

**FORM 37**

Rule 60(1)

**FINDING INTO DEATH WITH INQUEST**

*Section 67 of the Coroners Act 2008*

**Court reference:** 2715/09

**Inquest into the Death of ANTONIO TOTARO**

Delivered On: 8 December 2010

Delivered At: Melbourne

Hearing Dates: 7 October 2010

Findings of: Coroner K.M.W. Parkinson

Place of death: Alfred Hospital, Commercial Road, Melbourne, Victoria 3004

Police Coronial  
Support Unit  
(PCSU): Senior Constable Kelly Ramsey

**FORM 37**

Rule 60(1)

**FINDING INTO DEATH WITH INQUEST**

*Section 67 of the Coroners Act 2008*

**Court reference:** 2715/09

In the Coroners Court of Victoria at Melbourne

I, KIM M.W. PARKINSON, Coroner

having investigated the death of:

**Details of deceased:**

Surname: TOTARO  
First name: ANTONIO  
Address: 5 Tabor Mews, Frankston, Victoria 3199

AND having held an inquest in relation to this death on 7 October 2010  
at Melbourne

find that the identity of the deceased was ANTONIO TOTARO

and death occurred on 31st May, 2009

at The Alfred Hospital, Commercial Road, Melbourne, Victoria 3004

from

1a. HEAD INJURIES SUSTAINED IN A MOTOR VEHICLE INCIDENT  
(PEDESTRIAN) IN A MAN WITH ISCHAEMIC CARDIOMYOPATHY

in the following circumstances:

1. An inquest was conducted into the death of Mr Antonio Totaro on 7 October 2010. The purpose of a coronial inquiry is to establish to the extent possible the medical cause and circumstances causing or contributing to the death. It is not a criminal proceeding and nor is it a civil proceeding designed to attribute or apportion blame, although sometimes the factual circumstances will clearly identify that an action or act has caused or contributed to the death and in such a case the Coroner will make a finding to that effect. Such a finding is to be made on the balance of probabilities having regard to the evidence before the court.

2. The following witnesses were called to give evidence in the proceeding: Dr Melissa Baker, Forensic Pathologist, Victorian Institute of Forensic Medicine; Sergeant Samuel Booth, Sergeant of Victoria Police; Mr Ryan Lehman; Ms Louise Wotherspoon; Senior Constable Ian Campbell, Senior Constable of Police at Frankston Highway Patrol Unit.

3. Mr Totaro's family have made extensive written submissions, both prior to and after the completion of the inquest and raised matters of concern during the course of the proceeding. Whilst I have not specifically recounted each concern, I have taken those matters and their submissions into account in this finding.

4. Mr Totaro was born on 5 November 1927 and he was 81 years of age at the time of his death. He resided with his wife of 49 years, Mrs Rosa Totaro, at 5 Tabor Mews, Frankston. Mr Totaro had a medical history which included ischaemic heart disease, diabetes mellitus, previous Cerebrovascular Accident ("CVA"), peripheral vascular disease and renal impairment. Mr Totaro had a history of recent CVA and as a result he was less nimble and walked at a slower pace, he nevertheless was a regular walker and walked his dog most days to the Ballam Park which is on the north side of Cranbourne Road at Frankston.

5. Mr Totaro was struck by a vehicle driven by Ms Louise Wotherspoon. Mr Totaro was located on the roadside, his head on the roadway and his upper body and legs on the centre median strip. He was treated at the scene by ambulance officers and transported to the Alfred Hospital. He was transferred to the ICU for cardiovascular and neurological support. Mr Totaro showed no neurological improvement after 48 hours and was clinically declining with the development of severe cardiogenic shock. After discussion with his family he was treated palliatively and died on 31 May, 2009.

## **CIRCUMSTANCES**

6. On 29 May 2009 Mr Totaro was walking his dog to the park. He had walked from his home down through the grass floodway reserve to the Cranbourne Road. He was wearing a blue jacket with dark coloured pants and a black hat.

7. Cranbourne Road is a dual carriageway with twin lanes travelling in an East-West direction. The two lanes of west bound traffic are separated by broken white lines. The road is divided by a centre median plantation which at the time of the collision was planted quite heavily with medium density shrubs and native trees. Approximately 50 metres west from the point at which Mr Totaro entered the roadway is a bus stop and 100 metres down the road is a pedestrian crossing with pedestrian lights.

8. At approximately 8.45am, Mr Totaro crossed the road in a northerly direction heading towards Ballam Park. As he crossed the road, a vehicle driven by Ms Louise Wotherspoon entered the roadway from the side road. The side road entry point is located approximately metres West of Karingal and Cranbourne Road intersection and approximately 130 metres from where Mr Totaro entered the roadway.

9. The day was bright and sunny and it is apparent from scene photographs taken by police when they attended the scene, (Exhibit 4) that there was some overhang of branches onto the roadway at the median strip and that the trees and shrubbery caused shadows to form in some locations of the roadway.

10. Mr Totaro was observed by Mr Ryan Lehman to enter Cranbourne Road, after crossing the side road at the end of the grassy walkway. This location is approximately 139 metres west of Karingal Drive, Frankston. The vehicle which struck Mr Totaro, entered the roadway from the side access road approximately 120 metres from the collision point.

11. There was some discrepancy between the evidence of Ms Wotherspoon and that of Mr Lehman as to Mr Totaro's position on the roadway at the point in time when the vehicle entered the roadway and when the collision occurred. Mr Lehman observed Mr Totaro on the roadway, Ms Wotherspoon's evidence was that she had surveyed the roadway in front of her and there was no-one on the road. However the evidence is that Ms Wotherspoon was entering the road from the side access road on an acute angle. Mr Lehman's vision of the events was from a position south of the collision looking back up the hill. This may account for why Mr Lehman was able to see Mr Totaro when Ms Wotherspoon was not.

12. Family contend that it was impossible for Ms Wotherspoon not to have seen Mr Totaro and that either she saw Mr Totaro and took no steps to avoid the collision, or she failed to pay proper attention and therefore collided with him having taken no evasive action. They are critical of the police investigation into the accident. It is apparent that there was error in the police record of the evidence of Mr Ryan Lehman as to his observations.

13. Police concede that they were in error in recording Mr Lehman as stating he saw the dog run back onto the road and Mr Totaro step back from the centre median strip onto the roadway. This has caused the family some distress and understandably increased their concerns as to the effectiveness of the investigation. However it appears that comprehensive investigations were undertaken by police, including interview of the driver, attending and photographing the scene and conducting a scene analysis, mechanical review of the motor vehicle, and review of investigations with the major collision investigation unit.

14. Ms Wotherspoon's evidence was she was taking her 5 year old twins to school and following the route she usually took each morning. It was approximately 8.45 am. Her route to the school required that she enter Cranbourne Road, make her way to the inside lane and execute a U turn in the allocated turn lane to travel north on that road. She stated that she entered the roadway and made her way directly across two lanes of traffic to the inside south bound lane as she was intending to use the U Turn lane some 300 metres down the road.

15. Her evidence was that she had checked for vehicles travelling south and coming over the hill towards her and had noticed one vehicle, a red car, which she thought was travelling quite quickly. As a result she proceeded to move out of its way and into the inside lane. She said that she surveyed the road in front of her, in particular looking for the boy next door who often crossed the road without using the pedestrian crossing. She did not see the boy and nor did she see anyone else walking across the road.

16. Her evidence was that even at the point of the collision she did not see Mr Totaro and that whilst she heard a bump she was uncertain as to what had occurred. She had sighted Mr Totaro's dog on the medium strip as she passed and at about that sighting she heard the bump and thought she may have hit another dog or that she had brushed the overhanging tree. She stopped her vehicle on the other side of the road after completing the U turn and returned to the site. It was when she arrived at the scene she became aware that she had hit Mr Totaro.

17. She then assisted at the scene, administered first aid and remained until police arrived. Ms Wotherspoon was administered a preliminary breath test which was negative. Mr Lehman states that Ms Wotherspoon was administering first aid to Mr Totaro and that she did not appear to be under the influence of either drugs or alcohol. Family are concerned that Ms Wotherspoon was not tested for illicit substances by police at the scene, however her breath test was negative and police state there was no basis for forming a belief that she may have been affected by any substance and no evidence in this inquest which would support such a finding.

18. Mr Lehman's evidence was that he was sitting at the bus stop and observed Mr Totaro enter the roadway. Whilst there had been cars driving past, at the time Mr Totaro entered the roadway there were no cars. He was walking slowly across the road and was at the broken white lines when Ms Wotherspoon's vehicle came into his view. Mr Lehman says that Mr Totaro then appeared to attempt to speed up his pace to cross the road, however Mr Lehman could not be sure whether Mr Totaro had in fact observed the vehicle. Mr Lehman gave evidence that from his estimation the motor vehicle was on the road for 6 to 7 seconds from the time he saw it to the point of the collision. Police evidence is that the roadway distance between the exit from the service lane to the collision point was approximately 120 metres and a motor vehicle could travel that distance in 5 to 8 seconds depending upon the rate of acceleration.

19. He observed the vehicle coming closer to Mr Totaro, when Mr Totaro was almost across the road. Mr Lehman's evidence was that he first thought the vehicle might hit Mr Totaro, but that he then believed he had managed to pass the car onto the centre median. Shortly afterwards he realised that Mr Totaro had been hit by what he believed to have been the drivers side rear view mirror. He did not see the impact, although he believed that Mr Totaro was at the edge of the road at the centre medium strip and that the dog was already on the centre medium strip by the time of the collision.

20. The inconsistency between Mr Lehman and Ms Wotherspoon, if it might be described as inconsistent, is his evidence that he was able to observe Mr Totaro was on the roadway at or past the centre white lines and Ms Wotherspoon's evidence that she did not see Mr Totaro. Each version of these events is reconcilable having regard to the location and the placement of the witness and the driver. Each was approaching the view of the scene from opposite directions, with Ms Wotherspoon travelling across the road lanes at an angle, merging lanes and travelling downhill and Mr Lehman looking back up the hill, with possibly less obstruction to his view of the pedestrian than Ms Wotherspoon.

21. Victoria Police scene reconstruction evidence and diagrams, together with the photographs of damage to the motor vehicle, establish that the collision occurred on the side of the vehicle and most likely with the side mirror of the motor vehicle, in a glancing type blow. Mr Totaro was located with his upper body and legs on the median strip with his head onto the roadway. There was no damage to the front of the motor vehicle attributable to direct impact with Mr Totaro. It appears that the right side of Mr Totaro's head hit the bitumen roadway and as a result he sustained a very serious head injury.

22. Senior Constable Campbell gave evidence of the investigations undertaken by police at the scene. Inquiries were made of the telecommunications carrier into the usage of Ms Wotherspoon's mobile phone and police report that the phone had not been used at or immediately before the accident. There was no evidence that the vehicle was travelling at excessive speed either for the prevailing conditions or as signposted. The speed of the vehicle at the point of collision was estimated by police to have been 60 kilometres per hour. The designated speed for that stretch of road is 70 kilometres per hour. There was no evidence of braking by the vehicle, which might have suggested that the driver had seen Mr Totaro. The vehicle was in a roadworthy condition.

23. The damage to the vehicle was recorded in scene photographs as impact damage to the drivers side mirror, a scratch or scuff mark to the drivers side panel and an egg shaped dent in the upper section of the drivers side panel. The debris trap had come loose from the front of the vehicle, however this was not uncommon on the vehicle and if connected to the incident was likely to have arisen from jolting rather than direct impact. There was no damage to the front of the motor vehicle.

24. Senior Constable Campbell was asked as to his conclusions as to how the collision occurred and in particular why the driver may not have seen Mr Totaro on the road. His evidence as to this matter is at (t.110.5 -31 and 124.3): At t.110.5 he stated:

*"I can speculate, I can form my own opinion of why. But none of them - there are so many variables. Could it have been from looking in a mirror to change lanes, shading from the trees - as I said, did Mr Totaro make it to the edge and just put one foot back on the road? Did he not make it to the edge? Did he try to hurry in front of the car? Ms Wotherspoon - did she- was she looking in the mirror travelling that distance?"*

25. Police investigators were unable to conclude as to the reason why Ms Wotherspoon did not see Mr Totaro nor as to exactly where Mr Totaro was when the collision occurred, other than that he was at the edge of the roadway and perhaps had already mounted the median strip.

26. An application for no autopsy was made by the family of Mr Totaro and granted by the Coroner. An inspection and report was undertaken by Dr Melissa Baker, a Forensic Pathologist of the Victorian Institute of Forensic Medicine. Dr Baker conducted an external examination and an examination of the post mortem CT and reviewed the medical deposition and clinical notes from the Alfred Hospital. She reported that Alfred Hospital investigations revealed closed head injuries (contusions, subarachnoid haemorrhage, subdural haemorrhage and diffuse axonal injury), fractured left fibula and lacerations to his forehead, left thumb and right elbow.

27. Examination of the post mortem CT scan shows subarachnoid haemorrhage and cortical contusions, cardiomegaly, calcified coronary arteries, bilateral pleural effusions, patchy consolidation of the lung bases and degenerative changes in the spine. Dr Baker stated that the cause of death was Head injuries sustained in a motor vehicle incident (pedestrian) in a man with ischaemic cardiomyopathy.

28. Dr Baker was questioned by the family as to whether she had observed any injury to Mr Totaro's calf muscle. This question was directed towards attempting to establish the point of impact of the motor vehicle. That is whether Mr Totaro was first struck on the right or left hand side of his body. Dr Baker's evidence at t.17.27-31) was that she did not recall such an injury and the inspection report did not describe such injury. In her evidence, Dr Baker stated that she did not observe fractures of the type which family reported had been commented upon by a surgeon at the Alfred Hospital. She reported:

*"There were minimally displaced fractures of the upper shaft of the left fibula and distal shaft of the left fibula. There were no pelvic fractures. There were old healed fractures of left ribs 3 to 6 anteriorly. There were radiological features of osteoporosis in the thoracic vertebral column."*

29. At the request of the Coroner, Dr Baker provided an expanded report, having been asked to comment upon the nature of the injuries and their consistency with the collision as described. She reported:

*"I have been asked to comment on the extent of the impact injuries and whether the injuries are consistent with a side swipe blow from a rear view side mirror of a motor vehicle. All of the injuries identified on the external examination are due to blunt force trauma. It is not possible to determine however whether these injuries are due to impact with the side rear view mirror of a car, another part of the car or the road surface. If the deceased was struck by the rear view side mirror, which appears to be the case, it is likely that the majority of the injuries, particularly the head injuries are due to impact with the road surface."*

30. Whilst the evidence does not enable me to conclude as to whether Mr Totaro was struck by the motor vehicle to the left or right side of his body, I am satisfied that the injuries which were sustained by Mr Totaro were consistent with his having been struck in a glancing blow, likely by the side mirror, causing him to fall to the ground and hit his head on the bitumen roadway. The pathologist reports these injuries as consistent with the account. (t.14.1 to 14.6) That is the impression of the incident described by Mr Lehman and is the most likely scenario having regard to the position in which Mr Totaro was located and the damage to the motor vehicle.

31. Whilst the family submit that there is no evidence that sun glare, tree branch overhanging or overshadowing were relevant factors, I am satisfied that these matters are evident in the scene photographs and are likely to have been influential in the cause of the incident.

32. The evidence before me supports a finding that a tragic accumulation of factors resulted in Ms Wotherspoon not having seen Mr Totaro on the roadway and having struck him with her motor vehicle. The contributing factors were: the location where Mr Totaro crossed the road, his pace of travel across the road, the angle associated with entering the roadway at the point used by the driver, sun glare and tree overhang and shadowing on the morning in question. It is likely that Ms Wotherspoon's attention being directed to observing potential obstacles, including possible pedestrians elsewhere on the road and a possible head check for other vehicles, has caused her to not see Mr Totaro on the roadway. It is possible that Mr Totaro did not see Ms Wotherspoon's vehicle and his pace across the road also added to his vulnerability as a pedestrian. Sergeant Samuel Booth who also walked his dog in the park with Mr Totaro stated that he had been concerned for Mr Totaro's safety in crossing the road at the point he chose and had suggested that he use the pedestrian crossing some 100 metres down the road.



33. Family submitted that Ms Wotherspoon had not proven that she was not distracted by her children, or by possibly lighting a cigarette, or by her own inattention or that she was not substance affected. Ms Wotherspoon denied she was distracted, but was otherwise unable to state why she did not see Mr Totaro. She was not obliged to disprove any matter. There was no evidence before the court, even by reasonable inference, that any of those circumstances applied.

34. In a coronial proceeding the coroner must find the facts based upon the evidence and reach a finding by applying the concept of balance of probabilities. There is no basis to conclude that Ms Wotherspoon was anything other than frank and truthful in her evidence and in her recorded interview with police. The evidence before me does not enable a conclusion that, other than as the driver of the motor vehicle, Ms Wotherspoon caused or contributed to the death by any action or inaction on her part.

35. The death of Mr Totaro is tragic and a reminder of the need for both drivers and pedestrians to keep a careful lookout, take particular care to cross roads and to enter roads at a safe access point, such as a pedestrian crossing, even where it may be inconvenient.

36. I find that Mr Antonio Totaro died on 31 May 2009 at the Alfred Hospital at Melbourne and that the cause of his death was head injuries sustained in a motor vehicle incident as a (Pedestrian) in a man with ischaemic cardiomyopathy.

## COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death (including any notification to the Director of Public Prosecutions under Section 69(2) of that Act):

37. Police commented that the roadway is subject to heavy traffic and having regard to its location near a major public park, with residential properties nearby, the designated speed should be lowered to 50 kph. This may have provided additional time for the driver to observe the pedestrian and in reducing the speed of the traffic provide for a safer entry into the roadway from the side road safer.

38. In addition it appears that the entry design to the roadway from the side road into Cranbourne Road is awkward and vision is limited having regard to the angle of the entrance and the necessity to pay careful attention to the volume and speed of the traffic coming over the hill. Vic Roads may wish to review the nature of that entrance way and the appropriateness of its location.

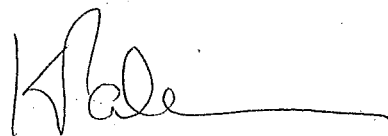
## RECOMMENDATIONS

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

39. That Vic Roads may wish to review the access point from the side road into Cranbourne Road as to its suitability and safety.

40. That Vic Roads give consideration to a reduction of the speed limit applicable to the section of Cranbourne Road between Karingal Road and the pedestrian crossing at Ballam Park to 50 kilometres per hour.

Signature:



K.M.W. Parkinson

Coroner

Date: 8th December 2010

