



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2017 5776

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 63(1)

*Section 67 of the **Coroners Act 2008***

INQUEST INTO THE DEATH OF PIERINO TARANTO

Findings of:	Coroner Jacqui Hawkins
Delivered on:	17 June 2020
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, Victoria, 3006
Hearing date:	10 June 2020
Counsel Assisting the Coroner:	Mr Lindsay Spence, Principal In-House Solicitor, instructed by Ms Anna Dalling, Coroner's Solicitor of the Coroners Court of Victoria
Counsel for Victoria Police:	Monika Pekevaska of Counsel instructed by Katherine Goldberg, Norton Rose Fulbright
Catchwords:	VICTORIA POLICE, DEATH IN POLICE CUSTODY, OFFENCE OF PUBLIC DRUNKENNESS, WORKING ONE UP, MANDATORY INQUEST, PRE-EXISTING MEDICAL CONDITION OF ANKOLYSING SPONDYLITIS

BACKGROUND

1. Pierino Taranto was born in Italy on 30 December 1951. He was 65 years old at the time of his death. Mr Taranto moved to Australia in the late 1970s from Italy with his wife Joanne, and was the father of their three children, Melissa, Damian and Christopher.
2. Upon arriving in Australia, the Taranto family lived at a number of addresses in the Box Hill area, including 29 Hopetoun Parade, Box Hill. Mr Taranto worked at the Brick Works in Box Hill until the business closed during the 1990s.
3. In approximately 1995 Mr Taranto divorced from his wife Joanne. Joanne remained living at 29 Hopetoun Parade with their three children. It appears Mr Taranto had limited to no access to his children and became estranged from them.
4. Little appears to be known as to what Mr Taranto did following his divorce. It is believed that he may have returned to Italy for a period of time, however the last time his daughter, Melissa saw her father was after a chance meeting at a shopping centre in Box Hill in January 2001. Whilst Melissa wanted to re-initiate contact with her father, she had no means of contacting him.
5. Other members of his extended family report having contact with Mr Taranto from 2001 through to 2019, although it appears to have been sporadic. During this period, it is believed Mr Taranto may have lived in a number of hostels and then eventually became homeless.
6. Over the past two years a security officer at Box Hill Central Shopping Centre reported that Mr Taranto would spend a considerable amount of time within the Shopping Centre, using the bathrooms to wash and bathe himself and he would sit in the Food Court for most of the day. Occasionally, Mr Taranto was located sleeping within the Shopping Centre car park.
7. During this time, Mr Taranto would often return to his former residential address at 29 Hopetoun Parade, Box Hill. Some residents of Hopetoun Parade, Box Hill reported that it was not unusual for Mr Taranto to arrive in their street at approximately 5pm, drinking and intoxicated and often calling out. He would often stay there for a number of hours, drinking. One resident reported that Mr Taranto had been returning to the street on a semi-regular basis for the previous 10 years.

8. On 14 November 2017 a resident of Hopetoun Parade called police due to a man (Mr Taranto) being intoxicated and causing a disturbance in their street. Sergeant Alasdair Farrell from Box Hill Police Station attended the scene and after a short time arrested Mr Taranto for being drunk in a public place. As the arrest was taking place and after Sergeant Farrell had placed Mr Taranto in handcuffs, Mr Taranto tripped over Sergeant Farrell's leg and he fell to the ground and hit his face and forehead. Mr Taranto was rendered unconscious.
9. Sergeant Farrell immediately contacted emergency services for ambulance and police backup. Mr Taranto was transported by ambulance to Box Hill Hospital and died at approximately 1.30am the following morning.

CORONIAL INVESTIGATION

Jurisdiction

10. Mr Taranto's death constituted a '*reportable death*' pursuant to section 4(c) of the *Coroners Act 2008* (Vic) (**Coroners Act**), as his death occurred in Victoria and immediately before his death he was a person placed in custody or care. A person placed in custody or care includes "*(f) a person in the custody of a police officer*".
11. The evidence is that Sergeant Farrell arrested Mr Taranto pursuant to section 13 *Summary Offences Act 1966* (Vic) and was therefore in the custody of a police officer at the relevant time.

Purpose of the Coronial Jurisdiction

12. The jurisdiction of the Coroners Court of Victoria (**Coroners Court**) is inquisitorial.¹ The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.
13. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
14. The circumstances in which the death occurred refers to the context or background and surrounding circumstances of the death. It is confined to those circumstances that are sufficiently proximate and causally relevant to the death.

¹ Section 89(4) *Coroners Act 2008*.

15. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the prevention role.
16. Coroners are empowered to:
- (a) report to the Attorney-General on a death;
 - (b) comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and
 - (c) make recommendations to any Minister or public statutory authority or entity on any matter connected with the death, including public health or safety or the administration of justice.

These powers are the vehicles by which the prevention role may be advanced.

17. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death and are specifically prohibited from including a finding or comment or any statement that a person is, or may be, guilty of an offence.² It is not the role of the coroner to lay or apportion blame, but to establish the facts.³

Standard of Proof

18. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.⁴ The strength of evidence necessary to prove relevant facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.⁵
19. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁶ The effect of this and similar authorities is that coroners should not make

² Section 69(1). However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if they believe an indictable offence may have been committed in connection with the death. See sections 69(2) and 49(1) of the Act.

³ *Keown v Khan* (1999) 1 VR 69.

⁴ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

⁵ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J (noting that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in the Federal Court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

⁶ (1938) 60 CLR 336.

adverse findings against, or comments about, individuals or entities, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

20. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demands a weight of evidence commensurate with the gravity of the facts sought to be proved.⁷ Facts should not be considered to have been proven on the balance of probabilities by inexact proofs, indefinite testimony or indirect inferences. Rather, such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.⁸

Coronial Inquest

21. Section 52(2)(b) of the Coroners Act requires that I must hold an inquest if the death occurred in Victoria and the deceased was, immediately before death, a person placed in custody or care. Consequently, an Inquest was held on 10 June 2020.

Witnesses

22. Two witnesses were called to give *viva voce* evidence at the Inquest, including Sergeant Alasdair Farrell and the Coroner's Investigator, Detective Senior Sergeant Mark Colbert, Homicide Squad, Victoria Police.

Sources of Evidence

23. This Finding draws on the totality of the coronial investigation into Mr Taranto's death. That is, the court records maintained during the coronial investigation, the Coronial Brief and any further material sought and obtained by the Coroners Court, the evidence adduced during the Inquest and submissions.
24. In writing this Finding, I do not purport to summarise all of the evidence but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence should not lead to the inference that it has not been considered.

IDENTITY OF THE DECEASED

25. On 16 November 2017, Mr Taranto was identified through the Deceased (Fingerprint) Identification Report. He was also visually identified by his daughter, Melissa Taranto,

⁷ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

on 17 November 2017. Mr Taranto's identity was not in dispute and required no further investigation.

MEDICAL CAUSE OF DEATH

26. On 15 November 2017, Dr Heinrich Bouwer, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an autopsy on Mr Taranto's body and reviewed the Victoria Police Report of Death Form 83, Box Hill Hospital medical records and e-medical deposition, the post mortem computed tomography (CT) scan, scene photos and the statement of a police member at the scene.
27. Dr Bouwer reported that Mr Taranto had the following injuries:
 - a) Blunt head and neck trauma, which included evidence of frontal head impact, including:
 - i. Abraded bruise on the mid/right forehead.
 - ii. Abraded lacerations on the nose.
 - iii. Nasal bone fractures.
 - iv. Abraded laceration of the right lower eyelid and cheek.
 - v. Right frontal subgaleal haematoma.
 - vi. Purple bruise on the base of the left side of the neck.
 - b) Cervical spinal fractures, including C2 dense fracture with posterior displacement into the spinal canal causing spinal compression and laceration, and fracture through the C5/6 disc;
 - c) Traumatic intra-cranial and spinal subarachnoid haemorrhage;
 - d) Abraded bruises around the wrists, consistent with restraint marks (i.e. handcuffs or similar); and
28. Dr Bouwer also reported that Mr Taranto had Ankylosing Spondylitis.
29. On 16 November 2017, Dr Chris O'Donnell, Consultant Radiologist at the Victorian Institute of Forensic Medicine was requested to review the post mortem radiological imaging of Mr Taranto's body, and specifically to comment on the CT findings of

trauma to his spine and head and their connection to his condition. Dr O'Donnell reported the following relevant comments:

- a) Mr Taranto appears to have an underlying medical condition known as ankylosing spondylitis whereby the vertebra are fused causing a deformity of the spine known as kyphosis or hunched spine in the thoracic region and an exaggerated lordosis in the neck. This deformity is fixed and cannot be corrected by posture as the vertebrae are fused. Patients with this condition are prone to vertebral fractures due to the rigidity of the spine that does not bend or flex with an applied force (as in the normal spine).
 - b) The mechanism of injury in this case appears to be the impact to the brow and nose with resultant hyperextension of the neck causing two apparent fractures. The first is a fracture of the dens (C2 vertebra) with posterior displacement into the spinal canal and impaction at the C2 spinous process causing marked compression of the spinal cord. This leads to respiratory arrest and cessation of breath. The second fracture is through C5/6 disc space anteriorly.
 - c) Both the spinal ankylosis or fusion and resultant deformity of the cervical spine are very likely to have contributed to the development of both fractures.
 - d) The force to the head required to sustain such fractures is likely to be substantially less than in a person without such a medical condition and the position of the fixed, lordotic cervical spine makes it more vulnerable to hyperextension.
 - e) The intra-cerebral and spinal subarachnoid haemorrhage is likely to have resulted from disrupted blood vessels (arteries and/or veins) in the upper cervical spine due to the dens (C2) fracture.
30. Other natural disease detected at autopsy included evidence of ischaemic heart disease due to coronary artery atherosclerosis. Extensive left lung adhesions and pleural fibrosis, heavy congested lungs, pulmonary emphysema and acute on chronic bronchitis.
31. Toxicological analysis of antemortem specimens received from Box Hill Hospital detected a blood alcohol concentration of 0.20g/100ml. No other common drugs or poisons were detected.

32. Dr Bouwer provided an opinion the medical cause of death was 1(a) *Traumatic high cervical spine injury in the setting of frontal head impact in a man with Ankylosing Spondylitis*. I accept and adopt this as the cause of death.

CIRCUMSTANCES OF DEATH

33. At approximately 5.30pm on 14 November 2017, Andrea Middling, a resident of Hopetoun Parade, Box Hill saw Mr Taranto outside 27 Hopetoun Parade, with a bottle of wine in a brown paper bag. She attempted to engage Mr Taranto in a short conversation but was unable to make much sense of what he was saying.⁹ Approximately two hours later, another resident of Hopetoun Parade, William Tang observed Mr Taranto sitting down on a brick fence at the front of his property smoking, drinking and at times yelling and screaming.¹⁰ At 8.24pm the male was still outside so a resident called 000 to request police attendance.
34. Sergeant Farrell was rostered to perform afternoon patrol shift duties. His call sign was Forest Hill 251. Sergeant Farrell was rostered to work 'one up' throughout this shift. This meant that he was working alone, without a colleague or driver.
35. At 8.43pm Police Communications broadcast a job in Hopetoun Parade, Box Hill described as "*a person causing trouble, drunk person outside an address and who had been there for several days*".¹¹ As he was only streets away from the location, and both the Forest Hill 303 and Box Hill 303 Divisional Vans were tied up with other jobs, Sergeant Farrell acknowledged the job and indicated that he would respond.¹²
36. Sergeant Farrell arrived on the scene in a marked police vehicle and in full uniform. Upon arrival he observed Mr Taranto leaning against a fence. The police presence caused Mr Taranto to immediately start to walk west along Hopetoun Parade. Sergeant Farrell called out to Mr Taranto a number of times, but he refused to engage and continued to walk away slowly, muttering something that could not be understood by Sergeant Farrell.¹³
37. Sergeant Farrell followed Mr Taranto and attempted to engage him in conversation. Two or three houses down Mr Taranto stopped and leant against a brick fence. Sergeant Farrell asked him his name and what he was doing there. When Mr Taranto responded

⁹ Exhibit 6 – Coronial Brief, p24.

¹⁰ Exhibit 6 – Coronial Brief, p22.

¹¹ Exhibit 3, Transcript of police communications, Coronial brief, p143.

¹² Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

with “Who?” to each question asked, Sergeant Farrell asked him for his wallet, health care card or some other form of identification. These further enquiries yielded no response of value.¹⁴

38. Sergeant Farrell could smell alcohol on Mr Taranto’s breath or perhaps on his clothes and he could also smell urine. In Sergeant Farrell’s opinion Mr Taranto was “*clearly drunk but didn’t seem to have an understanding of that being an issue for the neighbours or for the Police*”.¹⁵
39. In the absence of identification, Sergeant Farrell informed Mr Taranto that he needed to provide evidence of who he was or where he lived, or he may have to be arrested for being drunk in a public place. Mr Taranto responded by asking something along the lines of “*Why drunk a problem?*”.¹⁶ Sergeant Farrell again informed Mr Taranto that it was an offence to be drunk in a public place, especially if he were causing problems. This prompted Mr Taranto to ask “*Who called?*”.¹⁷
40. When Sergeant Farrell declined to respond, Mr Taranto clenched the fence and started to shake it, saying “*This one called, this one called*”.¹⁸ Sergeant Farrell responded that he was unaware of who made the call. Sergeant Farrell repeated his request for Mr Taranto to provide him with his name, otherwise he would have to arrest him for being drunk in a public place. Mr Taranto then turned back towards the house that they were in front of and yelled out something that Sergeant Farrell was unable to understand but it did include the word ‘fucking’, leading Sergeant Farrell to conclude that Mr Taranto thought these specific occupants must have been the ones who called.¹⁹
41. Sergeant Farrell then told Mr Taranto that he was under arrest for being drunk in a public place and asked him to turn around and put his hands behind his back. Mr Taranto complied without resistance and was subsequently handcuffed.²⁰
42. Sergeant Farrell then walked Mr Taranto along the pavement towards his police vehicle. They walked shoulder to shoulder, Sergeant Farrell to Mr Taranto’s left, with his hand on Mr Taranto’s bicep. Mr Taranto was physically passive and compliant but called out

¹³ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

¹⁴ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

¹⁵ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

¹⁶ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

¹⁷ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

¹⁸ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

¹⁹ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, pp43-44.

²⁰ Exhibit 1 - Statement of Sergeant Farrell dated 15 November 2017, coronial brief, pp43-44.

something like ‘police’ or ‘fucking police’ a number of times. Sergeant Farrell did not consider this was aggressive and he did not consider him a threat to his own physical safety.²¹ Upon arriving back to where his police vehicle was parked, Sergeant Farrell requested Mr Taranto to sit on the bonnet of his vehicle, but he refused. Sergeant Farrell then requested Mr Taranto to sit on the grass, on the nature strip on the kerb, but he again refused.²²

43. They were still shoulder to shoulder when Mr Taranto started to rotate his body to the right, turning away from Sergeant Farrell. Sergeant Farrell moved with him, stepping his right leg out when Mr Taranto unexpectedly rotated back towards Sergeant Farrell which resulted in him falling over Sergeant Farrell’s extended right leg. Sergeant Farrell described Mr Taranto’s fall as “*he went stiff and tense and then fell almost like a tree being felled and went over in a lever action straight over*”.²³ Further, “*it was like he tried to step across my legs but didn’t make it*.”²⁴
44. Mr Taranto fell to the ground, struck his front facial region on the grass nature strip and was lying prone. Sergeant Farrell did not believe he hit the gutter or the pavement. He placed Mr Taranto in the recovery position and removed the handcuffs. He noted an indentation to Mr Taranto’s nose with some blood but no significant damage to his face or teeth, and no blood on the kerbside. Mr Taranto was unresponsive although he was still breathing, made some jaw movements, and appeared to be holding his head up.²⁵ Sergeant Farrell immediately requested the assistance of additional police and ambulance.²⁶
45. Box Hill 303 arrived to assist and observed Mr Taranto’s facial injuries and saw that he was still breathing. They established Mr Taranto’s identity and monitored his pulse.²⁷ Gregory Scammell, a MICA Ambulance Paramedic arrived 10 minutes later and took over the care of Mr Taranto. Paramedic Scammell assessed Mr Taranto as unconscious, with no spontaneous respiration and no carotid pulse. Treatment commenced immediately including CPR and resuscitation as well as a number of other measures

²¹ Transcript of evidence, p26.

²² Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

²³ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

²⁴ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

²⁵ Transcript of evidence p30.

²⁶ Exhibit 3, Transcript of police communications, Coronial brief, pp144-145.

²⁷ Exhibit 6 - Coronial Brief, pp53, 60.

including ventilation and the administration of adrenaline. These measures assisted with the return of spontaneous circulation and very low blood pressure.²⁸

46. At this point in time Sergeant Farrell removed himself from rendering first aid to Mr Taranto and immediately notified the afternoon Divisional Supervisor for Eastern Region, Senior Sergeant (SS) Bradford Peters that there was potential that Mr Taranto may die and therefore the incident would potentially be deemed a death in custody. SS Peters attended the scene, provided support to Sergeant Farrell, established a crime scene and arranged a road block and a cordon.²⁹
47. As per Victoria Police protocol, SS Peters then notified the relevant units, including the Eastern Region Duty Officer, Professional Standards Command, Monash Criminal Investigation Unit, Homicide Squad and Crime Scene Services.
48. At 9.36pm Mr Taranto was transported by ambulance to the Box Hill Hospital. At approximately 1.30am the following morning, Mr Taranto died, having never regained consciousness.

CORONIAL INVESTIGATION

49. Victoria Police immediately commenced a coronial investigation. SS Peters separated the members at the scene and they were later conveyed to the Forest Hill Police Station to make statements. That evening Sergeant Farrell was directed to undergo Drug and Alcohol Testing on the grounds it was believed that he had been involved in a Critical Incident. The results returned negative readings.
50. The Major Crime Scene Unit attended and examined the scene which included photos and video of the scene, and the collection of a number of exhibits.
51. Enquiries made by the Coroner's Investigator with the Operational Safety and Tactics Training (OSTT) Unit at the Victoria Police revealed that Sergeant Farrell was qualified to carry out operational duties and carry his OSTT equipment.
52. The Victoria Police LEAP System recorded a number of relevant interactions between Mr Taranto and Victoria Police, specifically in relation to previous attendances at Hopetoun Parade, Box Hill.³⁰

²⁸ Exhibit 6 - Coronial Brief, p73.

²⁹ Exhibit 6 - Coronial Brief, pp66, 68.

³⁰ Exhibit 6 - Coronial Brief, pp133-134.

53. There was no direct CCTV, In-car video or Body Worn Video Camera evidence in respect of the arrest of Mr Taranto by Sergeant Farrell. This matter pre-dated the rollout of Body Worn Video Cameras within Victoria Police and the Coroner's Investigator confirmed that a CCTV canvass failed to identify any relevant CCTV footage. Further there were no eyewitnesses identified in respect of the interaction between Mr Taranto and Sergeant Farrell. Analysis of the events of that evening therefore relies heavily upon the evidence given by Sergeant Farrell, combined with the post mortem analysis and opinions in respect of the injuries sustained.

CORONIAL INQUEST

Scope of Inquest

54. The purpose and scope of the inquest was to investigate the appropriateness of the Victoria Police response including:
- a) Sergeant Farrell's decision to arrest Mr Taranto for the offence of public drunkenness;
 - b) Sergeant Farrell's decision to handcuff Mr Taranto and his subsequent fall; and
 - c) The safety issues associated with working 'one up'.

Sergeant Farrell's decision to arrest Mr Taranto for the offence of public drunkenness

55. Sergeant Farrell was rostered as the patrol duty sergeant for the afternoon shift. His role was to monitor the availability of resources, provide supervision and advice to other units at jobs, to provide welfare and mentoring to junior members and to brief up to management in order to gain any additional resources or services if required.³¹
56. At approximately 8.43pm Sergeant Farrell was advised of the job at Hopetoun Parade, Box Hill, in relation to a drunk person causing trouble at the address. As he was proximate to the address, Sergeant Farrell notified D24 he would attend. His thought process was that if it was just an elderly person who was 'carrying on' then he could simply tell that person to move on, or alternatively, ascertain whether the male was actually still there and if so, he could obtain observations and inform other police units of the situation and determine whether or not they were required to attend. He explained that sometimes by the time you attend these types of jobs, the person has

³¹ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p41.

often moved on. Sergeant Farrell said there was nothing in the job description that caused any immediate concern to him. His thought was it was a routine job and that he would just assess the situation.³²

57. Once Sergeant Farrell arrived at the scene, the evidence is that he attempted to engage Mr Taranto in conversation to ascertain his identity and investigate the complaint. Mr Taranto failed to provide his name, produce any identification or explain why he was at the location or where he was intending to go. Sergeant Farrell said he was wearing his uniform and in a marked police vehicle and was easily identifiable as a police officer. Mr Taranto walked away from Sergeant Farrell muttering to himself. According to Sergeant Farrell, he was not displaying any threatening behaviour. He thought the man might be suffering from a medical issue.³³
58. Sergeant Farrell repeatedly tried to engage with Mr Taranto and establish his identity but thought Mr Taranto may not have understood him. He considered it was “*either an intoxication issue, a mental health issue or a language issue.*”³⁴ He smelt alcohol on Mr Taranto’s breath, and together with his dishevelled clothes and general appearance, Sergeant Farrell formed the belief that he was drunk.³⁵ Consequently, Sergeant Farrell told Mr Taranto that it was an offence to be drunk in a public place, especially if he was causing trouble. Mr Taranto was placed under arrest for being drunk in a public place and asked him to turn around and put his hands behind his back.³⁶ Sergeant Farrell reflected that “*quite often in policing, you get identity via consent... when I don’t have that consent, the only lawful power that I felt I had to me at the time was to actually arrest him and then conduct a search, get some ID.*”³⁷
59. Section 15 of the *Summary Offences Act 1966* (Vic) allows a police officer to arrest a person who is drunk in a public place pursuant to section 13 of that Act. The term ‘drunk’ is not defined within the legislation although ‘public place’ is, and includes any public highway, road, street, bridge, footway, footpath or thoroughfare.
60. Sergeant Farrell’s justification for arresting Mr Taranto was that he believed “*he was a risk to himself and to the occupants of Hopetoun Street*”.³⁸ The identified risks included

³² Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p42.

³³ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, pp42-43.

³⁴ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

³⁵ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43 and transcript of evidence, p18

³⁶ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

³⁷ Transcript of evidence p20.

³⁸ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

Mr Taranto's interest in understanding who had contacted police, doubt about Mr Taranto's ability to care for himself given his intoxication, the heat of the day and the heavy clothing he was wearing, and the physical location with train tracks running parallel to Hopetoun Parade and an adjoining busy road with visibility issues.³⁹ Sergeant Farrell stated his intention "*was to detain him, search him and locate identification documents*".⁴⁰

61. Sergeant Farrell gave evidence that earlier that day he had attended a job involving another intoxicated man, who due to the combination of heat and intoxication was experiencing a medical episode. This event was at the forefront of his mind when interacting with Mr Taranto and he remained of the view that he needed to determine whether he was dealing with a criminal, medical, or simple intoxication issue.⁴¹
62. Sergeant Farrell stated that if he lived locally he could drive Mr Taranto home in preference to placing him in a cell. He also considered that a search may assist to identify any medical issues, or he could check whether he was a missing person.⁴² Sergeant Farrell said that "*locking someone up in a cell for drunk is my absolute last resort*"⁴³ and he maintained that his intention was to identify Mr Taranto to determine his next steps.

Sergeant Farrell's decision to handcuff Mr Taranto and his subsequent fall

63. Following the arrest, Sergeant Farrell asked Mr Taranto to turn and place his hands behind his back. Mr Taranto complied without any complaint or resistance. Sergeant Farrell explained that one reason he applied handcuffs was because drunks often flail or stumble which can offset their centre of gravity, so he said it removes that aspect for them to offset themselves.⁴⁴ In evidence Sergeant Farrell described "*the handcuffing process was largely uneventful*."⁴⁵
64. Sergeant Farrell then walked Mr Taranto along the pavement towards his police vehicle which was parked approximately one or two houses down the street.⁴⁶ They walked shoulder to shoulder, Sergeant Farrell to Mr Taranto's left, with his hand on Mr

³⁹ Transcript of evidence pp20, 42.

⁴⁰ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

⁴¹ Transcript of evidence p10.

⁴² Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

⁴³ Transcript of evidence p19.

⁴⁴ Transcript of evidence, p22.

⁴⁵ Transcript of evidence, p21.

⁴⁶ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p43.

Taranto's bicep. As they walked, Mr Taranto continued to mumble incoherently, but used the occasional words including 'fucking' or 'fucking police.' Sergeant Farrell's evidence is that Mr Taranto was generally compliant, and he did not consider Mr Taranto to be a threat to his physical safety.⁴⁷ Sergeant Farrell said that his intention was to either get him to lean on the bonnet of the car or sit on the nature strip.⁴⁸

65. Upon arriving back to his police vehicle, Sergeant Farrell requested Mr Taranto to sit on the bonnet of his vehicle, but he refused. Sergeant Farrell then requested him to sit on the grass on the nature strip near the kerb, but he again refused.
66. At inquest, Sergeant Farrell was extensively questioned about the circumstances of how Mr Taranto fell and came to be on the ground. Sergeant Farrell said "*it wasn't until we got towards the police car that that was when he tried to turn away from me.*"⁴⁹ He described that he was standing on Mr Taranto's left-hand side, holding Mr Taranto's left bicep when Mr Taranto "*began to rotate his body clockwise,*"⁵⁰ towards the right. Sergeant Farrell stated that as Mr Taranto "*went to the right, I stepped out with my right leg*"⁵¹ and it "*was at that point he began to rotate back to his left*".⁵² Sergeant Farrell explained he had his "*right leg extended and [Mr Taranto] went rigid, locked up at the knees and ... it was like a tree being felled. He went quite hard, quite rigid and ... over my leg and impacted the grass*".⁵³ Sergeant Farrell stated he:

*didn't know whether it was due to uncoordination (sic). ... or whether it was just a delayed reaction to ... holding onto his arm and he had decided to come back to where I was but again with drunks sometimes thought processing is delayed and so if he had decided to come with me and not realised where I was, that he had stepped straight across my path.*⁵⁴

67. Sergeant Farrell said that he did not use any force but that as Mr Taranto fell to the ground "*he had some body momentum and was turning away and then he turned back and went over my legs*". That momentum took him to the ground as Sergeant Farrell was holding onto his left arm.⁵⁵ As Mr Taranto was handcuffed, he was unable to use

⁴⁷ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p44.

⁴⁸ Transcript of evidence, p24.

⁴⁹ Transcript of evidence, p25.

⁵⁰ Transcript of evidence, p27

⁵¹ Transcript of evidence, p27

⁵² Transcript of evidence, p27

⁵³ Transcript of evidence, p28.

⁵⁴ Transcript of evidence, p29.

⁵⁵ Exhibit 2, Second statement of Sergeant Farrell dated 19 December 2017, coronial brief, p49.

his hands to protect himself from the fall.⁵⁶ Sergeant Farrell then immediately removed the handcuffs.⁵⁷

68. Sergeant Farrell is heard to say to D24 *“I’ve had to cuff this bloke and put him down”*.⁵⁸ In a second statement, Sergeant Farrell explained that the use of the term ‘gone to ground’ relates to an OSTT phrase to inform D24 and other units the male is on the ground and that further assistance is required.⁵⁹ Sergeant Farrell stated *“if I had my time again, would I choose those words and I don’t consciously choose them, but the phrase I probably would’ve gone with is ‘we’ve gone to ground’*.⁶⁰
69. When queried on the use of the phrase ‘put him down’, Sergeant Farrell conceded that it was imprecise language for the situation and was probably a default reaction.⁶¹ However, he maintained that he did not apply any force and he had not thought he needed to. Sergeant Farrell considered that the words would have appropriately conveyed to other police members via D24 that the job as previously reported had escalated from a passive situation, to an interaction which required further assistance.⁶²
70. The D24 transcript also records Sergeant Farrell advise *“he’s drunk and causing a bit of mischief”*.⁶³ He further explained, *“he’s tripped over my leg while he’s tried to basically walk away and he’s struck his head...”*⁶⁴
71. When SS Peters got to the scene, Sergeant Farrell told him: *“I was moving him off the road and he started to fire up so I cuffed him for my safety. We were in the process of moving away from the road onto the nature strip and our legs go (sic) tangled up as I was leading him across in front of me and we fell”*.⁶⁵ This was confirmed with the Coroner’s Investigator, Detective Senior Sergeant (DSS) Mark Colbert as he was informed by SS Peters that Mr Taranto was *“intoxicated and aggressive and was handcuffed”*.⁶⁶
72. At Inquest when questioned about the possible contradiction in evidence regarding the apparent threat posed by Mr Taranto, Sergeant Farrell explained that in these

⁵⁶ Transcript of evidence pp27-28.

⁵⁷ Transcript of evidence p30.

⁵⁸ Exhibit 3, Transcript of police communications, Coronial brief, p144.

⁵⁹ Exhibit 2, Second statement of Sergeant Farrell dated 19 December 2017, coronial brief, p49.

⁶⁰ Transcript of evidence p32.

⁶¹ Transcript of evidence p31.

⁶² Transcript of evidence pp31-32.

⁶³ Exhibit 3, Transcript of police communications, Coronial brief, p145.

⁶⁴ Exhibit 3, Transcript of police communications, Coronial brief, p148.

⁶⁵ Exhibit 6, Statement of Senior Sergeant Peters dated 21 December 2017, coronial brief, p66

interactions with SS Peters he was trying to provide a “snapshot of what had happened”⁶⁷ and “the mechanics of getting there were probably still spinning though my head.”⁶⁸ He clarified that his expression ‘fire up’ indicated “someone who’s not entirely compliant.”⁶⁹ Sergeant Farrell’s evidence was that Mr Taranto was non-compliant with his requests to provide identification and to seat himself. However, Sergeant Farrell considered this non-compliance may be due to intoxication or a failure to fully comprehend the situation, as opposed to deliberate defiance or opposition to his requests as a police officer. He maintained he did not feel threatened by Mr Taranto.⁷⁰

73. The use of force by police is primarily governed by section 462A of the *Crimes Act 1958* (Vic) which details that:

a person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

74. The Victoria Police Manual (VPM) *Operational Safety Equipment (OSE)* states that:

*Members are expected to protect themselves and the public while fulfilling their duties. To do this effectively, they may need to use force. The use of force, including the use of OSE, must be in accordance with specific legal requirements.*⁷¹

75. Specifically, with respect to handcuffs the VPM states that “any person arrested or taken into custody should be handcuffed if it is reasonably believed to be necessary in the circumstances.”⁷²

76. Sergeant Farrell did not use any OSTT equipment other than the handcuffs.⁷³ Further, he didn’t see the need to escalate the situation and his intention was to “find somewhere he could be housed be that with a friend, in care or whatever”.⁷⁴

77. According to Sergeant Farrell he acted lawfully and consistent with his training.⁷⁵ Whilst he agreed that he would not always handcuff a person who is under arrest, he suggested that it required more exceptional circumstances, for example a minor, or an

⁶⁶ Exhibit 5, Statement of Detective Senior Sergeant Mark Colbert dated 19 August 2019, p126

⁶⁷ Transcript of evidence p36.

⁶⁸ Transcript of evidence p31.

⁶⁹ Transcript of evidence p36.

⁷⁰ Transcript of evidence pp16, 26.

⁷¹ Exhibit 6 – Coronial brief p191.

⁷² Exhibit 6 - Coronial brief p191.

⁷³ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p46.

⁷⁴ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p46.

⁷⁵ Exhibit 2, Second statement of Sergeant Farrell dated 19 December 2017, coronial brief, p50.

elderly person accused of a first-time non-violent offence. He considered that it was required in these circumstances because, it demonstrated to Mr Taranto that he was under arrest, and provided him with a better level of control to prevent injury and escape. Noting that in his experience even an apparently compliant drunk person may flail or stumble.⁷⁶

78. I note that the version of events provided by Sergeant Farrell was supported by the the post-mortem examination of Mr Taranto. Both in his statement and in evidence at inquest, the Coroner's Investigator DSS Colbert gave evidence in respect of a meeting attended on Tuesday 16 January 2018 with Dr Heinrich Bouwer, the Forensic Pathologist who had conducted the post-mortem examination.
79. DSS Colbert gave evidence that the purpose of the meeting was "*to discuss the medical position in relation to the death of Mr Taranto and the level of force that may be required to sustain the injury in the circumstances*"⁷⁷. DSS Colbert indicated that "*Dr Bouwer advised that in relation to the use of force in this case that the injury sustained was consistent with the version of events as provided by Sergeant Farrell given the circumstances of the case and the existing medical disposition of Mr Taranto*"⁷⁸. DSS Colbert confirmed this position in evidence when he said of his discussions with Dr Bouwer "*he did speak significantly of the pre-existing condition that Mr Taranto suffered, but overall Dr Bouwer's advice to me was that it was very much consistent, or the autopsy outcomes were very much consistent with the version of events that we believed them to be, and which are presented in Sergeant Farrell's statement*".⁷⁹

The safety issues associated with working 'one up'.

80. Sergeant Farrell was rostered to perform afternoon shift 251 duties as the Patrol Sergeant. He was rostered to work 'one up' throughout this shift. That is, he was working alone without a colleague or driver. Sergeant Farrell stated that when working 'one up' there is a caveat about attending jobs should the member deem the risk assessment to be sufficiently low that it is safe to attend the job.⁸⁰ Sergeant Farrell was unsure if there was "*any sort of a blanket rule about what jobs or what type of jobs should or shouldn't be attended*".⁸¹

⁷⁶ Transcript of evidence p22.

⁷⁷ Exhibit 5, Statement of Detective Senior Sergeant Mark Colbert dated 19 August 2019, p128

⁷⁸ Exhibit 5, Statement of Detective Senior Sergeant Mark Colbert dated 19 August 2019, p129

⁷⁹ Transcript of evidence p47.

⁸⁰ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p41.

⁸¹ Exhibit 1, Statement of Sergeant Farrell dated 15 November 2017, coronial brief, p41.

81. Sergeant Farrell explained that as a police officer you are always conducting risk assessments and that it is largely based on experience. In this case Sergeant Farrell assessed that he was in proximity, he knew the area well and deemed that it was safe to do a drive over and assess the situation.⁸² He was satisfied that he could do that alone. His evidence was that if he had assessed any risk he would have sat off and waited for back up.⁸³
82. In evidence DSS Colbert explained that at the time of this incident Sergeant Farrell was operating as a single officer patrol and was therefore subject to the considerations of Chief Commissioner's Instruction 08/15 (**CCI 08/15**) *Operational Safety Measures – Single Officer Duties*. The CCI 08/15 provides at paragraph 9 that:
- Members may perform the following duties on their own:*
- *Secondary response duties;*
 - *Patrol Supervisor duties as secondary responder, if resources do not permit members to work two up;*
 - *Attending court or meetings;*
- Providing that they conduct a risk assessment before and throughout their duties and develop appropriate risk mitigation strategies. They are not to perform primary response duties, such as undertaking elective interception of vehicles, elective field contacts with suspects, or responding to tasks or public incidents other than as back-up to primary response units.*⁸⁴
83. While conducting this investigation, DSS Colbert discovered that Sergeant Farrell's beliefs about working 'one up' was in broad terms, a widely held belief by many other police members. His evidence was that many members informed him that they would often respond to jobs if deemed safe to do so. DSS Colbert considered that CCI 08/15 was created in response to the rising terrorism threats that had emerged over recent years and as such its focus was on police officer safety, as opposed to giving primary consideration to the safety of everyone involved.⁸⁵
84. Sergeant Farrell acknowledged that he would have been made aware of CCI 08/15 when it was first issued. However, he explained that his understanding of its application in an operational setting was skewed to more strongly consider the need for ongoing risk assessment.⁸⁶

⁸² Transcript of evidence p11.

⁸³ Transcript of evidence p12.

⁸⁴ Exhibit 6 – Coronial Brief p199.

⁸⁵ Exhibit 5, Statement of Detective Senior Sergeant Mark Colbert dated 19 August 2019, p130.

⁸⁶ Transcript of evidence p39.

85. To assist him to understand this issue, DSS Colbert conducted an audit of the Electronic Data Patrol Return (**EDPR**) forms for the Eastern Region for the month of June 2019. He discovered that greater than fifty incidents were attended by members working in a ‘one up’ patrol capacity.⁸⁷ He also attempted analysis of this issue using data from the time of Mr Taranto’s death, but found that the information was impossible to reliably reconcile.⁸⁸ Consequently, DSS Colbert requested a response to this issue from a suitably qualified member of Victoria Police. Commander Clive Rust of the Eastern Region confirmed the expectation for members to adhere to CCI 08/15 but was silent as to any strategies to ensure compliance.⁸⁹
86. On his decision to attend the job, Sergeant Farrell stated, “*I think the public would expect me to do something*”.⁹⁰ The general nature of his evidence was that if he was available, proximate to the job, and able to suitably manage the presenting risks, he should provide a police response. DSS Colbert was not critical of this decision and described it as “*the thin blue line getting the job done*”.⁹¹ He also noted that when Sergeant Farrell advised he would take on this task, neither D24 nor the district patrol supervisor questioned that decision.⁹² DSS Colbert agreed that at that time, prohibiting ‘one up’ patrols from ever acting as primary responders would, in a practical sense, have inhibited Victoria Police’s capacity to respond to events⁹³.
87. DSS Colbert explained that a CCI acts as a short-term guide that would usually be distributed by email or posted in the Gazette.⁹⁴ CCI’s will then be incorporated into the VPM in due course. He confirmed that this CCI has been incorporated into the VPM – “Operational Duties and Responsibilities” as of 27 May 2019.⁹⁵
88. Both Sergeant Farrell and DSS Colbert considered that in practice, the decision about whether to attend one up was no longer commonly required of police officers, stating anecdotally that increased resources meant it was now far less common for officers, particularly in metropolitan areas, to work operational shifts one up.⁹⁶

⁸⁷ Exhibit 5, Statement of Detective Senior Sergeant Mark Colbert dated 19 August 2019, p130.

⁸⁸ Transcript of evidence pp51-53.

⁸⁹ Exhibit 6, Statement of Commander Clive Rust dated 3 May 2018, p121.

⁹⁰ Transcript of evidence p41.

⁹¹ Transcript of evidence p51.

⁹² Exhibit 5, Statement of Detective Senior Sergeant Mark Colbert dated 19 August 2019, p130.

⁹³ Transcript of evidence p51.

⁹⁴ Transcript of evidence p49.

⁹⁵ Transcript of evidence p60, coronial brief, p201.

⁹⁶ Transcript of evidence pp40, 53-54.

89. Sergeant Farrell stated that since Mr Taranto's death he had often turned his mind as to whether another officer being present may have changed the outcome. But concluded it was impossible to say. He noted that it was just as likely that an additional police officer may have been writing notes or performing another task at the time of the fall resulting in an identical outcome.⁹⁷

FINDINGS

90. Having investigated the death of Pierino Taranto and having held an Inquest in relation to his death on 10 June 2020, at Melbourne, I make the following findings and conclusions, pursuant to section 67(1) of the *Coroners Act 2008*:
- a) that the identity of the deceased was Pierino Taranto, born 30 December 1951;
 - b) that Mr Taranto died on 15 November 2017, at Box Hill Hospital, from 1(a) *traumatic high cervical spine injury in the setting of frontal head impact in a man with ankylosing spondylitis*;
 - c) in the circumstances set out above.
91. Never has the method and manner of police arrests been given such intense public scrutiny as they are now, which is due, in part, to recent worldwide events, particularly in the United States of America. Coronial findings are made after an independent forensic analysis of the evidence. They must be made based on clear and cogent evidence. They are often made after having considered and given context to a tragic moment in time.
92. In examining the issues in this case there is no eyewitness evidence or CCTV footage. Therefore, I am reliant on the evidence before me which includes Sergeant Farrell's testimony, D24 police communication records and the forensic medical examination of Mr Taranto. I have carefully and thoroughly considered all of the evidence before me, including the credibility and demeanour of Sergeant Farrell in this case. I am comfortably satisfied that his evidence was truthful and that he was a credible witness.
93. I find that Sergeant Farrell was reasonably justified in his decision to arrest Mr Taranto as he was concerned for the safety of Mr Taranto and other residents of Hopetoun Parade. I consider he acted appropriately and within his powers as a police officer and pursuant to the *Summary Offences Act 1966* (Vic). It is noted that the toxicological

⁹⁷ Transcript of evidence p39.

analysis of antemortem blood samples identified that Mr Taranto had a blood alcohol concentration of 0.20g/100ml, which confirmed Sergeant Farrell's observations and subsequent conclusions.

94. I accept Sergeant Farrell's explanation of how Mr Taranto, whilst handcuffed, fell or stumbled over his leg. Sergeant Farrell consistently gave evidence that he did not use force against Mr Taranto and he did not consider Mr Taranto a physical threat.
95. I find the medical evidence supports that Mr Taranto's underlying medical condition of ankylosing spondylitis meant that he suffered fatal injuries to his cervical spine, with very little force. This was consistent with the events described by Sergeant Farrell.
96. I acknowledge that the language used by Sergeant Farrell when he referred to 'gone to ground' and 'put him down' was imprecise but I accept it was his way of informing police communications that Mr Taranto was on the ground, the situation had escalated and he needed further assistance. It was evident to me that the unexpected outcome of this interaction with Mr Taranto has been difficult for Sergeant Farrell to process.
97. I find despite being a 'one up' patrol, Sergeant Farrell implemented an appropriate risk assessment prior to and during his interactions with Mr Taranto. I accept that his initial decision to attend the scene was to ascertain if Mr Taranto was still there and to make some observations to determine whether further assistance was required. I also accept his evidence that he thought he could attend as a one up member if he conducted an appropriate ongoing risk assessment. At the time this approach appeared to be in contravention of CCI 08/15, however I am satisfied it did not cause or contribute to Mr Taranto's death. There is no evidence before me that would allow me to conclude that the presence of two police officers as opposed to a 'one up' patrol would have materially changed the outcome. There is every likelihood that, even had two police officers been present, it would have been a single officer leading Mr Taranto to the police vehicle following his arrest and that an identical sequence of events may have eventuated. I acknowledge that Victoria Police have now incorporated this into the VPM – Operational Duties and Responsibilities and increased resources which has reduced the risks associated with members working one up.
98. Sadly, the address of 29 Hopetoun Parade, Box Hill was a place where Mr Taranto associated with his former family life before he spiralled into alcohol abuse, mental health decline and homelessness. I acknowledge the grief experienced by Mr Taranto's

family at his sudden loss due to this tragic accident. I convey my sincerest sympathy to Mr Taranto's family.

COMMENTS

99. Pursuant to section 67(3) of the Coroners Act, I make the following comments connected with the death.
100. Whilst this inquest did not examine the issue of public drunkenness in any depth, apart from the reason for Mr Taranto's arrest, I note that Deputy State Coroner Caitlin English in the Finding into the death of Tanya Louise Day delivered by on 9 April 2020, made a recommendation to the Attorney-General to decriminalise the offence of public drunkenness.
101. Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.
102. I direct that a copy of this finding be provided to the following:
- The family of Pierino Taranto;
Chief Commissioner of Police;
Coroner's Investigator, D/S/Sgt Mark Colbert, Victoria Police; and
Professional Standards Command, Victoria Police.

Signature:



JACQUI HAWKINS
CORONER
Date: 19 June 2020

