IN THE CORONERS COURT

OF VICTORIA

AT MELBOURNE

Court Reference: COR 2017 6004

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008 (Vic)

I, AUDREY JAMIESON, Coroner having investigated the death of ERIKA MARIA GERLACH

without holding an inquest:

find that the identity of the deceased was ERIKA MARIA GERLACH

born 1 January 1938

and the death occurred on 27 November 2017

at the Alfred Hospital 55 Commercial Road, Melbourne, Victoria 3004

from:

1 (a) COMPLICATIONS OF INJURIES SUSTAINED IN A MOTOR VEHICLE COLLISION (PASSENGER)

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances**:

1. Erika Maria Gerlach was 79 years of age at the time of her death. She lived in Croydon North with her husband Reinhard Gerlach. The couple emigrated from Germany to Australia together in 1967. She was a Personal Care Attendant and retired from full time work in the mid-1990s. She had adult children with whom she was in regular contact.

2. On 5 November 2017 at about midday, Mr Gerlach and his wife left their home to visit their son in Healesville. Mr Gerlach was driving his 2014 Suzuki Alto (registration 1CJ3GJ) and Mrs Gerlach sat in the front passenger seat.

3. At approximately 2.25pm, Mr Gerlach drove his vehicle east on Maroondah Highway, Coldstream, and came to a crest in the road. Approximately 300 metres after the crest, there was a stationary silver Mazda CX5 (registration 1KZ1OE) with its right indicator on, signalling an intention to turn into the Oakridge Winery on the other side of the road. The front driver-side of the Suzuki Alto and the rear passenger side of the Mazda CX5 collided as Mr Gerlach failed to avoid the other car or to come to a stop. The collision pushed the Mazda CX5 into oncoming traffic, resulting in a collision between that car and an oncoming Toyota Corolla (registration 1JH7ES).

4. Emergency services were contacted, and Ambulance Victoria paramedics attended the scene to attend to the injured. Mrs Gerlach was identified as having serious injuries and was subsequently transported to the Alfred Hospital Emergency Department (ED) at 4.25pm. Mrs Gerlach's admission diagnosis was a T10 vertebrae fracture, multiple rib fractures and hepatic[1] lacerations.

5. On 6 November 2017, Mrs Gerlach was intubated subsequent to evident respiratory distress. On 7 November 2017, hospital staff noted that Mrs Gerlach had right sided weakness and difficulty mobilising. Computed tomography (CT) scanning did not identify acute intracranial haemorrhage,[2] pneumothorax[3] or acute cervical spine fracture. Fractures and lacerations identified on admission were confirmed, as well as an acute fracture to Mrs Gerlach's sternum.

6. On 8 November 2017, the neurosurgical team were consulted, and the team reviewed her again on 11 November 2017. She was administered the antiepileptic (anti-seizure) medication Keppra.[4] Medical practitioners indicated that Mrs Gerlach could be administered aspirin if required.

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[1] Liver.

[2] Bleeding inside the skull.

[3] A collapsed lung.

[4] The generic name for this medication is levetiracetam.

7. Between 11 November 2017 and 13 November 2017, Mrs Gerlach underwent a Magnetic Resonance Imaging (MRI) screening which detected multiple infarcts[5] in her brain. On 13 November 2017, testing was unable to identify if the source of the infarctions were blockages. The stroke team reviewed Mrs Gerlach and determined that she would require a long period of rehabilitation and probably would not be able to return to regular functioning.

8. On 15 November 2017, the stroke team advised that Mrs Gerlach should not be transferred to their care due to her poor prognosis. A medical practitioner informed her family of the significance of her stroke compounding her difficulties from other injuries sustained the motor vehicle collision. Mrs Gerlach's family agreed that, if Mrs Gerlach was in distress and not progressing well, practitioners should provide palliative care. She was extubated that day.

9. On 21 November 2017, CT scanning identified that Mrs Gerlach suffered aspiration pneumonia and her family were informed of her deteriorating condition at 2.00pm. At 1.20pm on 27 November 2017, Mrs Gerlach died in hospital.

10. Hospital staff believed Mrs Gerlach's death was associated with injuries from the motor vehicle condition and reported her death to the Coroners Court of Victoria. Mrs Gerlach's body was transferred to the Victoria Institute of Forensic Medicine (VIFM).

INVESTIGATIONS

Forensic pathology investigation

11. Dr Mathew Joseph Lynch, Forensic Pathologist at VIFM, performed an external examination upon the body of Erika Maria Gerlach, reviewed a post mortem CT scan and referred to the Victoria Police Report of Death, Form 83. CT scanning detected multiple healing fractures, increased lung markings and a cerebrovascular accident.[6]

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[5] Failure of blood supply to tissue, which may lead to stroke if the blood supply is not restored.

[6] Stroke.

12. Senior Forensic Toxicologist Maria Pricone stated that the earliest available ante-mortem specimens were collected on 19 November 2017, therefore no suitable specimens were received, and toxicological analysis was not completed in this matter.

13. Dr Lynch formulated the medical cause of Ms Gerlach's death as complications of injuries sustained in a motor vehicle collision (passenger).

Police investigation

14. Upon attending the site of the collision, Victoria Police identified that conditions were fine, and visibility was excellent. In accordance with the *Road Safety Act 1986* (Vic), a blood sample was taken from Mr Gerlach at the Maroondah Hospital where he had been transported to treat fractured ribs. The sample was analysed, and analysis did not detect the presence of alcohol, common drugs or poisons.

15. Detective Senior Constable (DSC) Matthew Hunt was the nominated Coroner's Investigator.[7] At my direction, DSC Hunt investigated the circumstances surrounding Mrs Gerlach's death, including the preparation of the coronial brief. The coronial brief contained, *inter alia*, statements made by several witnesses to the collision, driver of the Mazda CX5 Dragutin Vulin, collision reconstruction expert Detective Sergeant Dr Jenelle Mehegan and member of the advisory panel for revision of Austroads "Assessing Fitness to Drive" guidelines Dr Morris Odell.

16. During the investigation, police learned that witnesses were unable to account for the cause of the incident. Dragutin Vulin was driving the Mazda CX5 which belonged to his friend Mira Prentic, who sat in the front passenger seat. Mr Vulin said that he saw the Suzuki Alto coming up behind him, but he was unable to avoid the collision due to oncoming traffic. Mr Vulin spoke to Mr Gerlach after the incident and that he appeared to be in a state of shock and did not know how the collision occurred. Mr Vulin commented that a car could have driven around his stationary vehicle. He said that it would need to drive slowly and carefully in order to do so, as the highway is single lane with a narrow, parallel bike lane.

[7] A Coroner's Investigator is a police officer nominated by the Chief Commissioner of Police or any other person nominated by the Coroner to assist the coroner with his/her investigation into a reportable death. The Coroner's Investigator receives directions from a Coroner and carries out the role subject to those directions.

17. Witness Sarah Edwards said that she saw the Suzuki Alto as it climbed the hill prior to striking the Mazda CX5. Ms Edwards stated that the Suzuki Alto's brake lights remained on the entire time it drove up the incline but that the vehicle did not slow. She also said that the vehicle was crossing the lane lines. Ms Edwards' observations were repeated by witnesses Callum Timmerman and Jayden Lafora. Mr Timmerman also said that the vehicle did not appear to slow as it approached the Mazda CX5 and Mr Lafora said it did not swerve but simply drove directly into the back corner of the other vehicle.

18. After the collision, Mr Lofaro approached the Suzuki Alto to provide assistance and he saw that Mr Gerlach was wearing a seatbelt which he struggled to unclasp. Mr Gerlach got out of the vehicle and seemed unbalanced, so Mr Lofaro helped him to sit down. Mr Timmerman stated that when he approached the vehicle, Mrs Gerlach appeared dazed, shocked and was unable to answer questions. He said that he held her hand and she squeezed his in response. Mr Timmerman commented that Mrs Gerlach's seat was very reclined.

19. Collision Reconstruction and Mechanical Investigation Unit Detective Sergeant (DS) Dr Mehegan reviewed the Victoria Police: Traffic Incident System Report, sketch of the scene, statements and photographs.

20. DS Dr Mehegan determined the approximate speed of Mr Gerlach's Suzuki Alto at the time of the collision by reference to the weights of the other vehicles and the distances they travelled subsequent to each impact. DS Dr Mehegan stated that, after the collision with the Suzuki Alto, the Mazda CX5 travelled 5.8 metres before colliding with the Toyota Corolla which, after the second impact, travelled 8.8 metres toward the north side of the road. DS Dr Mehegan commented that there was no evidence of pre-impact braking. She stated that the vehicle was travelling at approximately 83.9km/h.

21. DS Dr Mehegan attended the collision scene to determine the line of sight and visibility of east-bound vehicles on the Maroondah Highway. She stated that the Oakridge Winery is on the south side of the road and that east-bound vehicles intending to turn right into the winery must give way to any west-bound vehicles. A crest impedes east-bound vehicle occupants' vision of vehicles turning into the entrance. However, DS Dr Mehegan stated that the crest of the hill is approximately 270 metres west of the winery entrance. She stated that at a speed of 100km/h, a driver would have 9.5 seconds

of visibility of any vehicle turning into the winery and at a speed of 80km/h a driver would have that visibility for approximately 12 seconds. DS Dr Mehegan said that it was impossible to determine at what speed Mr Gerlach drove his vehicle prior the collision. However, statements from witnesses meant it was reasonable to assume Mr Gerlach had between 9.5 and 12 seconds of visibility of the Mazda CX5 prior to the first impact. DS Dr Mehegan was unable to determine why Mr Gerlach failed to avoid the collision.

22. Dr Morris Odell is a forensic physician at the clinical division of VIFM, as well as a member of the advisory panel for revision of Austroads "Assessing Fitness to Drive" guidelines. Dr Odell reviewed, *inter alia*: Mr Gerlach's blood test results taken after the collision, Ambulance Victoria Patient Care Records, Mr Gerlach's medical record from Lilydale Medical Centre, two witness statements, and Victoria Police's Motor Vehicle Collision Unit record card.

23. Dr Odell said that Ambulance Victoria paramedics assessed Mr Gerlach after the collision and found him to be fully conscious with normal observations for his age. Mr Gerlach had diabetes and informed paramedics of this fact. A finger-prick blood glucose test detected 11.8 mmol. Dr Odell stated that this was slightly high but no cause for concern. He noted that blood glucose could be elevated in times of stress or trauma.

24. Dr Odell concluded that: Mr Gerlach's diabetes was well controlled by insulin and oral medication at the time of the collision; he had no history of diabetic complications, such as visual impairment, which may have affected his driving; Mr Gerlach's condition was unknown to the VicRoads medical review department, however, based on the medical history available, he would have been eligible to continue to hold a driver's licence with regular reviews of his condition.

25. On 5 June 2018, DSC Matthew Hunt wrote a letter addressed to the State Coroner which accompanied the Coronial Brief. DSC Hunt stated that criminal charges against Mr Gerlach were not authorised by the Office of Public Prosecutions as it was considered not to be in the public interest. DSC Hunt stated that VicRoads reviewed Mr Gerlach's driver's licence owing to his diabetic condition; he failed two driving assessments in April 2018 and May 2018, respectively. VicRoads imposed conditions on Mr Gerlach's licence, he must be: accompanied by a driving instructor, driving a dual

control car for assessment with a qualified assessor, driving within 10km of his home, and accompanied by a licenced driver.

26. In his letter, DSC Hunt wrote that Mrs Gerlach' family, along with witnesses to the collision, had raised concerns about the Maroondah Highway layout. DSC Hunt commented that the highway is an extremely busy road, especially on weekends, as the area is a tourist destination. Anecdotally, DSC Hunt had been made aware of concerns about varying speeds of vehicles attempting to locate a winery entrance and that there was only one overtaking lane along the Maroondah Highway between Healesville and Coldstream.

27. DSC Hunt conducted a search of the Victoria Police Traffic Incident System (TIS) and identified 51 reported collisions on the Maroondah Highway, Coldstream, over the past five years, including:

    a. 4 fatal collisions;

    b. 38 injury collisions;

    c. 8 non-injury collisions, and

    d. 1 Police incident collision.

28. DSC Hunt also conducted a search of the Victoria Police TIS and identified 91 reported collisions on the Maroondah Highway, Healesville, over the past five years, including:

    a. 54 injury collisions;

    b. 32 non-injury collisions;

    c. 3 Police collisions, and

    d. 2 Police incident collisions.

29. Of the 142 reported collisions on the Maroondah Highway between Coldstream and Healesville, DSC Hunt informed me that there were 20 "rear-end" collisions. Victoria Police submitted a request to VicRoads in relation to any planned roadworks for the area, but no response was received.

Coroners Prevention Unit Investigation

30. In light of the issues raised by DSC Hunt's correspondence, I requested the Coroners Prevention Unit (CPU) review this matter.[8] Specifically, I requested the CPU to examine my Investigator's data for accuracy and ascertain whether there have been any coroners' comments or recommendations for improved safety measures on Maroondah Highway between Coldstream and Healesville. I also requested that the CPU ascertain whether VicRoads have plans to duplicate Maroondah Highway.

Road Crash Data

31. The CPU used its surveillance database to identify all fatal road collisions occurring along Maroondah Highway between Coldstream and Healesville for the period 1 January 2000 to 30 October 2018. The CPU identified 23 such collisions, which included:

    a. 11 head on collisions;

    b. 9 collisions where the counterpart was a fixed object, e.g. tree or sign post;

    c. 2 side impact collisions, and

    d. 1 rear end collision.

32. To ascertain whether my Investigator's data was accurate, the CPU contacted VicRoads and requested data from its Road Crash Information System (RCIS). VicRoads provided information on 42 relevant fatal and non-fatal collisions involving injury between 1 January 2013 and 29 October 2018 that occurred on Maroondah Highway between Healesville and Coldstream. They included:

    a. 3 collisions in which the highest level of injury sustained was fatality;

    b. 17 collisions in which the highest level of injury sustained was serious injury, and

[8] The Coroners Prevention Unit (CPU) was established in 2008 to strengthen the prevention role of the coroner. The unit assists the coroner with research in matters related to public health and safety and in relation to the formulation of prevention recommendations, as well as assisting in monitoring and evaluating the effectiveness of the recommendations. The CPU comprises a team with training in medicine, nursing, law, public health and the social sciences.

c. 22 collisions in which the highest level of injury sustained was other injury.

33. Across the 42 injury collisions three people died, 24 people sustained serious injuries and 37 people sustained other injuries.

34. The CPU was unable to account for the large discrepancy between the Coronial Investigator's and VicRoads' accounts of fatal injury collisions (four versus three) and other injury collisions (92 versus 39). It is possible that the CI and VicRoads included different sections of Maroondah Highway in their counts, or different counting rules.

35. Given that VicRoads is the organisation responsible for compiling collision and injury data for Victorian roads, the CPU opined that their data should be preferred over my Investigator's data. As such, there were 23 motor vehicle fatalities that occurred on Maroondah Highway between Coldstream and Healesville since 2000; which included three fatalities in the past five years. VicRoads data found 39 non-fatal collisions on the same stretch of road since 2013. Ten of these non-fatal collisions were rear end collisions.

The Blackspot Program Criteria

36. The Black Spot Program, administered by the Commonwealth Department of Infrastructure Regional Development and Cities (DIRDC), funds projects to reduce the risk of crashes at dangerous locations. Funding is mainly available for sites or road lengths with a proven history of crashes.

37. The DIRDC states that '*for lengths of road, there should be an average of 0.2 casualty crashes per kilometre per annum over the length in question over five years*'[9] to be eligible for funding.

38. Taking the VicRoads non-fatal injury collision data, and combining it with the CPU's fatal collision data, there were a total of 42 motor vehicle collisions in which a person was injured or died along Maroondah Highway between Coldstream and Healesville, during the period 1 January 2013 to 30 October 2018.

[9] DIRDC, Blackspot Site Eligibility, 7 October 2017, https://investment.infrastructure.gov.au/infrastructure_investment/black_spot/black_spot_sites_eligibility.aspx accessed at 14/03/2019.

39. To test whether this frequency of injury and fatality collisions over time would be considered low, average or high, the CPU applied the Black Spot Program criteria. The length of Maroondah Highway between Coldstream and Healesville is approximately 15km (using Google Maps to measure). 42 casualty crashes over a 15km stretch of road in six years is 0.46 casualty crashes per kilometre per annum. Based on these calculations, this section of Maroondah Highway would meet the criteria to receive funding from the Black Spot Program.

40. I note that any nomination for the Black Spot Program must be supported by a Road Safety Audit.

Coronial Findings and Relevant Recommendations

41. The CPU identified three findings with recommendations for collisions that occurred on Maroondah Highway between Coldstream and Healesville. On 2 October 2014, Coroner Peter White recommended in his finding into the death of David McVea that:[10]

VicRoads adopt a working protocol, which would authorise VicRoads Regional Directors to impose temporary speed limits, in the vicinity of known road friction black spots, such as that which had been identified in this instance.

Emergency funding be made available for expenditure at the exclusive discretion of VicRoads Regional Directors, in respect of road surface friction repair issues, to be applicable in such circumstances to be determined and published as part of an operational procedure, by the VicRoads Chief Executive in consultation with the Director of Operations.

42. The CPU informed me that VicRoads implemented his Honour's recommendations.

VicRoads Improvements & Plans

43. VicRoads informed the Court that some work was completed along the Maroondah Highway between Lilydale and Healesville. The work was completed to reduce signage clutter along Maroondah Highway within the Maddens Lane and Hill Road areas. Individual winery signage was removed from Maroondah Highway and replaced with

[10] COR 2007 0708.

'Maddens Lane Wineries' and 'Hill Road Wineries' tourist signs. Winery directory boards were installed on Maddens Lane and Hill Road; along with individual business identification signage for each winery. Also, due to resurfacing works, two out of the four painted arrow markings on Maroondah Highway into Oakridge Winery were covered over without being refreshed.

44. On 15 October 2018, the CPU contacted VicRoads requesting information about any proposed or ongoing improvements or plans, including any plans to duplicate the Maroondah Highway between Coldstream and Healesville. On 8 November 2018, Chief Executive Michael Malouf wrote to the Court and indicated that investigations into duplicating that stretch of road were conducted approximately 20 years ago. However, these investigations were preliminary in nature and could no longer be considered current due to changes in land use and travel patterns. Mr Malouf stated:

> *As you may appreciate, VicRoads receives many requests for highway upgrades, including duplication projects throughout Victoria. All requests are prioritised based on the extent to which such a project would reduce congestion and/or improve safety.*[11]

Further Investigation

45. On 20 February 2019, the CPU Motor Vehicle Accident Investigator informed me that VicRoads had completed a media release dated 12 February 2019.[12] The release related to *Maroondah Highway safety improvements, Coldstream to Healesville* and included serious injury and fatality statistics between July 2013 and July 2017. The release indicated that, during this period, there were two fatalities and most of the incidents resulting in serious injuries occurred as a result of "head-on" collisions, after vehicles had drifted onto the wrong side of the road. The release stated that the following improvements were to be completed by 2020 as part of a harms-reduction scheme, "Toward Zero":

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[11] Coronial File, *Letter from VicRoads Chief Executive Michael Malouf*, dated 8 November 2018, at 3.

[12] VicRoads, *Maroondah Highway safety improvements, Coldstream to Healesville*, dated 12 February 2019 https://www.vicroads.vic.gov.au/planning-and-projects/melbourne-road-projects/maroondah-highway-safety-improvements, accessed 15 March 2019.

a. Installing centreline and left-hand side flexible safety barriers to reduce the risk and severity of head on collisions and run-off-road crashes;

b. Widening traffic lanes and road shoulders to accommodate for the installation of flexible safety barriers;

c. Installing rumble strips in high-risk locations to warn drivers when they begin to veer from their lane, and

d. Exploring options for safer overtaking opportunities.

46. On 20 February 2019, the Court contacted VicRoads to invite formal confirmation of the planned roadworks and improvements. The Court requested a response by 28 February 2019. Ultimately, no formal response was received.

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comments connected with the death:

1. The investigation has identified that Mr Gerlach had conditions imposed on his licence shortly after the collision. Furthermore, Dr Odell stated that Mr Gerlach's diabetic condition ought to have been known to the VicRoads medical review department and that, based on Mr Gerlach's medical history, he would have been eligible to hold a driver's licence albeit with regular reviews of his condition.

2. In the past, I have made recommendations[13] to VicRoads in relation to Fitness to Drive and the inadequacies of the "self-report" model used in Victoria, whereby individuals are expected to report their own health conditions or other issues which may affect their ability to drive. VicRoads indicated that they are reviewing this model and considering other models which may be implemented in its stead. To that end, I will not repeat my recommendations but provide this Finding to VicRoads with the intention of augmenting their review of the Fitness to Drive self-reporting model.

3. VicRoads did not formally correspond with the Court but indicated in a media release that roadworks on the Maroondah Highway between Coldstream and Healesville would be completed by 2020, as part of "Toward Zero". These works were to be conducted

[13] Please see COR 2016 5554 and COR 2016 4001.

based on statistics from a four-year period between 2013 and 2017, where the majority of serious injuries occurred following "head-on" collisions. The proposed improvements are commendable and provide safety improvements for local residents and visitors to the area. However, the CPU investigation identified that, between 2000 and 2018, there were 23 fatalities, 11 of which were sustained in "head-on" collisions. Victoria Police's Traffic Incident System indicated that there were 20 rear-end collisions on the Maroondah Highway between Coldstream and Healesville within a five-year period. These broader time periods indicate it is critical that VicRoads implements safer overtaking options for road users at the earliest opportunity.

4. The CPU also recognised that the Maroondah Highway between Coldstream and Healesville may be eligible for nomination as a "Black Spot" and the associated funding.

RECOMMENDATIONS

Pursuant to section 72(2) of the *Coroners Act 2008* (Vic), I make the following recommendations:

1. With the aim of improving public safety and preventing like deaths, **I recommend** that VicRoads conduct a Road Safety Audit of Maroondah Highway, between Coldstream and Healesville to establish whether it is eligible for nomination as a "Black Spot" and the associated funding, and

2. With the aim of improving public safety and preventing like deaths, **I recommend** that VicRoads implement safer overtaking opportunities for road users on the Maroondah Highway between Coldstream and Healesville, and

3. With the aim of improving public safety and preventing like deaths, **I recommend** that VicRoads consider dedicated turning lanes at popular tourist destinations directly accessed by the Maroondah Highway between Coldstream and Healesville.

FINDINGS

Pursuant to section 73(1A) of the *Coroners Act 2008* (Vic), I order that this Finding be published on the internet.

The investigation has identified that Mrs Gerlach was a passenger in a rear-end collision on the Maroondah Highway at Coldstream where her husband was the driver.

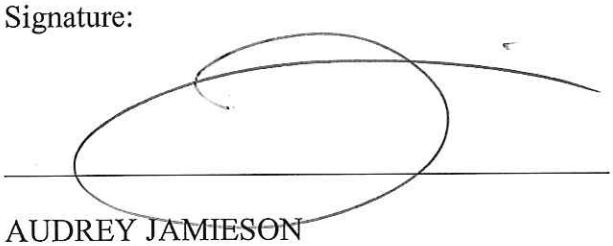
The investigation has been unable to determine the cause of the collision, despite numerous eyewitness statements. However, the investigation has identified serious safety concerns for road-users of the Maroondah Highway between Coldstream and Healesville.

I accept and adopt the medical cause of death formulated by Dr Joseph Lynch, and I find that Erika Maria Gerlach died from complications of injuries sustained in a motor vehicle collision (passenger).

I direct that a copy of this finding be provided to the following:

Detlef Gerlach, on behalf of his father Reinhard Gerlach
VicRoads
Transport Accident Commission
Detective Senior Constable Matthew Hunt

Signature:



AUDREY JAMIESON
CORONER
Date: **20 March 2019**