

**INQUEST INTO THE DEATH OF PHOEBE HANDSJUK
SUBMISSIONS OF COUNSEL ASSISTING THE CORONER**

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1. INTRODUCTION

1. On Friday, 3 December 2010 at 4.35am, Dr Canillo at the Western General Hospital certified the death of Phoebe Handsjuk (9/5/1986) (“**Phoebe**”).¹
2. The precise time of Phoebe’s death is unknown. It is likely that she died between 12 noon and approximately 7.30pm on Thursday, 2 December 2010.
3. Phoebe died of exsanguination and hypovolemic shock² arising from multiple injuries, in particular, injuries to the left and right lower limbs.³
4. These submissions focus primarily on the circumstances of her death. In summary, it is submitted that the evidence is insufficient to satisfy the Court on the balance of probabilities that Phoebe died by reason of suicide, borderline personality disorder, misadventure or third party involvement.
5. It is open, on the evidence, for the Coroner to comment on the Police investigation and on the manner in which Phoebe’s psychologist dealt with a telephone call from Phoebe on 30 November 2010. It is submitted that the Court should also make recommendations in relation to the recommended dosage for and warnings on Zolpidem (Stillnox), as set out in part 7 below.

2. OVERVIEW OF FACTS

6. At the time of her death Phoebe was 24 years of age. She lived with her boyfriend, Antony Hampel (“**Mr Hampel**”), in his apartment on the 12th floor of the Balencea apartment complex, 454 St Kilda Road, Melbourne.
7. Phoebe and Mr Hampel began dating in mid-2009⁴ and Phoebe moved into the apartment on 23 October 2009.⁵ The apartment was owned by Mr Hampel but Phoebe paid rent and financially contributed to expenses.⁶
8. At the time of her death Phoebe had a part-time job, working 3 days a week at an advertising agency.⁷
9. Phoebe suffered from depression but was receiving treatment and trying to manage the illness.⁸ She was proactive about trying to get better.⁹ Phoebe was

¹ Exhibit 15 p.303

² T1104

³ Exhibit 26 p.270; Phoebe had multiple bruises and abrasions affecting predominantly her lower limbs with relative sparing of her upper limbs and torso. She had fractures of the left femur and distal right tibia and fibula with virtual amputation of the right foot above her ankle with severing of blood vessels and fracture of her left great toe. There was no evidence of neck or anogenital trauma. The nature and extent of her injuries are detailed in Dr Lynch’s reports at Exhibit 26, 26A, 26B, in Exhibit 35 at p.357 and in photographs marked Exhibits 16(g) and 16(h)

⁴ Phoebe’s Iphone calendar noted 13 July 2010 as “our anniversary” (Exhibit 28c). Mr Hampel said that that they commenced seeing each other in June or July 2009 (T1374)

⁵ T1374. Mr Hampel had lived in the apartment since December 2008

⁶ T1380. See also T1383-1384 and p34 of the Exhibits Folder. There was no formal rental agreement. Mr Hampel and Phoebe had an informal agreement as to how much money Phoebe would pay

⁷ T1379

exercising,¹⁰ taking the anti-depressant Cymbalta (60mg) and was under the care of a General Practitioner at High Street Medical Clinic in Prahran and Joanna Young (“**Ms Young**”), Psychologist. However, due to her illness, Phoebe’s attendance at work was inconsistent.¹¹

10. In 2009 Phoebe was diagnosed as suffering from alcohol abuse.¹² She did not drink alcohol on a daily basis. Indeed, several weeks could go by without Phoebe drinking any alcohol but she would then have a drinking “binge”.¹³ Phoebe was very sensitive to alcohol.¹⁴ When she drank, Phoebe would be quickly and visibly affected by alcohol. Her Mother, Natalie Handsjuk (“**Mrs Handsjuk**”), and maternal Grandfather, Lorne Campbell (“**Mr Campbell**”) observed that she would become physically clumsy after a small amount of alcohol.¹⁵ Russell Marriott (“**Mr Marriott**”), her Mother’s partner, also gave evidence that Phoebe would become clumsy and was quite quickly affected by alcohol.¹⁶ Phoebe’s friend, Mr Brendan Hession (“**Mr Hession**”), said that it would only take two glasses and Phoebe would be affected.¹⁷ Given Mr Hampel’s work as a producer, Phoebe was frequently required to attend social functions. At times she found this difficult, particularly given her efforts to manage her alcohol intake and depression.¹⁸
11. Phoebe was a creative young woman who, in 2009, had studied Creative Arts at the Centre for Adult Education (“**CAE**”) in Melbourne. Numerous witnesses gave evidence that Phoebe wrote poetry, wrote in journals and diaries, drew pictures and hoped to pursue a career in the creative arts.¹⁹ She was athletic and frequently rode her bike, walked her dog, Yoshi, and used the gymnasium in the apartment complex.
12. She was close to her family, in particular, her brothers Tom and Nikolai and her maternal Grandmother, Jeanette Campbell (“**Mrs Campbell**”).²⁰ Mrs Campbell was also referred to in some of the evidence as “Marm.”
13. Phoebe was last seen alive at 11.50am on 2 December 2010. There was a fire alarm in the Balencea apartment complex and the building’s CCTV footage,

⁸ T294-295

⁹ T295. See also T1383: Mr Hampel said that she was working hard on her own methods to stop drinking and T1458: Mr Hampel referred to Phoebe doing “homework” from Ms Young

¹⁰ T1378

¹¹ T1379: Mr Hampel said that she did not attend work on average one day per week.

¹² Exhibit 42 p.218. The diagnosis was confirmed by Ms Young in 2010 (Exhibit 8 p.215)

¹³ T1385

¹⁴ T1381

¹⁵ T341: Mr Campbell also said that she would be visibly affected by about 2 ½ glasses of alcohol; Exhibit 7 p.79 and 110; Mr Hampel (T1380) agreed that she would become affected by a very small amount of alcohol. He said that after 2 glasses of wine he would notice a personality shift in Phoebe. He said that while she would not become clumsy and fall over but she may not be standing completely upright

¹⁶ T299

¹⁷ T484

¹⁸ Exhibit 42 p.94; T1479-1482

¹⁹ For example, T298; T478; T507; T1196

²⁰ There was also evidence (T1362) that Phoebe generally met with her father on a weekly basis

showed Phoebe leaving the building at approximately 11.43.58am and re-entering the building at approximately 11.50.15am with Yoshi.²¹ Whilst outside she was observed speaking to members of the Metropolitan Fire Brigade (“**MFB**”).²²

14. Phoebe used the iMac computer in the apartment’s study on 2 December 2010. An analysis of the computer, conducted by Mr Alexander Robertson (“**Mr Robertson**”), Digital Forensic Analyst, Victoria Police E-Crime Unit, established that, on 2 December 2010, Entourage (email) and Safari (internet) files were created at 8.47am and 8.50am respectively. Safari files were created again at 9.15am and Entourage files at 11.24am. Following the fire alarm, the iMac again records that files were created at 12.01pm and 12.02pm in “Garage Band” (a program for performing, recording and/or creating music).²³ Mr Robertson was unable to determine for what duration the computer programs were used from 12.01pm – whether it was for a few minutes or an hour or more.²⁴ Mr Robertson confirmed that the computer programs running at that time were due to operation by a person rather than automated processes of the computer. There was recorded activity (System Process (Menus)) at 2.19pm, although Mr Robertson explained that whilst it could have been human interaction with the computer he considered it more likely that the 2.19pm record related to an automated activity of the computer.²⁵ He said that there was then a gap between 12.02pm and 6.18pm in which no computer file was “created” or “written”.²⁶ The iMac computer then records files created or written at 6.19pm, 7.01pm, 7.39pm and 7.40pm.²⁷
15. The cleaning staff at the apartment complex worked from 7am to 12 noon each day. After 12 noon the concierge on duty became responsible for any cleaning tasks that arose.²⁸ The duties of cleaning staff included checking the bins in the ground floor refuse room and replacing them if they were full.²⁹ From time to time, the cleaning staff chocked the door open to the ground floor refuse room

²¹ Exhibit 3J and Exhibit 3M (lobby). Phoebe rummages in her bag for her swipe card and enters the second entry door and disappears from view at 11.51.40am.

²² Exhibit 42 p.28; Exhibit 17a p.962 (Carrick notes that Phoebe spoke to MFB & “appeared alright”). The Police did not speak with members of the Metropolitan Fire Brigade to determine if further information could be obtained, for example, about Phoebe’s state of mind, whether she had been drinking etc

²³ Exhibit 41a p.1204. A Summary of computer activity prepared by Mr Marriott records that iLife, iPhoto and iMusic were used at 12.02pm. iLife is an Apple software package for organising, editing and publishing photos, movies and music and the suite includes three applications, iMovie, iPhoto and Garage Band.

²⁴ T1635

²⁵ T1636

²⁶ T1635. He said that records for “last accessed” does not necessarily indicate that a person was using the computer and may be automated activity by the computer. As such, his analysis was based on “last written” and “last created” records in respect of which he could be confident that a person was using the computer.

²⁷ T1637 and Exhibit 41a p.1206. Mr Marriott’s computer summary included “file accessed” records as well as “last written” and “last created”. Mr Marriott’s summary, at Exhibit 42 p.440, included an entry at 6.34.59pm (Remote Desktop). This does not appear in Mr Robertson’s analysis of files “last written” or “last created”. Accordingly, the record at 6.34.59pm may be an automated process of the computer.

²⁸ T20

²⁹ T17; T19

with a wooden wedge to enable bins to be wheeled in and out.³⁰ There was only one door to the refuse room, which locked automatically on closure.³¹ There was evidence that the door was generally locked, and that cleaning staff and the concierge required a key to open the door.³²

16. On 2 December 2010, the cleaning staff ceased work at 12 noon. This included a temporary cleaner who was regarded, by the Building Manager, Mr Enrico Giamarrio (“**Mr Giamarrio**”), as unreliable. He was asked not to return. Mr Giamarrio and the concierge, Ms Betul Ozulup (“**Ms Ozulup**”), were the only staff that worked on the afternoon of 2 December 2010. Facilities Management Victoria (“**FMV**”), a company that provided services to the Balencea apartment complex, engaged both Mr Giamarrio and Ms Ozulup. Mr Giamarrio worked from approximately 7.30am³³ to just after 5pm³⁴ and Ms Ozulup commenced at 4.05pm.³⁵ During the day Mr Giamarrio left the apartment complex and went to VCAT. He returned to the apartment complex by 2.16pm. During his absence, the General Manager of FMV, Mr Antonio Basile, was in charge at the apartment complex. Compared with other days, Mr Giamarrio spent more time in the Manager’s Office that day because tradesmen were conducting maintenance work on the lift.³⁶
17. A second fire alarm sounded in the apartment complex at approximately 6.05pm on 2 December 2010.³⁷ The fire alarm was set off by a tradesman who was working in the apartment complex. The tradesman then tried to assist Ms Ozulup to disengage the alarm in the fire control panel room. However their efforts were unsuccessful and the MFB again attended the apartment complex.³⁸ Members of the MFB were observed on the CCTV footage arriving through the front door of the apartment complex at approximately 6.20pm.³⁹ It is unknown whether occupants evacuated the building at that time.⁴⁰
18. Ms Ozulup telephoned Mr Giamarrio to inform him of the second fire alarm that day. The apartment complex’s telephone records note a telephone call to Mr Giamarrio at 6.27pm.
19. Ms Ozulup subsequently discovered Phoebe in the ground floor refuse room when she opened the door with a key to get a sweeper.⁴¹ This was the first time that she opened the door to the ground floor refuse room that day. Neither Mr Giamarrio nor Ms Ozulup had seen the door to the ground floor refuse room

³⁰ T121

³¹ T121. There was an alcove in the room that housed the hot water service

³² Exhibit 1 p.21; T92

³³ T120-121

³⁴ T136

³⁵ Exhibit 1 p.21

³⁶ T123

³⁷ Exhibit 1 p.21

³⁸ T76-77. Ms Ozulup thought that the tradesman came from the 20th floor

³⁹ Exhibit 3j

⁴⁰ T77. There does not appear to be an obvious evacuation based on the CCTV footage and Ms Ozulup, who was in the fire control room, did not think that the occupants evacuated (T28).

⁴¹ T39

open or anything untoward during the day.⁴² In her statement to police on 2 December 2010, Ms Ozulup said that she went to the ground floor refuse room “at about 6.35pm, maybe a bit later”.⁴³ Given the passage of time and her distress on the night she was unable to inform the Court of how much later she entered the room.⁴⁴

20. The CCTV footage showed that in the lead up to 7pm several people spoke with Ms Ozulup in the Manager’s Office.⁴⁵ It also showed that at 7.04.17pm Ms Ozulup left the Manager’s Office and walked, in a seemingly ordinary and calm state, towards the lift lobby. Ms Ozulup was not seen thereafter as the available CCTV footage of the front entry ceased at 7.06pm (and the lobby at 4.16pm).
21. On discovering Phoebe in the ground floor refuse room Ms Ozulup “ran out of the room and straight back into the office”.⁴⁶ From the Manager’s Office she called her manager Mr Giamarrio, then triple zero and then Mr Basile. The apartment complex’s telephone records revealed that the second telephone call to Mr Giamarrio was at 7.11pm, the triple zero call was at 7.13pm⁴⁷ and the call to Mr Basile was at 7.16pm. On this basis, it is open to infer that Ms Ozulup discovered Phoebe in the ground floor refuse room some time between 7.04pm and 7.11pm on 2 December 2010.
22. Detective Senior Constable Justin O’Brien and Constable Claire Hocking, together with Sergeant Graeme Forster, arrived at the Balencea apartment complex at 7.18pm.⁴⁸ A Crime Scene Log recorded their arrival at the ground floor refuse room and establishment of the crime scene at 7.22pm.⁴⁹ Ambulance paramedics Ms Kristie Cooke (“**Ms Cooke**”) and Ms Jade Mintern arrived at the crime scene on the ground floor at 7.27pm.⁵⁰ No medical examination was conducted by the paramedics to determine life status and no one touched Phoebe at that time to determine whether she had a pulse or was warm, shone a light in her eyes or held a mirror to her mouth to see if it fogged. The Police and Ms Cooke stated that Phoebe appeared to be deceased at that time.⁵¹
23. Traces of blood found on the floor of the 12th floor refuse room suggest that Phoebe had entered the garbage chute from an entry hatch in the 12th floor refuse room and that she fell down the chute into the ground floor refuse room.

⁴² T35; 128

⁴³ Exhibit 1 p.21

⁴⁴ T35

⁴⁵ The CCTV footage reveals - at 18.50pm, a man in a blue shirt and dark trousers, carrying a bag, stands in the doorway of the Manager’s Office and then leaves at 18.51pm. At 18.56.40pm a man in a fluorescent yellow top enters the Manager’s Office and at 18.58.00 he heads back towards the lifts. At 19.02.40 another man in a blue shirt and beige trousers briefly attends the Manager’s Office and leaves through the front door with two women at 19.03.10pm.

⁴⁶ Exhibit 1 p.22

⁴⁷ Exhibit 1c

⁴⁸ Exhibit 12 p.285. O’Brien and Hocking (call sign 303) and Forster (call sign St Kilda 251)

⁴⁹ Exhibit 15b

⁵⁰ The paramedics’ attendance time on the Crime Scene log includes their attendance on Ms Ozulup to check on her wellbeing. They observed from their position in the doorway for less than 10 minutes & observed the body specifically for less than a minute (T1292)

⁵¹ T571-572; T582; T587-588; T596; Exhibit 29; Exhibit 12; Exhibit 42 p.290

Dr Lynch, a Forensic Pathologist, was of the opinion that Phoebe entered the chute feet first given the nature of her injuries.

24. The chute's entry hatch was situated in the wall of the 12th floor refuse room. The hatch had a width of 545mm and height of 300mm. It was positioned 1025mm off the floor⁵² and when open had an aperture of 220mm.⁵³ Detective Andrew Healey⁵⁴ and Senior Constable Collihole were the first Police officers to enter the 12th floor refuse room that evening. When Police entered the 12th floor refuse room, at approximately 8.20pm,⁵⁵ there was no equipment or belongings in the room. Photographs of the 12th floor refuse room, taken at 10pm that night,⁵⁶ show two wall mounted fire extinguishers and a small black recycling tub on the floor. Detective Healey instructed Senior Constable Hodgson to stand guard at the door of the 12th floor refuse room at 8.50pm. During the Inquest, Detective Healey was shown a photograph of the room taken at 10pm that evening. He could not recall whether the black recycling tub depicted in the photograph⁵⁷ was in that same position as when he observed the room.⁵⁸ He said he had no memory of the tub or whether the lights in the 12th floor refuse room were on or off when he arrived.⁵⁹
25. Police did not enquire as to whether anyone on the 12th floor used the 12th floor refuse room between 12 noon and 7.11pm. It is not known therefore, when the blood first appeared on the floor of the 12th floor refuse room, whether anyone walked over the blood on the floor or whether the black recycling tub was moved at any stage prior to Police observing the room that night.
26. It is not known at what time Phoebe entered the chute, save that it was some time between 12.02pm and 7.11pm.
27. The vertical chute was made of brushed steel and had a diameter of 530mm.⁶⁰
28. Phoebe travelled a distance of 11 stories down the chute (the ground floor was also known as level 1). It is not known whether Phoebe was able to cushion her passage on the way down the chute. Dr Odell, a Forensic Physician, gave evidence that the whole environment was very dirty; whilst there was some dirt and foreign material deposited on Phoebe's right lower thoracic and lumber regions, there were no references in the autopsy report to dirt stains on her

⁵² From the floor to the top of the hatch when open

⁵³ Exhibit 7i (updating Exhibit 7d)

⁵⁴ See further T636: Detective Healey was made a Detective in 2001 but was present that night in his capacity as the "265" and not as a Detective.

⁵⁵ The notes of Detective Senior Constable Collihole record his entering the Level 12 Refuse Room at 8.20pm (p1045). The notes of Detective Senior Constable Hodgson record his guarding the door to the Level 12 Refuse Room from 8.50pm (p1040).

⁵⁶ Exhibit 42 p.320

⁵⁷ Photograph 134 of Exhibit 16h

⁵⁸ T611

⁵⁹ T611-612

⁶⁰ Mr Campbell made measurements of the entry hatch on the 12th floor and the chute (Exhibit 7d and updated, replacement diagrams at Exhibit 7i), Exhibit 20h (steel circular ring)

hands or upper limbs or clothing. As such, no inference could be drawn as to whether she had used force to try to break her fall or slow her movement.⁶¹

29. Dr Lynch described the event as a “complex fall” in the context of force delivery and as it having a number of variables.⁶² Ms Louise Brown (“**Ms Brown**”), a Forensic Biologist at Victorian Police Forensic Service Centre, described a “projected bloodstain” as a stain forming from a force greater than gravity, such as one from an impact. She said that there was no blood stain of that nature in the ground floor refuse room.⁶³
30. Phoebe exited the chute into a 240 litre green “wheelie bin” located in the ground floor refuse room. The bin sat on a metal tray and was held in position under the chute by two steel framed “arms” and metal poles on which the machine’s control panel was situated.⁶⁴
31. Photographs of the machine taken at 10pm that evening showed the bin, into which Phoebe fell, lying horizontally on the ground. The other 4 bins on the carousel were still on the machine and in an upright position. The bin carousel had moved two bin places, in an anti-clockwise direction, by the time the machine was switched off at 9.22pm.⁶⁵ The Police and paramedics who viewed the room that evening all gave evidence that, consistent with the photographs, 4 bins were standing upright on the carousel and one bin was lying horizontally on the floor. However, Ms Ozulup gave evidence that all of the bins were lying on the floor when she entered the room and discovered Phoebe. It is submitted that the evidence of the Police and paramedics, in respect of the position of the bins, should be preferred to the evidence of Ms Ozulup. Whilst it is submitted that Ms Ozulup was a truthful witness, it is important to note that she was in an extremely distressed state when she discovered Phoebe,⁶⁶ which may have impaired her recollection of the scene. Ms Ozulup readily conceded that she was traumatised by the events of that evening.⁶⁷
32. Blood stains in the ground floor refuse room reveal that Phoebe survived the fall and was, at least for some period, conscious. Phoebe exited the bin, as or after it fell onto the ground, either in the course of the machine’s rotation or by Phoebe rocking or pushing the bin until it fell over. Ms Brown stated that, whilst it could not be determined conclusively, crime scene photographs of the blood stains suggested that she exited the bin somewhere between the door and the drain hole.⁶⁸

⁶¹ T1039

⁶² T1165

⁶³ T716

⁶⁴ See, for example, photos 45, 68, 67, 18 and 66 in Exhibit 16h

⁶⁵ Exhibit 15b. It is not known how long the machine carousel took to move two positions. It would depend upon how long it took to fill the second bin including whether there was already rubbish in the second bin. It is possible that when Phoebe fell, the machine’s sensor light detected that the bin into which Phoebe fell was full and moved one bin place

⁶⁶ This might also explain why she believed that a page from the apartment complex’s logbook had been ripped out. When the original log book was produced there was no evidence that the page relating to 2 December 2010 had been removed

⁶⁷ T44

⁶⁸ T726 and photographs in Exhibit 16h

33. On exiting the bin Phoebe dragged herself from near the drainage hole, around the ground floor refuse room in a clockwise direction, moving to the far corners of the room, before coming to rest near the door.⁶⁹ Blood stains in the ground floor refuse room show that Phoebe made contact with objects such as a plastic sewerage pipe and wooden handle on a broom,⁷⁰ presumably for support, as she dragged herself around the room. Ms Brown could not rule out the possibility that blood on the bin in photo 33 were finger prints⁷¹ but considered it reasonable to infer that Phoebe had passed between the red poles and the bin in that photograph.⁷² There were transfer blood stains on the lower portion of the walls of the ground floor refuse room.⁷³ Ms Brown stated that the marks on the white pipe in photo 36 appeared to be finger type impressions.⁷⁴ Ms Brown's overall impression was that Phoebe's movement around the room was not constant and that, in light of the blood pattern, she "stopped and started".⁷⁵
34. The area where Phoebe is likely to have exited the bin was no more than a few metres away from the door. However Phoebe's movement around the room, presumably in order to reach the door and seek help, was either because she was disorientated from the fall or because the room was in darkness and her visibility was poor. There was no evidence as to whether the light in the room was on or off when Ms Ozulup first opened the door. Ms Ozulup said the light in the room was not a time-based "pop" light.⁷⁶ She could not recall if the light was always on in the ground floor refuse room.⁷⁷ Mr Giamarrio said there was a rule that if you closed the door you turned off the light.⁷⁸ If the lights were off when Phoebe exited the bin then the room is likely to have been extremely dark.⁷⁹
35. It is also not known how long it took for Phoebe to move around the room after exiting the bin or whether she remained conscious throughout the process. Evidence of the observations made by Police, paramedics and Mr Hampel do not allow a finding to be made in that regard. Detective Senior Constable Justin O'Brien said that the blood on the floor of the ground floor refuse room appeared to be dry when he viewed the room, albeit briefly, from the doorway at 7.22pm.⁸⁰ There was no abnormal smell in the room when the door was opened.⁸¹ Ms Cooke, paramedic, also thought that the blood was dry when she attended at 7.27pm but conceded that this was based only a superficial assessment and was not reliable as it was not her practice to assess such matters.

⁶⁹ T701; Exhibit 16h. The blood stains, including those on the outside of the machine's steel support pole, exclude the possibility that her movement was caused by being dragged by the machine (T720).

⁷⁰ Exhibit 16c(1), 16c(2)

⁷¹ T721; Exhibit 16h

⁷² T722; See also screen shot photographs in Exhibit 16c

⁷³ T701; T717

⁷⁴ T718-719; Exhibit 16h.

⁷⁵ T720

⁷⁶ T63

⁷⁷ T63

⁷⁸ T254

⁷⁹ T1552

⁸⁰ T579

⁸¹ T586

On the floor of the ground floor refuse room there was some garbage located on top of blood staining after the latter had been deposited.⁸²

36. However, when Mr Hampel was asked to comment on whether the blood he observed on the computer keyboard in the apartment at approximately 6.19pm⁸³ was fresh, in the sense of being dry or not dry, he replied that it was fresh blood.⁸⁴ Mr Hampel said that when he returned home the evening of 2 December 2010, there was either incense still burning in the apartment or it had been burning recently. The scent was still very present in the air.⁸⁵
37. Ms Brown was unable to determine, from photographs taken at 10pm, how long the blood had been in the ground floor refuse room. She observed that blood stains get darker over time but as to how quickly that occurs depends upon how warm and dry the room is.
38. Dr Lynch, was unable to determine precisely how long it would have taken for Phoebe to become unconscious and subsequently die from hypovolemic shock. Dr Lynch said it depended upon a number of variables including whether she had taken any steps to try to stem the flow of blood, including by applying pressure or changing her position to try to stop bleeding. He said that it would also vary from person to person⁸⁶ and that one would expect a conscious person to make some attempt to stop bleeding.⁸⁷ A young, healthy person like Phoebe could withstand greater blood loss than an older person with medical conditions. He said at the one extreme, effective control of blood loss would render this a survivable injury and at the other end of the extreme, if the injury was left untended with no attempt to staunch the flow of blood at all it could take 5 to 10 minutes for the person to bleed out, by which he meant losing consciousness.⁸⁸ Dr Lynch was unable to draw any conclusions about the time of death based on his examination, the photographs and/or toxicology report.⁸⁹ Phoebe had not eaten any solid food recently although he noted that she might have had something to eat that was not solid and was digested.⁹⁰
39. When Phoebe was discovered, her jeans were positioned just below her knees and her belt, which was undamaged,⁹¹ was threaded through two loops of her jeans. It is unknown why Phoebe's jeans were below her knees.⁹² Ms Brown considered it unlikely that her belt would have fallen into an unfastened state. There was evidence that some of the injuries were consistent with the jeans being in an "as worn" position when the injuries were sustained. Other injuries were not consistent with that proposition, such as damage to the sides of the

⁸² T716

⁸³ T1453

⁸⁴ T1434

⁸⁵ T1426; T1491

⁸⁶ T1104-1105

⁸⁷ T1106

⁸⁸ T1104-1107

⁸⁹ T1107

⁹⁰ T1118

⁹¹ T715 (the loops were also undamaged).

⁹² There was no evidence of any sexual interference (Exhibit 26)

right and left legs. However, Ms Brown gave evidence that damage to clothing will not always be replicated in injuries to the wearer of the garment and factors such as tightness of fit, depth of penetration into the fabric and type of implement may be significant.⁹³ Ms Brown surmised that the belt on the jeans may have been unbuckled by Phoebe.⁹⁴ It is possible that Phoebe tried to remove jeans after exiting the chute in order to help her move around room but it became too painful to remove them entirely given the nature of her injuries. It is also possible that she tried to remove the belt and jeans in order to or in the course of trying to stem the flow of blood.⁹⁵ The evidence does not enable a definitive finding to be made in this regard.

40. There was also evidence that in the lead up to 2 December 2010 the garbage disposal machine in the ground floor refuse room had regularly become blocked.⁹⁶ Maintenance workers had worked on the machine on 5 October 2010,⁹⁷ on or about 15 October 2010,⁹⁸ 3 November 2010,⁹⁹ 12 November 2010,¹⁰⁰ 30 November 2010¹⁰¹ and a minor service was conducted on the machine on 1 December 2010,¹⁰² being the day before Phoebe was located in the ground floor refuse room. Ms Ozulup gave evidence that the machine beeped when it became blocked and also when all five bins on the carousel were full.¹⁰³ Mr Giamarrio noted that the machine beeped as a warning, when it was about to turn, when it was full or if there was a problem.¹⁰⁴ The refuse room could not be seen from the Manager's Office. In terms of acoustics, Ms Ozulup gave evidence that, from the Manager's Office, she would not be able to hear if a bin fell or someone was talking, yelling or laughing in the ground floor refuse room.¹⁰⁵ Neither Ms Ozulup nor Mr Giamarrio had any recollection of the machine beeping on 2 December 2010. In any event, Mr Giamarrio said that he would not expect to be able to hear beeping from the Manager's Office.¹⁰⁶

3. STANDARD OF PROOF

41. Findings must be made on the basis of proof of relevant facts on the balance of probabilities.

⁹³ Exhibit 16 p.337

⁹⁴ She described this as her 'best guess' as to how the belt was in this position (T715).

⁹⁵ Given the medical evidence about the impact of substances on her mental processes and the extent of her injuries, it is uncertain whether Phoebe would have had the requisite understanding and foresight at the time to take this measure. There were 2 nails on the floor of the refuse room. Police did not conduct fibre testing on the nails. Ms Brown said that fibre testing was of possible assistance but unlikely to be conclusive as to whether the nails caused her jeans to be pulled down. She did not see any puncture marks or tearing on the belt and considered it unlikely that damage to the jeans was caused by Phoebe passing over the nails (T723; T739 & T751)

⁹⁶ Exhibit 3q p.863-871

⁹⁷ Exhibit 3q p.864

⁹⁸ Exhibit 3q p.863

⁹⁹ Exhibit 3q p.868

¹⁰⁰ Exhibit 3q p.867

¹⁰¹ Exhibit 3q p.869

¹⁰² Exhibit 3q p.870

¹⁰³ T62; T31

¹⁰⁴ T123

¹⁰⁵ T26

¹⁰⁶ T123-124; T26 – Ms Ozulup said that it could only be heard when the building was very quiet

42. Proof on the balance of probabilities requires an “affirmative conclusion....establish[ed] to the reasonable satisfaction of a judicial mind...” . It does not authorise a court “to choose between guesses, where the possibilities are not unlimited, on the ground that one guess seems more likely than another or the others. The facts proved must form a reasonable basis for a definite conclusion affirmatively drawn of the truth of which the tribunal of fact may reasonably be satisfied.”¹⁰⁷
43. In the present context, in which factual findings are of a serious nature, findings must be made in accordance with the requirements of s140(2) of the *Evidence Act 2008* (Vic), which reflect the scale of satisfaction postulated in *Briginshaw v Briginshaw*.¹⁰⁸ In *Briginshaw* Dixon J stated that “when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence.....It cannot be found as a result of mere mechanical comparison of probabilities”. Dixon J continued at 362:

“[R]easonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of a fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.”

44. In *Rejtek v McElroy*¹⁰⁹ the High Court referred to “clear and cogent” proof to induce, on the balance of probabilities, an actual persuasion of the mind. Similarly, in *NOM v DPP*¹¹⁰ the Supreme Court of Victoria Court of Appeal stated:

“Mere mechanical comparison of probabilities independent of a reasonable satisfaction will not justify a finding of fact. The fact finder must feel an actual persuasion of the occurrence or existence of the fact in issue before it can be found. Where, as in the present case, the standard of proof is to be applied to circumstantial evidence, satisfaction as to a reasonable and definite inference is required.”

4. EVIDENCE AS TO CIRCUMSTANCES OF DEATH

45. The evidence raised several possibilities as to the circumstances of Phoebe’s death.

¹⁰⁷ *Jones v Dunkel* (1959) 101 CLR 298 at 305 per Dixon CJ; See also *West v Government Insurance Office of NSW* (1981) 148 CLR 62 at 66

¹⁰⁸ (1938) 60 CLR 336; See *Morley v ASIC* [2010] NSWCA 331 at [735]- [753] and *Seltsam Pty Ltd v McGuinness* [2000] NSWCA 29 at [136] per Spigelman CJ

¹⁰⁹ (1965) 112 CLR 517

¹¹⁰ [2012] VSCA 198 at [124]

4.1 WAS PHOEBE'S DEATH A SUICIDE?

46. To make a finding of suicide the Coroner must be satisfied that Phoebe did the act that ended her life and that she intended by that act to end her life.
47. There was evidence that raised the question of whether Phoebe's death was a suicide:
 - Phoebe suffered episodically with depression since her teenage years. She had also developed problems with her alcohol consumption and used other recreational drugs from time to time. At the time of her death she was taking anti-depressants, which had been prescribed by her General Practitioner. Phoebe's alcohol problems and depression were factors in Victoria Police's determination, in December 2010, that her death was a suicide.¹¹¹
 - In a statement to Police, Phoebe's grandmother, Mrs Campbell, referred to seeing a cut on Phoebe's wrist approximately 9 months before her death – although Phoebe told her at the time that she was not trying to hurt herself and she was not suicidal.¹¹² In statements to Police, Phoebe's Mother, and Mr Hampel¹¹³ also referred to Phoebe having previously cut herself.
 - In his statement to Police on 2 December 2010,¹¹⁴ Mr Hampel concluded "I believe that as a result of Phoebe's depression and alcohol abuse she took her life tonight".¹¹⁵
 - A close friend of Phoebe's, Mrs Vanessa Levin ("**Mrs Levin**"), made a statement to Police in which she referred to a discussion she had had with Phoebe on the night of 17 November 2010. During this conversation Phoebe spoke about self-mutilation and self-loathing. Phoebe also told Mrs Levin about an incident, approximately 3-6 months earlier, in which she was at the apartment complex and had pulled a chair out so she could stand on the balcony railing.¹¹⁶
 - On Tuesday, 30 November 2010, at 12.01pm, Phoebe telephoned her Psychologist, Ms Young, in a distressed state. Telephone records revealed that the apartment landline had briefly called the Alfred Hospital and the High Street Medical Clinic before calling Ms Young. In a report to the Coroner's Court, Ms Young noted that during their telephone conversation on 30 November 2010, Phoebe told her that she felt "extremely distressed about relationship issues, was drinking heavily and felt unsafe". Ms Young

¹¹¹ T870; T853

¹¹² Exhibit 42 p.181: Mrs Campbell calculates the date as being approximately 18-20 months before she made her statement dated 28 October 2011.

¹¹³ Exhibit 34 p.44

¹¹⁴ Exhibit 34 p.43-47

¹¹⁵ Exhibit 34 p.44

¹¹⁶ Exhibit 42 p.165

gave oral evidence that she inferred from Phoebe's reference to "unsafe" that Phoebe was actively suicidal.¹¹⁷

- On Tuesday, 30 November 2010 at 2.41pm Phoebe left a voice message on Mr Hession's mobile phone. The message included a statement that if he did not return her call she would "leave this world forever....bye".¹¹⁸
- On Wednesday, 1 December 2010 a text message was sent from Phoebe's mobile phone to members of her immediate family, Mr Hampel and Ms Michelle Savonna (her employer) as follows:

"Hi family. I am in bed about to sleep and when I WAKE I will transform into the most incredible human being [sic] you've ever seen!...(not) I will go to hospital. It's safer there and I hear the special tonight is tomato soup...Delicious! Nutritious! I love u all very much but not enough to send an individual text. Sorry about that but time is sleep and I must b [sic] on my way.....Merrily, merrily, merrily. Life is but a dream xo."

48. However, as evidence was elaborated upon and tested in the course of cross-examination it became apparent that:

- In the period Friday, 26 November 2010 to Wednesday, 1 December 2010, Phoebe spoke with family and friends about getting away and travelling, including to Mallacoota and India.¹¹⁹
- Phoebe was in the process of looking into courses with a view to undertaking further study in the area of creative arts.¹²⁰
- Although Phoebe had argued with Mr Hampel on the evening of 29 November 2010, when Phoebe later recounted the incident to Mr Marriott and Mrs Levin she had not found fault with herself but had instead, focused on Mr Hampel's conduct.¹²¹ Mrs Levin described Phoebe as being cross and that she had a lot of strength.¹²²
- When Phoebe's voice message to Mr Hession (at 2.41pm, 30 November 2010) was played in Court, Mr Hession conceded that Phoebe's tone and intonation did not sound like she was either unsafe or desperate.¹²³
- As at the evening of Wednesday, 1 December 2010, Phoebe was a little flat and hung over. However, Mr Hampel felt that she had entered a recovery

¹¹⁷ T415. She denied that Phoebe had been actively suicidal in the past (T470).

¹¹⁸ T493 and Exhibit 9a

¹¹⁹ Exhibit 9 p.160 (Brendan Hession); T507, T513 (Ben Silver); T282 (Russell Marriott)

¹²⁰ In Phoebe's Iphone calendar (Exhibit 28c), on the date 24 November 2010, there is a reference to a 2nd year sculpture course at CAE and on 26 November 2010 a reference to a copyright course.

¹²¹ T1201-1202, T296, T300

¹²² T1201-1203

¹²³ Exhibit 9a; T494

phase; she was in “a better place” than she had been and “there was no question in [his] mind that she was starting, what [he] thought, to go through a positive cycle”; he described her as wanting to eat, being calm, quiet, contemplative and reflective.¹²⁴ Her behaviour was consistent with how she would ordinarily present after a drinking binge.¹²⁵

- Mr Hampel gave evidence that, on the night of Wednesday, 1 December 2010, he showed Phoebe their airline tickets to Paris and she was very excited.¹²⁶
- Phoebe had made plans to catch up with a friend, Sarah Bruce, on 2 December 2010¹²⁷ and had planned to have dinner with her Father and Mr Hampel that evening.¹²⁸
- On Thursday, 2 December 2010 Phoebe had, in all likelihood, only taken one sleeping pill.¹²⁹
- In his statement to Police, Mr Hampel had said “sometimes when she was drinking she would cut herself”. However, in oral evidence Mr Hampel confirmed that he only recalled seeing Phoebe cut herself on one previous occasion and could not recall the date, other than to say that it was in 2010.¹³⁰ He said that he did not think she was suicidal during their relationship.¹³¹ In terms of Phoebe’s depression, “all the right steps were being taken” and “she was adamant and very determined to get on top of [it].”¹³²
- Ms Young did not consider that Phoebe was on a trajectory to suicide.¹³³
- In cross-examination Ms Young confirmed that in their telephone conversation on 30 November 2010, Phoebe had not said she was going to commit suicide; it was an inference drawn by Ms Young.¹³⁴ Ms Young also elaborated on her reference, in the 30 November telephone call, to Phoebe feeling “unsafe”. She considered that Phoebe was “unsafe” because of alcohol and pills. Ms Young conceded that she did not know whether Phoebe might continue to drink and take pills and, thereby, unintentionally

¹²⁴ T1412, 1415-1416

¹²⁵ T1416

¹²⁶ T1419

¹²⁷ Exhibit 42 p.192: Sarah Bruce cancelled their ‘catch-up’ by text message sent at approximately 4.30pm on 2 December 2010. In the text message Sarah Bruce asked Phoebe if they could re-schedule for the Saturday. She did not receive a reply

¹²⁸ Exhibit 42 p.58 and p.61

¹²⁹ On 2 August 2010, Phoebe informed her General Practitioner that she had taken 5 sleeping pills on the previous Friday because she “just wanted to sleep and be out of it”. She told her General Practitioner at that time that she had no current thoughts of self harm and wanted to get better. Exhibits Folder, page 143 – Records of High Street Medical Centre

¹³⁰ Exhibit 34 p.44; T1386

¹³¹ T1389

¹³² T1388-1389

¹³³ T442

¹³⁴ T448

take her life or whether she would use the alcohol and pills as a means to end her life. She also could not exclude the possibility that Phoebe felt unsafe because of aggression.¹³⁵ In cross-examination Ms Young agreed that the reference to “continue with the struggle of her life” might not have been about life/death but might have been a broader reference to work, relationship and a need for change.¹³⁶

- In the hours after her telephone call to Ms Young on 30 November 2010, Phoebe’s concern/distress subsided. Phoebe sent Mrs Campbell a text message at approximately 3.50pm that day saying “I am ok, will call you tomorrow. xx”.¹³⁷ Mr Benjamin Silver (“**Mr Silver**”), who met Phoebe at 4pm that day, did not have the impression that she had experienced a crisis that day.¹³⁸ He described her as being “calm, lucid and confident”. He gave evidence that during their catch up over coffee, Phoebe discussed her plans for the future including plans to perform voluntary work in India.¹³⁹ He described Phoebe as being in a good mood and they giggled about her new hair cut.¹⁴⁰
- In oral evidence, Mrs Levin clarified aspects of her statement to Police. She said that when Phoebe spoke with her on the night of 17 November 2010 about self loathing and self mutilation, she was not particularly referring to herself. They spoke generally about the topic of depression and “all sorts of aspects of depression came into it and that was one of them”.¹⁴¹ She did not take Phoebe’s comments as being a reference to herself.¹⁴²
- Mrs Levin also said that she did not take Phoebe’s comments about jumping off the balcony seriously. She described the comment as having been made in a jovial or non-serious way and that she did not consider it to be a cry for help.¹⁴³
- The tomato soup text was not sent to Mrs Levin despite the fact that Phoebe and Mrs Levin had a very close, personal relationship.¹⁴⁴ Mrs Levin said that if the text message were a “cry for help” she would have expected Phoebe to have sent the text message to her.¹⁴⁵ Mr Hampel, who received the text message, interpreted it as saying that Phoebe was “okay, that she was safe, that she was home, and was sleeping it off” and that he had no reason to be concerned on receiving it.¹⁴⁶ The text message must also be considered in the context that Phoebe would have been tired and hung-over

¹³⁵ T457-458

¹³⁶ T476. In her written submission, referred to in part 6 below, Ms Young said that she did not consider Phoebe to be at imminent and specific risk

¹³⁷ Exhibit 28c; Exhibit 42 p.182

¹³⁸ T511

¹³⁹ Exhibit 42 p.156

¹⁴⁰ T512

¹⁴¹ T1189

¹⁴² T1208

¹⁴³ T1191-1192, T1193

¹⁴⁴ T1211

¹⁴⁵ T1211

¹⁴⁶ T1399

at the time it was sent (the morning of Wednesday, 1 December 2010) and possibly also after Phoebe had taken two sleeping pills.¹⁴⁷

- Mr Hampel did not regard the post-it notes, found in the apartment on the evening of 2 December 2010, as being anything different, in content or handwriting, from what he had previously read in Phoebe's diary.¹⁴⁸

49. There was other evidence inconsistent with Phoebe having taken her life:

- Phoebe came from a close family and was much loved grand daughter, daughter, and sister. It was uncontested that Phoebe was particularly close to her grandmother, Mrs Campbell, and to her brothers.¹⁴⁹
- Phoebe's brother, Tom Handsjuk ("**Mr Handsjuk**") gave evidence that Phoebe "was never without a sense of humour or events she had to look forward to and was planning for her life"¹⁵⁰.... "[w]hen I saw Phoebe, she was never without a hope, aspiration or an inspiration to share, and she was always 100% present and engaged. Although like all of us, she had her ups and downs, there was not one occasion that I felt a concern for Phoebe's life or her state of mental wellbeing."¹⁵¹
- Mr Marriott agreed that Phoebe's state was unsettled but noted that that was the nature of depression.¹⁵² He refuted the suggestion that Phoebe's ability to pull herself out of her depression may have been deteriorating.¹⁵³ She was proactive about trying to get better and put a lot of effort into it.¹⁵⁴ Mr Marriott had told Phoebe that the "door was always open" and he had the utmost confidence that she would have followed up with Mrs Campbell if she had been feeling out of control or in danger.¹⁵⁵
- Phoebe's Father, Dr Leonid Handsjuk ("**Dr Handsjuk**") gave evidence that Phoebe had only recently discussed with him the topic of getting fit and resuming training.¹⁵⁶

¹⁴⁷ Mr Hampel gave evidence that when he returned to the apartment complex at lunchtime on Wednesday, 1 December 2010, Phoebe told him that she had taken two sleeping pills (T1397; Exhibit Folder p239). It is unknown what time she took the pills.

¹⁴⁸ T1429

¹⁴⁹ T1191 (Vanessa Levin): "she loved her family so much...particularly her brothers she was very, very fond of" and at T1217: she was very, very fond of her grandmother and her mother of course. She felt great safety with her grandmother and they spoke on the phone regularly about all her personal issues as far as I know.

¹⁵⁰ Exhibit 42 p.73

¹⁵¹ Exhibit 42 p.74

¹⁵² T296

¹⁵³ T295. See also Ms Young's evidence at T426 that, whilst she would not call Phoebe resilient, she did recover enough to carry on her normal daily life.

¹⁵⁴ T295

¹⁵⁵ T301

¹⁵⁶ Exhibit 42 p.62

- Mr Hession described Phoebe as having “so much vigor and life about her”. Mr Silver gave evidence that when he met with Phoebe on 30 November 2010, she had an interest in further study, in holidaying in India or travelling to a place that was “devastated” so she could perform voluntary work.¹⁵⁷
- Mrs Levin said that during her lunch with Phoebe on 26 November 2010, Phoebe was in good spirits, had discussed prospects of further study, looking into courses, getting out of her work and changing her life. Mrs Levin said that over lunch she encouraged Phoebe to go to Mallacoota again.¹⁵⁸ Mrs Levin referred to having had positive discussions with Phoebe, in the lead up to her death, about Phoebe changing her life; “she needed growth and she needed to grow.”¹⁵⁹
- Mr Hampel said that she was “keen to pick up her study again” and vaguely recalled Phoebe attending an open day or information session about a course in or about late November 2010.¹⁶⁰
- On 3 December 2010, the Australian Taxation Office sent an email to Phoebe’s email address, which referred to an application Phoebe had recently made for an Australian Business Number.¹⁶¹ She also received numerous notifications by email relating to job vacancies including, on 30 November 2010, a job as a writer.¹⁶²
- Phoebe had spoken with close family and friends in the days leading up to her death and did not say anything to the effect that she wanted to take her life.¹⁶³ Phoebe also never said to Mr Hampel that she wanted to end her life.¹⁶⁴ Many of her friends and family expressed shock and disbelief that she would have taken her life.¹⁶⁵ Mrs Levin said “I strongly believe she would never, ever have taken her life”.¹⁶⁶
- Ms Young also expressed surprise at hearing of Phoebe’s death and said that she did not think she would have killed herself.¹⁶⁷ She assumed that, if Phoebe had died from pills or alcohol, it would have been accidental.¹⁶⁸
- Phoebe was an avid writer yet there was no suicide note.

¹⁵⁷ T507

¹⁵⁸ T1197 T1201

¹⁵⁹ T1197

¹⁶⁰ T1462

¹⁶¹ T1642-1643

¹⁶² T1643

¹⁶³ T295; Exhibit 42 p.62, p.71, p.73-74; p.62; Exhibit 9 p.159 and 162; T496

¹⁶⁴ T1387

¹⁶⁵ For example, Exhibit 42 p.162, T499 (Brendan Hession), p.167 (Vanessa Levin)

¹⁶⁶ T1227

¹⁶⁷ T426-427 and 443

¹⁶⁸ T426

- None of the medication that Phoebe had taken was in a quantity consistent with an intention to take her life. Dr Morris Odell, Professor Olaf Drummer and Associate Professor Gunja considered that the quantity of Zolpidem in Phoebe’s system was at a therapeutic level and that Cymbalta was within the range of normal, prescribed usage.¹⁶⁹

50. Phoebe had a number of exciting and happy events coming up in her life:

- Her Mother returned from a 9 week period of work in the Western Desert on Wednesday, 1 December 2010.¹⁷⁰
- Phoebe had arranged to have dinner with her Father on the evening of 2 December 2010 to celebrate his birthday.
- The following day, Friday, 3 December 2010, an 18th birthday party was planned for Phoebe’s brother, Nikolai, and Phoebe had planned to visit her Mother on 2 December to help with preparations for Nikolai’s party. There was evidence that she was looking forward to the celebration immensely and was “chirpy”.¹⁷¹
- Her Grandmother, Mrs Campbell, was due to arrive in Melbourne on 2 December 2010.¹⁷²
- Phoebe had planned to visit her Grandfather, Mr Campbell, in country Victoria for his 70th birthday in mid-December 2010.¹⁷³
- Mrs Levin’s birthday luncheon was in mid-December 2010 and Phoebe was going to help to organise it.¹⁷⁴
- She was making a film for Mrs Levin’s son’s Bar Mitzvah, which she was excited about.¹⁷⁵
- Phoebe planned to go to Paris with Mr Hampel on 21 December 2010.

51. Mrs Levin said “she had a lot to look forward to and we discussed it openly, she wasn’t going anywhere.”¹⁷⁶

52. Witnesses said that of all of these events, it was her youngest brother’s party on 3 December 2010 to which Phoebe was most looking forward.¹⁷⁷ Mr Marriott

¹⁶⁹ T1003-1013

¹⁷⁰ Exhibit 42 p.81

¹⁷¹ T295, T298

¹⁷² Exhibit 42 p.81 and 177; T1460

¹⁷³ Exhibit 7 p.110; T360 – she was enthusiastic and had spoken to Mr Campbell’s wife about attending.

¹⁷⁴ T1224. Mr Hampel said she was looking forward to her Grandfather’s birthday and would have also been looking forward to Mrs Levin’s birthday (T1461)

¹⁷⁵ T1224

¹⁷⁶ T1224

¹⁷⁷ T300; T1224-1225

said that she was very close to Nikolai, and she would “absolutely not” have committed suicide at this particular juncture having regard to the party that was planned for her brother.¹⁷⁸

53. Given Phoebe’s close and loving relationship with her younger brother and the fact that Mrs Campbell was due to arrive in Melbourne on 2 December 2010, there is considerable force in Mr Marriott’s comment.
54. Moreover, if Phoebe were minded to take her life, why would she choose to do so in such an unusual way? Why would a person who was intent on taking their life bother to leave the building for a fire alarm?
55. It is submitted that a finding of suicide cannot be established on the balance of probabilities.

4.2 WAS PHOEBE’S DEATH CAUSED BY BORDERLINE PERSONALITY DISORDER?

56. Phoebe was never diagnosed with Borderline Personality Disorder.
57. Dr Peter Churven, Senior Consultant Psychiatrist, who treated Phoebe in 2008-2009, stated that her behaviour in that period was consistent with a diagnosis of early stages of Borderline Personality Disorder. He had not seen Phoebe for approximately 12 months prior to her death.¹⁷⁹
58. Ms Young, who treated Phoebe in the period leading up to her death, considered that Phoebe had elements of Borderline Personality Disorder¹⁸⁰ but that she did not meet the full criteria for Borderline Personality Disorder.¹⁸¹ Ms Young said that based on Dr Churven’s assessment, Phoebe’s condition had remained the same.¹⁸²
59. Dr Handsjuk, a Psychiatrist with approximately 40 years’ experience confirmed that Phoebe had never been diagnosed with Borderline Personality Disorder.¹⁸³ He gave evidence that, since Phoebe’s death, as a loving Father and as an experienced Psychiatrist he had reflected back on Phoebe’s personality/behaviour. He described himself as “obsessional enough to look for the smallest little hints.”¹⁸⁴ Dr Handsjuk was well placed to provide an opinion given his professional experience and the fact that he generally saw Phoebe on a weekly basis for coffee and/or dinner. He last had breakfast with Phoebe on Monday, 29 November 2010, being a few days before her death.¹⁸⁵ Based on his

¹⁷⁸ T298. The same sentiment was expressed by Mr Campbell in Exhibit 7 p.110. Mr Hampel said that she was close to her brothers and was looking forward to her Mum coming home and would have been looking forward to Mrs Campbell arriving in Melbourne on 2 December 2010 (T1460-1461)

¹⁷⁹ Exhibit 31a p.218-220

¹⁸⁰ Exhibit 8 p.215

¹⁸¹ T421, T467

¹⁸² T423

¹⁸³ T1367

¹⁸⁴ T1364

¹⁸⁵ T1362

observations of Phoebe and his professional experience, Dr Handsjuk did not believe that Phoebe had Borderline Personality Disorder. He had also discussed the issue with his colleague “Chilli” who agreed with Dr Handsjuk’s assessment.¹⁸⁶

60. Dr Handsjuk described Borderline Personality Disorder as a vexed question within the profession.¹⁸⁷ He noted that it did not have a linear progression. That is, statistically it gets better such that behaviour becomes less dramatic over time.¹⁸⁸
61. On the evidence, it is not open to find that Phoebe’s death was caused by or related to Borderline Personality Disorder.

4.3 DEATH BY MISADVENTURE?

62. To make a finding of death by misadventure the Coroner must be satisfied, on the balance of probabilities, that Phoebe did the act that ended her life but that she did not intend by that act to end her life. For example, death by misadventure could be established if the Coroner were satisfied on the balance of probabilities that Phoebe, by reason of the alcohol and other substances in her system, entered the chute of her own volition but without being conscious of what she was doing and without intending to end her life or, alternatively, if Phoebe, in a spirit of adventure, decided to climb into the chute.
63. There was evidence that Phoebe was adventurous and liked to climb. In his statement to Police,¹⁸⁹ Mr Hession gave evidence that “I find it hard to believe that she took her own life. There is part of me that thinks that this may have been an accident. Phoebe loved climbing and if she had been drinking she may have got adventurous.” In his oral evidence, Mr Hession described Phoebe as agile, adventurous but that sometimes her interest did not match her ability.¹⁹⁰ He stated that on one occasion Phoebe had broken her arm climbing a fence on the way home.¹⁹¹ He explained that the reference, in his Police statement, to Phoebe climbing was because he was trying to comprehend what had happened at the time with little or no information as to what had occurred. He said “it was my understanding maybe while she was found at the end – at the bottom of a 12 floor building, that possibly could have been a slip or a fall rather than her jumping.”¹⁹² Mr Hampel also gave evidence that, on one occasion, Phoebe had climbed a tree during a holiday in Bali.¹⁹³
64. There was no evidence that Phoebe had any experience in abseiling or that she had ever attended a recreational centre to engage in wall climbing activities.¹⁹⁴

¹⁸⁶ T1364-1365

¹⁸⁷ T1362

¹⁸⁸ T1363

¹⁸⁹ Exhibit 9

¹⁹⁰ T498

¹⁹¹ T501

¹⁹² T499

¹⁹³ T1378

¹⁹⁴ T1378

65. Phoebe had an extremely slight build. Dr Lynch noted that Phoebe weighed 57 kg and her height measurement was 166cm. Dr Lynch conceded that her injuries might have impacted on the height measurement such that Mr Campbell's reference to markings on the wall at approximately 1.7m¹⁹⁵ in height may be more accurate. Mr Campbell's experiments revealed that a young woman of Phoebe's height and weight could enter the chute, albeit with some difficulty, when sober.¹⁹⁶
66. The post-mortem toxicology report revealed that Phoebe had a cocktail of substances in her system.¹⁹⁷
- Ethanol detected in blood and vitreous humour at 0.16 grams/100 mL;
 - Zolpidem (which is sold under the brand name "Stillnox" in Australia) in the blood at 0.2 mg/L;
 - Quinine detected in blood at 1.4mg/L;
 - Duloxetine (brand name "Cymbalta") detected in blood at 400 ng/mL; and
 - Dextromethorphan detected in blood.
67. Dr Morris Odell (Forensic Physician), Professor Olaf Drummer (Head, Forensic Scientific Services, Department of Forensic Medicine) and Associate Professor Naren Gunja (Clinical and Forensic Toxicologist) gave evidence about the substances in Phoebe's system.
68. Dr Odell gave evidence that alcohol, Zolpidem, Cymbalta and Dextromethorphan are substances which act on the brain and/or nervous system in such as way as to affect thinking, behaviour and consciousness.¹⁹⁸
69. It was uncontested that, at higher doses, alcohol is a potent central nervous system depressant and causes impairment of balance, cognition, psychomotor performance, judgement and reasoning.¹⁹⁹ The anti-depressant, Cymbalta, causes primarily sedation and tachycardia (a high resting heart beat). Zolpidem is a short acting, hypnotic drug prescribed for insomnia. Zolpidem significantly impairs memory, cognitive and psychomotor function, balance and posture. At its peak (1-3 hours after dose) Zolpidem induces imbalance and falls, with impairment continuing into day time, well after the patient takes the hypnotic to go to sleep. This is observed particularly in women and elderly persons, possibly due to reduced Zolpidem metabolism and/or heightened sensitivity to its effects.²⁰⁰ Associate Professor Gunja said that whilst Zolpidem could keep a person asleep for 3-4 hours it could still have an effect on the body up to 10 hours after the dose, in terms of posture, balance and the ability to perform tasks.²⁰¹

¹⁹⁵ Exhibit 7 p.104

¹⁹⁶ T1183-1184 (Viviana's height and weight)

¹⁹⁷ Exhibit 26 p.269 and p.273-277

¹⁹⁸ Exhibit 22 p.281-282

¹⁹⁹ Exhibit 24 p.882-883, Exhibit 23 p.372, Exhibit 23 p.283

²⁰⁰ Exhibit 24 p.883

²⁰¹ T1007

70. Since March 2007, there have been strong warnings on the prescription of Zolpidem due to significant adverse reactions in some patients. Zolpidem has been associated with hallucinations, amnesia, increased suicidality, and parasomnias (complex sleep related behaviours). These parasomnias usually take the form of automatisms that the patient is unable to remember when they wake the next morning. Cases of sleep walking, sleep driving, sleep eating, sleep cleaning and various other sleep related behaviours have been reported. Although such adverse events are uncommon, Associate Professor Gunja noted that in Korea, 5% of psychiatric outpatients reported amnesia or sleep walking after taking Zolpidem.²⁰²
71. Associate Professor Gunja gave evidence that there is considerable interaction between Zolpidem and alcohol. Zolpidem and alcohol, taken together, potentiate each others impairing effects on memory, balance and alertness.²⁰³ In his opinion, the concentration of Zolpidem identified in Phoebe's toxicology report would be expected to cause drowsiness and impairment of cognitive and psychometer function as well as impaired balance and posture.²⁰⁴
72. In their oral evidence, the medical experts stated that it was not possible to say what time Phoebe took any of the substances in her system²⁰⁵ because the time of her death is unknown and because Zolpidem and Cymbalta exhibit a phenomenon of post-mortem redistribution.²⁰⁶ However, they considered it likely that Phoebe took Zolpidem on the day she died.²⁰⁷ The medical experts viewed the CCTV footage of Phoebe on 2 December 2010 (front entry and lobby, 11.43am-11.44am). They observed that Phoebe appeared to be behaving quite normally, that she had purposeful movement and did not look peak drug affected at that time.²⁰⁸
73. In his report, Associate Professor Gunja observed that there were two possible modalities in which alcohol and Zolpidem could have contributed to Phoebe's death:
- (i) The drugs depressed her mood, judgement and perception – this may have promoted or exacerbated her suicidal thoughts leading her to enter the garbage chute as a suicidal act; or
 - (ii) The drugs impaired her cognitive and motor capacity, to the extent that Phoebe would not have been physically capable of entering the garbage chute unassisted.

²⁰² Exhibit 24 p.883

²⁰³ T1024

²⁰⁴ Exhibit 24 p.883; T1030

²⁰⁵ T1003

²⁰⁶ T1003-1010

²⁰⁷ T1011

²⁰⁸ T1017-1018

Associate Professor Gunja said that a definitive conclusion was not possible in the absence of more information about Phoebe's alcohol consumption and the timing and dosage of Zolpidem.²⁰⁹

74. His report concluded:²¹⁰

“The issue of acute and long-term tolerance to ethanol makes definitive judgement on the ability to enter the garbage chute with a BAC of 0.16% difficult. However, the added synergistic effect of Zolpidem with ethanol is likely to have significantly impaired, though not entirely preclude, Phoebe's ability to physically enter the chute unassisted.”

75. During the Inquest the medical experts were questioned about Phoebe's state of mind and, in particular, whether the combination of substances in her system was such that she might not have been conscious of the activity that she was engaging in and/or unable to form an intention to take her life. Dr Odell and Associate Professor Gunja stated that it was not possible to draw that inference from the toxicology report. That is, they could not say, from the reported concentrations of drugs in the toxicology report, that Phoebe was unable to form intent.²¹¹ Professor Drummer said that the combination of alcohol and Zolpidem was such that a person could be asleep or alternatively, conscious and doing things, albeit not well.²¹²

76. The medical experts were also asked whether, given the likely impact of the substances on a person's psychomotor skills, co-ordination and balance, whether it was physically possible for Phoebe to have entered the chute unassisted. Associate Professor Gunja replied:²¹³

“Well I think that's difficult to say....all I can say is that however difficult it may be for someone to get in unassisted without the drugs, having the drugs on board would make that even more difficult. And I think that's as much as I could say about that.”

77. Dr Odell agreed with Associate Professor Gunja,²¹⁴ referred to the young women in the experiment conducted by Mr Campbell being able to enter the chute and said:²¹⁵

“And as Dr Gunja says, the presence of any intoxicating substance would make it more difficult. You know, we don't know how long it might have taken her to do it of course, and it could have been that, you know, that if she'd formed the idea that she had to do it, that she was determined to go and do it, and it certainly could have contributed to her injuries or whatever in the process of doing it. So just the fact that she's got these

²⁰⁹ Exhibit 24 p.885

²¹⁰ Exhibit 24 p.885

²¹¹ T1031

²¹² T1031-1032

²¹³ T1032

²¹⁴ T1033, L2

²¹⁵ T1035

substances on board doesn't exclude the possibility that she could have climbed into the chute."

And

"the young ladies in the demonstration were fit young women and they found it difficult. And as Dr Gunja says, it would be even more difficult if a person was intoxicated."²¹⁶

78. The medical evidence, taken at its highest, is that *it is difficult to say* whether she could have entered the chute; it is *possible* Phoebe could have climbed into the chute and, in the words of Dr Odell, that possibility "*could not be excluded*".
79. Phoebe's state of mind and thought processes that day cannot be determined on the evidence. It is not open on the evidence to determine whether she was conscious or aware and capable of forming intent or in a parasomniac state.
80. In terms of her physical capacity to enter the chute, it is submitted that the fact that an event is possible or cannot be excluded as a possibility by the medical experts, falls short of the requisite standard of proof (namely, satisfaction that it is more probable than not that Phoebe had the cognitive and motor skills to physically climb into the chute). Conjecture or speculation, which may range from the barely possible, to the quite possible, does not provide proof on the balance of probabilities. Whilst establishing a fact on 'the balance of probabilities' does not require absolute certainty it must go further than establishing a mere 'possibility'.

4.4 DEATH BY THIRD PARTY INVOLVEMENT?

81. The phrase "third party involvement" embraces homicide, disposing of what might erroneously be considered to be a dead body and assisted suicide.
82. There was evidence that raised the question of whether Phoebe's death was caused by third party involvement. This evidence included:
 - Bruises on Phoebe's body;
 - The presence of blood, broken glass and scattered cushion stuffing in the apartment;
 - The difficulty in physically entering the chute;
 - The security system at the apartment complex was not impenetrable;
 - The absence of fingerprints or blood on the chute entry hatch;
 - DNA from another person in the ground floor refuse room; and

²¹⁶ T1035

- Uncertainty as to whether the front door to the apartment was locked or unlocked when Mr Hampel came home on the evening of 2 December 2010.
83. There was also evidence about the setting on the garbage machine and the police media release that was relevant to the question of third party involvement.
84. Each of these matters will be addressed in further detail below.

4.4.1 Bruising

85. Dr Lynch observed that Phoebe had circular and ovoid shaped bruising on her right medial upper arm,²¹⁷ which he described as having the appearance “of recent injuries of nonspecific appearance which would be consistent with grip marks although certainly not specific for same”.²¹⁸ In oral evidence Dr Lynch stated that this bruising evidenced “some form of compression but I would be cautious about attributing specifically, to say, a hand being applied to the neck....one possible way would be a hand applied but there would be other ways that she might have sustained the injuries as well.”²¹⁹
86. Phoebe also had bruising to her left wrist,²²⁰ bruising in the vicinity of her right jaw line,²²¹ bruising to her left and right shoulders²²² and a bruise to the back of her neck,²²³ the latter which Dr Lynch described as being consistent with some form of blunt trauma.²²⁴ Dr Lynch was unable to determine the age of the bruises by reference to their colour.²²⁵
87. Mr Silver gave evidence that on the afternoon of Tuesday, 30 November 2010, Phoebe was “wrestling” with him, punching and kicking and that he had to restrain her.²²⁶ In his oral evidence Mr Silver described the manner in which he restrained Phoebe. During this episode he described Phoebe being on the ground, his legs were just across her waist and his fingers were touching the ground. Mr Silver placed weight on his finger tips (which were on the ground) rather than making contact with Phoebe’s wrists. Mr Silver was adamant that he never touched her neck during this episode,²²⁷ he did not believe he touched her shoulders and did not recall touching her upper arms, although conceded that he may have done so.²²⁸ Phoebe was straining against him as he tried to restrain

²¹⁷ Exhibit 26b p.278; T1088: in oral evidence Dr Lynch corrected the photo numbering referred to in his supplementary report. He said that photo 63 and 64 of Exhibit 16g depicted the bruising to which he referred.

²¹⁸ Exhibit 26b; T1088

²¹⁹ T1090

²²⁰ Exhibit 26 p.263 and T1088

²²¹ Exhibit 26 p.262, T1084 and photos 22, 24 and 25 of Exhibit 16g

²²² T1088 (photo 26 and 27 of Exhibit 16g); Exhibit 26 p.263

²²³ Exhibit 26 p.262; T1085

²²⁴ T1085-1090

²²⁵ T1089

²²⁶ Exhibit 10 p.157. He said that the statement to Police should have said “volatile” rather than “violent”.

²²⁷ T523-524

²²⁸ T523

her.²²⁹ Mr Silver said that he was “quite careful to not try and hold her in a way that would make her freak out even more because I was having a tough time with it already”²³⁰ and “I was trying to hold her in ways that she didn’t feel restricted as if someone was...stopping her moving completely but just so I could make her aware of the fact that she was really upsetting me.”²³¹ Mr Silver did not observe any lacerations or bruising to her body on 30 November 2010.²³² Mr Hampel also did not observe any bruising or lacerations to her body when he saw her on the evening of Wednesday, 1 December 2010 or morning of Thursday, 2 December 2010.²³³

88. Dr Lynch could not determine when or how the bruises on Phoebe’s body were sustained. He could not say whether they had been sustained before, during or after her passage down the chute.²³⁴

4.4.2 Blood, Glass and White Stuffing in Apartment

89. There was blood found in Mr Hampel’s apartment on the evening of 2 December 2010.
90. Police in attendance observed and photographed blood on the architrave of the study doorway, approximately 10-20 cm above the middle hinge and blood on the computer mouse in the study. Ms Louise Brown, Forensic Biologist, identified from crime scene photographs, blood on the desk and diffuse blood on the mouse pad in the study.²³⁵ Mr Hampel also referred to observing blood on the computer keyboard in the study when he arrived home.²³⁶ The blood on the architrave was tested and was found to belong to Phoebe.²³⁷ The blood on the mouse, mouse pad, keyboard and desk were not DNA tested.²³⁸
91. There were small fragments of broken glass on the floor in the apartment’s hallway, leading to the kitchen.²³⁹ The glass did not have any blood in it.²⁴⁰ Police assumed that the glass fragments were likely to have come from a broken

²²⁹ T523

²³⁰ T524

²³¹ T526

²³² T527: Mr Silver conceded that he wasn’t looking for bruising or lacerations but that Phoebe was quite vocal so he felt that Phoebe would have said something about any such injuries if they had been present.

²³³ The latter evidence must be considered in the context that Mr Hampel said he had bathed Phoebe, made her dinner and put her to bed (T1487) but also said (T1420) that she was clothed and under the doona on Wednesday night (1/12/10) and the room was dark and blinds drawn on Thursday morning (2/12/10).

²³⁴ T1089, T1090; T1086; T1121

²³⁵ T700. Detective Carrick (T788), who attended the apartment on 2 December 2010, said that there was blood on the desk near the mouse and on the mouse itself. He could not recall if there was blood on the keyboard.

²³⁶ T1431 -T1433 – which he described as fresh blood

²³⁷ Ms Brown said (at T700) that the Court could conclude that it was Phoebe’s blood based on statistical probability

²³⁸ Exhibit 16 p.336

²³⁹ See, for example, Photo 109 of Exhibit 16h

²⁴⁰ T789

drinking glass. However, a glass vessel was not discovered²⁴¹ and no tests were conducted on the glass fragments to determine if they matched drinking glasses in the apartment.²⁴² Mr Hampel did not know whether there had been any further part of the glass and, if so, what had happened to it.²⁴³ Detective Carrick did not inspect the sliding door in the vicinity to see if it provided an explanation for the broken glass fragments on the floor.²⁴⁴ There was no liquid or substance on the floor in the vicinity of the broken glass.²⁴⁵ However, Detective Carrick gave evidence that there was some staining on the wall²⁴⁶ from an unknown substance. The substance on the wall was not tested by Police.²⁴⁷

92. When Police attended the apartment that evening they observed what appeared to be white stuffing from a cushion scattered across the floor in the living room. The Police assumed, from what Mr Hampel told them, that Phoebe's dog had ripped a cushion causing the contents to be scattered across the floor.²⁴⁸ However, neither the Police nor Mr Hampel had witnessed the incident.²⁴⁹ At the time Police attended the apartment, the dog was on the balcony.²⁵⁰

4.4.3 Difficulty Entering the Chute

93. Police did not conduct any tests to determine if someone of Phoebe's height and weight could enter the chute unassisted. Mr Campbell conducted two experiments, which were video taped and played during the Inquest. The first experiment was to determine whether it was possible for a young woman of Phoebe's height and weight to climb into the entry hatch unassisted. The second experiment was in order to determine whether the relevant young woman could physically pass through the chute.²⁵¹
94. Mr Campbell's experiments established that it was possible, albeit difficult, for a sober and fit young woman of the same height and weight as Phoebe, to enter the chute from the 12th floor refuse room.²⁵²

²⁴¹ Not all of the bins in the apartment were searched for the drinking glass; T685

²⁴² T801

²⁴³ T1431

²⁴⁴ T802

²⁴⁵ T1431; T789

²⁴⁶ T802

²⁴⁷ T790

²⁴⁸ T622; T608-609

²⁴⁹ T812; 844; 608, 641; 684; 1430

²⁵⁰ T642

²⁵¹ The first experiment was conducted on the 12th floor of the apartment complex and the second experiment was conducted off-site using a precise replica of the chute (manufactured by Mr Bone from Wastech, being the manufacturer of the machine at the Balancea apartment complex).

²⁵² Exhibit 7e and Exhibit 7f. To slide unaided into the chute, Viviana had to hold the hatch door open using an arm extended above and behind her to overcome the closing pressure of the hatch (Exhibit 7 p106 and Exhibit 7f). The video taped experiments did not test whether it was possible for the same young woman to enter the chute having a blood alcohol concentration of 0.16% and the medication that Phoebe had in her system.

95. Mr Campbell's re-enactment also demonstrated the relative ease with which Mr Marriott placed one of the young women into the chute after carrying her over his shoulder.²⁵³

4.4.4 Security System in the Building

96. Mr Giamarrio and Ms Ozulup gave evidence about the security arrangements that were in place at the Bancea apartment complex on 2 December 2010. Mr Giamarrio had only worked at the apartment complex for approximately 8 weeks prior to Phoebe's death. Since Phoebe's death, changes have been made to the security system.
97. The security system that was in place at the apartment complex on 2 December 2010 was not impenetrable. For example:
- There was evidence that a person needed a swipe card to enter the apartment complex through the front door or car park.²⁵⁴ Alternatively, the person would have needed to follow someone into the building or to have contacted a resident to arrange for that resident to "buzz them in. However, the CCTV footage revealed that during the morning fire alarm on 2 December 2010, the front entry doors and glass doors to the lobby opened for approximately 17 minutes and numerous persons walked in and out of the building, in some cases repeatedly, without using their swipe cards and without any record being taken of their identity.²⁵⁵
 - There was evidence that a resident needed to use a swipe card, programmed to their particular floor, to take the lift from the ground floor or car park up to their floor. Alternatively, they would have needed to arrange for a resident to "buzz them up" to that resident's floor. However, Mr Giamarrio was uncertain as to what happened to security in the lift during a fire alarm. He thought that the lift would have been disabled but observed, on CCTV footage, people using the lift during the morning fire alarm on 2 December 2010.²⁵⁶ Whilst persons did not require their swipe card to come down in the lift to the lobby, it is uncertain whether the security system required them to swipe to go up to a floor in the lift during a fire alarm on 2 December 2010.²⁵⁷
 - A person could have followed a resident into the building and up in the lift to the resident's floor. The swipe log for 2 December 2010 showed that between 12 noon and 7.15pm that day, swipe cards programmed to level 12 used the lift at 12.54.34pm (apartment 1203),²⁵⁸ 2.32.57pm (apartment 1203),²⁵⁹

²⁵³ T293; Exhibit 7f

²⁵⁴ Mr Giamarrio said that from the car park a person could get to level 1 (lobby) but in order to access another floor the person would need to be "buzzed up": T97

²⁵⁵ T130; T132. The CCTV footage of the entry did not show the doors opening during the evening fire alarm.

²⁵⁶ T131

²⁵⁷ T132: Whilst Mr Giamarrio was uncertain as to what happened with security during a fire alarm he thought that residents would still need to swipe to go up in the lift

²⁵⁸ Exhibit 42 p.726

²⁵⁹ Exhibit 42 p.740

12.36pm (apartment 1203),²⁶⁰ 5.13.26pm (apartment 1201 – being the swipe card allocated to Mr Sari, who leased a car space in the building from Mr Hampel), 5.51.00pm (apartment 1204),²⁶¹ 6.09.17pm (apartment 1201),²⁶² 6.20.07pm (apartment 1203),²⁶³ 6.22.16pm (apartment 1203),²⁶⁴ 6.23.35pm (apartment 1203),²⁶⁵ 6.27.30pm (apartment 1202),²⁶⁶ and 7.13.51pm (apartment 1204).²⁶⁷ The swipe log did not record whether the person was going up or down in the lift. Between 12 noon and 7.15pm a swipe card programmed to level 12 used the car park rear tilt door at 2.30pm (apartment 1203)²⁶⁸ and 6.06.56pm (apartment 1201)²⁶⁹ and used the front door entrance at 5.12.58pm (apartment 1201 – being the swipe card allocated to Mr Sari)²⁷⁰ and 6.26.40pm (apartment 1202).²⁷¹ From 12 noon to 7.11pm there were also numerous swipe card entries recorded for “FMV”, “Spare Master Swipe 1”, “Eric BM” and “Beth”. The latter entries did not record the floor on which the card holder exited the lift.

- Mr Giamarrio was uncertain as to whether the swipe log recorded each occasion on which a person was “buzzed up” to a floor.²⁷² He said that, assuming that the system was working properly on 2 December 2010, a “buzz up” should have been recorded on the swipe log.²⁷³ The swipe log only recorded the floor rather than the apartment to which they were “buzzed up”. Mr Giamarrio gave evidence that he did not understand all of the entries in the swipe log²⁷⁴ and was unsure as to whether the swipe log would always record a “buzz up” as “Alarm On”.²⁷⁵ There was no “buzz up” to the 12th floor recorded in the swipe log in the period 12 noon to 7.11pm. The only “buzz up” on 2 December 2010 appeared in the swipe log at 8.03pm, which was the delivery of take-away food to Mr Hampel’s apartment.²⁷⁶
- Police observed Mr Hampel’s relatives in his apartment at 8.46pm.²⁷⁷ It is unknown how they obtained access to his apartment without their arrival

²⁶⁰ Exhibit 42 p. 740

²⁶¹ Exhibit 42 p.768

²⁶² Exhibit 42 p.770

²⁶³ Exhibit 42 p.774

²⁶⁴ Exhibit 42 p.775

²⁶⁵ Exhibit 42 p.775

²⁶⁶ Exhibit 42 p.776

²⁶⁷ Exhibit 42 p.783

²⁶⁸ Exhibit 42 p.739

²⁶⁹ Exhibit 42 p.769

²⁷⁰ Exhibit 42 p.762

²⁷¹ Exhibit 42 p.776

²⁷² T217

²⁷³ T106-107. In the course of the Inquest, Police conducted an experiment and found that a “buzz up” was recorded by the security system on the date the experiment was conducted and that only the floor (rather than the apartment) to which they had been “buzzed up” was recorded.

²⁷⁴ T216

²⁷⁵ T214-215

²⁷⁶ Exhibit 42 p.791; T1455

²⁷⁷ Exhibit 13 p.297; T605 – 613: Detective Healey said that Mr Hampel approached him at approximately 8.10pm looking for his flat mate [the swipe log at Exhibit 42 p.791 shows the use of a swipe card allocated to the apartment at 8.12pm]. Mr Hampel returned to his apartment and Detective Healey spoke with Sergeant Forster. Detective Healey then went up to Mr Hampel’s apartment before

registering on the swipe log. That is, the swipe log did not record any “buzz up” to the apartment after Mr Hampel was informed of Phoebe’s death and none of the swipe cards allocated to his apartment were recorded in the swipe log thereafter. Detective Healey stated “I found out that they’d actually entered from the car park directly into the lift and come directly up ...I was actually inside the apartment when they just came in through the front door”.²⁷⁸ Detective Healey was taken to his notes²⁷⁹ in which he referred to the arrival of Mr Hampel’s relatives. He said that a question mark appeared in his notes because he was “trying to work out how they actually got in...”²⁸⁰ The swipe log did not record their entry or journey in the lift to the 12th floor.

- There were no CCTV cameras on the 12th floor.
- Mr Giamarrio was a new staff member and did not recognise all of the residents’ faces at that time.²⁸¹
- A person could not have walked up the fire escape stairwell and entered the 12th floor unless the fire door on the 12th floor had previously been “chocked open.”²⁸² However, a person could have left the 12th floor by going down the fire escape stairwell without requiring a key or swipe card.²⁸³
- Normally, a person walking down the fire escape stairwell towards the ground floor would not have been able to exit at the bottom of the stairwell because of a locked gate at the bottom of the stairwell.²⁸⁴ However, a fire alarm had the effect of triggering the fire exit doors/gate to open, which would have enabled the person to exit the building via the fire escape without using a swipe card.²⁸⁵
- The swipe cards allocated to the cleaners and concierge provided access to the entire building.²⁸⁶ On occasion, swipe cards were shared between staff and other cards were utilised. The swipe log showed Ms Ozulup’s swipe card was used regularly over the 24 hours leading up to midnight on 2 December 2010.²⁸⁷ She conceded that sometimes staff left swipes for each other in the Manager’s Office²⁸⁸ and Mr Giamarrio said that sometimes staff might have

returning downstairs and confirming that it was Phoebe’s body that had been discovered. After Detective Healey subsequently returned to the apartment, relatives of Mr Hampel arrived; Exhibit 14 p.294 (Detective Senior Constable Howells entered the apartment at 8.46pm); Exhibit 13 p.299 (Detective Healey referred to arrival of relatives and the arrival of Detective Howells).

²⁷⁸ T613

²⁷⁹ Exhibit 13a p.992

²⁸⁰ T614

²⁸¹ TT93

²⁸² T221

²⁸³ T178

²⁸⁴ T178

²⁸⁵ T179

²⁸⁶ TT19; T93

²⁸⁷ For example, Exhibit 42 p.665 (12.05.16am), p 722 (12.08.37pm), p. 737 (2.09.34pm) and p. 824 (11.50.06pm)

²⁸⁸ T21 – although she has no recollection of doing so on 2 December 2010

shared swipe cards.²⁸⁹ Ms Ozulup gave evidence that she started at 4.05pm on 2 December 2010. The “swipe log” contained a reference to “Spare Master Swipe 1” accessing the front door at 4.06pm on 2 December 2010. Ms Ozulup was uncertain as to whether she used the Spare Master Swipe 1 that day.²⁹⁰

- The apartment complex had been commissioned in 2008. As such, in December 2010, it was still within the defect liability period. For that reason, there were still quite a number of contractors on site doing work. The contractors’ swipe cards were programmed to access the whole building. For example, lift maintenance workers.²⁹¹
- There was a key safe at the service entry, which could be accessed by members of the owners corporation committee. The key safe contained a master key for the building.²⁹²
- Spare “master swipes” were kept in a key cabinet in the Manager’s Office.²⁹³ The key cabinet was generally left unlocked. However, the Manager’s Office was to be locked when staff left the Office.²⁹⁴ Mr Giamarrio said that when the concierge “patrolled” the building the Manager’s Office was to be locked.²⁹⁵ He conceded that there may have been occasions when the Manager’s Office was probably not locked, such as when staff went to the mail room.²⁹⁶
- The swipe log²⁹⁷ did not record which residential level was accessed by a person using a “master swipe”.
- A spare “master key”, which allowed entry to the building via the fire escape doors, was also kept in the Manager’s Office.²⁹⁸ The spare key to the ground floor refuse room was also kept in the unlocked key cabinet in the Manager’s Office.²⁹⁹
- The key cabinet in the Manager’s Office also held residents’ spare keys. It is unknown whether Mr Hampel’s apartment had a spare key in the key cabinet on 2 December 2010.³⁰⁰ If there was a spare key to the apartment, it was not recorded as having been borrowed by anyone that day.³⁰¹

²⁸⁹ T114

²⁹⁰ T22

²⁹¹ T97

²⁹² T257-258. The master key did not allow access to the ground floor refuse room. Cleaners and the concierge held keys for the ground floor refuse room.

²⁹³ T22

²⁹⁴ T122

²⁹⁵ T122

²⁹⁶ T90

²⁹⁷ The term “swipe log” in these submissions refers to the computer print out of swipe card and car park remote control usage for the apartment complex on 1 December 2010 and/or 2 December 2010 generated through the Inner Range software

²⁹⁸ T187

²⁹⁹ T258

³⁰⁰ T91; T1466

³⁰¹ Although “Anthony” the painter was not recorded as signing his swipe/key back in

- Ms Ozulup could not remember whether she handed keys or swipe cards to anyone before she discovered Phoebe in the ground floor refuse room.³⁰²
- A person who leased a car space from a resident on level 12 could have accessed level 12 (although, if they went up in the lift their swipe card would have generally been recorded on the swipe log).³⁰³ Mr Giammarrio said that he did not know that Mr Hampel leased one of his car spaces in the building at the time.³⁰⁴
- A person could have exited the building without a swipe card including from the service entry door and the fire exit near the mail room.³⁰⁵ They could have exited the car park in a car without using a swipe card.³⁰⁶
- Mr Giammarrio gave evidence that, at that time, a person could get from a residential floor to the car park without a swipe “if you know what you’re doing”.³⁰⁷ He described a means by which a person could have travelled from the basement level to and from a residential floor without using a swipe card - by using the fire stairwell, leaving a fire gate in the stairwell ajar and chocking another door.³⁰⁸ He said that there was a two-step method by which someone could have gotten onto a residential floor without the use of a swipe card, “it can be done, but you’d have to do it in – you’d have to set it up. In other words, you have to plan it. You’d have to plan it very, very well.”³⁰⁹

4.4.5 Absence of Blood or Finger Prints on Chute Entry Hatch

98. Although Phoebe’s blood was found on the architrave of the study doorway in the apartment, and on the floor of the 12th floor refuse room, there was no blood found on the 12th floor chute entry hatch. Ms Brown opined that if Phoebe had cut her hand and that part of her hand had come into contact with a wall or door in the vicinity of the entry hatch, she would expect a transfer blood stain.³¹⁰
99. Blood was found by Police on the door to the 12th floor refuse room on 2 December 2010.³¹¹ However, it was never tested, measured or photographed to determine its source. Senior Constable Martin Koslowski, who attended the building on the morning of 3 December 2010 to conduct finger print tests, did not recall observing the blood on the door and there is no evidence that it was drawn to his attention.³¹²

³⁰² T79

³⁰³ T98

³⁰⁴ T202

³⁰⁵ T103

³⁰⁶ T104. T112: To go to the basement levels or exit the carpark on foot, a person required a swipe card or to follow someone with a swipe card out

³⁰⁷ T220

³⁰⁸ T221-223

³⁰⁹ T222. See also T230-231

³¹⁰ T709

³¹¹ T609-611; Exhibit 15a and Exhibit 19a

³¹² T821

100. Senior Constable Koslowski conducted finger print tests on items on the 12th floor namely, the door to the 12th floor refuse room, the steel chute entry hatch and a laminated placard above the entry hatch. He also attended the ground floor refuse room and conducted finger print tests on the door to the ground floor refuse room and a sewerage pipe in the ground floor refuse room.
101. Senior Constable Koslowski found no finger prints of any identifiable value. In respect of the entry hatch he said that brushed steel is not the best surface from which to get prints.³¹³ He tested the inside and outside of the brushed steel frame, although he could not recall testing the underside lip (under the words “GARBAGE”). Senior Constable Koslowski confirmed that he tested the side of the open entry hatch but not the interior sides of the receiving tray. He did not test the wall.³¹⁴
102. Senior Constable Koslowski said that he may have found partial print details, which were insufficient to identify a print, such as a “wipe” with no ridge details. He noted that whilst the laminated sign is an excellent surface from which to obtain prints,³¹⁵ he found prints of “no value”. He explained that if he had found nothing at all he would have recorded “nil” rather than “no value”.
103. He did not consider it surprising, if Phoebe had entered the chute herself, that there were no identifiable fingerprints. He referred to the fact that if a person touches something and then slides or pulls their hand across a surface, if hands are wet, dirty or covered in blood, it can have a detrimental effect on leaving identifiable prints.³¹⁶ He also stated that the more pressure that is placed on skin, the more ridge details are flattened, and the greater the risk that a blank finger mark without ridge details are left.³¹⁷ Senior Constable Koslowski said “[a]s to how she managed to get herself into the chute I really couldn’t say where she would have left any fingerprints, if any.”³¹⁸

4.4.6 DNA in the Ground Floor Refuse Room

104. Ms Brown found a mixture of DNA, from at least two people, in apparent blood stains on the inside door of the ground floor refuse room.³¹⁹
105. In oral evidence Ms Brown explained that the majority of the DNA on the inside door of the ground floor refuse room was from Phoebe’s blood. The balance of the DNA material could have come from another individual’s blood, hair or sweat making contact with the door. She could not determine the age or source of the other person’s DNA.³²⁰

³¹³ T822

³¹⁴ T827

³¹⁵ T823

³¹⁶ T824

³¹⁷ T829

³¹⁸ T824

³¹⁹ T703

³²⁰ T703-704

4.4.7 Unknown whether the Apartment's Front door was Locked

106. There was evidence that the front door to Mr Hampel's apartment needed to be manually locked.³²¹ On 2 December 2010, Police did not ask Mr Hampel whether, when he returned home on the evening of 2 December 2010, the front door was locked. Mr Hampel now has no recollection of whether the door was locked or unlocked.³²²

4.4.8 Was the Machine Set on Manual or Automatic?

107. Mr Neil Bone, the Managing Director of Wastech, gave evidence about the operation of the garbage compactor. Mr Bone provided significant co-operation and assistance, including through the manufacture of a replica of the entry hatch for use in Mr Campbell's experiment, photographs, videos, diagrams and a sample of the steel from which the chute was manufactured (which he had cut to the 530mm, being the same diameter as the chute in the Balencea apartment complex).
108. In his witness statements³²³ Mr Bone had said that if the garbage compactor was set on "auto", being its normal operational setting, Phoebe's injuries would have been more significant and extensive. However, if the machine was set on manual, she would have passed through the machine uninjured, save for any injuries she sustained on exiting the machine. Mr Bone had speculated that Phoebe's injuries might have been consistent with someone changing the setting from "auto" to "manual" as her body passed through the machine. That evidence suggested that another person might have been involved in her death.
109. After providing his witness statements, Mr Bone undertook various experiments using a replica of the machine, which he video-taped and/or photographed. These experiments included a person moving from a standing to kneeling position on the ejection door, a person kneeling on the ejection door inside the machine, different sized pieces of wood being placed in the compactor to observe the impact of the compactor blade and retraction of the ejection door. Based on his experiments, Mr Bone stated that whilst he could not be certain as to what setting the machine was on when Phoebe's body passed through, it was possible that the machine was set on "auto".³²⁴

4.4.9 Identity of Man in Police Media Release

110. Ms Fotheringham, a resident in the apartment complex, made a statement to Police in which she said that at approximately 4pm on a day in December 2010, she saw a man enter the lift at basement level 1. He was carrying an item that she described as "weird". She said the item was 20cm long by 8-10cm wide. The lift button for the 12th floor was illuminated and on that basis she believed

³²¹ Exhibit 42 p.435

³²² T1425

³²³ Exhibits 20, 20A and 20B

³²⁴ T976

that someone had buzzed him up to the 12th floor.³²⁵ In cross-examination Ms Fotheringham said that the date on which she saw the man was 2 December 2010. It looked like he was carrying a suction bottle. She conceded that she did not have a clear picture in her mind of the man she saw in the lift and that she could have been mistaken when she said she saw the button for the 12th floor illuminated in the lift. She was uncertain as to whether the man she saw in the lift was the same man who was pictured in the Police media release, dated 15 April 2013.³²⁶ She said that they looked similar.³²⁷

111. The Police identified a tradesman as the person pictured in the Police media release. His presence in the building was investigated by Police and found not to be suspicious.³²⁸

4.4.10 Mr Hampel

112. Save for during the morning fire alarm on 2 December 2010, the last person who saw Phoebe alive was Mr Hampel. It is, therefore, necessary to consider whether, on the evidence before the Court, Mr Hampel caused Phoebe's death.

(a) Relationship

113. Mr Hampel gave evidence that he and Phoebe were “very fond of each other”.³²⁹ He acknowledged that the relationship was difficult, “up and down” at various times,³³⁰ that he and Phoebe had had discussions about having to work through issues in the context of making the relationship work and agreed that there were problems but that Phoebe did not tell him that the relationship was over.³³¹
114. There was evidence that Phoebe struggled with the relationship.
115. Ms Young said that “partner relational problems” was a focus of her clinical work with Phoebe.³³² Phoebe had described her relationship with Mr Hampel as “volatile” to Ms Young.³³³
116. Ms Young said that the relationship was a central part of her discussions with Phoebe. Ms Young said that there were problems in the relationship – “it struck me as a troubled relationship”.³³⁴ She said that Phoebe's feelings about the relationship fluctuated. She was eager to have a stable relationship but there were problems all along.³³⁵ Ms Young said “I think that she was not happy

³²⁵ Exhibit 11 p.399

³²⁶ T547-551; Exhibit 3s

³²⁷ T547

³²⁸ Exhibit 39

³²⁹ T1374 and T1469

³³⁰ T1475

³³¹ T1377

³³² T398

³³³ T411

³³⁴ T410

³³⁵ T412

about the fact that she was not, if you like, an equal partner in that relationship, felt quite dependent, I believe, on him. She was highly anxious at a lot of the functions and events that they attended³³⁶ ...I had little sense of her capacity to go out and forge a life for herself by herself.”³³⁷

117. Ms Young referred to her notes about the relationship. For example, on 2 August 2010, Ms Young noted that Phoebe said that they had “rowed” and that she felt unsupported by Mr Hampel.³³⁸ On 8 November 2010 she noted that Phoebe had left Mr Hampel but had come back. Ms Young observed that “[t]hat was something that happened in the relationship. Phoebe’s paternal grandmother had died. She was longing for a stable relationship.”³³⁹ In respect of their session on 15 November 2010, Ms Young said, “[o]f the relationship, she didn’t know what to do...[w]e talked about the relationship, as we often did. I’ve noted that she is unhappy in the relationship. She can’t decide whether to stay or go. Her mood was low and teary.”³⁴⁰ She noted that “they are booked for an overseas holiday in five weeks...she might stay for that...referring to the overseas trip.”³⁴¹ During the period up until the time of her death, Ms Young said “she told me that she was “unhappy”, that she felt Mr Hampel put her down and that he was “defensive and aggressive”.”³⁴² In the last session before her death, namely 29 November 2010, Phoebe reported having argued with Mr Hampel, she moved out for a week and stayed with her Mother, Father and friends before returning to the apartment and deciding to “give it another go”.³⁴³ The relationship was on her mind during that session.³⁴⁴
118. Phoebe’s Mother and her brother, Tom, gave evidence that Phoebe and Mr Hampel had broken up four times in the last 6-8 weeks of her life.³⁴⁵ Mr Hampel disagreed that they had had a formal break and said that there were four short separations in the period October to December 2010.³⁴⁶
119. There was evidence that, in the days leading up to her death, Phoebe experienced problems in the relationship and that she also spoke to friends and family about ending the relationship:
- Mr Hampel telephoned Phoebe repeatedly when she went out with Mr Hession on the night of Monday, 29 November 2010. They had had a disagreement earlier in the evening. Mr Hession said the phone rang 6-

³³⁶ T428

³³⁷ T429

³³⁸ T406

³³⁹ T409

³⁴⁰ T409-410

³⁴¹ T412-413

³⁴² T410

³⁴³ T412

³⁴⁴ T413

³⁴⁵ Exhibit 42 p74 and p77. Mrs Handsjuk described their relationship as one with periods of instability and volatility although at times they were very happy together (p77) and as being turbulent and unstable (p102).

³⁴⁶ T1375

10 times in half an hour³⁴⁷ and was “quite interruptive”. Mr Hession described that, at one stage, Phoebe walked away from him and it sounded like she was having a brief argument.³⁴⁸ She told Mr Hession that it was Mr Hampel who was calling. Mr Hession described Phoebe as being upset and harassed by the phone ringing when she threw the phone that evening.³⁴⁹

- Mr Silver said that when Phoebe contacted him on 30 November 2010 “she was having some difficulties with [Mr Hampel] and just not wanting to necessarily live there anymore but she didn’t want to just lump herself back on her Mother’s doorstep....she wanted to try and take care of it herself.”³⁵⁰
- Mrs Levin gave evidence that when Phoebe stayed at her house on 17 November 2010, “she was feeling quite insecure in both her relationship with [Mr Hampel] and with her relationship in general with family, and felt a little need to – to break away and possibly travel and do all these things that she’d always wanted to do”.³⁵¹ She agreed that Phoebe had told her that she was concerned about going to Paris with Mr Hampel, if something went wrong she’d have no money, she didn’t want to marry him and was concerned he was going to propose.”³⁵²
- Dr Handsjuk gave evidence that he picked Phoebe up from outside Mr Hampel’s apartment on 23 November 2010. Phoebe had a suitcase with her and said that Mr Hampel had thrown her out.³⁵³ Mr Hampel denied that she had been “thrown out”. He said that, at times, Phoebe left for “time out” and that she had never taken all of her belongings.³⁵⁴
- Mr Handsjuk said “in the months prior to her death, Phoebe had expressed dissatisfaction with her relationship with [Mr Hampel] and her living arrangement, and uncertainties she had around these aspects of her life and how to deal with them. She expressed on numerous occasions her struggle with her living arrangement and the confused expectation of being tenant and girlfriend. Despite her loving of [Mr Hampel], the impression Phoebe left with me in the months before her death was that she no longer wanted to be in the relationship, but she did not know how to leave.”³⁵⁵

³⁴⁷ Exhibit 28a. The Optus webtrace for Mr Hampel’s mobile phone reveals that his mobile telephoned Phoebe’s mobile phone almost constantly (numerous calls being between approximately 1 minute to 5 minutes apart) in the period 11.26.30pm to 12.41.07am. See also T1486 (Counsel for Mrs Handsjuk referred to 27 calls from Mr Hampel’s mobile from 11.30pm-12.30am).

³⁴⁸ T484

³⁴⁹ T484-487. Mr Hampel said that the same pattern of calls was not evident on the night of 2 December 2010 when Phoebe was not in the apartment was because she did not have her phone (T145)

³⁵⁰ T510

³⁵¹ T1190

³⁵² T1193; 1198

³⁵³ Exhibit 31

³⁵⁴ T1375-1376

³⁵⁵ Exhibit 42 p.74

- During her lunch with Phoebe on Friday, 26 November 2010, Mrs Levin said that they discussed the relationship. Phoebe’s concern that day was that Mr Hampel was quite controlling and that although Phoebe knew he loved her, she felt that she didn’t have a voice in the relationship. Mrs Levin recalled telling Phoebe that day “you need to lay everything on the table and if things aren’t going to...you’re not going to be able to agree on something I think that maybe you should finish it.”³⁵⁶ She said that Phoebe would have happily have contemplated a sea change and moved to Mallacoota.³⁵⁷
- Mrs Handsjuk said that “she was clearly making plans for a life separate from [Mr Hampel].”³⁵⁸
- Mrs Campbell said that Phoebe had left Mr Hampel at least half a dozen times during their relationship.³⁵⁹
- When Phoebe last visited Mallacoota in the weeks prior to her death she told Mr Keith Allan that she wasn’t happy with living in the apartment in Melbourne.³⁶⁰
- Mrs Levin said that in the last 4-6 weeks of Phoebe’s life, Phoebe spoke to her on approximately three occasions, in a way that seemed to be serious and real about wanting to leave the relationship.³⁶¹ Mr Hampel said that he had no knowledge of the discussion or of Phoebe’s intention.³⁶² Mrs Levin stated that Phoebe was determined but was talked into staying in the relationship or that she and Mr Hampel co-jointly reached the decision to stay but that it seemed, or Phoebe said, that she was staying against her better judgement.³⁶³
- Mr Marriott gave evidence that in the early hours of Tuesday, 30 November 2010, Phoebe was angry about the manner in which Mr Hampel had treated her the previous evening. Mr Marriott stated that she “most definitely” spoke with him about leaving or bringing the relationship to an end and going to Mallacoota.³⁶⁴ He said that they talked for hours and “she told me she loved [Mr Hampel] to bits but still wanted to leave him.”³⁶⁵

³⁵⁶ T1200. See also Exhibit 42 p.73 in respect of the relationship.

³⁵⁷ T1205

³⁵⁸ Exhibit 42 p.102

³⁵⁹ Exhibit 42 p.175 and p.181

³⁶⁰ Exhibit 42 p.208

³⁶¹ T1218-1219

³⁶² T1377

³⁶³ T1219

³⁶⁴ T296

³⁶⁵ Exhibit 6 p.152

(b) Mr Hampel's Movements on 2 December 2010

120. Mr Giamarrio gave evidence about the swipe cards and car park remote controls that were allocated to Mr Hampel's apartment at the time. The evidence suggested that Mr Hampel generally used swipe card "533" and car park remote "1142" and that Phoebe used swipe card "664".
121. On 2 December 2010, swipe card 533 used the lift in the apartment complex at 9.01.08am.³⁶⁶ The next use of the swipe card was at 6.09.17pm that evening.³⁶⁷ The only time the car park remote 1142 was recorded in the swipe log is at 6.06.56pm³⁶⁸ at the rear tilt door of the car park. There was no other recorded usage of swipe card 533 or car park remote 1142 that day.
122. Swipe card 664 was used at the front entry at 11.50.09am and in the lift at 11.54.05am (presumably by Phoebe after the fire alarm).³⁶⁹ The swipe card was not recorded in the swipe log as being used thereafter.
123. In the period 11.54am – 7.15pm there is no "buzz up" to the 12th floor recorded in the swipe log.
124. References to telephone towers in the telephone records do not assist in determining Mr Hampel's movements during the day on 2 December 2010. Mr David Finlay ("**Mr Finlay**") from Optus gave evidence that the towers recorded on the Optus phone records were those that received the strongest signal. The recorded tower was not necessarily the one in closest proximity to the handset. He agreed that if a handset were receiving a fairly low signal, for example, because a building was in the way or because of traffic interruption, but that another tower 10km away got a stronger line of sight and stronger signal the further distant tower would receive the call.³⁷⁰ He agreed that the record of the tower is not a significant indicator of call location.³⁷¹ As such, no inferences can be drawn about Mr Hampel's whereabouts on 2 December 2010 on the basis of the telephone towers.
125. Mr Hampel gave evidence that he did not return home at any time between leaving the apartment at 9.01am and returning at 6.06pm.³⁷²
126. On the evidence there were limited opportunities for Mr Hampel to have returned to the apartment during the day. Mr Hampel's colleagues gave evidence about his whereabouts on 2 December 2010:³⁷³

³⁶⁶ Exhibit 42 p.691

³⁶⁷ Exhibit 42 p.770

³⁶⁸ Exhibit 42 p.769

³⁶⁹ Exhibit 42 p.719

³⁷⁰ T1278

³⁷¹ T1277-1278

³⁷² T1423

³⁷³ Exhibit 7(c) p. 453-454: Mr Campbell noted that there were some inconsistencies in the evidence given by Mr Hampel's colleagues as to his movements that day.

- Mr Matthew Flinn (“**Mr Flinn**”) said that he first saw Mr Hampel when Mr Flinn returned to their office in Richmond at approximately 12 noon. Mr Hampel had a lunch break for approximately 30-45 minutes during which time he left the office. Mr Flinn next saw him at approximately 1.30pm and was with Mr Hampel until approximately 6pm that evening.³⁷⁴
 - Ms Suzanne Arratoon, who worked in the same office³⁷⁵ building as Mr Hampel, said that Mr Hampel and Mr Flinn left the office at about 11am and returned in the late afternoon.³⁷⁶
 - Ms Jacqui Duca-Clemens referred to Mr Hampel arriving in the office at approximately 9-9.30am. She worked with Mr Hampel on presentations that morning and said he took a lunch break for an hour at approximately 12 or 1pm. Mr Hampel then left the office to attend a meeting with Mr Flinn and she did not see him in the office again until after 3pm.³⁷⁷
 - Mr Christo Van Egmond, a friend³⁷⁸ and colleague of Mr Hampel’s, was present with Mr Hampel at a meeting from approximately 3pm to 4.30pm that day.³⁷⁹
127. Mr Campbell referred to the fact that there were gaps in Mr Hampel’s phone usage from 11.42am to 12.25pm (43 minutes), 12.57-1.38pm (41 minutes), 2.54 and 3pm (6 minutes), 3.56pm-4.28pm (32 minutes), that it took between 8-13 minutes to travel from Richmond to the Balencea apartment complex. He also noted that Mr Hampel was alone over the lunch break, which was a period of 30 minutes to one hour.³⁸⁰
128. The swipe log revealed that Mr Hampel’s swipe card was used in the apartment complex at 6.09pm (the car park remote at 6.06pm) and Phoebe was found between 7.04pm and 7.11pm. Mr Hampel gave evidence that Phoebe was not there when he returned home. During the period 6.09pm-7.11pm, the objective evidence revealed:
- There were files written or created on the iMac computer in the apartment at 6.19pm, 7.01pm, 7.39pm and 7.40pm. Mr Robertson was unable to determine for how long the iMac computer was used on each

³⁷⁴ Exhibit 42 p.194-195

³⁷⁵ Exhibit 42 p.204

³⁷⁶ Exhibit 42 p.197

³⁷⁷ Exhibit 42 p.204

³⁷⁸ Interview 2 November 2011 in Exhibit Folder p.129; Mr Van Egmond said they were good friends in the context that they work together and he has been a friend of the family for a long time (T265) and that their relationship was mostly professional (T272)

³⁷⁹ Exhibit 5 p.199

³⁸⁰ Exhibit 7(c) p.453-454

of these occasions.³⁸¹ That is to say, he was unable to state when the computer ceased being used after 6.19pm.³⁸²

- Mr Hampel telephoned WA Solar from the apartment landline, for 5 seconds at 6.24.59pm.³⁸³
- Mr Hampel spoke to Dr Handsjuk by telephone at 6.52pm.³⁸⁴
- Mr Hampel telephoned Mrs Levin at 6.56pm but she did not answer.
- Mr Hampel telephoned Phoebe's old Nokia phone at 7.14pm.
- Mr Hampel ordered take-away food by telephone at 7.20pm.
- Mr Flinn telephoned Mr Hampel at 7.27pm.
- Dr Handsjuk telephoned Mr Hampel again at 7.28pm.
- Mr Hampel telephoned Mr Flinn at 7.32pm.

(c) Telephone contact on 2 December 2010

129. Mr Hampel gave evidence that he did not speak with Phoebe on 2 December 2010. She was asleep when he left to go to work at 9.01am.³⁸⁵
130. There was evidence that Mr Hampel telephoned the landline in the apartment and Phoebe's old Nokia mobile phone during the day. In respect of the latter, his mobile telephoned Phoebe's Nokia at 11.44am, 1.39pm and 2.31pm.
131. Mr Hampel gave evidence that he did not speak to Phoebe on the telephone on 2 December 2010. The telephone records revealed that at 2.31pm on 2 December 2010, Mr Hampel's mobile number successfully called Phoebe's Nokia for 10-12 seconds.³⁸⁶ Mr Hampel was unable to explain the call but said that he did not speak to anyone else on that number. He did not recall leaving a voice mail message (the records did not show that it was forwarded to voice mail). He speculated that perhaps Phoebe answered but there was no dialogue.³⁸⁷ It is unclear why this telephone call is recorded in the Optus telephone records (for Mr Hampel's mobile) but not in the Vodaphone records (for Phoebe's Nokia).

³⁸¹ T1637. Mr Robertson was referred to Mr Marriott's summary of computer usage (Exhibit 42 at p440), which also included a reference to 6.34pm "remote desk top". Mr Robertson said that this was a "file access", which he didn't include because it could have been an automatic process (T1638).

³⁸² T1637

³⁸³ Exhibit 28a -There had been a 5 second call from that company to Mr Hampel's mobile at 6.11pm, which went to voicemail

³⁸⁴ Exhibit 28a

³⁸⁵ T1453; T1486. There was computer usage on the iMac from 9.12am, which Mr Robertson said was not the result of automated process (T1685).

³⁸⁶ Exhibit 28a p.92

³⁸⁷ T1502-1503

132. In cross-examination Mr Hampel was taken to the telephone calls he made that evening from 6.52pm to 8.19pm. Mr Hampel agreed that it was markedly different from the number of calls that he made on Monday, 29 November 2010 when Phoebe was out and he was concerned about her.³⁸⁸

(d) Observations made about Mr Hampel's Behaviour

133. Some witnesses gave evidence about Mr Hampel's behaviour after Phoebe's body had been discovered.
134. Detective Andrew Healey gave evidence that when he informed Mr Hampel that Phoebe's body had been located, Mr Hampel was visibly upset, shocked and that he did not recall seeing any unusual reaction from him.³⁸⁹
135. Detective Justin O'Brien was tasked to remain with Mr Hampel from 9.05pm to 9.58pm that evening. Detective O'Brien gave evidence about his observations of Mr Hampel that evening.³⁹⁰ Detective O'Brien said that Mr Hampel was wailing and crying hysterically and that he believed that some of Mr Hampel's comments were made for the benefit of others in the room.³⁹¹ Whilst at the St Kilda Road Police Complex from 10.13pm, Detective O'Brien observed, "[d]uring this time HAMPEL continued to cry, I observed that there were no tears running down his face, nor did it appear that there had been any at all. HAMPEL was sniffing yet there was no sign of mucus or snot coming from his nose, his eyes were not bloodshot or red and his face appeared quite normal". Detective O'Brien also referred to Mr Hampel, "laughing nervously", and offering to type his statement on the basis that he might be faster.³⁹²
136. Mrs Levin gave evidence about her observations of Mr Hampel in the days after Phoebe's death. She described his behaviour as unusual. Mrs Levin said "[t]o explain his behaviour, [Mr Hampel] would have moments of what appeared to be normality and be on Facebook on his computer and checking his work emails. There was over a hundred persons visit [sic] him within this week. It appeared to me that he was lapping up this attention. [Mr Hampel] would then, as persons arrive, go back to lying on the couch in the foetal position holding a cushion and bracing himself... Either the Monday or Tuesday of the following week, I was at [Mr Hampel's] apartment when the intercom went. [Mr Hampel] was at the dining table on his laptop checking emails and Facebook. I went to answer the intercom and [Mr Hampel] asked 'Who is it?', I told him it was Thomas [Handsjuk]. He slowly walked back to the couch and grabbed a pillow. He commenced crying. It seemed to me that he was turning his emotions on and off."³⁹³

³⁸⁸ T1505

³⁸⁹ T631

³⁹⁰ Exhibit 12 p.286-289

³⁹¹ T583

³⁹² Exhibit 12 p.287-288

³⁹³ Exhibit 27a p.169-170 (Exhibit 27A)

137. Mr Hampel denied that he was turning his emotions “on and off” and said it was possible that his behaviour in the presence of Detective O’Brien was due to shock.³⁹⁴

4.4.11 Summary – Death by Third Party Involvement

138. Whilst the bruises on Phoebe’s body, the blood stains in the apartment, cushion stuffing and broken glass on the floor of the apartment, is consistent with third party involvement it is also consistent with a number of other explanations. For example, Phoebe dropping a glass on the floor and cutting herself and the dog ripping the cushion. Similarly, the absence of blood and finger prints on the entry hatch of the chute, the presence of another person’s DNA on the inside door of the ground floor refuse room are capable of innocent explanation.
139. Further, by-passing the security system would require considerable planning and a third party would, in normal circumstances, be at risk of being identified on CCTV footage.³⁹⁵ There was no DNA under Phoebe’s finger nails to indicate the presence of a third party.³⁹⁶ Mr Hampel denied having any involvement in Phoebe’s death.³⁹⁷ If Mr Hampel were involved in her death why would he telephone her during the day? Why would he not clean up the blood, glass and cushion stuffing in the apartment?
140. In short, it is submitted that none of the evidence points positively to the conclusion that a third party was involved in Phoebe’s death. Whilst the evidence raises a possibility of third party involvement it falls short of the requisite standard of proof, being proof on the balance of probabilities.

4.5 INCOMPLETE EVIDENCE

141. Unfortunately, there was an incomplete body of evidence before the Court. This necessarily impacts upon the ability to make positive findings and/or to exclude certain possibilities.

4.5.1 CCTV Footage

142. Police did not obtain the full CCTV footage from the apartment complex for 2 December 2010. Mr Giamarrio gave evidence about the location of CCTV cameras in the apartment complex in 2010³⁹⁸ and said that only footage from 3 out of approximately 14 cameras had been obtained.³⁹⁹ CCTV footage was obtained from the main entry (10.35am to 7.06pm),⁴⁰⁰ ground lobby (10.52pm-4.16pm) and basement level B1 (12.13pm-3.37pm).⁴⁰¹ Had the full CCTV

³⁹⁴ T1467

³⁹⁵ Most of the CCTV footage for 2 December 2010 was not preserved.

³⁹⁶ T 1554; Email of Louise Brown dated 8 October 2013 – “the profiles match the deceased. There are no indications of a second contributor.”

³⁹⁷ T1466

³⁹⁸ T114-118. See also Exhibit 4

³⁹⁹ T237

⁴⁰⁰ Exhibit 3J

⁴⁰¹ Exhibit 3M

footage been obtained, it may have excluded some matters that now remain ‘possibilities’ and/or enabled other positive findings to be made in relation to Phoebe’s death. The balance of the CCTV footage can no longer be obtained.

143. Mr Giamarrio made a statement to Police on 10 January 2012⁴⁰² in which he stated:

“I mentioned to some of the Police that we had CCTV in the building. We were having problems with the CCTV at the time and the problem was that the footage was that the looping time for recording was too short, as in taping over itself. It was looping every 2-3 days. I suggested that it [sic] to the Police that if they needed any CCTV at the time they should start downloading. The Police on the night didn’t really respond to me suggesting this.”

144. Mr Giamarrio said that he mentioned this to two or three different police officers on the night of 2 December 2010.⁴⁰³ Whilst he could no longer recall saying the exact timeframe in which the system looped (ie 2-3 days), Mr Giamarrio did recall telling Police that they needed to start downloading quickly if they needed CCTV because he was having issues with the footage being looped over. However, he agreed that his statement to Police comprised an accurate account of what he remembered at that time.⁴⁰⁴

145. Mr Giamarrio remembered making these comments to Police because “I was concerned we might have lost something.”⁴⁰⁵ He said “I would have thought given the circumstances, very unusual circumstances – and again I’m not trying to be flippant about this but I would have thought the police would have sealed my office and said, nobody touch that equipment, we’re going to grab it because we need everything we can. This is too important to lose any of the information.”⁴⁰⁶ He said “that stuck in my mind most because I would’ve thought, given the circumstances that the police would’ve wanted to – if ‘confiscate’ is the right word, take all they can to retain any evidence that may be necessary, given the circumstances of the death.”⁴⁰⁷

146. Mr Giamarrio said the system “should have been stopped, the whole system should have been shut down so that material should have been preserved.”⁴⁰⁸ The Police did not ask Mr Giamarrio to shut the system off so it stopped looping⁴⁰⁹ and they did not ask him if they could take the DVR system.⁴¹⁰ He said that if you wanted to take away the DVR you could just unplug it and take it away;⁴¹¹ the hard drive could have been taken away.⁴¹²

⁴⁰² Exhibit 3

⁴⁰³ T139

⁴⁰⁴ T170-171; 235

⁴⁰⁵ T140

⁴⁰⁶ T141

⁴⁰⁷ T171. See also his opinion that he regarded the task as urgent (T231)

⁴⁰⁸ T143

⁴⁰⁹ T144

⁴¹⁰ T145

⁴¹¹ T239

147. Mr Giamarrio gave evidence that he did not know how to retrieve the data himself and that no one at Balencea had the technical ability to do so.⁴¹³ He did not tell Police that night that he could download the data.⁴¹⁴ Mr Giamarrio contacted an independent company, Sielox, to download the footage. In the course of giving evidence, he was taken to Detective Butterworth's statement in which Detective Butterworth said he "caused enquiries to be made with regards to obtaining the apartment's CCTV footage." Mr Giamarrio said that the Police may have asked him to contact a company to do it;⁴¹⁵ "they may have asked...because it was done so I obviously contacted the company to do it."⁴¹⁶
148. Mr Giamarrio assumed that the Police were working in conjunction with Sielox because he lacked the relevant expertise and it was a Police matter.⁴¹⁷ The evidence revealed that Police had no communication with Sielox in relation to the downloading of data from the CCTV system.⁴¹⁸ The Sielox invoice was paid by the owners corporation.⁴¹⁹
149. Mr Giamarrio said Sielox could only download one camera at a time, they were having trouble doing it and it was taking a long, long time.⁴²⁰ Mr Giamarrio had no technical expertise so was unable to explain why Sielox could not perform the task better or faster.⁴²¹ He was unsure whether the cameras could have been downloaded concurrently instead of, as Sielox had done, downloading one camera after another.⁴²² He was not told at the outset how long the task would take or why it took so long.⁴²³ He observed that Sielox "took a long, long time to download what they could and by the time they got to a certain stage it had already looped so they lost quite a number of cameras so whatever was recovered was able to be recovered".⁴²⁴ Mr Giamarrio said that when he provided the discs to Police he would have told them that the footage was incomplete and that that he was providing what was recoverable.⁴²⁵
150. The Sielox invoice revealed that Sielox attended the Balencea apartment complex on 3 December 2010. Mr Giamarrio said that the Sielox representative set up equipment, that resembled an external harddrive, on site then left.⁴²⁶ Mr Kevin Widman ("**Mr Widman**") from Sielox made a statement to Police on 27

⁴¹² T240

⁴¹³ T143 and T232. He said that at the time he did not think he could download the footage himself although he could do so now (T231)

⁴¹⁴ T232

⁴¹⁵ T143

⁴¹⁶ T144

⁴¹⁷ T146

⁴¹⁸ T848

⁴¹⁹ T173; Exhibit 3X (Sielox invoice)

⁴²⁰ T145

⁴²¹ T145

⁴²² T174

⁴²³ T175

⁴²⁴ T142

⁴²⁵ T145

⁴²⁶ T238

August 2013⁴²⁷ in which he stated that he attended the Balencea apartment complex at approximately midday on 3 December 2010 and was instructed by Mr Giamarrio to obtain the swipe logs and video footage for 2 December 2010.

151. In his statement Mr Widman confirmed that the video footage at the apartment complex looped after approximately 2 days. He said that if he had been instructed to download all the footage from all of the cameras at the apartment complex he would not have been able to do so due to footage being overwritten before it could be downloaded. Mr Widman said that when he made Mr Giamarrio aware of this situation, “I assume he selected the most appropriate cameras (3) to be downloaded.” Mr Giamarrio did not recall selecting cameras to be downloaded as suggested by Mr Widman.⁴²⁸
152. Mr Widman did not explain in his statement whether the cameras could have been downloaded concurrently rather than one after the other (and if not, why not) or why the DVR could not be unplugged or “frozen” to stop overwriting data.
153. Significant time was lost in the course of Sielox downloading the material. Mr Widman commenced downloading the first camera at midday on 3 December 2010. After setting up the download he left the apartment complex. Mr Widman said that each camera took 4 hours to download and that the first camera was completed at 4pm. He returned to the apartment complex at approximately 8-8.30pm that evening (being 4-4 ½ hours after the first camera was completed). It appears from his statement that Mr Widman then set up the second camera and returned just over 24 hours later, at 9 to 10pm on 4 December 2010 and selected the 3rd camera. On 6 December 2010, the footage and logs were burned onto discs and on 7 December 2010 the discs were handed to Mr Giamarrio. Given that the system looped approximately every 2 days, valuable time was lost.
154. Detective Justin O’Brien, who was one of the first Police members on site on 2 December 2010, said that he did not discuss obtaining the CCTV footage with Mr Giamarrio but agreed that obtaining the CCTV footage would have been crucial.⁴²⁹ Detective Angela Sorrell (nee Hay) said that she recalled looking at some CCTV footage that evening⁴³⁰ and that no one instructed her to get CCTV footage or the hard drive.⁴³¹ She was junior and primarily followed Detective Butterworth around and acted under his direction.⁴³² In his oral evidence, Detective Butterworth agreed that CCTV footage was vital evidence,⁴³³ that there was no attempt by Police to seize the DVR and no enquiries were made by Police as to whether it was possible to seize the DVR system. He confirmed that Victoria Police’s Audio Video Unit in the Forensic Science Department had

⁴²⁷ Exhibit 37

⁴²⁸ Exhibit 37

⁴²⁹ T577

⁴³⁰ T669-670

⁴³¹ T670

⁴³² T678

⁴³³ Detective Butterworth agreed with the proposition although the transcript (T845) records his answer as “inaudible”. At T847 – he does not dispute that it had the potential to be important.

personnel with expertise in retrieving data from DVR systems but no arrangements were made for such persons to attend. No arrangements were made for personnel in E-crime or information technology sections in Victoria Police to attend and retrieve the CCTV footage. Detective Butterworth said he did not consider calling relevant experts from Victoria Police to attend because he remembered asking someone to organise the copying of the CCTV footage. He did not know who he asked and it was not recorded in his notes.⁴³⁴

155. Detective Butterworth agreed that the obtaining of CCTV evidence was an important task and could well have produced important, forensic evidence in the investigation.⁴³⁵ He agreed that before getting owners to provide CCTV footage, Police would first need to know if the owner or its agent were capable of getting all of that evidence.⁴³⁶
156. Detective Wallace said that he did not consult with E-Crime as to whether it was possible to recoup data from the CCTV system. He was aware of some cases in which E-Crime was able to retrieve deleted or overwritten data but that enquiry was not made in the present case. He was aware there was a capacity to explore that avenue at the time of the investigation.⁴³⁷ In response to questions from his Honour, Detective Wallace agreed that with an “absolutely vital piece of evidence” such as CCTV he would first go to Police Audio and would not hand the evidence over to an outside agency unless he was confident that Police resources were insufficient to do the work properly. He would allow Police personnel to exercise their view of the matter before reverting to the outside agency as a second option.⁴³⁸
157. It is submitted that, in terms of preserving the integrity of such important evidence, it would have been prudent for Police to have arranged for their own internal experts to download the CCTV footage or, at the very least, obtained further and detailed information about the means by which Sielox was proposing to undertake the task, the qualifications and the experience of the person undertaking the task, and the timeframe within which the task was to be done. It cannot and should not be assumed that experts within Victoria Police would have undertaken the download in precisely the same manner or within the same timeframe as Sielox or achieved the same result. In the present context, the task of preserving vital evidence for the investigation was, in effect, delegated but without first determining what services Sielox could provide, how they were planning to retrieve the data, whether Victoria Police could provide guidance or technical assistance to Sielox and whether there were likely to be any problems in the download process.

⁴³⁴ T847-848

⁴³⁵ T862

⁴³⁶ T887. He was uncertain as to whether Victoria Police could have downloaded without the need to seize the hard drive. He assumed that there were police officers who could attend to download material from computers (T888).

⁴³⁷ T1338

⁴³⁸ T1345. See also T1352 – Detective Wallace did not make any enquiries with E-Crime as to whether they could go and download the hard drive on site and did not know what Sielox had done by way of trying to obtain the footage.

4.5.2 The Garbage Bags in the Apartment were not married to Garbage or Garbage Bags in the Ground Floor Refuse Room

158. Phoebe's swipe card and keys were found in the apartment and she had bare feet. One possibility is that Phoebe entered the chute in the course of putting a bag of garbage in the entry chute. For example, to retrieve an item that had dropped into the chute.⁴³⁹
159. There was no evidence that Police tried to 'marry' any of the garbage or garbage bags from the wheelie bins or on the floor of the ground floor refuse room to the apartment.⁴⁴⁰ This information could have been of assistance in excluding possibilities or in providing answers to questions that will now remain unanswered.

4.5.3 Not all Bins in the Apartment were Searched

160. Ms Shellie Tonkin ("**Ms Tonkin**"), Mr Hampel's then housekeeper, informed Police that there was a bin in the kitchen, a bin in each of the bathrooms and a bin in the study.⁴⁴¹ Only the bin in the kitchen was searched by Police.⁴⁴²
161. Prior to Phoebe's death, Ms Tonkin had last attended the apartment and emptied the bins on 1 December 2010. Information as to whether the bins in the apartment were empty or had been used since 1 December 2001 could have been of assistance in determining whether Phoebe had emptied the garbage that day.

4.5.4 Blood on the Door of 12th Floor Refuse Room was not Tested

162. The notes of Detective Sorrell (nee Hay) and Detective Butterworth referred to the existence of a small drop of blood on the door leading to the 12th floor refuse room.⁴⁴³ Detective Healey, who appeared to have been the source of that information,⁴⁴⁴ said it was possible that there was blood on the door of the 12th floor refuse room but that he had no recollection of it and he did not know where on the door it was located or at what height it was located.⁴⁴⁵

⁴³⁹ There were sunglasses and a lens (Exhibit 17b and 17c) found in the ground floor refuse room but it is not known whether they belonged to Phoebe (T778). See also T853-854.

⁴⁴⁰ T777; T854 – Detective Butterworth did not know of any attempt to do so; T1545

⁴⁴¹ Exhibit 35f (formerly Exhibit 33). Mr Hampel agreed that this is where the bins were located (T1463).

⁴⁴² T802. See also T616

⁴⁴³ T610-611; Exhibit 15a p.986 (which was in the context of a briefing by Detective Healey) and Exhibit 19a p.948

⁴⁴⁴ Detective Sorrell (nee Hay) said that she took notes as Detective Healey spoke (T666) and Detective Butterworth's note was made in the context of Detective Healey's attendance on the 12th floor (T611).

⁴⁴⁵ T611

163. The blood was not photographed or tested by Police. Neither Detective Sorrell nor Detective Butterworth saw the blood on the door.⁴⁴⁶ Leading Senior Constable Bernard Carrick, from Victoria Police Forensic Services, did not recall being told about blood on the door and said that he would have made a note of it if he had been told.⁴⁴⁷
164. The amount and location of the blood, its height on the door, whether it contained Phoebe's DNA or someone else's DNA, whether the blood contained ridge marks, all had the potential to tell the Court more about the means by which Phoebe entered the 12th floor refuse room. That opportunity has been lost because the evidence was not secured.

4.5.5 It is Unknown whether any Residents entered the 12th Floor Refuse Room between noon and 7.11pm

165. Phoebe was located in the ground floor refuse room between 7.04pm and 7.11pm.
166. Whilst Police spoke with residents on the 12th floor they did not ask residents when they last used the 12th floor refuse room and, specifically, whether they had entered the room at any time between 11.50am and 7.11pm.⁴⁴⁸
167. Whether residents had seen (or not seen) blood on the floor of the 12th floor refuse room in the afternoon or early evening, whether a resident had moved the black recycling tub in the room, whether a resident had walked across the room (and over blood on the floor), touched the entry hatch, observed anything on the entry hatch, might have provided valuable information to assist in interpreting evidence and in narrowing the time within which Phoebe entered the chute.

4.5.6 It is Unknown Whether the Front Door was Locked

168. There is no evidence that Police asked Mr Hampel whether his front door was locked or unlocked when he returned home on the evening of 2 December 2010.⁴⁴⁹
169. Given that Phoebe's keys and swipe card were found in the apartment, knowing whether the front door of the apartment was locked or unlocked could have provided some insight into whether Phoebe intended to return to the apartment and/or about the security of the apartment.
170. At the time of the Inquest, Mr Hampel had no knowledge as to whether his door was locked or unlocked when he returned home on 2 December 2010.

⁴⁴⁶ T667 and T844

⁴⁴⁷ T785

⁴⁴⁸ T1545; T648

⁴⁴⁹ T854 – Detective Butterworth had no knowledge of anyone asking Mr Hampel the question of whether his front door was locked when he arrived home. T635 – to Detective Healey's knowledge, no enquiry was made as to whether Mr Hampel had used a swipe card/key to gain access to the home or whether he was able to open the door by just turning the handle. There was no discussion about that at all.

4.5.7 Glass Fragments and Substance on Wall were not tested and their source was not identified

171. As noted above, Police assumed that the glass fragments, found on the floor of the apartment, had come from a glass vessel in the apartment.⁴⁵⁰ However, no tests were conducted to determine whether the glass fragments on the floor matched any other glass wear in the apartment.
172. The statements made by Police who attended that night did not refer to undertaking a search for the glass vessel.⁴⁵¹ However, in oral evidence, Leading Senior Constable Carrick said that he looked through the garbage bags that were in the green bins on the machine carousel. He specifically recalled opening the bag that was in the wheelie bin that Phoebe had entered. He did not find any glass.⁴⁵²
173. Leading Senior Constable Carrick searched a bin in the kitchen. He did not recall any other bin.⁴⁵³ It is unknown whether there was glass in any of the other bins in the apartment.
174. Neither the substance found on the apartment wall in the vicinity of the glass fragments nor the liquid in the glass on the kitchen bench were tested by Police.⁴⁵⁴
175. Obtaining further information in relation to the source of the glass fragments (whether they came from a broken kitchen tumbler or whether they did not match glass wear in the apartment) and identifying the substance on the wall could have provided answers as to why there were glass fragments on the floor.

4.5.8 Preservation of Evidence from the Computer

176. Phoebe used the iMac computer in the study on 2 December 2010.
177. In an interview with Police on 2 November 2011, Mr Hampel said that when he returned home the iMac computer was on the Gmail home page and he had the impression that Phoebe had accessed her email.⁴⁵⁵ There was also blood found on the mouse of the computer.
178. At the time of her death it was unknown whether there were any letters or emails on the computer that were relevant to the investigation. When Detective Butterworth attended the apartment he saw the laptop on the table and the iMac in the study. At some stage that evening he saw blood on the mouse of the iMac.

⁴⁵⁰ T801

⁴⁵¹ T800

⁴⁵² T777

⁴⁵³ T802

⁴⁵⁴ Mr Hampel said that when he arrived home there were 2 glasses on the bench which had not been there that morning. He could not exclude the possibility that Phoebe had had a drink with someone (T1495)

⁴⁵⁵ Exhibit Folder p.260

He conceded that the computers in the apartment might have been of assistance, such as in determining whether there was a suicide note or an email that might have had a bearing on the investigation.⁴⁵⁶ Detective Wallace conceded that there was good reason to have taken the computer at the time⁴⁵⁷

179. The iMac computer was not seized by Police until 10 March 2011.⁴⁵⁸ Whilst Mr Robertson set the computer up, looked at email and facebook and enabled a police officer to preview the computer on 4 April 2011,⁴⁵⁹ the iMac was not analysed in any detail until 4 September 2013.⁴⁶⁰
180. The use of the iMac from 3 December 2010 until 10 March 2011 meant that part of the data on the computer may have been overwritten and/or changed.⁴⁶¹ Mr Robertson gave the example that if someone had changed their resume on the computer on 2 December 2010 but the document had been subsequently accessed it would not appear in his report as the date/time stamp on the document will have changed.⁴⁶² Similarly, Mr Robertson could not say whether a user of the iMac had cleared a file from the browser history or deleted it from trash.⁴⁶³
181. Further, whilst the iMac computer was held by Police its time clock also altered such that in April 2011 it was 2 minutes and 44 seconds faster than Australian Eastern Standard Time and it is now 22 minutes and 10 seconds faster.⁴⁶⁴
182. Mr Robertson agreed that because of the risk of overwriting and changing of data including date/time stamps, when conducting a computer analysis, it is best to obtain the computer straight away.⁴⁶⁵ Seizing the iMac on the night of 2 December 2010 would have preserved the integrity of the evidence on the computer. Given the iMac was used for a period of approximately 3 months after Phoebe's death, the possibility that relevant data on the computer was "written over" or date/time stamps were altered so that relevant material fell outside the scope of Mr Robertson's analysis, cannot be excluded.

4.5.9 Preservation of Evidence from Phoebe's Mobile

183. Phoebe had two mobiles, an iphone 3 and a Nokia. The Police did not seize either of Phoebe's mobile phones on the night of 2 December 2010. This is despite the fact that Dr Handsjuk informed Police, in his statement on 2 December 2010, that Mr Hampel had told him that Phoebe's mobile phone was

⁴⁵⁶ T852

⁴⁵⁷ T1318

⁴⁵⁸ T1537

⁴⁵⁹ Exhibit 41a p.1192 and T1626-1627 (as to what was done on 4 April 2011)

⁴⁶⁰ The analysis was conducted at the request of the Coroner

⁴⁶¹ T1621: this statement was made in the context of the MacBook but has application in respect of use of the iMac and, in particular, analysis of last accessed, last written or last created files.

⁴⁶² T1638

⁴⁶³ T1655

⁴⁶⁴ T1627

⁴⁶⁵ T1621-1622

in the apartment when he arrived home.⁴⁶⁶ Detective Healey also gave evidence that Mr Hampel told him, at 8.10pm on 2 December 2010, that Phoebe had left her phone and handbag in the apartment⁴⁶⁷ and that Mr Hampel showed him Phoebe's mobile phone.⁴⁶⁸

184. Detective Butterworth said he was aware of Phoebe's phone being in the apartment.⁴⁶⁹ When asked whether it would have been a good idea to take the mobile phone, Detective Butterworth said, "probably would have taken the mobile phone" and "all I can say is at the time I thought that what I did take was appropriate".⁴⁷⁰
185. On 7 December 2010 Police collected Phoebe's iphone from Mr Hampel and it was placed in a lockable drawer. At the time the iphone was analysed on 9 December 2010, some of the text messages that had been sent to Phoebe on 2 December 2010 had been "read". For example, a text message from Mrs Levin at 1.57pm and a text message from Sarah Bruce at 4.31pm on 2 December 2010. It is unknown when the text messages were first read and by whom. Mr Hampel gave evidence that, to his recollection, no one read her text messages before the mobile phone was handed over to Police.⁴⁷¹ If the iphone had been seized that evening, it would have preserved the integrity of the evidence and may have assisted in determining which messages had been read by Phoebe. To that end, it may also have assisted in narrowing down her time of death.
186. Leading Senior Constable Neil Daly gave evidence that, in December 2010, he was attached to the Homicide Squad and had approximately 12 months' experience in conducting mobile phone analysis.⁴⁷² He conducted an analysis of Phoebe's iphone on 9 December 2010 and confirmed that he did not "read" the text messages dated 2 December 2010 on Phoebe's iphone during the analysis.⁴⁷³ Leading Senior Constable Daly said that the software used during his analysis could not read Phoebe's SIM card. He considered it likely that the SIM card could now be read due to technological developments.⁴⁷⁴ Leading Senior Constable Daly said that it was possible that other sections within Victoria Police, such as E-Crime, which may have "better machines" may have been able to read the SIM card at the time. He did not make enquiries of E-

⁴⁶⁶ Exhibit 42 p.61

⁴⁶⁷ Exhibit 13 p.298. See T606: Mr Hampel showed him the mobile when Detective Healey returned to the apartment.

⁴⁶⁸ Exhibit 13 p.298; In cross-examination Mr Hampel conceded that he may have made the statement to Detective Healey but did not recall showing him the phone. He said that Phoebe's iphone was broken and that he had been unclear as to exactly when he had dropped the phone off for repair but that Thursday [2 December 2010] was "his best guess" (T1437). He did not have a distinct recollection of taking it in on the Thursday but he was guessing it was Thursday (T1441). There is no evidence that on 2 December 2010 Police asked Mr Hampel for the iphone or, save for the evidence of Detective Healey referred to above, discussed its whereabouts.

⁴⁶⁹ T853

⁴⁷⁰ T853

⁴⁷¹ T1445

⁴⁷² T1596

⁴⁷³ T1599

⁴⁷⁴ Exhibit 42 p.653. It is unknown whether this was also the case in November 2011 when Mr Hampel told Police he still had Phoebe's iphone.

Crime at the time and there is no evidence that anyone else did so.⁴⁷⁵ He informed Detective Wallace that the SIM card could not be read.⁴⁷⁶

187. Leading Senior Constable Daly said that whilst he considered it unlikely, he could not exclude the possibility that there was additional data on the SIM card.⁴⁷⁷ Mr Finlay from Optus confirmed that there is a memory capacity on the handset and on the SIM and some information about calls and messages, sent and received, can be stored on the handset and some can be stored on the SIM card.⁴⁷⁸
188. Rather than making enquiries of E-Crime to determine if the SIM could be read by E-Crime or arranging to hold the SIM card pending the outcome of the investigation, Phoebe's iphone and SIM card were returned to Mr Hampel on 10 December 2010.
189. On 2 November 2011, Mr Hampel informed Police that he still had Phoebe's iphone.⁴⁷⁹ Although Police informed him that an Inquest was likely to occur⁴⁸⁰ they did not ask Mr Hampel to return the SIM card or to keep it in safe custody pending the outcome of the Inquest. At the Inquest Mr Hampel gave evidence that the iphone and SIM card had been returned to him but that he did not know the whereabouts of Phoebe's SIM card. He considered it possible that Phoebe's iphone had been given to a contractor and a new SIM card installed.⁴⁸¹ As such, the data on Phoebe's SIM card was not available to the Court. It is unknown whether there were any additional text messages or telephone calls stored on the SIM card that were relevant to the Inquest.

4.5.10 Ambulance Paramedics did not Examine Phoebe

190. Ms Kristie Cooke, paramedic, gave evidence that she and Ms Jade Minter, paramedic attended the Balencea apartment complex at 7.27PM on 2 December 2010.⁴⁸²
191. Ms Cooke said that they arrived at the apartment complex at almost the same time as the first Police responders. However, the Police reached the ground floor refuse room before the ambulance paramedics did.⁴⁸³ The paramedics

⁴⁷⁵ T1597

⁴⁷⁶ T1599

⁴⁷⁷ T1598-1599

⁴⁷⁸ T1260. Conducting analysis of the SIM card may also have explained the difference between the SMS records provided in the Optus webtrace of the iphone (Exhibit 28b) and the Police records from the handset (Exhibit 28c)

⁴⁷⁹ Exhibit Folder p. 36; T1447

⁴⁸⁰ See Transcript of interview Exhibit Folder p.148-290

⁴⁸¹ T1447-1448. In cross examination, Mr Hampel said that he did not have a reason to hold onto the SIM card. When asked whether the Inquest was a reason to hold onto the SIM card he replied that he did not know there was going to be an Inquest. It was put to him that Detective Payne informed him, in an interview on 2 November 2011, that he thought it likely that there would be an inquest [“this is going to end up in the Coroners Court” (p.150); “I do think it will be a Coroner’s Inquest (p.286)], Mr Hampel said that that was an opinion of his.

⁴⁸² Exhibit 29 p.39

⁴⁸³ T1283-1284

were stopped at the corridor, before the doorway to the ground floor refuse room, by an older Policeman, who had stripes on his epaulette.⁴⁸⁴ The older Policeman said words to the effect, “Look this is a crime scene. You’re not allowed past here.”⁴⁸⁵ Ms Cooke said that they offered to put the monitor on Phoebe and he said “no”.⁴⁸⁶ Ms Cooke said that she was not allowed into the ground floor refuse room and, although she could have reached across and touched Phoebe, she was not allowed to do so.⁴⁸⁷

192. Ms Cooke gave evidence that from standing in the doorway of the ground floor refuse room she observed that Phoebe “showed generalised cyanosis, showed no spontaneous respirations and appeared deceased.”⁴⁸⁸ She gave evidence that whilst she could not see Phoebe’s whole body she could see approximately 90% of it from where she was standing.⁴⁸⁹
193. Ms Cooke said that whilst she is not able to certify death, as a paramedic, she is able to undertake a verification of death which involves approximately 7 steps, including placing a monitor, listening for breath sounds, looking at the patient’s Glasgow Coma score. On 2 December 2010 neither she nor Ms Mintern undertook an examination of Phoebe to verify that she was deceased.
194. In his statement dated 20 August 2013, Sergeant Forster stated that Phoebe looked deceased and that his observations were based on his 38 years’ experience as a Police officer. He said “without the need to enter the room or touch the body I had no reservations that the female was deceased.” Sergeant Forster could not recall actual conversations due to the passage of time but said that “suffice to say as the area was a crime scene they did not enter the refuse room.”⁴⁹⁰
195. On the evidence there can be no finding that the failure of the paramedics to undertake an examination of Phoebe was a cause or contribution to her death for the purpose of s.67 of the *Coroners Act*. Weight must be given to the observations of the paramedics and Sergeant Forster. However, if the paramedics had been able to undertake an examination of Phoebe it is likely to have assisted the Court in at least narrowing the time of death.
196. There were other aspects of the investigation that had the potential to impact on the volume and quality of evidence available at the Inquest:

4.5.11 Garbage System was Not Shut Down Promptly

197. There was no evidence that Police asked any staff at the Balencea apartment complex to turn off the garbage compacting machine before Detective

⁴⁸⁴ T1284; The Patient Care record (Exhibit 29A) that was completed by the paramedics contained the Police number for Sergeant Forster.

⁴⁸⁵ T1285

⁴⁸⁶ T1287

⁴⁸⁷ T1286-1287

⁴⁸⁸ Exhibit 12b p.39. See also T1288

⁴⁸⁹ T1286

⁴⁹⁰ Exhibit 30

Butterworth arranged to do so at 9.22pm.⁴⁹¹ Mr Giamarrio had no recollection of Police asking him to do so when he returned to the apartment that evening.⁴⁹² Given that Phoebe's body was discovered after some residents would have arrived home from work, the garbage compacting machine rotated as part of its normal operation and that part of Phoebe's body was in contact with the frame of the machine, the failure to turn off the machine more promptly risked the preservation of evidence in the ground floor refuse room.

198. Police instructed Mr Giamarrio to place signs on the refuse room doors at each level of the building. However, Mr Giamarrio was not instructed to do so until at least 9.22pm when Detective Butterworth heard the garbage compactor machine still operating.⁴⁹³ It was Mr Giamarrio's impression that Police did not know the circumstances of Phoebe's death when they asked him to print the signs.⁴⁹⁴ Accordingly, for approximately two hours after Phoebe's body was discovered, there was a risk of evidence being contaminated in the ground floor refuse room by garbage being placed in the garbage chutes throughout the building. There was a risk that evidence in the 12th floor refuse room could also be contaminated by the failure to instruct staff to put up signage when Police arrived.

4.5.12 Entries/Exits & Apartment were not Promptly Secured

199. The Crime Scene Log reveals that as at 9.35pm on 2 December 2010, residents were still entering the apartment complex from the car park. Detective Butterworth did not know why the entries/exits from the carpark had not been secured at that time.⁴⁹⁵ Detective Sorrell (nee Hay) said that when she arrived at 8.46pm she did not know which entrances or exits had been secured and was uncertain whether any had been. She did not know why the entrance to the car park was unguarded at 9.35pm.⁴⁹⁶ Blood had been found in Level B1 of the carpark (it was later determined to be unrelated to Phoebe's death).⁴⁹⁷ At 9.53am, almost 2½ hours after Police first arrived at the scene, Detective Butterworth assessed security at the scene⁴⁹⁸ and a note in the Crime Scene Log recorded "guard all entrances".⁴⁹⁹ The rear service entry was taped off at 10.45pm. Detective Sorrell (nee Hay) did not know why it was not taped off earlier.⁵⁰⁰ The failure to secure entries and exits to the premises, in circumstances in which cause of death was unknown, could have interfered with and/or placed at risk the collection of relevant evidence.

⁴⁹¹ Exhibit 15b

⁴⁹² T138

⁴⁹³ T138

⁴⁹⁴ T138

⁴⁹⁵ Exhibit 15b; T850

⁴⁹⁶ T667

⁴⁹⁷ Exhibit 16 p.335

⁴⁹⁸ Exhibit 15b

⁴⁹⁹ Exhibit 15b

⁵⁰⁰ T668

4.5.13 Persons in Apartment

200. Detective Butterworth acknowledged that, once it was established that the girl in the ground floor refuse room had come from Mr Hampel's apartment, it would have been prudent to remove all persons in that apartment.⁵⁰¹ Instead, after speaking with Detective Healey at 8.10pm about the fact that Phoebe was missing, Mr Hampel returned to the apartment alone. Even after Detective Healey subsequently returned to the apartment⁵⁰² and confirmed that Phoebe had been found in the ground floor refuse room, Mr Hampel was not immediately asked to leave the apartment. Relatives of Mr Hampel later arrived and also entered the apartment.⁵⁰³ Detective Healey agreed that, given they did not know what had happened to Phoebe, it would have been prudent not to have further people come into the apartment.⁵⁰⁴ The apartment was not vacated until Detective Howells declared the apartment a crime scene at approximately 8.46pm.⁵⁰⁵ At the time the apartment was vacated the cause of Phoebe's death was unknown. Phoebe's handbag, keys, swipe card and other items of personal property were in the apartment and there was blood, fragments of glass and cushion stuffing on the floor. The presence of any non-Police persons in the apartment, after Phoebe had been identified, had the potential to interfere with the location and preservation of valuable evidence.

4.5.14 Unexplained Marks in the 12th Floor Hallway

201. Detective Gareth Howells observed marks on the carpet in the (external) hallway on the 12th floor. He speculated that it may have been dirt from shoes and, in his opinion, was from someone who was very tall or someone who was running or moving at a speed greater than normal walking pace.⁵⁰⁶ Detective Howells observed that they were "closer to the apartment" than the hallway depicted in photograph 73.⁵⁰⁷ He did not know whether Police undertook any investigation to determine if these marks were in any way associated with Phoebe's death.⁵⁰⁸ There was no evidence that residents on the 12th floor were asked about the marks on the floor and, in particular, when they were first observed and/or their source.

⁵⁰¹ T842

⁵⁰² He estimated that he returned to the apartment and confirmed that Phoebe had been located approximately 5 minutes after their conversation at 8.10pm (T606).

⁵⁰³ Detective Healey gave evidence that he had asked whether the crime scene had been secured and was told it had been. He assumed from that that someone was guarding each of the entries and exits (T605). Detective Healey was uncertain as to how relatives managed to enter the apartment as he thought the premises had been secured (T613-614).

⁵⁰⁴ T613-614.

⁵⁰⁵ T618

⁵⁰⁶ T645

⁵⁰⁷ Photograph in Exhibit 16h; T656

⁵⁰⁸ T643

4.5.15 Metropolitan Fire Brigade

202. During the morning fire alarm, Phoebe was observed speaking with members of the MFB. Police did not enquire of the MFB whether Phoebe had made any relevant statements during their conversation or whether the MFB made any relevant observations about her demeanor on the morning of 2 December 2010.⁵⁰⁹

4.5.16 Conclusion – Incomplete Evidence

203. The Police investigation impacted upon the volume and quality of evidence available to the Inquest. Securing the evidence referred to above may or may not have enabled positive findings to be made as to the circumstances of Phoebe’s death. The evidence may have “provided further pieces of the jigsaw”; answered questions that remain outstanding; elevated possibilities to probabilities or enabled certain possibilities to be excluded altogether. Of the above matters, the failure to take charge of obtaining and preserving the CCTV footage, the failure to seize the iMac at the time, the failure to make enquiries about and/or seize Phoebe’s SIM card on 2 December 2010, make enquiries as to whether the SIM card could be analysed by E-crime and/or retained by Police until such time as it could be analysed, the failure to test, properly examine and photograph the blood on the door of the 12th floor refuse room, determine whether persons had entered the 12th floor refuse room in the period 12 noon to 7.11pm and moved the black tub or saw/walked over blood, the failure to check all bins in the apartment and determine whether any of the garbage or bin liners in the ground floor refuse room were connected with the apartment are arguably the most significant matters and may well have yielded relevant evidence. Unfortunately, such evidence was not secured and is now no longer available.

4.6 CONCLUSION – CIRCUMSTANCES OF DEATH

204. Whilst relativities between various possibilities may vary, ranking possibilities from least to most likely and selecting the most likely possibility does not satisfy the standard of proof. The test is not, which of a comparison of possibilities is most likely but rather what, on the balance of probabilities, were the circumstances of Phoebe’s death. Put another way, the correct approach is not to opt for the most likely of the possibilities but to ask whether the evidence takes the Court to the requisite threshold. As noted above, Dixon CJ in *Jones v Dunkel*⁵¹⁰ stated that a court is not authorised to “choose between guesses, where the possibilities are not unlimited, on the ground that one guess seems more likely than another or others. The facts proved must form a reasonable basis for a definite conclusion affirmatively drawn of the truth of which the tribunal of fact may reasonably be satisfied”.

⁵⁰⁹ T1542

⁵¹⁰ (1959) 101 CLR 287 at 305

205. It is submitted that the evidence before the Coroner is insufficient to satisfy the Court to the requisite degree of the circumstances of Phoebe's death and accordingly, the Court should make an open finding.

5. REQUEST FOR POSITIVE FINDING IN RELATION TO MR HAMPEL

206. The submissions filed on behalf of Mr Hampel request that a positive finding be made that Mr Hampel was not involved in Phoebe's death.

207. As noted above, the Court's findings as to circumstances of death must be made on the balance of probabilities. The finding can only be made if the evidence compelled that finding.

208. The evidence as to third party involvement is insufficient to satisfy the requisite standard of proof. As noted above, objective evidence, such as bruising (being consistent with but not specific to grip marks), blood in the apartment, no blood or finger prints on the chute entry hatch, raise questions that are capable of a number of explanations. The evidence neither positively establishes nor excludes the possibility of third party involvement on the balance of probabilities. The failure to secure relevant evidence, such as the CCTV footage, answers as to whose blood was on the door of the 12th floor refuse room, whether anyone entered the 12th floor refuse room from noon to 7.11pm, whether anyone moved the black tub in that room and the inability to determine questions such as the precise time of Phoebe's death, whether Ms Ozulup gave out keys to anyone,⁵¹¹ do not enable a positive finding to be made on the balance of probabilities as to the involvement of Mr Hampel. That is not to say that he had any involvement but rather, there is an inability to 'exculpate' on the balance of probabilities.

209. Given paragraphs 203 and 208 above, the absence of relevant evidence works an injustice to all interested parties.

210. Moreover, there were aspects of Mr Hampel's evidence that were unsatisfactory in that they were clearly a reconstruction, at times he would agree with a proposition until such time as an inconsistency was pointed out and other aspects of his evidence were not consistent with objective facts. For example:

Repair of Iphone

211. Mr Hampel gave evidence about when Phoebe's iphone was taken into the repair shop. His evidence in that regard was clearly reconstructed.

212. On 6 December 2010 Mr Hampel told Mrs Handsjuk that he had taken Phoebe's mobile phone to work with him on Wednesday [1 December 2010] to have it repaired.⁵¹² On 2 November 2011, Mr Hampel told Detective Payne he took the phone to be repaired "definitely the Tuesday or the Wednesday",⁵¹³ "it would

⁵¹¹ T79 – she did not recall

⁵¹² Exhibit 7a p.1053

⁵¹³ Exhibit Folder p.163; T16

make sense that I took it on the Wednesday”,⁵¹⁴ he was then asked whether he was busier on Wednesday or Thursday and went on to say “it was definitely one of those two days”,⁵¹⁵ “probably Thursday”,⁵¹⁶ “I’m starting to lean towards it being Thursday rather than Wednesday”.⁵¹⁷

213. Mr Hampel’s Counsel said in the course of the Inquest that the iphone was taken to be repaired on the Thursday [2 December 2010].⁵¹⁸
214. In the course of cross-examination Mr Hampel said that it was possible he may have told Phoebe’s father on the night of 2 December 2010 that her mobile phone was at the apartment,⁵¹⁹ it is possible he may also have said to Detective Healey that Phoebe’s mobile was in the apartment⁵²⁰ but he did not recall showing Detective Healey Phoebe’s mobile phone.⁵²¹
215. Mr Hampel gave evidence that he took the iphone in to be repaired on Thursday, 2 December 2010. When asked about his movements on the day of Phoebe’s death he said he had a clear recollection of his movements that day⁵²² and said:

“Mid-morning *I recall* going to drop her phone off to be repaired. I don’t remember the exact time, it may have been around 11.00, 11.30. I returned to work, had a short lunch ...”⁵²³ (emphasis added)

216. Mr Hampel was pressed about his recollection of his movements that day.⁵²⁴

Counsel: You said a moment ago, and quite specifically, you dropped the phone off for repair mid morning that Thursday, between 11 and 11.30. Do you say you have a direct memory of dropping off her phone that Thursday or are you saying that that’s your best guess based on having gone through the documents? ---I’m saying now that it was late morning the exact time was around 11, 11.30. Yeah

⁵¹⁴ Exhibit Folder p.165

⁵¹⁵ Exhibit Folder p169

⁵¹⁶ Exhibit Folder p.196

⁵¹⁷ Exhibit Folder p223

⁵¹⁸ T368

⁵¹⁹ T1435. He said later that he “was not thinking clearly at the time at all”. On Dr Handsjuk’s evidence Mr Hampel made the statement about the mobile phone in their (first) telephone conversation at 6.52pm. Following which Mr Hampel ordered take away food and at 7.26pm Mr Hampel spoke to Matthew Flinn, his work colleague (he said at T1457 if he spoke to Matt Flinn it would have been work related) and then Dr Handsjuk rang a second time at 7.28pm (T1505; 1455).

⁵²⁰ T1436

⁵²¹ T1436. Mr Hampel subsequently said he was in “a state of shock” when he spoke to Detective Healey. On Detective Healey’s evidence their conversation about Phoebe’s mobile occurred when Mr Hampel went downstairs at 8.10pm, before she had been identified and before he learned that Phoebe had been found in the ground floor refuse room (Exhibit 13, p.298).

⁵²² T1424

⁵²³ T1423

⁵²⁴ T1436- T1437. See also T1471

Counsel: And do you say it's Thursday because you have a distinct recollection that it was the Thursday or do you say you've just given your best guess that it was Thursday by having gone through and read all the material? ---Ah, yes, at the time I was unclear as to exactly when I dropped the phone off.

Counsel: Yes, and you now say it's Thursday. Is that your best guess --- Yes

Counsel: Or do you have a direct memory? --- That's my best guess

Counsel: Can I suggest you might be mistaken in saying you took the phone, the Iphone on Thursday morning, and that the phone was still in the apartment on Thursday evening? ---Ah, I recall dropping the phone off on the Thursday morning.

Counsel: I thought you just told me that you didn't have a distinct recollection, that you were making your best guess? --- Well, it's the best guess that it was Thursday morning, yes.

217. Mr Hampel confirmed that before giving oral evidence he had seen a reference, in Detective Clanchy's note, to Mr Hampel dropping the phone off Thursday, which he said confirmed what he thought it was.⁵²⁵
218. When taken to the various dates he had previously given to Police about when the iphone was taken for repair, Mr Hampel said:

Counsel: Yes, and you were reconstructing in your own mind and trying to reason by reference to when you had discussions with Phoebe as to when you may have taken the phone in; is that correct? ---That's correct. Yeah.

Counsel: And so you don't have a distinct recollection of taking it on Thursday, you're just guessing it was Thursday? ---Yes

219. In re-examination, Mr Hampel's Counsel asked him:⁵²⁶

"And might your iphone have been on that bench when the police attended later that night? --- Yes"

220. Mr Hampel subsequently said it was "likely" to be his phone on the bench that night.⁵²⁷
221. That contention had not been put to Detective Healey,⁵²⁸ who had earlier attended Court and given evidence that Mr Hampel told him that Phoebe's

⁵²⁵ T1438

⁵²⁶ T1474

⁵²⁷ T1512

mobile was in the apartment and Mr Hampel showed him Phoebe's mobile phone on Thursday night. Nor had it been raised by Mr Hampel earlier in his evidence, when he was cross-examined about Dr Handsjuk's and Detective Healey's evidence about the presence of Phoebe's mobile phone in the apartment on Thursday evening.

G-Mail

222. Another illustration was Mr Hampel's evidence about the Gmail homepage, which moved from recollection to possibility.

Counsel: We see that you tell Detective Payne on 2 November, during this discussion you have with him, that on that night the computer was on and the Gmail homepage was showing. Was that your recollection? -- Yes⁵²⁹

Counsel: And you're sure about that? --- Ah, well I'm sure I went to the computer and that I had a look at what was on the screen and to my recollection the Gmail page, homepage was open.

223. When asked shortly thereafter:⁵³⁰

Counsel: But when you first used the computer that evening it was on Gmail? --- Ah, it's possible, yes.

Garbage Bags

224. In the course of the Inquest the Coroner asked Mr Hampel's Counsel to obtain instructions from his client about whether the garbage bags, in photographs of the ground floor refuse room, were the same as the garbage bags used by apartment 1201 at the time of Phoebe's death. This was relevant to the question of whether Phoebe may have emptied the garbage on the day she died. On 20 August 2013, Mr Galbally informed the Coroner of his instructions that the "Glad" brand garbage bags with white and blue markings, shown in photographs 18 and 38,⁵³¹ "were the sort of garbage bag that apartment 1201 was using at the time".⁵³² However, Ms Tonkin, Mr Hampel's former housekeeper disagreed and said, in a statement tendered on the morning of 23 August 2010, that she replaced the bags every week and, to her knowledge, the bags used in the apartment were "Multix" brand. They were all white and tore easily.⁵³³

⁵²⁸ The rule in *Brown v Dunn* requires such evidence to have been put to Detective Healey to give him an opportunity to respond and deal with the contention or inferences to be drawn from it. As the rule in *Brown v Dunn* was not observed, Mr Hampel's evidence in this regard should be given no weight.

⁵²⁹ T1448

⁵³⁰ T1449

⁵³¹ Exhibit 16h

⁵³² T995

⁵³³ Exhibit 35f (formerly Exhibit 33)

225. After Ms Tonkin's evidence was tendered, Mr Hampel sought to qualify the earlier statement made through his Counsel. He said that he did not have a recollection of what bags were used at the time Phoebe died; it would depend upon what bags were bought; that Glad was one of the type of bags used that he recognised but didn't say that he exclusively used one type of bag; there were different rolls and different types of bags.⁵³⁴

Early Evening - 2 December 2010

226. In cross-examination, Mr Hampel said that when he arrived home on 2 December 2010, he saw the fragments of glass. It caused him concern. He did not sweep it up. He was concerned and was looking to see whether Phoebe may have been writing something on the computer, looking to see if there was a particular website or "anything at all". He saw a small amount of blood on the keyboard of the computer in the study but did not recall if he cleaned it up before Police arrived.⁵³⁵ The blood caused further concern to him. Mr Hampel said, "I was so concerned I was looking for anything that may have shown me anything else to be concerned about or, um, anything at all, so I was becoming, um, very concerned at that point". Mr Hampel said that he continued to use the computer because he would possibly have been looking at search history, he may have been looking where she'd been browsing and what music she might have been playing, looking for anything that could give him a clue as to what was going on.⁵³⁶ He said he was distressed and was not looking for anything specific; whether she'd written something on the computer. Mr Hampel said Phoebe liked music and he was interested to see if she had been listening to something.⁵³⁷ Mr Hampel could not recall what he discovered but said "I think by that point I was in quite a state". His first concern was in seeing the glass and he became more concerned when he saw the blood and he went straight to the computer. He was looking at "anything, anything to try and establish, um, where she was, what was happening, where she may have been, um, anything at all." He said these concerns had developed before he spoke to Dr Handsjuk.⁵³⁸

227. Aspects of Mr Hampel's oral evidence about being "in a state" and "distressed" at that particular point in the evening do not sit comfortably with objective facts:

- His statement to Police on 2 December 2010 does not refer to going straight to the computer to check the computer in a state of distress, for indications as to Phoebe's whereabouts. He also did not refer to doing so in his interview with Police on 2 November 2011.
- Mr Hampel did not look at any "Word" documents at all between 6.09pm when he arrived home and 8.10pm when he went downstairs. He looked at Garage Band (music program), iMovie because he was looking at what

⁵³⁴ T1463-1464

⁵³⁵ T1431-1433

⁵³⁶ T1434

⁵³⁷ T1449

⁵³⁸ T1449-1450 and T1452

music she was listening to and what programs were open.⁵³⁹ The report of Mr Robertson revealed that he also logged into his Facebook.⁵⁴⁰

- When Mr Hampel telephoned Dr Handsjuk⁵⁴¹ he did not mention that he had found blood and glass in the apartment or his state of distress.⁵⁴²
 - He had a cigarette, beer, fed the dog, and waited.⁵⁴³
 - He ordered take-away food at 7.20pm.
 - He spoke with his work colleague, Matthew Flinn, and assumed that their conversation would have been work related. Mr Hampel stated that the fact his laptop was open on the table meant that he may also have used his laptop.⁵⁴⁴
 - Mr Hampel did not ring the Police or the Manager's Office.⁵⁴⁵
 - When Dr Handsjuk rang back at 7.28pm and suggested that he make enquiries of the concierge⁵⁴⁶ he did not do so.
 - He looked at material the subject of the non-publication order made on 8 October 2013.
228. Phoebe's death occurred more than 2½ years before the Inquest and, as such, there is greater scope for revision to intrude. However, reconstructed memory is not reliable evidence and does not assist the Coroner.
229. For that reason and because relevant evidence, which may have assisted the Court in determining circumstances of death, was not secured by Police at the time, it is submitted that no positive finding can be made on the balance of probabilities as to Mr Hampel's involvement. As noted above, that is not to say that he had any involvement but rather, the absence of evidence and the state of the available evidence does not compel a positive finding to be made on the balance of probabilities.

⁵³⁹ T1453-1454. He was uncertain as to whether he had the ability to access her email account at the time (T1452)

⁵⁴⁰ Attachment to Exhibit 41a p.1228

⁵⁴¹ Mr Hampel called at 6.52.17pm after Dr Handsjuk had telephoned Phoebe's iphone at 6.51.57pm – Mr Hampel gave evidence that the timing of the calls was co-incidental.

⁵⁴² T1454. After hearing that Phoebe was not in the apartment at 6.52pm, Dr Handsjuk's phone records show that he rang his son, Tom, at 6.56pm, at 6.58pm he telephoned Mrs Handsjuk, at 7pm he telephoned his son, Nikolai, at 7.02pm he telephoned Mrs Handsjuk's landline, then Mr Hampel at 7.28pm

⁵⁴³ Exhibit 34 p.46

⁵⁴⁴ T1457

⁵⁴⁵ In an interview with Police on 2 November 2011 (Exhibit Folder p.257), Mr Hampel said in respect of his telephone call with Dr Handsjuk "I think he brought something up about a missing person....and I think that's when I might have said something about, I don't think they'll look at it as a missing person"

⁵⁴⁶ Exhibit 42 p.65

6. COMMENTS

230. Pursuant to s. 67(3) of the *Coroners Act* 2008, a Coroner may comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice.
231. As noted above, it is possible that if Police had secured further evidence at the time and comprehensive investigations undertaken, matters that remain ‘possibilities’ might well have been excluded or otherwise elevated to ‘probabilities’ and/or answers may have been provided to questions that remain outstanding. The Police investigation has impacted upon the volume and quality of evidence before the Court. As such, it is open to the Coroner to comment on the Police investigation.
232. Ms Young, Phoebe’s Psychologist, gave evidence about a telephone call that she received from Phoebe on 30 November 2010. At the Inquest Ms Young said that she thought that, during the telephone call, Phoebe was actively suicidal, high risk and probably needed close monitoring.⁵⁴⁷ Ms Young was unable to see her that day and did not follow up with Phoebe later that day or the following day. Whilst Ms Young encouraged Phoebe to call the Alfred Hospital and suicide crisis lines she did not take steps herself to call a “CAT” team, the Police, her supervisor or one of Phoebe’s family members. Ms Young noted that she did not call a CAT team due to her inexperience at the time.⁵⁴⁸ In cross-examination Ms Young initially said that she thought that there were ethical impediments to calling one of Phoebe’s family members. However, having refreshed her memory from the Australian Psychological Society’s Code of Confidentiality, Ms Young conceded that she was permitted to breach confidence to the minimum necessary to avoid imminent risk.⁵⁴⁹ As Dr Handsjuk observed in cross-examination, Ms Young’s actions did not reflect the gravitas that she had described in her report or oral evidence.⁵⁵⁰ Ms Young admitted in cross-examination that she was struggling to explain this and conceded that perhaps she felt that the risk was not that high or imminent.⁵⁵¹
233. Ms Young’s written submission, dated 10 October 2013, referred to the APS Code of Ethics and specifically, the obligations in clause 4.4.2 in respect of confidentiality. Clause 4.4.2 relevantly provides that a psychologist may disclose confidential information obtained in the course of their provision of psychological services only under the following circumstances:
- (a) with the consent of the relevant client or a person with legal authority to act on behalf of the client;
 - (b) where there is a legal obligation to do so;

⁵⁴⁷ T415

⁵⁴⁸ T415

⁵⁴⁹ T446

⁵⁵⁰ T474

⁵⁵¹ T474

- (c) if there is an immediate and specified risk of harm to an identifiable person or persons that can be averted only by disclosing information
234. Ms Young says “[Phoebe] informed me that she was unwilling to have any friends or family come and stay with her. I did not consider that there was an immediate and specified risk of harm to her that would have allowed me to breach confidentiality by making contact with other persons if she was not prepared to do so. This is consistent with clause 4.4.2. In any event, I note that [Phoebe’s] death did not occur on 30 November 2010, which further confirms that [Phoebe] was not subject to an immediate or specified risk of harm...I believe that disclosure in circumstances where a person was no subject to an immediate or specified risk of harm would have been a breach of confidentiality that would have put me at risk of disciplinary action.”
235. It is difficult to reconcile Ms Young’s oral evidence with her written submissions. Ms Young’s written submissions appear to depart somewhat from her earlier evidence that she considered Phoebe to be actively suicidal, high risk and that she probably needed close monitoring.⁵⁵² Ms Young had previously given evidence that she did not call a CAT team because of her inexperience at the time.⁵⁵³
236. In oral evidence Ms Young said:⁵⁵⁴
- Counsel:* So is what you’re saying is we shouldn’t draw any inferences from the fact you didn’t call out the CAT team, we shouldn’t infer that you didn’t think it was at that level of risk? That’s right, no. I think – you’re correct. I think that the risk was there and – and it would have been appropriate.
237. Indeed, the computer analysis revealed that at approximately 11.43am on 30 November 2010 Phoebe was “googling” “Mental Health Crisis Team”, “CAT Team City of Melbourne”, “CAT team Alfred Hospital”.⁵⁵⁵
238. The difference between her evidence and submissions may well be explained by Ms Young’s observation in the written submission that, “[g]iven the passage of time, I no longer have a clear recollection of that phone call. I am guided by the file note I made of the phone call and the information in the informal report I prepared for Detective Payne.”
239. Ms Young confirmed in her written submission that she had conducted a risk assessment in their first session and that Phoebe’s condition improved under her care.⁵⁵⁶

⁵⁵² T415

⁵⁵³ T415

⁵⁵⁴ T416

⁵⁵⁵ Attachment to Exhibit 41a p.1211-1215

⁵⁵⁶ Mr Hampel also said that Phoebe told him on several occasions that she was feeling happier with Ms Young than previous doctors and he believed Ms Young empathized with Phoebe (T1388)

240. At times, psychologists may be a primary point of contact for persons who are depressed and/or actively suicidal. For that reason, they have serious and important responsibilities in protecting vulnerable persons from harm. If Ms Young had thought that Phoebe was actively suicidal on 30 November 2010 then further steps should have been taken to protect her, such as calling a CAT team, calling a family member, calling the Police, calling a General Practitioner, contacting Ms Young's supervisor and following up with Phoebe later that day. If Phoebe was not actively suicidal or otherwise at imminent risk, then she was at least in need of someone to talk to and, beyond giving her telephone numbers and encouraging her to walk to the Alfred Hospital, it would have been prudent for Ms Young to undertake some form of follow up with Phoebe that day (or as soon as possible thereafter) to ensure that Phoebe had received assistance. Mr Silver's observations of Phoebe later that day and Phoebe's text to Mrs Campbell both suggest that she was feeling more positive a few hours after her telephone call to Ms Young on 30 November 2010.
241. It is open to the Coroner to comment on Ms Young's handling of the 30 November 2010 telephone call.

7. RECOMMENDATIONS

242. Section 72(2) of the *Coroners Act* relevantly provides that a Coroner may make recommendations to any Minister, public statutory authority or entity on any matter connected with a death which the Coroner has investigated, including recommendations relating to public health and safety or the administration of justice.
243. Associate Professor Gunja, Professor Drummer and Doctor Odell unanimously agreed that Australia should follow the approach adopted by the United States Food and Drug Administration by reducing the recommended dosage of Zolpidem for women by 50%.⁵⁵⁷ Associate Professor Gunja stated that the FDA had implemented this measure in 2013 based on data showing that women are not able to clear Zolpidem out of the body as well as men. He considered that the 50% reduction for women should be a measure introduced world wide.⁵⁵⁸
244. The medical experts were also asked about the impact of Zolpidem on patients with depression. The boxed warning on Zolpidem in Australia currently states:⁵⁵⁹

“Zolpidem may be associated with potentially dangerous complex sleep-related behaviours which may include sleep walking, sleep driving and other bizarre behaviours. Zolpidem is not to be taken with alcohol. Caution is needed with other CNS depressant drugs. Limit to four weeks maximum under close medical supervision.”

⁵⁵⁷ T1040-1041

⁵⁵⁸ T1041

⁵⁵⁹ Exhibit 25b p.912

245. Associate Professor Gunja referred to the Product Information for Zolpidem in the United States, which includes.⁵⁶⁰

“STILNOX is not recommended as primary therapy in patients with depression and psychosis. In such conditions, psychiatric assessment and supervision are necessary as depression may increase in some patients and may contribute to deterioration in severely disturbed schizophrenics with confusion and withdrawal. Pre-existing depression may be unmasked during the use of STILNOX. Suicidal tendencies may be present or uncovered and protective measures may be required. Intentional overdosage is more common in this group of patients: therefore, the least amount of drug that is feasible should be prescribed for the patient at any one time.”

246. Associate Professor Gunja noted that MIMs in Australia contains almost identical product information for Zolpidem as set out above.⁵⁶¹ However, he considered that the caution in relation to depression should be more prominent, such as part of the boxed warning.⁵⁶²
247. On the basis of the literature in Exhibit 25B and the evidence of the medical panel, it is submitted that a recommendation should be made to the Therapeutic Goods Administration, MIMs Australia and any other relevant public statutory authority or entity to implement each of these proposals in the interests of public health and safety.

DEBORAH SIEMENSMA

OWEN DIXON CHAMBERS WEST

⁵⁶⁰ T1047

⁵⁶¹ T1050

⁵⁶² T1050