



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2016 000456

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Findings of:	Coroner Darren J. Bracken
Deceased:	Edward Michael Espino
Date of birth:	05 April 1979
Date of death:	01 February 2016
Cause of death:	1(a) Neck compression in the circumstances of hanging
Place of death:	Caroline Springs, Victoria, 3023

INTRODUCTION

1. Edward Michael Espino was the 36-year old son of Ana and Miguel Espino, and younger brother of Carlos.
2. At the time of his death, Mr Espino was a single mechanic, who lived with his friend, Kate Dennison, in Caroline Springs.
3. On 1 February 2016, Mr Espino was found at his home deceased by neck compression the circumstances of hanging.

THE CORONIAL INVESTIGATION

4. Mr Espino'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.
5. 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.
6. 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.
7. The Victoria Police assigned an officer to be the Coroner's Investigator (**CI**) for the investigation of Mr Espino's death. The CI 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.
8. This finding draws on the totality of the coronial investigation into the death of Mr Espino, including evidence contained in the coronial brief. Whilst 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.¹

BACKGROUND

9. Mr Espino was born on 5 April 1979 in Footscray to Argentinian parents, Ana and Miguel Espino, and had an older brother, Carlos.
10. In 1981, following his parents' separation, Ana Espino moved with her children to Argentina, however, they returned to Australia in 1988, when Mr Espino was nine years old.
11. Mr Espino attended Carlton Primary School and University High School in Parkville, where he was a keen sportsman, excelling in tennis. After completing his secondary education, Mr Espino commenced studies in computer engineering at RMIT University, but left upon developing an interest in motor mechanics, a field in which he would later gain employment.
12. Mr Espino's psychiatric history was first documented in 2006 and included three admissions to public mental health units. He has a recurrent psychotic disorder variously diagnosed as bipolar affective disorder, schizoaffective disorder or drug-induced psychosis, but most recently as bipolar affective disorder. His illness was complicated by intermittent cannabis use. Mr Espino had also been diagnosed with post-traumatic stress disorder following workplace bullying and injury in 2013.²
13. Since his discharge from the North West Area Mental Health Service (**NWMHS**) in about May 2013, Mr Espino regularly attended appointments with psychiatrist Dr David Muirhead.³ For about a year thereafter, Mr Espino's mood appeared stable and he was compliant with the atypical antipsychotic medication prescribed.⁴
14. During a consultation with Dr Muirhead in mid-May 2015, Mr Espino seemed 'a bit more stressed than usual' but showed no signs of relapse of psychosis.⁵ The psychiatrist recommended an increased dose of medication.

¹ 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.

² Coronial Brief of Evidence [CB], Statement of Dr David Muirhead.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

15. On 26 June 2015, it is alleged that Mr Espino assaulted a man at Krupic Auto Repairs.⁶ First Constable Killeen was the police member investigating the incident.⁷
16. In early July 2015, concerned about her son and suspicious that he was non-compliant with prescribed medication and using cannabis, Ana Espino contacted Mr Espino's psychiatrist.⁸ Dr Muirhead scheduled an appointment, but Mr Espino did not attend and when the psychiatrist followed up by phone, Mr Espino 'made excuses,' saying that he would attend 'when he could'.⁹
17. In accordance with Dr Muirhead's advice, Ana Espino contacted NWMHS Triage (**Triage**) to raise concerns about her son's deteriorating mental health.¹⁰
18. On 25 July 2015, it is alleged that Mr Espino seriously assaulted three people in Glenroy.¹¹ Detective Senior Constable (DSC) Dwyer was the police member investigating the incident.
19. On 26 July 2015, Mr Espino was arrested in connection with the alleged assaults in Glenroy. Police were concerned about his mental state and so he was conveyed to the Royal Melbourne Hospital for psychiatric assessment.¹²
20. Mr Espino was admitted to Sunshine Adult Acute Psychiatric Unit (SAAPU) as a compulsory patient under the *Mental Health Act* 2014 where he was treated for acute relapse of psychotic symptoms.¹³

Criminal Proceedings and Bail

21. DSC Dwyer charged Mr Espino with intentionally causing serious injury and other offences arising from the incidents in Glenroy and on 4 August 2015, following a hearing conducted at SAAPU, he was remanded in custody.¹⁴ Mr Espino was discharged from SAAPU¹⁵ and transported to the Melbourne Assessment Prison and admitted to its Acute Assessment Unit where

⁶ Mr Espino's Law Enforcement Assistance Program (LEAP) record, Incident 150201442 created 27 June 2015.

⁷ Ibid.

⁸ CB, Statement of Dr David Muirhead.

⁹ CB, Statement of Dr David Muirhead.

¹⁰ Ibid; see also Mr Espino's NWMHS records, for instance a NWMHS Assessment dated 26/7/2015 which refers to 'Anna [sic] ... NWMH ... with concerns about deteriorating mental health since 21/7/15' and noting 'private psychiatrist also concerned ... [about] signs of relapse'.

¹¹ CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015.

¹² Ibid.

¹³ Mr Espino's NWMHS records relating to his admission from 26 July to 4 August 2015.

¹⁴ CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015.

¹⁵ Mr Espino's NWMHS records, for instance, a nursing note and MHA 112 Revocation of Temporary Treatment Order dated 4 August 2015.

he received ongoing psychiatric treatment.¹⁶ A new medication regime of 600mg valproate¹⁷ twice daily and 10mg olanzapine¹⁸ at night was commenced.¹⁹

22. On 11 December 2015, Mr Espino made a successful application for bail.²⁰ He was released from custody upon entering an undertaking of bail with a surety and conditions including a static residential address in Caroline Springs, daily reporting to Caroline Springs police station and a nightly curfew.²¹
23. On 16 December 2015, Mr Espino attended an appointment with Dr Muirhead during which he presented as low in mood but without persisting psychotic symptoms.²² On mental state examination, Mr Espino acknowledged some thoughts about ‘not being here’ but was not suicidal.²³ In the psychiatrist’s assessment, Mr Espino was not ‘overtly depressed at that stage’.²⁴
24. On 30 December 2015, Dr Muirhead again reviewed Mr Espino who reported ‘increasingly low mood’ and some suicidal ideation but denied that he would act on these thoughts.²⁵ The psychiatrist was ‘sufficiently concerned’ that he arranged to see Mr Espino the following week and suggested a referral to the local area mental health service for more intensive support; Mr Espino declined the referral, assuring Dr Muirhead that he would ‘be safe’.²⁶ Mr Espino’s medication regime was changed to replace olanzapine with 10mg asenapine²⁷ while valproate was continued.²⁸
25. When reviewed on 8 January 2016, Mr Espino reported the medication change was ‘helping to block his negative thoughts more effectively’ and he was no longer sleeping excessively.²⁹ Mr Espino ‘felt that his life was not worth much’ but denied any plan to harm himself.³⁰ Referral to

¹⁶ CB, Statement of Dr David Muirhead.

¹⁷ Valproate, also known as valproic acid or sodium valproate, is a carboxylic acid used therapeutically as an anticonvulsant, treatment for manic depression or in some instances, neurogenic pain.

¹⁸ Olanzapine is an atypical antipsychotic primarily used to treat schizophrenia and bipolar disorder.

¹⁹ CB, Statement of Dr David Muirhead.

²⁰ Certified Extract of orders made in respect of Case Number F12785934 in the Magistrates’ Court of Victoria at Melbourne on 11 December 2015 by Magistrate Rosencwaig. Mr Espino was bailed to appear at the County Court at Melbourne on May 2016.

²¹ CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015. Mr Espino was released subject to several other bail conditions, but the conditions specified are of most relevance to events that followed.

²² CB, Statement of Dr David Muirhead.

²³ CB, Statement of Dr David Muirhead.

²⁴ CB, Statement of Dr David Muirhead.

²⁵ CB, Statement of Dr David Muirhead.

²⁶ CB, Statement of Dr David Muirhead.

²⁷ Asenapine is an atypical antipsychotic medication used to treat schizophrenia and acute mania associated with bipolar disorder.

²⁸ CB, Statement of Dr David Muirhead.

²⁹ CB, Statement of Dr David Muirhead.

³⁰ CB, Statement of Dr David Muirhead.

the mental health service was again suggested and declined. Mr Espino was advised to contact Triage if his mood deteriorated.³¹

26. On 11 January 2016, Mr Espino contacted DSC Dwyer to enquire if he could be permitted to attend a wedding to be held over a weekend outside metropolitan Melbourne with his friend, Karin Parker. The detective advised him that ‘because he had been complying with his bail conditions’, there would be ‘no issues’ provided he informed her when and where the wedding would occur, with whom he would attend and supplied a contact phone number.³²
27. Between 18 and 24 January 2016, when on nightshift at Flemington police station, DSC Dwyer spoke to Mr Espino twice about ‘his bail conditions and how excited he was to go to the wedding’.³³ The detective reminded Mr Espino to supply the information requested so that she could ‘amend his bail folder’.³⁴
28. On 26 January 2016, DSC Dwyer received an email from Ms Parker containing the information about the wedding she had requested.³⁵ She replied to the email confirming that Mr Espino could attend the wedding³⁶ and that if there were any problems while they were away, to contact Flemington police station.³⁷ DSC Dwyer telephoned Caroline Springs police station and ‘advised them of the bail amendments’³⁸ between ‘29 and 31 January 2016.’³⁹
29. On 27 January 2016, Mr Espino, accompanied by his mother, attended an appointment with Dr Muirhead and reported ‘feeling better’: his appetite was improving, he was sleeping well and had decided to return to school and move back in with his mother.⁴⁰ Mr Espino reported having no thoughts of wanting to end his life.⁴¹ A further review in two weeks’ time was planned.
30. On Thursday, 28 January 2016, Mr Espino stayed overnight at Ms Parker’s home so that they could leave together the following morning for the wedding in Lorne. According to Ms Parker, over the weekend, Mr Espino’s behaviour was ‘normal,’ and they had a ‘good time’.⁴²

³¹ CB, Statement of Dr David Muirhead.

³² CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015.

³³ Ibid.

³⁴ Ibid.

³⁵ CB, Appendix A.

³⁶ CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015.

³⁷ CB, Statement of Karin Parker dated 4 June 2016.

³⁸ Ibid.

³⁹ CB, Statement of DSC Stacey Dwyer dated 29 April 2019.

⁴⁰ CB, Statement of Dr David Muirhead.

⁴¹ CB, Statement of Dr David Muirhead.

⁴² CB, Statement of Karin Parker dated 4 June 2016.

31. On 29 January 2016, First Constable Killeen, apparently unable to locate Mr Espino in connection with the allegation of assault at an auto repairs shop in June 2015, submitted a 'whereabouts', which flagged him as a person wanted for interview on LEAP.⁴³

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

Circumstances in which the death occurred

32. At about 8pm on Sunday, 31 January 2016, Ms Parker and Mr Espino arrived back from Lorne at Ms Parker's home. Before Mr Espino left for Caroline Springs, around 8.30pm, Ms Parker offered to email or call DSC Dwyer to inform her that he had returned. Mr Espino said he would contact the detective himself.⁴⁴

33. Mr Espino arrived home around 9pm; Ms Dennison recalled 'nothing unusual' about Mr Espino's demeanour.⁴⁵

34. Around 10.05pm, Mr Espino telephoned Flemington police station to inform DSC Dwyer of his return.⁴⁶ Senior Constable (SC) Igor Chernyega was performing reception duties and answered the call;⁴⁷ DSC Dwyer was not on duty.⁴⁸ According to SC Chernyega, Mr Espino told him that he had 'come back from a holiday and thought police may be looking for him'.⁴⁹

35. The police member performed a name search of the Law Enforcement Assistance Program (LEAP), which revealed there was a LEAP Person Whereabouts⁵⁰ (**whereabouts**) for Mr Espino.⁵¹ The whereabouts relating to Mr Espino indicated that 'police need to speak to [him] about a matter, but could not locate him'.⁵² SC Chernyega advised Mr Espino to attend 'any police station as soon as possible to have the matter resolved' and that the Informant in the matter was DSC Dwyer.⁵³

⁴³ Victoria Police Manual – Tagging of records to locate suspects or offenders, date of first issue 22 February 2010.

⁴⁴ Ibid.

⁴⁵ CB, Statement of Kate Dennison dated 2 May 2016.

⁴⁶ CB, Statement of Senior Constable Igor Chernyega dated 28 April 2016.

⁴⁷ Ibid.

⁴⁸ CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015.

⁴⁹ CB, Statement of Senior Constable Igor Chernyega dated 28 April 2016.

⁵⁰ Victoria Police Manual – Tagging of records to locate suspects or offenders, date of first issue 22 February 2010.

⁵¹ CB, Statement of Senior Constable Igor Chernyega dated 28 April 2016.

⁵² CB, Statement of Senior Constable Igor Chernyega dated 28 April 2016.

⁵³ Ibid.

36. According to Ms Dennison, at the conclusion of the call Mr Espino was ‘in a panic and ... had an anxiety attack’.⁵⁴ They spoke for a while, Mr Espino relaying that the incident giving rise to the whereabouts related to a ‘scuffle’ at an auto repairs shop.⁵⁵
37. At 10.23pm, Mr Espino emailed DSC Dwyer asking her to call him ‘urgently’ because he had ‘to report to a police station regarding some mechanical work or something. I’m really scared ... doesn’t matter what time you call me I’ll be waiting’.⁵⁶
38. Around 10.30pm, Mr Espino called Ms Parker, ‘distressed and in a panic’, saying ‘they’re gonna put me back in jail ... tomorrow’.⁵⁷ She told him to ‘be reasonable, calm down, and just sign on in the morning’.⁵⁸
39. According to Ms Dennison, around 11pm Mr Espino telephoned the police station again.⁵⁹ This time he spoke to a female police member who reportedly told Mr Espino he ‘would be arrested when he [handed] himself in’.⁶⁰ The police member said she would contact the Informant, First Constable Killeen, to ‘get him to call’ Mr Espino.⁶¹
40. At 11.52pm, Mr Espino emailed DSC Dwyer again asking her to call him ‘asap’.⁶²
41. Ms Dennison stated that Mr Espino called the police station a third time ‘straight after’.⁶³ He also called friend and his mother more than once, the last call to Ana Espino being around 1am on 1 February 2016.⁶⁴
42. A little before 2am, Mr Espino telephoned Triage and spoke to Felicity Lang.⁶⁵

⁵⁴ CB, Statement of Kate Dennison dated 2 May 2016.

⁵⁵ Ibid.

⁵⁶ CB, Appendix C.

⁵⁷ CB, Statement of Karin Parker dated 4 June 2016.

⁵⁸ Ibid.

⁵⁹ CB, Statement of Kate Dennison dated 2 May 2016. Ms Dennison was not sure if Mr Espino had contacted Flemington or Fawkner police stations after calling Flemington police station and speaking to SC Chernyega around 10.05pm on 31 January 2016. Neither SC Tara Conte nor SC Jessica Gaylard who were performing watchhouse duties overnight on 31 January – 1 February 2016 at Fawkner and Flemington police stations respectively recalled speaking to Mr Espino or making any notes about any interaction with him that night: Statements of SC Tara Conte dated 26 April 2019 and SC Jessica Gaylard dated 25 April 2019.

⁶⁰ CB, Statement of Kate Dennison dated 2 May 2016.

⁶¹ Ibid.

⁶² CB, Appendix C.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ CB, Statement of Kate Dennison dated 2 May 2016.

43. Ms Dennison ‘heard from [Mr Espino’s] phone call that he was advised to go to the [emergency department] if he did not feel good’.⁶⁶ She asked Mr Espino after the call if he wanted to go to hospital; he declined, saying he was ‘alright’.⁶⁷
44. For the next couple of hours, Mr Espino was ‘in and out’ of Ms Dennison’s room.⁶⁸ He did not say much but asked, ‘what happens if I go back to jail?’⁶⁹ Ms Dennison told him he would have to be ‘brave’.⁷⁰ At one point she asked whether he had taken his nightly medication (he said he had).⁷¹
45. Around 4am, Mr Espino asked Ms Dennison what he should do, to which she replied that he ‘just had to face’ whatever transpired.⁷² He then said he would ‘get the rope ready’.⁷³ Ms Dennison said that Mr Espino had ‘talked about killing himself a few times’.⁷⁴ She told him, ‘this is not your path, you can get through it’.⁷⁵ After a pause, Mr Espino said ‘yep’ and left Ms Dennison’s room; she thought he had agreed with her and gone to bed because the house was quiet thereafter.⁷⁶
46. At about 5.20am on 1 February 2016, Ms Dennison heard ‘noises’ and texted Mr Espino to ask him what he was doing at that hour.⁷⁷ She did not receive a reply or a receipt indicating that her message had been read.⁷⁸
47. Ms Dennison woke around 7.40am but stayed in her room until about 10am because she did not want to ‘bother’ Mr Espino.⁷⁹ When she left her room, Mr Espino’s bedroom door was open and the light was on but he did not appear to be in the house at all. Ms Dennison noticed that the rear sliding door was open and, upon going outside, found Mr Espino hanging⁸⁰ by the neck from a length of rope fixed to a metal support in the covered area of the rear yard.⁸¹

⁶⁶ CB, Statement of Kate Dennison dated 2 May 2016.

⁶⁷ CB, Statement of Kate Dennison dated 2 May 2016.

⁶⁸ CB, Statement of Kate Dennison dated 2 May 2016.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid. Though it is not clear from Mr Dennison’s statement whether this reference to Mr Espino’s references to suicide occurred overnight on 31 January-1 February 2016 or at another time, or both.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ CB, Statement of SC Glen Hutton dated 7 June 2016.

48. Ms Dennison called the emergency services but attending paramedics confirmed that Mr Espino had died some time earlier.⁸²
49. During their examination of the scene, attending police located Mr Espino's mobile phone in the pocket of his trousers; the last search revealed a YouTube page entitled 'how to tie a hang man's noose'.⁸³ Mr Espino left no note explaining his actions.⁸⁴

Identity of the deceased

50. On 1 February 2016, Edward Michael Espino, born 5 April 1979, was visually identified by his friend Kate Dennison.
51. Identity is not in dispute and requires no further investigation.

Medical cause of death

52. Forensic Pathologist Dr Victoria Francis of the Victorian Institute of Forensic Medicine (**VIFM**), conducted an external examination on 2 February 2016 and provided a written report of her findings dated 3 February 2016.⁸⁵
53. The external examination revealed a ligature abrasion above the laryngeal prominence and around the neck with dimensions consistent with a ligature received with the body. There were no other injuries visible on either visual inspection or post-mortem computerised tomography (CT) scans of Mr Espino's whole body.⁸⁶
54. Toxicological analysis of post-mortem blood samples detected valproic acid at a level (~17mg/L) consistent with its therapeutic use, but no alcohol or any other drugs or poisons.⁸⁷
55. Dr Francis provided an opinion that the medical cause of death was '1(a) neck compression in the circumstances of hanging'.⁸⁸
56. I accept Dr Francis' opinion.

⁸² CB, Statement of SC Glen Hutton dated 7 June 2016.

⁸³ CB, Statement of SC Glen Hutton dated 7 June 2016. There is no time stamp or play history on the download; if, or when, Mr Espino viewed the download cannot be determined.

⁸⁴ Ibid.

⁸⁵ Medical Investigation Report of Dr Victoria Francis dated 3 February 2016.

⁸⁶ Ibid.

⁸⁷ VIFM Toxicology Report dated 7 March 2016.

⁸⁸ Medical Investigation Report of Dr Victoria Francis dated 3 February 2016.

FAMILY CONCERNS

57. By correspondence dated 14 February and 10 March 2016, and in a statement witnessed on 24 October 2017, Carlos Espino raised several concerns about the circumstances of his brother's death as he understood them.⁸⁹ In particular, he was concerned about:

- a. Communications between Mr Espino and police on the night of 31 January 2016. Carlos Espino asserted that when his brother telephoned police, he was told (words to the effect) that he had contravened his conditions of bail by entering a licensed premises; he 'would go back to jail' because he had not reported to the police station each morning; and that he had to hand himself in to police because there was a 'whereabouts placed on him'.⁹⁰ Carlos Espino asked, 'if the police knew ... [my brother] had permission to leave Melbourne, why was he placed under this pressure and stress, knowing that he was severely depressed, and in a very fragile state of mind?'⁹¹
- b. Communication between Mr Espino and NWMHS Triage, and between Ana Espino and Triage, in the early hours of 1 February 2016. Carlos Espino did not understand why his brother was not hospitalised given these 'cr[ies] for help'.⁹²

58. On 12 July 2017, Ana Espino filed with the Court a Request for Inquest into Death (Form 26). She sought an inquest to 'determine the circumstances, reasons and causes' of her son's death because she had 'serious concerns' about the cause of his death.⁹³ Ana Espino indicated that she

⁸⁹ Not all the concerns raised by Carlos Espino have been the subject of further investigation or will be canvassed further in this Finding. The following matters were not further investigated: (1) Carlos Espino called the 'CAT team in July 2015' himself about his brother's wellbeing; he asserted that his cries for help were 'ignored'. I have not investigated these concerns as they are temporally remote from Mr Espino's death. (2) Carlos Espino referred to the cause of 'red markings around [Mr Espino's] arm and chest' not being explained in 'the report'. I have not investigated this matter further because the forensic pathologist noted no injuries on Mr Espino's body save for those on his neck and these were attributed to the ligature. (3) Carlos Espino asserted that Coronial Investigator SC Hutton 'confirmed Katie's Dad spoke to [Mr Espino] the night prior' about Mr Espino 'needing to pay back the money that Katie put up for his bail'. Ms Dennison had reportedly not mentioned any such discussion when she spoke to Carlos Espino after his brother's death. Carlos Espino asserted that a discussion about this "debt" would cause Mr Espino to 'be under extreme pressure'. I note that in neither of the two statements provided by SC Hutton is there any mention of a conversation between Ms Dennison's father and Mr Espino proximate to his death. There is no mention of it either in Ms Dennison's statement. Indeed, all of the available evidence suggests that Mr Espino's primary concern on the morning he died was that he would be returned to custody when he reported to the police station in accordance with his undertaking of bail.

⁹⁰ Correspondence from Carlos Espino (incorrectly) dated 14 February 2015 but date stamped as received by the Court on 17 February 2016.

⁹¹ Ibid.

⁹² Correspondence from Carlos Espino (incorrectly) dated 14 February 2015 but date stamped as received by the Court on 17 February 2016.

⁹³ Form 26 Request for Inquest into Death dated 17 July 2017, filed by Ana Espino.

had ‘met a few people whom [she didn’t] personally know’ who informed her that Mr Espino was ‘murdered as he had many injuries on his body, chest, arm’.⁹⁴

59. On 26 July 2017, the Court wrote to Ana Espino advising her that because my investigation of her son’s death was ongoing, no decision about whether to hold an inquest had yet been made.⁹⁵

60. On 5 March 2021, pursuant to section 52(6) of the Act, I decided not to hold an inquest and explained my reasons in a Decision by a Coroner Whether or Not to Hold an Inquest (Form 28) which was sent to Ana Espino.

FURTHER INVESTIGATIONS

61. Carlos Espino’s concerns about his brother’s communications with police and NWMHS Triage overnight on 31 January-1 February 2016 were subject to further investigation. At my direction, several additional statements and documents were obtained about that issue and about administration of justice issues arising from Mr Espino’s involvements with police.

Monitoring Mr Espino’s Bail Compliance

62. Mr Espino was granted bail by a court and, among the conditions attached to his undertaking of bail was one requiring him to report daily to Caroline Springs police station, a process known colloquially as “reporting” or “signing on”.⁹⁶

63. The Victoria Police Manual (**VPM**) requires an Informant to complete a Bail Report form (Form 475) and email it, with a photograph of the accused, to the Officer in Charge (**OIC**) of the station to which the accused must report.⁹⁷ Any changes to bail/reporting requirements are required to be communicated in a similar fashion.⁹⁸ In accordance with the VPM, DSC Dwyer contacted SC Bisby at Caroline Springs police station and then prepared a Form 475⁹⁹ for the ‘bail folder’.¹⁰⁰

⁹⁴ Form 26 Request for Inquest into Death dated 17 July 2017, filed by Ana Espino.

⁹⁵ In accordance with section 52(6)(c) of the Act.

⁹⁶ Certified Extract of orders made in respect of Case Number F12785934 in the Magistrates’ Court of Victoria at Melbourne on 11 December 2015 by Magistrate Rozencwajg. Mr Espino was bailed to appear at the County Court at Melbourne on 11 May 2016.

⁹⁷ Victoria Police Manual – Guidelines – Bail and Remand, as in force on 17 August 2016.

⁹⁸ Ibid.

⁹⁹ Form 475 is a Bail Report Form onto which information about the accused person, the pending charges, conditions of bail, any ‘remarks’ and the Informant’s contact details may be entered.

¹⁰⁰ CB, Statement of DSC Stacey Dwyer dated 29 April 2019.

She emailed Form 475 and a (blank) Form 475A¹⁰¹ to the Caroline Springs OIC and SC Bisby on 11 December 2015.¹⁰²

64. DSC Dwyer completed and submitted a L22 Form, used to ensure ‘updated conditions of bail’ appear on LEAP.¹⁰³ This form is not used to update an individual’s residential address on his or her Master Name Summary on LEAP, though the VPM requires an Informant and his/her supervisor to update the Master Name Summary if aware of a more recent address.¹⁰⁴
65. Before DSC Dwyer completed her shift on 11 December 2015, a hardcopy ‘bail folder’¹⁰⁵ had been created at Caroline Springs police station and LEAP reflected Mr Espino’s bail conditions.¹⁰⁶
66. The VPM requires the Work Unit Manager to commence a file containing Forms 475 and 475A, ensure the file is monitored daily for any breaches of bail and if a breach of bail occurs, notify the Informant’s Work Unit Manager within eight hours of the breach to enable ‘appropriate action’ to be taken.¹⁰⁷ In practice, in December 2015-January 2016, police members rostered to work day shifts at Caroline Springs police station were ‘tasked with checking the bail folders’ and if anyone failed to sign on, it was their responsibility to email the Informant notification of any non-attendance.¹⁰⁸
67. When an accused is no longer required to report on bail, pursuant to the VPM, the Work Unit Manager must return Forms 475 and 475A to the Informant for retention and disposal with the brief of evidence.¹⁰⁹ As a matter of logic, provided it is completed each time an accused reports to a police station, the Form 475A is the best record of compliance with a reporting condition attached to an undertaking of bail and the “bail folder” would also reflect any modifications to bail conditions and communications about these matters.

¹⁰¹ Form 475A is a Bail Report Sheet onto which the date and time an accused reports to the police station in compliance with an undertaking of bail is noted, along with the accused’s signature and a note of the police member who facilitated his/her ‘signing on’.

¹⁰² CB, Statement of DSC Stacey Dwyer dated 29 April 2019.

¹⁰³ CB, Statement of DSC Stacey Dwyer dated 29 April 2019.

¹⁰⁴ VPMs entitled ‘Reporting a Crime on LEAP’ and ‘Crime reporting and investigation’ relate to these matters.

¹⁰⁵ That is, a manila folder with Mr Espino’s name on it, enclosing the Form 475 and Form 475A, which was kept in a drawer in the watch house: CB, Statement of SC Glen Hutton dated 5 May 2019.

¹⁰⁶ Ibid.

¹⁰⁷ Victoria Police Manual – Guidelines – Bail and Remand, as in force on 17 August 2016.

¹⁰⁸ CB, Statement of SC Glen Hutton dated 5 May 2019. I note that Inspector King’s statement suggests different expectations about the checking of ‘bail reporting documents’: bail reporting documents were checked on a bi-monthly basis by the OIC as part of the Monthly Inspection regimes; there was an expectation the records would be checked weekly by watch house staff; from April 2016, I reviewed bail reporting and allocated a specific member to monitor basil reporting.

¹⁰⁹ Victoria Police Manual – Guidelines – Bail and Remand, as in force on 17 August 2016.

68. Unfortunately, no bail record or “bail folder” relating to Mr Espino was produced for my investigation. DSC Dwyer advised that no bail folder was returned to her by Caroline Springs police station.¹¹⁰ Searches for relevant documents conducted by CI SC Glen Hutton,¹¹¹ Inspector Trevor King¹¹² and Senior Sergeant Jason Dolman¹¹³ failed to locate Mr Espino’s bail folder at Caroline Springs or another police station.¹¹⁴ Nor did the correspondence register document that Mr Espino’s bail records arrived or left the Caroline Springs police station between November 2015 and February 2016.¹¹⁵
69. I note both that SC Hutton conceded that, with hindsight, as CI he ‘should have’ taken responsibility for the bail folder¹¹⁶ and that the VPM is silent as to the management of bail folders where the accused has died in reportable circumstances. That said, by May 2019 Caroline Springs police station had implemented an electronic bail reporting system such that hardcopy bail folders were no longer used¹¹⁷ and so the likelihood that bail records will be lost is significantly reduced.
70. DSC Dwyer received no emails, notifications or correspondence indicating that Mr Espino had failed to report to Caroline Springs police station between 11 December 2015 and 25 January 2016.¹¹⁸ Indeed, Mr Espino’s compliance with his reporting condition was influential in her decision to excuse him from reporting while attending a wedding in Lorne.

‘Variation’ of Mr Espino’s Bail Conditions

71. Pursuant to the *Bail Act* 1977 (Vic.),¹¹⁹ unless varied or revoked, an undertaking of bail with or without conditions will continue in the terms granted between court dates. Conditions of bail create obligations for the accused.¹²⁰ With the (very limited) exception of any bail condition formulated to allow deviation from the original terms,¹²¹ conditions of bail can only be varied on

¹¹⁰ CB, Statement of DSC Stacey Dwyer dated 29 April 2019.

¹¹¹ SC Hutton’s enquiries included contacting the administration officer of Flemington police station where DSC Dwyer was stationed at the relevant time.

¹¹² OIC of Caroline Springs police station July 2015-June 2016.

¹¹³ OIC of Caroline Springs police station.

¹¹⁴ CB, Statements of SC Glen Hutton dated 5 May 2019, Inspector Trevor King dated 16 May 2019, and Senior Sergeant Jason Dolman dated 27 May 2019.

¹¹⁵ CB, Statement of Senior Sergeant Jason Dolman dated 27 May 2019. According to Inspector King, bail documents were not recorded on the station correspondence register.

¹¹⁶ CB, Statement of SC Glen Hutton dated 5 May 2019.

¹¹⁷ Ibid.

¹¹⁸ CB, Statement of DSC Stacey Dwyer dated 29 April 2019.

¹¹⁹ The *Bail Act* 1977 (Vic.) in operation of the time Mr Espino was granted bail is that incorporating amendments as at 14 October 2015.

¹²⁰ The *Bail Act* 1977 (Vic.), section 17(1).

¹²¹ For instance, a condition that the accused live at a particular place is qualified with ‘and provide the Informant with any change of address within [a specified period/or in advance] or the duration of a condition is fixed for a specified period.

application to the court.¹²² An application to vary conditions of bail by an accused ordinarily requires three days' notice to be provided to the prosecution and Informant,¹²³ and any surety.¹²⁴

72. The conditions of bail relevant to Mr Espino's request to go to Lorne for a weekend were those requiring him to live at a fixed address, report to Caroline Springs police station daily and, remain at his residence (that is, his fixed address) during curfew hours.¹²⁵

73. Mr Espino first enquired about engaging in activities prohibited by his bail conditions on 11 January 2016, with two further conversations with DSC Dwyer between 18 and 24 January and email correspondence between Ms Parker and the detective occurring on 25-26 January 2016.¹²⁶ I reiterate these dates purely to demonstrate that there was ample time in which an application to vary conditions of bail could have been brought before the Magistrates' Court.

74. DSC Dwyer stated that she acceded to Mr Espino's request because she considered it 'reasonable under the circumstances.'¹²⁷ That is, he was 'complying with all of his bail and CISP¹²⁸ conditions' and the detective had no reason to believe he was a risk to community safety by re-offending or that he was a flight risk.¹²⁹ Further, the 'rest of his bail conditions other than reporting and residing at home for those dates would still apply.'¹³⁰ She did not seek any advice from her Senior Sergeant but made the decision herself in 'good faith' because she was 'satisfied' that she had 'sufficient information' to know Mr Espino's whereabouts over the weekend.¹³¹

75. Although not an unreasonable decision, it was not one DSC Dwyer had the authority to make under the *Bail Act 1977 (Vic.)*.¹³²

76. As alluded to above, the VPM requires an Informant to notify the police station to which an accused reports when there is a 'variation to the bail reporting requirements, court date or the accused is no longer required to report on bail'.¹³³ Having received email confirmation of Mr

¹²² The *Bail Act 1977 (Vic.)*, sections 18AC (application to vary) especially subsections (4) and (5), and 18AD (determination of application to vary).

¹²³ The *Bail Act 1977 (Vic.)*, section 18 AK. The notice period may be waived by consent.

¹²⁴ The *Bail Act 1977 (Vic.)*, section 18AI.

¹²⁵ Certified Extract of orders made in respect of Case Number F12785934 in the Magistrates' Court of Victoria at Melbourne on 11 December 2015 by Magistrate Rozencwajg.

¹²⁶ CB, Statement of DSC Stacey Dwyer (inaccurately) dated 9 September 2015.

¹²⁷ CB, Statement of DSC Stacey Dwyer, dated 29 April 2019.

¹²⁸ CISP is the acronym of the Court Integrated Services Program, which aims to support accused on bail to access services and provide case management to reduce the risk of re-offending.

¹²⁹ CB, Statement of DSC Stacey Dwyer, dated 29 April 2019.

¹³⁰ CB, Statement of DSC Stacey Dwyer, dated 29 April 2019.

¹³¹ CB, Email correspondence from DSC Stacey Dwyer to SC Glen Hutton dated 28 February 2019.

¹³² I note Inspector King's comment that 'bail modifications should only be made by a Magistrate if bail had originally been granted via a court process', Statement dated 16 May 2019.

¹³³ Victoria Police Manual – Guidelines – Bail and Remand, as in force on 17 August 2016.

Espino's address and contact details between 28-31 January 2016 from Ms Parker, DSC Dwyer contacted Caroline Springs police station to 'advise them to note in the bail folder that [Mr] Espino would not be reporting for two' days.¹³⁴ She did not record the name of the police member to whom she spoke. Incidentally, DSC Dwyer observed no 'active whereabouts' relating to Mr Espino or any other information 'available to [her]' about any outstanding matters recorded on LEAP.¹³⁵ This was because although Mr Espino had been identified as the alleged offender in the auto repairs shop incident on 26 June 2015, and the incident was entered onto LEAP on that date, it was not linked to Mr Espino's Master Name Summary on LEAP until First Constable Killeen submitted a whereabouts on 29 January 2016.¹³⁶

Whereabouts

77. A whereabouts is a mechanism used to alert police members that the named person is wanted by police, and recommends the action required if s/he is encountered, by flagging him/her on LEAP.¹³⁷
78. A whereabouts is placed on LEAP upon submission of a Person Whereabouts Desired (L12) form. Details of the incident to which the whereabouts relates, the person wanted, what should be done and who notified if s/he is located appear on the form. Among the 'person details' required to complete the form are the last known address and the year the address was known to be current.¹³⁸ The relevant VPM provides a non-exhaustive list of situations in which a L12 form 'is to be submitted', which includes that where a suspect is known for an offence and is wanted for interview but could not be located, as was apparently the case for Mr Espino.¹³⁹
79. Before submitted for inclusion on LEAP, the L12 form must be authorised by the investigating member's supervisor. Authorisation is indicated by the supervisor signing the L12 to show he or she is 'satisfied that the investigating members have conducted all reasonable enquiries in an effort to establish the whereabouts of the above-mentioned person. The whereabouts of the person

¹³⁴ CB, Statement of DSC Stacey Dwyer, dated 29 April 2019.

¹³⁵ CB, Statement of DSC Stacey Dwyer, dated 29 April 2019.

¹³⁶ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021. If the auto repairs shop incident been linked to Mr Espino's Master Name Summary when it was first reported/entered on LEAP other police members could have viewed it by following a link on LEAP to Mr Espino's 'involvements' which include 'incidents'. Indeed, if there were no 'missing link', DSC Dwyer could have been aware of it at the time she charged him with the assaults alleged to have occurred in Glenroy on 25 July 2015 – his December 2015 grant of bail *could* have been made in respect of all pending allegations.

¹³⁷ Victoria Police Manual – Tagging of records to locate suspects or offenders, date of first issue 22 February 2010.

¹³⁸ Person Whereabouts Desired (L12) form.

¹³⁹ Victoria Police Manual – Tagging of records to locate suspects or offenders, date of first issue 22 February 2010.

has not been established at this time ... I authorise the request for a 'whereabouts' to be entered on LEAP'.¹⁴⁰

80. The whereabouts in relation to Mr Espino was created on 29 January 2016,¹⁴¹ some six months after the incident to which it related had occurred and was documented on LEAP. First Constable Killeen had identified Mr Espino as the alleged perpetrator of the auto repair shop assault, and spoken to him by phone, on the day it occurred, 26 June 2015. A month later, on 23 July 2015 (two days before the alleged assaults in Glenroy), First Constable Killeen attempted to contact Mr Espino by text.¹⁴²
81. Following Mr Espino's arrest by DSC Dwyer on 26 July 2015 he was a psychiatric inpatient for ten days before being remanded in custody. He remained in custody between 4 August and 11 December 2015; it is fair to say that his whereabouts were knowable in that period. Indeed, it seems that 'prior to 28 November 2015', First Constable Killeen became aware that Mr Espino was in custody but did not consider it 'appropriate' to interview him about 'a minor offence between known parties' when an application to the court would be required to do so.¹⁴³ He contemplated charging Mr Espino without interviewing him, however, the LEAP record suggests this course was not approved by a supervisor.¹⁴⁴
82. On 19 January 2016, First Constable Killeen made further inquiries and ascertained that Mr Espino had been bailed.¹⁴⁵ Despite the details of Mr Espino's conditions of bail having been added to LEAP at DSC Dwyer's direction on 11 December 2015 – and available to all members via the 'bail' tab on Mr Espino's Master Name Summary on LEAP – First Constable Killeen was unaware of his static bail address or that he was reporting daily to Caroline Springs police station.¹⁴⁶
83. At some point during his investigation, First Constable Killeen attended Mr Espino's Glenroy address, as recorded in the LEAP Master Name Summary, in an effort to locate him¹⁴⁷ but, as is apparent from the foregoing, Mr Espino would not have been found there after 26 July 2015.
84. The only document submitted to my investigation about the whereabouts is a 'LEAP – Whereabouts desired record enquiry' provided by the CI. The document confirms that the

¹⁴⁰ Person Whereabouts Desired (L12) form.

¹⁴¹ CB, LEAP Whereabouts Desired Record Enquiry, Sub-incident number: 150306642 created 29 January 2016.

¹⁴² Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁴³ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁴⁴ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁴⁵ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁴⁶ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁴⁷ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

whereabouts was ‘reported at’ 2.33pm on 29 January 2016, that Mr Espino had been identified as an ‘offender’ in relation to the offence of recklessly causing injury (Sub-incident 150306642, the incident at an auto repair shop on 26 June 2015) and should be detained and questioned.¹⁴⁸ Informant Killeen was to be notified when Mr Espino was located.¹⁴⁹ This document was in a form that did not enable the authorising supervisor to be identified.

85. Inspector King asked Informant Killeen to produce the L12 form he submitted but received no reply.¹⁵⁰

Communications overnight on 31 January 2016 with police members

86. Ms Dennison recalled Mr Espino calling ‘a police station’ three times on the night of 31 January 2016, though she was unsure if he called the same police station each time, or indeed, which station he had contacted.¹⁵¹ SC Hutton made enquiries of nightshift staff at each of the locations Ms Dennison nominated,¹⁵² with the only confirmed contact between Mr Espino and police being with SC Chernyega at Flemington police station, where DSC Dwyer was stationed.

87. SC Chernyega provided two statements two years apart and made it clear in the later of these that he had no greater memory of his conversation with Mr Espino than he had when preparing his original, brief, 2016 statement.¹⁵³ The elaboration provided in the 2018 statement drew on his usual approach to calls like Mr Espino’s rather than reflecting the ‘exact words’ used in their conversation.¹⁵⁴ Indeed, SC Chernyega said he had had no cause to pay particular attention to the conversation he had with Mr Espino at the time as it involved a ‘run-of-the-mill’ enquiry received in the course of a reception duty shift at Flemington police station.¹⁵⁵ He stated that the call ‘was not long’ ... perhaps 30 seconds in length’ and he made no notes of it which was not uncommon; he would only take notes of such conversations if something ‘unusual’ occurred during the call that warranted notation.¹⁵⁶

¹⁴⁸ CB, LEAP Whereabouts Desired Record Enquiry, Sub-incident number: 150306642 created 29 January 2016.

¹⁴⁹ Ibid.

¹⁵⁰ CB, Statement of Inspector Trevor King dated 16 May 2019. No reply as at the date of Inspector King’s statement; nothing further has been provided to the Court.

¹⁵¹ CB, Statement of Kate Dennison dated 2 May 2016.

¹⁵² CB, Statements of SC Tara Conte dated 26 April 2019 and SC Jessica Gaylard dated 25 April 2019.

¹⁵³ CB, Statements of SC Igor Chernyega dated 28 April 2016 and 23 October 2018.

¹⁵⁴ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁵⁵ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁵⁶ CB, Statement of SC Igor Chernyega dated 23 October 2018.

88. SC Chernyega answered Mr Espino's call at around 10.05pm on 31 January 2016; Mr Espino 'expressed a belief ... that police may be looking for him'.¹⁵⁷ SC Chernyega did not remember 'how Mr Espino said that he came to that conclusion'.¹⁵⁸
89. SC Chernyega asked for Mr Espino's full name and date of birth to enable him to perform a check of his name on LEAP. The search – which likely resulted in display of Mr Espino's Master Name Summary – revealed an outstanding (that is, active) whereabouts. The police member observed that, depending on the nature of the whereabouts, his usual practice was: to inform the person of the existence of the whereabouts and, in general terms, to what it related (for example, an assault); advise the person to present at any police station at 'the earliest available opportunity' and what to expect when s/he did so, for example, alerting them to the possibility of arrest.¹⁵⁹ In SC Chernyega's experience, 'most people preferred' to not be 'arrested by surprise'.¹⁶⁰
90. SC Chernyega stated that as a result of the LEAP name check, he 'advised Mr Espino that police wished to speak with him ... [about] an assault and that Dwyer is the Informant'.¹⁶¹ As far as the police member could recall, the 'conversation then concluded' and, shortly after, he finished his shift.¹⁶²
91. At 10.08pm, SC Chernyega emailed DSC Dwyer: 'Edward Espino 05/04/1979 [10-digit mobile phone number]'.¹⁶³ He noted that it was not unusual for him to send or receive emails like this – which could appear inadequate to an outside observer – as notification of an attempt to make contact.¹⁶⁴ SC Chernyega conceded that he 'made an assumption' that DSC Dwyer 'would know what the email meant upon receiving it'.¹⁶⁵ I note that he also assumed (incorrectly) that DSC Dwyer was the relevant Informant and had initiated the whereabouts on LEAP.¹⁶⁶

Submissions of the Chief Commissioner of Police

92. In light of the administration of justice issues raised by my investigation, and the potential for adverse comments to be made about certain actions of DSC Dwyer and First Constable Killeen,

¹⁵⁷ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁵⁸ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁵⁹ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁶⁰ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁶¹ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁶² CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁶³ CB, Appendix B.

¹⁶⁴ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁶⁵ CB, Statement of SC Igor Chernyega dated 23 October 2018.

¹⁶⁶ CB, Statement of SC Igor Chernyega dated 23 October 2018. SC Chernyega is unable to account for the error. The correct informant – First Constable Killeen – was identified by a different police member with whom Mr Espino subsequently spoke.

I provided the Chief Commissioner of Police (CCP) with an opportunity to file submissions addressing them.

93. The CCP advised that the Victoria Police Centre for Law and Operational Development provides training to police members and recruits about bail.¹⁶⁷ The legislative framework for bail is the focus of training, with additional guidance provided in relation to bail and remand in the VPM. Among the matters traversed in 2016 training materials (and those presently in use) are that only a member of or above the rank of sergeant is authorised by the *Bail Act* 1977 to fix (and so vary) bail and while police have discretion in relation to the enforcement of bail non-compliance, only a court can vary conditions of bail set by a court.¹⁶⁸
94. The CCP advised that neither Victoria Police training nor the VPMs provide police members with guidance about how to manage enquiries like that made by Mr Espino to DSC Dwyer concerning about non-observance of bail conditions.¹⁶⁹
95. While the CCP conceded that DSC Dwyer did not have any power to ‘vary’ Mr Espino’s bail conditions, she did have discretion as to whether he would be charged for breaching his bail conditions by virtue of the qualification ‘without reasonable excuse’ contained in s30A of the *Bail Act* 1977.¹⁷⁰ The CCP asserted that rather than purporting to ‘vary’ Mr Espino’s bail conditions so that he could attend a wedding in Lorne, DSC Dwyer had assessed that there would be insufficient grounds to breach his bail and she would have consented to a variation application if made, she sought to ‘assure Mr Espino that he would not be charged’ with non-compliance with his reporting condition over the weekend of the wedding.¹⁷¹ As she had not varied Mr Espino’s conditions of bail she made no change to the relevant part of LEAP but updated the bail folder at Caroline Springs so that other members were ‘aware of the dates he would be away’.¹⁷²
96. The CCP conceded that the ‘apparent disappearance’ of Mr Espino’s bail folder is ‘regrettable’ it would have ultimately been destroyed once the accused was no longer required to report on bail and that an offender’s ‘general bail history’ is available on LEAP.¹⁷³

¹⁶⁷ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁶⁸ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁶⁹ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷⁰ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷¹ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷² Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷³ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021. The general bail history would not contain the level of detail that may be required during a coronial investigation.

97. The CCP submitted that First Constable Killeen acted reasonably, and in accordance with the VPM, in submitting a whereabouts in respect of Mr Espino in January 2016.¹⁷⁴ First Constable Killeen’s supervisors also considered the whereabouts appropriate – by authorising it – as a means of ensuring action to locate Mr Espino continued when he transferred to a temporary role as a detective.¹⁷⁵ That said, the CCP ‘acknowledge[d]’ that the enquires undertaken by First Constable Killeen ‘failed to draw his attention’ to Mr Espino’s current (bail) address, or that he was reporting to Caroline Springs police station daily; nothing prevented First Constable Killeen from accessing this information via Mr Espino’s Master Name Summary.¹⁷⁶
98. While the CCP conceded that First Constable Killeen’s investigation was ‘more protracted than would be desirable’, he stated that the member’s enquiries and the time they took should be viewed in context. At the time, First Constable Killeen was a junior member working in a busy police station and when he submitted the whereabouts had new investigations and obligations arising from a new role as a detective.¹⁷⁷ The auto repairs shop incident was ‘minor ... and of less urgency compared to other matters he was working on’, and would continue to be overtaken by newer, more serious investigations and First Constable Killeen’s ‘recognition of this fact led to’ the whereabouts.¹⁷⁸
99. The CCP argued that while Mr Espino was told that a whereabouts had been placed on him in the hours before his death, it cannot be concluded that the placing of the whereabouts was itself an action which caused or ‘relevantly contributed’ to his death.¹⁷⁹ It was apparent that Mr Espino was fearful of the prospect of returning to jail, but this fear arose from the fact that police were following up on an assault allegation, not the fact of the whereabouts.¹⁸⁰
100. Further, the CCP asserted that DSC Dwyer’s exercise of ‘her discretion not to arrest Mr Espino for breaking his bail conditions from 28 January – 1 February 2016 and informing him in advance that he could safely miss his reporting during that period, whether or not it was in strict compliance with Victoria Police policies, did not cause Mr Espino any distress or play any role in the events that unfolded’.¹⁸¹ DSC Dwyer’s ‘pragmatic approach’ should not be viewed as sufficiently causally connected to his death to warrant any adverse finding.¹⁸²

¹⁷⁴ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷⁵ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷⁶ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷⁷ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷⁸ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁷⁹ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁸⁰ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁸¹ Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

¹⁸² Letter submitted on behalf of the Chief Commissioner of Police dated 30 April 2021.

Communications with NWMHS Triage in the early hours of 1 February 2016

101. At 1.57am on 1 February 2016, Mr Espino called NWMHS Triage and spoke with social worker Felicity Lang. Ms Lang's notes of the 20-minute call were recorded contemporaneously.¹⁸³
102. She gathered demographic information and viewed the Client Management Interface (CMI),¹⁸⁴ which showed that Mr Espino had diagnoses of schizoaffective disorder and drug use disorder, and his previous contact with NWMHS.¹⁸⁵
103. Ms Lang reviewed Mr Espino's electronic clinical record, particularly the most recent discharge summary relating to his SAAPU admission between 26 July and 4 August 2015 for acute relapse of psychosis.¹⁸⁶ The discharge summary noted that Mr Espino's risk of relapse was associated with medication non-compliance and substance use.¹⁸⁷
104. During the call, at about 2am, Ms Lang's colleague Olga Pantazopoulos received a call from Ana Espino. Unbeknownst to Ms Pantazopoulos, the notes she (thought she had) added to Ms Lang's 'Screening Register Detail' were not saved on CMI.¹⁸⁸ She attributes this to the 'highly unusual situation' whereby two clinicians were simultaneously occupied with the same matter in circumstances where CMI does not allow for concurrent entry of data in relation to the same client.¹⁸⁹
105. Ms Pantazopoulos recalled that Ana Espino asked whether her son had contacted Triage that night; she had spoken to him earlier and her son had 'been stressed about a police matter'.¹⁹⁰ As Ms Pantazopoulos could hear Ms Lang on a call with Mr Espino, she asked Ana Espino for her son's date of birth and then interrupted her colleague who confirmed that she was speaking with Mr Espino.¹⁹¹

¹⁸³ CB Statement of Felicity Lang dated 23 September 2017 and the Screening Register Detail dated 1 February 2016 at 1.57am.

¹⁸⁴ Client Management Interface (CMI) and Operational Data Store (ODS) are the Victorian public mental health client information management system. The CMI is the local client information system used by each public mental health service while ODS manages select data items from each CMI and is used to allocated a unique (mental health) registration number for each client, known as the state wide unit record (UR) number. ODS shares some client-level data between Victoria public area mental health services to support continuity of treatment and care. The ODS meets the various reporting requirements of the Department of Health and supports the statutory function of the Chief Psychiatrist and the Mental Health Tribunal.

¹⁸⁵ CB, Statement of Felicity Lang dated 23 September 2017.

¹⁸⁶ CB, Statement of Felicity Lang dated 23 September 2017.

¹⁸⁷ CB, Statement of Felicity Lang dated 23 September 2017.

¹⁸⁸ CB, Statement of Olga Pantazopoulos dated 22 March 2018.

¹⁸⁹ CB, Statement of Olga Pantazopoulos dated 22 March 2018. While CMI allows more than one clinician to be logged into the same client's Screening Register for 'Read Only' purposes, it does not permit data to be added concurrently by two or more clinicians. This limitation was confirmed in the Statement of Peter Kelly dated 30 October 2018.

¹⁹⁰ CB, Statement of Olga Pantazopoulos dated 22 March 2018.

¹⁹¹ CB, Statements of Olga Pantazopoulos dated 22 March 2018 and Felicity Lang dated 23 September 2017.

106. When Ms Pantazopoulos told Ana Espino that her son was speaking to a clinician, the latter responded that she was ‘satisfied that he was speaking to someone about his worries’.¹⁹² Ms Pantazopoulos stated that Ana Espino ‘denied concerns about [her son’s] risk to self [...] and chose not to continue the call as she just wanted to check that her son was receiving support.’¹⁹³
107. According to Ms Lang, Mr Espino told her that he was on bail and had been told by police to attend Caroline Springs police station about an outstanding legal matter, which he referred to as an ‘outstanding whereabouts’.¹⁹⁴ He was concerned that his bail would be revoked, and he would be returned to prison; he was very stressed about the prospect of imprisonment.¹⁹⁵ Mr Espino said that he was ‘seeking a psychiatric admission, rather than return to prison’.¹⁹⁶
108. During their conversation, Mr Espino reported medication compliance (including taking his nightly medication that evening), recent review by his psychiatrist, and denied recent drug or alcohol use.¹⁹⁷ He denied current paranoia and perceptual disturbance and Ms Lang could not identify any indication of psychotic relapse as a result of their interaction.¹⁹⁸
109. Mr Espino identified low mood in the context of feeling stressed about the legal matter he had disclosed and difficulty sleeping due to that stress.¹⁹⁹ When Ms Lang asked directly about suicidal ideation, planning or intent, Mr Espino denied all three.²⁰⁰ She re-iterated that enquiry towards the end of the call; Mr Espino again denied suicidality²⁰¹ Ms Lang advised Mr Espino to contact Triage again or attend a hospital emergency department if he developed suicidal thoughts.²⁰²
110. Ms Lang provided Mr Espino an opportunity to express his concerns and they explored possible supports, including: a face-to-face mental health assessment at Sunshine Hospital overnight ‘if seeking admission’ (which Mr Espino declined); he could contact Dr Muirhead during business

¹⁹² CB, Statement of Olga Pantazopoulos dated 22 March 2018.

¹⁹³ Ibid.

¹⁹⁴ CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

¹⁹⁵ CB, Statement of Felicity Lang dated 23 September 2017.

¹⁹⁶ CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

¹⁹⁷ CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

¹⁹⁸ CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

¹⁹⁹ CB, Statement of Felicity Lang dated 23 September 2017.

²⁰⁰ CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

²⁰¹ CB, Statement of Felicity Lang dated 23 September 2017.

²⁰² CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

hours; and, Mr Espino suggested that he could (and would) talk to his lawyer and CISP worker in the morning.²⁰³ Mr Espino told Ms Lang that he intended to comply with the police request to attend a police station.²⁰⁴

Review of care

111. At my request, the Coroners Prevention Unit (CPU)²⁰⁵ reviewed the available materials and provided advice about the adequacy of the response by NWMHS Triage to Mr Espino and Ana Espino's calls on 1 February 2016.

112. The CPU advised that it was appropriate that Ms Pantazopoulos ended the call with Ana Espino once she had relayed to her that Mr Espino was speaking with her colleague Ms Lang, given no concerns were expressed by Ana Espino for her son's immediate safety nor any risk of harm to himself or others.

113. The CPU further advised that NWMHS' triaging of Mr Espino's call was appropriate, for the following reasons:

- a. Mr Espino did not present as experiencing, nor did he express, psychotic symptoms;
- b. He reported compliance with this medication regime and denied any substance use;
- c. Mr Espino said that he had recently seen his private psychiatrist and knew how to contact him;
- d. While Mr Espino disclosed anxiety and stress that were adversely affecting his sleep and mood that night, he denied any suicidal ideation;
- e. Mr Espino engaged in problem solving with Ms Lang and a plan for him to contact his lawyer and CISP worker later in the morning was developed;

²⁰³ CB, Statement of Felicity Lang dated 23 September 2017 and Screening Register Detail (Edward Espino) dated 1 February 2016 at 1.57am.

²⁰⁴ CB, Statement of Felicity Lang dated 23 September 2017.

²⁰⁵ The Coroners Prevention Unit (CPU) was established in 2008 to strengthen the prevention role of the coroner. The unit assists the Coroner with research in matters related to public health and safety and in relation to the formulation of prevention recommendations. The CPU also reviews medical care and treatment in cases referred by the coroner. The CPU is comprised of health professionals with training in a range of areas including medicine, nursing, public health and mental health.

- f. Mr Espino requested an admission to an acute mental health unit. However, it was not appropriate to admit him to avoid prison in the absence of acute mental health or psychotic symptoms or a risk of harm to himself or others;
- g. Ms Lang suggested that Mr Espino attend the emergency department to speak directly to a mental health clinician or contact Triage again if he experienced any suicidal ideation; he did not do either.

114. I find that Mr Espino's management by NWMHS Triage on 1 February 2016 was reasonable in the circumstances.

NWMHS' In-Depth Case Review

115. NWMHS conducted an In-Depth Case Review (**IDCR**) of Triage's response to Mr Espino's needs on 1 February 2016.²⁰⁶

116. The IDCR concluded that psychiatric admission in the circumstances²⁰⁷ would not be justified and the Triage clinician's actions²⁰⁸ were appropriate given Mr Espino's presentation.²⁰⁹

117. At the time of Mr Espino's call, there was no indication that he intended to take his own life and as such his death was not foreseeable. However, it was highly probable that Mr Espino's decision to take his own life was related to his concern about being imprisoned given his death occurred soon after contact with Triage.²¹⁰

118. One recommendation arose from the IDCR: that NWMHS contact a client's treating health professionals as soon as practicable to advise them of his/her contact with Triage to inform overall management.²¹¹

²⁰⁶ CB, Statement of Peter Kelly dated 30 October 2018. I note that as part of the IDCR, NWMHS examined all contacts with Triage relating to Mr Espino. The IDCR observed that Ana Espino contacted Triage on 15/7/15 with concerns her son was using cannabis but was reportedly unwilling to allow Mr Espino to be contacted by NWMHS and later retracted her concerns after visiting her son. A further contact occurred between Triage and Ana Espino on 21/7/15 with similar concerns about Mr Espino. Attempts were made to assess Mr Espino and NWMHS contacted his general practitioner and psychiatrist. Mr Espino was referred for assessment by NWMHS Community Team on 24/7/15 and, though attempts were made to locate and assess him, they were unsuccessful prior to learning on 26/7/15 that Mr Espino have been arrested. The Review highlighted a concern relating to 'potential delays in activating a referral to the NWMHS Community Team and the process used to locate Mr Espino; these were to be reviewed jointly by Triage and the Community Team.

²⁰⁷ That is, Mr Espino's mental state was stable, there were no psychotic symptoms and medication compliance and recent review by his psychiatrist were reported. Suicidal ideation was denied, and Mr Espino sought a psychiatric admission to avoid imprisonment

²⁰⁸ That is, provision of support, a plan for Mr Espino to obtain legal advice, and advice that he present to an emergency department or contact Triage again if he felt unsafe.

²⁰⁹ Critical Incident Review Report (In-Depth Case Review): Incident ID: 283854, undated.

²¹⁰ Critical Incident Review Report (In-Depth Case Review): Incident ID: 283854, undated.

²¹¹ Critical Incident Review Report (In-Depth Case Review): Incident ID: 283854, undated.

FINDINGS AND CONCLUSION

119. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:

- a. the identity of the deceased was Edward Michael Espino born 5 April 1979;
- b. the death occurred on 1 February 2016 at Caroline Springs in Victoria from neck compression in the circumstances of hanging; and
- c. the death occurred in the circumstances described above.

120. I am satisfied that Mr Espino intentionally took his own life.

121. Having considered all the evidence, I find that DSC Dwyer should not have told Mr Espino that he need not report to the Caroline Springs police station over the weekend of 29-31 January 2016 as was required by his undertaking of bail. Rather, given there was sufficient time for an application to vary bail to have been made and heard, this is what she should have suggested to facilitate his attendance at the Lorne wedding. That said, there is no evidence that DSC Dwyer's conduct had any impact on Mr Espino's decision to end his life.

122. First Constable Killeen's investigation of the Krupic Auto Repairs assault was undesirably protracted, in part because he appears to have not accessed information on LEAP that could have provided a ready means through which to contact Mr Espino and progress it, and this prompted him to place the whereabouts alert. Notwithstanding that Mr Espino learned of the whereabouts proximate to his death, and it triggered anxiety that the Krupic Auto Repairs assault allegation may result in his bail being revoked and his return to prison, it cannot be said that the whereabouts contributed to Mr Espino's death.

COMMENT

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

123. Characterisation of a police member's pre-emptive agreement to not prosecute permitted contravention of court-ordered conditions of bail as a pragmatic strategy should be repudiated. To the extent that police members unilaterally effectively 'vary' court-imposed bail conditions as canvassed in this Finding, such a practise should cease. To do otherwise, would render such conditions nugatory and eviscerate the court's power to impose conditions on those entering undertakings of bail to protect the Victorian community.

RECOMMENDATIONS

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

124. That the Chief Commissioner of Police provide training for recruits, and instructions for extant members, making clear that police members have no power to relieve those who have entered into undertakings of bail fixed by a court of their obligation to comply by pre-emptively agreeing not to prosecute the breach of any such obligation.

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:

Mr Espino's family

Peter Kelly, North Western Mental Health Service, c/- Jan Moffatt of DTCH Lawyers

Chief Commissioner of Police, c/- Victorian Government Solicitors Office

Senior Constable Glen Hutton, Coroner's Investigator

Signature:



Darren Bracken

CORONER

Date: 14 July 2021

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.
