



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2015 4765

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: CONNOR MICHAEL TOLSON

Findings of:	AUDREY JAMIESON, CORONER
Delivered on:	29 January 2018
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Hearing date:	3, 4 May 2017 and 2 June 2017
Police Coronial Support Unit:	Leading Senior Constable Tracey Ramsey, Assisting the Coroner

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I, AUDREY JAMIESON, Coroner having investigated the death of **CONNOR MICHAEL TOLSON**

AND having held an inquest in relation to this death on 3, 4 May 2017 and 2 June 2017
at Southbank

find that the identity of the deceased was **CONNOR MICHAEL TOLSON**

born on 23 January 1994

and the death occurred on 19 September 2015

at 3 Berrima Avenue, Malvern East Victoria 3145

from:

1 (a) UNASCERTAINED CAUSES

in the following summary of circumstances:

In the early hours of Saturday 19 September 2015, a fire ignited in the bungalow situated at the rear of 3 Berrima Avenue in Malvern East. Emergency services personnel, including Metropolitan Fire Brigade members, attended. In the process of extinguishing the fire, they located Connor Michael Tolson, a 21 year old man, deceased inside the bungalow.

The subsequent investigation included a full post mortem examination by a Senior Forensic Pathologist at the Victorian Institute of Forensic Medicine, a Victoria Police investigation, a Forensic Officer's report, and a Metropolitan Fire Brigade investigation. The investigation did not ascertain either the cause of his death, or the cause of the fire, however, the forensic pathology results strongly suggested that Connor Michael Tolson was deceased prior to the onset of the fire.

BACKGROUND CIRCUMSTANCES

1. Connor Michael Tolson (**Connor**) was 21 years of age at the time of his death. Connor worked as a kitchen hand in a restaurant and was a musician. He was the youngest of three children; his parents, Karen Martello (**Ms Martello**) and William "Bill" Tolson (**Mr Tolson**) were separated. Connor lived in a detached bungalow at the rear of 3 Berrima Avenue in Malvern East. His mother and sister, Alanna Tolson (**Alanna**) lived within the main residence on the property. Connor's father lived at a nearby property, and his older brother James Tolson (**James**) generally resided elsewhere.

SURROUNDING CIRCUMSTANCES

2. Just prior to 5.00am on Saturday 19 September 2015, Alanna was awoken by the smell of smoke. Alanna heard popping noises and observed a fire in the rear bungalow of the family's Malvern East property. Alanna woke up Ms Martello who attempted to enter the bungalow, but she was forced back by the intensity of the flames. Emergency services were contacted and Metropolitan Fire Brigade (MFB) members arrived shortly afterwards. Ms Martello and Alanna were unsure if Connor was inside the bungalow. Alanna tried unsuccessfully to call and text her brother.
3. MFB members checked the bungalow and located Connor lying on the floor; his feet were near the bed. It was apparent that Connor could not be revived. The MFB members withdrew from the premises, until the fire was controlled and extinguished. Police attended and established a crime scene.

JURISDICTION

4. Connor's death was a reportable death under section 4 of the *Coroners Act 2008* ('the Act'), because it occurred in Victoria, and was considered unexpected, unnatural or to have resulted, directly or indirectly, from an accident or injury.

PURPOSE OF THE CORONIAL INVESTIGATION

5. The Coroners Court of Victoria is an inquisitorial jurisdiction.¹ The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.² The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.³

¹ Section 89(4) *Coroners Act 2008*.

² Section 67(1) of the *Coroners Act 2008*.

³ See for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

6. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by Coroners, generally referred to as the 'prevention' role.⁴ Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.⁵ These are effectively the vehicles by which the prevention role may be advanced.⁶
7. It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation. Nor is it the Coroner's role to determine disciplinary matters. However, pursuant to section 49(1) of the Act, if the Coroner believes an indictable offence may have been committed in connection with the death, the principal registrar must notify the Director of Public Prosecutions.
8. Section 52(2) of the Act provides that it is mandatory for a Coroner to hold an Inquest into a death if the death or cause of death occurred in Victoria and a Coroner suspects the death was as a result of homicide, or the deceased was, immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.
9. The identity of Connor was not in dispute and he was not a person placed in "*custody or care*" as defined by section 3 of the Act. In addition, the initial investigations did not raise a high suspicion that Connor's death was the result of homicide, therefore, it was not mandatory to conduct an Inquest into the circumstances of his death. However, as both the cause of Connor's death and the cause of the fire at 3 Berrima Avenue remained equivocal and there remained a possibility of third party involvement, I determined, pursuant to section 52(1) of the Act, to hold an Inquest. In the interests of promoting public health and safety and the administration of justice, I had identified matters that required further investigation.

⁴ The "prevention" role is explicitly articulated in the Preamble and Purposes of the Act.

⁵ See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

⁶ See also sections 73(1) and 72(5) of the Act which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

10. This finding draws on the totality of the material; the product of the coronial investigation into the death of Connor. That is, the court records maintained during the coronial investigation, the coronial brief and the evidence obtained at the Inquest.
11. In writing this finding, I do not purport to summarise all of the evidence, but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence, either obtained through a witness or tendered in evidence does not infer that it has not been considered.

STANDARD OF PROOF

12. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining whether a matter is proven to that standard, I should give effect to the principles enunciated in *Briginshaw v Briginshaw*.⁷ These principles state that in deciding whether a matter is proven on the balance of probabilities, in considering the weight of the evidence, I should bear in mind:
 - the nature and consequence of the facts to be proved;
 - the seriousness of any allegations made;
 - the inherent unlikelihood of the occurrence alleged;
 - the gravity of the consequences flowing from an adverse finding; and
 - if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect inferences.
13. The effect of the authorities is that Coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

⁷ (1938) 60 CLR 336.

INVESTIGATIONS PRECEDING THE INQUEST

Identity

14. By way of Form 8, pursuant to section 24 of the *Coroners Act 2008*, dated 22 September 2015, odontology evidence was used to determine that the identity of the deceased was Connor Michael Tolson.

Medical Cause of Death

Post mortem examination

15. Dr Malcolm Dodd, Senior Forensic Pathologist at the Victorian Institute of Forensic Medicine, performed a full post mortem examination upon the body of Connor, reviewed a post mortem computed tomography (CT) scan and referred to the Victoria Police Report of Death, Form 83. Fracturing of the skull was identified. Dr Dodd reported that he and an independent pathologist came to the same conclusion after reviewing the CT scan; that the apparent fracturing to Connor's head was more than likely heat induced. However, Dr Dodd noted that blunt force trauma to this area could not be entirely excluded. Dr Dodd reported that the internal examination did not disclose evidence of soot in Connor's upper or lower airways, nor within the region of the buccal cavity or oesophagus. He opined that this strongly suggested that Connor was deceased prior to the onset of the fire.
16. No significant naturally occurring disease was disclosed. Dr Dodd identified several small areas of haemorrhage in the region of Connor's low neck, but no other areas of trauma were identified. Dr Dodd opined that two of the areas of neck haemorrhage may possibly suggest neck compression. However, he noted that the distribution pattern of the areas of bruising were non-specific and there may be alternative explanations for their origins.

Toxicology

17. Toxicological analysis of post mortem blood identified alcohol at a concentration of 0.12g/100mL⁸ and delta-9-tetrahydrocannabinol (THC).⁹ Dr Dodd noted that carboxyhaemoglobin and hydrogen cyanide were not detected in post mortem specimens, which strongly substantiated the notion that Connor died prior to the fire.

⁸ This compares with the 0.05g per 100ml being the legal limit for blood alcohol concentration for fully licensed car drivers. A blood alcohol content in excess of 0.15% can cause considerable depression of the central nervous system (CNS) affecting cognition and capable of producing adverse behavioural changes.

⁹ Delta-9-tetrahydrocannabinol (THC) is the active form of cannabis. The carboxy metabolite of THC, 11-nor-delta-9-carboxy-tetrahydrocannabinol (THC-COOH) was detected in urine.

Forensic pathology opinion

18. Dr Dodd reported that all evidence suggested that Connor's death occurred prior to the onset of fire, and opined that the cause of Connor's death remained unascertained.

Conduct of my investigation

Police Investigation and Coronial Brief

19. The investigation and the preparation of the Coronial Brief was undertaken by Detective Senior Constable (DSC) Paul Jenkins on my behalf. The Coronial Brief contained, *inter alia*, statements made by Connor's mother Ms Martello, father Mr Tolson, sister Alanna, friend Stefan Unterwurzacher, five local residents and Uber driver Imad Mohammad.

20. Upon the arrival of Victoria Police at the Malvern East premises on 19 September 2015, some local residents stated that, upon exiting their homes, they observed an unknown male fleeing down a nearby laneway. Investigators later established that the male was a neighbour, who was alerting other residents to the fire at 3 Berrima Avenue.

21. Connor's father, Mr Tolson stated that the bungalow was in the backyard when the family purchased the house in 1990.¹⁰ It had one door at the front, with windows either side. There was also a window at the back that was quite high. Ms Martello reported that Connor had lived in the rear bungalow since he was 17 years old. Friend Stefan Unterwurzacher (**Stefan**) stated that the bungalow was one big, 'messy' room, which consisted mainly of clothes, bed and music equipment.¹¹ Ms Martello stated that there was also an electric blanket on Connor's bed, which he would turn on during most cold nights. The bungalow contained two large speakers on each side of Connor's bed, and a power board with cords for the speakers and lamps. There were also two televisions, a laptop, a record player, a stereo system, and a guitar amplifier. Mr Tolson said that his son had at least 10 guitars and that he had placed a key lock on the door to the bungalow.

¹⁰ Exhibit 5: Statement of William (Bill Tolson).

¹¹ Exhibit 4: Statement of S. Unterwurzacher, 25/11/15, plus diagram.

22. In her supplementary statement, Ms Martello stated that Connor would always keep the bungalow locked when he was out and when he was inside asleep.¹² The door required a key to enter and there was a locking device on the inside. Ms Martello stated that the door originally had an old lock, but *'due to pushing and shoving by James, my eldest son, the timber surrounding the door broke'*. Ms Martello stated that a new lock had been placed on the door and that Connor had a key for it.
23. In the course of the investigation, police learned that Connor did not have a good relationship with his older brother, James Tolson (**James**). Stefan stated that the brothers had been in a few fights recently. He added that Connor did not like to be around his brother, and had spoken about getting an intervention order.¹³ Mr Tolson stated that James had been diagnosed with attention deficit hyperactivity disorder (ADHD) approximately four or five years ago, and began to abuse his medication. He said that James became verbally abusive and behaved erratically. Mr Tolson added that James' behaviour deteriorated over the years and he caused disruption to the whole family.
24. Ms Martello stated that James was *'becoming too difficult to live with'* and there were *'more and more fights and arguments between myself and James and Connor and James.'* Ms Martello said that James and Connor *'would push each other around. No-one ever used objects but it was physical and they would get red marks on them or get bruises but it was just pushing and shoving...'*
25. Police were called to attend 3 Berrima Avenue eight times between 17 September 2013 and 16 September 2015, due to James' behaviour.¹⁴
26. On 28 January 2015, Connor provided a statement to police, pertaining to an incident which had occurred on that date. In his statement, Connor reported that an argument had arisen after he turned the computer on to use the internet, and James turned it off. A physical confrontation arose. Connor stated that he went to pick up a telephone so that he could telephone their father, but James blocked him from doing so. He stated that he managed to get to the phone, but James threw his arm around his body and hit him in the back; *'I don't know what he hit me with but it was painful'*. Connor stated: *'I was scared at this stage. I*

¹² Exhibit 15: Second statement of Karen Martello, 22/3/17.

¹³ Exhibit 4: Statement of S. Unterwurszacher, 25/11/15, plus diagram.

¹⁴ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

was on edge and nervous. I didn't know what he was going to do next'. He said he subsequently tried to text his father, but James punched him to his left front shoulder. 'This punch hurt me and I was scared to do anything because James is bigger and stronger than me'. Connor said that 'during the time of the assault I feared for my safety and I was scared'. He added that their father came to the house and intervened, but when he left, 'James came into my bedroom. He walked up to me and punched me in the forehead.'

27. On 29 January 2015, an interim family violence order application was made, under the *Family Violence Protection Act 2008*, with Connor as the affected family member, and James listed as the respondent.¹⁵ The intervention order was to expire on 29 January 2016, and included the condition that James not commit family violence against Connor. James was charged with assault and received a 'without conviction' result at the Melbourne Magistrates' Court on 21 July 2015.¹⁶
28. Mr Tolson said there was also an occasion when James kicked in the door to Connor's bungalow, and in retaliation, Connor kicked in the door to James' room.
29. Ms Martello obtained an intervention order against James on 22 May 2015.¹⁷ She stated that the order permitted James to attend the Berrima Avenue house if she allowed him to attend. Ms Martello said that James *'didn't take the service of the intervention order well'* and became homeless for some time. He would still attend the house three to four times a week.
30. On 8 August 2015, there was a verbal dispute between Connor and James and police attended. No parties were willing to provide a statement.¹⁸
31. On 5 September 2015, Alanna telephoned emergency services after James refused to leave the premises in breach of the intervention order.¹⁹ Police attended, and James reportedly jumped over the back fence. Again, no parties were willing to make a statement.²⁰

¹⁵ Exhibit 9: Certified extract of the Family Violence Protection Act 2008 proceedings in relation to Connor Tolson.

¹⁶ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

¹⁷ Directions Hearing Transcript p 2.

¹⁸ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

¹⁹ Exhibit 16 – CD of 000 calls and list of event logs.

²⁰ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

32. At 5.30am on 16 September 2015, police were called to attend 3 Berrima Avenue as James had been found asleep on the lounge room couch and had refused to leave the premises.²¹ Police attended and told James to leave, which he did. Police were called back approximately one hour later, as James had returned. Uniform police arrested James for breach of the intervention order. James was charged with persistent breach of intervention order and breaches on 5 September 2015 and 16 September 2015. James was directly presented to the Moorabbin Magistrates' Court where he entered a plea of guilty and received a conviction with a fine of \$800.²²
33. James initially provided a signed statement, dated 27 October 2016, in which he acknowledged he was the brother of Connor and stated *'I do not want to make a comment in relation to his death'*. In a supplementary statement, dated 3 April 2017, James said that he and Connor had a good relationship most of time. *'We had different interests but we got on well together I thought [sic]'*.
34. Alanna stated that her mother had made James move out of their house three days before Connor died. Ms Martello stated that at around the time of Connor's death, James would sleep in people's gardens or boarding houses. She did not know where he was staying on the night Connor died. James stated that at around the time of the fire he *'was living on the streets... (he) would usually sleep a couple of nights at the same place [sic] like the botanical gardens'*. James added that he could not recall where he was on the night of the fire.
35. Stefan stated that Connor smoked cannabis most days; it relaxed him and did not seem to have any adverse effects. He said that Connor took other recreational drugs sometimes, but not often. They had occasionally taken nitrous oxide (NO₂) together.²³ Ms Martello stated that she never suspected her son was using any 'hard' drugs, and noted that he looked healthy and ate very well. She stated that he rarely got sick.

²¹ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

²² Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

²³ Exhibit 4: Statement of S. Unterwurszacher, 25/11/15, plus diagram.

Events of 18-19 September 2015

36. Between 7.00pm and 8.00pm on Friday 18 September 2015, Connor arrived at a friend's home in Brighton to have drinks prior to a friend's 21st birthday party. Stefan was present at the address, and believed Connor may have smoked some marijuana at this time. The friends arrived at the venue of the party, 'The Deck' in Bay Street, Brighton at approximately 9.30pm. Stefan stated that he was not in the vicinity of Connor the whole time, but did not see any fighting or drugs at the party.²⁴
37. Stefan stated that he left the party with Connor and three other guests at approximately 11.30pm and walked to the train station. He stated that Connor got on a train going in the opposite direction, as he was going home and had work the next day. Stefan believed that Connor was quite drunk, but he was still talking, walking and aware of his surroundings.²⁵
38. Uber driver Imad Mohammad reported that his account showed that he picked up a customer in Brighton at approximately 12.13am on 19 September 2015, and drove them to Malvern. Mr Mohammed said he did not remember anything from the fare, only that the passenger was male and may have had a bag with him. Police obtained Mr Mohammad's Uber trip log, which indicated that Connor was picked up from Bay Street in Brighton, near North Brighton station, and dropped off near his home.
39. Ms Martello reported that one of her neighbours had said she smelt smoke at around 3.00am on 19 September 2015, but did not get up to investigate. Alanna stated that she stirred from her sleep at approximately 3.30am on 19 September 2015, and heard some noises outside in the backyard. She thought it could have been her brother, James, and that he might have been sleeping there. Alanna stated that the noises sounded like movement. She looked out her window, but did not see anything. She got up and could smell some smoke in the house and realised that the power was off. Alanna stated that she did not think much of the power being off, as it had happened before when a cable in Connor's bungalow had shorted out the power. Alanna stated that she lay in bed for a bit and must have fallen asleep again.
40. Between 4.30am and 4.45am on 19 September 2015, some local residents were watching television at a nearby address and identified the smell of smoke. They investigated the source of the smoke and heard the crackling and popping of fire, which sounded like mini

²⁴ Exhibit 4: Statement of S. Unterwurszacher, 25/11/15, plus diagram.

²⁵ Exhibit 4: Statement of S. Unterwurszacher, 25/11/15, plus diagram.

explosions. One of these residents contacted emergency services at 4.56am. Emergency Services Telecommunications Authority (ESTA) records showed three other residents and Ms Martello called '000' between 4.48am and 5.04am.

41. Ms Martello reported that after her daughter woke her at approximately 4.55am, they went outside. Ms Martello tried the front door handle of the bungalow, but it was locked. She kicked open the front door, but the bungalow was filled with smoke and flames.

Report by Forensic Officer at the Victoria Police Forensic Services Centre George Xydias²⁶

42. Forensic Officer George Xydias (**Mr Xydias**) examined the bungalow on the morning of 19 September 2015. Mr Xydias noted the freestanding bungalow was 6.8 metres long by 3.7 metres wide. The structure was of weatherboard and timber frame construction, with asbestos cement sheet inner walls and ceiling, carpet covered timber flooring and a corrugated iron roof. Mr Xydias described the interior as heavily congested with several furnishings, appliances and stored personal items including a double bed, three timber framed furnishings, a timber framed cabinet, a variety of musical instruments and pieces of electrical equipment. Mr Xydias noted that even though the bungalow door appeared to have been open, there was no suggestion of unlawful entry, burglary, vandalism, ransacking or associated disturbance to the interior at any stage prior to the fire.
43. Mr Xydias identified a single seat of fire and point of origin, noting that there was exceptionally localised, intense burning and associated heat damage to a 1.5 square metre area across the eastern side of the bed, the adjacent flooring and other items in the immediate locale. It was apparent that the fire had spread variably from this region of the bed to the rest of the interior. Mr Xydias did not identify the presence of flammable liquid to initiate, spread or fuel the fire. He found a number of smoking related items near the bed, including Zippo lighters and the remnants of cigarette butts. While no smoke detector was located, Mr Xydias noted that the level of damage was sufficiently severe to have destroyed any smoke detector remains.
44. At the apparent point of origin of the fire, Mr Xydias also found the fire damaged remnants of what appeared to be a mobile phone; several charging cables; a charging transformer for an 'Apple' brand computer; a laptop type computer; what appeared to be an electrical power board; and at least six small, metal soda syphon type bulbs. Mr Xydias noted that several

²⁶ Exhibit 1 - Statement of George Xydias dated 23/12/15.

other metal soda syphon type bulbs were located in other regions of the bungalow, and appeared to be either nitrous oxide bulbs (used in whipped cream syphons) or carbon dioxide bulbs (commonly used in SodaStream devices to make soda water). Mr Xydias stated that as they are compressed gases in a high pressure containment, in most cases, the direct application of intense heat to these materials will cause a mechanical explosion of the metal bulb.

45. Mr Xydias concluded that a single fire started on or immediately beside the eastern side of the double bed and mattress. He opined that the likely cause was the ignition of the available combustible materials in this region, such as the mattress materials and bed frame, the bed clothes, papers, clothing, the carpet and / or other items present in the vicinity.

46. Mr Xydias considered whether the fire was ignited by electrical means, and noted that there were many electrical devices within a one metre radius of the determined seat of the fire. However, from the nature and extent of the destruction to these items and the other combustible objects, it was not possible to determine which of these devices were connected to power and / or switched on at the time of the fire. Mr Xydias noted there was no apparent characteristic arcing or similar damage on any of these devices, which is normally associated with an electrical fault, or wires present about this region. It was also possible that any such effect was damaged beyond recognition.

47. Mr Xydias concluded there were four probable means of ignition:

- Sparks / arcing caused by a fault in an electrical appliance or device;
- Overheating and ensuing smouldering / fire, caused by either incorrect use of, and / or an indirect fault in, an electrical appliance or device;
- A smoking related incident; for example a carelessly discarded, improperly extinguished, discarded or dropped cigarette, a lighter or match, a 'bong' or a similar smoking related item; or
- Deliberate ignition, by a cigarette lighter or match.

48. Mr Xydias noted that while deliberate ignition of the mattress and bedding, papers and / or other materials by a lit match or cigarette lighter could not be excluded as a possibility, there was no evidence to substantiate this.

49. In his statement, DSC Jenkins stated that on the morning of 19 September 2015, he conducted a walkthrough of the scene with a number of people including Mr Xydias. DSC

Jenkins stated that Mr Xydias indicated some items which he believed were of interest, including: a bottle of turpentine located on the ground in the far north west side of the property; and painting, cleaning products and miscellaneous chemicals located down the west side of the residence.²⁷

Metropolitan Fire Brigade Fire Investigation Report

50. The Coronial Brief also contained an MFB Fire Investigation Report, prepared by Lead Investigator, Senior Station Officer Steve Attard. The Fire Investigation Report provided information relating to the approach taken by attending MFB members, preliminary internal and external examinations, and evidence regarding the area of origin and point of origin of the fire.
51. In addition, the Coronial Brief included an Energy Safe Victoria (ESV) Report of Fire of Electrical Cause, prepared by Compliance Officer Goran Sokoleski. The report noted ESV examined the fire damaged remains of a laptop, iPhone, Apple power supply, Motorola mobile phone, conductors of supply flexible cords and batteries found near the origin of the fire. The ESV sought to identify any evidence of adverse electrical activity that could have been the cause of the fire.
52. The ESV concluded that no adverse electrical activity could be identified in the laptop, iPhone, Apple power supply or Motorola mobile phone. The conductors of the supply flexible cords and batteries did show signs of adverse electrical activity. However, it could not be identified if the adverse electrical activity was because of the insulation melting from the heat of the fire, or because of the failure of the equipment.

Cessation of police investigation

53. By way of email dated 3 February 2017 and telephone correspondence with the Court on 6 February 2017, DSC Jenkins advised that the police investigation was finalised. There was no indication of any pending criminal charges, thus I was able to advance the coronial investigation.

²⁷ Exhibit 7: Statement of Detective Senior Constable Paul Jenkins dated 01/05/17.

INQUEST

Directions Hearing

54. A Directions Hearing was held on 4 April 2017 to progress the coronial investigation into Connor's death. I was assisted by Leading Senior Constable (**LSC**) Tracey Ramsey from the Police Coronial Support Unit (**PCSU**). Ms Martello and Mr Tolson were in attendance.
55. LSC Ramsey submitted that a statement ought to be obtained from Glen Devison (**Mr Devison**), Ms Martello's partner, to provide a more objective perspective of the family's dynamics.²⁸ LSC Ramsey also submitted that an Inquest was required to assist in providing greater clarity in regards to the circumstances surrounding Connor's death.
56. Following LSC Ramsey's submissions, I indicated my intention to exercise my discretion under section 52(1) of the Act to hold an Inquest, as I remained unenlightened as to a number of issues, including the cause of Connor's death and the cause of the fire on 19 September 2015.
57. A supplementary statement was subsequently obtained from Ms Martello, as well as a statement from Connor's brother James Tolson.²⁹

Statement of Glen Devison³⁰

58. Prior to the Inquest, a statement was provided by Mr Devison, dated 1 May 2017. Mr Devison advised that he would stay at the Berrima Avenue house approximately three nights each week. He said that his relationship with both Connor and Alanna was reasonable, but added that he did not like James as he was *'making everyone's lives miserable'*.
59. Mr Devison stated that he witnessed James having psychotic episodes, for which he was hospitalised on two occasions. He stated that James had entered the bedroom he shared with Ms Martello on *'several occasions'*, and caused them to fit a lock to the bedroom door. Mr Devison stated that as James' drug use appeared to escalate, he had *'real concerns'* for their

²⁸ Directions Hearing Transcript p 4.

²⁹ Following the Directions Hearing, my assistant, with another police member present, took a detailed statement from James. During a relatively lengthy interaction, my assistant advised James that I proposed to conduct an inquest, the process at inquest and the purpose of the inquest into the death of his brother. He did not want any assistance during the taking of the statement, although this was offered and his participation in the inquest was also canvassed with him at that time. I ultimately determined, given all the circumstances, that evidence beyond his statement was not required for my investigation.

³⁰ Exhibit 12: Statement of Glen Warwick Devison with site drawing dated 01/05/17.

safety and developed an action plan in the event James would invade their room during one of his episodes.

60. Mr Devison stated that approximately four to six weeks prior to the fire, James had a brawl with Connor at the house, which caused some damage. He added that at this time Connor pleaded with Ms Martello to upgrade the lock on the bungalow, to keep James out.

61. Mr Devison stated that he completed some ad hoc trade work on the Berrima Avenue property between April 2012 and May 2013. This work included painting the exterior of the house and fitting new doors to the laundry and bungalow. Mr Devison stated that there was an alcove on the western side of the house, in which he stored left over paints and equipment. He said it was possible there may have been a one litre bottle of 'low odour' turpentine in the alcove. He said there was no reason why a bottle of turpentine would be in the backyard, as it would either be kept in the alcove or in the laundry.

***Viva voce* evidence at the Inquest**

62. *Viva voce* evidence was obtained from the following witnesses:

- Mr William (Bill) Tolson, Connor's father
- Ms Karen Martello, Connor's mother
- Ms Alanna Tolson, Connor's sister
- Mr Stefan Unterwurszacher, Connor's friend
- Mr Glen Devison, Ms Martello's partner
- Dr Malcolm Dodd, Senior Forensic Pathologist at the Victorian Institute of Forensic Medicine
- Mr George Xydias, Forensic Officer at Victoria Police Forensic Services Centre
- Detective Senior Constable Paul Jenkins

ISSUES INVESTIGATED AT THE INQUEST

63. A number of issues were explored during the course of the Inquest, including but not limited to: Connor's interactions with others; the cause of Connor's death; the cause of the fire; and access to the bungalow. During the running of the Inquest, a number of issues evolved which related to James' behaviour and family violence matters which became more apparent and a central point of focus for the witnesses. Additional issues explored included: the

family's relationship with James; Connor's relationship with James; considering potential suspects; recording of '000' calls; James' location at the time proximate to the fire; and James' current status. I was again assisted by LSC Tracey Ramsey.

Connor's interactions with others

64. Stefan stated that he never saw Connor pick a fight with anyone; the only time he would get angry was when he was fighting with James.³¹ He described Connor as a very calm person; *'[i]f he was ever to get into a fight, it wouldn't be of his choice.'* Apart from James, Stefan said he could not think of anyone that had any issues with Connor.³² Mr Tolson described Connor as passive, popular, warm and peaceful; *'everyone loved him'*.³³ He said Connor definitely had no enemies.³⁴ Alanna stated that *'everybody seemed to like him'*.³⁵
65. DSC Jenkins said that police looked through phone records and observed that Connor did not have any contact with people with a criminal history, *'he was just an ordinary kid'*.³⁶
66. Stefan stated that Connor would smoke marijuana most days, usually in the bungalow.³⁷ Stefan confirmed that he was confident Connor had not used any of the nitrous oxide located after the fire, because he had not ordered the canisters that need to be used with it.³⁸ Stefan stated that Connor would smoke 'Champion Ruby' brand cigarettes.³⁹ He was unsure if Connor had ceased smoking proximate to his death, because he would often stop smoking for short periods at a time.⁴⁰ Stefan confirmed that Connor did own Zippo lighters, but said he did not use them very often.
67. Mr Tolson stated that he did not believe anyone would have been targeting Connor; rather, he could imagine that someone may have wanted to obtain a piece of equipment from his

³¹ Transcript of Proceedings (T) @ p 58.

³² T @ p 59.

³³ T @ p 63.

³⁴ T @ p 63.

³⁵ T @ p 238.

³⁶ T @ p 160.

³⁷ T @ p 46.

³⁸ T @ p 48.

³⁹ T @ p 51.

⁴⁰ T @ p 51.

bungalow.⁴¹ However, Mr Tolson acknowledged that he was not aware of anything being taken.⁴²

68. Stefan stated that during the party on the night of 18 to 19 September 2015, nothing happened that was out of the ordinary.⁴³ He said that Connor had a good time and met a lot of new people.⁴⁴

The medical cause of Connor's death

69. Dr Dodd stated that injuries he observed to Connor's neck, including *an 'elongated area of dense haemorrhage on the lateral border of the inferior one third of the left sternothyroid muscle'* and *'an ovoid focal area of haemorrhage in the left paralaryngeal soft tissues'* and a *'further area of diffuse haemorrhage... identified at the base of the origin of the left common carotid artery'* had occurred during Connor's life.⁴⁵

70. Dr Dodd added that the injuries to Connor's neck were forms of blunt force trauma of some description.⁴⁶ He said it could have been caused by neck compression directly, or by falling against a firm object.⁴⁷ Dr Dodd stated that his concern with the pattern of injuries was that there were three distinct regions. *'They are in close proximity but they are actually separated by normal tissues...'*⁴⁸ Dr Dodd opined that a single fall would be unlikely to cause these injuries; *'[m]y suspicion would be neck compression'*.⁴⁹ Dr Dodd added that manual neck compression could involve throttling or strangulation.⁵⁰

71. Dr Dodd added that a stumble against an object would more likely cause injuries in just one area, rather than in three separate areas, unless the substance was an irregular contoured object, where you might have three independent impact points on the one fall.⁵¹ Dr Dodd

⁴¹ T @ p 96.

⁴² T @ p 100.

⁴³ T @ p 54.

⁴⁴ T @ p 55.

⁴⁵ T @ p 107-108, Exhibit 6: Statement of Dr. Malcolm Dodd – Senior Forensic Pathologist.

⁴⁶ T @ p 108.

⁴⁷ T @ p 108.

⁴⁸ T @ p 108.

⁴⁹ T @ p 109.

⁵⁰ T @ p 109.

⁵¹ T @ p 119.

said that *'generally speaking if you fall and... impact your neck... and it's an uncomplicated fall you really should just have one area of bruising, not multiple'*.⁵²

72. Dr Dodd said that it is extremely difficult to age bruising when the skin is not intact.⁵³ He said that he observed areas of soft tissue and muscle under the microscope and could only see fresh red cells in all three areas.⁵⁴ Dr Dodd said *'it's all fresh and the presumption is it's occurred just before death'*.⁵⁵ He added that there was no evidence of any acute inflammation indicating that a bruise might have occurred a few days before.⁵⁶

73. Dr Dodd stated that the difficulty in ascribing the cause of Connor's death to neck compression, stemmed from the damage to his skin and underlying fatty tissue, so that any external bruising on the skin, bruising under the skin or petechial haemorrhaging on his eyelids could not be identified. Dr Dodd explained that as Connor's body was severely burnt, he would have needed some other form of physical indication.⁵⁷ Dr Dodd stated that if he had observed petechial bruising on Connor's eyelids and bruising around his neck, he would have been comfortable to ascribe the cause of Connor's death to neck compression.⁵⁸

74. Dr Dodd elaborated that pressure to the neck could lead to a state of asphyxia, where the heart will stop just from pure lack of oxygen or a cardiac reflex from the pressure on the carotid artery (which in Connor's case had haemorrhage around it).⁵⁹ However, he said alternatively, you could just have pain induced in that area because there has been some pressure and swelling.⁶⁰

75. Dr Dodd stated that following the examination, and the involvement of a separate pathologist in examining the CT scan, he was satisfied that the damage to Connor's skull was heat induced.⁶¹ However, he said he was unable to entirely exclude the possibility of

⁵² T @ p 119.

⁵³ T @ p 119.

⁵⁴ T @ p 1120.

⁵⁵ T @ p 120.

⁵⁶ T @ p 120.

⁵⁷ T @ p 109.

⁵⁸ T @ p 110.

⁵⁹ T @ p 115.

⁶⁰ T @ p 115.

⁶¹ T @ p 111.

blunt force trauma.⁶² He later conceded that it was possible that there could have been a small fracture ante mortem.⁶³ Dr Dodd added that he was unable to identify any injury to Connor's brain.⁶⁴

76. Dr Dodd stated that carboxyhaemoglobin is almost always detected in reasonably high levels, upon toxicological analysis of post mortem blood when a person has died in a house fire.⁶⁵ He added that raised carboxyhaemoglobin levels and the presence of hydrogen cyanide is often seen in domestic settings.⁶⁶ As neither of these substances were detected, and as there was a total absence of soot in Connor's mouth, upper gullet and trachea, Dr Dodd felt confident to conclude that Connor was deceased prior to the fire commencing.⁶⁷ Dr Dodd added that if Connor had experienced a prolonged exposure to a smouldering of fire, he would expect it to be typical for producing carbon monoxide.⁶⁸

77. Dr Dodd confirmed that he was unable to find any naturally occurring disease, and described Connor as a '*very, very healthy person*'.⁶⁹

The cause of the fire

78. Mr Xydias gave evidence that at the seat of the fire, there was a hole burnt through the floor, with quite severe damage, so any materials like clothing or bedding would have been consumed.⁷⁰ He said that electrical items and some of the Zippo lighters were found at this location.⁷¹

79. Mr Xydias stated that if a cigarette had started the fire, it was possible for there to have been three hours of smouldering prior to the fire.⁷²

80. Mr Xydias stated that he conducted a walk around the bungalow exterior.⁷³ He observed a 'low odour' turpentine bottle in the extreme corner of the property, along the edging

⁶² T @ p 114.

⁶³ T @ p 124.

⁶⁴ T @ p 112.

⁶⁵ T @ p 117.

⁶⁶ T @ p 118.

⁶⁷ T @ p 118.

⁶⁸ T @ p 125.

⁶⁹ T @ p 120-121.

⁷⁰ T @ p 8.

⁷¹ T @ p 8.

⁷² T @ p 25-26.

between the bungalow and the fence.⁷⁴ He said it was capped and looked full.⁷⁵ He later elaborated that it looked *'fairly full'* and was missing 50 to 100mL at the most.⁷⁶ Mr Xydias indicated that the bottle's significance at the time was reduced because it was outside, effectively filled with liquid, and no fuel had been located inside the bungalow.⁷⁷ He confirmed that there were no similar items in the vicinity of the turpentine bottle.⁷⁸

81. DSC Jenkins stated that the turpentine was of interest because *'it could potentially be used as an accelerant'*.⁷⁹ He added that he believed *'about maybe a third'* of the bottle was missing.⁸⁰ DSC Jenkins added that the painting, cleaning products and miscellaneous chemicals they had observed, were stored in an alcove of the house, approximately 10 to 15 metres away from the bottle of turpentine.⁸¹ DSC Jenkins stated that the bottle of turpentine had been processed and found to contain no forensic value – no fingerprints or DNA evidence.⁸² He stated that most DNA evidence would have been washed off by the MFB members anyway, as it was covered in water.⁸³

82. DSC Jenkins stated that he spoke to the manufacturers and learned the bottle of turpentine was generic, and *'commonly bought at Safeway'*.⁸⁴ He added that the bottle had not been in that position on the grassed area for an extended period of time. The label was not sunburnt, and the grass surrounding it was not dead; *'[i]f it had been there for three weeks, the grass would be dead'*.⁸⁵

83. Mr Devison stated that it was likely there would have been a bottle of turpentine in the alcove. He said he did not usually purchase low odour turpentine, but observed that Ms

⁷³ T @ p 14.

⁷⁴ T @ p 16.

⁷⁵ T @ p 16.

⁷⁶ T @ p 34.

⁷⁷ T @ p 17.

⁷⁸ T @ p 18.

⁷⁹ T @ p 131.

⁸⁰ T @ p 131.

⁸¹ T @ p 131.

⁸² T @ p 132.

⁸³ T @ p 132.

⁸⁴ T @ p 170.

⁸⁵ T @ p 170.

Martello may have had a bottle.⁸⁶ Mr Devison stated that the alcove used to store the chemicals – and possibly the bottle of turpentine – is tucked around the side of the house; *'it's quite out of the way'*.⁸⁷ He said Ms Martello also kept a bottle of turpentine and methylated spirits, which was usually stored in the laundry.⁸⁸

84. Mr Devison said *'there'd be no reason... for a bottle of turps to be behind the bungalow'*.⁸⁹ He said he had not conducted any works on the house for about a year before the fire.⁹⁰ Mr Devison described it as *'quite strange that there'd be... a bottle of turps with any in it behind the bungalow'*.⁹¹ He said he could not imagine himself just discarding a bottle of turpentine down the back of the property; *'[c]ertainly I would have had it in the alcove'*.⁹²

85. Alanna and Ms Martello stated that they had never done any painting at the house, and were unclear why the turpentine bottle was located at the northwest corner of the property.⁹³ Ms Martello stated that Connor used to paint, and would paint a lot in his bedroom. *'I don't know if he ever put it there'*.⁹⁴

86. Mr Xydias stated that there was no indication of any flammable liquid at the areas adjoining the seat of the fire.⁹⁵ However, he added that it was *'impossible'* for him to say if a small amount was poured directly at the seat of the fire, because the fire *'has consumed everything... even burning through the floor and causing a hole'*. He said that the damage was consistent with some bedding burning at the edge of the fire and said *'[y]ou can get the same effect by pouring a small amount of fuel there'*.⁹⁶ Mr Xydias opined that if it was a very localised, as opposed to widespread, application of fuel, *'you're not going to be able to determine anything'*.⁹⁷ He added that a small amount of fuel could be just millilitres.⁹⁸

⁸⁶ T @ p 203.

⁸⁷ T @ p 202.

⁸⁸ T @ p 204.

⁸⁹ T @ p 203.

⁹⁰ T @ p 203.

⁹¹ T @ p 204.

⁹² T @ p 208.

⁹³ T @ p 260, 288.

⁹⁴ T @ p 289.

⁹⁵ T @ p 10.

⁹⁶ T @ p 10.

⁹⁷ T @ p 10.

87. An empty packet of cigarettes and a portion of 'Champion Ruby' tobacco paper wrapper was found on the ground between the northern wall of the bungalow and the neighbouring fence line.⁹⁹ Mr Xydias stated that the small gas cylinders that were located in the vicinity, were not flammable, but would explode with external heat.¹⁰⁰

88. Ms Martello stated that after Connor's death, on Monday 21 September 2015, a white laptop charger arrived in the mail.¹⁰¹ Ms Martello said she spoke with Stefan, who advised her that Connor had a problem with his laptop charger, where it would overheat and become red hot and burning.¹⁰² She said that she believed this *'great big heat source was probably the cause of the fire'*.¹⁰³ Ms Martello confirmed that Connor had never talked to her about his faulty computer charger.¹⁰⁴ She said she had not included reference to this in her second statement, because police had been asking her certain questions, and she had believed it was in the first one she provided.¹⁰⁵

Access to the bungalow

89. Mr Tolson stated that the bungalow could not be seen from Berrima Avenue.¹⁰⁶ Ms Martello said that she never saw anyone unusual visiting the bungalow at night time, but said she was not at home during the day, as she worked.¹⁰⁷

90. Mr Xydias recollected that the window on the northern wall of the bungalow was about head height, *'rather high up in the room'*, and about one and a half metres wide.¹⁰⁸ He recalled that the window was hinged from the top, and believed that it probably would have been enough for someone to get through.¹⁰⁹ However, Mr Xydias stated that *'you'd need some*

⁹⁸ T @ p 34.

⁹⁹ T @ p 14-15.

¹⁰⁰ T @ p 33.

¹⁰¹ T @ p 280.

¹⁰² T @ p 280-281.

¹⁰³ T @ p 281.

¹⁰⁴ T @ p 281.

¹⁰⁵ T @ p 282.

¹⁰⁶ T @ p 97.

¹⁰⁷ T @ p 284-285.

¹⁰⁸ T @ p 3.

¹⁰⁹ T @ p 5.

means of being able to get up there, if you needed entry'.¹¹⁰ He suggested that as the fence line was nearby, you could climb on the fence and probably get in through the window.¹¹¹ Mr Xydias stated that three chairs were found outside, on the northern side of the bungalow, positioned to the east of the window.¹¹² He added that there was *'nothing there to suggest anyone had actually climbed in through that window'*.¹¹³ Mr Devison stated that he could not recall seeing the chairs before, but said *'I'm not sure if Connor might have put them there out of the bungalow'*.¹¹⁴

91. Mr Tolson stated that he used to run a computer business in the bungalow in the 1990s.¹¹⁵ He said he would sometimes lock himself out of the bungalow, and climb up through the window at the rear.¹¹⁶ He said the window had a lever, and never had any form of lock; *'[y]ou lift it up, crawl in and fall back down'*.¹¹⁷ Mr Tolson had no knowledge of any alterations being made to the window to make it more secure.¹¹⁸

92. Mr Devison stated *'if you were going to say there was a weak entry point'* to the bungalow, it was *'certainly the window'*.¹¹⁹ He said that the window never locked, and if someone had a chair they could easily lift it out and *'climb through that window quite easily'*.¹²⁰ Mr Devison said if the chairs were there, *'it certainly would facilitate somebody getting in the window... that could have been an entry point if the door was locked...'*¹²¹

93. Alanna stated that she was not sure if it would be possible or not to enter through the window at the rear of the bungalow.¹²² In his statement dated 3 April 2017, James told

¹¹⁰ T @ p 6.

¹¹¹ T @ p 26.

¹¹² T @ p 26-27.

¹¹³ T @ p 29.

¹¹⁴ T @ p 207.

¹¹⁵ T @ p 61.

¹¹⁶ T @ p 61.

¹¹⁷ T @ p 61-62.

¹¹⁸ T @ p 62.

¹¹⁹ T @ p 207.

¹²⁰ T @ p 207.

¹²¹ T @ p 208.

¹²² T @ p 259.

police: *'[t]he bungalow had some big windows in the front and a little one that goes out on the back. I don't think anyone could get through it'*.¹²³

94. Mr Xydias stated that he could not recall if he found any glass at the rear of the bungalow.¹²⁴

With regards to the front windows, Mr Xydias observed that the glass was heavily sooted, and believed that a soda bulb had ruptured the window; *'[i]t didn't appear as though anything had been broken prior to the fire'*.¹²⁵

95. Stefan stated that Connor had a key and he would lock the door from the inside, on the handle.¹²⁶ He added that Connor would lock the door sometimes, but not always.¹²⁷

96. Mr Devison stated that the bungalow door lock would open *'if you gave it a good nudge'*.¹²⁸

He described it as a *'fairly loose lock'*.¹²⁹ Mr Devison recalled that Connor got Ms Martello to upgrade the lock on the bungalow after a brawl with James.¹³⁰ He was not sure what happened, but was aware that a locksmith came.¹³¹ Mr Devison stated that he believed the door was still able to be budged open, as Ms Martello had been able to kick the door in on the night of the fire.¹³²

97. Alanna stated that when she and Ms Martello approached the bungalow on the morning of 19 September 2015, the door was locked from the inside; *'... we couldn't open it and he always locked it from the inside'*.¹³³ Ms Martello stated that the new, more secure lock was operating and working at the time of the fire; it was *'locked at the time'*.¹³⁴

98. Mr Xydias recalled that the door to the bungalow was *'quite heavily damaged and... partly consumed'*.¹³⁵ He added that it did not appear as though anyone had forced the door.¹³⁶

¹²³ Exhibit 17: Remainder of Brief.

¹²⁴ T @ p 35-36.

¹²⁵ T @ p 36, 38.

¹²⁶ T @ p 42.

¹²⁷ T @ p 42.

¹²⁸ T @ p 180.

¹²⁹ T @ p 180.

¹³⁰ T @ p 182.

¹³¹ T @ p 182.

¹³² T @ p 193.

¹³³ T @ p 237.

¹³⁴ T @ p 278.

¹³⁵ T @ p 4.

99. Mr Xydias stated that there was no evidence of anything strewn across the floor, or items that had been tipped over or upturned.¹³⁷ He said that *'[t]hings seemed to be in their place, not thrown onto the floor.'*¹³⁸

100. DSC Jenkins stated that he conducted a walkover of the fence line of 3 Berrima Avenue and surrounding properties, looking for disturbances; nothing of note was observed.¹³⁹ He said *'... especially on the rear (north) side... there was nothing but cobwebs along the entire fence line'*, and added that this would indicate no one had been through there.¹⁴⁰

101. DSC Jenkins opined that the most likely means of access to the property would have been entry or exit via the side gate.¹⁴¹ Mr Devison stated that the side gate had a slide bolt locking mechanism on it.¹⁴² However, he said this did not stop James, because he would just climb over the gate, which was about seven feet high.¹⁴³ Alanna agreed that you could jump over the gate, *'if you really wanted to'*.¹⁴⁴

The family's relationship with James

General behaviour and the family's frustration

102. Stefan observed that Connor's family appeared to be frustrated with James.¹⁴⁵ He described James as having a *'short fuse'*.¹⁴⁶ Mr Tolson said that James could be *'very, very aggressive'*.¹⁴⁷ He added that he was scared of James at times.¹⁴⁸ However, he said there was a quiet, studious side of James, and that he would not go out of his way to start a fight.¹⁴⁹

¹³⁶ T @ p 4.

¹³⁷ T @ p 7.

¹³⁸ T @ p 7.

¹³⁹ T @ p 133.

¹⁴⁰ T @ p 133.

¹⁴¹ T @ p 167.

¹⁴² T @ p 213.

¹⁴³ T @ p 213.

¹⁴⁴ T @ p 238.

¹⁴⁵ T @ p 56.

¹⁴⁶ T @ p 57.

¹⁴⁷ T @ p 60.

¹⁴⁸ T @ p 73.

¹⁴⁹ T @ p 73.

103. Mr Tolson said that over the last two or three years before Connor died, James' behaviour was consistently bad.¹⁵⁰ He said that James would verbally abuse Ms Martello.¹⁵¹ Mr Tolson spoke of James suffering from episodes of psychosis; *'there are times that he'd... think there was a camera in the roof, and he'd literally etch out with a screwdriver [sic] a hole in the ceiling.'*¹⁵²
104. Alanna stated that James would annoy her because he was always verbally abusing Ms Martello or Connor.¹⁵³
105. Ms Martello stated that James infuriated and annoyed the family, due to his verbal behaviour.¹⁵⁴ However, she said that nobody would have been scared of him.¹⁵⁵ Ms Martello said she was never in fear of him, and added that *'he wasn't one to really hurt anyone'*.¹⁵⁶ She said that the conflict was always around him doing things like turning electrical appliances and Wi-Fi off around the house.¹⁵⁷ Ms Martello acknowledged that the verbal behaviour escalated to become physical, *'but it was like a push or something like that'*.¹⁵⁸
106. While Mr Tolson acknowledged he did not live at the Berrima Avenue address, or see everything, he said he believed James acted like he ran the house, and was abusing the whole family.¹⁵⁹ Mr Tolson said he would often hear that James had been disruptive and turned off electrical items like the internet, the fridge and lights.¹⁶⁰
107. Mr Devison stated that he had concerns for the safety of Ms Martello, Alanna and Connor.¹⁶¹ He said he was told that Connor and James had a *'big brawl'*, but he only witnessed James pushing Connor on one occasion. Mr Devison said Connor was very

¹⁵⁰ T @ p 66.

¹⁵¹ T @ p 70.

¹⁵² T @ p 70.

¹⁵³ T @ p 239.

¹⁵⁴ T @ p 269.

¹⁵⁵ T @ p 269.

¹⁵⁶ T @ p 277, 286.

¹⁵⁷ T @ p 269.

¹⁵⁸ T @ p 270.

¹⁵⁹ T @ p 83.

¹⁶⁰ T @ p 83-84.

¹⁶¹ T @ p 187.

slightly built, *'probably four inches and twenty kilos less than James'*, and an easy target.¹⁶² He described James as *'intimidating and bullying towards his brother'*.¹⁶³

Drug use and psychotic episodes

108. Mr Devison stated that he believed James consumed marijuana, acid and 'ice' over the years.¹⁶⁴ He added that when James was *'at the height of his ice use'* he would have five or six showers a night.¹⁶⁵ Mr Devison believed that James was misusing his ADHD medication, as *'he had hundreds of pills in his room'*.¹⁶⁶ Alanna said she also believed James was probably taking too much of his ADHD medication, and thought he was probably using marijuana.¹⁶⁷ Alanna added that she was unsure specifically what substances James may have been taking, as he would have done it in his room.¹⁶⁸ She said she believed he might have been taking something like 'ice', because of the way he was acting.¹⁶⁹ Ms Martello stated James had *'never taken ice in his life'*.¹⁷⁰ However she said she assumed James was abusing his ADHD medication.¹⁷¹ Ms Martello stated that James had taken LSD in the past, and that this had led to a psychotic episode in 2012, when he was hospitalised.¹⁷²

109. Ms Martello stated that during James' psychotic episodes, he was never violent nor lashed out at people, even at his absolute worst.¹⁷³ She said she had spoken to James after the episodes, and he could remember what he was doing at all of those times, and did not have blackouts.¹⁷⁴

¹⁶² T @ p 187.

¹⁶³ T @ p 197.

¹⁶⁴ T @ p 176.

¹⁶⁵ T @ p 177.

¹⁶⁶ T @ p 195.

¹⁶⁷ T @ p 246.

¹⁶⁸ T @ p 246.

¹⁶⁹ T @ p 250.

¹⁷⁰ T @ p 286.

¹⁷¹ T @ p 290.

¹⁷² T @ p 291.

¹⁷³ T @ p 291.

¹⁷⁴ T @ p 292.

Breaking in to 3 Berrima Avenue and the bungalow

110. Mr Tolson said that James would often break into the Berrima Avenue house, through a window and by other means.¹⁷⁵ He said Ms Martello would call him and say that she could not get rid of James.¹⁷⁶ He said Ms Martello would have called him six to ten times about this over the years.¹⁷⁷

111. Mr Devison also stated that James *'would quite often break into the house'* during the year prior to the fire.¹⁷⁸ He said James found a way to break in where he could manipulate the lock on the laundry door; *'so quite often we'd come home and he'd be in the house'*.¹⁷⁹ Ms Martello stated that James would use a screwdriver to open the laundry door.¹⁸⁰

112. Mr Devison stated that they fitted a deadlock on the laundry door, but after that he would break into the house by other means.¹⁸¹ He described how, on one occasion, James climbed up through the toilet window, which was nine feet off the ground; *'a 500 by 500 window. I don't know how he climbed through it, but he got through it'*.¹⁸² Alanna also recalled this occasion, and stated that James had smashed the little window in the bathroom, and was able to get through.¹⁸³

113. Mr Devison stated that James had gone into the bungalow on a few occasions; *'he would go into everyone's rooms and take stuff'*.¹⁸⁴ He said there were times when James would go to the bungalow, and his interaction with Connor appeared amicable. However, he said there were also plenty of times when he would go in uninvited, when Connor was either there or not.¹⁸⁵

¹⁷⁵ T @ p 71.

¹⁷⁶ T @ p 71.

¹⁷⁷ T @ p 81.

¹⁷⁸ T @ p 179.

¹⁷⁹ T @ p 180.

¹⁸⁰ T @ p 279.

¹⁸¹ T @ p 180.

¹⁸² T @ p 185.

¹⁸³ T @ p 258.

¹⁸⁴ T @ p 181.

¹⁸⁵ T @ p 197.

114. Ms Martello said that each of her children would wander into each other's rooms; *'[i]t was quite normal. They all did it to each other'*.¹⁸⁶ She added that James was the first to put a lock on his door.¹⁸⁷

115. Mr Devison stated that on at least 12 occasions, James had opened the door to the bedroom he shared with Ms Martello.¹⁸⁸ He said James would have some *'...reason why he wanted to talk to his mum at 2.00am in the morning'*.¹⁸⁹ Mr Devison said he put a lock on the bedroom door. He said he was fearful of James and described his behaviour as *'unnerving'*.¹⁹⁰ Mr Devison stated that he developed an action plan, in the event that James would invade the room while they were asleep.¹⁹¹ He said they *'were all sleeping on edge'*.¹⁹²

116. Ms Martello stated that Mr Devison had put the lock on their bedroom door for privacy.¹⁹³ She acknowledged that Mr Devison had concerns James might come in and harm them, but said she thought that was *'ludicrous'*.¹⁹⁴ Ms Martello said she thought the concerns were unfounded, as James would only ever open the door to speak, *'he didn't ever open the door to do anything aggressive'*.¹⁹⁵

117. Mr Devison stated that in the lead up to the fire, James was breaking in to the house all the time.¹⁹⁶ He believed there were occasions where James could have been charged, but Ms Martello did not follow through, because she did not want her son to have a criminal record.¹⁹⁷ Ms Martello concurred that she did not want James to be charged, because she did not want him to have a criminal record, which might have affected his future employment prospects.¹⁹⁸

¹⁸⁶ T @ p 278.

¹⁸⁷ T @ p 278.

¹⁸⁸ T @ p 182.

¹⁸⁹ T @ p 183.

¹⁹⁰ T @ p 183.

¹⁹¹ T @ p 186.

¹⁹² T @ p 186.

¹⁹³ T @ p 286.

¹⁹⁴ T @ p 286.

¹⁹⁵ T @ p 287.

¹⁹⁶ T @ p 188.

¹⁹⁷ T @ p 188.

¹⁹⁸ T @ p 273.

118. Alanna stated that James would *'keep hanging around'* even when Ms Martello said he could not be there.¹⁹⁹ She said *'[h]e could just creep around or try and get in the house'*.²⁰⁰ Alanna said that James would hang around the front yard and knock on the door all the time.²⁰¹ She added that James would always be around the street, or sleeping in someone's yard.²⁰²

Threats reportedly made by James

119. Mr Tolson said that James had said on a number of occasions: *'I'm going to burn the house down, I'm going to kill you...'*.²⁰³ Mr Tolson clarified that this was not said to him, but James had said it to other family members.²⁰⁴ Mr Tolson said he had a fear, *'with the way James is... it just felt like some impending thing'*.²⁰⁵

120. Alanna said she was *'a little bit'* fearful of James. She said that Ms Martello always said he would never hurt anybody. Alanna said *'[h]e was just very verbal'*.²⁰⁶ However, she said that there were times when he would threaten them, and that would scare her.²⁰⁷ Alanna said that he would say things, including that he would burn the house down.²⁰⁸ She said he made this threat more than once, but added, *'I don't know if that means he actually did it...'*. Alanna said that when James would get angry, he would say things like *'I'll kill you'*.²⁰⁹ She said she was only a little bit scared, and was not sure whether to take it seriously.²¹⁰ She added that she would always tell her mother about it, and say that they had to get him out, because *'what if he's telling the truth?'*.²¹¹ Alanna said that James had said words to this

¹⁹⁹ T @ p 233-234.

²⁰⁰ T @ p 234.

²⁰¹ T @ p 234.

²⁰² T @ p 248.

²⁰³ T @ p 88.

²⁰⁴ T @ p 89.

²⁰⁵ T @ p 90.

²⁰⁶ T @ p 243.

²⁰⁷ T @ p 243.

²⁰⁸ T @ p 243.

²⁰⁹ T @ p 244.

²¹⁰ T @ p 244.

²¹¹ T @ p 244.

effect a few times over the past six months to year prior to Connor's death. She said *'he was just angry a lot at us'*.²¹²

121. Ms Martello stated that she could not personally recall James making threats in relation to killing everyone and burning the house down, but did remember someone talking about it having been said.²¹³ She said she was not really concerned about this, because she was used to hearing unpleasant words.²¹⁴

Police Involvement

122. Alanna stated that James' behaviour was *'very stressful for everybody'* and said *'things he'd say and the way he comes across could be... pretty scary'*.²¹⁵ She disagreed with James' statement that there were some *'minor stuff'*, for which Ms Martello called the police.

123. Ms Martello stated that calling the police became necessary to break up an argument, which she felt seemed ridiculous, but she said there was no other option.²¹⁶

124. Mr Tolson said that Ms Martello was reluctant for the police to come to the house, and tried to *'hush-hush'* James' behaviour.²¹⁷ He added that Ms Martello hated police cars being at the front of the house; *'[s]he just wants it all protected and hidden'*.²¹⁸ He described the intervention order that was later taken out as *'very vague'*, as James could still pop into the house and said *'it would be breached and (Ms Martello) wouldn't do anything anyway'*.²¹⁹

125. DSC Jenkins agreed that in effect, the terms of Ms Martello's intervention order that was obtained against James on 22 May 2015, meant that he could be at 3 Berrima Avenue with her consent.²²⁰ Alanna said that following the intervention order, James would still come knocking on the door and trying to get in, so he could get in the house and then he would not leave.²²¹

²¹² T @ p 244.

²¹³ T @ p 285.

²¹⁴ T @ p 285.

²¹⁵ T @ p 256-257.

²¹⁶ T @ p 278.

²¹⁷ T @ p 69.

²¹⁸ T @ p 90.

²¹⁹ T @ p 74.

²²⁰ T @ p 152.

²²¹ T @ p 247.

126. DSC Jenkins stated that on 7 September 2015, a decision was made by the Family Violence Unit to make James a Family Violence Unit Target. He said that this occurs when a person has become a concern, or is a recidivist.²²² The Unit obtained the '000' recording from the incident on 5 September 2015, which indicated that James had spat towards Ms Martello and refused to leave the premises.²²³ On 14 September 2015, members from the Family Violence Unit attended 3 Berrima Avenue and spoke with Ms Martello.²²⁴ DSC Jenkins stated that members of the Unit told Ms Martello they had concerns about the limitations of the Intervention Order and her unwillingness to make a statement. They informed Ms Martello of the Family Violence Unit's intention to start charging James of their own volition from this point on.²²⁵

127. Mr Devison stated that he felt like James' behaviour was escalating in the weeks preceding the fire.²²⁶ Ms Martello stated that she did not believe the behaviour escalated in the months before the fire; *'I'd say it was pretty consistent'* over the preceding year.²²⁷

128. DSC Jenkins stated that a difficulty faced in the course of the investigation, was that Ms Martello had not been forthcoming with information.²²⁸

Connor's relationship with James

129. Stefan stated that Connor would try and avoid James as much as possible.²²⁹ He added that the main times he saw the brothers together, was when James would come to the bungalow.²³⁰ Stefan said there was *'a lot of tension'* between them.²³¹ He added that Connor never mentioned to him that he was in fear of James.²³² However, he thought Connor

²²² T @ p 152-153; Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

²²³ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

²²⁴ Exhibit 10: Document prepared by Sergeant Rodney Giles (Family Violence Unit) on incidents of family violence at 3 Berrima Avenue, Malvern East.

²²⁵ T @ p 153.

²²⁶ T @ p 218.

²²⁷ T @ p 272.

²²⁸ T @ p 166.

²²⁹ T @ p 43.

²³⁰ T @ p 44.

²³¹ T @ p 44.

²³² T @ p 58.

showed signs of being fearful, or at least general frustration, by trying to avoid contact with James as much as possible.²³³

130. Stefan recalled an occasion when he was inside the bungalow with Connor playing music, and James kicked the door five or six times.²³⁴ He said that the door broke a little bit, but it was locked and the lock kept it closed.²³⁵

131. Alanna stated that Connor only had conflict with James; *'James would verbally abuse him but then Connor would fight back... they both fought with each other'*.²³⁶ She added that James would be mean to Connor.²³⁷ Alanna said that James did not like Connor having the door to his bungalow locked.²³⁸

132. Mr Tolson said that on one occasion Connor had told him he had been meditating in the backyard, when James came up and called him a 'faggot' and spat on him.²³⁹

133. Mr Tolson said that Connor would *'often be bruised'*,²⁴⁰ and said there would sometimes be marks on him that James had reportedly caused.²⁴¹

134. Ms Martello stated that Connor would have bruises, but *'both of them did, both of them, equal'*.²⁴² She said that James had also had a blackened eye at one point.²⁴³

135. Mr Devison stated that the *'brawl'* which he believed Connor had with James approximately four to six weeks prior to the fire, was quite serious. He said there were holes in the wall of the living room and all the glass was smashed in a crystal cabinet.²⁴⁴ Mr Devison described Connor as *'quite fearful of his safety'* after this event.²⁴⁵

²³³ T @ p 58.

²³⁴ T @ p 46.

²³⁵ T @ p 46.

²³⁶ T @ p 238.

²³⁷ T @ p 240-241.

²³⁸ T @ p 259.

²³⁹ T @ p 70.

²⁴⁰ T @ p 61.

²⁴¹ T @ p 75.

²⁴² T @ p 270.

²⁴³ T @ p 270.

²⁴⁴ T @ p 182.

²⁴⁵ T @ p 192.

136. In his statement, James said that they sometimes had physical confrontations; *'[t]here was some minor stuff that mum called the police for'*. He could not recall specific details but said *'sometimes he would hit me and I would hit him back and then he would call the police'*. James added: *'I don't know if he would hit me because he thinks he could get away with it because he is younger'*.²⁴⁶

137. Mr Tolson stated, contrary to James' statement, he did not believe it likely that Connor would have provoked James before their altercations.²⁴⁷ He believed it more likely that Connor, as a peaceful person, would just want to be away from James.²⁴⁸ However, he acknowledged it was not impossible, as Ms Martello had told him Connor was not always the innocent one.²⁴⁹

138. Mr Devison said that in most cases, the altercation would be caused by James either invading Connor's privacy or his room or taking his possessions, and Connor would dispute this and it would escalate as an argument.²⁵⁰ Mr Devison said that if an altercation escalated into violence between James and Connor, *'then it's all James' fault'*.²⁵¹

139. Alanna stated that she believed James was usually the instigator of altercations with Connor; *'[i]t's hard not to fight back if someone's... in your face all the time and abusing you.'*²⁵²

Considering potential suspects

140. Mr Tolson considered it was possible that *'[maybe] the jealousy of Connor actually being talented and smart, and clever, and having friends, and sociable got too much'*.²⁵³ However, he said he would be very, very surprised if James was involved in Connor's death.²⁵⁴ Mr Tolson emphasised that James would be angry, and had a superiority complex, but was

²⁴⁶ Exhibit 17 – Remainder of Brief.

²⁴⁷ T @ p 76.

²⁴⁸ T @ p 76.

²⁴⁹ T @ p 76.

²⁵⁰ T @ p 189.

²⁵¹ T @ p 196.

²⁵² T @ p 241.

²⁵³ T @ p 95.

²⁵⁴ T @ p 96.

not overtly violent.²⁵⁵ He said he was not *'100 per cent positive'* but that he did not see that undercurrent.²⁵⁶

141. Mr Devison stated that James was generally *'fairly meek'*.²⁵⁷ He said Connor was one of the few people James could push around, because he was so slightly built. However, he said James was not the type of person that was physically violent.²⁵⁸ Mr Devison said that this factor made it almost unimaginable that James could be responsible, but also said that the drug use and his altered state of consciousness made it less inconceivable.²⁵⁹

142. Mr Devison added that in a normal state of mind, James was fairly passive. However, he became increasingly aggressive as his drug use escalated; *'he was breaking into the house... he could've been capable of anything'*.²⁶⁰ He said that at the time of the fire, he was fearful.²⁶¹

143. Alanna stated, *'I don't know whether James did it or not... it's a possibility'*.²⁶² She said she did not know if he was capable of hurting someone, but added *'you don't know what someone's like'*.²⁶³

144. Ms Martello said she remembered thinking, if James *'was there at the time, this wouldn't have happened, he would have smelt the smoke'*.²⁶⁴ She said that she *'never suspected him... if he was around, he would have smelt it'*.²⁶⁵

145. Mr Devison stated that he believed Ms Martello was in denial about James' possible involvement.²⁶⁶

²⁵⁵ T @ p 96.

²⁵⁶ T @ p 99.

²⁵⁷ T @ p 214.

²⁵⁸ T @ p 214.

²⁵⁹ T @ p 214.

²⁶⁰ T @ p 228.

²⁶¹ T @ p 228.

²⁶² T @ p 264.

²⁶³ T @ p 264.

²⁶⁴ T @ p 277.

²⁶⁵ T @ p 277.

²⁶⁶ T @ p 225.

146.DSC Jenkins stated that the investigation had focused quite heavily upon James, because he was the only person he could identify who had any sort of problem with Connor; *'[t]he unfortunate reality was there was a lot of things pointing in his direction'*.²⁶⁷

147.DSC Jenkins stated that no other person of interest had arisen.²⁶⁸ He added that there had not been any reports of burglaries in the surrounding areas in recent times.²⁶⁹ DSC Jenkins said that burglaries normally occur during the day, when residents are not home.²⁷⁰ He added that there was probably not all that much to steal in the bungalow, and what was there was too cumbersome.²⁷¹

Recording of '000' calls

148.DSC Jenkins obtained the recordings of a number of calls to emergency services, or '000', relating to family violence incidents at 3 Berrima Avenue, which was tendered as an Exhibit at the Inquest.²⁷² These recordings indicated that Mr Tolson telephoned '000' on 28 January 2015 at 2.56pm. Mr Tolson can be heard saying: *'I've got problems with my sons at the moment... My oldest son is bashing my youngest son, he gave him a black eye the other week... He's been violent against him today... He's just being violent towards him... Something needs to be done... James Tolson is assaulting Connor Tolson'*.

149.A call was made by Ms Martello on 13 March 2015 at 8.39pm. In the recording, Ms Martello can be heard describing two males in the house, who were fighting aggressively and pushing each other; *'just continual aggression'*.

150.On 20 March 2015 at 4.41pm, Mr Tolson contacted emergency services, and reported violence at 3 Berrima Avenue, and that they were having trouble with James. Mr Tolson told the operator it was an *'ongoing thing'* with violence between James and other family members.

151.In a phone call to police on Saturday 8 August 2015 at 2.20am, Ms Martello telephoned police and reported that her sons had been *'wrestling physically'* and that one son was *'really angry and aggressive'*.

²⁶⁷ T @ p 159.

²⁶⁸ T @ p 160.

²⁶⁹ T @ p 160.

²⁷⁰ T @ p 160-161.

²⁷¹ T @ p 161.

²⁷² T @ p 149, Exhibit 16 – CD of 000 calls and list of event logs.

152. On Wednesday 12 August 2015 at 2.05pm, Connor telephoned '000'. In the recording, he can be heard telling the call-taker that James had returned while their mother was at work, and was refusing to leave. Connor explained that it was *'just verbal abuse'* on this occasion.

153. In a call on Saturday 5 September 2015 at 1.23am, Alanna Tolson explained that her brother was present at the premises. She told the operator that *'he's coming over at midnight and he's not supposed to be living here'*. In addition, Alanna reported that James had spat at Ms Martello, but was *'very verbal, mainly'*.

154. On Wednesday 16 September 2015 at 5.30am, Ms Martello called '000' and said that James *'keeps coming back and he is here at the moment'*. She adds that *'he's got nowhere to live, so he just comes in the night time'*. At 6.37am, Ms Martello telephoned emergency services again and explained that while police had already attended the house, James had returned.

James' location at the time proximate to the fire

155. Mr Tolson stated that he was not aware of when James had last attended the Berrima Avenue house, prior to the fire.²⁷³ Mr Tolson said he did not know where James was at the time of the fire.²⁷⁴

156. DSC Jenkins stated that closed circuit television (CCTV) footage was requested from the nearest train stations, at Malvern East, Carnegie and Murrumbena, but it was of no investigative value.²⁷⁵

157. Alanna stated that when she woke up in the early hours of Saturday 19 September 2015, she heard a few noises in the backyard and thought it might have been James.²⁷⁶ She said she was worried he might be trying to get into the house, so she looked through a window but did not see anything, *'I thought I heard movement or something'*.²⁷⁷ Alanna said she believed the noise came from the backyard, but was not certain.²⁷⁸ She added that on a previous occasion, James had been in the backyard and had tried to get through the back door, but it was locked.²⁷⁹

²⁷³ T @ p 78.

²⁷⁴ T @ p 86.

²⁷⁵ T @ p 143.

²⁷⁶ Exhibit 13: Statement of Alanna Tolson dated 03/04/16.

²⁷⁷ T @ p 234.

²⁷⁸ T @ p 234.

²⁷⁹ T @ p 234.

158. DSC Jenkins stated that he was notified by police communications at 9.50am on Sunday 20 September 2015, that a burglary was taking place at a neighbouring property, 32 Serrell Street in Malvern East.²⁸⁰ This was approximately 27 hours after the fire.²⁸¹ He said that James was subsequently located nearby and taken into custody by police.²⁸² Police were informed that James had been homeless and been staying at the location to be undercover and out of the rain.²⁸³

159. DSC Jenkins stated that when he saw James on 20 September 2015, he was quite dishevelled and looked like he had been sleeping rough for quite some time.²⁸⁴ He said that he did not appear to be drug affected, but had obvious signs of mental health issues.²⁸⁵ DSC Jenkins stated that he found it quite odd when James showed very little physical and emotional response when told about the death of Connor; *'there was very little emotional response whatsoever'*.²⁸⁶ DSC Jenkins stated that he was confident James understood what he said, but observed *'I'm more to the opinion that he didn't really care'*.²⁸⁷ He added that, after about 15 to 30 seconds of delivering the news of Connor's death, the topic was never discussed again or brought up; *'[t]here were no questions asked'*.²⁸⁸

160. Alanna stated that she also observed James did not react much on 20 September 2015 to the news of Connor's death, but that generally; *'he doesn't show that much emotion'*.²⁸⁹

161. DSC Jenkins stated that on 20 September 2015, he asked James where he had been on the night of the fire. He said that James had said that he had stayed in a drain in St Kilda.²⁹⁰ DSC Jenkins stated that James did not have a phone, and there was nothing that he said that could be corroborated.²⁹¹ He added that James said he walked everywhere, and would

²⁸⁰ T @ p 136.

²⁸¹ T @ p 140.

²⁸² T @ p 136-137.

²⁸³ T @ p 137.

²⁸⁴ T @ p 137.

²⁸⁵ T @ p 139.

²⁸⁶ T @ p 140.

²⁸⁷ T @ p 141.

²⁸⁸ T @ p 142.

²⁸⁹ T @ p 253-254.

²⁹⁰ T @ p 143.

²⁹¹ T @ p 144.

occasionally take trams.²⁹² Mr Devison stated that approximately a week after the fire, James had also told him and Ms Martello that he had been in St Kilda on the night of the fire.²⁹³

162. Ms Martello stated that she disputed the evidence of police and Alanna that James was first located after the fire on 20 September 2015. *'It wasn't, it was days after... It was like three days after'*.²⁹⁴ Ms Martello recalled that they had been wondering where James was.

163. Mr Devison stated that it seemed strange to him that James had been getting into the house every second day, but then from on or around the time of the fire, for approximately three or four days they did not see him.²⁹⁵

James' current status

164. Ms Martello stated that James is much better now, and is abiding by the rules of the accommodation at which he is staying, which is run by a mental health service.²⁹⁶ She said James was there voluntarily. Ms Martello confirmed that she had not advised James of her current address and probably would not do so in the future, *'[n]ot for fear of anything'*, but because he would possibly ask if he could stay at her home, and she wanted him to maintain his independence.²⁹⁷

REFERRAL TO THE DIRECTOR OF PUBLIC PROSECUTIONS

165. Having reviewed all of the available evidence and heard *viva voce* testimony at Inquest, I formed the belief that an indictable offence may have been committed, and asked that the Director of Public Prosecutions be notified of this belief pursuant to section 49(1) of the *Coroners Act 2008*. By way of letter dated 5 June 2017, the Court's Principal Registrar notified the Director of Public Prosecutions, and enclosed a copy of the Inquest transcripts, exhibits and the Coronial Brief.

²⁹² T @ p 144.

²⁹³ T @ p 200-201.

²⁹⁴ T @ p 275.

²⁹⁵ T @ p 213.

²⁹⁶ T @ p 297.

²⁹⁷ T @ p 298.

RESPONSE FROM THE DIRECTOR OF PUBLIC PROSECUTIONS

161. By way of correspondence dated 2 November 2017, the Acting Director of Public Prosecutions Gavin Silbert QC advised me, *inter alia*, that having considered the materials provided by the Court, it was his view that there was insufficient evidence to charge anyone in connection with the death of Connor Tolson.

FINDINGS

Having investigated the death of Connor Tolson and having held an inquest into his death I make the following findings pursuant to section 67(1) of the Coroners Act 2008:

1. I find the identity of the deceased is **CONNOR MICHAEL TOLSON**, born 23 January 1994 and who died on 19 September 2015 at 3 Berrima Avenue, Malvern East Victoria 3145.
2. AND I further find that Connor Michael Tolson died in the bungalow at the rear of 3 Berrima Avenue, Malvern East Victoria 3145 where he resided in circumstances that are unexplained and suspicious.
3. I accept and adopt the cause of death as ascribed by Dr Malcolm Dodd and I find that Connor Michael Tolson died from a cause or causes that are not ascertained but are not from natural causes.
4. AND there is no evidence that Connor Michael Tolson intentionally took his own life.
5. AND in making these findings I have formed a belief that the injuries that caused the death of Connor Michael Tolson were inflicted or caused by another person or persons.
6. I find that on the balance of probabilities that the said injuries that caused the death of Connor Michael Tolson occurred prior to the fire that engulfed and destroyed the bungalow at 3 Berrima Avenue, Malvern East Victoria 3145 and the fire *per se* was not causal to his death.
7. AND I have formed a belief that the fire that engulfed and destroyed the bungalow at 3 Berrima Avenue, Malvern East Victoria 3145 was deliberately lit.
8. In the event that evidence becomes available that will enable the making of more definitive findings, the investigation can be reopened and these Findings potentially set aside.

To enable compliance with section 73(1) of the *Coroners Act 2008* (Vic), I direct that the Findings will be published on the internet.

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

Ms Karen Martello

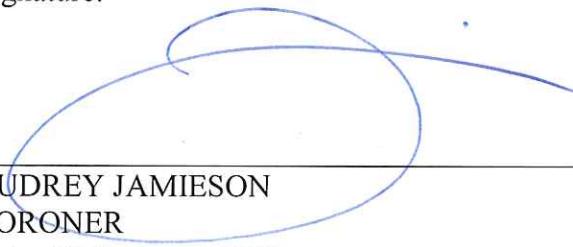
Mr William (Bill) Tolson

Metropolitan Fire Brigade

Energy Safe Victoria

Detective Senior Constable Paul Jenkins

Signature:



AUDREY JAMIESON
CORONER
Date: **29 January 2018**

