

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2016 005829

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Findings of:	Judge John Cain, State Coroner
Deceased:	Danny Lee O'Brien
Date of birth:	27 January 1979
Date of death:	9 December 2016
Cause of death:	1(a) Stab wound to the chest
Place of death:	Unit 1/85 Nelson Place, Williamstown, Victoria, 3016
Keywords:	Family Violence; Intimate Partner Homicide

INTRODUCTION

1. On 9 December 2016, Danny Lee O'Brien was 37 years old when he was fatally stabbed in his residential unit in a boarding house in Williamstown, Victoria. At the time of his death, Mr O'Brien lived alone and was separated from his recent partner, Kerry Jones.
2. Mr O'Brien was born in Melbourne and was raised mainly by his mother in Braybrook with his half-brother, Geoffrey O'Brien. Mr O'Brien had difficulties with substance abuse early in life, starting at the age of fourteen. He spent time in Queensland trying to address his substance use but started using heroin regularly after a short period.
3. Mr O'Brien suffered a stroke when he was twenty-four years old and lost the ability to talk, walk and eat. The stroke affected the right-hand side of his body. Mr O'Brien went through intense physiotherapy and speech therapy. As a result of the stroke, Mr O'Brien became shut down, emotionally and physically. Mr O'Brien was living with his grandmother at this time and continued to do so until he met Ms Jones.
4. Mr O'Brien attended Community School in Braybrook where he learnt computer skills and he commenced work part time in this field before working for the Regional Rail Link.
5. In approximately early 2014, Mr O'Brien met Ms Jones on a dating website and the pair commenced a relationship shortly after. Mr O'Brien continued living with his grandmother initially and Ms Jones would visit often.
6. Mr O'Brien eventually left his grandmother's residence in Braybrook and moved in with Ms Jones who had two children from previous relationships residing with her in Wyndham Vale.
7. The available evidence suggests that the relationship between Ms Jones and Mr O'Brien involved multiple incidents of family violence. There were numerous reports of family violence made to services during the relationship between Ms Jones and Mr O'Brien. Mr O'Brien was identified as the perpetrator of family violence in all of these incidents.

THE CORONIAL INVESTIGATION

8. Mr O'Brien'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.

9. 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.
10. 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.
11. Victoria Police assigned an officer to be the Coroner's Investigator for the investigation of Mr O'Brien's death. The Coroner's Investigator conducted inquiries on my behalf, including taking statements from witnesses – family, the forensic pathologist, treating clinicians and investigating officers – and submitted a coronial brief of evidence.
12. This finding draws on the totality of the coronial investigation into the death of Danny Lee O'Brien including evidence contained in the coronial brief. Whilst I have reviewed all the material, I will refer only 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

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

Circumstances in which the death occurred

13. In the early evening of 8 December 2016, Ms Jones and Mr O'Brien met outside Ms Jones's residence. When Mr O'Brien departed, Ms Jones organised for another man to drive her and her baby to Williamstown. Ms Jones arrived at the boarding house at approximately 8.35 pm and gained access to Mr O'Brien's room by climbing through the window and unlocking the door.² Mr O'Brien returned about 15 minutes later.
14. Shortly after midnight another resident of the boarding house heard a woman's voice from Mr O'Brien's room repeatedly shouting '*where is my drugs*'.³ At about 9.30 am on 9 December

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*, Interview transcript - Ms Jones dated 9 December 2016, 1340

³ *Coronial Brief*, Statement of Michael Filce dated 17 January 2017, 241

2016 a different resident heard a man and woman yelling and the sound of a baby crying from within Mr O'Brien's room. About ten minutes earlier, a worker at a construction site near the boarding house heard a raised male voice in what sounded like an argument.⁴

15. While the evidence is inconclusive as to whether there was any physical violence between Ms Jones and Mr O'Brien that morning, it is accepted that there had been at least a heated verbal argument between the couple and, in that context and against the history of family violence, Ms Jones perceived a threat to her person from Mr O'Brien.
16. Mr O'Brien sat at the small table in the room either preparing a syringe of methylamphetamine for his use or having just used that syringe. As he went to stand up, Ms Jones picked up the kitchen knife from the table and stabbed him to the chest.⁵
17. Following the stabbing, Ms Jones fled the boarding house with her baby and walked to the Williamstown Police Station, about 100 metres away. Ms Jones told the duty officer to call an ambulance and that she had had an argument and had stabbed '*him*'.⁶ Ms Jones was cautioned and prior to a formal interview, told police that she had been threatened, punched and grabbed around the neck.⁷ Ms Jones said the same thing to the medical doctor who examined her that day.
18. At approximately 9.49 am on 9 December 2016, two police members attended Mr O'Brien's residence and found him seated at a table slumped forward.⁸ Police members attempted to resuscitate Mr O'Brien without success and at 10.07 am, attending paramedics confirmed that Mr O'Brien was deceased.⁹
19. On 31 July 2018, in the Supreme Court of Victoria, Ms Jones was found guilty of the manslaughter of Mr O'Brien and was sentenced to a term of imprisonment for nine years.¹⁰

Identity of the deceased

20. On 12 December 2016, Danny Lee O'Brien, born 27 January 1979, was identified via fingerprint identification.

⁴ *Coronial Brief*, Statement of Matthew Lewis dated 10 February 2017, 260-261

⁵ *Coronial Brief*, Interview transcript - Ms Jones dated 9 December 2016, 1345

⁶ *Ibid*, 1345-1360

⁷ *Coronial Brief*, Statement of Senior Constable Eileen Hockey dated 9 December 2016, 305-306

⁸ *Coronial Brief*, Statement of Leading Senior Constable Russell King dated 29 December 2016, 317-318

⁹ *Coronial Brief*, Statement of Peter Neyland dated 2 March 2017, 280

¹⁰ *R v Jones* [2018] VSC 415, 12

21. Identity is not in dispute and requires no further investigation.

Medical cause of death

22. Forensic Pathologist Dr Yeliena Baber from the Victorian Institute of Forensic Medicine (VIFM), conducted an autopsy on 10 December 2016 and provided a written report of her findings dated 10 May 2017.

23. The post-mortem examination revealed the following:

a) no natural disease was identified that may have caused or contributed to death. A remote infarction, or stroke, was identified in the brain which has had no bearing on the cause of death; and

b) a single stab wound to the right side of the chest which has gone through the superior vena cava (main vein returning blood to the heart from the head and upper limbs). The wound track travels from right to left, and has a depth of approximately 8 cm. At least moderate force would be required to inflict the stab wound to the deceased as there is injury to rib cartilage.

24. Toxicological analysis of post-mortem samples identified the presence of methylamphetamine and nordiazepam within blood and urine; the presence of morphine, codeine, nordiazepam, oxazepam, temazepam, morphine, codeine and cannabis all within urine. These have no bearing on the cause of death.

25. Dr Baber provided an opinion that the medical cause of death was 1 (a) Stab wound to the chest.

FURTHER INVESTIGATIONS AND CORONER'S PREVENTION UNIT REVIEW

26. The unexpected, unnatural and violent death of a person is a devastating event. Violence perpetrated by an intimate partner is particularly shocking, given that all persons have a right to safety, respect and trust in their most intimate relationships.

27. For the purposes of the *Family Violence Protection Act 2008*, the relationship between Mr O'Brien and Ms Jones was one that fell within the definition of '*de facto partner*'¹¹ under that Act. Moreover, Ms Jones's actions in fatally assaulting Mr O'Brien constitutes '*family violence*'.¹²

¹¹ Family Violence Protection Act 2008, section 9

¹² Family Violence Protection Act 2008, section 5

28. In light of Mr O'Brien's death occurring under circumstances of family violence, I requested that the Coroners' Prevention Unit (CPU)¹³ examine the circumstances of his death as part of the Victorian Systemic Review of Family Violence Deaths (VSRFVD).¹⁴
29. The available evidence suggests that the relationship between Ms Jones and Mr O'Brien involved multiple incidents of family violence. There were numerous reports of family violence made to services during the relationship between Ms Jones and Mr O'Brien. Mr O'Brien was identified as the perpetrator of family violence in all of these incidents.

Family violence and the relationship between Ms Jones and Mr O'Brien

30. Ms Jones and Mr O'Brien commenced an intimate relationship in 2014 and remained in this relationship, on and off, until the fatal incident.¹⁵ Ms Jones had three children, two children from previous relationships and one child with Mr O'Brien.
31. Both Mr O'Brien and Ms Jones had substance abuse issues.¹⁶ Mr O'Brien also had physical impairments, specifically a limp and reduced use of his right arm, which he sustained following a stroke in 2003.¹⁷
32. On 29 April 2015, Ms Jones attended Werribee Police Station and reported a physical assault perpetrated against her by Mr O'Brien.¹⁸ Ms Jones reported that during a verbal argument Mr O'Brien had put his hand around her throat and grabbed it so hard he had '*left finger marks*.'¹⁹ She reported that she was scared of Mr O'Brien and that he frequently threatened her, saying things to suggest that people he knew were going to kill her.²⁰ Ms Jones also stated that Mr O'Brien threatened her, her family members, and her former partners '*every time things [did not] go the way he want[ed] them to go*.'²¹

¹³ The Coroners Prevention Unit is a specialist service for Coroners established to strengthen their prevention role and provide them with professional assistance on issues pertaining to public health and safety

¹⁴ The VSRFVD provides assistance to Victorian Coroners to examine the circumstances in which family violence deaths occur. In addition the VSRFVD collects and analyses information on family violence-related deaths. Together this information assists with the identification of systemic prevention-focused recommendations aimed at reducing the incidence of family violence in the Victorian Community

¹⁵ Coronial brief, Statement of V O'Brien, 105; Statement of J Christiansen, 122.

¹⁶ Coronial brief, Statement of V O'Brien; Statement of B Jones.

¹⁷ Coronial brief, Statement of V O'Brien, 104.

¹⁸ *The Queen v Jones* [2018] VSC 415, 1 [4]; Coronial brief, Appendix DD, 1110 – 1124.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

33. Following this report, police applied for a Family Violence Intervention Order (**FVIO**) to protect Ms Jones and her children,²² interviewed Mr O'Brien about the incident²³ and charged him with unlawful assault.²⁴
34. On 7 May 2015 a FVIO was issued in the Werribee Magistrates' Court which included conditions that prohibited Mr O'Brien from contacting, communicating with, residing with, or going near Ms Jones or her children and their home.²⁵
35. On 17 July 2015 Mr O'Brien pleaded guilty to unlawful assault and was sentenced to a 12-month Community Correction's Order (**CCO**) with a condition that he complete 150 hours of community work.²⁶
36. Ms Jones stated that after the FVIO was issued she discovered that she was pregnant to Mr O'Brien. She applied to vary the FVIO to allow Mr O'Brien to be able to visit her. However, prior to the variation hearing the pregnancy ended prematurely. As a result, Ms Jones did not proceed with the variation.²⁷
37. Mr O'Brien and Ms Jones resumed their relationship and in September 2015, Ms Jones invited Mr O'Brien to stay with her.²⁸ On 19 September 2015 Ms Jones applied to vary the FVIO to enable Mr O'Brien to reside and communicate with her, and the matter was adjourned to 29 October 2015.²⁹
38. In early October 2015, Ms Jones discovered that she was again pregnant to Mr O'Brien.³⁰
39. On 8 October 2015, Ms Jones' sister, Sarah contacted '000' to report a family violence incident between Ms Jones and Mr O'Brien and was purportedly notified that there were no police units available to attend.³¹ Sarah subsequently called '000' to update them that Mr O'Brien had left Ms Jones' residence. Ms Jones was contacted by Werribee Police station who requested that she attend and provide a statement. Ms Jones indicated that she was unable to do this at the time as she needed to put her children to bed.³²

²² Coronial brief, Appendix EE, 1126.

²³ Coronial brief, Appendix DD, 1118.

²⁴ Ibid 1114.

²⁵ Coronial brief, Appendix EE, 1133-1135.

²⁶ Coronial brief, Appendix FF, 1166; Corrections Victoria, records relating to Danny O'Brien, 108.

²⁷ Coronial brief, Appendix FF, 1160.

²⁸ Coronial brief, Appendix FF, 1160.

²⁹ Coronial brief, Appendix EE, 1138.

³⁰ Ibid 1157.

³¹ Coronial brief, Appendix FF, 1142, DFFH records 839.

³² Coronial brief, Appendix FF, 1142.

40. On 12 October 2015, Ms Jones attended Werribee Police Station to make a formal report about the incident on 8 October 2015.³³ Ms Jones reported that she and Mr O'Brien had a verbal argument following which Mr O'Brien went into the bedroom. Ms Jones followed him and asked him to leave quietly, at which time he allegedly pushed Ms Jones to the face and torso, forcing her from the bedroom. Ms Jones then armed herself with a serrated bread knife and confronted Mr O'Brien. Mr O'Brien reportedly grabbed Ms Jones by the throat, causing her to drop the knife, and hit her to the top of her head twice with a closed fist. They each then slapped each other in the face and Mr O'Brien hit Ms Jones in the back of the head before leaving the property.³⁴ A report was made to the Department of Health and Human Services³⁵ (**Child Protection**) following this incident.³⁶ Mr O'Brien was unable to be located at the time and a whereabouts was submitted indicating that he needed to be interviewed.³⁷
41. On 17 October 2015, Ms Jones' ex-partner Mr Buckso contacted Victoria Police to report that a verbal altercation had occurred between himself, Mr O'Brien and Ms Jones at Ms Jones' residence. He reported that Mr O'Brien was present at Ms Jones' address in breach of a FVIO.³⁸ Police attended and spoke to both Mr O'Brien and Ms Jones. Ms Jones advised police that she was pregnant with Mr O'Brien's child and wanted him to remain at the address with her for support. Police advised Ms Jones that Mr O'Brien was not permitted to be at the address and Ms Jones would need to seek a variation of the FVIO for him to reside there. Ms Jones noted that she had applied for a variation, which was due to be heard on 29 October 2015. Mr O'Brien admitted to contravening the FVIO, stating he had just attended to collect personal belongings, and agreed to leave the property.³⁹ He was not interviewed about the incident on 8 October 2015.
42. Mr O'Brien was charged with contravening a FVIO in relation to the incident on 17 October 2015 and issued with a summons to attend the Werribee Magistrates' Court on 1 February 2016.⁴⁰ This charge remained unresolved at the time of the fatal incident.⁴¹
43. On 28 October 2015, Child Protection conducted a home visit with Ms Jones. During this visit Ms Jones disclosed that Mr O'Brien was controlling and isolated her from her friends and

³³ *The Queen v Jones* [2018] VSC 415, 1 [5]; Coronial brief, Appendix FF, 1144-1169.

³⁴ Coronial brief, Appendix FF, 1142.

³⁵ Now known as the Department of Families, Fairness and Housing.

³⁶ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 838-851.

³⁷ Coronial brief, Appendix FF, 1143.

³⁸ Coronial brief, Appendix GG, 1171.

³⁹ *Ibid* 1171-1174.

⁴⁰ *Ibid* 1180.

⁴¹ *The Queen v Jones* [2018] VSC 415, 2 [7].

family. She indicated that his abuse had initially been verbal, but had recently escalated to physical violence, and there had been three family violence reports made to police.⁴²

44. On 29 October 2015, Ms Jones failed to attend the court hearing in relation to her application to vary the FVIO, and her application was struck out.⁴³ This meant that the full FVIO continued to be in place.
45. On 15 December 2015, Child Protection ceased their involvement with Ms Jones on the basis that she agreed to contact police if Mr O'Brien breached the FVIO again, and to link in with Women's Health West (**WHW**) specialist family violence services and the St Kilda Crisis Service.⁴⁴
46. On 31 December 2015, Mr O'Brien was interviewed by police in relation to the family violence incident on 8 October 2015.⁴⁵ However, he was not charged with offences relating to this incident until September 2016, and these charges remained unresolved at the time of the fatal incident.⁴⁶
47. In January 2016, Mr O'Brien moved into a boarding house managed by Yarra Community Housing.⁴⁷
48. On 2 February 2016, Child Protection received a report that Ms Jones was continuing to have contact with Mr O'Brien, that he had assaulted her, and that these assaults had not been reported to police. These assaults included incidents where Mr O'Brien had allegedly punched Ms Jones in the face on one occasion, and on another had allegedly dragged her back to his car by the throat after she attempted to leave his vehicle.⁴⁸ The report also alleged that Ms Jones was using methamphetamine and heroin.⁴⁹ Child Protection interviewed Ms Jones' daughter, who disclosed occasions where Ms Jones had assaulted her or threatened to seriously assault her.⁵⁰
49. Child Protection interviewed Ms Jones, who denied having any contact with Mr O'Brien. She provided a negative urine drug screen, several days after it was originally requested, confirmed she would extend the FVIO to protect her and the children from Mr O'Brien and confirmed she

⁴² Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 820-822.

⁴³ Coronial brief, Appendix EE, 1139.

⁴⁴ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 802-803.

⁴⁵ Coronial brief, Appendix FF, 1154.

⁴⁶ Ibid 1154-1155; *The Queen v Jones* [2018] VSC 415, 2 [6].

⁴⁷ Coronial brief, Appendix HH, 1204.

⁴⁸ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 794

⁴⁹ Ibid, 790-794.

⁵⁰ Ibid 754-758.

would not bring the children into contact with Mr O'Brien.⁵¹ Child Protection closed this referral on 6 May 2016 after ensuring that services engaged with Ms Jones would notify them if the risk to her children escalated.⁵²

50. On 3 March 2016, Mr O'Brien was arrested by Police and charged with possession of heroin and methamphetamines. He was bailed the following day with the condition that he notify Victoria Police if his address changed.⁵³
51. On 7 May 2016, the FVIO protecting Ms Jones and her children from Mr O'Brien expired.⁵⁴
52. On 26 May 2016, Ms Jones gave birth to Mr O'Brien's daughter.⁵⁵ On 31 May 2016, a report was made to Child Protection, which outlined concerns that Ms Jones was bringing her children into contact with Mr O'Brien and that Mr O'Brien had attended the hospital to visit his daughter.⁵⁶
53. On 14 June 2016, Ms Jones agreed to a safety plan with Child Protection under which she was to obtain a FVIO against Mr O'Brien, to not have contact with him or allow her children to have contact with him, to not allow him in their home, to notify police and Child Protection if he had any contact with them, and to provide copies of the new FVIO to her children's schools and childcare.⁵⁷
54. In subsequent contact with Child Protection throughout July 2016 Ms Jones indicated that Mr O'Brien was repeatedly attending her home unannounced and she had let him in on at least one occasion.⁵⁸
55. On 28 July 2016, Ms Jones lodged an application for a FVIO to protect her and her children from Mr O'Brien. Whilst an interim FVIO was put in place at the initial hearing of the application, this was subsequently struck out in October 2016 when Ms Jones failed to attend court.⁵⁹
56. Between 19 and 22 September 2016, Ms Jones' property was broken into on two occasions, and she believed Mr O'Brien was responsible. Support workers from Women's Health West

⁵¹ Ibid 687.

⁵² Ibid 680.

⁵³ Ibid 730.

⁵⁴ Coronial brief, Appendix EE, 1133.

⁵⁵ Coronial brief, Statement of B Jones, 141; Statement of S Jones, 155.

⁵⁶ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 668.

⁵⁷ Ibid 619.

⁵⁸ Ibid 606-611.

⁵⁹ Ibid 605; *The Queen v Jones* [2018] VSC 415, 2 [11].

(WHW) and Anglicare Changing Futures Program (**Anglicare**) assisted Ms Jones to report these incidents to police at Laverton Police Station, who advised Ms Jones to attend the Altona North Police Station to report the break ins, and return to them with additional documentation, but it appears she did not do so.⁶⁰

57. Child Protection closed their referral on 22 September 2016 after ensuring Ms Jones was linked in with appropriate supports, specifically WHW and Anglicare.⁶¹
58. On 28 September 2016, Victoria Police contacted Ms Jones in relation to the family violence incident on 8 October 2015, as Mr O'Brien had not yet been charged in relation to that incident. Ms Jones advised police that she did not wish to proceed with the charges or her complaint and signed a statement of no complaint.⁶² Police nonetheless proceeded with charges against Mr O'Brien for contravening the now expired FVIO and a summons was issued to Mr O'Brien on 29 September 2016.⁶³
59. On 10 October 2016, a further notification was made to Child Protection alleging that Ms Jones was bringing Mr O'Brien's daughter into contact with Mr O'Brien, using illicit substances, and had been physically rough with Kayla.⁶⁴ On the same day Anglicare were notified that Ms Jones and Mr O'Brien's daughter were living with Mr O'Brien. Anglicare contacted Ms Jones who advised them that she was homeless, had no power at her residence in Altona Meadows and had been staying with Mr O'Brien as a result. Anglicare encouraged Ms Jones to engage with WHW to get the power turned back on at her home.⁶⁵
60. The various service records provided to the court indicate that Ms Jones' willingness to engage with services fluctuated throughout their involvement with her, and she often gave conflicting accounts of her circumstances and wishes to different services. This continued throughout September to December 2016. During this time Ms Jones fluctuated between saying that she wanted no involvement with Mr O'Brien at all and saying that she wanted to resume their relationship and did not think he was unsafe. Ms Jones also asked her sister Sarah to take over care of Mr O'Brien's daughter, then removed Mr O'Brien's daughter without notice after she

⁶⁰ Women's Health West, Records relating to Kerry Jones, 23, 29, 31, 35; Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 538-540.

⁶¹ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 540.

⁶² Coronial brief, Appendix FF, Statement of MP, 1143-44; Statement of K Jones 1146. It is noted that MP stated the conversation occurred on 12 October 2016 however Ms Jones signed the statement of no complaint on 29 September 2016 and indicated the conversation had occurred on 28 September 2016.

⁶³ Coronial brief, Appendix FF, 1154.

⁶⁴ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 530.

⁶⁵ Anglicare Victoria, records relating to Ms Jones' children, 8.

had been living with Sarah for several weeks.⁶⁶ Whilst on some occasions Ms Jones attended appointments and appeared to be willing to engage with supports, on others she repeatedly failed to attend appointments or directly indicated she did not want any assistance.

61. This pattern of behaviour was noted by Anglicare, who recorded that Ms Jones had a history of presenting well for periods of time but was unable to sustain this, and that she had a history of breaking safety plans in relation to her children without notice.⁶⁷
62. On 30 November 2016, Child Protection was notified that Ms Jones had reunited with Mr O'Brien and was spending the weekend with him, and that she had been rough with Mr O'Brien's daughter and had shaken her. They were also notified that Ms Jones' family had ceased supporting her due to her ongoing behaviour.⁶⁸

COMMENTS

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

Victoria Police contact with Ms Jones and Mr O'Brien

63. As noted above in the relationship history, there were three incidents of family violence reported to Victoria Police between Mr O'Brien and Ms Jones during their relationship. The actions of Victoria Police in response to these incidents appear to have been largely in accordance with the *Code of Practice for the Investigation of Family Violence (Code of Practice)* which was applicable at the time.⁶⁹ Victoria Police applied for a FVIO to protect Ms Jones and her children, completed VP Form L17s and pursued relevant criminal offences. However, the coronial investigation identified potential concern in relationship to elements of this service contact.

Response to family violence incident on 8 October 2015

64. An investigating police member took a statement from Ms Jones on 12 October 2015 in relation to an incident on 8 October 2015. However, criminal charges arising from this report, specifically contravention of a FVIO and unlawful assault, were not submitted to be authorised for prosecution until almost one year later.

⁶⁶ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 499, 504.

⁶⁷ Anglicare Victoria, correspondence relating to Kerry Jones, 1-2; records relating to Ms Jones' children, 25.

⁶⁸ Department of Health and Human Services, Child Protection records relating to Ms Jones' children, 460-461.

⁶⁹ Victoria Police, *Code of Practice for the Investigation of Family Violence* (2014) 3rd Ed, V2.

65. There appear to be several reasons for this delay. The investigating police member was initially unable to contact Mr O'Brien via telephone and did not have an address for him as he was reportedly transient. In response, the investigating police member appropriately submitted a whereabouts request for Mr O'Brien.⁷⁰
66. This request does not appear to have been noted by the police members who interviewed Mr O'Brien on 17 October 2015, as they did not interview him in relation to the incident on 8 October 2015. It is unclear why this was the case, but it is possible that the whereabouts request had not yet been submitted or uploaded into LEAP.
67. Mr O'Brien was subsequently located and interviewed in the field on 31 December 2015 by members of Williamstown Police Station. Documentation in relation to this interview was reportedly sent to Werribee Police Station but the investigating police member never received these documents.⁷¹ It is unclear why these records were not received and not pursued further by the investigating police member.
68. The investigating police member left Werribee Police Station at the end of his probationary period in April 2016 and took no further action to complete the criminal investigation after that time, based on his belief that the matter was going to be re-assigned to another member. The matter does not appear to have been re-assigned and in September 2016 the investigating police member was asked to provide an update on the matter as the statute for the offence was due to expire. The investigating police member was advised by his Senior Sergeant to proceed without the missing documentation and he contacted Ms Jones, who indicated that she no longer wished to proceed with the charges. Despite this, the investigating police member compiled and submitted a brief of evidence, which was authorised for prosecution, and a summons was issued to Mr O'Brien on 29 September 2016 for him to attend the Werribee Magistrates' Court on 21 November 2016.⁷²
69. Whilst the *Code of Practice* at the time did not define required time periods for proceeding with criminal prosecutions, Mr O'Brien could and should have been charged with offences arising from the incident on 8 October 2015 much sooner. Victoria Police confirm that the policy instruments for crime reporting guided members to submit crime reports as soon as possible after an incident, with the intention for this to occur before the end of their shift. Brief preparation is similarly to occur as soon as possible, with the intention for the brief to be

⁷⁰ Coronial brief, Appendix FF, 1143.

⁷¹ Ibid 1154.

⁷² Ibid 1154.

submitted for checking within one month from the date of interview.⁷³ While irregular and exacerbating circumstances may cause an extension of these timelines, the intention is still to complete these actions as soon as possible. The lengthy timeline of this particular case indicates that this principle was not followed.

70. The failure to take prompt action in relation to the FVIO breach was a missed opportunity to hold Mr O'Brien accountable for his actions and reinforce the FVIO as a protective order. Mr O'Brien was also subject to a Community Corrections Order (CCO) because of family violence related offences at the time of this offending. Had Mr O'Brien been located and interviewed in relation to this incident sooner, this should have alerted Corrections Victoria to the fact that Mr O'Brien was continuing to perpetrate family violence and criminal offences in contravention of his CCO and would have provided an additional opportunity for him to be held accountable for his actions, in the form of contravention proceedings for the CCO.
71. It is noted that in 2014, the then State Coroner Ian Grey recommended that Victoria Police amend their policies and procedures to require benchmark periods for both the commencement of the prosecution of family violence offences, and the authorisation of charges for breaches of FVIOs and Family Violence Safety Notices (FVSNs).⁷⁴ Following that recommendation timeframes for court listings of all criminal matters involving family violence offending were introduced across various Magistrates' Courts in Victoria between 2014-2018 under the Family Violence Fast Track Initiative.⁷⁵
72. This initiative was also incorporated into the Victorian Governments *Family Violence Rolling Action Plan 2017-2020* which stated that the 'Magistrates' Court will work with Victoria Police and Victoria Legal Aid to fast track family violence-related criminal matters, ensuring these charges are dealt with quickly within defined time frames.'⁷⁶
73. In addition to these measures, Victoria Police have also undertaken significant reform of their family violence related practices and procedures to implement the recommendations of the *Royal Commission into Family Violence* which were made in 2016.

⁷³ Victoria Police response to Court concerns dated 6 April 2022, 3

⁷⁴ CCOV, Finding into the death of Luke Batty, COR 2014/0855 (September 2015), 108.

⁷⁵ Victoria Police, Chief Commissioners Instruction 05/17 – Family Violence Fast Track Initiative (February 2017), 2.

⁷⁶ State of Victoria, *Family Violence Rolling Action Plan 2017-2020*, 21.

74. Victoria Police also confirm that the Fast-Track initiative has since been amalgamated into the Victoria Police Manual Guidelines and Procedures (VPMG) Brief Preparation and Management policy requiring that:⁷⁷

- a) Family violence Fast Track Initiative (FTI) timelines apply to criminal matters where the offending involves family violence. Magistrates Court Victoria has issued Practice Directions for each court the FTI is in place. Members must comply with the listing practice where there is a practice direction in place.
- b) The listing date relates to the date of process of the offender and the manner in which the accused is compelled to appear at court. Accordingly, the first mention date must be within the following timeframes:
 - Remand – next sitting day
 - Bail – within 1 week of offender processing i.e. date of interview
 - Summons – within 4 weeks from offender processing
 - Warrants – within 1 week of execution regardless of where the file originated.
- c) All subsequent listings will occur within the next 28 day period i.e. mention to summary case conference, summary case conference to contest mention and contest mention to hearing (as appropriate); there are to be no administrative adjournments.
- d) For summons matters members should use s.14, CPA to ensure that the matter is listed and filed within the timelines and served within 14 days (s.16).

Justice Services (Corrections) management of Mr O'Brien's CCO and family violence

75. After pleading guilty to assaulting Ms Jones on 29 April 2015, Mr O'Brien was sentenced to a CCO from 17 July 2015 to 17 July 2016. The terms of this CCO required him to attend 150 hours of community work and report to Werribee Community Corrections (Werribee CCS) as required.⁷⁸

76. During the term of his CCO, Mr O'Brien attended only three appointments with Werribee CCS. He failed to attend 22 of his rostered community work sessions and failed to report to Werribee CCS on four occasions.⁷⁹ He also continued to perpetrate family violence and was charged with contravening a FVIO.

⁷⁷ Victoria Police response to Court concerns dated 6 April 2022, 4

⁷⁸ Corrections Victoria, records relating to Danny O'Brien, 108.

⁷⁹ Ibid 79.

77. Mr O'Brien attended his initial induction appointment with Werribee CCS on 20 July 2015, and advised the Corrections Officer (CO) that there was a FVIO in place against him.⁸⁰ Werribee CCS later confirmed to the Court that they did have a copy of the FVIO in Mr O'Brien's offender management file but the timing of its receipt and where Werribee CCS sourced it from is unknown.
78. At Mr O'Brien's second attendance on 16 December 2015 he advised the CO that he had been charged with contravening the FVIO in October 2015 and was required to attend court in February 2016. He also informed the CO that Ms Jones was pregnant, and he had not been attending his rostered community work as he had been stressed about appointments for the baby. The CO advised Mr O'Brien that if he was charged with any further offences during the operational period of his CCO he would be placed in contravention.⁸¹
79. It is noted that if Mr O'Brien was attending medical appointments with Ms Jones, this would have been in contravention of the FVIO. Based on the available notes the CO does not appear to have made note of this or counselled Mr O'Brien against this activity. The CO also does not appear to have made any subsequent enquiries to obtain further information about Mr O'Brien's criminal charges. These should have been of particular concern given the CCO was imposed for a family violence related assault.
80. Justice Services have confirmed that Community Correction Services (CCS) policy and guidance on the management of family violence perpetrators and victim survivors has also been expanded upon significantly since the time of Mr O'Brien's management. In 2019, CCS adopted a Practice Guideline titled *Managing Family Violence in Community Correctional Services* (the **Guideline**), accompanied by new practice tools that are based on the evidence-based risk factors associated with the Multi-Agency Risk Assessment Management Framework (**MARAM**). The Guideline complements the new case management framework, supporting CCS practitioners to use professional judgement to address identified risks and needs.
81. The Guideline is both educative and prescriptive. It contains mandatory requirements for assessment of risk, of both perpetrators and victim survivors, guidance to identify signs of victimisation, guidance to identify perpetrators and a section on information sharing, based on the Family Violence Information Sharing Scheme (**FVISS**) (of which Corrections Victoria is a prescribed organisation).

⁸⁰ Ibid 50.

⁸¹ Ibid 33.

82. The Guideline is predominately used for offenders subject to ‘*assessed*’ orders in the case management stream, rather than offenders subject to ‘*unassessed*’ orders. If through a file review, or inadvertent contact with an offender, it is identified that an offender subject to an ‘*unassessed*’ order may be committing family violence, that there are children at risk of harm and/or there are concerns the offender may commit an act of family violence, CCS staff are expected to speak with a supervisor or refer to Practice Guideline 10.7.2.⁸²
83. In addition, Risk Assessment Management Panels (**RAMPS**) were introduced across the State in 2017, resulting in those perpetrators presenting the most serious and imminent risks to Affected Family Members being regularly reviewed and discussed by relevant agencies (Victoria Police, Department of Health, specialist Family Violence services, Alcohol and Drug, mental health, CCS, Child Protection etc.). This ensured that perpetrators are kept in view of these services. CCS is a member of RAMPS across the state. The initiative of RAMPS has resulted in strengthened practice and information sharing.
84. Werribee CCS received two E*Justice⁸³ notifications in relation to Mr O’Brien during his CCO. These notifications related to police attendances on 31 December 2015 and 12 February 2016⁸⁴ and indicated that on both occasions Mr O’Brien had been arrested pursuant to a warrant and interviewed at Sunshine Police Station.⁸⁵ A CO emailed Victoria Police following each of these notifications, asking them for further details of these attendances.⁸⁶ However, no response to these enquiries is recorded in the corrections file, and there appears to be no record of any further enquiries being made to follow this information up.⁸⁷ Werribee CCS also do not appear to have discussed this with Mr O’Brien when they subsequently spoke to him on 11 January 2016 or when he attended their office on 7 March 2016.⁸⁸ They also do not appear to have discussed the outcome of the criminal proceedings that had been scheduled in February 2016.⁸⁹
85. Justice Services have since confirmed that at the time of Mr O’Brien’s management, CCS received E*Justice notifications from Victoria Police when an offender is subject to a CCS

⁸² Practice Guideline 10.7.2 – Responding to non-compliance – order administration (Jan 2017).

⁸³ E*Justice is a shared application that enables the seamless transfer of prisoner and offender information between key management groups including Victoria Police, Courts, Adult Parole Board, Prisons, CCS and Justice Health. E*Justice provides a link between each service and enables shared knowledge of prisoner and offender background, histories, risks and management strategies.

⁸⁴ Ibid 26, 31.

⁸⁵ Ibid.

⁸⁶ Ibid 25, 30.

⁸⁷ Ibid 25.

⁸⁸ Ibid 9, 28.

⁸⁹ Ibid 9.

order, assigned to a case manager, was placed in police attendance (e.g. arrested and interviewed at a police station or following an arrest for a warrant) or placed into police custody.⁹⁰ There is no record on E*Justice relating to police attendance at Ms Jones' residence following the alleged verbal altercation between Ms Jones and Mr O'Brien, where both were spoken to and where Mr O'Brien agreed to leave Ms Jones's residence. The events leading up to the fatal incident would not have generated an E*Justice notification as Mr O'Brien was not placed into police attendance or police custody.

86. Since early May 2019, the following additional events would create notifications on E*Justice:

- a) Family violence incidents;
- b) Intervention orders;
- c) Field Contacts;
- d) Accused involvements;
- e) Pending charges; and
- f) Outstanding warrants.

87. A copy of the charge sheet and summons from the family violence incident on 17 October 2015 is included in the Werribee CCS records, but it is unclear when this was obtained, or provided to Werribee CCS.⁹¹ As the summons was issued on 16 November 2015 it would have been either on or after that date.

88. Despite Mr O'Brien's substantial non-compliance with the CCO, an authority to commence breach action was not issued by Werribee CCS until 21 July 2016⁹² and the charge sheet and summons for contravening the CCO was not filed until 5 September 2016. These documents cited Mr O'Brien's failure to report as directed and failure to attend community work.⁹³ Notes from 21 September 2016 indicate that the summons was unable to be served on Mr O'Brien due to him '*avoiding police messages*',⁹⁴ and notes in the Corrections file indicate that a warrant was to be issued, however it is unclear whether this occurred.⁹⁵

⁹⁰ Justice Services response to Court concerns dated 16 December 2021, 6

⁹¹ Ibid 119-121.

⁹² Ibid 117-118.

⁹³ Ibid 88-106.

⁹⁴ Ibid 99.

⁹⁵ Ibid 79.

89. Justice Services confirm that following Mr O'Brien's withdrawal from community work in March 2016, it would have been expected that the contravention action be approved sooner than July 2016.⁹⁶ CCS's policy in 2016 (still current) requires that contravention proceedings are initiated within six weeks of the date of the ultimate contravening incident. In Mr O'Brien's case, Werribee CCS did not adhere to this timeframe.
90. Justice Services confirm that as a consequence of the CCS Service Reform Project, a number of initiatives have been implemented to improve the management of contraventions. This includes:
- a) Introduction of the dedicated Order Administration stream responsible for the management of low risk CCOs and unsupervised/reparation orders.
 - b) New Practice Guidelines supporting the management of non-compliance and contravention action for Community Work Only orders.
 - c) Introduction of the CCS Staff Supervision Framework (SSF). The SSF requires mandatory fortnightly supervision between line supervisors and practitioners and provides a structured avenue for the identification and monitoring of progress with case management action.
 - d) Changes to the process for issuing CCS Charge and Summons, improving the timeliness of the process.
 - e) Introduction of the Court Assessment and Prosecutions Service (CAPS) stream formalising the role and responsibilities of existing court advice and prosecutions staff at the CCS location level. The CAPS stream will regularly engage case management staff to support contravention activity and strengthen recommendations to the court.
 - f) The commencement of the CAPS Central Unit within Community Operations and Parole, Justice Services. This unit supports CCS' higher court contravention processes, central oversight of CAPS functions and training for CAPS practitioners.

FINDINGS AND CONCLUSION

91. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:
- a) the identity of the deceased was Danny Lee O'Brien, born 27 January 1979;

⁹⁶ Justice Services response to Court concerns dated 16 December 2021, 5

- b) the death occurred on 9 December 2016 at Unit 1/85 Nelson Place, Williamstown, Victoria, 3016, from a stab wound to the chest; and
- c) the death occurred in the circumstances described above.

92. I convey my sincere condolences to Mr O'Brien's family for their loss.

93. 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.

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

Ms Vicki O'Brien, Senior Next of Kin

Ms Melissa Westin, Deputy Commissioner, Custodial Operations

The Honourable Natalie Hutchins, MP, Minister for Corrections

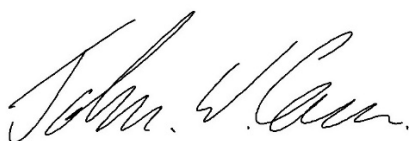
Ms Kate Davey, Principal Solicitor, Victorian Government Solicitor's Office

Ms Lauren Callaway, Assistant Commissioner, Victoria Police

Ms Eleri Butler, CEO, Family Safety Victoria

Detective Sergeant Scott Jones, Coroner's Investigator

Signature:



Judge John Cain
STATE CORONER
Date: 19 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.
