

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 1997 3954

AMENDED FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Amended pursuant to section 76 of the Coroners Act 2008 on 13 April 2015.¹

Inquest into the Death of: KATHLEEN GLADWYN DOWNES

Delivered On:	27 March 2015
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street, Southbank
Hearing Dates:	28 and 29 January 2015
Findings of:	JUDGE IAN L GRAY, STATE CORONER
Representation:	Mr J Desmond of Counsel, instructed by Ms Kate Ballard of Doogue O'Brien & George, appeared on behalf of Mr P Dupas
Police Coronial Support Unit:	Sergeant D Dimsey, assisting the Coroner.

I, JUDGE IAN L GRAY, State Coroner, having investigated the death of KATHLEEN GLADWYN DOWNES

AND having held an inquest in relation to this death on 28 and 29 January 2015
at Melbourne

find that the identity of the deceased was KATHLEEN GLADWYN DOWNES

born on 29 January 1902

and the death occurred 31 December 1997

at Brunswick Lodge, 17 Loyola Avenue, Brunswick Victoria 3056

from:

I (a) INCISED INJURY TO THE NECK

in the following circumstances:

Background and Personal History

1. Kathleen Gladwyn Downes (nee Fraser) was born on 29 January 1902 in Fryerstown, near Castlemaine, Victoria. She later moved to Ascot Vale where she met her eventual husband, Mr Lionel Downes. They married on 15 October 1927 at Moonee Ponds.
2. They lived their lives together in their family home in Strathmore, where they raise their three children, Patricia, William and Geoffrey:
3. Mr Downes passed away in 1964, and Mrs Downes continued to reside alone in the family home. In 1988, she underwent surgery to replace faulty heart valves and as a result of the operation, she suffered a stroke. After Mrs Downes was released from hospital, she lived with her son William for several months.
4. On 4 February 1989, Mrs Downes moved into the Brunswick Lodge Aged Care Facility at the above address, where she occupied room number 1.
5. At the completion of her rehabilitation, Mrs Downes remained quite active until she was involved in a car accident in 1996. She suffered injuries to her legs and became reliant on the use of a walking frame. Later, she suffered another stroke, which left her speech impaired, but she remained reasonably active.

6. At the time of her death, Mrs Downes was 95 years old. She was described as having a wonderful nature, and was considered the matriarch of the Aged Care Facility. Her family and staff at the Lodge state that Mrs Downes had no known enemies.

Brunswick Lodge Aged Care Facility

7. Brunswick Lodge is situated at 17 Loyola Avenue, Brunswick, on the western side of the street opposite Pitt Street. It is a supported residential service for the elderly. At the time of Mrs Downes' death, the premises was leased by the co-managers, Ms Susan Clarke and Ms Claire Matthews who had been business partners in the premises since mid-1993. There were a further twelve people employed at the Facility on casual and full-time bases as cooks, personal care attendants and cleaners. There were 21 residents living at Brunswick Lodge at the time.
8. Brunswick Lodge is a cream brick 'L' shaped building with two wings. The two wings junction at the main section of the building, which consists of a reception and office area, a dining room, kitchen and common room/television area. There is an upstairs self-contained residential unit, which was inhabited at the time by Ms Clarke.
9. The northern wing consisted of nineteen resident rooms and the eastern wing consisted of six rooms. Each room contained a bedroom and ensuite.
10. Room 1 is situated at the eastern most end of the eastern wing and is the closest to Loyola Avenue. There is a fire escape door at the end of the eastern wing corridor, adjacent to the door of room 1. Access into the building via the fire escape door is only possible with a key. A key is not required to exit via this door.
11. All doors to the residents' rooms were not lockable. Some of the residents chose to sleep with their doors open, and some chose to sleep with their room or ensuite lights on.

Summary

12. On the evening of 30 December 1997, Ms Clarke, Ms Matthews and a friend, Ms Leanne Renfree were upstairs in Ms Clarke's residence. The Facility residents had all gone to bed by approximately 8.00pm, and those who could not go to bed themselves had been assisted by Ms Clarke or Ms Matthews.
13. During the evening, both Ms Clarke and Ms Matthews had checked that all external doors were locked and that the premises were secure.

14. At approximately 10.00pm, Ms Matthews left the premises via the front reception door and ensured that the door was locked.
15. At approximately 12.30am on the morning of Wednesday 31 December 1997, both Ms Clarke and Ms Renfree walked downstairs and Ms Renfree left the premises via the main office door. Ms Clarke checked several of the residents in the eastern wing including Mrs Downes in room 1, who was observed to be asleep in bed.
16. Ms Clarke then went to the northern wing and checked on several of the residents asleep in their rooms. After she had done some cleaning up, she returned upstairs to bed.
17. At approximately 3.00am, a resident, Ms Marjorie Morris, was lying in her bed in room 2 when she observed her door being opened slowly. She sat up and let out a yelp, and the door closed softly. Approximately five minutes later, she heard the venetian blinds on the fire exit door rattling.
18. At approximately 6.15am, the local newspaper delivery person, Ms Jayne Irvine, attended at Brunswick Lodge to deliver the morning paper. It was her usual practice to leave the papers on the ground near the fire escape door at the eastern end of the eastern wing. On this occasion, Ms Irvine noticed that the door was open, which was unusual. She placed the papers on the ground between the door and the doorframe but did not enter the premises.
19. At approximately 6.20am, Ms Matthews arrived back at Brunswick Lodge for work. She noticed that the newspapers had been left in a different position to where they were normally dropped. After entering the premises via the rear kitchen door, she put the kettle on the stove. She looked down the corridor of the eastern wing and noticed that the venetian blind on the fire escape door at the end of the corridor was hanging loosely. Ms Matthews went to investigate and found that the door was open.
20. Ms Matthews noticed that Mrs Downes' room door was ajar. She pushed it open further and found Mrs Downes on the floor with a pool of blood around her. Ms Matthews alerted Ms Clarke, and they contacted the police and ambulance.
21. Paramedics attended the Facility and examined Mrs Downes, and confirmed that she was deceased.

Crime Scene Examination

22. Brunswick Lodge and the surrounding area was examined by members of the Crime Scene Section, Victorian Forensic Science Centre in conjunction with members of the Homicide Squad.
23. It appeared that the offender entered Brunswick Lodge through the wind-out style kitchen window on the western side of the building. The chain section of the winding mechanism had been cut, and traces of red paint and yellow paper were located on the edge of the brick windowsill (this is consistent with a pair of bolt cutters being used to cut the winder chain). Dark coloured cotton fibres were located on the cut chain link of the window. The flyscreen of the window had been cut in a reverse 'L' shape. Two milk crates had been moved under the window and were stacked on top of each other.
24. Mrs Downes was observed to be lying in her room on the floor on her right hand side, in the foetal position. Her left leg was raised and on the bed. The contents of her handbag had been emptied on her bed. A drawer had also been removed, place on the bed and searched. Several items in the room appeared to have bloodstained glove prints on them. A blood smear was located on the doorframe of Mrs Downes' room and a bloodied glove print was located on the venetian blinds of the fire escape door.
25. On the northern side of the east wing is a neighbouring private residential property at 19 Loyola Avenue. The driveway is situated on the southern side of the property and there is a locked gate across the driveway. On the railing of the paling fence separating number 19 from 17 Loyola Avenue, police located scuffmarks on either side of the driveway gate. At two other locations along the southern fence of 19 Loyola Avenue, scuffmarks were located on the railings. On a bale of hay leaning against the fence, there appeared to be an impression on top of the bale, consistent with a person standing on it. The various markings on the fence and bale of hay aligned with different bedroom windows on the eastern wing of Brunswick Lodge.
26. An extensive search of the scene and the neighbouring properties and streets failed to locate any weapon that might have been used to kill Mrs Downes. There were no identifiable fingerprints located at the scene.

Purpose of a Coronial Investigation

27. This finding is based on the totality of the material the product of the coronial investigation of Mrs Downes' death. That is, the brief of evidence compiled by the Coroner's Investigator Sergeant Michael Daly, the statements, reports and testimony of those witnesses who testified at inquest and any documents tendered through them, and the final submissions. All of this material, together with the inquest transcript, will remain on the coronial file. In writing this finding, I do not purport to summarise all the material and evidence, but will refer to it only in such detail as is warranted by its forensic significance and in the interests of narrative clarity.
28. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death, and are specifically prohibited from including in a finding or comment any statement that a person is, or may be guilty of an offence.¹ However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if the coroner believes an indictable may have been committed in connection with the death.²

Findings as to uncontentious matters

29. In relation to Mrs Downes' death, most of the matters I am required to ascertain, if possible, were uncontentious from the outset. Her identity and the date and place of death were not at issue. I find, as a matter of formality, that Kathleen Gladwyn Downes, born on 29 January 1902, aged 95, died at Brunswick Lodge, 17 Loyola Avenue, Brunswick, Victoria 3056, on 31 December 1997.
30. Nor was the medical cause of death contentious. On 31 December 1997, an autopsy of Mrs Downes' body and post mortem CT scanning (PMCT) were performed by Senior Pathologist Dr Shelley Robertson at the Victorian Institute of Forensic Medicine, which revealed the cause of her death to be *I (a) incised injury to the neck*.³ The post mortem examination revealed that Mrs Downes had received three stab wounds to the right side of the neck, and deep laceration extending across the throat. There was bruising to the back of the head, the back of the left hand and to the left and right lower legs. There was an abrasion to her right eyebrow.

¹ Section 69 *Coroners Act 2008* (Vic).

² Section 49(1) *Coroners Act 2008*.

³ Report of Dr Robertson dated 14 July 1998.

Inquest

31. An inquest into Mrs Downes' death was held on 28 and 29 January 2015. The issue for examination at inquest was the identity of any person or persons who caused or contributed the death of Mrs Downes.
32. The witnesses called at inquest were:
 - o Mr Andrew Fraser
 - o Mr Peter Dupas
 - o Sergeant Michael Daly.
33. At inquest, Sgt Daly confirmed the accuracy of the contents of the coronial brief and spoke to the details of the investigation to the extent that he was in charge of parts of it. I accept his evidence.
34. It is clear on the evidence contained in the brief prepared by the Homicide Squad and tendered at inquest (Exhibit 10) that Mrs Downes was murdered in her bed at the Brunswick Lodge some time in the early hours of 31 December 1997.
35. I accept and find that the circumstances surrounding Mrs Downes' death are those described in the summary set out above. I also accept the evidence of the post mortem examination conducted by Dr Robertson.

Issue at inquest – who caused Mrs Downes' death

36. Victoria Police and prosecuting authorities considered Mr Peter Norris Dupas, born 6 July 1953, as a person who might have caused the death of Mrs Downes. Mr Dupas has never been charged with any offence in relation to her death. He appeared from prison by video link at the inquest, and was represented by Mr John Desmond of Counsel.
37. I have referred above in the summary to the results of the various investigations, which focused on Mr Dupas as the person thought to be responsible for the death of Mrs Downes
38. The coronial brief contained evidentiary material describing the investigation of Mrs Downes' death and the evidence thought to implicate Mr Dupas. The key pieces of that evidence relate to the circumstances of two telephone calls, considered by investigators to have been made by Mr Dupas, on 31 December 1997.
39. As part of the daily running of Brunswick Lodge, staff maintained a diary titled 'Waiting List', for the purpose of recording details of persons enquiring about accommodation at the

Facility. Some time between 20 November and 14 December 1997, an entry was made in the diary that read '*William Johnston - Monday 6pm for mother*'. A further handwritten note from 27 November 1997 read '*William Johnson to see room. No show again!*'⁴

40. The investigation established that two telephones calls were made to Brunswick Lodge from Mr Dupas' phone at 19 Coane Street, Pascoe Vale. The first phone call was at 5.34pm on 23 November 1997 and the duration of the call was 3 minutes 42 seconds. The second call was at 9.04pm on 24 November 1997 and the duration of the call was 1 minute 19 seconds.⁵ Police believed that Mr Dupas telephoned Brunswick Lodge on 23 November 1997 using the alias of William Johnston and made an appointment to view a room for his mother, and that he phoned Brunswick Lodge on 24 November 1997 again using the name of William Johnston and changed the appointment time to 6.00pm on 27 of November 1997.⁶
41. Mr Dupas' mother lives interstate and has remarried. She does not require aged care and she did not intend to move to Melbourne. She has told investigators that Mr Dupas was supportive of her current situation and residence and had never raised the subject of her requiring aged care.
42. At the time of Mrs Downes' death, Mr Dupas was in a relationship with Ms Iolanda Cruz. Ms Cruz left Australia on 21 September 1997 to travel to South Africa, returning on 7 January 1998. During the time that Ms Cruz was overseas, Mr Dupas made four telephone calls to South Africa from his phone. Two calls were made in the early hours of 31 December 1997 at 4.36am and 4.38am, both of three seconds' duration. Investigators concluded that the two calls indicate that Mr Dupas was at home and awake at the time. Based on the time that Ms Morris states she heard the venetian blinds at Brunswick Lodge rattling (approximately 3.00am), there was sufficient time to return from Brunswick to Pascoe Vale and make the telephone calls. The morning of Mrs Downes' death is the only morning that investigators can establish that Mr Dupas was awake and using his telephone service at that time of day.⁷
43. The detailed evidentiary support for the proposition that the two telephone calls in question were made by Mr Dupas in the circumstances described in the summary, was contained in

⁴ Inquest brief summary, page 10.

⁵ Ibid pages 9-10.

⁶ Ibid page 10.

⁷ Ibid pages 9-12.

the telephone records set out at Appendix A of the brief.⁸ In my opinion, that material strengthens the conclusion, at least on the balance of probabilities, that it was Mr Dupas who made the two telephone calls.

44. On the other hand, the evidence relating to similarities of injuries sustained by Mrs Downes to injuries sustained by other women the subject of attacks/murders by Mr Dupas is less compelling. I accept the evidence given by A/Prof David Ranson that on a comparison of the injuries between Ms Halvagas and Mrs Downes, there is no cogent basis upon which one could conclude that the medical evidence could support a finding that there is a clear or 'marked' similarity between the injuries to any of the other women and those to Mrs Downes.⁹

The Coroners Act and relevant case law

45. Section 67 of the *Coroners Act 2008* (Vic) (the Act) states that a coroner investigating a death must find, if possible—

- (a) *the identity of the deceased; and*
- (b) *the cause of death; and*
- (c) *unless subsection (2) applies, the circumstances in which the death occurred; and*
- (d) *any other prescribed particulars.*¹⁰

46. As noted earlier, section 69 of the Act states that a Coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence. This does not apply to the inclusion of a statement relating to a notification to the Director of Public Prosecutions under section 49 of the Act.

47. The decision of the Supreme Court in *Priest v West*¹¹ is to the effect that a coroner must investigate the circumstances of a death thoroughly for the purposes of identifying the person or persons who caused or contributed to the death. This is to ensure fulfilment of the requirement of section 67(1)(b) as it was put by Justices Maxwell and Harper:

...the Act declares – unequivocally – that the Coroner's investigative function is inquisitorial in nature. The Coroner must therefore be an active investigator of the death in question. There being no parties to an inquest (although interested parties may be given leave to appear), the responsibility is the Coroner's alone.

⁸ Exhibit 10.

⁹ Inquest transcript, page 155 and Exhibit 8.

¹⁰ Section 67 Coroners Act 2008.

¹¹ *Jean Marie Priest v Deputy State Coroner and Derek Percy* [2010] VSC 449, [2012] VSCA 327.

Moreover, the introductory words to s67 are emphatic: when investigating a death, the Coroner 'must find, if possible; the identity of the deceased, the cause of death, and the circumstances in which the death occurred. The words 'if possible' in s67 make it obligatory, in our view, for the Coroner investigating a death to pursue all reasonable lines of inquiry.¹²

...The implications of this analysis for the present appeal are as follows. If, in the course of the investigation of a death it appears that a person may have caused the death, then the Coroner must undertake such investigations as may lead to the identification of that person. Otherwise the required investigation into the cause of death and the circumstances in which it occurred will be incomplete; and the obligation to find, if possible, that cause and those circumstances will not have been discharged.¹³

48. Consistent with the clear duty to 'undertake such investigations as may lead to the identification' of the person who may have caused the death, the available evidence put before the inquest included the evidence of Mr Andrew Fraser.
49. Mr Fraser made a statement dated 28 June 2005 and added further comments to it. He made a second statement on 16 December 2010. This second statement was witnessed on 10 June 2013. Mr Fraser's evidence was that Mr Dupas spoke to him on three occasions while they were both in prison together. Mr Fraser's evidence was that on the first two of those occasions, Mr Dupas referred to 'the old sheila down the road',¹⁴ and that on the third occasion Mr Dupas said 'I reckon I'm gonna end up wearing the old sheila Downes too'.¹⁵ Mr Fraser regarded these statements as admissions by Mr Dupas of responsibility for the death of Mrs Downes.
50. Mr Fraser's evidence was that the first occasion¹⁶ Mr Dupas mentioned Mrs Downes was when he came to Mr Fraser's cell, which was on the first tier, unannounced. Mr Fraser stated that Mr Dupas appeared highly agitated, and stated that because Mr Dupas had knee injuries, it was highly unusual for him to come upstairs. Mr Fraser stated that Mr Dupas told him he had been taken from the prison to be interviewed by police that day. He then stated

¹² *Jean Marie Priest v Deputy State Coroner and Derek Percy* [2010] VSC 449, [2012] VSCA 327, 1.

¹³ *Ibid*, 3.

¹⁴ Exhibit 1, statement of Mr Fraser dated 28 June 2005.

¹⁵ Exhibit 2, second statement of Mr Fraser dated 16 December 2010, page 3.

¹⁶ As to when this occurred, Mr Fraser states in his first statement, Exhibit 1, that he was in the Sirius East protection unit of Port Phillip Prison from around February 2002 to June 2003, and that the conversation took place shortly after Mr Dupas was charged with the murder of Margaret Maher.

that he left no forensic evidence at Fawkner,¹⁷ then, *'he paused and stared at me as if to let it sink in and added, out of the blue; 'nor with the old sheila down the road'.*¹⁸

51. Mr Fraser stated that the second occasion Mr Dupas mentioned Mrs Downes was at Port Phillip Prison, after Mr Fraser had read the brief of evidence against Mr Dupas regarding the murder of Margaret Maher. Mr Fraser referred to the DNA evidence on the Maher brief and Mr Dupas replied that police had planted the DNA. Mr Fraser states that:

*Dupas then became agitated and repeated the comment that he left no forensics at Fawkner or with the 'old sheila down the road.' Again, as on the first occasion, he paused in between the mention of Fawkner and the old sheila.*¹⁹

52. Mr Fraser stated that the third and final occasion that Mr Dupas made admissions regarding Mrs Downes was in late 2004 at Port Phillip Prison. Mr Fraser stated that he was performing the role of Prison Listener, a peer support role. Mr Dupas had been convicted of the Maher murder, and Mr Fraser stated that he thought Mr Dupas had been transferred to Barwon Prison. Mr Fraser stated that Mr Dupas had asked to see him, but that the Prison Listener did not know whom they were going to see beforehand. Mr Fraser stated:

[w]hen I arrived I was surprised to see Dupas back at Port Phillip. We spoke in the common area of the unit. We sat at the first table nearest the Officer's Station. Dupas sat to my left (I am deaf in my right ear). I remember I was seated closest to the door into the unit with my back to the station. Dupas was really worried and agitated with all the media speculation over the Halvaxis matter and thought he was a certainty to be charged with the murder as well as Maher.

*He said 'these cunts' won't leave him alone. He put a lot of emphasis on the word 'cunt' and said it with a lot of venom, almost spitting the word out. In addition to being charged with the Halvaxis murder he said 'I reckon I'm going to end up wearing the old sheila Downes too.' He again repeated that he left no forensics at Fawkner and no forensics with [the] 'old sheila.' This was the only occasion he referred to Mrs Downes by name. The statement came without warning and surprised me. I have not spoken to Dupas since this conversation.*²⁰

53. At inquest, Mr Fraser was extensively and intensively cross-examined by Mr Desmond for Mr Dupas. He did not resile from his statements. Mr Fraser was consistent in asserting that there were three conversations; that in the first two, Mr Dupas referred to *'the old sheila down the road'* and that in the third he also referred to the name *'Downes'*, in addition to

¹⁷ This appeared to be a reference to the death of Mersina Halvaxis.

¹⁸ Exhibit 2, second statement of Mr Fraser dated 16 December 2010, page 2.

¹⁹ Ibid pages 2-3.

²⁰ Ibid page 3.

referring to 'the old sheila'. Mr Fraser was not shaken on his memory of the conversations. He described the circumstances of the conversations with Mr Dupas in detail.²¹

54. Significantly, Mr Fraser also stated that he was concerned not to be exposed to an accusation of recent invention. In response to cross-examination by Mr Desmond he stated that:

I had enough difficulty talking Mr Scarlett into putting a reference to "the old sheila down the road" in the statement because he was concerned that it would be ruled out as being inadmissible. And I knew that, but I wanted a reference to her in there to avoid precisely what you're putting to me now.

*Mr Desmond: Yes, but it doesn't accommodate the proposition that you've recently invented - that is five years later - these two further allegations of admissions concerning the "old sheila down the road"?---No, I didn't.*²²

55. In my opinion, Mr Fraser was a generally credible witness. His credibility increased rather than diminished over the course of cross-examination. His insistence on ensuring that he could not be later accused of recent invention strengthened his credibility. Taken overall, I accept Mr Fraser's evidence as to the conversations he said took place with Mr Dupas, the circumstances in which they occurred and the reasons why he made his statements in the terms that he did, when he did. I do not find that the prospect of any financial incentives or reward, or early release, in any way vitiates the credibility of his evidence. I note the comments by other Judges that were drawn to my attention about Mr Fraser's demeanour and credibility. To the extent that those comments were called in aid of the proposition that I should doubt, if not completely reject, Mr Fraser's credit, I do not agree. It is important of course to note that the standard of proof in this jurisdiction is on the balance of probabilities. In the context of the evidence given by Mr Fraser about Mr Dupas, the *Briginshaw*²³ gloss on that standard applies.

56. Mr Dupas himself declined to give evidence. After administration of the section 57 caution, and the offering of a certificate of indemnity under that section,²⁴ he maintained his refusal to give evidence willingly. I declined to compel Mr Dupas to give evidence pursuant to that

²¹ Inquest transcript, page 35.

²² Ibid page 39.

²³ *Briginshaw v Briginshaw (1938) 60 C.L.R. 336 esp at 362-363*. 'The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences...'

²⁴ A certificate under section 57 of the Coroners Act 2008 may be given to a witness if a witness objects to giving evidence, or evidence on a particular matter, at an inquest on the ground that the evidence may tend to prove that the witness has committed an offence or is liable to a civil penalty under an Australian law or a law of a foreign country. The coroner must determine whether there are reasonable grounds for the objection.

section, and note that both Mr Desmond and Sgt Dimsey (assisting me) submitted that I should not compel him. In my assessment, it was not in the public interest that I compel Mr Dupas to give evidence in the circumstances of this case, fundamentally because he is potentially facing a charge of the murder of Mrs Downes.

Referral to the Director of Public Prosecutions

57. The Office of Public Prosecutions advised me by letter dated 25 July 2014, that in the opinion of the Director of Public Prosecutions and as the brief of evidence currently stood, there was insufficient evidence to charge Mr Dupas with any offences at that point in time.
58. Section 49(1) of the Coroners Act states that the Principal Registrar must notify the Director of Public Prosecutions if the coroner investigating a death or fire believes that an indictable offence may have been committed in connection with the death or fire.²⁵
59. However, as stated earlier, a coroner must not include in a finding or comment any statement that a person is, or may be guilty of an offence. This does not apply to the inclusion of a comment regarding referral to the Director of Public Prosecutions.

Conclusions

60. The standard of proof for coronial findings of fact is the civil standard of proof, on the balance of probabilities, (with the *Briginshaw* gloss or explication). 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.
61. For the purposes of section 67(1)(b) of the Coroners Act, I am satisfied that the death of Mrs Kathleen Gladwyn Downes was a result of the actions of Mr Peter Dupas on the night of Tuesday 30 to Wednesday 31 December 1997.
62. For the purpose of section 49(1) of the Coroners Act, I am satisfied that an indictable offence may have been committed by Mr Dupas in connection with the death of Mrs Downes, and I intend to have the Principal Registrar of the Court notify the Director of Public Prosecutions accordingly.
63. Mr Desmond made submissions in respect of a referral to the Director of Public Prosecutions. He urged me to ensure that in the event of such a referral, my findings would not be able to prejudice a criminal trial of Mr Dupas if charged with the murder of Mrs

²⁵ Section 49 Coroners Act 2008.

Downes. I agree that it is obviously necessary to ensure, to the extent possible, that no prejudice is visited upon a potential accused arising out of coronial findings. This is particularly so where a coroner has made a decision to refer a matter to the Director, having concluded that an indictable offence may have been committed by a particular person in respect of a death.

64. I will suppress publication or distribution of those parts of this finding, pursuant to section 18(2) of the **Open Courts Act 2013**, that refer to Mr Dupas and the references to the referral to the Director on the basis that publication would be likely to prejudice the fair trial of a person. Consistent with that order, I order that a redacted version of this finding be published on the Court website.

I extend my condolences to the family of Mrs Downes.

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

Mr William Downes

Mr Geoff Downes

Ms Jenny Irwin

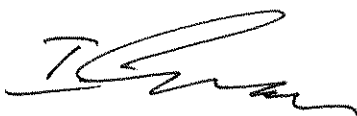
Mr Peter Dupas c/o Ms Kate Ballard, Doogue O'Brien & George

Mr John Champion SC, Director of Public Prosecutions

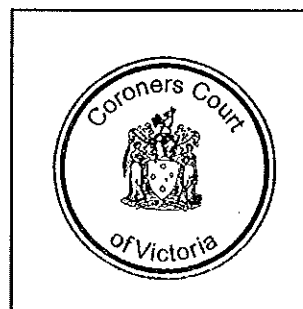
Sergeant Michael Daly, Victoria Police, Coroner's Investigator

Sergeant David Dimsey, Police Coronial Support Unit.

Signature:



JUDGE IAN L GRAY
STATE CORONER
Date: 27 March 2015



¹ The original finding was signed by the Coroner and dated 27 March 2015. This version of the finding has been amended pursuant to section 76 of the *Coroners Act 2008*, by correction of a clerical mistake at the heading to paragraph 57 and an accidental slip at paragraph 61 of the finding.