
Individual Communication to the United Nations Human Rights Committee

Submitted by: Shani Cassidy on behalf of her deceased son Tyler Jordan Cassidy and in her own name

Alleged victims: Tyler Jordan Cassidy and Shani Cassidy

State party: The Commonwealth of Australia

Date of submission: 10 March 2015

Claim: In the matter of Tyler Jordan Cassidy, Australia has violated its human rights obligations under Articles 6(1) and 2 of the *International Covenant on Civil and Political Rights*

Application: To the United Nations Human Rights Committee under Article 1 of the *Optional Protocol to the International Covenant on Civil and Political Rights*

Residence: Tyler and Shani were at all material times residents of Australia

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1. Introduction

1. On 3 December 2014, the author received a copy of the State party's observations concerning the admissibility and merits of Communication No. 2296/2013, which the author submitted to the Human Rights Committee (**Committee**) for consideration under the First Optional Protocol to the International Covenant on Civil and Political Rights (**ICCPR**). The author provides the following comments in reply to the State party's observations.
2. As a preliminary matter, the author reiterates that her claim is founded on a violation of the procedural (and not substantive) obligations imposed by the right to life under Article 6(1) of the ICCPR. In summary, and as set out in detail at paragraphs 144 to 148 of the author's submissions, the right to life under Article 6(1) imposes both procedural and substantive obligations on State parties. Given that Tyler's death was the direct result of the fatal use of force by members of Victoria Police, a potential breach of the substantive obligations arises. Whether those substantive obligations were in fact breached can only be determined through an effective and independent investigation into the circumstances of Tyler's death. Therefore, the author submits that the procedural obligations of Article 6(1) were engaged in the present case.

2. Admissibility of claim

3. The author reiterates that Communication No. 2296/2013 is admissible for determination by the Committee pursuant to the First Optional Protocol to the ICCPR (**First Optional Protocol**) and in satisfaction of the Rules of Procedure of the Committee.

2.1 Compliance with Articles 1, 2 and 3 of the First Optional Protocol

4. The author notes that the State party does not dispute compliance with Articles 1, 2 and 3 of the First Optional Protocol.¹

2.2 Compliance with Article 5 of the First Optional Protocol – exhaustion of all available remedies

5. The author maintains that she has exhausted all domestic judicial and non-judicial remedies that are available to her and can provide an effective remedy.

2.2.1 Judicial remedies

6. The State party submits that the author has not exhausted all judicial remedies as she has not:
 - appealed against the inquest findings and sought judicial review;
 - commenced a civil claim against the State of Victoria, the Coroner or Victoria Police; and
 - commenced a criminal prosecution.²

¹ See author's submissions, paragraphs 63 to 73.

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7. The State party concedes that it is not open to the author to pursue a claim against the State of Victoria on the basis of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).³

2.2.1.1 Appeal against inquest findings

8. In regards to an alleged failure to appeal against the inquest findings, the State party admits that such an appeal must be on a question of law.⁴ The State party submits that the author could appeal the inquest findings on three bases, namely that:
- the findings were not open on the evidence;
 - there was a failure to accord natural justice; or
 - there was an insufficient inquiry.
9. In response, the author submits that this avenue is not open to her as any question of law giving rise to judicial review would be incapable of dealing with the issue of whether there was a procedural breach of the right to life. Further, the remedies available would not be effective.
10. First, the author submits judicial review is unavailable to seek a remedy regarding the nature of the investigation itself. As a matter of general principle, the author submits that there has been a breach of the procedural obligation of the right to life and the requirements of the investigation into a death involving State responsibility.⁵ Judicial review on a question of law is available when the Coroner has failed to exercise their jurisdiction to investigate a death⁶ and make those findings they are required to make under the *Coroners Act 2008* (Vic).⁷ It is not available in circumstances where the very nature of the investigation (in this matter, by police without sufficient independence) is impugned rather than the exercise of the Coroner's power on the basis of that investigation. The Coroner herself stated that she would not examine the model of how deaths associated with police conduct are investigated.⁸ Accordingly, the author submits judicial review is unavailable on this issue.
11. Second, in any event, the author submits that the specific grounds of judicial review identified by the State party are unavailable and would not have a reasonable prospect of success.

² State party's submissions, paragraphs 35 and 49-50.

³ State party's submissions, paragraph 49.

⁴ State party's submissions, paragraph 38.

⁵ Author's submissions, paragraph 148.

⁶ *In ex parte Routledge* (1943) 60 WN(NSW) 184 at 184 per Jordan CJ; *Annetts v McCann* (1990) 170 CLR 596 at 605 per Brennan J.

⁷ Particularly those matters in s 67 of the *Coroners Act 2008* (Vic) (the identity of the deceased, the cause of death and the circumstances in which the death occurred).

⁸ Author's submissions, paragraph 92.

Findings which are not open on the evidence

12. There is no suggestion that the Coroner made a finding that was not open on the evidence. As stated above, the Coroner did not examine the model of investigation. It is that model that forms the basis of the author's submission that her and Tyler's rights have been breached. It would not be open to the author to seek judicial review of a finding that does not exist.⁹
13. Although the Coroner did make comments regarding the competency, adequacy or impartiality of how evidence was obtained and treated, these matters did not go to the fundamental procedural obligations of the State party pursuant to the right to life. In fact, the author has relied on a number of the Coroner's findings to highlight the breach by the State party of its procedural obligations.
14. This ground of judicial review is more appropriate where the findings being challenged relate to the cause and circumstances of the death, and not the procedural aspects of the investigation into that death.¹⁰

A failure to accord natural justice

15. The author submits that this ground is not properly available to her. A failure to accord natural justice might arise where a family is not provided with an opportunity to make submissions on a possible adverse finding concerning their interests during a coronial investigation,¹¹ or where the Coroner is accused of bias.¹² These grounds are irrelevant to the author's communication to the Committee.
16. The decision of *Matterson* does not support the State party's submission. In that decision, the Coroner was accused of bias because he had failed to disclose to the deceased's partner that a material police witness who attended the crime scene was also a member of the Coroner's investigative team.¹³ That scenario does not arise in the author's circumstances. The author has not accused the Coroner of bias but submitted that the investigation upon which the Coroner relied was not sufficiently independent of Victoria Police to satisfy the procedural obligations imposed by the right to life under Article 6(1) of the ICCPR.
17. In fact, in *Matterson*, while the Court rejected that there was evidence of bias, it expressed concern that the Coroner relied on serving police officers to conduct his investigation and that the circumstances of the case were 'quite inappropriate'.¹⁴ However, the Court did not intervene in that aspect of the case and there was no suggestion that a question of law arose on that issue.

⁹ See e.g. author's submissions, paragraph 199.

¹⁰ *Thales v The Coroners Court of Victoria* [2011] VSC 133 at [59]; *R v Matterson; ex parte Moles* (1994) 4 Tas R 87 at [60]-[61] (*Matterson*).

¹¹ *Annetts v McCann* (1990) 170 CLR 596 at 601 per Mason CJ, Deane and McHugh JJ.

¹² *Matterson*, above n 10, [48].

¹³ *Matterson*, above n 10, [45].

¹⁴ *Matterson*, above n 10, [34].

Insufficiency of inquiry

18. The author submits that she does not properly have access to a ground of review on the basis of the insufficiency of the inquiry. The nature of this ground of review is not the insufficiency of the police investigation into a death but the insufficiency of the Coroner's statutory inquiry into the cause and circumstances of that death. Again, this is not directly related to the author's key submission that her and Tyler's rights under the ICCPR have been breached.
19. For example, in the decision of *Matterson*, the relevant portion of the paragraph relied on by the State party at paragraph [44] of its submission is as follows:
- If a coroner gives reasons for his inquisition and decision to commit or not commit for trial, and those reasons only address matters peripheral to those decisions, or fail to deal with the fundamental issues touching and concerning those decisions, there may have been an insufficient inquiry.¹⁵
20. It follows that this ground of review is only available if the Coroner fails to refer to evidence central to the investigation, makes findings overwhelmingly contrary to the principal findings of fact or the findings are tainted with legal error.¹⁶ Considering that the author's submission centres on the nature of the police investigation into Tyler's death, this ground of judicial review is not available to the author.
21. For these reasons, judicial review is not available to the author.

Remedies

22. The author maintains that a new inquest would not be an effective remedy. The Coroner would still rely on Victoria Police to gather evidence and conduct investigations. No matter the Coroner's level of oversight, the Coroner would still rely on an investigation that is not sufficiently independent. The State party's submission does not suggest that the Coroner would not rely on Victoria Police to conduct an investigation into a police contact death, even taking into account recent changes to policy and procedure.¹⁷ The State party's submission also fails to take into account the author's position that a breach of the procedural obligations associated with the right to life has already occurred and could not be remedied by another investigation, howsoever conducted.
23. For the same reasons, even if the Supreme Court of Victoria could quash the previous inquest and order that a new one be conducted (which is not accepted for the reasons above), it would still not correct the deficiencies of the original investigation. In fact, a new inquest would likely repeat those mistakes as the author maintains that an investigation into a police conduct death by Victoria Police (even with the oversight described by the State party's submission) would not be sufficiently independent.

¹⁵ *Matterson*, above n 10, [96].

¹⁶ *Matterson*, above n 10, [96].

¹⁷ See State party's submissions, paragraphs 112-116.

2.2.1.2 Civil claim

24. While the author may seek damages for a wrongful death or negligence at common law, this action would relate to any substantive breaches of the right to life rather than to the procedural breaches that are the subject of this communication. For this reason, the State party's reliance on English case law relating to a substantive violation of the right to life is irrelevant to the author's allegations.

2.2.1.3 Criminal prosecution

25. Further, any action by the author to commence a private prosecution would suffer the same deficiency. There is no avenue for the author to commence a private prosecution to redress the procedural deficiencies of the investigation. In any event, as noted by the State party,¹⁸ the Director of Public Prosecutions has an effective veto over any private investigation by virtue of s 22(1)(b)(ii) of the *Public Prosecutions Act 1994* (Vic). Further, any private prosecution would be for criminal charges against specified persons, which is outside the scope of the author's communication to the Committee.

2.2.2 Non-judicial remedies

26. The State party concedes that the non-judicial remedies identified by her would not constitute effective remedies due to their recommendatory rather than binding effect.¹⁹
27. The State party submits that one non-judicial remedy is available and has not been exhausted, namely a request to the Independent Broad-Based Anti-Corruption Commission (**IBAC**) to examine the investigation.²⁰
28. The author submits that this avenue is exhausted as she requested that the IBAC's predecessor organisation, the Office of Police Integrity (**OPI**), assume the conduct of the investigation. This request was refused.²¹ Section 4 of the Schedule to the IBAC Act states that all debts, liabilities and obligations of the OPI became those of IBAC when it was abolished and any reference to the OPI in any legislation is taken to be a reference to IBAC. In those circumstances, considering IBAC completely succeeded the OPI, the author submits that she has exhausted this avenue.
29. Further, if IBAC was to conduct an investigation into any police personnel misconduct, the remedies available to the author would not be effective. While IBAC might recommend or initiate criminal proceedings in its own right, it may only do so in relation to a potential criminal offence.²² This would not remedy any breach of the State's procedural obligations regarding the sufficiency of the investigation.

¹⁸ State party's submission, paragraph 50.

¹⁹ State party's submissions, paragraph 36.

²⁰ State party's submissions, paragraphs 51-52.

²¹ Author's submissions, paragraphs 105-106.

²² *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) (**IBAC Act**) s 190.

2.3 Substantiation of claim

30. The State party submits that the author has not sufficiently substantiated her claim, in the sense that she has not established a prima facie case as a threshold issue relevant to the admissibility of the claim.²³ The State party relies on *Hickey v Australia*²⁴ (**Hickey**), a case in which the Committee considered that the author had failed to sufficiently substantiate her claim.²⁵
31. However, the circumstances in *Hickey* are clearly distinguishable from those in the present case and the decision in *Hickey* does not support the proposition that the author has failed to sufficiently substantiate her claims. A key distinction is that, contrary to Tyler's death, there was no clear connection between the actions of the police officers and the death of Thomas Hickey. Thomas was riding his bicycle at high speed in the vicinity of a police operation when he fell and his neck and chest were impaled on the poles of a metal fence. According to witnesses, one police vehicle had started following him, however police officers denied any type of pursuit.²⁶ The Committee held that the author had failed to sufficiently substantiate her claim because her claim was "formulated in general terms and is not based on concrete facts and evidence challenged by the author before the domestic authorities in connection with the death of her son".²⁷
32. In contrast, it is undisputed that Tyler's death was a direct result of the use of force by members of Victoria Police. Specifically, Tyler died from a gunshot wound to the chest after he was shot by police.²⁸
33. Unlike in *Hickey*, the State party has failed to demonstrate a basis on which the author's submissions on the law and merits of the claim do not substantiate the author's claim sufficiently to satisfy the threshold issue of admissibility.

3. Submissions on law and merits of claim

34. The author maintains that the State party has breached Articles 6(1) and 2 of the ICCPR. The author no longer presses the submission that the State party has breached Article 14 of the ICCPR.

3.1 Article 6(1) of the ICCPR

35. The author maintains that the State party has failed to investigate Tyler's death in accordance with the procedural obligations of Article 6(1) of the ICCPR.

²³ State party's submissions, paragraphs 53-54.

²⁴ Human Rights Committee, *Views: Communication No 1995/2010*, 111th sess, UN Doc CCPR/C/111/D/1995/2010 (21 July 2014) (**Hickey v Australia**).

²⁵ *Hickey v Australia*, above n 24, [8.4].

²⁶ *Hickey v Australia*, above n 24, [2.1].

²⁷ *Hickey v Australia*, above n 24, [8.4].

²⁸ Redacted finding into Death with Inquest: Tyler Jordan Cassidy [2011] Coroners Court of Victoria 5542/08 (Judge Jennifer Coate, 23 November 2011).

36. The State party does not contest the author's submission that Article 6(1) imposes a duty to investigate, and that this duty is enlivened in relation to Tyler's death.²⁹

3.1.1 Scope of the duty to investigate

37. The author maintains that the procedural obligations of Article 6(1) require that an investigation:

- be hierarchically, institutionally and practically independent;
- be adequate and effective;
- be open to public scrutiny;
- be prompt and carried out with reasonable expedition; and
- involve next-of-kin.³⁰

38. The author further maintains that in relation to the requirement for hierarchical, institutional and practical independence, investigations of the use of lethal force by police will lack sufficient independence if they are carried out by other members of the same police force, even where the investigators work in a different department or an independent body oversees the investigation.³¹

3.1.1.1 Police may play an initial role in the investigation

39. In responding to the author's submissions on the scope of the duty to investigate, the State party submits that the "Committee should reject the author's central argument that 'independence' always requires *all* functions and aspects of an investigation to be conducted *in its entirety* by an entirely separate body".³² However, this statement by the State party misconstrues the author's submissions.

40. As set out in paragraphs 172 to 173 of the author's submissions, the requirement for hierarchical, institutional and practical independence does not mean that members of the police force cannot play any initial role in the investigation. Rather, the procedural requirements of Article 6(1) require that the investigation be placed in the hands of the independent investigative body at the earliest point it is practicable to do so.

41. The State party's misinterpretation of this aspect of the author's submissions is reinforced by the State party's discussion of *Giuliani and Gaggio v Italy (Giuliani)*. The State party asserts that *Giuliani* does not support the author's submissions because the European Court of Human Rights held that there was no violation of the duty to investigate where the police undertook initial searches and recording of items.³³ To the contrary, this jurisprudence is consistent with the author's submission that the requirement for an independent investigation does not preclude police from having an initial role.³⁴

²⁹ State party's submissions, paragraph 67.

³⁰ Author's submissions, paragraph 151.

³¹ Author's submissions, paragraph 161.

³² State party's submissions, paragraph 69. Emphasis added.

³³ State party's submissions, paragraph 76.

³⁴ Author's submissions, paragraph 172.

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42. The State party further submits that the "author has been unable to identify any Committee views where the Committee has stated that complete institutional separation of an investigating agency is required for all investigations, at *all stages* of the investigation."³⁵ This statement is based on the same misinterpretation of the author's submissions.

3.1.1.2 Relevance of ECHR/IACHR jurisprudence

43. The author maintains that in interpreting the scope of the duty to investigate, the Committee may be guided by jurisprudence of the European Court of Human Rights (**ECHR**) and the Inter-American Court of Human Rights (**IACHR**), provided that it is not inconsistent with the Committee's own jurisprudence.³⁶ For instance, in *Larranaga v Phillipines*, the Committee cited the ECHR decision of *Öcalan v Turkey* as authority for the proposition that the imposition of the death penalty after the conclusion of a trial that does not meet the requirements of Article 14 also amounts to a breach of Article 7.³⁷ The jurisprudence set out at paragraphs 160 to 161 of the author's submissions therefore supports the author's submissions on the scope of the duty to investigate.
44. The author rejects the State party's submission that the nature of the obligations in one treaty cannot be determined by reference to jurisprudence on a similar obligation in another.³⁸ In *Cifuentes Elgueta v Chile*, the Committee relied on the definition of 'enforced disappearance' in the International Convention for the Protection of All Persons from Enforced Disappearance to inform the interpretation of Article 1 of the First Optional Protocol.³⁹
45. The author further submits that the approach of the ECHR and IACHR to characterising the scope of the duty to investigate is the correct approach as a matter of law. Therefore, regardless of the view taken as to the applicability of the jurisprudence, the Committee should adopt the approach reflected in this jurisprudence. The author notes that the State party has not identified any Committee, ECHR or IACHR jurisprudence that is inconsistent with the author's submissions.
46. The author also rejects the State party's submission that the ECHR jurisprudence "offers limited support to the author's propositions, as the Court takes a case-by-case approach to assessing the adequacy of investigations".⁴⁰ The author submits that the need to conduct an assessment on a case-by-case basis does not negate the utility of referring to precedent for guidance on the principles that inform the assessment.

³⁵ State party's submissions, paragraph 69. Emphasis added.

³⁶ Author's submissions, paragraph 143.

³⁷ Human Rights Committee, *Views: Communication No 1421/2005*, 87th sess, UN Doc CCPR/C/87/D/1421/2005 (24 July 2006) (**Larranaga v Phillipines**), [7.11].

³⁸ State party's submissions, paragraph 62.

³⁹ Human Rights Committee, *View s: Communication No 1536/2006*, 96th sess, UN Doc CCPR/C/96/D/1536/2006 (28 July 2009) (**Cifuentes Elgueta v Chile**), [8.4].

⁴⁰ State party's submissions, paragraph 62.

3.1.2 Breach of the duty to investigate

47. The author maintains that the State party breached Article 6(1) by failing to ensure a hierarchically, institutionally and practically independent investigation. In summary, and as set out in detail in paragraphs 194 to 203 of the author's submissions, this breach arises primarily because a division of Victoria Police (the Homicide Squad) had responsibility for conducting the primary investigation into the circumstances of Tyler's death, including responsibility for preparing the Inquest Brief for the Coroner. This primary investigation was therefore conducted by persons from the same body as the officers being investigated, resulting in a lack of institutional independence.
48. Further, and as set out in detail in the author's submissions:
- The oversight responsibility for the Homicide Squad's investigation was undertaken by the Ethical Standards Department (**ESD**), a department of Victoria Police.⁴¹
 - The Confidential OPI Report was a limited assessment of the sufficiency of the police investigation into Tyler's death, in terms of compliance with operational procedures. It did not constitute an investigation into Tyler's death.⁴²
 - The Coronial Inquest was based in large part on the Inquest Brief prepared by the Homicide Squad.⁴³
49. The author submits that the factors identified by the State party at paragraphs 73 to 105 of its submissions do not remedy this lack of institutional independence that is inherent in the investigative model. As such, these submissions should be rejected by the Committee. The author reiterates that an independent investigative framework is crucial to allay perceptions of wrongdoing, both by the deceased's family and the public generally. This ensures confidence that matters are properly investigated and that any wrongdoing is exposed, and equally, that any conduct by officers is effectively exonerated.⁴⁴

3.1.3 Relevance of changes in the coronial system and investigative processes since Tyler's death

50. The State party's submissions refer to a number of changes which are said to have been made to the coronial system and investigative processes since Tyler's death.⁴⁵ The author submits that these changes are not relevant to the question of whether the State party has breached Article 6(1) in relation to the investigation of Tyler's death because they occurred after Tyler's death, and therefore that they should not be considered by the Committee.
51. The author further submits that, leaving aside the issue of relevance, the changes do not remedy the fundamental defects in the investigative model that gave rise to the breach of Article 6(1) in relation to Tyler's death.

⁴¹ Author's submissions, paragraph 189. The Ethical Standards Department is now the Professional Standards Command.

⁴² Author's submissions, paragraph 191.

⁴³ Author's submissions, paragraph 193.

⁴⁴ Author's submissions, paragraphs 163-165.

⁴⁵ State party's submissions, paragraphs 106-122.

3.1.3.1 Relationship between the Coroner and the investigator

52. At the Inquest into Tyler's death, the lead investigator gave evidence that Victoria Police did not seek direction from the Coroner while preparing the Inquest Brief. Rather, it was only subsequent to the production of the Inquest Brief that any further investigations were conducted at the direction of the Coroner.⁴⁶ With reference to updates to the Victoria Police Manual (*VPM*), the State party asserts that "[i]t is now clear that police investigators are to cooperate with, and follow the direction of, the Coroner and Coroners Court staff *at all times*."⁴⁷ However, the author submits that the State party has not sufficiently substantiated this claim for the following reasons:

- The author has sourced and viewed a current version of the VPM and has been unable to identify the sections that specify that police investigators are to cooperate with, and follow the direction of, the Coroner and Coroners Court staff at all times.
- To this end, on 6 February 2015 the author wrote to the State party with a request that the State party direct the author to the relevant sections of the VPM or other Victoria Police documents that support this claim. A copy of this request is included at **Annexure A**. On 24 February 2015, the State party responded to advise that, in its view, any concerns relating to the State party's submissions in this matter should be raised through the Committee process.
- The changes introduced by the *Victoria Police Act 2013* (Vic), as cited by the State party at paragraphs 111 and 115 of its submission, do not support the existence of such a relationship. Rather, section 59 merely provides that a police officer "may assist a coroner in the investigation of a death".

53. The provisions of the *Coroners Act 2008* (Vic) cited by the State party at paragraph 115 of its submission do not require that police investigators are to follow the direction of the Coroner at all times. Rather, section 36 provides that a police officer who has information that may be relevant to an investigation by a coroner must give that information to the coroner. Section 60 provides that a coroner may be assisted at an inquest by a police officer. The author submits that there is no requirement for police investigators to cooperate with, and follow the direction of, the Coroner and Coroner's court staff at all times. As such, the model for the investigation of deaths associated with police contact continues to lack institutional independence.

54. Even if there were a requirement that police investigators follow the direction of the Coroner at all times, the author submits that this would not remedy the fundamental defect in the investigative model noted at paragraph 51 above.

3.1.3.2 Changes to other Victoria Police protocols

55. The State party identifies a number of other changes to internal Victoria Police protocols since Tyler's death. For example, the State party cites three new sets of guidelines that

⁴⁶ Author's submissions, paragraph 188.

⁴⁷ State party's submissions, paragraph 116. Emphasis added.

have been included in the VPM.⁴⁸ The author acknowledges that these changes may provide clearer internal guidance on the responsibilities of Victoria Police following a police shooting. However, the author submits that these changes do not alter the fundamental relationship between the Coroner and the investigator and, as such, do not remedy the lack of institutional independence in the investigative model.

3.1.3.3 Changes in the Ethical Standards Department

56. The State party notes that the ESD has developed a set of 'oversight principles' to maintain the integrity of investigations into deaths following police contact.⁴⁹ However the author maintains that, regardless of these oversight principles, oversight by the ESD as a department of Victoria Police is not sufficient to ensure the independence of the investigation.

3.1.3.4 Establishment of IBAC

57. The State party characterises the establishment of the IBAC as an advance in the coronial system and investigative processes since Tyler's death. However, the State party also acknowledges that the role of IBAC in respect of police shooting deaths is akin to the former role of the OPI.⁵⁰ As such, the author submits that the establishment of IBAC cannot be considered an 'advance' since Tyler's death.

58. As noted at 2.2.2 above, the author requested that the OPI assume the conduct of the investigation however this request was refused.

3.2 Article 2 of the ICCPR

59. The author maintains that the State party has breached Article 2 of the ICCPR by failing to ensure an effective remedy for the breach of Tyler's right to have his death investigated in accordance with the procedural requirements of Article 6(1).⁵¹ As outlined in the author's submissions, Article 2(3) requires that the State party provide Tyler and the author with an effective remedy in the form of an impartial, thorough and diligent investigation into the circumstances of Tyler's death.⁵² For the reasons set out in paragraphs 235 to 240 of this submission, neither the Inquest Finding nor the recommendations made by the Coroner satisfy these requirements.

60. The State party submits that, if the Committee considers that there has been a violation of Article 6(1), the investigation into Tyler's death was impartial, thorough and diligent such that it provided an effective remedy.⁵³ This submission is illogical and should be rejected by the Committee, as the effective remedy proposed by the State party is in fact the conduct on which the breach of Article 6(1) is based. If the Committee considers that the

⁴⁸ State party's submissions, paragraph 119.

⁴⁹ State party's submissions, paragraph 121.

⁵⁰ State party's submissions, paragraph 122.

⁵¹ Author's submissions, paragraphs 230-243.

⁵² Author's submissions, paragraph 232.

⁵³ State party's submissions, paragraph 139.

investigation into Tyler's death breached the procedural requirements of Article 6(1), then this same investigation cannot possibly constitute an effective remedy for the breach.

4. Conclusion

61. For the reasons set out in the author's submissions dated 3 September 2013 and these comments in reply to the State party's observations, the author maintains that the State party has breached Articles 6(1) and 2 of the ICCPR by failing to ensure a hierarchically, institutionally and practically independent investigation into Tyler's death.
62. The author reiterates that the following would provide an effective remedy for this breach:
- Australia, including the Victorian Government, enact legislation and develop appropriate policies, processes, institutions and mechanisms to ensure the independent and effective investigation of all deaths associated with police contact in accordance with the requirements of Article 6(1).
 - Australia make a public apology and reparations to the author for its failure to ensure an effective and independent investigation of Tyler's death.

Annexure A

From: Anna Brown
Sent: Friday, 6 February 2015 11:02 AM
To: 'Amelia.Talik@ag.gov.au'
Subject: Cassidy Communication - Request for Information

Dear Amelia

As we have discussed, the HRLC is assisting Ms Shani Cassidy in connection with the communication made by her to the United Nations Human Rights Committee relating to the death of her son, Tyler Cassidy (Communication No. 2296/2013). HRLC has received a copy of the Australian Government Submission on the admissibility and merits of the communication dated 17 November 2014.

The Australian Government Submission discusses advances in the coronial system and investigative processes and procedures since Mr Cassidy's death. In this context, paragraph 116 states:

"The Victoria Police Manual has also been comprehensively updated to better clarify the various roles of Victoria Police following a police shooting and to codify some conventions. It is now clear that police investigators are to cooperate with, and follow the direction of, the Coroner and Coroners Court staff at all times. To further address any future perceptions of bias, the Victoria Police Manual provides clearer direction about conforming with the Victoria Police and the Coroners Court 'Media protocols for incidents involving police and the Coroner' governing the release of information to the public. The protocol emphasises that the investigation is for the Coroner and that it is imperative that any comment released to the media must be made in consultation with the Coroner's Office."

HRLC has sourced and reviewed a current version of the Victoria Police Manual (*VPM*) and has been unable to identify the sections of the VPM that:

- Specify that police investigators are to cooperate with, and follow the direction of, the Coroner and Coroners Court staff at all times; and
- Provide direction about conforming with the Victoria Police and the Coroners Court 'Media protocols for incidents involving police and the Coroner'.

For the purposes of assisting Ms Cassidy to provide her comments in response to the Australian Government Submission by 23 February 2015, HRLC requests that the Office of International Law provide or direct HRLC to the relevant section(s) of the VPM or other Victoria Police documents that support each of these statements, as soon as possible.

If it would be more efficient or appropriate for us to contact Victoria Police in relation to this request please let us know. Many thanks for your assistance.

Kind regards

Anna Brown
Director – Advocacy & Strategic Litigation



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