



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

**COR 2021 003026**

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 63(2)*

*Section 67 of the Coroners Act 2008*

Findings of:	Coroner David Ryan
Deceased:	Nina Barake
Date of birth:	7 July 2000
Date of death:	9 June 2021
Cause of death:	1(a) Drowning
Place of death:	Curdies River Crossing, Maddens Bridge Road, Glenfyne, Victoria, 3266
Keywords:	Floodwaters, floodway, road hazard, emergency planning, risk management.

## INTRODUCTION

1. On 9 June 2021, Nina Barake was 20 years old when she drowned after the car she was driving was swept off the road by floodwater in Glenfyne, Victoria. At the time of her death, Nina lived with her parents at their home in Simpson. She is survived by her parents, Joseph and Julie, and her siblings, Chloe and Drew. She is warmly remembered as a fun-loving, caring and adventurous young woman.

## BACKGROUND

2. At the time of her death, Nina worked as a farmhand on a property in Glenfyne. She would travel to and from work in her vehicle, a Toyota Hilux utility, which according to her father was well maintained and “*built for off road conditions*”. He stated that Nina was an experienced driver in “*extreme conditions*”.<sup>1</sup> She was the holder of a probationary Victorian driver’s licence and had no recorded traffic offences.
3. According to her mother, Nina would take the most direct route when she travelled to and from her workplace which involved driving west along Maddens Bridge Road and crossing a floodway<sup>2</sup> over the Curdies River. She also referred to an alternative route which would have taken Nina an extra 10 minutes to arrive at work.<sup>3</sup>
4. The section of Maddens Bridge Road on either side of the floodway is a single lane, gravel road and the speed limit is 100 kilometres per hour. The floodway crossing the Curdies River includes a concrete culvert. There are depth indicators erected on either side of the floodway measuring a maximum depth of 3 metres. ‘Floodway’ signs are situated approximately 100 metres from the floodway in either direction. At approximately 10-15 metres from the floodway in either direction, further signs are erected which read “*Road Subject to Flooding – Indicators Show Depth*”.<sup>4</sup>

---

<sup>1</sup> Statement of Joseph Barake dated 30 July 2021.

<sup>2</sup> Floodways are common in Victoria and are a cost-effective alternative to bridges. However, depending on the level of flooding and traffic usage, there may be varied levels of disruption due to road closures.

<sup>3</sup> Statement of Julie Barake dated 30 July 2021.

<sup>4</sup> Statement of Julie Barake dated 30 July 2021.

## THE CORONIAL INVESTIGATION

5. Nina's death was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (**the Act**). Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.
6. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
7. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
8. Victoria Police assigned an officer to be the Coroner's Investigator for the investigation of Nina's death. The Coroner's Investigator conducted inquiries on my behalf, including taking statements from witnesses – such as family, the forensic pathologist, treating clinicians and investigating officers – and submitted a coronial brief of evidence. I also requested material from the Corangamite Shire Council.
9. This finding draws on the totality of the coronial investigation into Nina's death including evidence contained in the coronial brief. While I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.<sup>5</sup>

---

<sup>5</sup> Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

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

### Circumstances in which the death occurred

10. At around 7.50am on 9 June 2021, Joseph spoke with Nina at their home in Simpson before they both separately left for work, and he recalled commenting on the “*wet and miserable*” weather conditions. In his statement, Joseph stated that it had been “*raining heavily all night*”.<sup>6</sup>
11. At 8.25am, Joseph received a message on Snapchat from Nina which consisted of a photograph of floodwaters on Timboon-Colac Road which appeared to Joseph to be “*about 10 to 15 minutes from her workplace*”.<sup>7</sup>
12. At around 9.45am, a local farmer, John Plozza, observed that the indicators at the floodway over Curdies River on Maddens Bridge Road disclosed a flood level of about 1.5-1.6 metres. He made the observation while assisting a male motorist whose car had become submerged while attempting to cross the floodway. Another witness also observed that submerged vehicle at about 10:00-10.30am and noted that the indicators recorded a depth of 2.2 metres. Mr Plozza did not see any sign of Nina’s vehicle at this time. He recalled that in the 26 years he had been living at his property, there “*has been about 15 occasions where either a vehicle has been washed off the bridge or I’ve had to come down and tow them out*”.<sup>8</sup>
13. Nina did not arrive at work at her usual time and her manager, Linton Smith, tried unsuccessfully to contact her by phone. At around 3.20pm, Mr Smith travelled to Julie’s work and reported that Nina had not attended work that day. Friends and family searched for Nina along the route that she would have travelled to get to work. At about 4.14pm, Joseph observed that the indicators at the floodway recorded a depth of two metres. Julie contacted Victoria Police at around 4.30pm to report Nina missing.<sup>9</sup>

---

<sup>6</sup> Statement of Joseph Barake dated 30 July 2021.

<sup>7</sup> Statement of Joseph Barake dated 30 July 2021.

<sup>8</sup> Statement of John Plozza dated 16 June 2021; Statement of Rhys Keys dated 25 June 2021.

<sup>9</sup> Statement of Julie Barake dated 30 July 2021; Statement of Joseph Barake dated 30 July 2021.

14. At around 8.30am on 11 June 2021, Nina was located deceased in her vehicle in Curdies River about 65 metres downstream from the floodway over Maddens Bridge Road. She was located in the rear passenger section of the vehicle. Her four dogs, Magic, Skye, Tammy and Toni were also located deceased in the vehicle.<sup>10</sup> The vehicle was in neutral gear, the keys were in the ignition and switched to the 'On' position. The driver's side window was partially open, and all other windows were closed.

### **Identity of the deceased**

15. On 17 June 2021, Nina Barake, born 7 July 2000, was identified pursuant to a determination by Coroner McGregor.
16. Identity is not in dispute and requires no further investigation.

### **Medical cause of death**

17. Forensic Pathologist Dr Sarah Parsons from the Victorian Institute of Forensic Medicine performed an autopsy on 16 June 2021 and provided a written report of her findings dated 21 July 2021.
18. Dr Parsons stated that drowning is a diagnosis of exclusion and considered that there was no other clear cause of death and that the circumstances were in keeping with Nina's vehicle being washed off the road and into water. Further, she stated that the existence of nonspecific findings observed at autopsy, such as hyperinflated lungs, pleural effusions and water in the stomach, are suggestive of drowning.
19. Toxicological analysis of post-mortem samples identified the presence of sertraline<sup>11</sup> at levels consistent with therapeutic use. No alcohol was detected.
20. Dr Parsons provided an opinion that the medical cause of death was 1(a) Consistent with drowning.
21. I accept Dr Parson's opinion and taking into account the circumstances, I am satisfied that Nina did in fact die from drowning.

---

<sup>10</sup> Statement of Senior Constable Like Hunter dated 11 February 2022; Statement of Joseph Barake dated 30 July 2021.

<sup>11</sup> Sertraline is an anti-depressant drug used in for the treatment of depression.

## **MECHANICAL INSPECTION**

22. Senior Constable Brett Gardner from the Collision Reconstruction and Mechanical Investigation Unit conducted an examination of Nina's vehicle on 21 July 2021. He observed that the vehicle was fitted with electrically operated windows and door lock mechanisms
23. Upon testing, he found that none of the electrical systems were working and the battery was completely discharged.
24. When Senior Constable Gardner connected a 'slave battery' to the vehicle, he found that the central locking and windows were not functioning. He noted that the components of the combination switch assembly which operated the driver's side window were heavily corroded. Further, the main power feed terminal to the electrical connector from the actuator assembly of the driver's side door was also found to be heavily corroded.
25. Senior Constable Gardner concluded that it was likely that the windows and door locking systems were functional, and all doors were unlocked at the time of Nina's vehicle entered the water at the floodway on Maddens Bridge Road. However, Senior Constable Gardner was unable to operate any of the windows or electric door locking systems due to the level of corrosion of the electrical components. He concluded that the corrosion was the direct result of exposure to excessive moisture.<sup>12</sup>

## **RESPONSE FROM THE CORANGAMITE SHIRE COUNCIL**

26. Andrew Mason, the Chief Executive Officer of the Corangamite Shire Council, provided a statement which included a summary of the flood prevention and warning measures in place at the floodway on Maddens Bridge Road. Mr Mason emphasised that the relevant section of the road across the Curdies River is a 'floodway' and not a 'bridge', noting that each type of structure is subject to different management and maintenance practices.<sup>13</sup>
27. Mr Mason confirmed the existence of the warning signs and the depth indicators on approach to the floodway and stated that they are in compliance with the relevant Australian Standard. He noted that the Council had not identified any alternative measures that would enhance the warnings currently in place. In addition to the static warning signs, Mr Mason advised that

---

<sup>12</sup> Statement of Senior Constable Brett Gardner dated 5 September 2021.

<sup>13</sup> Statement of Andrew Mason dated 29 March 2022.

Council officers erect temporary road closure signs at the site as it does with any other flooded roadway that presented a risk to road users.

28. The Council conducts regular maintenance on the floodway and Mr Mason noted that records indicate that during the last inspection conducted in December 2020, no works were identified as being required.
29. Responding to a suggestion from the Coroner’s Investigator that the construction of a barrier along the sides of floodway may minimise future incidents, Mr Mason stated it would be unlikely to improve safety in the circumstances. He noted that barriers are generally set at a height of 0.74 metres above the roadway and may therefore be below the surface of floodwaters and not visible to motorists. Further, he stated that the installation of roadside barriers that are not visible during a flood event may have the unintended result of creating unforeseen hazards (e.g., risk of collision with submerged objects).
30. A letter was received by the Court from the Princetown Wetland and Estuary Preservation Inc dated 26 August 2021 claiming that the Council failed to adequately plan for the increased dangers of drowning through climate change effects, including through the preparation of flood overlays. In response to this claim, Mr Mason stated that flood overlays are a planning issue and are not relevant to prevention systems or emergency planning for flood or storm incidents. He stated:

*“[The] intent of flood overlays in a planning scheme is to manage buildings and works within the flood overlay area and to establish floor heights if development is allowed. These areas and overlays are typically focussed on towns and areas with a high likelihood of future development”.*

31. Mr Mason also referred to the following key action in the Corangamite Catchment Regional Floodplain Management Strategy 2018-2028:

*“To investigate a regional flood mapping project for the whole Shire to identify key rural flow paths and provide advice on where overland flow paths might affect assets (including agricultural assets and roads, rail, drainage). This will include road inundation assessment (eg depth of flooding over roads) to assist the Shire and SES plan for road closures during floods and to better plan for potential road damages.”*

32. Mr Mason advised that this action has not yet been implemented due to funding availability and the size of the project, but that planning is ongoing with initial scoping funding likely to be finalised this year. Clearly, the implementation of this project, as soon as possible, is in the community interest given the flooding that has devastated many communities across Victoria this year.

## **FINDINGS AND CONCLUSION**

33. After reviewing the evidence, I am satisfied that at around 8.40am on 9 June 2021, Nina was travelling west on Maddens Bridge Road in her vehicle when she attempted to cross the floodway over Curdies River. I consider that at this time, the depth of the flood water was likely to have been considerable but less than the 1.5-1.6 metres observed by Mr Plozza at around 9.45am. I find that her vehicle became buoyant in the floodwater and was washed off the floodway and downstream into Curdies River. Tragically, Nina was unable to exit her vehicle and has drowned after it was submerged and the cabin filled with water.
34. Having considered all of the circumstances, I am satisfied that Nina misjudged the strength of the floodwaters and the depth at which her vehicle would become buoyant when crossing the floodway over Curdies River at Madden Bridge Road. I consider that the warning signs and depth indicators on approach to the floodway over the Curdies River were appropriate, clear and visible.
35. Pursuant to section 67(1) of the Act I make the following findings:
- a) the identity of the deceased was Nina Barake, born 7 July 2000;
  - b) the death occurred on 9 June 2021 at Curdies River Crossing, Maddens Bridge Road, Glenfyne, Victoria, 3266, and the cause of death was drowning; and
  - c) the death occurred in the circumstances described above.



## COMMENTS

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

36. This tragic case provides a salutary reminder to the community of the dangers of crossing floodways when they are covered by water. Vehicles can become buoyant driving through water at a relatively shallow depth. This can occur even with experienced drivers in vehicles built for offroad conditions.
37. On 14 October 2022, the Mayor of the Corangamite Shire Council echoed a plea by the State Emergency Service for people not to drive through floodwaters and referred to research which found that just 15 centimetres of slow-flowing floodwater was powerful enough to move a small car.<sup>14</sup>

## RECOMMENDATIONS

Pursuant to section 72(2) of the Act, I make the following recommendations:

- (i) That the Corangamite Shire Council review the floodway over Curdies River on Maddens Bridge Road to consider the feasibility, safety and utility of other construction options or enhancements, in light of the traffic use and frequency of flooding.

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

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

Pursuant to section 49(2) of the Act, I direct the Registrar of Births, Deaths and Marriages to amend the cause of death to the following: 1(a) Drowning.

---

<sup>14</sup> *Plea to Drivers*, [www.corangamite.vic.gov.au](http://www.corangamite.vic.gov.au).

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

Joseph & Julie Barake, Senior Next of Kin

Corangamite Shire Council, c/o Maddocks

Neil Longmore

Senior Constable Luke Hunter, Coroner's Investigator

Signature:



Coroner David Ryan

Date : 16 January 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.

---