

FORM 38

Rule 60(2)

FINDING INTO DEATH WITHOUT INQUEST

Section 67 of the Coroners Act 2008

Court reference: 5471/08

In the Coroners Court of Victoria at Melbourne

I, **KIM M. W. PARKINSON** Coroner

having investigated the death of:

Details of deceased:

Surname: **FRAWLEY**
First name: **TREVOR**
Address: 151 Miramar Road Somers Victoria 3927

without holding an inquest:

find that the identity of the deceased was **TREVOR JAMES FRAWLEY**
and death occurred on 6th December, 2008
at Alfred Hospital 55 Commercial Road Melbourne Victoria 3004

from

1a. GUNSHOT WOUND TO HEAD

Pursuant to Section 67(2) of the Coroners Act 2008, an inquest into the death was not held and the deceased was not immediately before the person died, a person placed in custody or care; but there is a public interest to be served in making findings regarding the following circumstances:

1. Trevor Frawley was a forty year old man, born 17 December 1967. He was employed as a personal carer. He lived at 151 Miramar Road, Somers Victoria 3927. Detective Senior Constable Brock of Victoria Police provided a brief to the Coroner setting out police investigations¹ and I have drawn on that material as to the factual matters in this finding.

¹A complete description of the investigation undertaken is contained in the police brief prepared for the Coroner by Detective Senior constable Rohan Brock dated 5 February 2009, and in further brief material dated 15 September 2009 and 17 November 2009 obtained at the request of the coroner.

2. On 6 December 2008, Mr Frawley was undertaking instruction in pistol shooting as a prospective member of the Peninsula Pistol Club. He was using a .22 calibre pistol owned by his instructor and pistol club member, Mr John Britton. After shooting several rounds under supervision, Mr Frawley left the range in company with Mr Britton. He returned to the range a short time later. Mr Britton also returned, however, was approximately 10 metres behind when they approached the shooting bay area. Mr Frawley entered Bay 12 unaccompanied. He re-loaded five rounds into the .22 pistol and shot himself in the right side of the head above his ear. The re-loading and shooting was heard by Mr Britton who was by then, approximately five metres away. He reported observing Mr Frawley step back halfway and loading his magazine. He observed him step forward, and heard a click consistent with the breach closing. He then heard a round being fired and observed Mr Frawley fall backwards. He observed the pistol on the ground near to Mr Frawley's right hand which was partly open. Mr Britton called for assistance and went to Mr Frawley's aid. Ambulance paramedics attended and Mr Frawley was transferred by Air Ambulance to The Alfred Hospital at Melbourne. Brain function had ceased and he was declared deceased at 23.55 hours on 6 December 2008.

3. The gun was cleared by another club member and placed on a table. Police investigators attended and examined the scene and along with other weaponry, they located a .22 calibre target pistol, x-esse brand on a table at the rear of shooting bay 12. Also located was a .22 pistol magazine containing four rounds. The scene was photographed and reported. A suicide note was located at Mr Frawley's residence. Police reported no suspicious circumstances.

4. An objection to autopsy made pursuant to s29 of the Coroners Act 1985 was granted by the coroner. An examination was undertaken by Dr Matthew Lynch, Senior Forensic Pathologist with the Victorian Institute of Forensic Medicine. Dr Lynch reported:

" I have made extensive external examination of the body and there is evidence of a contact range gunshot wound to the region of the right temple. No exit wound was noted. I have reviewed the post mortem CT scan which reveals fragmented projectile within the skull, an entrance wound in the right temporal region and no exit wound."

5. The toxicology report on post mortem blood sample was unremarkable.

6. Mr Frawley had a history of psychiatric illness and had been identified as a suicide risk in May 2008, when as a patient of mental health services, he had been reported missing and at risk of suicide. This was recorded on the LEAP data base, but was not information accessed by Victoria Police when they received the notifications of receiving instruction.

7. Mr Frawley was also under the care of a private psychiatrist, Dr Sam Jolayemi until October 2008, when he ceased his attendances. Dr Jolayemi reported that he suffered from anxiety, confusion and possible depression and that this followed a period of long term heavy

abuse of marijuana followed by a cocktail of other drugs whilst on holidays. Mr Frawley's partner, Ms Louise Christopoulos reported that he had also been a sufferer of migraine headaches, which more recently had been numbering up to five in any one week.

8. Mr Frawley was not the holder of a current firearms licence. He had previously held a license, however, it had expired in 2004, and he had not sought to have it renewed. Mr Frawley was receiving instruction in the use of firearms at the Peninsula Pistol Club at Mount Martha. He had attended at the club for six instruction sessions. He had not yet made an application for membership of the club, nor had he made an application for a firearm license.

The Firearms Act 1996 ("the Act") and Mr Frawley's capacity to be 'Under Instruction'

9. The legislative scheme comprises a requirement of licensing of persons using firearms and registration of firearms and oversight of persons under instruction.

10. By s17 of the Act, the Chief Commissioner of police must not issue a long arm or handgun license unless satisfied that a person is not a prohibited person, and that the person is a fit and proper person to hold a license and can possess, carry or use a firearm without being a danger to public safety or peace. The scrutiny of an applicant includes consideration of medical reports and detailed questions relating to physical and psychological or psychiatric ailments.

11. Exemptions to licensing apply in relation to unlicensed persons, such as Mr Frawley, who are receiving instruction in the use of firearms.

12. S54 of the Act provides:

(1) Any non-prohibited person who is of a category of persons specified in an item in Column 1 of the Schedule 3 who possesses, carries or uses a registered firearm in the circumstances set out in that item in Column 2 of Schedule 3 does not commit an offence against section 6 or 7 for so doing and is not required to hold a license under this Part.

(2) If a person receives instruction in the use of a general category handgun in accordance with the exemption set out in item 4 or 5A of Schedule 3, the person who gives the instruction, must, on each occasion that the person gives that instruction, so notify the Chief Commissioner in the form approved by the Chief Commissioner.

Schedule 3, Item 4 exempts a non-prohibited person who is receiving instruction by or under the immediate supervision of the holder of a general category handgun license for the purposes of obtaining a general category handgun license, from the requirement to hold a license.

13. In November 2008, Mr Frawley completed relevant parts of a number of Notifications of Receiving Instruction in the use of firearms ('NORI') which were required to be filed by the instructor under S54 and Item 4 of Schedule 3 of the Act. The NORI are filed with police after the instruction has been received.

14. In completing the NORI the candidate is asked to disclose any prior criminal history and any medical history which may be relevant to his capacity to hold a firearms license. Mr Frawley inaccurately declared that there were no such medical conditions. There was no requirement for a medical certificate or any independent statement as to these matters of 'fitness' to be provided. Upon receiving the NORI, licensing police investigate prohibited person status and criminal history. There is no requirement at that stage for police to inquire into fitness matters, such as recorded suicide risk.

15. It is apparent that neither the police receiving the NORI, nor Mr Britton who was instructing Mr Frawley, had knowledge of either his physical or his psychological condition. The firearms legislation appears to focus upon 'fitness' only at the licensing and registration stage of firearms regulation.

16. I am satisfied having regard to the legislative scheme that Mr Frawley would not have been regarded as fit to receive instruction if accurate information as to his mental and physical health status was known.

Immediate Supervision for the purposes of instruction

17. I am advised by Senior Sergeant Dennis Toccock of Victoria Police License Services Division that:

"Immediate supervision during firearms training for novice police, security or prisons officers means:

- One on one training, and
- That the instructor is in such close proximity to the student that the instructor is able to instantly, and where necessary physically intervene should the person under instruction act in a manner that poses a threat to either themselves or any other person on the shooting range."

18. Although this event could not reasonably have been anticipated by the instructor given the information available to him, the proximity of supervision was inadequate to enable a response of the type described as desirable by professional firearms instructors.

21. The police reported no suspicious circumstances associated with Mr Frawley's death. I am satisfied that the gunshot wound was inflicted by Mr Frawley and that he acted with the intention of taking his own life.

22. Having considered all of the available evidence I find that Mr Trevor Frawley intentionally took his own life on 6th December 2008, by a self-inflicted gun shot wound to the head.

23. There are a number of matters appropriate for comment and recommendation in this case.

COMMENTS:

Pursuant to Section 67(3) of the Coroners Act 2008, I make the following comment(s) connected with the death:

1. The expression "immediate supervision" in Schedule 3 Item 4 of the Firearms Act 1996, is uncertain and should be clearly defined. It is not 'immediate supervision' to enable an unlicensed person to access a firearm for even a short period, without the instructor being physically present in the firing bay. An immediate presence may discourage a person from acting upon impulsive or planned suicidal ideation. Immediate presence of the instructor to the student at all times is the practice adopted on professional ranges, such as those operated by Victoria Police and ought to be legislatively directed practice on private ranges.

2. The Notification of Receiving Instruction form, suffers from the fact that it does not provide information obtained on an independent basis. The form should include a statement from a GP that there is no medical impediment, psychological or physical as is required from an applicant for a firearms license.

3. The expression 'medical conditions' in the Notification of Receiving Instruction is open to misunderstanding as it does not include psychiatric or psychological conditions. The expression should be defined to include any physical or psychiatric/psychological ailment.

4. The LEAP system had information of relevance to Mr Frawley's fitness to receive instruction which was not accessed. That information, that he had been reported a suicide risk, should have been accessible to police receiving the notification. Such information should preclude a person from receiving instruction until medical (including psychological) assessment has been undertaken and police ought be authorised to direct that instruction cease.

RECOMMENDATIONS:

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

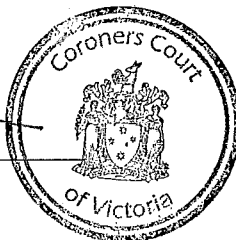
1. The expression 'immediate Supervision' in Schedule 3 Item 4 of the Firearms Act 1996, should be defined as requiring:
 - one on one training, and
 - That the instructor is in such close proximity to the student that the instructor is able to instantly and where necessary physically intervene should the person under instruction act in a manner that poses a threat to either themselves or any other person on the shooting range.
2. The condition referred to in Recommendation 1, should be imposed by the Chief Commissioner of Police when approving private firearms shooting ranges pursuant to s179 of the Firearms Act 1996.
3. The Notification of Receiving Instruction form, should require the provision of a certificate from a GP that there is no medical impediment, psychological or physical to the student receiving instruction and this should be provided in advance of receiving instruction.
4. The expression 'medical conditions' in the Notification of Receiving Instruction form, should be defined to expressly include any physical or psychiatric/psychological ailment.
5. Upon receipt by police of a Notice of Receiving Instruction, a full Leap system check be made in relation to fitness to receive instruction in firearms.
6. Factors such as reported suicide risk should result in a person being ineligible to receive instruction until medical clearance has been obtained.

Signature:



Kim M. W. Parkinson
Coroner

Date: 17th February 2010



Copies of this Finding to be provided to:

The Family

The Minister for Police and Emergency Services:

Chief Commissioner of Victoria Police

Victoria Police Licensing Services Division

The Honourable Bob Cameron MP

Mr Simon Overland

Senior Sergeant Dennis Toccock