

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2017 4397

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:	CORONER DARREN J BRACKEN
Deceased:	Scott Andrew Fewson
Date of birth:	25 November 1970
Date of death:	2 September 2017
Cause of death:	Multiple injuries sustained in motorcycle incident (driver)
Place of death:	Princetown Road near the intersection with Melrose Road, Princetown, Victoria

TABLE OF CONTENTS

Background	1
The Coronial Investigation	1
Matters in relation to which a finding must, if possible, be made	3
- Identity of the deceased, pursuant to section 67(1)(a) of the Act	3
- Cause of death, pursuant to section 67(1)(b) of the Act	3
- Circumstances in which the death occurred, pursuant to section 67(1)(c) of the Act	8
Comments pursuant to section 67(3) of the Act	8
Findings and conclusion	8

HIS HONOUR:

BACKGROUND

1. On 2 September 2017, Scott Fewson was 46 years old and died when the motorcycle he was riding left the road and collided with a culvert. Immediately prior to his death, Mr Fewson lived with his wife and 13-year-old daughter at 26 Moroney Street, Boronia, Victoria.
2. No medical history was obtained during the course of the investigation into Mr Fewson's death, however citalopram (an antidepressant) and oxycodone (an opioid medication used to treat moderate to severe pain) were detected on post-mortem toxicology.
3. At the time of his death Mr Fewson held a full licence to ride a motorcycle in Victoria. The motorcycle that Mr Fewson was riding at the time of the incident, a black and silver 2012 Suzuki motorcycle, was registered in his own name.
4. Mr Fewson was an experienced motorcycle rider and was not known to take risks with his riding.¹ He was a member of the 'Razorbacks', a social club for people interested in motorcycles and riding.

THE CORONIAL INVESTIGATION

Coroners Act 2008

5. Mr Fewson's death was a "*reportable death*" pursuant to section 4 of the *Coroners Act 2008* (Vic) (**the Act**) because his death occurred in Victoria, was unexpected, appears to have resulted from an accident or injury and was not from natural causes.²
6. The Act requires a coroner to investigate reportable deaths such as Mr Fewson's and, if possible, to find:
 - (a) The identity of the deceased;
 - (b) The cause of death; and
 - (c) The circumstances in which death occurred.³

¹ Statement of Shivantha Beddewela, Coronial Brief, p.10.

² *Coroners Act 2008* (Vic) s 4.

³ *Coroners Act 2008* (Vic) preamble and s 67.

7. For coronial purposes, “*circumstances in which death occurred*”,⁴ refers to the context and background to the death including the surrounding circumstances. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death relevant circumstances are limited to those which are sufficiently proximate to be considered relevant to the death.
8. The Coroner’s role is to establish facts, rather than to attribute or apportion blame for the death.⁵ It is not the Coroner’s role to determine criminal or civil liability,⁶ nor to determine disciplinary matters.
9. One of the broader purposes of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through comments made in findings and by making recommendations.
10. Coroners are also empowered to:
 - (a) Report to the Attorney-General on a death;⁷
 - (b) Comment on any matter connected with the death investigated, including matters of public health or safety and the administration of justice;⁸ and
 - (c) Make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.⁹

Standard of Proof

11. Coronial findings must be underpinned by proof of relevant facts on the balance of probabilities.¹⁰ The strength of evidence necessary to so prove facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.¹¹

⁴ *Coroners Act 2008* (Vic) s 67(1)(c).

⁵ *Keown v Khan* [1999] 1 VR 69.

⁶ *Coroners Act 2008* (Vic) s 69 (1).

⁷ *Coroners Act 2008* (Vic) s 72(1).

⁸ *Coroners Act 2008* (Vic) s 67(3).

⁹ *Coroners Act 2008* (Vic) s 72(2).

¹⁰ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

¹¹ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J but I note that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in a 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, Brenna, Deane and Gaudron JJ.

12. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demand a weight of evidence commensurate with the gravity of the facts sought to be proved.¹² Facts should not be considered to have been proved on the balance of probabilities by inexact proofs, indefinite testimony, or indirect inferences,¹³ rather such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.¹⁴

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Identity of the Deceased - Section 67(1)(a) of the Act

13. On 2 September 2017, Gage Taite identified the deceased as his friend, Scott Fewson, born 25 November 1970.
14. Mr Fewson's identity is not in dispute and requires no further investigation.

Cause of death - Section 67(1)(b) of the Act

15. On 7 September 2017, Dr Khamis Almazrooei, a Forensic Pathologist trainee practising at the Victorian Institute of Forensic Medicine, conducted an autopsy upon Mr Fewson's body under the supervision of Pathologist Dr Paul Bedford. Dr Almazrooei also reviewed the Police Report of Death (Form 83), which described that Mr Fewson was riding his motorcycle when he failed to negotiate a right-hand bend, struck a concrete structure on the side of the road and landed in a drain. Mr Fewson is said to have died on impact having sustained a puncture wound to his chest. Dr Almazrooei provided a written report, dated 20 December 2017, in which he opined that the cause of Mr Fewson's death was '*multiple injuries sustained in a motorcycle incident (driver)*'. I accept Dr Almazrooei's opinion.
16. Dr Almazrooei's report refers to the post-mortem examination and computed tomography (CT) scan revealing extensive injuries consistent with the clinical history. There was a penetrating wound to the left shoulder (as referred to in the Police Report of Death) which could have been sustained by impact with some parts of the damaged motorcycle (for example, the hand grip or front fork) at the time of the incident.

¹² *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336, referring to *Barten v Williams* (1978) 20 ACTR 10; *Cuming Smith & Co Ltd v Western Farmers Co-operative Ltd* [1979] VR 129; *Mahon v Air New Zealand Ltd* [1984] AC 808 and *Annetts v McCann* (1990) 170 CLR 596.

¹³ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.

¹⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.; *Cuming Smith & CO Ltd v Western Farmers Co-operative Ltd* [1979] VR 129, at p. 147; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brenna, Deane and Gaudron JJ.

17. Toxicological analysis of post-mortem samples detected the presence of ethanol (alcohol) at 0.21g/100mL in the blood and at 0.27g/100mL in the vitreous humour, some four times the legal limit for driving in the state of Victoria. Whilst the effects of a particular blood alcohol concentration on an individual are difficult to predict due to the development of tolerance, levels in excess of 0.15g/100mL can cause considerable depression of the central nervous system affecting cognition.
18. Oxycodone,¹⁵ citalopram¹⁶ and delta-9-tetrahydrocannabinol (cannabis) were also detected in Mr Fewson's post-mortem blood sample. Persons under the influence of cannabis will experience impaired cognition (reasoning and thought), poor vigilance and impaired reaction times and coordination.
19. Significant natural disease in the form of cardiomyopathy was identified. The term cardiomyopathy or heart muscle disease is used to describe any cardiac dysfunction resulting from the heart muscle's abnormality. Cardiomyopathies are a heterogeneous group of diseases of the myocardium associated with mechanical and/or electrical dysfunction and often leading to failure of the myocardial performance, leading to heart failure or life-threatening arrhythmia. There are many types of cardiomyopathy (including hypertrophic, dilated, restrictive) with many causes. Some types of cardiomyopathies are unclassified as the features do not fit into one of the classified cardiomyopathy. In this case, as the exact cause had not been demonstrated, the cardiac changes are considered to be a cardiomyopathy 'not-otherwise specified'. The contribution, if any, of this disease is unable to be determined. Several forms of cardiomyopathy may be genetically inherited and immediate family members are recommended to have their cardiovascular health assessed.

Circumstances in which the death occurred - Section 67(1)(c) of the Act

20. At about 9.00am on Saturday 2 September 2017, Mr Fewson, along with a group of riders from the Razorbacks, set out from Melbourne on a memorial ride to Kangarooie.
21. Just before 1.00pm, the group of approximately 12 riders¹⁷ stopped at the Simpson Hotel (**the Hotel**) at 1 Williams Road, Simpson. The families of the riders, who had followed behind in motorcars, arrived at the Hotel shortly after, including Mr Fewson's daughter.

¹⁵ An opioid medication used for the treatment of moderate to severe pain.

¹⁶ An anti-depressant medication.

¹⁷ Statement of Nadine Pears, Coronial Brief, p.16.

22. At the Hotel, Mr Fewson had a meal for lunch and drank alcoholic spirits (including shots) and several beers.¹⁸
23. By about 4.30pm most of the riders and family cars left for Kangarooobie. Mr Fewson and two other riders, Shivantha Beddewela and Ian Brown, stayed at the Hotel and drank '*a few more beers*'.¹⁹ At around this time the bartender who had been serving the group that afternoon finished her shift and was relieved by a second bartender.
24. The second bartender stated she served the men full-strength beer in pots, a '*mini beer*' (liqueur with cream on top) each and shots of rum and Sambuca which she stated she served us an underpour in 15mL plastic cups. She stated she '*had been keeping an eye on them with what they were drinking from when I started*'.²⁰
25. Shortly before 6.00pm a third bartender arrived and started her shift. She told the Publican she was not going to serve '*those bikies*' as they '*were too drunk*'. The Publican went to the bar and based on her observations believed that the men were '*excessively drunk*'.²¹
26. At 6.00pm the Publican telephoned another member of the Razorbacks and left him a voice message explaining that some club members were still at the Hotel, that they were too intoxicated to ride home and that he would need to arrange for them to be picked up.²² She then contacted the second bartender and told her she had contacted someone to collect the men and that they were not to be provided any more alcohol.
27. At approximately 6.30pm or 7.00pm, Mr Fewson, Mr Beddewela and Mr Brown decided to leave the Hotel and complete their ride to Kangarooobie. By this time several patrons had discussed with the men that they should lock up their motorcycles at the Hotel and get a lift to Kangarooobie, with one patron offering to drive them himself.²³ The men refused the offer for a lift so the patron said he would drive in front of them in his car and they could follow, to which they agreed.²⁴
28. Mr Beddewela reported that as Mr Fewson was getting onto his motorcycle, he lost balance and dropped the motorcycle on the road.

¹⁸ Statement of Dakota Jordan-Steel, dated 10 December 2018.

¹⁹ Statement of Shivantha Beddewela, Coronial Brief, p.8.

²⁰ Statement of Vicky Royal, Coronial Brief, p.28.

²¹ Statement of Nadine Pears, Coronial Brief, p.17.

²² Statement of Nadine Pears, Coronial Brief, p.17.

²³ Statement of Mick Royal, Coronial Brief, p.34; Statement of Marty Duynhoven, Coronial Brief, p.40.

²⁴ Statement of Marty Duynhoven, Coronial Brief, p.40.

He said he and Mr Brown both told Mr Fewson that they should leave the motorcycles behind and get a lift, but Mr Fewson insisted he was okay to ride.²⁵

29. The men set off riding their motorcycles and following the car in a southerly direction down Princetown Road. The men were riding single file with Mr Brown at the front, Mr Fewson in the middle and Mr Beddewela at the rear. The driver of the car stated he was travelling at about 80 km/h and that at one stage he was travelling at 50 km/h while waiting for the men to catch up. He estimated the men were travelling at no greater than 70 km/h.²⁶ The men stayed behind the car until it indicated left and turned off onto Fords Road. The three men continued riding straight on Princetown Road past the intersection. Mr Brown told police he was riding below the speed limit as it was dark and the roads were damp.²⁷ He said he had to slow down to allow Mr Fewson and Mr Brown to catch up as they were riding slower than he was. Mr Brown estimated they were riding between 80 and 100km/h.²⁸
30. The section of Princetown Road south of Fords Road is straight leading to a slight right-hand bend before the intersection with Melrose Road. It is a two-way carriageway with provision for one 3.2-metre-wide lane for traffic in each direction. There are fog lines down each side of the road separating the bitumen from the gravel shoulders. The setting is rural and the road shoulders drop off into earthen drains on each side. The section of road is marked as a 100 km/h zone, however the right-hand bend has an advisory sign of 75 km/h.
31. The men were about 50 metres north of the Melrose intersection²⁹ when Mr Beddewela reported seeing Mr Fewson move to the left as he entered the right-hand bend rather than lean to the right as Mr Beddewela expected he would. Mr Beddewela saw Mr Fewson continue travelling to the left and off the road. Mr Beddewela told police that once off the paved surface, Mr Fewson's motorcycle collided with a concrete structure located in the earth drain before continuing on for a short distance.
32. Mr Beddewela pulled over and approached Mr Fewson, who had landed on the ground on his back, partly on the drain which ran parallel to the edge of the road.

²⁵ Statement of Shivantha Beddewela, Coronial Brief, p.9.

²⁶ Statement of Marty Duynhoven, Coronial Brief, p.40.

²⁷ Statement of Ian Brown, Coronial Brief, p.14.

²⁸ Statement of Ian Brown, Coronial Brief, p.14.

²⁹ Statement of LSC S Thompson, Coronial Brief, p.55.

Mr Brown tried to rouse Mr Fewson but he was unresponsive. The motorcycle had sustained extensive damage with the front wheel having separated from the rest of the motorcycle.³⁰

33. A couple who owned the property adjacent to the road heard the accident and approached the scene. They observed that Mr Fewson's leg was wedged under the motorcycle and he was still wearing a helmet.³¹
34. At 7.25pm the couple called emergency services. Shortly after a passing truck driver stopped at the scene, followed by Mr Brown who had realised something was wrong and turned back.
35. The emergency services operator instructed those present to perform cardiopulmonary resuscitation (CPR) on Mr Fewson, which they did for approximately 30 minutes until Ambulance paramedics arrived.
36. At 7.50pm a Victoria Police unit arrived at the scene and assisted with CPR.
37. Upon arrival paramedics moved Mr Fewson out of the drain to continue resuscitation efforts. They were unable to revive Mr Fewson and he was declared deceased at the scene at approximately 8.04pm.
38. At the time of the incident, it was dark with no road lights in the area. The road was damp, (although it was not raining) and traffic was light.³²

Victoria Police and Coronial Investigation

39. Later that evening, additional Victoria Police units arrived and examined the scene of the incident. They found the road surface to be in good condition.
40. Police observed that a concrete culvert, about 1.5 metres by 1.5 metres in size, had been dislodged and was sticking up at a right angle. A piece was missing from the culvert. A similar culvert on the opposite side of the road was square over a table drain going under the road.
41. Police observed light scrape marks in the road surface believed to be left by Mr Fewson's motorcycle. The scrape marks led directly to marks in the gravel shoulder and onto the concrete structure and the ultimate resting place of Mr Fewson and his motorcycle.

³⁰ Statement of SC Joanne Wastell, Coronial Brief, p.64.

³¹ Statement of Neil Robbins, Coronial Brief, p.45.

³² Statement of Shivantha Beddewela, Coronial Brief, p.10.

42. Police concluded that Mr Fewson struck the culvert after he and his motorcycle left the road. The force of the collision ripped off a large section of the concrete and caused significant damage to the bike.³³
43. There were no other vehicles involved in the collision and police concluded that the road, weather and vegetation were not contributing factors.
44. The motorcycle's speedometer was stuck at approximately 80 km/h.³⁴
45. Police viewed closed-circuit television footage from the Simpson Hotel which showed Mr Fewson consuming approximately 13 pots of beer and six shots of alcohol.³⁵
46. An Infringement Notice was served on the Licensee of the Simpson Hotel for supplying liquor to intoxicated person contrary to the Liquor Control Reform Act with a penalty of \$1903.00 imposed.
47. I am unable to say precisely what caused Mr Fewson and his motorcycle to leave the road and collide with the culvert however, the results of toxicological analysis, his blood alcohol level was 0.21g/100ml, suggest that the considerable amount of alcohol he drank that day and the licit and illicit drugs he had ingested (see paragraph 18) at the very least played a part. Despite a number of apparently well-meaning attempts by others to prevent it, regrettably, Mr Fewson decided to ride his motorcycle from the hotel after having spent the afternoon drinking. I am unable to say why he made such a poor and dangerous decision. Mr Fewson's death was a tragedy which need never have occurred and, had he been involved in a collision with another or other road users, could have caused more death or injury.
48. The coronial brief refers to Police and VicRoads together having assessed the road environs in the vicinity of Mr Fewson's death and concluding that the location of signage and road markings ought to be changed. The brief also contains an unspecific reference to another collision having occurred in January 2016 near the site of Mr Fewson's death.
49. I am satisfied, having considered all of the available evidence, that no further investigation into Mr Fewson's death is required.

³³ Statement of LSC Andrew Macmillan, Coronial Brief, p.62.

³⁴ Statement of LSC Andrew Macmillan, Coronial Brief, p.62.

³⁵ Statement of SC Joanne Wastell, Coronial Brief, p.65.

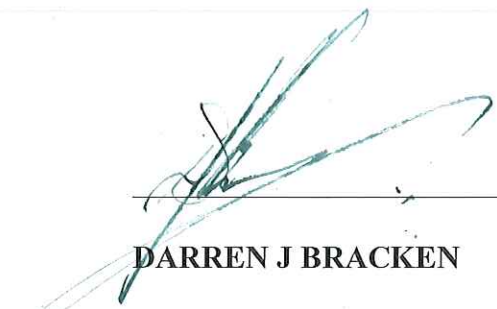
Recommendations

50. I recommend that, informed by appropriate input from Victoria Police, VicRoads undertake an assessment of the condition of Princetown Road between Ford's Road and Melrose Road including the adequacy of signage and road markings applicable to traffic travelling south and around the right-hand bend immediately before Princetown Road crosses Melrose Road. I further recommend that VicRoads make any necessary changes to road marking and signage that this review identifies as being desirable.

FINDINGS AND CONCLUSION

51. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the *Coroners Act 2008*:
- (a) The identity of the deceased was Scott Andrew Fewson, born 25 November 1970;
 - (b) Mr Fewson's death occurred;
 - i. on 2 September 2017 at Princetown Road near the intersection with Melrose Road, Princetown, Victoria;
 - ii. from multiple injuries sustained in a motorcycle incident (driver); and
 - iii. in the circumstances described in paragraphs 20 - 49 above.
52. Pursuant to section 73(1) of the Coroners Act 2008, I order that this finding be published on the internet.
53. I direct that a copy of this finding be provided to the following:
- (a) Nicole Fewson, senior next of kin.
 - (b) VicRoads.
 - (c) Senior Constable Joanne Wastell, Coroner's Investigator, Victoria Police.

Signature:



DARREN J BRACKEN

CORONER



Date: 23 June 2020.

