



CORONERS COURT OF NEW SOUTH WALES

Inquest: Inquest into the death of Jerwin Royupa

Hearing dates: 25 November to 4 December 2024

Hearing venue: Albury Courthouse, Albury NSW

Date of findings: 16 January 2026

Place of findings: Coroners Court, Lidcombe NSW

Findings of: Deputy State Coroner, Magistrate Hosking

Catchwords: CORONIAL LAW: Manner of death; adequacy of the post death police investigation; Department of Home Affairs assessment of applications for Subclass 407 Training Visa; support provided to Subclass 407 visa holders; the implementation of the 2017 *Hidden in Plain Sight* report of the Joint Standing Committee on Foreign Affairs; Modern Slavery.

File number: 2019/83521

Representation: Counsel assisting the Inquest: Simon Buchen SC and Emma Sullivan of Counsel instructed by Gillian Buchan and Penelope Smith, NSW Crown Solicitor's Office (**Assisting team**)

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Commissioner of Police, NSW Police Force (**NSWPF**): Anders Mykkeltvedt of Counsel, instructed by Aurhett Barrie, Office of General Counsel, NSW Police Force

Detective Senior Constable Richard Nelley: Anthony Howell of Counsel, instructed by Ben Lee, Police Association of NSW

Royupa Family: Christine Melis of Counsel, instructed by Sheeza Naz, Legal Aid NSW

NSW Anti-Slavery Commissioner Dr James Cockayne

Pro bono counsel for **Operator 1** in relation to the s 61 objection: Bridget Kennedy

Pro bono counsel for Agent 1 in relation to the s 61 objection: George Fren

Pro bono counsel for **Operator 2** in relation to the s 61 objection: Maclaren Wall

Findings:

Identity of deceased: Jerwin Royupa

Date of death: 15 March 2019

Place of death: Royal Melbourne Hospital

Cause of death: Jerwin died from the complications of multiple blunt force injuries

Manner of death: Between 10 and 14 March 2019 Jerwin became increasingly fearful of **Operator 1**. This fear was compounded by Jerwin feeling threatened while he was **Operator 1**'s passenger and **Operator 1** indicated he would take Jerwin to the airport or the police. In that context, Jerwin died from injuries suffered after he voluntarily exited the moving vehicle at **██████████** Road, approx. 1km east of **██████████**.

Recommendations:

Recommendation 1

That the Minister for Home Affairs conduct a thorough internal review (in the nature of a root cause analysis) with respect to the potential 'lessons learned' arising from the circumstances relating to the death of Jerwin Royupa, including giving consideration to the following matters:

- 1 whether there is a need for a formal review process to:

- (a) ensure appropriate investigation and analysis of the role of the Department of Home Affairs (**DHA**) (including its delegates) in approving subclass 407 training visas that may have been used for exploitation of subclass 407 visa holders (not least in circumstances where the subclass 407 visa holder nominee is deceased in connection with activities relating to training in Australia); and
 - (b) consider the risk of exploitation of subclass 407 visa holders, including in relation to the existing visa requirements (including pay and employment conditions), approval process, monitoring and support to visa holders)
- 2 the use of potential 'risk profiling' to focus the monitoring activities of the Sponsor Monitoring Unit (**SMU**) on sponsors who may be high risk (including by reason of the following factors: a) being a new sponsor; b) the training is located in a geographically isolated, agricultural area; c) there is a risk of the subclass 407 visa holder undertaking unskilled labour or unpaid work; d) the sponsor's operations are small scale)
- 3 (related to 1(b)) the utility of 'random' audits or checks by the SMU of sponsors who may be considered 'high risk' (including for the reasons stated), including to ascertain whether a training program is in fact being provided as a genuine training opportunity
- 4 the absence of any referral for investigation or ongoing investigation into allegations of exploitation of Jerwin Royupa, and the role, communication between, and coordination of Commonwealth agencies in identifying and addressing potential exploitation of subclass 407 visa holders – namely, the DHA (including the Australian Border Force); the Fair Work Ombudsman; and the Australian Federal Police

- 5 the utility of this matter as a case study for learning by relevant officers (including decision makers assessing s 407 training applications and SMU officers) and consideration of additional training needs for decision makers and/or SMU team members on forced labour risks and indicators
- 6 a review of the adequacy of the information provided in the letter confirming the grant of a subclass 407 visa (especially whether there is adequate reference to available support services concerning exploitation and modern slavery) and the inappropriateness of a sponsor being the sole 'authorised recipient' of that information (as contemplated by the form 'Appointment or withdrawal of an authorised recipient')

and that relevant Commonwealth agencies (including the Commonwealth Attorney General, the Commissioner of the Australian Federal Police and the Fair Work Ombudsman), and the Australian Anti-Slavery Commissioner be consulted and involved, as necessary and appropriate, as to relevant aspects of the review, including for example, the development of enhanced 'risk based' approaches to regulation and monitoring of the subclass 407 visa framework.

Recommendation 2

That the Minister for Home Affairs liaise with the Australian Anti-Slavery Commissioner and the NSW Anti-slavery Commissioner as to the lessons learned arising from the review contemplated at (1) above.

Recommendation 3

That the Minister for Home Affairs implement pre-departure briefings for subclass 407 training visa holders (consistent with Recommendation 46 of the *Hidden in Plain Sight* report of the Joint Standing Committee on Foreign Affairs, dated December 2017).

Recommendation 4

That the Australian Anti-Slavery Commissioner and the NSW Anti-slavery Commissioner liaise and work

collaboratively with the Commonwealth (including relevant agencies, such as the Commonwealth Attorney General, the Commissioner of the Australian Federal Police and the Fair Work Ombudsman) to consider measures to improve reporting of modern slavery offences, including considering the development of a national modern slavery hotline (consistent with Recommendation 46 and 47 of the *Hidden in Plain Sight* report of the Joint Standing Committee on Foreign Affairs, dated December 2017), in an appropriate form.

Recommendation 5

That the Commissioner of the NSW Police Force (or his delegate) liaise with the NSW Anti-slavery Commissioner as to the development and implementation of mandatory ‘modern slavery’ training for officers operating in ‘high risk’ areas, including for example, regional/rural and agricultural areas of NSW where conditions of modern slavery may arise.

Recommendation 6

That the coronial brief of evidence and transcript from the coronial proceedings be referred to the Australian Federal Police for consideration as to further investigations.

Publication orders:

Non-publication and pseudonym orders apply to the evidence in this inquest. A copy of the orders made by Deputy State Coroner Hosking can be requested from the Court Registry.

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FINDINGS

Introduction

- 1 Section 81(1) of the *Coroners Act 2009* (NSW) (**the Act**) requires that when an inquest is held, the coroner must record in writing their findings as to whether the person has died and if so, the date and place of the person's death, and the cause and manner of their death.
- 2 The coroner may also make recommendations arising out of the death in question in relation to matters which have the capacity to improve public health and safety in the future.
- 3 These are the findings into the circumstances of the death of Jerwin Royupa. Jerwin died on 15 March 2019, aged 21, from injuries sustained on 14 March 2019 when he exited a Van¹ being driven at speed on [REDACTED] Road, approximately 1km east of [REDACTED]. He was a much-loved son, brother and friend.
- 4 Jerwin was a Filipino national who arrived in Australia on 7 February 2019 under a, '407 subclass training visa' (**s 407 visa**). He was sponsored by Operator 1 [REDACTED] through his 'Agricultural Business' and was residing at the 'Agricultural Premises'². Jerwin had been recruited by Operator 1³ through his contact in the Philippines, 'Agent 1'⁴. In the Philippines, Jerwin was an employee of BOT⁵, in respect of which Agent 1 was a chairman.

¹ A [REDACTED] van, model [REDACTED], registered to Operator 1 (**Van**).

² Non-publication orders have been made with respect to Jerwin's 'sponsor' in Australia which includes the relevant individuals' names, relevant business names/corporate entities and the premises at which he was working and residing in Australia in the lead up to his death. I will refer to the premises as the 'Agricultural Premises' and the business operating from the premises as the 'Agricultural Business'. In saying that, throughout the inquest, various business names were referred to, some colloquial and some registered entities. The distinction is not of significance and I will refer to the blanket pseudonym on an inclusive basis.

³ Owner of the Agricultural Business and Premises, Jerwin's sponsor.

⁴ Agent 1's identity is also the subject of non-publication orders.

⁵ A pseudonym.

- 5 Jerwin's tragic death was felt by his family in the Philippines and the friends he made in the short time he lived in Australia.
- 6 This inquest was held pursuant to s 21(1) of the Act in circumstances where Jerwin's death was a reportable death as defined in ss 6(1)(a) and (c) being a death which was unnatural or otherwise occurring in suspicious or unusual circumstances.

The issues examined at the inquest

- 7 An inquest into the circumstances of Jerwin's death was held between 25 November and 4 December 2024, at Albury Court House, Albury NSW.
- 8 The issues identified in the coronial investigation to be explored during the inquest included the following:
 - (1) The statutory findings required under s 81 of the *Coroners Act 2009* (NSW), including as to manner and cause of death.
 - (2) The circumstances leading up to Jerwin's departure from the Agricultural Premises on 14 March 2019, including the matters that follow.
 - (a) The information provided to obtain the subclass 407 visa for Jerwin, and the manner in which **Operator 1** and Agent 1 sought to obtain approval for Jerwin to come to Australia.
 - (b) Once Jerwin was in Australia on the subclass 407 visa, the mechanisms, if any, to ensure that Jerwin was participating in occupational training activities.
 - (c) Supports and services available for subclass 407 visa trainees in Australia, particularly persons who may be being exploited.

- (d) Supports and services available for subclass 407 visa sponsors in Australia, in the event the sponsor wished to cease sponsoring the subclass 407 visa trainee.
 - (e) Jerwin's working and living conditions at the Agricultural Premises.
- (3) The circumstances of, and following, Jerwin exiting the vehicle on 14 March 2019.
 - (4) The adequacy of the original NSWPF investigation, including whether the NSWPF Crash Investigation Unit⁶ and crime scene personnel should have attended the scene on 14 March 2019.
 - (5) Whether any recommendations are necessary or desirable in connection with Jerwin's death.

The evidence

- 9 Tendered to the court was an 8 volume brief of evidence compiled by Det. A/Insp. Irving⁷ and supplemented by the Assisting team. An additional 20 documents were exhibited in the course of the hearing and documents tendered after the hearing of the matter were marked exhibits 21-31 in chambers.
- 10 We had the privilege of hearing from Jerwin's sisters at the inquest. Jamaica gave evidence and Jessa-Joy provided a family statement.
- 11 A schedule identifying the witnesses that gave oral evidence, their role and title is at **Annexure A**. Witnesses will be referred to by their last name herein.

⁶ CIU.

⁷ The Officer in Charge of the Coronial Investigation, Detective Acting/Inspector Jason Irving.

- 12 I have drawn from the submissions by Counsel assisting in relation to non-contentious factual matters, issues and summaries of evidence. I am grateful for their assistance.
- 13 I have reviewed and considered all of the evidence and submissions in this matter while only referring to the salient or contentious aspects herein.

Findings

- 14 Having heard all of the evidence and reviewed all of the submissions, the findings made in this inquest are summarised below.

Issue 1 findings: Jerwin's death and the surrounding circumstances

- 15 I find:
- (1) Jerwin died on 15 March 2019 at Royal Melbourne Hospital from complications of blunt force injuries.
 - (2) Between 10 and 14 March 2019 Jerwin had become increasingly fearful of **Operator 1**. This fear was further compounded by Jerwin feeling threatened when **Operator 1** indicated he would take him to the airport or the police. This is consistent with **Operator 1**'s evidence of Jerwin's reaction when that threat or comment was made while they were in the Van and before Jerwin exited the Van.
 - (3) Jerwin voluntarily jumped or fell from the Van.
 - (4) In relation to speed, **Operator 1** slowed the vehicle in circumstances where it became apparent that Jerwin had taken his seat belt and his shirt off.
 - (5) I am unable to make a determination as to what was said or what otherwise occurred in the Van prior to Jerwin exiting.

Issue 2(a): Findings

- 16 I accept the unchallenged concession by the DHA that the approval of the first nomination application was an inappropriate decision for the reasons articulated by the decision maker considering the same documentation in respect of the second nomination.

Issue 2(b): Findings

- 17 I find that the DHA does not take active steps to supervise compliance or prevent employers taking advantage of overseas trainees thereby exposing vulnerable overseas workers to an unacceptable risk of exploitation in high risk industries such as the agricultural industry.

Issue 2(c): Findings

- 18 I find that the supports available to Jerwin, a s 407 visa holder and a vulnerable young man in a foreign country were inaccessible, inadequate and insufficient, particularly in circumstances where:
- (1) absent a clear understanding that the conduct to which Jerwin appears to have been exposed was potentially criminal and not simply civil, it may not have been apparent to Jerwin or those assisting him that it would be appropriate to call triple 0.
 - (2) DHA's phone number is not readily apparent on its website and the website was not 'user friendly' in terms of locating the number as was demonstrated in Court – combined with English as a second language and a vulnerable inexperienced user, it is not useful.
 - (3) the letter granting Jerwin's visa was provided to **Operator 1** and not to Jerwin. Even if it had been provided to Jerwin it did not contain a contact number for DHA or details of how to contact emergency services.
- 19 I acknowledge that since Jerwin's death, by virtue of legislative change and the appointment of a NSW Anti-Slavery Commissioner, a hotline is now operative.

However, on the information presently available, the demand outweighs capacity and it is not advertised such that a person like Jerwin, without their own 'champions' in Australia, may not know of its existence.

Issue 2(d): Findings

- 20 I consider that Operator 1 understood that if Jerwin absconded, he would be liable for the costs associated with Jerwin's recovery. While that did not translate to an obligation to see Jerwin to the airport gates, that may well have been Operator 1's interpretation of his obligations.
- 21 Of significance, Operator 1 as a sponsor, was readily able to access advice from DHA in circumstances where Jerwin, in desperate need of assistance, could not.

Issue 2(e): Findings

- 22 I find that for the 5 week period he was in Australia, Jerwin was exploited in the following ways:
- (1) he was required to work excessive hours (up to 60 hours per week) in a manner wholly inconsistent to the 'training schedule' that had been proposed
 - (2) he was required to work outside in excessive heat without having been provided with appropriate clothing or sunscreen
 - (3) he was exclusively performing manual labour and was not engaged in any educational schooling or training contrary to what had been proposed to him
 - (4) while he was promised a 'generous allowance', no payments were made to him during his period in Australia and while it was unclear on the evidence whether any payment would be made to him, the amount of P5,000, as submitted to the DHA, was wholly inadequate.

23 I am satisfied as to the matters that follow.

- (1) The cabin facilities provided to Jerwin were adequate and appropriate.
- (2) On the evening of 12 March 2019, the electricity to the cabin was off. However, I am unable to determine why or how it was off. I accept that there may have been an innocent explanation such as an automatic cut off following an appliance overload. Notwithstanding, I accept that the electricity not being available contributed to Jerwin's fears in the circumstances.
- (3) Jerwin did not have access to his passport while at the Agricultural Premises. This was a complaint of significance being repeatedly made by Jerwin. It is consistent with **Operator 1**'s fear of being financially responsible for Jerwin if he were to abscond. While the passport was found by Nelley in Jerwin's personal carry bag in the front pocket of his suitcase, the airline ticket was also in the personal carry bag and according to both **Operator 1** and Agent 1, the airline ticket was not in the bag while they were in the Van as it was shown to Jerwin prior to him exiting the Van.

Issue 3: Findings

24 **Operator 1** was Jerwin's sponsor and the person for whom he had been working while in Australia. **Operator 1**'s conduct was deplorable, particularly:

- (1) failing to take immediate steps to obtain assistance for Jerwin including in not calling an ambulance immediately
- (2) disparaging Jerwin while he was unconscious on the side of the road including suggesting he may be violent
- (3) talking to Agent 1 on the phone while he should have been supporting and assisting Jerwin

- (4) leaving the scene after being expressly told not to.

Issue 4: Findings

- 25 In the immediate aftermath of the incident, Nelley, with limited resources available to him, in circumstances where **Operator 1** had left the scene with the Van, was faced with the dilemma as to whether it was more important to secure the Van or the scene. He instructed Churchin to photograph the scene and to then pursue the Van and driver. That decision was not inappropriate.
- 26 The investigative steps taken by Nelley were appropriate in the following aspects: obtaining of key witness statements, attending and inspecting the Agricultural Premises and taking photographs, seizing the Van, attempting to access Jerwin's phone and contacting DHA to obtain further information regarding Jerwin's visa. However, it is clear that more could have been done. Significantly, Nelley acknowledged this in the course of the inquest.
- 27 I find that the initial investigation by the NSWPF was inadequate in the ways that follow.
- (1) The crime scene coordinator should have been notified. Kremers said they would have attended if notified and George identified critical road evidence which may have been gathered in this event.
- (2) The CIU should have been contacted, although I accept Nelley's evidence, though it was not tested, to the effect that his supervisor told him they would not come⁸, and also the evidence of Foster and Hogan that they would not have attended if contacted.
- (3) The interior of the Van should have been photographed (including the positioning of the armrests) and subjected to a forensic examination.

⁸ I note the submission on behalf of the Commissioner of the NSWPF that Nelley's assertion as to a conversation with his supervisor is to be dealt with cautiously given the evidence is untested as the supervisor is not called. To the extent that I accept the evidence I do so in Nelley's favour and not to the extent that I am making adverse findings against a potential witness not called to give evidence.

- (4) Jerwin's shirt (which appears in the photographs taken from the Agricultural Premises) ought to have been seized and forensically examined.
- (5) A statement ought to have been obtained from **Witness 4**
- (6) Given the information known on 14 March 2019, the investigation should have been approached as 'suspicious' rather than one which did not involve 'foul play'. The relevant factors included doubt as to whether Jerwin had jumped out of or fallen from a moving vehicle at great (and ultimately catastrophic) danger to himself, **Operator 1** left the scene of the incident twice, that **Operator 1** was making disparaging comments about Jerwin and that he was attempting to play down the injuries of a young vulnerable man in grave danger.

Recommendations

- 28 Having heard all of the evidence and reviewed all of the submissions, the recommendations made are summarised on the cover page.

Jurisdictional issues

- 29 In their submissions dated 28 May 2025 and 24 October 2025, the DHA raise a number of issues. While I have had regard to the entirety of their submissions and those of Counsel assisting in response, I deal only with the salient issues below.

The evidence of Goodsell⁹ and Clayton¹⁰

- 30 The DHA suggest that certain evidence given by the DHA's two 'executive' witnesses was outside their respective authority, does not represent the views of DHA and therefore should not inform my findings or recommendations.

⁹ James Goodsell, Director, Student Program Management Section, DHA

¹⁰ Paul Clayton, Insp. Australian Border Force's National Sponsor Monitoring Co-ordination Unit, DHA

31 That is, whilst each witness provided written statements and gave oral evidence to assist the Court's understanding of the nature of the visa granted to Jerwin, DHA assert in their written submissions that they also gave evidence on topics beyond their knowledge or authority. To the extent that this occurred, their evidence is said to reflect their own opinions and not the views of the DHA or the Commonwealth. Specifically, the areas outside knowledge or authority are detailed below.

(1) For Goodsell: the topics of a modern slavery hotline, compliance with Form 956, the operation of the DHA's phone line and the Australian Government's response to the *Hidden in Plain Sight* report.

(2) For Clayton: random 'spot checks' conducted by inspectors; public knowledge of the 'Border Watch' website; the DHA's role in an emergency (or non-emergency) phone number for s 407 visa holders; whether the vulnerability of s 407 visa holders should outweigh the need to provide procedural fairness to sponsors; and a modern slavery hotline.

32 The DHA contends that these topics concern government policy and could only be addressed by the Minister for Home Affairs, the Commonwealth Attorney General (**AG**) or the Parliament. Further, it is submitted that the Court should not make any findings or recommendations the subject of the AG's portfolio, given the AG was not invited to comment or participate in the inquest thus amounting to a denial of procedural fairness.

33 I reject the DHA's submissions for the reasons that follow.

(1) The vast majority of the evidence that DHA are seeking to impugn was not objected to by counsel for the DHA during the hearing.

(2) None of the topics canvassed with the witnesses were beyond the scope of issues explored during the inquest, and which otherwise ought to have been apparent from the requests for statements and the issues list, or the brief of evidence. Requests for statements addressing issues went

beyond 'assist[ing] the Coroner to understand the nature of the visa granted to Jerwin' and sought answers to direct questions regarding the DHA's involvement in the circumstances that led to the grant of Jerwin's s 407 visa, and whether it should have been approved. The tragic circumstances of Jerwin's death necessarily give rise to close analysis of what remedial steps could have been taken then and should be taken in the future.

- (3) It was clear from Issue 5 in the Issues List that witnesses from DHA would be asked about issues relating to potential recommendations.
- (4) The DHA was provided with the Issues list and it determined which witnesses were appropriate to provide statements and give evidence.
- (5) It is not unusual for government employees to provide evidence about operational or policy matters that informs an inquest. While such evidence may not directly reflect the 'policy' of a particular department, it does not detract from the potential utility of the evidence which is to be assessed in the context of the witnesses' role and experience. In this case, Clayton in particular, sought to provide the court with the benefit of his views, informed by almost two decades of experience within the DHA.
- (6) Much of the evidence now seeking to be impugned is evidence which the DHA appears to consider adverse to its interests. For example, concessions made by Clayton that there 'may be benefits in looking further at the details of this case to at least draw that ... there isn't effective coordination across government departments when considering ... such serious matters'. The court would not lightly disregard the views of an experienced public servant, who had provided two statements to the inquest and was apprised of relevant issues concerning the DHA.

- (7) To the extent that other DHA staff (or other agencies with relevant responsibility or authority) are subject matter experts or more appropriately consulted on topics, the DHA could have obtained the benefit of their input into proposed recommendations given they were on notice of proposed recommendations and given time to provide a written response.

Determination of whether the granting of Jerwin's visa was lawful

- 34 In paragraph 20 of their 28 May 2025 submissions, the DHA quote me as confirming that I do not need to make a determination as to whether or not the granting of Jerwin's visa was appropriate. I do not resile from that position. Rather, I accepted concessions made by DHA in the course of the inquest to the effect that while lawful, the decision was inappropriate. That concession was not challenged and was accepted by the court.

Power to make recommendations

- 35 I reject the submission by DHA that I am precluded from making recommendations pursuant to s 82 of the Act in relation to the absence of any formal review into Jerwin's death or as to the lack of co-ordination between the DHA and the Fair Work Ombudsman after Jerwin's death.

- 36 The objects of the Act include:

... to enable coroners to make recommendations in relation to matters in connection with an inquest or inquiry (including recommendations concerning public health and safety and the investigation or review of matters by persons or bodies)¹¹.

- 37 The power to make recommendations is found in s 82 of the Act:

A coroner (whether or not there is a jury) or a jury may make such recommendations as the coroner or jury considers necessary or desirable to make in relation to any matter connected with the death, suspected death, fire or explosion with which an inquest or inquiry is concerned.

¹¹ Section 39(e).

- 38 Section 82 has been interpreted broadly. In *Commissioner of Police NSW Police Force v Attorney General of NSW* [2025] NSWSC 1119 McHugh JA said at [48]:

Similarly, within the limits of the s 23(1) jurisdiction, the coroner has discretion to identify factual issues to be pursued and decided at an inquest for the purpose of exercising the discretion whether to make a s 82(1) recommendation. No doubt there may be a substantial overlap between the issues to be decided for the purpose of making s 81(1) findings (in particular, as to the “manner and cause of the person’s death”) and those to be decided for the purpose of making a s 82(1) recommendation “in relation to any matter connected with the death”. **But the latter may extend to at least some matters beyond the former, particularly where the recommendation is directed to systemic issues (as to which, see further below).** For example, new hospital procedures adopted after a person’s death might not themselves be within the “manner and cause” of death, but the fact and extent of the new procedures might well be relevant to whether or not to make a s 82(1) recommendation. Again, the jurisdiction s 23(1) confers to hold an inquest in which the coroner is given a discretion to make such recommendations includes the authority to decide factual matters that the coroner has properly identified as relevant to exercising the s 82(1) discretion.

- 39 As in a hospital death, evidence will be adduced in an inquest as to what steps were taken following the death to reduce the risk of a repeat occurrence. The adequacy of those steps will be reviewed by the coroner in their determination as to whether additional recommendations are necessary or desirable.
- 40 The DHA rightfully accepts at paragraph 19 of their 28 May 2025 submissions that the factual matrix related to Jerwin’s death is that it occurred whilst he was the holder of a subclass 407 visa – a visa which the DHA concedes ought not have been issued. What steps have been taken to reduce the risk of a repeat occurrence are wholly relevant to the coronial investigation.
- 41 How the circumstances of Jerwin’s time in Australia and tragic death were managed in the period after he died fits squarely within the death prevention role of a coroner empowered to make recommendations.

Jerwin’s life

- 42 Jerwin was born on 10 May 1997, in the Philippines. Jerwin was a graduate of Pangasinan State University with a Bachelor of Science in Agriculture. He had

four older siblings, Jamaica; Jessa-Joy; Jordan and Jasmine. Jerwin was the youngest. The siblings lived in the Philippines along with Jerwin's parents, Rosalinda and Oscar. Jamaica and Jessa-Joy attended the inquest with the rest of their family joining via AVL.

43 Jerwin shared a close relationship with his sisters Jamaica and Jessa-Joy, and he was in regular communication with them. In travelling overseas as part of his education, Jerwin was following in Jamaica's footsteps.

44 Jessa-Joy described Jerwin as:

...a sweet and kind guy. He was hard working and caring. He was very loving to our family. Jerwin was also very religious. He was very active in our Christian church in the Philippines, the Sound of Praise church in Mancup.

45 Jamaica described Jerwin as 'kind-hearted and always shares the words of God'. On his return to the Philippines, Jerwin wanted to work both in Agriculture and in the Church. Jerwin attended the [REDACTED] Catholic Church in [REDACTED] for the short period of time that he was in Australia. It was there that Jerwin first met [Witness 5 [REDACTED]], who later described Jerwin to her aunt, [Witness 3 [REDACTED]], as 'very happy and full of dreams'.

46 In her family statement Jessa-Joy described how her family remains broken-hearted from Jerwin's tragic death. She described the night they were informed of Jerwin's passing as the longest and saddest night of their lives; and she conveyed the anguish that she and her family have felt in attempting, for many years, to understand the truth of what happened to Jerwin.

47 Through Jerwin's sisters and the friends that Jerwin made here in Australia, those present at the inquest gained a picture in their minds of a very special young man, prematurely lost not just to his family and friends but also to the broader community. I express my deepest sympathy to Jerwin's family and friends for his tragic death. I acknowledge the loss to the community here in Australia and in the Philippines of a fine young man, determined to contribute to his country in the areas of religion and agriculture.

- 48 Jerwin arrived in Australia on 7 February 2019 pursuant to a s 407 visa. He was sponsored by the Agricultural Business operated by **Operator 1** having been introduced by Agent 1, Chairman of BOT, Jerwin's employer in the Philippines.
- 49 Jerwin participated in a Training Program outlined in an MOU¹² between the Agricultural Business and BOT.
- 50 Jerwin was only in Australia for approx. 5 weeks before he died. The bond that he made with **Witness 3**, her niece and her employer, in that brief period is testament to the special young man that he was.

Issue 1: The statutory findings required under s 81 of the Act

Post-mortem: Report by Dr Irvine, Forensic Pathologist, dated 2 May 2019

- 51 On 27 March 2019, Dr Irvine, conducted a limited autopsy.
- 52 She found the direct cause of Jerwin's death to be 'complications of multiple blunt force injuries.' The reference to 'complications' refers to the fact that the injuries suffered by Jerwin did not cause his immediate death – he died the day after the 'incident', being the exiting of the moving Van, which caused the blunt force injuries.
- 53 Dr Irvine observed that there was 'no investigative evidence of foul play.' She also confirmed that during the post-mortem examination she did not see any 'older injuries.' She did note numerous 'road rash' type abrasions on Jerwin's right and left shoulders, upper back, posterior based of the neck and left and right anterior chest.

What were the circumstances ('manner') surrounding Jerwin's death?

- 54 The circumstances surrounding Jerwin's death and the determination of the 'manner' of death is contentious.

¹² Memorandum of understanding.

55 On 14 March 2019, Jerwin exited the moving Van being driven by Operator 1 at [REDACTED] Road, approx. 1km east of [REDACTED]. Jerwin was transferred to Royal Melbourne Hospital where he succumbed to his injuries. As will follow, how and why Jerwin exited the vehicle are issues that were investigated as part of the coronial process.

Operator 1 and Agent 1

56 Operator 1's¹³ description of events follows.

- (1) At around 12pm on 14 March 2019, shortly after he and Jerwin left the Agriculture Premises in the Van, Operator 1 told Jerwin that he was taking him to the airport.
- (2) After this, Jerwin took off his shirt, unclipped his seatbelt and the Van began to 'ding'.¹⁴
- (3) He rang Agent 1 to try to calm Jerwin down, but Jerwin did not respond to Agent 1.¹⁵
- (4) Jerwin asked again 'where in Melbourne are we going?'. Operator 1 replied, 'I am taking you to the airport, you know that the tickets [are] in front of you. Or if we're not going to the airport then I will take you to the police'.
- (5) At that moment, Jerwin opened the front passenger door of the van, Operator 1 began to brake. He 'yelled out "Jerwin what're you doing?" and then [Jerwin] jumped'.

¹³ On 14 March 2019, Operator 1 gave an account of events to Nelley. A supplementary statement was provided on 27 June 2019.

¹⁴ That is, the sound a vehicle makes when a passenger is sensed and the seatbelt is not engaged.

¹⁵ Telephone records confirm that Operator 1 telephoned Agent 1 at 12.03pm and that they had a 4-minute and 49-second phone call.

57 Agent 1 recounted the following in relation to what he heard (over the telephone) happening in the Van.

- (1) Operator 1 called him and said, 'we are on our way to the airport'.
- (2) Jerwin asked Operator 1 'Where in Melbourne you will drop me?' and Operator 1 responded, 'No Jerwin I'm going to take you to the airport, I told you that earlier. Here this your ticket, see?'
- (3) At this point, Jerwin sound flustered. He was saying things like, 'What's this, where are we going?'
- (4) Agent 1 suggested to Operator 1 that he could talk with Jerwin to help calm him down.
- (5) Agent 1 heard Jerwin yell, 'Let me out, let me out!' Operator 1 told Jerwin to 'just calm down' and 'talk to [Agent 1]'.
- (6) Agent 1 thought he might be able to calm Jerwin down and 'explain the reality to him'. When Operator 1 attempted to give Jerwin his phone to talk to Agent 1, Agent 1 heard Jerwin yell 'please god, protect me.' The next thing Agent 1 heard was Operator 1 saying, 'oh my god he jumped out of the car!'.

58 On 14 March 2019 at 2.40pm, Agent 1 gave an account of events to police officer Churchin which was captured on Body Worn Video. Relevantly, Agent 1 stated:

So he's – we're a school here, training, fine foods.

...

And so he was here as part of the Filipino-Australia connection, to learn fine food growing, making, processing, and marketing, direct marketing. So that was here. But he – he showed zero interest in wanting to learn, and, yeah, just zero willingness. And he was always on his mobile phone, on the wi-fi, on our wi-fi. And then we caught him, porn, looking at porn and gaming. And it seems

to be that he has some connection with Melbourne. We've had talks from [BOT] in the Philippines saying that he's posting some stuff on there, on some site that was a little bit deflaming [sic], defamatory. And, I did ask him, I said, Jerwin, what are you doing? Why are you doing this?

...

I said, please stop this. I said, We've done everything out of good faith. We've spent about 400,000 pesos to get you out here'. It's about a million peso budget for these people. And the aim of it is to train them up so they can, when they go back, they can run their own farm, and manage a farm, manage an enterprise, and be part of a group called ..., in the market and selling. So helped all the way through. He showed zero interest.

...

And I did contact the immigration department. And I said, Well, what do I do? And they said, Oh, look. You can say that you don't want to – you can't be here anymore, and he needs to go back. And that's what I said. And he basically said, Can you book the next available ticket? I booked the next available ticket. So that was extra cost. I started to take him to Melbourne, and I said to him, I said, No, I have to take you right to the airport and through the gates.

...

And he said, No. No. No. Something about just wanting to go to Melbourne.

...

I said, Jerwin, you understand I'm the sponsor. I'm responsible for everything, right? You don't understand. My responsibility stops once you leave. And he goes, No. I don't want to go to Melbourne. I said, well, Jerwin, if you're not going to go to Melbourne, I will drop you off at the police, right? That's when he jumped. But, yeah, there's a lot I'm still trying to understand why ...

- 59 Subsequent accounts of at least Agent 1, do not accord with his statement to police. In an email account provided (to Fr Peter Smith) on 24 January 2020, Agent 1 stated the following:

On the way to the airport on 14 March 2019, **Operator 1** was driving Jerwin and while taking on his speaker phone to his right, Jerwin sitting his left undid his seat belt, took off his t-shirt and opened the door. **Operator 1** heard the rush of air and quickly responded applying the breaks while at the same time navigating the large oncoming Semi-trailer. Jerwin paused as he hung our side of the vehicle for it to slow down before he jumped at about 40km/hour. We strongly suspect Jerwin had been coached and his actions were intentional trying to hurt himself to collect insurance money and stay in the country. The oncoming semi-trailer driver witnessed the entire incident. He quickly called the ambulance and police and paramedics took him to the local hospital, and later he was airlifted him [sic] to Melbourne Royal Hospital. Jerwin died in the early hours of 15 March 2019.

60 Through their counsel, both **Operator 1** and Agent 1 objected to giving evidence pursuant to s 61 of the Act. **Operator 2** who is also involved in the Agricultural Business, was also called to give evidence at the inquest, but objected pursuant to s 61 of the Act.

61 On 18 November 2019, prosecutors in the Philippines (in the Regional Trial Court in Tarlac City) commenced criminal proceedings against Agent 1's former partner, Agent 1 and **Operator 1** for the offence of 'qualified human trafficking' in relation to Jerwin and two other program trainees. The proceedings against Agent 1's former partner were dismissed, whilst the proceedings against Agent 1 and **Operator 1** are stayed given both persons are outside the jurisdiction.

62 In those circumstances, and given ss 61(1) and (4),¹⁶ I did not require those three witnesses to give evidence pursuant to s 61 of the Act.

63 The evidence of both **Operator 1** and Agent 1 is untested. I could not be satisfied as to its reliability.

Witness 2

64 **Witness 2** was travelling on Road in an easterly direction¹⁷ in his white Kenworth T604 truck at around 100km an hour. In his contemporaneous statement **Witness 2** said:

I was approximately 50 metres away when I saw the passenger door suddenly swing open. The next thing I noticed was a human body went up above the roof of the car. It looked like he was a type of rag doll coming out of the car. The body quickly fell back to the ground.

65 In his oral evidence at the inquest, **Witness 2** said that he was driving his truck in the opposite direction to the Van, on a clear and cloudless day. He told the Court that his seat in the truck is around two metres off the ground, which sits

¹⁶ Which in effect provides that a witness cannot be required to give evidence where the evidence may tend to prove the witness has committed an offence under the law of a foreign country.

¹⁷ The opposite direction to the direction Jerwin was travelling in the car driven by **Operator 1**

higher than the Van, and that the road is a single carriageway with a slight sweeping bend.

66 **Witness 2** told the Court that he could see the Van approaching in the distance from about half a kilometre up the road. He did not at any time see the Van swerve, leave its lane or do anything erratic. He estimated the Van was travelling about 80km/hr. **Witness 2** first noticed something untoward about the Van when it was about 50–100 metres away from him, although he passed the Van ‘just a split second or a couple of seconds’ later.

67 **Witness 2** gave the following account to the Court:

So, I'm driving out back towards my farm. The white van's coming towards me and we're, you know, within 50 to 100 metres. The passenger door came open and then I saw a body - you know, it looked to be horizontal to the ground and above the height of the car - bearing in mind I'm sitting at 2 metres - and then the body disappeared behind the car. We passed one another and the young fella was lying on the side of the road.

68 **Witness 2** gave evidence that that opening of the front passenger door was a ‘complete movement’, an ‘unhindered full opening’. The next thing he saw was Jerwin’s body in the air beside the car ‘at a height that would seem to be from where I was sitting about level with the top of the car or higher’.

69 **Witness 2** confirmed that he did not see Jerwin’s body leaving the Van because the open door blocked his vision. Nor did he see the moment that Jerwin hit the ground, as Jerwin was behind the vehicle at that time.

Initial police investigation

70 Nelley¹⁸ formed a view that Jerwin was not ejected from the vehicle and was not the ‘subject of foul play’ based on:

- (1) the internal measurements of the vehicle

¹⁸ The officer in charge of the initial NSWPF investigation.

(2) the locking mechanism that required the internal passenger door handle to be used to open the door

(3) **Witness 2** evidence about how Jerwin left the vehicle.

71 Nelley opined, 'it is my belief Jerwin was ejected from the vehicle by his own intentional or accidental actions.' Nelley confirmed this view in his oral evidence.

72 Concerns as to the adequacy of the first investigation were raised by Jerwin's family and explored during the inquest - these concerns are detailed further below.

Expert evidence

Sgt Kristy Foster, NSWPF, Metropolitan CIU, report dated 18 July 2023

73 Consistent with Nelley's view, Foster opined that Jerwin left the Van of his own volition. She considered her opinion was consistent with the evidence of **Operator 1** (independently supported by Agent 2) and the evidence of **Witness 2** that he observed Jerwin leave the vehicle in an upward motion 'above the roof of the car'. She indicated that the opinion of a biomechanical engineer could be obtained to confirm her views.

Dr Andrew McIntosh, Biomechanical Engineer, report dated 24 June 2024

74 On 14 April 2024, Dr McIntosh was able to undertake a site visit to [REDACTED] Road, [REDACTED], and also to access the vehicles driven by both **Operator 1** and **Witness 2**. A simulation of events from **Witness 2** perspective was also conducted and recorded (part of which was played in Court).

75 Dr McIntosh summarises the incident as outlined below.

(1) Jerwin was the front passenger in the Van. Jerwin and **Operator 1** were the only occupants.

- (2) It is alleged Jerwin voluntarily exited the Van while it was in motion. Various terms are used to describe Jerwin exiting the Van - leaping, jumping, jumping from front door, or opening the front door and jumping.
- (3) The Van was travelling west (towards [REDACTED]) in a 100 km/h speed zone on [REDACTED] Rd, [REDACTED] NSW. There is one lane in each direction and [REDACTED] Rd is a sealed bitumen road with unsealed dirt and gravel road edges.
- (4) At the time the incident occurred, **Witness 2** was driving a semi-trailer haulage truck east on [REDACTED] Rd.
- (5) No tyre marks were observed or recorded following the incident.
- (6) The COPS¹⁹ report narrative details refer to Jerwin leaping from the vehicle while it was travelling at 100 km/h. Paramedic Hurd referred to **Operator 1** stating that he was travelling at 30 or 40 km/h when the incident occurred.
- (7) According to Agent 1 and **Operator 1** there was a live phone call at the time of the incident and Jerwin was speaking immediately prior to exiting the vehicle.
- (8) There was only a small amount of blood on the road near the southern edge fog line.
- (9) The COPS report refers to the Incident location as 2 km east of the [REDACTED] Highway, [REDACTED].
- (10) Jerwin was found lying half on the bitumen roadway and half off the roadway.

¹⁹ Computerised operational policing system.

76 During the site visit on 18 April 2024, Dr McIntosh was able to access the Van. Dr McIntosh's observations of the Van follow.

- (1) It was equipped with ABS brakes which were functioning correctly at the relevant time.
- (2) The doors of the Van locked automatically when the vehicle was in motion and the front passenger door could be opened via the door's internal handle while the vehicle was in motion.
- (3) The horizontal distance from the centre of the steering wheel to the nearside front door handle is approximately 120cm.²⁰
- (4) There was a distance of 1.6m from the front passenger door handle to the centre of the steering wheel when the front passenger's door, at its fully open position, was measured.
- (5) The reach distance for a seated driver (left shoulder to nearside front door handle) was approximately 120cm \pm 10 cm (for a driver seated upright and not leaning).
- (6) There are 'barriers laterally' in the front compartment - namely, two arm rests.

77 Significantly, Dr McIntosh noted that at 188cm, he was not able to sit in the driver's seat and reach the nearside front door handle of the Van while maintaining a functioning driving posture (that is, holding the steering wheel and observing the road).

78 In analysing Jerwin's abrasion injuries, Dr McIntosh noted that these were consistent with bouncing and sliding contact between the road surface and/or gravel road shoulder, with biomechanical impact tests 'strongly support[ing] the

²⁰ This is consistent with measurements taken by police.

opinion that [Jerwin's] head injuries are consistent with jumping or falling from the moving vehicle.'

79 Dr McIntosh's opinion is summarised below.

- (1) Based on the incident context, his inspection of the Van, the dimensions of the cabin of the Van, body dimensions (anthropometry) and biomechanical considerations (forces), it is very unlikely that **Operator 1** could have opened the door of the Van and then pushed Jerwin out of the Van.
- (2) The reach requirements for **Operator 1** to have pushed Jerwin out of the vehicle 'exceeded the normal reach envelope, even under optimal circumstances.'
- (3) If, hypothetically, it was possible to operate and maintain control of the vehicle while reaching around the front passenger and releasing the door latch, it may not be possible to then exert sufficient force to push the door open because of the extreme posture and door resistance due to its mass, its hinges and air resistance (aerodynamic drag).
- (4) Jerwin did not exit the van on 14 March 2019 as a result of being pushed. Instead, Jerwin exited the van voluntarily by jumping or falling.
- (5) As to the speed the vehicle was travelling, Dr McIntosh stated that 'it is not possible to apply information regarding injuries in this case to make a reliable estimate of speed'. However, as guide, he considered that the injuries were more suggestive of speed in the range of 30km to 60km, rather than 60km to 100km/h (being a 'best guess' based on experience and expertise).
- (6) The available evidence is consistent with Jerwin's body hitting the ground following a jump or fall.

(7) It is possible that Jerwin jumped from the Van step and, momentarily, **Witness 2** formed a visual impression that his body was horizontal and at the roof level of the Van.

80 In oral evidence, Dr McIntosh confirmed his opinion explaining that it was based on the driver's ability to reach over and open the passenger door, and push someone out of the vehicle, whilst controlling the Van. The driver's ability was hindered by the ergonomic question of reaching around the passenger to the door, the wind resistance against the door opening and remaining open, and the force required to push the passenger out of the Van. His opinion was not ultimately different even in the scenario of the driver braking. Whilst the thesis of 'pushing' someone out of the Van was marginally more possible with a third person, Dr McIntosh did not consider it a very likely scenario. Nor was there any evidence of the involvement of a third person.

81 With respect to conclusions drawn from the simulation of the incident, Dr McIntosh stated that **Witness 2** probably would have been able to see the Van's door open but would not see anything behind the door or below the roof line. He considered it unlikely that **Witness 2** had seen Jerwin's body above the roof of the car after it had 'bounced' from the road surface, and he considered that there was some error in perception by **Witness 2** as a result of Jerwin being displaced laterally from the Van, and in fact being below the roof line of the car. Dr McIntosh considered that **Witness 2** view of Jerwin in a horizontal position was more consistent with Jerwin's initial exit from the vehicle by jumping or leaping, rather than it being a view of Jerwin after he had already hit the ground.

82 Dr McIntosh's evidence was not the subject of challenge in cross-examination.

Mark George, Forensic Crash Investigator, report dated 6 July 2024

83 George opined that it was not possible to provide a conclusive opinion on how Jerwin may have exited the vehicle.

84 Of relevance to the speed the vehicle may have been travelling at the time Jerwin exited, George observed that from a vehicle dynamics perspective, the

aerodynamic force of the air rushing past the Van creates significant resistance against the door being opened. At high speeds, such as that reported of around 100 km/h, this force would be substantial and would make it very hard to push the door open, which, at all times would be getting forced back towards the closed position. At some point, if Jerwin managed to open the door sufficiently to 'jump up' from the vehicle, he would need to stop pushing outwards on the door in order to jump outwards and upwards, whereupon the door would immediately be forced back towards the closed position (back into the victim).

85 George considered, the door would be easier to open as the speed decreased and indeed, once opened, the inertia of the vehicle braking heavily and decreasing speed would contribute to the force opening the door, potentially including the mass of an unrestrained victim against the door interior, to the opposing force of the oncoming airflow. Conceivably, if Jerwin jumped outwards and upwards from the vehicle during this time, with the Van slowing rapidly, he could potentially impact the upper section of the door trim/sill and rotate (pitch) up towards the roof line level of the vehicle (forcing the door fully open at the same time) before falling onto the roadway. **Witness 2** observations would not be inconsistent with such a scenario.

86 George also observed some consistency between the versions of **Witness 2** and **Operator 1** regarding plausible vehicle and pedestrian dynamics. Applying certain equations, he formed the view that the most likely speed the vehicle was travelling at was a range of between 34 and 48km/h.

87 In oral evidence, George confirmed his view that based on the available information, there was 'just nothing there to validate how [Jerwin] may have exited the vehicle.' However, George agreed that it was unlikely that Jerwin was pushed, given the dimensions of the vehicle and the wind force resistance dynamics.

How did Jerwin come to leave the vehicle?

88 I accept the opinion of Dr McIntosh to the effect that Jerwin voluntarily jumped or fell from the vehicle noting:

(1) Dr McIntosh had the benefit of viewing the subject vehicles, conducting a site inspection and also a simulation. His analysis was considered, comprehensive and not ultimately challenged.

(2) Dr McIntosh's opinion is supported by other evidence including the opinion of Dr Irvine that there was 'no investigative evidence of foul play' and the opinions expressed by George, Nelley and Foster.

89 In addition, in relation to speed, I accept George's analysis and Dr McIntosh's 'best guess' that Operator 1 slowed the vehicle in circumstances where it became apparent that Jerwin had taken his seat belt and his shirt off²¹.

90 As to what else was said or otherwise occurred in the Van prior to Jerwin exiting, I am unable to make a determination. I accept that there was a phone call between Operator 1 and Agent 1 commencing at 12.03pm. While Operator 1 and Agent 1 both give a version as to the conversation between Operator 1 and Jerwin, and those versions are largely consistent, their evidence was untested as they objected to giving evidence at the inquest.²² Call charge records obtained by the NSWPF show that Operator 1 and Agent 1 had 5 lengthy phone calls between 12.49pm and 6pm on 14 March 2019²³ and another 4 calls the following day²⁴. This has the potential of tainting the evidence we do have from these witnesses.

91 I find:

(1) that Jerwin voluntarily jumped or fell from the Van.

(2) in relation to speed, Operator 1 slowed the vehicle in circumstances where it became apparent that Jerwin had taken his seat belt and his shirt off.

²¹ To take off his shirt, Jerwin would have been required to undo his seatbelt. The fact that his shirt had been removed is consistent with it not being found at the scene, the account of Witness 2 and the potential that the shirt was photographed after the incident at the Agricultural Premises.

²² Such objection being upheld.

²³ 12:49pm, 25m57s; 13:43pm, 23m5s; 17:55pm, 54m36s; 20:26pm, 29m45s

²⁴ 08:37am, 24m34s; 08:41am, 56m10s; 10:35am, 48m23s; 13:42pm, 9m50s

92 I am unable to make a determination as to what was said or what otherwise occurred in the Van prior to Jerwin exiting.

Why did Jerwin leave the Van?

93 In exiting the Van, Jerwin left behind his luggage and his phone. It is likely that something happened in the car with **Operator 1** and Agent 2 on the phone which compelled Jerwin to take the split second decision to jump (or prepare to jump and instead fall). However, the evidence does not enable any finding as what precisely occurred.

94 Nunez²⁵ stated that Jerwin may have thought he would survive the jump from the car on the basis that people commonly jump on and off transport in the Philippines.

95 This evidence was refuted by Jerwin's family. In her affidavit of May 2019, Jamaica stated: 'I know my brother so well and he will never jump off a fast moving vehicle.' In her submission to Magistrate Brender in June 2019²⁶, Jessa-Joy similarly stated: 'I firmly believe that my brother did not jump off a speeding car and is out of character of him to do such act'. Jessa-Joy also noted that, 'it is exceptional that somebody will jump off someone's car'.

96 The evidence that follows supports the theory that Jerwin did not know he was going to Melbourne airport on 14 March 2019 until after he left the Agriculture Premises in the Van with **Operator 1**

(1) On 28 February 2019, Jerwin messaged Jamaica complaining about his working conditions. Jerwin said that if he were to simply quit, 'maybe he will send me back home immediately' and Jerwin suggested an alternate option was possible: 'I will go to Perth'.

(2) On 12 March 2019, **Operator 1** contacted the DHA regarding whether he could send Jerwin home because 'he wasn't participating in the training

²⁵ A Filipina and the migration agent who was contacted by Jerwin regarding his s 407 visa.

²⁶ Magistrate Brender was the initial coroner to have carriage of Jerwin's matter.

programme he was here on his visa for'. The DHA told **Operator 1** that he could not force Jerwin to leave, he could only ask him to leave. **Operator 1** said that following the conversation with the DHA, he spoke to Jerwin telling him that he needed to leave and that Jerwin asked if he could go to Melbourne. **Operator 1** says he replied 'I am responsible for you I am your sponsor. You cannot stay here anymore and you need to leave', to which Jerwin replied 'alright I want to go as soon as possible'. Of note, Regulation 2.81 of the *Migration Regulations 1994* (Cth) (the **Regulations**) requires a sponsor, in certain circumstances, to reimburse the Commonwealth for costs incurred in locating and removing a non-citizen, with the debt for removal shared equally between the unlawful non-citizen and the sponsor.

- (3) Later, on 12 March 2019, Jerwin sent a Facebook message to Jamaica telling her that **Operator 1** had booked him a return flight to the Philippines for 30 March 2019. Jerwin also told her that 'Mel²⁷ is inviting me to visit Perth ... she will contact the immigration so I can still continue my training to another employer ... they will have me in Perth.' Nota confirmed this in her statement.
- (4) On 12 March 2019, Jonathan Sahagun, a friend of Jerwin's from the Philippines, telephoned Jerwin. Jerwin told Jonathan that his employer had booked him a flight to return to the Philippines on 30 March 2019.
- (5) On 13 March 2019, Jerwin sent a series of Facebook messages to Nunez stating, 'my employer will send me back home by the end of this month (not sure because he didn't show me the itinerary yet)'. Jerwin told Nunez that he still wanted to continue his traineeship in 'other agricultural sector/company' and asked if she knew of anyone who could sponsor him. Nota's statement also confirmed that such inquiries were being made.

²⁷ Melina Nota, Jerwin's cousin that lived in Perth, statement dated 18 December 2024 at Exhibit 22.

- (6) On 13 March 2019, Jerwin spoke with **Witness 6** over the phone and told her that he would be fine with either being sent back to the Philippines or getting 'another chance with another visa'. **Witness 6** gave oral evidence regarding this phone call and stated that Jerwin told her his electricity had been cut off and that he did not have any hot water. They also discussed Jerwin getting his passport back. The following day, she received a message from Jerwin saying he was confident and was going to do that.
- (7) On the evening of 13 March 2019, according to Agent 1, he and **Operator 1** discussed whether they should 'let [Jerwin] know in advance or not' about having a flight on 14 March, with Agent 1 stating: 'I said 'no don't tell him, you don't want any trouble at the airport.'
- (8) Around 6am on 14 March 2019, Jerwin sent Nota a message saying he was going to work; he later sent a further message stating that his boss was acting 'nice', but that he was determined not to trust him again.
- (9) At 10.57am on 14 March 2019, Jerwin sent a Facebook message to Nunez asking her 'can my employer send me back home without any agreement with my visa?' As noted above, the message sent prior by Jerwin to Nunez on 13 March 2019 stated: 'my employer will send me back home by the end of this month'.
- (10) Around 11.00am on 14 March 2019, according to **Operator 1** he told Jerwin in his cabin: 'Good news, I've got you a ticket for today'; he said to 'get packed and get going'. **Operator 1** stated that he then watched Jerwin pack as he did not trust him; he then carried Jerwin's suitcase to the Van, placing it in the back. Thus, from around 11am, on **Operator 1's** account, Jerwin knew that he was going to the airport and returning to the Philippines that day.
- (11) At 11.23am, 11.24am and 11.27am that day, Jerwin sent a series of emails to Nunez, providing her with his employment contract and visa

documentation. Significantly, he did not mention going to the airport or leaving Australia later that day.

- (12) Around 12.00pm on 14 March 2019, Jerwin then left the Agriculture Premises in the Van driven by **Operator 1**. The incident occurred sometime just prior to 12.08pm, when **Witness 2** called emergency services.

- 97 It seems highly unlikely that Jerwin would not have communicated to friends and family that he was immediately leaving for the airport and departing on a flight to the Philippines in a matter of hours, upon being told this. Also, on a practical level, the airport in Manila was 4-5 hours from where Jerwin's family lived. He would have needed to arrange transport from the airport.
- 98 Based on the evidence outlined above, I find that Jerwin did not know he was going to the airport until after the Van had left the Agriculture Premises.
- 99 I reject the proposition that Jerwin jumped (or fell) from the vehicle because it was common practice in the Philippines.

Was Jerwin was fearful of **Operator 1**

- 100 It was submitted by the Assisting Team that Jerwin became increasingly fearful of **Operator 1** over the period 10 to 14 March 2019. The evidence on which this submission is based is summarised below.
- (1) **Witness 4** met with Jerwin on 10 March 2019. **Witness 4** husband picked Jerwin up and he was 'hiding' before jumping the fence to get into the car. When she saw Jerwin he looked 'completely sunburnt and very fatigued and scared'. **Witness 4** offered to speak to **Operator 1** about Jerwin's rights. Jerwin was 'actually very scared when I even brought up **Operator 1**s] name.' Jerwin later agreed for **Witness 4** to speak with **Operator 1**.
- (2) On 11 March 2019 at 2.02am, Jerwin wrote to Jamaica on Facebook, 'Sister, I am afraid'. He later spoke with Jessa-Joy, and said his boss was rude and that he is 'really intimidating me'. Jamaica spoke to Jerwin

on 11 March 2019 and after the call, he messaged her stating that **Operator 1** had booked him a flight home on 30 March 2019. On 11 March 2019, Jamaica gave her brother advice to 'lock his door for his safety'.

- (3) By 12.47pm that day, Jerwin had posted messages on the 'Smith²⁸ Filipino candidates' Facebook page, telling them 'I still hope that even the \$750 must be given to us' but that 'after 6 months we will be having our salary only 5400 [pesos] only'. Jerwin also told the Smith candidates that 'we will also pay the expenses they spend coming here.'
- (4) At 4.06pm that day, Jerwin messaged Jamaica on Facebook telling her that 'they spoke with my boss ... and they told me he is rude ... I want to leave here ... He has no intention of paying me.' Jerwin also said that he thought that **Operator 1** might send him home.
- (5) At 4.47pm that day, he sent a further Facebook message to the Smith candidates, stating 'There is no \$750. I spoke with **Operator 1** I am leaving. You can go if that's what you want. Sorry guys.' This is likely what **Operator 1** was referring to when he spoke to Churchin after the incident (around 2.40pm), stating:

We've had talks from [BOT] saying that he's posting some stuff on there, on some site that was a little bit deflaming [sic], defamatory. And, I did ask him, I said, 'Jerwin, what are you doing? Why are you doing this?'

- (6) Jerwin's posting to the future Smith candidates (future recruits for the sham 'Training Program') effectively warning them about the arrangement likely enraged **Operator 1**. This accords with his account to Churchin, as well as Jerwin's contemporaneous messaging and calls with Jamaica.

²⁸ A pseudonym.

(7) At 7.00pm that evening, Jerwin contacted **Witness 4** saying, 'Mam I'm really scared now'. She responded saying all that **Operator 1** could do is send him back, to which Jerwin replied, 'I'm okay with that mam.'

(8) Around 7.30am on 13 March 2019, Jerwin had a further conversation with **Witness 4** where he told her:

The electricity went off last night and is still off. **Operator 1** has shut it off. I am really scared. **Operator 1** got really angry with me last night. He is very aggressive. The authorities had called **Operator 1**. They asked about my wages. I spent all night locked in my cabin because I was so scared. My food is running out and **Operator 1** has not bought me any supplies. The electricity is off. **Operator 1** is really upset. Can I go and stay with **Witness 3**?

(9) In oral evidence, **Witness 4** stated that this was a short conversation (ten to fifteen minutes); Jerwin's tone of voice was 'very scared'. She was getting ready for work and 'tried to calm him down because he was completely scared, and I could see the anxiety in him.'

(10) Nota recalled that on 13 March 2019, Jerwin messaged her, stating that his electricity had been cut off; she told him to leave immediately if he felt unsafe. He replied that he could not 'because his boss claimed he had the "right to handle him" and threatened to call the police if anyone pick him up'.

101 The evidence summarised above supports the finding that between 10 and 14 March 2019 Jerwin became increasingly fearful of **Operator 1**. This fear was further compounded by Jerwin feeling threatened when **Operator 1** indicated he would take him to the airport or the police. This is consistent with **Operator 1**'s evidence of Jerwin's reaction when that threat or comment was made while they were in the Van and before Jerwin exited the Van.

Issue 1 findings: Jerwin's death and the surrounding circumstances

I find:

- (1) Jerwin died on 15 March 2019 at Royal Melbourne Hospital from complications of blunt force injuries.
- (2) Between 10 and 14 March 2019 Jerwin had become increasingly fearful of Operator 1. This fear was further compounded by Jerwin feeling threatened when Operator 1 indicated he would take him to the airport or the police. This is consistent with Operator 1's evidence of Jerwin's reaction when that threat or comment was made while they were in the Van and before Jerwin exited the Van.
- (3) Jerwin voluntarily jumped or fell from the Van.
- (4) In relation to speed, Operator 1 slowed the vehicle in circumstances where it became apparent that Jerwin had taken his seat belt and his shirt off.
- (5) I am unable to make a determination as to what was said or what otherwise occurred in the Van prior to Jerwin exiting.

Issue 2: Circumstances leading up to Jerwin's departure from the Agricultural Premises on 14 March 2019

Overview of Training Program and visa approval for Jerwin

Recruitment of Jerwin

- 102 On 23 September 2018, Jerwin expressed his interest in the Training Program advertised on Facebook. Regular communication with Agent 1 followed.

- 103 On 29 September 2018, Jerwin participated in a Skype call with **Operator 1** facilitated by Agent 1, which took the form of an interview for a training role. Agent 1 subsequently informed Jerwin that he had been accepted and Jerwin agreed to work at BOT in the Philippines during the time that it took for the visa to process.
- 104 On 3 October 2018, Jerwin commenced work at BOT in San Juan de Mata in the Philippines.
- 105 On 1 November 2018, **Operator 1** sent a letter to Jerwin confirming his acceptance into the Training Program. The letter stated that Jerwin would be employed by BOT as a management trainee on behalf of the Smith Group. The Agricultural Business was then to cover the cost of Jerwin's return air travel, accommodation and meals, health insurance whilst in Australia and all visa expenses. There was mention of a 'Monthly Salary Paid by BOT.' Jerwin's out of pocket expenses would include his clothes, passport preparation, pre-departure vaccinations, stationery and a local Australian Sim card.
- 106 On 8 November 2018, Agent 1 told Jerwin that he was going to send through Jerwin's employment contract with BOT to support his visa application. Agent 1 then discussed **Operator 1's** scholarship, noting that it would include 'flights insurance & big fat monthly expenses.' This was followed by a message from Agent 1 which read 'Ha ha ha'.
- 107 On 10 November 2018, Agent 1 emailed Jerwin a copy of the 'Draft Smith Management Trainee Employee Agreement'. In that email, Agent 1 asked Jerwin to keep in mind that the document was for immigration purposes, stating that Agent 1 would pay him a 'healthy monthly expenses stipend' and said that 'while we do not want to break the law, we have been very creative to skirt around issues like your [sic] having to pay employment tax etc.'

Subclass 407 Training Visa Process and Sponsorship Obligations

108 Goodsell²⁹ explained that the issuing of a s 407 training visa entails a two-step process:

- (1) an entity must be approved as a 'Temporary Activities Sponsor' under s 140E of the *Migration Act 1958 (Cth)* (**Migration Act**); and
- (2) under s 140GB of the *Migration Act*, the Temporary Activities sponsor must nominate an applicant for a training visa, and this nomination must then be approved by the DHA Decision maker³⁰.

109 Obligations imposed on sponsors pursuant to the Regulations include:

- (1) to comply with record keeping requirements
- (2) to provide accommodation for applicants in a volunteer role, such accommodation to be of a reasonable standard, clean and well-maintained, have a lounge area, power for lighting, cooking and refrigeration, adequate privacy and secure storage
- (3) to ensure that the sponsored person does not work in an occupation, program or activity other than that for which a nomination has been approved
- (4) not to recover, transfer or take actions that would result in another person paying for certain costs

²⁹ Since 2022, the Director, Student Program Management Section at the DHA. He prepared four statements for this inquest (three before and one after the hearing) and gave oral evidence at the hearing.

³⁰ In their submissions, the DHA indicated that the power to approve is exercised by a delegate of the Minister, using their own discretion (see para 27 of the DHA's submissions dated 27 May 2025). I will refer to the **DHA Decision Maker** in these findings and in doing so I am referring to the person within the organisation of the DHA who had the relevant authority to make the decision and did make the decision.

- (5) reimbursing the Commonwealth for costs incurred in locating and removing a non-citizen, with the debt for removal shared equally between the unlawful non-citizen and the sponsor

(together, **Sponsor Obligations**).

- 110 Goodsell explained that there is an expectation that there would be classroom-based training and the decision-maker has to be satisfied that this requirement is met. However, the word 'classroom' is not defined and training programs could have a variety of different structures. When asked, Goodsell agreed that a physical environment conducive to delivery of the structured education program would be expected.

Nature of a s 407 visa

- 111 A s 407 visa allows nominees to visit Australia to complete a workplace-based training or a professional development training program.³¹ Jerwin's s 407 visa fell under the category of 'occupational training for capacity building overseas.' This enabled the nominee to undertake 'professional development programs of face-to-face teaching in a classroom or similar environment in Australia. It is for overseas employers to send their managerial or professional employees'.³²
- 112 For approval of **Operator 1**'s nomination of Jerwin, the Training Program had to meet various requirements: these included that the position was a genuine training position, that there was a tailored and structured workplace training program, and that there was a relevant classroom-based training program.

****Operator 1** the Agricultural Business applies to become a sponsor**

- 113 On 19 November 2018, **Operator 1** applied to the DHA for the Agricultural Business to become a 'Temporary Activities Sponsor'. The application was

³¹ Home Affairs, *Subclass 407 Training Visa*: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/training-407#About> (accessed 16/03/2025)

³² Home Affairs, *Occupational training types for Training visa (subclass 407)*: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/training-407/occupational-training-types#content-index-2> (accessed 16/03/2025).

accepted on 20 November 2018³³ for the period 20 November 2018 to 20 November 2023.

- 114 On 24 November 2018, Agent 1 and his then wife, signed Jerwin's 'Smith Management Trainee Development Employment Agreement.' The base salary was set at P5,000 per month (approximately AU\$131 equivalent) with performance incentives to be 'discussed and agreed during monthly dialogs with' Agent 1.
- 115 On 27 November 2018, Jerwin signed the Australian Department of Immigration and Border Protection's 'Form 1283: Acknowledgement of Unpaid placement – visa applicant' in relation to his placement at the Agricultural Business and Premises for a period of 24 months. **Operator 1** also signed this form.

Approval of s 407 visa

- 116 On 31 January 2019, **Operator 1** received confirmation that Jerwin's s 407 Visa was approved for Jerwin to be a 'Mixed Crop Farmer' at the Agricultural Business from 31 January 2019 to 31 January 2020. Jerwin was the first proposed trainee under the arrangements agreed between Agent 1 and **Operator 1** to be approved by a DHA Decision Maker.

Jerwin travels to Australia

- 117 On 7 February 2019, Jerwin travelled to Australia and was collected from the airport by **Operator 1** he was then taken to the Agricultural Premises where he lived in a cabin annexed to the property used to operate the Agricultural business, until his death on 14 March 2019.

³³ Albeit in a different corporate name than applied for – it is unclear why.

Issue 2 (a): The information provided to obtain the s 407 visa, and the manner in which Operator 1 and Agent 1 sought to obtain approval for Jerwin to come to Australia

Nature of the s 407 Training Visa approved for Jerwin

118 In summary, the s 407 Visa issued to Jerwin was for an unpaid position. It was for the capacity building of professionals or managers, providing a genuine training opportunity, tailored to the individual's professional development, with a substantial component of classroom instruction.

Information provided by Operator 1 for Jerwin's s 407 Training Visa

119 The 'Application for a Training Visa' submitted by Operator 1 on 29 November 2018 included the following:

Training type: Professional development

Position: Management Trainee

Occupation: Mixed Crop Farmer

Duties/activities: Learning: Sustainable Farming Property Planning, Organic Farming International Best Practices, Farm Operations Standard Operating Practices Facilities Management, Fine Food Production Best Practices and Fine Food Brand Management

No remuneration to be received and the stay to be funded by a Scholarship from the Agricultural Business.

120 The 'Application for a Training Visa' also cited 'supporting evidence' as including an 'Employment contract' and 'Smith Management Trainee Development Agreement'.

121 Subsequently, an email (undated) to Nelley from Matthew Noble of DHA³⁴ stated that the supporting documentation for the application also relevantly included the 'Management Training Development Volumes 1 and 2', Scholarship Acceptance Letter, and the MOU.

122 The MOU provided that (amongst other things):

³⁴ Then Director, Student and Graduate Visas Section with DHA.

- (1) the Training Program curriculum learning objectives comprised 6 models and had a 'learning schedule' with 'self-study background readings, face to face skills training instruction' delivered by **Operator 1** as well as 'applied learning assignments for practice'
 - (2) the assessment methodology would include background reading quizzes, draft plans for the participant to establish and develop their own business, and applied learning projects to guide 'the design, construction and management skills of critical operating systems required by an organic farm'
 - (3) the Agricultural Business would 'conduct knowledge and competency assessments in line with the curriculum teaching objectives'
 - (4) assessment would be provided by weekly 'participant assessment reporting update meetings' with the Agricultural Business/**Operator 1** monitoring self-study readings by conducting 'informal quizzes.' There would be 'Work Integrated Learning Assignments' and 'Action Learning Projects'.
- 123 There ought to have been a number of readings (or ebooks) associated with the program; and also work product generated by Jerwin, as well as feedback and recommendations from his 'Instructor'. No such documentation was ever provided by either Agent 1 or **Operator 1** including when compelled under subpoena³⁵.

Inquiries by Nelley as to the Training Program

- 124 On 19 March 2019, Nelley emailed Agent 1 as follows:

³⁵ Exhibits 16 and 17, Subpoena for production issued to Agent 1 on 12 November 2024, and bundle of material produced in response, p 1. **Operator 1** produced no material, Agent 1 produced limited documents citing that 6 years had lapsed; documents would be available from DHA submitted with the application for the s 407 visa. He confirmed Jerwin completed no assignments and was given no written feedback or recommendations.

I am now looking to collect any and all documentation that relates to Jerwin and the education offered by you and your organisation, beyond what has already been supplied by Operator 1

If you have any contracts signed by Jerwin, any documentation that relates to his work, what was offered and what his expectations were, I would appreciate it please.

In addition, as he was training with you as part of the education scheme for some months, do you have any documentation that records performance, or anything that documents the issues you stated you had with him?

125 On 20 March 2019, Agent 1 responded and relevantly stated:

Training Program Material

The arrangement for Jerwin to train at BOT was based on an oral agreement. The purpose of the trial period at BOT was to learn basic organic farming practices and screen his potential as a candidate. In Jerwin's case it took longer than other candidates because Operator 1 and I were still designing the training program course materials, registering [the Agricultural Business] as a certified training centre and establishing Operator 1 to become a sponsor with the Australian Immigration Department. If Operator 1 has not already provided you an outline for the training program, I am sure a copy could be arranged if necessary.

The training course materials are split over two modules including two workbook manuals to guide self-study and instructor guided learning, plus a library of supporting ebooks for each unit. I will attach curriculum outlines in a second email.

126 Agent 1 provided Nelley with a copy of the 'Smiths Group Management Trainee Development Program MOU between the Agricultural Business and BOT' dated 1 June 2018. This included the 'Agricultural Business Training Program Curriculum Learning Objectives' comprised of six modules, the Smith Management Trainee Development Employment Agreement signed by Jerwin on 24 November 2018, and selected pages from Volume of the 'Management Trainee Development Program Volume 1'.

127 The 'Smith_Record of emails sent to Jerwin Royupa attaching ebooks' that Agent 1 referred to were in fact dated from October to December 2018 and appeared to relate to BOT's pig farming activities. It was unclear how they related to the purported Training Program. Nor did it appear that Jerwin was in fact sent any ebooks or readings as referred to in Volumes 1 and 2 of the 'Smith Group Management Trainee Development Program'.

- 128 Importantly, Jerwin appeared not to have a laptop computer or tablet device that would have enabled him to review the supposed electronic course material. Nor were any such materials found in his suitcase, or at the Agricultural Premises in Jerwin's cabin (as searched by Nelley).

DHA assessment of the information provided by Operator 1

- 129 DHA's Integrated Client Service Environment (ICSE) records the following note relevant to the assessment of the 'Application for a Training Visa':

Approve: on the evidence provided, I am satisfied that the requirements for approval are met and satisfied to approve the nomination for a training period of 12 months.

- 130 From this excerpt, the DHA Decision Maker had no concerns regarding the application being for a genuine training position. In addition, the decision maker evidently found that the criteria was met for 'overseas employer and manager or professional'; 'tailored and structured workplace training program'; and 'relevant classroom-based training program'.

Further application by Operator 1 rejected by DHA (9 April 2019)

- 131 On 25 February 2019, Operator 1 lodged a second nomination application. It appears that the same 'training' documentation was effectively relied upon as with the first application.³⁶
- 132 On 17 March 2019, following Jerwin's death, the DHA received an anonymous website communication (now known to have been made by Nota), which made an allegation against the Agricultural Business in relation to excessive unpaid work and confiscation of the applicant's passport.

³⁶ BOE Vol 7, Tab 136, Second statement of James Goodsell dated 17 October 2024 at [21] which notes: "Information contained in both approved and refused nomination applications were similar with regard to the SMGT Development Program MOU, Operator 1's Scholarship - Smith Group Management Development Trainee Program, development program documentation ('training plan') and Smith Management employment contract. Both nominees had signed Form 1283 'Acknowledgement of unpaid placement - Visa applicant', and the sponsor had provided Form 1284 'Acknowledgement of unpaid placement - Sponsor' with both applications."

- 133 On 9 April 2019, (after Jerwin's death), the second nomination application was refused by a DHA Decision Maker. The 'Notice of Decision – Nomination Refusal Notice' provides a clear account of the basis for the refusal:

From examination of the supporting documentation, I am not satisfied that a genuine training opportunity is intended for the nominee. Rather, that the nominee will be subject to work with incidental training opportunity. The nominee is recipient of a '[...] Scholarship' to undertake a 'Smith Group Trainee Management Development program'. In the 'Scholarship Acceptance letter, it is stated that this scholarship program aims to 'establish a Centre of Talent Excellent' [sic] for graduates to 'pursue Ag-preneur career paths in the organic farming and fine food production fields.' After completion of the scholarship, the letter states the nominee 'will return and be supported to develop your own organic farm, to grow organic produce and develop find food products for local and for export under the Smith Group Coop'. I note that none of the supporting documentation demonstrates that the nominee possesses the appropriate capabilities, such as relevant managerial experience, to undertake and benefit from the professional development program that the sponsor is proposing the nominee to undertake.

The intended learning outcome is that the nominee will possess the expertise to develop their own organic farm, along with undertaking other associated high-level responsibilities. Having viewed the nominee's resume, the training would need to be comprehensive to achieve the high-level proposed learning objectives. Instead, the supporting documentation, in particular, I refer to the 'Management Trainee Development Program Volume 1' And 'Management Trainee Development Program Volume 2', contains negligible information. The Management Trainee Development Program lacks the necessary scope to detail how the nominee could realistically become a competent Organic Farmer. There are no time scales, nor methodology in these documents, with most detail pertaining the learning objectives. As a result, I cannot be satisfied that the occupational training is genuine, as I do not find the training documented to be plausible.

Adding to the concerns of the professional development training is the proposed remuneration the nominee is to receive over 24 months for forty hours per week. The 'Smith Management Trainee Development Employment Agreement', identifies that the nominee will be paid a monthly base salary of P5,000, which converts to \$134.92 AUD. The base salary that the nominee will receive in Australia, (excluding additional allowances) does not reflect the appropriate Australian award rate or Industrial agreement for the position. This would suggest that the nominee would not be paid their minimum lawful entitlements. I do not find it plausible that a genuine training placement is intended for the nominee with the proposed remuneration. It is the sponsor's responsibility to ensure that the Australian Industrial laws are upheld. Based on the information available, I am not satisfied that the proposed remuneration would be lawful as per FairWork Australia obligations. It is clear from the ambiguous training content and proposed remuneration, that this proposed training placement exists to benefit primary the sponsor rather than a genuine training opportunity.

In sum, I am of the opinion that the training placement has been created for the purpose of securing migrant labour, for the benefit of the sponsor.

134 Goodsell summarised the rationale underlying rejection of the second nomination application in the terms that follow.

- (1) There was 'negligible detail provided in supporting documentation. The training documentation was not comprehensive, demonstrating how the training would achieve the high-level proposed learning objectives.'
- (2) The decision officer was not satisfied that the occupational training was genuine or plausible because 'the Management Trainee Development Program lacked the necessary scope to detail how the nominee could realistically become a competent Organic Farmer. There were no time scales, nor methodology in the documents provided, with most detail pertaining the learning objectives.'
- (3) The base remuneration package (which was converted from 5000 pesos to 134.92AUD per month excluding additional allowances) meant that the nominee 'would not receive their minimum lawful entitlements as required under Fair Work Australia obligations'.

407 Visa Procedural Instruction

135 The 407 Visa Procedural Instruction states that the supporting information that should be provided to show that the nominated program is offered as a genuine training opportunity includes:

details of the training program in terms of how it relates to the minimum occupational skills and experience it will provide participants in accordance with the minimum skills and experience requirements outlined in the Australian and New Zealand Standard Classification of Occupations (referred to as ANZSCO).

136 The 407 Visa Procedural Instruction also states that:

If further information is necessary to decide a nomination application, officers are to request this information in writing, listing all the documents required to assess the nomination.

- 137 For the visa nomination type 3 – Capacity Building (Professional Development), the 407 Visa Procedural Instruction states that the Minister must be satisfied of a number of criteria including:
- (1) the nominee is in a managerial or professional position in relation to their overseas employer; and
 - (2) the occupational training is relevant to, and consistent with, the development of the managerial or professional skills of the nominee; and
 - (3) the primary form of the occupational training is the provision of face-to-face teaching in a classroom or similar environment (which, as a matter of policy, is considered to be at least 55 per cent).
- 138 Further, the 407 Visa Procedural Instruction states that for the category of Capacity Building (Professional Development), the sponsor is required to provide evidence of ‘how the occupational training program will provide skills and expertise relevant to the overseas employer’s business and the nominees development’. The same part of the 407 Visa Procedural Instruction states the requirement that occupations not listed in the ANZSCO Major Groups 1 (managerial roles) and Group 2 (professional roles) should only be considered by the DHA Decision Maker if they are ‘prima facie, management or professional occupations’. Assessing officers with doubts about whether an occupation is professional or managerial are instructed in the 407 Visa Procedural Instruction to raise this with their supervisor or manager. There is no evidence that the first decision-maker had any such doubts in relation to the first application.
- 139 In terms of whether a person qualifies as a ‘manager’, the 407 Visa Procedural Instruction provides that ‘special care must be taken to ensure that the activities are specifically management related’. The 407 Visa Procedural Instruction makes special mention of applications relating to the development of skills of ‘farm managers’, instructing assessing officers to ‘ensure that the activities are specifically related to the management of the farm and not for training for

farming work.’ As noted above, the s 407 Training Visa Application for Jerwin was for the ANZCO field ‘Mixed Crop Farmer’.

- 140 In terms of whether a person qualifies as a ‘professional’, the 407 Visa Procedural Instruction states that: ‘Professionals perform analytical, conceptual and creative tasks through the application of theoretical knowledge and experience in the fields of science, law, engineering, business and information, health, education, social welfare and the arts.’ Notably, the fields of agriculture and farming are absent from the list of professional fields.

Evidence of Goodsell

- 141 In oral evidence, Goodsell was questioned about whether the first nomination application by **Operator 1** ought to have been approved by the DHA Decision Maker. Although stating that the decision was ‘lawfully open’, Goodsell stated:

However, again, as I noted, it is not the decision that I would have made. It is therefore that in looking at what occurred that the supervisory managerial component of our business provided the officer with remedial training and assistance because his decision did not conform with our normal instructions or expectations around the circumstances of this particular case.

I would say that it is not a decision that I and others believe was appropriate in the circumstances. The decision had to be made. We are required to reach an outcome, but it is not the decision that I or others would have necessarily made.

- 142 This evidence was accepted by counsel for DHA to be a concession that the first decision was ‘inappropriate’, albeit open to be made.
- 143 Goodsell explained that decision-makers assessing nomination applications have access to recorded adverse information received about the sponsor. There was no such adverse information regarding the nomination application for Jerwin. In terms of accessing information such as previous workplace complaints against **Operator 1** Goodsell stated that was dependent on whether Fair Work determined to refer the information to the DHA. Otherwise, the DHA does not ask applicants to declare that they have not had any contraventions of the *Fair Work Act*.

- 144 Goodsell told the Court that the normal administrative practice of decision-makers assessing applications is to be satisfied or not satisfied based on the information presented. Although there is an option to request further information from the sponsor or the visa applicant, or to undertake other checks including pre-decision verification inspections, the normal business practice is to make the decision on the information before them, for reasons of practicality.

Evidence of Clayton

- 145 Clayton explained that the primary focus of the Sponsoring Monitoring Unit (SMU) is to conduct monitoring investigations, known as audits, to assess whether a sponsor has complied with their obligations. An additional focus of the SMU is to conduct 'pre-decision verification visits', which can be in connection with a visa or nomination application where the decision-maker has concerns. The SMU requires a referral from a decision-maker in the DHA to undertake such visits, following which the SMU ascertain if they have sufficient resources and the referral is of sufficient priority, before carrying out the investigation.
- 146 Clayton confirmed that no referral was made to the SMU to carry out a verification investigation in Jerwin's case. Indeed, to his knowledge, a pre-verification visit has not occurred in connection with any s 407 visa application.
- 147 As to whether SMU shares with decision-makers learnings about particular industries or regions which may present a particular risk of exploitation, Clayton said the SMU would share that information, but that it is for the decision-makers' 'decision support team or case load risk and integrity team' to provide that guidance and to consider whether certain concerns should be flagged. He again confirmed that the SMU did not undertake a monitoring process for Jerwin's case.

DHA 'review' regarding the approval of Jerwin's s 407 visa

- 148 On 17 March 2019, the DHA received an allegation concerning Jerwin's mistreatment at the Agricultural Premises.

- 149 According to Clayton, no further investigation was carried out regarding this allegation as it did not relate to any of the obligations in Regulations 2.78 or 2.81–2.87. Also, the Fair Work Ombudsman (**FWO**) was already aware of the complaint relating to Jerwin’s working conditions and treatment.
- 150 In his statement, Clayton confirmed that while the DHA did not conduct any formal review of the allegations, it engaged with the FWO and Australian Federal Police (**AFP**) in relation to investigations carried out by those bodies on 3 occasions.
- (1) On 1 April 2019, the FWO contacted the DHA to inform the DHA that the Philippines Embassy had received information from Jerwin’s family that he had not been receiving payment for work and his passport was confiscated.
 - (2) On 3 April 2019, the FWO informed the DHA that they had referred the matter to the AFP and that the matter was not subject to an ongoing investigation with the FWO.
 - (3) On 11 April 2019, the Border Force Supervisor for NSW confirmed to the AFP that no further action was taken due to the nature of the allegation (underpayment and excessive work) and that it was understood that the FWO and the AFP were investigating the claims.
- 151 Clayton agreed that following the information received relating to Jerwin’s death, and communication with the FWO regarding the allegation being referred to the AFP, no further action was taken by the DHA. The DHA had ultimately concluded that ‘as the complaint related to the workplace treatment of [Jerwin], it would be more appropriate for any further review to be conducted by the FWO as the relevant regulator.’
- 152 In oral evidence, Clayton was taken to the publicly available register of sanctioned sponsors on the ABF website and accepted that **Operator 1** was not on the register because there had been no investigation that led to any finding

of breaches of sponsorship obligations. In oral evidence, Clayton accepted that there were 'strong indicators that would warrant commencing a further investigation'. In this regard, it fell within the remit of SMU to investigate the circumstances in which a sponsor may have provided false or misleading information to the DHA.

- 153 Clayton also accepted that there had not been a satisfactory response by the DHA and stated '[t]here could have been more done in this case'. He was not aware of any inquiry in the style of a 'root cause analysis' being done in this case, and stated:

There may - there may be benefits as in further looking at the details of this case to at least draw that there isn't effective coordination across government departments when considering the - yeah, such serious matters.

- 154 However, Clayton referred to an 'informal review' conducted regarding the decision-making process in relation to the granting of Jerwin's visa. In the statement of 18 October 2024, Clayton stated:

I have also been made aware that, following [Jerwin's] death, an informal review of the decision-making process in relation to the grant of [Jerwin's] visa was conducted. While that review did not result in formal disciplinary action, informal action, in the form of training about appropriate decision-making in the context of the 407 visa scheme was provided to the decision maker, and additional review of decisions by that delegate was proposed until sustained improvement was evident. I understand that the reason for this remedial action is because the Department formed the view that the decision-maker did not weigh the available evidence appropriately in deciding to grant the visa.

- 155 Goodsell also gave evidence that the decision-maker of the first nomination application was subject to remedial action by way of training around the visa, nomination and sponsorship applications. This informal review was documented and there was ongoing monitoring and assessment of cases before that decision-maker. In terms of the DHA's quality management framework, Goodsell explained that the DHA undertakes randomised sampling of cases in all the visa products, across all the decision-makers, to ensure the quality of the decisions is maintained. That information is used to consider factors such as additional training or support and to improve the overall quality of the processes and activities.

156 Goodsell gave evidence that he was not aware of any audit conducted by the DHA over s 407 visa applications since Jerwin's death, nor of any audits conducted over the first decision-maker's other decisions prior to Jerwin's death.

Issue 2(a): Findings

157 I accept the unchallenged concession by the DHA that the approval of the first nomination application was an inappropriate decision for the reasons articulated by the decision maker considering the same documentation in respect of the second nomination as set out in paragraph [133] above.

Issue 2(b): Once Jerwin was in Australia on the s 407 visa, the mechanisms, if any, to ensure that Jerwin was participating in occupational training

The regulation or oversight of s 407 visa trainees such as Jerwin

158 From 7 February 2019 until his death on 14 March 2019, no review or inspection relating to Jerwin's participation in the Training Program was undertaken or planned as 'there was no information available to the Department before Mr Royupa's death which would have suggested that an inspection was required'.

159 Thus, no checks of any kind were undertaken by the DHA to ascertain whether the Training Program was in fact legitimate, or operating as intended.

160 In his statement, Clayton explained that:

...subject to resources, priorities and risk assessments, inspections may be planned as part of a site visit when considering commencing a monitoring process.

The Department undertakes a range of educational, compliance and monitoring activities to educate sponsors, inspect workplaces and speak with sponsored workers. When a breach of a sponsorship obligation(s) is(are) identified, a formal monitoring process may be commenced...

161 Clayton also gave evidence regarding the SMU's role in investigating issues regarding sponsors, although he was not aware of any pre-decision verification checks being undertaken in connection with s 407 visas.

162 Goodsell provided statistics regarding the volume of s 407 visas. There were, at the time of the inquest, 5442 people holding s 407 training visas. Since the training visa scheme was introduced on 19 November 2016, a total of 24,081 training visas were granted (to 30 June 2024). For the year 2018 to 2019, 4017 training visas were granted. Goodsell indicated that the DHA does not have the resources to appoint and individually monitor individuals, within the context of the large numbers of visas granted and visa-holders in Australia each year.

163 In a further statement dated 10 February 2025, Clayton provided the following more specific statistics regarding s 407 Temporary Activity Sponsors and visa holders:

Period	Number of Temporary Activity Sponsors and visa holders	Number of 407 Sponsors and visa holders
2018-2019	5,978 Temporary Activity Sponsors - 65,431 visas granted	667 Temporary Activity Sponsors - 2,908 visas granted
2024-2025 (as at 31 December 2024)	4,430 Temporary Activity Sponsors - 40,277 visas granted	1,020 Temporary Activity Sponsors – 2,226 visas granted

164 The evidence is clear that the compliance mechanisms currently in place are reactive rather than proactive. They include:

- (1) (at the time of Jerwin's placement) sanctions under the 'Sponsorship Compliance Framework' where sponsors were found not to have met their obligations.
- (2) recent amendments to the *Migration Act* brought about by the *Migration Amendment (Strengthening Employer Compliance) Act 2024* (Cth) introducing new enforcement measures, including criminal offences for using a person's immigration status to exploit them in the workplaces

through coercion, undue influence or pressure; a power to prohibit employers found to have engaged in exploitation from employing additional temporary workers; and finally, increased penalty amounts for breaching sponsorship obligations.

- (3) the power to issue a compliance notice to a sponsor requesting they take particular actions to fulfil their obligations, and changes to visa conditions which provide the visa-holder additional time to find a new sponsor.
- (4) the SMU's role in considering information regarding potential breaches of their obligations and conducting monitoring investigations or audits to assess compliance. The audit process may be initiated when the SMU receives information regarding a potential breach or when the SMU identifies a concern when conducting an education visit.

165 In practice following the amendments, Clayton was aware of action being taken including barring and cancelling sponsors, and the issuing of compliance notices. However, he was not aware of any cases where the new measures had resulted in the detection of exploitation of persons on training visas.

166 Clayton stated that it was challenging to enforce requirements under visas and particularly under the s 407 visa that genuine occupational training is in fact taking place. However, Clayton accepted that the SMU does not conduct 'random' or 'surprise' checks, and there possibly may be a place for that type of enforcement activity.

167 Clayton was questioned about the circumstances in Jerwin's case presenting a particular risk profile, namely:

- (1) this was **Operator 1**'s first application for sponsorship and nomination
- (2) the sponsorship involved a placement in a geographically isolated, agricultural area

- (3) due to the agricultural focus of the work, there is the risk the worker will be made to perform unskilled labour
- (4) **Operator 1** was running a small operation
- (5) Jerwin was brought to Australia around the harvest time when there was a particular need for labour.

Clayton agreed that these circumstances presented a risk of exploitation.

168 In that context, Clayton gave evidence that he was not aware of any risk profiling conducted in 2019 or currently to focus monitoring activities on particular grants and applications which involve a risk of exploitation. He stated that the SMU considers risk across programs which impacts the prioritisation of work, but there is no specific risk profiling around exploitation in similar circumstances. As to whether anyone in the SMU was looking at the specific risks involved in temporary visas in geographically isolated regional areas, Clayton told the Court that the field operations team at the SMU do undertake activities in regional areas, but there is not a direct link in doing regional work.

169 Clayton gave evidence that if a nomination was approved on the basis that the nominated person would receive a genuine training opportunity in the area of professional development, but in fact they were made to engage in menial labour, which would be a potential breach of regulation 2.86. In relation to a training visa, while some work closely related to the training opportunity may be permissible, the majority of the work is to be in receiving the training opportunity for which the nomination of the visa was granted.

Issue 2(b): Findings

170 I find that the DHA does not take active steps to supervise compliance or prevent employers taking advantage of overseas trainees thereby

exposing vulnerable overseas workers to an unacceptable risk of exploitation in high risk industries such as the agricultural industry.

Issue 2(c): What supports and services are available for s 407 visa trainees in Australia, particularly persons who may be being exploited

Modern slavery in NSW

- 171 The prevalence of modern slavery is a growing concern in NSW and Australia wide. As will be outlined below, it is an area of developing law. The investigation into Jerwin's death identified allegations of modern slavery. In the course of the inquest, issues emerged regarding the investigation and policing of modern slavery and the education and training of NSWPF officers and the Australian Federal Police in this emerging area of law.
- 172 In January 2025, the Judicial Commission released 'Modern Slavery – A guide for NSW judicial officers.' The 'Introduction' to that publication provides a helpful overview of the concept of modern slavery:³⁷

Modern slavery is all around us, often hidden in plain sight. People can be forced into situations of slavery, such as when making our clothes, serving our food, picking our crops, working in factories, or working in houses as cooks, cleaners or nannies. Individuals subjected to modern slavery are in situations of exploitation they cannot refuse or leave because of factors such as violence or threats, inescapable debt, or having their passport taken away and threatened with deportation. Many people end up in these situations while trying to escape poverty or insecurity, improve their lives and support their families.¹

In Australia, modern slavery is an umbrella term used to describe a range of extreme exploitative practices including:

- trafficking in persons
- slavery, and
- slavery-like practices, including forced labour, forced marriage servitude, debt bondage and deceptive recruiting for labour or services.

Australia is not immune from modern slavery. It can occur in both public or private sectors, including industries such as agriculture, construction, domestic work, sex work, cleaning, hospitality, and food services.²

- 173 The International Labor Office in its 'ILO Indicators of Forced Labour',³⁸ identified the following indicators representing the 'most common signs or

³⁷ Available at https://jirs.judcom.nsw.gov.au/publish/e-resource_series/03-modern_slavery/Modern_slavery.pdf.

³⁸ Exhibit 18.

“clues” that point to the possible existence of a forced labour case’: abuse of vulnerability, deception, restriction of movement, isolation, intimidation and threats, retention of identity documents, withholding wages, debt bondage, abusive working and living conditions and excessive overtime.

- 174 The *Modern Slavery Act 2018* (NSW) (***Modern Slavery Act NSW***), which commenced operation after Jerwin’s death, on 1 January 2022, defines modern slavery in non-exhaustive terms, as follows (per s 5):

modern slavery includes the following—

- (a) any conduct constituting a modern slavery offence,
- (b) any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of organisations.

NSW Anti-slavery Commissioner

- 175 The *Modern Slavery Act NSW* also creates the role of the Anti-slavery Commissioner, who holds office for a term not exceeding five years (s 6). The general functions of the Anti-slavery Commissioner for NSW are specified in s 9 as follows:

9 General functions of Commissioner

(1) The functions of the Commissioner are as follows—

- (a) to advocate for and promote action to combat modern slavery,
- (b) to identify and provide assistance and support for victims of modern slavery,
- (c) to make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery,
- (d) to co-operate with or work jointly with persons and organisations to combat modern slavery and provide assistance and support to victims of modern slavery,
- (e) to monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies,

(f) to monitor the effectiveness of legislation and governmental policies and action in combating modern slavery,

(g) to raise community awareness of modern slavery,

(h) to exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

(2) In exercising the Commissioner's functions, the Commissioner must encourage good practice in—

(a) the prevention, detection, investigation and prosecution of modern slavery, and

(b) the identification of victims of modern slavery.

(3) Unless the contrary intention appears, the Commissioner's functions may be exercised with respect to any government agency, person, matter or thing (whether or not they are in or of, or for, the State), so long as the function is exercised in relation to a matter to which this section relates.

176 Dr James Cockayne, the current NSW Anti-Slavery Commissioner, was granted leave to appear at the inquest. Dr Cockayne provided a submission and a statement as to the operation of the Anti-Slavery Hotline³⁹, '1800 FREEDOM' (**NSW Hotline**). The NSW Hotline provides confidential assistance and support to people at risk of or suffering from modern slavery, who can also access the Office of the NSW Anti-slavery Commissioner via the email <antislavery@dcj.nsw.gov.au>. The assistance and support can also include referrals to other service provider organisations. Between 1 July 2023 to 31 December 2024, 108 enquiries were received and 397 referrals were made to 90 different organisations.

177 The NSW Hotline is staffed by a support and assistance team comprised of three social work, clinical support and victim response specialists. Up until 31 December 2024, the NSW Hotline was run on a 24 hours a day, seven days a week basis. This was achieved by having the Commissioner personally staff the NSW Hotline after hours and on weekends. From 1 January 2025, due to

³⁹ Specifically, pursuant to s 12(d) of the *Modern Slavery Act NSW*, the Anti-Slavery Commissioner is (relevantly) to 'to establish and maintain a hotline (or utilise a hotline maintained by another person or body) for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery'.

constraints on funding and resources, the hotline has only been staffed within business hours. Outside that time, callers can leave a message.

178 Of course, the NSW Hotline was not available to Jerwin in 2019.

Appointment of Australian Anti-Slavery Commissioner

179 On 7 November 2024,⁴⁰ Chris Evans was appointed as the first Australian Anti-Slavery Commissioner for a five-year term which commenced on 2 December 2024). An important aspect of the Australian Anti-Slavery Commissioner's role is stated to be 'implementation of future modern slavery reforms, including those arising from a statutory review of the *Modern Slavery Act 2018* (Cth)'.⁴¹

180 The functions of the Australian Anti-Slavery Commissioner under s 20C of the *Modern Slavery Act 2018* (Cth) (***Modern Slavery Act Cth***) relevantly include:

20C Functions of Commissioner

(1) The Commissioner has the following functions:

- (a) to promote compliance with this Act;
- (b) to support Australian entities and entities carrying on business in Australia to address risks of modern slavery practices in their operations and supply chains, and in the operations and supply chains of entities they own or control;
- (c) to support collaboration and engagement within and across sectors in relation to addressing modern slavery;
- (d) to support victims of modern slavery by providing information in relation to government and non-government resources, programs and services, including by developing and maintaining guidance material and making such material publicly available;
- (e) to engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery;
- (f) to support, encourage and conduct education and community awareness initiatives relating to modern slavery;

⁴⁰ Australian Anti-Slavery Commissioner, <https://www.antislaverycommissioner.gov.au/> (accessed 16/2/2025).

⁴¹ Commonwealth Attorney General's Department, Media Centre, *Appointment of Australia's first Anti-Slavery Commissioner*: <https://ministers.ag.gov.au/media-centre/appointment-australias-first-anti-slavery-commissioner-11-11-2024> (accessed 16/2/2025).

(g) to support, encourage, conduct and evaluate research about modern slavery;

(h) to collect, analyse, interpret and disseminate information relating to modern slavery;

(i) to consult and liaise with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery;

(j) to consult and liaise with other persons and organisations on matters relating to modern slavery;

(k) to advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice;

(l) at the request of the Minister, to provide advice to the Minister on matters relating to modern slavery;

(m) such other functions as are conferred on the Commissioner by this Act or any other law of the Commonwealth;

(ma) to engage with victims of modern slavery to inform and support the performance of the above functions;

(n) to do anything incidental or conducive to the performance of any of the above functions.

181 However, the Australian Anti-Slavery Commissioner may not investigate or resolve complaints concerning individual instances (or suspected instances) of modern slavery.⁴²

NSW Police Force – awareness of modern slavery

182 Superintendent Jayne Doherty⁴³ provided a statement concerning the current investigative relationship between the NSWPF and the Australian Federal Police (**AFP**) in relation to modern slavery. The statement also addressed the training available to NSWPF officers regarding modern slavery offences, and her ongoing communications with Dr Cockayne.

183 In relation to the relationship between the NSWPF and the AFP, Superintendent Doherty stated that in 2021 the AFP and all Australian state and territory police

⁴² s 20C(2) of the *Modern Slavery Act* (Cth).

⁴³ Commander of the NSWPF Sex Crimes Squad and Head of Discipline for Modern Slavery, Statement dated 4 February 2025 at Exhibit 23.

agreed to the 'National Policing Protocol to Combat Human Trafficking and Slavery', to promote collaboration between the policing agencies.

- 184 The AFP has primary responsibility for the investigation and prosecution of human trafficking and slavery offences, and the other policing agencies can recognise suspected instances of trafficking and refer matters to the AFP. Accordingly, in NSW, the NSWPF initially refers matters to the AFP, and if the AFP declines to take action, the NSWPF will further consider whether it wishes to investigate offences.
- 185 Following the commencement of the *Modern Slavery Act NSW* on 1 January 2022, a 'New Law' article was disseminated to NSWPF employees via internal systems (then reiterated in the February 2022 issue of 'Police Monthly'). In January 2022, a Library Bulletin was also circulated around NSWPF referencing articles on human trafficking and modern slavery.
- 186 On 23 August 2022, COPS was updated to include an 'Event' incident category of 'modern slavery' and further sub-classifications, including 'slavery', 'forced labour' and 'people trafficking'. If these categories are selected, the Event report is to be reviewed by a specialist team within the Sex Crimes Squad (Team 4), who may then refer the matter to the AFP.
- 187 Superintendent Doherty outlined training initiatives introduced by the NSWPF since 2022 to ensure that officers are aware of modern slavery offences.
- (1) For both civilian employees and sworn officers, there is an optional modern slavery training package available on the NSWPF training platform 'PETE', called 'Look a Little Deeper'. This was introduced in August 2023.
 - (2) The NSW Police Force Detectives Designation Course requires all officers seeking designation as detectives to complete the 'Modern Slavery Topic Sheet' which outlines offences related to modern slavery,

lists indicators of modern slavery and refers to the NSW Anti-Slavery Commissioner.

- (3) For specialist officers and teams, there are more targeted training initiatives and upskilling in this area. Relevant specialist teams that have received further training include domestic violence and crime prevention teams, the Police Multicultural Advisory Council and NSWPF Multicultural Community Liaison Officers, members of the Sex Crimes Squad and the Drug Squad.

Attempts by Jerwin and others to get help

- 188 On 1 March 2019, Jerwin asked **Witness 3** for advice about what to do about his long working hours. **Witness 3** made inquiries of a friend (a migration agent).
- 189 On 10 March 2019, Jerwin noted that the migration agent/friend of **Witness 3** had not accepted his friend request. **Witness 3** replied to say that the friend said Jerwin should get his cousin to find an employer and then the sponsorship could be transferred to the new employer.
- 190 On 12 March 2019, Jerwin called **Witness 6** to ask what to do. She told him to contact Australian Immigration and she texted him the 131 881 number⁴⁴ and a link to a directory of Australian government entities (<directory.gov.au>). In oral evidence, **Witness 6** confirmed that she had strongly advised Jerwin to contact Immigration. She had found the telephone number through a Google search.
- 191 On 12 March 2019, **Witness 4** was also making enquiries as to whether she could find Jerwin a different sponsor.
- 192 Also on 12 March 2019, Nota spoke with Jerwin and advised him to request his flight itinerary and passport from his employer. Nota then began searching for flights and was considering picking him up herself. In Facebook messages, Nota asked Jerwin who had called 'the department' and he replied, 'they haven't

⁴⁴ The in-Australia number for the Global Service Centre on the DHA website, open Monday to Friday 9am to 5pm.

called yet'. Nota advised by message that if Jerwin felt unsafe, he should have someone pick him up and then call the police to get his passport. Jerwin responded by saying Witness 6 was writing a draft message to immigration for him.

193 In the evening of 12 March 2019, Witness 6 found the details of Elaine Nunez of 'Seek Migration' on Facebook and passed them on to Jerwin.

194 At 10:09am on 13 March 2019, Jerwin spoke to Nunez via Facebook messenger and stated he was working 10 hours a day, including on Saturdays, that he would be paid \$150 monthly after 6 months because of the money spent to get Jerwin to Australia, and that his employer held his passport. Jerwin told Nunez that a flight home had been booked for him but that he still wanted to continue his traineeship. He asked Nunez to help in finding another sponsor in the agricultural sector. Nunez asked to see the contract before giving him any advice.

195 On the morning of 13 March 2019, Witness 3 called the Fair Work Ombudsman on Jerwin's behalf, stating that Jerwin had not been paid his wages, was working 10 hours a day, 6 days a week and that his passport had been confiscated. Witness 3 messaged Jerwin and told him someone from the Fair Work Department would call him, and that they were sending his case to the head of the department. Witness 6 texted Jerwin that the Fair Work Ombudsman had told Witness 3 that it was Jerwin they needed to speak to, and that Jerwin needed to talk to, or email, Immigration himself.

196 Jerwin later messaged Nota that it had been reported to the Ombudsman, but nothing happened. Nota advised Jerwin to call the Ombudsman on 14 March 2019. Jerwin sent further messages to Nota stating that 'they said I should ask the immigration about the visa. They say, the Ombudsman handles different matters'.

197 On the morning of 13 March 2019, Nota continued to message with Jerwin and provided him with a number of links to various parts of the DHA website.

- 198 That morning, **Witness 4** spoke to Jerwin on the phone and assured him 'we are all working on this'. In oral evidence, **Witness 6** told the Court she felt like 'we were the only hope' and that **Witness 6** **Witness 3** and herself were working to get Jerwin some kind of assistance. Following this call with Jerwin, **Witness 4** spoke with **Witness 6** who was also making enquiries for an alternative training or employment for Jerwin and trying to find an immigration agent. **Witness 4** called a number of friends, and her sister-in-law, to see if they could employ Jerwin. She spent most of that day doing this. **Witness 4** has stated that later in the day on 13 March 2019, **Witness 6** updated her and said she had found someone who could employ Jerwin.
- 199 In the late evening of 13 March 2019, **Witness 6** messaged Jerwin and told him she had sent through a draft email to Immigration that her sister-in-law had prepared and told Jerwin to put in all the important information, to check it and to email it to Immigration when he had decided. In oral evidence, **Witness 6** explained that she needed assistance and a second opinion from her sister-in-law in relation to ensuring the English was correct, and that she had helped Jerwin with just the basic information and checking of English.
- 200 On 14 March 2019, Jerwin finalised the draft email setting out a summary of his situation and the request for help to the Department of Immigration, at <Homeaffairs.com.au@gmail.com>. It appears that this address was designed by its operator to mimic the email address for the DHA with a view to luring communications for private purposes. Goodsell accepted in his oral evidence that such email addresses, websites and other methodologies are used by operators on the internet to attempt to circumvent the proper processes and contact. Jerwin's email draft, as sent to Nota at 2:13am on 14 March 2019 stated: 'I have read in the website too in immigration that there are few options for me'.
- 201 Notably, on 17 March 2019, an anonymous enquiry was received via the DHA website which contained text that was said to be an excerpt from an email from Jerwin explaining his situation. It repeated the text provided in earlier drafts of the email sent to Nota and **Witness 6** Nota has since confirmed that she submitted the anonymous enquiry after Jerwin's passing.

- 202 At 2:14am on 14 March 2019, Jerwin asked **Witness 3** for the number of the 'Ombudsman', following which there was a phone call between Jerwin and **Witness 3** at some stage that morning. Jerwin texted **Witness 6** on 14 March 2019, stating he could not contact the Ombudsman because 'it says they're still out of service'. **Witness 6** advised Jerwin to call the Ombudsman, to call Immigration, and to call the immigration agent, to which he enquired whether there was a 'teller' first when you call them, before you speak to someone. **Witness 6** asked him who he had talked to but did not find that out. In oral evidence, **Witness 6** explained the messages on 14 March 2019 when Jerwin asked her if there was a 'teller' or automated switchboard before speaking with the right department or the right people.
- 203 At 10:57am on 14 March 2019, Jerwin again messaged Nunez to ask whether he could be sent home without any agreement. Between 11:23am and 11:27am he forwarded copies of his signed training agreement, s 407 visa grant and other material about the training program to Nunez. At 11:35am Nunez messaged Jerwin to say that a consultation appointment could be conducted face to face, via telephone or Skype and that it would cost \$89 for the first 30 minutes. Nunez stated that she was in meetings for the rest of the day on 14 March 2019. It was not until 16 March 2019 that she saw the messages and emails from Jerwin.
- 204 Jamaica told the Court that after the electricity had been cut off to Jerwin's cabin (as noted above), she felt this was a 'red flag'. Heartbreakingly, Jamaica sent a message to **Witness 3** to go and fetch Jerwin on 14 March 2019. Her evidence was that there was a plan in place to intervene and physically get Jerwin off the Agricultural Premises on 14 March 2019, the day Jerwin died.

What assistance was available in 2019?

- 205 Goodsell was questioned as to the avenues of assistance available for a trainee in circumstances such as those confronting Jerwin. The salient features of his evidence are summarised below.

- (1) The letter in which the grant of the visa is conveyed sets out key contact details. Persons can also access the DHA's services through searching the internet and accessing information online.
- (2) To manage the volumes of queries, the DHA has different channels for people to obtain information, including the website, a contact number, email addresses and physical offices in Australia and abroad. The letter sent refers to the DHA website. However, it does not include the main phone number for the DHA.
- (3) As to how a person located the telephone number to call the DHA, a demonstration was undertaken in Court navigating through DHA's website (as it appeared on 2 December 2024). It was necessary to work through four different screens to obtain the contact number for calls within Australia, namely the Global Service Centre (131 881). As indicated on the website, this call centre is open Monday to Friday 9:00am to 5:00pm. On contacting the call centre number, a person would enter into an 'automated process to allow the person to self-select for information or the types of services they were seeking information on'. If a person made contact during business hours and the system information did not answer their question, they could then speak to an operator about their circumstances.
- (4) The DHA does not provide any pre-departure or post-arrival briefings to s 407 visa holders. Nor does it request feedback from 407 visa holders about their living and working conditions. Goodsell was not aware of any specific plans to introduce either pre-departure briefings or post-arrival briefings. Whilst it could potentially be a good idea to have pre-recorded briefings that set out visa holders rights, responsibilities and options for making a complaint, this would require the development of content in a number of languages and also maintaining that information. Goodsell emphasised that if a visa holder is in an emergency situation or requires immediate assistance, the DHA would recommend they call Triple 0.

206 In Jerwin's case, the letter referred to above was issued to **Operator 1** as Jerwin's representative.

207 In relation to a proposal for a hotline phone number allowing a visa holder to call, with the hotline operator then triaging the complaint and directing it to an appropriate Commonwealth Agency, Goodsell stated:

...in general, the concept of providing a single point of reference for all those services is always, I guess, the optimal solution. It does come down to the availability of the resources and the capacity to run such a service.

208 Clayton indicated that the DHA:

[had] been progressing measures to address migration related barriers to leaving an exploitative work arrangement, reporting exploitation, or pursuing recourse'

[including a pilot program introduced in July 2024 to encourage migrant workers to]

report and resolve workplace issues early...[and] ...a workplace justice visa pilot to enable temporary migrants to remain in Australia for a short period of time to pursue a matter relating to workplace exploitation.

209 Clayton also gave oral evidence regarding the 'reporting protections pilot', a program encouraging workers to provide information to the SMU around exploitation with an awareness that it will not lead to visa cancellation. No designated phone line has been established – rather, the channel for persons to report information is via the Border Watch website. Clayton noted that the Border Watch program is not designed to provide an emergency response. Rather, a local response with immediate assistance would fall to local police.

210 In relation to a potential modern slavery hotline triaging matters for each relevant agency, Clayton agreed that it would be beneficial for a central system to better triage the information; however, he suggested that this had been considered previously and the government had advised there were already sufficient avenues available.

- 211 Clayton gave evidence that the SMU conducts education campaigns and visits, speaking with various stakeholders. He provided an example of a campaign in June 2024 in which the SMU met with over 950 sponsors and employers.
- 212 Clayton agreed that requiring Jerwin to engage in manual labour for long hours would be at odds with the nomination application. A person being compelled to work extremely long hours and not being paid appeared to be a breach of regulation 2.86. He gave evidence that it can be challenging to identify breaches of obligations.
- 213 In terms of the processes that *would have* occurred had Jerwin successfully sent information concerning his circumstances to the DHA, Clayton stated that Triple 0 and local police are the primary contact in an emergency situation. There are links to emergency services on the Border Watch website. He also noted that there is an agreed arrangement between DHA, the AFP and the ABF so that if the SMU received information regarding a possible trafficking matter (including indicators such as someone being held against their will or having their passport held), the SMU would contact the human trafficking contact officer who would make an assessment and contact the AFP. Additionally, the SMU has capacity to call the local police authority and request them to visit the location.
- 214 Ultimately Clayton accepted that there was a gap between someone in a situation of urgency relating to modern slavery or human trafficking, and someone in a situation that amounts to a police emergency.

Hidden in Plain Sight – Recommendations 46 and 47

- 215 *Hidden in Plain Sight* was the final report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into establishing a Modern Slavery Act in Australia (released in December 2017). It set out a body of evidence concerning the potential value of pre-departure briefings and information for relevant visa holders, and also a helpline that persons subject to exploitation could call.⁴⁵ The Committee stated:

⁴⁵ See Exhibit 11.

[9.114] The Committee agrees that the information on employment rights and responsibilities provided to migrant workers could be improved. The Committee agrees that relevant organisations should be supported to provide advice to migrant workers on their employment rights and mechanisms for reporting cases of concern. The Committee agrees with recommendation 10 of the PJCLE to improve the information available for migrant workers through expanding pre-departure briefings and information and introducing post-arrival briefings.

[9.115] The Committee recommends that these post-arrival briefings should include information on:

- offences against the withholding of passports under the Foreign Passports (Law Enforcement and Security) Act 2005;
- offences under Divisions 270 and 271 of the Criminal Code Act 1995;
- employment rights and responsibilities, including the requirement for employers to provide payment summaries on request as well as advice on where to report breaches of employment rights;
- details on specific visa requirements, including information on options for demonstrating compliance with work requirements; and
- the modern slavery hotline, and where else to go to report offences and exploitation.

[9.116] The Committee agrees that incentives should be developed that disrupt the power imbalance between perpetrators of modern slavery and victims.

216 A modern slavery hotline has been implemented in other jurisdictions. Reference was made to 'Unseen UK' which administers the Modern Slavery Helpline and Resource Centre in the UK: the Helpline is confidential, and available 24/7, 365 days a year for anyone requiring help, information or support regarding any modern slavery issue.

217 The Committee ultimately stated the following on this issue (at [9.117]):

The Committee considers that raising community awareness and providing information through a national hotline could assist in creating incentives to report cases and encourage victims and members of the community to come forward. The Committee recommends the introduction of a national hotline similar to the hotline administered in the UK by Unseen. The Committee considers that this hotline would complement the existing advice and reporting provided by the Fair Work Ombudsman.

218 Recommendation 46 stated:

[9.118] The Committee recommends that the Australian Government:

- review and expand pre-departure briefings and information on Australian employment rights and responsibilities currently available to all visa holders eligible to work in Australia (including information given upon application for a visa online or otherwise); and
- introduce post-arrival briefings to ensure migrant workers are provided with relevant information from the Fair Work Ombudsman and other relevant bodies.

[9.119] The Committee recommends that the Australian Government support government and non-government organisations to deliver these post arrival briefings to provide advice to migrant workers on their employment rights and responsibilities, accommodation options and mechanisms for reporting cases of concern, including via the recommended modern slavery hotline (see recommendation 47).

219 Recommendation 47 stated:

[9.120] The Committee recommends that the Australian Government introduce measures to incentivise the reporting of modern slavery and exploitation, including by introducing a national modern slavery hotline available via phone and online. The functions of the hotline should include, but not be limited to:

- providing information on the indicators of labour exploitation and modern slavery;
- providing information about mechanisms to report cases of labour exploitation and modern slavery;
- the ability to report potential modern slavery and exploitation abuses and offences
- providing advice on visa conditions; and
- referring matters to law enforcement and/or support services.

[9.121] The modern slavery hotline should be accessible to culturally and linguistically diverse communities and people with a disability. The public should also be made aware of this hotline via national efforts to raise public awareness about modern slavery, for example by commencing a national television and online advertising campaign.

Response of Australian Government

220 In a report dated October 2020, the Australian Government accepted Recommendation 46 in principle, although referred to a number of ‘significant activities and programs underway’ to enhance communications with migrant

workers, including through the Fair Work Ombudsman.⁴⁶ The Australian Government's response to Recommendation 47 relevantly stated:

The Australian Government notes this recommendation.

The Government has existing mechanisms in place to assist individuals seeking to report allegations of human trafficking and slavery. All suspected cases of human trafficking and slavery should be reported directly to the AFP, either by calling 131 AFP (131 237) or by completing a form on the AFP's website

(https://forms.afp.gov.au/online_forms/human_trafficking_form).

General information about people at risk of human trafficking and slavery can also be reported to Crime Stoppers on 1800 333 000 or via their website

(<https://crimestoppers.com.au/#report>). Information can be provided to the AFP and Crime Stoppers anonymously.

Those who wish to report allegations of workplace exploitation can contact the FWO (www.fairwork.gov.au) on 13 13 94 or through the FWO's anonymous reporting tool (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report>).

...

In an emergency, people should always dial Triple Zero (000).

221 In light of the above, it seems the recommendations were not actioned.

Issue 2(c): Findings

222 Jerwin was university educated in English and had the benefit of his family in the Philippines and in Perth offering him guidance and support. He also had a group of people in Australia who were advocating for him. As seen above, the path was fraught. Notwithstanding the attempts made by various people across different institutions to obtain assistance, Jerwin remained in a situation so frightening he jumped or fell from a moving Van to escape.

⁴⁶Exhibit 12: Australian Government response to the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry reports: *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (October 2020), pp 92-93.

I find that the supports available to Jerwin, a s 407 visa holder and a vulnerable young man in a foreign country were inaccessible, inadequate and insufficient, particularly in circumstances where:

- (1) absent a clear understanding that the conduct to which Jerwin appears to have been exposed was potentially criminal and not simply civil, it may not have been apparent to Jerwin or those assisting him that it would be appropriate to call triple 0.
- (2) DHA's phone number is not readily apparent on its website and the website was not 'user friendly' in terms of locating the number as was demonstrated in Court – combined with English as a second language and a vulnerable inexperienced user, it is not useful.
- (3) the letter granting Jerwin's visa was provided to **Operator 1** and not to Jerwin. Even if it had been provided to Jerwin it did not contain a contact number for DHA or details of how to contact emergency services.

I acknowledge that since Jerwin's death, by virtue of legislative change and the appointment of a NSW Anti-Slavery Commissioner, a hotline is now operative. However, on the information presently available, the demand outweighs capacity and it is not advertised such that a person like Jerwin, without their own 'champions' in Australia, may not know of its existence.

Issue 2(d): Supports and services available for s 407 visa sponsors in Australia, in the event the sponsor wished to cease sponsoring the s 407 visa trainee

223 On 12 March 2013, **Operator 1** contacted the DHA about cancelling Jerwin's sponsorship. A record of the advice provided states:

... You can go to the border watch report. Withdraw sponsorship You can't withdraw your sponsorship after a visa is granted.

Voluntary cancellation can only be requested by the visa holder themselves, or their authorised contact. by email to sponsornotifications@homeaffairs.gov.au. that the visa holder cannot work in Australia, unless it relates to their study or training. the first day one of the following happens: the visa holder has left Australia.

224 Agent 1 referred to a discussion with **Operator 1** on 13 March 2019, where he referred to getting a stand-by seat for Jerwin on 14 March 2019; they discussed whether or not to let Jerwin know in advance, and Agent 1 advised against it due to concerns about trouble at the airport. He stated: 'My concern was if Jerwin did run away **Operator 1** would be responsible as his sponsor in Australia'. **Operator 1** also reported that he shared this review of being 'responsible' for Jerwin and told SC Churchin on 14 March 2019 that he had told Jerwin 'Jerwin, you understand I'm the sponsor. I'm responsible for everything right? You don't understand. My responsibility stops once you leave'. He also said that he had told Jerwin he had to take him right to the airport and through the gates.

225 On 15 March 2019, **Operator 1** again contacted the DHA (via the sponsor.notifications@abf.gov.au email address), stating:

I contact the Immigration Department 13 18 81 sometime last week to inform I had issues with a 407 trainee not willing to learn and be part of the program but more interested in how to stay in the country. We discussed the matter and the best course of action was to offer him an early flight to go home. This was done. He accepted.

DHA evidence

226 Clayton was questioned regarding Regulation 2.81 of the Sponsorship Obligations Procedural Instruction concerning the obligation of sponsors to pay costs incurred by the Commonwealth in locating and removing unlawful non-citizens. He explained that termination of the sponsorship agreement does not make the visa-holder an unlawful non-citizen. It is only if the visa is cancelled or expired that they become an unlawful non-citizen.

- 227 Clayton told the Court that if the sponsorship arrangement is terminated, there is no expectation or obligation on the part of the sponsor to take steps to remove the visa holder from the country. Instead, the obligation is for costs incurred by the Commonwealth in locating and removing an unlawful non-citizen. The other relevant obligation is reporting to the DHA if there is a change in the sponsorship arrangement. Certainly, there was no obligation or expectation that **Operator 1** would drive Jerwin to the airport so he could leave the country once he deemed the arrangement terminated.
- 228 Goodsell told the Court that a person is an unlawful non-citizen if they are not an Australian citizen, they do not hold a substantive or bridging visa and they remain in the migration zone. Where the DHA receive notification of the withdrawal of the nomination by the approved sponsor, the visa is not 'automatically cancelled.' Instead, the DHA may consider whether to cancel the visa. The sponsor's obligations at that stage are not specified to the level of detail that requires the sponsor to drive the visa holder to the airport so they can leave the country.

Issue 2(d): Findings

I consider that **Operator 1** understood that if Jerwin absconded, he would be liable for the costs associated with Jerwin's recovery. While that did not translate to an obligation to see Jerwin to the airport gates, that may well have been **Operator 1**'s interpretation of his obligations.

Of significance, **Operator 1** as a sponsor, was readily able to access advice from DHA in circumstances where Jerwin, in desperate need of assistance, could not.

Issue 2(e): Jerwin's working and living conditions at the Agricultural Premises

Operator 1's submissions

- 229 Operator 1's (126 page) submissions were received at 1.58pm on 12 January 2026 in circumstances where findings were to be delivered at 3.00pm that day. In my *ex tempore* judgment on Operator 1's application for leave to rely on his submissions, I detailed the history of extensions granted and found that Operator 1 had been afforded procedural fairness in the lead up to 12 January 2026 such that leave could have been refused. However, in the interests of ensuring all available information was before this Court and, in the interests of finality for Jerwin's family, I granted leave and determined that I would receive Operator 1's submissions out of time.
- 230 Jessa-Joy had travelled from the Philippines to Lidcombe to receive the findings and represent her family. Taking into account her departure date and the importance of her 'in person' attendance, I imposed a very strict timetable for truncated submissions in reply. I acknowledge that I imposed this on the Assisting team and on each representative during a period they may have otherwise been on leave. I am grateful for each representative who, in recognising the needs of Jerwin's family to conclude this inquest, agreed without hesitation to achieve this.
- 231 I have carefully considered the submissions by Operator 1 in their entirety. Similarly, I have considered all submissions in reply to Operator 1's submissions carefully – namely, those filed by counsel assisting on 14 January 2026; and those filed by the DHA and Royupa family on 15 January 2026. I note at [23] of the submissions for the family, further discussion regarding recommendations. Ms Melis, counsel for the family, acknowledged that it is 'late in the piece' to be making further proposed recommendations. In relation to paragraph 23, I note that those submissions will be provided to both the DHA and to the Australian and NSW Anti-Slavery Commissioners. Given the timing of the submission and the inability of any participant to reply, it is otherwise not appropriate for me to respond to it.

232 There are many parts of Operator 1's submissions which are inadmissible as instances of Operator 1 attempting to give evidence as to matters not otherwise in evidence, as opposed to reflecting submissions on the evidence adduced at the inquest. I have disregarded those aspects of Operator 1's submissions. This includes, but is not limited to:

- (1) at [2], [3], [106] to [118] (as to the SEERS vision), [153] (as to his communication with DHA), [176] (as to Jamaica being present in conversations), and [695] (as to the intention of the 'training program').

233 There are also instances where Operator 1 criticises members of Jerwin's family, without evidentiary basis. Absent evidence in support of these submissions, they are given no weight. This includes, but is not limited to:

- (1) the criticisms directed at Jerwin's family at [5] for relentlessly pursuing answers in relation to how and why Jerwin died (which I consider is entirely understandable and appropriate);
- (2) the allegation that Jerwin's family are looking for a 'perpetrator to blame';
- (3) at [697] and [716] as to the theme of a financial motive, and at [391]-[391] as to the theme of the omission of facts in the Philippines proceedings;
- (4) at [428] and [434] as to an allegation that Jessa-Joy failed a duty of professional candour, and at [518]-[519] as to alleging that witnesses had been influenced; and
- (5) the allegation that Jerwin's family was motivated by an insurance claim.

234 In the strongest terms, I reject the submissions at [63] to [75] of Operator 1's submissions and those referred to at [233] above. As noted by counsel assisting and the family in reply to Operator 1's submissions, there is no evidence to support the assertions made against Jerwin's family. Jerwin's family co-operated fully with the police in providing access to material and information.

Attempts were made to examine Jerwin's phone which were unsuccessful due to the aged technology. To the extent that material relating to Jerwin's death was provided to them in the immediate aftermath of his death, this was entirely appropriate. Jessa-Joy was not called as a witness but her written evidence was tendered without objection; and Jamaica's cross examination was entirely appropriate. The release of information to the interested parties in the inquest was conducted appropriately. Jerwin's family was residing in the Philippines at the time of his death. The attempt by **Operator 1** to somehow implicate Jerwin's family members in his death is deplorable.

- 235 Given the nature and content of the submissions which were received between 12 and 15 January 2026, I will deal with only the salient aspects below in a truncated manner using **Operator 1**'s headings.

A. Alarming unfair procedural context

- 236 **Operator 1** refers to 'findings' by other bodies, including the AFP, Magistrate Brender (coroner) and a trial judge in the Philippines, concluding that there was no criminal conduct on his part.

- (1) The decision by Magistrate Brender as the original coroner, was taken at an earlier stage on limited evidence. There was a subsequent decision of the State Coroner to require an inquest be held.
- (2) The outcome of any investigation conducted by the AFP may be considered as part of a coronial investigation but does not in any way bind a coroner conducting an inquest.
- (3) The outcome of any investigation or criminal proceedings in a foreign jurisdiction would not bind a coroner conducting an inquest and it is the understanding of this Court that **Operator 1** has not been personally prosecuted in the Philippines such that there has been no hearing on the facts.

- 237 I reject Operator 1's submission that the modern slavery focus was 'withheld'. The circumstances leading up to Jerwin's departure from the Agricultural Premises on 14 March 2019, including his working and living conditions was identified on the issues list first served on Operator 1 on 6 September 2024. The NSW Anti-Slavery Commissioner was granted leave to appear at the Directions hearing on 7 November 2024, at which Operator 1 was present. The Assisting team's exploration of issues of modern slavery was entirely appropriate. Operator 1 was entitled to be represented and engage in the proceedings at all times. His request to view the proceedings, including directions hearings and the substantive hearing, via AVL was accommodated. I appreciate that Operator 1 has raised issues regarding inequality of access to financial support. While this issue may have impacted his ability to obtain representation, that is not an issue which is determined by a coroner or the Coroners Court.
- 238 I reject the submission that this inquest was a branding exercise on the part of the Assisting team, the NSW Anti-Slavery Commissioner or any other participant in so far as this inquest has been identified as the first inquest in Australia dealing with modern slavery.
- 239 I reject the submission that any 'covert criminal finding' has been made. Consistent with s 81(3) of the Act, I do not suggest that any person has committed a modern slavery offence or any other offence.
- 240 I reject Operator 1's submissions that the inquest was improperly conducted. This is a serious allegation, blindly made without referring to particulars of the alleged conduct. Operator 1 was entitled to engage in the proceedings and could have participated and objected to the tender of evidence and to questions put to witnesses as they were being asked.

B. Compromised evidentiary foundations

- 241 I confirm that no changes have been made to the transcripts which were provided to Operator 1 directly from the registry.

- 242 The contentions by **Operator 1** (at [71] to [75]) that evidence was tampered with or falsified have no evidentiary foundation. Evidence of Jerwin's messages with friends and family were provided by way of screenshots obtained during the coronial investigation and Jerwin's phone itself was not able to be examined⁴⁷. This does not provide a basis to conclude the messages are false, noting also that **Witness 6** **Witness 5** and Jamaica who exchanged messages with Jerwin also gave evidence at the inquest and were questioned about those messages. **Operator 1** could have asked questions concerning the authenticity of this evidence and he did not avail himself of that opportunity.
- 243 **Operator 1** alleges that Jamaica 'falsified' translations of communications with Jerwin and refers to 'Police report of S/C Richard Nelley' (at [72]). In oral evidence on 26 November 2024, counsel for Jerwin's family took Nelley to an opinion set out at [159] of his statement dated 5 November 2019 that the messages between Jerwin and Jamaica, as translated by Jessa-Joy '*differs from that of the accredited translation service. Messages have been added to with the content and nature of the conversation influence by the opinion of Jessa-Joy*'. Nelley later clarified that he was referring to a third 'translation' found in an email on red page 275 of Volume 3; and further, that '*I was trying to make ... [the coroner] aware that the transcript provided from the independent translation, word for word, didn't match the document of the email because there's additional stuff that I didn't ask for to be translated because it wasn't necessary*'. This does not support the allegation of falsified translations.

C and D: The true context of the unexposed visa risk and the tragic impact of an unvetted unsupported visa

- 244 I reject **Operator 1**'s allegation that Jerwin 'misled' and 'exploited' him: there is no evidence for that proposition.
- 245 As to the balance of **Operator 1**'s submissions at [126] to [145], the submission appears to be that DHA failed to appropriately interrogate Jerwin's visa application and also failed to disclose to **Operator 1** his risks as a sponsor. I have

⁴⁷ Multiple attempts were made by the NSWPF, however, given the outdated technology that Jerwin was using it was not possible to access the data on his phone.

considered DHA's submissions at [11] to [24] in reply to **Operator 1**'s assertions on these topics. I deal with DHA's consideration of Jerwin's visa application within these findings. As to **Operator 1** as a business owner and Australian resident, pursuing or engaging in a sponsorship program, he is empowered to make his own enquires as to his obligations both in respect to his arrangements with Agent 1 and his legal obligations to Jerwin, his trainee.

246 I accept **Operator 1**'s submission that he sought advice as to how to end the sponsorship arrangement as his relationship with Jerwin had broken down, he understood he was exposed to a financial risk if Jerwin had absconded and that was a determinative factor in him seeking to take Jerwin to the airport to return to the Philippines.

247 I accept the DHA's submission at [18] that the obligations imposed on sponsors do not extend to taking on a 'moral, legal or financial responsibility' for a visa holder in the *general* sense suggested **Operator 1**

248 Otherwise, see paragraph [231] above.

E. Timeline narrative of events

249 Jerwin's intention to send money home to the Philippines does not provide an evidentiary basis for the allegation that Jerwin entered Australia for a 'fraudulent misrepresented purpose.' There is ample evidence in support of the finding that Jerwin understood he was to receive a stipend. I make no finding that the value of that stipend was \$750 a month or another amount. I do find that Jerwin was not paid any stipend in the time he was in Australia.

250 I reject the submission that Jerwin's complaints regarding his treatment at the Agricultural Premises were geared at providing a foundation for a compensation claim. On the contrary, the evidence adduced at the inquest indicated that Jerwin saw his traineeship as a learning opportunity and as an opportunity to travel to another country as his sister Jamaica had done.

- 251 The evidence also indicated an absence of any education component to the training program noting that no education or training materials could be produced by **Operator 1** or Agent 1 in response to a subpoena. The absence of production gives rise to an inference that no such documents relating to Jerwin's time at the Agricultural Premises exists.
- 252 **Operator 1** asserted at [121] that the s 407 visa scheme:
- ...wasn't designed as a classroom based education. It was also not designed to facilitate any employment based training as an apprentice for any qualifications. Rather it appeared to offer an opportunity for a sponsor to offer a newly graduated Agricultural Student, real world learning within commercial operations, and with implied flexibility.
- 253 As noted by the DHA in its reply submissions at [7] to [10], this is contrary to the sworn evidence of Goodsell to the effect that the scheme was intended to allow for training opportunities which may include classroom based training. Importantly, contrary to **Operator 1**'s assertion, Goodsell confirmed that sponsors are not prohibited from paying 407 visa holders. A factor the decision maker is required to consider in accepting an application is whether the proposed training arrangement would comply with the *Fair Work Act 2009* (Cth).
- 254 To the extent that **Operator 1**'s submissions are formulated as evidence which undermines the sworn unchallenged evidence of Goodsell, it must be rejected.
- 255 In [201] to [204], **Operator 1** asserts that Jerwin falsified records in that he acknowledged the placement would be unpaid while seeking payment on arrival. Jerwin had been told in writing that he would receive a stipend. The evidence indicated that Jerwin was seeking the stipend he had been promised. I make no finding that Jerwin was promised \$750AUD per month which is refuted by **Operator 1**
- 256 As to [231] to [232], **Operator 1** appears to be asserting that 'playful' texts between Jerwin and his sister about Jamaica joining him in Australia represent some ulterior motive on Jamaica's behalf to use Jerwin to come to Australia. The evidence adduced at the inquest was consistent with Jerwin's sisters being

independently successful and supportive of Jerwin pursuing his own life dreams. I reject the submission that Jerwin was pursuing ulterior motives and that his references to staying in Australia were anything but aspirations which would be expected of a young man on his first overseas journey. His sisters' responses appear to encourage his dreams and commitment to his career and financial security.

- 257 I reject the allegation that Jerwin misrepresented his intentions. The allegation is unfounded and not supported by the evidence. Jerwin was a young man at the beginning of his career. He had come to Australia on what he believed was going to be a positive training experience. The fact that he was considering alternative options when he was not happy is not evidence of having misled anyone as to his intentions or that he was worried about family debt. Rather, it most likely reflects that he was seeking a genuine training opportunity. He was not ready to give up on his dreams and he was trying to determine what his options were. All understandable responses.

F. Specific evidentiary responses to Counsel Assisting's closing submissions

- 258 As to [682] and [683], the evidence of **Operator 1** and Agent 1 is untested and therefore of limited weight. I am unable to make a finding as to the precise reason or reasons that Jerwin voluntarily left the vehicle or what was going through his mind when he did so. I cannot rule out that there was some threat though I also cannot make a positive finding in that regard. I reject that an inference ought to be drawn based on Nunez's evidence that he jumped from the vehicle as it is a common practice in the Philippines.
- 259 As to [691], there is no evidence of sun protection provided to Jerwin and there was evidence from **Witness 4** as to Jerwin appearing to be sunburned.

G. The Briginshaw Standard

- 260 I accept that certain findings made would require the *Briginshaw Standard* to have been met, such standard requiring clear and cogent proof. The findings I have made are based on consideration of:

- (1) sworn and tested oral evidence
- (2) documentary evidence (including text messages to friends and family)
- (3) the absence of documentary evidence which one would expect to exist if Jerwin's training truly had an education component, such evidence, if it existed, having been lawfully required to be produced under subpoena.

261 As an interested party, **Operator 1** could have objected to the tender of evidence, cross examined witnesses to test evidence or at any stage rectified any omissions in his previous response to subpoenas.

H. Unfounded unavailable criminal allegations

262 **Operator 1** appears concerned that the Court is being asked by the Assisting team to make findings as to criminal conduct which would be contrary to s 81(3) of the Act.

263 Section 81(3) of the Act states:

Any record made under subsection (1) or (2) must not indicate or in any way suggest that an offence has been committed by any person.

264 As submitted by Counsel assisting (and I'm grateful for her summary of the applicable law), the recitation of facts about how a death occurred (that is, the circumstances) and the cause of death, does not contravene the s 81(3) prohibition.⁴⁸ This is consistent with the basic function of a coronial inquest as set out in *R v South London Coroner, ex parte Thompson* per Lord Lane CJ:

The function of an inquest is to seek out and record as many of the facts concerning the death as public interest requires.⁴⁹

In discharging this function:

⁴⁸ The cases are comprehensively reviewed in the ruling annexed to the decision *Inquest into the death of Shandee Renee Blackburn* (QLD), 21 August 2020 at pages 66 – 74 (Annexure A).

⁴⁹ (1982) 126 SJ 625; *The Times*, 9 July 1982; full text decision in P Knapman & M Powers, *Sources of Coroners Law* (1999) Vol 1, p 214 at 218-219.

It is the duty of the coroner as the public official responsible for the conduct of inquests...to ensure that the relevant facts are fully, fairly, and fearlessly investigated. ...He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse, or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory.⁵⁰

265 There is no obstacle to a coroner exploring facts which might be relevant to civil or criminal liability⁵¹.

266 As noted by Queensland Central Coroner O'Connell in the *Inquest into the death of Shandee Renee Blackburn*,⁵² a consequence of recording the facts found by the coroner is that:

...it may well be open, to an objective reader of an inquest decision, to draw such conclusions as that reader believes are open. This is well-recognised in coronial jurisprudence. Lord Lane CJ, in *Thompson*⁵³, set out the position as follows:

In many cases, perhaps the majority, the facts themselves will demonstrate quite clearly whether anyone bears any responsibility for the death; there is a difference between a form of proceedings which affords to others the opportunity to judge an issue and one which appears to judge the issue itself.

It follows that findings from which a reader may draw their own conclusions about what ultimately occurred do not contravene the prohibition contained in s 81(3) of the Act.⁵⁴ In this regard, the seminal authority as to the construction of s 81(3) of the Act derives from *Perre v Chivell*,⁵⁵ a decision of the Supreme Court of South Australia. In that case Nyland J was concerned with an application to set aside coronial findings concerning the identification of a person who had sent a bomb to a premises which exploded and killed a police officer. *Perre v Chivell* analysed s 26(3) of the *Coroners Act 1975* (SA), which was relevantly in these terms:

⁵⁰ *R v HM Coroner for North Humberside & Scunthorpe, ex parte Jamieson* [1995] 1 QB 1, at 26B point (14), per Sir Thomas Bingham MR in delivering the judgment of the Court of Appeal. His Lordship later restated this view in *Jordan v Lord Chancellor* [2007] 2 AC 226, at [23].

⁵¹ Queensland Supreme Court decision of *Atkinson v Morrow* (per Mullins J), which considers the cognate provision to s 81 of the Act being s 43 *Coroners Act 1958* (QLD). This section has subsequently been modified in the *Coroners Act 2003* (QLD) and is found at s 45 but the effect of the prohibition contained therein is the same.

⁵² 21 August 2020, 'Ruling' annexure A at pages 66 – 74, paras [28] and [30].

⁵³ (1982) 126 SJ 625; *The Times*, 9 July 1982; full text decision in P Knapman & M Powers, *Sources of Coroners Law* (1999) Vol 1, p 214 at 218–219 (full text decision) at 218. His Lordship was there citing, with approval, from the 'Brodrick Report', at [16.40]: *Report of the Committee on Death Certification and Coroners* (1971) Comd 4810.

⁵⁴ This view is supported by the learned authors of *Waller's Coronial Law & Practice in NSW* (4th Ed, 2010) at [81.35]: 's 81(3) does not mean that a coroner cannot make findings of fact which, if accepted by a criminal court, could render the person criminally liable.'

⁵⁵ (2000) 77 SASR 282 (SASC).

A coroner holding an inquest must not in the inquest make any finding, or suggestion, of criminal or civil liability.

After careful review of the development of s 26(3), Nyland J concluded at [57] that (emphasis added):

The mere recital of relevant facts cannot truly be said, of itself, to hint at criminal or civil liability. Even though some acts may not seem to be legally justifiable, they may often turn out to be just that. For example, a shooting or stabbing will, in some circumstances, be justified as lawful self-defence. As I have stated, criminal or civil liability can only be determined through the application of the relevant law to the facts, and it is only the legal conclusions as to liability flowing from this process which are prohibited by s 26(3). Thus, the word "suggestion" in this section should properly be read as prohibiting the coroner from making statements such as "upon the evidence before me X *may* be guilty of murder" or "X *may* have an action in tort against Y" or statements such as "it appears that X shot Y without legal justification". In other words, the term "suggestion" in s 26(3) prohibits speculation by the coroner as to criminal or civil liability. In the present case, the coroner has neither found nor suggested that Perre is criminally or civilly liable for his acts.

267 As can be seen herein, I make no finding that there was a breach of the Commonwealth *Criminal Code* or any other law. Rather, I have found that there are a number of indicators of modern slavery identified in the evidence. I also recommend that the coronial brief and transcript from the proceedings be referred to the AFP for consideration as to further investigations. The 'indicators' were identified by reference to clear and cogent evidence as outlined in the balance of my findings.

268 **Operator 1** also makes various submissions referable to proceedings in the Philippines, which I consider are unfounded. Such proceedings are not relevant to my determination.

I. Unavailable findings summary

269 Having given careful consideration to **Operator 1's** submissions and the evidence adduced in the course of the inquest I am satisfied that the findings I have made are substantiated by the evidence tendered and the oral testimony given to the appropriate standard.

270 As outlined above, the conduct of the Assisting team was entirely appropriate, as was acknowledged by both the family (at [13] and [14]) and the DHA (at [4])

in their respective submissions in reply to Operator 1's submissions. Operator 1 was given appropriate notice of the issues being explored in the inquest, he was identified as an interested party early in the proceedings, and he was entitled to engage in the inquest as much or as little as he desired.

271 For the reasons outlined in my *ex tempore* decision of 12 January 2026, I determined that Operator 1 had been afforded procedural fairness in the conduct of the inquest. Notwithstanding that, I granted a further indulgence in accepting his submissions sought to be filed 1 hour and 2 minutes before findings were to be delivered.

272 The assertion of the delayed disclosure of legal advice as to the exposure of Operator 1 and Agent 1 in relation to the offences in the Philippines is unfounded. The advice was obtained to inform the Court as to the Court's consideration of any objection that may be taken pursuant to s 61 of the Act. It was appropriately disclosed to Operator 1 to enable an application to be made pursuant to s 61 which was ultimately made.

Hours and nature of Jerwin's work

273 Based on the training schedule in the MOU, the Training Program was to be 40 hours per week from Monday to Friday. Of this, 30 hours was for 'Face to Face Instruction', 10 hours was for 'self-study', and 6 hours was for 'Applied Learning Projects with Coaching Guidance'.

274 According to Operator 1 the program ran from Monday to Saturday. Of this, 32 hours were classified as 'work experience' comprised of 8-hour days on Monday, Tuesday, Thursday and Friday. Wednesday and Saturday were 'study days' for Jerwin to conduct research. Where other activities occurred on the farm that Jerwin might benefit from, he was invited to join in.

275 On the basis of Operator 1's statement, if Jerwin's study days were also 8 hours long, Jerwin was involved in the Training Program for 48 hours per week.

- 276 Operator 1 stated that ‘from the first day he started Jerwin was a problem student’ who ‘showed no willingness to learn’ and who ‘would barely participate in work tasks.’ According to Operator 1 ‘my course was failing’ because Jerwin was ‘not interested in learning’.
- 277 Operator 2 recalled occasions where Jerwin was distracted on his phone. Operator 2 stated that Jerwin ‘always showed no interest’ and ‘won’t try [to] learn’. This evidence was not tested, as Operator 2 also objected to giving evidence, and was not required to do so.
- 278 Witness 1, a former full-time employee at the Agricultural Business, gave evidence that he had worked for the Agricultural Business for over 20 years up until 5 November 2022. At the time, he, Operators 1 and 2 and Jerwin were the only people working on the farm.
- 279 Witness 1 said that he worked with Jerwin ‘most days initially’ but not as often in Jerwin’s final weeks. He said he tried to teach Jerwin ‘how to do things, but he wasn’t really interested’.
- 280 Witness 1 gave evidence that his working hours were Monday to Friday 8am to 12pm, an hour’s lunch break and then 1pm to 5pm, following which he would go home. He was unaware whether Jerwin was working outside of those hours, in the evening or on weekends. He was paid monthly on a wage of around \$28 an hour; he was not aware of whether Jerwin was being paid.
- 281 Witness 1 was questioned as to Jerwin’s working conditions. He said that between 7 February 2019 and 14 March 2019, the times he worked with Jerwin would have been in the early part of that period, and the work he described that he undertook with Jerwin was physical farm work.
- 282 Whilst undertaking this work, they would be out in the sun and in late February/early March, the temperatures can be in the 30s. Witness 1 said that Jerwin would start the workday wearing a ‘long-sleeved heavy sort of jumper or cardigan’ that they then take it off and wear a t-shirt only because of the heat.

He thought that Jerwin had a 'terry towelling hat'. He did not notice that Jerwin was sunburnt; he was unaware if Jerwin was supplied with suncream. He considered it was not his business as to whether Jerwin had appropriate protective clothing or protection from the sun.

283 Witness 1 was disparaging of Jerwin stating:

We'd go out and do a job and he'd wander off into the [redacted] somewhere else away from me, and because I had a job to do, I'd do the job and then at lunchtime I'd go and track him down to take him in for lunch.

284 On the morning of 14 March 2019, Operator 1 told Witness 1 that he was taking Jerwin to the airport. Witness 1 said he did not find that strange because Jerwin 'didn't want to learn – didn't seem to want to learn what I want – what I was asked to teach him'. Witness 1 stated that Jerwin did not understand English and so Witness 1 used sign language to show him what had to be done.

285 Witness 1 gave the following examples of the things he tried to teach Jerwin:

...you show him how to cut staples on the posts that hold the wire on, and how to ride the four-wheel bike, and how he needed to pull the trickle line off the - down the simplest and easiest way.

286 However, Witness 1 accepted that Jerwin did, in fact, learn to ride the quad bike, to cut staples and pull the trickle line out. He maintained that Jerwin would walk off during the workday and do 'virtually nothing'; Witness 1 told Operator 1 that he could not work with Jerwin.

287 Witness 1 also said that Jerwin was 'regularly' on the phone, using it when he was supposed to be working – he confirmed he reported this to Operator 1

288 The nature of the evidence given by Witness 1 was indicative of him seeing Jerwin as a farm hand. None of the tasks described were indicative of anything resembling management training.

289 Witness 1 was asked a series of questions as to his recent contact with Operators 1 and 2. He confirmed he visited the Agricultural Premises about a month prior

staying for an hour. He denied talking about Jerwin, the inquest into his death or giving evidence during that visit and maintained that position when asked a second time. In response to further questions from Counsel assisting regarding his subpoena to give evidence at the inquest, Witness 1 stated that he had not had any phone calls with Operator 1 since receiving his subpoena. However, he then gave evidence that he thought Operator 1 rang him once the week prior where they had discussed the subpoena and the inquest.

290 In oral evidence, Jamaica was questioned about particular elements of the training Jerwin was supposed to receive, based on the scholarship documents for the Training Program. To her knowledge, Jerwin did not speak about training or education in 'green economy and future opportunities', 'health impact of urban environment', 'compromised ag', 'property planning', 'grazing management', 'solar fencing', 'seedling propagation', 'aquaculture system', 'mobile chicken/pig pens', 'establishing worm farms', or any other topics and modules proposed in the Training Program documents.

291 Jerwin had in fact told her that there was no schooling.

292 Witness 6 stated that Jerwin told her that he was working for '10 hours a day' and that he was doing 'mainly hard jobs'. Jerwin also told Witness 6 that 'another worke[r] would be driving the car or truck' while Jerwin 'would be the one on the ground ... feeding the log into the machine'. Jerwin said that he was 'being over worked' and that if it continued 'he is wanting to go home'.

293 In oral evidence, Witness 6 explained that her mother, Witness 3 met Jerwin through Witness 5. Witness 3 was concerned for Jerwin and asked Witness 6 to get him a SIM card because Jerwin did not have contact with his family in the Philippines. Witness 6 purchased a SIM card in Melbourne and then travelled to [REDACTED] and gave it to Witness 3. Witness 6 was told by Witness 3 to drop the SIM card off in the vicinity of Operator 1's property but not on the property as Jerwin said he did not want Operator 1 to see.

- 294 [Witness 6] gave evidence that Jerwin had been working 'long hours'. During a phone call on 11 March 2019, Jerwin told her he was working 10 hours a day and that his duties were heavier than the other farm worker. He said that one of his duties was feeding logs into a machine. From the recruitment process, Jerwin was told he was only going to work around 6 hours, and that 10 hours was not advised to him.
- 295 Further, Jerwin told [Witness 6] over the phone of an occasion where he was not allowed to go off the property even though it was a Sunday and his day off. Jerwin also reported that he had seen [Operator 1] using his phone, and so Jerwin deleted his messages to [Witness 6] fearing his phone might be taken.
- 296 During their phone call on 11 March 2019, and also in messages, Jerwin told [Witness 6] that his passport was confiscated on the third day he was at the farm, the reason given being that it was for his security or safety.
- 297 [Witness 5] gave evidence that she met Jerwin in February 2019 at a church in [REDACTED]. Jerwin told her in that first conversation that he was not okay with his employer and that his work was very hard. [Witness 5] told the Court she met Jerwin at the [REDACTED] Hotel again the day after they met in church and that he said he was okay, but he did not look okay.
- 298 Jamaica communicated with Jerwin when he was in Australia through Facebook Messenger and weekly phone calls through the Facebook Messenger app, which became daily phone calls in March.
- 299 On 10 February 2019, Jerwin posted an image with this message: 'Jesus said unto them, The harvest is plentiful, but the workers are few' Luke 10:12'.
- 300 On 11 February 2019, Jerwin sent a Facebook message to Jamaica saying that he was working for '10 hours per day' and only had Sundays off work. In oral evidence, Jamaica confirmed that Jerwin told her he was working 60 hours a week and receiving no training. In further messages the same day, Jerwin told

Jamaica that he was sunburnt and he did not have a hat or long-sleeve shirt with him, although he did have a jacket.

301 On 13 February 2019, Jonathan Sahagun called Jerwin. In tears Jerwin told him that **Operators 1 and 2** 'have [a] terrible attitude', treating Jerwin 'unfairly and unequally'. Jerwin also told Jonathan that he was working for 10 hours per day.

302 Jamaica stated that whilst on 17 February 2019, Jerwin was still feeling positive about the job he became increasingly unhappy. By 28 February 2019, he had messaged her saying that working 10 hours a day is not fair.

303 On 28 February 2019, Jerwin exchanged a series of Facebook messages with Jamaica where he told her that he was working '60 hours a week, Saturday's included' for '10 hours a day', 'in intense heat'. He said there was only one other worker with him, a 65 year old man who would 'leave at 5.00pm with 8 working hours his reason was he was too old'. They discussed Jerwin speaking to his boss about his working hours, but that:

He was scared because I think he is trapped with this thing. All the promises, the 407 training visa; he's having difficulties in the working hours.

304 On 28 February 2019, **Witness 3** exchanged Facebook messages with Jerwin. Jerwin told her that he was working 10 hours a day while the normal hours should have been only 7-8 hours a day. Jerwin said to **Witness 3** 'That is wrong, what is your advice for me?'

305 On 12 March 2019, Jamaica had a Facebook phone call with Jerwin where they discussed the referral being made to the Fair Work Ombudsman. She told the Court that the plan at that time was to wait for the reply of the Fair Work Ombudsman and to coordinate with their cousins in Perth and the women in including **Witness 6** and **Witness 3**

306 On 13 March 2019, there was a further call with Jerwin where they discussed the training program. There were also further messages with Jerwin that day

concerning Jerwin having warned other potential trainees away from the program which caused **Operator 1** to blame Jerwin for 'destroying his program'.

307 When **Witness 4** met Jerwin in person at the [REDACTED] Hotel on 10 March 2019, Jerwin told **Witness 4** his work involved picking weeds in the heat all day, every day. He also said he was assured that he would be paid for his work in Australia, but that his boss was not paying him. He told her that he could only stay at the hotel for a short time because his boss checked on him.

308 In her statement, Nota referred to messages between her husband and Jerwin where he began confiding about his difficult situation. Nota stated:

...He mentioned not being paid by his employer despite working 10- hour days, including Saturdays, often under the sun. He expressed feeling unwell and dizzy. That same day, he called us via Messenger, speaking briefly with my husband and me. Jerwin shared that he had already spoken to someone who would address the matter with his boss.

...On 12th March 2019, I advised Jerwin to inform his family about his situation so they could provide guidance. He responded that his sisters were already aware. During our conversation, he expressed feeling scared and unwilling to remain at his current location due to potential consequences. Jerwin also shared concerns that his boss might demand repayment of expenses ² supposedly amounting to more than \$10,000, though he believed the actual costs were closer to \$2,000. I reassured him that he had not signed any agreement obligating him to repay such expenses. Jerwin mentioned his intention to speak with his boss and inform him that their arrangement was no longer working. He also added, with visible anxiety, 'Oh no, my boss saw me using my phone; I'll face verbal reprimand later'.

Evidence of participation in a genuine training opportunity

309 Given the totality of the evidence, there is no evidence of Jerwin having received the suggested readings or e-books, completing any written work product or material for assessment, nor receiving any form of feedback or instruction from **Operator 1** or anyone else. On his inspection of the premises after Jerwin's death, Nelley noted:

The MOU also outlines 'modules' and learning objectives over a six-phase training schedule. Whilst viewing the accommodation used by Jerwin at the Agricultural Premises, or in a review of his property I did not locate any 'training' books, readings, assignments or any documentation I would attribute to study as outlined in the MOU.

310 Consistent with this, on 28 February 2019, after Jerwin had been in Australia for three weeks, Jerwin told Jamaica Royupa in a Facebook message 'I assumed there is a schooling but I was wrong[ed]'.

311 Witness 1 said he understood from **Operator 1** that Jerwin was doing a training course of some sort, but he did not know the sort of training that Jerwin was supposed to receive. Witness 1 was not given any instructions to deliver training to Jerwin. He did not ever see Jerwin with any training material; nor did he see anyone giving instruction to Jerwin. Witness 1 was never asked to fill in any forms about Jerwin's performance or to assess his performance.

Payment to Jerwin

312 On 1 November 2018, **Operator 1** wrote a letter (**Sponsorship Letter**) advising Jerwin that he had been accepted onto the Training Program. It stated that the Training Program would include 'learning, practicing and planning for your own organic farm development in the future ... under the instruction of **Operator 1** According to the Sponsorship Letter, BOT would employ participants as management trainees with a 'monthly salary' paid by BOT. 'Full tuition fees' would be paid by the Agricultural Business. The sponsorship would include return air travel, accommodation and meals, health insurance and visa expenses. The Sponsorship Letter also noted out-of-pocket expenses for trainees for passport preparation, vaccinations, working clothes, stationary, local Sim card and personal toiletries.

Contractual and oral agreement with BOT

313 On 11 October 2018, in a series of Facebook messages between Agent 1 and Jerwin, Agent 1 stated 'our monthly expense allowance is tax free ... so you will be able to send most of it home or save etc'.

314 On 8 November 2018, in further Facebook messages between Agent 1 and Jerwin, Agent 1 told Jerwin that he had provided **Operator 1** with a document which would 'detail your scholarship details as we discussed previously'. He stated that this included flights, insurance and 'big fat monthly expenses.' Agent

1 confirmed that Jerwin's food and accommodation were all covered with the benefit that 'most of your income is up to you.'

315 On 10 November 2018, Agent 1 emailed Jerwin stating, amongst other things:

(1) 'we have been very create[ive] to skirt around issues like you having to pay employment tax etc'

(2) 'don't stress about any offer details such as monthly expenses etc. Both [Operator 1] and I are very careful to do everything legally'.

316 On 24 November 2018, Jerwin signed Agent 1's Employment Agreement with BOT for a 3-year term. The 'compensation and benefits' included 'a base Salary paid on a monthly basis of Pesos 5,000'. The Employment Agreement stated that 'any increase in this Base Salary component shall be at the sole discretion of' BOT. The agreement mentioned 'Performance Incentives' which would 'be discussed and agreed during monthly dialogs with BOT Chairman' (i.e. Agent 1).

317 On 28 December 2018 and 31 December 2018, Agent 1 shared a series of draft Management Trainee Brochures with Jerwin which stated that the Scholarship covered 'visa expenses, tuition costs, travel costs, accommodation & meals, plus a generous monthly allowance'.

318 In an email to Nelley dated 20 March 2019, Agent 1 referred to the arrangement for Jerwin to train at BOT as being 'based on an oral agreement'. No further details of the agreement were provided.

319 On 28 February 2019, [Witness 3] exchanged Facebook messages with Jerwin where he referred to working for 10 hours per day and being paid \$750 monthly.

320 On 8 March 2019, Jamaica stated that Jerwin told her that [Operator 1] would not give him his \$750AUD salary and 'claimed that he [has] no idea' other than a payment of 5,000 pesos (Philippine Currency) to Jerwin as his salary in Australia. Jamaica stated that Jerwin had not yet received any payment and

that he had been told by his employer that 'he will just receive his salary after... six months'. Jamaica stated that upon being told that, Jerwin 'asked his employer if he can just go home'.

321 In oral evidence, Jamaica stated that Jerwin was paid an allowance of 5,000 Philippine pesos per month while participating in the training program in Tarlac with Agent 1, but sometimes this payment was delayed. Jerwin told her that after this training in Tarlac, Agent 1 and **Operator 1** would take him to Australia on a s 407 Training Visa and then after two years of schooling and training in how to run an organic farm, he would return to the Philippines to start an organic farm.

322 In oral evidence, Jamaica recalled that Jerwin said he would be paid an allowance of \$750 AUD per month, and that **Operator 1** told him to open a bank account in the Philippines. Jamaica went with Jerwin to open the account; she made an initial deposit of 100 Philippine pesos. Jamaica was able to check the account's funds and confirmed that **Operator 1** did not ever put any money into that bank account.

323 Jamaica's evidence was that Jerwin had been expecting his monthly allowance on 7 March 2019, but it was not paid. On 10 March 2019, Jerwin asked **Operator 1** for his allowance, but **Operator 1** did not want to give it to him as promised and shouted at Jerwin for asking for his allowance and his passport. Jerwin told her that he would not be paid until after the first six months of working in Australia as he had to first repay the expenses that **Operator 1** incurred in bringing him to Australia. Similarly, Nota stated that, 'Jerwin also shared concerns that his boss might demand repayment of expenses of more than \$10,000, though he believed the actual costs were closer to \$2,000.'

324 In her statement, **Witness 6** stated that Jerwin told her that in the Philippines he 'had been promised an allowance every month' and that after a month in Australia 'he had not received any money'. He said that when he didn't receive any money, he spoke to 'his employer and his employer denied everything'. In oral evidence, **Witness 6** confirmed that Jerwin asked her what he could do regarding

his pay, and that he had been promised \$750 in payment when he was recruited in the Philippines. Jerwin said he had not received any payment since coming to the farm and that he had asked **Operator 1**. In response, **Operator 1** told him that the \$750 payment was only for the other worker: for Jerwin, the payment of \$150 was mentioned, but Jerwin had not received it. In response to these issues, **Witness 6** advised Jerwin to contact Immigration.

325 On 10 March 2019, Jerwin told Jonathan Sahagun that he had not received his salary.

326 On 11 March 2019 at 12.47pm, Jerwin sent a series of Facebook messages to a Facebook group of other potential Filipino candidates telling them 'I still hope that even the \$750 must be given to us' but that 'after 6 months we will be having our salary only 5400 [pesos] only'. Jerwin also told the candidates that 'we will also pay the expenses they spend coming here'.

327 On 11 March 2019:

(1) at 4.47pm, Jerwin sent another Facebook message to the candidate Facebook Group saying 'There is no \$750. I spoke with **Operator 1** I am leaving. You can go if that's what you want. Sorry guys.'

(2) at 4.06pm, Jerwin messaged Jamaica on Facebook saying that **Operator 1** 'has no intention of paying me here'.

328 On 12 March 2019, Jerwin called **Witness 6** telling her that he had been promised an allowance every month but had not received any money. **Witness 6** advised him to contact Australian Immigration and seek their advice. She confirmed this in oral evidence, and also that during this call, Jerwin said he would approach **Operator 1** and ask for his \$150 entitlement. Jerwin texted her after this, telling her that his employer's attitude changed following the conversation.

329 Also on 12 March 2019, **Witness 4** spoke with **Operator 1** over the phone regarding Jerwin's rights as a trainee, his working conditions, wages and Internet access

(consistent with the offer she made on meeting Jerwin on 10 March 2019). **Witness 4** stated that the conversation was normal initially, but on raising the issue of visas, **Operator 1** became agitated, intimidating, aggressive and started to yell. **Operator 1** said that he stopped Jerwin's internet access because Jerwin was watching pornography and claimed that they did not have mobile reception on the farm.

- 330 On 12 March 2019, Jerwin sent a series of Facebook messages to Jamaica concerning his pay. Jerwin told Jamaica that his boss 'told me that you are leaving soon you can give me details where I can send the money to the Philippines, that's verbally... he made that 150\$ as ... which he will give to me'.
- 331 On 13 March 2019, Jerwin messaged Nunez on Facebook telling her that he had 'been deceived or misled'; he said that on 9 March 2019 he had asked his employer about the monthly allowance as promised by his recruiter and that 'my employer refused it and told me that I should get my allowance after 6 months and after that I'll just get 150\$ a month because he spent a lot of money to get me here'. Jerwin also said that he had not yet been paid the allowance that he had been promised and that it 'would be paid...after six months [and] then he would receive \$150 per month after that'.

Evidence of Agent 1 and **Operator 1 following Jerwin's death**

- 332 In Agent 1's statement dated 30 May 2019 he said that the payment arrangement under the Training Program was for students to receive 'P5500 (equivalent of \$150 Australian dollars)' in the Philippines as a 'living allowance'. Once in Australia, 'we agreed [trainees] would receive around \$500 per month after their probation period having demonstrated their commitment to the program'. According to Agent 1, **Operator 1** would cover all living expenses in Australia 'and the allowance could be sent home towards the planning for developing their family property'.
- 333 Agent 1 also referred to a three-way phone conversation with **Operator 1** and Jerwin after the first month when Jerwin approached **Operator 1** for his monthly allowance. Agent 1 stated: 'I told **Operator 1** to ask Jerwin 'Do you feel you have

been committed to this programme and given 100% since you arrived here?'. According to Agent 1, when Jerwin did not respond, 'I suggested that due to his performance to date we should only give the same allowance Jerwin had received in the Philippines part of the course. Which was about \$150. And should he improve he would return to the full allowance of \$500'. **Operator 1** does not refer to this discussion in his statements.

334 Agent 1 also stated: 'There was no actual need to give Jerwin any money, as all his living costs were already being met by **Operator 1** food, accommodation, clothing etc. And the only reason for the allowance was so he [could] send money home if he chose to do that.'

335 **Operator 1** stated that under the scheme, the Agricultural Business would pay students 'a small allowance per month of \$150 for the first six months, then \$300 per month for the second six months and if they stay for two years, they get a \$500 per month allowance.' According to **Operator 1** 'in exchange' for the allowance 'the students contribute to working ... as part of their training'.

336 With respect to discussions with Jerwin about payment, **Operator 1** stated the following in his second statement:

As I said in my first statement, I was to pay the students an allowance while they are training on my farm. Once Jerwin had been at the farm about three weeks was the first time he asked me for money. He asked me 'When can I get paid'.

I told him when a month is up, that's what the agreement was. About a week later I had come to the decision the Jerwin had to leave. It was clear by then he was not there to learn. I then had a conversation with Jerwin and told him that. I told him, I would still give him the allowance, of \$150 Australian dollars, but asked how he would like it payed [sic]? He did not have an Australian bank account that he had told me about, so I let him know I could transfer money to his Philippines account, but he would loose [sic] about \$32 in the transfer fees. I let him know I could give it to him in cash, but as he was leaving I would give it to him at the airport.

Jerwin argued with me and demanded I pay him \$700, saying Agent 1 had told him he would be payed [sic] that amount. I don't believe Agent 1 would ever tell him that. I never got to give Jerwin any cash, however we had about \$250 stolen from the farm van's glove box in the second week Jerwin was with us. At that time the Van was parked out in the farm shed when the Money went

missing. I didn't report that missing cash to Police, only mentioned it to my brother...

- 337 Witness 1 gave evidence that he did not hear about any stealing or money going missing in around March 2019.
- 338 When shown Agent 1's email to Jerwin about being 'creative to skirt around paying employment tax', Operator 1 stated that he had not read the email before and did not know what it referred to. He also stated: 'In my knowledge Jerwin was only here to train, I never had any intention of him being an employee. I don't know what this email is about.'
- 339 Ultimately, there is no evidence that Operator 1 paid Jerwin any amount by 14 March 2019 or at any time in the five weeks Jerwin was in Australia. This appears to be conceded by Operator 1

Adequacy of food and accommodation

- 340 Concerns were raised by Jerwin's family as to the adequacy of his living conditions, including food and accommodation, whilst living at the Agricultural Premises.
- 341 As to food, Operator 1 stated that on his first day in Australia, he took Jerwin shopping, purchasing a 'new rice cooker, bags of rice and some other organic food'. He stated that Jerwin could help himself to fridges and freezers in the shed 'which are always full of food'; he could also access smoked meats from the brick meat smoker. He stated that he also saw Jerwin using supplied fishing poles and equipment to catch and eat his own fish.
- 342 With respect to Jerwin's cabin, Operator 1 stated that it had its 'own water supply, air conditioning, heater, fridge, microwave and kitchenette area... [and] Beside the cabin is the winery shed which had a working bathroomm [sic] toilet, shower and washing machine for Jerwin to use'. Images of the cabin and surrounding buildings appear to confirm this.

- 343 On a number of occasions in February 2019, Jerwin posted Facebook messages about dishes he had prepared, including on 17 February 2019 (coconut milk salmon with lettuce), 18 February 2019 (a hamburger), on 22 February 2019 (bulalo) and on 24 February 2019 (Aussie pigar-pigar) – being the last post.
- 344 **Witness 3** referred to giving Filipino food to Jerwin at 7:00am on 7 March 2019. She also told the FWO (when she first called them on 13 March 2019) that, 'one day, I pick him and then bring it here so that we can give them food'.
- 345 In his affidavit, Jonathan Sahagun gave evidence that Jerwin told him, during a phone conversation on 10 March 2019, that he 'did not have anything to eat' and that his friend **Witness 3** 'gave him food'.
- 346 Sometime prior to 11 March 2019, **Witness 3** asked **Witness 6** to buy food for Jerwin (as well as a SIM card); she bought fish and pork, gave it to her cousin to take to [REDACTED].
- 347 On 13 March 2019, **Witness 4** reported that she spoke with Jerwin at 7.30am, who was very scared and told her amongst other things, that '... My food is running out and **Operator 1** has not bought me any supplies'.
- 348 Nelley attended the cabin on 14 March 2019 and described it as 'a single room cabin with two single beds, a kitchenette with fridge, cooking and cleaning areas.' Nelley observed that 'there was food including fresh fruit and vegetables as well as packs of noodles.' Images of the kitchenette confirm this.
- 349 When Nelley returned to the cabin on 16 March 2019 he observed it to have, 'the same food and produce as two days prior. The fridge contained fruit, milk and eggs. A produce rack beside the fridge held potatoes, onions and garlic. Within the kitchenette area I could see rice, packets of noodles, cans of tuna, coconut milk and packets of cereal.'
- 350 Nelley ultimately expressed the following view in the initial investigation:

The accommodation of Jerwin was of a level suitable to the conditions and in an idyllic location, it was in good order and condition. He had ready access to food, heating, cooling, and suitable ablutions. Facebook posts from Jerwin clearly show his access to food.

351 On 16 March 2019, Jamaica told Nelley that Jerwin was being mistreated by **Operator 1** including that he was not provided with food, had no power within his accommodation and that he was forced to work 10 hours per day, for which he was not being paid.

352 In oral evidence, Witness 1 was questioned about Jerwin's accommodation. He said that friends of the family and workers (known as 'woofers') had stayed in the cabin previously. He said the cabin has air conditioning and electricity; he believed the switchbox was either in the shed or on the cabin. The shower for Jerwin was located in the shed. Of note, while Witness 1 was invited into the main house on the property, he had not seen Jerwin in the main house.

353 Witness 1 had not seen Jerwin leave the farm; he did not know if Jerwin was allowed to leave the farm or not. He had not offered Jerwin a lift into town; nor had he seen Jerwin riding a push bike, or a quad bike outside the farm.

354 On the available evidence including the inspections of the cabin undertaken by SC Nelley after Jerwin's death, it appears that Jerwin did have access to adequate accommodation and food during his stay.

Allegation that the electricity was cut off

355 On the evening of 13 March 2019, **Operator 1** secured a flight for Jerwin to return to the Philippines on 14 March.

356 That same evening, Jerwin sent a Facebook message to Jamaica stating that he had no electricity while 'seeing his employer's house with electricity', suggesting to Jamaica that 'his electricity was purposely cut off'. That day, he also spoke with **Witness 6** who later reported that Jerwin '... told me his electricity had been cut off, and that he didn't have any hot water'.

357 Jamaica gave oral evidence concerning Jerwin's messages to her on 13-14 March 2019 regarding the electricity in his cabin going out, whilst it stayed on in the house. She did not speak to Jerwin about this on the phone, as she considered the electricity being cut off a 'red alert'. Significantly, Jamaica told the Court that she had messaged her cousin Santy on 14 March 2019 and decided to get Jerwin off the farm on 14 March 2019.

358 On 13 March 2019, at 7.30am, **Witness 4** states that she received a call from Jerwin who sounded very scared. She recounted the conversation as follows:

Me: What happened Jerwin?

Jerwin: The electricity went off last night and is still off. **Operator 1** has shut it off. I am really scared. **Operator 1** got really angry with me last night. He is very aggressive. The authorities had called **Operator 1**. They asked about my wages. I spent all night locked in my cabin because I was so scared. My food is running out and **Operator 1** has not bought me any supplies. The electricity is off. **Operator 1** is really upset. Can I go and stay with **Witness 3**?

Me: Jerwin, you have a mobile. If you feel threatened, call the police. We are all working on this. Try not to worry. Nobody can physically harm you in this country. The maximum he can do is send you back to the Philippines. If he is turning the electricity off, he is just trying to scare you. If you feel threatened, call 000 and the police will come.

359 **Witness 4** understood that Jerwin was very scared for his safety due to the cutting off of his electricity, the lack of food being provided and being checked up on. She understood that Jerwin was scared for his life.

360 Nota stated the following in her statement:

On 13th March 2019, Jerwin messaged me, informing me that his electricity had been cut off. I urged him to leave immediately if he felt unsafe and to seek help from **Witness 3** or others he trusted. He replied that he couldn't leave because his boss claimed he had the 'right to handle him' and threatened to call the police if anyone pick him up.

361 On 14 March 2019, **Witness 3** called Jerwin at 6am. He told her:

...they cut off his electricity. I told him maybe there was problem with the power as we sometimes have problem with the power in [REDACTED]. He told me he had looked out at the [main] house and they had power, just not him. He said he was scared.

362 At around 6:12am, Jerwin replied to a Facebook message from Jamaica asking whether his electricity had been fixed. Jerwin replied, 'that his employer said that something exploded and his employer will have it fixed'.

363 On the morning of 14 March 2019, the last time she spoke to Jerwin, **Witness 6** recalled the following from their conversation:

He called me first to say he approached **Operator 1** about why he didn't have any electricity the night before. He told me **Operator 1** said he will fix it later, but now he had to go to get prepared because they are going to work.

364 Nelley inspected Jerwin's cabin and stated that there was an electricity control box on the interior wall of the cabin. **Operator 1** told Nelley about power supply to the cabin, stating this was the only power control box for the cabin.

365 It was submitted on behalf of Jerwin's family that it was open to me to find that the electricity was cut off on purpose by or on behalf of **Operator 1**. I accept that is a possibility. However, there was no submission as to how this was undertaken in circumstances where the power control box was within the cabin. Absent a plausible theory as to how this could have occurred, I consider that it is not open for me to make a finding that the electricity was purposely turned off.

366 Finally, information provided to Irving by Essential Energy stated that there were recorded outages affecting the Agricultural Premises during the period 7 February 2019 to 14 March 2019.

Allegation of confiscation of Jerwin's passport

367 On 1 March 2019, Jerwin messaged Jamaica on Facebook messenger saying: 'Sister, my boss confiscated my passport. That's illegal right? Right after my allowance is given I will tell him'. Jamaica confirmed this in oral evidence, stating that Jerwin had told her in a phone call on 1 March 2019 that **Operator 1** had confiscated his passport. Jamaica stated that later in March 2019, she told Jerwin to ask **Operator 1** for the passport back, but that Jerwin was afraid of **Operator 1**

- 368 On 8 March 2019, **Witness 3** stated that she exchanged Facebook messages with Jerwin where he told her that: **Operator 1** took his Passport ... He never said if **Operator 1** gave him back his passport’.
- 369 On 11 March 2019, **Witness 6** stated that Jerwin told her that his passport was confiscated three days after coming to the farm and that this was for ‘a safety reason’.
- 370 On 13 March 2019, Jerwin told **Witness 6** that he was going to talk to **Operator 1** and ‘ask for his passport’.
- 371 On 13 March 2019, Jerwin messaged Nunez on Facebook telling her that **Operator 1** ‘holds my passport’.
- 372 In contrast, **Operator 1**’s account was that he only briefly had the passport when making a copy for his file.
- 373 On the afternoon of 14 March 2019 at around 2.00pm, after **Operator 1** had left the scene of the incident in the van, Churchin attended the Agricultural Premises. She took the keys to the Van and conveyed **Operator 1** to **[REDACTED]** Hospital for a blood and urine test. On her return, Churchin located Jerwin’s suitcase on a ‘table underneath the carport’ near the Van.
- 374 When Nelley later searched Jerwin’s suitcase he noted:

In the front pocket of the suitcase I located a small personal carry bag. Inside this carry bag I located the passport of Jerwin, a VIVO bran[d] mobile telephone, \$81.45 in Australian currency and some travel documents in the name of Jerwin Royupa.

Issue 2(e): Findings

I find that for the 5 week period he was in Australia, Jerwin was exploited in the following ways:

- (1) he was required to work excessive hours (up to 60 hours per week) in a manner wholly inconsistent to the 'training schedule' that had been proposed
- (2) he was required to work outside in excessive heat without having been provided with appropriate clothing or sunscreen
- (3) he was exclusively performing manual labour and was not engaged in any educational schooling or training contrary to what had been proposed to him
- (4) while he was promised a 'generous allowance', no payments were made to him during his period in Australia and while it was unclear on the evidence whether any payment would be made to him, the amount of P5,000, as submitted to the DHA, was wholly inadequate

I am satisfied as to the matters that follow.

- (1) The cabin facilities provided to Jerwin were adequate and appropriate.
- (2) On the evening of 12 March 2019, the electricity to the cabin was off. However, I am unable to determine why or how it was off. I accept that there may have been an innocent explanation such as an automatic cut off following an appliance overload. Notwithstanding, I accept that the electricity not being available contributed to Jerwin's fears in the circumstances.
- (3) Jerwin did not have access to his passport while at the Agricultural Premises. This was a complaint of significance being repeatedly made by Jerwin. It is consistent with Operator 1's fear of being financially responsible for Jerwin if he were to abscond. While the passport was found by Nelley in Jerwin's

personal carry bag in the front pocket of his suitcase, the airline ticket was also in the personal carry bag and according to both **Operator 1** and Agent 1, the airline ticket was not in the bag while they were in the Van as it was shown to Jerwin prior to him exiting the Van.

Modern Slavery

375 Consistent with s 81 of the Act, I do not suggest that any person has committed a modern slavery offence or any other offence.

376 However, I make the observation that on the evidence outlined above, a number of indicators of modern slavery (as that concept is broadly understood; see [172] above) are present including:

- (1) **Deception:** Jerwin was promised a 'generous monthly allowance' and an educational Training Program – neither of which were received in the 5 weeks in which he remained in Australia.
- (2) **Restricted movement:** Jerwin was concerned that he would be in trouble if he left the farm (see [100(1)]).
- (3) **Isolation:** Jerwin was located on a farm, some 12 kilometres from [REDACTED]; he was geographically isolated with no access to a vehicle; Jerwin's internet was also controlled by **Operator 1** [320].
- (4) **Intimidation and threats:** I have found that the evidence supports that Jerwin was very fearful of **Operator 1**.
- (5) **Abuse of vulnerability:** Jerwin was a young Filipino man, who spoke English as a second language; he did not have access to an Australian bank account, his access to the internet was limited.

- (6) **Retention of identity documents:** I have found that the evidence supports that **Operator 1** confiscated Jerwin's passport.
- (7) **Withholding of wages:** I have found that Jerwin was not paid for the work he was doing.
- (8) **Debt bondage:** Jerwin expressed concerns that he would not be paid until after the first six months because he had to first repay the expenses incurred in bringing him to Australia. Jerwin in turn passed this information onto prospective candidates to warn them that they 'will also pay the expenses they spend coming here'.
- (9) **Excessive overtime:** Jerwin was undertaking hard manual labour, working some 60 hours per week, in the heat, without adequate sun protection.

Issue 3: The circumstances of, and following, Jerwin exiting the vehicle on 14 March 2019.

377 The evidence and my findings as to the circumstances in which Jerwin exited the vehicle are outlined above in the context of my findings as to 'manner' of death. I now deal with the events following Jerwin exiting the vehicle.

****Operator 1**s conduct after Jerwin exited the vehicle**

378 **Operator 1** told the '000' operator that he wanted a police officer to attend the scene (but did not request an ambulance, though he later noted that **Witness 2** was calling an ambulance). When the '000' operator asked if Jerwin was breathing, **Operator 1** said he was, before telling the operator, 'he is just doing an act to stay in Australia.' That evidence is to be contrasted with the scene depicted by **Witness 2** – that is, of an obviously gravely injured young man requiring urgent medical attention.

379 Hurd reported that at the scene of the incident, **Operator 1** stated that Jerwin was 'causing trouble, I was driving him to Albury airport to send him home, but then we turned around'. However, by all accounts (including **Witness 2**, **Operator 1** and

Jerwin were headed for Melbourne Airport. In oral evidence, Hurd told the Court he was 'a little bit confused' by **Operator 1**'s statements to him that: 'You've got to watch for the male on the ground, he's not a nice person, he's always causing trouble' and 'You have to be careful with him, he will be violent', because Jerwin was unconscious at that time.

380 **Witness 2** told the Court that after he passed the Van, he brought his truck to a stop and pulled off to the side, got out and walked to where Jerwin was lying on the roadside. **Operator 1** turned his Van around and came back to park on the opposite side of the road to Jerwin. **Witness 2** said to **Operator 1** 'are you going to call triple-0 **Operator 1** or am I?', to which there was no reply and **Witness 2** subsequently called 000. **Witness 2** also commented on **Operator 1**'s behaviour as follows.

- (1) While they were on the roadside, **Operator 1** stated that Jerwin's injuries were just scrapes and bruises, but **Witness 2** knew this was not the case. He saw Jerwin lying face down on the road, unconscious, with very laboured breathing, blood on one ear, a wet patch on his jeans and no shirt on.
- (2) While **Witness 2** called 000, he told **Operator 1** to go and get the doctor, after which **Operator 1** drove away in his van and was away for about 10-15 minutes, before returning with no doctor. **Witness 2** stated that **Operator 1** then 'seemed to spend a hell of a lot of time in his car on the phone'. It is likely that this related to the lengthy 26 minute phone call that **Operator 1** had with Agent 1 at 12.49pm.
- (3) There were conversations with **Operator 1** at the roadside. **Operator 1** said at some point that Jerwin had done 'terrible things out at their place and some of these people are not very nice'. **Witness 2** recalled that **Operator 1** told him he was taking Jerwin in to catch the bus, that Jerwin had decided he did not want to go and then jumped out of the car; **Operator 1** said that if Jerwin didn't leave, he would take him to the police station.

(4) **Operator 1** appeared calm and did not express concern about Jerwin's welfare.

381 Exton, in her conversation with **Operator 1** at the roadside. **Operator 1** asked 'if he could leave, and I said, no, you need to stay until the police arrive, they will want to talk to you'. Exton did not recall seeing the man leave but did recall police arriving and asking where the man was; he was not there.

382 Agent 1 stated that in one of his calls with **Operator 1** he stated, 'He will be ok, it's just a few scratches and grazes' and also, that Jerwin was 'just sitting there with his head down quiet'. This is wholly inconsistent with the evidence which indicates that Jerwin was only ever lying unconscious on the road and suggests that **Operator 1** was trying to downplay Jerwin's injuries.

383 **Operator 1**'s interaction with Churchin at 2.40pm as captured on BWV are also significant. At this time, **Operator 1** could not recall Jerwin's surname. He stated, 'we're a school here, training, fine foods'; he suggested Jerwin had been posting things that were 'defamatory' and referred to the cost of bringing Jerwin out (400,000 pesos, equating to around \$10,845 AUD).

384 Stein telephoned **Operator 1** after he had left the scene of the incident and **Operator 1** stated: 'we have been having some problems with one of our workers here...he just doesn't want to work'. When initially asked about the incident, **Operator 1** reported that **Witness 2** had been driving the Van and said that **Witness 2** was currently with him at home; and also warned Stein to 'be careful' with Jerwin.

385 On 15 March 2019 at 11.29am (the day after Jerwin's death), **Operator 1** emailed Sponsor Notifications (through the DHA), in these terms:

I contact the Immigration Department 13 18 81 sometime last week to inform I had issues with a 407 trainee not willing to learn and be part of the program but more interested in how to stay in the country. We discussed the matter and the best course of action was to offer him an early flight to go home. This was done. He accepted.

...

On the way to the Airport Jerwin jumped out of the vehicle. It seems he wilfully wanted to harm himself. The ambulance and the Police were called. Unfortunately that incident lead to him passing away.

The police should have a report on it soon.

Can someone from the Department call ASAP as I need some help in how to proceed with this situation.

Issue 3: Findings

- 386 Counsel assisting submitted that **Operator 1** 'demonstrated a callous disregard for Jerwin's welfare in the aftermath of a serious incident.' This description is apt.

Operator 1 was Jerwin's sponsor and the person for whom he had been working while in Australia. **Operator 1**'s conduct was deplorable, particularly:

- (1) failing to take immediate steps to obtain assistance for Jerwin including in not calling an ambulance immediately
- (2) disparaging Jerwin while he was unconscious on the side of the road including suggesting he may be violent
- (3) talking to Agent 1 on the phone while he should have been supporting and assisting Jerwin
- (4) leaving the scene after being expressly told not to.

- 387 In their submissions, Jerwin's family expressed their gratitude to **Witness 2** for remaining with Jerwin in the period before the paramedics arrived. I am also grateful that Jerwin was not alone. **Witness 2** a man previously unknown to Jerwin, called the ambulance, acted on their instructions, stayed with Jerwin and supported him until the paramedics arrived. This represented **Witness 2** kind and compassionate nature. **Witness 2** evidence, while difficult for him to give, was extremely helpful to the Court and I understand, to Jerwin's family.

Issue 4: The adequacy of the original NSWPF investigation, including whether the NSWPF Crash Investigation Unit and crime scene personnel should have attended the scene on 14 March 2019.

388 Jerwin's family and friends were very concerned by perceived inadequacies in the initial police investigation undertaken by Nelley. These are summarised below.

- (1) In the submission of Jessa-Joy to Magistrate Brender on 23 July 2019, she noted concerns about the objectivity of the officer in charge of the police investigation (Nelley), and her view that he may not have grasped the whole circumstances of Jerwin's death given the recruitment process that had commenced in the Philippines in 2018. A range of related issues were raised as to the lack of comprehensive investigation of Jerwin's death.
- (2) Nota stated that she received a call from Nelley on 15 March 2019 in which he claimed there was no foul play and said Jerwin's actions were 'silly'.
- (3) On 2 May 2019, Jessa-Joy, Nota, ^{Witness 6} and Philippines Assistant Consul Maybel Capistrano attended [REDACTED] Police Station in order to meet with Nelley. Jessa-Joy noted that she and ^{Witness 6} provided statements on that day, but Nota was unwell and decided to defer making her statement, which did not appear to occur.
- (4) ^{Witness 4} referred to contacting [REDACTED] Police Station two or three times in relation to giving a statement. On the first call, she was told Nelley was on training and would call her back. On a different call, the officer she spoke to said Nelley had gone to Melbourne. She left 'a couple more messages' and offered to go to [REDACTED] but never heard back. ^{Witness 4} confirmed this in oral evidence and stated that she 'repeatedly' called police before providing a statement to the Royupa family's solicitor. In oral evidence, Nelley told the Court that he could not recall receiving any messages at [REDACTED] Police Station to contact ^{Witness 4}

The investigation

- 389 Churchin, the first NSWPF officer on scene, arrived at around 12.50pm on 14 March 2019. Two ambulance vehicles were present and Jerwin was already inside one of them. No one else was there. On seeing Jerwin in the ambulance, Churchin thought he was in a 'serious state'. She was told that the driver of the vehicle had left.
- 390 Churchin noted the location of the point of impact by pacing out the distance from a road marker sign. It was unknown how fast the driver was travelling at the point of impact; she observed no skid marks on the road. There was a small pool of blood on the side of the road.
- 391 While on scene, Churchin had a conversation with Inspector Huggett⁵⁶ to advise of 'the seriousness of what had occurred' (Jerwin's injuries and that the driver had left the scene) and to request that detectives attend. Churchin thought that a serious offence had occurred and that detectives needed to investigate. Inspector Huggett agreed detectives should attend. Churchin then received a phone call from Nelley who was enroute to the scene. She briefed him and Nelley asked her to photograph the area. Churchin formed the view that the vehicle 'absolutely' should be seized and she spoke about that with Nelley. Churchin then travelled to the Agricultural Premises and no one remained at the scene.
- 392 On attending the Agricultural Premises, Churchin inspected the Van. She recalled walking around the Van but not noticing any external damage. Churchin believed that she looked inside the Van but did not see anything out of the ordinary. She recalled seeing Jerwin's luggage, which she later seized, but does not remember what happened to a red shirt on top of the bag (as depicted in the photographs taken).

⁵⁶ The supervisor for the western cluster of the Albury area.

393 Churchin then drove Operator 1 to the [REDACTED] Hospital – a five to seven-minute drive from the farm – where they met Nelley. She did not recall Operator 1 expressing concern for Jerwin’s wellbeing during that trip.

394 Around 3.10pm, Nelley arrived on scene, comparing it with the images sent by SC Churchin. From this and conversations with Churchin, he concluded that ‘... no additional scene examination required’. In making this assessment, Nelley stated that:

...there were no clear tyre skid marks on the West bound lane of [REDACTED] Road’; there was ‘a small amount of blood present near the southern edge fog line’.

[This indicated that] the point of impact was on the Southern side of the road and suggested the vehicle was travelling in a Westerly direction’. ...[there] were no other marks to indicate the direction of travel or point of impact.

395 Nelley then left the scene to attend [REDACTED] Hospital to meet with Churchin and Operator 1. He made arrangements for the Van to be taken to the [REDACTED] Police Station for examination and then went about obtaining statements from Operator 1, Witness 1 and Witness 2.

396 Later during the afternoon of 14 March 2019, Nelley drove Operator 1 to the Agricultural Premises. He was shown Jerwin’s cabin and Operator 1 provided him with a copy of Jerwin’s passport and next of kin details.

397 On 15 March 2019, Nelley also contacted Agent 1 by telephone asking about his relationship and knowledge of Jerwin, making arrangements for him to supply a statement.

398 In terms of Nelley’s role as a then Plain Clothes Senior Constable (being a detective in training), Nelley told the Court his supervisor at March 2019 was ‘a bit fluid’. Officially it was Detective Sergeant Swinton, but he was not there at the time. On 14 March 2019 in terms of speaking to someone for advice or guidance, there was the investigations manager, Detective Sergeant John Croker. Nelley recalled consulting with Croker before attending the scene on 14 March 2019.

- 399 Nelley gave evidence that crime scene examiners were not called out to inspect the Van. He had considered calling the Crash Investigation Unit (**CIU**) on 14 March 2019 but did not have experience of whether they would come or not and was advised against it by Croker who said something to the effect of 'crashies won't come from Sydney, don't worry'. Nelley also recalled a telephone conversation with Croker about potential deployment of crime scene examiners to the road scene on 14 March 2019. Nelley accepted that it was his call to make. His thinking was informed by the advice of Croker being that there were not enough resources to protect the road scene and therefore no point in calling crime scene examiners to attend.
- 400 Nelley told the Court that he was the only officer working on this investigation, and following 14 March 2019, his supervisor was Sergeant Casey Braz and later Acting Sergeant Lugston.
- 401 As to investigation of the aspects of human trafficking/modern slavery, Nelley gave consideration to that issue but was told by his supervisors that the slavery/visa issues and conditions were not for him or for [REDACTED] to investigate and he should focus on the Van. Despite that, Nelley took further steps to obtain evidence about these issues, including travelling to Melbourne to speak with Nunez (having convinced his supervisor to allow him to do this).
- 402 Other steps taken by Nelley are outlined below.
- (1) In conjunction with Churchin, steps were taken to locate the Van and Operator 1 [REDACTED] was also confirmed to be the driver of the vehicle; he was then detained and conveyed to hospital for drug and alcohol testing.
 - (2) He obtained statements from police and witnesses and further documentary material.
 - (3) He attended the Agricultural Premises on three occasions, arranging for examination of the Van and phone.

- (4) On 15 March 2019, he contacted the Philippines Consulate in Australia and he subsequently requested documents including Jerwin's academic transcripts and employment records.
- (5) On 16 March 2019, he telephoned Jamaica and subsequently returned to the Agricultural Premises and took photographs of Jerwin's cabin, facilities and access to food.
- (6) On 19 March 2019, he contacted the NSWPF Immigration Liaison Unit to request copies of Jerwin's birth certificate, photograph and passport.
- (7) On 19 March 2019, he requested that **Operator 1** and Agent 1 provide copies of all written copies of training program documentation and complaints about issues concerning Jerwin. He subsequently receiving 'very little' material from both men.
- (8) He attempted to ascertain from Dr Irvine (the forensic pathologist) whether it could be determined during the course of an autopsy if Jerwin was unconscious before he left the Van (he was advised this could not be determined).
- (9) He reviewed Jerwin's social media (Facebook).
- (10) On 21 March 2019, he was contacted by First Constable Dory Khoury of AFP Human Trafficking Investigations and subsequently forwarded on investigative material. Nelley told the Court that he considered the AFP to be the experts on the human trafficking/slavery side of the investigation and that it would be more appropriate for the AFP to focus on that aspect. In a further phone call on 23 July 2019, Officer Khoury told Nelley that the AFP case had been closed and there was no ongoing human trafficking investigation.
- (11) On 26 March 2019, Nelley was contacted by Sue Howie of SafeWork NSW and was advised that agency would not investigate.

- (12) On 16 April 2019, Nelley arranged for the Van to undergo a forensic mechanical examination by Senior Constable Jeffrey Head of the NSWPF Engineering Investigation Section; no mechanical defects or faults with the vehicle were found. On 24 April 2019, Nelley arranged for Croker to take measurements of the Van.
- (13) At some point, Nelley made enquiries with the DHA and received a letter from Matthew Noble, Director Student and Graduate Visas Section, and further documentation in relation to the application approved for Jerwin and the later application denied in relation to Wenmarl Campehios.
- (14) On 15 March 2019, Nelley attempted to conduct a field Cellebrite examination of Jerwin's phone but was unable to bypass security to unlock the phone. On 2 May 2019, Nelley met with Jessa-Joy who indicated that Jerwin's phone may have recorded conversations between Jerwin and **Operator 1**. On 20 May 2019, Nelley requested that Senior Sergeant Cameron MacRaild of the State Electronic Evidence Branch (SEEB) review Jerwin's phone. When Senior Sergeant MacRaild was unable to bypass security, Nelley arranged for the phone to be couriered to the SEEB office in Sydney for further, (unsuccessful) analysis by SEEB and the Cellebrite company.
- (15) On 2 May 2019, Jessa-Joy, **Witness 6** Nota and Marinay-Caparino of the Philippines Consulate attended **[REDACTED]** Police Station and Nelley obtained statements from Jessa-Joy and **Witness 6**.
- (16) On 22 May 2019, Nelley obtained a statement from Nunez in Melbourne.
- (17) Between 15 March 2019 and 30 May 2019, Nelley also obtained a statement from Agent 1.

403 In oral evidence, Nelley confirmed that on 14 March 2019, he did not have suspicions of 'foul play.' However, he had the following exchange with Counsel assisting (Buchen SC):

Q. Broadly speaking, there are three possibilities. One, that he voluntarily left the car; two, that there was some mechanical defect in the vehicle that caused him to be ejected accidentally; and three, that something happened inside the car that caused him to leave--

A. Yep.

Q. --in what might be called suspicious circumstances.

A. Yeah.

Q. I suppose when you think about it, even if Jerwin left the vehicle voluntarily, that may still occur in suspicious circumstances if something happened to cause him to take that action.

A. Yeah.

Q. Because, of course, it's unusual for someone to attempt to leave a moving vehicle.

A. Very much so.

Q. That latter scenario that I've just painted for you, Jerwin leaving the car but under suspicious circumstances, was that any part of your investigative thinking in this early stage?

A. It wasn't not part of the thinking, which is why seizing the vehicle was the priority.

404 It seems to me that there was a premature narrowing of the investigation on the assumption that there was no 'foul play'. While subsequent investigations support the contention that Jerwin left the vehicle voluntarily, the unusual nature of the incident warranted further consideration as to the 'why', even if the 'how' had been explained. The unusual circumstances are summarised in the submissions for the family and include:

- (1) that Jerwin had jumped out of or fallen from a moving vehicle at great (and ultimately catastrophic) danger to himself
- (2) that **Operator 1** left the scene of the incident twice, the first time after being asked by **Witness 2** to go and get a doctor and the second time not waiting to speak to police despite being told to by paramedics

- (3) that Operator 1 was making disparaging comments about Jerwin and that he was attempting to play down the injuries of a young vulnerable man in grave danger.

405 The information above was available at the onset of the investigation and it is concerning that it did not raise more suspicions.

406 Significantly, in oral evidence, Nelley made appropriate concessions about aspects of his investigation which, with the benefit of hindsight, could have been more thorough and changes he has since made to improve his practices. These are summarised below.

- (1) Nelley accepted that he could have called CIU. He told the Court that he is now better aware of the capacities of the CIU and has contacted them since 2019 because the CIU now has rural deployment.
- (2) Nelley said he could also have made a call to the Albury Crime Scene Section and consulted with crime scene examiners. He gave evidence that: 'I certainly call them a lot more now'.
- (3) He also agreed that he failed to show Operator 1 the photo taken by Churchin of Jerwin's suitcase with a red garment on top, in order to ask whether that was the shirt that Operator 1 said Jerwin took off.
- (4) Nelley accepted that it 'probably wasn't necessary' to obtain Jerwin's academic transcripts, but that he 'was looking for something that I could rely on in terms of the differing opinions I was being given from both sides.'
- (5) Nelley conceded that had it been a criminal investigation, it potentially would have been the proper approach to go back to Operator 1 and raise inconsistencies in the evidence with him, but that it was not the proper approach in circumstances where Nelley was compiling evidence for the coroner.

(6) Nelley accepted that the statement of **Witness 3** dated 13 June 2019 ought to have been included in the brief of evidence he provided to the coroner.

407 In terms of Nelley's supervisors, Croker is no longer employed with the NSWPF and due to a work-related injury he was unable to provide evidence. Braz has been certified as unfit for work-related duties due to a work-induced psychological injury and was also not called to provide evidence.

408 On 14 March 2019, while a constable, Stein was rostered to work general duties from 1.00pm to 11.00pm at **██████████**. Having heard about the accident on the radio prior to his shift commencing, he contacted Churchin asking if she needed assistance and she initially said no.

409 On commencing his shift, Stein reviewed the CAD job and ran a vehicle registration check on the Van, finding a link to **Operator 1** and the Agricultural Company. He called an associated phone number identified via a Google search and spoke with **Operator 1**. According to Stein, **Operator 1** told him that he was expecting the phone call and said that he was 'having a lot of trouble with one of his workers' and something about the worker stealing. Stein said that was not the reason for the contact – he was calling in relation to a motor vehicle accident. Stein did not make contemporaneous notes of the conversation; he told the Court that he recalls it clearly.

410 During the conversation, Stein asked **Operator 1** to tell him who was driving the Van. **Operator 1** said, 'Yeah it was **Witness 2** **██████████**']; he also told Stein that **Witness 2** was 'here with him'. Stein confirmed his clear impression that **Operator 1** **██████████** was trying to tell him **Witness 2** was the driver of the vehicle involved in the accident. Stein said that **Operator 1** later clarified that he was in fact driving the Van and **Witness 2** had 'witnessed everything'. Stein thought this conversation was strange as he later conveyed to Nelley.

411 Stein said that **Operator 1** spoke in a sombre tone and told him to 'be careful' because 'there's something wrong with him'; he understood this to be a

reference to Jerwin. Stein was unable to recall further details of this aspect of the conversation in his oral evidence; and he could not recall whether he relayed this particular information to Nelley later that day.

412 Stein then attended [REDACTED] Oval to clear the grounds so that a helicopter could arrive to transport Jerwin to hospital. Stein remained at the oval until the helicopter arrived.

413 The NSWPF took custody of Jerwin's phone on 14 March 2019. Since then, the attempts described below have been made to access the phone and extract data from it.

(1) In May 2019 and in around August 2019, the SEEB⁵⁷ – now known as the Digital Forensics Unit (DFU) – unsuccessfully attempted to obtain data from the phone.

(2) A second unsuccessful attempt to access the phone was then made by the providers of 'Cellebrite' in September 2019.

(3) A third unsuccessful attempt was made in August 2024 by DSC Smith, who is Cellebrite-trained.

(4) A fourth unsuccessful attempt was made in January 2025, following the inquest hearing, when Jerwin's phone was sent to the DFU in Sydney and a request was made to access the phone.⁵⁸

414 For his part, Irving considered the investigation by Nelley to be 'quite thorough', referring to the general detail of the brief, the chasing down of phone records and statements, the examination of the vehicle, and the enquiries made by Nelley into the 407-visa scheme and the course that Jerwin had been involved in.

⁵⁷ D/S Irving described SEEB as comprising specialist police officers with IT skills.

⁵⁸ Exhibit 28, Statement of Senior Constable Jason Touma dated 21 February 2025.

- 415 However, Irving identified additional investigative steps that he would have taken as OIC. This included evidence as to phone calls between **Operator 1** and Agent 1 (a five-minute conversation) at 12.03pm on 14 March 2019, just before Jerwin allegedly jumped from the van. There were also discrepancies in the accounts provided in their original statements to police. Irving would have tried to extract more detail from them, in particular Agent 1, about exactly what was said during that phone call. He noted that the alleged threat made about taking Jerwin to police was referred to in **Operator 1**'s statement, but not Agent 1's – this was important and he queried whether it was 'something that scared [Jerwin] deeply'.
- 416 Irving also touched on the potential use of warrants under the *Telecommunication Intercept and Access Act 1972* (Cth), although noted that a lot more investigative work would have been required before entering a covert investigative phase.
- 417 The evidence clearly established that Crime Scene were not notified of Jerwin's death, and accordingly, were unable to assess whether it was an appropriate matter for them to attend. Irving explained that the initial notification would be via phone call to a centralised number connected to the Regional Operations Coordinator (the **ROC**), being a crime scene officer who fields State-wide enquiries for the allocation of crime scene resources. The ROC decides whether to deploy a crime scene officer to a particular location or not. In this case, had the ROC determined that a crime scene officer was to be deployed, they would have notified Albury Police Station.
- 418 Crime scene officers have specialist training in locating physical evidence; as Irving explained, there are problems when a conclusion is made that there is 'nothing to see' at a significant incident if a crime scene officer has not attended.
- 419 If in Nelley's position, Irving would have called crime scene, at least so that they were aware of the incident and to obtain advice.

- 420 Irving expected that crime scene officers would have looked at the blood stain on the side of the road and inspected the roadway for tyre marks, skid marks and slide impressions from braking. There would have been an examination of the vehicle (including examining for evidence of an altercation, a struggle or blood).
- 421 Irving also explained that in March 2019, Nelley was a Plain Clothes Senior Constable – that is, an officer in training to become a detective. Plain Clothes officers are allocated designated detectives to ask for advice. Questions about the attendance of crime scene could be raised with the supervisor. Irving stated that as a supervisor himself, he would have wanted a phone call if one of his trainee detectives was going to make the decision not to notify crime scene.
- 422 In terms of the challenges posed by [REDACTED] being remote, Irving explained that there would not necessarily be police or ambulance officers working at any given time; they might be on an afternoon shift, on a day off or busy, so the incident would fall to officers at other stations, such as [REDACTED] or [REDACTED]. If crime scene was to attend an incident in [REDACTED], they would come from Albury, roughly a two-hour trip. However, distance would not have a significant bearing on crime scene attendance, as arrangements would be made if the circumstances warranted it.
- 423 In relation to the attendance of the NSWPF CIU, based on experience Irving did not think they would have attended, if notified. Instead, they would have referred the incident to crime scene. However, DS Irving stated that officers in the field can call the CIU to seek advice, in the same way that crime scene can be called on for advice. This also would have been the case in March 2019. Crime scene officers may also have crash investigation knowledge or training, so there may be utility in their attendance, even if the CIU does not.
- 424 Evidence was taken from Irving as to preservation of the crime scene on [REDACTED] Road. Of note, Churchin was the first officer on scene, by which time Operator 1 had left in the Van. In those circumstances, Irving thought securing the vehicle was ‘extremely important’, but that it would have been a very difficult

decision to make – that is, the decision between preserving the Van or controlling/sealing the road – owing to the limited resources available (one police officer). Irving said it would have been ‘quite some time for other officers to make it out there’.

425 Irving gave evidence that as 25 November 2024, he had not received NSWPF training on the indicators of modern slavery or human trafficking. However, he had not investigated or reviewed a matter concerning modern slavery or human trafficking – this case was the first time he had encountered these circumstances. Irving agreed it would be useful for NSWPF officers to receive training in the indicators of modern slavery and human trafficking.

426 In his statement, Detective Sergeant Kremers⁵⁹ relevantly stated:

- (1) there was no record of contact with the Albury Crime Scene Section on 14 March 2019 in relation to this matter.
- (2) on 17 April 2019, Nelley submitted a request to the Albury Crime Scene Section for an examination of the subject vehicle (in particular, to show the distance from the driver side door to the passenger door). This request was rejected on 19 April 2019, with the job to be completed at a local level by the OIC as there was no ‘technical aspect’.
- (3) based on the description of the event as recorded in COPS, it would have constituted a ‘Major Traffic Crash’. Nelley had been advised that it was unlikely Jerwin would survive the night due to his injuries; in the circumstances, the criteria for notifying the CSSB⁶⁰ were met.
- (4) Nelley should have contacted the Crime Scene Coordinator (**CSC**) to engage the services of crime scene investigators (ie CSSB); the CSC would have arranged the attendance of crime scene investigators from Albury Crime Scene Section to attend the location, to commence an

⁵⁹ A crime scene officer attached to the Forensic Evidence and Technical Services Command (**FETS**), Albury Crime Scene Section.

⁶⁰ Crime Scene Services Branch

examination of the scene and other available evidence associated with the incident.

Expert evidence regarding the police investigation

427 George identified inadequacies in the investigation as summarised below.

- (1) The forensic integrity of the incident scene was compromised by Operator 1's departure which 'inexplicably occurred on two occasions prior to police arrival'.
- (2) No forensic road evidence was obtained to support the hypothesis that Jerwin leapt from the vehicle.
- (3) Local police did not have Operator 1 return to the scene to show relevant positions from where Jerwin exited the vehicle and where he stopped the van.

428 George also identified the steps that follow which he considered should have been taken (including the attendance of the CIU to investigate).

- (1) **Scene examination:** to examine, mark-up and document the available physical evidence. In particular, looking for Jerwin's interaction with the roadway from first contact to final rest position, which could potentially corroborate the witness statements and allow for some estimates of vehicle speed at the time the victim left the vehicle. Identification of the vehicle rest positions for both the Van and Witness 2 and identification of any associated tyre marks. Detailed photographs of the scene, including road level images, aerial drone images and forensic mapping of the scene.
- (2) **Follow up vehicle examination:** seizing and examining the vehicle to include an internal examination to see whether there was physical evidence of the Jerwin's alleged seating position and/or exit and observations for contact damage on the interior door trim and arranging

for DNA samples. As well as external examination of the vehicle to identify any contact trace evidence and CAN Bus diagnostic investigation to obtain data regarding removal of the seatbelt and opening of the door whilst the vehicle was driven at speed.

- (3) **Acquisition of the vehicle's Infotainment System:** which can provide a variety of relevant information whilst the vehicle is in operation.
- (4) **Mechanical examination:** to ascertain roadworthiness, including in particular, of the hinge and locking mechanisms whilst the vehicle is in motion.
- (5) **Jerwin's skin and clothing:** Jerwin's skin and clothing should have been examined for evidence of road abrasions for correlation with any scene evidence. His shirt, which was allegedly taken off inside the vehicle prior to his exit, should also have been obtained and examined for any supportive evidence or otherwise.
- (6) **Follow-up interviews with witnesses:** should have been conducted, as necessary.

429 George stated that in his 'professional view... all fatal traffic collisions should be professionally investigated by appropriately trained CIU police'; he noted however, that NSWPF has a vetting policy in place 'primarily designed to manage CIU workloads'. He acknowledged that 'a significantly larger investment in CIU police numbers, training and equipment would probably be required if they were required to attend all fatal accidents in NSW'.

430 Irrespective, in George's view, the reported circumstances in the COPS event relating to the incident involving Jerwin were 'from a forensic level crash investigation perspective ... significantly unusual, reasonably questionable and therefore worthy of a CIU investigation.'

- 431 Foster explained that the decision as to whether CIU attends a scene rests with the on-call CIU State Referral Officer. The process involves the first attending officers requesting CIU attendance at a scene contacting the State Co-Ordinator Unit (SCU). In turn, the SCU contacts the CIU State Referral Officer.
- 432 As to the incident involving Jerwin, Foster considered that CIU would not have attended the scene based on the available information from **Operator 1** that the Jerwin had 'leapt' from the moving vehicle, together with evidence of **Witness 2** that Jerwin left the vehicle 'in an upwards direction'.
- 433 Dr McIntosh confirmed the opinion in his report that as the Van had an antilock braking system, it would not necessarily leave pronounced tyre marks on the road. The photographs available were not of sufficient quality to disclose potential tyre marks.
- 434 Specifically, tyre marks on roadways, particularly where there are antilock braking systems, can be quite subtle and only visible from certain angles. He told the Court that if there were in fact subtle swerve marks on the roadway before Jerwin exited the vehicle, this physical evidence could impact on an opinion. Dr McIntosh cited the hypothetical example of an unconscious passenger being pushed out of the car by the driver, who might struggle to maintain control of the vehicle on opening the door and pushing the passenger out; this might leave brake, skid or tyre marks indicating changes of direction or breaking.
- 435 In his report, Dr McIntosh said that 'if there were additional photographs or better quality photographs of the road surface at the Incident location taken immediately after the Incident, these should be reviewed for tyre marks.' He confirmed this opinion in oral evidence and told the Court that the photos he had been briefed with (that had been taken by Churchin) were not of that quality.

436 Evidence was also given by George, Foster and Detective Inspector Hogan⁶¹ concurrently. DI Hogan had no training or expertise in the operational duties of the CIU; his focus was therefore upon the management and policy of the CIU.

437 The following propositions concerning crash investigators were put to George and Foster, in respect of which they both agreed – namely:

- (1) crash investigators have specialised training and expertise specific to the field of crash investigations
- (2) crash investigators are trained to attend and record various types of evidence at a crash scene and to provide analysis of that evidence using scientific methods and techniques to investigate the cause of an accident
- (3) based on their training, crash investigators identify and collect evidence on scene that other specialist investigators would not identify
- (4) the best quality evidence from a collision scene will be gathered by a trained forensic crash investigator
- (5) the gathering and interpretation of evidence at the scene of a collision is vital in any investigation.

438 The differences between crash investigators (also known as ‘crashies’) and crime scene investigators were explained. George explained the role of crime scene as more identifying evidence at a scene (for example, taking photographs with specialist equipment and doing site diagrams). In comparison, crash investigators analyse that evidence and apply specific scientific formulas to it. Foster explained that where crime scene attends, usually that means the CIU would not attend. Crime scene would document the scene. However, if the CIU attends as a job meets their criteria, CIU would identify, document and analyse the scene. Hogan explained that if crime scene is not available, the Crime Scene Coordinator would contact the CIU

⁶¹ Manager of the NSWPF CIU since December 2021

Coordinator. CIU would then attend and undertake the role normally done by crime scene. This arrangement has operated since December 2022 to ensure that a scene is appropriately documented.

- 439 George identified various categories of evidence that he considered would have been obtained had crash investigators attended the scene. In terms of the impact of the failure to collect that evidence on the investigation, George stated:

... the investigation is left with an inconclusive ability to, or there's no ability to correlate the injuries of the victim with interaction with the roadway. That would be required to validate whether those injuries were caused at that scene.

- 440 Foster ultimately agreed with the list of evidence outlined in George's report, despite the earlier opinion (in her report) that no further evidence would have been obtained had CIU attended the scene. In oral evidence, Foster also clarified that more photos and a plan could have been made to make the scene a lot clearer. At the very least, Foster agreed that crime scene should have been called to document the scene.

- 441 As to the post-collision follow-up investigations undertaken by Nelley, George thought they were not adequate. For example, he noted that the testing of the Van was not exhaustive. It was centred around mechanical examinations and internal measurements but did not involve any diagnostic investigation, such as scanning the vehicle for faults using a tool such as Mercedes-Benz XENTRY. In this respect, where a seatbelt is released or a door is opened whilst a vehicle is in motion, 'diagnostic trouble codes' are written to the vehicle, which can then be reviewed. George would also have looked at the Van's Infotainment system: it can record information like vehicle motion, position and direction of travel, and door opening and closing events – things that he thought were 'highly relevant to this case'. Although obtaining (or removing) an Infotainment system is not difficult, acquiring the data from it can be. Whilst CIU may not have the ability to do that, George thought that other units within the NSWPF do. For her part, Foster confirmed that she has not obtained an Infotainment system from a vehicle before.

- 442 In terms of forensically analysing the interior of the vehicle for DNA and fingerprints, Foster initially queried where that would have taken things. However, she later conceded that if forensic examination had revealed blood inside the vehicle, that would be 'totally different'. She ultimately agreed with the statement that absent forensic analysis, 'you don't know what evidence you might have lost that may have been critical.'
- 443 George's report referred to how a victim's skin and clothing should be examined for evidence of road abrasions for correlation with scene evidence. He thus thought that Jerwin's shirt, allegedly taken off inside the van before he exited, should have been examined for supportive evidence. George confirmed this opinion at the hearing. Foster also gave evidence that she too would have seized Jerwin's shirt.
- 444 George also clarified the comments in his report regarding evidence of Jerwin's likely interaction with the internal components of the passenger door trim and windowsill frame. He explained that upon the hypothesis that the door was forced open, the vehicle was breaking heavily, there was wind resistance and increasing force on the door, and the victim had taken off his seat belt, the inertia of his unrestrained body inside the car would have been forced directly into the opening door. He further explained:
- ... he has reportedly taken his shirt off, so there's going to be potential for you know skin contact, hair contact, on the internal components of the door, particularly the top, the door sill on the top, which is relatively, you know, a sharp edge. The fact that the truck driver says that he saw even if it was for a moment in time, the victim sort of up around the top of the roof line ... the totality of that tells me that well ... there's the potential of material transfer on the door.
- 445 George considered that had crime scene inspected the vehicle, they potentially could have detected that skin contact and material transfer.
- 446 George and Foster agreed that the incident was a 'highly unusual circumstance' and, accordingly, that it was appropriate for crime scene to attend to examine the subject vehicle externally and internally. This could have excluded, for example, the possibility of blood in the cabin.

447 As to changes in the operation of the CIU since 2019, DI Hogan gave evidence that:

- (1) the CIU now has an authorised strength of 62 investigators across locations, an increase relative to 2019. In late 2022, authorisation was given for two additional CIU locations: a new one at Dubbo, and the Bathurst location was moved to the Riverina (at Wagga Wagga Police Station). The Riverina CIU, which has five investigators, would be relevant to an accident in [REDACTED] but was not there in 2019.
- (2) the CIU has a 24/7 on-call referral service with a SRO who holds the rank of Sergeant or above. The SRO has authority to recall and deploy staff where CIU deployment criteria are met, which must be in accordance with the SOPs. The CIU can provide support for investigations into critical incidents and 'intention offences' and other circumstances where the expertise of the CIU will assist in the investigation. The CIU also plays a support, consultancy and advisory role to Police Area Commands or Police Districts leading investigations into motor vehicle crashes where death or serious injury has occurred and the CIU criterion are not met. The consultancy and advisory functions of the CIU were previously available but were made express in the December 2022 SOPs.

448 DI Hogan considered that based on the deployment criterion applicable as at March 2019, the CIU would not have been deployed. However, even if an incident does not meet the deployment criterion, if it is a highly unusual circumstance, the SRO can authorise the attendance of the CIU. DI Hogan said the view 'clearly expressed to all my staff' is that 'If there is any doubt whatsoever, that CIU will be deployed.'

449 New Standard Operating Procedures (**2022 SOPs**) for the CIU came into effect in December 2022 and brought a raft of improvements. The 2022 SOPs were endorsed by the Commissioner's executive team and were in place as at November 2024. One significant improvement stemming from the 2022 SOPs

was a new quality review process whereby COPS events indicating a serious injury or fatality are now reviewed daily by the SRO to ascertain whether CIU should be deployed or to otherwise provide investigative support. However, NSWPF policy is that the CIU will not, as a matter of course, attend all fatalities.

- 450 As to whether this case would have met the criteria under the new SOPs for deployment of the CIU, George pointed out that determining the responsible party hinged on the responding police accepting the version of the driver. Even under the new system, the CIU is still reliant on the SRO gleaning information from local police who attend, and they need to make a call on who is at fault and whether criminal charges are likely when they matter has not been fully investigated. He further said, 'obviously they've got to have some sort of SOPs in place to manage the workflow. But, you know, in terms of fatal[itie]s, I just think that ... they need to be investigated by professionals completely.'

Issue 4: Findings

In the immediate aftermath of the incident, Nelley, with limited resources available to him, in circumstances where **Operator 1** had left the scene with the Van, was faced with the dilemma as to whether it was more important to secure the Van or the scene. He instructed Churchin to photograph the scene and to then pursue the Van and driver. That decision was not inappropriate.

The investigative steps taken by Nelley were appropriate in the following aspects: obtaining of key witness statements, attending and inspecting the Agricultural Premises and taking photographs, seizing the Van, attempting to access Jerwin's phone and contacting DHA to obtain further information regarding Jerwin's visa. However, it is clear that more could have been done. Significantly, Nelley acknowledged this in the course of the inquest.

I find that the initial investigation by the NSWPF was inadequate in the ways that follow.

- (1) The crime scene coordinator should have been notified. Kremers said they would have attended if notified and George identified critical road evidence which may have been gathered in this event.
- (2) The CIU should have been contacted, although I accept Nelley's evidence, though it was not tested, to the effect that his supervisor told him they would not come⁶², and also the evidence of Foster and Hogan that they would not have attended if contacted.
- (3) The interior of the Van should have been photographed (including the positioning of the armrests) and subjected to a forensic examination.
- (4) Jerwin's shirt which appears in the photographs taken from at the Agricultural Premises ought to have been seized and forensically examined.
- (5) A statement ought to have been obtained from **Witness 4**
- (6) Given the information known on 14 March 2019, the investigation should have been approached as 'suspicious' rather than one which did not involve 'foul play'. The relevant factors included doubt as to whether Jerwin had jumped out of or fallen from a moving vehicle at great (and ultimately catastrophic) danger to himself, **Operator 1** left the scene of the incident twice, that **Operator 1** was making disparaging comments about Jerwin and that he was attempting to play down the injuries of a young vulnerable man in grave danger.

⁶² I note the submission on behalf of the Commissioner of the NSWPF that Nelley's assertion as to a conversation with his supervisor is to be dealt with cautiously given the evidence is untested as the supervisor is not called. To the extent that I accept the evidence I do so in Nelley's favour and not to the extent that I am making adverse findings against a potential witness not called to give evidence.

Issue 5: Whether any recommendations are necessary or desirable in connection with Jerwin's death.

Recommendations submitted by Jerwin's family

451 I address the submissions of Jerwin's family as to recommendations⁶³ below.

- (1) [Para 78] That an internal review or audit should be undertaken in respect of other decisions made by the DHA decision maker that approved the first application which related to Jerwin.

Given the absence of evidence that there was a systematic defect in the decision making of this decision maker, I am declining to make this recommendation.

- (2) [Para 79] That the recipient of the visa receives the information which is provided in conjunction with the grant of the s 407 visa, in electronic and paper form. As will be seen below, I consider the information as to supports available to visa holders should be provided electronically and in paper in conjunction with the pre-departure briefings and have incorporated this recommendation accordingly.
- (3) [Para 80] As will be seen below I have incorporated into my recommendations the need for any hotline to be appropriately advertised and funded.
- (4) [Para 81] As will be seen below; I have incorporated the need for a sponsor to disclose relevant criminal history including breaches of the *Fair Work Act 2009* (Cth) into my recommendations.
- (5) [Para 82] That the DHA website be reviewed to make it more user friendly and to ensure important information is more prominent.

⁶³ See paragraphs 78-84 of the submissions of Christine Mellis on behalf of Jerwin's family dated 9 April 2025.

I am declining to make that recommendation in the absence of evidence as to competing needs and benefits of their website design. I accept that information as to supports available to visa holders must be more accessible. However, I consider that can be more readily achieved by the information being provided directly during a pre-departure briefing and in conjunction with other pre-departure information being supplied.

- (6) [Para 83] As will be seen below; I have incorporated the need for a review of the Australian Border Force website to determine whether the 'Register of Sanctioned Sponsors' is adequately and appropriately accessible.
- (7) [Para 84] Jerwin's family has requested I consider referring my reasons and the transcript of these proceedings to the Law Enforcement Conduct Commission to consider investigating Nelley's conduct in the original investigation into Jerwin's death. For the reasons outlined above, I did find that Nelley's investigation was inadequate. However, external factors included the regional location, a lack of resources and inadequate support/supervision. It is also significant that in the course of the inquest, Nelley was able to recognise the deficiencies in his investigation and improvements to his own methods since Jerwin's death. In all the circumstances I do not consider a referral of the nature sought is appropriate.

Recommendations to the Minister for Home Affairs

- 452 The three recommendations proposed to the Minister for Home Affairs are set out below. These were reformulated by Counsel Assisting having considered the submissions from each of the participants (including Jerwin's family) and the invaluable input from Dr Cockayne and Chris Evans.

Recommendations (1) to (3) to the Minister for Home Affairs

Recommendation 1

That the Minister for Home Affairs conduct a thorough internal review (in the nature of a root cause analysis) with respect to the potential 'lessons learned' arising from the circumstances relating to the death of Jerwin Royupa, including giving consideration to the following matters:

- (1) whether there is a need for a formal review process to:
 - (a) ensure appropriate investigation and analysis of the role of the Department of Home Affairs (**DHA**) (including its delegates) in approving subclass 407 training visas that may have been used for exploitation of subclass 407 visa holders (not least in circumstances where the subclass 407 visa holder nominee is deceased in connection with activities relating to training in Australia); and
 - (b) consider the risk of exploitation of subclass 407 visa holders, including in relation to the existing visa requirements (including pay and employment conditions), approval process, monitoring and support to visa holders)
- (2) the use of potential 'risk profiling' to focus the monitoring activities of the Sponsor Monitoring Unit (**SMU**) on sponsors who may be high risk (including by reason of the following factors: a) being a new sponsor; b) the training is located in a geographically isolated, agricultural area; c) there is a risk of the subclass 407 visa holder undertaking unskilled labour or unpaid work; d) the sponsor's operations are small scale)
- (3) (related to 1(b)) the utility of 'random' audits or checks by the SMU of sponsors who may be considered 'high risk' (including for the reasons

stated), including to ascertain whether a training program is in fact being provided as a genuine training opportunity

- (4) the absence of any referral for investigation or ongoing investigation into allegations of exploitation of Jerwin Royupa, and the role, communication between, and coordination of Commonwealth agencies in identifying and addressing potential exploitation of subclass 407 visa holders – namely, the DHA (including the Australian Border Force); the Fair Work Ombudsman; and the Australian Federal Police
- (5) the utility of this matter as a case study for learning by relevant officers (including decision makers assessing s 407 training applications and SMU officers) and consideration of additional training needs for decision makers and/or SMU team members on forced labour risks and indicators
- (6) a review of the adequacy of the information provided in the letter confirming the grant of a subclass 407 visa (especially whether there is adequate reference to available support services concerning exploitation and modern slavery) and the inappropriateness of a sponsor being the sole ‘authorised recipient’ of that information (as contemplated by the form ‘Appointment or withdrawal of an authorised recipient’)

and that relevant Commonwealth agencies (including the Commonwealth Attorney General, the Commissioner of the Australian Federal Police and the Fair Work Ombudsman), and the Australian Anti-Slavery Commissioner be consulted and involved, as necessary and appropriate, as to relevant aspects of the review, including for example, the development of enhanced ‘risk based’ approaches to regulation and monitoring of the subclass 407 visa framework.

Recommendation 2

That the Minister for Home Affairs liaise with the Australian Anti-Slavery Commissioner and the NSW Anti-slavery Commissioner as to the lessons learned arising from the review contemplated at (1) above.

Recommendation 3

That the Minister for Home Affairs implement pre-departure briefings for subclass 407 training visa holders (consistent with Recommendation 46 of the *Hidden in Plain Sight* report of the Joint Standing Committee on Foreign Affairs, dated December 2017).

The DHA's submissions

- 453 The DHA opposed each of the three proposed recommendations.
- 454 The DHA submitted that any proposal to address recommendations to the Minister for Home Affairs should be rejected on procedural fairness grounds, given the Minister was not invited to participate in the inquest (and did not seek leave to appear) in his personal capacity, and nor was the Minister invited to comment on Counsel assisting 's Submissions. This objection was addressed in the directions hearing on 18 September 2025 and the DHA indicated that the objection on the grounds that the DHA was not the appropriate party, was not pressed.
- 455 The DHA also submitted that the DHA is not the appropriate agency to implement a number of aspects of the proposed recommendations, which either relate to Government policy or go beyond the DHA's portfolio.
- 456 The DHA opposed Recommendation 1 in essence on the basis that:
- (1) it is not clear what a root cause analysis would entail

- (2) it does not accept that such an analysis would be appropriate having regard to the review conducted to date and the concessions that have been made as to the appropriateness of the visa granted in Jerwin's case
- (3) that Recommendations 1(a) to (f) have 'not been explained' or raise a real question' as to the whether certain conduct is permissible under the *Migration Act*
- (4) that the use of Jerwin as a case study may involve the inappropriate use of personal information about Jerwin
- (5) that s 494D is a legislative impediment to proposed Recommendation 1(f)
- (6) that the recommendation involves potential consultation with other Commonwealth agencies
- (7) that there have been significant changes adopted since Jerwin's tragic death.

457 The reluctance to engage in an internal review appears to be inconsistent with the advice from the Commonwealth Ombudsman⁶⁴:

Coronial inquests are fundamentally connected with improving public safety and reducing fatalities. Coroners frequently make recommendations directed to government agencies in light of lessons learned from the investigation during a coronial inquest. Such recommendations aim to improve processes, policies and legislation to prevent similar deaths in the future.

...

Use recommendations to identify and drive improvement in agency work

Recommendations can occasionally be couched as criticism of the agency to which they are directed. Agencies can demonstrate their commitment to continuous improvement in public safety and administration of their policies by

⁶⁴ Commonwealth Ombudsman, Fact Sheet, *Principles for good practice in responding to coronial recommendations*: https://www.ombudsman.gov.au/data/assets/pdf_file/0015/36213/Principles-of-Good-Practice.pdf (accessed: 23/12/2025).

placing value on recommendations made by coroners for the purpose of improving public safety and reducing the likelihood of fatalities.

The improvements gained through the thoughtful consideration of coronial recommendations benefit the agency's reputation and administration and recommendations should be received in this spirit.

458 It is significant that Recommendation 1 is supported by the State and Commonwealth Anti-Slavery Commissioners, and, in relation to the use of Jerwin's personal information, Jerwin's family.

459 Recommendation 1 was formulated to enable an in depth analysis of potential gaps in processes and to identify areas where risk management can be strengthened to combat issues such as exposure to modern slavery. Such a review may well identify legislative impediments to change or the need for more broader policy or legislative changes or the need to liaise with other Commonwealth agencies. The matters identified in subparagraphs (a) to (f) are matters for consideration only.

460 Case study models are frequently used and can easily be undertaken using de-identified information alleviating concerns about the dissemination of personal information.

461 Having implemented changes, an in depth analysis could consider whether the improvements made are adequate to respond to the risks identified by virtue of Jerwin's particular circumstances.

462 As to Recommendation 2, it is both necessary and desirable that the outcome of the review contemplated in recommendation 1, be provided to both the NSW and Australian Anti-Slavery Commissioner.

463 As to Recommendation 3, the DHA's opposition appears to be on two bases:

- (1) that the recommendation relies heavily on the *Hidden in Plain Sight Report* which the DHA submitted is of limited utility in deciding whether or not it is appropriate to hold pre-departure briefings; and

(2) it is an issue of resources.

464 I don't suggest that the *Hidden in Plain Sight Report* binds the current government. However, it is compelling that the Joint Standing Committee on Foreign Affairs, Defence and Trade conducted a comprehensive review in 2017 and its findings should not be easily set aside. As evidenced in Jerwin's case, the basis for pre-departure briefings is sound. Migrant workers need to be provided with adequate and appropriate information to ensure, amongst other things, access to appropriate agencies in Australia when issues arise.

465 I accept that resources are limited and the distribution of public funds is a matter of government policy. However, it is not unusual for coronial recommendations to act as a factor informing government policy as to the appropriate distribution of their limited resources.

Conclusions – Recommendations 1-3

466 For the reasons outlined, I make Recommendations 1-3.

467 I accept that there is no legislative requirement for a Commonwealth agency to acknowledge or respond to a recommendation made by a coroner. However, the DHA positively engaged in the inquest process and I am confident they will, consistent with the Fact Sheet issued by the Commonwealth Ombudsman,⁶⁵ consider and implement as appropriate and practicable, my recommendations arising out of this inquest, given the tragic circumstances of Jerwin's death. It is critical that all lessons are learnt.

⁶⁵ Commonwealth Ombudsman, Fact Sheet, *Principles for good practice in responding to coronial recommendations*: https://www.ombudsman.gov.au/data/assets/pdf_file/0015/36213/Principles-of-Good-Practice.pdf (accessed: 23/12/2025).

Recommendation (4) to the Australian Anti-Slavery Commissioner and the NSW Anti-slavery Commissioner

That the Australian Anti-Slavery Commissioner and the NSW Anti-slavery Commissioner liaise and work collaboratively with the Commonwealth (including relevant agencies, such as the Commonwealth Attorney General, the Commissioner of the Australian Federal Police and the Fair Work Ombudsman) to consider measures to improve reporting of modern slavery offences, including considering the development of a national modern slavery hotline (consistent with Recommendation 46 and 47 of the *Hidden in Plain Sight* report of the Joint Standing Committee on Foreign Affairs, dated December 2017), in an appropriate form.

468 Both the NSW and the Commonwealth Anti-Slavery Commissioners support this recommendation. I also note there was no opposition to this recommendation by any other participant.

469 I make this recommendation.

Recommendation (5) to the Commissioner of the NSW Police Force

That the Commissioner of the NSW Police Force (or his delegate) liaise with the NSW Anti-slavery Commissioner as to the development and implementation of mandatory 'modern slavery' training for officers operating in 'high risk' areas, including for example, regional/rural and agricultural areas of NSW where conditions of modern slavery may arise.

470 I note that the Commissioner of the NSW Police Force has indicated his agreement to this recommendation (which was amended to take into account constructive feedback from his legal representatives).

471 I make this recommendation.

Recommendation (6) to the Commissioner of the Australian Federal Police

That the coronial brief of evidence and transcript from the coronial proceedings be referred to the Australian Federal Police for consideration as to further investigations.

472 None of the participants objected to this recommendation being made.

473 There was evidence adduced at the inquest to the effect that there was an AFP investigation into some issues arising in conjunction with Jerwin's death (see paragraphs 150-151). The nature or outcome of those investigations were not considered in the course of the inquest. The referral is made on the basis that the evidence and findings in the inquest may inform the AFP in respect of any current or future investigation (noting also the Coroner's express power in s 82(2)(b) of the Act to recommend that a matter be investigated or reviewed by a specified body or person).

474 I make this recommendation.

Concluding remarks

475 I will close by conveying to the Royupa family and to **Witness 3** and her family and friends whose lives were touched by Jerwin in the brief period they knew him, my sympathy for the loss of Jerwin.

476 I thank the Assisting team for their outstanding support in the conduct of this inquest.

477 I thank the officer in charge, Det. A/Insp. Irving for his work in conducting the investigation and compiling the brief of evidence which was supplemented by the Assisting team.

Statutory findings required by s 81(1)

478 As a result of considering all the documentary and the oral evidence heard at the inquest, I make the following findings:

Identity

The person who has died is Jerwin Royupa

Date of death

15 March 2019

Place of death

Royal Melbourne Hospital

Cause of death

Jerwin died from the complications of multiple blunt force injuries

Manner of death

Between 10 and 14 March 2019 Jerwin became increasingly fearful of Operator 1. This fear was compounded by Jerwin feeling threatened while he was Operator 1's passenger and Operator 1 indicated he would take Jerwin to the airport or the police. In that context, Jerwin died from injuries suffered after he voluntarily exited the moving vehicle at [REDACTED] Road, approx. 1km east of [REDACTED].

I close this inquest.



Magistrate R Hosking

Deputy State Coroner

Lidcombe

Annexure A

NSWPF		BOE Ref	Transcript ref
Irving	Detective Acting Inspector Irving, OIC of the Coronial investigation	Vol 1, Tab 6D	D1 (25/11/24) T22 – T63
Nelley	Detective Senior Constable Richard Nelley, OIC of the NSWPF Investigation	Vol 1, Tabs 7 and 8	D2 (26/11/24) T110 – T192; D3 (27/11/24) T208 – T263 & T320 – T339
Churchin	Senior Constable Samantha Churchin, first officer on the scene engaged in the NSWPF Investigation	Vol 2, Tab 9	D2 (26/11/24) T193 – T205
Stein	Constable Jarrod Stein, engaged in the NSWPF Investigation	Vol 2, Tabs 10 & 10A	D1 (25/11/24) T65 – T72
Kremers	Detective Sergeant Dane Kremers, FETS ⁶⁶ , Albury Crime Scene Section	Vol 2, Tab 13B; Vol 4, Tab 42F	Did not give oral evidence
NSWA			
Hurd	Patrick Hurd, Paramedic	Vol 2, Tab 14	D2 (26/11/24) T96 – T104
Exton	Inspector Juliann Exton, Ambulance Officer	Vol 2, Tab 16A	D2 (26/11/24) T105 – T109
Lay witnesses			
Witness 6	Witness 6 , daughter of Witness 3 ⁶⁷ and a friend to Jerwin in Australia	Vol 3, Tab 24	D3 (27/11/24) T81 – T318
Witness 5	Witness 5 , niece of Witness 3 , and a friend to Jerwin in Australia	Vol 3, Tabs 25D and 25E	D3 (27/11/24) T264 – T279
Witness 4	Witness 4 , employer of Witness 3 , and a friend to Jerwin in Australia	Vol 3, Tab 25C	D7 (03/12/24) T643 – T657
Operator 1	Owner of the Agricultural Business and Premises, Jerwin's sponsor	Vol 2, Tabs 17 and 18	D4 (28/11/24) T343 – T345
Agent 1	Jerwin's contact in the Philippines	Vol 2, Tab 20	D4 (28/11/24) T347 – T352
Operator 2	Owner of the Agricultural Business and Premises, brother of Operator 1	Vol 3, Tab 30	D5 (29/11/24) T454 – T456
Witness 1	Employee of the Agricultural Business	Vol 3, Tab 29	D4 (28/11/24) T353 – T387 & T395 – T423
Witness 2	Witness 2 , eyewitness, was driving towards the Van when Jerwin exited the Van	Vol 2, Tabs 19 and 19A	D1 (25/11/24) T73 – T93

⁶⁶ Forensic Evidence and Technical Services Command

⁶⁷ Jerwin met **Witness 3**, a local Filipino, at Church. **Witness 3** was very kind to Jerwin and along with her friends and family, tried to help him. **Witness 3** was unable to give evidence at the inquest as she had been hospitalised.

Rahill	Alison Rahill, Archdiocese of Sydney and Executive Officer of Anti-Slavery Taskforce	Exhibit 13	D8 (04/12/24) T664 – T673
DHA			
Goodsell	James Goodsell, Director, Student Program Management Section, DHA	Vol 5, Tab 47; Vol 7, Tabs 136 and 136A Exhibit 26	D6 (02/12/24) T511 – T577 D7 (03/12/24) T559 – T577
Clayton	Paul Clayton, Insp. Australian Border Force's National Sponsor Monitoring Co-ordination Unit, DHA	Vol 7, Tab 137; Exhibit 24	D7 (03/12/24) T617 – T642 D8 (04/12/24) T674 – T714
Experts			
Dr Irvine	Dr Rebecca Irvine, Forensic Pathologist	Vol 1, Tabs 3 and 3A	D4 (28/11/24) T388 – T394
Foster	Sergeant Kristy Foster, NSWPF, CIU	Vol 1, Tab 6A	D7 (03/12/24) T579 – T614
Hogan	Inspector Jason Hogan, NSWPF, CIU	Vol 4, Tab 42E	
George	Mark George, Independent crash investigation expert	Vol 1, Tab 6C	
Dr McIntosh	Dr Andrew McIntosh, Biomechanical engineer.	Vol 1, Tab 6B	D5 (29/11/24) T473 – T508