



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Jesse Drabsch
Hearing dates:	19-23 April 2021, 17-18 June 2021
Date of findings:	29 October 2021
Place of findings:	Coroners Court, Lidcombe
Findings of:	Magistrate Harriet Grahame, Deputy State Coroner
Catchwords:	CORONIAL LAW – accidental death after use of insulin, Performance and Image Enhancing drugs (PIEDs), Insulin, death in 24 hour gym
File Number:	2017/353545
Representation:	<p>Counsel assisting: Ms L Coleman instructed by Ms L Nash of Crown Solicitor's Office</p> <p>Anytime Australia: Mr S Beckett instructed by Ms E Petrie of Moray and Agnew</p> <p>ATGPPMS, Paul Hrobat, Holly Thiessen and Joshua Allen: Mr D Mitchell instructed by Mr L Vincent of Wotton + Kearney</p> <p>The Cleaning Staff: Ms C Palmer of counsel</p>

<p>Non publication orders</p>	<p>The court made specific non-publication orders pursuant to ss. 65 and 74 of the <i>Coroners Act 2009</i> (NSW). The orders relate to names, addresses and contact details of witnesses in the proceedings as well as information that is commercially sensitive for Anytime Australia Pty Ltd. The orders are available through the Court Registry.</p>
<p>Recommendations</p>	<p>To Anytime Australia</p> <p><u>Bathrooms</u></p> <ol style="list-style-type: none"> 1. That Anytime Australia implement the Trial Policy on a permanent basis at all existing and future Anytime Fitness gyms in Australia. 2. That Anytime Australia direct its franchisees to undertake a documented internal audit of the bathroom log sheets every three months so as to assess compliance with the requirement in the Trial Policy for regular, documented bathroom checks. 3. That Anytime Australia direct its franchisees to provide training to all new and existing staff and external cleaners at Anytime Fitness centres which includes: <ol style="list-style-type: none"> a. a summary of the requirement for regular, documented bathroom checks as embodied within the Trial Policy; b. a description of the procedure to be followed in the event that a bathroom door is locked and the occupant of the bathroom is non-responsive or requires medical attention; and c. training in how to unlock a locked

bathroom door from the outside, including ensuring that all staff and cleaners are shown the location of any requisite tools for carrying out that task

4. That Anytime Australia undertake an immediate costing regarding any technological measures that would assist in detecting an incapacitated person inside the bathrooms at existing and future Anytime Fitness centres, and give documented consideration to prompt installation of those measures, including an upgrade to the main door entry system to record the time that members exit the facility and to notify staff if a member is at the facility for an extended period.
5. That Anytime Australia give immediate, documented consideration to measures for improving the design of the bathroom doors at existing and/or future Anytime Fitness centres to provide visibility of a potential collapse inside the bathroom, whilst preserving the privacy of occupants of the bathrooms, including by:
 - a. creating a narrow gap between the bottom of the bathroom doors and the floor; and
 - b. installing a narrow glass or Perspex panel between the bottom of the bathroom doors and the floor, in a manner that complies with any relevant requirement of the BCA.
6. That Anytime Australia send a written reminder notification to all franchisees

detailing the requirement to log a contemporaneous Anytime Safety incident report in respect of any safety or medical incidents (including those involving patrons inside bathrooms), and that Anytime Australia conduct a regular audit of any such incidents.

PIEDs

7. That Anytime Australia consider liaising with the NSW Ministry of Health, Fitness Australia, Dr Beng Eu, Dr Katinka van de Ven, Kay Stanton and any other appropriate stakeholders with a view to considering:
 - a. the actual or suspected use of PIEDs by those who attend Anytime Fitness gyms;
 - b. what, if any, measures could be introduced at Anytime Fitness centres (including through digital means such as blogs and social media) to improve awareness of the health risks associated with PIEDs; and
 - c. what, if any, harm reduction measures or strategies could be implemented at Anytime Fitness centres (including through digital means such as blogs and social media) for those who use PIEDs
8. That Anytime Australia give immediate, documented consideration to the delivery of educational campaigns or sessions to Anytime Fitness franchisees regarding PIEDs use, including by way of recorded online webinars and/or presentations at

annual conferences of Anytime Australia.

To the NSW Minister for Health

9. That the NSW Ministry of Health give immediate, documented consideration to:
 - a. adopting or endorsing the Sydney North Health Network's "GP guide to harm minimisation for patients using non-prescribed anabolic-androgenic steroids (AAS) and other performance and image enhancing drugs (PIEDs)", including on Your Room and/or the NSW Ministry of Health website for alcohol and other drug health professionals; and
 - b. any additional steps that can be taken to educate general practitioners regarding the identification, management and treatment of individuals who use or are suspected of using PIEDs.
10. That the NSW Ministry of Health consider the preparation and distribution of a dedicated online Fact Sheet regarding the health risks of using non-prescribed insulin.
11. That the NSW Ministry of Health consider liaising with Anytime Australia, Fitness Australia, Dr Beng Eu, Dr Katinka van de Ven, Kay Stanton and any other appropriate stakeholders with a view to considering:
 - a. the nature and prevalence of PIEDs use;
 - b. what, if any, additional education, information or resources could be disseminated in NSW to improve public awareness of the health risks

	<p>associated with PIEDs, including at gyms, at fitness centres and online;</p> <p>c. what, if any, harm reduction measures or initiatives could be implemented (including at gyms and fitness centres) for those who use PIEDs.</p> <p>12. That the NSW Ministry of Health consider what if any search engine optimisation strategies can be utilised to cause Your Room to appear higher in the ranking for search terms such as “PIEDs”, “performance enhancing drugs”, “bodybuilding drugs”, “fitness drugs” and “steroids”.</p>
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Introduction

1. This inquest concerns the tragic death of Jesse Drabsch. Jesse was 31 years of age at the time of his death. He worked as a personal trainer and was passionate about body building and fitness training.
2. Jesse attended Anytime Fitness Castle Hill at approximately 2:45pm on 16 November 2017 and worked out for some hours. Jesse spoke to his mother, Debbie, from the gym early on the evening of 16 November 2017. The following morning she realised that Jesse had not returned home. This was entirely out of character and she became concerned. Debbie immediately commenced making inquiries and tried to locate her son.
3. Just after 2:00pm on 17 November 2017, Jesse was found unconscious, but breathing, in a bathroom at Anytime Fitness, Castle Hill. A review of the Closed Circuit Television (CCTV) footage revealed that Jesse entered the bathroom on 16 November 2017 at approximately 5:30pm. Jesse remained in the bathroom for over 20 hours until he was discovered by NSW Police.
4. Paramedics arrived soon after police and Jesse was taken by helicopter to Westmead Hospital where he was sedated and ventilated. Tragically his very serious brain injury was incompatible with recovery. Jesse died on 21 November 2017.
5. Jesse was a much loved brother to Eryne, Zenta and Jordaan, and was adored by his mother Debbie. He was described as a shy, gentle soul, who was dedicated to his work. Although initially training as a carpenter, he later pursued a career in personal training. It is clear from the evidence before the court that his clients shared a deep affection for him. He was dedicated to his own training as well as to the training of others, helping his clients to reach their potential. His friend described him as “just a genuine guy who was just trying to better himself really, above all things”.
6. His mother and sisters attended the inquest and their continued grief at the loss of their son and brother was palpable. They conducted themselves with grace, notwithstanding that some of the evidence would have been very difficult to hear. I offer Jesse’s family my sincere and heartfelt condolences.

The role of the coroner and the scope of the inquest

7. The role of the coroner is to make findings as to the identity of the nominated person and in relation to the place and date of their death. The coroner is also to address issues

concerning the manner and cause of the person's death.¹ A coroner may also make recommendations, arising from the evidence, in relation to matters that have the capacity to improve public health and safety in the future.²

8. In this case there was no dispute in relation to the identity of the deceased or the date or place of death. However, the *medical cause of death* and the *manner or circumstances* of Jesse's death required significant investigation.
9. As part of these investigations, the court examined the safety systems in place at Anytime Fitness Castle Hill at the time of Jesse's death. Counsel for Anytime Australia, the franchisor of the Anytime Fitness brand in Australia, cautioned the court against "engaging in hindsight bias" when considering such safety systems. However, in circumstances where a person has died as a result of becoming incapacitated in an Anytime Fitness bathroom without being found for some 20 hours, a concern for hindsight bias is misplaced. The tragic circumstances leading to Jesse's death necessitated a careful examination of the safety systems in place at Anytime Fitness gyms at that time, with the aim of understanding whether there were missed opportunities to find Jesse much earlier. These considerations are also critical in evaluating whether any measures could or should be implemented to ensure such a tragedy is not repeated in the future.
10. Investigations also led the court to examine the role that the use of performance and image enhancing drugs (**PIEDs**) had on Jesse's behaviour on that day and ultimately on his tragic collapse and death. The court became aware that there is limited reliable evidence available about the prevalence of PIEDs use in NSW and a limited number of resources in existence to provide useful information to PIEDs users and their medical advisors. While the operation of harm reduction principles in relation to illicit drug use is now well known and accepted by health professionals in NSW, it became apparent that there is a somewhat surprising gap in relation to the creation of specific educational and treatment strategies and support for people using PIEDs.

The evidence

11. The court took evidence over seven hearing days. The court also received extensive documentary material. This material included witness statements, medical records and expert reports. The court heard oral evidence from people who worked in a variety of capacities at the gym where Jesse collapsed and from his friends. The court also heard from those involved in the fitness industry, specifically those associated with Anytime

¹ Section 81 *Coroners Act 2009* (NSW).

² Section 82 *Coroners Act 2009* (NSW).

Fitness. The court heard expert evidence from a senior endocrinologist and from a variety of witnesses with specific expertise in the use of PIEDs.

12. While I am unable to refer specifically to all the available material in detail in my reasons, it has been comprehensively reviewed and assessed.
13. A list of issues was prepared before the proceedings commenced.³ These questions directed the focus of the evidence presented in court. However, as is often the case, a hearing tends to crystallise the issues which are really at stake. The focus of the inquest centred on understanding the safety systems in place at the time of Jesse's death and whether there are ways of preventing future tragedies of this sort.

Fact finding and chronology

14. In her submissions, counsel assisting provided a very detailed review of the evidence before this court. I rely on that document to set out the chronology of events and to outline the expert evidence received. I accept counsel assisting's summary of the evidence as accurate and reproduce much of it below.

Background to the events leading to Jesse's death

15. At the time of his death, Jesse lived with his mother Debbie and his sister Zenta at their family home. From February 2016, he worked as a sub-contracted Personal Trainer at Anytime Fitness Dural.⁴ Jesse worked out at the gym every day.⁵ He also acquired and used a variety of PIEDs. On 22 October 2017, Jesse participated in his first body building

³ List of Issues prepared by Counsel Assisting:

1. Was Jesse's death preventable?
2. Did Jesse's death result from the self-administration of insulin?
3. What reasons led to Jesse remaining undetected and incapacitated in a public bathroom at Anytime Fitness Castle Hill for approximately 20 hours?
4. What improvement measures have been implemented by Anytime Australia Pty Ltd (Anytime Australia) and / or Anytime Fitness Castle Hill in response to Jesse's death?
5. Should consideration be given by Anytime Australia to the implementation of measures to improve the safety of patrons at Anytime Fitness gyms, including with respect to:
 - i. the design of the bathroom doors;
 - ii. systems for recording which bathrooms have been inspected and cleaned, and when; and
 - iii. notification or escalation procedures if a bathroom door is locked and the bathroom cannot be inspected or cleaned for a particular period of time;
6. Should consideration be given by Anytime Australia and its franchisees to the implementation of measures at Anytime Fitness centres to improve awareness of the risks associated with performance and image enhancing drugs (PIEDs) and safe practices regarding the administration or use of PIEDs?
7. During the course of the police examination of Anytime Fitness Castle Hill and items belonging to Jesse on or around 17 November 2017, was relevant evidence secured appropriately?
8. Are sufficient educational material, support services and/or harm minimisation strategies available for PIEDs users in New South Wales?
9. Is there adequate training and support for health professionals in New South Wales in identifying, managing and treating those who use or are suspected of using PIEDs?
10. Are further recommendations from the Coroner necessary or desirable pursuant to s 82 of the Act?

⁴ Ex 1 Vol 1, Tab 19A at [6].

⁵ Ex 1 Vol 1, Tab 19A at [7].

competition which was organised by the International Federation of Body Building.⁶

16. Anytime Australia is the franchisor in Australia of the Anytime Fitness brand.⁷ As at April 2021 there were 520 Anytime Fitness centres around Australia, each of which is independently owned and operated.⁸ Anytime Fitness Castle Hill operates pursuant to a Franchise Agreement between Anytime Australia and ATGPPMS Pty Ltd (**ATGPPMS**).⁹ ATGPPMS has held the franchise rights to Anytime Fitness Castle Hill since 2010, and operates a total of 14 Anytime Fitness centres in NSW.¹⁰ Paul Hrobat is (and was as at November 2017) the director of ATGPPMS and the Managing Director of Anytime Fitness Castle Hill.¹¹
17. Anytime Fitness Castle Hill (as with all Anytime Fitness centres)¹² was as at November 2017 open to members 24 hours a day, 7 days a week.¹³ All Anytime Fitness centres are unstaffed for a period of time during the night, with those unstaffed hours varying from club to club.¹⁴ Anytime Fitness Castle Hill was then, and remains now, staffed on Monday to Thursday from 10am to 8pm, on Friday from 10am to 7pm, and on Saturday from 10am to 2pm (with no staff on Sundays).¹⁵
18. Anytime Australia is also a member of Fitness Australia, and thereby subject to the National Fitness Industry Code of Practice.¹⁶ Richard Peil is the current Managing Director of Anytime Australia and its overarching parent, Collective Wellness Group. He has held this position since May 2012.¹⁷ He is also one of the co-founders of Anytime Fitness in Australia¹⁸ and currently holds the franchise rights to five Anytime Fitness centres.¹⁹ Jordan Smith is the Company Secretary of the Collective Wellness Group and the current Chair of the Finance and Risk Committees, roles he has held since January 2020.²⁰
19. The court was also informed that Anytime Australia is subject to a master franchise agreement with Anytime Fitness LLC in the USA which ensures consistency of the global brand and reciprocal membership rights.

⁶ Ex 1 Vol 1, Tab 19A at [8]; see also Ex 1 Vol 3, Tab 51 at pp. 1, 4.

⁷ Ex 1 Vol 2, Tab 33 at [8].

⁸ Ex 1 Vol 2, Tab 33B at [13].

⁹ Ex 1 Vol 2, Tab 33 at [25].

¹⁰ Mr Hrobat, Transcript 19/4/21, page 40, lines 10 to 20.

¹¹ Mr Hrobat, Transcript 19/4/21, page 39, lines 42 to 49, page 40, lines 1 to 2.

¹² Ex 1 Vol 2, Tab 33 at [5].

¹³ Ex 1 Vol 1, Tab 29 at [4]; Mr Peil, Transcript 21/04/21, page 75, lines 39 to 44.

¹⁴ Mr Peil, Transcript 21/04/21, page 75, line 46 to page 76, line 4.

¹⁵ Mr Hrobat, Transcript 19/4/21, page 81, line 41 to page 82, line 2.

¹⁶ Mr Peil, Transcript 22/04/21, page 23, lines 44 to 49; Ex 1 Vol 2, Tab 33B at p. 35ff (Code of Practice); Mr Smith, Transcript 22/04/21, page 58, line 49 to page 59, line 4.

¹⁷ Ex 1 Vol 2, Tab 33B at [3].

¹⁸ Ex 1 Vol 2, Tab 33B at [2].

¹⁹ Mr Peil, Transcript 21/04/21, page 76, line 23.

²⁰ Ex 1 Vol 2, Tab 33C at [6].

The events of 16 and 17 November 2017

20. On Thursday 16 November 2017, two staff members worked at Anytime Fitness Castle Hill: Josh Allen (then a Member Consultant), who worked from about 10:00am to 5:30 or 6:00pm; and Holly Thiessen (then the Club Manager),²¹ who worked from about 12:00pm to 8:00pm.²² Between 8:00pm on 16 November 2017 and 10:00am on 17 November 2017, the gym was unstaffed.²³
21. On Friday 17 November 2017, Ms Thiessen and Mr Allen again worked at Anytime Fitness Castle Hill. Ms Thiessen commenced her shift at about 10:00am.²⁴ However, she tagged into the gym at approximately 6:00am²⁵ and undertook a training session prior to the commencement of her shift.²⁶ Mr Allen was rostered to commence his shift at 3:00pm.²⁷ They were the only two staff members working at the gym on that date.²⁸
22. At approximately 2:45pm on 16 November 2017, Jesse tagged in at Anytime Fitness Castle Hill.²⁹ He proceeded to work out in the downstairs “free weights” area of the gym until about 4:40pm and, subsequently, on the cardio step machine upstairs for about 30 minutes. He then stretched for between 5 and 10 minutes before using his mobile telephone for less than 5 minutes.
23. At around 5:30pm³⁰, Jesse entered the nearest bathroom, closing and locking the door. He did not appear to be under any distress.
24. The bathrooms at Anytime Fitness Castle Hill are self-contained, and lockable from the inside only. They contain toilets and showers, and are fitted with “Emergency” buttons which alert security if the button is pressed.³¹ There are (and were as at November 2017) six bathrooms and several dry change rooms at Anytime Fitness Castle Hill, and each has a door that extends all the way from the floor to the ceiling.³²
25. At 5:34pm, Jesse’s mother Debbie called his mobile telephone and had a conversation with Jesse lasting for about 4 minutes.³³ Jesse remained inside the bathroom during that

²¹ Ex 1 Vol 1, Tab 31B at 2(a).

²² Ex 1 Vol 1, Tab 29 at [13]-[14]; Tab 31B at [6(a)(i)].

²³ Ex 1 Vol 1, Tab 29 at [4].

²⁴ Ex 1 Vol 1, Tab 31B at [9(a)(i)].

²⁵ Ex 1 Vol 1, Tab 29B at p. 20.

²⁶ Ex 1 Vol 1, Tab 31B at [7]; Ms Thiessen, Transcript 21/04/21, page 45, line 33 to page 48, line 5.

²⁷ Ex 1 Vol 1, Tab 31D at [6(a)(i)].

²⁸ Ex 1 Vol 1, Tab 29 at [15].

²⁹ Ex 1 Vol 1, Tab 29B at p. 4.

³⁰ I note that the CCTV time stamps appear to be approximately 10-15 minutes ahead of local time. This can be confirmed by reference to objective evidence such as telephone call logs. The references to CCTV times should be regarded as approximate for this reason. Nevertheless the timings are extremely useful for judging how long certain actions took.

³¹ Ex 1 Vol 1, Tab 19 pp. 115-123; Vol 2, Tab 33D. Mr Hrobat is not aware of any occasions where that emergencybutton has been used at Anytime Fitness Castle Hill: Mr Hrobat, Transcript 19/4/21, page 90, lines 32 to 34.

³² Ex 1 Vol 1, Tab 19 at p. 120; Vol 2, Tab 33D; Mr Hrobat, Transcript 19/4/21, page 69, line 28 to page 70, line 3; Ms Thiessen, Transcript 21/04/21, page 42, line 25, page 43, lines 1 to 5.

³³ Ex 1 Vol 3, Tab 57.

call. According to Debbie, Jesse sounded normal and was fully coherent.³⁴ Debbie asked Jesse whether he was home, but Jesse mumbled in response and did not answer the question.³⁵ Jesse did not sound unwell or unhappy to his mother, and he did not make any complaint of feeling unwell.³⁶

26. At 5:41pm, Jesse sent a text message from inside the bathroom.³⁷ The contents of that message, and the recipient of that message, are unknown. This is the last time that Jesse is known to have used his mobile telephone. It is also the last time that Jesse is known to have been conscious.
27. Debbie called Jesse again at 6:22pm (and several times subsequently on 17 November 2017), but he did not answer his phone and Debbie's calls went through to voicemail.³⁸ Jesse received an MMS on his mobile telephone at 6:37pm, to which he did not respond.³⁹ Nor did Jesse return or acknowledge Debbie's telephone call from 6:22pm. I accept that this was unusual in the context of their relationship. Debbie told the court that she tried again later in the evening at about 10:00pm, but there was no reply.⁴⁰ In my view, the evidence establishes that it is most likely that Jesse became incapacitated some time between 5:41pm and approximately 6:22pm on 16 November 2017.
28. On 17 November 2017 Debbie called Jesse at 6:09am; that call went through to voicemail.⁴¹ At 6:27am, Debbie called Castle Hill Police Station and asked a female officer whether Jesse had been in an accident.⁴² Debbie then attended Anytime Fitness Dural between 6:09am and 8:00am, but there were no staff members around and she could not see Jesse's car.⁴³ At 6:54am, Debbie called Westmead Hospital to see whether Jesse had been in an accident.⁴⁴
29. At 8:39am and 10:19am, Debbie again telephoned Castle Hill Police Station.⁴⁵ She spoke with Constable Stephanie Brown during one of those calls⁴⁶ and told her that Jesse was missing, and that it was odd as he was a creature of habit.⁴⁷ According to Debbie, Constable Brown told her during one of these telephone calls that "nothing could be done", that he was 31 years old and that Jesse had to be missing for 24 hours.⁴⁸

³⁴ Ex 1 Vol 1, Tab 19A at [20].

³⁵ Ex 1 Vol 1, Tab 19A at [20].

³⁶ Ex 1 Vol 1, Tab 19A at [20].

³⁷ Ex 1 Vol 3, Tab 57.

³⁸ Ex 1 Vol 1, Tab 19A at [21], [25]; Vol 3, Tab 57.

³⁹ Ex 1 Vol 3, Tab 57.

⁴⁰ Ex 1 Vol 1, Tab 19A at [23].

⁴¹ Ex 1 Vol 1, Tab 19A at [25]; Vol 3, Tab 57.

⁴² Ex 1 Vol 3, Tab 57; Vol 1, Tab 19A at [26].

⁴³ Ex 1 Vol 1, Tab 19A at [27].

⁴⁴ Ex 1 Vol 3, Tab 57; Vol 1, Tab 19A at [27].

⁴⁵ Ex 1 Vol 3, Tab 57.

⁴⁶ Ex 1 Vol 1, Tab 19A at [28]; Vol 1, Tab 20 at [5].

⁴⁷ Ex 1 Vol 1, Tab 19A at [28].

⁴⁸ Ex 1 Vol 1, Tab 19A at [28].

30. Constable Brown does not recall making any statement to that effect, and does not believe that is something she said.⁴⁹ Constable Brown says that it is also clear through her inquiries on that date that it was not the case that nothing could be done.⁵⁰ The other female on duty at Castle Hill Police Station on 17 November 2017 was General Administrative Support Officer Brooke Scanlan, who does not recall having any conversations with Debbie on that date.⁵¹ Ms Scanlan's shift commenced at 11:00am that day,⁵² and Debbie did not use her mobile telephone to call Castle Hill Police Station at any time after 11:00am.⁵³
31. It is difficult now to be certain about exactly what Debbie was told during this call. I accept that she came away with the impression that nothing substantive could be done at that stage. I also accept that NSW Police commenced some inquiries within the first 24 hours.
32. On 6 April 2021, Superintendent Jason Joyce, Commander of the Hills Police Area Command, sent an email to all staff drawing their attention to the Missing Person Standard Operating Procedures (**MP SOPs**).⁵⁴ In that email, he asked staff to ensure that they familiarise themselves with those new MP SOPs and "ensure that all missing person reports are managed in accordance with the SOPs".⁵⁵
33. I am heartened that staff in the Hills Police Area Command have now been reminded of the relevant procedures in this regard and am confident that further education for all frontline police officers has also been undertaken following changes made to the MP SOPs. At the time of Jesse's collapse, and currently, there is no requirement for a person to be missing for over 24 hours before police can begin an investigation.⁵⁶ However, over the years there have been common misconceptions about waiting periods in relation to the report of missing persons both within the police force and the general public. It is an issue that has been comprehensively addressed by the new Missing Persons Registry.
34. At about 10:30am on 17 November 2017, Debbie attended Anytime Fitness Dural and met with the male member in charge.⁵⁷ She asked him to check where Jesse had tagged into the gym.⁵⁸ The male staff member told Debbie that Jesse had tagged into Anytime Fitness Dural at about 11:00am on 16 November 2017, and subsequently tagged into

⁴⁹ Ex 1 Vol 1, Tab 20A at [6]-[7].

⁵⁰ Ex 1 Vol 1, Tab 20A at [6].

⁵¹ Ex 1 Vol 1, Tab 20C at [5].

⁵² Ex 1 Vol 1, Tab 20C at [4]-[5].

⁵³ Ex 1 Vol 3, Tab 57.

⁵⁴ Ex 1 Vol 1, Tab 24B.

⁵⁵ Ex 1 Vol 1, Tab 24B.

⁵⁶ Ex 1 Vol 1, Tab 24C at [16].

⁵⁷ Ex 1 Vol 1, Tab 19A at [30].

⁵⁸ Ex 1 Vol 1, Tab 19A at [30].

Anytime Fitness Castle Hill at about 2:30pm on that date.⁵⁹ The staff member was unable to identify when Jesse had left the gym because Anytime Fitness does not have any swipe-out facility.⁶⁰

35. At 11:49am, Debbie attended Castle Hill Police Station and reported Jesse as missing.⁶¹ She spoke with Constable Brown, who took details from Debbie in official Police notebook F632294 in order to put on a missing person's report.⁶² After leaving the police station, Debbie telephoned Anytime Fitness Castle Hill at about 12:00 or 12:30pm⁶³ and spoke with Ms Thiessen.⁶⁴ Debbie asked Ms Thiessen to check the CCTV footage at Anytime Fitness Castle Hill, which Ms Thiessen agreed to do.⁶⁵ Upon reviewing the CCTV footage, Ms Thiessen discovered that Jesse had entered the bathroom at 5:30pm the previous day and had not exited the bathroom.⁶⁶
36. Ms Thiessen proceeded to knock on the bathroom door and the "first thing" she did thereafter was to telephone the club supervisor, Ed Abella, at about 1:00pm.⁶⁷ Mr Abella, who was based in Pymble, in turn telephoned Mr Hrobat.⁶⁸ Mr Hrobat got in his car, where he called Ms Thiessen at approximately 1:19pm⁶⁹ and told her that his executive assistant was on her way to Anytime Fitness Castle Hill.⁷⁰ Ms Thiessen does not recall what she was doing between the telephone calls with Mr Abella and Mr Hrobat respectively, but said that she was "waiting for direction basically".⁷¹ During the latter call, Mr Hrobat told Ms Thiessen not to break into the bathroom but instead to call the police and wait for them to arrive.⁷² Mr Hrobat knew that something serious must have happened to Jesse and that Jesse may have been in need of medical attention at that time, but gave evidence that "[Ms Thiessen] was 20 and [Mr Allen] was 19 and I felt it was best that someone from emergency services or a police officer access the bathroom".⁷³ I understand that Mr Hrobat's motivation for giving that direction was the well being of his young staff, but it was the wrong advice. The door should have been opened immediately. I am not critical of Ms Thiessen, who acted according to the instructions given to her by her boss. Nevertheless, Anytime Fitness Castle Hill should employ staff that it can confidently rely upon to act in an emergency of this sort.

⁵⁹ Ex 1 Vol 1, Tab 19A at [30].

⁶⁰ Ex 1 Vol 1, Tab 19A at [30].

⁶¹ Ex 1 Vol 1, Tab 19A at [31]; Vol 1, Tab 20 at [6]-[13].

⁶² Ex 1 Vol 1, Tab 20 at [10] and Annexures A and B.

⁶³ Ex 3; Ex 1 Vol 1, Tab 29 at [17]; Ms Thiessen, Transcript 21/04/21, page 50, lines 18 to 31.

⁶⁴ Ex 1 Vol 1, Tab 19A at [32].

⁶⁵ Ex 1 Vol 1, Tab 19A at [32]; Vol 1 Tab 29 at [17]; Vol 1, Tab 31B at [12(c)].

⁶⁶ Ex 1 Vol 1, Tab 31B at [9(a)(vi)]; Tab 29 at [18].

⁶⁷ Ex 3; Ex 1 Vol 1, Tab 31B at [9(a)(viii)]; Ms Thiessen, Transcript 21/04/21, page 71, line 45.

⁶⁸ Ex 1 Vol 1, Tab 29 at [18]-[19]; Vol 1, Tab 31B at [9(a)(viii)(i)].

⁶⁹ Ex 3; Ms Thiessen, Transcript 21/04/21, page 65, lines 36 to 38.

⁷⁰ Ex 1 Vol 1, Tab 29 at [19].

⁷¹ Ms Thiessen, Transcript 21/04/21, page 65, lines 43 to 48.

⁷² Ex 1 Vol 1, Tab 29 at [19]; Ex 3; Mr Hrobat, Transcript 19/4/21, page 100, lines 18 to 20; Ms Thiessen, Transcript 21/04/21, page 53, lines 29 to 30.

⁷³ Mr Hrobat, Transcript 19/4/21, page 100, lines 22 to 44.

37. All staff at Anytime Fitness Castle Hill are trained in first aid, including the use of the defibrillator on site.⁷⁴ Ms Thiessen gave evidence that she “[d]efinitely” knew or thought that Jesse might have needed medical assistance, and she knew how to open the door from the outside, but she did not enter the bathroom to render first aid to Jesse because she was instructed by Mr Hrobat not to open the door.⁷⁵ She also gave evidence that neither Mr Hrobat nor Mr Abella told her to call an ambulance.⁷⁶ When asked whether it crossed her mind to call an ambulance, Ms Thiessen said that “I didn’t know what the situation was and I was very distressed at the time ... to think clearly was difficult”.⁷⁷ She denied thinking that it was already too late and said she “honestly didn’t know what had happened or what the situation was”.⁷⁸
38. Ms Thiessen telephoned Castle Hill Police Station directly at 1:30pm and spoke with Ms Scanlan,⁷⁹ who created a Concern for Welfare job for police to attend Anytime Fitness Castle Hill.⁸⁰ Ms Thiessen also telephoned Mr Allen, asking him to come to work early and telling him that she had called the police.⁸¹ Ms Thiessen called Castle Hill Police Station, rather than triple-0, because the police station “was so close and I expected them to be able to get there ... it was a more direct way to get through to them and have people get there as quick as possible”.⁸²
39. At approximately 2:05pm, a full hour after Ms Thiessen had realised Jesse was in the bathroom, police gained entry to the locked bathroom at Anytime Fitness Castle Hill and found Jesse lying on his back on the floor, where he was unconscious but breathing sporadically.⁸³ He was frothing at the mouth and had been incontinent.⁸⁴ He was bleeding from his head and there was also blood around his nose or from his mouth, and light blood spray on the wall in the bottom corner of the bathroom.⁸⁵ Jesse was wearing a T-shirt, black gym shorts and white shoes,⁸⁶ and his gym bag was also in the bathroom.⁸⁷
40. NSW Ambulance received the call to attend Anytime Fitness Castle Hill at 2:06pm on 17

⁷⁴ Mr Hrobat, Transcript 19/4/21, page 88, lines 1 to 22; see also Mr Allen, Transcript 21/04/21, page 4, line 46 to page 5, line 20; Ms Thiessen, Transcript 21/04/21, page 29, lines 34 to 50.

⁷⁵ Ms Thiessen, Transcript 21/04/21, page 51, lines 49 to 50; page 52, lines 1 to 6; page 52, line 42 to page 43, line 2.

⁷⁶ Ms Thiessen, Transcript 21/04/21, page 53, lines 45 to 47, page 54, line 28, page 67, lines 4 to 16.

⁷⁷ Ms Thiessen, Transcript 21/04/21, page 54, lines 5-6.

⁷⁸ Ms Thiessen, Transcript 21/04/21, page 67, line 45 to page 68, line 2.

⁷⁹ Ex 1 Vol 1, Tab 20 at [14].

⁸⁰ Ex 1 Vol 1, Tab 20 at [14]; Vol 1, Tab 23.

⁸¹ Ex 1 Vol 1, Tab 31B at [9(a)(viii)(iii)]; Mr Allen, Transcript 21/04/21, page 17, lines 16-17.

⁸² Ms Thiessen, Transcript 21/04/21, page 67, lines 32 to 35.

⁸³ Ex 1 Vol 1, Tab 21 at [5], [7]-[8].

⁸⁴ Ex 1 Vol 1, Tab 21 at [7].

⁸⁵ Ex 1 Vol 1, Tab 21 at [7].

⁸⁶ The first officer on the scene, Sergeant Mammone, said that Jesse was wearing no shirt when he was first discovered: Ex 1 Vol 1, Tab 21 at [7]. However, CCTV footage shows that Jesse was initially wearing a T-shirt which was then cut off by paramedics and/or police while treating him at the scene: Ex 1 Vol 2, Tab 43.

⁸⁷ Ex 1 Vol 1, Tab 21 at [7].

November 2017.⁸⁸ The first ambulance crew, consisting of P1 Paramedic Andrew Preece and L1 Paramedic Brett Eichorn, arrived at Anytime Fitness Castle Hill at 2:18pm.⁸⁹ They assisted police in moving Jesse from the bathroom to the corridor.⁹⁰ A second crew arrived at 2:22pm, consisting of P1 Paramedic Ross Morrison and Intensive Care Paramedic Virginia Pok.⁹¹

41. Mr Morrison recorded that Jesse had a glucose level of 1.2 (the normal range being between 4 and 8).⁹² His Glasgow Coma Scale (**GCS**) level was 3 (the normal level being 15).⁹³ Glucose 10% was administered intravenously, following which Jesse's sugar levels increased.⁹⁴ Mr Morrison observed that the blood spray on the wall appeared to have been spat out of Jesse's mouth, and opined that the blood spray and facial trauma were consistent with Jesse falling and landing on his face.⁹⁵
42. At 2:42pm, a CareFlight Doctor and CareFlight Paramedic arrived at the scene.⁹⁶ The CareFlight Doctor intubated Jesse,⁹⁷ before he was conveyed to Westmead Hospital at about 3:18pm.⁹⁸ CareFlight records show that Jesse had a BSL of 4.6 and that his GCS score remained at 3 during transit.⁹⁹
43. Jesse arrived at Westmead Hospital at 3:35pm.¹⁰⁰ He was sedated with propofol and fentanyl, ventilated and admitted to the Intensive Care Unit under the care of Dr Mann (Toxicology).¹⁰¹
44. In a progress note dated 19 November 2017 at 1:18pm, Medical Officer Vineet Nayyar recorded that "the trends, EEG and CT result at admission point to significant brain damage from which recovery to normal state will not be possible" and that "[I]likely cause [was] critically low blood glucose levels, though additional contribution likely from low oxygen levels, dehydration".¹⁰² Dr Nayyar also recorded that:¹⁰³

"High probability that exogenously administered insulin could have resulted in the initial loss of consciousness – hard to reconstruct the incident because of the passage of time, smudging of the picture as a result of secondary insults.

⁸⁸ Ex 1 Vol 1, Tab 25 at [5]; Tab 26 at p. 3.

⁸⁹ Ex 1 Vol 1, Tab 26 at p. 3.

⁹⁰ Ex 1 Vol 1, Tab 21 at [9]; Tab 22 at [8].

⁹¹ Ex 1 Vol 1, Tab 25 at [7]-[8]; Tab 26 at p. 9.

⁹² Ex 1 Vol 1, Tab 25 at [14].

⁹³ *Ibid.*

⁹⁴ Ex 1 Vol 1, Tab 25 at [14].

⁹⁵ Ex 1 Vol 1, Tab 25 at [13].

⁹⁶ Ex 1 Tab 1, Tab 27 at pp. 3, 10.

⁹⁷ Ex 1 Vol 1, Tab 25 at [15].

⁹⁸ Ex 1 Vol 1, Tab 26 at p. 9.

⁹⁹ Ex 1 Vol 3, Tab 44 at p. 133.

¹⁰⁰ Ex 1 Vol 1, Tab 26 at p. 9.

¹⁰¹ Ex 1 Vol 3, Tab 44 at pp. 82, 118; see also pp. 21, 33-37, 43, 59, 61.

¹⁰² Ex 1 Vol 3, Tab 44 at p. 28.

¹⁰³ *Ibid.*

Family confirmed that they have found an insulin syringe of novorapid in his bag. Enquiries made of the police who attended the scene – no illicit drugs.”

45. On 21 November 2017, after medical advice, Jesse’s family decided to withdraw his life support. He was extubated at 11:11am and pronounced deceased at 2:25pm on that date by Dr Mohanty at Westmead Hospital.¹⁰⁴
46. A Discharge Transfer Document from Westmead Hospital recorded that “[n]o clear cardiac or neurological cause of his sudden unwitnessed collapse was found”, that “TTE showed concentric LV hypertrophy consistent with a collateral hx of previous anabolic steroid use” and that “[c]ircumstantial evidence and collateral history suggests that Jesse may have injected insulin for its anabolic effects”.¹⁰⁵
47. An antemortem blood sample was taken from Jesse at 3:44pm on 17 November 2017.¹⁰⁶ Following Jesse’s death, that sample was sent for analysis by the NSW Forensic and Analytical Science Service and a blood insulin level of <1 mIU/L was recorded.¹⁰⁷

The response of Anytime Australia and Anytime Fitness Castle Hill

48. Anytime Australia utilises a Workplace Health and Safety system known as Anytime Safety, which (among other things) allows franchisees to log records of incidents that occur in Anytime Fitness clubs, including safety incidents, medical emergencies and the like.¹⁰⁸ The logging of incidents in Anytime Safety “constitutes the required, formal notification of incidents from franchisees” to Anytime Australia.¹⁰⁹ In Mr Peil’s words, it is “meant to give a reporting system where we can gather data that allows us to analyse recurring issues, so that we can make systemic changes to improve the safety and security of members and staff and the business themselves”.¹¹⁰ Mr Hrobat did not fill out an Anytime Safety incident report in respect of Jesse’s incapacitation and subsequent discovery on 16-17 November 2017¹¹¹ (and nor did Anytime Australia ask him to provide such a report); when asked why not, Mr Hrobat said that “I think we just had so much going on around it”.¹¹² Mr Peil gave evidence that there should have been an Anytime Safety incident report in relation to Jesse’s collapse.¹¹³

¹⁰⁴ Ex 1 Vol 3, Tab 44 at pp. 18-19, 22-23; Ex 1 Vol 1, Tab 1.

¹⁰⁵ Ex 1 Vol 3, Tab 44 at p. 18.

¹⁰⁶ Ex 1 Vol 1, Tab 4 at p. 3.

¹⁰⁷ Ex 1 Vol 1, Tab 5; Ex 1 Vol 1, Tab 4 at p. 3.

¹⁰⁸ Ex 2 at [3]-[4]; Mr Peil, Transcript 22/04/21, page 7, lines 12 to 21. See the template form at Ex 1 Vol 2, Tab 33 at pp. 210-216.

¹⁰⁹ Ex 2 at [4]. See also Ex 1 Vol 2, Tab 33 at p. 167; Mr Peil, Transcript 22/04/21, page 7, lines 1 to 3; Mr Hrobat, Transcript 19/4/21, page 108, lines 26 to 29.

¹¹⁰ Mr Peil, Transcript 22/04/21, page 7, lines 45 to 48; see also page 8, lines 37 to 45.

¹¹¹ Ex 2 (Statement of Andrew Gow) at [5].

¹¹² Mr Hrobat, Transcript 19/4/21, page 108, lines 35 to 39, page 109, lines 1 to 3.

¹¹³ Mr Peil, Transcript 22/04/21, page 9, lines 37 to 43.

49. A separate “in-house” incident report was completed by each of Ms Thiessen¹¹⁴ and Mr Allen¹¹⁵ and submitted to Anytime Australia,¹¹⁶ and an insurance incident report was likewise prepared.¹¹⁷ In that respect, on or around 20 November 2017 a meeting took place between Mr Hrobat, his business partner Michael McGrath and Ms Thiessen where Ms Thiessen was told what her role would be in relation to paperwork that needed to be filled out, and any meetings with insurance, and she was also offered counselling and support.¹¹⁸
50. Mr Allen gave evidence that he was asked not to discuss the incident involving Jesse with other staff and with people who came into the gym.¹¹⁹ He does not recall who asked him not to discuss it, but said that it would have been shortly after the incident and that he complied with that instruction.¹²⁰ Ms Thiessen does not “specifically recall being instructed not to say anything about it”.¹²¹ However, she was approached by “a couple of members a day” who queried why the police and ambulance had been at the gym.¹²² Those members “didn’t know any details of the situation” so Ms Thiessen “kept that from them” and “explained that a member had been locked in the bathroom” but did not tell them the member had died.¹²³ Anytime Fitness Castle Hill does not have a newsletter, but communicates mainly through Facebook and Instagram.¹²⁴ There “wasn’t really much activity” on those platforms as at 2017, and Anytime Fitness Castle Hill did not communicate any news about Jesse’s death on any of those platforms.¹²⁵
51. Mr Peil found out about the events concerning Jesse shortly after the events themselves.¹²⁶ Anytime Australia did not reach out to Jesse’s family about the circumstances of Jesse’s death.¹²⁷ When asked whether the board took any action upon learning of Jesse’s incapacitation and death, Mr Peil said that “it was referred to the risk committee to analyse ... and yes, we did discuss it. We asked for additional information, which was hard to get. We then undertook that any changes that – like you’re talking about needed to wait for an enquiry”.¹²⁸ Mr Peil determined that Anytime Australia would wait for the outcome of the coronial inquest to implement changes.¹²⁹ Mr Peil said that “a death of that type had not happened for nine years that we’ve been in operation” and that

¹¹⁴ Ex 3; see Ms Thiessen, Transcript 21/04/21, page 56, lines 11 to 38.

¹¹⁵ Ex 6.

¹¹⁶ See Mr Hrobat, Transcript 19/4/21, page 99, lines 40 to 50, page 108, lines 37 to 50, page 109, lines 9-10.

¹¹⁷ Ex 7.

¹¹⁸ Ms Thiessen, Transcript 21/04/21, page 55, line 9 to page 56, line 7.

¹¹⁹ Mr Allen, Transcript 21/04/21, page 17, lines 32 to 38, lines 45 to 50, page 18, lines 1 to 15.

¹²⁰ Mr Allen, Transcript 21/04/21, page 18, lines 21 to 37.

¹²¹ Ms Thiessen, Transcript 21/04/21, page 57, line 16, page 68, lines 46 to 49.

¹²² Ms Thiessen, Transcript 21/04/21, page 57, lines 18 to 41.

¹²³ Ms Thiessen, Transcript 21/04/21, page 57, lines 40 to 45.

¹²⁴ Ms Thiessen, Transcript 21/04/21, page 69, lines 5 to 10.

¹²⁵ Ms Thiessen, Transcript 21/04/21, page 69, lines 12 to 15; see also page 70, line 19.

¹²⁶ Mr Peil, Transcript 22/04/21, page 10, lines 1 to 4.

¹²⁷ Mr Peil, Transcript 22/04/21, page 47, lines 37 to 42.

¹²⁸ Mr Peil, Transcript 22/04/21, page 10, lines 14 to 18.

¹²⁹ Mr Peil, Transcript 22/04/21, page 11, lines 32 to 35.

“statistically the chance of that happening again were low [sic]”.¹³⁰ Mr Peil also said that he was confident that even if the formal reporting system was not working, he would find out about incidents of that kind one way or another.¹³¹

52. I accept counsel assisting’s submission that this evidence is undermined to some degree by the circumstances surrounding an incident at Anytime Fitness Hornsby in September 2020. The court was told that Mr Peil first became aware of that incident in April 2021, in the week prior to the hearing of this inquest.¹³² Nevertheless I accept Mr Peil’s evidence that Jesse’s collapse occurred in the context of “millions” of visits to Anytime gyms and the general submission of both Anytime Australia and ATGPPMS that collapses of the kind Jesse experienced are in fact “extremely rare”.

Items located in Jesse’s gym bag and car

53. Following the discovery of Jesse on 17 November 2017, police conducted a search of Jesse’s gym bag and located the following items:¹³³

- a. an empty blister packet of “Klenbol Clenbuterol HCL Tablets 60 mcg” which is a product said by its manufacturer to increase muscle bulk and strength and decrease body fat;¹³⁴
- b. an empty blister packet of “Modvigil-Tablets 200”; and
- c. an opened blister packet of “T3-Max-25 Tablets”.

54. Clenbuterol is mainly used for asthma but has pharmacological similarities to adrenaline, and in sufficiently high doses it can cause an increase in the metabolic rate.¹³⁵ Modvigil is a drug which promotes and enhances wakefulness,¹³⁶ while T3 Max tablets contain the hormone tri-iodothyronine, a naturally occurring thyroid hormone which has potential use as a weight loss agent when used in pharmacological doses.¹³⁷

55. The Officer in Charge of the coronial investigation, Senior Constable Scott Darwick (**OIC Darwick**), told the court that he checked the rubbish bin inside the bathroom where Jesse was found, and it contained nothing of interest.¹³⁸ However, to the best of his knowledge, the sanitary bin in the bathroom was not checked¹³⁹ and no photographs were taken of that item. Detective Senior Constable Hugh Thomas attended the scene with OIC

¹³⁰ Mr Peil, Transcript 22/04/21, page 12, lines 16-17.

¹³¹ Mr Peil, Transcript 22/04/21, page 11, lines 15 to 25.

¹³² Mr Peil, Transcript 22/04/21, page 13, line 9.

¹³³ Ex 1 Vol 1, Tab 7 at [81].

¹³⁴ Ex 1 Vol 1, Tab 7 at [97].

¹³⁵ Ex 1 Vol 3, Tab 58 at [7(a)].

¹³⁶ Ex 1 Vol 3, Tab 58 at [7(b)].

¹³⁷ Ex 1 Vol 3, Tab 58 at [7(c)].

¹³⁸ Ex 1 Vol 1, Tab 19.2.

¹³⁹ Ex 1 Vol 1, Tab 19.1 at [4].

Darwick on 17 November 2017 and took a number of photographs of the bathroom and of Jesse's property.¹⁴⁰ DSC Thomas did not notice the presence of any needles in the bathroom.¹⁴¹ However, DSC Thomas confirms that police did not search the sanitary wastebin inside the bathroom where Jesse was located.¹⁴²

56. Police also searched Jesse's car in the car park at Anytime Fitness Castle Hill, and located:¹⁴³

- a. numerous unopened "BD Ultra-Fine II Short Needle Insulin Syringes",¹⁴⁴
- b. an empty Australia Post Express Parcel from "SS.com, 177 Booran Road, Caulfield South VIC 3162" addressed to Jesse; and
- c. an empty blister packet of "T3-Max-25 Tablets".

57. According to OIC Darwick, police did not locate any syringes or NovoRapid pens in Jesse's gym bag or in his car during the course of their searches on or after 17 November 2017.¹⁴⁵ There is no photographic evidence of any such items having been located by police.¹⁴⁶

58. However, Jesse's sister Eryne Davies provides a different account.¹⁴⁷ Eryne says that while Jesse was at Westmead Hospital, Jesse's friend SJ came to visit him in hospital. Eryne says that while SJ was visiting Jesse at Westmead Hospital, he "said something to us like, he knew Jesse was taking insulin and he told him not to." SJ did not mention anything about a brand called NovoRapid pen. That conversation occurred outside the nurses' station and Eryne says that it "led us to investigate so that we could treat Jesse accordingly". Eryne says that the family then found a NovoRapid pen in Jesse's gym bag which had been left in the tray of Jesse's ute by police. The pen was "thick and blue" and "there was ½ to ¾ remaining in there". She says that they (that is, Eryne and her family) either told the hospital about the pen or showed them a photograph of the pen. Eryne was unaware at that time that Jesse was using insulin or PIEDs. Eryne's account is noteworthy for its detail. It is also supported by the contemporaneous entry in the Westmead Hospital records on 19 November 2017 that "[f]amily confirmed that they have found an insulin syringe of NovoRapid in his bag. Enquiries made of the police who attended the scene – no illicit drugs."

59. I accept Eryne's evidence that a NovoRapid pen was located by the family. The most

¹⁴⁰ Ex 1 Vol 1, Tab 24F at [7].

¹⁴¹ *Ibid*

¹⁴² *Ibid*

¹⁴³ Ex 1 Vol 1, Tab 7 at [83].

¹⁴⁴ Ex 1 Vol 1, Tab 7 at [101]-[102].

¹⁴⁵ Ex 1 Vol 1, Tab 19.1 at [4], [6] and [8].

¹⁴⁶ Cf. Ex 1 Vol 1, Tab 7 Annexure 2, images 1 to 11 (photographs taken by police of the restroom at Anytime Fitness Castle Hill, including Jesse's gym bag and its contents), Annexure 1, images 1 to 15 (photographs taken by police of Jesse's car and its contents).

¹⁴⁷ The proceeding summary is taken from Ex 1 Vol 1, Tab 19D at [8]-[11].

likely explanation is that it was simply missed by NSW Police or that they did not recognise the pen or understand its significance at that time. I accept that the family were extremely motivated to look for anything that would aid Jesse's treatment and the contemporaneous hospital note supports Eryne's account.

60. When police arrived at the gym on 17 November 2017, Sergeant Giuseppe Mammone contacted the Crime Scene Coordinator and provided a detailed description of what had occurred, what he had witnessed, and Jesse's condition at that time.¹⁴⁸ The Crime Scene Coordinator declined Crime Scene Investigators' attendance.¹⁴⁹ In a statement provided on 15 April 2021, Acting Superintendent Debnam indicated that where an incident takes place which does not appear to be connected to a crime, but there is a person presenting in a critically ill state, then the Crime Scene Coordinator should make sufficient inquiries to establish the likelihood of the person surviving the incident.¹⁵⁰ If the person is not likely to survive and the matter will progress to a coronial investigation, then a determination should be made for crime scene officers to attend to examine and record the scene on behalf of the coroner.¹⁵¹
61. Acting Superintendent Debnam also indicated that exhibits collected by police other than crime scene investigators will generally be photographed in situ before being collected, packaged, conveyed back to the police station, entered into the Exhibits Forensic Information Miscellaneous Property System (**EFIMS**) and secured in the exhibit room.¹⁵² Miscellaneous property collected by police should be photographed, packaged, entered into EFIMS and secured within the police station until such time as it is returned to the owner or otherwise disposed of.¹⁵³ Where an exhibit or miscellaneous property relates materially to the cause of death, it should be retained pending a discussion with the Coroner and should not be disposed of until the Coroner directs.¹⁵⁴ Where an item is not required to be retained and a lawful owner has been identified, the owner should be notified promptly that the items are able to be returned and arrangements should then be made to have the items returned directly to the owner, and this movement of exhibits recorded in EFIMS.¹⁵⁵
62. As I have stated, I accept Eryne's evidence that Jesse's family located an insulin pen. The account is highly plausible and consistent with the medical record. While no insulin pen is depicted in the contemporaneous photographs taken by police, and the evidence of OIC Darwick and DSC Thomas is that no such pen was located, I am of the view that

¹⁴⁸ Ex 1 Vol 1, Tab 7 at [80].

¹⁴⁹ *Ibid.*

¹⁵⁰ Ex 1 Vol 1, Tab 24E at [17].

¹⁵¹ Ex 1 Vol 1, Tab 24E at [17].

¹⁵² Ex 1 Vol 1, Tab 24E at [27].

¹⁵³ Ex 1 Vol 1, Tab 24E at [28].

¹⁵⁴ Ex 1 Vol 1, Tab 24E at [31].

¹⁵⁵ Ex 1 Vol 1, Tab 24E at [32].

it was most likely to have been overlooked and thus not appropriately photographed and secured. However, I note that the expert opinion of Professor Carter as to the manner of Jesse's death does not depend on whether or not any insulin pen was in fact located on Jesse's person or in his belongings in November 2017.

Jesse's history of PIEDs usage

63. The evidence summarised below establishes that Jesse had a substantial history of PIED use and that he acquired and used a wide variety of PIEDs in the years prior to his death, including non-prescribed insulin.
64. Jesse had acquired or sought to acquire insulin on at least four occasions in 2016 and 2017:
- a. in or around October 2016, Jesse appears to have placed or sought to place an online order for an "insulin flex pen" or "90-insulin pen" using a bitcoin-based payment system;¹⁵⁶
 - b. on 14 December 2016, Jesse placed an online order for, among other things, a NovoRapid insulin pen – 300iu;¹⁵⁷ and
 - c. on each of 25 July 2017 and 8 November 2017 Jesse purchased "2 x NovoRapid Insulin Pens – 300iu" online, using a bitcoin-based payment system.¹⁵⁸ The latter order of 8 November 2017, which was to be delivered to Jesse via Express Postage,¹⁵⁹ is of significance given its proximity to the date of Jesse's death.
65. On 10 June 2017, Jesse made an inquiry online about the possibility of a supplier getting "any slin in stock".¹⁶⁰ On 11 August 2017, Jesse sent an email to an encrypted email service in which he stated "Hey how would you recommend using the dnp [2,4-Dinitrophenol] with insulin? Have you combined both before?".¹⁶¹ On 13 August 2017 Jesse received a response from that encrypted email service which stated "not sure on that one I have not used insulin and really don't like it as I have seen friends in hospital because of it. maybe ask on forum what peoples [sic] thoughts are....".¹⁶²
66. Meanwhile, an entry in the "Notes" application on Jesse's mobile phone dated 31 July 2017 (shortly before Jesse's emails about combining "dnp" with insulin) sets out what appears to be a detailed regime for supplements including insulin, as follows (emphasis

¹⁵⁶ Ex 1 Vol 3, Tab 56 at p. 9.

¹⁵⁷ Ex 1 Vol 3, Tab 56 at p. 10.

¹⁵⁸ Ex 1 Vol 1 Tab 7 at [105]-[106]; Vol 1 Tab 9 at pp. 50-51 (Images 1 and 2).

¹⁵⁹ Ex 1 Vol 1, Tab 9 at p. 51 (Image 2).

¹⁶⁰ Ex 1 Vol 3, Tab 56 at p. 12.

¹⁶¹ Ex 1 Vol 1, Tab 7 at [121]; Vol 1, Tab 13 at p. 105 (Image 48).

¹⁶² Ex 1 Vol 1, Tab 7 at [121]; Vol 1, Tab 13 at p. 106 (Image 49).

added):¹⁶³

"Fuvk money

Hard work dedication

I won a Australian title on this

*1ml of test prop every 2nd day from week 1 to
week The 1st 6 weeks 500mg of Deca per week*

Dnp 400mg to 600mg for 10days then clenbutroel for 10days and repeat

**With the dnp I would take insuline (dnp and insuline is the most anabolic
substance it's poor mans**

hgh at 21 iu a day dan duchain claims

*Ok at week 6 I would drop the Deca and throw in 1ml of parabolan or tren every
2nd daywith the tren*

*Last 4 weeks I would put in 50mg of Winstrol injected with 1ml of kynoslen.
Kynoslen is cheap man Winstrol it's amazing u buy 100ml from pet barn for
70 bucksworks great to*

lean u out.

*Last 4 weeks I would take nolvodex or letrozol at high mg to
dry u outLast 3 days diuretics*

Back stage I would carb up on insuline."

67. The reference to having "won a Australian title on this" suggests that this regime was provided to Jesse by another (unknown) individual.
68. On numerous occasions between August 2016 and November 2017, Jesse also searched for and reviewed information online regarding the use of insulin.¹⁶⁴ By way of summary:
- a. on 16 November 2017 between 1:42pm and 1:59pm, Jesse searched on his mobile telephone for "insulin before cardio" and accessed a variety of online forums in relation to that topic until approximately 2:07pm. At least two of those forums expressed doubts about the efficacy and/or safety of using insulin before cardio. Jesse subsequently tagged in at Anytime Fitness Castle Hill at 2:45pm on that date;

¹⁶³ Ex 1 Vol 3, Tab 55 at p. 6.

¹⁶⁴ Ex 1 Vol 3, Tab 55 at pp. 11-13; Ex 1 Vol 3, Tab 56.

- b. on 11 November 2017, Jesse accessed a YouTube video about “insulin without GH, insulin with GH peptides”;
- c. on 10 November 2017, Jesse conducted a Google search for “insulin only pre workout” and subsequently accessed various webpages responsive to that search;
- d. on 9 November 2017, he searched for “insulin without hgh” and “insulin without growth” and accessed several online message threads and articles in response to those searches;
- e. on 8 November 2017, Jesse accessed at least six YouTube videos after searching “insulin pre-workout”;
- f. on 7 November 2017, he searched for “milos insulin protocol” (which appears to be a reference to bodybuilder Milos Sarcev, who had posted videos online about insulin, hgh and its use in bodybuilding). Also on 7 November 2017, Jesse accessed three YouTube videos about insulin use in bodybuilding as well as various message forums about that topic;
- g. on 4 November 2017, Jesse accessed an online message thread on his mobile telephone, which discusses among other things using “slin”;
- h. on 27 October 2017, Jesse searched on his mobile telephone for, among other things, “using insulin” and “using insulin for comp prep”;
- i. on 10 September 2017, Jesse searched online for “dnp and insulin”;
- j. on 28 August 2016, Jesse searched for “feel nothing from taking 20iu insulin”;
- k. on 22 August 2016, Jesse searched for “how to tell if insulin is real”; and
- l. on 21 August 2016, Jesse searched for “insulin dosage bodybuilding”.

69. SJ, a friend of Jesse’s, with whom he trained at Anytime Fitness Dural,¹⁶⁵ also had some information for the court in relation to Jesse’s use of insulin. He told the court that on one occasion, probably about a year or so prior to Jesse’s death,¹⁶⁶ SJ was talking to Jesse in the gym and he noticed that Jesse was changing shape and putting on a lot more muscle.¹⁶⁷ He asked Jesse what had changed, and in response Jesse said that he was using insulin.¹⁶⁸ Jesse told SJ that he had an episode and got dizzy after injecting himself with insulin at home in the kitchen, but that all he had to do was to take a lemonade or a

¹⁶⁵ Ex 1 Vol 1, Tab 19E at [4].

¹⁶⁶ SJ, Transcript 22/04/21, page 79, line 38.

¹⁶⁷ Ex 1 Vol 1, Tab 19E at [9]; SJ, Transcript 22/04/21, page 79, line 44.

¹⁶⁸ Ex 1 Vol 1, Tab 19E at [9].

lolly to reverse it.¹⁶⁹ SJ says that he told Jesse to “get off it”,¹⁷⁰ and that Jesse told him that insulin was one of the best and fastest muscle building components that you could take.¹⁷¹ According to SJ, Jesse was injecting into his stomach just near the belly button, because that area is considered a “fast receptor”.¹⁷² SJ does not know how frequently Jesse was using insulin, or what dosage or type of insulin he was using and Jesse never told him where he was getting it from.¹⁷³ Nor does SJ know whether Jesse used insulin before or after training.¹⁷⁴

70. There is therefore considerable evidence to establish that Jesse had acquired and self-administered insulin in the period prior to 16 November 2017 for its perceived anabolic effects, including by reference to his purchase of two NovoRapid insulin pens on 8 November 2017 and the online searches conducted shortly before he entered the gym on 16 November 2017. This provides strong circumstantial evidence supportive of the expert opinion of Professor Carter, namely that Jesse developed hypoglycaemia and fell unconscious as a result of the administration of insulin.
71. More broadly, from at least October 2016 Jesse procured Trenbolone, thyroid hormones, Modafinil, Dihydroboldenone Cypionate, Testosterone Suspension, Dihydroboldenone, Testosterone Enanthate, Testosterone Propionate, Atomoxetine Hydrochloride, Clenbuterol, 2,4-Dinitrophenol, Etizolam, Tadalafil, Trenbolone Hexahydrobenzylcarbonate, and ephedrine, caffeine and aspirin.¹⁷⁵ In emails sent in 2017, Jesse indicated that he was taking T3, “test 1 cyp” (Dihydroboldenone Cypionate), testosterone suspension and “clen” (Clenbuterol) and that he had also sold one drug to a client.¹⁷⁶ A note recorded in Jesse’s phone dated 5 October 2017 sets out what appears to be a record of the regime that Jesse was following as at that date, including the use of (among other things) Clenbuterol and DNP.¹⁷⁷ Meanwhile, Jesse’s mother Debbie says that after she cleaned out his room in November 2017, she located little black and silver coloured satchels of gel labelled “testosterone” in Jesse’s refrigerator which she disposed of,¹⁷⁸ as well as a NovoRapid pen in his freezer.¹⁷⁹
72. The substances acquired by Jesse during this period were procured from websites hosted behind proxy servers, so that the websites are untraceable by NSW Police.¹⁸⁰ They were also procured from encrypted email services, which were likewise

¹⁶⁹ Ex 1 Vol 1, Tab 19E at [9]. See also Professor Carter, Transcript 23/04/21, page 13, line 28 to page 14, line 14.

¹⁷⁰ Ex 1 Vol 1, Tab 19E at [9].

¹⁷¹ Ex 1 Vol 1, Tab 19E at [10].

¹⁷² Ex 1 Vol 1, Tab 19E at [10]; SJ, Transcript 22/04/21, page 81, lines 12 to 23.

¹⁷³ Ex 1 Vol 1, Tab 19E at [10]; SJ, Transcript 22/04/21, page 80, lines 29 to 49.

¹⁷⁴ SJ, Transcript 22/04/21, page 81, line 31.

¹⁷⁵ Ex 1 Vol 1, Tab 7 at [120], [126]-[127], [130]; Vol 3, Tab 56 at pp. 9ff.

¹⁷⁶ Ex 1 Vol 1, Tab 13 at pp. 62-3, 70, 77, 82, 89-91, 95-98, 103.

¹⁷⁷ Ex 1 Vol 3, Tab 55 at pp. 6-8.

¹⁷⁸ Ex 1 Vol 1, Tab 19A at [14].

¹⁷⁹ Ex 1 Vol 1, Tab 19B at [4].

¹⁸⁰ Ex 1 Vol 1, Tab 7 at [148].

untraceable during the investigation.¹⁸¹ Jesse used the payment method of the cryptocurrency “Bitcoin” and the encrypted messenger application “Wikr” to procure substances, so that both the money and the messages are also untraceable.¹⁸²

Jesse’s medical history

73. According to Jesse’s medical records from the Dural Family Medical Practice, Dural Medical and Skin Cancer Clinic, and Round Corner Medical Practice, Jesse did not disclose to his treating doctors whether he was using, or considering the use of, insulin. Nor had he been diagnosed with diabetes or prescribed insulin by any of his doctors.
74. Jesse did divulge that he was taking or had taken anabolic steroids, protein supplements and iron supplements; thus, he informed his treating doctors on a number of occasions from at least August 2012 that he was taking or had taken testosterone, including in his last recorded consultation with general practitioner Dr Segaram on 6 July 2017 at Round Corner Medical Practice.¹⁸³
75. By way of summary, Jesse’s medical records disclose the following:¹⁸⁴
- a. On or about 6 September 2012, Jesse attended the practice of endocrinologist Professor Steven Boyages “for continuing management of suppressed serum testosterone levels”.¹⁸⁵ Professor Boyages noted that Jesse had tried anabolic steroids for a period of time as a very young man and was taking multiple high strength compounds. Although Jesse reported that he had “been off the compounds now for about a year”, his serum testosterone levels “remain quite suppressed with values of 2.6 and 2.2 respectively”. Professor Boyages recorded his suspicion that Jesse’s prolonged suppression of LH FSH may be due to exogenous steroid use. Professor Boyages also noted that Jesse had a “moderately loud systolic ejection murmur ... at the base of the heart.”¹⁸⁶
 - b. On 20 September 2012, Professor Boyages reviewed Jesse and observed that he continued to have low testosterone levels and suppressed pituitary hormones.¹⁸⁷ Professor Boyages also noted that “liver function tests are slightly perturbed and urea is elevated”.¹⁸⁸ Those findings were “consistent with pituitary suppression due to previous use of anabolic steroids”. Professor Boyages recorded that while Jesse “strongly denies” current use of anabolic steroids, he

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ Ex 1 Vol 3, Tab 50 at p. 4.

¹⁸⁴ Ex 1 Vol 3, Tabs 48 to 50.

¹⁸⁵ Ex 1 Vol 3, Tab 48 at pp. 28-29.

¹⁸⁶ Ex 1 Vol 3, Tab 48 at p. 28.

¹⁸⁷ Ex 1 Vol 3, Tab 48 at p. 31.

¹⁸⁸ Ex 1 Vol 3, Tab 48 at p. 31.

“is using other compounds and there may still be some androgenic properties in some of these other compounds”. Professor Boyages recommended a “trial of treatment” for Jesse.¹⁸⁹

- c. On 14 February 2013, Professor Boyages again reviewed Jesse.¹⁹⁰ He recorded that Jesse’s serum testosterone on Testogel had increased to above normal at 41.1. Jesse continued to exhibit elevated urea and abnormal liver function, both of which were “probably related” to the supplements he was taking.¹⁹¹
- d. On 1 August 2013, general practitioner Dr Sharmini Mendis saw Jesse.¹⁹² The clinical record of that consultation records that Jesse was “advised [sic] very strongly that these [steroids] will affect his health adversely – aware of the consequences”.¹⁹³ Dr Mendis’ correspondence to Professor Boyages with respect to that attendance noted, amongst other things, that Jesse was “possibly maybe ?? taking steroids at the gym?? ... He admitted this on close questioning that he’s done this in the past”.¹⁹⁴
- e. On 29 August 2013, Jesse was reviewed by endocrinologist Dr Mark Rosman.¹⁹⁵ In his record of that consultation, Dr Rosman noted that Jesse had taken anabolic steroids in the past, and that he had been taking supplements including “peptides” and protein supplements. The week prior to his appointment, Jesse took an illicit injection of a short-acting testosterone preparation. Blood tests also indicated that Jesse was either taking growth hormone or something which would stimulate endogenous growth hormone production. Dr Rosman recorded his concern that Jesse’s persistent liver function abnormalities were related to his use of supplements, and noted that growth hormone excess can put him at risk of diabetes, leukaemia and symptoms of acromegaly.¹⁹⁶ He referred also to problems with infertility, severe mood changes and even suicide, as well as secondary polycythaemia and increased risk of thromboembolic disease. Dr Rosman says “I told him that I think that he is being very foolish taking illicit testosterone preparations” and that, as regards testosterone and growth hormone, “[b]oth of these can be harmful for a number of reasons”.¹⁹⁷ Dr Rosman says that “I also pointed out that most of the illicit testosterone preparations which he will have access to are

¹⁸⁹ Ex 1 Vol 3, Tab 48 at p. 31.

¹⁹⁰ Ex 1 Vol 3, Tab 48 at pp. 23-24.

¹⁹¹ Ex 1 Vol 3, Tab 48 at pp. 23-24.

¹⁹² Ex 1 Vol 3, Tab 48 at p. 22.

¹⁹³ Ex 1 Vol 3, Tab 48 at p. 8.

¹⁹⁴ Ex 1 Vol 3, Tab 48 at p. 22.

¹⁹⁵ Ex 1 Vol 3, Tab 48 at pp. 15-16.

¹⁹⁶ Ex 1 Vol 3, Tab 48 at pp. 15-16.

¹⁹⁷ Ex 1 Vol 3, Tab 48 at p. 15.

veterinary products which are made to significantly lower standards than products made for human consumption”.¹⁹⁸

- f. On 11 September 2013, Jesse had an appointment with Dr Mendis. Dr Mendis’ record of that consultation says that Jesse was “strongly advised [sic] that he is destroying his life by taking testosterone and supplement.s [sic] given a=examples [sic] given information this is not legal”.¹⁹⁹
- g. On 30 December 2014, general practitioner Dr Talal Serhan attended on Jesse and recorded that he “took lots of steroid to build up muscles”.²⁰⁰
- h. On 2 January 2015, Dr Serhan again reviewed Jesse and recorded that he “was taking testosterone suppliments [sic] till 2/52 ago”.²⁰¹ Dr Serhan recorded that “pt. has been educated not to take supplement [sic] and to lose weight”.
- i. On 28 May 2015, Jesse attended an appointment with Dr Mendis.²⁰² Dr Mendis recorded that “testosterone high” and that Jesse was “still taking illegal testosterone”. Dr Mendis noted that he “advised [sic] risks and potential life threatening complications - not willing tostop”.²⁰³
- j. On 9 October 2015, Jesse attended a consultation with Dr Serhan.²⁰⁴ Dr Serhan recorded “elevated liver enz. he eats high fat diet and lots of suppliments [sic]...”.²⁰⁵
- k. On 19 August 2016, Jesse attended a consultation with general practitioner Dr Wenxiong He.²⁰⁶ According to Dr He’s record of that consultation, the pair discussed ceasing the useof protein supplements and testosterone.
- l. On 16 March 2017, Jesse attended another appointment with Dr He.²⁰⁷ Dr He’s record of that appointment notes the following: “discuss about the steroid use side effect and stress at work and gym training, state he will cut down the gym and testosterone use”.²⁰⁸
- m. On 3 July 2017, Jesse attended a consultation with Dr Patrick Ao.²⁰⁹ Dr Ao recorded “Take testosterone for muscle building” and “Healthy lifestyle

¹⁹⁸ Ex 1 Vol 3, Tab 48 at p. 16.

¹⁹⁹ Ex 1 Vol 3, Tab 48 at p. 9.

²⁰⁰ Ex 1 Vol 3, Tab 49 at p. 1.

²⁰¹ Ex 1 Vol 3, Tab 49 at p. 2.

²⁰² Ex 1 Vol 3, Tab 48 at p. 11.

²⁰³ *Ibid.*

²⁰⁴ Ex 1 Vol 3, Tab 49 at p. 3.

²⁰⁵ Ex 1 Vol 3, Tab 49 at p. 3.

²⁰⁶ Ex 1 Vol 3, Tab 48 at pp. 11-12.

²⁰⁷ Ex 1 Vol 3, Tab 48 at p. 12.

²⁰⁸ *Ibid.*

²⁰⁹ Ex 1 Vol 3, Tab 50 at p. 3.

discussed”.²¹⁰

76. In their last recorded consultation, on 6 July 2017 general practitioner Dr Thuvaaraga Raja Segaram reviewed Jesse.²¹¹ Dr Segaram’s record of that consultation includes the following:²¹²

“Takes iron supplements, multivitamins, inc b12, Takes testosterone [sic] supplementation

Pt not willing to disclose all the supplements he is taking Is training for a body building tournament

Attends gym daily

...

Plan:

-suggested stop Fe, testosterone replacement, thyroid, multivitamins but pt wants to keep taking until a bodybuilding tournament (16 weeks away)

...

- discussed adverse effects of excess testosterone, iron

- also discussed risks of unknown ingredients in certain supplementations

...

- discussed the possibility of supplements causing blood abnormalities ...”

77. I am grateful that counsel assisting summarised this evidence in careful detail. I accept her submission that Jesse was advised on multiple occasions over several years, by various medical practitioners with whom he consulted, to cease using PIEDs and that he was clearly informed that they were likely to have adverse consequences for his health. He also experienced various health issues that were (or were suspected to have been) caused by or related to his steroid and supplement use, including low testosterone levels, abnormal liver function, suppressed pituitary hormones, elevated urea, low energy and digestive issues. He had previously experienced dizzy spells or near collapse after using insulin at home. Ultimately, notwithstanding the advice he had received, Jesse made a decision to continue using these substances in an effort to change his body and increase his muscle.

78. It was important to carefully review Jesse’s *overall* use of PIEDs, as insulin appears to have been used as just one substance among many. I note counsel for Anytime

²¹⁰ Ex 1 Vol 3, Tab 50 at pp. 3-4.

²¹¹ Ex 1 Vol 3, Tab 50 at p. 4.

²¹² *Ibid.*

Australia's submission that Jesse's death was caused by insulin and that his use of other PIEDs such as anabolic-androgenic steroids (**AAS**) "was not connected with his death." While this may be strictly true, I think it misses the importance of the pattern and progression of Jesse's PIED use. Insulin is unlikely to have been the first PIED Jesse tried, but his progression to that substance and his continued use, even after having suffered troubling effects, is noteworthy. It may be that insulin is a particularly taboo drug to disclose and it is noteworthy that Jesse did not discuss it with his medical practitioners. While the expert evidence suggests it may be a substance used more often by "hard core" body builders, it is not useful to consider the use of insulin away from its context as a broadly defined PIED. It was for that reason, while primarily focussed on the use of insulin, the court received evidence on the use of PIEDs more generally.

PIEDs: resources and training

79. The circumstances of Jesse's death are extremely concerning. The court was keen to understand Jesse's decision to keep using PIEDs after having been advised of at least some of the risks involved and to understand why he may not have sought medical advice about his insulin use. It is necessary when grappling with these issues to understand the nature of the information and training available to both Jesse and those advising him in relation to his ongoing PIED use.
80. The Court heard that the Royal Australian College of General Practitioners (**RACGP**) does not produce any clinical guidelines or reports in connection with the actual or suspected use of PIEDs by patients, including appropriate advice or referral pathways.²¹³ Nor does the RACGP collect data in relation to the prevalence of PIEDs usage, or the use of non-prescribed insulin more specifically.²¹⁴ The RACGP Ethics Committee provided ethical approval for a research study called "PUSH! The PIED users' health audit" (the **PUSH! Audit**) which was scheduled to run until 2021 and to chart patients' physical health measures in areas that can indicate side effects of non-prescribed anabolic steroid use; however, the RACGP is not itself directly involved in the project.²¹⁵
81. The court was also assisted by information provided by the NSW Ministry of Health (**Ministry**). The Ministry is responsible for the website "Your Room", which is the NSW Government's primary source for providing information on the health effects of PIEDs.²¹⁶ That website provides a dedicated page on anabolic steroids and a 'Steroids Fact Sheet' which is currently undergoing review. The Ministry indicated that it was open to consulting with the RACGP, representatives of the fitness industry and other experts in

²¹³ Ex 1 Vol 3, Tab 50D.

²¹⁴ Ex 1 Vol 3, Tab 50D.

²¹⁵ Ex 1 Vol 3, Tab 50D.

²¹⁶ Ex 1 Vol 3, Tab 50B at p. 1.

the field of PIEDs.²¹⁷ There is also capacity on Your Room to link or refer to other government-endorsed resources. Since mid-2019, the Ministry has been working to improve how Your Room website search results appear higher in the ranking for a range of search terms such as “PIEDs” or “steroids”, using search engine optimisation strategies.²¹⁸

82. While there are no formal educational programs provided by or in consultation with the Ministry in relation to PIEDs usage, Needle and Syringe Program (**NSP**) workers engage with clients to provide information, education and other services as required, while written materials targeting PIEDs users are available through most NSP sites in NSW.²¹⁹ Those resources highlight harm reduction messaging, including safe injection techniques and obtaining suitable health support.²²⁰

83. The expert evidence of Dr Eu and Dr van de Ven clearly established the paucity of resources, educational material and support services available to PIED users in New South Wales, and little in the way of effective measures to prevent or reduce the use of PIEDs and the harms associated with those substances. In addition, there is little specific training, education or support for health professionals to assist in identifying, managing and treating those who use or are suspected of using PIEDs. While existing NSP can provide syringes and some limited resources, there is likely to be a need to target material specifically for PIED users, as while they may use syringes, some PIED users may not identify themselves as “drug users.”²²¹

84. The evidence suggests that in lieu of professional advice, PIED users like Jesse may rely on advice obtained from their peers or from unreliable internet forums.²²² The inherent danger in anonymous or non-medical advice is obvious.

The prevalence of PIED use generally and by members of Anytime Fitness

85. To place Jesse’s death in its wider context, the court was keen to understand the prevalence of PIED use in New South Wales and in gyms generally. It became immediately apparent to the court that the true extent of PIED use in New South Wales is difficult to accurately gauge. Quite simply there is a lack of reliable empirical data. Secrecy and stigma surrounding PIED use is also a barrier to understanding the real nature of the problem and to obtaining accurate statistics. While Jesse’s death occurred at an Anytime Fitness club, there is no suggestion that PIED use is a particular issue at

²¹⁷ Ex 1 Vol 3, Tab 50B at pp. 1-2.

²¹⁸ Ex 1 Vol 3, Tab 50B at p. 2.

²¹⁹ Ex 1 Vol 3, Tab 50B at pp. 2-3.

²²⁰ *Ibid.*

²²¹ Ms Stanton, Transcript 18/06/21, page 7, lines 26 to 27.

²²² See Ex 1 Vol 3, Tab 56 at pp. 3-8.

Anytime Fitness gyms. The issues go well beyond any specific franchise or enterprise and for this reason it was appropriate to attempt to gain an overview of the size and nature of the problem. In this respect, the court was greatly assisted by the expert evidence, as well as the specific knowledge of those working for Anytime Fitness gyms.

86. Conflicting evidence was given as to whether, and to what extent, patrons at Anytime Fitness gyms are likely to be engaged in the use of PIEDs.²²³ Mr Hrobat and Mr Peil respectively considered that most members of Anytime Fitness Castle Hill and Anytime Fitness more broadly would *not* be PIED users, based at least in part upon their belief that PIEDs use predominantly occurs among bodybuilders; SJ's impression was to the contrary, as was the evidence of Kay Stanton. Moreover, the consistent evidence of Dr Eu, Dr van de Ven and Ms Stanton demonstrates that PIEDs are used by males and females across a range of different age groups, with varying lifestyles and professions, and that for a host of different reasons one cannot necessarily tell from a person's appearance whether they use PIEDs. The court also heard that most PIED users train at the gym regularly and that large bodybuilders do not in any sense represent the majority of the cohort of PIED users. The evidence also established that the question of PIED use is attended by an element of secrecy. It is not discussed openly, save perhaps amongst friends, and users are reluctant to be viewed as drug users or "cheats". I note that at the conclusion of the evidence counsel for ATGPPMS quite properly conceded that it appears that PIEDs are likely to be used by a wider section of society than Mr Hrobat understood to be the case and that use was not confined to body builders. I accept the evidence of Dr Eu, Dr van de Ven and Ms Stanton in this regard.
87. Mr Hrobat told the court that the "vast majority" of members at Anytime Fitness Castle Hill would not ordinarily consider the use of PIEDs.²²⁴ Mr Hrobat was concerned that erecting signage or providing educational material with respect to PIEDs may suggest that the use of PIEDs is prevalent or acceptable; that it may cause some members to consider something they would otherwise not consider; and that it may cause some members to believe that drug use is acceptable at Anytime Fitness Castle Hill.²²⁵ For that purpose, Mr Hrobat was relying simply on his experience with the member base of Anytime Fitness and his long association with the gym industry. He had not himself reviewed any data or conducted any research into the effects of educational material regarding drug use on his gym members or the public.²²⁶ Neither Mr Hrobat nor Anytime Fitness Castle Hill collates or reviews any data on the prevalence or incidence of PIEDs

²²³ See also Ms Thiessen, Transcript 21/04/21, page 35, lines 40 to 50; Mr Allen, Transcript 21/04/21, page 21, line 20 to page 22, line 21.

²²⁴ Ex 1 Vol 1, Tab 31.3 at [7.1].

²²⁵ Ex 1 Vol 1, Tab 31.3 at [7.1].

²²⁶ Mr Hrobat, Transcript 19/4/21, page 92, lines 3 to 7, lines 28 to 30.

usage within the fitness industry.²²⁷

88. Mr Hrobat also says that Anytime Fitness gyms “do not cater to the demographic which would primarily use PIEDs” (which he believed to be mainly body builders).²²⁸ However, Mr Hrobat accepted that there would be people coming to Anytime Fitness gyms who would be using PIEDs.²²⁹ Mr Hrobat gave evidence of “a couple of instances” where needles or syringes have been located in bathroom bins and in car parks at the Anytime Fitness centres operated by ATGPPMS.²³⁰ Mr Hrobat also accepted that “[y]ou don’t a hundred per cent” know if somebody is using PIEDs and that “I could look at someone and have an inkling but I can’t make a determination off how they look ... it is very hard to prove and show”.²³¹ Mr Hrobat is not aware of any research or statistics in relation to the demographics that use PIEDs in Australia.²³² Mr Hrobat has not himself been involved in bodybuilding, and he has not trained any clients who were involved in bodybuilding albeit that competitive bodybuilders have frequented his clubs.²³³
89. Mr Peil stated that Anytime Fitness clubs “deliberately do not cater for the heavy weightlifting community where, anecdotally, the use of illicit substances occur”.²³⁴ Mr Peil based that statement, in part, upon the fact that Anytime Australia imposes a limit of 60kg on the dumbbells that are stocked at Anytime Fitness centres,²³⁵ though he accepted that most Anytime Fitness clubs would have “a handful” of “heavy lifters”.²³⁶ Mr Smith likewise gave evidence of what he described as Anytime Australia’s “practical deterrent strategy to prevent and prohibit use of illicit substances” in limiting the weight of dumbbells to 60kg “[b]ecause there seems to be a correlation with drug use and those heavier weights”.²³⁷
90. However, there is no corresponding limit on the capacity of any of the other machines and weights at Anytime Fitness gyms in Australia. For instance, all Anytime Fitness gyms are equipped with barbells which are then loaded on either side with weight plates by the individual user for use in a variety of compound exercises, such as squats, deadlifts and bench press.²³⁸ Mr Peil gave evidence that there is “no limit” on the weight capacity of barbells and that “somebody could go and grab every weight ... off the floor and stack that weight on”.²³⁹ Anytime Fitness gyms stock weight plates of up to 25kg.²⁴⁰ The

²²⁷ Mr Hrobat, Transcript 19/4/21, page 91, lines 9 to 12.

²²⁸ Ex 1 Vol 1, Tab 31.3 at [7.2]-[7.3].

²²⁹ Mr Hrobat, Transcript 19/4/21, page 99, lines 4 to 13.

²³⁰ Mr Hrobat, Transcript 19/4/21, page 95, lines 44 to 50, page 96, lines 1 to 4.

²³¹ Mr Hrobat, Transcript 19/4/21, page 94, lines 9 to 11, lines 19-20.

²³² Mr Hrobat, Transcript 19/4/21, page 97, lines 4 to 6.

²³³ Mr Hrobat, Transcript 19/4/21, page 91, lines 35 to 41.

²³⁴ Ex 1 Vol 2, Tab 33B at [26].

²³⁵ Mr Peil, Transcript 22/04/21, page 29, lines 10 to 12, page 33, lines 17 to 25.

²³⁶ Mr Peil, Transcript 22/04/21, page 34, lines 31 to 33.

²³⁷ Mr Smith, Transcript 22/04/21, page 65, line 46 to page 66, line 10; Ex 1 Vol 2, Tab 33C at [11]-[12].

²³⁸ Mr Peil, Transcript 22/04/21, page 26, line 43 to page 27, line 44.

²³⁹ Mr Peil, Transcript 22/04/21, page 27, lines 3 to 5.

²⁴⁰ Mr Peil, Transcript 22/04/21, page 27, line 11.

barbell can therefore be used to lift or bench press 220 kilograms or more.²⁴¹ Pin-loaded machines can likewise be loaded with weights well in excess of 60kg.²⁴² Indeed, using a plate-loaded machine such as a leg press, a person at Anytime Fitness could seek to press 400 kilograms worth of weights.²⁴³ It follows that, notwithstanding the weight limit of 60kg imposed with respect to dumbbells, there is no impediment to patrons of Anytime Fitness training with a variety of weights that well exceed that limit, and that are capable of facilitating the kind of training session in which a “large bodybuilder” might wish to engage.

WJ and SJ

91. WJ was a friend of Jesse’s and used to train with him at various Anytime Fitness gyms.²⁴⁴ He was formerly a personal trainer at Anytime Fitness Castle Hill (Central)²⁴⁵ and a user of PIEDs. WJ told the court he had competed in nine bodybuilding competitions (including the competition in which Jesse competed in October 2017), and that he placed second in a national bodybuilding competition.²⁴⁶ WJ gave evidence that “it’s a very taboo industry that we – that I come from and a lot of people just don’t want to talk about it”.²⁴⁷ WJ said that it is “assumed that virtually all professional bodybuilders ... are performance enhancing” and that “[i]t wasn’t something that I wanted to do; it was something that was, like, I guess that’s what I have to do to get there”.²⁴⁸ WJ mainly used testosterone, together with supplements, during the period that he competed in bodybuilding competitions.²⁴⁹
92. WJ gave evidence that the absence of dumbbells over 60kg did not deter him from training at Anytime Fitness gyms. He said simply “you just work around it ... If there weren’t enough weights in one machine, you would just go to another machine and try and lift more there or you would change the way in which you were lifting that weight”.²⁵⁰
93. SJ is also a former user of PIEDs. He used to obtain testosterone enanthate from Jesse, which SJ used “on and off” for about a year.²⁵¹ SJ used to train with Jesse at Anytime Fitness Dural.²⁵² He gave evidence of his impression that around 80-85% of people that go to the gym will be using some form of PIED or supplement (legal or illegal), that it is

²⁴¹ Mr Peil, Transcript 22/04/21, page 27, lines 10 to 44.

²⁴² Mr Peil, Transcript 22/04/21, page 28, line 46 to page 28, line 8.

²⁴³ Mr Peil, Transcript 22/04/21, page 28, line 25.

²⁴⁴ WJ, Transcript 22/04/21, page 103, line 10, line 50 to page 104, line 2.

²⁴⁵ WJ, Transcript 22/04/21, page 108, line 50.

²⁴⁶ WJ, Transcript 22/04/21, page 107, lines 21 to 30, page 112, lines 26 to 30.

²⁴⁷ WJ, Transcript 22/04/21, page 122, lines 23-24.

²⁴⁸ WJ, Transcript 22/04/21, page 106, lines 35 to 40, page 117, lines 36-37.

²⁴⁹ WJ, Transcript 22/04/21, page 113, lines 19 to 32, page 116, lines 26 to 29

²⁵⁰ WJ, Transcript 22/04/21, page 116, lines 5 to 12.

²⁵¹ SJ, Transcript 22/04/21, page 84, line 35 to page 85, line 32.

²⁵² Ex 1 Vol 1, Tab 19E at [4].

“common at Anytime Fitness”²⁵³ and that around “60% of the guys” are on steroids or performance enhancing drugs (as distinct from legal protein supplements).²⁵⁴ SJ gave evidence that PIEDs use is not discussed openly, except amongst friends. He said that “no one wants to be known as, like, they cheated to get to a certain point. So, do people openly talk about it? No. Like, if it’s your friends, yes”.²⁵⁵ He said that “the way information is spread about performance enhancing drugs is you’ll find someone at the gym that looks a certain way and then you kind of just work your way up and speak to them, train with them, and then you ask them what they’re taking. And then, the way it works is, whatever they’re taking you think is good because of the way they look, so you don’t question it, you just say, ‘Give me what you’re taking’”.²⁵⁶

94. Counsel for ATGPPMS urged the court to reject SJ’ evidence in relation to the prevalence of PIED use, in particular his suggestion that around “60% of the guys at Anytime would be on steroids or performance enhancing drugs”. I accept his evidence does not fit easily with the existing objective data and that it is likely to be inflated or influenced by his own experience.
95. Putting to one side the precise figures nominated by SJ, his broad impression of the prevalence of PIED use among the gym-goers *he associated with* (including those at Anytime Fitness) and his candid information about the secrecy with which PIED use is regarded by users was enlightening. Like others who gave evidence he appeared convinced he could tell who was using PIEDs, something which was also cautioned against by the experts.

Dr Eu

96. Dr Beng Eu is a general practitioner with a special interest in *inter alia* AOD (alcohol and other drugs) medicine and has seen hundreds of patients who have used PIEDs as part of his practice over the last 20-odd years.²⁵⁷ Dr Eu was briefed to provide an expert opinion regarding PIEDs use in Australia and the level of training, education or support provided to general practitioners in relation to the actual or suspected use of PIEDs by patients. He provided an expert report dated 9 May 2021²⁵⁸. Dr Eu’s experience in this field of medicine is well accepted. His evidence greatly assisted this court in understanding how general practitioners can be further supported in providing appropriate advice to patients using PIEDs.

²⁵³ SJ, Transcript 22/04/21, page 86, lines 10 to 43, page 87, line 21, page 92, lines 25 to 31, page 96, lines 10-11.

²⁵⁴ SJ, Transcript 22/04/21, page 96, lines 10-11.

²⁵⁵ SJ, Transcript 22/04/21, page 89, lines 18 to 20, page 95, lines 16 to 18.

²⁵⁶ SJ, Transcript 22/04/21, page 89, lines 31 to 37; see also WJ, Transcript 22/04/21, page 111, line 40 to page 112, line 20.

²⁵⁷ Ex 5, Tab 65 at p. 1.

²⁵⁸ Ex 5, Tab 65

97. Dr Eu told the court that PIEDs include a large variety of substances, the most common being AAS, such as testosterone and other synthetic hormones that mimic the molecular structure of testosterone.²⁵⁹ There is very limited published data in Australia regarding the prevalence of PIEDs use.²⁶⁰ The existing data shows that 2-3% of secondary school students (approximately 30,000 to 45,000 students) have used PIEDs.²⁶¹ Dr Eu estimates, based on data in the United Kingdom and the United States, that there are probably 150,000 to 250,000 current users of PIEDs in Australia.²⁶² Dr Eu has not seen any specific prevalence data with respect to insulin use²⁶³ but notes that anecdotally, insulin is “often only used by ‘hard-core’ bodybuilders / strength competitors”.²⁶⁴
98. In terms of demographics, Dr Eu identified that PIEDs are mainly used by males and that PIEDs use ranges from teenagers through to people in their 60s.²⁶⁵ The main population is likely to be 20 – 40 year old men from all different professions and backgrounds.²⁶⁶ The majority of people who use PIEDs are not doing it for sports or competition purposes but to make some gains at the gym, either to increase their strength or to improve their appearance.²⁶⁷
99. Dr Eu stated that there is no accepted best practice for management by medical practitioners of patients who use, or are suspected of using, PIEDs.²⁶⁸ Having become aware of that deficiency, Dr Eu was involved as a co-author in the publication in December 2020 of the Sydney North Health Network “GP guide to harm minimisation for patients using non-prescribed anabolic-androgenic steroids (AAS) and other performance and image enhancing drugs (PIEDs)” (**SNHN GP Guide**).²⁶⁹ The SNHN GP Guide was commissioned and funded by the Sydney North Health Network²⁷⁰ and uploaded to their website; it was then promoted by way of an article on the RACGP website dated 15 February 2021.²⁷¹ The court had an opportunity to review this excellent resource and would support its wider distribution.
100. Dr Eu gave oral evidence that harm minimisation is about looking after the health of PIEDs users, even if they continue to use PIEDs.²⁷² This approach sits comfortably within broader harm minimisation principles that are readily implemented in relation to other

²⁵⁹ Ex 5, Tab 65 at [1].

²⁶⁰ Ex 5, Tab 65 at [2(a)].

²⁶¹ *Ibid.*

²⁶² Ex 5, Tab 65 at [2(a)].

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ Ex 5, Tab 65 at [2(b)].

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ Ex 5, Tab 65 at [2(c)].

²⁶⁹ Ex 5, Tab 64 at Attachment C.

²⁷⁰ As to which, see Ex 12.

²⁷¹ Ex 11.

²⁷² There is no transcript of the oral evidence given by Dr Eu and Dr van de Ven on 17 June 2021 owing to a malfunction with the recording system.

drugs of addiction. However in contrast to harm minimisation strategies regarding drugs of addiction, Dr Eu says that there is no specific training or education provided to general practitioners in Australia in relation to treatment, advice and referral pathways for individuals who use PIEDs and that this is an area that has been “lacking in attention and resources”.²⁷³ Nor are there any clear referral pathways for general practitioners to use.²⁷⁴ In Dr Eu’s opinion, ongoing education on this subject needs to be provided to general practitioners and other health practitioners.²⁷⁵ Dr Eu says that the “difficulty finding non- judgemental health care with a focus on harm reduction for this population remains a challenge”.²⁷⁶

101. Dr Eu told the court that there is no specific training in relation to insulin use in this setting and that the stigma and non-disclosure associated with PIEDs use presents a challenge to even engage with these patients.²⁷⁷ Dr Eu gave oral evidence that there is “real hesitation” among PIEDs users to disclose their use of those substances to their general practitioner, but that in his experience these individuals are very receptive to his advice about the risks of PIED use and harm minimisation. Dr Eu’s oral evidence was that most patients generally express an intention to continue using PIEDs despite the risks, albeit that a small number will stop using altogether.
102. Dr Eu was unaware of any published data about insulin-related deaths or near deaths and believes there is a paucity of data in this field in general.²⁷⁸ He stated that due to the stigma associated with PIEDs , it is likely that any PIED use is not disclosed when presenting to health services.²⁷⁹
103. Dr Eu was involved in the PUSH! Audit which was designed to collect data about PIED users and to provide education to the doctors involved with the audit.²⁸⁰ The results of that study are still being collated and analysed; however, Dr Eu gave oral evidence that the results that are presently available indicate an average body mass index (**BMI**) among users of 27.8, which effectively corresponds with the BMI of the average male in Australia (which is 28). In his oral evidence, Dr Eu confirmed that one mostly cannot tell if a person is using PIEDs simply by their appearance and that in his experience, large bodybuilders are the “minority” in terms of the cohort of PIEDs users.
104. In Dr Eu’s opinion, there needs to be more education campaigns for PIEDs users.²⁸¹ Currently, their only source of information is online and, whilst some of the information on

²⁷³ Ex 5, Tab 65 at [3(a)].

²⁷⁴ Ex 5, Tab 65 at [3(a)].

²⁷⁵ Ex 5, Tab 65 at [4(b)].

²⁷⁶ Ex 5, Tab 65 at [3(a)].

²⁷⁷ Ex 5, Tab 65 at [3(b)].

²⁷⁸ Ex 5, Tab 65 at [2(d)].

²⁷⁹ *Ibid.*

²⁸⁰ Ex 5, Tab 65 at [4].

²⁸¹ Ex 5, Tab 65 at [4(b)].

the internet is accurate, there is no easy way for people to tell which are the reliable sources and which are not.²⁸² There are some limited resources available (e.g. the Australian Drug Foundation, Hepatitis Australia) but Dr Eu's opinion is that there need to be more reliable resources readily available, so that there is an increased chance of encountering these reliable resources online.²⁸³

105. Dr Eu stated that one of the challenges is creating harm reduction information which can be disseminated through gyms.²⁸⁴ Gyms have generally been resistant to any such efforts; however, the reality is that almost all PIEDs users go to the gym so it would be effective, in Dr Eu's opinion, to have harm minimisation messages placed in gyms.²⁸⁵ Dr Eu's opinion is that it would be "extremely useful to have a fitness industry led campaign" and to work with the fitness industry to come up with some useful training to help prevent harm at the gym.²⁸⁶ In his oral evidence, Dr Eu described the fitness industry as having a "crucial role" to play in this area and said that it was important to start a dialogue with the Ministry, the fitness industry and health care professionals with an interest in the area. Dr Eu's opinion is that some harm reduction messages are essential (including for those who are going to the gym and using PIEDs) as there will always be some people who will use PIEDs despite knowing the associated harms.²⁸⁷ I accept the force of his evidence in this regard.

106. Dr Eu stated that another significant issue is the lack of services to help someone cease using PIEDs.²⁸⁸ For instance, Dr Eu identifies that significant side effects are experienced by individuals who stop using these substances due to the lack of testosterone (which could last up to 6 months or longer), but there are no treatment programs to help them overcome those symptoms.²⁸⁹

107. Finally, Dr Eu told the court that in his opinion, government support would be beneficial in raising awareness, and highlighting the dangers, of PIEDs, and it would also provide clarity about the legality of its practice for doctors and patients alike.²⁹⁰ Doctors need to be confident about their practice not being in violation of the law and patients need to know that by seeking help, they do not risk a criminal conviction.²⁹¹

108. The RACGP was invited, but declined, to comment on the report of Dr Eu.²⁹²

109. Dr Eu was an impressive and knowledgeable witness. I accept all his recommendations

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ Ex 5, Tab 65 at [5].

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ Ex 5, Tab 65 at [5].

²⁹² Ex 5, Tabs 50E-F.

without reservation. There is clearly a need for further education and support for general practitioners in this area of medicine. Referral pathways and treatment programs need to be developed. Harm reduction principles must inform the development of new resources and partnerships with the fitness industry must be developed. I accept Dr Eu's evidence that this area is currently under-resourced.

Dr van de Ven

110. Dr Katinka van de Ven is a Senior Lecturer at the Centre for Rural Criminology at the University of New England and a Visiting Fellow as part of the Drug Policy Modelling Program, Social Policy Research Centre at the University of New South Wales. Dr van de Ven was briefed to provide an expert opinion regarding *inter alia* the prevalence and use of PIEDs in Australia, the market for production and supply of those substances, and existing harm minimisation programs or initiatives for persons who use or are suspected of using PIEDs. She provided an expert report dated 19 May 2021²⁹³. Dr van de Ven appears to be one of the few academics with a broad overview of PIED use in Australia and the court was greatly assisted by her expertise.
111. Dr van de Ven advised the court that PIEDs are drugs used to enhance the appearance of a person and/or to improve their physical capabilities such as strength or endurance.²⁹⁴ The term represents a wide range of substances (both licit and illicit), but the oldest and largest group are non-prescribed AAS.²⁹⁵ There are various risks associated with PIEDs use, arising from the substance itself, the way it is administered and the source.²⁹⁶
112. The most common reported reason for using non-prescribed AAS and PIEDs is for aesthetic purposes.²⁹⁷ Other reported motivations for using PIEDs are for recreational and competitive bodybuilding; to enhance sport performance; to enhance occupational performance; hormone replacement therapy; retaining youthfulness; for anti-aging purposes; and to aid injury pain / anxiety / increase confidence.²⁹⁸ As for insulin, that is used for its perceived anabolic effects and strength, to burn fat, and for weight-loss purposes.²⁹⁹
113. Dr van de Ven described the market for the production and supply of PIEDs in Australia. While there is very little research on that topic, a study conducted by Dr van de Ven showed that the largest group of PIEDs providers in Australia (22%) consisted of people

²⁹³ Ex 5, Tab 67

²⁹⁴ Ex 5, Tab 67 at p. 1.

²⁹⁵ Ex 5, Tab 67 at pp. 1-2.

²⁹⁶ Ex 5, Tab 67 at pp. 3-4.

²⁹⁷ Ex 5, Tab 67 at p. 2.

²⁹⁸ Ex 5, Tab 67 at p. 2-3.

²⁹⁹ Ex 5, Tab 67 at p. 3.

working in the gym industry (e.g. personal trainers and gym owners) followed by the healthcare sector (17%).³⁰⁰ This is consistent with what has been shown internationally.³⁰¹ Counsel for ATGPPMS urged caution in relation to Dr van de Ven's statistics. He pointed out that the data was obtained from scanning Austlii judgements (convictions) and media articles concerning 144 court cases from 2010-2016 and that it was, as a consequence, necessarily limited and of limited utility. I accept it paints a very partial picture, but in a context where extensive data is lacking, it represents at least some objective evidence. I accept that the gym industry is of significant interest to educators trying to reach a population who may purchase PIEDs. At the same time, I note the clear evidence that Jesse bought PIEDs over the internet and that actual transactions in gyms are rarely observed.

114. International research shows that PIEDs are produced and distributed both via legal and illegal routes, including via "home brewing" whereby raw AAS materials are ordered from overseas and turned into a pharmaceutical format at a non-pharmaceutical location (e.g. at home).³⁰² The internet is an increasingly popular place for the illicit supply of PIEDs, either via fake pharmaceutical sites such as online pharmacies or via illegal websites.³⁰³ International research shows that the gym environment is the main location for buying PIEDs and/or coming into contact with a supplier.³⁰⁴
115. To the best of Dr van de Ven's knowledge, no prevalence studies exist on either the use of non-prescribed insulin (in Australia or internationally) or the use of PIEDs in New South Wales.³⁰⁵ However, there are indicators that PIEDs use in Australia is rapidly growing, particularly in the period from 2005 to 2015.³⁰⁶ Dr van de Ven states that PIEDs use can start as early as 14 years of age (though this is rare) and that it most commonly begins between the ages of 20 and 24 years.³⁰⁷ Men aged 40 years and over also start using non-prescribed AAS for anti-aging purposes.³⁰⁸ As to gender, AAS are mainly used by men.³⁰⁹ PIEDs are usually used by people engaged in either recreational sport (e.g. for fitness purposes) or professional sport.³¹⁰
116. Dr van de Ven was the principal investigator in the preparation of the SNHN GP Guide. Dr van de Ven was asked about current best practice for management by health professionals of patients who are suspected of using PIEDs. Dr van de Ven gave

³⁰⁰ Ex 5, Tab 67 at p. 5.

³⁰¹ Ex 5, Tab 67 at p. 5.

³⁰² Ex 5, Tab 67 at pp. 5.

³⁰³ Ex 5, Tab 67 at pp. 6-7.

³⁰⁴ Ex 5, Tab 67 at p. 7.

³⁰⁵ Ex 5, Tab 67 at p. 8.

³⁰⁶ Ex 5, Tab 67 at p. 8.

³⁰⁷ Ex 5, Tab 67 at p. 9.

³⁰⁸ Ex 5, Tab 67 at p. 9.

³⁰⁹ Ex 5, Tab 67 at p. 9.

³¹⁰ Ex 5, Tab 67 at p. 9.

evidence that there is a lack of knowledge on PIEDs within the health workforce, which is the reason that she (together with Dr Eu and others) developed the SNHN GP Guide.³¹¹ Many health professionals are unsure how to engage with and support this drug-using group, and they report a lack of prevention and harm reduction materials in Australia and internationally to upskill themselves.³¹² Australia is “particularly lagging behind when it comes to effective measures for preventing or reducing the use of PIEDs, which is generally non-existent”.³¹³

117. Particularly within the fitness industry, Dr van de Ven’s evidence is that nothing has been implemented in Australia (and internationally) despite PIEDs users and health professionals indicating that this would be an ideal environment to engage with users because most consumers will go to gyms.³¹⁴ Dr van de Ven gave oral evidence that it is difficult to identify precisely what information should be available in gyms given the inadequacy of the current evidence base; in her opinion, the first step would be to conduct some sort of “roundtable” with the fitness industry, users of PIEDs, healthcare professionals and also the Ministry to discuss the various available strategies and the issue of PIEDs use more broadly and to devise an appropriate response. Presently, the fitness industry adopts a “zero tolerance” approach.³¹⁵ Dr van de Ven gave oral evidence that zero tolerance is not effective in reducing or eliminating drug use and may drive users underground. I accept her evidence without reservation and intend to make a recommendation calling for some kind of “roundtable” discussions to indicate a way forward. In my view the evidence established a clear need for such a strategy.

118. In addition to the lack of resources, Dr van de Ven identifies that the resources and programs that do exist in Australia and internationally are generally not tested for their effectiveness and it is therefore unknown how effective they are in preventing use or reducing harm.³¹⁶ Although internationally some prevention materials and programs exist, particularly focused on high school students, harm reduction programs and/or treatment and other behaviour-change interventions targeting PIEDs users “seem to be mainly absent in most other countries as well”.³¹⁷ To the best of her knowledge, no research exists on the effectiveness of harm reduction measures for those using PIEDs both in Australia or internationally.³¹⁸ Dr van de Ven gave oral evidence that, looking beyond PIEDs to other substances, there is considerable research on the effectiveness of a harm reduction approach in relation to drug use and that the research shows harm

³¹¹ Ex 5, Tab 67 at p. 9.

³¹² Ex 5, Tab 67 at p. 9.

³¹³ Ex 5, Tab 67 at p. 10.

³¹⁴ Ex 5, Tab 67 at p. 10.

³¹⁵ Ex 5, Tab 67 at p. 10.

³¹⁶ Ex 5, Tab 67 at p. 10.

³¹⁷ Ex 5, Tab 67 at p. 10.

³¹⁸ Ex 5, Tab 67 at p. 13

reduction to be very effective in reducing both the use and the side-effects of drugs.

119. In relation to harm minimisation programs or initiatives, Dr van de Ven is aware of only one AAS outreach program provided via Your Community Health in Melbourne.³¹⁹ To the best of her knowledge, no other harm minimisation programs or initiatives exist in NSW or Australia.³²⁰ There are some resources aimed at improving knowledge on how to prevent use and/or reduce harm, generally targeted at health professionals; however, the resources in Australia tend to be focused on sports doping.³²¹ Dr van de Ven states that although this is an important issue, the majority of PIEDs use by young men is for aesthetic and lifestyle purposes and, importantly, this conflation of PIEDs use with sports doping hinders the development of harm reduction resources.³²²
120. Dr van de Ven states that PIEDs use is not just confined to the heavy weightlifting community and that not all people who use PIEDs will have evident features of PIEDs use.³²³ While higher prevalence numbers are “generally” seen in high-risk environments such as heavy weightlifting communities compared to more commercial gyms, Dr van de Ven states that “this could also be an issue of non- or underreporting within commercial gyms”.³²⁴ Dr van de Ven gave oral evidence that the majority of people who use PIEDs, work out at the gym regularly, but that one cannot always tell by looking at a person whether they use PIEDs. Dr van de Ven’s evidence in this respect is consistent with that of Dr Eu, Ms Stanton and WJ.³²⁵ I accept her opinion.
121. Dr van de Ven concludes that PIEDs users represent a group who are in need of help and who currently have limited options to obtain medical information and care.³²⁶ In Dr van de Ven’s opinion, it is therefore “key” that health services for this group are improved.³²⁷ In addition, poly-drug use is high within this community but harm reduction information on this is currently missing, as all materials are mainly focused on AAS.³²⁸ For instance, Dr van de Ven states that no information exists on the risks of using non-prescribed insulin.³²⁹ It is therefore “key” that prevention and harm reduction resources and materials are expanded beyond AAS.³³⁰ I accept her evidence in this regard.
122. The RACGP was invited, but declined, to comment on the report of Dr van de Ven.³³¹

³¹⁹ Ex 5, Tab 67 at p. 12

³²⁰ Ex 5, Tab 67 at p. 12

³²¹ Ex 5, Tab 67 at p. 12

³²² Ex 5, Tab 67 at p. 12

³²³ Ex 5, Tab 67 at p. 14

³²⁴ Ex 5, Tab 67 at p. 14.

³²⁵ WJ, Transcript 22/04/21, page 110, line 35 to page 111, line 39.

³²⁶ Ex 5, Tab 67 at p. 15.

³²⁷ Ex 5, Tab 67 at p. 15.

³²⁸ Ex 5, Tab 67 at p. 15.

³²⁹ Ex 5, Tab 67 at p. 15.

³³⁰ Ex 5, Tab 67 at p. 15.

³³¹ Ex 5, Tabs 50E-F.

Ms Stanton

123. Ms Stanton is employed by Your Community Health in Victoria as a Steroid Educator.³³² She has held this role for approximately 24 years.³³³ Ms Stanton is not aware of anyone else who carries out that role in Australia.³³⁴ Her role as a steroid educator encompasses developing harm reduction strategies for users of steroids, including providing information in relation to clean injection techniques, injection sites, infections, side effects, and guidelines as to dosage.³³⁵ Her background and expertise placed her in a unique position to assist the court.
124. Ms Stanton is also a TAFE certified fitness instructor.³³⁶ From 1996 to 2001 Ms Stanton was a competitive bodybuilder, during which time she “won a couple of State titles” and also placed second and third in bodybuilding competitions.³³⁷
125. In her statement, Ms Stanton stated that while the majority of PIEDs users are between 20 and 50 years of age, there has been a significant increase in younger users.³³⁸ Ms Stanton has seen clients younger than 20 years of age, and older than 50 years of age.³³⁹ Her clients include both males and females.³⁴⁰ Most of her clients work out at the gym on a regular basis.³⁴¹ The three main reasons that her clients use PIEDs are for bodybuilding competitions, for their profession (e.g. personal trainers) and “significantly more for body image purposes and wanting to look a certain way”.³⁴² Ms Stanton states that the “reasons why and who use[s] PIEDs is wide and varied” and that any reference to PIEDs use being confined to the heavy weightlifting community is “completely false”.³⁴³ Ms Stanton says that “[n]ot all users want to be huge, rather a lean athletic body that typifies images in social media drives usage”.³⁴⁴ Ms Stanton gave evidence that “what they’re just trying to do is just transform their body into something that they’re proud to look at and know that people are going to appreciate and look up to them for and it gives them more confident [sic] ... it’s this snowball effect where they just don’t want to come off, in the end, so it’s more a desire in terms of body image addiction than for an actual reason, such as competing or anything, or a sport”.³⁴⁵ Ms Stanton is not aware of any service or program that currently exists to help a person come off a cycle of steroid

³³² Ex 5, Tab 69 at [3]; Ms Stanton, Transcript 18/06/21, page 2, lines 1 to 40, page 3, lines 22 to 27.

³³³ *Ibid.*

³³⁴ Ms Stanton, Transcript 18/06/21, page 6, line 48 to page 7, line 19.

³³⁵ Ms Stanton, Transcript 18/06/21, page 8, line 7 to page 9, line 2.

³³⁶ Ms Stanton, Transcript 18/06/21, page 3, lines 1 to 3.

³³⁷ Ms Stanton, Transcript 18/06/21, page 3, lines 5 to 11.

³³⁸ Ex 5, Tab 69 at [6].

³³⁹ Ms Stanton, Transcript 18/06/21, page 3, lines 34 to 38, page 4, line 29.

³⁴⁰ Ms Stanton, Transcript 18/06/21, page 3, lines 41 to 44.

³⁴¹ Ms Stanton, Transcript 18/06/21, page 6, lines 29 to 31.

³⁴² Ex 5, Tab 69 at [7].

³⁴³ Ex 5, Tab 69 at [13].

³⁴⁴ Ex 5, Tab 69 at [15].

³⁴⁵ Ms Stanton, Transcript 18/06/21, page 6, lines 20 to 27.

use.³⁴⁶

126. Ms Stanton gave evidence that most gyms will not have written pamphlets or material dealing with steroids and side effects due to the stigma of being associated with steroid use.³⁴⁷ However, Ms Stanton's observation (based on her experience as a steroid educator and her own experiences training in gyms in Australia) is that "probably at least [a] minimum 95% of gyms would have steroid users in there at some point in time, training. They mightn't be the big bulky guys or the really huge guys but there's so many small framed men and women that have got ... just that real fit, leaner muscle look that are using steroids ... there's steroid use in pretty much most gyms, just on a different level".³⁴⁸ In Ms Stanton's view, "for gyms to sit there and say they've got no steroid users in their gym is wrong".³⁴⁹
127. Since Ms Stanton began working as a steroid educator, there has been a significant increase in black market products used by her clients.³⁵⁰ The strength of the available products has also increased. Together with backyard manufacturing, it is difficult if not impossible to determine the quality, strength and legitimacy of the product.³⁵¹ Ms Stanton says that there has been a general increase in use of PIEDs by both males and females.³⁵² Her clients obtain PIEDs "through contacts, through mates or online, black market online, the dark web ... or also personal trainers".³⁵³ Ms Stanton gave evidence that "their whole life is ... kept behind closed doors and they don't want people knowing because of the stigma that's attached".³⁵⁴ A "lot of these clients that I have will take it to their grave that they're natural and they could be standing there as large as life but will refuse to admit to anybody that they're using anything".³⁵⁵
128. In Ms Stanton's experience, the use of insulin is extremely dangerous but "not unusual" and while she always endeavours to dissuade people from using insulin, the "perceived need to grow rapid lean muscle mass means users are willing to take the risk".³⁵⁶ Ms Stanton said that a lot of her clients hear that the top bodybuilders are using it and that it will make them bigger, so they want to use it.³⁵⁷ Some are aware of the risks, while others "go into it very blindly".³⁵⁸ As to steroids more broadly, Ms Stanton gave evidence that users get their information from online forums and websites, Google, and through word

³⁴⁶ Ms Stanton, Transcript 18/06/21, page 10, lines 7 to 11.

³⁴⁷ Ms Stanton, Transcript 18/06/21, page 12, lines 32 to 36, lines 47 to 49.

³⁴⁸ Ms Stanton, Transcript 18/06/21, page 12, lines 36 to 47, page 14, lines 10 to 18, page 17, lines 49 to 50, page 18, lines 46 to 48.

³⁴⁹ Ms Stanton, Transcript 18/06/21, page 13, lines 28 to 29.

³⁵⁰ Ex 5, Tab 69 at [8].

³⁵¹ Ex 5, Tab 69 at [8]; Ms Stanton, Transcript 18/06/21, page 4, line 50 to page 5, line 34

³⁵² Ex 5, Tab 69 at [9]

³⁵³ Ms Stanton, Transcript 18/06/21, page 4, lines 42 to 50.

³⁵⁴ Ms Stanton, Transcript 18/06/21, page 7, lines 24 to 28.

³⁵⁵ Ms Stanton, Transcript 18/06/21, page 11, lines 15 to 18; see also page 19, line 19.

³⁵⁶ Ex 5, Tab 69 at [16].

³⁵⁷ Ms Stanton, Transcript 18/06/21, page 14, lines 35 to 38.

³⁵⁸ Ms Stanton, Transcript 18/06/21, page 15, lines 8 to 13.

of mouth, which Ms Stanton likened to “the blind leading the blind”.³⁵⁹

129. Ms Stanton was asked to comment upon Anytime Australia’s initiative of limiting the capacity of dumbbells to a maximum weight of 60kg. Ms Stanton believes that capping the weight of dumbbells to deter the “heavy” weightlifting community from attending Anytime Fitness centres is “futile and ... a total waste of time”.³⁶⁰ Ms Stanton said that based on her observations, most of the “big guys” will lift dumbbells of 35 to 50kg but not many would lift more than 60kg, and that while there are gyms that stock dumbbells heavier than 60kg, they “just sit and collect dust anyway”.³⁶¹ Ms Stanton has not seen anybody lift over 60kg in dumbbells, even in a hard core gym.³⁶² It is “very rare”.³⁶³ With dumbbells of that weight, Ms Stanton gave evidence that one needs to be “very careful that you’ve got a good spotter, and ... that you don’t damage your actual shoulder and pec”.³⁶⁴ Ms Stanton said that weights training can be more controlled using barbells and other machines that are much heavier than a 60kg dumbbell and will “accommodate all the different muscles to your chest”, so that the absence of dumbbells over 60kg “wouldn’t deter bigger guys from coming into that facility, because they can utilise all these other things to lift even heavier than that, in any case”.³⁶⁵ I accept her evidence in this regard.
130. Ms Stanton impressed the court as a knowledgeable and experienced outreach worker. Her wealth of experience over twenty years and her personal knowledge of the fitness industry made her evidence particularly compelling.

Conclusion regarding PIEDs

131. I accept counsel assisting’s submissions that, having regard in particular to the expert evidence (which was relevantly unchallenged), the evidence given by Mr Peil that “most people using performance-enhancing or image-enhancing drugs require a level of weights that we don’t cater for”³⁶⁶ should be rejected. I accept that the evidence in its entirety, including that of Dr Eu, Dr van de Ven and Ms Stanton, establishes that while, as a cohort, large body builders may be more likely to use PIEDs, they are not the majority of PIED users. I am also persuaded by the evidence of Ms Stanton and WJ that the absence of dumbbells weighing more than 60kg is unlikely in itself to deter large bodybuilders from attending Anytime Fitness centres, having regard to the variety of other mechanisms available at Anytime Fitness for training with very heavy weights.

³⁵⁹ Ms Stanton, Transcript 18/06/21, page 15, lines 19 to 26.

³⁶⁰ Ex 5, Tab 69 at [13].

³⁶¹ Ms Stanton, Transcript 18/06/21, page 16, lines 3 to 14.

³⁶² Ms Stanton, Transcript 18/06/21, page 16, lines 45 to 46.

³⁶³ Ms Stanton, Transcript 18/06/21, page 17, lines 16 to 21.

³⁶⁴ Ms Stanton, Transcript 18/06/21, page 17, lines 1 to 4.

³⁶⁵ Ms Stanton, Transcript 18/06/21, page 16, line 10 to page 17, line 21

³⁶⁶ Mr Peil, Transcript 22/04/21, page 26, lines 21 to 22.

132. Common to the expert evidence given by Dr Eu and Dr van de Ven was the need for the fitness industry in Australia to play a role in engaging with PIEDs users, including by way of harm reduction messaging, and for there to be increased awareness of and attention to the issue on the part of the government and the fitness industry. I accept the expert evidence of both Dr Eu and Dr van de Ven as to the utility of a dialogue or “roundtable” between the Ministry, the fitness industry and healthcare professionals and intend to make a recommendation in this regard.
133. I note that Anytime Australia accepts it has some role in relation to training and education and it facilitates the delivery of regular, externally-driven educational sessions by subject matter experts, both via webinars and through sessions at annual conferences.³⁶⁷ Mr Smith gave evidence of his understanding that the webinars are typically recorded and hosted on the ‘Dashboard’, which is the franchisee communications portal.³⁶⁸ Anytime Australia selects which topics will be addressed in those sessions, with input from its franchisees.³⁶⁹ The court was informed that Anytime Australia intends to provide franchisees with a webinar series having a specific focus on drug and alcohol use within the gyms, which will among other things provide resources for further education about the use of PIEDs.³⁷⁰ That series will, however, focus upon the employment obligations of franchisees.³⁷¹ There remained a general lack of enthusiasm to get involved in educating patrons about PIEDs in the gym setting.³⁷²
134. In my view there appears to have been an historic reluctance by those in the fitness industry to talk openly about the extent of PIED use in gyms and fitness centres. ATGPPMS or Anytime Australia are likely to be no different, but also no worse in this regard. While various witnesses spoke about the fact that you *need* to use PIEDs to compete in body building competitions,³⁷³ talking about PIED use in regular gyms appeared to be somewhat taboo. Both Mr Hrobat and Mr Peil gave evidence of “zero tolerance” policies in relation to PIED use³⁷⁴. Mr Hrobat stated that although he was not aware of any specific instances relating to the sale or use of drugs on Anytime Fitness premises, he would not hesitate to take action if he became aware of it.³⁷⁵ Mr Peil told the court that he had cancelled multiple memberships when he has suspected a patron is training in a manner that “is influenced by PIEDs.”³⁷⁶ In Mr Peil’s view the industry has worked hard to and done well at reducing PIED use, although “unfortunately it’s never

³⁶⁷ Ex 1 Vol 2, Tab 33C at p. 4.

³⁶⁸ Mr Smith, Transcript 22/04/21, page 63, lines 22 to 24.

³⁶⁹ Mr Smith, Transcript 22/04/21, page 64, lines 4 to 9.

³⁷⁰ Ex 1 Vol 2, Tab 33C at p. 4.

³⁷¹ Ex 1 Vol 2, Tab 33C at pp. 3-4; Mr Smith, Transcript 22/04/21, page 65, lines 4 to 8.

³⁷² See for example Mr Peel Transcript 22/04/21, page 32, lines 37 to 39.

³⁷³ Mr Peil, Transcript 22/04/21, lines 10-20; WJ, Transcript 22/04/21, lines 5 to 25.

³⁷⁴ Mr Peil, Transcript 22/04/21, page 24, line 45ff.

³⁷⁵ See for example his discussion of a suspected case at Transcript 19/4/21, page 95, line 5 to 15.

³⁷⁶ Mr Peil, Transcript 22/04/21, page 25, lines 30 to 32.

going to be totally eliminated from society”.³⁷⁷

135. I accept that most PIED use is likely to occur at home or in a private space rather than at the actual gym. Nevertheless, the gym can be a useful focus for outreach to PIED users. To squarely engage with the issue is not to condone or encourage use.³⁷⁸ One cannot help but be reminded of the positive health benefits achieved by harm reduction strategies and education in relation to “street drugs” and anticipate their usefulness in this context.
136. In Mr Peil’s opinion, the use of PIEDs usually masks deeper issues. He explained that users have usually “been the victim of bullying”, “have massive self-esteem issues” or “more general mental health issues”.³⁷⁹ In his view these underlying issues need to be addressed, rather than the use itself. In his view introducing educational material into the gym about the dangers of PIEDs is a “band aid”³⁸⁰ and unlikely to be of any benefit. He suggested that people already know of the dangers and continue to use these substances.³⁸¹ While I understand his point of view, I am convinced by the experts on this issue. Increased attention to open harm reduction messaging needs joint consideration by experts in the field and those involved in the fitness industry.
137. PIED use is unlikely to go away. Contrary to Mr Peil’s view, the expert evidence indicates it may be increasing. I am satisfied the evidence establishes that comprehensive harm reduction health strategies are called for.

Systems and procedures with respect to bathroom checks

138. A key issue that arose from the circumstances of Jesse’s death was an examination of the bathroom safety systems which were in place at Anytime Australia and in particular Anytime Fitness Castle Hill as at November 2017. The court was keen to understand how gym users were to be protected, especially within a business model which necessarily lacked constant onsite supervision. For this reason, it was necessary to examine the procedures which were in place to check occupied bathrooms, both by gym staff and cleaners. The court was interested in the policies, training and record keeping involved in this process. The court also sought information about what changes, if any, had been made by Anytime Australia and Anytime Fitness Castle Hill since Jesse’s tragic death.

³⁷⁷ Mr Peil, Transcript 22/04/21, page 32, lines 47 to 49.

³⁷⁸ Mr Peil, Transcript 22/04/21, page 32, lines 30 to 40:

“Q. I’m just interested in what your view is on introducing, for example, educational material within the confines of the gym that would educate members about the dangers of PIEDs and other illicit substances?”

A. If that’s the finding of your Honour in this Court, then we will be abide by it. Would I proactively go and do that, and the answer is no.”

³⁷⁹ Mr Peil, Transcript 22/04/21, page 26, lines 5 to 15.

³⁸⁰ Mr Peil, Transcript 22/04/21, page 32, line 42.

³⁸¹ Mr Peil, Transcript 22/04/21, page 32, line 42.

139. Counsel assisting submitted that as at November 2017 neither Anytime Australia nor Anytime Fitness Castle Hill had in place adequate systems, training or procedures to ensure the safety of occupants of the bathrooms. As at November 2017 Anytime Fitness Castle Hill had no system in place for recording which bathrooms had been checked and cleaned, either by staff or by the external cleaners. Staff were not given any training as to what they were to do in the event that a bathroom door was locked and the bathroom in question could not be accessed for checking or cleaning. There were no formal or established escalation procedures for either staff or external cleaners to follow in order to confirm the safety or wellbeing of the occupants of bathrooms³⁸², in circumstances where a bathroom door was locked for an extended period, such as knocking or calling out to determine whether the bathroom was in fact occupied, calling out to determine whether any occupant was unwell or incapacitated, contacting security or emergency services or gaining entry to the bathroom itself.
140. In particular, as at November 2017 there was no system or procedure of any kind in place for checking the bathrooms at the end of staffed hours each day. The unstaffed hours during which Anytime Fitness Castle Hill nonetheless remained open to the public (being 14 hours on a Monday, Tuesday, Wednesday and Thursday night; 15 hours on a Friday night; and 44 hours between Saturday afternoon and Monday morning) presented a significant period of time for a person to remain undetected inside a bathroom, and a corresponding risk to the safety of the occupants of those bathrooms.
141. The court heard that Mr Smith chaired the Risk Committee, which is an internal group at the Collective Wellness Group head office whose role is to identify risks within the business (including Anytime Australia) and then ensure that measures were put in place to address those risks, including safety and security risks..³⁸³ Mr Smith was not aware of the Risk Committee conducting any assessment of the risk to occupants of the bathrooms at Anytime Fitness gyms, nor any assessment of the risk to patrons during unstaffed hours.³⁸⁴ It is surprising that a 24 hour gym business, which was designed to be unstaffed for lengthy periods, had not considered these risks.
142. Counsel for ATGPPMS was concerned that counsel assisting's submissions did not give sufficient prominence to the safety systems which were in place at the time of Jesse's death. Counsel for ATGPPMS submitted that there were a number of significant measures which had been devised to ensure patron safety. These included, but were not limited to, emergency buttons in bathrooms which were regularly audited, personal

³⁸² The practice described by Cleaner CC of recording such matters in the Rymax cleaning book and/or reporting them to the manager does not fall into this category.

³⁸³ Mr Smith, Transcript 22/04/21, page 57, lines 1 to 9.

³⁸⁴ Mr Smith, Transcript 22/04/21, page 57, lines 11 to 17.

security devices which were available for use especially after hours, and a clearly labelled emergency button in the foyer entry. Further he submitted that regular cleanliness checks by both staff and after hours by the attendance of cleaners provided some protection. Prior to November 2017 there had been no incident involving death or incapacity in an Anytime Fitness bathroom facility. Counsel for Anytime Australia submitted that the systems in place were sufficient to meet the rare occasions of a patron being in physical difficulty in a bathroom. I accept that the provision of an emergency button in the bathroom was a significant safety measure and one mandated by Anytime Australia. Unfortunately, Jesse appears to have lost capacity quite quickly and was thus unable to use it. I note that the CCTV footage showed very limited engagement by gym staff with the testing of the emergency buttons. If the bathroom they wished to test the emergency button of was occupied, they simply skipped that check on that occasion. In my view a more robust safety system was required.

Cleaning services at Anytime Fitness Castle Hill

143. The attendance of cleaners after hours was identified as part of the “safety system” by counsel for Anytime Fitness Castle Hill. It was necessary to closely examine the provision of this service and analyse the protection it provided to patrons. As at November 2017, a company called Rymax Cleaning Services Pty Ltd (**Rymax**) was contracted to provide cleaning services at Anytime Fitness Castle Hill pursuant to an agreement entered into with ATGPPMS in or around 2015.³⁸⁵ Under that agreement, cleaning services were to be provided six nights per week (from Sunday to Friday) between approximately 10:00pm and 5:00am.³⁸⁶
144. Rymax, in turn, sub-contracted those cleaning services to a company called SSD Global, whose director was Jimmy Lee.³⁸⁷ SSD Global then sub-contracted to two individuals, Cleaner CC and Cleaner SS, to undertake those services pursuant to a verbal agreement that was in place between approximately November 2017 and June 2018.³⁸⁸ Cleaner CC and Cleaner SS carried out the cleaning services at three Anytime Fitness centres: Anytime Fitness Castle Hill, Norwest and another Anytime Fitness centre in Castle Hill.³⁸⁹ As at 17 November 2017, Mr Hrobat was not aware of the sub-contracting arrangements between Rymax and SSD Global, or between SSD Global and Cleaner CC / Cleaner SS.³⁹⁰ Anytime Australia did not have any role in overseeing the provision

³⁸⁵ Ex 1 Vol 2, Tab 34 at [A1].

³⁸⁶ Ex 1 Vol 1, Tab 31 at [5(a)].

³⁸⁷ Ex 1 Vol 2, Tab 34 at [A3]; Vol 2, Tab 36 at [3]-[4].

³⁸⁸ Ex 1 Vol 2, Tab 38 at [3].

³⁸⁹ Cleaner CC, Transcript 20/04/21, page 8, lines 43; Cleaner SS, Transcript 20/04/21, page 29, lines 28 to 34, line 42; Cleaner AK, Transcript 20/04/21, page 45, lines 41 to 44.

³⁹⁰ Mr Hrobat, Transcript 19/4/21, page 50, lines 26 to 34, page 83, lines 17 to 23.

of contracted cleaning services at Anytime Fitness centres, which was instead simply a matter for each individual gym.³⁹¹

145. According to both Mr Hrobat and the director of Rymax, Ryan Maxwell, as at November 2017 neither Rymax (nor its sub-contractors) maintained any log or record as to which bathrooms had been cleaned during the course of their work at Anytime Fitness Castle Hill.³⁹² Mr Hrobat says that Rymax did not provide any records of completed tasks to Anytime Fitness Castle Hill.³⁹³ Mr Hrobat says that in the event a bathroom was occupied during the cleaning process, Rymax cleaners were given a verbal direction from the General Manager at Anytime Fitness Castle Hill to move on to the next bathroom and to circle back and clean the bathroom once it had been vacated.³⁹⁴ As at November 2017, Rymax (and its sub-contracted cleaners) were not given any instructions from Anytime Fitness Castle Hill about what to do if a bathroom was unable to be accessed and cleaned during the full course of their shift, and there was no associated procedure in place at that time.³⁹⁵ For instance, cleaners were not instructed or directed to knock on locked bathroom doors, or to call out to any occupants of those bathrooms, or to notify management or security or emergency services in such circumstances.³⁹⁶

146. Mr Maxwell stated that Rymax was not provided with any training or copies of any policies by Anytime Fitness Castle Hill with respect to the safety of patrons, including occupants of the bathrooms; nor did Rymax provide SSD Global with any training or policies in relation to that topic.³⁹⁷ Rymax carried out fortnightly inspections of the sub-contractors' cleaning and provided SSD Global with the general cleaning scope of works which Rymax had agreed with Anytime Fitness Castle Hill.³⁹⁸ Mr Maxwell stated that if cleaners found that a bathroom was locked, they would think that it was in use and would move on to another task before coming back to check if they could access and clean it.³⁹⁹ But in Mr Maxwell's words, "cleaners weren't there to monitor the use of the cubicles".⁴⁰⁰ Consistent with Mr Hrobat's evidence, Mr Maxwell says that there was no escalation process in place in the event that one of the bathrooms was unable to be accessed by Rymax or its subcontractors.⁴⁰¹

147. In November 2017 the cleaners at Anytime Fitness Castle Hill used a book called the Rymax cleaning book as a means of communication between the gym, Rymax and its

³⁹¹ Mr Peil, Transcript 22/04/21, page 20, line 45 to page 21, line 4; Mr Hrobat, Transcript 19/04/21, page 83, line 44 to page 84, line 15.

³⁹² Ex 1 Vol 1, Tab 31 at [9]; Vol 2, Tab 34 at [A8]; see also Mr Hrobat, Transcript 19/4/21, page 85, lines 23 to 41.

³⁹³ Ex 1 Vol 1, Tab 31 at [9(a)].

³⁹⁴ Ex 1 Vol 1, Tab 31 at [8(a)-(b)]; Mr Hrobat, Transcript 19/4/21, page 84, lines 33-34

³⁹⁵ Mr Hrobat, Transcript 19/4/21, page 84, lines 40 to 50.

³⁹⁶ Mr Hrobat, Transcript 19/4/21, page 85, lines 1 to 12; Cleaner CC, Transcript 20/04/21, page 13, lines 20 to 44; Cleaner SS, Transcript 20/04/21, page 32, line 43 to page 33, line 44; see also Cleaner AK, Transcript 20/04/21, page 47, lines 10 to 12.

³⁹⁷ Ex 1 Vol 2, Tab 34 at [A2]-[A3].

³⁹⁸ Ex 1 Vol 2, Tab 34 at [A3]-[A4].

³⁹⁹ Ex 1 Vol 2, Tab 34 at [A6a].

⁴⁰⁰ Ex 1 Vol 2, Tab 34 at [A6c].

⁴⁰¹ Ex 1 Vol 2, Tab 34 at [A6b].

cleaners given that the gym was unstaffed when cleaning services were provided.⁴⁰² That book was kept onsite.⁴⁰³ Mr Hrobat says that the cleaning book typically contained any cleaning issues that needed to be addressed that day, such as dirty mirrors.⁴⁰⁴

148. According to Cleaner CC, he and Cleaner SS were asked by Mr Lee when they first commenced their duties in around November 2017⁴⁰⁵ to leave comments to the staff in the Rymax cleaning book to inform them when supplies were out, and also when they had trouble fulfilling their task due to circumstances such as a blocked toilet or locked doors.⁴⁰⁶ Cleaner CC said in his statement that in the event that one of the bathrooms was unable to be accessed by cleaning staff for the duration of their shift, they would leave a comment in the Rymax cleaning book and/or report it to the manager by a text message or a telephone call, but there was otherwise no specific escalation process in place.⁴⁰⁷ Cleaner CC did not suggest that his practice of leaving comments in the Rymax cleaning book was contingent upon Mr Lee telling him to do so on each occasion that Cleaner CC had trouble fulfilling his task; nor would such a process sit comfortably with Cleaner CC's evidence that Mr Lee gave that very instruction on a global basis when Cleaner CC first commenced work as a cleaner at Anytime Fitness Castle Hill. Having regard to that initial instruction, it would make little sense for Cleaner CC nonetheless to refrain from leaving any record in the Rymax cleaning book unless such a direction was specifically repeated by Mr Lee each time the issue arose.

149. That practice was explored with Cleaner CC during his oral evidence, which was given with the aid of an interpreter. Cleaner CC gave evidence that when he could not clean one of the bathrooms at Anytime Fitness Castle Hill as a result of an issue such as a locked door or blocked toilet, it was his usual practice to record that in the Rymax cleaning book.⁴⁰⁸ That evidence is consistent with his written statement; again, it was not conditioned by the need for any further instruction or direction from Mr Lee. When asked why he would do that, Cleaner CC explained that "I had an obligation to clean the bathrooms so whenever I was unable to complete the job because for example the door was locked or the toilet was blocked or something like that I would have had to leave - provide some explanation as to why I could not complete my job so that's why I would leave that record in the Rymax book and then I would call the Korean manager also to notify of him [sic]of the circumstances".⁴⁰⁹

150. Cleaner CC's use of the Rymax cleaning book for those purposes is supported by the

⁴⁰² Ex 1 Vol 1, Tab 31 at [6(b)].

⁴⁰³ Ex 1 Vol 2, Tab 34 at [A5].

⁴⁰⁴ Ex 1 Vol 1, Tab 31 at [6(b)].

⁴⁰⁵ Cleaner CC, Transcript 20/04/21, page 13, lines 5 to 12.

⁴⁰⁶ Ex 1 Vol 2, Tab 38 at [5].

⁴⁰⁷ Ex 1 Vol 2, Tab 38 at [7].

⁴⁰⁸ Cleaner CC, Transcript 20/04/21, page 20, lines 29 to 38.

⁴⁰⁹ Cleaner CC, Transcript 20/04/21, page 20, lines 35 to 40.

evidence of Cleaner CC's wife, Cleaner AK, who sometimes assisted Cleaner CC with his cleaning duties. Cleaner AK said that she "knew there was something there that was for the purpose of communicating with AnytimeFitness ... and the reason why I remember that much in this respect when I actually don't go there often is because my husband would sometimes ask me how to say, for example that the toilet is blocked".⁴¹⁰

151. Cleaner CC later said that his first step would be to contact Mr Lee, as well as leaving a record in the book.⁴¹¹ He would either telephone Mr Lee or send him text messages, and sometimes photographs; when asked whether he used the book or mainly called Mr Lee, Cleaner CC said that "usually" when any of these problems occurred he would in the first instance telephone Mr Lee.⁴¹² When Cleaner CC contacted Mr Lee about these issues, that contact usually took place during Cleaner CC's working hours.⁴¹³ Cleaner CC gave evidence that nobody told him to telephone Mr Lee in those circumstances, but that "it was my duty to clean the bathroom but if it's locked and I ... can't clean it and you know that's part of my job".⁴¹⁴ I accept his evidence that his focus was on the fact that a locked door might prevent him from undertaking the tasks he was paid for, rather than any issue of consumer safety.

152. It was subsequently put to Cleaner CC that if "any further steps needed to be taken" when an issue arose such as a blocked toilet or closed bathroom door, he would rely on what Mr Lee told him to do.⁴¹⁵ The nature of the "further steps" embraced by that proposition was not identified. Cleaner CC's response to that proposition was "[y]es that would be right. Yes, so if Mr Je Min Lee had given me those instructions or certain instructions yes I would have followed those instructions".⁴¹⁶ Viewed in the context of Cleaner CC's evidence as a whole, that answer simply indicates that if Mr Lee had given him particular instructions to take some further step when a bathroom door was locked or a toilet was blocked, then Cleaner CC would have followed them. It does not derogate from Cleaner CC's evidence as to his practice of recording those matters in the Rymax cleaning book in accordance with the initial instruction given to him by Mr Lee when he commenced at Anytime Fitness Castle Hill. Thus, when it was then put to Cleaner CC that he would "only" write in the Rymax cleaning book if Mr Lee told him to do so, Cleaner CC said that he was "really not capable of recalling you know to, to, to that extent of details".⁴¹⁷

⁴¹⁰ Cleaner AK, Transcript 20/04/21, page 47, lines 25 to 31. Note that Cleaner SS is able to write in English without the assistance of a translator: Cleaner SS, Transcript 20/04/21, page 28, lines 41 to 48.

⁴¹¹ Cleaner CC, Transcript 20/04/21, page 20, line 45 to page 21, line 7; page 26, lines 34 to 36.

⁴¹² Cleaner CC, Transcript 20/04/21, page 12, lines 21 to 34.

⁴¹³ Cleaner CC, Transcript 20/04/21, page 12, lines 46 to 50.

⁴¹⁴ Cleaner CC, Transcript 20/04/21, page 12, lines 38 to 44.

⁴¹⁵ Cleaner CC, Transcript 20/04/21, page 26, lines 38 to 39.

⁴¹⁶ Cleaner CC, Transcript 20/04/21, page 26, lines 40 to 42.

⁴¹⁷ Cleaner CC, Transcript 20/04/21, page 26, lines 47 to 48.

153. The contractual arrangement between Rymax and Anytime Fitness Castle Hill concluded in June 2018.⁴¹⁸ Cleaning services at Anytime Fitness are now provided by SSD Pro Pty Ltd pursuant to a contractual agreement with ATGPPMS.⁴¹⁹

The cleaners' attendance on 16-17 November 2017

154. At 10:39pm on 16 November 2017, Cleaner CC and Cleaner SS tagged in at Anytime Fitness Castle Hill.⁴²⁰ They were joined on that occasion by Cleaner AK.⁴²¹ Cleaner CC, Cleaner SS and Cleaner AK cleaned in and around the bathrooms adjacent to that occupied by Jesse from approximately 12:02am to 2:03am on 17 November 2017. Cleaner CC vacuumed the corridor outside the bathroom doors between about 12:14am and 12:16am. He also mopped the bathroom two doors down from the one occupied by Jesse at around 12:18am and 12:27am. Cleaner AK mopped the bathroom adjacent to Jesse at approximately 12:39am⁴²² and again at 1:54am. Meanwhile, at about 1:06am Cleaner SS took the rubbish out of the third bathroom in that corridor.⁴²³
155. The CCTV footage depicts all three cleaners approaching the locked door of Jesse's bathroom at different times during that evening:
- a. at approximately 12:36am, Cleaner CC goes to the door of the bathroom occupied by Jesse.⁴²⁴ He appears to knock on the door and then wait for about 6 seconds, before leaning his head against the door to listen for about 5 more seconds. He then appears to knock again and to wait and listen for another 11 seconds, before knocking and ultimately exiting the area at about 12:37am. He removes his mobile telephone from his left pocket while moving out of frame;
 - b. at approximately 1:13am, Cleaner SS goes to the door of the bathroom occupied by Jesse. She listens briefly at the door before leaving about 7 seconds later;
 - c. at approximately 1:21am, Cleaner SS again goes to the door of Jesse's bathroom. She appears to push it, and give it a brief knock, before moving to the right of screen and looking back at the bathroom door. She then appears to sit down across the corridor from the bathroom door. Cleaner SS has no recollection of the details of that night but gave evidence that she was "probably" knocking or pushing on the door "as an attempt to clean that part"

⁴¹⁸ Ex 1 Vol 2, Tab 34 at [A1].

⁴¹⁹ Ex 1 Vol 1, Tab 31.3 at [3].

⁴²⁰ Ex 1 Vol 1, Tab 29B at p. 1.

⁴²¹ Ex 1 Vol 2, Tab 40 at [2]; Cleaner AK, Transcript 20/04/21, page 44, lines 46 to 48.

⁴²² Cleaner AK, Transcript 20/04/21, page 49, line 29.

⁴²³ Cleaner SS, Transcript 20/04/21, page 37, lines 7 to 13.

⁴²⁴ See Cleaner CC, Transcript 20/04/21, page 17, line 5 to page 18, line 36.

of the bathroom area, in order to make sure that as part of carrying out her duties that evening she cleaned each of the bathrooms in the area.⁴²⁵ Cleaner SS cannot recall whether she heard any sounds from inside the bathroom but gave evidence that “I should think if there was any sound from inside I would have done something”.⁴²⁶ She did not call out to see whether there was someone inside the bathroom;⁴²⁷

- d. at approximately 1:26am, Cleaner AK approaches the door of Jesse’s bathroom with her mobile telephone in her hand. She takes several photographs of the door, at various distances from that door, and then moves towards the right of screen and ultimately out of view. She then appears to sit down with Cleaner SS across the corridor from the bathroom door.

156. It appears from the CCTV footage that Cleaner SS may have been sitting across the corridor from (and facing towards) Jesse’s bathroom between about 12:11am and 12:25am, and again between approximately 1:34am and 1:49am. Her shoe is visible at various points within those two windows of time; Cleaner SS also agreed that she can be seen holding a mobile telephone in her hands during the latter window.⁴²⁸

157. Cleaner CC gave evidence that he does not recall the night of 16-17 November 2017.⁴²⁹ He has no specific recollection of talking to Mr Lee that night about the locked bathroom door, though he believes he would have done so.⁴³⁰ In that respect, the telephone records of Cleaner CC and Mr Lee show that there was relevantly no telephone call or text message through the carrier (as distinct from other platforms or applications such as WhatsApp, which are not captured by the telephone records) between Cleaner CC and Mr Lee during Cleaner CC’s shift on 16-17 November 2017.⁴³¹ As to the Rymax cleaning book, Cleaner CC cannot recall whether he made any record that night to indicate that he had been unable to clean the bathroom in question,⁴³² though in his statement Cleaner CC said that he was “certain” that he would have done so.⁴³³ Cleaner CC ultimately has no precise recollection of what steps he took on 16-17 November 2017.⁴³⁴

158. Cleaner SS gave evidence (through an interpreter) that she has never contacted Mr Lee herself by telephone or email or by any other means.⁴³⁵ Cleaner AK similarly gave

⁴²⁵ Cleaner SS, Transcript 20/04/21, page 39, lines 35 to 44.

⁴²⁶ Cleaner SS, Transcript 20/04/21, page 39, lines 46 to 49.

⁴²⁷ Cleaner SS, Transcript 20/04/21, page 40, lines 20 to 23.

⁴²⁸ Cleaner SS, Transcript 20/04/21, page 36, lines 10 to 48, page 41, lines 6 to 8 and lines 18 to 41.

⁴²⁹ Cleaner CC, Transcript 20/04/21, page 17, lines 34-35, page 18, lines 35 to 36.

⁴³⁰ Cleaner CC, Transcript 20/04/21, page 19, lines 12 to 15; Ex 1 Vol 2, Tab 38 at [9].

⁴³¹ Ex 5, Tabs 75 and 76.

⁴³² Cleaner CC, Transcript 20/04/21, page 19, lines 26 to 28, page 21, lines 13 to 17.

⁴³³ Ex 1 Vol 2, Tab 38 at [9].

⁴³⁴ Cleaner CC, Transcript 20/04/21, page 20, line 42 to page 21, line 11.

⁴³⁵ Cleaner SS, Transcript 20/04/21, page 29, lines 19 to 22.

evidence, with the aid of an interpreter, that she has never had contact with Mr Lee.⁴³⁶ Nor did Cleaner AK have any contact with Mr Maxwell during the period that Cleaner CC provided cleaning services at Anytime Fitness Castle Hill.⁴³⁷

159. Cleaner AK does not recall whether she took any photographs or video footage of the bathroom on the night of 16-17 November 2017.⁴³⁸ However, having reviewed the CCTV footage, Cleaner AK says that it “seems” that she took a photograph of the locked door.⁴³⁹ Cleaner AK cannot recall what she did with those photographs but believes she would have provided them to Cleaner CC “so that he could use them as proof that the door was locked”.⁴⁴⁰ In that respect, Cleaner CC says that he probably asked Cleaner AK to take a photograph of the door as proof that they could not access the bathroom for cleaning.⁴⁴¹ Cleaner AK cannot remember taking any other steps in relation to the bathroom in question after discovering that it was locked.⁴⁴² Cleaner AK does not remember whether she ever wrote a message in the Rymax cleaning book to say that one of the bathrooms could not be cleaned due to a locked bathroom door.⁴⁴³
160. Cleaner SS says in her statement that she did not make any telephone calls or take any other steps to inform anybody that the bathroom in question was locked on the night of 16-17 November 2017, nor did she take any photographs or video of the bathroom door.⁴⁴⁴ She does not recall any conversations with Cleaner CC or Cleaner AK about the bathroom during their shift.⁴⁴⁵ In her oral evidence, Cleaner SS said that if an occasion arose where she was not able to perform her cleaning duties she would in the first instance raise that matter with Cleaner CC.⁴⁴⁶ She would not herself have recorded any message in the Rymax cleaning book.⁴⁴⁷ Cleaner SS gave evidence that she cannot recall the details of the night of 16-17 November 2017⁴⁴⁸ but that “from the position of a cleaner whether there is someone inside a bathroom cubicle or, or toilet or not or, or why the door is locked is, is really not of importance”.⁴⁴⁹
161. The evidence of Cleaner CC, Cleaner SS and Cleaner AK reveals that in the event of a locked bathroom door during the course of their shift at Anytime Fitness Castle Hill, their primary concern was the discharge of their cleaning duties and it was that concern which informed any steps that those individuals took by way of response to a locked bathroom

⁴³⁶ Cleaner AK, Transcript 20/04/21, page 46, lines 33 to 36, page 53, lines 29 to 31.

⁴³⁷ Cleaner AK, Transcript 20/04/21, page 46, line 49 to page 47, line 3.

⁴³⁸ Ex 1 Vol 2, Tab 40 at [4(f)].

⁴³⁹ Ex 1 Vol 2, Tab 40 at [4(f)].

⁴⁴⁰ Cleaner AK, Transcript 20/04/21, page 51, lines 18 to 22, page 52, lines 20 to 35.

⁴⁴¹ Ex 1 Vol 2, Tab 38 at [9(c), (f)].

⁴⁴² Ex 1 Vol 2, Tab 40 at [4(g)].

⁴⁴³ Cleaner AK, Transcript 20/04/21, page 48, lines 14 to 16.

⁴⁴⁴ Ex 1 Vol 2, Tab 42 at [9].

⁴⁴⁵ Ex 1 Vol 2, Tab 42 at [9].

⁴⁴⁶ Cleaner SS, Transcript 20/04/21, page 31, lines 42 to 50, page 32, lines 10 to 12.

⁴⁴⁷ Cleaner SS, Transcript 20/04/21, page 32, lines 4 to 8, page 42, line 43.

⁴⁴⁸ Cleaner SS, Transcript 20/04/21, page 37, line 33.

⁴⁴⁹ Cleaner SS, Transcript 20/04/21, page 38, lines 12 to 14.

door. Relevantly, Cleaner CC and Cleaner SS were not given any instructions or training to check on the welfare of any occupant of such a bathroom. Neither Cleaner CC nor Cleaner AK knew how to unlock the bathroom door from the outside; Cleaner CC's belief was that "there was no way to open the door from the outside".⁴⁵⁰

162. Cleaner CC was not notified that a young man had been inside the bathroom on the night of 16-17 November 2017, who had subsequently died, until sometime in 2019.⁴⁵¹ Cleaner SS likewise found out some time in 2019 following a telephone call from Cleaner AK, and "had no recollection of these events prior to being notified that this had happened".⁴⁵² That is, both Cleaner CC and Cleaner SS continued to work at Anytime Fitness Castle Hill six nights per week for approximately seven months and neither of them were told during that time about the incident involving Jesse.⁴⁵³ Cleaner AK thinks she was notified some time in 2019 by way of a telephone call from Mr Maxwell who said "that he only found out about it himself just then. And he said the police should be contacting us in due course. So, so he told us to expect a call from the police".⁴⁵⁴ Mr Maxwell told Cleaner AK that he was "very surprised himself"; Cleaner AK's evidence was "that's why I remember this. Because at the time I, I was very surprised to hear this as well".⁴⁵⁵

163. Mr Hrobat was asked whether he made any inquiries of the cleaners after Jesse was discovered on 17 November 2017 in order to ascertain whether they had any relevant information about the night of 16-17 November 2017. Mr Hrobat gave evidence that he made inquiries of Mr Maxwell within a week or two after the incident (at which stage Mr Hrobat believed that Mr Maxwell's own employees had undertaken the relevant cleaning) and asked for "any information he could give us".⁴⁵⁶ Mr Hrobat says that he did not hear back from Mr Maxwell in relation to that inquiry, and that he never followed up with Mr Maxwell because "I assumed that he'd get back to me if he had any more information or any evidence, he'd let us know".⁴⁵⁷

164. I find it very difficult to understand why the cleaners were not spoken to by Anytime Fitness staff in the days after the incident. It should have been immediately clear that a change in the system could decrease the chance of a future tragedy. That they continued cleaning during the following period without that information is extraordinary. While cleaners should not be expected to bear the brunt of a safety system, their work gives them the opportunity to alert others of potential risk as part of a more broadly conceived

⁴⁵⁰ Cleaner CC, Transcript 20/04/21, page 19, lines 17 to 24; Cleaner AK, Transcript 20/04/21, page 51, lines 28 to 30.

⁴⁵¹ Cleaner CC, Transcript 20/04/21, page 21, lines 48 to 49.

⁴⁵² Cleaner SS, Transcript 20/04/21, page 43, lines 4 to 11.

⁴⁵³ Cleaner CC, Transcript 20/04/21, page 22, lines 1 to 21; Cleaner SS, Transcript 20/04/21, page 43, lines 13 to 17.

⁴⁵⁴ Cleaner AK, Transcript 20/04/21, page 52, lines 39 to 43, page 53, line 3.

⁴⁵⁵ Cleaner AK, Transcript 20/04/21, page 53, lines 15 to 20.

⁴⁵⁶ Mr Hrobat, Transcript 19/4/21, page 50, line 1ff.

⁴⁵⁷ Mr Hrobat, Transcript 19/4/21, page 50, line 46 to page 51, line 7.

safety system.

165. There is no clear evidence to establish that Cleaner CC in fact left a record in the Rymax cleaning book on 17 November 2017 to identify that the cleaners had been unable to access one of the bathrooms overnight due to the locked door. Mr Hrobat told the court that he was not aware of any comments being left in the Rymax cleaning book as at November 2017 to that effect.⁴⁵⁸ Mr Hrobat gave evidence that he has some memory of one of his staff checking the book on 17 November 2017, that it may have been his supervisor (though he is not sure) and that his supervisor did not inform him that there was any relevant message in the Rymax cleaning book on that date.⁴⁵⁹
166. Mr Allen was not required to check the Rymax cleaning book as part of his role, and it was never his practice to do so.⁴⁶⁰ As for Ms Thiessen, she would usually only check it if she had seen something that needed cleaning or if she had made an entry in the book and was waiting for a follow-up; she did not otherwise routinely check the Rymax cleaning book and she was never instructed or trained to do so.⁴⁶¹ Ms Thiessen did not check the Rymax cleaning book during her shift on 17 November 2017 (or subsequently, in relation to that day), but gave evidence that she was “pretty sure someone looked at it” and she believed it to be the supervisor Mr Ed Abella.⁴⁶² Ms Thiessen does not herself recall ever seeing any comment in the Rymax cleaning book saying that the cleaners had been unable to clean one of the bathrooms because of a locked door.⁴⁶³ That may be explicable on the basis that Ms Thiessen did not routinely check that book. It may also be that the precise issue of a bathroom door being locked for the full duration of the cleaners’ shift had not arisen on many occasions at Anytime Fitness Castle Hill during the seven-month period that Cleaner CC and Cleaner SS carried out the cleaning services; Cleaner SS could recall only one other such occasion, when the door had an “Out of order” sign affixed to it.⁴⁶⁴ Cleaner CC could not recall precisely, though he believed there were “times when those things happened”.⁴⁶⁵ Cleaner AK could not recall any other examples.⁴⁶⁶
167. The Rymax cleaning book has since been discarded. Rymax does not retain copies of that book.⁴⁶⁷ I accept that had the book contained some reference to the door being locked and had that notation been seen by a staff member and then pursued, it is possible that Jesse could have been located earlier. But it is important to note that the

⁴⁵⁸ Mr Hrobat, Transcript 19/4/21, page 86, lines 45 to 50.

⁴⁵⁹ Mr Hrobat, Transcript 19/4/21, page 87, lines 20 to 45.

⁴⁶⁰ Mr Allen, Transcript 21/04/21, page 15, lines 5 to 18.

⁴⁶¹ Ms Thiessen, Transcript 21/04/21, page 37, lines 35 to 46.

⁴⁶² Ms Thiessen, Transcript 21/04/21, page 40, line 35 to page 41, line 6.

⁴⁶³ Ms Thiessen, Transcript 21/04/21, page 39, line 42 to page 40, line 2.

⁴⁶⁴ Cleaner SS, Transcript 20/04/21, page 32, lines 18 to 39.

⁴⁶⁵ Cleaner CC, Transcript 20/04/21, page 13, lines 14 to 18.

⁴⁶⁶ Cleaner AK, Transcript 20/04/21, page 48, line 33 to page 49, line 8.

⁴⁶⁷ Ex 1 Vol 2, Tab 34 at A5.

book was primarily used to communicate cleaning issues such as the need for soap or that toilet paper was running low, it was not conceived of being part of a broader *safety* system. Even if that system had been working correctly, it would be inadequate to deal with the identified risk. A mechanism which supports cleaners to identify and make a timely response to the risk implicit in a locked bathroom door should not be grounded in a system involving leaving a note for gym staff to action the following day.

Bathroom checks by staff at Anytime Fitness Castle Hill

168. In November 2017 Anytime Fitness Castle Hill had a “daily tasks document” which was handed to each staff member upon the start of their employment and which allocated tasks by reference to four phases of the day.⁴⁶⁸ The document was drafted by management at Anytime Fitness Castle Hill. It was not prepared with any guidance from Anytime Australia and was intended to be a “checklist” or “guide” identifying work tasks to be completed when required.⁴⁶⁹
169. The daily tasks document relevantly guided staff to undertake the following tasks:⁴⁷⁰
- a. during the Opening Phase (between 9:45am and 12:00pm): “[c]heck all bathrooms, tidy floor, stock up toilet paper, and soap (Approx each hour)”;
 - b. during the Second Phase (between 12:00pm and 2:00pm): “[c]heck bathrooms and restock if required”;
 - c. during the Third Phase (between 2:00pm and 5:00pm): “[c]lub 4pm ‘Refresher’ clean – Bathrooms – wipe down sinks, benches mirrors, hand dryers, toilet paper dispensers and soap dispensers. Pick up rubbish”;
 - d. during the Closing Phase (between 5:00pm and 8:00pm): “[c]heck of bathrooms and that amenities are fully stocked (Hourly)”;
 - e. under the heading “Other things to remember”: “Make sure bathroom checks are done throughout the day (hourly) as some will be occupied when you do the standard rounds as specified above”.
170. Mr Hrobat told the court that the daily tasks document was not enforced for every hour of the day but that staff members were asked to complete the tasks for each phase.⁴⁷¹ As at November 2017 there was no specific training provided to staff at Anytime Fitness Castle Hill in relation to the daily tasks document, and no records were kept or maintained in

⁴⁶⁸ Ex 1 Vol 1, Tab 29 at [9]; Vol 1, Tab 29A.

⁴⁶⁹ Ex 1 Vol 1, Tab 31 at [1].

⁴⁷⁰ Ex 1 Vol 1, Tab 29A.

⁴⁷¹ Ex 1 Vol 1, Tab 29 at [11].

relation to compliance with that document (including records as to bathroom checks).⁴⁷² Thus, there was no “log as such” to monitor whether bathroom checks were being carried out, nor did Anytime Australia require or direct Anytime Fitness centres to keep such a record,⁴⁷³ rather, the procedure relied upon communication as between staff, the General Manager, and the relevant supervisor who visited the gym “every day or two” for “an hour, two hours, depending on the day”.⁴⁷⁴ Mr Hrobat gave evidence that staff were to check the bathrooms “once or twice per phase so every 60 to 90 minutes”; however, prior to Jesse’s collapse in November 2017 “the mindset around our bathroom checks was very much about hygiene and making sure toilet paper was restocked and soap was filled”.⁴⁷⁵ Staff “obviously [had] plenty of other things to do on any given day”.⁴⁷⁶ Where more than one staff member was on duty, it was a matter for staff to determine how those bathroom checks were allocated as between staff throughout the day.⁴⁷⁷ For instance, there was no instruction to staff that they were to take it in turns to carry out those checks.⁴⁷⁸

171. As at 16 November 2017, staff at Anytime Fitness Castle Hill were not given any instruction or training as to what they were to do if a bathroom could not be accessed for cleaning throughout the day, and they were not instructed or trained to knock on the door of an occupied bathroom.⁴⁷⁹ Anytime Australia did not direct or instruct Anytime Fitness gyms to have staff knock on a locked bathroom door.⁴⁸⁰ Mr Hrobat said in his statement of 10 January 2018 that staff members do not knock on the bathroom doors if the bathrooms are occupied for the privacy of members as that would result in complaints from members.⁴⁸¹ In his oral evidence, Mr Hrobat said that the question of knocking on doors “didn’t even come up to be honest”.⁴⁸² Mr Allen meanwhile gave evidence that he was instructed not to knock on bathroom doors for the privacy of members, though he does not recall who gave him that instruction.⁴⁸³
172. Staff were not instructed or trained to call out to the occupant of a locked bathroom at any stage during their shift,⁴⁸⁴ and nor did Anytime Australia instruct Anytime Fitness

⁴⁷² Ex 1 Vol 1, Tab 31 at [3]-[4]; Mr Hrobat, Transcript 19/4/21, page 79, lines 39 to 44; Mr Allen, Transcript 21/04/21, page 9, line 30; Ms Thiessen, Transcript 21/04/21, page 32, lines 30 to 35

⁴⁷³ Mr Peil, Transcript 22/04/21, page 19, line 48 to page 20, line 2

⁴⁷⁴ Mr Hrobat, Transcript 19/4/21, page 44, lines 20 to 40.

⁴⁷⁵ Mr Hrobat, Transcript 19/4/21, page 77, lines 35 to 45

⁴⁷⁶ Mr Hrobat, Transcript 19/4/21, page 77, line 40.

⁴⁷⁷ Mr Hrobat, Transcript 19/4/21, page 44, lines 41 to 50; Mr Allen, Transcript 21/04/21, page 9, line 36 to page 10, line 5; Ms Thiessen, Transcript 21/04/21, page 33, lines 8 to 23.

⁴⁷⁸ Mr Hrobat, Transcript 19/4/21, page 44, lines 49 to 50, page 45, lines 1 to 4.

⁴⁷⁹ Mr Hrobat, Transcript 19/4/21, page 80, lines 22 to 29; Mr Allen, Transcript 21/04/21, page 12, lines 11 to 15; Ms Thiessen, Transcript 21/04/21, page 33, line 48 to page 34, line 9.

⁴⁸⁰ Mr Peil, Transcript 22/04/21, page 20, lines 4 to 7.

⁴⁸¹ Ex 1 Vol 1, Tab 29 at [12].

⁴⁸² Mr Hrobat, Transcript 19/4/21, page 80, line 32.

⁴⁸³ Mr Allen, Transcript 21/04/21, page 12, lines 17 to 35, page 13, line 16.

⁴⁸⁴ Mr Hrobat, Transcript 19/4/21, page 80, lines 40 to 42.

centres to have staff take that step.⁴⁸⁵ As at 16 November 2017, staff were not instructed or trained to notify a supervisor or management if they were unable to access a locked bathroom,⁴⁸⁶ and Anytime Australia did not provide any direction or instruction for individual centres to notify security or emergency if a bathroom door was locked for an extended period.⁴⁸⁷ When asked why there was no system or procedure in place in November 2017 as to how staff were to respond when a bathroom door was locked for a prolonged period of time, Mr Hrobat said that “the situation had never arisen. It just wasn’t on our radar at all”.⁴⁸⁸

173. Ms Thiessen said that the daily tasks document was used to assist all staff in maintaining a productive work-flow and helped ensure necessary tasks were completed each day.⁴⁸⁹ Her understanding of “checking the bathrooms” as set out in the daily tasks document was that it involved cleaning / tidying the cubicles and surrounding areas; stocking toilet paper rolls; filling soap dispensers; relocating any abandoned belongings to lost property; and ensuring the bathrooms were presentable for members to use.⁴⁹⁰ Ms Thiessen understood, based on the training given to her by her supervisor, that staff needed to conduct a bathroom check at least every 60 to 90 minutes “if we could, depending on how busy we were” but that sometimes that was not possible.⁴⁹¹ Ms Thiessen said that there was no training given to her in circumstances where a bathroom was unable to be accessed for “checking” but that in the event a bathroom was occupied, her usual practice was to move on to the next bathroom and clean the occupied bathroom at a later time.⁴⁹² She would rely on her memory in that regard, and would usually come back to the occupied bathroom as part of the next round of checks.⁴⁹³ Ms Thiessen said that following Jesse’s death, staff were directed to monitor “blind” areas such as bathrooms and changerooms and, in the event that any bathroom or changeroom was closed for an extended period of time, staff were directed to knock and ask if the member was okay.⁴⁹⁴

174. Mr Allen said in his statement of 11 March 2020 that the daily tasks document provided new staff with a broad outline of duties that were required to be completed throughout the day, and that during a shift it provided staff with a checklist of things that needed to be done – in other words, a “to-do” list.⁴⁹⁵ A copy of that document was visible in the office

⁴⁸⁵ Mr Peil, Transcript 22/04/21, page 20, lines 9 to 12.

⁴⁸⁶ Mr Hrobat, Transcript 19/4/21, page 81, lines 13 to 19.

⁴⁸⁷ Mr Peil, Transcript 22/04/21, page 20, lines 14 to 16.

⁴⁸⁸ Mr Hrobat, Transcript 19/4/21, page 81, lines 25 to 28, page 82, lines 10 to 15.

⁴⁸⁹ Ex 1 Vol 1, Tab 31B at [5(a)(iv)].

⁴⁹⁰ Ex 1 Vol 1, Tab 31B at [5(b)].

⁴⁹¹ Ms Thiessen, Transcript 21/04/21, page 31, line 46 to page 32, line 20.

⁴⁹² Ex 1 Vol 1, Tab 31B at [5(c)].

⁴⁹³ Ms Thiessen, Transcript 21/04/21, page 33, lines 36 to 46.

⁴⁹⁴ Ex 1 Vol 1, Tab 31B at [14(a)]; Ms Thiessen, Transcript 21/04/21, page 58, lines 7 to 38.

⁴⁹⁵ Ex 1 Vol 1, Tab 31D at [4(a)].

and in the gym so that all staff knew what needed to be done daily.⁴⁹⁶ Mr Allen's understanding of "checking the bathrooms" was that it entailed ensuring that the toilet paper rolls and soap dispensers were filled, and that the bathrooms were generally clean and tidy.⁴⁹⁷ He does not recall any specific instructions in the event a bathroom was occupied but his practice was to circle back later in the shift if a bathroom was occupied.⁴⁹⁸ He would rely on memory in that regard, and if the bathroom was still occupied then he would just circle back again.⁴⁹⁹ Mr Allen gave evidence that the bathrooms were a "low priority".⁵⁰⁰ Mr Allen ceased his employment with Anytime Fitness Castle Hill on 28 June 2018. Mr Allen said that between November 2017 and June 2018, he was not given any additional training or instructions or guidance as to what he should do if a bathroom door at the gym was locked for an extended period of time.⁵⁰¹

175. A review of the CCTV footage at Anytime Fitness Castle Hill during staffed hours between 5:30pm and 8:00pm on 16 November 2017 and between 10:00am and 2:00pm on 17 November 2017 reveals the following:

- a. on 16 November 2017 at approximately 5:48pm, Mr Allen walks past the bathroom which Jesse had entered nearly 20 minutes earlier. He proceeds past the next two bathrooms, both of which had their doors open at the time. He then walks out of view to the right of screen. At approximately 5:51pm, he walks back into frame. He walks past the third bathroom, which still has its door open. He then walks past the second bathroom (which now has its door closed) and proceeds past Jesse's bathroom, while typing on his mobile phone, before exiting the area. Mr Allen cannot recall what he was doing at that time, but gave evidence that he was not carrying out a bathroom check;⁵⁰²
- b. on 16 November 2017 at approximately 7:40pm, Ms Thiessen walks past the bathroom occupied by Jesse while carrying out a bathroom check.⁵⁰³ She proceeds past the next two bathrooms, both with their doors closed, while looking at her mobile telephone. She proceeds to the end of the corridor and out of view. She then re-enters the frame. She walks past the third bathroom, which is still occupied, while looking at her phone. She proceeds past the second bathroom, which is now vacant, and finally past the bathroom occupied by Jesse before exiting the bathroom area at about 7:42pm;

⁴⁹⁶ Ex 1 Vol 1, Tab 31D at [4(a)].

⁴⁹⁷ Ex 1 Vol 1, Tab 31D at [4(b)].

⁴⁹⁸ Ex 1 Vol 1, Tab 31D at [4(c)].

⁴⁹⁹ Mr Allen, Transcript 21/04/21, page 11, lines 25 to 45.

⁵⁰⁰ Mr Allen, Transcript 21/04/21, page 10, line 49 to page 11, line 11.

⁵⁰¹ Ex 1 Vol 1, Tab 31D at [8]; Mr Allen, Transcript 21/04/21, page 20, lines 5 to 16.

⁵⁰² Mr Allen, Transcript 21/04/21, page 16.

⁵⁰³ Ms Thiessen, Transcript 21/04/21, page 43, line 30.

- c. on 17 November 2017 at approximately 10:44am, Ms Thiessen walks past the bathroom occupied by Jesse while on her mobile telephone and enters the adjacent bathroom and, subsequently, the third bathroom in that corridor. Ms Thiessen was carrying out a bathroom check.⁵⁰⁴ She then walks further down the corridor to the right and ultimately out of view, before walking back into the frame still on her mobile phone. She pauses for a short time while facing in the direction of Jesse's bathroom, before exiting the area at about 10:46am. At that time, Ms Thiessen was on a telephone call with an employee of Paul-Tec, the security provider at Anytime Fitness Castle Hill, completing a monthly security system check.⁵⁰⁵ Ms Thiessen gave evidence that she had assumed the door to the first bathroom in the corridor was locked "because it had the red label on the outside" as distinct from the green label, which would have indicated that the door was unlocked;⁵⁰⁶
- d. on 17 November 2017 at approximately 11:09am, Ms Thiessen enters the corridor outside the bathrooms and proceeds to re-stock the vending machine outside the bathroom occupied by Jesse. She exits approximately 1 minute later.

176. The appearances by Ms Thiessen on 16 November 2017 at 7:40pm, and on 17 November 2017 at 10:44am, are the only occasions on which a bathroom check was carried out during staffed hours between approximately 5:30pm on 16 November 2017 and (relevantly) about 1:09pm on 17 November 2017, by which time Ms Thiessen had ascertained that Jesse was still inside the bathroom.⁵⁰⁷

177. Counsel for ATGPPMS was concerned that counsel assisting's careful summary of the objective evidence about Mr Allen and Ms Thiessen's actions and movements on the day contained implicit criticism because they were seen on their phones while Jesse lay hidden, but nearby in a critical condition. His concerns here are unfounded and I am not critical of either staff member, who I regard as undertrained and unsupported. The importance of the CCTV footage is to highlight the way in which the safety system as it was then in place, created numerous missed opportunities to provide Jesse with earlier assistance. I am heartened that recent changes to that system will decrease the risk of a similar event.

⁵⁰⁴ Ms Thiessen, Transcript 21/04/21, page 48, lines 17 to 22.

⁵⁰⁵ Ms Thiessen, Transcript 21/04/21, page 49, lines 1 to 10; Ex 1 Vol 1, Tab 31B at [9(a)(iv)].

⁵⁰⁶ Ms Thiessen, Transcript 21/04/21, page 48 lines 37 to 50.

⁵⁰⁷ See also Ms Thiessen, Transcript 21/04/21, page 45, lines 17 to 19, page 49, lines 12 to 48.

Consideration and implementation of changes following Jesse's death

178. A critical question arising out of that sequence of events is how to prevent the recurrence of a situation where somebody lies unconscious inside a bathroom at an Anytime Fitness centre for some 20 hours undetected. The court was keen to investigate a range of solutions including technological measures, such as the implementation of automatic exit technology (which would create an alert when a person has been at the gym for a long time); human-based systems, such as regular and documented bathroom welfare checks; and/or physical measures, like altering the design of the bathroom doors to render it more likely that a person who has collapsed inside the bathroom will be discovered in a timely way, such as by creating a narrow gap or transparent panel between the bottom of the doors and the floor.⁵⁰⁸ The court accepts that Anytime Fitness' corporate structure necessitates that any changes to the physical fit-out of the gym must be determined by Anytime Australia.⁵⁰⁹
179. The court was struck by counsel assisting's submission that between approximately 5:28pm on 16 November 2017 and approximately 2:05pm on 17 November 2017, a member of the public or a member of staff passed by the bathroom in which Jesse lay unconscious somewhere in the region of 600 times. During the period from 5:28pm to 8:28pm on 16 November 2017, there were approximately 210 occasions where a person walked past that bathroom. Plainly, there was a greater possibility that Jesse would have been detected earlier if the bathroom door did not extend all the way to the floor.⁵¹⁰ Equally if a more robust human-based checking system had been in place there is a real possibility that Jesse would have been discovered sooner.
180. The court was also concerned about procedures and processes that came into play when Jesse's mother contacted the gym to register her concern. A system which can alert staff to an "over stayer" could have triggered an investigation that may have led to a much earlier discovery. Tragically, it is also clear that Ms Thiessen should have been given clear advice to open the door immediately she became aware Jesse was inside the bathroom.

Design of the bathroom doors

181. Mr Hrobat gave evidence that he has not personally considered the possibility of shortening the bathroom doors at Anytime Fitness, nor discussed that option with Anytime Australia.⁵¹¹ While Mr Hrobat assumes that "the cost analysis would be

⁵⁰⁸ See, for example, Mr Piel, Transcript 22/04/21, page 16 line 25 to page 17 line 15.

⁵⁰⁹ Ex 1 Vol 1, Tab 29 at [23].

⁵¹⁰ A proposition with which Mr Hrobat agreed: Mr Hrobat, Transcript 19/4/21, page 74, lines 30 to 33.

⁵¹¹ Mr Hrobat, Transcript 19/4/21, page 70, lines 5 to 11.

negligible” (which cost would be borne by the franchisees), he expressed concerns for the privacy of those inside the bathrooms but agreed that there is “no concern” with shortening the doors to a short degree so that, in the event of concern for the occupant, one could see underneath the door without compromising the privacy of the person inside.⁵¹² Mr Hrobat gave evidence that he would be prepared to consider that option and to work with Anytime Australia in that regard, provided that it did not interfere with the privacy of members.⁵¹³

182. Mr Peil gave evidence that Anytime Australia has discussed the possibility of shortening the bathroom doors at Anytime Fitness centres so that they do not extend all the way to the floor, but that they “very quickly determined that it’s not a way that we would like to move forward”.⁵¹⁴ Anytime Australia has not considered installing glass or Perspex panels at the bottom of bathroom doors.⁵¹⁵ Mr Peil views both options as “crazy” because he believes that members may feel at risk of sexual harassment and therefore be deterred from attending the gym.⁵¹⁶
183. Consultant architect Dr John Cooke was instructed by Anytime Australia to provide an expert opinion as to whether shortening the doors of the bathrooms at Anytime Fitness centres, or installing a Perspex panel along the bottom of the doors, would comply with the National Construction Code (**NCC**) which includes the Building Code of Australia (**BCA**). Dr Cooke noted that the relevant codes provide that sanitary compartments “must have doors and partitions that separate adjacent compartments and extend ... from floor level to the ceiling in the case of a unisex facility”.⁵¹⁷
184. There was some disagreement about whether the implication of the relevant codes resulted in any shortening to a door to a unisex sanitary compartment, being impermissible no matter how small the resulting gap may be. Without repeating the detailed submissions outlined by counsel assisting and counsel for Anytime Australia in this regard, I note that differing views were put forward.
185. Having considered these detailed submissions, in my view, the best evidence comes from Dr Cooke himself. He initially opined that shortening the unisex bathroom doors at Anytime Australia would not comply with the requirement that such doors extend “from floor level to ceiling”.⁵¹⁸
186. However in Dr Cooke’s supplementary expert report, he opined that “a 2-3cm gap

⁵¹² Mr Hrobat, Transcript 19/4/21, page 70, lines 28 to 34.

⁵¹³ Mr Hrobat, Transcript 19/4/21, page 74, lines 16 to 22

⁵¹⁴ Mr Peil, Transcript 22/04/21, page 5, lines 49 to 50, page 6, lines 1 to 11.

⁵¹⁵ Mr Peil, Transcript 22/04/21, page 6, line 17.

⁵¹⁶ Mr Peil, Transcript 22/04/21, page 4, line 46 to page 5, line 40, page 6, lines 19 to 22.

⁵¹⁷ Ex 5, Tab 71 at [23] and Appendix C at p. 254.

⁵¹⁸ Ex 5, Tab 71 at [27]-[28].

between the floor and the door of the Restrooms would comply with [relevant building codes]”, albeit “only if a gap of that dimension would not compromise the privacy of users of the restrooms”.⁵¹⁹ He observed that it was not possible from a standing position to see into a bathroom whose door finished approximately 3cm above floor level, but opined that “if a person could see a Restroom occupant through the 3cm gap (for example, by looking under the gap) then the occupant’s privacy would be compromised and the door would not be compliant”.⁵²⁰

187. It is difficult to imagine that any member privacy would be compromised by a small gap (of no greater than 3cm) at the bottom of the door to a unisex sanitary compartment. The benefit of having such a gap, in my view, far outweighs any risk to member privacy. In circumstances where each of the three cleaners identified the locked door behind which Jesse lay incapacitated as being unusual, it is entirely conceivable that a small gap at the bottom of that door would have allowed them to use it to detect him lying there. Resistance to such a simple, yet highly effective solution is regrettable.

Bathroom welfare checks

188. The procedures surrounding bathroom checks at Anytime Fitness Castle Hill have undergone various changes in the period from approximately February 2018 to April 2021. By way of summary, Mr Hrobat says that:⁵²¹

- a. at or around the end of February 2018,⁵²² staff at all gyms operated by ATGPPMS⁵²³ were instructed when undertaking the hourly checks of bathrooms to pay attention to when bathrooms were occupied and to revisit them, in a separate check about 20 to 30 minutes later,⁵²⁴ if a door was closed and they had any concerns (because, for example, there was no noise suggesting activity coming from the bathroom). If on a subsequent check the door was still closed, and the staff member had concerns, staff were to knock and check that the person was okay and if they were not okay, or there was no answer, staff were to call security (by activating the duress button)⁵²⁵ or emergency services as appropriate. That instruction was given to staff verbally by Mr Hrobat’s General Manager at a managers meeting.⁵²⁶ It was not reduced to writing because, in Mr Hrobat’s words, it was “more of a change of mindset for us ... Not so much

⁵¹⁹ Ex 5, Tab 71B at [2].

⁵²⁰ *Ibid*

⁵²¹ The proceeding summary is taken from Ex 1 Vol 1, Tab 31.1 at [3]-[7], unless otherwise indicated.

⁵²² Mr Hrobat, Transcript 19/4/21, page 41, lines 25 to 28.

⁵²³ Mr Hrobat, Transcript 19/4/21, page 53, lines 10 to 13.

⁵²⁴ Mr Hrobat, Transcript 19/4/21, page 46, lines 10 to 32.

⁵²⁵ Mr Hrobat, Transcript 19/4/21, page 47, lines 15 to 20.

⁵²⁶ Mr Hrobat, Transcript 19/4/21, page 41, line 35, page 42, lines 1 to 50, page 43, lines 1 to 10.

changing the regularity of it”.⁵²⁷ Nor was the daily tasks document updated to reflect that instruction.⁵²⁸ Mr Hrobat gave evidence that staff were informed as to the frequency of bathroom checks that “[e]very sort of 60 to 90 minutes was my intent. It wasn’t a hard and fast one hour ... it was at least once to twice each phase”.⁵²⁹ Staff were not told in what circumstances it would be appropriate to call security as distinct from emergency services (nor vice versa), and staff were not told that they were themselves to enter the bathroom if the occupant was not okay or did not respond, due to Mr Hrobat’s concerns about the welfare of staff and the privacy of occupants of the bathrooms;⁵³⁰

- b. there was no corresponding instruction or direction given to the external cleaners in or around February 2018.⁵³¹ Indeed, in the period between November 2017 and April 2021, the external cleaners at Anytime Fitness Castle Hill were not given any additional or new instructions or training regarding bathroom welfare checks.⁵³² When asked why that was the case, Mr Hrobat answered simply: “I don’t know”,⁵³³
- c. the 2018 changes were in place until about July 2020.⁵³⁴ During that period, staff at Anytime Fitness Castle Hill were not asked to report back to management at any stage on the implementation of that procedure,⁵³⁵ save that the supervisor and General Manager would ask questions of staff to see how it was progressing.⁵³⁶ Mr Hrobat does not know how frequently that was being checked with staff by the General Manager.⁵³⁷ There were no occasions during that period where security or emergency services were called by staff at any of the Anytime Fitness centres operated by ATGPPMS, in relation to the occupant of a locked bathroom;⁵³⁸
- d. in about July 2020, when Anytime Fitness re-opened following the outbreak of COVID-19, gyms were required to have COVID-19 marshals present during all operational times. In practice, this meant that the gyms operated by ATGPPMS no longer operated 24 hours a day, seven days a week. By about “August / September, possibly October” Anytime Fitness Castle Hill was open from

⁵²⁷ Mr Hrobat, Transcript 19/4/21, page 43, lines 12 to 21.

⁵²⁸ Mr Hrobat, Transcript 19/4/21, page 43, line 30ff.

⁵²⁹ Mr Hrobat, Transcript 19/4/21, page 43, lines 7 to 18.

⁵³⁰ Mr Hrobat, Transcript 19/4/21, page 46, lines 41 to 50, page 47, lines 1 to 11.

⁵³¹ Mr Hrobat, Transcript 19/4/21, page 49, lines 23 to 27.

⁵³² Mr Hrobat, Transcript 19/4/21, page 49, lines 29 to 34.

⁵³³ Mr Hrobat, Transcript 19/4/21, page 49, lines 36-37.

⁵³⁴ Mr Hrobat, Transcript 19/4/21, page 48, lines 22 to 26.

⁵³⁵ Mr Hrobat, Transcript 19/4/21, page 49, lines 3 to 9.

⁵³⁶ Mr Hrobat, Transcript 19/4/21, page 48, lines 31 to 50, page 49, lines 1 and 8.

⁵³⁷ Mr Hrobat, Transcript 19/4/21, page 48 line 49 to page 49 line 1.

⁵³⁸ Mr Hrobat, Transcript 19/4/21, page 49, lines 11 to 21.

5:00am until 10:00pm for about two to three months.⁵³⁹ As part of those changes, staff at gyms operated by ATGPPMS⁵⁴⁰ were directed to knock on bathroom doors shortly before closing each day and to inform the occupants that the gym would be closing shortly and that they needed to leave. That direction was given to staff both verbally and in an email to staff, by Mr Hrobat (initially) and then by his General Manager Nicholas Starr.⁵⁴¹ In his oral evidence, Mr Hrobat said that in the event that staff received no response from the occupant of a bathroom, staff were directed to follow the same procedure as was applied in 2018.⁵⁴² Ms Thiessen gave evidence that she was never asked to report back on the implementation of that new procedure,⁵⁴³

- e. in September 2020, there was an incident at Anytime Fitness Hornsby (which is operated by ATGPPMS) where a member fainted inside a bathroom and hit his head. The staff member in question knocked on the door and received no response, following which she opened the door, located the member inside and telephoned an ambulance.⁵⁴⁴ The member made a full recovery. The relevant staff member therefore did not follow the procedure in place at Anytime Fitness Hornsby at that time, which required staff to telephone emergency services or security rather than entering the locked bathroom. Mr Hrobat does not know why that procedure was not followed and did not make any enquiries of the staff member as to that, but gave evidence that “she’d only been with us a couple of weeks”.⁵⁴⁵ An insurance incident report was completed (Ex 9), together with an “in house” incident report dated 13 September 2020 (Ex 8). However, Mr Hrobat did not log an Anytime Safety report in relation to this incident until 8 April 2021.⁵⁴⁶ Mr Hrobat gave evidence that he initially reported the incident by way of a telephone call to Andrew Gow, who is now the Central Operations Manager at Anytime Australia.⁵⁴⁷ Mr Gow subsequently provided a statement dated 20 April 2021 in which he stated that he was “not aware of the Hornsby incident”, does not recall any conversation with Mr Hrobat in relation to that incident, and would have directed Mr Hrobat to log an Anytime Safety incident report if he had been contacted in September 2020,⁵⁴⁸ and

⁵³⁹ Mr Hrobat, Transcript 19/4/21, page 51, lines 19-25.

⁵⁴⁰ Mr Hrobat, Transcript 19/4/21, page 53, lines 10 to 13.

⁵⁴¹ Mr Hrobat, Transcript 19/4/21, page 51, lines 42 to 50, page 52, lines 1 to 9. See letter from Wotton Kearney dated 25 June 2021 and attached email from Mr Starr dated 31 July 2020 (which documents have not yet formally been tendered).

⁵⁴² Mr Hrobat, Transcript 19/4/21, page 52, lines 19 to 30.

⁵⁴³ Ms Thiessen, Transcript 21/04/21, page 62, lines 6 to 8.

⁵⁴⁴ Mr Hrobat, Transcript 19/4/21, page 53, lines 18 to 24.

⁵⁴⁵ Mr Hrobat, Transcript 19/4/21, page 53, lines 37 to 50.

⁵⁴⁶ Ex 2 at [6].

⁵⁴⁷ Mr Hrobat, Transcript 19/4/21, page 52, lines 39 to 48.

⁵⁴⁸ Ex 2 at [7]-[8].

f. following the incident in September 2020 at Anytime Fitness Hornsby, staff at all gyms operated by ATGPPMS⁵⁴⁹ were instructed to knock on all bathroom doors at the commencement of staffed hours and at the conclusion of staffed hours, in addition to the regular checks, and that the same procedure was to be followed if there was no response or staff had any concerns. The decision to implement ongoing bathroom checks at opening and closing time was made by Mr Hrobat and his business partner in or around November 2020,⁵⁵⁰⁵⁴⁶ and the instruction was conveyed by the General Manager to staff in managers meetings.⁵⁵¹⁵⁴⁷ The daily tasks document was updated to reflect this.⁵⁵²⁵⁴⁸ In terms of ensuring that the new procedure in relation to member welfare checks was being complied with, Mr Hrobat relied on “communication ... between general manager, supervisors, club staff on a regular basis and I’m asking that question regularly of my general manager and supervisors as well”.⁵⁵³

189. Apart from the incident in September 2020 at Anytime Fitness Hornsby, Mr Hrobat is not aware of any other occasion since July 2020 where a staff member has knocked on the door of an occupied bathroom at a gym operated by ATGPPMS and received no response from the occupant.⁵⁵⁴ Nor is Mr Hrobat aware of any other occasion where a person has collapsed or become incapacitated inside a bathroom at any of the gyms operated by ATGPPMS, or where staff have held concerns for the welfare of an occupant of one of the bathrooms at Anytime Fitness Castle Hill.⁵⁵⁵

190. More recently, in April 2021 Anytime Australia consulted with Mr Hrobat about a trial policy for bathroom welfare checks (**Trial Policy**).⁵⁵⁶ The Trial Policy provides that staff must conduct a welfare check of all bathrooms on a 2-hourly basis during staffed hours, together with checks at opening and closing, and must record those checks in the club’s record log. If a bathroom is occupied, staff are to knock on the door and ask if the occupant is okay. If there is ultimately no response, staff are to gain access to the bathroom themselves by unlocking the door with a screwdriver. Cleaners are to be directed to act in accordance with the Trial Policy, which requires them to clean the bathrooms at the commencement of their shift, and if a bathroom is occupied, cleaners must knock on the door and ask if the occupant is okay. If there is ultimately no response, the cleaner is to gain access to the bathroom by unlocking the door. Cleaners are also

⁵⁴⁹ Mr Hrobat, Transcript 19/4/21, page 54, lines 21 to 22.

⁵⁵⁰ Mr Hrobat, Transcript 19/4/21, page 55, lines 24 to 25.

⁵⁵¹ Mr Hrobat, Transcript 19/4/21, page 54, line 15ff.

⁵⁵² See letter from Wotton Kearney dated 25 June 2021 at [2.2] (which has not yet formally been tendered); cf. Mr Hrobat, Transcript 19/4/21, page 55, line 29 (548)

⁵⁵³ Mr Hrobat, Transcript 19/4/21, page 56, lines 48 to 50, page 57, lines 1 to 7.

⁵⁵⁴ Mr Hrobat, Transcript 19/4/21, page 52, lines 32 to 37, page 56, lines 42 to 46, page 65, lines 44 to 47.

⁵⁵⁵ Mr Hrobat, Transcript 19/4/21, page 75, lines 36 to 50.

⁵⁵⁶ A copy of which appears in Ex 1 Vol 1, Tab 31.1.

required to log the time and completion of the bathroom check in the cleaners' book at each gym, which is to be checked by staff at the commencement of staffed hours each day.

191. The Trial Policy commenced in 20 Anytime Fitness clubs between 6 April and 9 April 2021,⁵⁵⁷ being the clubs operated by Mr Peil and Mr Hrobat.⁵⁵⁸ Relevantly, the Trial Policy was implemented at Anytime Fitness Castle Hill on or about 9 April 2021.⁵⁵⁹ The Trial Policy was circulated to staff, and a copy left at the gym.⁵⁶⁰ A sign has also been affixed to the wall inside each of the bathrooms at the gyms operated by ATGPPMS notifying members that welfare checks are conducted frequently and asking that they "avoid wearing headphones" inside the bathrooms.⁵⁶¹ An email was circulated by Anytime Fitness Castle Hill to its members on or about 9 April 2021 to notify them of the Trial Policy.⁵⁶² A record log of bathroom checks carried out both by staff and by the external cleaners (Ex 10) is kept in the cleaners' cupboard at Anytime Fitness Castle Hill.⁵⁶³
192. To that end, representatives of ATGPPMS had a meeting with Mr Lee on 8 April 2021 during which the Trial Policy was explained to Mr Lee, a hard copy of that policy provided to him, and Mr Lee's signature attached to the relevant part of that policy.⁵⁶⁴ Mr Hrobat gave evidence on 19 April 2021 of his belief that signed copies were also received by Mr Lee's subcontractors.⁵⁶⁵ Five signed acknowledgments of the trial policy from Mr Lee's subcontractors were subsequently produced,⁵⁶⁶ of which two are undated; one is dated 22 April 2021 (and missing the second page); and two are dated 23 April 2021 (one of which is missing the first page).
193. Those clubs that have implemented the Trial Policy were asked to provide feedback by 16 April 2021, for Anytime Australia to consider before the policy is implemented across all Anytime Fitness clubs.⁵⁶⁷ Mr Peil says that implementation will occur by incorporating the Trial Policy into the Operations Manual; posting a copy of the policy and any supporting materials onto the central communications platform utilised for communications between franchisor and franchisee (the "Dashboard"); emailing an announcement to all franchisees; conducting internal training as regards the Trial Policy; and adding a requirement that the Operations team conduct an audit as to whether a club is

⁵⁵⁷ Ex 1 Vol 2, Tab 33B at [28].

⁵⁵⁸ Mr Peil, Transcript 22/04/21, page 22, line 50.

⁵⁵⁹ Mr Hrobat, Transcript 19/4/21, page 58, lines 19 to 24, page 67, line 13.

⁵⁶⁰ Mr Hrobat, Transcript 19/4/21, page 58, lines 43 to 47.

⁵⁶¹ Mr Hrobat, Transcript 19/4/21, page 66, lines 25 to 45; a copy of that sign appears in Ex 1 Vol 1, Tab 31.1.

⁵⁶² Mr Hrobat, Transcript 19/4/21, page 66, line 47 to page 67, line 18.

⁵⁶³ Mr Hrobat, Transcript 19/4/21, page 59, lines 31 to 46.

⁵⁶⁴ Ex 1 Vol 1, Tab 31.3 at [6].

⁵⁶⁵ Mr Hrobat, Transcript 19/4/21, page 63, lines 6 to 13.

⁵⁶⁶ Not yet formally tendered.

⁵⁶⁷ Ex 1 Vol 2, Tab 33B at [36]-[37].

maintaining a welfare check register during the standard club audits.⁵⁶⁸ That implementation across Australia was anticipated to occur by May 2021.⁵⁶⁹

194. Mr Peil gave evidence that the Trial Policy is “looking – like it is a good solution so far”,⁵⁷⁰ that it seems to have been well-received,⁵⁷¹ and that his “absolute preference is that it’s adopted across and made mandatory”.⁵⁷² The international team is “very much in support of it and intend rolling that out across the globe” which “tells us that they’re in support of the trial”.⁵⁷³ Mr Hrobat likewise gave evidence that the feedback he has received as to the implementation of the Trial Policy is that “it’s pretty efficient. It’s not too bad ... for most part the members are quite responsive to it ... we haven’t had any negative feedback”.⁵⁷⁴ Mr Hrobat is prepared to adopt the Trial Policy on a permanent basis moving forward.⁵⁷⁵
195. The Trial Policy provides for, among other things, a check of the bathrooms to be conducted at the end of staffed hours. Had such a procedure existed as at 16 November 2017, with the result that a bathroom welfare check was conducted at or around 8:00pm on that date, it is likely that Jesse’s death could have been prevented.⁵⁷⁶ Between the date of Jesse’s death in November 2017, and the introduction of the Trial Policy in April 2021, Anytime Australia did not put in place any changes “across the network” to prevent or reduce the chance of undetected collapses in bathrooms.⁵⁷⁷
196. The court is heartened by Anytime Australia’s and ATGPPMS’s adoption of the Trial Policy, albeit years after Jesse’s death. In my view it is a real improvement on past systems.

Other measures to improve the chances of detection

197. Following Jesse’s death, in or around December 2017 Mr Hrobat had a telephone conversation with Gordon Martin (then General Manager of Anytime Australia) about what measures could be implemented to alert security when a person occupies a bathroom for more than one hour, including the installation of security sensors.⁵⁷⁸ No other technologies were discussed.⁵⁷⁹ As at September 2019, Mr Hrobat did not know

⁵⁶⁸ Ex 1 Vol 2, Tab 33B at [38].

⁵⁶⁹ Ex 1 Vol 2, Tab 33B at [39].

⁵⁷⁰ Mr Peil, Transcript 22/04/21, page 22, line 13.

⁵⁷¹ Mr Peil, Transcript 22/04/21, page 44, lines 13 to 21.

⁵⁷² Mr Peil, Transcript 22/04/21, page 23, lines 19-20.

⁵⁷³ Mr Peil, Transcript 22/04/21, page 23, lines 24 to 31.

⁵⁷⁴ Mr Hrobat, Transcript 19/4/21, page 66, lines 1 to 10.

⁵⁷⁵ Mr Hrobat, Transcript 19/4/21, page 66, lines 19 to 24.

⁵⁷⁶ See also Mr Hrobat, Transcript 19/4/21, page 82, lines 23 to 28; Professor Carter, Transcript 23/04/21, page 17, line 42 to page 18, line 20, page 33, lines 21-22.

⁵⁷⁷ Mr Peil, Transcript 22/04/21, page 15, lines 27 to 32; see also page 51, lines 36 to 39.

⁵⁷⁸ Ex 1 Vol 1, Tab 29 at [23]; Vol 1, Tab 31 at [10]; Mr Hrobat, Transcript 19/4/21, page 67, line 25 to page 68, line 15.

⁵⁷⁹ Mr Hrobat, Transcript 19/4/21, page 68, line 15.

whether those options had been progressed.⁵⁸⁰ Other than that single telephone conversation in December 2017, Mr Hrobat has not had any discussions or interactions with Anytime Australia in the period since Jesse's death about what sort of measures could be implemented to alert security when a person occupies a bathroom for an extended period.⁵⁸¹ Mr Hrobat's oral evidence was that he "left it in their hands with regards to the physical side of the security and sensors and what could and couldn't be done".⁵⁸²

198. In his statement dated 25 November 2019, Mr Martin stated that active discussions were ongoing with Anytime Australia's specialised and expert security vendors to determine what, if any, additional measures can be implemented across the Anytime Australia gyms to alert security when a person occupies a bathroom for a period of longer than one hour.⁵⁸³ Those measures could include sensors on bathroom doors to alert gym staff and/or security, and scheduled and logged patrols of bathrooms by staff or security.⁵⁸⁴ Mr Martin in his statement of 25 November 2019 said that those measures were being investigated and would be considered once inquiries into the existence, feasibility and costs of such measures are known.⁵⁸⁵ Mr Martin ceased employment with Anytime Australia in September 2020.⁵⁸⁶
199. Mr Peil gave evidence that Anytime Australia had participated in meetings with its security provider Rylex on the implementation and efficacy of installing security sensors on bathroom doors or motion sensors in bathrooms, and that at one time the estimate for retrofitting those sensors was a minimum of \$10,000 per club.⁵⁸⁷ Mr Peil's understanding is that this is "not seen as a viable solution".⁵⁸⁸ Mr Peil said that "we are awaiting the outcomes and, of, of what recommendations your Honour comes to us with. So that's why there may not have been anything brought forward to the board at this stage".⁵⁸⁹
200. Anytime Fitness centres in Australia have 24-hour security services.⁵⁹⁰ There are no regular or scheduled patrols carried out by security at any Anytime Fitness centres, nor were there as at November 2017.⁵⁹¹ Notwithstanding the evidence of Mr Martin that Anytime Australia was investigating that option (among others), Mr Peil gave evidence that this is "not a solution that we are looking at".⁵⁹² He said that the "amount of incidents

⁵⁸⁰ Ex 1 Vol 1, Tab 31 at [10]

⁵⁸¹ Mr Hrobat, Transcript 19/4/21, page 68, line 36.

⁵⁸² Mr Hrobat, Transcript 19/4/21, page 68, lines 39 to 41.

⁵⁸³ Ex 1 Vol 2, Tab 33 at [42].

⁵⁸⁴ Ex 1 Vol 2, Tab 33 at [44].

⁵⁸⁵ *Ibid.*

⁵⁸⁶ Ex 1 Vol 2, Tab 33B at [10].

⁵⁸⁷ Mr Peil, Transcript 21/04/21, page 92, lines 16 to 27, page 93, lines 10 to 13.

⁵⁸⁸ Mr Peil, Transcript 21/04/21, page 93, lines 24 to 29.

⁵⁸⁹ Mr Peil, Transcript 21/04/21, page 93, lines 47 to 50.

⁵⁹⁰ Mr Peil, Transcript 22/04/21, page 2, lines 17 to 25.

⁵⁹¹ Mr Peil, Transcript 22/04/21, page 2, lines 27 to 41.

⁵⁹² Mr Peil, Transcript 22/04/21, page 2, line 47.

that we have, in my opinion, doesn't justify the additional expense that that would cost".⁵⁹³ Anytime Australia has not conducted an analysis of the cost of introducing scheduled patrols by security.⁵⁹⁴

201. Mr Peil says that Anytime Australia is currently working with the master franchisor of Anytime Fitness globally on an upgrade to the door entry system used by Anytime Fitness clubs, which would allow members to access clubs using their smartphone or smart watch (without the need for a physical fob key) and would monitor and record the time that members exit the facility, with the ability for electronic alerts to be sent to staff and security contractors in the event that a member is at a facility for too long.⁵⁹⁵ Mr Peil says that Anytime Fitness LLC are presently working with industry leading software and hardware vendors with global expertise in this area to identify, scrutinise and test suitable technology options.⁵⁹⁶ Once that is complete, the next step is to conduct an in-club pilot, which Anytime Fitness LLC have indicated will be able to occur in Australia.⁵⁹⁷
202. Mr Peil gave evidence that he anticipates that an in-club pilot would be able to occur in Australia "mid to late this year" and that he is "pushing on a weekly basis to get this accelerated".⁵⁹⁸ Whether it is adopted or not is "up to the US".⁵⁹⁹ The individual franchisees would bear the cost of installing the door entry system, which would (if implemented) be imposed as a requirement by Anytime Australia.⁶⁰⁰ Mr Peil described that form of automatic exit hardware as "the best solution".⁶⁰¹
203. The court agrees that a system which sends an electronic alert to staff and 24-hour security if a member has not exited a club within a reasonable time frame is highly desirable. This allows for investigations to take place to check on the member. It is the kind of system which could potentially have saved Jesse's life. This is an option which should be trialled as soon as possible.

Expert evidence – Jesse's hypoglycaemia

204. Professor Carter was briefed to provide an expert opinion as to the likely cause of Jesse's hypoglycaemia and initial loss of consciousness on 16 November 2017. Professor Carter has significant experience in the field of diabetes and endocrinology, both as a treating endocrinologist and a Clinical Professor of Medicine at the University of

⁵⁹³ Mr Peil, Transcript 22/04/21, page 3, lines 31 to 41.

⁵⁹⁴ Mr Peil, Transcript 22/04/21, page 3, line 40.

⁵⁹⁵ Ex 1 Vol 2, Tab 33B at [40]; Mr Peil, Transcript 22/04/21, page 16, line 44 to page 17, line 38.

⁵⁹⁶ Ex 1 Vol 2, Tab 33B at [41].

⁵⁹⁷ Ex 1 Vol 2, Tab 33B at [41].

⁵⁹⁸ Mr Peil, Transcript 22/04/21, page 18, lines 3 to 7.

⁵⁹⁹ Mr Peil, Transcript 22/04/21, page 17, lines 45-46.

⁶⁰⁰ Mr Peil, Transcript 22/04/21, page 18, lines 23 to 29.

⁶⁰¹ Mr Peil, Transcript 21/04/21, page 94, line 9.

Sydney.⁶⁰² He has published extensively in his field within the peer-reviewed literature over many decades, and was awarded an Officer of the Order of Australia in 2000 for services to diabetes and endocrinology.

205. Professor Carter provided two reports dated 5 September 2020 (**First Report**) and 23 February 2021 (**Second Report**).⁶⁰³ His evidence is summarised below.

The effect and types of insulin

206. The main effect of insulin is in the lowering of the blood glucose levels.⁶⁰⁴ Endogenous insulin produced from the pancreas is finely controlled by circulating blood glucose levels, so that when those levels drop below normal, insulin production is reduced. That feedback mechanism did not apply with exogenous insulin; the absorption of insulin into the circulation continues irrespective of the resultant effect on blood glucose levels. A non-diabetic male would usually be much more sensitive to the blood glucose lowering effects of injected insulin than a diabetic male; in other words, less insulin would be required to achieve hypoglycaemia than would be the case with a diabetic male.⁶⁰⁵

207. There are various types of insulin available in Australia. NovoRapid insulin is a very short-acting insulin.⁶⁰⁶ After a subcutaneous injection of NovoRapid, the onset of hypoglycaemic effects occurs after about 10-30 minutes, with the peak hypoglycaemic activity occurring between 30 minutes and 3 hours and the duration of action being around 3 to 5 hours.⁶⁰⁷ However, the higher the dose of insulin administered, the longer would be the period of hypoglycaemia.⁶⁰⁸

208. Professor Carter explained that a NovoRapid insulin pen is a disposable pen with a dial, and the user dials up the desired dose.⁶⁰⁹ Once the needle on the pen is injected subcutaneously, the other end of the pen is depressed and the pre-selected dose of insulin is delivered into the subcutaneous tissue. Normally the insulin is injected into subcutaneous tissue in the abdomen,⁶¹⁰ but it can also be injected elsewhere such as into the thigh or upper arm.⁶¹¹

209. A number of factors affect the speed at which exogenously administered insulin is absorbed in a non-diabetic adult male, including intramuscular rather than subcutaneous administration of insulin (with absorption being slightly quicker in the case of

⁶⁰² See Professor Carter's CV at Ex 1 Vol 3, Tab 58.

⁶⁰³ Ex 1 Vol 3, Tabs 58 and 60.

⁶⁰⁴ Ex 1 Vol 3, Tab 58 at [3].

⁶⁰⁵ Ex 1 Vol 3, Tab 58 at [3]; Professor Carter, Transcript 23/04/21, page 15, line 11 to page 16, line 3.

⁶⁰⁶ Ex 1 Vol 3, Tab 58 at [4].

⁶⁰⁷ *Ibid.*

⁶⁰⁸ *Ibid.*

⁶⁰⁹ Ex 1 Vol 3, Tab 58 at [8].

⁶¹⁰ See Professor Carter, Transcript 23/04/21, page 11, line 37 to page 12, line 2.

⁶¹¹ Ex 1 Vol 3, Tab 58 at [8].

intramuscular injection), and exercise (where absorption would again be faster).⁶¹² Exercise leads to increased blood flow through the peripheral tissues, particularly muscles and subcutaneous fat, which leads to faster absorption of insulin.⁶¹³ The administration of insulin after nearly three hours of exercise likewise means that the onset of hypoglycaemia is faster.⁶¹⁴ Where a non-diabetic male has administered insulin after exercising, the speed with which the insulin is absorbed from the subcutaneous tissues will be slower the longer the time since the exercise ceases.⁶¹⁵ However, the initial rate of absorption of insulin immediately after strenuous exercise would be quicker than immediately before the exercise was commenced.⁶¹⁶

210. Professor Carter was asked to describe why insulin may be used for performance-enhancing purposes. By way of response, Professor Carter explained that insulin is an anabolic hormone which facilitates glucose transfer into muscles where it can be deposited as glycogen, and also facilitates amino acid (protein) transfer into muscles.⁶¹⁷ Used at the end of a training session, insulin injections help muscles replenish their glycogen stores. Professor Carter also notes that hypoglycaemia, if sufficiently severe, can result in an increased output of growth hormone from the pituitary gland. Many bodybuilders believe that growth hormone is beneficial in assisting muscle development and reducing peripheral fat.⁶¹⁸
211. Professor Carter noted that Jesse was also using T3 Max and Klenbol. T3 Max is a thyroid hormone which ultimately increases blood supply to the peripheral tissues, which could increase the rate of absorption of insulin induced by exercise.⁶¹⁹ Meanwhile, Klenbol can increase the basal metabolic rate and heat production.⁶²⁰

Cause of Jesse's hypoglycaemia

212. Professor Carter stated that there are numerous potential causes for Jesse's hypoglycaemia on 16 November 2017.⁶²¹ Those potential causes include a tumour in the pancreas; an overdose of Sulphonylurea tablets; severe malnutrition; major liver or kidney disease; or an under-active pituitary gland or adrenal glands. Professor Carter opined that there is nothing in Jesse's history, or in the clinical or biological evidence, to support any of those potential causes of prolonged hypoglycaemia and each has "almost

⁶¹² Ex 1 Vol 3, Tab 58 at [4].

⁶¹³ Professor Carter, Transcript 23/04/21, page 12, line 34 to page 13, line 13.

⁶¹⁴ Professor Carter, Transcript 23/04/21, page 13, lines 5 to 13.

⁶¹⁵ Ex 1 Vol 3, Tab 58 at [5(c)].

⁶¹⁶ *Ibid.*

⁶¹⁷ Ex 1 Vol 3, Tab 58 at [6].

⁶¹⁸ *Ibid.*

⁶¹⁹ *Ibid.*

⁶²⁰ Ex 1 Vol 3, Tab 58 at [6], [7(a)].

⁶²¹ Ex 1 Vol 3, Tab 58 at [9].

certainly been excluded”.⁶²²

213. Professor Carter’s opinion is that Jesse developed hypoglycaemia as a result of the exogenous administration of insulin.⁶²³ In his oral evidence, Professor Carter confirmed his opinion that on the balance of probabilities, and based upon all of the material with which he was briefed, there is no other medical explanation or cause for Jesse’s prolonged hypoglycaemia.⁶²⁴ Professor Carter’s opinion in this respect does not depend on the existence or identification of an insulin pen on or near Jesse’s person.⁶²⁵ Professor Carter opined that the fact that Jesse was still unconscious when he was discovered, and the fact that his BGL was 1.2 mmol/L at 2:24pm on 17 November 2017, strongly suggests that if NovoRapid were the type of insulin injected, then the dose given must have been large.⁶²⁶
214. Professor Carter suspects that Jesse had seizures secondary to the hypoglycaemia, which may well have exacerbated or precipitated hypoxia to the brain resulting in features of hypoxic encephalopathy that were found on brain imaging at Westmead Hospital.⁶²⁷ Professor Carter also opined that prolonged hypoglycaemia would result in radiological features similar to those described, and that it is likely that the cause for the encephalopathy was a combination of both prolonged severe hypoglycaemia and hypoxia.⁶²⁸
215. Professor Carter considers it likely that Jesse self-administered insulin *after* he exercised at Anytime Fitness Castle Hill on 16 November 2017.⁶²⁹ That is because of the onset of NovoRapid insulin being sometime between 10 and 30 minutes after the injection. Professor Carter considers that it is possible that hypoglycaemia developed within 10 to 15 minutes of the injection, and that Jesse lost consciousness as early as 30 minutes after the injection of insulin.⁶³⁰
216. I accept Professor Carter’s evidence and am satisfied to the requisite standard that Jesse’s death was caused by a self-administered dose of insulin in the bathroom at Anytime Fitness, Castle Hill. I note that the medical cause of his death was not disputed by any of the interested parties.
217. I note that the forensic pathologist who conducted Jesse’s autopsy confirmed having reviewed all the evidence available at inquest that he agreed with Professor Carter’s

⁶²² Ex 1 Vol 3, Tab 58 at [9]; Tab 60 at [1]; Professor Carter, Transcript 23/04/21, page 4, line 39 to page 5, line 14; page 8, lines 39 to 50.

⁶²³ Ex 1 Vol 3, Tab 58 at [10(a)].

⁶²⁴ Professor Carter, Transcript 23/04/21, page 5, lines 22 to 34.

⁶²⁵ Ex 1 Vol 3, Tab 60 at [1].

⁶²⁶ Ex 1 Vol 3, Tab 58 at [10(a)]; Professor Carter, Transcript 23/04/21, page 16, lines 18 to 42.

⁶²⁷ Ex 1 Vol 3, Tab 58 at [10(a)].

⁶²⁸ *Ibid.*

⁶²⁹ Ex 1 Vol 3, Tab 58 at [10(b)]; Professor Carter, Transcript 23/04/21, page 14, lines 25 to 45.

⁶³⁰ Ex 1 Vol 3, Tab 58 at [10(c)].

opinion. Dr Szentmariay stated “I believe that the self-inflicted injection of insulin initiated a chain of events which eventually lead [sic] to hypoxic brain injury and death”.⁶³¹

218. Jesse’s death was a tragic accident. He had used insulin before and is likely to have thought he knew what he was doing. According to his friend, SJ, Jesse had previously advised him that an adverse reaction such as feeling dizzy or faint could be reversed by “having a lemonade or lolly.”⁶³² I have no doubt Jesse underestimated the risk he was taking when injecting himself with insulin on the evening of 16 November 2017. Jesse collapsed and was unable to use the emergency button or call for help. He was trapped in a locked bathroom where he quickly lost consciousness.
219. For completeness I can state there is absolutely no evidence of foul play or any suggestion that his death was intentionally self-inflicted.

Could Jesse’s death have been prevented?

220. In Professor Carter’s opinion, if Jesse had been discovered and given IV glucose within 3 to 6 hours of the injection of insulin, it is likely that irreversible brain damage could have been prevented.⁶³³ There is no critical time beyond which brain damage becomes irreversible; however, the shorter the period of hypoglycaemia, the greater the chance that the brain can recover function.⁶³⁴ In Professor Carter’s opinion, if Jesse had been “found at 8 o’clock and treatment had been started, I would’ve expected that he would’ve recovered”.⁶³⁵
221. Professor Carter was careful to acknowledge that he could not state that conclusion in categorical terms, but rather as a matter of probabilities.⁶³⁶
222. Counsel for ATGPPMS urged against accepting Professor Carter’s opinion in relation to the likelihood of recovery if Jesse had been discovered and treated within 3-6 hours after his injection and collapse. He submitted that Professor Carter may have relied too heavily on the article by Vincent Marks which reviewed a relatively small number of cases from existing literature. I accept that Professor Carter’s opinion was not the result of scientific trials or experiments. It was, as he remarked his “best guess” or his best “rough idea” based on Marks’ review of all the case studies he could find.
223. In my view it is patently clear that early discovery could have saved Jesse’s life. This is hardly surprising, in circumstances where ‘treatment windows’ are well accepted in various areas of medicine. I accept Professor Carter’s evidence that discovery, even

⁶³¹ Ex 1, Vol 1, Tab 4B at [10].

⁶³² Ex 1, Vol 1, Tab 19E at [9].

⁶³³ Ex 1 Vol 3, Tab 58 at [10(d)].

⁶³⁴ *Ibid.*

⁶³⁵ Professor Carter, Transcript 23/04/21, page 33, lines 21 to 22.

⁶³⁶ See e.g. Professor Carter, Transcript 23/04/21, page 32, lines 20 to 22, lines 39 to 40.

some hours after collapse could have avoided irreversible brain injury, although I accept that it is difficult to fix the number of hours with certainty.

The need for recommendations

224. Counsel assisting put forward a number of recommendations arising out of the evidence for the court's consideration.
225. Section 82 of the Act confers on a coroner the power to make recommendations that he or she may consider necessary or desirable in relation to any matter connected with the death with which the inquest is concerned. It is essential that a coroner keeps in mind the limited nature of the evidence that is presented and focuses on the specific lessons that may be learnt from the circumstances of each death.
226. I note that while the Ministry of Health chose not to attend these proceedings, its comment was sought on recommendations relevant to its function. I am grateful for the Ministry's assistance especially during the pandemic when I am aware their focus lies elsewhere.
227. I intend to deal with each of the proposed recommendations in turn.

Recommendations proposed by Counsel assisting the Coroner

Bathrooms

To Anytime Australia

That Anytime Australia implement the Trial Policy on a permanent basis at all existing and future Anytime Fitness gyms in Australia.

228. Anytime Australia recognised the sense of developing an improved bathroom check policy and had trialled it in 20 gyms by the time of the inquest. I am heartened that counsel for Anytime Australia indicated that it will have the bathroom Trial Policy rolled out to its 500 gyms throughout Australia "subject to the Coroner's findings". The issue is one which may affect the fitness industry more widely and I intend to send a copy of these findings to Fitness Australia who may be able to bring these issues to the attention of other gyms and franchises for their consideration.
229. ATGPPMS indicated that it was in favour of recommendations that would reduce risks to persons using Anytime Fitness bathrooms.

That Anytime Australia undertake, or cause its franchisees to undertake, a documented internal audit of the bathroom log sheets every three months so as to assess compliance with the requirement in the Trial Policy for regular, documented bathroom checks.

230. This was accepted by Anytime Australia as "workable and accepted", but it was noted

that the appropriate wording would involve Anytime Australia “directing” its franchisees (because of the contractual relationships involved). As indicated, ATGPPMS was supportive of these measures.

That Anytime Australia provide, or cause its franchisees to provide, training to all new and existing staff and external cleaners at Anytime Fitness centres which includes:

- a. a summary of the requirement for regular, documented bathroom checks as embodied within the Trial Policy;
- b. a summary of the requirement for regular, documented bathroom checks as embodied within the Trial Policy;
- c. a description of the procedure to be followed in the event that a bathroom door is locked and the occupant of the bathroom is non-responsive or requires medical attention; and
- d. a summary of the requirement for regular, documented bathroom checks as embodied within the Trial Policy;
- e. training in how to unlock a locked bathroom door from the outside, including ensuring that all staff and cleaners are shown the location of any requisite tools for carrying out that task.

231. Anytime Australia accepted this recommendation, noting that the drafting should be “direct” or “provide or cause its franchisees to provide” the preferable word is “direct”. As indicated, ATGPPMS was supportive of these measures.

That Anytime Australia undertake an immediate costing regarding any technological measures that would assist in detecting an incapacitated person inside the bathrooms at existing and future Anytime Fitness centres, and give documented consideration to prompt installation of those measures, including an upgrade to the main door entry system to record the time that members exit the facility and to notify staff if a member is at the facility for an extended period.

232. Any human based checking system can fail. In my view proper consideration of technological support systems is called for. I note that Mr Peil was particularly passionate about developing a front of house system which would provide an alert if a patron had been in the gym for an unusual amount of time. The idea has considerable merit and may have saved Jesse’s life. In my view development of such a system should be pursued with some urgency.

233. Anytime Australia raised concerns regarding a recommendation that would mandate “movement sensors” in bathrooms, as they were likely to be both ineffectual (e.g. where a person has collapsed but is still moving) and expensive for franchisees.

234. I accept this submission, particularly where another preferred technological solution is being explored, and would be supported, by Anytime Australia.

That Anytime Australia give immediate, documented consideration to measures for improving the design of the bathroom doors at existing and/or future Anytime Fitness centres to provide visibility of a potential collapse inside the bathroom, whilst preserving the privacy of occupants of the bathrooms, including by:

- a. creating a narrow gap between the bottom of the bathroom doors and the floor; and**
- b. installing a narrow glass or Perspex panel between the bottom of the bathroom doors and the floor,**
in a manner that complies with any relevant requirement of the BCA.

235. There was considerable resistance to this recommendation from Anytime Australia. The primary reason provided for this was that modifying doors in the way suggested would not comply with the requisite building codes; that modifying doors in this way would be a breach of privacy and that the proposed bathroom check policy was the most effective way of mitigating the risk. Anytime Australia also submitted that “the expert advice is that such a modification would be unlawful”. I am unconvinced that Dr Cooke expressed his opinion regarding modification to applicable doors in those terms.

236. In his evidence, Mr Hrobat indicated that provided such measures “didn’t interfere with the privacy of the members, we’re here to assist in whatever way we can so I don’t think that the cost would be too high per franchisee, depending on the club obviously but it would be something we’d look at and work with Anytime Australia.”

237. I support the consideration of this a relatively simple, and apparently cost-effective measure. The benefit of a small gap, that would have no bearing on the privacy of members, is obvious.

That Anytime Australia send a written reminder notification to all franchisees detailing the requirement to log a contemporaneous Anytime Safety incident report in respect of any safety or medical incidents (including those involving patrons inside bathrooms), and that Anytime Australia conduct a regular audit of any such incidents.

238. Anytime Australia opposed this recommendation and submitted that it should only have been directed at ATGPPMS. This was because only ATGPPMS had failed to lodge Anytime Safety incident reports. It was submitted that to “consider that issue across the Anytime Fitness gym network would have required an enlargement of the inquest.”

239. I am perplexed by the resistance. Safety incident reports were presented as a crucial

part of the overall safety system. A written notification to franchisees reminding them of their obligations in this regard is not onerous and may provide Anytime Australia with more reliable information to assess ongoing risk.

PIEDs

To Anytime Australia

That Anytime Australia consider liaising with the NSW Ministry of Health, Fitness Australia, Dr Beng Eu, Dr Katinka van de Ven, Kay Stanton and any other appropriate stakeholders with a view to considering:

- a. **the actual or suspected use of PIEDs by those who attend Anytime Fitness gyms;**
- b. **what, if any, measures could be introduced at Anytime Fitness centres (including through digital means such as blogs and social media) to improve awareness of the health risks associated with PIEDs; and**
- c. **what, if any, harm reduction measures or strategies could be implemented at Anytime Fitness centres (including through digital means such as blogs and social media) for those who use PIEDs.**

240. Anytime Australia indicated that this process was one better driven by government entities and that it would be “inappropriate” for one company to spearhead such a change. Nonetheless, it indicated that it would support a recommendation that Anytime Australia should give consideration to encouraging Fitness Australia to develop an industry-wide strategy. As noted above, ATGPPMS expressed general support for education measures and stated that these should be carried out by government.

That Anytime Australia give immediate, documented consideration to the delivery of educational campaigns or sessions to Anytime Fitness franchisees regarding PIEDs use, including by way of recorded online webinars and/or presentations at annual conferences of Anytime Australia.

241. Anytime Australia accepted this recommendation but objected to the use of the words “immediate” and “documented”.

To the NSW Minister for Health

That the NSW Ministry of Health give immediate, documented consideration to:

- a. **adopting or endorsing the Sydney North Health Network’s “GP guide to harm minimisation for patients using non-prescribed anabolic-androgenic steroids (AAS) and other performance and image enhancing drugs (PIEDs)”, including on Your Room and/or the NSW Ministry of Health website for alcohol and**

other drug health professionals; and

- b. any additional steps that can be taken to educate general practitioners regarding the identification, management and treatment of individuals who use or are suspected of using PIEDs.**

242. The Ministry largely accepted this recommendation and advised that it would, at an appropriate time, assemble a panel of appropriate experts to assess and review the resource. Further it undertook to raise the issues arising with RACGP and the Primary Health Networks. I accept that the Ministry identified these organisations as the appropriate ones to progress the second part of this recommendation and I am grateful for their involvement in raising the issue.

That the NSW Ministry of Health consider the preparation and distribution of a dedicated online Fact Sheet regarding the health risks of using non-prescribed insulin.

243. The Ministry indicated that it would be happy to progress the development of this resource.

That the NSW Ministry of Health consider liaising with Anytime Australia, Fitness Australia, Dr Beng Eu, Dr Katinka van de Ven, Kay Stanton and any other appropriate stakeholders with a view to considering:

- a. the nature and prevalence of PIEDs use;**
- b. what, if any, additional education, information or resources could be disseminated in NSW to improve public awareness of the health risks associated with PIEDs, including at gyms, at fitness centres and online;**
- c. what, if any, harm reduction measures or initiatives could be implemented (including at gyms and fitness centres) for those who use PIEDs.**

244. The Ministry advised the court that it would undertake to engage with the relevant stakeholders at an appropriate time. This kind of roundtable is highly desirable and would readily facilitate the sharing of information and expertise, with a view to developing an action plan about future initiatives.

245. I note that counsel for ATGPPMS stated that ATGPPMS supported all recommendations which might reduce potential harm to patrons but urged consideration of adding a representative of the New South Wales Department of Education as a stakeholder. The suggestion was made after the evidence disclosed that while no specific in-school education programs about PIEDs appear to currently exist, PIED use can commence in teenage. While the Department of Education were not represented at the inquest, in my view, the suggestion is a good one and I intend to urge the Ministry to consider adding a representative from that department to any roundtable discussions, if appropriate.

That the NSW Ministry of Health consider what if any search engine optimisation strategies can be utilised to cause Your Room to appear higher in the ranking for search terms such as “PIEDs”, “performance enhancing drugs”, “bodybuilding drugs”, “fitness drugs” and “steroids”.

246. The Ministry accepted this recommendation.

Findings

247. The findings I make under section 81(1) of the *Coroners Act 2009* (NSW) are:

Identity

The person who died was Jesse Drabsch.

Date of death

He died on 21 November 2017.

Place of death

He died at Westmead Hospital, Westmead NSW.

Cause of death

He died of hypoxic brain injury caused by the exogenous administration of insulin.

Manner of death

Jesse collapsed in a gym bathroom having injected insulin in the context of using PIEDs on 16 November 2017. He rapidly developed hypoglycaemia and lost consciousness. He was not discovered for around twenty hours and although he was treated by paramedics and taken to a tertiary hospital, he did not recover.

Recommendations pursuant to section 82 *Coroners Act 2009*

248. For the reasons stated above, I recommend that

To Anytime Australia

Bathrooms

1. That Anytime Australia implement the Trial Policy on a permanent basis at all existing and future Anytime Fitness gyms in Australia.
2. That Anytime Australia direct its franchisees to undertake a documented internal audit of the bathroom log sheets every three months so as to assess compliance with the requirement in the Trial Policy for regular, documented bathroom checks.
3. That Anytime Australia direct its franchisees to provide training to all new and existing staff and external cleaners at Anytime Fitness centres which includes:
 - a. a summary of the requirement for regular, documented bathroom checks as

embodied within the Trial Policy;

- b. a description of the procedure to be followed in the event that a bathroom door is locked and the occupant of the bathroom is non-responsive or requires medical attention; and
 - c. training in how to unlock a locked bathroom door from the outside, including ensuring that all staff and cleaners are shown the location of any requisite tools for carrying out that task.
4. That Anytime Australia undertake an immediate costing regarding any technological measures that would assist in detecting an incapacitated person inside the bathrooms at existing and future Anytime Fitness centres, and give documented consideration to prompt installation of those measures, including an upgrade to the main door entry system to record the time that members exit the facility and to notify staff if a member is at the facility for an extended period.
5. That Anytime Australia give immediate, documented consideration to measures for improving the design of the bathroom doors at existing and/or future Anytime Fitness centres to provide visibility of a potential collapse inside the bathroom, whilst preserving the privacy of occupants of the bathrooms, including by:
 - a. creating a narrow gap between the bottom of the bathroom doors and the floor; and
 - b. installing a narrow glass or Perspex panel between the bottom of the bathroom doors and the floor,in a manner that complies with any relevant requirement of the BCA.
6. That Anytime Australia send a written reminder notification to all franchisees detailing the requirement to log a contemporaneous Anytime Safety incident report in respect of any safety or medical incidents (including those involving patrons inside bathrooms), and that Anytime Australia conduct a regular audit of any such incidents.

PIEDs

7. That Anytime Australia consider liaising with the NSW Ministry of Health, Fitness Australia, Dr Beng Eu, Dr Katinka van de Ven, Kay Stanton and any other appropriate stakeholders with a view to considering:
 - a. the actual or suspected use of PIEDs by those who attend Anytime Fitness gyms;
 - b. what, if any, measures could be introduced at Anytime Fitness centres (including through digital means such as blogs and social media) to improve awareness of the health risks associated with PIEDs; and

- c. what, if any, harm reduction measures or strategies could be implemented at Anytime Fitness centres (including through digital means such as blogs and social media) for those who use PIEDs
8. That Anytime Australia give immediate, documented consideration to the delivery of educational campaigns or sessions to Anytime Fitness franchisees regarding PIEDs use, including by way of recorded online webinars and/or presentations at annual conferences of Anytime Australia.

To the NSW Minister for Health

9. That the NSW Ministry of Health give immediate, documented consideration to:
 - a. adopting or endorsing the Sydney North Health Network's "GP guide to harm minimisation for patients using non-prescribed anabolic-androgenic steroids (AAS) and other performance and image enhancing drugs (PIEDs)", including on Your Room and/or the NSW Ministry of Health website for alcohol and other drug health professionals; and
 - b. any additional steps that can be taken to educate general practitioners regarding the identification, management and treatment of individuals who use or are suspected of using PIEDs.
10. That the NSW Ministry of Health consider the preparation and distribution of a dedicated online Fact Sheet regarding the health risks of using non-prescribed insulin.
11. That the NSW Ministry of Health consider liaising with Anytime Australia, Fitness Australia, Dr Beng Eu, Dr Katinka van de Ven, Kay Stanton and any other appropriate stakeholders with a view to considering:
 - a. the nature and prevalence of PIEDs use;
 - b. what, if any, additional education, information or resources could be disseminated in NSW to improve public awareness of the health risks associated with PIEDs, including at gyms, at fitness centres and online;
 - c. what, if any, harm reduction measures or initiatives could be implemented (including at gyms and fitness centres) for those who use PIEDs.
12. That the NSW Ministry of Health consider what if any search engine optimisation strategies can be utilised to cause Your Room to appear higher in the ranking for search terms such as "PIEDs", "performance enhancing drugs", "bodybuilding drugs", "fitness drugs" and "steroids".

Conclusion

249. This inquest offers no simple solutions to the dangers inherent in unregulated PIED use. However I hope it may prompt more open discussion within the fitness industry about the prevalence and nature of PIED use. I am confident that round table discussions involving relevant stakeholders will prove fruitful and am thankful that the Ministry of Health has indicated a willingness to be involved. Effective harm reduction strategies in this space will require the involvement of the fitness industry, PIED experts and users and health professionals.
250. I offer my sincere thanks to counsel assisting, Louise Coleman and her instructing solicitor Lena Nash for their hard work and enormous commitment in the preparation and conduct of this inquest. I also thank Ms Jez, Ms Krynda and Ms de Raya. I thank the experts who were willing to assist the court and the officer in charge of the investigation.
251. Finally, once again I offer my sincere condolences to Jesse's family. I acknowledge that the pain of losing a loved one in these circumstances is profound.
252. I greatly respect Jesse's family's decision to participate in these difficult proceedings and acknowledge their ongoing sorrow and grief.
253. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner
29 October 2021
NSW State Coroner's Court, Lidcombe