CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the death of Ziad Hamawy
Hearing dates:	31 October – 4 November 2022; 23 November 2022
Date of findings:	21 July 2023
Place of findings:	NSW Coroners Court (sitting at Parramatta Court Complex)
Findings of:	Magistrate Harriet Grahame, Deputy State Coroner

Catchwords:	CORONIAL LAW – manner of death – involuntary patient – consideration of medical care, mental health care, and treatment provided by Hospital – assessments undertaken as to whether the deceased was a mentally ill person or mentally disordered within the meaning of s. 14 of the *Mental Health Act* – whether medical treatment and interventions during the admission were appropriate and adequate in the context of the legislative scheme then in operation (admission pursuant to orders made by Burwood Local Court under ss. 33(1)(b) and 33(1D)(b) of the *Mental Health (Forensic Provisions) Act 1990* (now repealed) – whether intervention or medical treatment of chronic mental illnesses or mental health conditions other than any acute drug intoxication implemented before discharge – whether a longer period of admission available and or necessary for treatment and stabilisation of mental state and function – time and circumstances of discharge from Hospital and communications between NSW Police Force officers and clinical staff of Hospital
File Number:	2019/00108352
Representation:	Ms Maria Gerace, Counsel Assisting, instructed by Ms Clara Potocki (Crown Solicitor's Office) Mr Jake Harris, instructed by Hicksons Lawyers for Sydney Local Health; South Western Sydney Local Health District; Dr Jeffery Snars; Dr Kwok Ping Low; and RN Sonny Hantin Ms Kim Burke, instructed by the Office of General Counsel NSW Police Force for the NSW Commissioner of Police Mr Simeon Beckett SC, instructed by Avant Mutual for Dr Nirenjen St George

Non publication orders:	Non-publication orders made on 23 November 2022 and 5 April 2023 prohibit the publication of various persons' personal information,particular evidence in the brief of evidence and material tendered as exhibits. The orders can be obtained on application to the Coroners Court registry.
Findings	**Identity** The person who died was Ziad Hamawy **Date of death** Ziad died on 7 April 2019 **Place of death** Ziad died at Bankstown-Lidcombe Hospital, Bankstown, NSW **Cause of death** Ziad died from complications of opiate toxicity. Ziad suffered a cardiac and respiratory arrest after using drugs on 18 March 2019, following his discharge from Concord Hospital. These events led to irreversible and significant hypoxic brain injury. Other significant conditions contributing to his death were renal complications which were also a consequence of the opiate toxicity **Manner of death** The circumstances of Ziad's discharge into the community from mental health care at Concord Hospital involved appreciable risk. Discharge occurred in circumstances of significant confusion in relation to an order which had been made pursuant to s 33 (1) (b) of the *Mental Health (Forensic Procedures) 1990 Act* (NSW) (now repealed and replaced with the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW))

Recommendations	I make the following recommendations pursuant to s 82 of the *Coroners Act 2009* (NSW) That parties to this inquest (NSW Police and Sydney Local Health District and South Western Sydney Local Health District) engage with the process apparently being undertaken to update the MOU – NSW Health – NSW Police Force to reflect the current legislative framework under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020.* That parties to this inquest provide input into that process (and to the review of the MOU between NSW Health and Corrective Services NSW) that will alert those undertaking the review to the problems that occurred in this case in relation to the communication between agencies and the documentation of orders and decisions.

Table of Contents

Introduction

1. This inquest concerns the tragic death of Ziad Hamawy.

2. Ziad was discharged from the Concord Centre for Mental Health at Concord Hospital on the morning of 18 March 2019. It appears that he then travelled to Riverwood and obtained and used opiate drugs, before collapsing in the street. A passer-by saw him and immediately called emergency services. Unfortunately, by the time paramedics arrived Ziad had already had a prolonged period of inadequate respiration secondary to a cardiac arrest. He was resuscitated and taken to Bankstown-Lidcombe Hospital where he received further medical support. However, his condition was extremely grave, and he died on 7 April 2019.

3. The inquest examined the circumstances surrounding Ziad's death, including his recent mental health care and the circumstances of his final discharge from Concord Hospital.

4. Despite his long history of mental health, substance use, and legal issues Ziad's family always remained present and supportive in his life. Unfortunately, they were not aware of his discharge on the morning of 18 March 2019 and only learnt of it once Ziad was unconscious in Bankstown-Lidcombe Hospital. I acknowledge their pain and the ongoing grief caused by the loss of their much loved family member.

5. Ziad's sister, Sonia and brother, Fawaz attended the inquest each day in attempt to understand the decisions which had been made in relation to Ziad's care, particularly, around his most recent hospital discharge. They were also focussed on sharing their family story in the hope that it might shine some light on the difficulties faced by patients such as their brother in accessing appropriate care in the public health system.

The role of the coroner and the scope of the inquest

6. 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 make recommendations, arising from the evidence, in relation to matters that have the capacity to improve public health and safety in the future.[2]

7. The court could not examine the entirety of Ziad's lengthy mental health treatment history or his related journey into the criminal justice system. However, a proper investigation of his death required an examination of the legal and clinical decisions made in the lead up to his death.

[1] Section 81 *Coroners Act 2009* (NSW).
[2] Section 82 *Coroners Act 2009* (NSW).

The evidence

8. The court took evidence over six hearing days. The court also received extensive documentary material contained in an eight volume brief of evidence as well as material tendered throughout the inquest. This material included witness statements, medical records, and expert reports. The court heard oral evidence from doctors and nurses involved in Ziad's medical care and from relevant police officers. The court was also assisted by the oral evidence of two expert psychiatrists, Dr Christopher Cocks and Professor Matthew Large.

9. While I am unable to refer specifically to all the available material in detail in my reasons, it has been comprehensively reviewed and assessed.

10. A list of issues was prepared before the proceedings commenced[3]. These questions guided the investigation. However, the inquest process tends to crystalize the issues in real contention, and I intend to address those issues under several broad headings after setting out a brief chronology.

Fact finding and chronology

11. Counsel assisting summarised much of the tendered material in her comprehensive closing submissions. I regard her summary of events as accurate and, as will be evident, rely heavily on that document to set out a chronology. I have also taken into account the helpful submissions made by each of the interested parties.

[3] (1) Whether the mental health care and treatment provided to Mr Hamawy by the Concord Hospital was adequate, reasonable, and appropriate. (2) Were the assessments undertaken by the Concord Hospital as to whether Mr Hamawy was a mentally ill person or mentally disordered within the meaning of s. 14 of the *Mental Health Act*, appropriate. (3) The adequacy of the medical care and treatment provide to Mr Hamawy following the assessment by Dr Nirenjen St George: (a) In relation to Mr Hamawy's acute or chronic mental illness or mental health conditions; and (b) Any acute intoxication. (4) The adequacy of the medical care and treatment provided to Mr Hamawy following the assessment by Dr Jeffery Snars: (a) In relation to Mr Hamawy's acute or chronic mental illness or mental health conditions; and (b) Any acute intoxication. (5) Whether the medical treatment and interventions in the admission were appropriate and adequate in the context of the legislative scheme then in operation (admission on 14 March 2019 pursuant to orders made by Magistrate Richardson under ss. 33(1)(b) and 33(1D)(b) of the *Mental Health (Forensic Provisions) Act 1990*) taking into consideration the following: (a) Whether Concord Hospital implemented any intervention or medical treatment of Mr Hamawy's chronic mental illnesses or mental health conditions other than any acute drug intoxication before his discharge on 18 March 2019? (b) Whether Concord Hospital should have investigated whether, and to what extent, Mr Hamawy had in place an appropriate treatment plan and medication for his chronic mental illness or mental health conditions? (c) As at the time of his admission, did Mr Hamawy have in place an appropriate treatment plan and medication for his chronic mental illness or mental health conditions? (d) What, if any, further interventions, or medication ought to have been considered for treatment of Mr Hamawy's chronic mental illness or mental health conditions? (e) Whether a longer period of admission available and or necessary for treatment and stabilisation of his mental state and function? (6) The time and circumstances of Mr Hamawy's discharge from Concord Hospital; (7) Why Mr Hamawy was not brought back before a Magistrate in accordance with the Burwood Local Court's Order of 14 March 2019 and in particular: (a) Whether NSW Police were informed of the Concord Hospital's assessments of Mr Hamawy and their plan for discharge of Mr Hamawy on 18 March 2019, and in particular: (b) The communications between NSW Police Force officers and clinical staff of Concord Hospital in relation to Mr Hamawy's discharge from Concord Hospital and any communications in relation to the need to detain Mr Hamawy for apprehension by NSW Police to be brought back before the Court; and (c) The awareness of clinical staff and NSW Police Force officers as to the effect of the Burwood Local Court's Order of 14 March 2019 and the operation of relevant provisions of the *Mental Health (Forensic Provisions) Act 1990 (now repealed)* and the *Mental Health Act 2007.* (8) Whether any recommendations necessary or desirable arising from any matter connected with Mr Hamawy's death?

Ziad's background

12. Ziad Hamawy was born on 23 May 1967 in Libya. He was the third child of Ahmad Hamawy and Sobhi Kak. Ziad had an older sister, Sonia Hamawy, and an older brother Fawaz Hamawy.

13. Sonia Hamawy states that Ziad's birth was traumatic and that both mother and child required medical treatment, with Ziad requiring significant blood transfusion.

14. In 1970, the family migrated from Libya to Australia via Egypt. In 1974 or 1975, the Hamawy family moved to 5 Dreadnought Street Roselands where they continued to reside up to Ziad's death. This address was Ziad's base for much of his life.

15. Sonia Hamawy says that as a small child Ziad was very active, intelligent, quick, and cheeky. He had a special bond with his mother. Growing up, Ziad enjoyed spending time with his friends and working on cars with his father who was a panel beater. Ziad's father taught him how to use the tools for panel beating and spray painting. As a teenager he was a popular and good looking young man.

16. Ziad finished school in year 10 and went straight to work as a panel beating apprentice at Padstow. He worked there for a number of years, and then worked in panel beating until he took a job at BP Steel. According to Sonia, whilst working at BP steel, Ziad started displaying the first signs of paranoia, voicing concerns that people at the workplace were targeting him, and feelings that he was not fitting in.

17. In 1980, Ziad came to the attention of NSW Police, and he was charged and convicted for attempting to steal a motor vehicle. He would not get into further trouble until 1985 when he was found in possession of hemp. From 1985, there were fairly frequent interactions with NSW Police and the criminal courts.

18. In the 1990s, after a workplace accident at BP Steel, Ziad returned to panel beating in Greenacre with his own business "Ziad's Smash Repairs". Ziad ran the business on and off for 10 years and it appeared to Sonia, that he made enough money to keep himself fed and clothed. He appeared to be relatively stable around that time.

19. Sonia recalls that in about the early 2000s, Ziad started to exhibit behaviours that led her to believe that he had significant mental health issues. He reported hearing things that she could not identify.

20. Sonia reports that Ziad also started seeing things and imagining the neighbours were looking at him through the window. He reported that people in public were watching him, but when asked to indicate where, his sister could not see anyone. Ziad accused his sister of not believing him. Sonia suspected it might be schizophrenia, but at the time he had not been diagnosed with schizophrenia. Sonia says Ziad started hanging out with people who

appeared to be using drugs. Ziad's behaviour changed markedly between 2000 and 2005 and Ziad's use of drugs may have increased in this period.

21. On 20 October 2006, Sonia became concerned that she had not seen or heard from Ziad. She travelled to his flat in Lakemba but there was no response to her knocking. His neighbour used a ladder to climb up to look through the window where he saw Ziad on the lounge. He climbed into the apartment. After letting Sonia in, they discovered Ziad appeared to be totally unconscious. Sonia started CPR and 000 were called. Ambulance and NSW Police officers arrived. Ziad appeared to have overdosed. Narcan was administered and he regained consciousness. Sonia discovered a note left by Ziad, apologising for his use of drugs and his behaviour.

22. Ziad's mental health issues worsened. Ziad would tell Sonia that people were trying to kill him, or about other people who wanted him to kill people. It was exhausting for the family and Sonia could tell it was having a significant emotional effect on Ziad. On a few occasions, Ziad told Sonia that he was going to kill himself. According to Sonia, it was some time after his first suicide attempt that Ziad was diagnosed with schizophrenia.

23. Sonia told the court that with Ziad, it was hard to distinguish between what was real and what Ziad believed to be real. At one stage Ziad believed he was being spied on through his parents' mobile phones and he started to take their mobile phones and flush them down the toilet. One day the toilet overflowed, and when the plumber came to look at it, ten mobile phones were retrieved from the toilet drain.

24. Sonia told the court that Ziad struggled with getting help for his mental illness because his mental illness was not stable enough for him to engage with the mental health services available. In a statement provided to the inquest, Sonia told the court of the real difficulties the family faced in trying to get Ziad help.[4] She recounted having many conversations with mental health teams at Bankstown and Canterbury over five years. Sonia reported that Ziad needed help however she would be told that Ziad needed to make an appointment to get help even when Sonia explained that Ziad's mental illness was not stable enough for him to be able to access help in that way. Sonia would request home visits but was told that was not possible because units were understaffed. It was suggested that she pass on a message to Ziad to go in and see them. Sonia's statements about the instability of Ziad's mental illnesses are reflected in the records examined, as is the pattern of engagement and disengagement from mental health services resulting from the instability of his mental state.

25. There was a long term pattern of repetitive engagement and disengagement from mental health services. Patients like Ziad can engage in mental health services for short periods, drift away and then come back, only to disengage a short time later and the pattern repeats.

[4] Exhibit 1, Tab 13.

According to information published by the NSW Ministry of Health[5] this pattern of engagement and disengagement, can result in a 'revolving door syndrome' in relation to treatment of mental illness. The 'revolving door syndrome' for some mentally ill patients is a descriptor with which Dr Cocks agreed. Professor Large did not agree with the analogy, but accepted Ziad's records demonstrated a long-term pattern of engagement and disengagement.

26. Despite these ongoing difficulties, Ziad remained close to his family. Having a relative with significant mental health issues can be extremely stressful. It is common in this court to hear of the problems families face in trying to support their loved ones to find appropriate treatment. Ziad's family never gave up.

Ziad's diagnosis and contact with mental health services

27. The court was able to review voluminous records of past hospital presentations, admissions, community mental health and general practitioner records. The material did not include all of Ziad's interactions with medical practitioners and services, but it provided a substantial background to his longstanding issues. The records establish chronic psychiatric illness and the presence of longstanding polysubstance drug use including heroin, cannabis, amphetamines as well as an extensive use of prescription drugs both prescribed and obtained illicitly.

28. Ziad had been involved in opioid substitution programs, both public and private and had frequent hospital admissions. At Concord Hospital alone he had 20 admissions, primarily for mental health or drug related issues. He had contact with community health services, in particular with the Canterbury Community Mental Health Team since 2012 but his attendance had been sporadic, and he was often lost to follow up.

29. The material contains various diagnoses, primarily recorded as schizophrenia, with antisocial personality traits/disorder and polysubstance abuse disorder. I note that one of his treating doctors, consultant psychiatrist Dr Nirenjen St George did not use the term antisocial personality traits and described Ziad's behaviour and engagement with health services as being characterised by both "help seeking" and "help rejecting" behaviours.

30. The records were examined by two independent expert psychiatrists, Dr Cocks and Professor Large who were largely in agreement in relation to the appropriate diagnosis of Ziad's mental health issues. He suffered chronic schizophrenia and polysubstance abuse disorder[6]. His symptoms were continuing and had been present for some time. They agreed

[5] New South Wales Mental Health Act Guidebook No 8 issued by the Health Education and Training Institute funded by the Mental Health Branch, NSW Ministry of Health.

[6] I note that Professor Large thought Ziad probably also had an antisocial personality disorder, but there was substantial agreement otherwise.

that the relationship between schizophrenia and any substance use disorder may be bidirectional. I accept their evidence in relation to Ziad's diagnosis and note that it generally accords with that given by the treating doctors who gave evidence.

31. Both experts appeared to agree that Ziad was likely to have been undermedicated throughout the course of his illness. The evidence certainly suggests that his schizophrenia was not well controlled. Numerous short interventions had not assisted him in maintaining sufficient stability in the community. Problems associated with his exclusion from public opioid programs meant his substance use issues were also likely to have been under treated.

32. In my view, the records painted a picture of chaotic and reactive care. I have no doubt that Ziad was often under the care of competent and committed practitioners. However, I accept his sister Sonia's evidence that more was needed both in relation to continuity of care and care which could go to him, rather than rely on him attending appointments. In other words, there were systemic issues that impacted on the care he received.

Events leading up to and including Ziad's arrest on 13 March 2019

33. By 2019, Ziad had experienced multiple interactions with NSW Police. A profile prepared by NSW Police for these proceedings indicated that between 1985 and 2019 there had been 232 police events, comprising of 30 intelligence reports, 44 charges, 22 occasions when he had been taken into custody and various other investigations.[7] Most of these events appear to have been driven by his mental illness and drug use and 15 were directly related to Mental Health Act interventions.

34. From 2010, Ziad started committing offences involving false representations that resulted in police investigations and using a carriage service to make hoax representations or to menace/harass or offend. In 2010, he was convicted of offences for making false representations that resulted in police investigations, using a carriage service, making hoax threats. He received suspended sentences for the offences. Ziad committed similar offences in 2015, 2016, and 2017. He was charged with similar offences in 2018 and 2019. It appears from the material examined that the false representations and hoax threats were largely the result of Ziad's mental illnesses.

35. The 2018 charges included multiple counts of false representation resulting in police investigation arising from false reports to Crimestoppers. The false reports included allegations a chemist was supporting the Islamic State and funding state fighters, nominating a person at a specified address that was impersonating a police officer with access to a gun and who lived with a young girl and another false report of a person who

[7] Exhibit 1, Tab 20.

was ‘sticking’ people with a HIV infected syringe. The Crimestoppers reports led to intelligence reports to NSW Police, counter terrorism and special tactic units and the child abuse squad and required police investigation of the information conveyed. Ziad was charged and given bail pending further court appearance. One of the bail conditions included a prohibition of further false reports.

36. On 13 March 2019, at about 12:52pm a call was made by a male to emergency services via ‘000.’ He stated that he had *“tied up and shot all three of them at the pharmacy because they were playing God”.* The caller said this had occurred at the Punchbowl Pharmacy on The Boulevarde, Punchbowl.

37. NSW Police attended this location to commence an investigation, quickly confirming the information provided was false. The call had been made from a telephone number known to be used by Ziad. NSW Police confirmed the phone number was subject to a separate investigation in relation to the 2018 offences. Enquires commenced to ascertain Ziad’s whereabouts which included numerous police searching the Punchbowl and Lakemba area.

38. Shortly after, NSW Police radio broadcast a further urgent request for police assistance. This broadcast related to a male entering a medical centre along Haldon Street, Lakemba holding a firearm. Detective Senior Constable Madden of Campsie Police Area Command (PAC) attended the vicinity of Haldon Street, Lakemba where she observed numerous police. Ziad had been apprehended by uniformed police and was seated on the ground. NSW Police were aware that Ziad had been in possession of a black coloured firearm, but he did not have it at the time. Detective Senior Constable Madden was advised that the firearm had been used to make threats towards a doctor at the United Medical Centre at Lakemba and a doctor and others at the A2Z Medical Centre at Lakemba. Both incidents were captured upon Closed Circuit Television footage (CCTV) from within each of the medical centres.

39. Ziad was taken to Campsie Police Station while NSW Police commenced an investigation into this incident speaking to numerous witnesses and obtaining CCTV as part of the investigation.

40. NSW Police commenced searching along Haldon Street, Lakemba to locate the black coloured firearm apparently used by Ziad. Detective Senior Constable Madden was made aware shortly after this search commenced, that the firearm had been recovered within the vicinity and discovered to be an ‘imitation firearm’. The ‘imitation firearm’ was seized as part of the investigation. It was approximately 15cm in length with a small scope on the top of the slide. There were no markings or identifiers upon this ‘imitation firearm’ to suggest it was not a real firearm.

41. Ziad was charged with several offences. NSW Police declined to grant him bail, he was held overnight, and taken before the Burwood Local Court on 14 March 2019.

42. Detective Senior Constable Madden was one of the NSW Police officers involved in the arrest of Ziad and gave evidence at the inquest. She told the court that a number of witnesses expressed fear in relation to the events which brought Ziad into custody. The imitation firearm looked real and significant NSW Police resources had been deployed to investigate and manage the events. There were significant risks involved in his conduct and arrest.

43. It is clear that there is a direct connection between Ziad's mental illnesses and his offending.

The proceedings at Burwood Local Court on 14 March 2019

44. On 14 March 2019 Ziad was taken in custody to Burwood Local Court in relation to the charges that had resulted from his conduct the previous day. At Burwood, whilst in the custody of Corrective Services NSW he was seen by Clinical Nurse Consultant, Susan Hebblewhite (CNC Hebblewhite) of the Statewide Forensic Mental Health Community and Court Liaison, which is part of Justice Health and Forensic Mental Health Network. For this to have occurred it is clear that Ziad must have been displaying obvious signs consistent with mental illness.

45. CNC Hebblewhite was asked to undertake a mental health assessment of Ziad.[8] CNC Hebblewhite documented that the reason for the referral for mental health assessment was to "*Assess mental state & eligibility for Court Diversion*"[9]. A verbal report was provided to the court.

46. Following the mental health assessment, CNC Hebblewhite recorded that[10]:

    a) During interview Ziad was uncooperative, guarded, and suspicious of questions. His affect was observed to be incongruent to context of conversation and situation. His mood was stated to be "fine". His speech was articulate, with normal rate and volume and he was not observed to have any formal thought form disorder. However, in relation to thought content, he expressed 'paranoid and persecutory delusions about the GP and the Pharmacy' and that he claimed to be under surveillance and expressed beliefs that people were trying to kill him.

    b) In relation to insight and judgment, he was assessed to be 'completely insightless' with 'grossly impaired judgment'.

[8] Exhibit 5, Volume 7, Tab 47, fax from CNC Hebblewhite to Admitting Doctor 14 March 2019 and Mental Health Assessment at page 2ff.
[9] Exhibit 5, Volume 7, Fax from CNC Hebblewhite to Admitting Doctor 14 March 2019 and Mental Health Assessment, page 2.
[10] Exhibit 5, Volume 7, Tab 47.

c) He was assessed at being at high level of risk of violence, problems with alcohol or substances misuse, major mental illness or disorder and with an at risk mental state which appeared to be highly changeable and with significant uncertainty in the assessment of the level of risk.

d) Her clinical impression that Ziad's impaired mental state and psychosomatic, persecutory, and paranoid delusions were of an intensity that caused him to be a risk to others and his impaired mental state presented a risk to himself and recommended further psychiatric assessment.

47. CNC Hebblewhite sent a fax to Concord Hospital on 14 March 2019[11]:

a) Providing a copy of her mental health assessment.

b) Advising that she had provided a verbal report of her assessment to the court.

c) Advising Ziad's matter 'has been finalised with a s 33(1)(b) of the *Mental Health (Forensic Provisions) Act 1990'* (the MHFPA).

d) Advising that Ziad would be escorted to the Concord Centre for Mental Health by Campsie Police for psychiatric assessment.

e) Advising that if following assessment, Ziad is not admitted, Ziad is to remain in the custody of the NSW Police and is required to be brought back to the court and if so, Concord is required to provide the court with a letter that addresses Ziad's risk to self and other and a plan for follow up.

48. CNC Hebblewhite's communication did not address what was to occur if Ziad was found to be mentally ill on assessment by the Concord Hospital.

49. After the assessment by CNC Hebblewhite, the Magistrate at Burwood Local Court made orders pursuant to s 33(1)(b) of the MHFPA[12] in relation to the 2018 and 2019 offences in the following terms[13] (the Order):

> "Mr Hamawy/defendant is to be taken by police and detained in the mental health facility for assessment at Concord Hospital in accordance with the Mental Health Act 2007. If on assessment Mr Hamawy is found not to be a mentally ill person or mentally disordered within the meaning off the Mental Health Act, he/she is to be brought by a prescribed person back before a Magistrate or an authorised officer unless granted bail by an officer at that facility."

[11] Exhibit 5, Volume 7, Fax from CNC Hebblewhite to Admitting Doctor 14 March 2019 and Mental Health Assessment.
[12] Exhibit 5, Volume 8, Tab 63, Transcript of Burwood Local Court proceedings 14 March 2019.
[13] Exhibit 1, Tab 23, Order for Assessment dated 14 March 2019.

50. The court recorded that bail was to be "dispensed with" in relation to all of the offences.[14] However, given the order was made under s 33(1) (b) this separate step was unnecessary.

51. It follows that the court did not record a date for any further mention of Ziad's charges.

52. Senior Constable Muaiad Bahi and Constable Kate Stojanovski from Campsie Police then attended Burwood Local Court and conveyed Ziad to Concord Hospital.

53. Detective Senior Constable Madden was not informed of the s 33(1)(b) order and only found out about the order when she communicated by email with the Prosecutor at the Burwood Local Court on 15 March 2019 to find out what happened. As is addressed later in these findings, the communication confirmed that both the Prosecutor and Detective Senior Constable Madden held an expectation that when Ziad was released by Concord Hospital, he would be returned to the court to be further dealt with in relation to the outstanding charges.

Ziad's involuntary admission to Concord Hospital 14 March – 18 March 2019

54. At Concord Hospital (the Hospital) Ziad was assessed by Dr Ferrer, Registrar. Following an initial assessment Dr Ferrer prepared a Form 1 Medical Report setting out the mental state of the detained person under s 27 of the *Mental Health Act 2007* (Mental Health Act).[15]

55. It appears likely that Dr Ferrer had a copy of the s 33 MHFPA order, the police fact sheet, and a document providing CNC Hebblewhite's assessment before him.[16]

56. Dr Ferrer observed Ziad to be agitated, irritable, verbally abusive, delusional and insightless. He found him to be a "mentally ill person" pursuant to the relevant legislation. Dr Ferrer also documented specific delusionary beliefs and behaviours in the progress notes. [17] He documented a plan to admit Ziad to the Intensive Psychiatric Care Unit (IPCU), prescribed medication and noted that Ziad was to be referred to social work and Drug and Alcohol Services the following day.

57. Later on 14 March 2019, Ziad was examined by a second medical practitioner, Dr Russell Cook (Senior Consultant, IPCU) as required by s 27(1)(b) of the Mental Health Act, and Dr Cook completed a further Form 1 deeming Ziad a mentally ill person under the Mental Health Act.[18] Dr Cook observed Ziad to be perplexed, distracted, paranoid, agitated, unpredictable and threatening and concluded that he required care, treatment, and control

[14] Exhibit 1, Tab 23.
[15] Exhibit 1, Volume 4, Tab 30, Annexure A. 20th Admission, page 27.
[16] Exhibit 1, Volume 4, Tab 30, section A, page 41 "Sources of Information" and at page 23 copy of section 33 (1) (b) order contained in medical records.
[17] Exhibit 1, Volume 4, Tab 30, section A, pages 41-43.
[18] Exhibit 1, Volume 4, Tab 30, Section A, pages 21 and 22, T 1/11/2022 61.5 -19.

in hospital. Ziad was involuntarily detained at the Concord Centre for Mental Health (Mackay Unit).

58. On 15 March 2019, Ziad was seen by Dr St George at the IPCU. Dr St George recognised Ziad from past interactions with the Bankstown and Canterbury Community Mental Health Team.

59. Dr St George had a thorough understanding of Ziad's past presentations and had been involved in developing previous community plans. He was well aware of the substance use issues that had affected Ziad for many years and he had previously tried to assist Ziad transfer from methadone to a publicly funded suboxone program. Dr St George had previously liaised with Ziad's family members and general practitioner, discussed and pursued the possibility of depot injections of Paliperidone, and supported Ziad's efforts to get public housing. The records indicate that Dr St George was a thorough and caring professional.

60. Dr St George made a copy of an extensive review note that he had made in 2018 and added it to the IPCU record so that the comprehensive background was available to all practitioners managing Ziad's current admission.

61. Dr St George stated that his understanding, once Ziad had been found to be mentally ill by Dr Cook, was that Ziad would require treatment in hospital as an inpatient suffering from a severe disturbance of mood and psychosis and eventually further treatment in the community, when appropriate. This would be in accordance with the principles of least restrictive care[19].

62. After examining Ziad on 15 March 2019, Dr St George formed the impression that Ziad was mentally ill. He documented a plan which provided hourly observations, no leave (and contact with police if AWOL), diazepam three times a day, no opioid relief, discharge on Monday if no significant concerns and recorded that a urine drug screen should be attempted.[20]

63. In oral evidence, Dr St George explained that while he was well aware of Ziad's chronic illness, his provisional diagnosis was that an acute drug intoxication was involved and that his symptoms may settle over the weekend.[21]

64. I accept that the plan provided by Dr St George had significant safeguards. The ultimate decision about discharge would be made on the following Monday, the consultant would at that time have information about Ziad's symptoms and conduct over the weekend. I accept that the plan allowed for further consideration of the impact the acute drug intoxication may

[19] Exhibit 1, Volume 1, Tab 19, paragraph 28.
[20] Exhibit 1, Volume 4, Tab 30, page 84.
[21] T 1/11/22 65-67.

have been having on his chronic symptoms. I also accept that Dr St George had every reason to expect that if Ziad were to be discharged, it would be into police custody.

65. Dr St George only saw Ziad on 15 March 2019. I accept his explanation that this was not the time to commence a depot medication. He told the court about his previous thoughts in relation to starting Ziad on a depot medication in the community. I note the records confirm that this was a path he had pursued.

66. In court, Dr St George impressed as a careful and thoughtful practitioner. After hearing him give oral evidence and having reviewed the opinions of the experts following his evidence, I have no criticism of Dr St George whatsoever.

67. An important part of Dr St George's recorded plan was that what occurred over the weekend would need to be considered. Unfortunately, over the weekend there were significant issues which do not appear to have been given sufficient weight when Ziad was reviewed on the Monday morning. While Ziad had acted appropriately at times, there were other times when he was irritable, aggressive, exhibited paranoid thinking, and engaged in threatening behaviour or bizarre actions.

68. On 15 March 2019 at 15:57pm, OT Evatt recorded that Ziad was engaged and pleasant but appeared to be 'thought blocked'.[22]

69. On 15 March 2019, Ziad falsely imagined that a nurse had taken his bloods and his blood was dripping everywhere. He was agitated and aggressive and needed to be restrained and sedated. Medical records establish that no nurse had performed a blood test on Ziad. Progress notes of the evening of 15 March recorded:[23]

> "**Progress Note**
>
> Situation/Subjective
>
> HAMAWY, Ziad Ahmad – 930261
>
> * Final Report*
>
> FIN: 5918504
>
> Pt was irritable and agitated, banging on the nursing station door. When approached by nursing staff pt began targeting a female nurse stating she had taken his blood earlier and it was dripping. Pt then expressed paranoid ideas that the nurse had poisoned him. Pt began threatening and intimidating the staff member stating 'I know where you live' and 'im going to kill you'. Pt then started demanding for DC and to be let out of the ward. Pt was attempted to be verbally de escalated with no effect.

[22] Exhibit 1, Tab 30, Section A, page 85.
[23] Exhibit 1, Tab 30, Section A, page 80.

Pt remained highly agitated and aggressive during this time. Duress was initiated. Pt was approached with extra staff and was escorted to SR3 via level 3 hold as pt was refusing to have medications and remained a high risk of aggression. Pt was restrained in prone position as was reluctant to have IMI. Pt was given IMI 5mg Midazolam and 20mg Ziprasidone. Pt was secluded at 1855hrs."

70. A further progress note of the events of the evening recorded:[24]

"**Assessment**

After dinner, pt dressed up his day clothes and approached to female n/s and verbally intimidated her.

Then asked the staff to open front door for him going home.

Activated duress.

De-esclated him briefly but remained with the thought of going home.

When explained care plan of D/C on Monday, pt disagreed.

When offered prn IMI, pt was uncooperative and resistive.

Verbally agressive and became agitated.

Finally given IMI with extra staff help as per charted and kept him in low stimulant room for one hour after being advised by OMO and n/supervisor.

Pt remained awake and asked to stay in his room for 10-15 min.

Then lying down on mattress wiith brething observed.

After one hour, SR3 was opened.

Informed OMO and supervisor.

Urine sample was not provided in this shift yet."

71. Chantal Mori Fredes, Registered Nurse (RN Fredes), completed a progress note on 16 March 2019 at 2:22pm documenting Ziad's irritability at wanting and being unable to achieve immediate discharge.[25] Ziad continued to demand discharge. He was observed to be hypervigilant and suspicious and somewhat paranoid. It was also stated that he was logical and coherent during conversations. RN Fredes considered Ziad to remain at high risk of unpredictable behaviour.

[24] Exhibit 1, Tab 30, Section A, page 82.
[25] Exhibit 1, Tab 30, Section A, page 78.

72. Mr Raksha Bakhati, Registered Nurse made a progress note at 19:41 on 16 March 2019[26] recording that Ziad can become agitated when his needs are not met and conflict with nursing staff when Ziad is informed that he does not have any leave. The progress note recorded that Ziad says the Hospital has humiliated his human rights and he will lodge an official complaint to the Supreme Court. The progress note records Ziad is acting inappropriately calling a nursing staff member a "Mexico chick" and was interfering with care towards other patients and that he was delusional. It is stated that Ziad believed that a fellow client, Z.K. was his son and it was his responsibility to save him. It is stated that he requires constant redirection from nursing staff.

73. RN Bakhati completed a progress note by way of addendum on 16 March 2019 at 21:32[27] recording that Ziad had apparently secreted razor blades. Ziad was given a razor and shaving foam on that evening and was advised to return the razor but failed to do so. When he was approached by nursing staff, he reported that he had shaved his "balls" and flushed the razor down the toilet. Ziad was asked by nursing staff why he did this, and he was unable to provide a reasonable explanation. A full body and room search, and a sweep of the ward was instituted by nursing staff, but the blades were not retrieved. Ziad was taken to a low stimulus environment. The nurse needed to flag the risk issues on the ward caused by the events to ensure the safety of patients and staff.

74. Ms Ning Yi Min, Registered Nurse, completed a progress note at 8:46pm on 17 March 2019 recording that Ziad was pacing around the ward, was using the ward phone for a long period of time, and was elevated in mood. Ziad thought that he should be discharged "for caring his grandmother today" and was given 10mg Olanzapine with no overt effect. RN Min considered Ziad to be thought disordered, elevated in mood, labile and having underlying aggression towards others.

75. These events were canvassed with the experts, who agreed that they provided evidence of ongoing agitation and aggression by Ziad. There were probable delusional beliefs and thinking that needed to be investigated and tested. I remain concerned about how the events of the weekend were factored into the decision made by Dr Jeffrey Snars on the Monday morning.

76. On the morning of 18 March 2019, Dr Snars, Medical Superintendent and Consultant Psychiatrist of the IPCU, reviewed Ziad. This was the first consultant review since Dr St George's review on 15 March 2019. While there had been a consultant on call over the weekend, there was no consultant psychiatrist present on the ward.

[26] Exhibit 1, Tab 30, Section A, page 76.
[27] Exhibit 1, Tab 30, Section A, pages 76-77.

77. Dr Snars formed the opinion that Ziad was not a mentally ill person within the meaning of the Mental Health Act and made a brief note of his assessment in the progress notes.[28] When examined at inquest, Dr Snars said that his notes were inadequate[29]. Dr Snars explained that his typing was hampered by a severe tremor. He told the court that when he was under any stress, he was totally incapable of typing accurately. He explained that his tremor meant that making clinical notes required an inordinate amount of time. He simply didn't have that amount of time in a day to type proper clinical notes.[30]

78. In a statement prepared for the inquest Dr Snars stated he had no independent recollection of Ziad or his admission and from the records, he believed his role was "*minimal and primarily consisted of putting in to place the management plan as set out by Dr St George*"[31] and that he "*conducted an examination of Ziad in preparation for his planned discharge*".[32] Dr Snars understood the management plan previously put in place was to keep Ziad in over the weekend in light of his erratic behaviour, psychosis, and his withdrawal from drugs. Subject to Ziad's mental state stabilising, Dr Snars understood the plan was to discharge Ziad on Monday 18 March 2019[33].

79. However, at inquest, he stated that he had still given independent consideration to the plan devised for Ziad, even though he had not documented the factors he specifically considered.[34] Dr Snars accepted that his responsibility on 18 March 2019, was to consider the events since the last review by a psychiatrist and to undertake his own independent assessment of Ziad to determine whether he was mentally ill. Dr Snars appeared to accept that his duty could never have been discharged by just putting into place the management plan set out by Dr St George because that plan was reliant on what had occurred over the weekend and consideration of Ziad's mental state over that period and on the Monday.

80. At inquest, Dr Snars said that he would have reviewed the medical records that identified the events occurring on the ward after Dr St George's assessment. It was not always easy to reconcile or understand his reasoning, but it appears that Dr Snars agreed that the events indicated possible ongoing psychotic phenomena which meant there was a risk of harm (either to or from Ziad). However, he considered the risks were attenuated by the fact that he believed Ziad would be discharged from the hospital into police custody and therefore, in his view, it was no longer necessary to involuntarily detain Ziad. As a result, Dr Snars concluded Ziad was no longer a mentally ill person within the meaning of the Mental Health Act and could be discharged.

---

[28] Exhibit 1, Tab 30, section A, page 66.
[29] T 2/11/22 T147.1-.5.
[30] T 2/11/22 T147.9-23.
[31] Exhibit 1, Tab 14, paragraphs 7 and 8.
[32] Exhibit 1, Tab 14, paragraph 13.
[33] Exhibit 1, Tab 14, paragraph 17.
[34] T 1/11/22 T132.30-35.

81. In considering the appropriateness of the actions and assessment of Dr Snars on 18 March 2019, it is necessary to consider the definition of mental illness and the criteria for involuntary admission of a mentally ill person in the Mental Health Act.

82. Section 4 defined mental illness as follows:

mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms—

(a) delusions,

(b) hallucinations,

(c) serious disorder of thought form,

(d) a severe disturbance of mood,

(e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).

83. The criteria for involuntary admission of a mentally ill person was set out in the then s 14(1) and (2) of the Mental Health Act and provided that:

S14 (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary—
(a) for the person's own protection from serious harm, or
(b) for the protection of others from serious harm.

S14 (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

84. A determination under s 14 also required consideration of the least restrictive care necessary for the protection of the person or others from serious harm.

85. When assessing Ziad on 18 March 2019, Dr Snars had to take into account:

(1) The circumstances that led to Ziad's admission and his presentation throughout the involuntary admission;

(2) His presentation at assessment; and

(3) Any continuing condition suffered by Ziad, any likely deterioration of it and the likely effects of any such deterioration.

86. Ziad's continuing conditions included his chronic schizophrenia and substance use disorder. In considering whether Ziad was a mentally ill person on 18 March 2019, Dr Snars had to take into account any likely deterioration in these conditions and the likely effects of any such deterioration. There was ample history available to Dr Snars which identified a likely relapse of Ziad's schizophrenia and substance use if he were to be released, resulting in erratic behaviour, drug seeking, potentially criminal behaviour, and harm to himself and others.

87. I accept that discharge into police custody, *might* have attenuated some of the risks to members of the public at large, and potentially minimised some of the risks to Ziad. However, it is not easy to understand exactly how that factor influenced Dr Snars' reasoning when it came to his determination pursuant to s 14 of the Mental Health Act. Given what had occurred over the weekend, it appears likely that discharge into police custody still had the potential to expose NSW Police and others in custody to harm. Ziad's behaviour also carried a risk of serious harm to himself both in the community *and* in custody. I accept counsel assisting's submission that the very fact that Dr Snars placed such weight on an understanding that Ziad's release into police custody provided some attenuation of risk, is in itself suggestive of a need for ongoing 'care, treatment, and **control**' (emphasis added) for the protection of Ziad or others from serious harm at that point.

88. Dr Snars came to later learn that Ziad was being released into the community, but he told the court that by this time there was nothing he could do having already made his assessment under the Mental Health Act.[35]

89. On 18 March 2019, and for the reasons stated by Dr Snars, Dr Snars did not consider other interventions or treatment for Ziad or consider the use of depot medication. Ziad was to be referred for community mental health engagement.

90. In relation to the assessment of Dr Snars, Dr Cocks expressed the opinion that there were a number of concerning events between the assessment of Dr St George on 15 March 2019 and the assessment on 18 March 2019. The concerning events included the events outlined in paragraphs [**69**] to [**74**] above. These events included observations of Ziad's distorted, irrational and paranoid thinking, erratic behaviour including secreting of razor blades, intimidating behaviour on the ward leading to a need for seclusion, his underlying aggression towards others, and his non-compliance with medication.[36]

91. The events of the weekend were significant and should have been carefully considered by Dr Snars. At the time of his assessment, Dr Snars documented that Ziad was "cheerful" and "reactive". It may be that Dr Snars placed too much weight on Ziad's presentation on

[35] 2/11/2022, T136.5-.24.
[36] Exhibit 1, Volume 5, Tab 36, pp. 15-16.

Monday morning. Dr Cocks expressed the opinion that Ziad's presentation on Monday, 18 March 2019 needed to be considered in a broader context including his presentation over the weekend. In Dr Cocks' opinion, a further period of inpatient treatment was warranted under the Mental Health Act. Dr Cocks adhered to these views at inquest. In relation to the evidence that Dr Snars believed some of the ongoing risks of harm would be attenuated by Ziad being released from Hospital into police custody, Dr Cocks agreed this would be the case, however Dr Cocks remained of the view that a further period of inpatient treatment was needed before Ziad was returned to police custody.

92. When Dr Cocks prepared his reports for the court and gave evidence at inquest, he did not have available to him the mental health assessment conducted by CNC Hebblewhite at Burwood Court on 14 March 2019. After having an opportunity to review CNC Hebblewhite's mental health assessment, Dr Cocks stated that CNC Hebblewhite's assessment provided further insight into the severity of Ziad's mental illness at the time he was admitted into the Hospital on 14 March 2019. Taking into account that he had not personally examined Ziad, Dr Cocks was nevertheless extremely doubtful that the acute psychotic symptoms described by CNC Hebblewhite would have resolved within four days. In Dr Cock's view, given Ziad's presentation at court and what is known from the records of his conduct over the weekend, Ziad required a further period of treatment under the Mental Health Act to assess his condition and to ensure appropriate treatment and discharge planning could take place.

93. Ultimately, Professor Large agreed that a short continuation of involuntary care *might* have assisted Ziad and would have been open to Dr Snars. In his report, Professor Large stated that even if Ziad was not exhibiting psychotic symptoms when assessed, Dr Snars could have found that the ongoing condition of Ziad, and the likelihood of his deterioration was enough to further detain Ziad. At inquest, Professor Large agreed that a further period of admission was open to Dr Snars and stated that patients can be delusional one day and then quiet the next. He stated that one does not immediately discharge a patient because they seem to be better on a single day. While Professor Large had not been initially critical of the decision to discharge Ziad on 18 March 2019, he told the court that his views had been moderated *to some degree* by additional matters which had come to light, and he agreed that a short period of further admission was appropriate. He agreed that something additional should have been done before discharge, and that might have led to a longer admission, although this was far from certain.

94. Professor Large agreed that the following additional matters should have been attended to before any discharge of Ziad[37]:

[37] 3/11/2022, T45.10-.26.

- discussion with the family have taken place;
- clarification with the police about where he was going should taken place; and
- a drug and alcohol opinion could have been obtained. This could have informed practitioners about appropriate medication and dosage for treatment of his substance use disorder, in particular as to the dose of diazepam.

95. These factors were relevant to the timing of discharge. Nevertheless, I note that Professor Large indicated that in his view only a short extension beyond 18 March 2019 appeared warranted.

96. Counsel assisting submitted that the opinions of Dr Cocks that the assessment of and care provided by Dr Snars was not adequate, ought to be accepted. Collateral information could have been obtained including by contact with the family. The provisional diagnosis of the treating team needed further testing and re-evaluation. A drug and alcohol consultation and social work review could have and should have been arranged. Counsel assisting submitted that due to his continuing condition, it was open to Dr Snars to hold Ziad under the Mental Health Act.

97. I have carefully considered the material before me and the opinions of the experts. In my view, Dr Snars did not give sufficient consideration to the decision he had to make on 18 March 2019. He agreed that his documentation was inadequate, but in my view the matter is more serious. In my view, the decision appears to have relied too heavily on the opinion of Dr St George a couple of days before. Insufficient weight was given to Ziad's ongoing and chronic issues and the way his behaviour had progressed over the weekend. I accept Dr Cocks' opinion that further treatment and investigation was called for. Dr Snars' assessment that Ziad was not a mentally ill person on 18 March 2019 within the meaning of the Mental Health Act was premature. The decision to discharge Ziad on 18 March 2019 was, accordingly, inappropriate. I accept Dr Cocks' opinion that Ziad was still a mentally ill person who required further involuntary, care, treatment, and control.

98. After Ziad was seen by Dr Snars, arrangements were made to discharge Ziad in circumstances to which I will return shortly. In my view, Ziad's release had significant risk.

Ziad's collapse and hospitalisation

99. The records suggest Ziad left the Concord Hospital (Hospital) mid-morning, sometime between 10am and 11.30am. No person gave evidence about his actual departure. While records suggest his property was returned to him on departure, it is less clear whether he was given medication.

100. After leaving the Hospital Ziad made his way to Riverwood. At some point before 6.07pm, Ziad accessed and used opioid drugs. Exactly how or when this occurred remains unknown.

101. At 6.07pm a 000 call was made for emergency services to attend to an unconscious and unresponsive male outside a flat in Riverwood.

102. NSW Paramedics attended the scene. Ziad was not breathing and had no heartbeat. A brown envelope containing cash and drug paraphernalia was found near him.

103. Paramedics undertook significant resuscitation measures including three shocks by defibrillation, compressions and airway management, and adrenaline before a return to spontaneous circulation. NSW Ambulance then urgently transported Ziad to Bankstown-Lidcombe Hospital.

104. Ziad was admitted to the Intensive Care Unit of the Bankstown-Lidcombe Hospital.

105. Dr Manoj Saxena provided a summary of the admission to Bankstown-Lidcombe Hospital following Ziad's collapse and cardiac arrest after discharge from Concord Hospital in the morning of 18 March 2019 as follows[38]:

a) Ziad was admitted at 19:17 hours on 18 March 2019 having been brought in by ambulance after being found unconscious following a cardiac arrest.

b) Ziad's drug consumption caused cardiac and respiratory arrest and insufficiency.

c) Ziad had received cardiopulmonary resuscitation (CPR) from paramedics but had already sustained hypoxic brain injury.

d) Ziad's condition did not improve on admission. He was unconscious on arrival and did not regain consciousness. The primary issues being managed were hypoxic brain injury, aspiration pneumonia and a developing renal condition.

e) The extent of his brain injury was severe, and the prognosis was poor; long-term survival was highly unlikely.

f) By 28 March 2019, neurology opinion and medical consensus confirmed the prognosis remained poor.

g) By 30 March 2019 Ziad's clinical condition had deteriorated with reduction in quality of his cough and gag reflex.

h) On 31 March 2019 a family meeting held where it was explained that Ziad's brain stem reflexes had become more impaired, and his renal failure was beginning to affect his other organs. The plan for management was to continue supportive care with mechanical ventilation, but otherwise not to intervene actively for any other

[38] Exhibit 1, Volume 5, Tab 33.

organ failures.

106. On 7 April 2019, Ziad's condition deteriorated suddenly, and he died.

Cause of death

107. A post-mortem examination was conducted on Ziad on 10 April 2019 by Dr Istvan Szentmariay and a Limited Autopsy Report was issued on 23 April 2020.[96] No internal examination was undertaken as per the Coronial order. Dr Szentmariay recorded the direct cause of Ziad's death as "*Opiate Toxicity*".

108. Dr Szentmariay provided the following summary of his findings[39]:

- A clinical history of heroin use, on methadone program, schizophrenia, and unspecified lifelong mental health issues.
- Illicit drug overdose leading to cardiac arrest.
- Opiate toxicity.
- No suspicious external injuries.
- Post-mortem CT scan examination: multifocal cortical areas of calcifying laminar necrosis (due to hypoxic / ischaemic encephalopathy).
- Toxicology results indicated that Ziad tested positive for Benzodiazepines and Opiates.

109. Opiate toxicity was the likely cause of Ziad's cardiac arrest which in turn caused a period of loss of brain function, deterioration, and death.

110. I find that Ziad died from complications of opiate toxicity. Ziad suffered a cardiac and respiratory arrest after using drugs on 18 March 2019, following his discharge from Concord Hospital. These events led to irreversible and significant hypoxic brain injury. Other significant conditions contributing to the death were renal complications which were also a consequence of the opiate toxicity.

Discussion of Issues

The operation of the Mental Health (Forensic Provisions) Act 1990 (MHFPA) (now repealed)

111. The MHFPA, under which the court's order to transport Ziad to Concord Hospital was made is no longer in force, although new provisions in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) do not alter the general scheme which was in place in relation to court ordered diversion at the time Ziad's matter was before the court.

[39] Exhibit 1, Volume 1, Tab 3.

112. The legislative scheme at the time of Ziad's transport to Concord Hospital required consideration of both the MHFPA and the Mental Health Act.

113. The Local Court's order in respect of Ziad was made under s 33(1)(b) Order of the MHFPA which at the time provided:

> (1) If, at the commencement or at any time during the course of the hearing of proceedings before a Magistrate, it appears to the Magistrate that the defendant is a mentally ill person, the Magistrate (without derogating from any other order the Magistrate may make in relation to the defendant, whether by way of adjournment, the granting of bail in accordance with the *Bail Act 1978* or otherwise):
>
> (a) may order that the defendant be taken to, and detained in, a mental health facility for assessment, or
>
> (b) may order that the defendant be taken to, and detained in, a mental health facility for assessment and that, if the defendant is found on assessment at the mental health facility not to be a mentally ill person or mentally disordered person, the person be brought back before a Magistrate or an authorised officer, unless granted bail by a police officer at that facility
>
> (c) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.

114. Section 33 in its terms does not address what should or must happen if the person is found to be a mentally ill person. A question arises as to whether or not the order to detain Ziad at Concord Hospital was spent following the assessment that he was mentally ill and he was involuntarily detained. Further, pursuant to s 27 of the Mental Health Act if following the first two assessments the person was found to be a mentally ill person, the person was to be brought as soon as practicable before a Magistrate for a mental health inquiry under Part 2 Division 3 of the act.

115. In *State of New South Wales v Roberson* [2016] NSWCA 151 ('*Roberson*'), the court (per Basten JA and Macfarlan JA, Beazley P agreeing) said an order under s 33(1), requiring that the person be **detained** in, a mental health facility "for assessment", will be spent once the process of assessment is complete, and that "assessment" as referred to in s 33 should be understood to extend to the mental health inquiry which is to be held once two medical officers have concluded that the person is a mentally ill person **and the person is detained in the mental health facility** (emphasis added).[40]

116. In respect of that conclusion, Macfarlan JA commented: "*on this extended meaning of "assessment", the s 33 order operates as an order that the defendant be detained, not only*

[40] *State of New South Wales v Roberson* [2016] NSWCA 151 at [17]-[20].

during the examinations at the mental health facility, but also for what may be a lengthy period during which the mental health inquiry is conducted. This result is surprising because, as contemplated by the terms of s 33(1), when the Magistrate makes the order under that section he or she is likely to have had only a limited opportunity to observe the defendant and not to have the assistance of any medical opinions."[41]

117. The court's statements in *Roberson* have to be considered in the context of the facts of that case. First, the court was considering the effect of an order made by a Magistrate that a defendant be taken to a local mental health facility for assessment only. Secondly, after being taken to the local mental health facility, the defendant was assessed by two medical practitioners who stated the defendant was mentally ill and even though the Hospital may have detained the defendant as an involuntary patient, this did not occur. Third, the court had the power to issue a warrant remanding a person in custody until the next date the matter was before the court, which was done, and where upon the defendant's return, the court exercised its powers to refuse bail and remand the defendant in custody. The central question for the court was whether the defendant's detention in the police cells and a correctional facility after the medical assessments amounted to unlawful imprisonment. The court's ultimate determination was that there was no inconsistency between the s 33(1)(b) orders and the other orders made, therefore the order returning the defendant to court the following day and the orders refusing bail were lawful, and the detention in police cells and subsequently were not unlawful.

118. As to the need for a mental health inquiry, in *Roberson* Basten JA stated:

> "*There is a further question raised by these provisions, namely whether a mental health inquiry is necessary, or even available, if the mentally ill person is no longer detained in a mental health facility. For the magistrate to hold an inquiry about "an assessable person", the person must, pursuant to s 17, be a person "detained in a declared mental health facility"; once the person is no longer so detained, he or she is no longer "an assessable person" and the obligation to bring him or her before a magistrate, so that the magistrate may conduct an inquiry, no longer arises*."[42]

119. His Honour Justice Basten said further (Beazley P agreeing at [1] and Macfarlan JA agreeing at [91]) that:

> "*…construction is consistent with the provisions of s 35, dealing with the "purpose and findings of mental health inquiries". Thus, if not satisfied that the assessable*

[41] *State of New South Wales v Roberson* [2016] NSWCA 151 at [92].
[42] *State of New South Wales v Roberson* [2016] NSWCA 151 at [18].

person is a mentally ill person, the magistrate "must order that the person be discharged from the mental health facility." [6] The assumption underlying this provision is that the person is, at the time the hearing is conducted, being detained in the mental health facility.

The conclusion is also consistent with the power of an authorised medical officer under s 30 of the Mental Health Act, at any time before a mental health inquiry is held, to classify the person as a voluntary patient, who will then no longer be involuntarily detained. Voluntary patients are dealt with in Ch 2 of the Mental Health Act and are not subject to the procedures under Ch 3."[43]

120. The need for a mental health inquiry was not examined at inquest. However, *Roberson* is authority for the proposition that if before a mental health inquiry is held, an authorised medical officer determines that a person is no longer a mentally ill person requiring that they be involuntarily detained, then a mental health inquiry is neither necessary nor available (as the person is no longer being detained involuntarily). When Dr Snars' assessed Ziad on 18 March 2018 as being no longer mentally ill for the purpose of the Mental Health Act, and no longer requiring involuntary admission, a mental health inquiry was neither necessary nor available.

121. After Dr Snars' assessment, the Hospital had no power to further detain Ziad under the Mental Health Act as a mentally ill person. Given a mental health inquiry was neither necessary nor available, any order by the Burwood Local Court to detain Ziad for assessment was also spent.

122. Importantly, and in any event, the terms of the s 33(1)(b) order made in respect of Ziad was not only to detain for assessment, but further to order that (after assessment) Ziad was to be returned to the Local Court.

123. It is necessary now to consider the obligations set out in s 32 of the Mental Health Act when a person is no longer to be detained under the Mental Health Act.

124. Section 32 of the Mental Health Act provided (emphasis added):

32 Detention on order of Magistrate or bail officer

(1) This section applies to a person detained in a mental health facility under this Part who is required not to be detained or further detained in the facility and who was taken to the facility:

(a) by a police officer under this Division after being apprehended by a police officer because the officer believed the person to be committing or to have recently

[43] *State of New South Wales v Roberson* [2016] NSWCA 151 at [19]-[20].

committed an offence, or

(b) on the order of a Magistrate or an authorised officer under section 33 of the *Mental Health (Forensic Provisions) Act 1990*.

(2) An authorised medical officer must release the person into the custody of any relevant person who is present at the mental health facility to ascertain the results of any examination or examinations of the person.

(3) **If a relevant person is not so present when the authorised medical officer becomes aware that the person must not be detained or further detained, the authorised medical officer must, as soon as practicable, notify a police officer at the appropriate police station that the person will not be further detained.**

(4) The authorised medical officer may take any of the following actions in relation to a person (other than a person referred to in subsection (5)), **after considering any matter communicated by a police officer as to the intended apprehension of the person by a police officer**:

(a) detain the person for a period not exceeding 2 hours pending the person's apprehension by a police officer,

(b) admit the person in accordance with this Act as a voluntary patient,

(c) discharge the person, in so far as it may be possible to do so, into the care of a designated carer or the principal care provider of the person,

(d) **discharge the person**.

(5) If the person is a person ordered to be brought back before a court under section 33 (1) (b) or (1D) (b) of the *Mental Health (Forensic Provisions) Act 1990*:

(a) **it is the duty of the police officer notified by the authorised medical officer to ensure that a police officer attends the mental health facility and apprehends the person as soon as practicable after notification**, and

(b) the authorised medical officer must detain the person pending the person's apprehension by a police officer.

(6) A police officer may apprehend a person under this section without a warrant.

(7) In subsections (2) and (3): **relevant person means:**

(a) if the detained person was taken to the mental health facility on an order under section 33 of the *Mental Health (Forensic Provisions) Act 1990*, any person (including a police officer) charged by the order with taking the person from the facility, or (b) in any other case, a police officer. (Emphasis added)

125. Once Dr Snars had determined Ziad was no longer to be detained under the Mental Health Act, and given Ziad had been taken to the Hospital under a s 33 order made pursuant to the MHFPA, the Hospital was to notify a police officer at the appropriate station that Ziad would not be further detained. The appropriate station for Ziad was Campsie Police station.

126. Except for patients taken to the Hospital under ss 33(1) (b) or 33(1D) (b) orders under the MHFPA, the Hospital may take any of the steps outlined in s 32(4) of the Mental Health Act after considering any matter communicated by the officer as to the intended apprehension of the person by police.

127. However, as Ziad was ordered to be brought back before the Burwood Court by order under s 33(1)(b) of the MHFPA, s 32(5) of the Mental Health Act provided:

(a) it is the duty of the police officer notified by the authorised medical officer to ensure that a police officer attends the mental health facility and apprehends the person as soon as practicable after notification, and

(b) the authorised medical officer must detain the person pending the person's apprehension by a police officer.

128. Accordingly, after Dr Snars assessment on 18 March 2019 determining Ziad was no longer to be detained under the Mental Health Act, three things needed to occur:

(1) The Hospital had to notify Campsie Police that the Hospital was no longer detaining Ziad

(2) It was the duty of the police officer notified to ensure that a police officer attended the mental health facility and apprehended Ziad as soon as practicable after notification.

(3) The authorised medical officer ought to have detained Ziad pending his apprehension by a police officer.

129. It is apparent from the evidence that some staff at the Hospital believed that having notified NSW Police and having been informed that NSW Police "no longer required" Ziad, Ziad could be discharged. This would be the case if the Hospital's obligations were to be determined under s 32(4) of the Mental Health Act, but not in compliance with s 32(5) which applied where a s 33(1)(b) order was made pursuant to the MHFPA.

130. The NSW Commissioner of Police (the Commissioner) provided detailed submissions on this issue. The Commissioner submitted that it should be accepted on the evidence that NSW Police provided a copy of the s 33(1)(b) order to the Hospital when Ziad was taken there on 14 March 2019. Further it was submitted that having determined Ziad was no longer mentally ill, s 32(3) of the Mental Health Act was operative and the authorised medical officer, who was Dr Snars, had a mandatory obligation under the section to notify NSW Police that Ziad was not to be further detained and was to be discharged. Under s

32(5) of the Mental Health Act it was submitted that there was mandatory obligation to detain Ziad pending his apprehension by a NSW Police officer. The Commissioner accepts that *if* NSW Police were notified by the Hospital that Ziad was to be discharged, NSW Police were required to attend as soon as practicable to apprehend Ziad and the authorised medical officer was to detain Ziad until that occurred. I accept those submissions.

131. The Commissioner further contended that even if the Hospital had been advised by NSW Police that they "*did not require*" Ziad, the Hospital was not permitted to discharge Ziad and should have taken further steps to have NSW Police attend, holding Ziad until that occurred.

132. I am somewhat troubled by the Commissioner's suggestion that the Hospital was required to take further steps to inquire into or to ensure that Ziad was actually apprehended and returned to Burwood Court. There is no doubt that further curiosity on the Hospital's part would have been beneficial. Best practice would certainly involve proper records being made about why someone in Ziad's position was not being taken back to court in accordance with a known court order. This may have prompted appropriate questioning of NSW Police, which in turn might have triggered a realisation that a mistake was being made. It was not a situation where NSW Police should have been asked "do you still want him?" there was clearly an obligation to collect him. However, *in practical terms* placing an onus on medical or nursing staff on a busy ward to delve into the basis of a decision made by NSW Police not to attend seems unworkable.

133. The issue is one of poor communication, poor record keeping, and patchy understandings of the meaning of the order which had been made.

134. The Memorandum of Understanding (MoU) between NSW Health and NSW Police[44] in place at the time largely reflected s 32 of the MHFPA, and provided in the final paragraph at 3.4.2:

> "*If the person has been ordered to be brought back before a magistrate under section 33 (1) (b) of the MHFPA, section 32 of the MHA requires the authorised medical officer to notify police that the person is not to be further detained in the facility and is to be discharged. Police are to attend the mental health facility to apprehend the person as soon as practicable after notification. The authorised medical officer must detain the person until apprehended by police.*"[45]

135. The proper execution of these obligations depends on timely, clear, and effective communication between the agencies. Each agency must also have an accurate understanding of their role.

[44] Exhibit 1, Volume 6, Tab 39 Annexure C.
[45] Exhibit 1, Volume 6, Tab 39 Annexure C, pp. 117-118.

136. The nature and effectiveness of any communications between the Hospital and Campsie Police on 18 March 2019 is dealt with later in these findings.

Adequacy of the medical care and treatment provided by treating staff at Concord Hospital

137. Having had the opportunity to review all the evidence, I find that the medical care and treatment provided by treating staff at Concord Hospital up to and including 17 March 2019 was largely appropriate.

138. The prescribing of Olanzapine and diazepam was appropriate.

139. The medical care and treatment provided by Dr St George was considered and appropriate.

140. Unfortunately, Dr Snars did not give sufficient consideration to the factors relevant to the decision he had to make on 18 March 2019. His decision that Ziad was no longer mentally ill and was suitable for discharge appears to have relied too heavily on the opinion of Dr St George a couple of days earlier and the proposed management plan made on that day and on Ziad's presentation on morning of 18 March 2019. Insufficient consideration was given to Ziad's ongoing and chronic conditions, the events over the weekend (which demonstrated Ziad continued to be thought blocked, hold and express irrational beliefs, was erratic, and intimidating in his behaviour, and displayed ongoing aggression towards others), the likely deterioration of his continuing conditions, and the likely effects of that deterioration. I accept Dr Cocks' opinion that further involuntary treatment and investigation was called for.

141. The decision to discharge Ziad on 18 March 2019 was not appropriate as there was evidence that Ziad continued to be a mentally ill person within the meaning of the Mental Health Act requiring involuntary admission. Even if he had been returned to court, as he should have been on discharge, his discharge from involuntary care appears premature.

142. Counsel assisting submitted that the evidence supports a finding that at the time of his discharge Ziad was suffering a continuing condition of chronic schizophrenia and substance use disorder, largely untreated or undertreated. His condition had been present for at least 10 years, with periods of engagement and disengagement with mental health services and treatment. Ziad had limited insight in relation to the severity of his illness and extremely limited capacity or willingness to follow a voluntary treatment plan. His condition meant that medical providers should have been very wary about his capacity to comply with a community treatment plan such as the one that had been put in place before. I accept her submissions on these issues.

143. Further, I accept her submissions that the evidence supports a finding that opportunities for optimising care and treatment for Ziad in this admission were missed by failing to involve drug and alcohol services and social work review. In my view, more could have been done to involve Ziad's family. After hearing the evidence of Dr St George, I accept that minds may differ about when was the best time to raise the possibility of depot medication with Ziad. Dr St George held the view that it was best done in the community. This may be the case.

144. When making these findings it is important to acknowledge the effect of the very real pressures which exist in the public health system which were referred to by Professor Large[46], Dr St George[47], and Dr Snars.[48] The court was advised that there has been no real increase in funding for mental health facilities since the onset of the crystal methamphetamine epidemic. There are ongoing staff shortages and bed pressures given the volume of patients requiring hospital treatment. Professor Large explained that the necessity to move patients who have "recovered enough" out of mental health wards is a day-to-day struggle for psychiatrists in the public health system. The most pressing driver of this is the flow of newly presenting patients in emergency departments and the attendant bed block and ambulance ramping which occurs. These factors can affect physical health care for community members in emergency departments across NSW. The pressure to discharge psychiatric inpatients in a timely way to keep things moving is constantly present.

145. I have no difficulty in accepting that doctors in public mental health facilities are under enormous and mounting pressure. It is unsatisfactory in the extreme.

146. Dr Snars was not prepared to express a view about the impact of these kinds of pressures on the treatment of a patient like Ziad. Nevertheless, I agree with counsel assisting that it is not difficult to infer from the evidence received that those pressures carry a continuing and tangible risk of influencing the decisions made in relation to patients generally and the approach taken to the care and treatment of patients like Ziad.

147. Much more needs to be done to solve these resourcing issues. It is unacceptable that doctors like Dr St George and Dr Snars must work in such difficult and pressured environments to provide care for the most vulnerable members of our community. These are matters of grave and ongoing concern to me.

The decision to allow Ziad to leave the Hospital

148. One of the most striking things about Ziad's exit from the Hospital is the significant confusion surrounding what was permitted and what actually occurred. Nobody can confirm who

[46] Exhibit 1, Volume 5, Tab 37, Report of Dr Large.
[47] T1/11/2022, T58.39-41.
[48] T1/11/2022 T112.9-114.37.

spoke to NSW Police and it appears nobody saw Ziad leave. It is even unclear whether he took medication with him.

149. It should also be noted that his release in those circumstances was made even riskier by the fact that there appears to have been no attempt to contact Ziad's supportive family. There is also nothing on file to suggest Ziad had refused to allow family contact and a family member had visited him over the weekend.

150. It was certainly the expectation of Detective Senior Constable Madden and the Police Prosecutor Sergeant Tran from Burwood Local Court, that Ziad would be taken back to court on release from Hospital, in line with the order which had been made at court. Ziad had been taken to the Hospital with the correct documentation and his eventual release into the custody of NSW Police should have followed at the appropriate time.

151. It appears that Dr St George and initially Dr Snars were also operating on the correct assumption that Ziad was to be returned to police. Dr Snars was the relevant medical officer pursuant to the legislation and he was required by legislation to notify NSW Police on discharge.

152. Dr Snars gave evidence that he understood this obligation and that given the conditions of Ziad's discharge – namely that he was to be discharged into police custody, he would have directed nursing staff to call NSW Police prior to discharge. However, it was enormously troubling that although he clearly understood the mechanics of an order pursuant to s 33(1)(b) of the MHFPA his evidence appeared to indicate that orders are sometimes contravened. He stated: "*in my experience, it is quite common that Police advise nursing staff that a patient is no longer required, notwithstanding the fact that their initial admission was in accordance with the Mental Health Act or as directed by the Court*."[49] It is clear that some patients who begin their admission by court order may be discharged without further action, but not those brought to hospital pursuant to s 33(1)(b) as Ziad was.

153. Dr Kwok Ping Low, who was a trainee specialist working under Dr Snars on the morning of Ziad's discharge records the plan at 9.21am as "*Aim discharge today, Await police call back kif(sic) they need to take him back*"[50] The note indicates that from an early stage the question of what would happen to Ziad on discharge was being approached from an incorrect or confused basis.

154. RN Chantal Fredes was the Nurse in Charge, and she accepted it was her responsibility to ensure that police were contacted in relation to discharge. She had no specific memory of the morning meeting on 18 March 2019, where she said it was likely that the circumstances surrounding Ziad's admission and discharge were discussed. She was unaware of any

[49] Exhibit 1, Volume 1, Tab 14, Statement of Dr Snars at [27].
[50] Exhibit 1, Volume 1, Tab 15, Statement of Dr Low at [16].

records relating to discussions at that meeting.[51] She offered that the clinical records disclosed RN Sonny Hantin was the nurse who had been assigned to Ziad's case and normal practice would suggest that he was involved in arranging and finalising discharge including contact with the NSW Police.[52]

155. RN Hantin gave evidence of more than one contact with NSW Police that morning, which correlates with Dr Low's notation. RN Hantin remembered that there had been an initial call and while nurses were waiting for a call back with advice about whether the discharge was into NSW Police custody or the community, other tasks were commenced, such as organising the self-assessment form in readiness for release. Later when he returned to the ward he was told by the nurse in charge, who he thought was RN Fredes that: "*Police had called and advised that [Ziad] was no longer required…[and Ziad] had been discharged into the community*."[53] He then contacted RN Elijah Sabondo at Bankstown Community Mental Health Team and gave an oral handover and referral.

156. The progress note made by RN Sabondo at 12:15 on 18 March 2019 indicates he "*noted consumer was supposed to be discharged in Police custody*" and that there was no community address. For this reason, he rang the ward back to check on these "anomalies" and spoke this time to RN Fredes who told him that "*Police no longer want to see the consumer*." [54] It is unfortunate that this inquiry did not trigger more curiosity back at the ward.

157. Both RN Hantin and RN Sabondo said that RN Fredes told them that Ziad was not required by NSW Police. RN Fredes did not deny their accounts but was otherwise unable to recall the events of 18 March 2019. RN Fredes gave evidence that if she had conversations with NSW Police, it was her usual practice to document the person with whom she had spoken.

158. The progress notes do not record who contacted NSW Police or with whom they had communicated or indeed why the Police "did not require" Ziad, given he was on a s 33(1)(b) order. This is clearly unacceptable. However, the records indicate that a contemporaneous note was made of contact with Police having occurred. Further, although none of the witnesses examined from the Hospital accepted that they had personally contacted the NSW Police, there was no real suggestion at the inquest that the contemporaneous records were falsely made. I accept there was some contact between the ward and the NSW Police that morning in relation to Ziad.

159. In the course of the inquest, and after examination of witnesses on this issue, the Hospital advised it had located records additional to those previously produced to the Court. Included

[51] Exhibit 1, Volume 1, Tab 18, Statement of RN Fredes at [9]-[14].
[52] Exhibit 1, Volume 1, Tab 18, Statement of RN Fredes at [17].
[53] Exhibit 1, Volume 1, Tab 16, Statement of RN Hantin at [16].
[54] Exhibit 1, Volume 4, Tab 30 Annexure A, p. 67.

in those additional records was a fax confirmation report of a fax sent from Concord Hospital to the Campsie PAC at 9.26am on 18 March 2019[55]. The fax confirmation report records that a two page document was faxed. Concord Hospital has only been able to produce the fax confirmation report, and not the original document faxed. The fax confirmation report identifies that one of the pages faxed was the covering fax sent from CNC Hebblewhite to the Hospital on 14 March 2019. The second page that was faxed to Campsie PAC has not been identified.

160. The fax confirmation report of 18 March 2019 confirms communication between the Hospital and Campsie Police on 18 March 2019 but does not on its face record who sent the fax or what exactly was included. From the information reproduced in the fax confirmation sheet it is established that one of the pages sent was the first page of a two page fax originally sent by CNC Hebblewhite to the Concord Hospital on 14 March 2019. It is safe to conclude that the Hospital faxed at least the first page of CNC Hebblewhite's document to Campsie PAC and that document identified Ziad, and set out that orders that had been made at the Burwood Local Court on 14 March 2019, in relation to charges (falsely represent to Police, stalk/intimidate with intent to cause fear/posses unauthorised pistol (imitation handgun), finalised by an order under s 33(1)(b) of the MHFPA. I am satisfied that the document provides some corroboration for the progress notes indicating some communication between the ward and Campsie Police Station took place.

161. Campsie PAC did not produce any records of communication from the Hospital, but I accept on balance that the fax was sent.

162. Other important information about what happened that morning came from a COPS audit[56] which established that Senior Constable Martin accessed police records relevant to Ziad on the morning of 18 March 2019. Senior Constable Martin provided a statement to the court and gave evidence at inquest. He stated that he had no specific recollection of his activities on 18 March 2019 but 'believed' that he accessed records pertaining to Ziad after reading an email of the Campsie Chronicle[57] notifying the arrest of Ziad.

163. The COPS audit shows that Senior Constable Martin accessed the information relevant to event 69779830 at 9.08am on Monday, 18 March 2019. [58] I accept the submissions made by the Commissioner that Senior Constable Martin accessed the records before the fax was received by Campsie PAC. However, the fact that a fax was apparently sent at 9.26am does not disprove other communication, including earlier communication took place. I accept that

[55] Exhibit 5, Volume 7, Tab 47, p. 12.
[56] Exhibit 5, Volume 7, Tab 57.
[57] Exhibit 5, Volume 7, Tab 58.
[58] Exhibit 5, Volume 7, Tab 58.

there is confusion about these events, but the timing of the fax does not in itself assist the Commissioner's position.

164. Senior Constable Martin was tasked with station duties from 6.00am to 6.00pm. When performing station duties, his work involved attending to counter enquiries, phone enquiries, report bailees, performing equipment checks, and placing jobs onto the police CAD system. It was also the station duties officer's responsibility to receive faxes sent to the station. Whilst on station duties, he would also review emails and access items such as command intelligence bulletins. It is fair to say that the Officer with station duties would be the person who would be expected to be contacted by the mental health facility in relation to discharge and who would make inquiries or seek confirmation from other officers in relation to what was to occur next. Senior Constable Martin does not recall receiving a phone call from Concord Hospital regarding Ziad and does not recall receiving a fax from Concord Hospital on 18 March 2019. He does not deny those matters but merely states that he cannot recall them.

165. The Commissioner submitted that on the available evidence it was not open to the court to make a firm finding that the Hospital did communicate with NSW Police to inform them that Ziad was ready for discharge. She drew the courts attention to the gaps in the evidence and the fact that none of the witnesses from the Hospital had agreed that they had personally called NSW Police. She submitted that notwithstanding the fax confirmation report and the limited but contemporaneous progress notes about awaiting contact back from NSW Police the gaps in the evidence remained substantial.

166. The Sydney Local Health District submitted that it is not possible to identify who was personally involved in contacting Campsie Police station, but that the evidence allows for an inference that there was further communication between the Hospital and Campsie Police either prior to or in response to the fax. I accept its submission that following contact with NSW Police, hospital staff were under the impression that police no longer required Ziad and acted upon that impression.

167. Notwithstanding the real limitations in the evidence, in my view, it can be established on balance that there was communication between Hospital staff (unknown) and a person(s) (unknown) at Campsie PAC around the time a fax was sent from the Hospital to Campsie PAC about Ziad. An inference is available that the fax was sent to provide further information to the Campsie PAC about Ziad. I am also satisfied that Hospital staff based their belief that Ziad was "no longer needed by police" on communication someone from the Hospital had with someone from Campsie PAC. Even after carefully considering the evidence about Senior Constable Martin accessing Ziad's records that morning I cannot with the requisite degree of certainty identify which Police officer gave the Hospital the advice upon which it relied. Equally whether Hospital staff fully understood what they had been told or acted on

a misapprehension is something I cannot be sure about. The paucity of records does not assist either the Hospital or NSW Police.

168. Without expressing a firm view in relation as to whether or not I am required to make these findings to the *Briginshaw* standard, as was submitted by the Commissioner, I record that I am in any event satisfied in relation to these matters to that standard.

169. Having addressed s 32 of the Mental Health Act and the MOU between NSW Health and NSW Police, it is clear what ought to have occurred:

(1) the Hospital had to notify NSW Police that Ziad was not required to be further detained;

(2) NSW Police should have collected Ziad and transported him back to court (or granted him bail)

170. At the end of the hearing, it was clear to me that there was significant confusion at Concord Hospital about the correct procedure to follow. This appears to have been exacerbated by the communication someone from the Hospital had with someone at Campsie Police Station.

The need for recommendations

171. Section 82 of the *Coroners Act 2009* 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.

172. Counsel assisting put forward recommendations arising out of the evidence for the court's consideration. I will deal with each in turn.

Recommendations for review and update of the Memorandums of Understanding (MOUs)

173. The inquest considered the Memorandums of Understanding (MOUs) between:

a) NSW Health - NSW Police Force Memorandum of Understanding 2018: Incorporating provisions of the *Mental Health Act 2007* (NSW) No 8 and the *Mental Health Forensic Provisions Act 1990* (NSW)[59] (MOU – NSW Health – NSW Police Force)

b) Memorandum of Understanding between NSW Health and Corrective Services NSW - May 2021[60]

174. I note that neither NSW Ministry of Health nor Corrective Services NSW were represented at the inquest.

[59] Exhibit 1, Tab 32A.
[60] Exhibit 9.

175. The need for MOUs reflects the complex situations for all involved agencies with respect to the assessment of custodial patients and their transport. Arrangements often require a planned, collaborative, multi-agency risk management plan and response.

176. I accept Counsel Assisting's submission that clear and common understandings of what is required to be done by each agency, and communication between agencies is important to ensure each agency is able to properly carry out their responsibilities.

177. As quoted in counsel assisting's submissions, the MOU – NSW Health – NSW Police Force states that:

> *"Effective discharge planning and transfer of care relies upon an active, collaborative planning involving consumers and their families/carers, the treating team and the receiving team. This will support* ***seamless and coordinated delivery of care****.* ***Timely, clear, verbal communication and documentation are essential elements of safe and effective discharge planning and transfer of care for mental health****"* (emphasis added)*.*

178. Since the time of the events considered by this inquest, the *MHFPA* has been repealed and replaced by the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW)*.* However, The MOU – NSW Health – NSW Police Force has not been updated to reflect the introduction of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

179. Counsel assisting summarised some of the difficulties in communication between agencies and the complexity of the arrangements as follows:

a) Patients' custody changing between NSW Police and NSW Correctives;

b) Flow of information between Courts and NSW Police where orders for mental health assessment of a defendant are made;

c) Consistent and contemporaneous recording of the expectations of investigating authorities about what is to occur with a defendant on release;

d) Agencies understanding what is to occur with a defendant on release and accurate communication of that information;

e) Hospitals undertaking assessments or to which a defendant has been involuntarily admitted being able to readily identify which agency (and where) they need to contact to know what is to occur with a patient/defendant on release;

f) Communication of risks for defendants being released; and

g) Documentation of decisions made by agencies.

180. Counsel assisting proposed that recommendations ought to be made to ensure:

a) The MOU – NSW Health – NSW Police Force is updated to reflect the current legislative framework under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020.*

b) The agencies in both MOU's consider whether arrangements between them can be improved to address the matters identified in the summary of issues highlighted by this inquest set out above in terms of consideration of potential improvements in communication of information and documentation of decisions and how that information is conveyed between agencies.

181. Counsel for the Sydney and South Western Sydney Local Health Districts submitted that a review of the MOU between NSW Health and NSW Police is currently underway, guided by an expert advisory group comprising representatives from the Ministry of Health, NSW Police and NSW Ambulance and that the recommendation proposed by counsel assisting was not opposed.

182. Counsel for the Commissioner noted the recommendation but provided no concluded view.

183. I note that other stakeholders, Corrective Services NSW, NSW Ambulance and NSW Ministry of Health were not separately represented during these proceedings. Despite this, I am satisfied that there are lessons that can be taken from this inquest, and I intend to make a recommendation which will request consideration of the issues raised. It may be that a review will subsequently trigger change to NSW Police or Hospital documentation systems, but in my view that process is best left until after the new MOU review process has been reviewed.

That Campsie Police Area Command (PAC) consider a register or other system (including by supervisor handover forms) for recording s 19 *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (then s 33 MHFPA orders) and documenting any requirement of officers of whether defendants to be taken back to Court

184. Counsel assisting made a number of submissions with regards to Detective Senior Constable Madden not being informed of the court orders that Ziad was subject to, record keeping by Campsie PAC, and the lack of a system for managing s 33(1)(b) *Mental Health (Forensic Provisions) Act 1990* (NSW) (MHFPA orders), now s 19 *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW) (MHCIFPA orders).

185. NSW Police involved in the arrest of Ziad were not informed of what had occurred at court and needed to make their own inquiries. On 15 March 2019, Detective Senior Constable Madden followed up the Police Prosecutor to find out what happened in relation to Ziad. Correspondence then ensued between Sergeant Tran and Detective Senior Constable Madden, and it is evident from that correspondence that both the Prosecutors and the investigating police anticipated that when Ziad was released from the Hospital he would be

taken by Police back to court for the charges to be further dealt with. Detective Senior Constable Madden expected Ziad would be returned to the court to be dealt with in relation to both the 2019 and the 2018 offences.

186. Counsel assisting submitted that there was no COPS event created in relation to the court appearance on 14 March 2019[61]. It was Detective Senior Constable Madden's expectation that one would be created by the general duty officers who were to collect Ziad from the court and take him to the Hospital[62], however this did not occur. It was uncontroversial, that uniformed police Senior Constable Bahi and Constable Stojanovski attached to the Campsie PAC had taken Ziad from Burwood Local Court to Concord Hospital[63], but they did not make a COPS entry of the transport.

187. Detective Senior Constable Madden did not create a COPS event after her communication with Sergeant Tran.

188. The COPS entries in NSW Police records did not record the fact that a s 33(1)(b) MHFPA order had been made, of the transport by Campsie PAC officers, nor of the expectation of Detective Senior Constable Madden and prosecutors that Ziad was to be returned to the court after any discharge from Concord Hospital.

189. Detective Senior Constable Madden did not know of the plan to release Ziad on 18 March 2019 or that he had actually been released from Concord Hospital some time that morning.[64] Upon contacting the Hospital on 19 or 20 March 2019, Detective Senior Constable Madden reported that she was advised that Ziad had been there until 18 March 2019 but had then been "*moved to the mental health facility within Bankstown[-Lidcombe] Hospital where the deceased was a current inpatient*"[65]. This was clearly incorrect, but may be the result of a miscommunication. It was not until 26 March 2019, when Detective Senior Constable Madden had a discussion with Ziad's sister, Sonia, that she became aware of the overdose and Ziad's subsequent admission to the ICU at Bankstown-Lidcombe Hospital.

190. The court received evidence from Detective Sergeant Mena Wolsely in relation to the systems at Campsie PAC for dealing with s 33(1)(b) MHFPA orders[66]. Detective Sergeant Wolsely gave evidence that where a request is received, police officers from Campsie PAC will attend and collect a defendant and transport the defendant to the Hospital with the relevant paperwork. Hospital staff are to be informed that Campsie PAC are to be called

[61] Exhibit 1, Tab 20.
[62] T43.28-46.
[63] Exhibit 1, Tab 7 Statement of DSC Madden at paragraph 10; Tab 40, Statement of SC Bahi and CAD Log 084533-14032019 annexed to statement; and Tab 41, Statement of Constable Stojanovski.
[64] Exhibit 1, Tab 7 and 43 and see COPS Event E71959521 attached to Tab 43.
[65] Exhibit 1, Tab 7, paragraph 11.
[66] Exhibit 1, Tab 42.

once the person's release is imminent as the person must appear back before the court. On release, the person is to be conveyed directly to Corrective Services or is taken back to Campsie PAC Custody if they are released out of hours. From there they will then be conveyed to court at the earliest opportunity. Detective Sergeant Wolsely said that in the past, hospital staff have called the police station and spoken to officers at the front counter and or the station supervisor to advise a person is to be collected following a mental health assessment.

191. Campsie PAC had no centralised system for recording/listing all s 33 MHFPA orders / s 19 MHCIFPA orders. Campsie PAC keeps records of their 'persons' placed on s 33 MHFPA orders / s19 MHCIFPA orders where this occurs in police custody, but not generally for defendants like Ziad who are in the custody of Corrective Services at the time of the court order. Sometimes, an order is on a supervisor's handover list, but not routinely. Ziad's order was not on any supervisor's handover.

192. Neither NSW Police centralised systems nor Campsie PAC supervisor handover sheets had any record of the s 33(1)(b) MHFPA order or a notation to the effect that Ziad was required to be collected and returned to court for further management of his charge.

193. There was no system, record, or conveyance of information to the Hospital, that Detective Senior Constable Madden be informed of any pending release of Ziad. If Hospital staff were to contact the front counter or the station supervisor about the pending release of Ziad, there would be no information readily available from documents kept by the PAC or on NSW Police records, of the need for Ziad to be collected by NSW Police and returned to custody.

194. Counsel assisting submitted that appropriate systems for keeping an up to date register or recording of s 33 MHFPA orders is an important feature of appropriate policing.

195. It was further submitted by counsel assisting that where an officer decides that a defendant is no longer required by NSW Police or that it is not necessary that a defendant is returned to police custody for further proceedings, that a record is kept of the person making the decision and the reasons why the decision has been made.

196. Counsel for the Commissioner submitted that the recommendation proposed by counsel assisting does not cure the issue that arose at inquest.

197. Counsel for the Commissioner also submitted that the evidence at inquest pertaining to records not being kept or maintained with respect to the s 33(1)(b) MHFPA order, of persons not in police custody at the time the order is made is not relevant to "any matter connected" with the death of Ziad.

198. I have given the matter considerable thought. In my view, the issues raised in relation to the confusion around the operation of s 33(1)(b) MHFPA are likely to extend well beyond the

Campsie PAC. Whether there should be some kind of easily accessible register or improved system to track these orders is likely to be a question best dealt with by those with an overview of the entire state. Given that I intend to send a copy of these findings to those reviewing the relevant MOUs. I am confident the issue could be raised in those forums. I decline making the specific recommendation to the Campsie PAC.

Findings

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

Identity

The person who died was Ziad Hamawy.

Date of death

Ziad died on 7 April 2019.

Place of death

Ziad died at Bankstown-Lidcombe Hospital, Bankstown, NSW.

Cause of death

Ziad died from complications of opiate toxicity. Ziad suffered a cardiac and respiratory arrest after using drugs on 18 March 2019, following his discharge from Concord Hospital. These events led to irreversible and significant hypoxic brain injury. Other significant conditions contributing to his death were renal complications which were also a consequence of the opiate toxicity.

Manner of death

The circumstances of Ziad's discharge into the community from mental health care at Concord Hospital involved appreciable risk. Discharge occurred in circumstances of significant confusion in relation to an order which had been made pursuant to s 33 (1) (b) of the *Mental Health (Forensic Procedures) Act 1990 (NSW)* now repealed and replaced with the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (NSW)).

Recommendations pursuant to section 82 *Coroners Act 2009*

200. For the reasons stated above, I recommend that parties to this inquest (NSW Police and Sydney Local Health District and South Western Sydney Local Health District) engage with the process apparently being undertaken to update the MOU – NSW Health – NSW Police Force to reflect the current legislative framework under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

201. Further I recommend that parties to this inquest provide input into that process (and to the review of the MOU between NSW Health and Corrective Services NSW) that will alert those undertaking the review to the problems that occurred in this case in relation to the communication between agencies and the documentation of orders and decisions.

202. I intend to supply a copy of these findings to the NSW Minister of Health and Minister for Regional Health, and the NSW Commissioner of Corrective Services for their information.

Conclusion

203. I offer my sincere thanks to counsel assisting, Ms Maria Gerace and her instructing solicitor Ms Clara Potocki for their hard work and enormous commitment in the preparation of this matter and in drafting these findings.

204. Finally, once again I offer my sincere condolences to Ziad's family, especially Sonia and Fawaz Hamawy. I acknowledge the tremendous grief and sorrow that flows from the loss of their beloved brother, Ziad.

205. I greatly respect Sonia and Fawaz's decision to participate in these difficult proceedings. They were in attendance during the inquest and their contributions were invaluable. The love they have for Ziad remains palpable and the passion they exhibited for improving mental health services is ongoing.

206. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner, NSW State Coroner's Court,
21 July 2023