. There was ample evidence that Paul had been violent to his father in the past when affected by alcohol. There was also ample evidence that Mr Carter Senior had sought police assistance in the past to have Paul removed from his place or outside his place when he was drunk and abusive. Despite this evidence, Mr Carter Senior's evidence in the Inquest was that Paul was welcome at his house any time of the day or night.

182. On the police evidence, Paul was calm, co-operative and not apparently affected by alcohol. The police all left Ontario Avenue happy to take Paul to Hornsey Park. S/C Giles and C/ Bruhn radioed in to say that was where they were going. No issue was raised about the suitability of the destination, by Paul or the police or the radio operator or anyone else at Ontario Avenue that night. No question was asked of the operator as to whether there was a problem at Paul's father's place and no advice was forthcoming about that being a problem. It was Paul's bail address for his pending charges.

Conclusion:

D. (ii) Did Paul ask to be taken out past the airport that night?

183. I can find no readily apparent correlation between the evidence of Paul enjoying walking down by the river or through the bush or from house to house visiting friends and family as support for the conclusion that he therefore is more likely than not to have asked to be dropped 11 kilometres out of town on a major trucking route at midnight in the middle of winter on the day his brother has died. There was no evidence that Paul had ever expressed a wish to go walking along the highway in the middle of the night. For this reason, the evidence of his frequent walking does not lend weight to S/C Hoyle and C/Ritchie's version of events on this question.

184. The evidence of the radio communication after dropping Paul on the Sturt Highway does not support S/C Hoyle and C/Ritchie's version of events. I have been asked by Counsel for the family to draw an inference in the style of a criminal "*consciousness of guilt*" ruling that the only reasonable inference is that S/C Hoyle said what he said to the radio communicator and failed to give an accurate representation of where they had left Paul as a result of his consciousness of guilt of what they had done. The statements of S/C Hoyle and C/Ritchie are both silent on why this inaccurate communication was made in these terms. Ultimately, the radio communication has an inherent ambivalence in its language which, whilst it raises a serious concern, makes the drawing of an inference in these circumstances not sustainable as the drawing of such an inference requires that it must be the only reasonable inference open on the evidence. Given the ambivalent nature of the language used in the communication itself, I find it falls just short of being capable of sustaining such an inference.

185. Whilst Paul had been distressed and upset earlier at Ontario Ave, all witnesses who have given accounts of Paul leaving Ontario Avenue described him as calm and co-operative as he left and stepping into the van without protest or assistance and making himself comfortable by putting his feet up on the back of the van. 15 to 20 minutes later, Val Cook hears someone in great emotional anguish, anger and upset and the truck drivers see someone behaving in a totally irrational and dangerous way and looking "crazy". The inconsistency between the statements of S/C Hoyle and C/ Ritchie on the one hand as to Paul's demeanour as unconcerned, happy and joking, thanking them for leaving him there, and the description of the independent witnesses (Val Cook and the truck drivers) who hear and see him no more than 10 to 20 minutes later is stark. Again, to draw an inference that the only reasonable explanation for this apparent dramatic change of demeanor is that he was dropped out on the Sturt Highway against his wishes is to take one small step beyond where the evidence supports. This is because Paul was known to be erratic and indeed he had gone from being very loud and agitated before the police arrived to calm and co-operative and quiet after they arrived.

186. Paul's past history of violence and disruption at his father's home did not provide any assistance in forming a view about whether it was more probable than not that Paul did say those words to S/C Hoyle. This is because despite a history of some violence against his father, he had been comfortably in his father's company earlier in the day, and had been bailed to his address. On all the evidence Paul was calm and co-operative when he left Ontario Ave and stepped willingly into the van believing he was being taken to his father's home. On the evidence, there was no apparent reason for him to contemplate that he would not be welcome at his father's home, and he raised no such reason when the suggestion was made to him in front of everybody else at Ontario Ave that night.

187. Whilst a combination of all of the above creates a very troubling picture and leaves many questions unanswered, ultimately the state of the evidence does not allow me to draw the conclusion to the *Briginshaw* standard that S/C Hoyle and C/Ritchie are lying when they state that Paul asked to be taken out to the Sturt Highway that night.

188. As to the issue about possible collusion between the four members, it is not possible on the evidence to reach a concluded view about what took place as between the four members on that night when they stopped their vans a few hundred metres down the road from Dulcie's place and spoke together. Again, a number of questions which raise my concern about the veracity of the accounts given by the four members are left not answered. For example, given that Hornsey Park was the agreed destination for Paul, why didn't S/C Hoyle and C/Ritchie confirm the number with S/C Giles before S/C Giles drove away from Dulcie's place? Why didn't they ask Paul for his address as he stepped calmly and willingly into the back of the van? Or drive to Hornsey Park and check the number with Paul when they got there? Why didn't S/C Hoyle check the number in Hornsey Park over the radio or indeed over the radio with S/C Giles who clearly knew the number? These questions remain unanswered, but I cannot use unanswered questions to come to conclusions to appropriate evidentiary standards.

189. Finally, in this section I note that I found Mr Leon Jones to be a credible witness. Given the evidence of the general unwillingness of aboriginal people to make formal

complaints in court about police, Mr Jones stands out against this trend. Mr Jones was unable to identify the police members who behaved in the way he described. He noted that the pair was a male and a female. In these circumstances, the evidence cannot be used by me to assist in drawing a conclusion about whether or not Paul Carter asked S/C Hoyle and C/Ritchie to be taken out past the airport on this night, but it is evidence to which Victoria Police should take particular heed.

D. (iii) Was Paul's death suicide?

190. Vito Bozzi was an experienced interstate truck driver. On this night, he drove out of Mildura towards Adelaide. His evidence was that as he rounded the bend out past the end of the airport, he had to brake heavily and swerve to avoid Paul. Mr Bozzi described Paul as *"running down that centre line, heading for the truck, not going either way, just on a mission, you know"*.⁹⁶ He described Paul as looking *"messy"*. He said *"[h]is hair was all messed and looked as though, I don't know whether drunk or not."*⁹⁷

191. Trent Larkin, travelling behind Mr Bozzi witnessed the smoke which came from the tyres of Mr Bozzi's truck and saw the swerve described by Mr Bozzi.⁹⁸ Mr Larkin brought his truck to a stop behind Mr Bozzi. Paul then approached his truck and Mr Larkin described the look of Paul as he approached his truck and stood in front of it and then tried to open the passenger door. He described Paul as looking *"crazy"* rather than drunk. He described Paul placing his hands on the front of his truck, then trying to open the door of the truck and then trying to get on the back of it.

192. The family through Ms Dixon SC submitted that this was consistent with a man desperately seeking help rather than a man trying to take his own life. However, the description of Paul's behaviour by Mr McLintock belies this.

193. As stated above, Mr McLintock, also a professional truck driver gave evidence that he left his workplace in Mildura that night just after midnight. As he headed out along the Sturt Highway to Adelaide he heard *"some chatter on the 2 way radio"* which included hearing someone say *"[t]here's some lunatic trying to kill himself, I should dial 000."* He observed trucks up ahead and slowed down to about 80 or 90 as he thought this may be where the radio talk was coming from.

194. He stated that he then -

"suddenly saw some light coloured runners and like a grey coloured trousers running towards me, dead centre in the left side lane. I think I was only about 18 metres away. The first thing I did was to swerve to the right to try to miss him. I knew that I was never going to miss the person by putting the brakes on. I think the truck had straddled the centre line of the road, centre with the truck and it looked to me as if the person lunged to the left in a deliberate action to get hit by the truck."

⁹⁶ Transcript 483

⁹⁷ Transcript 476

⁹⁸ Exhibit 25

195. Paul was struck by the left side of the bull bar.

196. Mr McLintock was questioned about the possibility that he was wrong about his observation that he saw the man lunge to the left in front of him. He said it was not possible that he was wrong about this observation. That is, he confirmed that he did see Paul lunge in front of him as he tried to avoid him.

197. Mr Andrew Mannix, the ambulance driver that attended the scene stated that Mr McLintock told him that he had tried to swerve to avoid the man but that the man kept coming in a deliberate act.⁹⁹

Conclusion

D. (v): Was Paul's death suicide?

198. In coming to a conclusion on this question, I have taken into account the evidence as to Paul's organic brain injury and the impairment to his executive functions together with the evidence of Dr Odell and Dr Ranson that the levels of alcohol found in Paul's blood would have interfered with both his mental state and his physical capacity and this interference would have been increased because of his pre-existing brain damage. Dr Odell stated¹⁰⁰ that fatigue and grief are all going to effect Paul's thinking and therefore his ability to be a safe pedestrian.

199. Dr Odell also gave evidence that Paul may have run down the road for reasons other than to end his life - such as the wrong perception of what the consequences of his actions were or as a result of very poor decision making, or confusion of thought which may well have been as a result of the effects of alcohol on his thinking.¹⁰¹ Dr Odell gave evidence that people are at risk of self harm when intoxicated as they make rash decisions they would not necessarily make otherwise.

200. Ms Dixon SC on behalf of the family submitted I should not find that Paul deliberately acted to end his own life. Mr Lawrie, on behalf of S/C Hoyle and C/Ritchie submitted I should find on the evidence that Paul committed suicide.

201. Mr Lawrie submitted that I should find that Paul did commit suicide but that I should not conclude that the location where he was dropped was not reasonable and safe. The reasons in summary submitted by Mr Lawrie were:

1. No location is safe if someone decides upon suicide.
2. If Paul wasn't apparently affected by alcohol and not showing any signs of disturbed behaviour, the location was reasonably safe. A pedestrian can walk well clear of the main carriageway without encountering major obstacles.
3. There was plenty of straight road to make it easy to be aware of on-coming vehicles

⁹⁹ Exhibit 27

¹⁰⁰ Transcript 578

¹⁰¹ Transcript 592-5

4. The night was not completely dark and the traffic was quite light .about 9 vehicles an hour.
5. The location was not isolated from human activity and within the range of distances Carter was known to walk.

202. On the evidence there can be little question that Paul's physical actions were to deliberately put himself in the path of an on-coming truck, not just once but twice. Paul had a history of self harming behaviour and suicide attempts.¹⁰² At Ontario Avenue, when observed to be in a very distressed state and crying, he was heard by Dulcie to say "*Coomba's gone and I'm going to.*" Val Cook's powerful evidence of the level of distress she heard minutes before his death, lamenting the loss of his brother adds weight to the conclusion that he killed himself.

203. On balance, I find that Paul, with a history of self harming behaviour, his ability to act safely on his own behalf affected by alcohol and cannabis on his pre-existing cognitive impairment, grief stricken by the loss of his brother that day, all alone on the highway in the middle of the night, deliberately ran in front of on-coming trucks twice with the intention of getting hit by those vehicles. Given the evidence of Mr Bozzi, Mr Larkin and Mr McLintock as to what he was doing, I find that in that moment that he lunged in front of Mr McLintock's on-coming vehicle, he intended to take his own life.

204. I find that Paul's suicide was clearly an impulsive act. Suicide is often an impulsive act based on decisions made when affected by alcohol. That is one of its cruel but inherent dangers.

205. Like many intentional acts of self harm, it goes without saying that without the effects of alcohol and extreme emotional distress, and the immediate means to take action such as Paul had, the act may well have not happened. It also goes without saying that had Paul been delivered to his father's home that night, he would not have been at risk of running in front of a truck on the Sturt Highway.

(iv) Should S/C Hoyle and C/Ritchie have taken Paul out to the Sturt Highway?

206. S/C Hoyle and C/ Ritchie have maintained that they did what Paul asked them to do and have maintained through their Counsel that in the circumstances there was no issue with what they did and what is more, they had little choice to do anything different.¹⁰³ Accepting that Paul requested to be taken out to the location where he was left by S/C Hoyle and C/ Ritchie, should they have done so, or should or could they have taken some other course of action? Some of these questions appear to have arisen for them. That is, both of them refer to not having any concerns for Paul's welfare in complying with his request, implying they turned their minds to his welfare and found no cause for concern. S/C Hoyle stated that if he had any concerns, he would not have driven Paul out there and left him there. C/Ritchie indicated he found no reason to have any concerns about leaving Paul in the circumstances that he did.

¹⁰² Exhibit 40; Kay Tulloch App N; App K Mildura Base Hospital 6.8.96 and 21.11.04

¹⁰³ The issue of what choices C/ Ritchie and S/CHoyle is discussed in the section on whether or not he was "*In custody*" and again in the Comments section

(a) What did S/C Hoyle and C/ Ritchie know about Paul?

207. S/C Hoyle had been stationed at Mildura for 5 years as at August 2006. He stated that he had numerous dealings with Paul during that time and knew him to be an alcoholic and drug user and unpredictable.¹⁰⁴ On 5.5.06, 8 weeks before his death, S/C Hoyle had attended at Dulcie's place after a complaint that Paul was threatening neighbours with a knife. Paul was charged with a range of incidents by S/C Hoyle arising from this including threats to kill, assault with a weapon and unlawful assault. Paul was still on bail for these offences at the time of his death.

208. C/ Ritchie had been stationed at Mildura for just over two years at the time of these events. He stated that he was aware that Paul had a criminal history but not of the exact content of it. He stated that during his time at Mildura he had "*some minor interaction*" with Paul when he had been watch-house keeper and Paul had been in the cells. C/Ritchie stated that he had also been involved in an investigation into the incident in Jaycee Park in Mildura in November 2004. This incident was one in which Paul cut his arm and sprayed a family with blood from his cut. Paul was involuntarily detained pursuant to s.10 of the *Mental Health Act* for 2 days at Mildura Base Hospital after this episode.

209. That Paul was notorious to Mildura police was not in any doubt. Sergeant Mason who had been stationed at Mildura Police for 20 years and was on duty on that night confirmed that Paul was well known to Mildura police.¹⁰⁵ LSC Baldock, who had been at Mildura only one quarter of the time that S/C Hoyle had been there gave evidence that he had heard a few stories about Paul Carter from other police over the 12 months that he had been there.¹⁰⁶ He stated that from his own knowledge and stories of others he knew that Paul could be difficult and challenging at times¹⁰⁷ and he knew from his LEAP police history that he was a known drug user and that he had warning flags in his police history for self harm and violence.¹⁰⁸

(b) Paul's mental health and emotional state

210. Paul's mental health history is set out above under the section with that title. His police LEAP history contained warnings for self-harm and suicide. It also contained a history of mental health problems. There is a comprehensive set of remarks and warnings and well documented history of self harm which records three separate attempts at self harm. His LEAP history also contained an entry that he appeared to have some brain damage/deficiency.¹⁰⁹

¹⁰⁴ Statement of Mick Daly

¹⁰⁵ Transcript 954-955

¹⁰⁶ Transcript 131

¹⁰⁷ Transcript 132

¹⁰⁸ Transcript 104-5

¹⁰⁹ See para 20 above

211. S/C Giles stated he did not know that Paul had ever been involuntarily detained.¹¹⁰ He did know however that Paul had a "*troubled background*" to some degree and that he had significant alcohol abuse problems. S/C Giles was most reluctant to concede that he knew anything of Paul's mental health or risk history despite agreeing that it was highly likely that Paul's Prisoner Information Record had been in the watch-house and accessible to him as a watch-house keeper on many occasions in the four years he had worked at Mildura.¹¹¹ Further, S/C Giles agreed that Paul was a person well known to Mildura police: "*You didn't have to be working the van to know him or about his history.*"¹¹² S/C Giles gave evidence that he did not know that Paul had an intellectual disability, or a history of solvent abuse and he could not recall if there were any warning flags for Suicide or Self Harm for Paul on LEAP.

Senior Constable Hoyle had remanded Paul in custody only weeks earlier and according to LSC Baldock¹¹³ must have generated a Person Information Report at the time at which he generated the brief.

(c) Death of Paul's brother

212. There was no dispute that both S/C Hoyle and C/ Ritchie knew that Paul's brother had died that morning. Paul told S/C Hoyle when he attended at Ontario Avenue, and before Paul got into the van.¹¹⁴ According to S/C Hoyle, Paul mentioned that his brother had died that day. He stated that Paul was very matter of fact about it and didn't appear very emotional or upset and appeared very calm.¹¹⁵ According to C/ Ritchie, Paul told him whilst he was at the front door that his brother had died that day and that he was a bit upset.¹¹⁶ C/ Ritchie described Carter as co-operative and not emotional. S/C Giles agreed that he was also told by Paul that his brother had died that day.¹¹⁷ He stated that Paul did not appear to be emotional, upset or outwardly grieving.¹¹⁸ S/C Bruhn also heard Paul tell S/C Hoyle that his brother had died that day or the day before. He thought that Paul did not seem upset.¹¹⁹

213. The evidence from Ms Val Cook who appears to have heard Paul's last words saying "*I just buried my brother yesterday*" and "*I haven't even got a fucken shirt*"¹²⁰ was very compelling. She was clearly moved when she gave evidence about what she heard on that night. She was very clear that the man she heard sounded upset and angry. She said he was moaning. When asked in evidence to try and give some more detail about the moaning she put her hand on her heart and looked full of pain and said:

110 Transcript 711

111 Transcript 653

112 Transcript 604

113 Transcript 127

114 Statement of Bruhn; Inquest Brief 60 and Statement of Hoyle; Inquest Brief 68

115 Statement of Hoyle

116 Inquest Brief; Statement of Ritchie P. 78

117 Transcript 724

118 Inquest Brief 55

119 Inquest Brief 60

120 Transcript 535-6

"The moaning was...it was emotion, it was of somebody who had-was clearly feeling a lot of emotional anguish and so along with that, that's where I would put two and two together in thinking that the emotion and the anger for whatever reason were connected, so this person was moaning through perhaps - and the crying in his voice and there was anger attached to it as well "121

There was no effective challenge to Ms Cook's account of this evidence.

214. When S/C Giles was asked if there was a reason why police should consider that Paul could be emotionally disturbed by the events of the day, including the death of his brother and the rejection of his girlfriend, he was reluctant to accept that and ultimately replied

"That was a possibility for consideration... yes, that he could've been "122

215. Similarly, the response of S/C Bruhn to questions about Paul's brother's death extracted below from Mr Stanton of Counsel demonstrated an unwillingness to accept, even during public examination, any sense of discomfort about the failure to even contemplate the impact his brother's death may have had upon him:¹²³

Mr Stanton: *You didn't ask Mr Carter any of the circumstances about his brother's death?*

S/C Bruhn: *No*

Mr Stanton: *You didn't think it was an important thing to get more information?*

S/C Bruhn: *I never asked him, no*

Mr Stanton: *You say in your statement you had a good rapport with Mr Carter, isn't that the sort of thing you would ask someone about if you had a good rapport with them?*

S/C Bruhn: *I suppose so.*

Mr Stanton: *Given that you just learnt that his brother had died and according to you he was showing no emotion whatsoever, that didn't strike you as being somewhat strange?*

S/C Bruhn: *I didn't think about that, no.*

Mr Stanton: *As being an unusual response to the death of a family member?*

S/C Bruhn: *People deal with death in different ways and so I didn't think it strange, no.*

216. On the other hand, when Sergeant Mason was contacted by S/C Hoyle at 12.22pm and told S/C Hoyle's version of what he and C/ Ritchie had done, he asked S/C Hoyle about Paul's mental state and his sobriety. When asked by Ms Ellis, Counsel Assisting, why he asked that, he answered:

"I considered it very relevant as to why they made the decision to comply with his request to be dropped off in that proximity." 124

217. Sgt Mason went on to agree that in making such an assessment, a member's ability to do so would be enhanced by a knowledge of that person's psychiatric history, any history of substance abuse or suicide attempts. Sergeant Mason also gave evidence that in making an

121 Transcript 535

122 Transcript 755

123 Transcript 1045

124 Transcript 943

assessment of Paul Carter on this evening, the members needed to consider the impact of the death of a family member on that same day.¹²⁵

(d) Paul's sobriety or otherwise

218. The weight of the evidence from Mildura police is that they all knew Paul Carter was an alcoholic.¹²⁶ There was considerable evidence elicited about Paul's drinking on that day. The varying observations of what Paul did or did not drink on that day are rendered somewhat superfluous by the evidence of the toxicological analysis of his post mortem blood which revealed a blood alcohol content (BAC) of .17. There was no challenge to the accuracy of this result.

219. The evidence of family members who saw Paul throughout the day varied. His father thought he did not appear drunk earlier in the day when he saw him. His brother, Ivan Johnson, said he could smell alcohol on Paul and thought Paul was drunk because of the behaviour he saw Paul engaging in. His brother Dennis saw him drinking beer earlier in the day. As the day passed and the night wore on, the evidence became more consistent with respect to observations of Paul. Jackie Jones said she could smell alcohol on Paul as he came through the door. Joyce Thorne who saw him at about 11pm thought he was a "*bit tipsy not majorly drunk*". Dulcie described him as very sober.¹²⁷ Dianne Jones said "*he didn't seem that pissed*" although he was very upset¹²⁸ and Jackie Jones smelt alcohol on him although she did not think he looked drunk.

220. Considerable time was spent on Paul's apparent state of sobriety and what the police did or did not make of his appearance as to whether or not he was or may be affected by alcohol. A summary of the evidence and statements of S/C Giles, S/C Bruhn, S/C Hoyle and C/ Ritchie are that Paul was not apparently affected by alcohol. S/C Hoyle in his statement says "*There was nothing to suggest that he was affected by drugs or alcohol in any way.*"¹²⁹

221. S/C Giles gave evidence that Dulcie was "*quite heavily intoxicated*" and having trouble speaking¹³⁰ but he also gave evidence that he accepted her assessment that Paul had not been drinking. He also gave evidence that he accepted Paul's word that he had not been drinking¹³¹ and further that he did not appear intoxicated as he appeared calm and rational. Despite this, in cross examination by Counsel Assisting, he agreed that generally when called in to deal with Paul, he was found in an intoxicated state and he could be difficult when intoxicated.¹³²

222. S/C Bruhn gave evidence that he could tell that Dulcie had had a few drinks but he found no reason not to believe her when she said Paul was the most sober there and had not

125 Transcript 975

126 Ex 7 Statements of L/S/C Baldock together with statement of Hoyle, Giles, Ritchie and Mason

127 Transcript p 310

128 Transcript 383

129 Inquest brief p69

130 Transcript 640

131 Transcript 760-1

132 Transcript 639 and 599

had anything to drink¹³³. S/C Bruhn stated that Paul presented as reasonable and not apparently intoxicated and that he stated he had not been drinking.¹³⁴

223. Val Cook described Paul's voice as she heard it just after midnight as sounding intoxicated although she conceded that the voice could have been full of emotion rather than drunkenness.¹³⁵ Both Mr Bozzi and Mr Larkin thought Paul was crazy or a lunatic rather than drunk.

(d) Paul's BAC at .17 and the risks to him

224. Dr Odell, a senior forensic physician at the Victorian Institute of Forensic Medicine, stated the risk of being killed as a pedestrian is much higher for intoxicated pedestrians compared to non intoxicated pedestrians. He stated that is because alcohol affects a range of tasks for safe road use including reaction time, tracking, vigilance or concentration, divided attention tasks, information processing, motor co-ordination and visual functions.¹³⁶

225. Dr Odell expressed the opinion that at .17, Paul's pedestrian skills would probably have been adversely affected by the effects of alcohol at the time of the collision although he was not able to quantify it. He did say though that "*anything that degrades a person's ability to take note of their environment and act in response to it, is going to be a dangerous issue*".¹³⁷ Dr Odell also gave evidence about the probable impact of a blood alcohol concentration of .17 on one's ability to safely navigate the roads as a pedestrian. Further, he gave evidence that Paul's cognitive impairment from his inhalant abuse would mean that the effects of the impairment from his blood alcohol levels would increase the impairment to his pedestrian skills.¹³⁸

226. Dr Odell, gave evidence that he is involved in training police about substances such as alcohol and cannabis and their effects on the population. He stated that in the course of this training police were given written materials which included information about the variable presentation of people who may have ingested drugs or alcohol and the effects of tolerance, effects on judgment, tracking and such other usual functions.¹³⁹ He gave evidence that it was entirely possible that Paul may not have shown obvious signs of intoxication to the casual observer. He also stated that the smell or otherwise of alcohol on his breath would not have been either an inevitable or reliable sign of intoxication and that even an experienced police officer may well find it very difficult to make an assessment as to whether or not a seasoned drinker was intoxicated merely by observing that person. Dr Odell stated that the gross unco-ordination associated with the popular impression of drunkenness may not appear until levels of 0.2% or more in seasoned drinkers."¹⁴⁰

133 Transcript 1020

134 Ex 17

135 Transcript 538

136 Ex 35

137 Transcript 577

138 Transcript 558

139 Transcript 570

140 Ex 35

227. A number of the police witnesses were asked what they understood about the ability to make an accurate assessment of someone's alcohol consumption when that individual was a "seasoned drinker". Each police member asked about this issue indicated a clear understanding of the difficulty of making an assessment in such circumstances.¹⁴¹

228. The response was well represented by what Leading Senior Constable Baldock had to say having spoken to Paul Carter early on the morning of the 6th August. He was asked whether or not he thought Paul Carter was affected by alcohol at that time. He answered that question from Mr Dennis as follows:

"I couldn't say totally, he didn't appear affected but if you're a seasoned drinker, you could have a fairly high reading which wouldn't appear to be anything".

Qn: And that's based on your years of experience of observing people's various states of intoxication, drunkenness?

*Ans: Yes.*¹⁴²

(e) Options available to the police on the night if Paul was drunk

230. Some time was spent during the Inquest on an examination of the various options that may have been available to the police that night if Paul was unable to be delivered to his father's home by police. In this context, evidence about a program called *Bacchus* was introduced into the inquiry including how it operates and whether or not it would have been available to Paul Carter on this night.

231. In essence the program was established to collect aboriginal people under the influence of alcohol from police stations and keep them safe until they have sobered up. There was some conjecture about the reach of the program and whether or not Paul would have been accepted by the program, in particular because the weight of the evidence was that the program only performed 'pick ups' from police stations and not private homes. In my view, the availability or otherwise of the program did not go to the heart of any issue before me in this Inquest. None of the police members who attended that night at Ontario Ave assessed Paul as intoxicated and thus there was no evidence that any member turned his mind to the relevance or availability of Bacchus.

(f) The location where Paul was left

232. Both Sergeant Mason¹⁴³ and Senior Sergeant Downes¹⁴⁴ agreed with propositions being firmly put to them by both Mr Lawrie of Counsel and Mr Dennis of Counsel that

¹⁴¹ S/C Giles gave evidence that an alcoholic may have a higher reading that their demeanour or presentation might indicate. Sgt Mason also gave this evidence. He agreed that it was far more difficult to make an assessment of the sobriety of a person who is an alcoholic. Senior Sergeant Downes also gave evidence that he had experienced people having a fairly high blood alcohol content without displaying obvious signs of intoxication. (Transcript 855)

¹⁴² Transcript 156

¹⁴³ Transcript 977

¹⁴⁴ Transcript 857

police members, once agreeing to transport someone not in custody and thereby giving them the "free taxi ride" discussed above, the police would be compelled to take that person wherever they demanded to be taken. Senior Sergeant Downes in answer to a question from me as to whether he would put any limits or qualifications on such a request to be delivered somewhere by a citizen getting a "free taxi ride" from police responded by saying:

*"in my opinion, it would have to be somewhere where it's reasonable and safe".*¹⁴⁵

Sergeant Mason agreed with this¹⁴⁶ as did Senior Constable Bruhn.¹⁴⁷ Indeed the statements of S/C Hoyle and C/ Ritchie are consistent with this principle as is the evidence of S/C Giles.¹⁴⁸

233. Paul was let out of the van that night on the northern side of the Sturt Highway about 300 metres north of Ash Avenue at a few minutes before midnight.¹⁴⁹ It was 7.6 degrees. The road was a major interstate trucking route. Paul was not wearing high visibility clothing. I attended two views, one during the day the other at night, at the location designated as the spot where Paul was left by S/C Hoyle and C/ Ritchie. There was some question raised about the exact spot where Paul was left. For my purposes I do not think anything turned on that, as there was only a couple of hundred metres between the alternate locations. At night, the area was dark and isolated. The evidence was that at that time of night on average about 10 trucks an hour go by. On the night Paul was killed, 3 trucks went by in about 5 minutes. There is no footpath and no street lighting.

234. Val Cook stated in the four and a half years that she had lived on the highway, she had not ever heard other persons making conversation or walking down the highway of a night.¹⁵⁰

235 Of the truck drivers who saw him that night, Mr Bozzi and Mr McLintock say they had each seen a few pedestrians out there from time to time along the side of the road. Mr Larkin stated he had never seen pedestrians out there before.

CONCLUSION:

236. It is not possible to get a clear picture of the specific detail of what S/C Hoyle and C/ Ritchie knew of the warnings contained in the Victoria Police LEAP system about Paul Carter. There was considerable evidence about the detail and availability of information retained by Victoria Police in their electronic systems. There is no evidence that S/C Hoyle or C/Ritchie requested any information or checks on Paul's police history or risks of self harm or suicide contained in the Victoria Police LEAP records on that night.

¹⁴⁵ Transcript 857, 979

¹⁴⁶ Transcript 950

¹⁴⁷ Transcript 1039

¹⁴⁸ Ms Dixon SC asked S/C Giles if it "[w]ould it be fair to say that if you take a person on board from a domestic or a person who is intoxicated or if you take them on board in that welfare role, that you have a responsibility as to where you take them?"

S/C Giles: "Yes, that would be fair"

¹⁴⁹ Appendix F

¹⁵⁰ Transcript 531

237. However, the evidence was that Paul was well known to Mildura police. S/C Hoyle had been at Mildura for 5 years and C/Ritchie for two years. Given the evidence from Kay Tulloch about Paul's presentation, S/C Hoyle and C/ Ritchie, given their familiarity with Paul, must have known at least of his limited intellect.

238. They did not know his blood alcohol reading. However, they did know that he was an alcoholic, prone to erratic behaviour, and they did know that his brother had died that day. Given the evidence of Dr Odell as to what Victoria police members are taught, they were likely to have known about the effects of tolerance on an alcoholic.

239. That Paul was asking to be left by the side of the road on an interstate trucking route at midnight in mid winter should have sufficiently raised the concern of S/C Hoyle and C/ Ritchie to have at least made an enquiry of their Sergeant. Given the evidence no police member in Mildura had ever heard of such a thing happening, the request by Paul Carter to have himself placed by the side of the road, 13 kilometres away from his father's home at midnight in the middle of winter on the day that his brother has died should have alerted S/C Hoyle and C/ Ritchie that Paul may not have been making appropriate decisions about his own safety. This request should have alerted S/C Hoyle and C/ Ritchie that Paul may not be thinking or behaving rationally.

240. For the few minutes he was in the presence of S/C Giles, S/C Bruhn, S/C Hoyle and C/ Ritchie that night, the observations of the four of them that he did not seem distressed adds little to an assessment of Paul's reaction to his brother's death. In the first minutes the police arrive, Paul told them his brother had died that day. S/C Hoyle and C/Ritchie should have predicted that the most likely impact upon Paul (as with any person) of the news of the death of a sibling would be shock, distress, upset and grief, no matter how that person might look or behave in the space of 10 minutes. The submission from Mr Lawrie that I should conclude that Paul was not displaying any signs of upset and was apparently calm when the police arrived does not assist in making it a reasonable conclusion to draw that he was therefore not upset by his brother's death, or that the police attending should have drawn such a conclusion.

241. Ultimately, regardless of whether Paul was in "*police custody*" at the time, or had requested to be taken out to the Sturt Highway, I have found that S/C Hoyle and C/ Ritchie knew:

- (a) Paul was a vulnerable aboriginal man who was an alcoholic and whose brother had died that day
- (b) Paul was found by the police in the company of his girlfriend who was obviously heavily intoxicated
- (c) Paul was unpredictable and erratic with a low intellect
- (d) His girlfriend had just ended their relationship that night
- (e) Paul bore the visible physical scars of self mutilation
- (f) Paul had a long and detailed criminal history with Victoria Police
- (g) S/C Hoyle knew that Paul was on bail on serious criminal charges involving volatile, irrational behaviour only weeks earlier

- (h) That the location where he was delivered was a dark stretch of open highway that had no footpaths and is an interstate trucking route and was about 13 kilometres from his father's home
- (i) That he was dressed in relatively dark clothing
- (j) That it was midnight and it was cold (about 7 C)

242. S/C Hoyle and C/ Ritchie took such action as they did without seeking advice from their supervisor about the potential for any risk to Paul in performing such an action, taking into account his likely level of fatigue, distress and all of his particular characteristics.

243. The actions of these two police members were not comparable to a situation where the members were under any pressure to make a quick operational decision. Indeed they went considerably out of their way to take Paul out to where they left him.

244. I find that in making an assessment about the reasonableness and safety of the location where Paul was being left, S/C Hoyle and C/Ritchie should have taken into account all of the above in paragraph 241 and what risks both his circumstances and the location and prevailing conditions may have posed to Paul.¹⁵¹

245. I do not conclude that S/C Hoyle and C/Ritchie intended to take the risk that Paul would intentionally run onto the highway in front of a truck. However, I do find that they left Paul in inherently dangerous circumstances which should have been apparent to them.

COMMENTS:

246. S.19(2) of the *Coroners Act* provides that a coroner may comment on any matter connected with the death including public health or safety or the administration of justice. It is a discretionary power which I have decided to exercise in this case by making both some comments and some recommendations.

General response of the police members on the night

247. There is no evidence that any police member who attended Ontario Avenue that night expressed or demonstrated any sympathy to Paul on the loss of his brother, despite all of them professing to have got along quite well with him and that Paul was being reasonable and co-operative on the night. Further, the consistent response of all four members was that he did not seem upset about his brother's death. This evidence about his level of distress runs contrary to the observations of the women gathered at Ontario Avenue that night, and those who saw or heard him out on the Sturt Highway before his death. That S/C Hoyle and C/ Ritchie would not have understood enough about the possible range of responses to the news of the death of a loved sibling such that they could conclude after 9 minutes that Paul was not apparently upset about his brother's death should be of concern to Victoria Police.

¹⁵¹ S/C Carter, an experienced radio operator, gave evidence that members on mobile patrol duty, are able to get information from the radio operator which could include any warnings, prior history, intervention orders, bail conditions and so on and confirmed that it was normal for such enquiries to be made by members intercepting someone on the street.

Given the responses of S/C Giles and S/C Bruhn in evidence on this issue, it raises an even greater concern that Victoria Police should address.

Police /indigenous relations in Mildura

248. Given that Paul was an aboriginal man, his death in these circumstances invariably raised issues about indigenous/police relations in Mildura. The evidence generally as to police/indigenous relations in Mildura produced some disparate views. On this wider issue, whilst the Inquest evidence touched upon it, it was not in any thorough or systematic way. There was general evidence contained in both statements¹⁵² and oral evidence¹⁵³ that complaints made by aboriginal people about police conduct were a pointless exercise. Further, there was evidence that aboriginal people feared retribution from the police for complaints made about their conduct. Whilst this evidence was not specifically directed towards police in Mildura, the evidence of Sid Clarke and Barry Stewart, both aboriginal men who are long term residents of Mildura, means that there is work to be done in the region to increase the level of confidence that aboriginal people have in the police, and to address the perception that complaining about police conduct is a "*pointless exercise*."

249. Following on from this, whilst the issue of whether or not Paul Carter had been or was being assaulted by police is sadly not capable of resolution now, it is important to record that Inspector Geddes, who was the supervising officer in the Victoria Police Aboriginal Advisory Unit at the time of Paul's death stated he had never received any complaints about police misconduct whilst at the unit, but rather about the service provided by police.¹⁵⁴ He stated he had never been made aware that aboriginal people might have felt too scared to complain about police conduct. As at May 2008 according to Inspector Geddes, Victoria Police had 95 members acting as police aboriginal liaison officers excluding those members in the Aboriginal Advisory Unit in Melbourne.¹⁵⁵

250. Mr Jackomos, Director, Indigenous Issues in the Department of Justice gave evidence quite to the contrary stating that the great majority of complaints he had been made aware of related to allegations of police misconduct rather than poor service. Mr Jackomos gave evidence that he was aware of the sort of concerns expressed by Mr Clarke and Mr Stewart that indigenous people often felt too scared to complain about police for fear of retribution or at least had no confidence that anything would happen in the wake of a complaint. Mr Jackomos referred to a number of documents produced as a result of recommendations from the Royal Commission into Aboriginal Deaths in Custody and initiatives undertaken at Government and police command level, noting that there had been a significant improvement over the last couple of years between the Koori community and Victoria Police but confirmed that these problems remained.¹⁵⁶

251. Consistent with the evidence of Mr Jackomos, Sergeant Greg Chandler, Aboriginal Liaison Officer with Victoria Police for the past 12 years stated that it was his opinion that

152 Statements of Barry Stewart and Sid Clarke

153 Andrew Jackomos

154 Transcript 801

155 Transcript 798

156 Transcript 921

aboriginal people feared reprisals from police if they made complaints and also expressed a lack of faith that the complaint would produce an outcome.¹⁵⁷ Superintendent Ehrenberg, in his oral evidence¹⁵⁸ stated he was aware of members of the indigenous community stating they thought there was little point in making a complaint against police.

252. Mr Andrew Jackomos gave evidence that despite these issues, there had been significant positive developments since the death of Paul. He gave evidence that there is an on-going dialogue between ESD and the Koori community in continuing efforts to improve understanding and trust between the Koori community and Victoria Police generally. He also noted that over the last couple of years there had been significant improvement in the level of police participation on a regional level on the local aboriginal advisory committees.

Flagging and Warning systems

253. There is no evidence that the police information system caused a problem. Whilst S/C Hoyle and C/ Ritchie were not in the station and able to personally access their system, the evidence was that the information was readily available to them that night via the radio operator. A simple enquiry would have alerted them to the potential risk. They did not call for it. The electronic LEAP system has been developed and used by Victoria Police for (inter alia) flagging and recording warnings about the known risks and vulnerabilities of people with a police history. This "*flagging*" system was introduced at the end of the 90's. The Person Warning Flag system was designed to include information on LEAP to alert members that a person poses a particular type of threat to police, the public or themselves. The whole LEAP system came under some scrutiny during this inquiry as it has done in the past in coronial inquiries. In the context of this case, the organization of the material I saw seemed logical, the content informative and the risks to the Victoria Police of dealing with Paul both with respect to risks to police and risks to Paul were well documented and seemingly readily available.

254. The need for integrated, accessible and comprehensive information systems for Victoria Police members has been the subject of successive recommendations of Coroners for at least the past decade. Victoria Police have apparently put considerable time and effort and resources into developing a comprehensive system of flags and warnings of risks to public, police and the individuals at risk of self harm. However, it is an inescapable comment in this case that there is no point in having a detailed set of warnings available if police members fail to avail themselves of the information available to them through their own system.

The free taxi ride program

255. There was considerable evidence in this Inquest about what a common occurrence it is for police in Mildura to transport people away from scenes where police have intervened as a result of someone being intoxicated or causing a breach of the peace and the police then take that person home or to a residential address where they will be accepted. A log of each of those trips was produced to me. It was explained that this was regularly done in

¹⁵⁷ Transcript 1060

¹⁵⁸ Transcript 913

circumstances where the person being transported was not in any form of police custody in that they have not been arrested or charged with any offence. That the "log" existed was both sensible and reassuring.

256. Transporting intoxicated people into safe places or diffusing situations by taking people out of those situations is good policing. It needs to be properly supervised and documented at all times and of course must result in ensuring that the person removed is delivered by police to a destination that is safe and reasonable.

257. What was of considerable concern however was the evidence from a number of police witnesses that once they commenced to transport a person in the police van they were compelled to take that person wherever that person demanded to go, as long as the location was "*safe and reasonable*". If police members in Mildura actually believe that they are compelled to take members of the public to whatever location they demand of the police, then an urgent piece of re-education needs to be done in the Mildura region.

Responding to a death in custody

258. Issues were raised about the police response to Paul's death and whether or not it was a death in custody or police presence or police care such that the Victoria Police Manual requirements for such a death should have been relied upon. As I have already noted above, from the very first report to Sergeant Mason and thereafter, no police member suggested other than it should be treated in this way. I simply make the comment that in my view the police response from Sgt Mason up on the evening was the correct one. That is, in circumstances where a death **may be found** to be a death in custody or connected to police action then the police should treat the entire scene and investigation as if that may be the case. The police did do that in this case as far as practical and it was appropriate that they did.

Post Incident Conduct

259. Mr Carter Senior gave evidence about his unhappiness about the way in which the death message about Paul was delivered to him and his wife. It was S/C Giles and S/C Bruhn that were dispatched to deliver the terrible news about Paul to his father. Mr Carter described some insensitive behaviour in his perception which included the police shining torches into the house and apparently looking around his house at this time. This was denied by S/C Bruhn and S/C Giles. It was difficult to get a sense of what actually happened during this time. However, my comment is that I consider it very poor judgment in these circumstances to have sent two of the police members so closely involved on this night to the Carter's home.

RECOMMENDATIONS

260. In my view, in this case, for much of what happened, the facts speak for themselves. The general exercise of common sense and humanity may have prevented Paul's death on this night in these circumstances. No particular expertise was required to make an assessment that the action taken by S/C Hoyle and C/Ritchie was not a safe or reasonable one. Notwithstanding this, the information available to me is that both Victoria Police

recruits and supervisors have a training program which covers suicide awareness. The facts and circumstances of this case may be seen as a valuable case study for those courses.

Recommendation 1:

That Victoria Police considers using the facts of this case as a teaching resource to assist in developing an understanding in all members being inducted into Victoria Police, the expectations placed upon them for responsible policing.

261. Given the evidence of the number of police members who believed they were required to take members of the public wherever they requested to be taken once they were inside a police vehicle but not under arrest, I make the following recommendation.

Recommendation 2:

That Victoria Police review what is being taught to recruits and disseminated throughout Victoria Police as to obligations to members of the public being transported by Victoria police when not under arrest or in custody.

262. In the immediate wake of Paul's death, the evidence reveals that the incorrect information that got out into the community, as a result of the information disseminated via Superintendent Ehrenberg, caused considerable distress and concern to Paul's family and community. It no doubt also exacerbated tensions between the Koori community and police in a very unproductive way. Ultimately, how or why it happened remains a mystery. Nevertheless, it is a matter that Victoria Police must be ever mindful of in such sensitive circumstances.

Recommendation 3:

That Victoria Police ensure that great caution is exercised in the immediate wake of any death and that every attempt is made to ensure that only accurate information is communicated to any other person.

263. Given the need for absolute transparency and public confidence in the system of police investigating police, as discussed above, I make this final recommendation.

Recommendation 4:

That Victoria Police consider requesting members directly involved in a death in police custody, care or control to participate in an electronically recorded interview as soon as practicable after the death.

Judge Jennifer Coate
State Coroner
May 13, 2009

DISTRIBUTION

I direct that a copy of this Finding and Comments and Recommendations be provided to the following (but not restricted to):

1. Ms Jane Dixon SC, Counsel instructed by Victorian Aboriginal Legal Service for Mr Carter and family
2. Mr Paul Lawrie, Counsel instructed by Russell Kennedy for S/C Hoyle and S/C Ritchie
3. Mr Brian Dennis, Counsel instructed by Victorian Government Solicitors Office for the Chief Commissioner of Police
4. The Honourable Rob Hulls, Deputy Premier and Attorney General
5. The Honourable Bob Cameron, Minister for Police and Emergency Services
6. Mr Michael Strong, Director, Office of Police Integrity
7. Mr Andrew Jackomos, Director, Indigenous Issues Unit, Department of Justice
8. Assistant Commissioner Luke Cornelius, Ethical Standards Department, Victoria Police
9. Associate Professor David Ranson, Victorian Institute of Forensic Medicine
10. Dr Odell, Victorian Institute of Forensic Medicine
11. Sgt Greg Chandler, Aboriginal Liaison Officer, Victoria Police
12. Detective Sgt Michael Daly, Homicide Squad, Victoria Police

