

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2012 4072

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

I, JUDGE IAN L. GRAY, having investigated the death of Gillian Edie Meagher  
without holding an inquest:

find that the identity of the deceased was Gillian Edie Meagher

born on 30 October 1982

and the death occurred on 22 September 2012

at a laneway located on Hope Street, between Sydney Road and Ovens Street, Brunswick, Victoria

**from:**

1 (a) COMPRESSION OF THE NECK

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. Gillian Edie Meagher, also known as Jill, was 29 years old when she died on 22 September 2012, from compression of the neck.

**Background**

2. Ms Meagher was born in Ireland, where she lived until she was seven years old and then returned to live from 1998 until 2003 and again from 2004 until 2009. Ms Meagher obtained Australian Citizenship in 1994. While studying at the University College of Dublin, Ms Meagher met Thomas Meagher. They married in July 2008. In 2009, Mr and Ms Meagher moved to Melbourne. From 2012, Ms Meagher worked as a Unit Co-ordinator at the Australian Broadcasting Corporation, at Southbank. By all accounts, Mr and Ms Meagher were happily married and, before her death, were discussing buying a house and having children.

3. Ms Meagher enjoyed a close relationship with her parents and brother, who live in Perth, Western Australia. On 31 August 2012, Ms Meagher's father suffered a stroke and was hospitalised. Ms Meagher, who had been in Ireland for a friend's wedding, returned to Western Australia on 7 September 2012, to support her family. Ms Meagher returned to Melbourne on 14 September 2012.

#### **Events proximate to death**

4. On Friday, 21 September 2012, Ms Meagher attended a birthday party for a co-worker in the city. Ms Meagher and three co-workers left the party at approximately 9.00pm and attended the Brunswick Green Hotel in Sydney Road, Brunswick. At 1.00am on 22 September 2012, Ms Meagher and a co-worker attended Bar Etiquette for a last drink. At about 1.30am, Ms Meagher's co-worker offered to walk her home. Ms Meagher declined as she only lived five minutes' walk away. Ms Meagher set off walking home north along the west side of Sydney Road.
5. Shortly after 1.30am, Adrian Ernest Bayley, who was also walking north along the west side of Sydney Road at Brunswick, sighted Ms Meagher ahead of him. As Bayley approached Ms Meagher, Ms Meagher was on the telephone to her brother in Western Australia. Ms Meagher and her brother were discussing their father's health and Ms Meagher was upset. Bayley approached Ms Meagher after she ceased the call and they exchanged words. Ms Meagher and Bayley each continued to walk north along the west side of Sydney Road and Ms Meagher turned off Sydney Road at Hope Street, to return home.
6. At the first laneway off Hope Street, Bayley attacked Ms Meagher. Bayley raped Ms Meagher and then compressed her airways until she died. Bayley left Ms Meagher's body in the laneway and returned to his home in Coburg to get his car and a shovel.
7. Bayley arrived back at the laneway at approximately 4.22am and placed Ms Meagher's body in the boot of his car. Bayley then drove to Gisborne South, Victoria, where he dug a shallow grave and buried Ms Meagher.
8. Victoria Police fully investigated the circumstances surrounding Ms Meagher's death. As a result of the investigation, Bayley was arrested on 27 September 2012. On 28 September 2012, Bayley was charged with the rape and murder of Ms Meagher. On 5 April 2013, Bayley was convicted of Ms Meagher's rape and murder. On 19 June 2013, Bayley was sentenced to 15 years' imprisonment for Ms Meagher's rape and life imprisonment for her murder. Bayley unsuccessfully appealed the sentence.

9. In his sentencing remarks Nettle JA described the rape of Ms Meagher, prior to her murder, as *“it was a savage, violent rape of the gravest kind committed upon a woman whom you knew was most certainly not consenting.”*<sup>1</sup> He noted the similarity between the rape and murder of Ms Meagher and the sexual and other violent offences for which Bayley had been sentenced in the past. He noted the devastating impact of her murder on family, friends and colleagues. Bayley was sentenced in respect of his murder of Ms Meagher as a serious violent offender having been convicted of multiple counts of rape and other sexual offences previously. As a consequence of the need to sentence him as a serious violent offender and serious sexual offender, the *Sentencing Act 1991* s.6D(a), required protection of the community to be regarded as the principle purpose for which the sentences were imposed on Bayley.
10. Both Justice Nettle, and Ian Callinan AC in his report, noted that at the time of the rape and murder of Ms Meagher, Bayley was on parole and on bail. Nettle JA referred to his *“extraordinary range of ...previous offending.”*<sup>2</sup> In his commentary on the matter, Ian Callinan AC said *“Unfortunate as it might be there do exist incorrigible offenders who, despite the best efforts for their rehabilitation, must nevertheless properly be classed as habitual serious offenders.”*<sup>3</sup>
11. In his coverage of Bayley’s case, Ian Callinan AC said *“We asked for, and were provided with, the Bayley file which did not disclose the names of the members of the panel that granted parole to Bayley. I regard that as a deficiency. The file itself was ill-organised and contained a deal of repetitive material including cuttings manifesting the entirely understandable public reaction to, and criticism of, the Board in this case. There was no single document containing a straightforward complete chronology of his criminal history or analytical material relating to it on the files.”*<sup>4</sup> This is a damning critique. However I infer from the detailed evidence about the reforms of the APB processes (set out in detail in my findings in Sarah Cafferkey<sup>5</sup>) that it would not happen today as a result of the modernisation of the APB.

### **Medical investigation**

12. On 28 September 2012, Dr Matthew Lynch, Forensic Pathologist at the Victorian Institute of Forensic Medicine, conducted a post mortem examination of Ms Meagher. Dr Lynch

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<sup>1</sup> R v Bayley [2013] VSC 313

<sup>2</sup> R v Bayley [2013] VSC 313

<sup>3</sup> Review of the Parole System in Victoria – Ian Callinan AC July 2013, p 59

<sup>4</sup> Review of the Parole System in Victoria – Ian Callinan AC July 2013, p 60

<sup>5</sup> COR 2012 4886

formulated her cause of death as '*compression of the neck*'.<sup>6</sup> Ms Meagher was noted to have additional bruises and lacerations consistent with the attack and rape. I accept Dr Lynch's opinion as to the medical cause of death. Toxicological analysis of samples taken from Ms Meagher confirmed the presence of alcohol.

13. Ms Meagher's identity was confirmed through DNA analysis and comparison with a swab from her brother, Michael McKeon.

### **Finding**

14. I find that:
  - a. the identity of the deceased is Gillian (Jill) Edie Meagher; and
  - b. Ms Meagher died on 22 September 2012 from compression of the neck, in the circumstances described in paragraphs 4-7, above. Her death was caused by Adrian Ernest Bayley.

### **COMMENTS**

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death:

15. Pursuant to section 52(2)(a) of the *Coroners Act 2008* ('the Act'), a coroner must hold an inquest where the coroner suspects that the death was the result of homicide. However, pursuant to section 52(3)(b) of the Act, a coroner is not required to hold an inquest where a person has been charged with an indictable offence in respect of the death. Section 71 of the Act provides that findings are not required if the coroner has decided not to hold an inquest because a person has been charged with an indictable offence in respect of the death and, based on that decision, the Coroner considers that the making of the findings would be inappropriate in the circumstances.

### **Purpose of a coronial investigation**

16. The purpose of a coronial investigation into a reportable death is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred. In the context of a coronial investigation, it is the medical cause of death which is important (including the mode or mechanism of death) and the context or background and surrounding circumstances of the death sufficiently proximate and causally relevant to the death, but not all circumstances which might form part of a narrative culminating in the death.

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<sup>6</sup> Autopsy report of Dr Matthew Lynch, dated 13 December 2012

17. The broader purpose of a coronial investigation 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. Coroners are also empowered 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. These are effectively the vehicles by which the prevention role may be advanced.
18. It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation.
19. Detective Senior Constable Benjamin Leonard from the Homicide Squad was the coroner's investigator and he prepared the coronial brief. This finding draws on the totality of the material, being the coronial brief, reports and other information provided to me throughout this investigation. 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.

#### **Decision not to hold an inquest into Ms Meagher's death**

20. At Ms Meagher's family's request and pursuant to section 52(3)(b) of the *Coroners Act 2008*, I determined that an inquest would not be held in respect of this death. In relation to section 52(3)(b) I note that Adrian Ernest Bayley was charged with an indictable offence in respect of Ms Meagher's death.
21. Although I determined not to hold an inquest into Ms Meagher's death, there are issues relevant to her death that warranted further consideration in the coronial jurisdiction because they relate to matters of public health and safety<sup>7</sup> and prevention opportunities.<sup>8</sup> Bayley's violent sexual offending and violent offending history and the fact that he was a prisoner on parole at the time he murdered Ms Meagher are relevant to matters of public health and safety and prevention.
22. The deaths of Ms Meagher, Ms Sharon Siermans<sup>9</sup> and Ms Sarah Cafferkey<sup>10</sup> occurred between 27 September 2012 and 6 April 2013; a period of less than six and a half months. Each young woman was killed by a man with a violent offending history. Two of the men

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<sup>7</sup> Section 67(3) of the *Coroners Act 2008*

<sup>8</sup> Section 1 of the *Coroners Act 2008*

<sup>9</sup> COR 2013 1465

<sup>10</sup> COR 2012 4886

were on parole at the time they killed these women,<sup>11</sup> one had recently completed his parole period.<sup>12</sup> As shown by these murders, each of these men after their release continued to pose a risk, particularly to women. The reforms to Victoria's Adult Parole System, including the risk assessment and screening tools applied in the parole decision making process, therefore warrant consideration in this case.

23. Bayley had a long and disturbing history of violent and sexual offences. He was a recidivist violent sexual offender and violent offender who had spent 11 years in prison for numerous violent rapes.
24. Justice Nettle's sentencing remarks in the matter of *R v Bayley*<sup>13</sup> set out Bayley's criminal history. In June 1990, at the age of 18, Bayley raped a young woman. Two months later, while on bail pending trial for the June 1990 rape charges, Bayley attacked and attempted to rape a 17 year old girl. In December 1990, Bayley attacked a 16 year old girl in an apparent attempted sexual offence. The young girl managed to escape the car before Bayley concluded his attack. Bayley was sentenced to five years' imprisonment with a non-parole period of three years, in relation to the offences against the three women. On 17 April 2001, Bayley was arrested and charged with 16 counts of rape against five complainants committed between 1 September 2000 and 31 March 2001. On 26 April 2002, Bayley was sentenced to 11 years' imprisonment with an eight-year non-parole period for those offences. On 17 March 2010, Bayley was released on parole. He re-offended and, on 27 February 2012, was sentenced in the Geelong Magistrates' Court to three months' imprisonment on one charge of recklessly causing serious injury. Bayley appealed the sentence and was granted bail pending the appeal. Bayley was on parole, and on bail, when he raped and murdered Ms Meagher.
25. I requested statements in relation to the management of offenders Adrian Bayley and Jason Dinsley. Bayley was convicted of the murder of Ms Meagher and Dinsley of the murder of Ms Siermans.

#### **STATEMENT OF ANDREW REAPER**

26. By letter dated 23 February 2016, the Victorian Government Solicitor provided me with detailed statements by Andrew Arthur Reaper in respect of each death.

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<sup>11</sup> At the time he killed Ms Meagher, Adrian Ernest Bayley was on parole in relation to sexual offence convictions and on bail pending appeal in relation to recklessly causing serious injury. At the time he killed Ms Siermans, Jason John Dinsely was on parole for violent sexual offences; his parole was cancelled on the same day he was arrested for Ms Siermans' murder, in relation to parole violations unrelated to Ms Siermans' murder.

<sup>12</sup> Steven James Hunter had completed his parole on 30 October 2012. He killed Ms Cafferkey 11 days later, on 10 November 2012

<sup>13</sup> [2013] VSC 313

27. Andrew Reaper is the Deputy Commissioner, Offender Management, Corrections Victoria. He has been in that position since June 2012. In relation to the Meagher matter, he set out in his statement the full criminal history of Bayley. He then set out the details of Bayley's imprisonment prior to the parole which he was on when he murdered Ms Meagher. He noted that Bayley was remanded in custody on 23 April 2001, then convicted in the County Court on 16 charges of rape of sex workers in St Kilda. Bayley was sentenced to 11 years imprisonment with a non-parole period of 8 years.
28. He then dealt with the various assessments that were made of Bayley when he was serving that term. In January 2004, Bayley was assessed by Correction Victoria Sex Offender program (SOP) using the "STATIC-99" risk assessment tool. He described that tool as a 10 item actuarial assessment instrument creating for use with adult male sexual offenders over the age of 18. That instrument measured Bayley as having a "moderate-high" risk of sexual reoffending.
29. Mr Reaper's statement details Bayley's participation in programs in prison. He participated in the "Modular Management Intervention Program (MMIP) in prison for a total of 42 sessions between May and November 2009. After that, in February 2010, the SOP conducted a post treatment assessment assessing his STATIC-99 risk as "high". The test was re-administered on 25 February 2010 (prior to release on parole) and he was again assessed as being at a high risk of sexual reoffending. That information was recorded on SOP database however the E\*Justice system<sup>14</sup> at the time continued to reflect that Bayley had a "moderate" risk assessment. Mr Reaper makes the point that from the records held by SOP, no additional modular management intervention program treatment was considered for Bayley after he had completed the course in 2009, despite his risk level having been re-assessed as warranting a higher score than originally assessed. I make the comment that on its face this appears to be a flaw within the system at the time. I infer from Mr Reaper's statement that it would have been a reasonable expectation that Bayley would have been put through another program as a consequence of his risk assessment going up.
30. Mr Reaper deals in his statement with other programs Bayley attended, including a psychological well-being program at Marngoneet prison, and a 'Real Understanding of Self Help' program, focused on identification of changes in behaviour and the connection between those changes and reoffending. While in custody, Bayley was assessed by the Australian

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<sup>14</sup> E\*Justice is the Corrections Victoria's electronic database recording module that manages information for prisoners/prisons and community-based dispositions to record information such as case management, sentence information and order details.

Community Support Organisation (ASCO COATS) in respect of post release services for drug/alcohol treatment requirements. ASCO COATS did not recommend treatment.

31. In his statement, Mr Reaper goes on to refer to a Community Correctional Services (CCS) progress report to the Adult Parole Board (APB) on 3 June 2007 and a “Subsequent Progress Report (Prisoner in Prison) on 2 September 2009 – prior to the APB’s consideration of his release on parole.”<sup>15</sup> He stated:

*“...The September 2009 report noted that Bayley’s suitability for release should be treated with caution and ‘any assessment made in terms of release for Parole will need to take into account Mr Bayley’s ability to develop insight’ into his offending and risk of reoffending. However, a report to the APB from SOP dated 11 December 2009 noted that Bayley had made some gains through treatment and had ‘contained his risk of sexual re-offending’.”<sup>16</sup>*

32. The statement then continues with the chronology of developments leading to Bayley’s parole. A “Parole Assessment Report” as required under DCI 5.2 (the Deputy Commissioner Instructions) was prepared. The Parole Assessment Report comprised the results of a Victorian Interventions Screening Assessment Tool (VISAT), a Tier 1 Report, a Parole Assessment Summary and Environment Scan for sex offenders (E-Scan). Mr Reaper described the purpose of a Parole Assessment Report as follows:

*“...to inform the APB of the suitability of a prisoner for release into the community and the prisoner’s offence-related and offence-specific needs that should be addressed by a parolee while serving parole. The purpose of the E-Scan is to examine and manage any individual risk and protective factors associated with the prisoner’s current and/or proposed residence. A recommendation is then made to the APB about the suitability or otherwise of the proposed residence.”<sup>17</sup>*

33. In relation to the VISAT assessment of 7 September 2009, Mr Reaper described that as the then “authorised screening tool used to assess prisoners’ general risk of offending.”<sup>18</sup> Significantly, “This assessment indicated Bayley had a ‘low’ risk of general re-offending. However it was overridden by senior staff to ‘moderate’ risk.”<sup>19</sup> He referred to the evidence given by Deputy Commissioner Wise in the Sarah Cafferkey inquest in relation to the adoption of a replacement risk assessment tool.

34. Parole was recommended:

*“As part of the Parole Assessment Summary, a SCM recommended that Bayley be released with the following conditions:*

- (a) That he participate in the Sexual Offender Supervision Program as directed by Community Correctional Services.*
- (b) That he have no contact whatsoever either directly or indirectly with the victims.*

<sup>15</sup> Statement of Andrew Reaper, 23 February 2016, p 8

<sup>16</sup> Statement of Andrew Reaper, 23 February 2016, p 8

<sup>17</sup> Statement of Andrew Reaper, 23 February 2016, p 9

<sup>18</sup> Statement of Andrew Reaper, 23 February 2016, p 9

<sup>19</sup> Statement of Andrew Reaper, 23 February 2016, p 9



- (c) That he adhere to a curfew between 8pm and 7am, except with the written permission of the supervising Community Corrections Officer; and
- (d) That he undergo assessment and treatment for alcohol or drug addiction or submit to medical, psychological or psychiatric assessment and treatment as directed by the Centre Manager...

On 17 February 2010, the APB decided to release Bayley on parole commencing 17 March 2010 until his end sentence date, which was 17 March 2013. The APB imposed the conditions recommended by the CCS together with a residential condition for Bayley to 'reside at...(his mother's address) until otherwise determined by the Centre Manager' and the standard conditions of a parole order were also included."<sup>20</sup>

35. Mr Reaper's statement then describes the supervision of Bayley's parole and his compliance with various requirements. He was allocated a Specialist Case Manager (SCM) as his case manager. This case manager was specifically trained to work with sex offenders. He set out the details of their training. He then set out the procedure applied to the management of parolees such as Bayley:

*"CCS's procedure is to manage and make appropriate interventions in the community for parolees according to the highest level of risk in either VISAT or STATIC-99. In Bayley's case, he was managed according to the STATIC-99 risk level of moderate-high. As set out above, Bayley was listed in E\*Justice with a risk level of 'moderate' due to the limitations that there were at the time in the system, and a post-treatment assessment conducted by SOP on 8 February 2010 re-assessed Bayley's STATIC-99 risk score as 'high'. This was not communicated to CCS, The APB, or entered into E\*Justice. However, CCS records show that CCS understood that Bayley had been assessed as 'moderate-high' risk, and he was case managed according to this risk level."*<sup>21</sup>

36. Mr Reaper deals with the employment Bayley had during his parole (five different employers and unemployment for only a brief period). He noted that *"Employment is considered an important protective factor for pro-social engagement and parole success."*<sup>22</sup> He went on to note that after twice-weekly reporting for the first three months of his parole (the intensive period), he went to weekly supervision on 21 June 2010.

37. In relation to alcohol, Mr Reaper states:

*"During supervision sessions with his SCM, Bayley sometimes discussed his alcohol consumption and on occasions provided contradictory statements about his ability to control himself after he had been drinking. On two occasions (16 August 2010 and 7 September 2010) Bayley admitted drinking alcohol after an argument with his girlfriend. Despite these admissions Bayley was not referred back to COATS for reassessment until after his further conviction for assault."*<sup>23</sup>

38. Bayley was referred to the Sex Offender Program when on parole for the purposes of commencing the Maintaining Change Program.

*"The Maintaining Change Program offers support (rather than treatment) to offenders to maintain the gains they have made during treatment whilst in custody and provides clinical*

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<sup>20</sup> Statement of Andrew Reaper, 23 February 2016, p 9-10

<sup>21</sup> Statement of Andrew Reaper, 23 February 2016, p 12

<sup>22</sup> Statement of Andrew Reaper, 23 February 2016, p 13

<sup>23</sup> Statement of Andrew Reaper, 23 February 2016, p 14

support regarding the implementation of a Healthy Lifestyle Plan developed during previous treatment episodes for sex offenders...Whilst on parole Bayley attended 12 sessions of the Maintaining Change Program delivered by SOP from 1 September 2010 until 13 April 2011. The completion report for this program noted that Bayley's attendance was of a satisfactory standard. Bayley had been 'a valuable group member, providing support and feedback to other group members'. He also showed that he was committed to identifying situations that were problematic for him and managing those situations appropriately."<sup>24</sup>

39. In relation to the offence at Geelong, Mr Reaper provided the following context:

*"On 16 August 2011, Bayley attended CCS and was observed to be 'anxious, tense' but nonetheless reported that his relationship was going well and he had found employment. Upon leaving the CCS office, he was arrested by police and charged with further offences in relation to an assault that had occurred in Geelong four days earlier. CCS submitted a 'Further Offences' Report to the APB on 17 August 2011 in relation to this matter. The APB noted the report but deferred any decision about Bayley's parole until the court determined the matter."*<sup>25</sup>

40. Mr Reaper went on to deal with the outcome of the Geelong matter as follows:

*"On 27 February 2012, Bayley was convicted of recklessly causing serious injury in relation to the Geelong incident. He was sentenced to three months imprisonment but was released on bail pending the lodging of and determination an appeal. A 'Result Report' was submitted by CCS to the APB that day noting these matters. CCS recommended the APB take no action regarding Bayley's parole at that stage and that a further report be generated around the time of the appeal hearing. The APB noted the report and awaited the outcome of the appeal."*<sup>26</sup>

41. After the Geelong offence, Bayley was referred to ASCO COATS for a drug/alcohol assessment and then referred to Anglicare for treatment. He completed alcohol counselling on 21 December 2011 after attending five sessions and missing one.

42. In his report, Ian Callinan AC referred to aspects of Bayley's criminal history, in particular the assault in Geelong which led to a conviction and sentence of imprisonment, an appeal against that sentence and release on bail pending the outcome of the appeal. In his commentary, Ian Callinan AC said:

*"Still the Parole Board temporized notwithstanding that a report made to it that the Board 'reiterate the expectations of him under parole'. But Corrections Victoria too produced a report suggesting the Board await the outcome..."<sup>27</sup> He went on to make the comment "It can...I think that the Parole Board had both cause and opportunity to cancel Bayley's parole. Partial compliance with conditions of parole is not good enough. Offending in a violent way when on parole should not have been countenanced as effectively it was by awaiting the outcome of the appeal."*<sup>28</sup>

I agree with this commentary.

<sup>24</sup> Statement of Andrew Reaper, 23 February 2016, p 15

<sup>25</sup> Statement of Andrew Reaper, 23 February 2016, p 16

<sup>26</sup> Statement of Andrew Reaper, 23 February 2016, p 18

<sup>27</sup> Review of the Parole System in Victoria – Ian Callinan AC July 2013, p 61

<sup>28</sup> Review of the Parole System in Victoria – Ian Callinan AC July 2013, p 61

43. In the final parts of his statement, Mr Reaper deals with the adoption of the new risk assessment tools – LS suite of tools. He makes the point that the VISAT test was not in fact the relevant assessment under which Bayley was managed. He goes on to point out that the VISAT tool has been replaced, referring to the evidence of Mr Wise in the Cafferkey matter. He noted, as did Mr Wise, that the LS suite of tools “takes 43 dynamic factors across 8 key components into account when assessing an offender’s treatment needs and risk level.”<sup>29</sup>
44. Finally, Mr Reaper deals with the legislative reforms which I have reviewed in detail in the Sarah Cafferkey findings. He referred in particular to the Justice Legislative Amendment (Cancellation of Parole and other matters) Act 2013 which commenced on 20 May 2013, and which provided for the cancellation of parole in circumstances where a person is charged with, or convicted/found guilty of certain offences while on parole. He makes this point:
- “...Crucially, this Act provided for automatic cancellation of parole in cases where a prisoner such as Bayley, released on parole for a sexual offence or serious violent offence, is convicted, while on parole, of a sexual offence or violent offence during the parole period. It also provided that sex offenders and serious violent offenders (SVoSOs) charged with a sex or violent offence while on parole must have their cases considered by the Board, with a presumption that parole will be cancelled; that SVoSOs convicted of lesser offences carrying a presumption that parole will be cancelled; and that all other offenders convicted of new offences while on parole which carry a term of imprisonment must be re-assessed by the Board, with a presumption that parole will be cancelled.”<sup>30</sup>*
45. He went on to state:
- “Had Bayley been subject to parole under the new legislation, therefore, as soon as he was charged with the offence of assault in Geelong on 16 August 2011 his parole would have been considered by the APBE and cancelled, unless it was satisfied that extenuating circumstances existed. Further, Bayley’s parole would have been automatically cancelled upon his being found guilty of the assault on 22 February 2012.”<sup>31</sup>*
46. The poignant truth of this paragraph will resonate with Ms Meagher’s husband, family and friends.
47. I note and commend this important reform – directed at serving the interest of public safety. It was an appropriate legislative response to a lesson learned directly from Ms Meagher’s death.

## **PUBLIC HEALTH AND SAFETY AND PREVENTION OPPORTUNITIES**

### **Victorian Parole System reviews and reforms**

48. I set out here the same summary of the reforms as I have in my findings in the Sarah Cafferkey matter.

<sup>29</sup> Statement of Andrew Reaper, 23 February 2016, p 19

<sup>30</sup> Statement of Andrew Reaper, 23 February 2016, p 20

<sup>31</sup> Statement of Andrew Reaper, 23 February 2016, p 20

49. In 2011, following a spate of murders committed by parolees in Victoria in the period July 2008 – November 2010, the Office of Correctional Services Review (OCSR) undertook a number of reviews into the management of parolees and other offenders,<sup>32</sup> including a *‘Review of parolee reoffending by way of murder’* by the OCSR and Professor James Ogloff (‘Professor Ogloff’s Report’). My finding into the death of Margaret Burton<sup>33</sup>, dated 2 October 2014, considers these reviews and the issues of parolee management and pre-parole assessment of prisoners and supervision of parolees.
50. Corrections Victoria incorporated the outcomes and findings of these reviews, including Professor Ogloff’s Report findings, and produced them in a report entitled *“Consolidated Responses to Reviews of Offenders Charged with Murder”* (the Consolidated Response Report). In 2013, Corrections Victoria published a redacted copy of the Consolidated Response Report and Professor Ogloff’s Report on their website.<sup>34</sup>
51. In May 2013, former High Court Judge Ian Callinan was engaged to conduct a review of the effectiveness of the Victorian APB. The *‘Review of the Parole System in Victoria’*<sup>35</sup> (‘the Callinan Review’) was released in July 2013 and covered the APB’s operations, including construct and membership, the legislative framework and options for increased transparency in APB decision making. The Callinan Review recommended 23 measures, to improve the APB’s operations.
52. Since 2012, the State of Victoria has made significant reforms to the Adult Parole System, both legislatively and through policy amendment. The following amending Acts have commenced since 2013, which reformed the Victorian Adult Parole System:
  - a. The *Corrections Amendment Act 2013* commenced on 30 April 2013. This Act, among other reforms, clarified the APB’s power to cancel parole in the case of offending that occurred partially within the parole period and replaced the information sharing regime applicable to the APB, Corrections Victoria and Victoria Police.
  - b. The *Justice Legislation Amendment (Cancellation of Parole and Other Matter) Act 2013* commenced on 20 May 2013. This Act provided for cancellation of parole in

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<sup>32</sup> Professor James Ogloff and the OCSR’s *‘Review of parolee reoffending by way of murder’*, report dated 2 September 2011; an intensive case-management audit for existing violent offenders on parole, which focused on offenders classified as Serious Violent Offenders (a new classification introduced for persons convicted of murder, manslaughter or other serious assaultive offences); a Victoria Police review of four persons who came to the attention of police between the time they commenced parole and were arrested for murder; and the Sentencing Advisory Council’s (SAC) *‘Review of the Adult Parole System’*.

<sup>33</sup> COR 2009 3158

<sup>34</sup><http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/consolidated+response+to+reviews+of+offenders+charged+with+murder>

<sup>35</sup> Ian Callinan AC, July 2013

circumstances where a prisoner is charged with or convicted of certain offences while on parole. It also provided for automatic cancellation of parole in cases where a prisoner released on parole for a sexual offence or serious violent offence has, while on parole, been convicted of a sexual or violent offence during the parole period, among other provisions.

- c. The *Corrections Amendment (Breach of Parole) Act 2013* commenced on 1 July 2014. This Act made it an offence for a prisoner to breach a prescribed term or condition of their parole order without reasonable cause and permits their arrest and detention in such circumstances.
- d. The *Corrections Amendment (Parole Reform) Act 2013* commenced on 20 November 2013. This Act reformed the APB's composition, allowing retired Judges of superior courts of other jurisdictions to be appointed to the APB. It expanded the class of eligibility for members to be appointed chairperson and amended the deputy chairperson and maximum terms of office provisions. This Act also required registered victims to be notified before the release of a prisoner on parole and specified the safety and protection of the community is to be the paramount consideration in all parole board decisions.
- e. The *Corrections Legislation Amendment Act 2014* commenced on 1 September 2014. This Act reformed the parole system, among other amendments:
  - i. to empower Victoria Police and the Director of Public Prosecutions to charge for Corrections Act and regulations offences;
  - ii. by providing an explicit power to direct parolees to undertake drug and alcohol screens;
  - iii. by clarifying circumstances for disclosure of information held by the APB; and
  - iv. by creating a new offence of failing to comply with electronic monitoring while on parole.
- f. The *Corrections Amendment (Parole) Act 2014* commenced on 2 April 2014, amending the *Corrections Act* regarding conditions for making a parole order for Julian Knight.
- g. The *Justice Legislation Amendment (Discovery Disclosure and Other Matters) Act 2014* amended the *Corrections Amendment (Breach of Parole) Act 2013*, to clarify the powers of police when arresting and investigating parolees for breach of parole.

- h. The *Corrections Amendment (Further Parole Reform) Act 2014* commenced on 1 July 2014. This Act made reforms including:
- i. identifying a category of Serious Violent Offenders and Sexual Offenders (SVOSOs) for whom a new two-tiered process for parole grants apply under a new SVOSO Parole Division. The first tier is an ordinary Division of the APB. If parole is granted by the ordinary Division of the APB, the SVOSO Parole Division (the second tier) ultimately decides whether to grant parole;
  - ii. creating automatic cancellation of parole whereby a prisoner receives another prison sentence while on parole (excluding wholly suspended sentences);
  - iii. providing that, if parole is cancelled and the prisoner is convicted of a further offence punishable by imprisonment committed during the parole period, the APB must not make a parole order again in respect of that prisoner until at least half of their remaining parole period has been served; and
  - iv. additional parole-related amendments to clarify provisions dealing with the procedure and process of Board meetings.

53. In addition to the above amendments:

- a. risk assessment and identification of treatment programs now occurs from the start of a prisoner's sentence;
- b. all prisoners are now required to apply for parole (previously, the APB could automatically consider a prisoner for parole when their non-parole period expired);
- c. intelligence functions have been, and continue to be, strengthened and risk assessment and case management processes are being enhanced; and
- d. the APB has increased resources, modernisation and refinement of operations and governance arrangements.

#### **New risk assessment tool**

54. Since I handed down my finding into the death of Margaret Burton, Corrections Victoria has replaced the VISAT with the 'Level of Service – Risk Needs and Responsivity' ('LS/RNR') for assessing offenders' general risk of re-offending. This change was in line with the Callinan Review recommendations and advice received regarding the risk assessment tool's appropriateness. The LS/RNR was implemented in early 2015, with associated IT changes and Corrections Victoria staff training. In the period prior to the LS/RNR's introduction, Corrections Victoria refined the VISAT's use and operation, to ensure that all serious violent

offenders were also assessed by the Violence Risk Scale to determine their risk of re-offending.

### **Further procedural changes**

55. In addition to the abovementioned changes to the parole system, the following procedural changes have occurred:

- a. A dedicated Community Correctional Services ('CCS') Parole Stream now provides a specialist response to the assessment and supervision of SVOSOs on parole and includes:
  - i. Principal Practitioners to oversee, train and mentor staff managing parolees;
  - ii. Senior Parole Officer and Parole Officer roles to case manage parolees (with Senior Parole Officers managing the highest risk parolees); and
  - iii. enhanced central governance with the establishment of a Central Parole Unit, providing oversight and analysis of the parole systems' operation;
- b. Recruitments to new and upgraded roles within the CCS;
- c. A new case management model was introduced to manage parolees using differentiated approaches according to their offence profiles and assessed re-offending risk;
- d. A comprehensive Parole Suitability Assessment report now informs the APB's decision to release prisoners on parole. Where possible, this report is completed by the prisoner's Parole Stream case manager for continuity of case management from prison to community;
- e. New regulations have set out a new, consolidated and clear structure for parole conditions, including mandatory terms and conditions and additional, optional terms and conditions, which strengthen supervision, movement and residence conditions for parolees.

56. All existing parole orders were reviewed and, where appropriate, reissued to reflect the new suite of mandatory terms and conditions.

### **OTHER RESPONSES TO THE REFORMS**

57. I set out below extracts from my finding in Sarah Cafferkey in which I covered in detail a number of reports outlining, and commenting on, responses to the reforms of the parole system.

## Victorian Adult Parole Board Annual Reports

58. The Annual Report of the Adult Parole Board for 2014/15 (Annual Report 2014/15) sets out details of the operations of the APB since the implementation of reforms flowing from changes to the Corrections Act by way of the Corrections Amendment Act 2013 and the Justice Legislation Amendment (Cancellation of Parole and other matters) Act 2013. These are changes were also referred to in the evidence given by Assistant Commissioner Fontana.
59. The Annual Report 2014/15 highlights the creation of the SVOSO division. This “Second Tier” Division was commenced on 1 July 2014. The two tiered approach would have applied to the consideration of Hunter’s parole were it in existence at the time. It is clearly a positive development. I note that in the year 2014/15 the Division considered 750 matters. The two tiered system assures that there will be “an extra layer” of consideration in respect of all SVOSO decisions.
60. The Annual Report 2014/15 provides a summary of highlights. One of the features of the modernisation of the APB has been full digitisation of its files. This was completed late in 2014. I note that all APB hearings are conducted electronically. I note the reference to improvements to roster arrangements leading to a reduced caseload at meetings. This clearly enables members of the APB to give greater and more detailed consideration to cases, many of which are complex.
61. The Annual Report 2014/15 contains an outline of the legislative framework within which parole is considered and granted including a statement of the purpose and principles underlying parole. I note that “*The purpose of parole is to provide a structured, supervised and supported transition back into the community for offenders who have served the non-parole period of their sentence and are approaching the end of their prison sentence, under conditions that are designed to minimise their risk of reoffending. Parole cannot completely eliminate the risk of reoffending.*”<sup>36</sup> I accept the importance of each of these propositions. Coupled with them is the emphasis under the amended legislation on community safety – community safety is the paramount consideration applicable when parole is being considered and granted. I note also that from a historical point of view, as far back as 1957 when legislation was introduced to create the parole system in Victoria, community protection was a key consideration. It has now been elevated to a position of absolute paramountcy. The message could not be more emphatic.
62. In relation to Serious Violent Offenders I note that according to the Annual Report 2014/15, 38.8% of parole orders granted in 2014/15 (a total of 520) related to serious violent or sexual

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<sup>36</sup> Adult Parole Board of Victoria Annual Report 2014-15, p17



offenders. Clearly the creation of the two tiered approach to be applied to these offenders is a mechanism to strengthen community protection by the imposition of a second level of consideration of each of these applications for parole.

63. It is early days in the implementation of the reforms referred to, but they certainly constitute significant and entirely positive changes from a risk assessment and management point of view. It would not be appropriate for me to comment further on the matter and time will tell whether these measures have had the desired effect. However I should note in this context an unintended consequence of one of the changes – the requirement that a prisoner make his or her application for parole before they will be considered for parole. An investigation by the Victorian Ombudsman, Deborah Glass in 2015 found, according to the report, “*a growing number of prisoners choosing not to apply for parole upon eligibility in favour of completing their maximum sentence and leave on straight release without the watchful eye of authorities.*” In her report released in September 2015, Ms Glass said “*This is also not consistent with the intent of any parole system and means that many prisoners are simply being warehoused, leaving prison without the reasons behind their offending and risk of reoffending being addressed.*”<sup>37</sup>
64. The APB’s 2013/2014 Annual Report considered the Victorian Adult Parole System reforms and provided data to support their effectiveness. The following examples are contained in the 2013/14 Annual Report:
- a. a 36 percent fall in the number of parole orders made;
  - b. a decline in the number of parole cancellations;
  - c. an increase in the ratio between numbers of cancellations and parole orders made (from 45 cancellations/100 parole orders to 58 cancellations/100 parole orders);
  - d. an increase in the number of APB meetings and increased scrutiny of each case (225 unscheduled meetings were convened in 2013-2013, to consider urgent matters); and
  - e. an increase in APB staff numbers, from 23 to 32.

#### **Victoria Auditor-General Report– Administration of Parole**

65. In February 2016 the Victoria Auditor-General reported on the ‘Administration of Parole’. In the opening comments the Auditor-General referred to the Callinan Review, and the finding including that the “*APB required reform, that there was insufficient information sharing between agencies and that the case loads of Community Corrections Officers were too high.*”

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<sup>37</sup> Victorian Ombudsman Report – Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015

This case has borne out each of those propositions very strongly. In its summary of findings, the Auditor-General's report contains the following:-

*"DJR now has a requirement that all serious violent or sexual offenders are screened and undertake programs in prison, when required. However, it does not monitor how many serious violent offenders have not completed the required offending behaviour programs OBP by their earliest eligibility date for parole. The APB is unlikely to grant a prisoner parole unless they have completed all required OBPs. DJR has targets for the provision of OBPs, however, it is achieving these less than half the time....*

*Information sharing between agencies has improved and there are now clear protocols for communication around breaches of parole. However, information sharing between DJR and community-based service providers and clinicians could be improved. Service providers and clinicians do not always have access to information such as detailed assessments and clinical information collected in prison, which inhibits their ability to support parolees. Parole officers also do not always receive appropriate information from service providers and clinicians, which hinders their ability to properly supervise parolees and inform the APB.*

*DJR now provides OBPs to parolees in the community as well as in prison. However, there is no evidence that DJR monitors wait times for OBPs in the community or that risk or therapeutic timing are considered when prioritising access to programs for parolees in the community."<sup>38</sup>*

66. Under the heading 'Adult Parole Board Operations', the report contains the following:

*"The Parole System Reform Program (PSRP) has improved the operations of the APB. Both the reviews of the parole system by the Sentencing Advisory Council (SAC) and former High Court Justice Ian Callinan, found that the case load of the APB was very high, with little time to consider individual cases. There are now more board members, and each board member considers fewer cases on average per sitting day. As of 31 December 2015, there are 39 members of the board, including four full-time members and a full-time chairperson. This is a large increase from 2011-12 when there were 24 members, only one of whom worked full-time. Case loads have subsequently dropped from an average of 55 matters considered per meeting day in 2011-12 to 33 in 2014-15. APB members reported significant improvements in the time they have available to consider each case."<sup>39</sup>*

67. Other relevant comments made in the Auditor-General's report were as follows:

*"In the day-to-day operation of the APB, the parole suitability assessment (PSA) is the most important document. It is the primary source of information APB members use to determine suitability for parole. It is therefore critical that parole officers – who are responsible for completing PSAs – are able to access comprehensive information themselves, have clear guidance on how to correctly complete PSAs and fill them out in line with this guidance and on time...*

*Current PSAs are a significant improvement on the previous system used to inform the APB about prisoners. Information was often outdated and not always available when needed, and files were held in hard copy rather than electronically. However, some issues remain – in compiling PSAs, parole officers have to consult at least six different databases to gather information. This is inefficient and onerous and increases the risk of missing information."<sup>40</sup>*

<sup>38</sup> Victorian Auditor-General's Report – Administration of Parole, February 2016, p x-xi

<sup>39</sup> Victorian Auditor-General's Report – Administration of Parole, February 2016, p 8

<sup>40</sup> Victorian Auditor-General's Report – Administration of Parole, February 2016, p 10-11

## **Response by Victoria Police to the Reforms to the Parole System as recommended in the Ogloff and Callinan Reports**

68. The evidence was contained in a statement made by Assistant Commissioner of Victoria Police, Stephen Fontana.<sup>41</sup>
69. In his statement AC Fontana outlined the response by Victoria Police to the legislative and policy reforms of the parole system undertaken since Ms Cafferkey's death in November 2012, in particular in relation to the sharing of information about offenders release on a parole order between Victoria Police, the Adult Parole Board, and Corrections Victoria. AC Fontana summarised the history of the reforms and the police response to them.
70. I note as I have in the other cases, that the safety of the community has now been entrenched as the paramount consideration applicable to APB decision making.
71. Gillian Meagher's death was preventable. A more rigorous, risk averse approach by CCS and the APB would have led to a cancellation of Bayley's parole either when charged with the Geelong offence, or when convicted in the Magistrates' Court. The approach taken is difficult to understand and in that regard I agree with Ian Callinan AC. If the approach was consistent with APB practice at the time, it was a flawed practice as it did not bring dangerous and high risk parolees immediately to account. In this sense it appeared not to prioritise the interests of public safety. As a consequence of the reforms that approach would not now be an option.<sup>42</sup> Bayley's parole would have automatically cancelled as a consequence of him receiving a sentence of imprisonment while on parole.
72. I am conscious of the delay in completing the coronial investigation in this case. I hope that the delay has not caused distress. As indicated earlier, I have waited until I was in a position to conclude my investigation in to the death of Sarah Cafferkey. I have been able to incorporate the details of the parole reforms within my findings in respect of all three deaths – Sarah Cafferkey, Gillian Meagher and Sharon Siermans.
73. As a consequence of the reforms to the parole system, it is not necessary to make recommendations arising from my investigation of Gillian Meagher's death.

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<sup>41</sup> Exhibit 10 – Inquest into the death of Sarah Cafferkey, COR 2012 4886

<sup>42</sup> Corrections Amendment (Further Parole Reform) Act 2014

Pursuant to rule 64(3) of the **Coroners Court Rules 2009**, I order that this finding be published on the internet.

I convey my sincere condolences to Tom Meagher and to Ms Meagher's family and friends at her tragic death in 2012.

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

**Thomas Meagher, Senior next of kin**

**George and Edith McKeon**

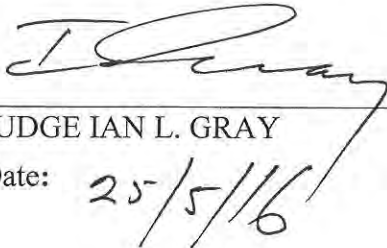
**Sgt Allan Birch, Coroner's Investigator**

**Victorian Government Solicitors Office**

**Corrections Victoria, Department of Justice and Regulation**

**Chief Commissioner of Police, Victoria Police**

Signature:



JUDGE IAN L. GRAY

Date:

25/5/16

