



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2016 005474

FINDING INTO DEATH WITHOUT INQUEST

Form 37 Rule 63(2)

Section 67 of the Coroners Act 2008

INQUEST INTO THE DEATH OF ELLY WARREN

Findings of: Judge John Cain
State Coroner

Delivered on: 15 December 2023

Delivered at: Coroners Court of Victoria
65 Kavanagh Street, Southbank, Victoria, 3006

Inquest Hearing Dates: 22 to 24 August 2023

Counsel Assisting: Sergeant Ross Treverton instructed by
Ms Abigail Smith, Senior Coroner's Solicitor,
Coroners Court of Victoria

REPRESENTATION

Mr Paul Warren

Mr Daniel McGlone, instructed by Hall and Wilcox

Family of Elly Warren

Mr David and Mrs Nicola Cafarella, self-represented

**Commissioner of Australian Federal
Police**

Mr Andrew Yulie, instructed by the Australian
Government Solicitors Office

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INTRODUCTION

1. Elly Rose Warren (**Elly**) was a passionate individual with a strong drive to do good and contribute to her community. She loved to travel, particularly to the more remote and less well travelled parts of the world, cared about the environment and was a very keen SCUBA diver.
2. Elly was born in Sandringham, Victoria on 24 June 1996, grew up in Bayside and after completing high school decided to travel to pursue her interest in the environment and SCUBA diving.
3. This passion for the environment and SCUBA diving had taken Elly to Africa, Central America, Thailand and Indonesia often working as a volunteer.
4. In October 2016, Elly travelled to Mozambique to work with an eco-education company Underwater Africa. She was based in Tofo, Mozambique. On 8 November 2016, she completed a period of volunteer work for Underwater Africa and had booked a flight back to Melbourne which was to depart on 13 November 2016.
5. Elly was enrolled in a Marine Biology degree at James Cook University Townsville and was due to commence university at the start of 2017.
6. Elly was described by Mrs Nicole Cafarella (Elly's mother) in her coronial impact statement as '*one of the most fearless but fair, caring, loud, opiniated, talkative people that I knew*'.¹ She described Elly's love of travel as an addiction that took her on trips to many parts of the world including Bali, Thailand, Central America, Africa and many parts of Australia all self-funded.²
7. Sadly, four days before her scheduled return to Australia, on 9 November 2016 Elly was found by a local fisherman deceased in an area adjacent to a toilet block near the marketplace at Tofo beach, Mozambique. Elly was age 20 at the time of her death.

¹ Transcript of Inquest Proceeding, 23 August 2023, p 112.

² Ibid.

8. Elly is survived by her mother and stepfather Mrs Nicole and Mr David Cafarella, her father Mr Paul Warren and siblings, Kristy and Sam.
9. The circumstances leading to Elly's death have been the subject of many enquiries and investigation by authorities in Mozambique, the Australian Federal Police (AFP), the Department of Foreign Affairs and Trade (DFAT) and private investigators. In addition, medical examinations were conducted in Mozambique, South Africa and Australia. Mr Warren also travelled to Mozambique to conduct his own inquiries. Despite these extensive investigations, there remains many unanswered questions with respect to Elly's death.

THE CORONIAL INVESTIGATION

10. Elly's death constitutes a '*reportable death*' under the *Coroners Act 2008* (Vic) (**the Act**), as Elly resided in Victoria³ and the death appears to have been unnatural and unexpected.⁴
11. The jurisdiction of the Coroners Court of Victoria is inquisitorial.⁵ The role of the coroner is to independently investigate reportable deaths to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.⁶
12. It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁷ It is not the coroner's role to determine criminal or civil liability arising from the death under investigation,⁸ or to determine disciplinary matters.
13. The expression '*cause of death*' refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
14. For coronial purposes, the phrase '*circumstances in which the death occurred*',⁹ refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.

³ Section 4 of the *Coroners Act 2008* (Vic).

⁴ Section 4(2)(a) of the *Coroners Act 2008* (Vic).

⁵ Section 89(4) of the *Coroners Act 2008* (Vic).

⁶ Preamble and section 67 of the *Coroners Act 2008* (Vic).

⁷ *Keown v Khan* (1999) 1 VR 69.

⁸ Section 69(1) of the *Coroners Act 2008* (Vic).

⁹ Section 67(1)(c) of the *Coroners Act 2008* (Vic).

15. Coroners are also empowered:
 - a) to report to the Attorney-General on a death;¹⁰
 - b) to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice;¹¹ and
 - c) to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.¹²
16. These powers are the vehicles by which the prevention role may be advanced.
17. The investigation of Elly's death was initiated by local police in Tofo, Mozambique. Upon Elly's repatriation to Victoria, at the direction of the coroner, Victoria Police and the AFP were appointed to jointly assist in the coronial investigation.
18. Victoria Police initially assigned Mr King Taylor from the Police Coronial Support Unit (PCSU) to be the Coroner's Investigator in this matter, who upon his retirement was succeeded by Sergeant Ross Treverton. The AFP assigned Federal Agent Kylie Hemiak to assist PCSU with this matter. As Elly's death occurred in Mozambique, assistance was also provided by representatives of the DFAT. Elly's family, including her father, Mr Warren and her mother and stepfather, Mr and Mrs Cafarella have also taken an active interest in the investigation.
19. The Coroner's Investigators conducted inquiries on behalf of the coroner, including taking statements from witnesses – such as family and friends, the forensic pathologists, and some relevant witnesses in Mozambique and South Africa – and submitted a coronial brief of evidence. The coronial brief was then supplemented with additional materials which included supplementary forensic reports, statements and other materials provided by the AFP as well as Investigation Reports prepared by a private investigator engaged by Mr and Mrs Cafarella.

¹⁰ Section 72(1) of the *Coroners Act 2008* (Vic).

¹¹ Section 67(3) of the *Coroners Act 2008* (Vic).

¹² Section 72(2) of the *Coroners Act 2008* (Vic).

20. This finding draws on the totality of the material obtained in the coronial investigation of Elly's death, that is, the court file, the coronial brief, and other additional material that has been obtained in the course of this investigation. I have considered this material together with the transcript of the evidence adduced at inquest, the written submissions of Counsel Assisting, Elly's family and the AFP, as well as the oral submissions of Mr Warren and the AFP.
21. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. 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.¹³
22. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.¹⁴ 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.
23. 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.¹⁵ 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.¹⁶
24. This coronial investigation has involved many complex inquiries involving co-operation from other countries facilitated through the offices of DFAT, the AFP and most recently the support of the Commonwealth Attorney General the Honourable Mark Dreyfus KC MP. I am very grateful for the support and assistance that has been made available to me in this investigation.
25. I would like to thank Sergeant Ross Treverton and Mr King Taylor as well as Federal Agent Kylie Hemiak for their assistance and support in this investigation.

¹³ *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.

¹⁴ (1938) 60 CLR 336.

¹⁵ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

¹⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

26. I also acknowledge and thank Ms Abigail Smith, Senior Coroner's Solicitor at the Coroners Court of Victoria, who has worked diligently and provided me with invaluable assistance throughout the entirety of this investigation.

PROCEDURAL TIMELINE OF INVESTIGATION

27. As this case has taken some time to be completed, I have set out below some of the key events in the investigation.

28. At the time that Elly's death was reported to the Court, the former State Coroner Judge Sarah Hinchey had carriage of this matter. In August 2018, the former Coroner Darren Bracken took over conduct of the case after Judge Hinchey moved to the County Court of Victoria. I assumed carriage of the investigation from Coroner Bracken after he left the Court.

29. In May 2019, Mr Warren requested that an inquest be held into Elly's death. Coroner Bracken held a directions hearing in this matter on 17 December 2020 during which he advised the parties that he had granted Mr Warren's application for an inquest. A further directions hearing was also heard on 2 February 2021.

30. On 10 March 2021, the AFP received a request from Coroner Bracken, asking the AFP to make a formal application to the Mozambique authorities to join their investigation. That request was issued by the AFP Commissioner Kershaw to the Director General, Criminal Investigative Service in Mozambique on 8 April 2021. There has been no response (formal or informal) to this request.

31. I then held a third directions hearing on 20 February 2023. At that directions hearing, I directed that additional material be obtained by the AFP, including an update from Mozambique on the status of the investigation into Elly's death. I also directed that a supplementary report be sought from Forensic Pathologist, Dr Matthew Lynch from the Victorian Institute of Forensic Medicine (VIFM). Following the provision of these additional materials, the coronial brief was updated and circulated to the interested parties.

32. At the directions hearing, I also set the matter down for inquest to commence on 22 August 2023.

INQUEST

33. I convened the Coroners Court of Victoria for the inquest from 22 to 24 August 2023.

SCOPE OF INQUEST

34. On 3 August 2023, the Scope of Inquest was determined pursuant to section 64(b) of the Act, as follows:

The issues to be considered by the State Coroner at inquest into the death of Elly Warren are as follows:

1. *Medical cause of death; and*
 2. *Circumstances of death.*
35. Although not included as an item on the Scope of Inquest, during the course of the coronial investigation, Elly's family raised concerns about the extent and nature of role of the AFP (and other Australian authorities) in investigations into crimes against Australians which occur overseas. Their concerns covered a wide range of issues including:
- a) AFP resources being deployed to assist with the investigation in Mozambique,
 - b) the possibility of a joint investigation conducted by the AFP and Mozambique authorities,
 - c) the apparent failure to make a Mutual Assistance Request (**MAR**),
 - d) information provided by the AFP to Elly's family about the extent and nature of their investigative role, and
 - e) sharing of information relevant to the investigation.
36. These issues were considered at inquest and are discussed in further detail below.

EVIDENCE AT INQUEST

37. At inquest the following witnesses gave evidence and were cross-examined by the interested parties:
- Mr Paul Warren – Elly's father.
 - Ms Jade O'Shea – friend of Elly's in Mozambique who spent time with Elly the day before her death.
 - Commander Andrew Smith – Commander International Engagement, Australian Federal Police.

- Mr Blake Gray – the former Australian Honorary Consul in Mozambique from 2016 and 2020.
- Ms Stacey-Anne Walker – previous employee of the Department of Foreign Affairs and Trade.
- Mr Noel Scruton – former Australian Federal Police Officer (retired).
- Dr Mathew Lynch Pathologist – Forensic Pathologist, Victorian Institute of Forensic Medicine.
- Dr Chris O’Donnell – Forensic Radiologist, Victorian Institute of Forensic Medicine.
- Dr Patricia Klepp – Forensic Pathologist, South Africa.

38. Dr Lynch, Dr O’Donnell and Dr Klepp gave evidence concurrently at inquest.

39. On 30 June 2023, Mr Warren’s representatives requested that I hear evidence from some additional witnesses at inquest. Of note, Mr Warren requested that I hear evidence from Dr Angela Jorge Miguez, the Medical Examiner from Mozambique. I asked the AFP to make enquiries on my behalf to arrange for Dr Miguez’s attendance. These efforts were unsuccessful, and Dr Miguez did not give evidence at inquest. However, their report formed part of the coronial brief of evidence.

40. In respect of the other witnesses proposed by Mr Warren, I determined that I would not be assisted by any evidence they may give. I considered that their evidence would be repetitious of other evidence to be given by other witnesses at inquest and/or that their evidence was not relevant to the issues in scope.

SUBMISSIONS

41. At the conclusion of the inquest, Counsel Assisting, Counsel for the AFP and Mr Warren as well as Mr and Mrs Cafarella made written submissions. Counsel on behalf of Mr Warren also provided submissions in reply. I am grateful to Counsel Assisting and the parties for their submissions.

42. On 11 October 2023, Mr Warren requested the opportunity to make oral submissions in addition to his written submissions. I granted this request and oral submissions from Mr Warren were heard on 11 December 2023.

43. Mr Warren's oral submissions expanded on his written submissions addressing specifically:
- the volume of sand found in Elly's lungs at post-mortem,
 - whether Elly's body had been moved post-mortem,
 - whether a MAR should have been made by the AFP,
 - the ripped black top seen in the photo of Elly's body in situ, and
 - the circumstances in which the photograph of Elly's body in situ was provided to the Mozambique authorities.
44. The AFP through their Counsel responded to some of the matters raised by Mr Warren in his submissions.
45. In writing this finding, I have considered all of the evidence and the submissions of the interested parties.¹⁷
46. I also received four coronial impact statements from Elly's family. Mr Warren and Mr Cafarella and Mrs Cafarella read their coronial impact statements in open court, and I read the coronial impact statement from Elly's sister, Kristy Warren in chambers.
47. I am very grateful to each of the family members for providing me with their statements. These statements enable me to better understand the great loss and pain the family has suffered caused by Elly's passing.

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

IDENTITY OF THE DECEASED, PURSUANT TO SECTION 67(1)(A) OF THE ACT

48. On 22 November 2016, Elly Rose Warren, born 24 June 1996, was identified by Senior Forensic Anthropologist, Soren Blau from VIFM.
49. Identity is not in dispute and requires no further investigation.

MEDICAL CAUSE OF DEATH, PURSUANT TO SECTION 67(1)(B) OF THE ACT

50. During the course of the investigation into Elly's death, there were three medical examinations completed. In forming my conclusions in relation to the cause of death, I have

¹⁷ The absence of reference to any particular aspect of the evidence does not imply that it has not been considered.

considered the reports from each of those examinations, the other forensic material in the coronial brief and the oral evidence given by the forensic witnesses at inquest.

Autopsy in Mozambique

51. Following the discovery of Elly's body in the marketplace in Tofo on 9 November 2016, the Mozambique Police arranged for her body to be transferred to the local hospital in Inhambane. Upon arrival at the hospital in Inhambane, her body was examined by Dr Yusdelaida Hariette Delgado, who certified Elly's death. Elly's body was then transported to Maputo Central Hospital, Forensic Medicine Service where a post-mortem was conducted on 14 November 2016 by Dr Angela Yorge-Miguez (the **Mozambique autopsy**).
52. The Mozambique autopsy report determined the cause of Elly's death as:¹⁸
 - a) mechanical asphyxiation;
 - b) introduction of sandy material, obstruction of the upper and lower respiratory tract by sand; and
 - c) direct suffocation.
53. That report concludes that the medicolegal cause of death is *homicide*.¹⁹ The examination did not include drug, alcohol or sexual assault testing. Elly's body was then embalmed prior to transfer to South Africa.

Autopsy in South Africa

54. Upon arriving in South Africa, Elly's body was held at the Thom Kight funeral home in Johannesburg.
55. Dr Patricia Klepp is a private forensic pathologist in South Africa who acts as a medical referee for cremations. Dr Klepp is a very experienced forensic pathologist who has been practising in the field for over 40 years.
56. On 16 November 2016, Dr Klepp attended the Thom Kight funeral home on private business when she was approached by a staff member, Mr Jeffery Russell who indicated that a post-mortem had been completed on Elly in Mozambique but that no cause of death had been

¹⁸ Exhibit 1, Volume 1, Tab 5, pp 4 – 5.

¹⁹ Exhibit 1, Volume 1, Tab 5, p 5.

found.²⁰ Prior to commencing the autopsy, Dr Klepp obtained signed consent from Mr Warren noting the limitations of the autopsy, namely that the post-mortem examination would not include testing for drugs, prescription or otherwise, or poisons.

57. Later in the process, subsequent approval was sought from Mr Warren for Dr Klepp to obtain toxicology samples, which was confined to testing eye fluid and urine, as no blood was available due to the embalming process.
58. Dr Klepp concluded that the cause of death was '*consistent with aspiration of sand, the cause of which is not determined at post-mortem examination*'.²¹
59. The toxicology results returned a negative result for any legal and/or illicit drugs. Although Dr Klepp had intended to test for alcohol, due to an administrative oversight, this was not done.²²

Autopsy in Australia

60. Elly was then repatriated to Australia to the VIFM. On 22 November 2016, Dr Matthew Lynch performed a third post-mortem examination and provided a written report of his findings dated 5 July 2017. In his report, Dr Lynch noted sand in Elly's airways but was unable to confirm that it was the cause of death. He concluded the cause of death as '*undetermined*'.²³
61. During the course of this investigation, Dr Lynch provided three supplementary reports dated 19 September 2019, 1 November 2019 and 5 June 2023 (**June 2023 report**) (respectively).
62. I have discussed the details of those reports in further detail below.

Supplementary forensic reports

63. On 18 June 2019, Dr Chris O'Donnell, Forensic Radiologist at VIFM, received a verbal request from Dr Lynch to provide a written opinion on the post-mortem radiological imaging of Elly's body that was performed on 20 November 2016 at the time of the third post-mortem examination.

²⁰ Transcript of Inquest Proceeding, 24 August 2023, p 166, lines 13 – 22.

²¹ Exhibit 1, Volume 1, Tab 7, p 3.

²² Transcript of Inquest Proceeding, 24 August 2023, p 177.

²³ Exhibit 1, Volume 1, Tab 9, p 10.

64. Dr O'Donnell made the following findings in his report:²⁴
- a) hyperdense material in the nasopharynx;
 - b) hyperdense material in the bronchial tree of both lungs; and
 - c) no skeletal injury including ribs, spine, facial bones and skull apart from the consequences of autopsy.
65. Dr O'Donnell noted that there was sand detected in the oral cavity at a prior autopsy and that based on his experience the hyperdense material was thought not to be the consequence of previous autopsy or embalming. In that regard, he stated that:
- 'It is reasonable to assume therefore that the hyperdense material seen on CT in the nasopharynx and airways of both lungs is sand' and 'in the absence of the body being in water allowing such sand to be washed into the airways and nasopharynx, it is likely that this sand has been inhaled during life given its distribution in distal lung airways'.*²⁵
66. Following the provision of Dr O'Donnell's report, Dr Lynch was asked to provide a supplementary report addressing issues which arose from the findings in Dr O'Donnell's report, including the presence of hyperdense material in Elly's nasopharynx and bronchial tree. Dr Lynch provided a supplementary report addressing these issues on 19 September 2019.
67. Mr Warren also queried the presence of a tampon which was identified by Dr Klepp at the time of the South African autopsy. On 1 November 2019, Dr Lynch provided a second supplementary report confirming that he had spoken to Dr O'Donnell and that he was unable to identify anything in the post-mortem imaging that might represent a tampon.²⁶
68. Between the date of that report and the directions hearing on 20 February 2023, Mr Warren submitted a number of additional questions to the Court regarding the post-mortem examinations in this matter.

²⁴ Exhibit 1, Volume 1, Tab 10, p 2.

²⁵ Exhibit 1, Volume 1, Tab 10, p 2.

²⁶ Exhibit 1, Volume 1, Tab 12, p 1.

69. Following the directions hearing on 20 February 2023, I asked Dr Lynch to provide an additional supplementary report responding to those questions and to assist in my consideration of a cause of death. That report was provided to the Court on 5 June 2023.

70. In the June 2023 report, Dr Lynch made the following observations:

*Report of Dr Angela Miguez:*²⁷

- Dr Miguez concluded that death was due to *'mechanical asphyxiation with possible mechanism being strangulation or direct suffocation'* the latter being caused by introduction of sandy material obstructing the upper and lower respiratory tract. The medico-legal cause of death (sic) was determined as homicide.
- The relevant findings of the examination included subconjunctival haemorrhage, excoriations of the chin and subcutaneous haemorrhage in the scalp.
- There was no evidence of anogenital injury. Intramuscular haemorrhage was noted in the neck and a large amount of sand within the larynx and trachea.
- The neck examination appears sub-optimal (at least based on the documentation available) as a layered neck dissection and subcutaneous dissection appear not to have been performed. A bloodless dissection of the neck was also not performed, thus introducing the possibility of artefactual haemorrhage in the neck.
- The fact that the bladder was noted to be distended with urine at the time of the second post-mortem examination in South Africa would indicate that the pelvic organs were not adequately examined at the first autopsy.
- It is unclear whether blood for alcohol and samples for toxicology and oral and anogenital swabs were taken at the time of the first post-mortem examination. Such specimens should have been taken.
- No photos appear to have been taken at time of autopsy.

²⁷ Exhibit 1, Volume 1, Tab 13, p 3.

*Report of Dr Patricia Klepp:*²⁸

- Dr Klepp concluded after examination that the cause of death was consistent with aspiration of sand, the cause of which is not determined at post-mortem examination only.
- Toxicological analysis of vitreous humor and urine was undertaken, and no prescription or illicit drugs were identified.
- As the body had been embalmed, measurement of ethanol was considered not possible. With the benefit of hindsight, I think there would have been value in attempting to quantify ethanol in blood and vitreous, notwithstanding the previous embalming. A negative result would provide useful information. A positive result would invite a discussion of possible embalming artefact.
- At the first autopsy in Mozambique a bloodless dissection of the neck was not performed. This means that this may represent an artefact of dissection (so-called Prinsloo-Gordon artefact).
- Whilst Dr Lynch was not critical of the report of Dr Klepp (who has specialist qualifications in forensic pathology, obtained in South Africa, a country with a rich tradition in academic forensic medicine), he noted that he would have postulated a cause of death of ‘undetermined’, and discussed the unusual finding of sand within the airways and its possible contribution to death.
- The optimal time to take samples was at the time of the first autopsy and included blood for alcohol, samples for toxicology as well as samples for sexual. These would have included an oral swab, rectal swab, and vaginal swab and blood for DNA. It is unclear whether the facilities were available for sampling and storage.
- There was no evidence of sexual assault observed but it is possible that the earlier post-mortem examination or the embalming process may have masked any otherwise observable evidence.
- No conclusion can be drawn from the observation that Elly had a distended bladder post-mortem.

²⁸ Exhibit 1, Volume 1, Tab 13, pp 3 – 7.

71. Dr Lynch was also asked to review the photos taken at the time of the South African autopsy and crime scene photos from Tofo, including the photograph of Elly's body in situ in which she is seen wearing a ripped black t-shirt. These photos did not prompt Dr Lynch to change or alter any of his initial opinions.²⁹
72. Dr Lynch also made a number of additional comments, including but not limited to:³⁰
- a tampon was not identified in situ or otherwise at the examination of Elly in Melbourne on 22 November 2016, noting that a tampon was noted as in situ during the autopsy conducted by Dr Klepp in South Africa;
 - embalming can impact subsequent toxicological analysis. Whilst it is possible to measure alcohol after the embalming process, it would not be possible to determine whether any ethyl alcohol (ethanol) was a result of antemortem consumption, post-mortem decomposition or the embalming process;
 - the optimal time for taking appropriate samples for analysis for alcohol and other drugs as well as sample for sexual offences was at the time of the first examination in Mozambique;
 - within the limit of his examination, Dr Lynch saw no evidence of sexual assault. This does not preclude the possibility of assault as such an assault may leave little in the way of injuries to observe. Moreover, the identification of subtle injuries if present may have been masked by the previous post-mortem examinations, the embalming process and the post-mortem interval and attendant decomposition;
 - it is very common in individuals who die with high blood alcohol levels for the bladder to be distended with urine. The presence or absence of urine in a bladder at autopsy is a non-specific finding; and
 - it is not uncommon for the bladder to be distended with urine at the time of post-mortem examination. It is also possible for an individual at the time of death to become incontinent of urine (in which case the bladder would be empty). The presence or absence of urine in the bladder at the time of post-mortem examination is a non-specific forensic sign.

²⁹ Exhibit 1, Volume 1, Tab 13, p 4.

³⁰ Exhibit 1, Volume 1, Tab 13, pp 4 – 7.

73. Dr Lynch did not alter his initial opinion as to the cause of death.

Forensic evidence at inquest

74. Dr Lynch and Dr Klepp gave evidence concurrently in a medical panel at inquest. Dr O'Donnell also joined the medical panel.

75. The medical panel were asked questions about the findings and observations from the forensic material in this matter, including the mechanism and cause of Elly's death.

Toxicology

76. At inquest, both forensic pathologists agreed that the optimal time for toxicological testing and forensic samples (including an oral, anal and vaginal swab) to occur was at the time of the first autopsy in Mozambique.³¹

77. Dr Klepp confirmed that although her examination was not initially to include toxicology, after obtaining consent from Mr Warren, she obtained vitreous humor samples from both of Elly's eyes and a sample of urine. Dr Klepp confirmed that these samples were taken as there was no blood left in Elly's body following the embalming process.³² Dr Klepp also confirmed that the results were negative and that unfortunately the box on the request form was not ticked for ethanol (alcohol).³³ Dr Klepp also commented that if vaginal swabs were taken at the time of the Mozambique autopsy, it would have been done with great difficulty because Elly's tampon was still in situ.³⁴

In relation to the Melbourne autopsy, Dr Lynch stated that because Elly had been previously examined and embalmed there were a limited number of specimens available for toxicological testing. Notwithstanding this, specimens of hair and liver were submitted to VIFM for analysis which returned negative results for common drugs and poisons as well as illicit drugs including cannabinoids and cathinones.³⁵

Physical and sexual assault

³¹ Transcript of Inquest Proceeding, 24 August 2023, p 178, lines 1 – 4; p 180, lines 23 – 28.

³² Transcript of Inquest Proceeding, 24 August 2023, p 176.

³³ Transcript of Inquest Proceeding, 24 August 2023, p 177.

³⁴ Transcript of Inquest Proceeding, 24 August 2023, p 178.

³⁵ Ibid.

78. Dr Klepp and Dr Lynch were asked questions about the possibility of sexual or physical assault upon Elly, including the presence of bruising or abrasions they observed on her face and body.
79. Dr Klepp stated that she observed a couple of puncture abrasions over the nose and her forehead and noted her lips were abraded. The abrasion on the nose she thought was consistent with her face being on the sand. She also noted abrasions on her knees and shins. She stated that this seemed consistent with her landing on the ground face first.³⁶
80. Similarly, Dr Lynch observed the abrasions which he described as non-specific on Elly's nose and upper and lower lips³⁷ and stated that it would not take a lot of force for someone to sustain those abrasions.³⁸ Dr Lynch also stated that due to the post-mortem interval the appearance of the abrasions would have significantly altered at the time of the third autopsy.³⁹
81. In relation to the bruises observed on Elly's abdomen, Dr Lynch stated that to describe the bruises as non-specific would be to '*overstate their specificity*' and that he did not have a view on the mechanism by which they were sustained or how when they were sustained.⁴⁰
82. The forensic pathologists were also asked questions about observations in the Mozambique autopsy report relating to muscular and perivascular haemorrhagic infiltration to the left of Elly's neck. Dr Klepp stated that she did not agree with this observation as the post-mortem in Mozambique had not involved a bloodless dissection of the neck and thus it was impossible to comment on haemorrhaging into the neck. Dr Klepp noted that '*if the correct technique is not adopted...it's actually totally taboo to comment on injury in the neck because you create injury as you dissect*'.⁴¹
83. Dr Klepp also commented that the Mozambique autopsy report mentioned petechiae in the eye. Dr Klepp confirmed that in conducting her examination she did not find petechiae in the eyes which indicated that there '*probably had not been pressure to the neck unless it had*

³⁶ Transcript of Inquest Proceeding, 24 August 2023, p 190, lines 12 – 30.

³⁷ Transcript of Inquest Proceeding, 24 August 2023, p 192, lines 18 – 27.

³⁸ Transcript of Inquest Proceeding, 24 August 2023, p 222, lines 10 – 16.

³⁹ Transcript of Inquest Proceeding, 24 August 2023, p 192, lines 18 – 27.

⁴⁰ Transcript of Inquest Proceeding, 24 August 2023, pp 222 – 223.

⁴¹ Transcript of Inquest Proceeding, 24 August 2023, p 188.

been very effective and very strong' and had that been the case she would have expected to find injury to the neck.⁴²

84. Dr Lynch concurred with the evidence of Dr Klepp.⁴³ Dr Lynch stated that he found the wording in the Mozambique autopsy report to be *'underwhelming'* and that the observation may have been an artefact as opposed to a real injury. Dr Lynch opined that from the autopsy reports from South Africa and Melbourne, in combination with the suboptimal neck examination in Mozambique, his preferred view is that the observation was an artefact as opposed to an injury.⁴⁴
85. In relation to the possibility of Elly having been sexually assaulted prior to, or at the time of her death, Dr Klepp stated that she did not find any evidence of sexual assault, noting that it is a *'very difficult question to answer'* as many adult women do not generally show signs of injuries even if they have been raped when they are sexually active.⁴⁵ Dr Klepp also noted that she would not expect to find injuries unless Elly had fought off her assailant.⁴⁶ Dr Klepp further stated that just because she did not find any injury it does not mean that Elly was not sexually assaulted.⁴⁷ Dr Lynch did not observe any sign of sexual or physical assault.⁴⁸
86. Dr Klepp also commented on the observation of the in-situ tampon at the time of the South African autopsy, in the context of the possibility of Elly having been sexually assaulted. Dr Klepp stated that she was *'gobsmacked'* to find the tampon in-situ and that she would have expected the first pathologist to have retrieved it for analysis. She also commented that it was a *'tampon which does sort of fill a vagina well, so I don't believe that there'd been true...vaginal penetration...because they would not have got past the tampon'*.⁴⁹ Dr Lynch stated that he did not observe a tampon at the time of the Melbourne autopsy.⁵⁰

⁴² Transcript of Inquest Proceeding, 24 August 2023, pp 170 – 171.

⁴³ Transcript of Inquest Proceeding, 24 August 2023, p 174.

⁴⁴ Transcript of Inquest Proceeding, 24 August 2023, pp 205 – 206.

⁴⁵ Transcript of Inquest Proceeding, 24 August 2023, p 189, lines 10 – 20.

⁴⁶ Ibid.

⁴⁷ Transcript of Inquest Proceeding, 24 August 2023, p 190, lines 4 – 6.

⁴⁸ Transcript of Inquest Proceeding, 24 August 2023, pp 191 – 192.

⁴⁹ Transcript of Inquest Proceeding, 24 August 2023, p 191, lines 19 – 27.

⁵⁰ Transcript of Inquest Proceeding, 24 August 2023, p 193.

87. Dr Klepp and Dr Lynch were also asked questions about Elly's bladder being distended with urine and concurred that this observation was not an indication of an assault on Elly's body or being in shock prior to her passing.⁵¹

Presence of sand

88. As outlined above, sand of varying amounts was observed at the time of the three post-mortem examinations. Dr Klepp stated that in her experience, she had '*never, ever...seen as much sand in the oral cavity, the trachea and the bronchi*' as she found in Elly. Dr Klepp further stated that '*for the sand to get down as far as it had, [she] did believe that [Elly] must have been breathing at the time that it was inhaled*' to such a degree that Dr Klepp formulated the cause of death as aspiration of sand which would have created a mechanical obstruction.⁵²
89. At inquest, Mr Blake Gray gave evidence to the effect that a local resident had told him that when Elly's body was found, or shortly thereafter, her mouth was packed with sand.⁵³ Dr Klepp agreed that this was an accurate description of what she observed noting that '*her mouth was absolutely chock-a-block, as was her trachea*'.⁵⁴ Dr Klepp also stated that through her examination process much of the sand would have been removed so that she could complete her examination resulting in significantly less sand in the mouth, throat and lungs when Dr Lynch conducted his examination.⁵⁵
90. Dr Klepp also acknowledged that there was some criticism that sand had not been collected in Elly's case, which she had never had to do previously. Dr Klepp also acknowledged that '*it was a good point*' as to whether the sand came from where Elly was found outside the toilet block with the rather hard-packed surface or elsewhere.⁵⁶
91. When Dr Lynch was asked about his findings in relation to the presence of sand, he confirmed that he specifically commented that there was a small amount of residual sand and that he was not surprised that there was not a large amount of sand remaining after the

⁵¹ Transcript of Inquest Proceeding, 24 August 2023, pp 186 – 188.

⁵² Transcript of Inquest Proceeding, 24 August 2023, p 181.

⁵³ Transcript of Inquest Proceeding, 24 August 2023, pp 118 – 119.

⁵⁴ Transcript of Inquest Proceeding, 24 August 2023, p 182, lines 3 – 9.

⁵⁵ Transcript of Inquest Proceeding, 24 August 2023, p 182, lines 10 – 12, 25 – 31.

⁵⁶ Transcript of Inquest Proceeding, 24 August 2023, p 182, lines 13 – 22.

first and second autopsies.⁵⁷ Dr Lynch also conceded that when he saw the small amount of sand in the airways, he did not think to take a sample.⁵⁸

92. Dr O'Donnell also gave evidence about the findings from the post-mortem CT scan. Whilst he could not explicitly say that he saw sand in the imaging, he did see hyperdense, white material that has an appearance that is certainly consistent with sand. He noted that the material was seen in the back of the nose, and in the airways of both lungs, all the way down to the smaller bronchi within the lungs.⁵⁹

Cause and mechanism of death

93. The Mozambique medical examiner found the cause of death to be '*abundant sandy content in the airways*'.⁶⁰ Similarly, in her report, Dr Klepp indicated that the cause of death was '*consistent with aspiration of sand, the cause of which is undetermined*'.⁶¹
94. Dr Klepp gave evidence at inquest to the effect that it was clear that Elly had aspirated a large amount of sand which caused a mechanical obstruction and that she was alive at the time she breathed it in.⁶² In response, Dr Lynch stated '*I don't think that Dr Klepp and I are actually too far apart ...*'⁶³ noting that he concluded the cause of death to be undetermined as he was unable to identify a specific pathological or toxicological process that could explain Elly's death.⁶⁴
95. Dr Lynch commented that the presence of sand in Elly's airway invited the question of why the sand was in her airways which in turn invited the subsequent question of whether Elly breathed it in and why she was in the position to do so. Dr Lynch suggested three possibilities, including that:⁶⁵

- Elly was intoxicated, but there was no evidence of this as the drug screen was negative,

⁵⁷ Transcript of Inquest Proceeding, 24 August 2023, p 183.

⁵⁸ Transcript of Inquest Proceeding, 24 August 2023, pp 185 – 186.

⁵⁹ Transcript of Inquest Proceeding, 24 August 2023, pp 184 – 185.

⁶⁰ Exhibit 1, Volume 1, Tab 6, p 5.

⁶¹ Exhibit 1, Volume 1, Tab 7, p 3.

⁶² Transcript of Inquest Proceeding, 24 August 2023, pp 193 – 194.

⁶³ Transcript of Inquest Proceeding, 24 August 2023, p 194.

⁶⁴ Transcript of Inquest Proceeding, 24 August 2023, p 195.

⁶⁵ Ibid.

- Elly was unconscious for some other reason, blunt head trauma, or she suffered a cardiac event, and was unconscious face down in the sand, or
 - Elly was face down in the sand and someone was holding her head down under the sand.
96. Dr Lynch stated that he could not elevate one of these scenarios to the ‘*italicised cause of death*’.⁶⁶ Dr Lynch did agree that there was sand within Elly’s airways, suggesting that around the time of her death she was breathing and there was particulate material that entered her airways, and it may have contributed to her death.
97. Dr O’Donnell also gave evidence to the effect that he had seen one other scenario where there was a similar appearance of sand found in the airways that being when bodies are found in the water in coastal situations where there is waves and sand or in fast moving water ways.⁶⁷ In those cases, Dr O’Donnell stated that there can be ‘*quite marked filling of the airways by...sand-like material*’.⁶⁸ Dr O’Donnell also commented that it may be a remote possibility (and that he was not saying that it did happen) that Elly was in the water at some stage and then moved to the position that she was found in.⁶⁹
98. In relation to the mechanism of death, the Mozambique autopsy report describes Elly’s death as a violent death with two mechanisms of asphyxia that being choking and direct suffocation.
99. Dr Klepp stated that Elly’s airways were compromised by a mechanical obstruction by sand.⁷⁰ Dr Lynch, noting the finding by Dr Klepp in her examination of a large amount of sand in the upper airway, agreed that this would cause another impediment to breathing in the form of upper airway obstruction.⁷¹ Dr Klepp and Dr Lynch both agreed that they are unable to settle on a mechanism of death and could not confirm whether the death was accidental or homicidal.
100. In reaching my conclusions with respect to the cause of Elly’s death, I acknowledge that there are gaps in the evidence which relate to the cause of death which have not been

⁶⁶ Transcript of Inquest Proceeding, 24 August 2023, p 195.

⁶⁷ Transcript of Inquest Proceeding, 24 August 2023, p 201.

⁶⁸ Transcript of Inquest Proceeding, 24 August 2023, pp 201 – 202.

⁶⁹ Transcript of Inquest Proceeding, 24 August 2023, p 201.

⁷⁰ Transcript of Inquest Proceeding, 24 August 2023, p 198.

⁷¹ Transcript of Inquest Proceeding, 24 August 2023, p 199.

resolved in this coronial investigation including the absence of toxicological forensic samples from the autopsies in Mozambique and South Africa. I also acknowledge whilst Dr Klepp and Dr Lynch are critical of the technique used by the Mozambique medical examiner, there remains a question about the observation of the bruising observed on Elly's neck.

101. Both Dr Klepp and Dr Lynch in their post-mortem examinations observed abrasions to Elly's knees, face and nose. Both forensic pathologists could only speculate about the likely cause of these injuries. The possibility that these injuries were caused or contributed to by the actions of another person or persons is not excluded by either of the forensic pathologists and they were unable to reach a conclusion about this from their examinations of Elly.
102. The post-mortem examinations also provide no indication as to where Elly died, including whether it was where she was found or if she been moved to that location at some time after her death. The evidence from the medical examinations provides no assistance in addressing these questions.
103. Having considered the reports of Dr Klepp, Dr Lynch and Dr O'Donnell and their oral evidence at inquest, I accept the opinion of Dr Klepp that the cause of death is '*Consistent with aspiration of sand the cause of which is not determined at post-mortem examination*' over the opinion of Dr Lynch that the cause of death was undetermined.

CIRCUMSTANCES OF THE DEATH, PURSUANT TO SECTION 67(1)(C) OF THE ACT

104. In September 2016, Elly travelled to Tofo in Mozambique to volunteer with Underwater Africa, an eco-education organisation which would assist her in gaining some experience before returning to Australia to complete a degree in Marine Biology at James Cook University in Townsville. Whilst in Tofo, Elly resided at Casa Barry, a popular hostel and bar. Casa Barry owns and administers Underwater Africa, and the volunteers typically stay at Casa Barry.
105. When Elly arrived in Tofo she became friends with Ms Jade O'Shea (**Jade**) another traveller who was working and living at Casa Barry.⁷²
106. In her statement, Jade described Tofo as a safe place for expats to visit and stay. Jade never experienced or witnessed a crime while living in Tofo and considered the town to have a

⁷² Exhibit 1, Volume 2, Tab 34, p 1.

very easy-going lifestyle. She felt very welcomed by the local people when she arrived there. The drinking culture she described as low key and although drug taking was illegal there was a tolerance of marijuana smoking.⁷³

107. Jade described Elly as outgoing, loud, full of energy and passionate about her volunteer work. She stated that Elly was chatty and friendly.⁷⁴
108. Jade also stated that she only saw Elly consume a few beers during the week and that she did not like being hungover particularly when she was diving the next day.⁷⁵ According to Jade, their group of friends would drink more than usual on a Friday night.⁷⁶
109. In early November 2016, Elly completed her time as a volunteer and had a scheduled return flight to Australia booked for 13 November 2016.
110. Approximately a week before her death, Elly was involved in an altercation with another resident at Casa Barry. Following this incident, Elly was banned from consuming alcohol at Casa Barry, and as it was her last few days in Tofo she decided to move to Periango Backpackers located about a 10-minute walk from Casa Barry.

Events immediately proximate to death

111. At approximately 6.30pm on Tuesday 8 November 2016, a group of Elly's friends, Jessie White (**Jessie**), Jacob Dovei (**Jake**), Sina Khreiker (**Sina**) and Jade gathered at Casa Barry. Although others in the group were consuming alcohol, it appears that Elly was only drinking water. At inquest, Jade referred to the last known photo of Elly that was taken of herself, Elly, Sina and Jessie sitting on the balcony at Casa Barry which shows Elly with a bottle of water.⁷⁷
112. The group left Casa Barry and travelled in Jake's car to Periango Backpackers to drop Elly at her new accommodation with her belongings. When they arrived at Periango Backpackers, it was agreed that Elly would move into her accommodation and meet the others at the market when she was ready. They decided to go to Victor's Bar to wait for Elly. Victor's Bar was owned by an expat and was located near the marketplace at Tofo beach.

⁷³ Exhibit 1, Volume 2, Tab 34, pp 2 – 3.

⁷⁴ Exhibit 1, Volume 2, Tab 34, p 4.

⁷⁵ Transcript of Inquest Proceeding, 22 August 2023, p 21.

⁷⁶ Ibid.

⁷⁷ Exhibit 2.

113. Elly arrived within half an hour and joined her friends at Victor's Bar. In her evidence at inquest, Jade recalled that they were all drinking beer and stated that Elly '*might've had one or two. They were quite big beers though, where the standard beer in Mozambique is a 500 ml one. So, um there pretty big, so she probably had one.*'⁷⁸
114. The group then decided to go to a friend's house named 'Fadouk' for some more drinks. Jade recalled that the group had cocktails, although there were only enough ingredients for one cocktail each because there were more people at the house than had been originally expected. Jade stated that there was wine and beer, but the power went out (apparently not uncommon in Tofo) so the beer was warm. Jade estimated that Elly may have had one cocktail and is unlikely to have had anything else to drink as she did not drink wine and the beer was warm. In her evidence at inquest, Jade stated that Elly '*...definitely wasn't drunk, I remember that much. She was completely coherent and sober.*'⁷⁹
115. The group had been at Fadouk's house for around an hour when Elly told Jessie that she was going to leave and walk back to the market. It was suggested to Elly that she wait, and they would all go back to the market together. Elly waited a short time to see if they would all leave together but as they were not ready to go Elly decided to walk back to the market on her own.
116. A short time later, Jade, Jessie, Jake and another friend Omphile decided to leave Fadouk's house and drove back to Casa Barry's to pick up their takeaway food (at Casa Barry their meals were included in the accommodation arrangements). They then travelled to Victor's Bar. When they arrived, they did not see Elly but were told by an expat, that Elly had come back to Victor's bar and had been looking for them.⁸⁰ Jade recalled that Victor's Bar was crowded by Tofo standards which meant that the bar stools were full.
117. Due to this, the group bought some drinks and moved to sit on the sand a few meters away from the bar. Whilst they were sitting on the sand, Elly walked round the corner. One of the group members then asked Elly where she had been, and Elly replied '*looking for you*' before she walked towards Victor's Bar.⁸¹ At inquest, Jade stated that she assumed that Elly

⁷⁸ Transcript of Inquest Proceeding, 22 August 2023, pp 32 – 33.

⁷⁹ Transcript of Inquest Proceeding, 22 August 2023, p 34.

⁸⁰ Exhibit 1, Volume 2, Tab 34, p 7.

⁸¹ Exhibit 1, Volume 2, Tab 34, p 8.

would get a drink from the bar and come back and sit with the group on the sand.⁸² Jade also gave evidence to the effect that Elly appeared to be normal and that there were no signs of bruises and that she did not recall her clothing being ripped.⁸³ That was the last time that anybody in the group saw Elly alive.

118. The group was joined for a short time by the owner of Victor's Bar. Jade recalled that the group spoke about Elly and assumed that she had gone home to the Periango Backpackers.⁸⁴ Jade estimated that this was at around 11.00pm or 11.30pm. The group remained on the sand near Victor's Bar until closing at around midnight.
119. At around 12.30am on 9 November 2016, the group left the area in Jake's car who drove them all back to Casa Barry. Before leaving the area, Jade went to the toilet block adjacent to the in the marketplace at Tofo beach. The toilet block is locked overnight however it is common practice when the toilet block is locked to urinate at the back of the toilet block. She did not see anybody in the area around the toilet block.⁸⁵
120. The coronial brief contains a short statement from a security guard 'Rafael', who was working night shift at Hotel Tofo Mar. Rafael stated that he was stationed at the front of Hotel Tofo Mar on the street leading from the marketplace to Periango Backpackers. He recalled seeing Elly walking towards Periango Backpackers at approximately 2.00am on 9 November 2016.
121. Rafael stated that she was alone and appeared to be heavily intoxicated. He further stated that a few minutes later he saw Elly coming back from Periango Backpackers. He did not see her again and cannot recall what she was wearing as it was dark. The security guard claims that although he did not know Elly by name, he did know her by site as she had attended a funeral at his family home, and she was known round the Tofo marketplace.⁸⁶
122. In her evidence, Jade described the Tofo marketplace as very dark at night particularly when the shops and bars had closed for the evening.⁸⁷ Rafael did not give evidence at the inquest, and it is not possible to determine his level of certainty that it was in fact Elly that he saw

⁸² Transcript of Inquest Proceeding, 22 August 2023, pp 37 – 38.

⁸³ Transcript of Inquest Proceeding, 22 August 2023, p 56.

⁸⁴ Exhibit 1, Volume 2, Tab 34, p 8.

⁸⁵ Transcript of Inquest Proceeding, 22 August 2023, p 40; Exhibit 1, Volume 2, Tab 34, p 8.

⁸⁶ Exhibit 1, Volume 2, Tab 33.

⁸⁷ Transcript of Inquest Proceeding, 22 August 2023, p 16.

and not some other person. There was also no opportunity to ask him how he formed the opinion that the person he saw was intoxicated. The evidence of this issue is inconclusive.

123. At around 5:00am that morning, Elly was found by a local fisherman deceased in an area adjacent to a toilet block near the marketplace at Tofo beach.

FURTHER INVESTIGATIONS

POLICE INVESTIGATION IN MOZAMBIQUE

124. Elly's death was reported to local police in Tofo and they commenced an investigation. The Operational Patrol team of the then Criminal Investigation Police (**CIP**) headed by Mr Jorge Miguel Cudzi, Criminal Investigation Inspector and Head of the Department of Investigation and Prosecution (**Inspector Cudzi**) attended the scene to inspect and examine the location.⁸⁸

125. The evidence suggests that the CIP observed Elly to be lying down on her stomach with her upper limbs folded in a "V" shape below her face. Her lower limbs were said to be stretched out and half open, with her underwear down to her knees, she was wearing a black blouse and her nostrils and mouth on the ground facing the southeast.⁸⁹

126. From this examination, the CIP technical team concluded that Elly's death was due to asphyxia but given the complexity of the case it was determined that they would proceed with an autopsy for the purpose of determining the cause of death.⁹⁰

127. In this regard, a report from the National Service of Criminal Investigation (**SERNIC**) states that the initial steps in the investigation undertaken by local police were as follows:

- assigned officers to isolate and protect the scene,
- inspected the scene,
- transported Elly's body to the morgue located at Provincial Hospital of Inhambane, and
- on 11 November 2016, Elly's body was transported to the morgue of the Maputo Central Hospital where the autopsy could occur.⁹¹

⁸⁸ Exhibit 1, Volume 2, Tab 44, p 2.

⁸⁹ Exhibit 1, Volume 2, Tab 44, p 4.

⁹⁰ Ibid.

128. On 30 November 2016, a team of investigators from the Provincial Director of SERNIC went to Tofo to monitor the investigations that were being conducted.⁹²
129. The SERNIC report provides a short summary of the information obtained through the investigation of Elly's known movements prior to her death as well as a summary of the autopsy report from the Forensic Medicine in Maputo. The SERNIC report concludes that *'the case is a homicide and is currently in the judicial inquiry stage'*.⁹³
130. In April 2017, Chief Inspector Januario Cumbane, Director of Investigations SERNIC took over the role of primary investigator.⁹⁴
131. I also note that Dr Gracio Adbula of GCS Lawyers and Consultants was appointed as the next of kin advocate in Mozambique.

INVOLVEMENT OF THE AUSTRALIAN GOVERNMENT

132. Following the report of Elly's death to the Australian Government, steps were taken to gather information and provide assistance to Elly's family.
133. On Thursday 10 November 2016, Mr Blake Gray the former Australian Honorary Consul in Mozambique was contacted by a colleague from the Australian High Commission in Pretoria, South Africa who notified him of the death of an Australian citizen in Tofo. As Australia does not have a full-time presence in Mozambique, Mr Gray was asked to assist in obtaining further information.⁹⁵
134. Mr Gray was in the Australian Honorary Consul role between 2016 and 2020 in a voluntary capacity. His role mainly involved assisting Australians with passport and visa renewal documentation, supporting official Australian Government visits and provided input for the DFAT Smart Traveller guide annually. DFAT provided a small stipend to Mr Gray. He reported to the DFAT Assistant Secretary based in Pretoria.⁹⁶
135. On 12 November 2016, Mr Gray drove to Tofo and stayed overnight to gather information about the circumstances of Elly's death. He spoke to a number of people in an effort to

⁹¹ Exhibit 1, Volume 2, Tab 42.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Exhibit 1, Volume 2, Tab 51.

⁹⁵ Exhibit 1, Volume 2, Tab 25, p 1.

⁹⁶ Ibid.

obtain information, including a local fisherman who had discovered Elly's body and had taken a photo at the time. This photo could not be shared electronically so he took a photo of the photo on his phone. This relatively poor-quality photo was provided to the High Commission in Pretoria by Mr Gray.⁹⁷

136. Whilst in Tofo, Mr Gray also spoke with Steve from Peri-Peri divers who was one of the people that was at the scene shortly after Elly was discovered. He had initially identified her.
137. Mr Gray recalled that Steve told him *'that the sand in Elly's mouth seemed to be very pact'*⁹⁸ and that it was his opinion that Elly's death was not an accident as the sand pact in Elly's mouth was not consistent with an accident. In his evidence at inquest, Mr Gray stated that there were a lot of strong differing opinions about what had happened to Elly with some people saying that it was an accident and others convinced it was not. Others suggested that she may have been abused after she collapsed.⁹⁹ Mr Gray confirmed that he did not hear any reports of Elly's body being moved until he read that information in media reports.¹⁰⁰
138. Mr Gray reported the information that he had obtained to his colleagues at the Australian High Commission in Pretoria which included a list of individuals that he would have liked to have spoken to, such as those that were first on the scene. Mr Gray subsequently left Tofo and did not have any further involvement in Elly's case.
139. On 10 November 2016, Detective Superintendent Noel Scruton (**DS Scruton**), AFP Senior Liaison Officer (**SLO**) attended a briefing with Australia Head of Mission and DFAT Consular Operations Officer in Pretoria. Following the briefing, the Mozambique SLO in Pretoria informed DS Scruton that without approval of the Mozambique Police Director of the Criminal Investigation Division (**CID**), the Mozambique authorities would not engage with the AFP. DS Scruton subsequently made arrangements for this request and the approval process to commence.¹⁰¹

⁹⁷ Exhibit 1, Volume 2, Tab 25, p 1.

⁹⁸ Transcript of Inquest Proceeding, 23 August 2023, p 118.

⁹⁹ Exhibit 1, Volume 2, Tab 25, p 4.

¹⁰⁰ Transcript of Inquest Proceeding, 23 August 2023, p 126.

¹⁰¹ Exhibit 1, Volume 2, Tab 18, pp 1 – 2.

140. Between 11 November 2016 and 17 November 2016, several attempts were made to engage with the Mozambique authorities with the assistance of the Australian Head of Mission in Pretoria.¹⁰²
141. On 17 November 2016, in the company of Ms Stacey-Ann Walker, DS Scruton travelled to Mozambique. Ms Walker was at the time the First Secretary to the Australian High Commission and her role was to act as interpreter for DS Scruton. Upon arriving in Mozambique, further attempts to meet with the Mozambique Police Director of the CID were unsuccessful. DS Scruton and Ms Walker subsequently travelled to Tofo and met with the Provincial Director of Health in Inhambane, Mr Naftal Mario Matusse before attending the site where Elly had been located. Whilst at the location, they took a series of photographs and DS Scruton also took sand samples from the area.¹⁰³
142. In the material that Mr Warren has provided to the Court and in his submissions, he raised the possibility that Elly may have been moved to the toilet block near the marketplace where she was found post-mortem. He suggests that the sand that Elly had aspirated was a different texture and consistency to the sand in the market area. At inquest, DS Scruton stated that there was no guarantee that the sand had not been replaced or disturbed between when Elly was found and when he took the samples.¹⁰⁴
143. On 18 November 2016, Ms Walker and DS Scruton attended a meeting in Inhambane at the office of Mr Matusse, who introduced the pair to the female doctor that had initially examined Elly and confirmed her death, Dr Delgado. That afternoon, DS Scruton met with the Head Prosecutor of Inhambane Province, Morals Baubo Nhanala who provided a briefing on the activity of the Mozambique authorities since the time of Elly's death. They were joined at the meeting by Inspector Cudzi. DS Scruton offered assistance to the Mozambique authorities and organised to have Elly's belongings located and returned to her family.¹⁰⁵
144. On 19 November 2016, DS Scruton and Ms Walker returned to Pretoria. On 3 February 2017, DS Scruton received a copy of the Mozambique autopsy report via email directly from the Mozambique Police. A copy was subsequently provided to the AFP.

¹⁰² Exhibit 1, Volume 2, Tab 18, pp 1 – 2.

¹⁰³ Exhibit 1, Volume 2, Tab 18, p 2.

¹⁰⁴ Transcript of Inquest Proceeding, 24 August 2023, p 154.

¹⁰⁵ Exhibit 1, Volume 2, Tab 18, p 2.

145. On 25 November 2016, a clear version of the photograph of the crime scene taken by the local fisherman was provided to the AFP by DFAT. In a letter to the Court dated 16 June 2023, the Australian Government Solicitor's office stated that DFAT advised the AFP that the fisherman had sent a clear version to Mr Gray, who then subsequently forwarded it to the High Commission in Pretoria. The letter also states that DFAT directly emailed the image to PCSU at the Court on the same date.¹⁰⁶
146. On 8 August 2017, DS Scruton returned to Mozambique to attempt to obtain additional evidence from the Mozambique authorities. In his statement, DS Scruton stated that he met with Mr Nhanala at the local police station who told him that whilst he had committed resources to the investigation the matter was still an active police investigation and that enquiries should be made with the local police. After the meeting, DS Scruton made arrangements to meet with Inspector Cudzi the following day in Inhambane.
147. DS Scruton stated that at the meeting with Inspector Cudzi an agreement was made for the return of the remainder of Elly's belongings, and he requested copies of the crime scene photographs taken by the Mozambique authorities. DS Scruton was advised that the crime scene photographs were on a mobile phone which was broken, and he supplied a sum of local currency for the purpose of repairing the phone to access the photographs. Elly's remaining belongings were subsequently provided to the AFP before being returned to her family.
148. At that meeting, the evidence also suggests that there was a discussion between DS Scruton and Inspector Cudzi about the possibility that Elly's body may have been moved post-mortem. This information is included in the AFP Action Sheet contained in the coronial brief.¹⁰⁷ Although the possibility was canvassed, there was no evidence at that time or subsequently that elevates this beyond being a possibility. The evidence on this issue is inconclusive but I cannot exclude the possibility that Elly was moved post-mortem.
149. In March 2021, Coroner Bracken requested that the AFP make a formal application to the Mozambique authorities to engage in a joint investigation into Elly's death. The AFP sent correspondence to SERNIC on 8 April 2021 making that request. On 10 April 2021, SERNIC acknowledged receipt of the letter and some months later advised that the letter

¹⁰⁶ Exhibit 1, Volume 2, Tab 53, p 2.

¹⁰⁷ Exhibit 1, Volume 2, Tab 32, p 113.

was with their legal department. The AFP made many attempts to follow up with SERNIC, but to date, the AFP has not received any response beyond an acknowledgement of receipt.¹⁰⁸

INTERACTIONS WITH MOZAMBIQUE AUTHORITIES

150. To date, the AFP and the Court have not been provided with a copy of or been given access to any material held by SERNIC pertaining to Elly's case. During the course of the investigation, the AFP and DFAT have made numerous enquiries with SERNIC to ascertain if a copy of the investigation brief could be provided, however to date nothing has been forthcoming.
151. On the date of the last directions hearing on 20 February 2023, I asked the AFP to obtain an update on the status of the Mozambique investigation prior to the date of the inquest.
152. In response to my request, the AFP with the assistance of Commonwealth Attorney General Mark Dreyfus MP KC arranged to meet with the Mozambique Deputy Attorney General and the SERNIC Director from Inhambane. This meeting took place in Mozambique on 23 May 2023.
153. On 19 June 2023, I was provided with a summary of the outcomes of that meeting by letter from the AFP, as follows:

'During [the meeting], the Mozambique representatives provided advice not previously shared with the AFP, including the following:

- *They have determined Elly Warren was a victim of homicide, but Mozambican authorities have been unable to determine the perpetrator(s); the criminal process remains on hold until the perpetrator(s) is/are established, and the process can be re-opened if new material is identified;*
- *The matter is now with the Instructing Judge to make a determination of the future course of the matter and the three options available to the Instructing Judge are; to agree with SERNIC and the Attorney-General's Office and close the matter, instruct further investigations to be conducted, or to initiate a prosecution;*

¹⁰⁸ Exhibit 1, Volume 2, Tab 52.

- *The Instructing Judge's view on sufficiency of evidence will determine whether the matter moves from its current status to the next phase;*
- *No timeframes were provided; it is entirely up to the Instructing Judge;*
- *As the matter is still in the 'instruction phase', under the Mozambican legal framework no part of the file can be provided or published. The only permitted access to the investigation file is by the Attorney General's Office, SERNIC, the Instructing Judge & the appointed NOK Advocate (on representation);*
- *The Deputy Attorney-General advised that the only way that the Coronial Inquiry in Australia could officially acquire the file would be through a Mutual Assistance Request once the instruction phase is completed and the secrecy provisions are relaxed;*
- *Dr Gracio Abdula, as the appointed [next of kin] Advocate has a right to review the investigation file and an opportunity to make representations to the Instructing Judge. The instructing Judge will then make a decision on future conduct.*¹⁰⁹

154. The Instructing Judge then listed the matter for hearing on 12 July 2023. This hearing was later adjourned to 17 July 2023. In preparation for the hearing various questions were provided to Dr Gracio Abdula, the appointed next of kin advocate by the AFP on behalf of Mr and Mrs Cafarella. The answers to the questions were intended to assist in understanding the next steps in the Mozambique investigation into Elly's death. As of the date of this finding, no additional information has been sought or provided by the Mozambique authorities.

155. Without knowing what is held by the Instructing Judge and investigating police in Mozambique, I do not know if there is an identified person or persons of interest, an active investigation underway or whether all possible leads have been pursued and the investigation is stalled. I do not consider that it would be appropriate to speculate about these issues. I accept that these are matters for the Instructing Judge in Mozambique and that he will consider them fully.

156. As we pass the seventh anniversary of Elly's death, there is strong desire to conclude the matter to provide some closure for Elly's family. I make no criticism of the Instructing

¹⁰⁹ Exhibit 1, Volume 2, Tab 54.

Judge in Mozambique and only urge upon him the strong desire of the family to reach some conclusion of the investigation as soon as possible.

CONCLUSIONS REGARDING CIRCUMSTANCES AND MEDICAL CAUSE OF DEATH

157. Having reviewed all the available evidence, including the coronial brief and the evidence at the inquest as well as having reviewed the submissions for the interested parties and Counsel Assisting, I have reached the following conclusions in relation to the circumstances of Elly's death:

- a) Elly may have consumed 2 or 3 alcoholic drinks (one or two beers and a cocktail) over a number of hours on the evening of 8 November 2016, but was unlikely to have been intoxicated.
- b) The toxicology reports showed no indication of Elly having consumed prescription medication or illicit substances on that evening.
- c) Elly aspirated a significant amount of sand that was the cause of her death.
- d) The available evidence does not enable me to determine the precise circumstances that led to Elly aspirating the sand that led to her death.
- e) On the available evidence, I am unable to determine whether Elly aspirated the sand at the location adjacent to the toilet block near the marketplace in Tofo beach, where she was found on the morning of 9 November 2016, or whether she aspirated the sand at some other location and was moved post-mortem.
- f) On the available evidence, I cannot determine whether Elly was sexually assaulted, but the possibility cannot be excluded.
- g) On the available evidence, it is possible that a person or persons unknown caused or contributed to Elly's death.

FINDINGS

Pursuant to section 67(1) of the Act, I make the following findings:

- a) the identity of the deceased was Elly Rose Warren, born 24 June 1996;
- b) the death occurred on 9 November 2016 in Tofo, Mozambique, from aspiration of sand;
- c) the death occurred in circumstances set out above;

- d) the toxicology reports do not show evidence of prescription or illicit drug use by Elly;
- e) Elly was in all likelihood not intoxicated on the evening of 8 November 2016;
- f) it is possible that Elly was moved post-mortem to the location adjacent to the toilet block near the marketplace at Tofo beach where she was found on the morning of 9 November 2016; and
- g) it is possible that a person or persons unknown caused or contributed to Elly's death.

COMMENTS

Pursuant to section 67(3) of the Act, I make the following comments connected with the death.

158. I have already summarised the actions that were taken by Australian authorities to assist with the investigation into Elly's death. In summary, that has involved assisting in the coronial investigation, engaging with Elly's family following her death, facilitating the return of Elly's property, attempted engagement with SERNIC (and other Mozambique authorities) and travelling to Mozambique on a number of occasions. The AFP have also been assisted in its activities by DFAT officials in the region, who travelled to Mozambique and/or communicated with Mozambique officials in respect of this case.
159. During the course of the coronial investigation, Elly's family raised concerns about the role of Australian authorities (particularly the AFP) in investigating crimes against Australian citizens overseas. I received written affidavit material and submissions from the AFP and heard oral evidence from Commander Smith at inquest addressing these issues. I have summarised that evidence below.

THE ROLE OF THE AFP IN INVESTIGATING CRIMES AGAINST AUSTRALIANS OVERSEAS

160. The role of AFP is to enforce Commonwealth criminal law, to contribute to combating organised crime and to protect the Commonwealth and national interests from criminal activity in Australia and overseas. The AFP is also Australia's international law enforcement

and policing representative, and the Commonwealth Government's chief source of advising on policing issues.¹¹⁰

161. In an affidavit to the Court dated 30 June 2023, Commander Smith stated that:

*'...there is a very limited role for the AFP in circumstances where Australian citizens are victims of crime overseas. The AFP does not have jurisdiction in overseas countries and therefore cannot enter into a foreign country to investigate crimes against Australian citizens overseas without an express formal authority from the foreign country. This accords the other country the same respect and authority that Australia would expect of any foreign State if a citizen of theirs was a victim of crime in Australia'.*¹¹¹

162. Commander Smith also stated that where an Australian citizen is the victim of a crime overseas the starting point is that the DFAT leads diplomatic and consular responsibilities. Commander Smith noted that very often, the AFP will not be informed and will play no role in responding to harm caused to Australians overseas.¹¹²

163. In the 30 June 2023 affidavit, Commander Smith stated that only a very small percentage of Australian deaths overseas will be referred to the AFP. However, in most cases, where an Australian is a victim of crime or is harmed overseas, the AFP does not become aware of the incident. Commander Smith noted that if the AFP does become aware of an incident (including a death) overseas and a competent authority is investigating, the AFP may offer assistance but will generally rely on the investigating authority in that country.¹¹³

164. Commander Smith also stated that in cases where the AFP does play a role of some kind in responding to an incident, a senior officer is usually deployed early on in the investigation to assist with a variety of roles including but not limited to, supporting DFAT and AFP decision making with respect to the case, providing or offering investigative assistance to the local authority or in providing oversight of the case to the AFP in Australia.¹¹⁴ I note that in Elly's case, DS Scruton was deployed to Mozambique shortly after Australian authorities were informed of Elly's death.

¹¹⁰ Exhibit 1, Volume 2, Tab 22, p 8.

¹¹¹ Exhibit 1, Volume 2, Tab 23, p 9.

¹¹² Ibid.

¹¹³ Exhibit 1, Volume 2, Tab 23, p 10.

¹¹⁴ Exhibit 1, Volume 2, Tab 23, p 11.

165. The role of the AFP also varies depending on which country in which the incident occurred with lines of communication varying from informal police-to-police relationships, to more formal but non-binding memorandum of understanding or formal requests such as Mutual Assistance Requests (**MAR**). In his affidavit, Commander Smith stated that:

*‘...regardless of the country involved, the AFP would not seek to enter and investigate crimes without the consent or invitation of a foreign law enforcement agency. The AFP does not have the authority to do this. This limitation does not change depending on the country’.*¹¹⁵

166. The AFP also provided written submissions addressing the issues raised by Elly’s family. I have included an extract from the written submissions below:

- a) The AFP play only a limited role overseas where Australians are victims of crime, because the AFP cannot enter foreign countries to investigate crimes without formal authority from the other country – in other words, without that country’s consent and cooperation.
- b) In this case, AFP officers have only ever travelled to Mozambique or acted in Mozambique as officers seeking to assist Mozambique authorities. As Mr Scruton said, he had *‘no legal authority in any of the 45 countries that [he] looked after whilst [he] was in Africa’*.
- c) It is highly unusual for the AFP to directly investigate a crime in another country, which is a position adopted by most if not all overseas law enforcement.
- d) The AFP have, however, developed relationships with law enforcement authorities overseas that can allow the AFP to assist in investigations formally (for example, through treaties) and informally (for example, through developed professional relationships). That assistance can take many different forms.
- e) The extent and manner of assistance will depend on many different factors in each case. The AFP’s Better Practice Guide to dealing with Harming Australians Offshore legislation provides guidance to officers dealing with cases where the AFP might have a role.
- f) It is extremely difficult where the country where the incident occurred does not work

¹¹⁵ Exhibit 1, Volume 2, Tab 23, p 12.

to the same standards as does the AFP. But that does not provide a basis for the AFP to conduct a direct investigation or to exercise coercive powers without the cooperation and consent of the other country. All that can be done in such situation is to offer assistance.

- g) There are also potential dangers of conducting investigations when not formally sanctioned.
- h) Where an Australian is the victim of crime overseas, it is usually DFAT that take the lead, because support is usually diplomatic or consular in nature.
- i) The AFP otherwise protects Australian interests and cooperates with international partners in a wide range of ways, generally at a higher level but also assisting other nations where it is invited into particular situations.¹¹⁶

PUBLICLY AVAILABLE INFORMATION ABOUT THE ROLE OF THE AFP IN OVERSEAS INVESTIGATIONS

167. As outlined above, in his affidavit to the Court dated 30 June 2023, Commander Smith confirmed that DFAT are the lead agency in matters where Australian citizens are victims of crime overseas. In this regard, he stated that the AFP website refers members of the public to the DFAT website and provides general information about the role of the AFP, including that:

- the AFP has no authority to carry out inquiries in foreign countries without local approval,
- the AFP does not liaise with foreign law enforcement agencies on behalf of members of the Australian public, and
- in some circumstances the AFP may be asked to assist a foreign country with investigations (including if offences have extraterritorial application) and that in those circumstances the investigation of offences by the AFP requires the cooperation and invitation of the foreign country concerned.¹¹⁷

¹¹⁶ Written submissions filed on behalf of the Commissioner for Australian Federal Police dated 18 September 2023.

¹¹⁷ Exhibit 1, Volume 2, Tab 23, pp 9 – 10.

168. Commander Smith also stated that in cases where the AFP has an ongoing role in relation to a death overseas, the AFP may appoint a Family Investigative Liaison Officer (**FILO**). In Elly's case, Federal Agents Kylie Hemiak and Denis Scott were appointed as the FILOs to Elly's parents. Commander Smith stated that FILOs primarily work in pairs to ensure consistency and continuity and provide a conduit between the next of kin and the investigation. Commander Smith stated that it is not the role of the FILO to provide welfare support to the next of kin with that assistance being provided through referral to other agencies, if required.¹¹⁸
169. Commander Smith also commented that the AFP do not generally have a role as an intermediary between family members and overseas authorities in an overseas investigation. In relation to Elly's case, which is unusual, Commander Smith stated that although the AFP made numerous attempts to assist the Mozambique authorities, the AFP did not act as an intermediary, but rather as the coroner's investigator and assisted in conveying information between the various parties, including Victoria Police, the coroner, and Elly's family.¹¹⁹

MUTUAL ASSISTANCE REQUESTS

170. In an international context, the AFP operates within an extensive international law enforcement network which recognises the importance of collaboration and cooperation between Australia and other countries. The AFP has developed more formal understandings with other countries which outline the expectations of the AFP and the law enforcement agency in the other country.¹²⁰
171. Where no formal bilateral agreement exists between Australia and another country, as is the case with Mozambique, the AFP relies on police-led-diplomacy. In such cases, cooperation relies on the development of relationships between law enforcement agencies and even individual police officers in different countries. In other cases, Australia has agreed formal treaties to allow for the provision of information in prosecutions. For example, formal legal agreements such as a MAR.
172. A MAR in criminal matters concerns the provision of formal assistance to, and the obtaining of formal assistance from, other countries for the purpose of:

¹¹⁸ Exhibit 1, Volume 2, Tab 23, pp 15 – 17.

¹¹⁹ Exhibit 1, Volume 2, Tab 23, p 17.

¹²⁰ Exhibit 1, Volume 2, Tab 22, p 10.

- a) the investigation and prosecution of a crime; and
- b) the restraint and confiscation of the proceeds of crime.¹²¹

173. In this case, the AFP sought advice from the Australian Government Attorney General's Department, International Crime Cooperation Central Authority (AGD) in relation to the requirements for seeking assistance from the Mozambique authorities through a formal MAR. The AGD advised the AFP, MAR arrangements between Commonwealth countries (such as Australia and Mozambique) are generally conducted in accordance with the *Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth* (the **Scheme**). The Scheme states at subparagraph 2(2) that:

*'a criminal matter arises in a country if the Central Authority of that country certifies that criminal or forfeiture proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to believe that an offence has been committed in respect of which such proceedings could be so instituted.'*¹²²

174. In this regard, the advice from the AGD to the AFP was that the MAR process was not available to the AFP with respect to obtaining material from the Mozambique authorities in support of Elly's investigation.
175. In addition, Part 5.4 of Division 115 of the Schedule to the Criminal Code provides for offences relating to harming Australian residents or citizens outside of Australia. In a letter to the Court from Assistant Commissioner Giles, he confirmed that the AGD advised the AFP that these provisions are unlikely to be relevant in Elly's matter¹²³ as the AFP are not in possession of the Mozambique investigation file and as such, do not have sufficient material which discloses an offence under Division 115.¹²⁴
176. At inquest, Commander Smith was asked questions about why a MAR request was not made in Elly's matter and the reasons for why the AFP chose not to open an investigation into Elly's death.

¹²¹ Exhibit 1, Volume 2, Tab 52, p 3.

¹²² Ibid.

¹²³ Exhibit 1, Volume 2, Tab 52, pp 4 – 5.

¹²⁴ Exhibit 2, Volume 2, Tab 52, p 4.

177. Elly's family suggested that if MAR had been made and granted it would have resulted in the release of the Mozambique investigation file and may have opened further lines of enquiry and enabled the AFP to make available its resources to assist the Mozambique investigators.
178. In his evidence at inquest, Commander Smith stated that a MAR cannot be utilised for a coronial process and that for a MAR to be made, there has to be an active criminal investigation being conducted by the AFP.¹²⁵ In this regard, Commander Smith confirmed that the AFP did not open an investigation into Elly's death and that the AFP was only involved in this investigation to assist the coroner. Commander Smith noted that he was not involved in and was unable to shed any light on the initial decision by the AFP not to commence an investigation into Elly's death.
179. Commander Smith was also unable to confirm whether Elly's family were specifically told that the AFP would not be investigating her death. Commander Smith was asked whether he would consider there to have been a breakdown in communication if Elly's family had not been advised that the AFP were not investigating Elly's death. He responded that there had been extensive communication between the AFP FILOs and Elly's family, and he was hopeful that the difference between the AFP conducting its own investigation and the role of the AFP in assisting the coroner would have been explained.¹²⁶
180. Commander Smith did acknowledge that if there had been an active AFP criminal investigation following Elly's death, then it may have been possible for Australian authorities to submit a MAR to the authorities in Mozambique. However, it is a matter for the receiving country (in this case Mozambique) to accept and act upon the MAR.¹²⁷
181. Commander Smith stated that he only became aware that Elly's death was being treated as a homicide in May 2023 after meeting with Mozambique officials.¹²⁸ During his evidence, Commander Smith was referred to the Mozambique autopsy report that describes '*the medico legal cause of death was homicide*' and that this report came into the possession of the AFP sometime in February 2017. Commander Smith acknowledged that this may have

¹²⁵ Transcript of Inquest Proceeding, 23 August 2023, pp 80 - 81

¹²⁶ Transcript of Inquest Proceeding, 23 August 2023, pp 78 – 79.

¹²⁷ Transcript of Inquest Proceeding, 23 August 2023, p 84.

¹²⁸ Transcript of Inquest Proceeding, 23 August 2023, p 81.

been an opportunity for the AFP to review its position in relation to commencing an investigation and if commenced a trigger for a MAR.¹²⁹

182. Commander Smith was asked whether the AFP may have made a different decision with respect to investigating Elly's death if the AFP had information from the Mozambique authorities which confirmed that they were of the opinion that Elly's death was a homicide. In response to this question, Commander Smith stated that '*it may have resulted in a...different decision, but...it would have to be based on...the information that we had at the time*'.¹³⁰
183. From a review of the evidence, it is clear that the AFP made numerous requests to the Mozambique authorities for information regarding the status of the investigation into Elly's death and offered on a number of occasions to assist the Mozambique authorities in their investigation. However, it is also clear that none of the requests for information or offers for assistance were accepted by the Mozambique authorities.
184. Mr Warren submitted that had an MAR been submitted to the Mozambique authorities that it is more likely that offers of assistance and requests for information would have been accepted. However, in my opinion, there is no evidence to support this conclusion. Whilst I accept that the investigation file held by the Mozambique authorities would have assisted in this coronial investigation, the state of the evidence is that the secrecy provisions that apply to the investigation phase of a criminal investigation in Mozambique would prohibit the Mozambique authorities from releasing the file while the case is still in the investigation phase and with the Instructing Judge, even if a MAR had been submitted and accepted by the Mozambique authorities.
185. I have carefully reviewed the steps taken by the AFP in assist with this investigation and in providing ongoing support to Elly's family. As noted above, in providing that assistance to the coronial investigation, the AFP have on numerous occasions made offers of support and assistance to the Mozambique authorities (including SERNIC) and that these offers have not been accepted. In light of this, I do not think that a MAR would have necessarily led to a different outcome in Elly's case. I also note that until the instruction phase of the criminal investigation in Mozambique is complete, and the secrecy provisions have been relaxed it is

¹²⁹ Transcript of Inquest Proceeding, 23 August 2023, p 83.

¹³⁰ Ibid.

unlikely that the investigation file or any part of it would be released. The Mozambique Deputy Attorney General provided this advice to the AFP in the meeting that occurred in Mozambique on 18 and 19 May 2023 attended by Commander Smith and Superintendent Kelly Mansfield.

186. Elly's family have expressed their considerable frustration in waiting nearly seven years and that there is no further information or answers as to the circumstances of Elly's death. It is possible that the Mozambique authorities do have information that is relevant to this investigation, but I do accept that release of any material held by the Mozambique authorities is a matter entirely in their discretion.
187. Elly's family have also expressed their frustration regarding the information provided by the AFP with respect to their role in the investigation into Elly's death, particularly the role of the AFP in assisting a coroner, including the limitations of that role. Whilst I accept that the AFP FILOs have been in regular contact with Elly's family during the course of this investigation, the role of the AFP in assisting the coroner in overseas deaths does not appear to have been explained to Elly's family as clearly as it could have been. In circumstances where families are grieving and likely to be highly anxious, great care and diligence is required to ensure that information is clearly conveyed and understood.
188. I am not critical of the work that has been done by the AFP in assisting with this coronial investigation, but in reflecting on the circumstances of this investigation, which has run over many years, it appears that there may have been an opportunity to better explain to Elly's family the roles and responsibilities (including the limitations) of the AFP when assisting in a coronial investigation involving the death of an Australian citizen overseas.
189. To avoid a similar situation arising in future matters, I would urge the AFP to review their communication guidelines relevant to assisting in a coronial investigation to ensure that information is clearly conveyed to families and that their expectations are not inflated or unrealistic. However, I also accept that this Court plays an important role in ensuring that families properly understand the roles and responsibilities of those involved in a coronial investigation, and that the role of the AFP may not have been properly explained to Elly's family in this case. In this regard, I consider that there may be merit in this Court reviewing its current communication guidelines to ensure that where a member of the AFP is appointed as a coroner's investigator that their role and responsibilities, including the limitations of that role are properly explained to family members of the deceased.

APPLICATION TO SET ASIDE AND REOPEN FINDING

190. The inquest was conducted, and this finding written without having the opportunity to review any material held by Mozambique authorities. It is possible that this material may become available at a later date.

191. I note that if new facts or circumstances become available in the future, section 77 of the Act allows any person to apply to the Court for an order that some or all of the findings be set aside. Any such application would be assessed and determined on its merits at the time.

I convey my sincere condolences to Elly's family for their loss.

Pursuant to section 73(1B) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

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

Mrs Nicole and Mr David Cafarella - Elly's mother and stepfather

Mr Paul Warren - Elly's father

Commissioner of the Australian Federal Police

Federal Agent, Kylie Hemiak – Coroner's Investigator

Sergeant Ross Treverton – Coroner's Investigator

Mr Sergio dos Reis – Deputy Attorney-General, Mozambique

Dr Joaquim Alfandega – National Service of Criminal Investigation, Mozambique

Signature:



**JUDGE JOHN CAIN
STATE CORONER**



Date: 15 December 2023

NOTE: Under section 83 of the *Coroners Act 2008* ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.
