CORONERS COURT
OF NEW SOUTH WALES

Inquest:	Into the death of Ye Chiu (a pseudonym)
File number:	2017/00039421
Hearing dates:	31 August, 1-2 September 2020
Date of findings:	23 October 2020
Place of findings:	Coroners Court, Lidcombe
Findings of:	Deputy State Coroner E. Truscott
Catchwords:	Coronial Law-Cause and manner of death-suicide-lawful custody-hyponatraemia delirium-vulnerable prisoner- decision to discharge-CSNSW policy notification of emergency contact person
Representation:	Counsel Assisting: Ms J Single SC instructed by Ms T Bird of the Crown Solicitor's Office Commissioner Corrective Services NSW: Ms M Campbell instructed by Mr V Musico of Department of Communities and Justice, Legal Justice Health and Forensic Mental Health Network: Mr B Bradley instructed by Ms K Hinchcliffe of Makinson D'Apice Lawyers Dr Johnathan Adams: Ms K Burke instructed by Ms C Darroch of Meridian Lawyers The Chiu family: Mr J Amond

Findings:	**Identity** Person known in these proceedings by the pseudonym Ye Chiu **Date of Death** 6 February 2017 **Place of Death** Westmead Hospital, Westmead **Cause of death** Head injuries **Manner of death** Ye Chiu died from injuries sustained in a fall from the upstairs landing in the Goldsmith "G" Block at the Metropolitan Remand and Reception Centre from height, such fall being deliberate with the intention to end his own life.
Recommendations:	**1.** Corrective Services NSW ("CSNSW") amend their policies to ensure that when a prisoner is subject to a medical emergency requiring conveyance to hospital that the following occurs: **a.** The prisoner's Emergency Contact Person ("ECP") is recorded on the escort and transfer documents. **b.** The Escort Officer (or another identified appropriate officer) ensures that the ECP information is transferred to the hospital triage document so the hospital has the prisoner's ECP details. **c.** A CSNSW staff member is identified and allocated the responsibility of: i. identifying the health status of the prisoner on a regular and frequent basis to enable a decision to be made that the prisoner's ECP be informed of the prisoner's condition; and ii. managing and facilitating the visiting access the ECP has to the prisoner with the Escort Officers; and iii. managing updating the ECP as to the condition of the prisoner. **2.** That an audit of the policy should occur within a reasonable period of time of the commencement of such policy to ensure that it is being complied with and is consistent with any Memorandum of Understanding ("MOU") between CSNSW, Justice Health and Forensic Mental Health Network and the Ministry of Health NSW.

Non-publication orders:	NOTE: Section 75 of the *Coroners Act 2009* applies to this Inquest and Findings. **1.** Pursuant to s. 65(4) of the *Coroners Act 2009*, a copy of the whole or a particular part of the Coroner's file is not to be supplied in contravention of this direction, without the Commissioner for Corrective Services NSW first being given an opportunity to be heard on the application. **2.** Pursuant to s. 74(1)(b) of the *Coroners Act 2009* that there be no publication of the evidence in the coronial brief of evidence identified in Schedules A and B as attached to the order made by Deputy State Coroner Truscott on 2 September 2020 (extracted below). **3.** Pursuant to s. 65 of the *Coroners Act 2009* there is to be no access to the documents identified in Schedule B as attached to the order made by Deputy State Coroner Truscott on 2 September 2020 unless specifically authorised by the Coroner and subject to order 1 above.

SCHEDULE 'A'

Tab, Document and its evidence	Date
Tab 8, Vol. 1 - Statement of Detective Sergeant Andrew TESORIERO - The names the five inmates described at [182] – [186] as giving statements. Also the inmate names and birthdates mentioned in the ERISP or notebook interviews cited at those paragraphs	9 January 2018
Tabs 31-35, Vol. 2 - The names and birthdates of the five inmates mentioned in the ERISP or notebook interviews as giving statements.	6-7 February 2017
Tab 77, Vol. 5A These Attachments to the Redacted Investigation Report: • Attachment 19: As per Tabs 31-35 above.	6-7 February 2017

Generally- In any CSNSW document any visible contact details of CSNSW staff or offices or of any Commonwealth offices unavailable to the public, or of the Chiu family	

SCHEDULE 'B'

- Exhibit 2, being the sensitive evidence.

IN THE CORONERS COURT

LIDCOMBE

NSW

Section 81, Coroners Act 2009

REASONS FOR DECISION

1. This is an inquest into the death of Ye Chiu (a pseudonym) ("Mr Chiu"). This is a required inquest pursuant to sections 23 and 27 of the *Coroners Act 2009* ("the Act") as Mr Chiu died whilst in lawful custody. Mr Chiu was a prisoner on remand, pending arraignment.

2. Mr Chiu died on 6 February 2017 at Westmead Hospital, Westmead after sustaining fatal head injuries in a fall in the Goldsmith "G" Block at the Metropolitan Remand and Reception Centre ("MRRC"), Silverwater.

3. On 9 February 2017, a limited post mortem examination was carried out by forensic pathologist, Dr Rianie Janse Van Vuuren who prepared a post mortem report dated 19 October 2017 in which she found that the cause of death was head injuries.[1]

4. Following Mr Chiu's death, an investigation leading up to the hearing of this inquest was facilitated by the officer in charge, Detective Sergeant Andrew Tesoriero and Senior Investigation Officer Grant Simpson of the Corrective Services NSW ("CSNSW") Investigations Unit.[2]

5. The purpose of this inquest is to make and record findings as to the date and place of Mr Chiu's death, as well as the manner and cause of death, and to make any recommendations that may be necessary or desirable.

Background

6. I now respectfully adopt the entirety of the background summary thoroughly and helpfully detailed by Counsel Assisting in her opening address to the inquest.[3]

7. Mr Chiu was born in China and was 67 years old when he died.

8. Mr Chiu married in 1977 and he and his wife ("Mrs Chiu") have two children, being a daughter born in 1979 ("A") and a son born in 1980 ("M").[4] Mr Chiu and his family migrated to Australia in October 1985.[5]

[1] Ex 1, Tab 4 (V1) Limited Autopsy Report for the Coroner.
[2] Ex 1, Tab 8 (V1) Statement of Detective Sergeant Andrew Tesoriero ("Statement of Tesoriero").
[3] Identifying details have been removed. Paragraphs 7-154.

9. Mr Chiu was a very hard working man who, following their migration to Australia first worked as a kitchen hand, before progressing to be an apprentice chef and then a Chinese chef. Mr and Mrs Chiu purchased their first property at Eastwood in 1989. They moved to Penshurst in 1992.[6]

10. In 2009, Mr Chiu started to suffer from repetitive strain injury ("RSI") and developed arthritis in his right hand. He continued to work until his condition worsened and ceased work in 2014 when he became eligible for a Disability Pension.[7]

Mental Health

11. In October 2015, Mr Chiu's family report that he started displaying strange behaviour with difficulty swallowing and restless nights.[8]

12. On 25 January 2016, Mr Chiu's general practitioner ("Dr W") diagnosed him with depressive anxiety disorder and prescribed the anti-anxiety medication Aropax.[9]

13. On 9 February 2016, Dr W recorded that there had been a partial relief of apprehension. On 16 February 2016, Dr W recorded "*recent exacerbation [sic] of anxity [sic] symptoms fter [sic] visit to optometrist told cataract and glaucoma worry withdrawal negative though for 24 hr not coping with the above new poor sleep variosu [sic] somatic symptoms … anxiuos [sic] anagitated [sic] no sucaidal [sic] thought focus on various health issue poor insight denies sucidal [sic] ideation".* Dr W made a referral for Mr Chiu to see a psychiatrist ("Dr SKL") and discussed a psychologist via a mental health plan. Dr W prescribed Ativan.[10]

14. Mr Chiu's son, M reported that after a few weeks Mr Chiu became very anxious and his behaviour became very strange including being nonresponsive and displaying abnormal behaviours. This behaviour increased when he was taking medication.[11] Mr Chiu told his family he was anxious because he was afraid of dying as his father had died at the age of 68.[12]

15. On 22 February 2016, Mr Chiu saw Dr SKL, who reported that Mr Chiu stated he had felt worried and depressed in the past six weeks; he did not sleep well, was socially withdrawn and he held no hope for the future. A mental examination revealed Mr Chiu was somewhat nervous and dejected but not suicidal. Dr SKL

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[4] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [7].
[5] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [9].
[6] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [9]-[12].
[7] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [15].
[8] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [17].
[9] Ex 1, Tab 68 MH Discharge/Transfer Summary p.178; Tab 73 (V3) Notes of Dr W, p.5.
[10] Ex 1, Tab 73 (V3) Notes of Dr W, p.5; Tab 36 (V2) Statement of M Chiu, 6 June 2017, [21].
[11] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [24]-[25].
[12] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [27].

diagnosed a depressive disorder of recent onset and prescribed Aropax and Ativan.[13]

16. On 18 March 2016, Mr Chiu saw Dr W and reported a relapse stating he felt his brain was not working, he was insecure, shaking and had a sense of doom. Mr Chiu was to recommence taking Ativan at night.[14]

First Admission to St George Hospital

17. On 28 March 2016, Mr Chiu and Mrs Chiu had finished dinner and Mr Chiu had taken his medication. Mr Chiu's stance became shaky and he saw things on an angle; he became confused as to whether he had taken his medication. He was stiff, shaking and unresponsive. He was taken by ambulance to St George Hospital.[15]

18. At the hospital, a nurse drew blood and Mr Chiu's behaviour changed immediately. He became very paranoid and thought Mrs Chiu and their son had brought him to hospital to kill him. Over time Mr Chiu's rants became more aggressive and louder. He had to be sedated. When being restrained by nursing staff he screamed that they were trying to kill him.[16]

19. Mr Chiu was admitted involuntary to the St George Hospital mental health unit. He was scheduled under the *Mental Health Act*.[17]

20. On 29 March 2016, Mr Chiu's sodium level was recorded as 122 mmol/L. A normal sodium level is considered to be in the range of 135 to 145.[18]

21. Mr Chiu was treated in intensive care for a few weeks. Mr Chiu was then moved to the mental health wing and later to the Older Person's Mental Health Unit.[19]

22. During his stay, Mr Chiu was trialled on anti-psychotic medication but he had reactions to each. He was prescribed Valium and sleeping pills and his mental state improved.[20]

23. On 29 March 2016, Mr Chiu underwent a CT of the brain which found no acute intracranial abnormality.[21]

24. On 4 April 2016, Mr Chiu underwent an MRI of the brain which found no intracranial pathology.[22]

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[13] Ex 1, Tab 75 (V3) Letter dated 24 February 2016 from Dr SKL to Dr W.
[14] Ex 1, Tab 73 (V3) Notes of Dr W, p.4.
[15] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [31]-[32].
[16] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [33]-[34].
[17] Ex 1, Tab 40, Statement of Mrs Chiu,[4]; Tab 41, Statement of Mrs Chiu, 3 February 2017; Tab 48, Inmate Profile Document; Statement of Tesoriero, 9 January 2018, [12].
[18] Ex 1, Tab 68 (V3) St George Hospital Mental Health Discharge 20 May 2016, p.255; p.258.
[19] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [39]-[41].
[20] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [41].
[21] Ex 1, Tab 68 (V2) CT Brain Final Report dated 29 March 2016, p.200.

25. On 30 May 2016, Mr Chiu was discharged from the St George Hospital mental health unit.

26. Mr Chiu's sodium levels were monitored throughout his stay and he was treated for hyponatraemia. It was noted by the treating team that his symptoms were consistent with a delirium related to hyponatraemia. Upon discharge Mr Chiu's levels were normal in the range of 137 to 140.[23]

June – August 2016

27. When released from St George Hospital, Mr Chiu commenced seeing a psychologist, Flora Truong, an Older Persons Nurse and psychiatrist, Dr Carolyn Jones from St George Hospital (in addition to visits to his general practitioner Dr W).

28. Mr Chiu's family reported his behaviour was up and down.[24]

29. On 10 June 2016, Mr Chiu was reviewed by Dr Jones with a Cantonese interpreter and his daughter. Dr Jones noted:[25]

> *"It is pleasing to report that Mr [Chiu] is managing well. He reports a normal appetite, good sleep, and reasonable energy levels. He is more open expressing when he feels anxious to his family, and this has been in situations of crowds.*
> *His diagnosis appears to be an anxiety disorder – with features of agoraphobia and previously panic episodes. This was complicated by organic mania (hyponatraemia and viral encephalitis) earlier this year*
> *… suggested to Mr [Chiu] that he could reduce his Melatonin to 2mg nocte and when he is next due for a diazepam prescription to reduce the dose to 4mg nocte".*

30. On 27 June 2016, Mr Chiu reported to Dr W that he had seen the psychologist and had a good response and was less anxious and coping on a reducing dosage.[26]

31. In July and August 2016, Mr Chiu saw the Older Persons Nurse five times, Ms Truong the psychologist four times, Dr W twice and psychiatrist Dr Jones on 19 August and 2 September 2016.

32. Dr Jones noted on 2 September 2016 that Mr Chiu's family were very concerned he was not maintaining improvement and Mrs Chiu was becoming exhausted and less able to cope. Mr Chiu described ongoing racing thoughts. He denied any thoughts

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[22] Ex 1, Tab 68 (V2) MRI Brain Final Report dated 4 April 2016, p.199.
[23] Ex 1, Tab 68 (V2) St George Hospital mental health progress note dated 20 May 2016, p.249, p.255; p.258; Tab 78 (V5) Blood Chemistries, p.304.
[24] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [42].
[25] Ex 1, Tab 68 (V2) Letter from Dr Jones GP Letter Brief, 10 June 2016, pp.202-203.
[26] Ex 1, Tab 73 (V3) Notes of Dr W, p.3.

or plans of self-harm or suicide however he made a comment that he felt like he was going to die. His recent bloods were normal. Dr Jones noted ongoing prominent anxiety with an episode of heightened arousal and suggested an increase in medication. Dr Jones noted that Mr Chiu was not currently meeting the requirements of the *Mental Health Act*.[27]

Second Admission to St George Hospital – 3 September 2016

33. On 3 September 2016, the day after Mr Chiu saw Dr Jones, a small splash of oil fell on Mrs Chiu's hand. Mr Chiu became anxious that she was hurt; his breathing became laboured. Mrs Chiu and their daughter, A told Mr Chiu they wanted to take him back to hospital and he refused saying he was scared to go back to hospital. Mr Chiu's son, M arrived and they called an ambulance. Mr Chiu was physically taken to hospital after he refused to leave.[28]

34. Mr Chiu was initially admitted to St George Hospital as a voluntary patient of the Older Persons Mental Health Unit. [29]

35. At the time of his admission Mr Chiu's sodium level was 130 and it was noted on 5 September 2016 that Mr Chiu's delirium was resolving and he had ongoing hyponatraemia which was improving.[30]

36. On 3 September 2016, Mr Chiu underwent another CT of the brain which found no acute intracranial pathology.[31]

37. On 9 September 2016, Mr Chiu assaulted a nurse by attacking her from behind and strangling her. It was noted "*On review was settled, no remorse, some paranoid ideations re: the nurse calling the police on him."*[32] Mr Chiu's sodium level on 9 September was 128.[33]

38. There were no further acts of aggression but it was noted that:

> *"Mr [Chiu] remains fixated that the nurse he assaulted was going to call the police, and he has expressed a desire to die, asking Dr Jones for a lethal injection."*[34]

39. Mr Chiu was presented to the Mental Health Review Tribunal and a four week involuntary patient order was made. He was transferred to the acute mental health unit. [35]

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[27] Ex 1, Tab 68 (V3) MH Progress Note dated 2 September 2016, p. 215.
[28] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [45]-[49].
[29] Ex 1, Tab 68 (V2) MH Discharge/Transfer Summary p.179; 183-185; 191-193.
[30] Ex 1, Tab 68 (V2) MH Discharge/Transfer Summary; Tab 76 (V5), p.107, 149.
[31] Ex 1, Tab 68 (V3) CT Brain Final Report, 3 September 2016, p.201.
[32] Ex 1, Tab 76 (V4) p.11-12.
[33] Ex 1, Tab 76 (V4) Blood Chemistries p. 165.
[34] Ex 1, Tab 76 (V4) p.9.
[35] Ex 1, Tab 68 (V2) MH Discharge/Transfer Summary p.179; 183-185; 191-193.

40. He settled over a few days and was transferred back to the Older Persons Mental Health Unit where his medication was adjusted with pregabalin being titrated upwards. He appeared to respond well to this change, with his anxiety becoming far less intrusive and more manageable. He attended escorted leave with family without incident and had weekend leave which all went well too.[36]

41. On 16 September 2016, Dr Jones noted that Mr Chiu when first assessed had delirium in the context of hyponatraemia and anxiety. The hyponatraemia had resolved. Mr Chiu ceased all psychotropic medication on admission as he was historically very sensitive to medications. It was noted that anxiety seemed to be the most prominent symptom. Depressive symptoms were not prominent nor were there any clear psychotic symptoms. Cognition seemed to be improving but needed further investigation. Mr Chiu had become settled on the ward with no risky behaviours identified.[37]

42. On 17 September 2016, a Registered Nurse at St George Hospital wrote a review of care plan stating:[38]

> *"Suicidal Ideation/Thoughts of Harming Self*
> *Mr [Chiu] expresses lack of opportunity to harm himself in the ward. However may attempt to jump off from the building if he goes outside.*
> - *Keep away all items that he may potentially use to harm himself.*
> - *Continually assess his risk and maintain on 1:1 special obs*
> - *Monitor his thoughts and feelings and allow patient to ventilate his fears*
> - *Express hope and positive outlook towards the future*
> - *Maintain safety"*

43. Mr Chiu was subject to a neuropsychological assessment on 26 September 2016.[39]

44. It was noted Mr Chiu had been trialled on a variety of medications but had been keenly sensitive to all of them, even at very small doses.[40]

<u>Discharge Home</u>

45. Mr Chiu was discharged on 26 September 2016.[41]

46. Mr Chiu's sodium levels had been monitored throughout his admission and upon discharge were 136.[42]

[36] Ex 1, Tab 68 (V2) MH Discharge/Transfer Summary p.179; 183-185; 191-193.
[37] Ex 1, Tab 76 (V4) p.9.
[38] Ex 1, Tab 76 (V4) p.6.
[39] Ex 1, Tab 76 (V4) p.15.
[40] Ex 1, Tab 68 (V2) MH Discharge/Transfer Summary. p.178.
[41] Tab 68 (V2), MH Discharge/Transfer Summary, p. 178.
[42] Ex 1, Tab 76 (V4) Blood Chemistries p.164.

47. Following Mr Chiu's release over a few weeks his anxiety became apparent again; he was worrying about trivial things. He was regularly seeing Flora Truong, Dr Jones and his general practitioner.[43]

48. His general practitioner Dr W recorded on 30 September *2016 "on new medication copes well stable less anxious."*[44]

The Alleged Offence

49. Turning to the event which resulted in Mr Chiu being on remand.

50. On 25 October 2016, Mr Chiu received a phone call from a family member informing him a family member from America would be visiting and arranging to catch up. Mr Chiu became anxious and was afraid they would come to learn he had a mental illness. He became anxious and told Mrs Chiu who tried to calm him down.[45]

51. At about 6pm, Mr Chiu, Mrs Chiu, their daughter, A and Mr and Mrs Chiu's grandchild were having dinner. Mrs Chiu told A that Mr Chiu had been acting weird during the day. Mr Chiu said that nothing was wrong.

52. After the others finished dinner, Mr Chiu sat at the table on his own and continued eating. Suddenly Mr Chiu slammed his bowl on the table and entered the kitchen where Mrs Chiu was washing the dishes.

53. According to the initial statements made to the police, Mr Chiu stood behind Mrs Chiu and wrapped both arms around her neck and squeezed tightly in a choke hold. Mrs Chiu attempted to free herself and they fell to the ground; he continued to choke her. Mr Chiu's daughter, A pulled his arms off Mrs Chiu; Mr Chiu resisted and tensed but A managed to free Mrs Chiu.

54. A removed Mr Chiu's grandchild (A's child) from the area. Once she left, Mr Chiu placed both his legs around the shoulders of Mrs Chiu. A returned to the kitchen and again freed Mrs Chiu. A and Mrs Chiu ran to the front door. Mr Chiu chased them and again grabbed Mrs Chiu, pulling her to the ground and choking her.

55. Two neighbours came to help and managed to pull Mr Chiu off Mrs Chiu. When police and an ambulance arrived they found Mr Chiu lying on the floor.[46]

56. Mrs Chiu clarified her evidence in a statement in February 2017 stating Mr Chiu had his arms around her chest, not her neck.[47]

[43] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [54]-[55].
[44] Ex 1, Tab 73 (V3) p.2.
[45] Ex 1, Tab 36 (V2) Statement of M Chiu, 6 June 2017, [56]-[58]; Tab 40 (V2) Statement of Mrs Chiu, 3 February 2017, [5].
[46] Ex 1, Tab 42 (V2) Police notebook statement of A, 25 October 2016.
[47] Ex 1, Tab 41 (V2) Statement of Mrs Chiu, 3 February 2017.

57. Mr Chiu was charged with choking a person with intent to commit an indictable offence, with the intention of causing actual bodily harm pursuant to s 37(2) of the *Crimes Act 1990* (NSW).[48]

Entering Custody

58. Mr Chiu appeared at Sutherland Local Court on 26 October 2016 and was remanded in custody. The initial remand warrant issued on 26 October 2016 was endorsed with the additional information of "receive mental health medication and treatment".[49]

59. Mr Chiu entered CSNSW custody at Sutherland Court cells at about 10.15 am on 26 October 2016.

60. On 26 October 2016, the Inmate Identification and Observation Form ("IIO") was partially completed without the assistance of an interpreter. It was noted that Mr Chiu did not speak English. No health history was acquired and no psychiatric or psychological interventions were ordered.[50]

61. It is clear that there were deficiencies with how this form was filled out.

62. Mr Chiu was transferred to Surry Hills Court cells where he remained overnight. He was spoken to by the Services and Programs Officer ("SAPO") Hellen Rogers with the assistance of a telephone interpreter. Mr Chiu was unable to provide contact details of anyone who spoke English. Ms Rogers told Mr Chiu that on reaching a correctional centre a thorough exploration would be conducted regarding accessing people and agencies in order to advise them of his circumstances and to receive ongoing support.[51] Ms Rogers was unable to facilitate a reception phone call as Mr Chiu was unable to provide any contact details.[52]

Metropolitan Reception and Remand Centre – 27 October 2016

63. On the evening of 27 October 2016, Mr Chiu was received into the MRRC.

64. Between 7.30 pm and 8.15 pm SAPO Margaret Rothwell conducted the Intake Screening Questionnaire ("ISQ**"**) process with the assistance of an interpreter.[53] It was noted:[54]

    (a) Mr Chiu was calm and co-operative, future oriented.

    (b) At question 52 - Mr Chiu stated he was "good".

[48] Ex 1, Tab 38 (V2) Facts Sheet.
[49] Ex 1, Tab 77 (V5A) Investigation Report, [1].
[50] Ex 1, Tab 68 Inmate Identification & Observation Form, p.154-159.
[51] Ex 1, Tab 77 Investigation Report, [7].
[52] Ex 1, Tab 77 (V5A) Investigation Report, [87].
[53] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [16], Ex CM-8; Tab 77 (Vol 5A) Investigation Report, [8], Att 5 Case Note Report; Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020, [13]-[14].
[54] Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, Ex CM-8.

(c) At questions 53 and 61 – Mr Chiu has been treated for anxiety, last dosed before he came into custody.

(d) At questions 56 and 57 – at home or in relationship when Mr Chiu is stressed he "deep rest".

(e) At question 18 - there is an AVO protecting his wife.

(f) At questions 58, 73, 74, 75, 76, 77 and 82 - he denied past and current self-harm/suicide ideation.

(g) At question 59 – he denied he has ever hurt others when stressed.

(h) There was no reception call as he said he has nobody to call.

65. A referral to the Justice Health and Forensic Mental Health Network ("Justice Health") was listed as required. A referral was also initiated for Fundamental Support.[55]

66. Between 9.18 pm and 10.01 pm Registered Nurse ("RN") Anna Grigore ("RN Grigore") conducted a Reception Screening Assessment and noted:[56]

(a) Mr Chiu spoke Cantonese and an interpreter was required.

(b) Mr Chiu's community health provider was a psychiatrist at St George Hospital and his general practitioner Dr W, Hurstville.

(c) In the section "Active Allergies", a number of medications were listed.

(d) Medical observations taken.

(e) Mr Chiu *"has become unwell this year becomes anxious ++ does not know why he feel like this – cannot relate it to anything – except stopping work – says money is not a problem – live with wife says that when he feels nervous he feels as if his head is exploding has son and daughter -and x 2 grandchildren – says they won't have time to visit."*

(f) Mr Chiu has been treated for depression.

(g) Mr Chiu has tried to hurt himself: "head butting" in cells.

(h) Mr Chiu had not tried to end his life, however felt suicidal when he first became ill.

67. It was noted Mr Chiu had suffered from hyponatraemia since 1 September 2016 but it had resolved.[57]

68. At 9.57 pm, RN Grigore completed a Justice Health Health Problem Notification Form ("HPNF") addressed to CSNSW requesting a Risk Intervention Team ("RIT")

[55] Ex 1, Tab 77 (V5A) Investigation Report, [8].
[56] Ex 1, Tab 68 (V2) Reception Screening Assessment, p.309; Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020, [14(b)], Ex TMM-4.
[57] Ex 1, Tab 68 (V2) Justice Health Current Health Conditions, p.314, 315.

assessment.[58] It was recorded that it was Mr Chiu's first time in jail; he was a Chinese speaker and an interpreter was needed; he had situational distress, and he was vulnerable, mentally unwell and had charges of violence.[59]

69. At 10 pm, RN Grigore raised a Mandatory Notification for offenders at risk of suicide or self-harm ("MNF") and Mr Chiu was placed on RIT status.[60] The risk assessment stated that Mr Chiu had been recently treated by a psychiatrist for a mental health problem. He stated he had attempted to hurt himself in the cells by head butting, that he had never attempted to try to end his life but felt suicidal when he first became ill.[61]

70. Andrea Bowen reported "*At his screening he appeared to be calm, co-operative and future focused. Mr [Chiu] did not speak English very well and the interpreter service was used to conduct the screening interview*.[62]

71. A decision was made to transfer Mr Chiu to the Mental Health Screening Unit ("MHSU") for a period of observation and diagnostic clarification.

The Darcy Unit

72. Mr Chiu remained in the Darcy Unit between 26 October and 17 November 2016 awaiting an available bed in the MHSU.[63] Whilst in the Darcy Unit, Mr Chiu was regularly reviewed by a mental health nurse and psychiatrist Dr Sunny Wade ("Dr Wade").

73. On 28 October 2016, Mr Chiu was seen by the mental health nurse for a mental health assessment.[64] It was incorrectly noted that Mr Chiu needed a Mandarin interpreter; however, this was changed and it was noted he needed a Cantonese interpreter. It was noted he had had two previous admissions to psychiatric hospitals. It recorded that he has a diagnosis of delusional anxiety, that he is sensitive to psychiatric medication. Mr Chiu provided a contact number for his son, M but commented that his children were too busy to visit him. It was noted his behaviour was *"appropriate, co-operative, not agitated, friendly"* and his mood was fine. Mr Chiu *"was able to guarantee his personal safety, denying current self-harm*

[58] Ex 1, Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020 [14(c)], Ex TMM-5.
[59] Ex 1, Tab 68, Health Problem Notification Form, 27 October 2016, p.23; Tab 77 (V5A) Investigator Report, p.2.
[60] Ex 1, Tab 77 (V5A) Investigation Report [10]; Att 2; Tab 77 (V5A) Att 9, Report of Andrea Bowen, Manager, Offender Services & Programs, 8 February 2017.
[61] Ex 1, Tab 68 (V2) D&A and MH Summary of RSA for CSNSW pp.160-161; Tab 68 (V2) RSA Clinical Summary, pp.162-163; Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020 [14(d)], Ex TMM-6.
[62] Ex 1, Tab 77 (V5A), Att 9, Report of Andrea Bowen, Manager Offender Services & Programs, 8 February 2017; Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9]; Ex CM-3.
[63] The Darcy Unit accommodates remand (unsentenced) prisoners. Ex 1, Tab 70 (V2) Statement of Dr Adams, 13 April 2016, [8]-[9].
[64] Ex 1, Tab 68 (V2), Mental Health Assessment, 28 October 2016, pp.31-38.

and suicidal ideation, plans & intent".[65] A risk assessment indicated a low risk of suicide.[66]

74. On the same date, Mr Chiu's son, M called the MRRC and *"raised concerns about his fathers [sic] mental well being."*[67] This was followed by an email to Client Liaison on 28 October 2016 outlining Mr Chiu's history and requesting he be allocated to an *"area for mental health inmates and receiving [sic] the adequate mental care whilst in corrections".*[68]

75. On 29 October 2016, Mr Chiu was interviewed by the RIT comprised of Assistant Superintended Burgess, SAPO Ms Moffitt and Registered Nurse Fagaloa.[69] The interpreter service was used to conduct the interview, however it was noted it was *"difficult to conduct interview under these circumstances".* Further, *"the interpreter service was difficult when eliciting certain information as questions may have been lost in transition and several times the interpreter stated she could not understand question and/or hear properly inmate's response."*[70]

76. It was noted Mr Chiu was *"[a]lert, responsive and generally settled in context to being first time in gaol and charged with serious domestic violence related assault against his wife."*[71]

77. Mr Chiu's son, M, was consulted during the RIT interview for background information.

78. Mr Chiu's mental health history was noted including previously expressed suicidal ideation. He denied thoughts, plans and intent to deliberately self-harm and/or suicidality.[72]

79. Mr Chiu was assessed as being at low risk of immediate suicidality and deliberate self-harm due to him having future plans and he did not present as anxious nor upset.[73]

80. Mr Chiu was cleared from a safe cell,[74] and was required to remain in Darcy Unit until seen by a psychiatrist and a primary health or general practitioner.[75]

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[65] Ex 1, Tab 46 (V2) Case Note Report, 29 October 2016, p.1.
[66] Ex 1, Tab 77 (V5A) Att 5 Case Note Report.
[67] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9]; Ex CM-3, p.1; Tab 77 (V5A) Investigation Report, [13]; Att 5 Case Note Report.
[68] Ex 1, Tab 68 (V2) Email dated 28 October 2016 from M Chiu to Client Liaison, p.148.
[69] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.40; Tab 77 (V5A) Investigation Report [14], Att 2 Risk Intervention Case Notes; Att 5 Case Note Report; Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020 [14(e)]; Ex TMM-7, TMM-8, TMM-9.
[70] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9], Ex CM-3, p.2; Tab 77 (V5A), Att 9 Report of Andrea Bowen, Manager Offender Services & Programs, 8 February 2017.
[71] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9], Ex CM-3, p.2.
[72] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9], Ex CM-3. p.2.
[73] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019 [9], Ex CM-3. p.2.

81. On 31 October 2016, Mr Chiu was further assessed with the use of an interpreter.[76]

82. On 1 November 2016, Mr Chiu was referred for placement in the MHSU by Dr Wade for diagnostic clarification and a period of close observation.[77] A telephone interpreter was used. Dr Wade took detailed notes which included Mr Chiu's history. Dr Wade noted:[78]

    (a) Mr Chiu's mood was normal; he had no sleep problems, poor appetite, was tired, had no motivation, his concentration was okay and he had no problems with his memory; he stated he had no worries or concerns and no anxiety.

    (b) Mr Chiu stated he does not believe he has a mental illness.

    (c) Mr Chiu stated he recalled in the past wanting to die but *"no longer thinks that and can't recall why he had those thoughts".*

    (d) Dr Wade spoke to Mr Chiu's son, M.

    (e) The review indicated an onset of mood disorder/ anxiety episodes with first psychiatric contact in the last nine to ten months.

    (f) Some cognitive deficits on brief testing. He noted limitations due to the interpreter and low educational attainment.

    (g) No current evidence of major mood disturbance or psychosis, although Mr Chiu appeared anxious. He denied any thoughts of self-harm.

    (h) Mr Chiu's history of hyponatraemia and side effects to anti-psychotics.

83. An assessment was conducted on 4 November 2016 by a Cantonese speaking nurse. It was noted that Mr Chiu felt confused and anxious.[79]

84. On 8 November 2016, Dr Wade spoke to the St George Older Persons Mental Health Service and obtained information regarding Mr Chiu's admissions. Dr Wade requested further information from St George Hospital. It was noted Mr Chiu had sensitivities to psychotic medication and that no medications were currently charted.[80]

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[74] Ex 1, Tab 77 (V5A) Att 12, email dated 6 February 2017 from Hardeep Bhalia to Michael Green, Thomas Woods; Tab 77 Att 9 (V5A) Report of Andrea Bowen, Manager, Offender Services & Programs, 8 February 2017.
[75] Ex 1, Tab 77 (V5A) Att 9, Report of Andrea Bowen, Manager Offender Services & Programs, 8 February 2017; Tab 68 (V2) Health Problem Notification Form 29/10/2016 p.22; Tab 68 (V2), MRRC RIT Management Plan, p.30; Tab 45 (V2) Case Management File.
[76] Ex 1, Tab 68, Progress/Clinical Notes, p.41.
[77] Ex 1, Tab 77 (V5A) Att 9, Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017.
[78] Ex 1, Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11; Tab 68 (V2) Progress/Clinical Notes, p.43-50.
[79] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.51.
[80] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.51.

85. On 9 November 2016, Mr Chiu was reviewed by the Clinical Nurse Consultant, Marco Ree.[81] It is noted a Mandarin interpreter was used.

86. Mr Chiu was assessed on 10 November 2016.[82] During this assessment, Mr Chiu complained of dizziness and headache. He refused to attend the clinic.[83] It was recorded Mr Chiu *"speaks Mandarin"* which was later that day corrected to *"speaks Cantonese"*.[84] Mr Chiu was transferred to Westmead Emergency Department complaining of weakness, dizziness and being unable to mobilise. He was discharged post review.[85] Mr Chiu's sodium level was 131 and it was noted that this is not "*impressively low*". [86]

87. Mr Chiu was further reviewed on 11 and 12 November 2016.[87]

88. On 15 November 2016, SAPO Geraldine Veneziano ("Ms Veneziano") noted three messages had been left by Mr Chiu's son, daughter and son-in law. Ms Veneziano spoke to Mr Chiu's son-in-law who advised that Mr Chiu's family was concerned he had not received mental health treatment since his admission into custody.

89. Mr Chiu advised his son he was hearing his son's voice and that he had a premonition that he was going to die. Mr Chiu advised his son that he had given up and requested that he be left in gaol and had refused gaol visits. Ms Veneziano confirmed that Mr Chiu had been seen by Justice Health staff, they were aware of his mental health concerns, he was receiving treatment accordingly, and that he had been referred to the MHSU for more assertive mental health treatment.[88]

90. On the same day, a detailed review of Mr Chiu was conducted by Dr Wade. Mr Chiu's sodium level was 133. The review included a review with Dr Jones of St George Hospital. An interview of Mr Chiu was conducted with the assistance of a Cantonese telephone interpreter, and the following was noted:[89]

    (a) Mr Chiu could not sleep and had a reduced appetite.

    (b) Mr Chiu's mood was described as a "*bit confused, and unhappy, and hungry*"; he indicated "*I don't know when I can go home*". Mr Chiu was feeling anxious as there was no court date.

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[81] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.52-53.
[82] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.54.
[83] Ex 1, Tab 68 (V2) Daily Update – Patient in Hospital, p.108; Tab 68 (V2) Progress/Clinical Notes, p.55
[84] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.55.
[85] Ex 1, Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11.
[86] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.195.
[87] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.56.
[88] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9], Ex CM-3 p.3; Tab 77 (V5A) Investigation Report, [20]-[21]; Att ,5 Case Note Report, p.3.
[89] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.56-61; p.171, 173, 175; Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11.

(c) Mr Chiu does not want to share a cell as he "*would be worried they would do things to me*".

(d) Mr Chiu denied thoughts of harm to self or others.

(e) Mr Chiu "*currently presents as relatively mentally stable; medically stable as per GP (although note mild low sodium); although ongoing anxiety and some somatic complaints*." Mr Chiu was on no current medications due to a stable mental state and previous reported side effects.

Mental Health Screening Unit – 16 November 2016

91. On 16 November 2016, Mr Chiu was accepted into the MHSU sub-acute pods 19/20 as a one-out cell placement.[90]

92. On 17 November 2016 at 1.36 pm, Mr Chiu was admitted to the MHSU within the MRRC for further observation of his mental state and diagnostic clarification. Mr Chiu's treating doctor was Dr Johnathan Adams ("Dr Adams").[91]

93. The admission documentation noted a history of mental health issues, a history of medical issues and the need for a Cantonese interpreter.[92] A formal interview could not be conducted as they were unable to secure a phone interpreter. Physical observations were obtained and were normal. A second unsuccessful attempt was made to obtain an interpreter; an in-person interpreter was booked for the next day.[93]

94. On 18 November 2016, a joint reception interview was completed by Michelle Curran (SAPO) ("Ms Curran"), Dr Adams (psychiatrist) and Mason Mei (mental health nurse).[94] A face-to-face Cantonese interpreter was used.[95] The case note report notes the following:[96]

(a) Mental health issues arose 12 months prior to the alleged offence characterised by anxiety, paranoia and uncharacteristic violence with manic and disinhibited episodes.

[90] Ex 1, Tab 77 (V5A) Att 9, Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017; Tab 68 (V2) p.20; Case Notes, p.14, Tab 45; Tab 77 (V5A) Investigation Report [22]-[23], Att 2 CMF-MHSU Acceptance Form 16 November 2016 and 17 November 2016; Att 7; Att 9.
[91] Ex 1, Tab 77 (V5A) Att 9 Report of Andrea Bowen, Manager Offender Services & Programs, 8 February 2017; Tab 77 (V5A) Att 9 Case Note Report, 18 November 2016; Tab 68 (V2) Justice Health form, p.18.
[92] Ex 1, Tab 68 (V2) Health Problem Notification Form, 17 November 2016, p.15.
[93] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.62.
[94] For the purposes of the reception interview, see Ex 1Tab 30A (V1) Statement of Michelle Curran dated 1 December 2019, [6].
[95] Ex 1, Tab 77 Att 9 (V5A) Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017; Tab 77 Att 9 (V5A) Report of Michelle Curran, Services and programs Officer MHSU, 8 February 2017.
[96] Ex 1, Tab 77 Att 9 (V5A) Case Note Report, 18 November 2016; Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [9]; Ex CM-3, p.4; Tab 68 (V2) Progress/Clinical Notes pp.63-67; Tab 77 (V5A) Investigation Report [24], Att 5; Att 9.

(b) Mr Chiu has been case managed via St George CMHT.

(c) Mr Chiu as had two psychiatric admissions due to uncontained behaviour.

(d) It was Mr Chiu's first time in custody.

(e) Mr Chiu presented to interview as polite, settled and co-operative and denied any mental health issues or associated history.

(f) He was unsure as to why he had been transferred to MHSU but was coping at the time and mixing in the pod without concern.

(g) Mr Chiu denied any deliberate self-harm or suicidal history.

(h) Mr Chiu denied any current psychotic phenomena, however the psychiatrist queried possible cognitive issues. A full work up would be conducted.

(i) Mr Chiu stated he had not received any contacts or visits from family since entering custody, which was in contradiction to OIMS information that his last visit was on 16 November 2016.

(j) Nil immediate risk issues were identified and Mr Chiu would remain in the MHSU for further monitoring and medical work-up.

95. Following the interview, Ms Curran called Mr Chiu's son, M who provided a history of Mr Chiu's mental health and raised a concern that at times Mr Chiu appeared confused as he seemed unable to recall receiving visits from his family.[97]

96. Mr Chiu was reviewed on each of 18, 19, 20 and 21 November 2016. Some of these were file based ward rounds.[98]

Admission to Westmead on 22 November 2016

97. On 22 November 2016, Mr Chiu was transferred to Westmead Emergency Department after complaining of dizziness with an onset of central chest pain. He was discharged and was returned to the MRRC on 23 November 2016. [99] Mr Chiu's sodium level was 130.[100]

[97] Ex 1, Tab 77 Att 9 (V5A) Case Note Report, 18 November 2016; Tab 77 (V5A) Investigation Report, [25]; Att 5.
[98] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.67-68.
[99] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019. [9], Ex CM-3. p.5; Tab 68 (V2) Progress/Clinical Notes p.69; p.109; p.150, p.152; p.164; Tab 68 (V2) Letter dated 29 November 2016 from Westmead Hospital, p.13; Tab 68 (V2) Request for unplanned transfer for healthcare 24 November 2016, p.14.
[100] Ex 1, Tab 72 Westmead Hospital Patient Record 22/11/16 p.32; Tab 68 St George eDischarge p.304-305.

Return to MSHU on 24 November 2016

98. Mr Chiu was further reviewed in the MHSU on 24 November 2016.[101]

99. On 25 November 2016, Mr Chiu was reviewed by Dr Adams with the assistance of a telephone interpreter as an in-person interpreter was unavailable.[102] Mr Chiu's mood was reported as "*very happy*" and he was happy to have seen his son. Mr Chiu had problems sleeping, but his appetite was good. He had no ideas of deliberate self-harm or suicide. Mr Chiu stated he felt safe. Dr Adams noted there was no clear evidence of psychosis, that his mood was likely low but there were varying reports and that he was not confused or delirious. A general practitioner's opinion regarding the hyponatraemia and a full neuropsychology review was needed. Mr Chiu's sodium level was 131.[103]

100. On 29 November 2016, Mr Chiu refused to attend an outpatient appointment.[104]

101. On 2 December 2016, Mr Chiu was seen by a general practitioner and underwent a further comprehensive review by Dr Calum Smith ("Dr Smith") with the assistance of an interpreter.[105] It was noted Mr Chiu was future oriented and denied thoughts of deliberate self-harm or suicide.[106] Mr Chiu's sodium level was recorded as above 130 which was noted as *"not likely to be having chemical effect"*.[107]

102. Mr Chiu was reviewed on 4, 5, 6 and 7 December 2016.[108] These reviews are all outlined in the Justice Health notes which are in the brief of evidence.

103. On 8 December 2017, Dr Adams conducted a review of Mr Chiu via a telephone interpreter.[109] Dr Adams spoke to M, A and A's husband. Dr Adams noted that Mr Chiu had a stable presentation and was not currently on psychotropic medication. Mr Chiu's children reported a significant improvement over recent weeks. Dr Adams noted that Mr Chiu had clearly stabilised without medication. There were no clear symptoms of psychosis or mood disorder now. Dr Adams noted an underlying cognitive functioning needs assessment and Mr Chiu's deterioration of mental health prior to the onset of aggression seemed to be secondary to psychiatric medication and antidepressant side effects. Dr Adams also queried an organic component. Mr Chiu was to remain in the MHSU for now.

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[101] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.70.
[102] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.70-73.
[103] Ex 1, Tab 68 (V2) Transfer to External Hospital, p.167.
[104] Ex 1, Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11; Tab 67 (V2), Case file, pp.13-14; Tab 68 (V2) Letter dated 29 November 2016 from Westmead Hospital, p.13; Tab 68 (V2) Request for unplanned transfer for healthcare 24 November 2016, p.14.
[105] Ex 1, Tab 68 (V2) Progress/Clinical Notes, pp.74-82.
[106] Ex 1, Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11; Tab 66, 28 April 2017.
[107] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.75.
[108] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.82.
[109] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.83-85.

104. Dr Adams requested a referral to a CSNSW neuropsychologist following concern about a possible underlying cognitive decline. This appointment had not occurred as at the time of Mr Chiu's death.[110]

105. Mr Chiu was reviewed on 9 December 2016,[111] 14 December 2016,[112] 20 December 2016,[113] and 21 December 2016.[114]

106. On 22 December 2016, Mr Chiu appeared by AVL at Central Local Court and was remanded in custody. [115]

107. There were further reviews on 25 December 2016,[116] and 26 December.2016.[117] .

108. Mr Chiu was reviewed on 27 December 2016.[118] Mr Chiu complained he had trouble sleeping and requested medication to help him sleep; further, he could not eat as he did not like the food. Mr Chiu denied self-harm, suicidal thoughts or psychotic symptoms. He was polite and co-operative and whilst he appeared distressed from poor sleep, no psychotic symptoms were observed.

109. On 29 December 2016, Mr Chiu was reviewed by Dr Adams with an interpreter. Dr Adams noted there were no symptoms of psychosis or mood disorder; however, Dr Adams noted the interpreter stated that he believed Mr Chiu was speaking in an illogical manner. Dr Adams prescribed a food supplement due to weight loss. Mr Chiu was not prescribed sleeping tablets due to previous reported side effects and confusion.[119]

110. There were further reviews on 30 December 2016,[120] 4 January 2017,[121] 5 January 2017,[122] and 6 January 2017.

111. Mr Chiu was further reviewed by Dr Adams on 6 January 2017 with a telephone interpreter.[123] Dr Adams also spoke to the general practitioner, Dr Yee who had been monitoring Mr Chiu. Dr Adams unsuccessfully attempted to contact Mr Chiu's son, M. Dr Adams suggested that there be ongoing monitoring of Mr Chiu's sodium levels. Dr Adams considered a neuropsychological assessment was still required

[110] Ex 1, Tab 77 (V5A) Att 9, Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017.
[111] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.86.
[112] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.87.
[113] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.87.
[114] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.87.
[115] Ex 1, Tab 77 (V5A) Investigation Report, [1]; Tab 42 (V2) Statement of Alex Simes, 13 February 2019, [22].
[116] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.87.
[117] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.88.
[118] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.88.
[119] Ex 1, Tab 68 (V2) Progress/Clinical Notes p.89-91; Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11.
[120] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.92.
[121] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.92.
[122] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.92.
[123] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.93-95.

but was not urgent and could be completed elsewhere given Mr Chiu's stable clinical presentation. Dr Adams noted "*no evidence of MHD*". Mr Chiu was to continue with no medication. Dr Adams requested Mr Chiu be provided Sustagen due to weight loss and poor diet.[124]

112. There continued to be almost daily reviews of Mr Chiu on 12 January 2017,[125] 13 January 2017,[126] 14 January 2017,[127] 16 January 2017[128] and 17 January 2017.[129]

113. On 12 January 2017, Mr Chiu's sodium level was 138 and it was noted his sodium level "*has normalised*".[130]

114. On 17 January 2017, the plan to discharge Mr Chiu from MHSU was explained to his family.[131] Dr Smith spoke with Mr Chiu's son, M who reportedly said his father's presentation was *"very good"* and Dr Smith recorded that Mr Chiu was "*his old self again*".[132]

115. Dr Adams reviewed Mr Chiu again on 20 January 2017.[133] Mr Chiu had remained settled, had no symptoms of any mental illness, no problematic behaviour, was compliant with routine and was not on any medication. It was noted his sodium levels had normalised. Dr Adams concluded that Mr Chiu was suitable for discharge and noted that neuropsychological testing was awaited. Dr Adams noted there needed to be a discussion with CSNSW regarding the most appropriate placement given Mr Chiu's vulnerability.

Decision to Discharge from MHSU – 20 January 2017

116. On 20 January 2017, a decision was made to discharge Mr Chiu from the MHSU to the MAIN. On 31 January 2017, a joint discharge plan was completed by Offender Services and Programs ("OS&P") and Justice Health.[134]

117. At the time of discharge, it was noted *"there were no significant concerns regarding Mr Chiu's risk to himself or others. It was noted Mr Chiu had not been prescribed any medication during his period of observation in the MHSU with no recommendation for medication upon discharge from the MHSU and was considered appropriate by the treating team to be discharged to the MAIN."* [135]

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[124] Ex 1, Tab 68 (V2) Individual Patient Use Form, p.136.
[125] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.95.
[126] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.95-96.
[127] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.96.
[128] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.97-98.
[129] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.99.
[130] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.100.
[131] Ex 1, Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11.
[132] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.99-100.
[133] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.100.
[134] Ex 1, Tab 77 (V5A) Att 9, Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017.
[135] Ex 1, Tab 77 (V5A) Att 9, Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017.

118. While Mr Chiu remained in the MHSU he continued to be reviewed. He was reviewed on 21 January 2017,[136] 27 January 2017,[137] 28 January 2017[138] and 31 January 2017.[139]

Discharge Plan – 31 January 2017

119. On 31 January 2017, Mr Chiu's discharge plan was prepared and finalised. The MHSU Discharge Plan noted the following:[140]

(a) In the section titled "Alerts", yes was noted for "Self Harm" and "Suicidality". A question mark was placed beside "Brain Damaged", and a comment "awaiting psychometric testing".

(b) In the "Summary of Illness" section, "Acute/Chronic Confusional State" was recorded.

(c) In the housing placement section, "one out cell placement" had been inserted and then crossed out and "Normal cell placement" had been handwritten.

(d) It was noted that ongoing mental health supported was required.

(e) A comment stated that "*During his admission, Mr [Chiu] was regularly seen by his treating psychiatrist (ADAMS and SMITH) and mental health nurses, alongside the assistance of a Cantonese interpreter. Mr [Chiu] was not prescribed psychiatric medication during his admission to which he stabilised in mental health. Mr [Chiu] was cleared from the MHSU by his treating psychiatrist on the 20/1/2017 due to his current presentation. Mr [Chiu] was recommended a one out cell placement due to his vulnerability in regards to age and non-English speaking background".* There is then handwritten comment stating: *"** SMITH changed cell placement to NCP @ 31.1.17".*

(f) It was noted Mr Chiu "*[c]urrently denies any SH/S thoughts or plans and able to guarantee his safety".*

(g) It was noted that: "*Psychiatrist has raised concerns about him potentially being a vulnerable inmate due to age and limited English."*

120. The change in housing placement from *"one out placement"* to *"normal cell placement"* was made by Dr Smith and initialled by RN Benjamin Vafo'ou on 31 January 2017.[141]

[136] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.100.
[137] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.101.
[138] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.101.
[139] Ex 1, Tab 68 (V2) Progress/Clinical Notes, p.101.
[140] Ex 1, Tab 30A (V1) Statement of Michelle Curran dated 1 December 2019, [10]; Ex MC-2, OIMS Case Note 31/1/2017; Ex MC-3; Tab 62 (V2) MHSU Discharge Management Plan; Tab 68 p.6.
[141] Ex 1, Tab 77 (V5A) Investigator Report, [34].

121. There was evidence at the inquest from Dr Smith as to why this was done.

122. The MHSU Discharge Management Plan noted that Mr Chiu was waiting for psychometric testing and required ongoing mental health support but was cleared for normal cell placement.[142]

Review

123. A mental health review was scheduled with Dr Adams on 3 February 2017. This did not take place as the telephone lines were down and the interpreter service was not able to be accessed.[143]

Transfer to Pod 12 Goldsmith "G" Block – 4 February 2017

124. On Saturday 4 February 2017, once a bed was available, Mr Chiu was discharged from the mental health unit and transferred to cell 404 in Pod 12 of Goldsmith "G" Block within the general population.[144] Mr Chiu was booked into the MRRC reception at 9.01 am and arrived at Pod 12 at about 1.30pm.[145] Cell 404 was located on the top landing within Pod 12 and was shared with two other inmates, Prisoner K and Prisoner A.[146]

125. When Mr Chiu was moved to Pod 12 on 4 February 2017, the receiving officer, Harbir Singh ("SCO Singh"), checked the case file for any threat assessment and the Inmate Profile Document for any alerts. Mr Chiu was placed *"in best available cell 404 with two other inmates"* and it was noted Mr Chiu was *"cleared by MH assessment team to move".*[147] SCO Singh stated:[148]

> *"I went through the case file and didn't find anything concerning. Inmate was placed on Normal Cell Placement by Justice Health. Inmate was then placed in cell 404. There was no concern raised to me by any MH staff or Justice Health staff regarding Inmate [Chiu].*
> *I didn't notice anything of concern regarding inmate before ceasing duty."*

126. There was only one vacant bed, on the top landing in cell 404. As Mr Chiu did not speak English, they had an inmate from Pod 11 translate to Mr Chiu where he was to be housed. Officers knew Mr Chiu did not speak English and sought to place him in Pod 11 where there were inmates he could converse with; however, there were no

[142] Ex 1, Tab 30A (V1) Statement of Michelle Curran dated 1 December 2019, Ex MC-3.
[143] Ex 1, Tab 77 (V5A) Investigator Report, [41]; Att 9, Att 11.
[144] Ex 1, Tab 77 (V5A) Att 9, Report of Andrea Bowen, Manager Offender Services & Programs, 8 February 2017; Tab 77 (V5A) Att 9, Report of Anjah Govender, Manager Crisis/Mental Health, 8 February 2017; Tab 77 (V5A) Att 12, Email dated 6 February 2017 from Hardeep Bhalia to Michael Green, Thomas Woods.
[145] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Vu Chinh Nguyen, 13 February 2017.
[146] Ex 1, Tab 77 (V5A) Investigator Report, [48].
[147] Ex 1, Tab 77 (V5A) Att 12, Officer Report Form, Harbir Singh, 16 February 2017.
[148] Ex 1, Tab 77 (V5A) Att 12, Officer Report Form, Harbir Singh, 9 February 2017.

vacancies. Mr Chiu was informed they would try to move him to Pod 11 the following day.[149]

127. There were no issues raised regarding Mr Chiu overnight on the evening of 4 February 2017.[150]

128. Mr Chiu was to be seen by the Justice Health Outreach staff on 11 February 2017 (being seven days post-discharge from MHSU).[151]

The Incident Causing Death

129. On 5 February 2017, Senior Correctional Officer ("SCO") Gary Kukreja, First Class Correctional Officer Rajeev Rampal and Probationary Correctional Officer Susan Rowan were rostered in Pod 12.[152]

130. Breakfast items were delivered at about 8.35 am and Mr Chiu's cell was unlocked at 8.40am. The next seven minutes were captured on CCTV footage.[153]

131. At 8.46.34 am, Mr Chiu turned and walked towards the stairs. He stopped halfway along and placed his right foot on the bottom of the three rails and took hold of the top railing with both hands, pulled himself up and placed both feet on the second railing as he turned to face towards the cells with his back to the open space.

132. At 8.46.41 am, Mr Chiu is seen to be momentarily seated, hanging backwards over the top railing which he held with both hands.

133. At 8.46.42 am, Mr Chiu appears to let himself go and he fell backwards, turning in the air so his right side was facing the floor. Mr Chiu landed head first on the concrete floor on the ground level.

134. The distance Mr Chiu fell was 3.62 metres.[154]

135. The following has been noted about Mr Chiu's behaviour whilst receiving first aid treatment:

(a) Mr Chiu was combative.[155]
(b) Mr Chiu was reported to be agitated and uncooperative.[156]
(c) Mr Chiu required physical restraint to hold him still, to allow medical staff to administer treatment.[157]
(d) Mr Chiu *"was uncooperative and constantly tried to move and get up."*[158]

[149] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Vu Chinh Nguyen, 13 February 2017.
[150] Ex 1, Tab 77 (V5A) Att 12, Investigator Report, [49].
[151] Ex 1, Tab 68 (V2) Overview Form for Suicide/Attempted Suicide/death, p.5.
[152] Ex 1, Tab 77 (V5A) Investigation Report, [50].
[153] Ex 1, Tab 77 (V5A) Investigation Report, [60].
[154] Ex 1, Tab 77 (V5A) Investigation Report, [103].
[155] Ex 1, Tab 9 (V1) NSW Police Force Report 7 February 2017.
[156] Ex 1, Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017.
[157] Ex 1, Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017.

(e) Officers *"began to help hold him still as the medical team were now there treating him"."*[159]

136. When ambulance paramedics attended, it was necessary to administer Mr Chiu a sedative for agitation. Once sedated, Mr Chiu was transported by ambulance to Westmead.[160] The ambulance report noted "no **immediate** life threat" [emphasis added] but "altered conscious state; behaviour agitated".[161]

137. The incident was reported to police at 10 am on 6 February 2017.[162]

Transfer to Westmead Hospital

138. Mr Chiu was escorted to Westmead Hospital by Correctional Officers Byron Aperocho ("CO Aperocho") and Mason Talolua ("CO Talolua").[163]

139. The Westmead admission documentation notes Mr Chiu's admission time was 10.11 am and records "Intended Overnight".[164]

140. Once at Westmead Hospital, Mr Chiu was placed in resuscitation room number 1, moved to get a CT scan and then returned to room number 1. CO Aperocho and CO Talolua were then told by a doctor that Mr Chiu "*received serious injuries and would be required to stay in hospital*".[165]

141. Mr Chiu's sodium levels were monitored. Upon admission at 10.14 am, his sodium level was 134.[166]

142. Mr Chiu underwent a series of X-rays and CT scans. CT scans at 5.28 pm showed that Mr Chiu's initial cerebral haemorrhages were expanding and increasing in size.[167]

143. At 6.30 pm Mr Chiu was moved to intensive care. COs Aperocho and Talolua were aware of this.[168]

144. At 8.25 pm, CSNSW at MRRC were informed that Mr Chiu had been transferred to the Intensive Care Unit ("ICU"). Michael Green, who was the Manager of Security at

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[158] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Christopher Rath, 5 February 2017.
[159] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Susan Rowan, 5 February 2017.
[160] Ex 1, Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017; Tab 71 (V3) Ambulance Electronic Medical Record, p.2.
[161] Ex 1, Tab 71 (V3) Ambulance Electronic Medical Record p.3.
[162] Ex 1, Tab 9 (V1) NSW Police Force Report 7 February 2017.
[163] Ex 1, Tab 77 (V5A) Investigation Report, [68].
[164] Ex 1, Tab 72 (V3) Admission Registration Form, p.26.
[165] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Byron Aperocho, 7 February 2017; Incident Report, Mason Talolua, 9 February 2017.
[166] Ex 1, Tab 72 (V3) Westmead Hospital Patient Health Record 5 February 2017, pp.195-199.
[167] Ex 1, Tab 72 (V3) Discharge Transfer Documents, p.29.
[168] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Byron Aperocho, 7 February 2017; Incident Report, Mason Talolua, 9 February 2017.

the MRRC ("Mr Green"), reports that advice from the treating doctor was to contact next of kin.[169]

145. At 8.40 pm Mr Chiu's son, M was contacted.[170]

146. At 9.15 pm, Mr Chiu became unresponsive and was intubated.[171]

147. A cerebral CT scan was performed at about 9.35 pm, from which it was noted that Mr Chiu needed urgent surgery.[172] He was taken urgently to theatre afterwards, but was comatose thereon. [173]

148. At 9.40 pm Mr Chiu's son, M attended Westmead Hospital.[174]

149. At 10 pm, Mr Chiu underwent emergency surgery and returned to the ICU at 2:25am.[175] Mr Chiu's son visited his father at 2.30am.[176]

150. During the course of 6 February 2017, family members visited Mr Chiu.[177]

151. At 6 pm the medical team conducted a family conference.[178]

152. At about 6.55 pm, Mr Chiu's life support was turned off. Mr Chiu was formally declared life extinct at 7.13pm.[179]

153. The Report of Death of a Patient to the Coroner was completed by Dr Kathirgamanathan, and recorded Mr Chiu's "*cause of death was a traumatic brain injury".*[180]

154. In her post mortem report, Dr Van Vuuren provided the opinion that the direct cause of death was head injuries.[181]

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[169] Ex 1, Tab 77 (V5A) Investigation Report [71]; Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017.
[170] Ex 1, Tab 77 (V5A) Investigation Report [71]; Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017.
[171] Ex 1, Tab 72 (V3) Discharge Transfer Documents, p.38; Tab 8 (V1) Statement of Tesoriero, [133].
[172] Ex 1, Tab 72 (V3) Westmead Hospital Medical Imaging, p.18; 20.
[173] Ex 1, Tab 72 (V3) Discharge Transfer Documents, p.29.
[174] Ex 1, Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017.
[175] Ex 1, Tab 72 (V3) Emergency Theatre Booking Form, p.125; Tab 77 (V5A) Investigation Report [73]; Tab 77 (V5A) Att 12, Report of Michael Green, 7 February 2017.
[176] Ex 1, Tab 77 (V5A) Investigation Report, [73].
[177] Ex 1, Tab 77 (V5A) Investigation Report, [74]-[76].
[178] Ex 1, Tab 72 (V3) Progress/Clinical Notes, p.118.
[179] Ex 1, Tab 1 (V1) Report of Death to the Coroner, 6 February 2017, p.3; Tab 4 (V1) Limited Autopsy Report, 9 February 2017, p.3; Tab 72 (V3) Report of Death Associated with Anaesthesia/Sedation, p.27; Tab 77 (V5A) Investigation Report [76] .
[180] Ex 1, Tab 1 (V1) Report of Death to the Coroner, 6 February 2017, p.3; Tab 4 (V1) Limited Autopsy Report, 9 February 2017, p.3.
[181] Ex 1, Tab 4 (V1) Limited Autopsy Report for the Coroner dated 19 October 2017. p.3.

Issues

155. There was no controversy surrounding Mr Chiu's identity or the time, place and medical cause of Mr Chiu's death. The issues involved the manner or circumstances of Mr Chiu's death. These issues at the Inquest involved both Justice Health and CSNSW separately and conjointly, and were as follows:

a. Whether Mr Chiu's death was suicide, an attempt at self-harm or an accidental fall.

Justice Health

b. The adequacy of Mr Chiu's care and treatment whilst at the MRRC.

c. The appropriateness of the decision on 20 January 2017 to discharge Mr Chiu from the MHSU to the MAIN (being a remand unit or "pod").

d. The appropriateness of Mr Chiu's transfer on 4 February 2017 to the MAIN, in circumstances where the previous day's mental health review did not proceed due to a lack of interpreter and Mr Chiu was yet to undergo the recommended neuropsychological assessment.

e. The availability of interpreters for medical consultations.

CSNSW and Justice Health

f. The appropriateness of the decision to change Mr Chiu's cell designation from one out to a normal cell placement on 31 January 2017.

CSNSW

g. The CSNSW investigation report, with reference to the report completed by the relevant officer, indicates that the officer who reviewed Mr Chiu's reception into the main gaol *"didn't find anything concerning".*

I find that the evidence indicates that the CSNSW officer had reviewed Mr Chiu's Inmate Profile Document, the MHSU Discharge Plan and the HPNF dated 31 January 2017. Accordingly, he had appropriately relied upon Justice Health's treating team's decision that Mr Chiu was fit for discharge into the main prison population.

h. The appropriateness of the decision to place Mr Chiu in a pod where no other inmates spoke Cantonese such that he had very limited means of communication.

i. Why upon entering corrections not all paperwork was correctly and accurately filled in, including why Mr Chiu's IIO form was not filled in with

the assistance of an interpreter, resulting in obvious deficiencies in the information collected. For example, Mr Chiu's next of kin details were not recorded in the OIMS and remained inadequately documented throughout his custody as a result of a Checking Officer Assessment not occurring when Mr Chiu was received at MRRC.[182]

j. Why Mr Chiu's family was not informed of his injuries or the emergency event on 5 February 2017 until 8.40 pm that evening, despite him arriving at the Westmead Hospital at 10 am that morning. The consequence of a lack of timely notification was that Mr Chiu's family was deprived of the opportunity to visit him whilst he remained conscious.

The Evidence

156. The brief of evidence includes Mr Chiu's CSNSW records and medical records from both Justice Health and the practitioners treating Mr Chiu prior to his incarceration. There are a number of CSNSW policy documents which existed as at February 2017 in the brief of evidence, and the inquest heard evidence as to how some of those policies have since been amended.

157. Statements were made by, and evidence was taken from, Mr Chiu's treating doctors whilst at MRRC: Dr Smith, Dr Sarah-Jane Spencer and Dr Adams.

158. The records kept by Justice Health and the steps taken by the treating team were reviewed by three experts, all of whom are psychiatrists: Dr Anthony Samuels ("Dr Samuels"), Professor Matthew Large ("Pr Large") and Dr Danny Sullivan ("Dr Sullivan").

159. Their opinions, as expressed in their respective reports, were discussed when they gave evidence in conclave during the inquest. They focused on the treatment received by Mr Chiu whilst at the MRRC and whether it was appropriate to discharge him from the MHSU on 4 February 2017.

160. In addition to the statements taken from both inmates and CSNSW officers regarding the events of 5 and 6 February 2017, two witnesses from Corrective Services provided a statement and gave evidence at the inquest: Mr Green (Acting Governor/ Manager of Security, MRRC, Silverwater) and Terrence Murrell ("Mr Murrell") (General Manager of the State-wide Operations Branch of the Custodial Corrections Division of CSNSW).

The Chiu Family

161. Both Mr Chiu's daughter and son attended the inquest. Mr Chiu's daughter and son and Mrs Chiu provided statements that were included in the brief of evidence. Mrs Chiu did not attend the inquest as she remains traumatised and grief-stricken that her beloved husband died when all the family wanted was for him to receive mental health intervention rather than imprisonment. The nature and prosecution

[182] Ex 1, Tab 77 (V5A) Investigator Report, Att 32, Pt 9.2, p.15-16.

of the charges and the court proceedings were issues outside of the scope of this inquest.

162. Mr Chiu's daughter and son each gave a family statement in the inquest and it is apparent that they, like their mother, have been gravely affected by Mr Chiu's death and the circumstances surrounding it. Mr Chiu was a loved husband, father and grandfather. He came from a humble background and his children spoke of Mr Chiu's selfless commitment in providing for his family and often working 12 hour days, six days a week until his retirement. Mr Chiu would help with his grandchildren and had happy and strong bonds with them.

163. Mr Chiu's son and daughter spoke of how Mr Chiu changed from the wise and confident man they had known for over 30 years to becoming like a shell of himself, due to the grip of his anxiety and depression. They spoke of their deep loss and sadness in losing their father and their children losing their grandfather. They visited Mr Chiu every week and noticed he had become settled in the MHSU and he felt safe and did not want to leave that unit and had become anxious about doing so. They spoke of how the delay of nearly 12 hours before being told about his fall and his injuries has caused them great trauma.

164. The Chiu family has been left traumatised by a train of events outside of their control resulting from their father's deteriorating mental health coming into collision with the criminal justice system. I acknowledge their trauma and loss and extend my sincere condolences but I suspect my words give them little, if any, comfort.

Mr Chiu was a Vulnerable Prisoner

165. Mr Chiu was, at age 67, an older prisoner, he had never previously been in any trouble with the police, and this was his first time in prison. He was a migrant to Australia who had worked hard all of his life. He spoke very little English. He suffered from anxiety and depression. For these reasons he was a vulnerable prisoner. From reading his CSNSW and Justice Health records, Mr Chiu was a quiet prisoner; he kept to himself, he caused no trouble and it would appear that he had not been the subject of any unwanted attention from other prisoners. Although it pained him greatly that he had hurt his wife, Mr Chiu received significant support from his children and they were able to advocate for his care.

166. When Mr Chiu was received into the MRRC on 26 October 2016 the need for a mental health screening was appropriately raised, however Mr Chiu was unable to be immediately admitted into the MHSU. He remained in the Darcy Unit without any adverse events for a period of three weeks before being transferred.

167. When Mr Chiu returned to the MAIN pod from the MHSU, CSNSW officers appreciated Mr Chiu's need to be with prisoners with whom he could communicate; however, following their inquiries it was apparent that Mr Chiu could not be accommodated that day in a pod with prisoners who spoke Cantonese. Mr Chiu was advised by CSNSW, with the assistance of another prisoner, that although there was no placement available to him that day in a pod with prisoners

who spoke Cantonese, there hopefully would be a placement the following day. Mr Chiu indicated that he understood this. Despite his communications being limited due to language, Mr Chiu was understood and other prisoners appeared to accommodate his requests.

168. One prisoner described that after Mr Chiu returned to the G Block he *"had to point to things, or only knew a few words, or was very limited. And there wasn't really any, any other Chinese people in that, in that pod. Or even maybe one or two that could translate for him…it was very hard to understand… him".*[183] Another prisoner said Mr Chiu *"was very quiet 'cause he couldn't hardly speak English, I didn't make much of a conversation out of him."*[184] He communicated by pointing.[185] On the Saturday evening Mr Chiu wanted the light left on and his cell mates *"left it on all night for him".*[186]

169. Before Mr Chiu was transferred to MHSU he was accommodated in a single cell called a "one-out" cell, as he was considered a potential risk of harm to others. Whilst Mr Chiu was in the MHSU he was housed in a one-out cell. As such, for the entirety of his period in the MRRC (until the night of 4 February 2017) Mr Chiu was not required to share a cell. Mr Chiu's son said that Mr Chiu told him in their conversations that he wanted his own cell. The night of 4 February 2017 was the first night on which Mr Chiu shared a cell. It is not known why he asked for the light to be left on all night or whether he usually slept with the light on even in his own cell.

170. Whilst Mr Chiu was in the G Block from 4 to 5 February 2017 there was no apparent event triggering his self-harm.

Mr Chiu's intentions – an accidental or deliberate fall

171. Between 26 October 2016 and 17 November 2016, Mr Chiu was accommodated in the Darcy pod awaiting an admission to the MHSU and he was regularly reviewed by mental health nurses and a psychiatrist, Dr Wade.

172. On 27 October 2016, Mr Chiu told RN Grigore that during his first night in custody he tried to hurt himself by head butting the wall. Mr Chiu denied ever attempting to end his life but reported that he did feel suicidal when he first became ill.[187]

173. On 1 November 2016, Mr Chiu told Dr Wade that in the past he had wanted to die but "*no longer thinks that and can't recall why he had those thoughts*".[188]

[183] Ex 1, Tab 77 (V5A) Att 19, Interview with Prisoner A, 6 February 2017 Q 15, Q20.
[184] Ex 1, Tab 77 (V5A) Att 19, Interview with Prisoner K, 5 February 2017 Q 15-21.
[185] Ex 1, Tab 77 (V5A) Att 19, Interview with Prisoner K, 5 February 2017 Q 27-31.
[186] Ex 1, Tab 77 (V5A) Att 19, Interview with Prisoner K, 5 February 2017 Q 35-36.
[187] Ex 1, Tab 68 (V2) D&A and MH Summary of RSA for CSNSW, pp.160-161; Tab 68 (V2) RSA Clinical Summary, pp.162-163; Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020 [14(d)]; Ex TMM-6.
[188] Ex 1, Tab 77 (V5A) Investigation Report Letter from Chief Executive Gary Forrest to Commissioner, 28 April 2017, [28], Att 11; Tab 68 Progress/Clinical Notes pp.43-50.

174. On 15 November 2016, Mr Chiu's son-in-law reported to SAPO Ms Veneziano that Mr Chiu was saying he could hear his son's voice and that he had a premonition that he was going to die, that he had given up and requested that he be left in gaol and had refused gaol visits.[189]

175. I find that whilst Mr Chiu was at the MHSU, he never indicated that he had any intention to self-harm and there was no basis upon which Justice Health staff would have suspected he was at such a risk should he be transferred from the MHSU to G Block in the MAIN.

176. The CCTV footage shows the incident and though it occurred very unexpectedly, it occurred within five minutes of Mr Chiu leaving his cell and going downstairs with a cup and perhaps a carton of milk or cereal. He returned upstairs and looked into the cell next door. One of his cellmates was about to clean the cell with a bucket and broom. Mr Chiu looked in his cell and then turned to the railing on the landing by the stairs. He stepped onto the bottom railing and pulled himself up with his hands, onto the top railing where he sat with both feet on the second railing and looking in the direction of the cell. Within three seconds of taking that position, Mr Chiu appears to release his hands, tumbling backwards and turning in the air. He landed head first onto the concrete floor on the ground level.

177. Looking at the CCTV footage alone is insufficient to determine whether Mr Chiu had simply lost his balance or whether he deliberately let himself flip backwards off the landing.

178. As soon as the incident occurred, a prisoner who spoke Mandarin (rather than Mr Chiu's spoken language, Cantonese) attended the scene and told police that Mr Chiu was saying *"I want to die".* However, that prisoner said it was not very clear because he also thought Mr Chiu was trying to get up. The prisoner told Mr Chiu not to struggle and to let the doctors help him. He thought Mr Chiu was confused.[190] At the time, the prisoner was telling the Justice Health nurses that Mr Chiu was saying *"I want to kill myself".*[191] Although Mr Chiu was agitated, resisted medical assistance and required sedation, little weight can be placed on that to ascertain his intentions given his agitated state and the injuries he had suffered.

179. Prior to his incarceration, Mr Chiu did have a history of suicidal thoughts. On 9 September 2016, whilst at St George Hospital it was noted: *"Mr [Chiu] remains fixated that the nurse he assaulted was going to call the police, and he has expressed a desire to die, asking Dr Jones for a lethal injection.*"[192]

180. On 21 July 2016, Mr Chiu's son, M told a registered nurse at the hospital that after some weeks of feeling anxious Mr Chiu said *"what's the point living like this".* Mr Chiu's son said that Mr Chiu's mother had died by suicide, by jumping from her

[189] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019 [9], Ex CM-3 p.3; Tab 77 (V5A) Investigation Report [20-21] Att 5 Case Note Report p.3.
[190] Ex 1, Tab 77 (V5A) Att 19, Interview with Prisoner Z, 6 February 2017, Q94-96.
[191] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Christopher Rath, 5 February 2017.
[192] Ex 1, Tab 76 (V4) p.9.

unit balcony, and the family were worried that Mr Chiu might do the same (although he had not been expressing any suicidal thoughts or plans).[193]

181. On 17 September 2016, the St George Hospital care plan noted:[194]

> *Suicidal Ideation/Thoughts of Harming Self*
>
> *Mr [Chiu] expresses lack of opportunity to harm himself in the ward. However may attempt to jump off from the building if he goes outside.*
>
> - *Keep away all items that he may potentially use to harm himself.*
> - *Continually assess his risk and maintain on 1:1 special obs.*
> - *Monitor his thoughts and feelings and allow patient to ventilate his fears*
> - *Express hope and positive outlook towards the future.*
> - *Maintain safety.*

182. I note that the information set out above was not conveyed to either CSNSW or Justice Health.

183. Those assisting me sought an expert report from Dr Samuels, psychiatrist and former Clinical Director of Justice Health. He was asked to provide his opinion as to Mr Chiu's intentions on the morning of 5 February 2016. Dr Samuels stated unequivocally that, given Mr Chiu's previous expressions of suicidal intent and admissions, Mr Chiu intended to end his life or cause himself serious damage. Dr Samuels commented that Mr Chiu acted purposefully and immediately. Dr Samuels did not think it was a frivolous or attention-seeking act.[195]

184. Pr Large noted in his evidence that *"Falling three to four metres, you wouldn't necessarily expect to die but you would expect to be injured so I...would classify this as deliberate self-harm resulting in death"* [196], which Pr Large opines *"falls within the rubric of suicide"*[197].

185. Whilst I accept the height might not be such to cause a person to think they would die from such a fall, the act of flipping so that the landing is head first, lends me to not accept the subtlety suggested by Pr Large.

186. A finding that a death is intentionally self-inflicted should not be made lightly. The evidence must be clear and cogent in relation to intention.[198]Taking into account Mr Chiu's history and circumstances and his fall involving a backwards flip to land

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[193] Ex 1, Tab 68 (V2) p.206.
[194] Ex 1, Tab 76 (V4) p.6.
[195] Ex 1, Tab 84 (V5B) Report of Dr Samuels, p.18, [172].
[196] 2.9.20 T21 L20.
[197] 2.9.20 T21 L46-47.
[198] The proper evidentiary standard to be applied to a coronial finding of intentional taking of one's own life is the Briginshaw standard (*Briginshaw v Briginshaw* 60 CLR 336).

on his head I am satisfied according to the Briginshaw standard that Mr Chiu deliberately intended to end his life.

The adequacy of psychiatric care and treatment at the MRRC

187. Mr Chiu was in the Darcy Unit for three weeks prior to his transfer to the MHSU and during that time he received regular reviews by a psychiatrist, Dr Wade and the mental health nurses.[199] Mr Chiu was not placed on any medications *"given [his] relatively stable mental state and side effects"*. [200]

188. When Mr Chiu was admitted to the MHSU he was placed under the care of forensic psychiatrist Dr Adams, who was employed by Justice Health as a staff specialist at the MHSU for two days per week.

189. Dr Adams arranged to review Mr Chiu on the day of his admission, however that could not proceed as no interpreter attended. The appointment on the following day also did not go ahead according to plan, as the interpreter did not attend in person and provided the interpretation service via telephone, which had an unclear line. However, Dr Adams was able to perform an initial review and decided to admit Mr Chiu to the MHSU, and provided the following reasoning:

> *"… Mr [Chiu] presented as reasonably stable. He denied experiencing any ideas of self-harm or suicide. My impression was of a change of mental health in the preceding 12 months, necessitating two admissions to psychiatric units in the community prior to his arrest. I noted a history of psychotic symptoms and organic issues prior to his arrest, thought to be the result of low sodium. However, given his history and the nature of the current charges, I deemed it necessary to admit Mr [Chiu] for a full assessment. I did not prescribe any psychiatric medication as Mr [Chiu] did not display symptoms that would lead to a diagnosis of a mental illness requiring treatment with medication. I made recommendations that Mr [Chiu] be followed up with a general practitioner and to obtain blood results"*[201].

190. The following week, on 25 November 2016, another review with a telephone interpreter occurred. Dr Adams said in his statement:

> *"I elicited no evidence of psychotic symptoms. I considered Mr [Chiu's] mood most likely to be low although there were varying reports about his mood (including Mr [Chiu's] report that he was happy to have seen his son that day). Mr [Chiu] denied experiencing any ideas of self-harm or suicide. There was no evidence of a confusional state or delirium. Again, no psychiatric medication was prescribed or deemed necessary. I did think Mr [Chiu] required a GP opinion in view of his hyponatraemia and a*

[199] Ex 1, Tab 68 (V2).
[200] Ex 1, Tab 70 (V2) Statement of Dr Adams, 13 April 2016, [13].
[201] Ex 1, Tab 70 (V2) Statement of Dr Adams, 13 April 2016, [19].

referral for neuropsychological assessment once his sodium levels had stabilised (to fully investigate the possibility of underlying cognitive dysfunction, which was not evident on basic testing)."[202]

191. Dr Adams said that the reason he requested a more in depth neuropsychological assessment was to ascertain whether Mr Chiu was experiencing a cognitive deficit. He did not think the assessment was urgent and it was for abundant caution. He had not observed any clear signs of deteriorating cognitive functioning, nor any clear signs of cognitive dysfunction.[203]

192. On 8 December 2016, Dr Adams noted that Mr Chiu remained stable without clear symptoms of psychosis or mood disorder and he remained stable without any medication. In reviewing Mr Chiu's history, Dr Adams was of the opinion that Mr Chiu's deterioration in mental health prior to onset of aggression seemed to be secondary to the psychiatric medication and anti-depressant side effects. This led to a change in his behaviour in the context of hyponatraemia.[204] Dr Adams explained that some people, particularly older people, can develop an electrolyte imbalance from psychiatric medication. Dr Adams thought that had occurred in Mr Chiu's case.

193. On the same date, Dr Adams met with Mr Chiu's children to gain collateral information. They reported to him that they had noticed a significant improvement in Mr Chiu's mental health.

194. On 29 December 2016, Dr Adams' registrar Dr Smith conducted a review. On 6 January 2017, Dr Adams again reviewed Mr Chiu. Dr Adams found no signs of major mental illness. He explained that as referring to "*the absence of a mental illness such as an anxiety disorder, a mood disorder, a psychotic disorder or any clear evidence of cognitive impairment during his period with us*".[205]

195. On 20 January 2017, Dr Adams reviewed Mr Chiu and again found that Mr Chiu remained stable with no symptoms of mental illness, no problematic behaviour and no prescribed medication. Dr Adams considered that it was suitable to discharge Mr Chiu.

196. Dr Adams gave consideration to whether Mr Chiu was at potential risk of future deterioration. He determined there was a minimal likelihood of that.

197. The Chiu family's legal representative, Mr Jack Amond ("Mr Amond") asked Dr Adams a number of questions about the decision to discharge Mr Chiu from the MHSU. Dr Adams said that he had no recollection of any discussion with Mr Chiu's son indicating that his father was terrified of entering the general prison population for fear of harm from other prisoners. He said that the discharge was

[202] Ex 1, Tab 70 (V2) Statement of Dr Adams, 13 April 2016, [21].
[203] 1/9/20 T46 L30.
[204] 1/9/20 T45 L20-35.
[205] 1/9/20 T47 L10-14.

completed on 31 January 2017 with input from the multi-disciplinary team and that Mr Chiu could have been discharged from that time onwards.

198. Dr Adams said that the review on 3 February 2017 did not occur as the telephone lines were down, however the review was unnecessary given that Mr Chiu had been observed daily by nursing staff, had been reviewed regularly by Dr Smith and there was no reported change since 20 January 2017. Dr Adams clarified during re-examination that Mr Chiu was not expected to be reviewed after the decision to discharge had been made; instead, Dr Adams had sought to review Mr Chiu because he was still in the unit on the day that Dr Adams was working there.

199. Mr Amond raised whether it would have been preferable for Mr Chiu to have a one-out cell given that he was a vulnerable prisoner. Dr Adams said that there are positives to having a vulnerable prisoner in a cell with other prisoners and that there are a lot of factors to take into account. Dr Adams did not see any medical reason for Mr Chiu to have a particular cell placement.

200. All three experts agreed that Mr Chiu received appropriate and adequate care and treatment whilst at the MRRC. They agreed with the approach adopted by Dr Adams and agreed with his findings.

201. I accept the experts' opinions and their reasoning which I note align with those indicated by Dr Adams. I find that Mr Chiu received appropriate care and treatment from Dr Adams and the members of the Justice Health team in the MRRC.

Decision to Discharge

202. The decision to discharge Mr Chiu into the main prison was supported by the experts Pr Large and Dr Sullivan but not Dr Samuels who considered that it would have been better for Mr Chiu to have been accommodated at Long Bay Prison Hospital either as a psychiatric patient or in the Aged Persons Unit. Dr Samuels was concerned that Mr Chiu was vulnerable given his past psychiatric history, his age, lack of English and due to it being his first time in custody. I take Dr Samuels' position as not cavilling with the MHSU multi-disciplinary team's decision to discharge Mr Chiu *per se,* but rather considering that it was not in Mr Chiu's best interest to be housed in the main gaol. Part of that reasoning is that Mr Chiu's actions, for which he was incarcerated, were done whilst mentally ill.

203. The decision to discharge was appropriately based on Dr Adam's assessment of Mr Chiu and the resolution of his mental health problems. The fact that discharge meant he would return to the main prison rather than home or a less punitive environment is not a determinative factor.

204. Dr Samuels did not disagree with Dr Adams' findings that Mr Chiu no longer required assessment, screening or treatment in the MHSU. Pr Large and Dr Sullivan agreed that Mr Chiu was not mentally ill at the time of discharge.

205. I find that the decision on 20 January 2017 to discharge Mr Chiu from the MHSU was appropriate. Mr Chiu had been fully assessed over a period of nearly three months and remained stable for a significant part of that admission, not requiring any further observation or intervention. There was no impediment to attending a neuropsychological assessment after his discharge and there was no need to have such an assessment prior to discharge.

206. I note that Dr Spencer gave evidence further to the discharge process and it was evident that the decision involved the multi-disciplinary team and a planned review within seven days of discharge. Pr Large suggested that an earlier post-discharge review would probably be preferable. However, it is noted that given the contained environment in which prisoners are held, any deterioration in mental health is more readily evident and nursing staff are available to escalate such a discharge review.

207. Dr Samuels raised in his report whether Mr Chiu should have been in the MRRC and suggested that he could have been scheduled as a mentally ill patient and transferred to Long Bay Hospital. He noted Mr Chiu's vulnerabilities and questioned his discharge to the G Block in the MAIN on that basis. Dr Samuels raised whether, if Mr Chiu was not scheduled, he could have been discharged to the Aged Care and Rehabilitation Unit at Long Bay Hospital.

208. Pr Large and Dr Sullivan both queried whether there would have been a legal basis to schedule Mr Chiu and Pr Large pointed out that the criteria is not the "best interests" of the person. Given Mr Chiu's stability and resolution of his hyponatraemia through withdrawal of psychiatric medication, there was no basis for Dr Adams to have scheduled Mr Chiu.

209. Likewise, according to Dr Spencer, Mr Chiu was not eligible to be considered for transfer to the Aged Care and Rehabilitation Unit at Long Bay Hospital as it used to treat inmates with advanced medical conditions, such as for palliative care and dementia.

210. I find that there was no impediment to discharging Mr Chiu after 20 January 2017 and in the context of there being no change to his presentation, the fact that he was not reviewed on 3 February 2017 is without criticism.

211. Likewise, the decision to discharge Mr Chiu without a neuropsychological assessment is without criticism given that it was not immediately required and there was no impediment to such a test being performed whilst Mr Chiu was accommodated in the main prison.

Ensuring the Availability of Interpreters

212. Dr Spencer, the Clinical Director for Custodial Mental Health at Justice Health states in her statement at [5(2)]: "Wherever possible interpreters from the Health

Care Interpreter Service are used in medical consultations where communication is essential for patients who are not fluent in English." [206]

213. That requirement is consistent with the policy applicable at the time.[207] This policy has since been amended. The policy provided: [208]

> *"Health care interpreters are to be used in all health care situations where communication is essential including admission, obtaining consent, conducting assessments, counselling, explanation of treatment including associated risks and side-effects, health education and discharge planning…*
>
> *A professional healthcare interpreter should be used in the following situations:*
> *…Obtaining medical and psychiatric histories, in assessment and ongoing treatment/management/in-depth case review…*
>
> *In the event that a health care interpreter cannot be provided on site, telephone interpreting or videoconference interpreting through HCIS or HLS should be used in the first instance. Where this is not possible, the TIS telephone number 131 450 can be used."*

214. Dr Adams conducted most of his reviews with the use of telephone interpreters, apparently due to difficulties with interpreters attending in person. The policy applicable at the time (and the current policy) makes it clear that it is preferable that face-to-face interpreters are used. There is no doubt that is particularly the case in a health care setting, and perhaps more so in mental health care. Indeed, the policy explains that face-to-face interpreting is more reliable than over the telephone.

215. Policy Directive PD2006_053, which was in place in 2016 to 2017 provided:[209]

> *"While telephone interpreting may be used, face-to-face interpreting is more reliable and therefore is the preferred option in the provision of health care.*
>
> *Telephone interpreting does not allow for interpretation of non-verbal forms of communication such as body language and gestures. It may also be easier to misunderstand what is said or not heard clearly over the telephone.*

[206] Ex 1, Tab 69 (V2) Statement of Dr Spencer dated 19 February 2019.
[207] Ex 1, Tab 89 (V5B) Ann F, Health Care Interpreter Services – Culturally and Linguistically Diverse Patients issued 24 October 2016 – Policy 1.230 ("Policy 1.230").
[208] Ex 1, Tab 89 (V5B) Ann F, Policy 1.230 at 1, 3.4.
[209] Ex 1, Tab 89 (V5B) Ann E, NSW Health Policy Directive PD2006_053- Interpreters – Standard Procedures for Working with Health Care Interpreters published on 11 July 2006, 3.5.1-3.5.2.

In the event that a health care interpreter cannot be provided on site, telephone interpreting or videoconference interpreting, where it is available, should be considered…".

216. I note that Dr Adams recorded in his notes when the telephone line was not particularly clear and he would record when an in-person interpreter had been booked but did not attend.

217. Dr Spencer said that the availability of interpreters poses difficulties for a number of reasons, including the interpreters' willingness to attend the prison and challenges progressing through security.

218. Whilst it is good that the doctors record the difficulty in the patient's record, there appears to be a need for Justice Health to engage with Health Care Interpreter Service to sure up a more reliable system so that when an interpreter is booked they actually arrive and the doctor does not have to resort to telephone interpreting or making another appointment.

219. There is no evidence that there was any impact on Mr Chiu's treatment caused by the non-attendance of an interpreter. However, the preference for in-person interpreting should be the norm, not the exception. Even video-conferencing is preferable to telephone interpreting and there should be no impediment to the implementation of same as part of the suite for telehealth. This is particularly so given the impact on provision of services resulting from the Covid-19 pandemic.

Mr Chiu's cell designation from one-out to normal placement

220. On 16 January 2017, Dr Smith reviewed Mr Chiu, apparently with the assistance of an in-person interpreter. Dr Smith spoke with Mr Chiu about the plan for him to soon be discharged from the MHSU. Mr Chiu told Dr Smith he would like a one-out cell and Dr Smith told him that he would not necessarily have a cell to himself. Dr Smith explained that it was the decision of CSNSW and that Justice Health only needs to advise as to whether there is a medical or mental health reason requiring a one-out cell.[210]

221. The following day, Dr Smith spoke with Mr Chiu's son about the plan to discharge Mr Chiu back to the main prison. Mr Chiu's son raised concerns about his father's vulnerability and Dr Smith explained the decision making process to Mr Chiu's son.[211] The MHSU Discharge Plan was devised by the multidisciplinary team and set out the information summarised above at [119].

222. During his evidence, Dr Smith was asked questions about why he changed the discharge summary from a one-out to normal cell placement. He said that there was no mental health-related reason that Mr Chiu should have a one-out cell. After being shown documentation, Dr Smith agreed with the legal representative for

[210] 1.9.20 T28 L25-30.
[211] 1.9.20 T29 10-15.

Justice Health, Mr Bradley that this was the view of the professional staff at Justice Health.[212] Dr Smith was aware that Mr Chiu had been in a one-out cell prior to his admission to MHSU and on the basis he was a potential risk to other prisoners due to his mental state at the time. It would appear the decision to change the recommendation occurred between 9 am and 9.14 am on the day of Mr Chiu's discharge. There is no evidence to suggest that there was any factor such as cell availability that played a role in the decision to change the cell placement recommendation.

223. At the time of discharge, Mr Chiu was not indicating a risk to himself or other prisoners and accordingly there was no basis to recommend a one-out cell. However, Mr Chiu's vulnerabilities were still noted by Justice Health on the discharge plan so that CSNSW could make an appropriate cell placement.

224. I find that it was not inappropriate for Justice Health to recommend to CSNSW that Mr Chiu be considered for normal cell placement.

The decision to place Mr Chiu in a pod and cell where there were no other Cantonese speaking prisoners

225. On 4 February 2017, Mr Chiu was transferred to Pod 12 within G Block in the MAIN. CSNSW officers were aware that there were Cantonese speaking prisoners in Pod 11 but that there were no vacancies. They placed Mr Chiu in a cell in Pod 12 with two English speaking prisoners who appeared to accommodate Mr Chiu's concerns about a noisy exhaust fan and wishing to keep the light on overnight, although he had to point to things as part of his communication.

226. The CSNSW officers arranged for one of the Cantonese speaking prisoners from Pod 11 to enter Pod 12 and go to Mr Chiu's cell. That prisoner explained to Mr Chiu that the officers were trying to get him a bed in Pod 11 although could not that night and there might be a vacancy the following day.

227. The CSNSW officers, including one who was very familiar with Mr Chiu whilst in the MHSU, all made statements providing that Mr Chiu did not display any change of behaviour that would have alerted them to him being distressed by the accommodation decisions. It is noted that there were no issues overnight.

228. As at February 2017, inmate accommodation was governed by Section 7.17 of the CSNSW Operations Procedures Manual ("OPM") titled "Inmate Accommodation"[213]. That policy states at 7.17.2:

> *"Where possible a cell placement conference will be convened involving both Justice Health staff and Corrective Services NSW staff to consider the information and appropriate cell placement".*

[212] 1.9.20 T37 L30.
[213] Ex 1, Tab 80 MG-8.

229. This policy is consistent with a decision about cell placement being made involving factors other than a prisoner's health. Although ultimately the decision rests with CSNSW, there would need to be good reason to depart from a recommendation by Justice Health. It would however, in my view, be open on such a policy to withhold a person's discharge from the MHSU until an appropriate cell placement was available. It would not be appropriate however for a recommendation to be changed due to the unavailability of an appropriate cell.

230. I note that the current policy in relation to cell placement also includes factors of old age and inability to speak English, in addition to the consideration of culturally appropriate accommodation.[214]

231. I find that although it was unfortunate there was no bed available in a pod with other Cantonese speakers, it was not inappropriate for Mr Chiu to be discharged to a pod and cell where there were no other Cantonese speakers.

Despite alerts raised by Justice Health in the MHSU Discharge Summary, CSNSW Officer Singh noted that "he didn't find anything concerning" when considering Mr Chiu's cell placement

232. Mr Green reported that *"it is reasonable to conclude that if the HPNF stated Mr Chiu was fit to be discharged from the MHSU to a normal cell then he did not present a current risk of self-harm – otherwise he would not have been discharged."*[215]

233. I note that SCO Singh says he took into account the MHSU discharge summary, the Inmate Profile Document and the HPNF of 31 January 2017. I do not necessarily disagree with Mr Green, but I think that it is incumbent upon a CSNSW officer to lend their mind at least collaboratively with the Justice Health material and whilst Mr Chiu was not assessed as presenting a current risk of self-harm at discharge, the discharge summary did signal an alert and whilst a consideration of that alert was unlikely to have resulted in different cell placement, it was an alert and may well cause an officer to find something concerning. Circumstances can change very rapidly, especially with vulnerable inmates, and a discharge from the MHSU that is not without alerts should not be overlooked. In any event, given that Mr Chiu was not a risk to others, placement in a cell with others could well have been considered a protective factor (leading to a normal placement, noting such an alert).

234. I find that SCO Singh not identifying the alerts as "concerning" had no effect on Mr Chiu's accommodation or wellbeing.

Incomplete Prisoner Intake Documentation

235. On 26 October 2016, Mr Chiu was initially in custody at the police station and after he was charged he was bail refused and taken to the local court. CSNSW

[214] Ex 1, Tab 83E (V5B), 2.4.
[215] Ex 1, Tab 80 (V5B) Statement of Michael Green, 2 July 2019, [5]-[14].

manage the cells in the court system so Mr Chiu entered CSNSW custody for the first time when he appeared in court. The CSNSW officers at the court cells are required to complete the IIO form and this and other documents are the initial documents placed on the prisoner's file.

236. The IIO was incomplete in numerous respects; most relevantly, Mr Chiu's family contact details were incomplete. The explanation may be due to a number of factors, such as Mr Chiu not wanting at that time to give that information or being unable to due to his mental state and/or limited language or there being insufficient time to complete the document in its entirety. It is apparently not uncommon for the form to be incomplete due to the circumstances. Given that there is a reception and checking process when the prisoner is transferred to a reception prison, any deficiencies are required to be addressed at that point.

237. In Mr Chiu's case, the forms did not receive the attention and checking process required and consequently at no stage was contact information about next of kin or the Emergency Contact Person ("ECP") placed on the form or Mr Chiu's management file. There are a number of documents that accompany a prisoner, including a warrant issued by the court, which form part of a prisoner's management file. There are numerous questions on the IIO. Of note, Mr Chiu's next of kin details were not recorded, his health history was not reported, no psychiatric or psychological interventions were ordered and no special needs were noted.[216]

238. When Mr Chiu was received at MRRC he underwent a reception screening process. That process involves two interviews, one being with a Justice Health nurse and the other with a CSNSW officer. The IIO is used to inform the CSNSW interview. The CSNSW officer completes an Inmate Screening Questionnaire ("ISQ"). The CSNSW Reception Policy provides that an admission interview is to be conducted and it must be conducted in a language the inmate understands.[217]

239. The *Policy and Procedures for Reception, Screening, Induction and Orientation of Inmates in CSNSW* relevantly provides:[218]

> *"When an inmate is received into custody of CSNSW from court, the receiving officer must ask for and obtain all relevant information about the inmate from police, court staff, legal representatives, judiciary, Community Corrections, health workers, family and friends. This information must be noted on the Supportive Information section of the* ***Inmate Identification and Observation FORM (IIO)*** *and communication between staff … This information is to be used for completing a risk assessment (IIO) in relation to health, suicide/self-harm, escape or other behavioural issues."*

[216] Ex 1, Tab 30B (V1) Statement of Cindy Moore dated 20 September 2019, [15], Ex CM-7.
[217] Ex 1, Tab 77 (V5A) Investigator Report Att 32, p.13.
[218] Ex 1, Tab 77 (V5A) Ann 32, *Policy and Procedures for Reception, Screening, Induction and Orientation of Inmates in CSNSW* dated 17 October 2016, p. 11, section 9.1.3.

240. Mr Chiu was interviewed with the assistance of an interpreter, however he declined to provide details of his family contacts. After interviews are completed, the IIO and other reception documents (such as the ISQ) are generally reviewed or checked to ensure compliance and to ensure that required information is on the CSNSW management system, the Offender Integrated Management System ("OIMS"). As a result, appropriate decisions in relation to prisoner classification, cell placement, alerts and special needs (to name a few) are recorded and actioned.

241. The role of a Checking Officer during an inmate's prison reception is to:[219]

(a) collect the case file;

(b) authorise any alert information into the appropriate OIMS screen;

(c) review that Priority 1 referrals (being referrals requiring immediate attention) have been actioned; and

(d) complete the Checking Officer's Assessment ("COA") – Intake Screening form.

242. The COA may affect an inmate's classification.[220] During Mr Chiu's reception on 27 October 2016 at MRRC, no COA occurred and subsequently it was not recorded on OIMS.[221] The COA section of the checklist on the covering page of Mr Chiu's Case Management File ("CMF") is not endorsed.[222]

243. Section 9.4 of the *Policy and Procedures for Reception, Screening, Induction and Orientation of Inmates in CSNSW* sets out under the section regarding COA that:[223]

> *"Following completion of the ISQ the checking officer … of the reception wing/pod, who has not directly screened the inmate, is to collect the case file and authorize any alert information on to the appropriate OIMS screen. The checking officer is also responsible for reviewing that Priority 1 referrals have been actioned prior to completing the [COA] – Intake Screening.*
>
> *This must be done prior to the initial classification."*

244. Throughout the 11 weeks Mr Chiu was in the MRRC, it would have been clear to anyone looking at the CMF that not all assessments had been carried out.

245. In his statement, Mr Murrell confirms that despite the failure to check the documents, Mr Chiu's mental health requirements and appropriate cell placement were known and appropriately addressed: [224]

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[219] Ex 1, Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020, [6]-[7]; Ex TMM-1 Checking Officer's Assessment (COA) – Intake Screening form.
[220] Ex 1, Tab 83 (V5B) Statement of Terrence Murrell, 10/7/2020, [9].
[221] Ex 1, Tab 83 (V5B) Statement of Terrence Murrell, 10/7/2020 [11]; Ex TMM-2 Initial Reception Checklist.
[222] Ex 1, Tab 77 (V5A) Investigator Report, [116].
[223] Ex 1, Tab 77 (V5A) Investigator Report, [117] Att 32.
[224] Exhibit 1, Tab 83 (V5B) Statement of Terrence Murrell, 10 July 2020, [15].

"Therefore, the failure to perform the COA after the ISQ of 8.15pm 27 October 2016 did not delay CSNSW custodial officers learning of Mr Chiu's mental health problems because:

a) *Officers became aware of those problems that same night,*

b) *By 29 October 2016 even an officer of the rank of Assistant Superintendent had become aware, and*

c) *By 29 October 2016 there were in Mr Chiu's Case Management File at least seven documents describing those problems for custodial officers to read".*

246. I accept that the failure to perform the COA had no effect on the appropriate placement of Mr Chiu upon his reception into custody and no effect on the care and treatment he received.

247. As Mr Chiu had declined to provide his family contact details during the screening process, there was no ECP entered on OIMS. However, because Mr Chiu's children visited him, their details and identification as family was on OIMS but at a location other than where it would be expected. That information was contained in the visitor information section of the management system. It is noted that although the Justice Health file contains family details, Justice Health information is managed separately and does not form part of the CSNSW system.

248. When CSNSW sought to advise Mr Chiu's family that he had been admitted into Westmead Hospital, there was a short delay of about 10 minutes before the officer obtained the visitor information details. It is not that delay in being notified of Mr Chiu being injured about which the family complain. The failure to record Mr Chiu's next of kin details in OIMS had no material effect on the promptness of Mr Chiu's family being contacted.

CSNSW Delay in Notifying Mr Chiu's family of his Hospitalisation

249. By 8.50 am on 5 February 2017, Mr Chiu was being assisted after his fall. He was conveyed to hospital. The ambulance report noted *"no immediate life threat"* but *"altered conscious state; behaviour agitated"*.[225]

250. The Westmead Hospital records indicate that Mr Chiu was admitted at 10.11 am and record *"intended overnight".* [226] Throughout the course of the day Mr Chiu's cerebral haemorrhages were being monitored as they were placing pressure on his brain and by 6.30 pm he was moved to intensive care. It was not until two hours later at 8.25 pm that the information that Mr Chiu had moved to intensive care was communicated to CSNSW at the MRRC. At this time, CSNSW at the MRRC also learned that the treating doctor advised the next of kin should be notified.

251. Mr Chiu's son, M received a telephone call at 8.40 pm from Superintendent Murray Stewart. Mr Chiu's son, M requested to visit his father and Mr Stewart

[225] Ex 1, Tab 71 (V3) Ambulance Electronic Medical Record, p.3.
[226] Ex 1, Tab 72 (V3) Admission Registration Form, p.26.

advised him he would speak with the doctor on his behalf. Mr Stewart again telephoned Mr Chiu's son at 9 pm to advise that he was unable to speak with the doctor but that Mr Stewart had approved him for a visit. Mr Stewart said Mr Chiu's son, M should take sufficient identification and that his visit would be subject to the doctor's instructions.[227] The hospital records indicate that at 9.15 pm, Mr Chiu became unresponsive and intubated.[228] Mr Chiu's son, M arrived at the hospital at 9.40 pm shortly before his father was taken into emergency surgery. Mr Chiu never regained consciousness.

252. Had the family been notified at the time of Mr Chiu's admission, they would have been able to request to visit Mr Chiu and despite the ongoing medical intervention could have provided him comfort and been there for his last conscious period.

253. When Mr Chiu was transported to hospital in the morning, CSNSW tasked two officers to provide a security escort. They were COs Aperocho and Talolua. They were informed by a doctor that Mr Chiu had received serious injuries and would be required to stay in hospital.[229] Their reports do not indicate the time at which they were told this.

254. Mr Green was on duty at the prison when Mr Chiu was injured and conveyed to hospital. He completed his shift at 1.30 pm. In his evidence Mr Green said he is not always in the office and is required to attend various locations throughout the MRRC. He had two conversations with the escorting officers between 10 am and 1.30 pm.

255. Mr Green furnished a report in which he says after Mr Chiu's death he spoke to CO Aperocho, who conveyed to him that he had contacted MRRC at about noon to advise that Mr Chiu had become an in-patient. Mr Green has no recollection of being advised of this and does not know who the person is that CO Aperocho spoke with. Mr Green has no recollection of receiving that information from a staff member. Although logs of incoming calls have been produced for other periods of that day there has been nothing produced by CSNSW for the period 10 am to 1.30 pm.

256. Given that Mr Green did not leave his shift until 1.30 pm, if a telephone call had been made at around noon to advise that Mr Chiu had been admitted, it would be reasonable to expect that Mr Green would have been advised. In his evidence, Mr Green suggested that the advice about whether a prisoner is being admitted to hospital is information that is important for the rostering of escort staff.

257. It may well be then, that those dealing with CO Aperocho only viewed the information important to perform the rostering task of replacing the escorts who were then still at the hospital.

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[227] Ex 1, Tab 77 (V5A) Att 12, Officer Report Form, Murray Stewart dated 13 June 2017; email dated 5 February 2017 from Murray Stewart to Michael Green, Thomas Woods, Paul Juhasz and cc Hardeep Bhalia; handwritten note of Murray Stewart dated 5 February 2017.

[228] Ex 1, Tab 72 (V3) Discharge Transfer Documents, p.38; Tab 8 (V1) Statement of Tesoriero, [133].

[229] Ex 1, Tab 77 (V5A) Att 12, Incident Report, Byron Aperocho, 7 February 2017; Incident Report, Mason Talolua, 9 February 2017.

258. It may also be that CSNSW does not view an admission to the Emergency Department as being an admission to hospital. Rather, CSNSW may only consider the transfer of a prisoner from the Emergency Department to a ward to be an admission involving a transfer of care which would then trigger the application of the policy contained in the OPM relating to when a prisoner's ECP is notified.

259. That policy provides:[230]

> *"If an inmate is admitted to hospital as an in-patient (i.e. they will be remaining overnight in the hospital) with little or no warning, then the GM (or the GMs authorised officer) must ensure the inmate's emergency contact person is notified…*
>
> *When an inmate is admitted as an in-patient with no advance warning (e.g. heart attack, appendicitis, serious assault) the GM (or authorised officer) is to ensure that the inmate's emergency contact person is notified of the situation, as soon as possible and on the same day it is confirmed that the inmate will be admitted as an in-patient."*

260. It is clear that the policy does not require an admission to have already occurred; rather, it requires that it has been indicated that an admission will occur. On the basis of that policy, Mr Chiu's family should have been advised of his admission shortly after 10.11 am. Superintendent Stewart was not advised by CO Aperocho that Mr Chiu was transferred to the ICU until two hours after it occurred. I have no doubt that the escort officers went with Mr Chiu from the Emergency Department ("ED") to the ICU. Accordingly, even on that transfer (from the ED to the ICU) the policy (requiring that the Emergency Contact Person be notified as soon as possible) was not complied with. Superintendent Stewart complied with the policy in that he informed Mr Chiu's son as soon as he learned of it, however he should have been advised of the transfer earlier. If that had occurred, Mr Chiu's family would have been able to visit before he lost consciousness.

261. Counsel Assisting suggested that there was insufficient evidence to determine whether CSNSW had been informed prior to 8.25pm that Mr Chiu had been admitted as an inpatient. I am of a different view, given that CO Aperocho said he advised someone in Mr Green's office at around noon. Even if that is incorrect, CO Aperocho was still at the hospital when Mr Chiu was transferred to the ICU. The policy does not apply to when the head of security is informed; it applies to any CSNSW officer, of which CO Aperocho was one.

262. The policy was not complied with and the reason it was not complied is likely because there is confusion about what approach CSNSW should take in circumstances where a prisoner is under the care of a health professional, be it in the prison where Justice Health are applying first aid with the NSW Ambulance

[230] Tab 77 (V5A) Investigator report, Ann 36, CSNSW *Operations Procedures Manual*, Section 7.3 – Miscellaneous Health Issues,7.3.7.3,"Notifying the emergency contact person".

Service, or outside of the prison where the NSW Ambulance Service and then a NSW Health hospital provide care to a prisoner.

263. The evidence of both Mr Green and Mr Murrell was that CSNSW take a reactive approach. Their evidence was that it is a matter for Justice Health or the hospital to tell CSNSW that an inmate is suffering a life threatening injury or has been admitted to hospital, and there is no obligation on CSNSW to make this inquiry.

264. With respect, such an approach invites a non-compliance with the policy to notify the ECP. The policy was subsequently amended and is now found in the *Custodial Operations Policy and Procedure*s - 6.2 Hospitalisation of inmates, at Part 1.3, which provides the following procedure:[231]

> *"Contact the inmate's Emergency Contact Person (ECP) as soon as possible and on the same day that it is confirmed that an inmate is:*
>
> - *admitted as an in-patient (remaining overnight in the hospital) with little or no advance warning (such as with a heart attack, appendicitis, serious assault)*
> - *their medical condition becomes life threatening"*

265. I doubt whether that change in policy would correct the "reactive" approach Mr Murrell and Mr Green described. I note that Mr Murrell gave evidence at the inquest stating that the policy is again under review. There are discussions which have been initiated by the Ministry of Health involving CSNSW, Justice Health, Ambulance NSW and the Local Health District regarding inmates in public hospitals. Mr Murrell gave evidence that CSNSW will consider raising with stakeholders the possibility of an escort having a checklist form which can be provided to the Nurse Unit Manager, to then be provided to CSNSW in the event the inmate needs to become an inpatient or has a life threatening condition.

266. If there is no system in place involving an appropriate person at the prison remaining in contact with someone at the hospital as to the health status of the prisoner for the purpose of advising the ECP, then the policy would be difficult to comply with. If the individual at the hospital is an escort officer, then they need to be specifically tasked with that purpose as part of their security mandate.

267. I accept there are numerous security issues involved in circumstances where a prisoner is hospitalised and their family want to visit. There is much balancing to be done for the numerous stakeholders to ensure the safety of fellow patients, staff and the public, the security of the prisoner and the provision of their medical treatment. There are a multitude of unwanted scenarios that could occur as a result of a policy whereby every time a prisoner is unexpectedly conveyed to a hospital an ECP is notified.

268. The fact remains that Mr Chiu was very seriously injured, he was not a person with criminal associates, he was an older man and he had family who visited him and who would want to know that he had been injured and hospitalised. Nobody at

[231] Ex 1, Tab 83F (V5B).

MRRC was tasked with keeping abreast of what condition he was in or what was happening for the purpose of his family's notification and involvement. It is that approach and purpose which needs to be addressed.

269. CSNSW have acknowledged that the failure in compliance with the policy caused the delay in notifying Mr Chiu's family. The Commissioner for CSNSW apologises and recognises the distress this has caused. The Commissioner offered his sincere condolences to Mr Chiu's family for their loss. I anticipate that a policy and approach change will also assist Mr Chiu's family and other families in the future.

270. The submissions of Counsel Assisting were very thorough and well-balanced and were adopted by parties in the inquest. Counsel Assisting put forward a recommendation that is directed at the issue in relation to ECP notification.

271. The recommendation is directed at CSNSW and it was suggested by them that Justice Health and the Ministry of Health be included but given the separation of services I have determined that it should remain a recommendation solely directed to CSNSW.

Recommendation to the Commissioner of Corrective Services NSW

1. Corrective Services ("CSNSW") amend their policies to ensure that when a prisoner is subject to a medical emergency requiring conveyance to hospital that the following occurs:

    a. The prisoner's Emergency Contact Person ("ECP") is recorded on the escort and transfer documents.[232]

    b. The Escort Officer (or another identified appropriate officer) ensures that the ECP information is transferred to the hospital triage document so the hospital has the prisoner's ECP details.

    c. A CSNSW staff member is identified and allocated the responsibility of:

        i. identifying the health status of the prisoner on a regular and frequent basis to enable a decision to be made that the prisoner's ECP be informed of the prisoner's condition; and
        ii. managing and facilitating the visiting access the ECP has to the prisoner with the Escort Officers; and
        iii. managing updating the ECP as to the condition of the prisoner.

2. That an audit of the policy should occur within a reasonable period of time of the commencement of such policy to ensure that it is being complied with and is

[232] As soon as an inmate has left the correctional institution in an emergency situation, then steps should be taken by CSNSW to collate the next of kin or emergency contact details so that such a call can be promptly made if required.

consistent with any Memorandum of Understanding ("MOU") between CSNSW, Justice Health and Forensic Mental Health Network and the Ministry of Health NSW.

Findings

272. I now enter my findings:

Identity	Person known in these proceedings by the pseudonym Ye Chiu
Date of Death	6 February 2017
Place of Death	Westmead Hospital, Westmead
Cause of death	Head injuries
Manner of death	Ye Chiu died from injuries sustained in a fall from the upstairs landing in the Goldsmith "G" Block at the Metropolitan Remand and Reception Centre from height, such fall being deliberate with the intention to end his own life.

Closing remarks

273. I again extend my deepest condolences to Mr Chiu's family and thank them for attending the inquest.

274. I close this inquest.

Magistrate E Truscott

Deputy State Coroner

23 October 2020