



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2018 1430

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

INQUEST INTO THE DEATH OF WILLIAM MAXWELL

Findings of:	Coroner Jacqui Hawkins
Delivered on:	21 May 2021
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, Victoria, 3006
Hearing date:	1-5 February and 2 March 2021
Counsel Assisting the Coroner:	Leading Senior Constable Dani Lord, instructed by Ms Anna Dalling, Coroner's Solicitor of the Coroners Court of Victoria
Counsel for Ms Kendall:	Ms Fiona Ryan and Ms Stephanie Wallace of Counsel instructed by Ms Danielle Meyer, Robinson Gill Lawyers
Counsel for Corrections Victoria	Ms Georgina Coghlan and Ms Marion Isobel of Counsel instructed by Ms Jasmine Still, Victoria Government Solicitors Office
Counsel for Mr Kaspars Celms and Ms Nikki Kelly	Ms Erin Gardner of Counsel instructed by Ms Renae Petulla and Ms Sally Robertson, Victorian Government Solicitors Officer

BACKGROUND

1. William Maxwell was 53 years old at the time of his death. He lived with his wife Tracey Kendall whom he married in October 2017. He had a loving and caring relationship with Ms Kendall's two children Libby and Vaun. He was described as a happy, upbeat and well-liked person.
2. Mr Maxwell had a medical history including hyperlipidaemia, vitamin D deficiency, raised ferritin, hip pain and an upper respiratory tract infection.
3. Mr Maxwell was employed by Corrections Victoria as a Correctional Services Officer and at the time of his death he was working at the Dame Phyllis Frost Centre. On 27 March 2018 he was found deceased in the gym at his workplace.

CORONIAL INVESTIGATION

Jurisdiction

4. Mr Maxwell's death constituted a '*reportable death*' pursuant to section 4(c) of the *Coroners Act 2008 (Vic)* (**Coroners Act**), as his death occurred in Victoria and was unexpected.

Purpose of the Coronial Jurisdiction

5. The jurisdiction of the Coroners Court of Victoria (**Coroners Court**) is inquisitorial.¹ The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.
6. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
7. The circumstances in which the death occurred refers to the context or background and surrounding circumstances of the death. It is confined to those circumstances that are sufficiently proximate and causally relevant to the death.
8. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation

¹ Section 89(4) *Coroners Act 2008*.

findings and by the making of recommendations by coroners. This is generally referred to as the prevention role.

9. Coroners are empowered to:
 - (a) report to the Attorney-General on a death;
 - (b) comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and
 - (c) make recommendations to any Minister or public statutory authority or entity on any matter connected with the death, including public health or safety or the administration of justice.

These powers are the vehicles by which the prevention role may be advanced.

10. 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 a finding or comment or any statement that a person is, or may be, guilty of an offence.² It is not the role of the coroner to lay or apportion blame, but to establish the facts.³

Standard of Proof

11. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.⁴ The strength of evidence necessary to prove relevant facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.⁵
12. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁶ The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals or entities, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

² Section 69(1). However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if they believe an indictable offence may have been committed in connection with the death. See sections 69(2) and 49(1) of the Act.

³ *Keown v Khan* (1999) 1 VR 69.

⁴ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

⁵ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J (noting that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in the Federal Court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

⁶ (1938) 60 CLR 336.

13. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demands a weight of evidence commensurate with the gravity of the facts sought to be proved.⁷ Facts should not be considered to have been proven on the balance of probabilities by inexact proofs, indefinite testimony or indirect inferences. Rather, such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.⁸

Sources of Evidence

14. This Finding draws on the totality of the coronial investigation into Mr Maxwell's death. That is, the court records maintained during the coronial investigation, the Coronial Brief and any further material sought and obtained by the Coroners Court, the evidence adduced during the Inquest and any submissions.
15. In writing this Finding, I do not purport to summarise all of the evidence but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence should not lead to the inference that it has not been considered.

CIRCUMSTANCES OF DEATH

Incident involving Mr Chand

16. On 24 December 2016, Mr Maxwell was performing duties with the Emergency Response Group (**ERG**) at the Melbourne Assessment Prison (**MAP**) in Spencer Street, Melbourne. At approximately 8.30am a prisoner, Michael Hearty became abusive and aggressive toward staff as they were trying to move him to another location. Mr Hearty stated that Prem Chand, a prison officer grabbed him forcefully on the back of the neck and head.⁹ In an attempt to stop him, Mr Hearty swung his fist at Mr Chand and struck him to the face.¹⁰ Another prison officer, Trilok Akung states that Mr Hearty headbutted and then punched Mr Chand to the face.¹¹ Mr Hearty was quickly restrained by other officers present including Mr Maxwell who handcuffed Mr Hearty. Mr Hearty was taken to an observation cell and placed on the ground and eventually stopped resisting.¹²

⁷ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

⁹ Exhibit 20, Coronial Brief, p 21.

¹⁰ Exhibit 20, Coronial Brief, p 21.

¹¹ Exhibit 20, Coronial Brief, p 29.

¹² Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 33.

17. Mr Chand entered the observation cell and Senior Prison Officer Ross Urquhart said that Mr Chand was very agitated and held him in the doorway of the observation cell and instructed him to move away.¹³
18. A short time later Mr Chand pushed back into the cell and kicked out at Mr Hearty and struck him to the head whilst he was still handcuffed on the ground. The kick was described as a soccer kick to the face.¹⁴ According to Mr Hearty, Mr Chand “*lined up my face, and kicked me to the face*”.¹⁵ Mr Hearty looked up and recognised Mr Chand. At this time, another prison officer said “no”.¹⁶ Mr Urquhart ushered Mr Chand out of the cell and instructed him to leave the cell.¹⁷ Mr Urquhart stated he was concerned how agitated he was and he didn’t want him to go back into the cell in his agitated state.¹⁸
19. Mr Maxwell ordered Mr Chand out of the cell and removed the handcuffs from Mr Hearty. Other staff exited the observation cell.
20. Mr Urquhart considered Mr Chand’s conduct was poor and unprofessional and he reported the incident to Mr Blair.¹⁹
21. As a result of this incident Mr Blair conducted a post incident de-brief with staff.²⁰ It was during this debrief that Mr Blair became aware that Mr Chand had been punched by the prisoner and he then checked on Mr Chand’s welfare to see if he was ok.²¹ Mr Blair requested Tracey Kirkham to take him to the medical centre.²² Mr Chand later was observed by Mr Akung to have a bruise on his face.²³
22. The incident was captured on CCTV footage. Whilst Mr Chand was being assessed in the medical centre, Mr Blair reviewed the CCTV footage of the incident and observed that Mr Chand entered the observation cell and kicked Mr Hearty whilst he was restrained on the ground.²⁴
23. Mr Chand was later interviewed by Mr Blair in relation to his actions and when asked whether he had done anything to Mr Hearty, he replied that he was angry and wanted to

¹³ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 33.

¹⁴ Exhibit 20, Coronial Brief, p 21.

¹⁵ Exhibit 20, Coronial Brief, p 21.

¹⁶ Exhibit 20, Coronial Brief, p 21.

¹⁷ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 33.

¹⁸ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 33.

¹⁹ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 34.

²⁰ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²¹ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²² Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²³ Exhibit 20, Coronial Brief, p 29.

help the other officers.²⁵ Mr Blair directly asked Mr Chand whether he had done anything to the prisoner and he couldn't remember doing anything.²⁶ Mr Blair informed Mr Chand what he had seen on the CCTV footage and told him the incident would be reported to the General Manager for further investigation.²⁷ Mr Chand was told to complete his written report and an Accident and Investigation Reporting System (AIRS) report.

24. The incident was also referred to Victoria Police for investigation, but no charges were issued against either party at that time.
25. As part of the investigation, Mr Maxwell and Mr Urquhart were requested to make statements about what they had witnessed in relation to both events. Mr Blair specifically told Mr Maxwell to *“be very factual in his written report, as he had pushed [Mr] Chand out of the cell during the incident”*.²⁸
26. In his first statement Mr Maxwell did not make mention of a prison officer striking out at the prisoner and kicking him.
27. At around midday on Sunday 25 December 2017, Mr Maxwell called Mr Blair at work and said he had not slept well the night before due to their conversation about the detail of his report and asked whether he could submit a new statement because *“his job was more important than anything else”*.²⁹ Mr Blair advised him that he had already submitted the incident package to Victoria Police and that if he wanted to resubmit his report he need to speak to the General Manager which he later did.³⁰ In his second statement he mentioned that he had observed the leg of an officer lash out and kick prisoner Hearty in the head. At that time Mr Maxwell did not name Mr Chand as the officer who kicked Mr Hearty.
28. On the 23 March 2017, and as a result of an internal investigation, Mr Chand was suspended from his position, and issued with the allegations against him. On the 14 September 2017, Mr Chand's employment with Corrections Victoria was terminated. Mr Chand later lodged an application with the Fair Work Commission claiming that he was unfairly dismissed by Corrections Victoria.

²⁴ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²⁵ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²⁶ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²⁷ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

²⁸ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 42.

²⁹ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

³⁰ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 41.

29. In 29 October 2017, Mr Maxwell started work as a Senior Prison Officer position at the Dame Phyllis Frost Centre (DPFC) in Ravenhall after he received a promotion.

Events proximate to Mr Maxwell's death

30. On 20 March 2018, Mr Maxwell's close friend, Scott Firth, who is a prison officer of MAP received a text message from Ms Kendall about a surprise birthday party she was organising for Mr Maxwell.³¹
31. On 23 March 2018, Ms Kendall's daughter, Libby discovered a message on an iPad which she shared with Mr Maxwell. The message was from a massage parlour. Ms Kendall confronted Mr Maxwell about the message but he denied knowing who the message was from.³² Ms Kendall became suspicious and upset.³³
32. The next day when Mr Maxwell returned from work he admitted to Ms Kendall he had attended a massage parlour. He told her it was the first time he had ever done anything like that and he apologised. She asked him to leave because she needed time and space to reconcile the information.³⁴ Ms Kendall considered she knew they would reconcile but she asked him to pack some things and leave.³⁵
33. On 24 March 2018 Ms Kendall sent a text message to Mr Firth and advised that the party was cancelled. Mr Firth asked if everything was ok and Ms Kendall said no, "*contact Bill he will tell you*".³⁶ Mr Firth then tried to call and text Mr Maxwell a number of times but he did not reply.³⁷
34. On 26 March 2018, Ms Kendall contacted Mr Firth and asked whether he had heard from Mr Maxwell, which he advised that he hadn't.³⁸ Mr Firth texted Mr Maxwell again at 7.10pm that day and asked if everything was ok but he did not receive a response.³⁹ At about 9.15pm Mr Firth went to bed as he had to work the following morning. The next morning at 6.50am Mr Firth was awoken by his alarm on his phone and picked it up to turn the alarm off and saw that he had received a text message from Mr Maxwell at 12.38am that morning stating "*no mate I am not, thank you for being a good mate*

³¹ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 84.

³² Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 92.

³³ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 92.

³⁴ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 92.

³⁵ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 92.

³⁶ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 84.

³⁷ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 84.

³⁸ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 85.

³⁹ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 85.

and a great best man, tonight I am taking my own life. Please ensure Tracy it is not her fault. Love you brother".⁴⁰ Mr Firth immediately tried to contact Mr Maxwell and left a message on his phone asking him "*what the hell are you talking about. Ring me now. Whatever is going on this is not the answer*".⁴¹ Mr Firth left a voicemail but did not hear back from him.

35. On 27 March 2018, at approximately 7.40am, prison officer Jeram Sleep went to the gym at DPFC and found Mr Maxwell deceased.⁴² It was apparent that Mr Maxwell had taken his own life.
36. After Ms Kendall was advised of Mr Maxwell's death she saw that he had sent her a message on messenger at 11.57pm on 26 March 2018.
37. A review of CCTV and security systems at the DPFC showed that Mr Maxwell had driven his vehicle into the car park without its light on and then walked into the amenities building at approximately 12.19 am. This was the last sighting of Mr Maxwell alive.
38. Emergency services were called. Staff came to assist and commenced CPR, but despite best efforts he was unable to be revived.

Coronial investigation

39. Victoria Police immediately commenced a coronial investigation into the death of Mr Maxwell and obtained a number of statements from relevant witnesses.
40. A statement was obtained from his wife Tracey Kendall who alleged that Mr Maxwell was the subject of workplace bullying in the form of being ostracized and segregated from other staff after the Chand incident at MAP. Mr Maxwell had informed his wife that staff at MAP had told him that he should not have '*dogged on a blue shirt*'. Ms Kendall, herself a prison officer, alleged that the harmful workplace her husband was exposed to led to his death as a consequence of the Chand incident. Ms Kendall further informed investigators that this behaviour from staff followed Mr Maxwell to the DPFC.

⁴⁰ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 85.

⁴¹ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 85.

⁴² Exhibit 20, Coronial Brief, p 59.

WorkSafe investigation

41. On the basis of these allegations, the Court referred the matter to Worksafe Victoria in April of 2019 to investigate the allegations of bullying. The Court was later advised that there would be no prosecution of any parties relating to the circumstances surrounding Mr Maxwell's death.

IDENTITY OF THE DECEASED

42. On 24 March 2018, Mr Maxwell was visually identified by Ahmed Khalil, a Senior Prison Officer, and work colleague. Mr Maxwell's identity was not in dispute and required no further investigation.

MEDICAL CAUSE OF DEATH

43. On 29 March 2018, Dr Khamis Almazrooei, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an autopsy on Mr Maxwell's body and reviewed the Victoria Police Report of Death Form 83 and post mortem CT scan.
44. Post mortem examination revealed a ligature mark around the neck in keeping with hanging. The examination also revealed cardiomegaly, moderate coronary artery atherosclerosis and a benign lesion in the liver.⁴³
45. Toxicological analysis of blood detected ethanol at 0.11 g/100mL. No other common drugs or poisons were detected.⁴⁴
46. Dr Almazrooei reported that the mechanism of death of hanging is due to one or a combination of the following mechanisms: generalised hypoxia due to airways occlusion, cerebral hypoxic ischaemia due to carotid artery obstruction, and carotid body stimulation with resultant vagal nerve inhibition.⁴⁵
47. Dr Almazrooei provided an opinion the medical cause of death was 1(a) *Hanging*. I accept and adopt this as the cause of death.⁴⁶

⁴³ Exhibit 20, Coronial Brief, p 4.

⁴⁴ Exhibit 20, Coronial Brief, p 3.

⁴⁵ Exhibit 20, Coronial Brief, p 4.

⁴⁶ Exhibit 20, Coronial Brief, p 4.

CORONIAL INQUEST

Request for inquest

48. On 19 July 2019, Ms Kendall submitted an application requesting an inquest into Mr Maxwell's death and attached submissions in support of her application. Section 52(1) of the Coroners Act provides that a coroner may hold an inquest into any death the coroner is investigating. This discretion must be exercised in a manner consistent with the preamble and purposes of the Coroners Act.
49. Although the immediate circumstances surrounding Mr Maxwell's death were non-controversial, I determined to exercise my discretion to hold an inquest as I considered that there were potential matters of public health and safety that warranted further exploration through a public hearing. Specifically, to investigate whether Mr Maxwell had been bullied at work while employed as a prison officer at Corrections Officer and whether there was any evidence that it may have contributed to his decision to end his life.

Witnesses

50. The following witnesses were called to give *viva voce* evidence at the Inquest:
- a) Tracey Kendall, Mr Maxwell's wife;
 - b) Ross Urquhart, former Senior Prison Officer, Melbourne Assessment Prison;
 - c) Gavin Blair, General Manager, Melbourne Assessment Prison;
 - d) Tracey Kirkham,^{*47} Prison Officer, Corrections Victoria;
 - e) Scott Firth, Senior Prison Officer, Melbourne Assessment Prison;
 - f) Andrew Fontana, former Prison Officer, Melbourne Assessment Prison;
 - g) AJ Amos-McLean,* former Prison Officer, Melbourne Assessment Prison;
 - h) Kirrily O'Brien, Training and Assessment Officer, Melbourne Assessment Prison;

⁴⁷ The witnesses identified with an * indicates that those witnesses were given a certificate pursuant to section 57 of the Coroners Act 2008 (Vic) which relates to the privilege of self-incrimination in other proceedings. The granting of a certificate means that any information, document or thing obtained as a direct or indirect consequence of that person giving evidence cannot be used against the person, unless it relates to a criminal proceeding in respect to the falsity of the evidence.

- i) Kaspars Celms,* Senior Prison Officer, Melbourne Assessment Prison;
- j) Dr Ahsan Hussain, General Practitioner, Tullamarine Complete Health Centre;
- k) Nikki Kelly,* Prison Officer, Melbourne Assessment Prison;
- l) Ryan Harkness,* former Prison Officer, Melbourne Assessment Prison;
- m) Nicholas Selisky, former General Manager, Melbourne Assessment Prison; and
- n) Melissa Westin, Deputy Commissioner, Custodial Operations, Corrections Victoria.

Scope of Inquest

51. The purpose and scope of the inquest was to investigate:

- a) The culture between prison officers when they make an adverse statement or allegation against a colleague.
- b) Whether Mr Maxwell was subject to bullying and harassment by staff of Corrections Victoria whilst employed as a prison officer by Corrections Victoria. If so, in what ways was he bullied and harassed? If so, did bullying and harassment contribute to his decision to end his life?
- c) What, if any knowledge did Corrections Victoria have of any allegations of bullying or harassment, or any adverse reactions to Mr Maxwell making an adverse statement against another work colleague, following an incident at the Melbourne Assessment Prison (MAP) on 24 December 2016?
- d) Any prevention opportunities, including policies and procedures undertaken by Corrections Victoria in relation to bullying and harassment within the workplace and determined in accordance with the *Occupational Health and Safety Act 2004* (Vic).

The culture between prison officers when they make an adverse statement or allegation against a colleague.

The Chand incident

52. As a result of the incident involving prison officer, Prem Chand and prisoner Mr Hearty (**the Chand incident**), witnesses to the incident were required to make statements, including Mr Maxwell and Mr Urquhart.
53. The Chand incident was captured on CCTV footage and according to Ms Kendall this fact was made known to Mr Maxwell on the day of the incident.⁴⁸ Mr Blair also commented in evidence “... *everyone would have known it was on CCTV footage. It’s no secret*”.⁴⁹ According to Mr Urquhart he reported the misconduct but believed that “*that all the other officers did not reflect [Mr] Chand’s actions in the cell.*”⁵⁰
54. Later that day Mr Maxwell submitted his report to Mr Blair who read it at the time.⁵¹ Mr Blair questioned Mr Maxwell as to whether it was a factual account and if it was his final report.⁵²
55. The evidence revealed that Mr Maxwell made two statements. His original statement made on the day of the incident made no reference to Mr Chand’s actions towards the prisoner. However, the day after the incident he changed it to reflect what he actually witnessed – which involved a prison officer (Mr Chand) kick Mr Hearty to the head.⁵³
56. Mr Maxwell also told AJ Amos-McLean that Mr Blair specifically asked him to change his report which made him feel conflicted⁵⁴ and caused him concern about potential consequences that may flow from making an adverse comment about a colleague.
57. According to Mr Firth, Mr Maxwell changed his statement because:

he feared for the consequences ... he was told that he could get in trouble if he didn’t do that because ...[it] – wasn’t a reflection of what was on the video and he was I guess called out on that ... and he was worried that he was going to get into trouble if he didn’t”.⁵⁵

⁴⁸ Transcript of evidence, p 73.

⁴⁹ Transcript of evidence, p 136.

⁵⁰ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 34.

⁵¹ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 42.

⁵² Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 42.

⁵³ Exhibit 6, Form 1.19 (including statement of William Maxwell).

⁵⁴ Transcript of evidence, p 293.

⁵⁵ Transcript of evidence, p 222.

58. The repercussions of changing his statement meant that he was going to be very unpopular with his colleagues.⁵⁶
59. Strong opinions were held in relation to the changed statement. Mr Harkness commented there were “...*definitely people that were of the view that he shouldn't have made that statement*”.⁵⁷ Mr Celms also admitted in evidence that he didn't think Mr Maxwell should have changed his statement and written up another officer.⁵⁸
60. The evidence established that prior to the Chand incident, Mr Maxwell was well liked and respected by many of his colleagues.⁵⁹ A friend of Mr Maxwell, Andrew Fontana said everything seemed fine until the Chand incident.⁶⁰

Culture between prison officers when they make an adverse statement or allegation against a colleague

61. There appears to have been a recognised culture at MAP that it is not acceptable to make an adverse statement or allegation against a colleague. This issue was explored at inquest. AJ Amos-McLean explained “*there is an unwritten code amongst prison officers of sticking together when an incident occurs with prisoners*”.⁶¹ Mr Urquhart stated “...*when you talk about culture and cultural norms ... it's not like it's written anywhere. It's just one of those things*”.⁶² According to Ms Kelly the unwritten code is explained to you in the first weeks of your training.⁶³
62. Prison officers are known by some within the prison as blue shirts, which is a colloquialism adopted from the old culture at Pentridge.⁶⁴ The concept was simply explained by Ms Kendall when she said that “*if you dob on a blue shirt then you're not to be trusted*”.⁶⁵ It seemed for some witnesses that it was an accepted principal of the prison that “*you don't write up an officer ever*”.⁶⁶ Ms Kendall said “*it's the culture of*

⁵⁶ Transcript of evidence, pp 220-1.

⁵⁷ Transcript of evidence, p 568.

⁵⁸ Transcript of evidence, p 611.

⁵⁹ Transcript of evidence, p 30.

⁶⁰ Transcript of evidence, p 258.

⁶¹ Exhibit 10, Statement of AJ Amos-McLean dated 18 November 2018, Coronial Brief, p 188.2.

⁶² Transcript of evidence, p 90.

⁶³ Transcript of evidence, p 510.

⁶⁴ Transcript of evidence, p 27

⁶⁵ Transcript of evidence, p 41.

⁶⁶ Transcript of evidence, p 22.

the prison. It's just a known fact".⁶⁷ Further, "you're supposed to have everyone's back".⁶⁸

63. A number of witnesses acknowledged this culture: Ms O'Brien agreed that there's always been a culture of not writing up your colleagues.⁶⁹ Mr Urquhart explained that the culture of writing up a colleague at the time was "*certainly frowned upon*."⁷⁰ Mr Firth described in evidence that:

*the culture is if you were to put somebody on paper and report something like that then I guess depending on the context and the circumstances in which it was done, it depends on the circumstances ... but, yes, absolutely... - I guess people could definitely be judging you and have not really good opinions on you I guess after that. The culture would be, you know, you don't do that.*⁷¹

64. According to Mr Harkness the culture at MAP is that staff don't trust each other,⁷²— especially when someone changes a statement – it means staff lose trust.⁷³

65. Ms Westin explained that:

*Custodial environments can be unpredictable and volatile by the nature of the behaviours the prisoners in our care exhibit. The MAP being a front-end ... maximum security prison where prisoners are often most unsettled, dealing with mental health issues, and withdrawing from substances, experiences volatile prisoner behaviour more than some other prisons ... The nature of this environment creates a need for a strong bond and trust among custodial staff. This aids in their safety and wellbeing by knowing that their colleagues ... will be there to back them up when incidents occur. In some cases, this strong bond can manifest in unhealthy ways, such as the perception amongst some staff that having someone's back means that you must cover for them if they behave inappropriately.*⁷⁴

66. At the time MAP was described as a toxic environment,⁷⁵ which was fuelled by rumour and innuendo. Gossip appears to be one of the biggest issues. Ms Kelly explained that gossip is "*how people get through the day*".⁷⁶ In evidence she said "*I don't think there's*

⁶⁷ Transcript of evidence, p 22.

⁶⁸ Transcript of evidence, p 22.

⁶⁹ Transcript of evidence, p 378.

⁷⁰ Transcript of evidence, p 90.

⁷¹ Transcript of evidence, p 222.

⁷² Transcript of evidence, p 540.

⁷³ Transcript of evidence, p 541.

⁷⁴ Exhibit 18, Statement of Melissa Westin dated 28 January 2021, Coronial Brief, p 618.

⁷⁵ Transcript of evidence, p 46.

⁷⁶ Transcript of evidence, p 496.

a single member of staff that hasn't been gossiped about at some point".⁷⁷ She said she had been the subject of gossip in the past.⁷⁸

67. Mr Harkness described MAP as *"a cesspool for gossip, it is just, its putrid. And its not until I sort of stepped away that I realised that, you know, how consuming that place can be"*.⁷⁹ With a certain frankness, he said *"very rarely did we deal with fact and there was a lot of over embellishment. People get a hold of a story, they run with it"*.⁸⁰ He said *"that place is just full of rumours"*.⁸¹

68. Counsel for Ms Kendall stated:

*The culture of the MAP was, at the relevant time, a toxic environment in which old-school attitudes about loyalty to fellow officers prevailed. This evidence was given by prison officers and managers alike, as well as those identified as being possible sources of bullying behaviour. There was a pervasive culture of not dobbing on fellow prison officers and a justified fear of reprisal if such a report were made.*⁸²

69. It was further submitted that this sort of workplace culture *"fosters endemic bullying and harassment amongst staff and undermines the safety of both prison officers and prisoners alike"*.⁸³

70. Counsel for Mr Celms and Ms Kelly submitted *"the observations about culture at MAP were to a significant extent borne out by the evidence"*.⁸⁴

71. Counsel for Corrections Victoria submitted that *"a number of Corrections officers have conceded that in the past there has been a culture at MAP of officers being reluctant to make adverse statements against other officers"*.⁸⁵ Further, there is evidence of a culture within MAP, and prisons more broadly, in previous years of some prison officers being reluctant to report on colleagues. However, it was submitted that this culture is shifting.⁸⁶

⁷⁷ Transcript of evidence, p 506.

⁷⁸ Transcript of evidence, p 506.

⁷⁹ Transcript of evidence, p 539.

⁸⁰ Transcript of evidence, p 539.

⁸¹ Transcript of evidence, p 542.

⁸² Submissions on behalf of the family of William Maxwell undated, p 1.

⁸³ Submissions on behalf of the family of William Maxwell undated, p 1.

⁸⁴ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 10.

⁸⁵ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 34.

⁸⁶ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 5.

72. I am satisfied that the evidence revealed that there was a toxic culture at MAP at the time Mr Maxwell was employed as a prison officer, particularly in relation to when an officer writes up another officer. The culture was fuelled by gossip and innuendo. There were remnants of old-school beliefs and an accepted unwritten code that you should always have another officer's back and never dob on or make an adverse statement about a fellow officer. There was also a strong belief that if you did, there would be consequences.

Whether Mr Maxwell was subject to bullying and harassment by staff of Corrections Victoria whilst employed as a Prison Officer by Corrections Victoria; If so, in what ways was he bullied and harassed? If so, did bullying and harassment contribute to his decision to end his life?

Evidence of no negative consequences towards Mr Maxwell

73. Given the culture within MAP at the time, evidence varied in terms of whether the Chand incident had a negative impact on Mr Maxwell. There were some witnesses who state that him changing his statement did not have a negative impact on him. On that basis, I determined not to call those witnesses to give evidence but relied on their statements that were prepared as part of the coronial brief.
74. Vijay Mehta was a prison officer who worked in reception at MAP at the time of the Chand incident and stated:

*I heard a rumour that Mr Maxwell was asked to change a report he had made regarding the ... incident. I do not know who asked him to change the report. I am not aware of any issues involving Maxwell/Urquhart. I am not aware of any other rumours circulating about bullying or ostracising of the two staff.*⁸⁷

75. Prison Officer Andrew Luong also stated that “*I am not aware of any negative reaction to this incident between the officers involved. I am not aware of any bullying amongst the other officers during or after this incident.*”⁸⁸

Did behaviour towards Mr Maxwell change after the Chand incident?

76. A number of Corrections Victoria staff stated that they had heard rumours that Mr Maxwell had changed his statement. Ms Kelly said the gossip was generally amongst

⁸⁷ Exhibit 20, Coronial Brief, p 46.

⁸⁸ Exhibit 20, Coronial Brief, p 39.

prison officers and senior prisons officers.⁸⁹ AJ Amos-McLean said “*it became known quite quickly that Bill had altered his report to reflect the true nature of the incident, and people at work were not happy with this*”.⁹⁰ .

77. The culture of not dobbing on a mate and the incessant gossip surrounding the Chand incident, did appear to cause some issues for Mr Maxwell at MAP.

78. Tracey Kirkham indicated:

*there was a lot of hostile ‘chatter’ in relation to [Mr] Maxwell and Urquhart’s reports as they had been written. Most of this hostility seemed to come from the Reception and ERG staff, but I cannot recall specific conversations or who said what. These discussions were basically just staff gossip sessions.*⁹¹

79. Mr Fontana agreed “*there’s always rumours within the prison environment between officers*”.⁹² He said its “*mainly locker rooms, ... walking past someone even in the work environment you can just hear the chitter chatter.*”⁹³ Ms Kirkham did not hear anything specific and agreed that it could be characterised as “*chatter about chatter*”.⁹⁴

80. Mr Fontana stated that “*after Bill changed his report, there were numerous rumours circulating around the prison, about what had happened and how disloyal Bill was to have betrayed another prison officer.*”⁹⁵ Mr Fontana explained:

*There is a culture of sticking together amongst the staff at MAP. People were talking about Bill and saying that it’s wrong to ‘dog on your blue’ like that. That kind of talk about Bill spread around the prison in a toxic way. People became cold towards Bill and I knew that he was becoming uncomfortable with the rumours about this. Eventually, Bill stopped working in reception.*⁹⁶

81. Ms O’Brien recounted an incident where she was training some staff and overheard someone talking about Mr Maxwell and the Chand incident and she said that from her experience – “*its one of the things that has been quite ... rampant through my career has been the gossiping and bullying and people treating other people disrespectfully and inappropriately and unprofessionally*”.⁹⁷

⁸⁹ Transcript of evidence, p 500.

⁹⁰ Exhibit 10, Statement of AJ Amos-McLean dated 18 November 2018, Coronial Brief, p 188.2.

⁹¹ Exhibit 5, Statement of Tracey Kirkham dated 14 August 2018, Coronial Brief, p 57.

⁹² Transcript of evidence, p 258.

⁹³ Transcript of evidence, p 258.

⁹⁴ Transcript of evidence, p 197.

⁹⁵ Exhibit 9, Statement of Andrew Fontana dated 3 September 2018, Coronial Brief, p 186.

⁹⁶ Exhibit 9, Statement of Andrew Fontana dated 3 September 2018, Coronial Brief, p 186.

⁹⁷ Transcript of evidence, p 379.

82. Ms Kelly described that colleagues were annoyed with the fact that he had changed his statement, and said that it raised the question of “*was it true what he said the first time or was it true what he said the second time, you know, that kind of thing.*”⁹⁸ Mr Chand was well liked, and the common view was that he lost his job because Mr Maxwell changed his statement⁹⁹. People felt sorry for Mr Chand.¹⁰⁰ Ms Kelly conceded her attitude toward Mr Maxwell at the time was “*you know, fuck him, you know. You know, like, he shouldn’t have done that if he was, you know, if it wasn’t true and what not.*”¹⁰¹
83. Mr Firth had a few conversations about Mr Maxwell being unhappy with what had happened at work and some of the comments that were going around about him. He told him that “*he was upset about it and ... that he thought it was unfair that he had been put in that situation and he thought the emphasis should have been on Chand and what he’d done and his actions as opposed to what he was doing with this report.*”¹⁰²
84. The person closest to Mr Maxwell, Ms Kendall was adamant Mr Maxwell’s behaviour changed after the incident. She said that “*news had got around the prison that Bill had ‘dogged on a blue shirt’. This hurt Bill considerably; he became isolated and excluded from many usual work/social get togethers after this incident ... I know this hurt Bill and affected him terribly.*”¹⁰³ Ms Kendall said that Mr Maxwell told her he was ignored by many colleagues after this incident.¹⁰⁴ People called him a dog.¹⁰⁵ Ms Kendall stated that Mr Maxwell told her the men’s locker rooms felt ‘icy’. She said “*I know he tried very hard to put this in the back of his mind.*”¹⁰⁶
85. Mr Urquhart agreed Mr Maxwell spoke to him some time after the incident and knew that “*he was getting a bit of heat and was being ostracised for reporting a fellow officer.*”¹⁰⁷
86. Consistent with this evidence, Mr Firth spoke to Mr Maxwell and he stated “*... he was getting the cold shoulder by some of the people he was working with in reception and that they weren’t being as forthcoming and having a laugh with him like they used to*

⁹⁸ Transcript of evidence, p 498.

⁹⁹ Transcript of evidence, p 499.

¹⁰⁰ Transcript of evidence, p 498.

¹⁰¹ Transcript of evidence, p 500.

¹⁰² Transcript of evidence, p 223.

¹⁰³ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 90.

¹⁰⁴ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 91.

¹⁰⁵ Transcript of evidence, p 26.

¹⁰⁶ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 90.

¹⁰⁷ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial brief, p 34.

do.”¹⁰⁸ Mr Firth said “*he had been ridiculed and given the cold shoulder by his previous friends and work colleagues. That’s why he was stressed out.*”¹⁰⁹ Mr Firth explained that Mr Maxwell:

*said that he was feeling flat and he felt hard done by, that he felt like he’d been put in an impossible position and like a no win situation I guess. ... there was no good outcome for him in that sense where if he did one thing or did the other he was going to be a bad guy regardless. He was angry as well that he’d been – and annoyed that he’d been put in a situation like that.*¹¹⁰

87. Similarly, AJ Amos-McLean explained: “*I don’t think he was coping. I think he felt very much ostracised by people who were supporting Chand and not supporting him, and unfortunately for him he was working in an area where predominantly the staff were in support of Chand*”.¹¹¹ AJ Amos-McLean said that Mr Maxwell told her around this time “*that he was feeling isolated, and that guys in the locker room were excluding him from conversations and jobs*”.¹¹² Further, “*his demeanour seemed to have changed a bit and I asked him ... about himself how he was feeling rather than about the incident and then he told me of the incident and stuff*”.¹¹³ However he didn’t seem to want to discuss it with anyone.¹¹⁴

88. There was ample rumour and innuendo circulating about Mr Maxwell after the Chand incident. There is no doubt there were some staff that had heard the rumours and considered Mr Maxwell had done the wrong thing by changing his statement and by not supporting a colleague. Mr Chand was well liked, and Mr Maxwell’s change of statement caused a sense of mistrust amongst his colleagues. I accept that Mr Maxwell directly told some prison officer colleagues and friends that he had experienced some backlash from changing his statement. I also acknowledge Mr Maxwell may have perceived some hostile and negative behaviour from some of his colleagues, however he never provided any detail about specific incidents.

¹⁰⁸ Transcript of evidence, pp 220-1.

¹⁰⁹ Transcript of evidence, p 238.

¹¹⁰ Transcript of evidence, p 221.

¹¹¹ Transcript of evidence, p 303.

¹¹² Exhibit 10, Statement of AJ Amos-McLean dated 18 November 2018, Coronial Brief, p 188.2.

¹¹³ Transcript of evidence, p 293.

¹¹⁴ Transcript of evidence, p 302.

Was there a decline in his mental and physical health?

89. Counsel for the family submitted that there were numerous accounts as to the deleterious effect the alleged bullying had on Mr Maxwell's health¹¹⁵ and the evidence "*overwhelmingly points to [Mr] Maxwell suffering a stress condition*".¹¹⁶ The impact on him was severe enough that numerous witnesses observed physical manifestations of his stress condition consistent with his own reports to medical practitioners at Tullamarine Complete Health Centre.¹¹⁷
90. These allegations were further examined at inquest. Specifically, whether Mr Maxwell had suffered a decline in his mental and physical health as a consequence of the changed statement and the Chand incident. Ms Kendall said soon after the Chand incident she "*noticed a decline in Bill's personality. He became withdrawn, isolative, his alcohol intake and smoking increased significantly from occasional to daily.*"¹¹⁸ Further, she said she would "*often observe Bill to be non-communicative and deep in thought this concerned me and [she] would ask 'penny for your thoughts?' he would brush it off. I knew he was suffering*".¹¹⁹ Over time she "*noticed that he was drinking more beer and ... chain smoking*"¹²⁰ Ms Kendall also thought he was suffering from gastric problems,¹²¹ was sad and gloomy¹²², not sleeping well¹²³ and it was affecting their relationship.¹²⁴
91. Friends and colleagues also began to notice a change in his physical and mental wellbeing, Mr Firth noticed a decline in his physical health and an increase in his drinking.¹²⁵ He asked him about it and "*in a typical Bill way it was "No, I'm all good, don't worry about it and I was like, well, I know you like a beer, ... you need to take your foot off the gas a little bit.*"¹²⁶ In evidence, Mr Firth considered "*the drinking was not going to help him in any way, that he needed to just, you know, have a clear head*

¹¹⁵ Submissions on behalf of the family of William Maxwell undated, p 7.

¹¹⁶ Submissions on behalf of the family of William Maxwell undated, p 8.

¹¹⁷ Submissions on behalf of the family of William Maxwell undated, p 8.

¹¹⁸ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 90.

¹¹⁹ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 90.

¹²⁰ Transcript of evidence, p 28.

¹²¹ Transcript of evidence, p 29.

¹²² Transcript of evidence, p 30.

¹²³ Transcript of evidence, p 80.

¹²⁴ Transcript of evidence, p 30.

¹²⁵ Transcript of evidence, p 224.

¹²⁶ Transcript of evidence, p 224.

and look after himself".¹²⁷ Mr Firth further conceded that he only assumed that work stress was affecting Mr Maxwell because of the fact he later suicided.¹²⁸

92. AJ Amos-McLean thought he looked haggard and that he'd put on weight and seemed to be consuming a lot of stomach tablets.¹²⁹ She said "*he just ... didn't look well. He didn't look well physically and didn't seem well emotionally*".¹³⁰ However, she acknowledged in evidence that she did not actually know the reasons for the perceived changes.
93. Mr Maxwell consulted with a number of general practitioners (GPs) at the Tullamarine Complete Health Centre before and after the Chand incident. Dr Ashan Hussain wrote two reports¹³¹ about Mr Maxwell's recent medical history which suggested he experienced workplace stress. In evidence, Dr Hussain said Mr Maxwell had "*multiple presentations because of stress, that would lead me to believe he [was] under a lot of stress*".¹³²
94. This statement proved controversial at inquest. Dr Hussain's position altered somewhat after he was subjected to some forensically challenging and robust cross examination which identified a number of inconsistencies in the medical records he used to assist him to write his reports. During cross-examination, he ultimately made a number of concessions about his two reports, including that he had no independent recollection of his consultation with Mr Maxwell when he wrote his report.¹³³
95. Counsel for Corrections Victoria concluded that Dr Hussain's statement of 22 November 2018 stated that Mr Maxwell presented on six separate occasions for stress related to work was incorrect – the evidence supports a conclusion that Mr Maxwell presented only twice for stress that were clearly related to work.¹³⁴ Further, contrary to Ms Kendall's claim that Mr Maxwell was having gastrointestinal issues, there was no evidence to support this.¹³⁵

¹²⁷ Transcript of evidence, p 224.

¹²⁸ Transcript of evidence, p 242

¹²⁹ Transcript of evidence, p 315.

¹³⁰ Transcript of evidence, p 321.

¹³¹ One statement was prepared for the coronial investigation - Exhibit 14, Letter from Dr Ashan Hussain dated 8 August 2018, Coronial Brief, p 419 and the other written for Robinson Gill to support a WorkCover claim for Ms Kendall - Exhibit 13, Letter from Dr Ashan Hussain dated 14 August 2018, Coronial Brief, p 416.

¹³² Transcript of evidence, p 470.

¹³³ Transcript of evidence, p 125.

¹³⁴ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 22.

¹³⁵ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 22.

96. Corrections Victoria submitted that the evidence does not support any conclusion that there was a connection between any stress Mr Maxwell was feeling, and any alleged bullying or harassment by staff at MAP. Further, he did not disclose to any doctor that he was being bullied or harassed.¹³⁶ It was submitted there were many other reasons that could explain his feeling of stress. Including that he made a false report, which may have professionally embarrassed and stressed him.¹³⁷
97. Counsel for Mr Celms and Ms Kelly highlighted in their submissions that none of the notes made by the GPs referenced any disclosure to the effect that Mr Maxwell alleged he was being bullied by colleagues. No mental health care plan or referrals were generated to assist Mr Maxwell to manage workplace stress as a result of bullying or otherwise.¹³⁸
98. I acknowledge some witnesses considered they had observed Mr Maxwell had increased his alcohol intake and was smoking more frequently and that generally he did not look well. The strength of Dr Hussain’s evidence about Mr Maxwell suffering workplace stress was somewhat weakened after his cross-examination and subsequent concessions. The evidence did not identify an exact cause of his stress and fell short of establishing a causal connection between any workplace stress and a decline to his health.

Is there evidence Mr Maxwell was experiencing bullying?

99. One of the key issues examined at inquest was whether there was any evidence Mr Maxwell had experienced bullying whilst employed at MAP as a consequence of the backlash from the Chand incident.
100. Some witnesses suggested that some of the behaviour Mr Maxwell experienced as a consequence of changing his statement over the Chand incident could be described as bullying and harassment, whilst others denied that he had been exposed to it at all.
101. To properly analyse this issue it is important to understand the concept of bullying and how it is defined by Corrections Victoria. The Department of Justice “*Respect in the Workplace*” policy document describes bullying as:

¹³⁶ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 23.

¹³⁷ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 23.

¹³⁸ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 8.

*repeated behaviour directed towards a worker or group of workers that a reasonable person would, in all the circumstances, consider to be unreasonable and which creates a risk to health and safety. Reasonable management action does not constitute bullying.*¹³⁹

102. Ms Kendall was the strongest critic and considered that Mr Maxwell was bullied by colleagues at Corrections Victoria. She stated:

*the behaviours and destructive culture in which my husband Bill was exposed to within the current prison system from prison officers and its hierarchy has been nothing short of a crime; the 12 months of ongoing bullying behaviours destroyed him, has robbed me and the children of a life with a good man, a good prison officer; my husband, Bill. A man of integrity and honesty who went to work every day to uphold the values and behaviours set down by Corrections Victoria; one that all prison officers should aim and aspire to. Unfortunately, this has not been the case.*¹⁴⁰

103. Examples were given by Ms Kendall as to what she considered may have constituted bullying at MAP which included a culture of gossip, rosters being changed, feeling ostracised, being moved to other locations – all of which were part of the culture at the time.¹⁴¹

104. Ms Kendall said there were “*jokes about him*”¹⁴² and that he was excluded from social events¹⁴³. Ms Kendall said he avoided certain people because of the way he had been treated.¹⁴⁴ She said “*he felt very intimidated in locker rooms*”¹⁴⁵ because he wasn’t welcome. Further, he began to feel isolated.¹⁴⁶ Despite these examples, Ms Kendall said Mr Maxwell did not talk to her about it.¹⁴⁷ She said when she questioned him, he would say he was fine – everything was good.

105. Mr Firth said he never actually discussed who was causing Mr Maxwell grief and “*if he did I can’t recollect exact names to be honest. I can’t remember. I think it was a multitude and so I can’t remember*”.¹⁴⁸

¹³⁹ Exhibit 20, Department of Justice Respect in the Workplace, attached to letter of Rod Wise dated 23 November 2018, Coronial Brief, p CB188.80.

¹⁴⁰ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 95.

¹⁴¹ Transcript of evidence, p 42.

¹⁴² Transcript of evidence, p 27.

¹⁴³ Transcript of evidence, p 27.

¹⁴⁴ Transcript of evidence, p 28.

¹⁴⁵ Transcript of evidence, p 28.

¹⁴⁶ Transcript of evidence, p 38.

¹⁴⁷ Transcript of evidence, p 27.

¹⁴⁸ Transcript of evidence, p 234.

106. Fellow prison officer, Trilok Akung had heard that people had been avoiding Mr Maxwell but felt that “*this was just gossip and rumours*”¹⁴⁹ He “*never saw anyone bully him or speak about the incident after that day*”.¹⁵⁰
107. In evidence, Ms Kirkham said Mr Maxwell told her he was feeling on the out¹⁵¹ and mentioned two names who were the cause of the ongoing alienation: Ryan Harkness and Nikki Kelly.¹⁵² During the inquest AJ Amos-McLean also alleged that there was a time when Ms Kelly and Mr Harkness influenced Mr Maxwell and Ms Kendall’s ability to get overtime.¹⁵³ This had not been mentioned in her previous statement and was based on an impression that Ms Kelly was “*in the staff office at the time*”.¹⁵⁴
108. These allegations were specifically put to Ms Kelly during the inquest and she denied ignoring or excluding Mr Maxwell.¹⁵⁵ She described there was a “*common feeling of fuck Bill*”¹⁵⁶ because he had changed his statement but she “*never saw anyone say anything to him about it*”.¹⁵⁷ She also denied altering the roster and accused AJ Amos-McLean of lying.¹⁵⁸ Ms Kelly said she “*had no control over overtime or anything to do with staffing*”¹⁵⁹ and had no influence over Mr Maxwell’s roster.¹⁶⁰ Her evidence was that she maintained a professional and cordial working relationship with Mr Maxwell and did not recall any change in him after the Chand incident.¹⁶¹
109. With the benefit of hindsight Ms Kelly agreed that some of the things she heard about Mr Maxwell could have constituted bullying.¹⁶² She said “*knowing what I know now, maybe not, but at the time I just felt it was just, you know, it’s gossip, they’ll have something new to talk about next week*”.¹⁶³ Ms Kelly considered that “*if it was the truth*

¹⁴⁹ Exhibit 20, Coronial Brief, p 30.

¹⁵⁰ Exhibit 20, Coronial Brief, p 30.

¹⁵¹ Transcript of evidence, p 164

¹⁵² Exhibit 5, Statement of Tracey Kirkham dated 14 August 2018, Coronial Brief, p 58; Transcript of evidence, p 165.

¹⁵³ Transcript of evidence, pp 319, 369.

¹⁵⁴ Transcript of evidence, p 369.

¹⁵⁵ Transcript of evidence, p 502.

¹⁵⁶ Exhibit 15, Statement of Nikki Kelly dated 13 September 2018, Coronial Brief, p 102.

¹⁵⁷ Exhibit 15, Statement of Nikki Kelly dated 13 September 2018, Coronial Brief, p 102.

¹⁵⁸ Transcript of evidence, p 504.

¹⁵⁹ Transcript of evidence, p 504.

¹⁶⁰ Transcript of evidence, p 505.

¹⁶¹ Transcript of evidence, p 501.

¹⁶² Transcript of evidence, p 506.

¹⁶³ Transcript of evidence, p 515.

[changing the statement] *then it essentially had to be done*¹⁶⁴ and she considered he might have been caught between *“a rock and a hard place either way.”*¹⁶⁵

110. At inquest Ms Kelly reflected *“I guess I ... just didn’t realise that if it was affecting him, he didn’t show it. You know, I wasn’t aware of it”*.¹⁶⁶ However, Ms Kelly was adamant she did not bully Mr Maxwell; *“I don’t believe I ever ostracised Bill in any way. I was friends with him and Tracey and still get on well with Tracey now”*.¹⁶⁷
111. Mr Harkness who was not represented at inquest, and appeared quite genuine as a witness denied being one of the staff members at MAP who isolated Mr Maxwell.¹⁶⁸ He candidly admitted that he *“never liked Bill and never spoke to him”*¹⁶⁹ and described their working relationship as professional. He said *“I wouldn’t talk to him and he wouldn’t talk to me”*.¹⁷⁰ With an alarming frankness, he said *“I’ve made no bones about the fact that Bill and I didn’t get along and I didn’t like Bill for my reasons, ... I don’t go to work to make ... friends. I got to work to do my work.”*¹⁷¹
112. Mr Harkness said that after Mr Maxwell made the statement about Chand, nothing changed between the two.¹⁷² He said he *“never at any stage heard anybody say anything directly to [Mr Maxwell]”*.¹⁷³ Mr Harkness sympathised that Mr Maxwell had been put in a tough position in that he had pressure to change his statement *“knowing full well that you’re probably going to cop the slack off everybody else.”*¹⁷⁴ He didn’t *“envy the position he was in”* and that’s why he *“remained neutral”* because he had experienced the same thing, therefore he understood *“where he was coming from in that sense”*.¹⁷⁵ Mr Harkness said he *“never directly saw anybody ever say anything to Bill”*.¹⁷⁶
113. Whilst Ms Kendall provided examples of what she considered was bullying behaviour, Mr Maxwell did not discuss it with her and would say he was okay. Other witnesses were unable to provide specific details or name potential offenders, other than Mr Harkness and Ms Kelly who both vehemently denied that they ostracised or bullied Mr

¹⁶⁴ Transcript of evidence, p 509.

¹⁶⁵ Transcript of evidence, p 509.

¹⁶⁶ Transcript of evidence, p 515.

¹⁶⁷ Exhibit 15, Statement of Nikki Kelly dated 13 September 2018, Coronial Brief, p 102.

¹⁶⁸ Transcript of evidence, p 582.

¹⁶⁹ Exhibit 16, Statement of Ryan Harkness dated 13 September 2018, Coronial Brief, p 108.

¹⁷⁰ Exhibit 16, Statement of Ryan Harkness dated 13 September 2018, Coronial Brief, p 108.

¹⁷¹ Transcript of evidence, p 534.

¹⁷² Exhibit 16, Statement of Ryan Harkness dated 13 September 2018, Coronial Brief, p 108.

¹⁷³ Transcript of evidence, p 563.

¹⁷⁴ Transcript of evidence, p 569.

¹⁷⁵ Transcript of evidence, p 570.

¹⁷⁶ Transcript of evidence, pp 550-1.

Maxwell and I accept their evidence. It was clear that no one specifically witnessed Mr Maxwell be bullied.

What, if any knowledge did Corrections Victoria have of any allegations of bullying or harassment, or any adverse reactions to Mr Maxwell making an adverse statement against another work colleague, following an incident at the Melbourne Assessment Prison (MAP) on 24 December 2016?

Were any managers/supervisors aware of issues with Mr Maxwell and making an adverse comment?

114. Mr Maxwell told Mr Urquhart he was “*getting a bit of heat and was being ostracised*”¹⁷⁷ and at inquest he agreed that he too “*was getting a hard time*”.¹⁷⁸ He said he specifically asked Mr Maxwell for more details including the names of those who were giving him a hard time and he offered him support.¹⁷⁹ However, Mr Maxwell reassured Mr Urquhart that he could handle it.¹⁸⁰ Mr Urquhart considered that he didn’t need his help and was dealing with it himself.¹⁸¹ Apart from this conversation Mr Urquhart did not witness or observe anyone talking about, spreading rumours or discussing Mr Maxwell change his statement.¹⁸²

115. Ms Kirkham’s evidence was that she did not witness any negative behaviour towards Mr Maxwell but had heard about it.¹⁸³ She said it was more “*chatter and gossip. I never heard anybody go to detail*”.¹⁸⁴ Ms Kirkham indicated that she didn’t have concerns for Mr Maxwell “*because when I had conversations in regard to this with [him] he told me that he was all right*”.¹⁸⁵ In evidence she did not believe it was her “*responsibility to report a friendly informal conversation*” she had with Mr Maxwell.¹⁸⁶ She didn’t discuss it with any of the other supervisors¹⁸⁷ because it was a private informal chat that they were having when he disclosed the two names to her.¹⁸⁸ Her evidence was that she hadn’t observed those two named people do anything.¹⁸⁹

¹⁷⁷ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 34.

¹⁷⁸ Transcript of evidence, p 94.

¹⁷⁹ Transcript of evidence, p 91.

¹⁸⁰ Transcript of evidence, p 94.

¹⁸¹ Transcript of evidence, p 91.

¹⁸² Transcript of evidence, p 95.

¹⁸³ Transcript of evidence, p 160.

¹⁸⁴ Transcript of evidence, p 160.

¹⁸⁵ Transcript of evidence, p 162.

¹⁸⁶ Transcript of evidence, p 180.

¹⁸⁷ Transcript of evidence, p 164.

¹⁸⁸ Transcript of evidence, p 164.

¹⁸⁹ Transcript of evidence, p 164.

116. At an unspecified time after the Chand incident, Mr Maxwell did go and speak to his supervisor, Kaspars Celms about some issues he was facing. According to Ms Kendall Mr Celms told her husband that he should never have dogged on a blue shirt.¹⁹⁰ Mr Maxwell was disappointed in his response because he would have expected more support.¹⁹¹
117. Mr Maxwell also discussed his conversation with Mr Celms with AJ Amos-McLean but indicated that it didn't go well¹⁹² and that Mr Celms told him he'd "*dug himself a hole by changing his report*".¹⁹³ AJ Amos-McLean suggested that Mr Maxwell and Mr Celms weren't friends so she considered Mr Maxwell would have gone to him as a supervisor to ask him about how to deal with the situation.¹⁹⁴
118. Mr Celms recalled that Mr Maxwell came to see him one day in his office but could not remember a specific date. Mr Celms' evidence is that he knew that Mr Maxwell had submitted another report and considered that may have been the reason why there was hostility out on the floor.¹⁹⁵ Mr Celms told him he had submitted a good report, but had no idea what was in the second report.¹⁹⁶ In evidence Mr Celms denied saying he told Mr Maxwell he shouldn't have dogged on a blue shirt. He said he would never refer to an officer as a blue shirt¹⁹⁷ and he found the term offensive.
119. According to Mr Celms, Mr Maxwell reported that "*he felt some hostility between him and other staff*"¹⁹⁸ but "*he didn't elaborate*"¹⁹⁹ or give any names. Mr Celms said Mr Maxwell didn't give him anything to go on.²⁰⁰ He was firmly of the belief that if Mr Maxwell had any issues, "*he should've elaborated on them*".²⁰¹ Ultimately, he "*didn't consider Mr Maxwell's complaint to have enough substance*"²⁰² to warrant further action.

¹⁹⁰ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, p 90.

¹⁹¹ Transcript of evidence, p 33.

¹⁹² Transcript of evidence, p 301.

¹⁹³ Transcript of evidence, p 301.

¹⁹⁴ Transcript of evidence, p 301.

¹⁹⁵ Transcript of evidence, p 424.

¹⁹⁶ Transcript of evidence, p 424.

¹⁹⁷ Exhibit 12, Statement of Kaspars Celms dated 13 September 2018, Coronial Brief, p 97.

¹⁹⁸ Transcript of evidence, p 620.

¹⁹⁹ Transcript of evidence, p 625.

²⁰⁰ Transcript of evidence, p 625.

²⁰¹ Transcript of evidence, p 628.

²⁰² Transcript of evidence, p 628.

120. No other prison officer made a complaint to Mr Celms.²⁰³ He said if a staff member, irrespective of rank, had come and spoken to him about Mr Maxwell and provided some detail, he would have approached Mr Maxwell to see if he wanted to discuss matters.²⁰⁴
121. I find that Mr Urquhart, Ms Kirkham and Mr Celms were aware that Mr Maxwell may have been experiencing some hostility from staff about the Chand incident. However, no one directly witnessed anyone being hostile or bullying Mr Maxwell. Nor did Mr Maxwell extrapolate on the issues.

Did anyone ever make a formal complaint that Mr Maxwell was bullied?

122. Mr Maxwell never made a complaint either formally or informally to any supervisor or manager. Whilst a number of colleagues were concerned about Mr Maxwell, none of them made a formal complaint on his behalf either.
123. When asked if she had reported the alleged bullying to anyone, Ms Kendall stated that *“I couldn’t report anyone because no one gave names”*.²⁰⁵
124. Because of his friendship with Mr Maxwell, Mr Firth thought he offered support in the way that they interacted and talked as friends, he didn’t think seeking formal support would have been beneficial.²⁰⁶ The official channel to make a complaint was for Mr Maxwell to go to his superior.²⁰⁷
125. The evidence of Mr Blair is that he did not see or hear anyone bully Mr Maxwell. Nobody reported it or mentioned it to him.²⁰⁸ In the months after the Chand incident Mr Blair checked on Mr Maxwell’s welfare to see that *“he was not receiving any heat or being ostracised because of the incident. Every time he told me he was fine and everything was ok”*.²⁰⁹ He also checked on Mr Urquhart who said he was also fine.²¹⁰
126. At the time of his statement in 2018, the Deputy Commissioner of Operations, Rod Wise was not aware of any allegations of bullying towards Mr Maxwell.²¹¹

²⁰³ Transcript of evidence, pp 635-6.

²⁰⁴ Transcript of evidence, p 634.

²⁰⁵ Transcript of evidence, p 40.

²⁰⁶ Transcript of evidence, p 226.

²⁰⁷ Transcript of evidence, p 240.

²⁰⁸ Transcript of evidence, p 123.

²⁰⁹ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 43.

²¹⁰ Exhibit 3, Statement of Gavin Blair dated 23 August 2018, Coronial Brief, p 43.

²¹¹ Exhibit 20, Coronial Brief, p 188.9

127. It was submitted by Counsel for Ms Kendall that Mr Maxwell was exposed to an unsafe place of work in circumstances in which Corrections Victoria, through its supervisors and/or managers had actual knowledge of the hostile work environment to which he was subjected.²¹² And further, that despite Mr Maxwell reporting the issue to three supervisors, no action was taken.²¹³
128. Counsel for Ms Kelly and Mr Celms submitted that the evidence to support the contention that Mr Maxwell experienced bullying or harassment was “*in every instance hearsay upon hearsay and was based on surmise, conjecture or inference*”.²¹⁴ Further, it was submitted that no witness gave evidence that they directly observed Mr Maxwell being subjected to any such treatment. Specifically, Ms Kendall’s evidence was that no member of the reception staff made comments directly to her which were derogatory of her husband.²¹⁵ It was submitted “*the particulars promulgated in support of the allegation that Mr Maxwell was bullied by staff were not borne out*”.²¹⁶ In relation to the specific allegations directed toward Ms Kelly, it was submitted there was a paucity of evidence that she participated in any bullying of Mr Maxwell.”²¹⁷
129. Counsel for Mr Celms and Ms Kelly submitted “*there is no evidence to find that Mr Celms perpetrated or turned a blind eye to bullying*”.²¹⁸ Further, “*there is insufficient evidence to find that Corrections staff, including Mr Celms and Ms Kelly said or did anything overtly or covertly to Mr Maxwell to justify a finding that he was the subject of bullying or harassment*.”²¹⁹
130. According to Counsel for Corrections Victoria:

*most of the evidence was unclear, and based on subjective perception or vague speculation. Most people could not explain who they heard rumours from, or how such rumours circulated. Most people did not give specific particulars of what it was that they heard. No names were given except for Mr Harkness and Ms Kelly, both of whom deny it.*²²⁰

²¹² Submissions on behalf of the family of William Maxwell undated, p 4.

²¹³ Submissions on behalf of the family of William Maxwell undated, p 4.

²¹⁴ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 5.

²¹⁵ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 5.

²¹⁶ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 6.

²¹⁷ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 7.

²¹⁸ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 7.

²¹⁹ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 9.

²²⁰ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 15.

131. Corrections Victoria submitted “*the evidence clearly demonstrates that Corrections had no knowledge of the bullying or harassment until after Mr Maxwell died*”.²²¹
132. Corrections Victoria submitted that the evidence provided from the witnesses about the purported bullying of Mr Maxwell:
- a) was unparticularised, vague and based on guesswork and speculation;
 - b) was contested by other witnesses who did not hear of any negative treatment and the two witnesses who were named as perpetrators emphatically denied it;
 - c) At times, may be explained by other circumstances unrelated to Mr Maxwell reporting a fellow officer; and
 - d) Taken at its highest did not meet the threshold of bullying or harassment.²²²
133. Corrections Victoria submitted there was insufficient evidence Mr Maxwell was bullied or harassed by staff of Corrections Victoria whilst employed as a Prison Officer by Corrections Victoria.²²³
134. There is no doubt Mr Maxwell was the subject of gossip and innuendo around the fact that he amended his first statement in relation to the Chand incident and spoke out against a fellow colleague. It is also apparent that he expressed a view to his wife and close friends that he was feeling ostracised and isolated. Despite this, the evidence revealed that he said he could manage and that he was ok.
135. It was clear to me that no one actually witnessed Mr Maxwell be bullied. Further, it was also vehemently denied by Ms Kelly and Mr Harkness: the two alleged perpetrators.
136. Mr Maxwell never make a formal complaint to Mr Celms, Mr Urquhart, Ms Kirkham or Mr Blair or any other person.
137. None of his colleagues made a formal complaint to any supervisor at MAP that Mr Maxwell was subjected to bullying or harassment either because they did not witness it occur or he did not provide them with specific examples and he usually expressed that

²²¹ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 5.

²²² Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, pp 8-9.

²²³ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 5.

he was fine. Therefore, I find there was insufficient evidence Mr Maxwell was bullied or harassed whilst he was employed as a Prison Officer at MAP.

What other issues were going on with Mr Maxwell at the time?

138. The coronial investigation revealed that Mr Maxwell may have had other issues going on in the days and weeks prior to his decision to take his life – these issues were further explored at the inquest.

Move to DPFC

139. It was submitted by the family that the impact of the workplace stress was so severe that he resigned from the ERG and he removed himself from MAP and continued to be plagued by worry in relation to the Chand incident.²²⁴

140. There was some contention at inquest about why Mr Maxwell moved to DPFC and whether he was subjected to any further bullying and harassment while working at DPFC.

141. One of the reasons for Mr Maxwell’s move to DPFC as described by Ms Kirkham was that he didn’t like working at MAP anymore and it was a time for change.²²⁵ Further:

*he had found it really hard to cope with the fact that staff had held such a grudge against him in relation to the incident and that the alienation was continuing so long after the incident. And I know that was one of the reasons he had applied for a transfer to the [DPFC] and he was extremely happy when granted that transfer.*²²⁶

142. According to Mr Firth, Mr Maxwell didn’t specifically say it was the reason he was leaving MAP.²²⁷

143. Once Mr Maxwell moved to DPFC, Ms Kendall said he was worried about being labelled a dog.²²⁸ However, in evidence she conceded no one said anything to him about the Chand incident.²²⁹ She stated that his duties often required him to work alone and she was concerned that he would be left to his own thoughts.²³⁰

²²⁴ Submissions on behalf of the family of William Maxwell undated, p 8.

²²⁵ Transcript of evidence, pp 163-4.

²²⁶ Exhibit 5, Statement of Tracey Kirkham dated 14 August 2018, Coronial Brief, p 58.

²²⁷ Transcript of evidence, p 225.

²²⁸ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, pp 91-2.

²²⁹ Transcript of evidence, p 59.

²³⁰ Exhibit 1, Statement of Tracey Kendall dated 24 April 2018, Coronial Brief, pp 91-2.

144. Mr Maxwell told AJ Amos-McLean that staff at DPFC had told him that they knew of the Chand incident.²³¹ Although she conceded in evidence he did not tell her he was being bullied at DPFC but that “*the situation was uncomfortable at times*”.²³²
145. Other evidence suggests that Mr Maxwell was happy with his move to DPFC. The week before Mr Maxwell’s death he told Mr Firth that he was really enjoying it at DPFC and liked the culture and that he was fitting in okay.²³³ Ms Kendall agreed that he seemed to be enjoying it too.²³⁴ In evidence, Mr Selisky said that he saw Mr Maxwell after his move to DPFC and Mr Maxwell was overwhelmingly positive about the role. He stated “*He loved being a senior, he loved being a leader within the place; and certainly, you know, I left there going, you know, upon reflection, on that day, he was pretty happy*”.²³⁵ His manager at DPFC, Tracy Jones also commented that Mr Maxwell “*appeared to be getting on well with his colleagues at the Gatehouse. When I asked him if he enjoyed the DPFC he said that he loved it and wished that he had come over sooner*”.²³⁶
146. The evidence is that Mr Maxwell applied for and obtained a promotion to DPFC as a Senior Prison Officer in October 2017. I am unable to determine his reason for moving, perhaps it was because he needed a change from the toxic environment at MAP, but equally a promotion to Senior Prison Officer also seems a likely reason. I am not satisfied that Mr Maxwell was subjected to any bullying at DPFC. Having considered all the evidence it appears he was enjoying his new role at DPFC.

Giving evidence at the Fair Work Commission

147. During the inquest some of the evidence suggested that Mr Maxwell was concerned and worried about giving evidence about the Chand incident at the Fair Work Commission (FWC).
148. Mr Urquhart spoke to Mr Maxwell in January 2018 about the FWC hearing and he told him things were going really well at DPFC. He told Mr Urquhart he was “*still getting a bit of grief about the incident from staff at MAP but for the most part her was fine*”.²³⁷ Mr Urquhart reminded him that at the end of the day he had done nothing wrong, that

²³¹ Transcript of evidence, p 306.

²³² Transcript of evidence, p 347.

²³³ Transcript of evidence, p 248.

²³⁴ Transcript of evidence, p 60.

²³⁵ Transcript of evidence, p 665.

²³⁶ Exhibit 20, Coronial Brief, p 181.

²³⁷ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, p 34.

Mr Chand was the person who had done the wrong thing and that Mr Maxwell's integrity was intact as he had done the right thing by reporting it in the first place.²³⁸

149. The FWC hearing was originally scheduled for 15 to 17 January 2018 but was subsequently adjourned.²³⁹ On 22 March 2018 Mr Maxwell was informed by email that those dates had been cancelled and that it had been relisted for 30 April and 1 May 2018.²⁴⁰
150. Mr Firth said that he was aware Mr Maxwell was going to give evidence at the FWC and that he was concerned about it because he felt that certain people would judge him in an unfair manner²⁴¹ and that was stressing him out.²⁴² Mr Firth said "*I think he was worried that he was ... going to get into trouble for it or get other people into trouble*".²⁴³ Further, "*he was worried that he was going to be obviously bombarded with a load of questions that he wasn't going to like and I just explained to him that he'd done nothing wrong and that all he had to do was just to be truthful, that the emphasis was on Chand to defend himself and not him*".²⁴⁴ Mr Firth reiterated he had done nothing wrong and to just be truthful like he had been the whole time. He told him to keep his chin up.²⁴⁵
151. AJ Amos-McLean also considered that he was worried about the hearing.²⁴⁶
152. It was submitted by Counsel for Ms Kendall that despite attempts by his friend Mr Firth to reassure him about the forthcoming hearing in the week prior to his death, he continued to appear stressed. Therefore, they submit it is a matter of common sense that this workplace stress, which had by the time of his death been affecting him for more than 14 months, materially contributed to Mr Maxwell's death.²⁴⁷
153. Counsel for Corrections Victoria submitted that consistent with the evidence of Mr Firth any stress that he was experiencing was more likely triggered by him having lied in the

²³⁸ Exhibit 2, Statement of Ross Urquhart dated 17 August 2018, Coronial Brief, pp 34-5.

²³⁹ Exhibit 20, Coronial Brief, p 122.

²⁴⁰ Transcript of evidence, p 528.

²⁴¹ Exhibit 7, Statement of Scott Firth dated 10 August 2018, Coronial Brief, p 86.

²⁴² Transcript of evidence, p 226.

²⁴³ Transcript of evidence, p 236.

²⁴⁴ Transcript of evidence, p 226.

²⁴⁵ Transcript of evidence, p 227.

²⁴⁶ Transcript of evidence, p 347.

²⁴⁷ Submissions on behalf of the family of William Maxwell undated, pp 8-9.

first statement he made and the inevitable challenges he would face as to his credit during the hearing as a result.²⁴⁸

Issues in the Marriage

154. The issue most proximate to Mr Maxwell's death as described earlier in the finding, was a dispute between he and Ms Kendall, four days prior to his death. After Ms Kendall's daughter had discovered an email on an iPad she shared with Mr Maxwell which suggested he had been unfaithful, Ms Kendall asked Mr Maxwell to move out of the family home as she needed some space and time to think.²⁴⁹ However, in evidence, she was adamant that "*at no time did we separate*".²⁵⁰ She said "*he was upset about it but he understood*",²⁵¹ and that she "*was concerned about his state of mind*".²⁵² Ms Kendall said that despite asking him to leave the family home, she believed work was the primary thing on his mind around this time.²⁵³
155. Ms Kendall conceded under cross examination that she and her children had been let down by Mr Maxwell and that he felt a sense of disappointment in himself and his conduct towards her.²⁵⁴ She also admitted in evidence that she sent him a text message a day or so before his death that indicated she was disappointed in him.²⁵⁵ She did not speak to him again. She did not know where he went after he left the house.²⁵⁶ After his death Ms Kendall found two charges on the credit card which indicated he had stayed at a hotel on the Saturday and Sunday night.²⁵⁷
156. On Monday 26 March 2018, Mr Maxwell sent a text to Mr Firth saying "*he'd really screwed up at home*".²⁵⁸ This obviously raised alarm bells and Mr Firth tried to contact Mr Maxwell to find out what was going on and whether he could assist.²⁵⁹ Attempts to contact Mr Maxwell were unsuccessful, which was unusual for him.²⁶⁰

²⁴⁸ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 28.

²⁴⁹ Transcript of evidence, pp 39-40.

²⁵⁰ Transcript of evidence, pp 39.

²⁵¹ Transcript of evidence, pp 39.

²⁵² Transcript of evidence, pp 40.

²⁵³ Transcript of evidence, pp 40.

²⁵⁴ Transcript of evidence, p 66.

²⁵⁵ Transcript of evidence, p 58.

²⁵⁶ Transcript of evidence, p 55.

²⁵⁷ Transcript of evidence, p 55.

²⁵⁸ Exhibit 8, Second statement of Scott Firth dated 10 August 2018, Coronial Brief, p 191.

²⁵⁹ Transcript of evidence, p 246.

²⁶⁰ Transcript of evidence, p 247.

157. In a statement provided to the Court, Rod Wise said “*Mr Maxwell’s suicide was not related to his work, but rather that it would seem to stem from the collapse of his marriage in the preceding week, and him leaving or being forced from the home that he shared with his wife*”.²⁶¹

158. Counsel for Mr Celms and Ms Kelly submitted that “*the fracture in his relationship with Ms Kendall due to her learning of his infidelity looms as the most likely precipitating factor. The fallout was substantial and immediate.*”²⁶² It was submitted the:

temporal connection between the marital fracture and Mr Maxwell’s death cannot be overlooked. It would be against the weight of the evidence to conclude that any bullying Mr Maxwell experienced or perceived was more likely the operative factor in his decision making”.²⁶³

159. Counsel for Corrections Victoria submitted that:

*the decision of Mr Maxwell appears to be an impulsive one, in that it was unexpected to all who knew him. It followed an unprecedented moment of personal crisis in his life. Moreover, the circumstances of Mr Maxwell dying by suicide may not be capable of being understood; there may be facts which contributed, of which we are not aware. In that context, and the lack of proximity of any alleged bullying or harassment to the timing of death, it is not open to conclude that it contributed to Mr Maxwell’s decision to take his life.*²⁶⁴

160. In the months prior to his death, Mr Maxwell had received a promotion and appeared to be enjoying his new workplace and distancing himself from his previous experience at MAP. Despite this, it is apparent that he may also have been harbouring some concerns about giving evidence at the upcoming FWC hearing, where he would no doubt have been challenged about the two versions of his statements.

161. The inquest has ascertained that Mr Maxwell was experiencing a personal crisis in the days proximate to his death. This as well as a number of other factors were present in his life at the time.

²⁶¹ Exhibit 20, Coronial Brief, p 188.10.

²⁶² Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 9.

²⁶³ Submissions on behalf of Kaspars Celms and Nikki Kelly dated 23 February 2021, p 10.

²⁶⁴ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, p 31.

Any prevention opportunities, including policies and procedures undertaken by Corrections Victoria in relation to bullying and harassment

162. It was clear to me throughout the inquest and particularly through the evidence of Ms Westin, Mr Selisky and submissions made by Corrections Victoria that despite evidence of an historical toxic workplace at MAP at the time Mr Maxwell was employed there, the organisation has conducted much soul-searching and self-examination and as a consequence has undergone some significant change.
163. Ms Westin and Mr Selisky both outlined some of the changes that have occurred at Corrections Victoria since Mr Maxwell's death (but not as a consequence to his death) including:
- a) The introduction of the 2019-2022 Cultural Reform Strategy – which is a project that aims to create a workplace free of discrimination, harassment and workplace bullying.
 - b) As part of the Cultural Reform Strategy, Corrections Victoria has implemented a *Drawing the Line* initiative – which recognises the value and importance of comradery but identities boundaries of inappropriate behaviour.
 - c) A Speak Up Guideline has also been developed which encourages staff to speak up about integrity or misconduct concerns.
 - d) The introduction of Brodies Law presentations which were organised by Mr Selisky after learning about the bullying allegations.
 - e) RUOK day is now formally celebrated each year.
 - f) A Staff Support Program has been introduced which creates an opportunity for their peers to raise concerns to peers if they feel uncomfortable raising it with a supervisor.
 - g) The continued existence of the Employee Assistance Program, available to all staff and an improving attitude towards seeking counselling assistance.
 - h) There has been an increase in reporting inappropriate conduct. There is now a new Justice Incident Management System where an injury or accident can be logged including any reports of bullying or harassment which can be done in a confidential setting.

- i) All staff are required to undertake the eLearning training programs, including Respect in the Workplace training.²⁶⁵
164. It was an encouraging development to see a number of witnesses at the inquest acknowledge that Corrections Victoria have made a number of changes in an attempt to create a more positive and improved workplace.
165. Ms Kendall agreed changes have occurred since Mr Maxwell's death.²⁶⁶ Although she did express some views that an initiative like RUOK day was seen as bit of a joke and an excuse for a free coffee and a muffin.²⁶⁷
166. Ms Kirkham agreed the culture has changed²⁶⁸ and there has been "*a genuine shift ... trying to make a more positive and appropriate culture within MAP to ... stamp out old cultural values that had been around since MAP actually opened*".²⁶⁹
167. Mr Firth agreed that management at MAP have emphasised the importance of mental health.²⁷⁰ He said there has been a shift in staffing and the types of officers that are now employed. In his opinion some of old guard type officers have retired and newer recruits have different views.²⁷¹ Mr Urquhart agreed the demographics of staff are changing and there appears to be a lower tolerance for disrespect amongst staff.²⁷²
168. Assistant Commissioner, Ms Westin stated:
- I have a really strong message with every new recruit that comes through the door in relation to the importance of comradery and comradery being something that actually keeps us physically and emotionally safe. But drawing the line, when that results in [needing] somebody to break their integrity to cover the actions of somebody else.*²⁷³
169. According to Mr Urquhart there are now more policies and discussions about what constitutes bullying and how they should have respect in the workplace.²⁷⁴

²⁶⁵ Outline of closing submissions for the Department of Justice and Community Safety (Corrections Victoria) dated 24 February 2021, pp 34-41.

²⁶⁶ Transcript of evidence, p 44

²⁶⁷ Transcript of evidence, p 44.

²⁶⁸ Transcript of evidence, p 167.

²⁶⁹ Transcript of evidence, p 206.

²⁷⁰ Transcript of evidence, p 249.

²⁷¹ Transcript of evidence, p 229.

²⁷² Transcript of evidence, p 96.

²⁷³ Transcript of evidence, p 716.

²⁷⁴ Transcript of evidence, p 97.

170. Mr Blair was “*passionate about ... creating a safe space for people.*”²⁷⁵ He said there have been changes about respect in the workplace and making a safer environment for people to stand up and speak and not to be bystanders. He said the message that is given is that if they see something or hear something, staff should stand up to it.²⁷⁶

171. Mr Selisky spoke about the importance of leadership. He said:

*I think it's the impact the general manager makes. You know, from my experience, you know, they set the scene and certainly the culture about their interaction with their staff, and how they portray what they want of a prison. So, if you've got, you know, effectively, good leadership, I think that can be, you know, handed on, and the directions.”*²⁷⁷

FINDINGS AND CONCLUSIONS

172. Having investigated the death of William Maxwell and having held an Inquest in relation to his death on 1-5 February 2021 and 2 March 2021, at Melbourne, I make the following findings and conclusions, pursuant to section 67(1) of the *Coroners Act 2008*:

- a) that the identity of the deceased was William Maxwell, born on 19 April 1964;
- b) that Mr Maxwell died on 27 March 2018, at Dame Phyllis Frost Centre, from 1(a) *Hanging*;
- c) in the circumstances set out above.

173. I am satisfied that the evidence revealed that there was a toxic culture at MAP at the time Mr Maxwell was employed as a prison officer, particularly when an officer writes up another officer. The culture was fuelled by gossip and innuendo. There was an accepted unwritten code that you should always have another officer's back and never dob on or make an adverse statement about a fellow officer. There was also a strong belief that if you did there would be consequences. I accept that this toxic culture could create a significant health and safety risk.

174. For me to make a finding that Mr Maxwell was subjected to bullying at MAP, I must be comfortably satisfied based on clear and cogent evidence. Facts should be proven on the balance of probabilities and not based on inexact proofs, indefinite testimony or indirect inference. Further, bullying is a criminal offence pursuant to the *Occupational Health*

²⁷⁵ Transcript of evidence, p 131.

²⁷⁶ Transcript of evidence, p 124.

²⁷⁷ Transcript of evidence, p 647.

and Safety Act 2014 (Vic) and according to section 69 of the Coroners Act, I am prohibited from make a finding that someone maybe guilty of an offence.

175. I find that there was ample rumour and innuendo circulating about Mr Maxwell after the Chand incident. There is no doubt there were some staff that had heard the rumours and considered Mr Maxwell had done the wrong thing by changing his statement and by not supporting a colleague. Mr Chand was well liked and Mr Maxwell's change of statement caused a sense of mistrust amongst his colleagues. I accept that Mr Maxwell directly told some prison officer colleagues and friends that he had experienced some backlash from changing his statement. I also acknowledge Mr Maxwell may have perceived some hostile and negative behaviour from some of his colleagues, however he never provided any detail about specific incidents.
176. I acknowledge some witnesses considered they had observed Mr Maxwell had increased his alcohol intake and was smoking more frequently and that he generally did not look well. The evidence did not identify an exact cause of his stress and fell short of establishing a causal connection between any workplace stress and a perceived decline to his health.
177. Whilst Ms Kendall provided examples of what she considered was bullying behaviour, Mr Maxwell did not discuss it with her and would say he was okay. Other witnesses were unable to provide specific details or name potential offenders, other than Mr Harkness and Ms Kelly who both denied that they ostracised or bullied Mr Maxwell and I accept their evidence. It was clear that no one specifically witnessed Mr Maxwell be bullied.
178. I find that Mr Urquhart, Ms Kirkham and Mr Celms were aware that Mr Maxwell may have been experiencing some hostility from staff about the Chand incident. However, no one directly witnessed anyone being hostile or bully Mr Maxwell. Nor did Mr Maxwell provide any detail. Mr Maxwell also never make a formal complaint to Mr Celms, Mr Urquhart, Ms Kirkham or Mr Blair or any other person.
179. None of his colleagues made a formal complaint to any supervisor at MAP that Mr Maxwell was subjected to bullying or harassment either because they either did not witness it occur or he did not provide specific examples. He would also often dismiss any enquiries and say he was fine. I find there was insufficient evidence Mr Maxwell was bullied or harassed whilst he was employed as a Prison Officer at MAP.

180. Mr Maxwell did not leave a note. Therefore, there is no evidence as to his state of mind in the moments before he took his own life. The coronial investigation has conducted a thorough review of the circumstances proximate to his death. As I said at the outset of the inquest, suicide is multifactorial and one can never be certain as to a person's reasons for taking their life. It can also be an impulsive decision made due to a number of life stressors and moments of crisis. The inquest has ascertained that Mr Maxwell was experiencing a personal crisis in the days proximate to his death. This as well as a number of other factors were present in his life at the time and may have factored into his decision to end his life.

181. Given the substantial changes that have occurred at Corrections Victoria I do not propose to make any comments or recommendations in this matter. However, the coronial investigation and inquest have nevertheless provided valuable insight into the corrections setting. I am satisfied that Corrections Victoria will continue to develop and implement various systemic improvements under the leadership of Ms Westin.

182. Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

Ms Tracey Kendall

Corrections Victoria

Mr Kaspars Celms

Ms Nikki Kelly

Interested parties

Detective Leading Senior Constable Paul Barrow, Victoria Police

Signature:



JACQUI HAWKINS
CORONER

Date: 21 May 2021