



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION



RECORD OF INVESTIGATION INTO DEATH (WITH INQUEST)

Coroners Act 1995

Coroners Rules 2006

Rule 11

4th May 2017

I, Glenn Alan Hay, Coroner, have investigated the death of ELIZABETH ANN HIGGINS with an inquest held at Hobart in Tasmania make the formal findings found at the conclusion of this document.

Representation:

Counsel Assisting the Coroner: Mr Peter Barker; Ms Jane Ansell

Counsel for Ms Chantelle Lacroix: Mr Stuart Tipple

Counsel for Mr Adrian Lacroix: Mr A Rodgers; Mr G Melick SC

Counsel for Dr Auchincloss: Mr K Proctor SC

Counsel for Dr Hildred: Ms S Taglieri

REASONS FOR DECISIONS AND FINDINGS AND GENERAL COMMENTS

BACKGROUND

1. On 14 March 2011 Tasmania Police (TasPol) gave notice to the Coroner of the death of Elizabeth Ann Higgins (Ms Higgins/the deceased) having occurred at Little Howrah Beach, Howrah in Tasmania during the early evening of that day.
2. This inquest commenced at the time that I was informed that the deceased body of Ms Higgins lay at the Hobart mortuary and at that time the cause of her death was unknown, other than it was believed to be by way of drowning. What caused her death and how it occurred is to be determined. There followed an adjournment of the formal inquest for investigation by Tasmania Police on my behalf.
3. During the investigation there were a significant number of complaints made by members of Ms Higgins family against others in the family and as to how those complaints may possibly have impacted upon Ms Higgins' state of mind at the time she entered the water on that day or whilst she was swimming that day, or additionally in relation to the health care and treatment provided to Ms Higgins by others prior to her death. Mr Higgins and Rebecca Higgins made allegations of unusual and inappropriate controlling behaviour by Mr and Mrs Lacroix over Ms Higgins with the sole purpose of gaining total control over her finances, assets and money. Each of those many complaints gave rise to concerns about what circumstances may or may not have contributed to the cause of death and had to be investigated fully at considerable time and expense. I was fully conscious that within the family of Ms Higgins there was a fracture of opinion and view about what circumstances may have contributed to the cause of death of Ms Higgins. Among other things, an important reason for me to conduct a public inquest into the death of Ms Higgins has been to attempt to allay rumour or suspicion aimed at individuals and to permit the family to vent those concerns at least to the degree where they may be relevant to the public interest. However, the remoteness of possible

contribution to causation cannot be permitted to extend the scope of this inquest. Having said that I have reminded myself of the guiding principle in *Rouf v Johnstone* [1999] VSC 396; BC9906931, that the coroner is not obliged to act upon speculation of “*intra-family ill-will*” in the absence of cogent, admissible and acceptable evidence.

4. Further, some members of the family of Ms Higgins raised concerns and criticisms about the nature of and the effectiveness of the coronial investigation carried out by TasPol on behalf of the Coroner. Those family members have been given the time and opportunity to either present evidence in that regard or alternatively to test the evidence in and about the investigation into the death.
5. Following the conclusion of the inquest hearing, I was advised by the counsel for the senior next of kin (Mrs Lacroix) that she no longer relied upon any submissions made by her former counsel following the inquest hearing. This was examined (inclusive of whether there was additional evidence to affect any findings). There was no further cogent persuasive material to warrant a re-opening of the formal inquest hearing pursuant to section 59(1)(d) or 59(1)(f) of the Coroners Act.

THE CONDUCT OF THE INQUEST HEARING

6. Leave was given for Mr Harold Higgins (Mr Higgins), the former husband of the deceased, and Rebecca Higgins the younger daughter of the deceased to appear as sufficiently interested persons and they were unrepresented. Leave was given for Mr Adrian Lacroix (Mr Lacroix), the son-in-law of the deceased, to appear as a sufficiently interested person and to be legally represented. Leave was given for Mrs Chantelle Lacroix (Mrs Lacroix), the elder daughter of the deceased to appear as a sufficiently interested person and to be legally represented. Mrs Lacroix is the senior next of kin of Ms Higgins. Mr and Mrs Lacroix are also the sole trustees and executors and the personal representatives of the estate of Ms Higgins.

7. Doctor Sally Hildred was the general practitioner for Ms Higgins between September 2007 and 16 February 2011 and was given leave to be represented at the inquest.
8. Dr Stephanie Auchincloss Consultant Psychiatrist provided psychiatric advice to Ms Higgins prior to her death and she was given leave to be represented at the inquest.
9. It should not be forgotten that this inquest is a fact-finding exercise and not a method of apportioning blame to any person. In an inquest it should never be forgotten that there are no parties, there are no charges, there is no prosecution, there is no defence, and there is no trial, simply an attempt to establish facts based upon the balance of probabilities. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends with the magistrate holding the balance. To that end the procedure to be followed in this inquest has had less rigidity to it compared to other proceedings.
10. It is to be emphasised that in conducting an inquest a coroner must not include in any finding or comment any statement that a person is or may be guilty of any offence.
11. Some of the findings to be made in and about the death of Ms Higgins will pose little difficulty or require little consideration. Others require more careful consideration of the facts and circumstances available before appropriate findings can be made.
12. At the outset of the public inquiry I emphasised that this inquest would only pursue matters relevant to findings to be made in accordance with the provisions of the *Coroners Act 1995* (the Act) and that it was not a proper forum for testing evidence relevant to possible proceedings in any other forum. It was also emphasised that by section 54 of the Act any evidence given by a witness in an inquest is not admissible

in evidence against that witness in any other proceeding in any other forum, other than for perjury.

13. The inquest hearing commenced on 27 May 2013 and concluded on 29 May 2014 with written submissions then to be provided by all parties. Some unrepresented parties took considerable time to deliver lengthy written submissions. The formal inquest hearing was delayed for numerous and various reasons including the unavailability of interstate counsel or witnesses or unavailable court time. It was also adjourned and delayed due to the unavailability of Mr Lacroix to give evidence due to his mental health issues and his hospitalisation in a mental health facility. From the very beginning of the inquest, counsel for Mr Lacroix raised issues as to whether he could be properly instructed by Mr Lacroix and on the first day of the hearing counsel gave notice that *'there may be some queries about Mr Lacroix's capacity to give evidence rationally and capably.'* In August 2013 the hearing was adjourned as counsel for Mr Lacroix foreshadowed an application to be made that Mr Lacroix be excused from giving evidence in the inquest based upon his mental health issues. That application was then made orally and upon the basis of a psychiatric opinion apparently to the effect that Mr Lacroix lacked capacity to give evidence because of mental health issues and any evidence given by him may well be inherently unreliable as he may be overwhelmed by a stream of questioning to the detriment of his mental health. The oral application was adjourned for sworn material to be filed by the reporting psychiatrist as I was not prepared to entertain the application in the absence of sworn and tested material. It was again adjourned as it was not in a position to proceed. It was adjourned to 28 November 2013 for counsel for Mr Lacroix to file further material and have his psychiatrist available for cross examination. On 28 November, Counsel for Mr Lacroix appeared but Mr Lacroix did not. That morning I was informed Mr Lacroix had made his own urgent ex parte application to the Supreme Court. His counsel was unaware of this action taken by Mr Lacroix. I adjourned the inquest hearing pending receipt of any such application. Later in the morning Mr Lacroix appeared and papers were made

available to counsel assisting me. In simple terms Mr Lacroix had applied for orders seeking my removal as Coroner and a new inquest be held. The basis for the application appeared to be that I was tainted by a severe conflict of interest. As a result I considered the inquest should be adjourned to a date to be fixed pending the determination of the Supreme Court proceedings. Those proceedings were dismissed in December 2013. The inquest hearing recommenced in March 2014 when Mr Lacroix was represented by different counsel and he did not pursue his application to be excused from giving evidence.

14. My findings touch upon some extraordinary aspects of this inquest not usually found and none the least was the action of Mr Lacroix in instituting Supreme Court proceedings on no less than 3 occasions to have me dismissed as the Coroner in this inquest. All applications were dismissed.

15. Towards the conclusion of the formal evidence in the inquest hearing the marriage between Mr and Mrs Lacroix ended.

THE STATUTORY REQUIREMENTS RELEVANT IN THIS INQUEST

16. The function of this inquest is to seek out and record as many of the facts concerning the death of Ms Higgins as the public interest requires and can be possibly made – s28(1). It is to determine certain facts about the deceased, namely:

- the identity of the deceased;
- how the death occurred, including whether the death occurred by acts or omissions which are directly responsible for the death, through the agency, intervention or involvement of any other person. Again, in simple terms and in this case - what produced the drowning;

- the cause of death, both in the terminal sense and in the sense of what caused the terminal event;
- when and where death occurred;
- particulars needed to register the death under relevant Tasmanian legislation; and
- by s28(1)(f) of the Act, to make any findings as to the identity of any person who contributed to the cause of death. That is, whether any person's conduct contributed to the cause of death? I am aware that this subparagraph was omitted by amending legislation on the 15th April 2015. However, I am still required to consider that subparagraph given that death is said to have occurred in March 2011 and the inquest hearing was held in 2013 and 2014, prior to that omission from the section.

17. It is also a statutory requirement that a coroner must, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate in connection with the death, including public health or safety or the administration of justice. That is, are there any systemic issues which require exploration or recommendations for ways to prevent further similar deaths?

18. By section 21 a coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death, that is, where the death has occurred in Tasmania and appeared to be unexpected, unnatural or violent; or resulted from an accident or injury; or where the cause is unknown. In this case it is clear that there existed a reportable death as of the 14th of March 2011 and that the coroner had jurisdiction to investigate it. Except in the terms of any issues relating to the 'administration of justice', my primary duty is not to investigate or comment upon the police investigation or the way in which it was conducted.

19. By section 27 a person who has a sufficient interest in the death may request the coroner to hold an inquest into the death and the written reasons for any decision in relation to such a request must be forwarded to that interested person. In this case Mr and Mrs Lacroix, Mr H Higgins and Ms R Higgins sought a formal inquest to be held and they were given leave to appear and give as well as adduce any evidence in their capacities as senior next of kin or otherwise as persons interested in the findings to be made.
20. By section 51 of the Act I am not bound by the rules of evidence and I may be informed and conduct the inquest in any manner I reasonably think fit. Having said that, in general terms the rules of evidence will guide me as to the weight to be given, or not, to any information provided to me in this inquest, and the best evidence available will be the most persuasive.
21. To make any findings I must be satisfied on the balance of probabilities (s140, *Evidence Act*) and this remains so even where the matter to be proved might involve criminal conduct. It does not require certainty to be the basis of my findings, as might be the standard of proof in a criminal proceeding. It requires me to be satisfied that it is more probable than not that the facts necessary to establish any findings existed.
22. In this case it is clear from the evidence that will follow that the terminal event giving rise to the death of Ms Higgins was one of drowning. Death in saltwater drowning is due to asphyxia because water instead of air occupies the air spaces in the lung. But, as a question of fact what caused the water to replace the air giving rise to asphyxia and death by drowning? This is an important question to answer if at all possible.
23. Freckleton's reference text on Coronial Inquests provides a useful commentary upon 'drowning' and posits timely warnings in that it must never be assumed that

where a body is recovered from water death has occurred from drowning. First, sudden death can occur from simple immersion of the body in water. For example, when a post-mortem is conducted none of the signs of drowning is found and it is believed the cause of death in such cases is cardiac arrest. Sudden immersion of the body in cold water induces a barrage of sensory stimulation with reflex nervous activity that induces cardiac arrest and as a result water rather than air fills the air passages. Further, a body recovered from water may have been dead before entering the water and the cause of death could be from natural disease, homicide or accident. Further, death can occur in water but from natural disease or accident, with the actual immersion in water playing no part in the cause of death.

24. Some other obvious examples of causes of death drowning may well be suicide; physical factors such as an inability to float or swim or lacking the strength or stamina to survive adverse or indeed any type of water conditions; or entering water unexpectedly hampered by clothing or accoutrements too heavy for buoyancy; an inability to survive in a water environment because of the ingestion of medication or illicit substances or alcohol or failing to take prescribed medications; a number of psychological/psychiatric factors which might cause a person to enter waters where their chances of survival are minimal; psychological/psychiatric or physiological factors whereby such things as an unexpected anxiety/panic attack or coughing fit gives rise to an involuntary ingestion of water into the air passages whereby the person is physically unable to survive especially in a water environment quite foreign to them or where they are not at ease; actions contributed to by others such as forcefully pushing a person into water or holding under; or by other persons failing to take action reasonably to be expected of them to avoid that person drowning following difficulties arising. In some of those circumstances it may well be possible to make a finding a person drowned as a result of a particular event or an act or omission by another person.

THE APPLICATION OF THE STATUTORY REQUIREMENTS AND THE PRINCIPLES TO THE CIRCUMSTANCES IN THIS CASE

SOME RELEVANT NON-CONTROVERSIAL BACKGROUND

25. On about 10 July 2010 Ms Higgins separated from her husband Harry Higgins following the breakdown in their marriage. She left the matrimonial home at Nowra Road in Roches Beach and commenced living with her daughter Chantelle Lacroix and her son-in-law Adrian Lacroix at Holland Court in Howrah. She had a history of psychiatric/psychological and medical problems which she had experienced for some years. According to Mr and Mrs Lacroix and others associated with the family it was asserted that Mr Higgins had exhibited some quite florid psychiatric symptoms leading up to the departure by Ms Higgins from the former matrimonial home. However, there was no acceptable evidence put before the inquest to confirm this, especially by way of medical diagnosis. No findings can be made or need to be made in relation to those assertions.

26. From the acceptable medical evidence and despite some of her medical advisers having difficulty in promoting her appropriate health care due to likely unnecessary interference by Mr and Mrs Lacroix in and about that treatment, Ms Higgins enjoyed a very significant improvement in her mental and general health leading up to the events of 14th March 2011. She had lost a considerable amount of weight, improved her fitness, and her treating medical practitioners had amended or withdrawn some of her medication.

27. She was pursuing a more active lifestyle which included gardening, walking and some swimming.

28. On 21 July 2010 Ms Higgins filed an application for property settlement in the Family Court of Australia at Hobart. Mr Higgins was the respondent.

29. On 22 July 2010 Ms Higgins executed a Will with legal representation in which she appointed Mr and Mrs Lacroix as her executors and trustees and Probate was subsequently granted to them. After making a small bequest to each of her two grandchildren, she gifted the balance of her estate to Mrs Lacroix.
30. On 22 July 2010 Ms Higgins executed an Enduring Power of Attorney, appointing Mr and Mrs Lacroix as her attorneys, both joint and several.
31. On 21 March 2011 Mr and Mrs Lacroix as the Executors of the estate of Ms Higgins applied to the Family Court to be substituted as the applicants in the Family Court proceedings. That order was made on 30 March 2011.

EVENTS AT LITTLE HOWRAH BEACH ON 14TH MARCH 2011

32. I set out below what I consider to be the relevant evidence of eye-witnesses to events on this date.
33. It is the evidence of Mrs Lacroix that at about 11pm on Sunday 13 March 2011, she returned to her home from her employment and found Mr Lacroix to be upset and she stated that he *'kept talking to my mother and me about my mother's untruths until about 4am in the morning'*.
34. Monday the 14th March 2011 was a public holiday. It was a warm day.
35. It is the evidence of Mr Lacroix in cross examination that at around 10am he drove Ms Higgins to her former matrimonial home at Nowra Road in Roches Beach. It was intended that she would spend the day gardening at that place. He said that he helped her for about 40 minutes and then he left her alone there from about 11.00am in the morning until she was collected by him from the property at about 6.00pm. Mr Lacroix was uncertain about the time he and Ms Higgins arrived at the

Roches Beach property and his evidence about that was generally less than convincing.

36. It is the evidence of witness Dr C McLeod, a near neighbour to the Roches Beach property, that she observed Ms Higgins and Mr Lacroix arrive at around 7.30am to 8.00am, and she last saw Ms Higgins at the property at about 6pm. I prefer her evidence about the time Ms Higgins arrived at her home, although little turns on it. During the day Ms Higgins had been actively involved in gardening work, including moving substantial amounts of wood. Dr McLeod described it as heavy sweaty work, it wasn't light gardening and that later in the afternoon Ms Higgins *"looked stuffed."*
37. A clear inference to be drawn from all of this evidence is that Ms Higgins was most likely very tired from lack of sleep prior to and her physical exertions during the long hot day.
38. During the course of the journey from Roches Beach after 6pm, Mr Lacroix and Ms Higgins had a discussion. Apparently Ms Higgins expressed a desire to go for a swim. Mr Lacroix agreed to take Ms Higgins to Little Howrah Beach, where they arrived at about 6.40pm.
39. On that same day and at that beach a group of friends had gathered. They had been boating and swimming during the course of the afternoon. Some of those present were Mr Damien Moore, Mr Niktar Nikitaras, Mrs Georgina Nikitaras, Mr Tas Castrisios, and some other members of their respective families.
40. Mr Nikitaras was in his boat not far from the northern end of the beach and saw a male person about 40 years of age with somebody he described as an elderly female walking on Little Howrah Beach, past him in a southerly direction. A short time later he returned from a ski run and was reversing his boat into the beach and

looking toward the southern end of the beach. His attention was drawn to some splashing in the water about 20 to 25 metres away. He observed the splashing for about 10 seconds. He described the splashing as excessive. He said that his impression was that the splashing he saw was to be expected of a person who was unable to swim or swimming *'not very well'*. Mr Nikitaras was in close proximity to Mr Moore at that time and Mr Moore informed Mr Nikitaras he believed that it was *"the old lady trying to swim."* The inference to be drawn is that this is a reference to Ms Higgins. Mr Nikitaras observed a woman splashing about in the water at about 6.45pm. She was between the buoys and the rocks at the southern end of the beach. Other than as noted above he did not take much notice of her. She did not appear as though she was in any trouble or difficulty. He did not see the male person or anyone else with her.

41. The evidence of Mrs Georgina Nikitaras recorded in her affidavit made on 9 April 2011 is that she was near some stairs leading from the beach to Howrah Road, near the southern end. She observed a woman splashing around in the water between some buoys and rocks at the end of the beach. The woman did not appear to be in trouble and she also observed a man sitting on the edge of the rocky area 10 to 15 metres from the woman, and he appeared to be watching her. About 15 minutes later Mrs Nikitaras and her children made their way to her car parked on Howrah Road when she heard a male voice say something like *'help, I can't find her, she's gone under'*. She turned and recognised the male she had seen sitting on the rocks who was talking to her friend Damien Moore. The clear inference is that it was Mr Lacroix speaking with Mr Moore. Mrs Nikitaras was close enough to them to hear their conversation. She observed Mr Lacroix point in the direction of area between the buoys and the rocks and she observed Mr Lacroix was *'freaking out'*, in distress and panic. She observed Mr Moore run towards where he was pointing and then she observed Mr Lacroix take off his clothes before entering the water to assist with the recovery of Ms Higgins. She observed he did not appear to be moving very fast as he removed his clothes. While this was happening Mrs Nikitaras telephoned for

an ambulance. She next observed Mr Moore and Mr Lacroix pulling a female from the water. They commenced CPR with Mr Moore doing compressions and Mr Lacroix doing mouth-to-mouth. She assisted Mr Lacroix by showing him a more appropriate method by tilting the woman's head back and holding her nose. Another woman then arrived and relieved Mr Moore with compressions. Policed then arrived followed shortly after by an ambulance.

42. In his affidavit sworn 16 March 2011, Mr Damien Moore said that at about 6.30pm he was on the beach and observed an elderly female enter the water from the southern end of the beach. She was wearing a black and white swimsuit. He was about 50 metres away from her at the time. He too saw a male standing on the shore of the rocky outcrop at the southern end of the beach. He saw the elderly lady walk out to about waist depth and then dive into the water. He saw her splashing about in a manner he would expect of a 10 year-old. He did not think that she was in any trouble but just enjoying herself, having some fun and splashing around, he said. At around 7pm he was herding his children into his car parked adjacent to the beach on Howrah Road and he was still wearing his wetsuit from the afternoon's earlier activities when he felt someone grab his arm and he turned and saw a fully clothed male he recognised as being the one he had observed standing on the shore at the rocky outcrop near the female in the water. It is clear on all the evidence it could only have been Mr Adrian Lacroix, who asked for Mr Moore's assistance. His recollection was that Mr Lacroix said "*you need to help me. My grandmother has drowned and I can't swim*" or words to that effect. He stated that Mr Lacroix was fully clothed. Mr Moore asked him where she was. Mr Lacroix pointed and said '*near the orange buoy*'.

43. Mr Moore looked out near the buoys and could see a grey crown (of a head) near the surface. He ran off the bank onto the beach and headed straight into the water. He estimated the distance from the edge of the water to the buoy was about 60 metres. He swam to where he had seen what earlier had attracted his attention to

that area, the grey crown. He got there and dived under the surface searching with his hands, eventually grabbing hold of Ms Higgins by the left arm and dragging her to the surface with her back onto his stomach. He could see that her eyes were open and she was foaming at her mouth. He gave her a couple of squeezes around the chest area but had no response.

44. He then commenced to swim to the beach with Ms Higgins in tow. As he arrived at the point where he could stand he became aware of Mr Lacroix standing beside him in chest deep water. They both then dragged Ms Higgins onto the beach. CPR was commenced with Mr Moore completing the compressions and Mr Lacroix the breaths.

45. A short time later Ms Noble, a first-aid officer and former nurse who had happened on the scene, assisted in providing instructions to Mr Lacroix about a more appropriate way to get air into the lungs. She took over the chest compressions while Mr Lacroix continued with the breaths. Ms Noble checked but felt no pulse at any relevant time. Emergency Services arrived a short time later at 7.15pm.

46. Mr Tas Castrisios gave evidence that he arrived at the beach at 5.30pm. At about 6.15pm - 6.20pm he was standing in waist-deep water at Little Howrah Beach, facing north when he heard a male yelling. He turned and saw an elderly lady standing about waist-deep and splashing in the water. His initial impression was that the lady was unable to swim because of the way she was behaving. She was hesitating to go in the water. He had the impression that she did not want to go any further into the water. He observed a man on the grass bank, fully clothed and who was yelling very loudly with a sharpness of tone to the elderly lady saying – ‘*Go on get out there, get deeper*’, or words to that effect. Mr Castrisios considered that the tone used by the male was aggressive and he did not consider it appropriate for anyone to speak in that way to an “elderly” person.

47. I accept that the fully clothed male and the elderly lady referred to by this witness were Mr Lacroix and Ms Higgins.
48. About 5 to 10 minutes later Mr Castrisios saw the elderly lady swimming in what he described as an awkward 'doggy style' toward the rocky point – *"it was more or less whatever she could do to stay afloat."* She did not look confident in the water. His evidence was that he saw the male standing near the rocky point, closer to its point than when he first observed him, whilst the elderly lady was swimming. He again heard the male yelling out to the female in a forceful and encouraging manner, telling her to swim out further. The man was holding a stubby (of beer) in one hand but was using both hands gesturing forwards, waving her out into the water. She was in Mr Castrisios' line of sight from the beach and he estimated that she would have been in water over her depth. He thought the male reckless to encourage the elderly lady to swim out that deep when in his view she was obviously not swimming well. He observed she was swimming away from the man toward a bright orange buoy off the shore. He left the beach shortly afterwards and did not observe anything else of relevance.
49. On the 20th April 2011 police obtained an affidavit from Mr Lacroix who said that Ms Higgins entered the beach via steps at the southern end of the beach. She walked out about 15 metres before entering the water and putting her head in and wetting her hair. She then swam on a slight diagonal out toward the rocky point before turning and swimming along the beach line. Mr Lacroix was of the opinion that she would not have been able to touch the bottom at this point and he did not see her stop swimming or stand. She swam a distance of about 30 metres. He described her as alternating between a version of freestyle and breast stroke. She then turned and swam back in the same direction, at times floating on her back and at other times swimming.

50. Mr Lacroix states that during that period he had walked to a position on the southern end of the beach and stood on the rocky point. When Ms Higgins returned to a point on the southern end of the beach she then swam on a diagonal into slightly deeper water. Mr Lacroix began walking from his position on the rocky point back toward where Ms Higgins had left her towel. At that time Ms Higgins was still swimming and did not appear to him to be in difficulty. By the time Mr Lacroix arrived at a position near a navigation pole on the edge of the sand and near where Ms Higgins had left her towel, he saw that Ms Higgins appeared to be in trouble. His evidence is that she had slowed down but was not signalling to him for help, but she did appear to be in difficulties. Her head at that time was still above water.
51. Mr Lacroix looked around the beach and saw a male who had been on the beach who was wearing a wetsuit. He appeared to be leaving the beach with his family.
52. It could only have been Mr Moore.
53. Believing that because Mr Moore was in a wetsuit he was in a better position to provide assistance, Mr Lacroix ran to him, a distance Mr Lacroix estimated at some 50 metres. He says he spoke to Mr Moore and a discussion ensued to the effect that he needed help.
54. Mr Moore took off toward the water at a run. Mr Lacroix then ran back along the beach and removed his shoes, jeans, socks, watch, sunglasses, and a top. He then entered the water wearing underwear. His recollection is that he arrived at Ms Higgins at about the same time as Mr Moore. [Later in my findings I address the improbability of this]. At that stage Ms Higgins was motionless. She was rolled onto her back and retrieved from the water by Mr Moore.
55. Mr Lacroix expressed the view in an affidavit that there was nothing more he could have done to prevent Ms Higgins drowning. He does not believe that Ms Higgins

intended to cause herself harm. He believed she may have underestimated her degree of fatigue as a result of her physical exertions in the garden during the course of the day. He said that he did not at any stage encourage Ms Higgins to go deeper into the water.

56. At one stage he said he thought she was too far out and called out to encourage her to return closer to shore. In his affidavit he said that he called out to remind her that it was supposed to be a quick swim as his children were at home alone. He said that he has been swimming since an early age himself. He has completed several First Aid certificates and had been awarded a Bronze Medallion and was a club swimmer. He described himself as a very competent swimmer.

57. Police attended the scene with initial officers arriving whilst CPR was still going on. (S/C) Castle attended and noticed on the beach south of the steps leading from the beach to Howrah Road, a pile of clothing - bottoms, top and a watch which she described as being folded in quite a neat pile. She subsequently saw Mr Lacroix put on that clothing. She confirmed that Mr Moore's vehicle was parked on Howrah Road near a pole to the left of the stairs running down to the beach. There is no evidence any person had disturbed that pile of clothing between the time Mrs Nikitaris observed Mr Lacroix place the clothing there and (S/C) Castle's observations of the pile a short time later.

58. Sergeant Michael Callinan was the principle investigation officer. He had been a police officer for 21 years and had been involved in 5 to 10 previous coronial investigations.

59. He happened to be on duty at about 7.05 pm on 14 March in a police vehicle driving on Howrah Road, opposite Little Howrah Beach and was flagged down by a male and was informed of a possible drowning. He went to the beach and made observations including Mr Moore kneeling at the foot of Ms Higgins, Mr Lacroix was

at the head of Ms Higgins performing the breathing component of CPR and Ms Noble was undertaking the compressions component of CPR. Sergeant Callinan spoke to the various witnesses present, taking basic details and ensured an ambulance had been called.

60. It is the evidence of Sergeant Callinan that following the initial investigation he was of the view *“there may be some relevant issues raised from a psychological perspective, such as dissociative episodes, that could explain the death”*; and that he was *“left with some concerns over the amount of time that it apparently took the deceased’s son-in-law, Adrian Lacroix, to respond to Higgins’ situation and following on from that, the actions taken by him upon realising that she was in trouble. It is my view that the death of Elizabeth Ann Higgins may have been prevented by more direct and timely intervention.”*

61. When cross examined by counsel for Mr Lacroix, Sergeant Callinan said this - *Q...your concern is that he took the decision to go and get Mr Moore rather than the decision to do something else? – Yes.*

62. When cross-examined by counsel for Mrs Lacroix he said this – *In fact I will take the opportunity to say at this point that Mr Lacroix was actually doing a very good job in my opinion of his component of breathing with CPR.*

63. Cross examination of Sergeant Callinan by counsel for Mrs Lacroix gave rise to criticism of his actions in that he had been initially informed of a possible drowning yet he failed to take the first aid kit from the trunk of the police vehicle to the scene. It is his evidence that the only item within the kit possibly useful in this incident was a ‘soft bag’ with a valve, useful in providing air to a victim in replacement to mouth-to-mouth procedures. It is his evidence that he immediately attended the scene to assess what might be required and to ensure emergency services had been notified. He observed that appropriate CPR by way of

compressions and mouth-to-mouth procedures were taking place and he then immediately returned to the police vehicle to obtain the soft bag but discovered that part of it was missing. At that time he heard the siren of the approaching ambulance and returned to the beach where Mr Lacroix was relieved of his CPR within a very short time.

64. Following the hearing Mr Lacroix made unclear submissions about this point but the inference was that as Sergeant Callinan was trained in CPR he should have relieved Mr Lacroix from the mouth-to-mouth component and he was otherwise critical of the police officer for not taking the soft bag in the first instance and then not having a suitable soft bag available.

65. Save and except as it is unfortunate the soft bag was not operational and that is something that TasPol should ensure is always in proper working order, I have no criticism of Sergeant Callinan in and about this point. There were 3 persons present to perform the two CPR components with mouth-to-mouth resuscitation being performed and the soft bag could not have enhanced that procedure any further. The police officer had other duties to attend to once he was satisfied CPR was being properly attended to. I find that he in no way delayed in any of his actions and there was nothing in his actions or if he had done them differently which could have made the chances of survival for Ms Higgins any greater than they then were.

66. On Tuesday 31 May Sgt Callinan and other police officers attended the beach with various devices including laser measuring equipment. He was present and responsible for various investigations and readings.

Some of the more relevant measurements are as follows –

- The distance between where Ms Higgins was removed from the water to the southernmost mooring buoy [orange buoy] in the bay where witness Moore observed the head of a person in the water as pointed out by Mr Lacroix, was 57.9 metres., and

- The depth of water at the orange buoy was 1.7 metres, and
- From the beach (water-line) where Ms Higgins was removed from the water towards the orange buoy, the depth of water increased to 1.4 metres at a distance of 35 metres from the beach and beyond that distance the depth gradually increased to 1.7 metres at the orange buoy, and
- The distance between the orange buoy and the nearest point of the rocky headland was 39 metres, and
- The depth of water from the nearest point of the rocky headland towards the orange buoy increased to 1.4 metres at a distance of 15 metres from the headland and beyond that distance the depth gradually increased to 1.7 metres at the orange buoy, and
- Sergeant Callinan obtained Ms Higgins' height from the Pathologists report as being 158cm.

67. It is the evidence of Sergeant Callinan that on 31 May he, with the assistance of S/C Castle, also obtained a measurement from the land by way of a laser distance measuring device that the distance between Mr Moore's vehicle on Howrah Road and the point where Mr Lacroix had observed Ms Higgins be in difficulties was approximately 70 metres. Whilst there is a discrepancy in the evidence of the two police officers as to the date the measurement was taken, in my view nothing turns on that.

I accept the evidence of measurements as given by TasPol.

68. S/C Castle was also on duty on Monday, March 14 2011. She arrived at the beach at about 7.10pm. By that time ambulance personnel were in attendance. She conducted initial inquiries with persons present on the beach, including Mr Lacroix. She observed some items of male clothing folded in quite a neat pile and a watch. She later observed Mr Lacroix put those clothes on. They were located on the beach south of the set of stairs leading to Howrah Rd.

69. Sergeant Pratt also gave evidence and he is an experienced police officer having spent 10 years in Marine and Rescue Services and a member of the Police Diving squad for 16 years. It is his evidence that between the approximate time of drowning on 14 March and 5pm the next day when a Tasmania Police photographer took many photographs of the beach area, there would have only have been a very small tide variation with a very minimal change in height. I also accept his evidence when he described the area in these terms - *Little Howrah Beach is a very gentle sloping sandy beach with a north to north westerly facing aspect. The depth of the water off the beach increased very gradually to the point where the water is only 5 metres deep, about 180 metres from the shore.*

70. The Tasmanian Ambulance Service received a call for assistance at 19:08 and an ambulance was dispatched immediately. It arrived at the scene at 19:15 without any appreciable delay. Appropriate treatment was given including inserting an endotracheal tube recovering copious water from the airway together with the administration of adrenaline and atropine, but no signs of life were discerned at any time. Ms Higgins was moved into the ambulance at 19:38 and arrived at the Royal Hobart Hospital at about 19:53 where continued resuscitative efforts were not successful.

71. Dr David Bvirakare of the Royal Hobart Hospital pronounced death at 21:00 on 14 March 2011.

72. Ms Higgins body was identified by her daughter Chantelle Lacroix that evening.

73. An autopsy was conducted by Dr Donald Ritchey on the 15th of March. He concluded that the death was consistent with drowning and there was no sign of heart attack or of stroke. His relevant evidence is that -

“She appeared to be a very fit person and had a small amount of [indistinct word(s)] vascular disease. I understand she had a history of high blood

pressure. And sometimes longstanding high blood pressure can cause somebody's heart to enlarge but that was not the case in her. And I also specifically was able to look into the blood vessels of the neck where there is a source of emboli or things that can cause stroke. There was no evidence that she'd had a stroke. I examined her brain both grossly and with microscopic sections, there was no evidence of a stroke either grossly or microscopically. In summary the only findings in this case that were anatomic were the gross findings at autopsy of the oedema fluid in her airway and in her lungs and no other apparent cause of death".

74. Dr Ritchey also gave this evidence:

"Is this true as a generalisation: the quicker someone is recovered from the water into which they have sunk the better their chances of being successfully resuscitated?..... I think that's a true statement.

75. Whether or not Ms Higgins may have drowned as the result of a dissociative state was put to Dr Ritchey -

"And would I be right in saying that if she'd had what's called – you know what a dissociative state is?..... I do.

Yes. Yes. And if Ms Higgins had gone into a dissociative state in the water and drowned that would not show up in the post mortem either would it?..... No it would not..... And indeed had she – I'm just asking you to assume this for the moment – had she had a panic attack and drowned that too would not show up in a post mortem would it?..... That's right".

76. There was evidence that Ms Higgins suffered from a degree of psychological and psychiatric troubles for some years leading up to her death. She was seeing a general practitioner on a regular basis and she was also under the care of a psychologist and a psychiatrist.

THE CONDUCT OF MR LACROIX

77. The conduct of Mr Lacroix in and about the events at Little Howrah Beach was the subject of significant evidence in the inquest and is to be examined closely.

78. Mr Castrisios gave evidence about a male (no doubt Mr Lacroix) yelling to Ms Higgins as she swam:

And your attention at that time was drawn to a male person you describe as on the grassy bank?..... Yep.

Can you, again using the white dots and the photograph, show us where the male person was on the grassy bank when you first noticed him? And would you tell us what the grid reference is of that white dot -.....B8.

Now the man was yelling out to the elderly lady you tell us; go on get out there, get deeper -..... Correct.

Is that your recollection?..... That's it. Exactly it.

And you say that you remember that because of the manner he was speaking to her?..... Yes.

What was it about the manner, the way in which he was saying that, that gave you that impression?..... It was very aggressive and rude. It's not something which I would speak to an elderly person.

Can you help us get a flavour for it – you've used the words aggressive and rudeness, not the way you would have spoken – can you help us though with a bit of understanding of the way in which this was being said by the male to the elderly lady?..... Yep. It was at the top of his voice – yelling very loudly and that sharpness in the tone is what made me turn around particularly to think 'Who is it? What was it?' Because we need to be aware of our role leaving the shore just to know who is in the water etc but that tone in his voice was very loud – shouting go on, get out there, get deeper. And I wrote the words down when I went home. I had a feeling this would go further.

All right. You say you wrote the words down at home. When did you write the words down?..... Maybe two hours after the incident. Once I'd received a phone call from other witnesses who were part of the friendship group boating.

Who rang you?..... Niktar Nikitaras.

Right. And you regarded what you heard and the way in which those words were delivered as being important?..... Yes.

MR BARKER: B7? Thank you. [resuming] And you heard him yelling out again to the female?..... Correct.

And what was he saying at that stage?..... To go further.

And in what manner was that being said?..... A forceful manner, encouraging manner.

MR BARKER: [resuming] And was it about that time that you left the area?..... Correct.

79. During cross examination of Mr Castrisios by Mr Rogers as counsel for Mr Lacroix this exchange occurred:

Did you see the gentleman on the rocky outcrop yelling at the lady and going like that -.....

HIS HONOUR: So you are putting your hands -.....

MR RODGERS: I'm sorry. Yes -.....

HIS HONOUR: -.....both hands palms forward -.....

MR RODGERS: [resuming] Both hands indicating to her to, as the witness would say, get into deeper water. Did you see him doing that?.....

HIS HONOUR: Sort of a pushing away action with both hands.

MR RODGERS: [resuming] Yes. Yes -.....Yeah.

You nodded then so -.....Well he was holding a stubby so he was with one hand encouraging her to get out there.

80. Mr Damien Moore said that he could smell alcohol on Mr Lacroix's breath during CPR.

81. Mr Moore was approached by Mr Lacroix and as a result he rushed into the water to recover Ms Higgins. At the time his vehicle was parked on the roadway corresponding to the "R" in "Road" on the aerial photograph exhibit to the left of the stairs descending to the beach.

82. In further cross examination of Mr Moore by counsel for Mr Lacroix there was this exchange -

Now you say – whether it be five minutes or 10 minutes or whatever time you saw the elderly lady – did you say you saw the fully dressed gentleman before or after that or at about the same time?.....At about the same time. And where was he when you first saw him?..... He was out on the Point. And do you recollect, at least from that time, what he was wearing or did you notice at the time what he was wearing?..... Oh look as far as I can gather he had jeans and a jumper on. That's about it mate. Now did you, to the best of your recollection, did you see either of them again before the events when you were touched on the arm by the gentleman dressed? -.....No I did not. No, we just mindful of where they were and as I said there was only one lady in the water so we just yeah stayed clear of her and we just basically just focused all of our attention the opposite way when we were leaving the beach. And your observations of the lady were fundamentally that she was splashing around having fun in the water? -.....Absolutely. And appeared – at least didn't appear to you to have any particular concerns about where she was or what she was doing at the time?.....Yep, that's correct.....And you were at the car when you felt someone grab you by the arm?..... That's correct. And the gentleman was freaking out somewhat was he not?..... Yes, he basically sort of grabbed me on the shoulder and said you need to help me my grandmother has drowned. Now you – can I assume that at the time his words were tumbling over themselves. He was trying to speak quickly?..... No I didn't have any issues whatsoever understanding him. No. No I'm not suggesting you did but that he

was in a state of some panic?..... Oh look yeah he was stressed, yeah..... Now when the gentleman approached you, and I think you described in some panic but sort of holding it together, can you try and recollect – without looking at your statement – as best you can and from memory now what you think he said precisely?..... I was talking to George Nikitaras and I felt someone grab me on the shoulder, I spun around, and he said you need to help me my grandmother has drowned. And then I just said to him whereabouts? And that's when he sort of pointed out near a buoy. At this stage we didn't actually really see her. And then a few moments later I actually saw something move in the water and I gathered that that was her. And when you say George Nikitaras that's Georgina Nikitaras is it?..... That's correct.

And she was in the same vicinity as you?.....We were up on the road together yes. And did he say something like I can't swim to get her something like that?.....That's correct, yeah, he said I can't swim.

Well, sorry, say that again?..... He said I can't swim. Well could I suggest that he might have said something more like I can't swim to get her having regard to – you looked at him, saw his dress -..... No look I – all I can remember is he said I can't swim. There was no - I can't swim out there and get her. He just said I can't swim. And I wasn't going to stand there and argue with the guy. And he was, was he not, speaking with – quite loudly quite loudly when he first addressed you?..... No. So you say you didn't hear him yell – yell the word help or anything like that?..... The first I knew was when he put his arm on my shoulder. I didn't even hear him run behind me you know like it actually startled me. And so you didn't hear him yelling out at all?..... That's correct. Can I suggest that you're simply mistaken in that and that he was in fact yelling?..... No. There was no one on the beach mate. We were the only ones there. It was as silent as on the beach”.....

83. Georgina Nikitaris was at the beach with her family and called the ambulance -

And eventually you what, did you have the children with you when you were making your way to the car and you heard this gentleman yell out?..... Yes I did. And again, and I'm sorry to keep doing this to you, where do you recall being when you first heard him call?..... Okay. I was up at my – the car was up here parked on the road, up along there, so I was up there trying to load the things into the car and the kids. Now you heard a man yelling and you looked around or you looked up and you saw that the gentleman was with Damien Moore?..... Mhm. Okay. Can you tell me, again point, where did you see the gentleman? Where were the gentleman and Mr Moore? If you could just point and then perhaps put a sticker there -.....Okay. They were just down this area down here And I think you've given evidence that the man appeared to be freaking out to use your expression -Mhm. Was he doing anything else? Was he gesticulating or anything like that?..... No, he just seemed a little bit upset – yeah he just went straight to Damien and said you know help I can't see her, she's gone under. Right. When you say he went straight to Damien could I assume that you were not looking at Mr Moore at the time or were you looking at Mr Moore at the time when the man approached him?.....From what I can remember I spoke to Damien at the stairs and then I made my way up the stairs with the children, and that's where we said goodbye from the end of the day at the beach, and I presumed that Damien was going to pack his things up with his daughters and go to his car and that's when – I was at the car and I heard that man yelling at Damien that his – the lady had gone under – and I turned around and that's when I saw him telling Damien what had happened. Right. And when you said goodbye to Damien Moore were you at the foot of the stairs or at the top of the stairs?..... At the foot of the stairs. Right. Now you were immediately – sorry, I withdraw that. You telephoned the ambulance did you not?.....Yes I did. Right. And can I just ask you to look at your statement – well you've probably got a handwritten copy have you or -.....Yep. Can you look about – a bit passed (sic) halfway -.....Mhm.-.....you said this – Damien ran towards where he – the gentleman – was pointing. As he did I ran along the

road and down the steps. I was calling the ambulance as I did so – you see that?..... Mhm. Yes. And then you say – I then observed the male from the rocks. He began to take his jeans and his jumper off. I don't think he was moving very fast as he did this. I then had to turn away from the beach as the ambulance operator required a street name -.....Yep. Yep.

84. Having heard the evidence of the above witnesses I had no reason to reject any part of their evidence. They are independent witnesses of tragic events where some differences in observations or perceptions might be expected. Where there were inconsistencies between them, they were of little relevance. They were not shaken in any material degree in cross examination and their oral evidence did not differ in any marked sense from the content of their affidavits created at a more contemporaneous time. Whilst on the face of the evidence there was a discrepancy between Georgina Nikitaris and Mr Moore as to where Mr Moore was when he was approached by Mr Lacroix seeking urgent assistance, I find that that approach was in the near vicinity of where Mrs Nikitaris and Mr Moore had parked her vehicle on Howrah Road and nothing turns upon any such disparity.

85. Mr Lacroix gave an account of the events of that day in an affidavit of the 20th of April 2011. As to what happened at the beach he said:

I drove Ann to Little Howrah Beach, arriving about 6:40pm. I parked at the top end of Howrah Court near a vacant block. We walked toward the edge of the beach and Ann left her towel on the grass ledge on the top side of the wall. Ann entered the beach via the steps at the southern end of the beach. She then walked about 15 metres before entering the water and putting her head in and wetting her hair. She then went on a slight diagonal out toward the rocky point before turning and swimming along with the lye of the beach. I don't believe she would have been able to touch the bottom at this point and I didn't see her stop. She swam a distance of about 30 metres, alternating between a version

of freestyle and breast-stroke. Ann turned and swam back in the same direction; she was floating on her back at times and swimming.

When she returned to a point on the southern end of the beach Ann swam on a slight diagonal into slightly deeper water. About this time I had begun walking from my position over on the rocky point where I had earlier been standing back toward where Ann had left her towel. At this time Ann was still swimming but did not appear in difficulty. By the time I got to a point near the navigation pole I saw that Ann appeared to be in difficulty. She had slowed down but was not signalling to me for help but I realised she was in trouble. Ann's head was still above water and I looked around the beach and saw a male who had been on the beach and who was wearing a wetsuit. He appeared to be leaving the beach with his family. I would estimate that male was about 50 metres away. I thought because he was in a wetsuit he was better positioned to provide assistance. I spoke to the male and said my mother in law is in the water and I needed help. The male asked, "Where is she". I pointed to where Ann was. I could see she was vertical in the water and her mouth was at water level and she was motionless. The male headed toward the water, I spoke to a female who was also there and because I didn't have a phone I asked her to call the ambulance which she did. I then ran back along the beach and removed my shoes, jeans, socks, watch, sunglasses and a top. I then entered the water wearing my underwear. I then swam quickly to where Ann was. My recollection is that I arrived at Ann roughly about the same time as the other male. Ann was motionless. We rolled her onto her back and retrieved her from the water. I had hold of her chin and keeping her face out of the water. The other male I think had hold of one of Ann's arms. At that point I could not find a pulse for Ann, I again checked for a pulse when we were in the water prior to reaching the beach. We went to a part where I was able to stand up and dragged Ann into the beach. We commenced CPR on the beach; this was done with the assistance of the male in the wetsuit and the lady who appeared from nowhere. Through discussion it was established she was a nurse and she

assisted in the CPR process. I took the initiative and did the breathing, the other two alternated between compressions. A short time later emergency services arrived and treated Ann. I would say Ann was about 35 metres from the beach when she got into difficulty. It was a calm day with barely a ripple on the surface. Ann was fond of the water and enjoyed swimming. Over that summer period Ann swam regularly at the beach. She has swum at Clifton Beach, Seven Mile Beach, Lauderdale Beach, Roches Beach, Coles Bay Beach, Hazards Beach, Honeymoon Bay and Little Howrah Beach. Ann was a capable swimmer and I had seen her swim in surf at Clifton. The conditions on the day of her death certainly would not have caused her concern.

Over the course of my life I have been swimming since the age of three to four. I have successfully completed several first-aid certificates, in the past completed a bronze medallion some years ago and used to be a club swimmer with Clarence. I believe I am a very competent swimmer.

I am of the view there is nothing more I could have done to prevent Ann's drowning occurring. I certainly do not believe Ann was intending to cause herself harm. With Ann working in the garden all day she may have underestimated the level of physical exertion she had experience that day and become tired. I did not at any stage encourage her to go deeper. At one point I thought she was too far out and called out to encourage her to come closer to shore. I also called out to her to remind her it was supposed to be a quick swim as the kids were home alone and I had intended to get dinner”.

86. During the course of his oral evidence Mr Lacroix gave an account which differed in some material respects from that which was contained in his affidavit:

MR BARKER: [resuming] What did she do when she got in the water?..... She was enjoying herself in the water.

In what manner?..... Splashing about. She ran into the water or jogged. She dived in. She put her head under the water –.....

HIS HONOUR: Did you say dived in?

WITNESS: Or went in –.....

HIS HONOUR: Dived in or put her head under the water?

WITNESS: Well, went in forwards and put her head under the water. And just generally enjoying being in the water at the beach. Did you yell anything to her?..... I at one point when she appeared to be – well, she was swimming towards the rocky outcrop and the submerged rocks, which was slippery and jagged and submerged, which are a hazard, and she appeared to be doggy paddling and may have potentially been considering exiting at that point, I had indicated to move away from that area. Because I thought it was dangerous that if that's what she was intending, which I don't know, but because she had changed to a doggy paddle style that she may have considered landing and exiting on those rocks, which would have been very dangerous if she did do that and tried to stand up. Even on the submerged rocks she could have slipped and cracked her head and it could have potentially been very dangerous. So at one point I did indicate that she should move away from that area because it was unsafe. The reason she was there is because there was a jet ski in operation which restricted her use of the normal parts of the beach that she might otherwise be swimming in. And the only other time, which I have already given evidence on, is when I said that we were – it was time to – get out soon – and to the fact that it was, you know, time to go soon – and that was later.

MR BARKER: [resuming] So you perceived a danger?..... Yes I did.

And what did you do as a result?..... I indicated to her that she should move away from those rocks. Where were you, looking at your map, at the time when you saw her when she was approximately where "5" is on it?..... I was in the general area of "9". Right. And you gave her an indication you say?..... Yes. I indicated with my hands – because there was a jet ski she couldn't hear me probably over the jet ski noise, it was excessive, so I indicated with my hands to move away from the rocks –.....

HIS HONOUR: You're indicating both hands pushing away sort of like a shooing motion is that a way to describe it –.....

WITNESS: I wasn't shooin' her no. I was –.....

HIS HONOUR: Well, but –

WITNESS: –.....making her aware that she was swimming into danger and –.....

HIS HONOUR: By using both of your hands pushing away from your body?

WITNESS: Yes. Because I was standing where I could see the submerged rocks there and I was on a raised part, she wasn't. She would not necessarily have even been aware that there were submerged rocks there, and like I would if my children were there and they were swimming into danger I was alerting her to the fact that it was dangerous to be swimming or continue swimming closer to those rocks. I don't know what she was intending but because she had changed to dog paddle she may have been considering standing up on or – I don't know. But I was concerned that she may have been swimming into danger.

HIS HONOUR: But am I correct in saying you didn't say anything, you just used hand actions? You didn't say anything because the jet ski

WITNESS: The jet ski was loud. I – you said something to her?..... That's right. I indicated with my hands that it was dangerous where she was. I said something – called out something to her. There was a jet ski so I needed to project my voice louder than I otherwise might because of the noise.

HIS HONOUR: –.....and you didn't think that she would hear.

WITNESS: –.....and I think I said away from, you know, away from the rocks something to that affect. She did hear/see because she was swimming towards me she could see me and she did – well, she continued swimming. I think she continued with her swimming and didn't continue towards those rocks where she was quite close.

MR BARKER: [resuming] But did you say anything to her?.....

Well I've said I – I don't recall my exact words but it was something to the effect of away or move away or something to the effect. I was trying to alert her to the danger that she was – appeared to be swimming into – or close to. Because she could have at that point even hit her knee on a rock that's submerged. She didn't have to stand up and slip over and crack her head. She

could have still been in danger just by hitting – hitting a rock with her knee or an arm, and I wasn't aware that she was even – knew about the submerged rocks – well, she couldn't have otherwise she wouldn't have been swimming in that vicinity so close to them. So I said something to alert her to the fact that it was dangerous or there was a hazard in that area that she was swimming in. And you were louder than you might otherwise have been because of the noise of the jet skis?..... Well, the jet ski was in operation, yes. And it was excessive the noise.

So did you shout something to her?..... Well I've answered that. I've said I've called out something along the lines of away or move away or something to that effect, in addition to signalling with my hands. I'm not sure whether she heard me over the noise of the jet ski but she did respond. It may have been a combination of me gesturing with my hands or it may have been that she was able to hear me because I had called out. I'm not sure. But she did respond to my attempt to alert her to the hazard that she was swimming into. Might you have yelled out to her go on, get out there, get deeper?..... No.

What might you have yelled out to her?..... Well, I've answered that three times. I said that I said something to the effect of away or move away – something along those lines.

And that was shouted?..... No. I wasn't shouting. I raised my voice so that she could hear me.

And you were satisfied that she had heard you?..... Well, I'm not sure whether she heard me but she did respond, whether it was responding to my hand gesture or whether it was responding to my voice or a combination I'm not sure, but she did respond and she ceased to swim into that hazardous/dangerous position near those submerged rocks.

I take it that you deny any suggestion that you yelled out to her in anything approaching an aggressive tone at any time while she was in the water?..... Well – no.

And I take it that you deny that at any stage you yelled out to her go on, get out there, get deeper or anything similar to that?..... No. I didn't say anything to that effect.

And you would say to this there was nothing about your behaviour which might be thought to be aggressive in any way?..... I think if there were onlookers looking I don't know whether you could consider it aggressive but my – it certainly wasn't aggressive. I had raised my voice to project my voice over an area, a body of water, whilst a jet ski was in operation that necessitated me raising my voice so that she could hear.

And you would say to us there was nothing about that that was aggressive and anybody that thought so was mistaken?..... Well, they've misinterpreted – it was certainly my only thoughts at the time were to alert her to the danger of the submerged rocks and the hazard of the submerged rocks.

87. Mr Lacroix was then taken to the point where Mr Lacroix observed Ms Higgins in difficulty:

"That's right. I couldn't see any obvious sign of movement – which is what alerted me to the fact that there was a problem. So she had slowed down.

She had apparently or appeared to have stopped moving. I couldn't see what was going on below the water but from what I could tell from where I was standing she had slowed down. She had stopped moving. She wasn't swimming.

And your reaction to noticing that was what?..... I immediately looked around the beach to see whether I could see anybody else that could assist me in the emergency situation – where she needed assistance.

What assistance did you think that somebody might be able to provide that you would not be able to provide?..... Well, I was fully clothed. I was by myself. I had my shoes on, my jeans on, my shirt on, my jumper on, and when I looked around the beach the only person that I could see at that point was a gentleman who was in a wetsuit, who was appearing to be about to leave the

beach area. It's the only person that I could see at that point. And I needed assistance with helping to retrieve Ann from the water.

Did you call out to her at all?..... I – I focused my attention on the gentleman in the wetsuit and running over to him as quickly as I could to ask for help.

HIS HONOUR: Could you just answer the question though: did you call out to her?

WITNESS: I didn't call out to Ann, no – because she was motionless. She wasn't moving.

MR BARKER: [resuming] I'm just wondering whether the circumstances might have provoked you to call out to her Ann, are you all right? Or something like that –.....Well, it would have been wasting time. –.....to confirm your suspicions that she was in trouble –.....I mean she clearly –.....

Would you listen to the question please? I'm wondering whether the circumstances were such as would put you in mind to call out to her Ann, are you in trouble? Are you all right? Or something like that?..... Well, she was clearly in trouble. She wasn't moving in the water. Her mouth was at water level and she was clearly in trouble. Did you yell out help or anything like that?..... I – I believe I have called out help as I'm running towards Mr Moore, who is the guy in the wetsuit.

And you've run you've indicated on your map from a position approximately "2" – is it zero – to where you have met Mr Moore?..... It's the approximate location. Yes. It wasn't up on the roadway appearing above that position was it?..... No. And you've had an exchange with Mr Moore. What did you say to him?..... I said that my mother-in-law – I needed help with – I said I needed help with – my mother-in-law needed help. And I have then attempted to help him locate where she was. He had – appeared to have difficulty locating where she was in the water, as the sun was starting to go down. I could clearly see where she was. And I assisted him by pointing my hand to the orange buoys and then moving my hand in towards the beach to where she was located so that he could see her location in the water.

Do you remember approaching Mr Moore and grabbing him on the arm?.....

Yes. I remember approaching him and asking him for help. Yes.

Do you remember grabbing him on the arm?..... I don't recall specifically grabbing him on the arm. Can you recall what you said to him?..... I asked for help. And I said that I needed help. Did you say to him you need to help me my grandmother has drowned and I can't swim?..... No I didn't.

Did you say to him you need to help me my mother-in-law has drowned and I can't swim?..... No I didn't. I said I needed help. I didn't – with my mother-in-law. I said that I was fully clothed – because he was reluctant. He looked at me as though – well, he was reluctant initially and I pointed out the obvious that I was fully clothed and I needed his help in the situation. He was in a wetsuit and he was in a position to help me. And the significance of pointing out to your clothing to him was what?..... Well, he was – appeared to be reluctant. And I pointed out that I was clothed, fully clothed, and I needed help.

You were in fact at the time a good swimmer yourself?..... That's correct.

You had been swimming since infancy?..... Yes.

You had several first aid certificates?..... Yes.

And you had previously been awarded a Bronze Medallion?..... That's correct.

By the Royal Lifesaving Association –.....That's correct.

And you had been in the past a competitive swimmer?..... That's correct.

Why didn't you go in the water and pull her out yourself?..... Because I needed assistance, and there was assistance available on the beach. Mr Moore was there in a wetsuit. He was wearing a personal flotation device, which is a wetsuit. It allows for buoyancy. And I needed Mr Moore's assistance. Had I have gone in by myself Mr Moore would have left the beach, because he was preparing to leave the beach, and I would have been there by myself attempting a solo rescue. And when I had got Ms Higgins back to the beach I would have been there by myself and in a position where there was nobody else on the beach and it was getting dark. And I was fully clothed. I wasn't in a position to race straight into the water and attempt a water rescue

MR BARKER: [resuming] What was so special about your clothes?..... Well, there's nothing special about my clothes. I was just fully clothed. I had shoes on. I had socks on. I had jeans on. I had a belt on. I had a shirt on – a buttoned up shirt. I had a jumper. And I was fully clothed. I wasn't in bathers. I wasn't in shorts. I wasn't in a position to enter the water immediately. It would be but a matter of moments to get rid of the majority, if not all of your clothes wouldn't it?..... That wasn't the issue of getting rid of my clothing. The issue was getting assistance, ensuring the ambulance was on the way, and being able to perform a water rescue and being in a position to be able to resuscitate if need be. Wasn't the priority getting her out of the water?..... Yes. That's part of – part of the process of – retrieval and recovery is retrieving her from the water, but you need to be thinking what are you going to do if the person is unconscious and you get them back onto the sand and they need resuscitating. The ambulance would need to be on the way because there is an emergency situation. And that's an important part of the process in any kind of emergency situation – is that there's assistance being used if it's available. It would be incorrect procedure to do a solo rescue when a person is available on the beach in a wetsuit and able to assist with the rescue. And it would have been inappropriate for me to have let Mr Moore leave the beach and attempt a solo rescue wasting time taking my clothes off, and then trying to do a solo rescue myself and potentially having to resuscitate with no ambulance on the way to be there to attend to an emergency situation. Incorrect procedure?..... As per the training that I had done with Royal Lifesaving Society of Australia – which is to seek assistance if it's available. There is nothing though to prevent you going from where you have indicated point two is on this map, or the vicinity of it, out to "B", throwing off your clothing as you did so and yelling for assistance?..... Well Mr Moore was preparing to leave the beach. He was a considerable distance away though wasn't he?..... It didn't take a long time for me to run to him. It was approximately –..... But why run to him at all? Why not just jump in the water and help the woman out?..... Because she was approximately 35

metres – 40 metres out and I was fully clothed. I wasn't even on the beach. I was on a grassed bank and I had all my clothes on. So jumping in the water and drowning myself wouldn't have helped her. She wasn't struggling. She was motionless in the water. At what risk of drowning would you have been?..... Well if I had jumped in..... It's not Bondi beach with a recalcitrant drunk is it? I mean, this fully clothed I would have been at considerable risk of drowning with shoes on and the heavy weighted clothing that I was wearing. A former competitive swimmer with a Bronze Medallion you thought you were at risk of drowning by swimming that short distance to recover someone who is motionless?..... With clothes on of course. That's how double drownings occur. That's how people in rescues actually end up drowning themselves when they attempt to jump in with their clothes and attempt to do a rescue where they're not in a position to with shoes and fully clothed. I mean if I had of done that I almost certainly in trying to retrieve her would have drowned myself.

Yep, but would you listen to my question please: do you accept that on that day in response to seeing Ms Higgins in difficulty at point "B" on that map you could have waded in your clothing most of the way out to her?..... And potentially drowned myself. Yes. Wading? You could have drowned yourself could you?..... If I continued to Ms Higgins at her depth and attempted a water rescue with my shoes and my clothes, my jumper, yes I could have potentially drowned. But It is a woman who is motionless in the water, you're fit and young, and you've got a Bronze Medallion?..... And she weighed approximately 55 kilos – 60 kilos. She had weight that needed to be supported by my body weight to be able to bring her in. And it would have not only have been my clothing that would have been weighing me down in the water, it would have also been her weight as well, which is why people – and why there are double drownings when people go in with their clothes in a situation like this.

So in so far as Sergeant Callinan thought you were reporting that you ran to where you saw the male that was incorrect?..... That's correct. That's why I've got it – its worded Ann's head was still above the water and I looked around

the beach – saw a male who had been on the beach and was wearing a wetsuit. Any reference to running to that male is crossed out by you?..... Well, I had to see him first to run to him. So the first thing I did was look, observe, and then respond by running. Well, can you tell me where it appears in this account now that you're running anywhere?..... Well, it should have appeared after I looked around the beach. I saw a male where I had been on the – ah, who had been on the beach wearing a wetsuit and then it should have documented further what I then did. But it was Sergeant Callinan taking this affidavit. And at that stage you are recorded as saying, that is, the 15th June 2011 – I would estimate that male was about 50 metres away –Well, Sergeant Callinan has estimated 50 metres. I've put –Now hang on, where you disagreed with Sergeant Callinan you were scrupulous to make sure that your disagreement was correct, that –.....Well, with just – with those measurements established that it was about – I think we said 40 metres. So 40 metres – 50 metres it's an approximation. So I think Sergeant Callinan's estimate of 50 metres I agreed with it and if it was 40 metres according to this well I would now say 40 metres rather than 50 metres – because I have been given a scale to actually measure the distance. So I think that estimate at that point in time without any scale or any way of measuring it was reasonable. Clearly it was only 40 metres that I ran and not 50 metres.

88. Mr Lacroix's recollection of what happened earlier that day is very poor and leads to a concern that his detailed evidence of events on the beach is at least in part tainted by reconstruction:

What time did you leave your home to go to the barbecue?..... It's in my affidavit. I've given evidence on it previously. I'm not sure –.....

Well, I'm asking you now –.....Well, I don't recall the exact time. All right. And it was just you and the two children in Ms Higgins' Magna that left your home?.....If my wife was attending the barbecue, which if she wasn't working she would have been, we would have taken separate cars because she was

working that day. So I actually don't know whether I had both the children, whether my wife had the children – I'm not sure whether we were – I'm, not sure. I do know that she was working that day and if we had of attended the barbecue together that we would have had separate cars because she would have been going to work.

Right. You have no present recollection as to whether your wife was at the barbecue or not?..... We'd had many barbecues at various locations and on that particular day I'm not sure if she attended. If she was there she would have left early because she would have.

Was this a barbecue that was being had amongst friends or was it arranged through a school or something like that?..... It was just friends – friends of our family.

Who was there?..... Gary and Tanya Quan, and their children – two children – and there may have been some other people there. I'm not sure.

All right. How much alcohol were you to take to the barbecue?..... I took one or two beers. What sort of beer?..... I think it was Moo Brew

What time did the barbecue start?..... At approximately – early afternoon. It may have even been around noon. It was lunch time. And I think we were there late until 4.00 or later.

I just want to understand this. The barbecue may have started as early as 12.00?..... Well, for lunch – so there wouldn't have been any food cooked until after that.

What time did you get there?..... I don't recall. It may have been around lunch – it was a lunch – a barbecue at lunch time. There's a possibility that we arrived slightly early if the kids were going to have a play. I don't recall..... I'm sure there are all sorts of possibilities but what time did you arrive there?..... I just said that I don't recall the exact time. I have put this in my affidavit, which I did three years ago – and I have said that it was around lunch time. And that we may have arrived early if the children were going to have a play prior to the barbecue actually starting.

89. Mr Lacroix's response to what occurred at the beach was raised with him in this way:

Isn't all this – your evidence about what your response was on the beach a rationalisation for a failure to act?..... No. I acted immediately. I acted in Ann's best interests. And I did everything I possibly could to preserve her life and attempt the quickest most efficient rescue and resuscitation. And I continued with the resuscitation until the ambulance took over after I started the mouth-to-mouth resuscitation some eight minutes later. And I suggest to you that an ordinary person finding themselves in the circumstances in which you did that afternoon would have immediately waded out toward, and swam the final part to, Ms Higgins without hesitation?..... I disagree. I think people would have responded differently. This is how I responded. It's how I thought was best to respond at the time. It was based on training that I had previously undertaken. And I believe that I responded in the most appropriate way on that day at that time.

*Right. So your response to what occurred down there was not a product of any panic to anything you did? You weren't panicking?..... I wasn't panicking. It was an emergency situation and I responded to it as best I could. Yes. So whatever you did or did not do was not the child of any panic on your part?..... What I did was based on my experience, my training, and responding to an emergency situation – **and not as a result of panic.** (my emphasis)*

90. All of the evidence leads to concern that Mr Lacroix did not react to the situation at the beach as might be expected of a reasonable person. The evidence from Mr Castrisios is that Mr Lacroix had a very loud and sharp voice which clearly had carried to him over a similar distance and in approximately the same area. On Mr Lacroix's own evidence the beach was almost deserted and it can be safely inferred the noise of any jet ski and/or ski boat had disappeared by this stage. It was a very quiet evening with no wind and witnesses had no difficulty in hearing Mr Lacroix

address Ms Higgins when she was swimming. Upon all of that evidence a loud alarm raised by him at the time he was aware Ms Higgins was in difficulty was, in my view, likely to be heard by Mr Moore and/or Mrs Nikitaris. In my view it would have been most appropriate for him to have done so. But clearly he did not, instead choosing to move towards Mr Moore a considerable distance away, raising no alarm until he touched him. Mr Moore was unaware of the presence of Mr Lacroix or of the emergency until Mr Lacroix touched him on the shoulder/arm. The only evidence that Mr Lacroix ran to Mr Moore came from his cross examination. It is to be noted that he specifically deleted any reference to running to Mr Moore from his hand-written affidavit dated 15 June 2011, notably 3 months after the drowning. It is the evidence of Georgina Nikitaris that after Mr Moore ran into the water she observed Mr Lacroix go back to a point on the beach towards the south of where Mr Moore had entered the water and that he did not appear to be in any hurry. In my view there is no acceptable evidence of Mr Lacroix operating with any particular haste at any relevant time. He could have immediately upon seeing Ms Higgins in difficulty, loudly raised an alarm to Mr Moore. Mr Lacroix was the closest person to Ms Higgins in what appeared to him to be a possible drowning episode and in those circumstances the medical evidence and the application of common sense is clear that time is then of the essence. Mr Moore and Mrs Nikitaris were somewhere between 50 and 70 metres away from him with clear line of sight to them and in weather and topography conditions conducive to the successful carry of sound and clear sight. Having done so and even if he had to quickly remove shoes and a jumper, he could well have gone to the more immediate aid of his mother-in-law and hopefully with the knowledge of reasonably immediate back-up from others. It is the evidence of Mr Lacroix that he was '*a competent swimmer*' and '*at the time a good swimmer*', the holder of a Bronze Medallion in swimming safety and a competitive swimmer in his youth. There was no evidence to suggest those skills were not readily and immediately available to him on this day.

91. I prefer the evidence of Mr Moore, Mrs Nikitaris and other witnesses when it is in conflict with the evidence of Mr Lacroix in and about the events leading up to the recovery of Ms Higgins from the water.
92. From the acceptable, objective and cogent evidence I find it more likely than not that whilst Mr Lacroix was standing on the rocky point as Ms Higgins was swimming, she responded to his loud and aggressive voice, it was either an encouragement to go deeper or a warning to stay away from rocks. The effect was that she swam away from him and the rocky shore and that she likely swam towards a greater depth of water, most likely over her head. Her competency as a swimmer was such that she was likely to have been uncomfortable if not anxious as a result of being in water where she could not stand or breathe and with that discomfort exacerbated by her tiredness. In any event, she continued swimming and then Mr Lacroix turned and walked away from her a distance I find to be no less than 75 metres towards where she had left her towel on the beach near a 'navigation pole', and during that period he did not have Ms Higgins under observation. When he arrived at that point he turned and noticed she appeared to be in difficulty. Mr Moore was somewhere between 50 and 70 metres from Mr Lacroix at the time he observed Ms Higgins in difficulties and he could still see her head but she was *motionless with her mouth at about water level*. Mr Moore heard and observed nothing untoward until he felt a touch on his shoulder. It was Mr Lacroix who asked for help and used the word '*drowned*' or '*drowning*' and said words to the effect '*I can't swim to get to her*'. Mrs Nikitaris heard some yelling and turned to see Mr Moore and Mr Lacroix together. She observed Mr Moore immediately run into the water in the direction where Mr Lacroix had been pointing. To borrow a phrase from counsel assisting, Mr Moore did this with commendable alacrity. She then observed Mr Lacroix go back along the beach. This was in the direction from where he had come to speak with Mr Moore. Mrs Nikitaris observed that Mr Lacroix stopped and removed most of his clothes and to her he did not appear to be moving very fast when he removed his clothes. In his

affidavit sworn 20 April 2011, Mr Lacroix said this – *‘removed my shoes, jeans, socks, watch, sunglasses and a top’ my shirt on, my jumper on’, and I had a shirt on – a buttoned-up shirt. I had a jumper. And I was fully clothed.*

93. Senior Constable Castles a little later observed clothes on the beach and described them as being neatly folded in a pile with a watch on top. At a time after Ms Higgins was removed from the beach S/C Castles observed Mr Lacroix go to the pile of clothes and put them on. Mr Moore swam to the place where he last observed Ms Higgins head in the water, approximately 70 metres from the edge of the water on the beach. When he arrived at that approximate place he propped in the water and observed her head about 4 to 5 metres away but then she disappeared under the water again. He swam in that direction and dived under the surface, could see nothing, searched with his hands, felt something namely her left arm, pulled her to the surface and dragged her onto his stomach and gave her a couple of squeezes around her chest area but gained no response and then began to tow her back to the beach, swimming on his back. When he arrived at a place where he could stand in chest deep water he noticed Mr Lacroix standing next to him. While I have no direct evidence of the height of Mr Moore, my observation of him in the witness box was that he was a relatively large and tall man. I observed Mr Lacroix to be shorter than Mr Moore, but it was Mr Moore’s observation that Mr Lacroix was also standing in chest deep water. I find that at that place the water depth was likely in the region of 1.4 metres and from the measurements and soundings conducted by police witnesses this place was approximately 35 metres closer to the beach from the orange buoy where Mr Moore had observed Ms Higgins’ head, and approximately 35 metres from the water line on the beach. This is in contrast to the evidence of Mr Lacroix that *‘he arrived at Ms Higgins at the same time as Mr Moore’*. I find that is highly unlikely given the haste with which Mr Moore proceeded and the steps he had to undertake for retrieval compared to the lack of haste by Mr Lacroix and his steps taken in removing and stacking his clothes.

94. I find that from the time Mr Lacroix believed Ms Higgins was drowning he moved between 50 to 70 metres to speak with Mr Moore. I find that from the place where he observed Ms Higgins in difficulty until when he touched Mr Moore, he raised no verbal alarm. I find that from the place where he raised the alarm with Mr Moore about Ms Higgins' plight, that Mr Moore ran/waded/swam approximately 70 metres to Ms Higgins, took time to locate and recover her body, quickly attempted resuscitation, placed her onto her back and then towed her by swimming on his back to a place halfway back to the beach where he met Mr Lacroix. I find that in that same time Mr Lacroix went to another place on the beach, removed all of his clothes except underwear, folding them into a neat pile, and then waded and/or possibly swam to the point where he met Mr Moore.

95. I find that the lack of haste in the actions or decisions of Mr Lacroix were not borne out of panic or inertia brought about by the agony of the moment or his inability to assist her in her plight because of his lack of skills, ability or experience to cope in an emergency situation.

96. The conclusion I draw from all of the evidence is that it is more likely than not had Mr Lacroix gone more immediately to the aid of Ms Higgins then the recovery of Ms Higgins from the water could have been attained sooner, with a consequent earlier introduction of CPR resuscitation and her chances of survival thus enhanced. However, other than an enhancement of resuscitation prospects, I am unable to find had he acted with more haste that Ms Higgins would not have drowned.

ARE THERE ANY OTHER RELEVANT FACTORS WHICH MAY HAVE CONTRIBUTED TO OR BE RELEVANT TO THE CAUSE OF DEATH?

97. The ability and capacity of Ms Higgins to swim was the subject of some of the evidence. Further, during cross examination of Mrs Lacroix exhibit C55c was shown to her; a 4 page close-typed letter by her to the Coroner's Associate dated 21st March 2011. The first two and half pages appear to be a diary of events relating to

her mother between 17 February and 14 March, but from Mrs Lacroix's perspective or observations. The balance of that letter appears to be her opinions as to the cause of death based upon what her husband had informed her of events at the beach and most importantly on page 4 questioning whether the Coroner would be in a position to rule out some medical reason that contributed to her drowning such as seizure, stroke, heart attack, muscle and stomach cramps or possible disassociation episode *while Mum was in the water*. The letter also raised concerns about Dr Hildred having altered Ms Higgins' medication for hypertension as being a relevant contributing factor. This letter and its relevance I will return to later. For the moment its relevance is that it summarises some of the factors the next-of-kin considered appropriate for investigation in this inquest. The treatment or lack of it by medical practitioners towards Ms Higgins prior to death was also raised by Mr and Mrs Lacroix. For the sake of completeness these factors must be addressed for relevance and any eventual findings. I note that upon advisement from her subsequent legal counsel she no longer adopts these submissions.

THE CAPACITY AND ABILITY OF MS HIGGINS TO SWIM?

98. Rohan Maxwell Clark was a friend of Mr and Mrs Lacroix and had seen something of her swimming abilities on two occasions between 13 January 2011 and 29 January 2011, and as a result he believed that she was competent in the water but not at a standard where she could do laps. He was asked the following questions....

MR BARKER: [resuming] As to those two occasions that you mentioned when you accompanied Mr Lacroix and Ann Higgins to the beach can you tell us which beach that was?..... That was Little Howrah Beach on both occasions. Behind you on the wall there is a picture of a beach. Is that the beach?..... That's correct.

You tell us that Ann didn't swim out too far from shore. What do you mean by that?..... She stayed around other swimmers. So she didn't swim out further than what other swimmers were swimming. I'd say it would have been within

35 – 35/40 metres that she'd swum out. Did she appear to be swimming within her depth?..... Yes.

MR TIPPLE: I object to that. I don't know what that means.

HIS HONOUR: Within a depth did you say?

MR BARKER: Within the depth m'mm.

HIS HONOUR: Within her depth?

MR BARKER: And the answer from the witness who understood it was yes.

MR TIPPLE: Well what does depth mean?

HIS HONOUR: Her depth – I think I know what it means perhaps we can ask the witness. What did you understand about her depth meaning?

WITNESS: Her capabilities.

HIS HONOUR: Is that how you intended it?

MR BARKER: No.

HIS HONOUR: No I didn't think so.

Mr BARKER: Do you think she would have been able to stand up if she wished to do so?..... No.

99. Mr Niktar Nikitaras observed Ms Higgins only briefly that afternoon:

What you were seeing was somebody apparently swimming but you thought not very well?..... Correct.

Okay. And was the person when you saw them sort of at all running around or were they just attempting to swim at all times but -.....Was what, sorry?

Was the person, that is, the person who is causing the splashing, was that person at all times you saw her attempting to swim or was it sometimes she was running around in the water?..... No, the only time I saw the person attempting to swim was like for – oh like 10 seconds and then I just looked away. I didn't – I didn't make like drew my attention or constantly looking at her. I heard the splash and saw it from the corner of my eye so I looked over and thought what is that? You know I thought about a dolphin or a seal around the bay which you do get every now and then, and I asked you know Damien

and he goes no its just a lady trying to swim. Right. And you saw her for 10 seconds or so?..... Yeah. And apart from when you saw her on the beach later on, and apart from when you had earlier seen her walk past, you didn't really see her at all?..... No. Correct.

100. Mr Tas Castrisios was with friends at the beach. His initial impression was that he didn't think Ms Higgins could swim because of the way she was behaving:

"What about her behaviour was it that gave you that impression?..... She was hesitating to go into the water. She was in waist height and splashing her arms around with water. And that's what gave me the impression I thought she was handicapped.....At any stage whilst you had the elderly lady in your sight did you notice her swimming a version of freestyle?..... No I didn't. At any stage whilst you saw her in the water did you see her swimming a version of breast stroke?..... Yes I did.

At what stage was that?..... When I was on the beach area waiting for the passenger and that's when I saw her swimming out. Did you see her -.....

HIS HONOUR: Can I just ask just so that it's clear to me, before or after the doggy style?

WITNESS: After.

HIS HONOUR: After the doggy – so heading in – in which direction was she heading when she was doing this form of breast stroke?

WITNESS: It wasn't a confident form of swimming.

HIS HONOUR: No.

WITNESS: As I said it started off with doggy and it was more or less whatever she could do to stay afloat.

HIS HONOUR: In which direction?

WITNESS: Again out towards -.....

HIS HONOUR: Towards – so it was after doggy style, still in the direction of this orange buoy that you were talking about?

WITNESS: [no audible reply]

HIS HONOUR: Okay.

101. Dr O'Donnell was Ms Higgins' treating psychologist. Ms Higgins spoke to her at length about her love for the water and swimming in recent months [prior to 14 March 2011] and the sense of freedom that it gave her. Ms Higgins did not report any current suicidal ideations to Dr O'Donnell and to the contrary she reported her quality of life had improved greatly since leaving Mr Higgins.

102. Evidence was available from other witnesses about Ms Higgins' swimming abilities. The general impression gained from the evidence is that while she was certainly capable of swimming it was likely she was not a "good" or competent swimmer and that she would probably have been more comfortable swimming in her own depth. In other words, a depth where she could comfortably stand and breathe and recover. In my view, this lack of competency as a swimmer was such that she was likely to have been uncomfortable if not anxious as a result of Mr Lacroix shouting loudly and aggressively to her either to encourage her to go deeper or alternatively to encourage her to keep away from the rocks. The effect was the same in either case, she did go into deeper water, and not long after she drowned.

WAS MS HIGGINS' MEDICAL TREATMENT APPROPRIATE?

MS HIGGINS' MEDICAL BACKGROUND

103. It is clear that Ms Higgins had lived the latter part of her married life in pitiable circumstances. The house in which she was living was in a dreadful condition, brought about by numerous and different factors and to the result whereby she and her husband and daughter Rebecca had to move from the home on 23 May 2010 after problems developed with drainage and hot water systems. Dr Julie Madden was an Elder of the Abundant Life Church and met the deceased through

that organisation in 2006. In July 2010 she attended the residence. She gave evidence of her observations within the house:

I have never been in a house that's been in such a mess, so unhygienic, so full of rubbish, and just so neglected. It was – there was a horrible smell going into the house. There were bags of rubbish all over the place .It was obvious that things hadn't been cleaned for a long time.

So there were soiled nappies -.....

MR TIPPLE: [resuming] Just stopping there – did you see some nappies and evidence of that?..... Yeah. Yeah. And I was involved in helping clean out the room that Ann said that she and Rebecca had slept in. There were mattresses with holes in them that looked like rats had eaten them and rat faeces. And the shed outside had numerous stacks of newspapers that were sort of stained with urine and smelt of urine. The garden was overgrown. It was just like a tip really. So when you attended when was that?..... That was in July 2010.– oh Ann and Rebecca were staying with a friend and they revealed to the friend what had been going on and it was after that that it became – came to the knowledge of our pastor at church. And so it was on a Sunday after church that we'd heard that Ann had been living in these difficult conditions. And I went there with some other members of the church as elders of the church just to see what the situation was, basically to see what practical help we could give.

But you actually gave practical help by going and helping clean up as well?..... Yes. So we visited on that day and just got a little bit a plan as to what to do and then I think it was probably the next day, I had the day off, and I went back and I helped. There was a group of people helping -..... How many people would have been there?..... Oh well there were probably three or four at the time that I was there but there were people who came and went at different times over you know the following weeks. My husband was involved. He's a builder. He arranged for skip bins to be brought to put all the rubbish in and there were a total of 10 big sized skip bins that were filled with - Did you say 10?..... 10

yeah from that – from stuff that had come out of the house. It was just unusable or so smelly that you could just – couldn't live with it really. You'd have to go out of the house every now and again just to get some fresh air. And Ann was there – from memory I think she was probably there and I think I went two or three times. I didn't keep records because at the time you don't imagine you're going to need to – have everything written down – but Ann was there I think if not on all of the occasions that I was there maybe once she wasn't”.

104. Mr and Mrs Higgins separated in their marriage on 8 July 2010. It is not entirely clear but it seems likely that Mr Higgins did not return to his home after 23 May 2010.

THE APPROPRIATENESS OR OTHERWISE OF MEDICAL TREATMENT PRIOR TO DEATH

105. As previously noted, prior to and during the inquest hearing, complaints or concerns were raised by Mr and Mrs Lacroix in affidavit material or in correspondence directed to the coroner's office, in relation to the health care and treatment provided to Ms Higgins by medical professionals prior to her death. There were also broad concerns expressed at the pre-inquiry hearing or by way of a line of questioning of medical witnesses during the hearing or in closing submissions by Mrs Lacroix and adopted by Mr Lacroix to suggest that changes in medication regimes or therapeutic treatment may have been significantly relevant to the question to be addressed as to whether the medical conditions and/or treatment of Ms Higgins prior to and at the time of her death were causal at least in some part to her death. Those complaints or concerns were raised specifically against Dr Hildred and Dr Auchincloss.

106. I have briefly touched upon Ms Higgins' general health for some time prior to her death. It is clear that in the period following Ms Higgins leaving the matrimonial home she made improvements in her health and happiness, although there were fluctuations in her happiness and well-being in the months before she died.

Of this Dr Madden said:

.....I was talking to her about how she was feeling and just saying 'gee you look so much better' – she'd had her teeth fixed, she'd had her hair done, she had new clothes and she was smiling like I'd never really seen her. She was just a new person really. I'd never seen her like that. When I knew her initially she was fairly overweight and really kind of slowed down and slow in her speech and not much sort of animation. I just felt that when I first met her she had absolutely no self-confidence and she'd lost her self-esteem but that she was regaining that and starting to be the person who she was meant to be. Even though she still had a lot of issues to work through.

And :

But what you are sure about is that the last time you saw her she was the happiest you had ever seen her?..... Oh yeah – I mean she'd lost a fair bit of weight and I kind of thought oh perhaps she's lost a little bit too much but she had been exercising and she'd been dieting and doing things that she hadn't had the opportunity to do before. But in her actual self you know she was the best I'd ever seen her. And you know sharp – more sharp mentally. I felt like she was kind of dull mentally before."

107. Dr Sally Hildred became Mrs Higgins' general practitioner in September 2007.

She too noticed the improvement in her wellbeing:

And the fact is doctor isn't it that you saw a tremendous improvement in this lady from when she came to disclose what conditions she had been living to in July to when you last saw her in February 2011?..... Yes. Yes. Yes I did. Yes. you never saw her happier?..... That's true. Yeah. But she was anxious?..... She was certainly anxious, yes. But the anxiety in your opinion was due to the interaction and the court cases with her husband is that right?..... No. She'd always been an anxious individual. I think that was part of Ann's character.

108. A little later in her evidence Dr Hildred qualified this to some extent when she said:

....the later times just before her death that Mrs Higgins was the happiest you had seen her?....I don't know whether you would say happiest. She was certainly- she was certainly happy. She was much more animated. She was - she was still a troubled soul let's put it like that, yes.

109. Dr Hildred referred Ms Higgins to Dr Stephanie Auchincloss for psychiatric management. The following passage of her evidence is persuasive that the resultant removal of all psychotic medication by Dr Auchincloss was to good effect:

And what was your reason for your decision to withdraw those two medicines?..... Well my reasons were twofold. The first one was that there hadn't been any review for a long time and as far as I could tell she wasn't psychotic and there was no reason for her to be on them. And they affect the way people think and if you don't need medications you probably shouldn't have them. And also she had diabetes Type 2 so she was overweight and olanzapine particularly makes people put on weight, sodium valproate also causes weight gain, so it seemed a good idea to see how she would go without them and see if that would assist her to lose weight. The other point is that often patients like Ms Higgins when they have a very long term medical psychiatric condition like she has is that it does burn itself out and they don't need to remain on medications. So they end up with what we call the negative symptoms rather than the positive ones, so without the delusions and hallucinations, just with some of the cognitive processing difficulties and then a motivation and the lack of energy, those sorts of things. Now you mention those two in particular -.....Yes. -.....they weren't the only ones that she was taking at that time?..... No. She was also on an antidepressant called Effexor venlafaxine. She was on 75 milligrams which is actually quite a low dose. And it's an extremely difficult medication to withdraw from, so it often makes people feel really unpleasant coming off it. So once someone is on it I usually, if

I am going to take them off and I want there to be good reasons to do that – and in fact I had a discussion with Chantelle I think in December, we talked with Ms Higgins about whether she could come off that. She said I'm not depressed. I'm not particularly anxious at that stage. So we took her off the Effexor slowly over that Christmas period. She went to 37 and a half and then came off it – and apparently without terrible side effects. The other two were taken off earlier than that?..... They were. That's right. Now looking back at that paragraph where the last word in that sentence is obtunded -.....Yes.

HIS HONOUR: It's what, sorry?

MR PROCTOR: Obtunded.

HIS HONOUR: Oh yes – yep.

MR PROCTOR: [resuming] Can you tell us what that is?..... It's just a sort of slightly lowered conscious state. So most of us are alert and awake and aware. With some of these medications you sort of lose that acuteness I suppose and you process slowly and don't seem to be – a bit drowsy. And did that pass?..... She certainly improved. That was a lot better once she came off those medications. But as I say on that last time when I tested her cognitive function tests they were still not wonderful.

110. Dr Hildred was also able to reduce Ms Higgins' medication:

She was also beginning to decrease her psychiatric medications with Stephanie and felt that her memory was improving and that she was beginning to feel happier. I did not see Ann again for four months until 19th January 2011 I had wondered if she had started to attend another GP, but just prior to sending her a recall she presented herself. She was almost unrecognisable. She was very slim, had lost 20kg through going to the gym five days a week and eating well. She was seeing Stephanie 6 weekly and Georgie O'Donnell weekly..... I saw Ann 3 times in January and February. We were able to cease all her diabetic tablets and some of the BP tablets - because of her wt. loss and fitness her diabetes and BP was much improved. Her last visit was in February 16" She was very anxious

to stop all tablets, and we did negotiate to stop the final BP tablet and to return for BP tests at the surgery and see me in 4 weeks. (She did not in fact come for the BP checks) Stephanie had phoned concerned that she was continuing to lose weight, Ann altered her exercise routine and her weight stabilised over that month.

111. Dr Hildred last saw Ms Higgins on the 16th February 2011 when she ceased blood pressure medication but as an *'extra precaution.....just being very conservative....it wasn't essential but it was just an extra precaution'*, she requested Ms Higgins to attend the medical practice nurses on three occasions to check her blood pressure prior to a further appointment to see Dr Hildred in four weeks post 16 February. However, Ms Higgins did not attend the nurses for blood pressure checks and she was due to see Dr Hildred again within days after her death.

112. Ms Higgins had also attended Dr Georgina O'Donnell for psychological support. Dr O'Donnell also gave evidence of improvement following the withdrawal of medication:

And from the time that you first saw her until you last saw her had her cognitive abilities improved?..... Yes. And part of that was due doctor I presume to the fact that the medication that she had previously been on was totally withdrawn?..... Yes. And did you see any evidence of psychosis at all?..... No.

113. However, Dr O'Donnell also said Ms Higgins *'was particularly vulnerable to being psychologically controlled and manipulated.'*

114. Dr Joseph Poznanski is a counselling psychologist practicing in Victoria. On 1 February 2011 he reported on Ms Higgins at the request of her solicitors engaged in Family Court legal proceedings wherein they sought 'a comprehensive psychological assessment' of Ms Higgins. A copy of his report was forwarded by him to the Coroner about four months after death and following that time it became apparent

that Mr and Mrs Lacroix may raise an issue that Ms Higgins suffered a dissociative episode immediately before her death which directly led to her death. In that report he was of the opinion that from his psychological assessment of Ms Higgins it indicated she presented with chronic PTSD; dissociative depersonalisation disorder *'defined as one of Depersonalisation and Emotional Numbing'*; and reactive depression. It is to be remembered that report was created about 5 weeks prior to the date of death of Ms Higgins.

115. This report by Dr Poznanski is to be compared and contrasted with a further report by him and forwarded to the same solicitors and dated 2 July 2012. Again, he was requested to provide a full 'comprehensive psychological assessment' of Ms Higgins. In this second and subsequent report created without having seen Ms Higgins again, his diagnosis had changed in that she was diagnosed as only suffering from Post-Traumatic Stress Disorder (Chronic). She did not meet the criteria for Dissociative Personality Disorder or Dissociative Amnesia or Depersonalisation Disorder, or Borderline Personality Disorder, or Dissociative Depersonalisation Disorder, or Dissociative Fugue.

116. These discrepancies were not explained to my satisfaction. I give little weight to the contents of the report by Dr Poznanski.

117. Further, Ms Higgins treating psychiatrist, Dr Auchincloss did not support any diagnosis of dissociative disorder and was unable to say whether on the day of her death she may have suffered from a dissociative episode.

118. At the inquest hearing in May 2013, when questioned by counsel for Mrs Lacroix in what in my view could only be regarded as in a manner critical of the lack of prescribed medication treatment for Ms Higgins by her then medical practitioners in Hobart, Dr Poznanski said this – *'And is it unusual in your experience doctor to have patients suffering from those conditions [dissociative episodes and*

panic attacks] *that haven't been prescribed medication?..... It is unusual.....What sort of medication would you expect someone suffering from the dissociative episodes and panic attacks that you diagnosed who have been medicated?..... Well often the group of medication is a group of serotonin reuptake inhibitors.....But often what I find is that clients who are traumatised they are often prescribed with fast release medication, benzodiazepines, that are quite addictive in a sense and usually doctors are very concerned about use of these medications. But there are also psychiatric medications like dyspraxia [sic] that are used on a long term basis.*

119. However, at the time of Ms Higgins' first consultation with psychologist Dr Poznanski on 4 September 2010, he noted her prescribed medications at that time and also noted her prescribed medications and changes thereto as at the date of his last consultation with her on 22 January 2011. He also stated in that report that Ms Higgins anxiety levels had increased from a score of 18 on 4 September to a score of 30 by 22 January 2011.

120. In seeking the report from Dr Poznanski, solicitors for Ms Higgins asked him to report upon, among other things, *'My opinion about recommended treatment for Ann including psychotherapeutic treatment and medication.'* In responding to that request he gave an opinion about recommendations for therapeutic treatments but made no recommendations as to any medication treatment, whether by way of change to current medication regime or otherwise. The clear inference to be drawn from this response is that the mainstay treatment for any of Ms Higgins' psychological issues was by way of psychological therapy and that her medication regime was appropriate.

121. Having considered all of the evidence in my view there is nothing to persuade me that the professional medical care of Ms Higgins prior to her death was anything but appropriate and adequate. Further, notwithstanding the earlier concerns of Mr and Mrs Lacroix as to the inadequacy of that treatment and its possible

consequential effect upon her frame of mind at the time of her death, with those concerns being held during the lengthy history of the inquest hearing, they each displayed a change of view towards the conclusion of that hearing. During the course of her evidence Mrs Lacroix responded to questions in the following way:

“So there are – can I use the word surviving – there are no surviving criticisms of Dr Auchincloss, and there is no longer in your mind any criticism to be made of Dr Hildred – if there ever was?No. Is there any other medical practitioner with whom your mother dealt in relation to whom you do have any surviving concerns about whether or not their treatment of your mother was appropriate or not?..... No. No? So tell me if I’m wrong, if I am, does that mean – I’ll withdraw that. That means that none of the medical practitioners we’ve mentioned, or indeed any others that we haven’t mentioned by name, none of them in your mind shall be subject to any criticism by the coroner in relation to their treatment of your mum?..... I don’t know of anyone else, no. No?.....

MR BARKER: [resuming] I might just repeat that Mrs Lacroix just to make sure that you and I are agreed. We’ve mentioned a couple of medical practitioners, we’ve mentioned Dr Auchincloss, we’ve mentioned Dr Hildred, and you are not making any suggestion that the coroner should be critical of either of them in relation to their treatment of your mother?..... No. No? And there are a whole lot of other medical practitioners who have got a mention at some time or another during the course of these proceedings or in things that have been written to the coroner’s office, in relation to them you don’t have any criticisms or make any suggestion that the coroner should make any criticisms of them in their treatment of your mother?..... No.”

122. At the conclusion of one of the last days of the inquest hearing there was this exchange between counsel for Dr Hildred and counsel for Mr Lacroix found at page 775 of the transcript.

MS TAGLIERI: Yes Your Honour I’m wondering whether I may take the liberty in the same way that Mr Barker did to enquire of Mr Melick whether there is any

part of Mr Lacroix's case that Dr Hildred in some way contributed to the death. If it is the case that he does not maintain that proposition then I would seek leave to simply to appear for closing submissions.

HIS HONOUR: It sounds reasonable. I'm not sure that he can even answer that today, but he needs to communicate.....

MR MELICK: Yes I can Your Honour – I can answer that - ...

HIS HONOUR: I'm sorry? Can you?

MR MELICK: There is no part of our case – we are not submitting that Dr Hildred in anyway contributed.

HIS HONOUR: Alright. Okay. Thank you. And does that apply to Dr Auchincloss as well?

MR MELICK: I can't give that undertaking at this stage Your Honour.

HIS HONOUR: Can I ask you to communicate that then with Mr Proctor (counsel for Dr Auchincloss) as soon as you possibly can – and perhaps I would suggest within a week or thereabouts?

MR MELICK: We've made no – in our evidence we've said nothing about Dr Auchincloss.

123. When the inquest hearing next resumed Mr Proctor did not appear as pre-arranged and as a result did not seek to cross examine Mr Lacroix in relation to any previous assertions he may have made in relation to her lack of or inappropriate medical care of Ms Higgins. There was no evidence at all by Mr Lacroix in relation to those previous assertions. The only inference I can draw is that Mr Lacroix conceded that in no way had Dr Auchincloss contributed to the death of Ms Higgins. That being the case her evidence did not and had not touched upon on any matter relevant to any of the statutory findings required of me in the inquest.

THE WEIGHT TO BE GIVEN TO THE AFFIDAVIT EVIDENCE AND OTHER WRITTEN MATERIAL PROVIDED BY OR ON BEHALF OF MRS LACROIX

124. I have mentioned on several occasions written material provided by Mr and Mrs Lacroix to the investigation for the inquest and for its preparation. The relevance of and the weight to be given to any such material provided by Mrs Lacroix is questionable bearing in mind Mrs Lacroix is not a witness to the events on Little Howrah Beach on 14 March 2011 and also bearing in mind the following relevant evidence by her.

125. Reference has already been made to exhibit C55c and a summary of its contents. It was at the point where Mrs Lacroix was being cross examined about this letter that another of the many strange twists in this inquest occurred as follows:

Mr BARKER: First, that which I have read has gone onto the fourth page of your letter – have I accurately read that to you?..... [no audible reply]

Didn't make any mistakes did I?..... No. No? Right. Now -.....Can – yep.

Sorry, there was something you wanted to say arising out of that was there?.....

He wrote that.

Yes, I rather thought he did. I was going to ask you so don't feel embarrassed about it. How did that come about?..... I was in hospital. You were in hospital?..... [no audible reply] I was thinking about a kidney stone, but you wouldn't have been in hospital for a kidney stone then would you? You were back there for a kidney stone -.....On Friday the – I – Friday – have you got a calendar? I can tell you -..... No, but I assume it was the Friday before the 21st March was it?..... It was Friday the – after mum's death. Okay. And I don't need to know, and I'm not asking you what you went to hospital for, but you -Oh, I had kidney stones which later they found out I had salmonella. I was there for about six days. Right.

And how did it come about that your husband was writing this letter apparently attributing it to you?..... Because he said they need to know the facts. Can you go, whilst you've got that in front of you, to page four? The final paragraph says please contact me via email – sorry – please contact me via mail to the above postal address as soon as the coronial investigation is complete and you are able to provide me with a copy of the findings. Thank you. Yours sincerely, Chantelle Lacroix – and a signature appears above that - Is that in fact your signature?..... No, that is my signature. How did you come to be signing this letter?..... Because he said I needed to sign it.

Was there any discussion with your husband about this letter before it was brought into existence?..... Yeah he spoke about it but I – I was really, really sick -.....

I can imagine, yes. Why was he bothering you about a letter like this when you were obviously very ill?..... I'm –

MR TIPPLE: Your Honour it's not really a question that my client can answer.

HIS HONOUR: I thought about that Mr Tipple and it's probably not but I think she can say I can't answer that – but she might have some knowledge as to some discussion that her husband had with her as to why she should sign it.

WITNESS: I can't answer that. I was just really sick on – it's not an excuse, I'm not saying that, I'm just.... HIS HONOUR: Mr Barker.

MR BARKER: Yes, thank you Your Honour. Mrs Lacroix during that break I asked you to look at that letter attributed to you dated the 21st March 2011, that's #C55(c) for the transcript, you've had an opportunity to read that?..... Mhm.

Can I take it from what you told us earlier that your husband was the real author of that? You were just asked to sign it?..... Yes.

Yes? I've finished with that particular exhibit, perhaps if that could go back to the court. During the course of the break I also asked you whether you would be good enough to have a look at a ring binder, its entitled "Inquest – Higgins, Elizabeth Ann – Documents Received from C Lacroix" – did you have an opportunity to look at that -.....Yeah.

.....Were you able to satisfy yourself that it contained a large number of letters from – apparently from you – to the coroner’s office?..... Yes.

Would I be right that each of those letters that you saw in the ring binder were in fact authored by your husband and you were just asked to sign them?.....

Can I have the -.....

MR BARKER: Yes, thank you Your Honour. [resuming] Mrs Lacroix can I ask you whether at any time you’ve actually sat down and drafted a letter to the coroner’s office yourself and signed it,..... I have of recent – just letting them know when Stuart was available.

I’m sorry?..... I wrote one to Russell about availability of – when they were trying to do the – like re-commencement, yes. Right, so you wrote that after you had separated from your husband?..... Yes.

And that was about Mr Tipple’s availability to finish off the inquest?..... Yes.

But apart from that on any occasion have you actually sat down and written a letter to the coroner’s office about this?..... I may have written one but not – no – no.

With the exception of possibly one is it the case that all the letters in that ring binder, or any other letters for that matter that have gone to the coroner’s office attributed to you, that is, carrying your signature, have in fact been drafted by your husband?..... Yes, because they’ve been emailed.

(My emphasis)

MR BARKER:..... I will ask about emails. [resuming] You mentioned in passing a few minutes ago now the question of emails and you wanted to tell us something about that. What was it about the emails that was troubling you?..... Well as you can see the emails say that I will come in my lunch time – like I – I don’t write emails from work when I’m at work. Right -.....And the times that the emails are sent are when I’d be at work.

Right. I’m going to ask this in two stages. The first is: before you separated from your husband did you have occasion to email the coroner’s office about anything yourself?..... There were emails to the coroner’s office but I didn’t type

*them, no. You didn't type them? **So if there are any emails to the coroner's office prior to your separation from your husband that appear to have been on the face of them emails from you, you say they were in fact emails from your husband?..... Yeah. Yes. Sorry?..... Yes.*** (My emphasis)

Yes? And since you have separated from your husband have you had occasion to email the coroner's office yourself?..... Yes, I just told you about that -.....

Ah, and that was to let them know about the availability of Mr Tipple?..... Yeah, because he was away at Christmas.

Right. But any emails in the coroner's file apparently sent by you were in fact sent by your husband?..... Yes.

126. The attention of Mrs Lacroix was again returned to exhibit C55c and there followed this passage of evidence:

MR BARKER: [resuming] No, I'm not being critical of you. When did you first see the letter?..... [no audible reply]

*.....Were you still in hospital or back home?..... The 14th – I believe I'm still in hospital. Yes. So would this be right? That he brought the letter to you in the hospital – which hospital was it?..... Hobart Private. Hobart Private? Your husband brought that letter to you whilst you were in Hobart Private for you to sign?.....Did he explain to you why he couldn't write a letter containing the same information to the coroner's office?..... Sorry, I don't know the answer to that. So he didn't explain that to you?..... Just other than the senior – that I'm the senior next of kin, he – Right. And just to be clear about it, when the letter records at page three that which I have read out to you earlier that's all stuff that Adrian has attributed to you, not things that you knew about yourself in any detail?..... Well, that's what he said. **So when it says given the information that I have about all the circumstances on that day I am of the opinion that the drowning was accidental in nature – that's not something you knew, that's something that your husband has attributed it to you?..... Yeah .And what your husband's occupation? What does he do for a***

living?..... At the moment or then? Then -.....Forensic document handwriting. (My emphasis)

127. This evidence was not challenged by counsel for Mrs Lacroix. In my view it establishes that the criticisms of other witnesses or diversionary allegations apparently made by Mrs Lacroix were in fact authored by Mr Lacroix. This leads to the further conclusion that he was the real agitator not only for the inquest but for the issues which might otherwise have been thought to be a reflection of the concerns independently held by Mrs Lacroix as senior next of kin. Further, it is also supports the manipulative and controlling personality and behaviour of Mr Lacroix touched upon elsewhere in the findings.

128. As a consequence of the evidence of and the belated concessions made by Mr and Mrs Lacroix there is no evidence whatsoever to support the assertions made by Mr Lacroix and seemingly adopted by his wife. To the contrary. For the sake of completeness and as the assertions were raised with some force prior to the inquest hearing and seemingly maintained until almost its conclusion, it is important that they be put to rest as best I am able.

129. Despite the lack of evidence and relevance, in closing written submissions counsel for Mrs Lacroix [and apparently also adopted in closing submissions by Mr Lacroix] submitted that Dr Auchincloss was a most unimpressive witness and that she failed to provide time (by allocating only 30 minute appointments) and patience to her patient and failed to read some letters provided by Ms Higgins. The inference being this conduct caused or contributed to the death of Ms Higgins. In cross examination by counsel for Mr Lacroix, Dr Auchincloss explained these so-called criticisms as follows:

What would happen is that Mrs Higgins would come in with a large number of notes that she'd said she had written and she would want to read them out to me. Now my appointments are 30 minutes and I felt – she was already seeing a

psychologist, specifically for – with a view to looking at past traumas – and that it was more important for me to assess some of the other things which I was actually very worried about with Mrs Higgins. They included whether she was doing well off her psychotropic medications. At the beginning she had very significant cognitive changes, and that went to things like capacity and whether she was able to process information I was giving her, how well she was, so I was very keen to do cognitive function tests on her. So if I spent a lot of time listening to her read these very large tracts I felt that I wasn't very helpful and a very useful use of my time with her, and also I wanted to make sure that she wasn't becoming psychotic or developing a mood disorder or that anything else was going on.

I find this a little difficult because it is speculative, but my feeling was that she had been told that she had to say all this stuff. So, I didn't find it very helpful to go through it with her because she would be reading all these things out and saying things to me like – 'I get flashbacks, I get nightmares' and I'd say 'well what's a flashback?' and she couldn't tell me. So I thought well that's not really very helpful. So either she didn't write this or she doesn't understand it or there's some other agenda. And I was really worried about keeping her well. And sometimes people who have been traumatised the more you go back into it the more it just brings these things up. And it may not be helpful.

I saw Mrs Higgins nine times and for the first three or four, or it might have been five times I saw her, she never reported nightmares to me. And then there was the context of another court proceedings and this issue of PTSD became very important....which hadn't come up before and suddenly there was a lot of pressure about Mrs Higgins having nightmares. Now I looked back through my notes and she hadn't spontaneously reported those previously. And one of the things that's – having seen a lot of people being assessed for post-traumatic stress disorder is it's very easy for people to learn what they have to say. They can be coached to do that. And so the most important thing about making these diagnoses is to – what happens at the beginning rather than what

happens down the track. And the other most important thing is the mental state examination. So Mrs Higgins did not report these things spontaneously and then when I did ask about them later on when she was talking about them she wasn't able to tell me what the nightmares were about. So it was a bit perplexing really

...She was still, I think, a very vulnerable woman at that stage because she had some difficulty with processing and I think she was probably easily – easily led at this stage.

130. And then in cross examination by counsel for Mrs Lacroix she said -

MR TIPPLE: [resuming] Right. And I understand from your evidence doctor that when she attended she would often come with these large letters? Yes. And they were always in her own handwriting?..... Well I don't know. She said that she had written them and I assumed she had. I am not sure about that. But you asked her and she said that it was -Yes. Yes she said she wrote them. It was in handwriting, yes it was. I believe you've already said you never got around to reading them? Well we didn't – there was no point in reading them in that half hour, that is what happened.

131. And then in cross examination by Mr H Higgins she said –

In terms of reading large tracts that's one of the problems I had with her coming in and reading stuff to me that, although she said she had written it and although she wanted to read it to me, my impression was that she had been told to do that, that it was something she felt she had to do while she was there, and that she didn't really understand what she was reading. And I think that was a major difficulty with it in that I felt it was a waste of time to read those things when I didn't really think whether she wrote them or not. It didn't strike me that she actually knew the content of the words.

132. In my view the observations by Dr Auchincloss about Ms Higgins being ‘told to say all this stuff’; and that maybe she was not the author of the writings; and the possibility of her being coached as to what she was saying; and her being easily lead, is very perceptive in the light of the admissions by Mrs Lacroix about the vast majority of her letters or sworn documents being authored by Mr Lacroix.
133. Further, in this regard I remind myself of the evidence of psychologist Dr O’Donnell who said Ms Higgins ‘*was particularly vulnerable to being psychologically controlled and manipulated.*’
134. Finally on this point, I reject that Dr Auchincloss was a most unimpressive witness. She explained at length her reasons for her methodology in dealing with her patient and I accept those explanations demonstrate that she had thought carefully about her role in Ms Higgins’ treatment. I find that the medical treatment and care by Dr Auchincloss of Ms Higgins was appropriate and without criticism by me.
135. In relation to Dr Hildred, I find that she took responsible and entirely appropriate action to assist Ms Higgins as her patient. Dr Hildred took appropriate steps to refer Ms Higgins for more specialist advice to Clinical Psychologist Dr O’Donnell and for expert psychiatric advice including appropriate prescribed medication by Dr Auchincloss. Other evidence previously referred to and including from Mr and Mrs Lacroix has demonstrated that there were significant improvements in the physical and psychiatric health of Ms Higgins after July 2010 when Dr Hildred was managing her appropriately altered treatment regime Further, Dr Hildred reviewed Ms Higgins’ diabetes and blood pressure conditions on a regular basis and on all of the evidence it is clear that at any relevant time prior to death, Ms Higgins’ blood sugar and blood pressure levels/readings were appropriate. Forensic Pathologist, Dr Ritchey gave evidence and referred to the conditions of diabetes and elevated blood pressure and he agreed that they were

not a causative or contributory factor to the death of Ms Higgins. His evidence was unequivocally that her death was by way of drowning. Dr Ritchey had made reference to those two conditions in his written and oral evidence merely as recording a “*past history*”, and he agreed there was no evidence that Ms Higgins had anything other than “normal” blood sugar levels and blood pressure at any relevant time prior to her drowning.

136. Further, a report of Dr Anthony Bell, a Medical Consultant was taken into evidence and his evidence supports the conclusion that all management and treatment by Dr Hildred was appropriate and did not cause or contribute to Ms Higgins death. At page 3 of his report he said:

On the basis of the medical history and the post-mortem findings there are no medical issues involved in the drowning. The medical history gives a clear picture of a patient with improving health over the last couple of years. The weight loss and exercise improved diabetic blood sugar control significantly even in the absence of medication. The blood pressure appeared reasonably controlled with less or no medication. The ceasing of the medications occurred without issues. The ceasing of the medication is not connected to the drowning.

137. I find that the medical treatment and care by Dr Hildred of Ms Higgins was appropriate and without criticism by me.

DID A DISSOCIATIVE EPISODE GIVE RISE TO THE DROWNING?

138. There was some evidence by witness Rohan Clark of his observations of Ms Higgins when he lived with her at the Lacroix home between 13 January 2011 and 29 January 2011. He noticed during one occasion when he was travelling in a motor vehicle driven by Ms Higgins she failed to respond to emergency lights and sirens of an ambulance and also failed to slow down or give way to pedestrians at an intersection the same day.

139. Reference has already been made to the February 2011 report by Dr Joseph Poznanski and his diagnoses of Ms Higgins conditions at that time. He was of the opinion she suffered from dissociative depersonalisation disorder because:

- she had reported that at times her mind wanders or 'goes blank' and she often felt as if she was daydreaming or things did not seem real to her;
- she had reported that in the last 4 months of having lived with her husband she frequently experienced sensations of being outside her body, watching herself from a distance and at times was not able to feel emotion and was absent-minded; and
- she responded slowly to questions; she appeared to have a vacant look and at times when being spoken to her mind wanders and as a result she realises she does not know what has been said to her.

140. Dr Poznanski noted that her presentation (presumably at interviews between September 2010 and January 2011) '*appears to correspond to these accounts*'.

141. However, I again note that in a subsequent diagnostic report by Dr Poznanski it was his opinion she did not suffer from such a condition.

142. When questioned by counsel for Mrs Lacroix, Dr Poznanski was asked about dissociative episodes and panic attacks and their effects:

So I am suggesting that if a dissociative episode suddenly came upon her and she lost her orientation and some degree of consciousness it could have easily have led to her swallowing water?..... Of course, panic attacks can be extremely disabling. They involve very strong hypo (sic) ventilation, dizziness, weakness, feeling of entrapment, feeling inability to escape or – so the person is basically very vulnerable at that time.

143. In his evidence he also offered up the conjecture that shouting by Mr Lacroix may have caused a panic attack:

Now I believe that when her son-in-law was standing on the rock shouting to her whatever he was indicating to her I wonder whether that, being alone in the water and being exposed to this figure at a distance shouting towards her, whether that was enough of a trigger that resulted in this panic attack.

HIS HONOUR: It's a possibility at least....

WITNESS: It's a possibility.

144. He was later asked in cross examination:

...And you offered unsolicited theory as to how it was that Ms Higgins may have suffered a dissociative state and an anxiety attack or a panic attack as a result of seeing a silhouette of a male person on the headland. Is that right? Is that what you said to his Honour?..... That's correct. I mean I suggested that as a probable scenario. And where did that come from this possible scenario?..... Well I have been reflecting on – on my understanding of how things could have happened and certainly I think situations like that can result in that kind of reaction or that kind of perception in a person who is very traumatised. Whether that happened I don't know. It's only a presumption. At the risk of you and I sounding like politicians reflecting on things as they may have happened – reflecting on what things doctor? What things were you told that you might useful reflect on?..... Reflecting on literature.

On?..... Literature.

Yes. But -.....Can I read something out of this book sir?

No thank you. Could you just tell me where it is that you got your reflections from that involved you speculating about a silhouette of a male on the headland?..... "Principles of Trauma Therapy" Joan Briere and Catherine Scott.

And if I borrow that book and look it up I'll find a chapter on silhouettes on headlands will I?..... Not necessarily, not that specifically.

All right. So who has told you about what the facts are as you have been led to understand them to be?..... Media.

All right. You have been reading the newspapers?..... That's correct.

Have you been offered any witness statements by anybody?..... No.

Have you been given a briefing by any solicitors or legal practitioners -.....No.

-.....about what it is said may have happened?..... No.

So you have reflected on what you have read in The Mercury and that's why you offered up to his Honour the possibility of a male silhouette on a headland?..... That's correct.

I see. Dissociative episodes whilst a person swimming associated with an anxiety attack you think that may have happened in this case?..... Yes I –

And you theorised that those events may have occurred as a result of some sort of stressor?..... Yes.

And you have in mind the silhouette of a male on the headland?.....

No – I believe that Ms Higgins suffered from post-traumatic stress disorder and that's -..... But that didn't drown her did it?..... Well that's a condition that certainly implicates a whole range of symptoms. It's a syndrome. And various images, even smells, can trigger severe anxiety reactions in people who have experienced trauma in life. And if you want to really prove that that happens that's extremely difficult because ethically it is not possible to conduct research to involve traumatised individuals in research studies in order to assess their reactions and triggers and correlate those kinds of factors to come up with some sort of clear picture. But certainly there is a lot of research into trauma over the last 20/30 years and these are the points of knowledge that I rely on. If someone was swimming and that someone was not confident as a swimmer, and if that someone was susceptible to panic attacks, could it be sufficient a stressor to bring on such an attack if they were encouraged by someone in those circumstances to go deeper, that is, further out into the water?..... I have to – would you remind repeating the question again. All right. Well let's assume this. Let's assume we are talking about the

deceased. The person you spent a considerable amount of time with. Let's assume she is in the water that day that she drowned and let's assume that she wasn't very confident as a swimmer. And let's assume that she was told by someone, fairly emphatically, that she should go deeper into the water. Is that the sort of thing you reckon that might have brought on a panic attack?..... First of all I do not believe that she was an incompetent swimmer. She was raised in Adelaide and lived next to the beach and often went swimming -.....

HIS HONOUR: No, just take the facts as they are being put to by Mr Barker. In those circumstances what is your belief?

WITNESS: Yes. I can't really comment. I simply wouldn't –

I cannot be sure what possibly would trigger her anxiety attack. I do not know exactly what are the triggers and I cannot comment. I cannot answer this question.

MR BARKER: [resuming] But didn't you tell us at some length that it could be anything?..... That's correct.

So it's certainly isn't excluded as a possible cause of a panic attack is it? Certainly not no...

145. This evidence by Dr Poznanski as to whether or not Ms Higgins suffered a “dissociative episode” amounted to nothing more than speculation on his part. Whilst it cannot be ruled out, especially in relation to the possibility of a panic/anxiety episode arising from being shouted at and/or waved at by Mr Lacroix [exemplified by the incident early in the morning 3 days before death as described by Mr Scott where he observed Ms Higgins cowering in the front yard of her home after being closely and loudly berated by Mr Lacroix] for whatever reason to the extent she may have become disoriented and/or swallowed water and came into immediate difficulties, I am unable to find it a likely occurrence especially whereby it might be said to be the trigger event for the drowning. It is also irrelevant

because what is important in this case is not what caused Ms Higgins to get into difficulty, but rather what response Mr Lacroix made to it.

CONTROLLING BEHAVIOUR?

146. There was a body of evidence, some of which I have referred to, suggesting that Ms Higgins was subjected to an unusually controlling personality of Mr Lacroix and to a lesser extent by Mrs Lacroix. This included –

- The evidence of witness Lambie, a long term friend of Ms Higgins; following Ms Higgins moving to live with Mr and Mrs Lacroix, Ms Lambie had to contact one of them informing them what she wished to speak with Ms Higgins about before being permitted to do so.
- The evidence of witness Scott, a near neighbour to the Lacroix house who observed an incident on 10 March 2011 at around 6.30am when Mr Lacroix manoeuvred Ms Higgins against the outside front wall of the Lacroix house and was remonstrating with her loudly. He left her ‘cowering’ in that place for some 15 to 20 minutes whilst Mr Lacroix went inside.
- A vigorous exercise regime exemplified by Ms Higgins walking the streets late at night; remonstrations over her breakfast; dramatic weight loss, and
- The attendance by Mr or Mrs Lacroix at Ms Higgins’ medical, psychological and psychiatric consultations. As to this and as only one example, in her report to the coroner’s office of the 1st February 2013 Dr Auchincloss said:

To turn to your second question, through many of the interviews with Mrs Higgins her daughter or her son-in-law were present. However, after time I insisted that I saw Ms Higgins alone although often her daughter would then come in afterwards to talk to me. It seemed to me that the input of Ms Higgins’ daughter Chantelle, and her son-in-law Adrian was over-intrusive and quite impinging on Ms Higgins. - In fact I did wonder whether she had come from one controlling relationship in the

form of her husband to another in the form of her daughter and son-in-law.]

Dr Auchincloss also said:

...She (Ms Higgins) often brought in detailed notes which when she was asked about them she was unable to explain. I did wonder if she had written them herself...

Dr O'Donnell reported at para 10 as follows –

They (Mr and Mrs Lacroix) engaged in a high level of supervision of Ms Higgins' daily activities, which they expressed they felt was necessary for her protection. In the weeks prior to Ms Higgins' death I observed significant tensions in the relationship between Ms Higgins and Mr and Mrs Lacroix. Despite efforts to encourage Ms Higgins to attend appointments on her own, there were numerous occasions during which either Mr or Mrs Lacroix (or both) would attend Ms Higgins appointments and try to resolve "problem behaviours" that Ms Higgins was engaging in, which they were concerned were negatively impacting on them and their two children. Ms Higgins expressed distress that the grandchildren said she was an embarrassment and that they did not want her to pick them up from school.

Dr Auchincloss in her report dated 1 February 2013 –C38 (p3) said this –

Whenever Chantelle was present she was quite controlling of the interview, however I did insist that Mrs Higgins answered questions herself as much as she could. On occasion when I saw Mrs Higgins alone she seemed quite frightened and on one occasion said she couldn't explore an issue in further detail because she wasn't allowed to.

147. I have already given examples of Mr Lacroix' controlling behaviour and personality in and about him authoring almost all letters and other documents on

behalf of Mrs Lacroix and his attempts to control the inquest and its proper course and outcomes by diversion by adjournments and short-lived unsuccessful applications to the Supreme Court to halt the proper progress of the inquest without just cause. In my view, it is likely Ms Higgins was subjected to unusual controlling personality and behaviour especially by Mr Lacroix. It begs the question, could it be that when Ms Higgins got into difficulty at the beach Mr Lacroix lost control of her and her situation and simply did not know what to do about it?

WAS THERE A CALL FOR HELP AT THE BEACH?

148. Mr Francis McGrath who resides near the beach gave evidence that at about 7pm he was walking on Little Howrah Beach in the vicinity of public toilets and a bus stop and believes he heard a female voice cry for help from the area of the point at the southern end of the beach. He described it as a weak call, a distant sound, he guessed from a distance of 100 metres away. He initially dismissed it as the result of children playing, as he had observed children playing in the vicinity of the beach. He scanned the beach area but did not see anything that was obviously related to what he had heard. It was not until some two years later that he contacted police to inform of what he had heard. He is concerned in retrospect that he ought to have done something about it at the time.

149. No criticism can attach to Mr McGrath for not investigating further what he had heard on that day. No cry for assistance from a female was heard by any other witness, all of whom were closer to Ms Higgins than he was and it is very unlikely that she was the source of whatever it was that he heard.

THE ADEQUACY AND INTEGRITY OF THE INVESTIGATION INTO THE DEATH AS CONDUCTED ON BEHALF OF THE CORONER BY OFFICERS OF TASMANIA POLICE.

150. Prior to the inquest hearing both Mr and Mrs Lacroix gave notice that they held concerns for the inadequacy and incompetency of the investigation by police into

the death of and the circumstances surrounding the death of Ms Higgins. They directed no specific cross examination towards any such concerns and having heard the evidence I hold no concerns whatsoever that the investigation was otherwise than thorough and competent by all police officers or other investigators charged with assisting me.

CONCLUSION

151. From the above findings of fact and comments it may well be observed this inquest has had unusual features and complexities. I make no apology for regurgitating large parts of the transcribed evidence to provide some context to some of the issues which arose and to assist the reasoning behind my findings and/or comments. A considerable amount of lengthy written submissions made by various interested persons, especially the joint submissions of Mr Higgins and Rebecca Higgins, I have not referred to. It is not that they have not been read it is that I have considered that in the main they related to matters not relevant to the findings I had to make in this inquest.

STATUTORY FINDINGS

152. I find that the deceased Elizabeth Ann Higgins born 2 August 1949 died by drowning on the 14th of March 2011 whilst swimming at Little Howrah Beach in Tasmania. There is no evidence of any other physical or medical cause of death. She was aged 61 years at the time of her death and she was at that time usually resident at 2/17 Holland Court, Howrah in Tasmania and was unemployed and in receipt of a disability support pension.

153. I find that her death occurred somewhere between about the time Mr Moore located her body under the water, approximately just before 7pm on the 14th March 2011 and the time she was pronounced dead at the Royal Hobart Hospital at 8.07pm on that date. Between those times Mr Moore alone; then Mr Moore and

Mr Lacroix and others and then Tasmania Ambulance Service officers continued CPR but were not successful, with no vital signs detected between those times.

154. I find that the terminal event of drowning occurred due to asphyxia due to salt water instead of air occupying the air spaces in the lungs. I am unable to make any finding as to what may have caused Ms Higgins to ingest the salt water which led to asphyxiation and death.
155. Other than in the sense that had Mr Lacroix acted sooner to retrieve Ms Higgins from the water to enhance the prospects of her resuscitation I make no finding that her death occurred by or was contributed to by any acts or omissions which were directly responsible for her death, through the agency, intervention or involvement of any other person.
156. There are no other relevant findings I need to make or to provide any other particulars to register this death under the *Births, Deaths and Marriages Registration Act 1999*.
157. There are no systemic issues which require further exploration or possible recommendations with respect to ways of preventing further deaths.
158. Finally, I take this opportunity to express my belated condolences to the family and friends of Ms Higgins. It has been a lengthy and difficult inquest and it has taken its toll on many persons who have been in close contact with it. I thank the police investigators and the associates and staff within the coroner's office for their diligence and professional application to a sometimes complex and difficult investigation. I am aware it has taken a toll on numerous of those persons. I also thank counsel representing any interested persons and the two counsel who have assisted me for their professional and competent conduct within the inquiry. Finally, I commend and thank those who attended to assist Ms Higgins on that tragic March day in 2011. I especially commend Mr Moore, Mrs Nikitaris and Ms

Noble for their efforts in recovering Ms Higgins from the water and attempting her resuscitation. Unfortunately it was to no avail.

Glenn Alan Hay

Coroner

4 May 2017