



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: **COR 2019 5236**

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:

PHILLIP BYRNE, CORONER

Deceased:

JULIAN VICTOR CHARLES BAREUTHER

Date of birth:

6 JUNE 1951

Date of death:

24 - 25 SEPTEMBER 2019

Cause of death:

**I (a) PLASTIC BAG AND NITROGEN GAS
ASPHYXIA**

Place of death:

**2/154 INKERMANN STREET, ST KILDA
EAST, VICTORIA, 3183**

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I, PHILLIP BYRNE, Coroner having investigated the death of JULIAN VICTOR CHARLES BAREUTHER

without holding an inquest:

find that the identity of the deceased was JULIAN VICTOR CHARLES BAREUTHER

born on 6 June 1951

and the death occurred on 24 - 25 September 2019

at 2/154 Inkerman Street, St Kilda East, Victoria, 3183

from:

I (a) PLASTIC BAG AND NITROGEN GAS ASPHYXIA

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

BACKGROUND

1. Julian Victor Charles Bareuther, 68 years of age at the time of his death, resided alone at a Ministry of Housing apartment at 2/154 Inkerman Street, St Kilda East. Mr Bareuther, who migrated from the United Kingdom some 40 years ago, had no living relatives in Australia. For reasons which I will discuss later in this finding, unfortunately Mr Bareuther never took Australian citizenship.
2. Mr Bareuther had several severe, indeed terminal, medical conditions including inoperable pancreatic cancer.
3. Mr Bareuther is described as a rather private, solitary person with a limited group of friends, including two neighbours Mr Michael Kesztlar and Ms Pamela Walsh.

BROAD CIRCUMSTANCES SURROUNDING DEATH

4. Late morning on 25 September 2019 Mr Kesztlar awoke and located two letters under his door; one addressed to him and the other to Ms Walsh. Upon reading the letter addressed to him in which Mr Bareuther thanked him for being a good friend, and being advised the letter to Ms Walsh conveyed similar sentiments, not surprisingly Mr Kesztlar, who was aware of Mr Bareuther's dire medical condition, had concerns for Mr Bareuther's welfare. Mr Kesztlar rang the 000-emergency number advising the call-taker he feared Mr Bareuther may have self-harmed. In a timely manner, Ambulance Victoria paramedics attended the apartment, gained access with a key provided by Mr Kesztlar, and located Mr Bareuther deceased with plastic bags secured over his head with a hose attached to a cannister of nitrogen on the floor beside Mr Bareuther's body. The paramedics exited the unit and awaited the arrival of police.
5. Victoria Police members, including uniform members and Crime Scene Services, and following established protocol, local Criminal Investigation Unit detectives attended. Mr Bareuther was formally declared deceased at the scene.

REPORT TO THE CORONER

6. Mr Bareuther's death was reported to the coroner and presented to me on 26 September 2019. Having considered the circumstances and having conferred with a forensic pathologist, I directed an external only post mortem examination and ancillary tests. The directed examination was undertaken at the Victorian Institute of Forensic Medicine (VIFM) by Forensic Pathologist Dr Victoria Francis who advised Mr Bareuther's death was due to:

I(a) PLASTIC BAG AND NITROGEN GAS ASPHYXIA

Toxicological analysis of post mortem specimens demonstrated prescribed medications at therapeutic levels.

FURTHER INVESTIGATION

7. To assist my investigation, I had my registrar request a directed coronial brief of evidence. A brief of evidence was submitted by First Constable Ian Churchill on 13 March 2020. It contained a statement by Mr Kesztlar, which provided helpful insight into Mr Bareuther's plight with his health and his wish to engage in the Voluntary Assisted Dying (VAD) protocols introduced in Victoria. Mr Kesztlar advised that Mr Bareuther never spoke of other modes of suicide.

8. As well as scene photographs the coronial brief contained material/letters written by Mr Bareuther. For completeness, and because of their importance, I include in this formal finding writings penned by Mr Bareuther:

"Tuesday 24th September 2019

TO WHOM IT MAY CONCERN

I, JULIAN BAREUTHER, have obviously committed suicide or euthanasia, call it what you will. I have done so of my own free will & I am content with that choice. Either way, I was dying of incurable pancreatic cancer, so please do not waste your time on any silly theories of foul play. This is the reality. I have no living family or relatives.

Signed,

J. Bareuther"

And:

"Thursday 6th June 2019

MY ADVANCED CARE PLAN

I, JULIAN BAREUTHER, want to exit this life as fast & as soon as possible. I do not want any medical intervention of any description to extend my life. I want to be completely pain free & comfortable, as is humanely and practically possible. Also, I want to die in my sleep.

Signed,

J. Bareuther"

9. Having examined the coronial brief, I noted reference to Mr Bareuther consulting Dr Nicholas Carr of St Kilda Medical Group. It was stated Dr Carr was a known advocate of the Voluntary Assisted Dying legislation. I had my legal officer request a statement from Dr Carr. A poignant letter dated 13 April 2020 was provided by Dr Carr who had agreed to act as Mr Bareuther's "coordinating doctor for VAD." Dr Carr described Mr Bareuther as a person who had "full control of his faculties and while at times despondent about the process, he was never at any time overtly depressed."
10. Unfortunately, the VAD process was denied Mr Bareuther as I understand on the basis, he was not an Australian citizen. Again, for completeness, and because it relates to what I see as a very sad tale, I include several excerpts from Dr Carr's letter; he wrote:

"I knew Julian for a short time. He was hugely relieved when I told him I could act as his coordinating doctor for VAD, and it was as if an enormous burden had been lifted from him. When I discovered that he had never taken out Australian citizenship, we went to great lengths to see if he might still be eligible for VAD. When I finally had to tell him that there was nothing more we could do, that he was not eligible, he was very upset and stopped seeing me. When I last rang him on September 21, 2019, he seemed resigned to the situation.

I personally was immensely distressed when I heard that Julian had killed himself. Here was a lonely man, dying of a horrible cancer, who sought my legitimate help. He was an Australian in every sense but a technical one, a previous taxpayer, a current Centrelink recipient and on the Electoral Roll.

Because of this citizenship technicality, he was denied VAD. I had to tell him that I was unable to help him in the only way he wanted and as a result he ended up committing suicide. I do not believe that this was what any of those who framed the law would have wanted to happen."

11. Although one can understand the rationale behind the denial of the VAD process to Mr Bareuther, I must say I have found it difficult not to feel sympathy for Mr Bareuther's plight and wonder whether there could be built into the process some level of discretion. I do not however propose to "sail into a maelstrom" by considering a formal recommendation.
12. Being entirely satisfied there are no suspicious circumstances, nor third party involvement, I consider no further investigation is warranted and propose to finalise my investigation by way of this Finding Without Inquest.

FINDING

13. I formally find Julian Victor Charles Bareuther at 2/154 Inkerman Street, St Kilda East, between 24 – 25 September 2019, terminally ill with inoperable pancreatic cancer intentionally took his own life by plastic bag and nitrogen gas asphyxia.
14. Pursuant to section 73 (1) (A) of the *Coroners Act 2008* (Vic), I direct that this finding be published on the Coroners Court of Victoria website.
15. I direct that a copy of this finding be provided to the following.
 - Ms Pamela Walsh, Senior Next of Kin;
 - Ms Betty King, Chairperson, Voluntary Assisted Dying Review Board;
 - Manager, Department of Health and Human Services, End of Life Unit; and

- First Constable Ian Churchill, Coroner's Investigator, Victoria Police

Signature:

PHILLIP BYRNE
CORONER
Date: 10 June 2020

