



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2018 5273

FINDING INTO DEATH WITH INQUEST OF SPIROS BOURSINOS

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

Findings of:	Coroner Jacqui Hawkins
Delivered on:	29 April 2021
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, Victoria, 3006
Inquest hearing date:	1 April 2021
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
Chief Commissioner of Police	Mr Ben Lloyd, Partner, Russell Kennedy Lawyers
Catchwords:	DRUG INDUCED PSYCHOSIS, PHYSICAL/MECHANICAL RESTRAINT, VICTORIA POLICE, DEATH IN POLICE CUSTODY, MANDATORY INQUEST, LICENSED PREMISES, RESPONSIBLE SERVICE OF ALCOHOL TRAINING

BACKGROUND

1. Spiros Boursinos was 45 years old when he passed away on 20 October 2018, following an incident at the Antique Bar, Glen Huntly Rd, Elsternwick.
2. At the time of his passing Mr Boursinos lived at Cheltenham with his mother, Christine and his father, Nicholas Boursinos, who has since passed away.
3. Mr Boursinos was the youngest of three children and had a sister, Helen, and a brother, Steven. He grew up in the family home in Cheltenham and attended Cheltenham East Primary School. He later attended St James Secondary College in East Bentleigh and Sandringham Technical School where he studied Business Studies.
4. At age 17 years Mr Boursinos started his own event management business, focusing primarily on dance events. It became, what his mother described, as his life-long passion. He had a keen interest in music culture which according to his brother Steven, was influenced by his father's involvement in the Greek community being a school principal.
5. In 1993 Mr Boursinos started his own business, Earthcore, described as an outdoor music festival which occurred once a year in November. The first Earthcore festival attracted approximately a hundred patrons but later Earthcore Festivals attracted thousands and were usually held in country Victoria and some were hosted interstate.
6. In 2008 his Earthcore business entered bankruptcy resulting in Mr Boursinos initially being unemployed, before commencing employment at the Royal Melbourne Hotel as an event's organiser. Whilst at the Royal Melbourne Hotel Mr Boursinos re-started his Earthcore business with mixed success.
7. Around 2000 Mr Boursinos met Bianca Besanko and a few years later they started dating. Their relationship continued as "*an on and off relationship until May 2018*".¹

CORONIAL INVESTIGATION

Jurisdiction

8. Mr Boursinos' death constituted a 'reportable death' pursuant to section 4(2)(c) of the Coroners Act 2008 (Vic) (Coroners Act), as his death occurred in Victoria and

¹ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 372.

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”.

9. The evidence in this case established that Mr Boursinos was in the custody of a Victoria Police member immediately before his death.
10. 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 1 April 2021.

Purpose of the Coronial Jurisdiction

11. The Coroners Court of Victoria (**Coroners Court**) is an inquisitorial court.² 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.
12. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
13. 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.
14. 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.
15. 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.

² Section 89(4) *Coroners Act 2008*.

16. 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 civil or criminal liability arising from the investigation of a reportable death. Further they are specifically prohibited from including a finding or comment, or any statement that a person is, or may be, guilty of an offence.³ It is also not the role of the coroner to lay or apportion blame, but to establish the facts.⁴

Standard of Proof

18. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.⁵ 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.⁶
19. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁷ The effect of this and similar authorities is that coroners should not make 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.⁸ 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.⁹

Sources of Evidence

21. This Finding draws on the totality of the coronial investigation into Mr Boursinos' death. That is, the court records maintained during the coronial investigation, the

³ 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.

⁴ *Keown v Khan* (1999) 1 VR 69.

⁵ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

⁶ *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.

⁷ (1938) 60 CLR 336.

⁸ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁹ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

Coronial Brief and any further material sought and obtained by the Coroners Court, the evidence adduced during the Inquest and any submissions.

22. 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.
23. In considering the issues associated with this Finding, I was mindful of Mr Boursinos' basic human rights to life, dignity and humane treatment as espoused in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), in particular, sections 8, 9, 10, 21 and 22.

CIRCUMSTANCES OF DEATH

Circumstances proximate to the death

24. On Friday 19 October 2018 Mr Boursinos spent most of the day with his friend, and business associate, Geordan Trakman. Mr Boursinos travelled with Mr Trakman to Anglesea to look at potential sites for the upcoming 25th Anniversary of the Earthcore Festival. Prior to this day, Mr Boursinos had experienced difficulty sourcing appropriate properties, and subsequent approval from multiple agencies to host the Earthcore event.¹⁰
25. By 5.00pm they had successfully secured two sites for the Earthcore Festival near Anglesea and Launching Place and it looked likely to proceed in November 2018.¹¹ To celebrate Mr Boursinos messaged a friend, Andrew Vile and asked him to meet he and Mr Trakman at the Antique Bar, Elsternwick for a drink.¹²
26. The Antique Bar located at 218 Glen Huntly Road was a single fronted, double storey 'Victorian' brick building. The bar contained a front open bar area and a number of smaller, private areas that were located on the ground floor and rear courtyard. The bar was immediately accessible from the front door and contained a number of tables and chairs and a galley style serving bar was located parallel with the eastern wall. The bar had commenced trading at 4pm on Friday 19 October 2018 and the owner, Sam Falleti was working with five other staff members that evening.

¹⁰ Statement of Geordan Trakman dated 7 November 2018, Coronial Brief, p 364.

¹¹ Statement of Geordan Trakman dated 7 November 2018, Coronial Brief, p 364.

¹² Statement of Andrew Vile dated 6 November 2019, Coronial Brief, p 199.

27. Mr Boursinos and Mr Trakman arrived at the Antique Bar at approximately 6.30pm and both consumed two Jack Daniels and Coke. An hour later Mr Trakman left and shortly after Mr Vile arrived.
28. Sometime around 10.30pm Campbell Bryant attended the Antique Bar and joined Mr Boursinos and Mr Vile. Mr Vile estimated that Mr Boursinos consumed approximately six bourbon and cokes during that time. Mr Vile then left around midnight. Mr Bryant thought Mr Boursinos “*seemed fine and happy and was behaving normally*”.¹³
29. By approximately 12.30am on Saturday 20 October 2018 a number of staff had finished their shifts leaving Sam Falleti, and two bar staff; Hayden Williams-Werchon and Jordan Gammans working within the licensed premises. Mr Falleti thought it was a quiet night and estimated that patron numbers were low.¹⁴
30. At approximately 12.50am Mr Falleti was outside the Antique Bar, talking to Salem Yaccob, who was attempting to enter the premises but had been banned due to his prior conduct. Mr Falleti spoke with Mr Yaccob for about an hour out the front of the bar but continued to keep an eye on what was happening in the bar.¹⁵
31. Around 2.00am Mr Bryant bought two drinks and when he handed one of the glasses to Mr Boursinos, he said that he didn’t want it, and then began to have “*a reserved look on his face and seemed withdrawn ... [and] to be thinking about something or dwelling on something,*”¹⁶ but did not think anything of it at the time. Mr Bryant did not think Mr Boursinos was drunk but he said if he was “*he wasn’t really the kind of person that would show it*”.¹⁷
32. A short time later Mr Bryant noticed Mr Boursinos was behind the bar screaming out “*they’re coming to get me, call the police, call the police*”.¹⁸ Mr Bryant didn’t think Mr Boursinos was addressing anyone in particular. He considered Mr Boursinos “*was in a maniacal state, he was hyper alert and seemed to be having some kind of psychotic episode*”.¹⁹ Whilst he did not appear to have a clear recollection of all the events, the

¹³ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 192.

¹⁴ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 176.

¹⁵ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 176.

¹⁶ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 192.

¹⁷ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 192.

¹⁸ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 192.

¹⁹ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 192.

scene was described by Mr Bryant as chaotic with Mr Boursinos yelling and screaming.²⁰

33. Just after 2.00am Mr Yacob entered the Antique Bar to use the bathroom. Mr Falleti followed him inside the bar as he didn't want him there. According to Mr Gammans, Mr Yacob's presence in the bar seemed to cause an escalation in Mr Boursinos' behaviour.²¹
34. Mr Boursinos made six 000 calls between 2.03am to 2.13am. In the first call to the 000 operator, Mr Boursinos said in part:

281 – 281 Glenhuntly²² Rd – 281 Glenhuntly Rd. I'm being attacked. 281 Glenhuntly Rd – Don't - 281 Glenhuntly Rd. I'm about to get fucking killed. Elsternwick – I'm about to get killed. I'm not going out there – call the police. I'm getting attacked – call the police.

Unknown male: *I've called them.*

*What do you mean you've called them? 281 Glenhuntly Rd – don't – don't – leave me alone. Please, please don't touch me – call the police.*²³

35. Mr Falleti said he could hear Mr Boursinos continuously screaming out "*he's coming to get me, call the cops, help me*".²⁴ Mr Falleti thought Mr Boursinos looked past him to where Mr Yacob had gone.²⁵ Mr Boursinos had moved behind the bar towards where barstaff, Mr Gammans and Mr Williams-Werchon were situated. Mr Boursinos then continued to pace behind the back of the bar, screaming and repeatedly saying that people were trying to kill him.²⁶
36. At 2:05am Mr Boursinos made a second call to 000 from his mobile and told the operator:

Leave me alone – leave me alone. Police – police – call the police – 281 Glenhuntly Rd – 281 Glenhuntly Rd. I want to be left alone – leave me alone man - don't – don't. 281 Glenhuntly Rd – Elsternwick.

²⁰ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 192.

²¹ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

²² Glen Huntly Road, Elsternwick is spelt as Glenhuntly in the transcript of police communications. Mr Boursinos also gives the incorrect dress of the Antique Bar as 281 Glen Huntly Road, Elsternwick, when in fact it was 218 Glen Huntly Road, Elsternwick.

²³ ESTA Transcript of Triple Zero Call, Coronial Brief, pp 451-7.

²⁴ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 177.

²⁵ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 177.

²⁶ Statement of Hayden Williams-Werchon dated 20 October 2018, Coronial Brief, p 188.

*I'm going to get killed outside – 281 Glenhuntly Rd. Don't – I know what's going on. 281 Glenhuntly Rd – police – Hang on, they're waiting for me outside the pub there. Call the police now, he's about to come and get me.*²⁷

37. One minute later, Mr Yacob exited the bathroom and walked over to the bar and according to Mr Falleti looked at Mr Boursinos “*like he was trying to understand what was wrong and what was happening*”.²⁸ Mr Falleti then took hold of Mr Yacob as he took a step toward Mr Boursinos and removed him from the bar by pushing him out the front door.²⁹

38. Mr Boursinos' third call to 000 was made at 2:07am, where he said:

*I know what they're doing. 281 Glenhuntly Rd – Glenhuntly Rd – I'm getting attacked – call the police. 281 Glenhuntly Rd. Leave right now or the police come. They know – They know what's going on here. I can't go out the front there, I can't go out the front.*³⁰

39. One minute later, he called 000 and said:

*Call the police – police – 281 Glenhuntly Rd – I'll go – I'll go when he goes - yeah, yeah, let him go and I'll go.*³¹

40. At 2:09 am Mr Boursinos again called 000 and said in part:

That's why he's waiting – that's why he's waiting. Call the police – police. don't – just leave me. You're not protecting me at all I know what's going on here. I'm getting shut up – leave me alone please.

Call the police, fucking leave, fucking leave.

Police – police – police – here he comes, here he comes. Police – police, leave me alone man.

Don't, don't, please don't – don't shoot me, don't shoot me, don't shoot me – let me go – let me go outside – let me go outside.

Here he comes – here he comes. Don't, don't, don't, don't, don't, don't, don't, don't, let me go, call the police Campbell.

Call the police. [...]

*Don't, don't, you fucking cunt. [...] Shut up. Call the police.*³²

²⁷ ESTA Transcript of Triple Zero call, Coronial Brief, pp 458-62.

²⁸ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 177.

²⁹ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 177.

³⁰ ESTA Transcript of Triple Zero call, Coronial Brief, pp 463-4.

³¹ ESTA Transcript of Triple Zero call, Coronial Brief, pp 465-6.

³² ESTA Transcript of Triple Zero call, Coronial Brief, pp 467-72.

41. As Mr Bryant, Mr Gammans and Mr Williams-Werchon continued to try to calm Mr Boursinos, he grabbed a large glass bottle from the water station and *“he seemed to be holding it like he intended to use it for self defence, there didn’t seem to be any aggression in him towards anyone else.”*³³ Mr Gammans was able to quickly and easily get the bottle away from him. Mr Gammans then tried to protect a cluster of other water bottles on the bar as Mr Boursinos attempted to grab another one. Mr Boursinos then retreated behind the bar in an agitated state.
42. When Mr Boursinos saw Mr Falleti re-enter the bar, Mr Yacob followed him into the bar and walked directly towards the bar which again seemed to cause Mr Boursinos’ behaviour to escalate. Mr Boursinos then picked up a bottle of Chivas Regal whiskey and held it as if he was arming himself.³⁴ Mr Falleti grabbed Mr Yacob and again removed him from the premises. As he did this Mr Yacob unsuccessfully grabbed a table to try to prevent himself from being ejected. As this occurred Mr Boursinos hid behind Mr Gammans and Mr Williams-Werchon. Mr Gammans was again able to remove the bottle of Chivas Regal from Mr Boursinos with minimal effort.³⁵
43. Following Mr Yacob’s second ejection, Mr Boursinos then rushed to the front door in a visibly manic state. Mr Gammans stated that Mr Boursinos *“started to go towards the exit with his friend, but then he panicked again and started yelling ‘You need to lock the door!’ Spiros locked the hinge lock on the main door”*.³⁶
44. Mr Boursinos then grabbed a stool from the bar and held it up in the air.³⁷ It is unclear what his intentions were. Mr Gammans was able to take the barstool from him *“without him swinging it or trying to hurt [him] with it.”*³⁸ According to Mr Gammans *“he seemed to only want to use it for self-defence and not to hurt anybody else.”*³⁹ After he took the barstool from Mr Boursinos, *“he seemed more panicked. He looked like he had been cornered. [He] ran full pelt at the bar and went behind it”*.⁴⁰
45. At 2:13am Mr Boursinos made his final call to 000 and said:

³³ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

³⁴ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 177.

³⁵ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

³⁶ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

³⁷ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

³⁸ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

³⁹ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

⁴⁰ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, pp 183-4.

*Call the police – Glenhuntly Rd – going to shoot me now – Don't, Don't, get away, leave me alone, leave me alone.*⁴¹

46. Mr Boursinos then picked up a bottle of 'Paradiso Lychee' Liqueur and struck the window at the front of the bar with the bottle two or three times⁴² which caused the window to crack.⁴³ Mr Falleti was standing outside on the footpath when a patron told him that he was going to call the police. Mr Falleti responded with "*no, he needs an ambulance*"⁴⁴ as he thought this was a medical issue.⁴⁵ Once he saw Mr Boursinos strike the window with the bottle Mr Falleti went back into the bar to try to bring the situation under control.⁴⁶
47. Prior to striking the shopfront window, Mr Boursinos' period of drug induced psychosis, which included behaviour of acute paranoia and extreme agitation had been occurring for a period of just under 13 minutes.
48. Mr Williams-Werchon then moved outside to replace Mr Falleti to prevent Mr Yacob from re-entering the premises and provoking any further reaction from Mr Boursinos.
49. Mr Gammans then approached Mr Boursinos who had attempted to climb over the bar, still holding the glass bottle of Paradiso Lychee Liqueur. Mr Gammans grabbed Mr Boursinos' right arm and attempted to restrain him and remove the bottle⁴⁷ from his grasp.
50. During the scuffle Mr Boursinos grabbed a wine glass that subsequently broke, leaving him holding the stem firmly in his grip. Mr Gammans does not know whether it was deliberate or whether it was broken during the scuffle but "*he began brandishing the broken wine glass*".⁴⁸ Mr Gammans did not think he was threatening anyone with the wine glass, more that he intended to defend himself.⁴⁹ Mr Falleti grabbed Mr Boursinos' right hand with both of his hands to prevent him from using the glass stem and told Mr Gammans to remove the glass from his hand, which he was able to do.⁵⁰

⁴¹ ESTA Transcript of Triple Zero call, Coronial Brief, pp 483-5.

⁴² Mr Gammans states Mr Boursinos struck the window three times, the CCTV footage shows it was twice.

⁴³ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

⁴⁴ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 178.

⁴⁵ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 178.

⁴⁶ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 178.

⁴⁷ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

⁴⁸ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

⁴⁹ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

⁵⁰ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 178; Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

51. Mr Falleti and Mr Gammans continued to scuffle with Mr Boursinos and attempted to take him to the ground to get him away from all of the glassware on the bar.⁵¹ Mr Gammans said *“there were too many things on the bar for him to grab and we thought it would be safer to stop him from grabbing anything else”*.⁵²
52. After hearing the commotion, a patron, Dean Spencer came to assist to restrain Mr Boursinos and helped drag him to the ground.⁵³ It took the efforts of Mr Falleti, Mr Gammans and Mr Spencer to place Mr Boursinos to the ground behind the bar.⁵⁴
53. At 02:15am, the CCTV footage shows Mr Falletti, Mr Gamman and Mr Spencer wrestling with Mr Boursinos who was on his knees in a kneeling position whilst Mr Falleti straddled his back, Mr Spencer stood bent over at the left side and Mr Gammans knelt to the front. Ten seconds later Mr Boursinos raised his back by lifting his legs and knees several times and appeared to try to remove Mr Falleti from his back unsuccessfully.
54. Mr Falleti stated he climbed onto Mr Boursinos’ back in an attempt *“to put as much force as possible on his hand to stop him moving until help arrived.”*⁵⁵ According to Mr Falleti, he *“ended up kind of lying with [his] stomach on his back holding his right hand. I just remember his body slowly touching the floor and [Mr Boursinos was] no longer on his hands and knees.”*⁵⁶ Mr Boursinos continued to yell and tried to move his limbs to get away.⁵⁷ Mr Gammans said Mr Boursinos was struggling to get away the whole time.⁵⁸
55. Mr Spencer described that the two bar staff had hold of Mr Boursinos’ back and shoulders: *“One placed himself over the back directly, crouching over him and one guy was to his left holding his upper body.”*⁵⁹ Mr Spencer was also crouched over the left of Mr Boursinos and held his back and shoulders down.⁶⁰ Mr Spencer stated that the male

⁵¹ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

⁵² Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

⁵³ Statement of Dean Spencer dated 20 October 2018, Coronial Brief, pp 210- 1.

⁵⁴ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184; Statement of Dean Spencer dated 20 October 2018, Coronial Brief, p 211.

⁵⁵ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 179.

⁵⁶ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 179.

⁵⁷ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 179.

⁵⁸ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 185.

⁵⁹ Statement of Dean Spencer dated 20 October 2018, Coronial Brief, p 211.

⁶⁰ Statement of Dean Spencer dated 20 October 2018, Coronial Brief, p 211.

*“was still going nuts yelling about a male out the front of the bar. He was still flapping around and going crazy”.*⁶¹

56. Two-and-a-half minutes after the scuffle began, Mr Boursinos’ knees collapsed underneath him under the weight of Mr Falleti until he was lying prone on the ground on his stomach. At that time Mr Boursinos’ legs can be seen outstretched and moving up and down, kicking wildly.
57. Mr Falleti remained lying on top of Mr Boursinos until the arrival of Victoria Police members. Whilst on the ground, Mr Falleti called out to see how long until police would arrive.⁶² At the same time he spoke into Mr Boursinos’ ear and told him that he was safe, and that help was coming.⁶³
58. Mr Boursinos is seen on CCTV to move his legs and body and attempt to remove Mr Falleti from his back numerous times. Mr Gammans estimated they were restraining him facedown for about two minutes.⁶⁴ This is consistent with the CCTV footage that shows Mr Boursinos’ knees collapse underneath the weight of Mr Falleti at 2.16.43am and Mr Gammans and Mr Spencer commence to remove themselves from a prone Mr Boursinos at 2.18.52am.
59. Once police arrived, Mr Falleti moved off Mr Boursinos’ back at the request of Victoria Police members. He thought Mr Boursinos was still awake.⁶⁵
60. Just prior to the arrival of Victoria Police, Mr Boursinos can no longer be seen moving on the CCTV footage.

Arrival of Victoria Police and Ambulance Victoria

61. Due to the number of calls made by Mr Boursinos, there was some initial confusion as to the nature of the job. The first D24 Police Communications (**police communications**) call was broadcast just after 2.06am as:

I’ve just had a job come through as a welfare check. Male keeps yelling his address, being 281 Glenhuntly Road in Esternwick, said he’s being attacked. He’s incoherent, and the call taker, he’s still trying to get some

⁶¹ Statement of Dean Spencer dated 20 October 2018, Coronial Brief, p 211.

⁶² Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 184.

⁶³ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 179.

⁶⁴ Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 185.

⁶⁵ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 179.

*further details but that's all I've got at the moment. I'll run a location check for you. Received?*⁶⁶

62. Police communications then broadcast just before 2.13am:

*Yeah, there's a second call come through as unknown location, but there's been five calls from this male. Now, I've had a look at the CLI and the phone is registered to a Spiro Boursinos. I'll run him through. He said he's still getting attacked. He was talking to people in the background, screaming for police. He was very erratic.*⁶⁷

63. The next broadcast just before 2.15am stated:

*...Priority 1, ... there's a male versus staff, the male's going off, he's got tanned skin, short, he's wearing a black T-shirt. He's now wrestling people inside the premises. I've got another call for it. It's the Antique Bar. It's a male with Tourette's. he's losing (sic) control, he's behind the bar, he's in a headlock and he's trying to bottle people. He has broken a glass and he's trying to stab someone, so safety principles.*⁶⁸

64. Constable Rachel Hart and Senior Constable (SC) John Patounas were the first police to respond to the call at 2:18am and immediately attended the Antique Bar, however they were unclear as to what they were responding to. One of the updates was that “*a male ... had smashed a bottle and was trying to stab people. Another update was that a male was being restrained.*”⁶⁹ SC Patounas said he could not remember the order the jobs came through but remembered the operator providing details over the air.⁷⁰

65. Upon their arrival Constable Hart and SC Patounas were advised that a male was being restrained behind the bar.⁷¹ As soon as they entered the bar they observed Mr Boursinos lying prone on the floor behind the bar with three males on top of him.⁷²

66. SC Patounas observed a male lying face down:

*with his hands pinned down in front of him. His arms were stretched out above his head, with his elbows bent, and his hands literally above his head, close together. I could see three males on top of him, applying weight on his back and stopping him from moving.*⁷³

⁶⁶ Transcript of Police Communications, Coronial Brief, p 645.

⁶⁷ Transcript of Police Communications, Coronial Brief, p 646.

⁶⁸ Transcript of Police Communications, Coronial Brief, p 646.

⁶⁹ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 250.

⁷⁰ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 250.

⁷¹ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

⁷² Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 239.

⁷³ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

67. Due to a lack of space behind the bar, SC Patounas was unable to *“tell exactly how each of the three males were positioned”*⁷⁴ as the area behind the bar was just over a metre wide.⁷⁵ SC Patounas noted that *“the male ... wasn’t moving, being aggressive or saying anything when [he] arrived”*.⁷⁶
68. SC Patounas placed his foot on Mr Boursinos’ left wrist as a precautionary measure, whilst the three males removed themselves and then Constable Hart and SC Patounas knelt next to Mr Boursinos⁷⁷ and handcuffed him.⁷⁸ Constable Hart observed that Mr Boursinos was breathing⁷⁹ but noted that as she approached him she saw *“his hands were twitching [and] he was not resisting”*.⁸⁰
69. As soon as the handcuffs were placed on Mr Boursinos the police rolled him onto his right side, into the recovery position.⁸¹ Constable Hart could hear air moving through Mr Boursinos’ mouth and observed his stomach and chest moving in and out.⁸² The officers tried to get a response and asked him for his name but he was not responding.⁸³ SC Patounas rubbed his chest⁸⁴ whilst Constable Hart gently slapped him to his cheeks in an attempt to wake him. Constable Hart considered that *“his eyes appeared to be twitching and did not look right”*.⁸⁵ After Mr Boursinos made a groaning noise, Constable Hart became concerned and immediately contacted police communications to confirm an ambulance had been dispatched.⁸⁶
70. Constable Hart and SC Patounas then tried to sit Mr Boursinos up in an attempt to wake him however he remained unresponsive.⁸⁷ SC Patounas observed that Mr Boursinos was falling in and out of consciousness and they quickly returned him to the recovery position where the officers observed his chest to be moving up and down.⁸⁸ SC Patounas *“kept giving him chest rubs to try and keep him conscious and awake”*⁸⁹ and

⁷⁴ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

⁷⁵ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

⁷⁶ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

⁷⁷ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

⁷⁸ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 252.

⁷⁹ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸⁰ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 239.

⁸¹ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸² Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸³ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸⁴ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 252.

⁸⁵ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸⁶ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸⁷ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

⁸⁸ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 252.

⁸⁹ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 252.

observed “*the whole time the male was on the ground lying on his side [they] could see his chest moving so [they] knew he was breathing*”.⁹⁰

71. Patrol Supervisor Acting Sergeant (A/Sgt) Ward Randall arrived shortly thereafter and was quickly briefed about the situation. A/Sgt Randall assessed Mr Boursinos and told Constable Hart and SC Patounas to check the colour of his lips, which had started to turn purple and they then realised Mr Boursinos was no longer breathing.⁹¹ A/Sgt Randall advised SC Patounas to immediately remove the handcuffs⁹² and rolled Mr Boursinos onto his back. A/Sgt Randall could not feel a pulse and immediately commenced cardiopulmonary resuscitation (CPR) with the assistance of Constable Hart and SC Patounas⁹³ which continued for over an hour.
72. At 2.29am Advanced Life Support Paramedics from Ambulance Victoria, Vanessa Ragauskas and Phoebe Sinnett attended the bar and observed police performing CPR upon Mr Boursinos behind the bar. Mr Boursinos was moved out from behind the bar into the front bar to create more space to work effectively.⁹⁴ Mr Boursinos was found to be pulseless with no spontaneous breathing effort and his ECG rhythm at the time was asystole.⁹⁵ Paramedics provided ventilation through a laryngeal airway mask whilst A/Sgt Randall and SC Patounas continued to rotate performing chest compressions throughout the entire resuscitation attempt at the direction of the paramedics.
73. At 2.35am MICA Paramedic, Nanto Cielens attended the Antique Bar and determined Mr Boursinos was in cardiac arrest with his ECG rhythm at the time asystole, his pupils were fixed and dilated and his skin was generally cyanosed all over.⁹⁶ Another MICA Paramedic, Patrick Donaldson arrived and took over management of Mr Boursinos’ airway including the insertion of an endotracheal tube to ensure continued adequate ventilation and the insertion of an orogastric tube.⁹⁷
74. Despite all best efforts, Mr Boursinos was declared deceased at 3.07am.⁹⁸

⁹⁰ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 253.

⁹¹ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 241.

⁹² Statement of Acting Sergeant Ward Randall dated 20 October 2018, Coronial Brief, p 292.

⁹³ Statement of Acting Sergeant Ward Randall dated 20 October 2018, Coronial Brief, p 292.

⁹⁴ Statement of Vanessa Ragauskas dated 25 October 2018, Coronial Brief, p 234.

⁹⁵ Statement of Vanessa Ragauskas dated 25 October 2018, Coronial Brief, p 234.

⁹⁶ Statement of Nanto Cielens dated 3 November 2018, Coronial Brief, p 232.

⁹⁷ Statement of Nanto Cielens dated 3 November 2018, Coronial Brief, p 232.

⁹⁸ Statement of Nanto Cielens dated 3 November 2018, Coronial Brief, p 232.

Coronial investigation

75. Detectives from the Glen Eira Bayside Police Service Area attended the scene and commenced an investigation. A critical incident was subsequently declared with members of the Victoria Police Homicide Squad and Professional Standards Command attending.
76. A crime scene examination was undertaken by officers of the Major Crime Scene Unit (MCSU), Victoria Police Forensic Services Centre. Leading Senior Constable (LSC) Rebecca Robinson observed that the serving bar was located along the eastern side of the room with an array of whiskey and liqueur bottles adorning the eastern wall and beer taps located along the northern section of the wall.
77. MCSU officers identified, photographed and collected the following relevant items of evidence:
 - a) A 'Nokia' mobile phone and a wallet were centrally located on the lower section of the serving bar. The wallet contained various forms of identification in the name of Spiro Boursinos.
 - b) Located on the serving bar near the wallet and phone was a 700ml bottle of Chivas Regal whiskey.
 - c) A wine glass broken into two pieces was located on the floor below the northern section of the bar. A second broken wine glass was located on the northern section of the bar near the beer taps. Pieces of broken glass were also located on the bench along the eastern wall, in close proximity to the beer taps.
 - d) An empty 700ml bottle of 'Paradiso Lychee' liqueur was located on top of a tray of glasses towards the northern end of the bar, along the eastern wall.
 - e) A black t-shirt that had been cut off Mr Boursinos whilst medical assistance was rendered was located underneath him during the crime scene examination.
78. During a laboratory examination of exhibits collected from within the crime scene, the black t-shirt cut off Mr Boursinos underwent further examination and a small resealable plastic bag containing a white powder/crystalline substance was located. The white powder/crystalline substance was later identified as cocaine.

79. The external surface of the 'Chivas Regal' whiskey bottle was later swabbed which detected the presence of Mr Boursinos' DNA.⁹⁹

IDENTITY OF THE DECEASED

80. Mr Boursinos was formally identified from the Victoria Police Fingerprint database. His name was recorded on this database as Spiro Boursinos. There was other evidence before me such as the Application for the Release of Deceased Person to suggest his name was Spiros Boursinos. Due to this discrepancy, clarification was sought from the family who have requested Mr Boursinos should be referred to as Spiros Boursinos. On that basis, he is referred to as Spiros Boursinos in this Finding.

MEDICAL CAUSE OF DEATH

81. On 20 October 2018, Dr Michael Burke, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an autopsy on the body of Mr Boursinos and reviewed the Victoria Police Report of Death Form 83, Section 27 request for autopsy and a post-mortem computed tomography (CT) scan. Sometime after the autopsy Dr Burke also reviewed the Ambulance Victoria records as well as CCTV footage of the incident from within the Antique Bar.
82. Dr Burke made the following relevant comments:
- a) The post-mortem examination showed underlying coronary artery disease. Coronary artery disease may cause sudden death as a result of a sudden cardiac arrhythmia ('heart attack').
 - b) The post-mortem examination showed a fractured right superior cornua of the thyroid cartilage ('larynx or voice-box') with associated bruising indicating pressure was applied to the deceased's neck at some time during the incident which led to death.
 - c) The toxicological analysis showed the presence of cocaine. Cocaine is a stimulant which, amongst other effects, may be associated with cardiac arrhythmias and death. Cocaine may lead to agitation and acute psychosis. The drug may also be associated with lethal cardiac arrhythmias.
 - d) The toxicology analysis also showed a blood alcohol level of 0.04g/100mL.

⁹⁹ Statement of Janette Psaroudis dated 15 May 2019, Coronial Brief, p 347

- e) Mechanical asphyxia describes a situation when one is unable to expand one's chest and inspire air to initiate gas exchange (oxygen for carbon dioxide). Forceful restraint may be described as a form of mechanical asphyxia.
- f) Mr Boursinos had a number of factors which may have contributed to, or led to his death. He had underlying coronary artery disease. During the episode of restraint he may well have suffered relative low blood oxygen, increasing his risk of myocardial (heart) ischaemia. Relative hypoxaemia (low oxygen) may well predispose to a cardiac arrhythmia. Cocaine toxicity is also a potential cause of death.¹⁰⁰

83. Dr Burke provided an opinion that the medical cause of death was 1(a) *coronary artery disease and mechanical asphyxia in a man using cocaine*.¹⁰¹ I accept and adopt this cause of death.

ISSUES EXAMINED AT INQUEST

84. The following issues were examined at the Inquest:

- a) Mr Boursinos' history of mental ill-health and drug induced psychosis;
- b) Conduct of the bar owner, bar tender and a patron in managing and restraining Mr Boursinos;
- c) Conduct of Victoria Police officers; and
- d) Adequacy of training available to staff in the liquor industry specific to a number of aspects related to the circumstances of Mr Boursinos' death.

Mr Boursinos' history of mental ill health and drug induced psychosis

85. The coronial investigation revealed that Mr Boursinos had a history of mental ill health and had experienced prior episodes of drug induced psychosis. It was important to examine some of these incidents to determine whether he had ever experienced other examples of the type of behaviour he exhibited in the early morning of 20 October 2018.

¹⁰⁰ Medical Examination Report dated 30 January 2019, Coronial Brief, pp 325-6.

¹⁰¹ Medical Examination Report dated 30 January 2019, Coronial Brief, p 325.

History of mental ill health

86. In April 2007 Mr Boursinos was referred by his General Practitioner (**GP**) to Consultant Psychiatrist, Dr Leslie Chester. Dr Chester reported that Mr Boursinos presented with a long history of multiple problems, which included mood fluctuations, and depression at times, but was generally able to function normally.¹⁰² At the time, Mr Boursinos reported that he had financial problems and was planning to liquidate his company.¹⁰³ Dr Chester advised Mr Boursinos to increase his antidepressant medication.
87. Dr Chester did not see Mr Boursinos again until June 2008 where he reported he had discontinued the Lexapro and was drinking excessively and was smoking cocaine quite frequently. He again referred to business debts and conflicts with his girlfriend.¹⁰⁴ Dr Chester advised Mr Boursinos to seek drug and alcohol counselling.
88. At a further appointment on 30 June 2008, Mr Boursinos reported feeling improved in mood, was less depressed and more settled and he reported that he had reduced his alcohol consumption and ceased drug abuse completely. His concerns at the time were about his business and finances.¹⁰⁵ Mr Boursinos made a further appointment for 17 December 2008 however failed to attend that appointment.
89. No evidence was obtained of any intervention with Mr Boursinos by a Mental Health Professional between July 2008 and January 2018.
90. In January 2018 Mr Boursinos was referred by his GP to Psychologist, AnneMaree Eddy for “*counselling for business failure, cocaine use and drug induced psychosis*”.¹⁰⁶ He attended for a total of six sessions between 30 January to 1 May 2018. Ms Eddy reported that Mr Boursinos presented with depression and anxiety, but there was no indication of psychosis or drug use at the time of treatment.¹⁰⁷
91. On 7 June 2018 Mr Boursinos presented at the Monash Medical Centre Emergency Department at 12.42 am complaining of panic attacks with paranoid thoughts in the setting of cocaine and alcohol use. An ECG showed sinus tachycardia with a heart rate of 100-110 bpm. Mr Boursinos was monitored for a number of hours before he was

¹⁰² Statement of Dr Leslie Chester dated 5 March 2019, Coronial Brief, p 395.

¹⁰³ Statement of Dr Leslie Chester dated 5 March 2019, Coronial Brief, p 395

¹⁰⁴ Statement of Dr Leslie Chester dated 5 March 2019, Coronial Brief, p 396.

¹⁰⁵ Statement of Dr Leslie Chester dated 5 March 2019, Coronial Brief, p 396.

¹⁰⁶ Statement of AnneMaree Eddy dated 27 February 2019, Coronial Brief, p 358.

¹⁰⁷ Statement of AnneMaree Eddy dated 27 February 2019, Coronial Brief, p 358.

discharged in the early morning and provided with a small pack of take-home diazepam for his anxiety.¹⁰⁸

92. Those closest to him gave consistent evidence that he would regularly experience feelings of being paranoid and scared. His sister, Helen Politis described over the previous four or five years Mr Boursinos had experienced manic type behaviour, on and off, which seemed to worsen in the two years prior to his death.¹⁰⁹ She also described that a constant theme he would discuss during these episodes was that he was scared and that someone was out to get him.¹¹⁰
93. His mother, Christine Boursinos described an event four or five months before he died where Mr Boursinos seemed upset and scared and she called an ambulance. At the time Mr Boursinos called the police and was concerned that someone was out to get him.¹¹¹ She tried to calm him down, but he was scared and paranoid. Police and ambulance transported him to the Monash Medical Centre.¹¹² This presentation to hospital is referred to above.
94. Mrs Boursinos said he came home the next day and he was “*perfectly normal and completely different from the night before*”.¹¹³ She called the hospital seeking answers about his behaviour but due to privacy issues was unable to obtain any information about his condition.¹¹⁴
95. Ms Politis strongly believes that Mr Boursinos’ death could have been avoided if “*his case was flagged earlier and there was greater intervention and collaboration between agencies, plus greater consultation with [his] family*”.¹¹⁵ She commented that there is “*far too much emphasis placed on an individual’s privacy to the detriment of the health and wellbeing of a person who was in crisis, and provided limited insight into the depths of his problems*”.¹¹⁶

¹⁰⁸ Statement of Dr Monica Abadier. Emergency Physician at Monash Health dated 20 March 2019, Coronial Brief, p 393.

¹⁰⁹ Statement of Helen Politis dated 18 July 2019, Coronial Brief, p 383.

¹¹⁰ Statement of Helen Politis dated 18 July 2019, Coronial Brief, p 383.

¹¹¹ Statement of Christine Boursinos dated 3 December 2018, Coronial Brief, p 379.

¹¹² Statement of Christine Boursinos dated 3 December 2018, Coronial Brief, p 380.

¹¹³ Statement of Christine Boursinos dated 3 December 2018, Coronial Brief, p 379.

¹¹⁴ Statement of Christine Boursinos dated 3 December 2018, Coronial Brief, p 379.

¹¹⁵ Statement of Helen Politis dated 18 July 2019, Coronial Brief, p 384.

¹¹⁶ Statement of Helen Politis dated 18 July 2019, Coronial Brief, p 384.

96. These types of issues have recently been addressed in the Royal Commission into Victoria's Mental Health System, where a number of recommendations were made¹¹⁷. The Coroners Act requires that coroners should avoid unnecessary duplication of inquiries and investigations¹¹⁸, so I chose not to investigate this issue in any depth.

History of drug induced psychosis

97. Mr Boursinos' former partner, Ms Besanko stated that she knew he used recreational drugs, predominantly cocaine, and that he would hide his drug use from her.¹¹⁹ However, she always knew from his behaviour when he used drugs. A similar theme emerged from the evidence of Ms Politis who stated she also knew he used drugs but he "*always vehemently denied taking drugs, and would put the blame on alcohol.*"¹²⁰

98. Ms Besanko thought that Mr Boursinos would often experience paranoid and suicidal thoughts. She could remember five or six specific incidents which resulted in police involvement.¹²¹ She said "*it didn't matter if he was sober, drugged or alcoholic (sic) affected. Some thoughts were about other people talking about him or at worst he would believe that people were out to hurt or kill him.*"¹²²

99. Ms Besanko described an incident that occurred in 2008 which she believed to be a drug psychosis because she knew he had used cocaine. His behaviour on this occasion included him expressing suicidal thoughts which was distressing to her and serious enough for her to call the police.¹²³

100. When Mr Boursinos took drugs, Ms Besanko explained that "*he would sweat and his heart would race. I would be scared for him. I would tell him its okay. He would be looking over his shoulder thinking someone was there.*"¹²⁴ When he was sober again, Ms Besanko would describe his behaviour and actions to him and tell him he was risking his life but he "*didn't listen or want to listen.*"¹²⁵

¹¹⁷ Royal Commission into Victoria's Mental Health System, Final Report, February 2021, Recommendation 30: Developing system-wide involvement of family members and carers; Recommendation 31: Supporting families, carers and supporters.

¹¹⁸ Section 7, *Coroners Act 2008* (Vic).

¹¹⁹ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 373.

¹²⁰ Statement of Helen Politis dated 18 July 2019, Coronial Brief, p 384.

¹²¹ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 375.

¹²² Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 374.

¹²³ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 373.

¹²⁴ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 374.

¹²⁵ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 374.

101. Between 2016 and 2018 Ms Besanko indicated that Mr Boursinos would go months without consuming illicit drugs. She explained that if he had drugs, his paranoia would escalate by 100 times.¹²⁶ Sadly, Ms Besanko said that “*away from drugs and the madness produced by drugs, Spiro was an incredibly funny, generous and at times very loving. He loved me, his family and his passion was his business, Earthcore*”.¹²⁷

Incident in 2015 involving the Critical Incident Response Team

102. In the early hours of Thursday 23 April 2015, the Victoria Police Critical Incident Response Team (**CIRT**) were dispatched following reports of a male inside an apartment on the 46th level of an address in Abeckett St, Melbourne West, who was armed with a knife, affected by alcohol and drugs, and threatening the resident. Whilst enroute CIRT officers were updated that the male had left the apartment and entered the stairwell on Level 46 armed with a large knife. Upon arrival CIRT located the stairwell on the ground floor but were unable to gain access.¹²⁸ Whilst covering the stairwell exit, CIRT observed Mr Boursinos exit and run towards the street exit holding a black object in his right hand. A CIRT officer deployed their Conducted Energy Device (**CED**) that incapacitated Mr Boursinos and enabled him to be secured into police custody.¹²⁹

103. Mr Boursinos informed CIRT officers that he had used a large amount of cocaine and that he was intensely paranoid. CIRT officers observed Mr Boursinos to look around the room constantly, not focusing on the conversation and saying that there were people after him. Mr Boursinos was sweating badly and was completely nervous and paranoid, asking questions constantly if the members in uniform were actually police. Mr Boursinos was sectioned pursuant to section 351 *Mental Health Act 2014 (Vic)* and conveyed to hospital.¹³⁰

Welfare checks in 2017

104. On 19 October 2017 at approximately 6.30am Victoria Police responded to a welfare check at Mr Boursinos’ home address. Upon arrival Senior Constable (**SC**) Dale Pensa observed that Mr Boursinos appeared erratic and paranoid.¹³¹ Mr Boursinos said he had consumed some alcohol and taken some medication, and that he was hearing voices.

¹²⁶ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 374.

¹²⁷ Statement of Bianca Besanko dated 7 February 2019, Coronial Brief, p 375.

¹²⁸ Statement of Sergeant Eran Jansz dated 11 November 2018, Coronial Brief, pp 413-4.

¹²⁹ Statement of Sergeant Eran Jansz dated 11 November 2018, Coronial Brief, pp 414.

¹³⁰ Statement of Sergeant Eran Jansz dated 11 November 2018, Coronial Brief, pp 416.

¹³¹ Statement of Senior Constable Dale Pensa dated 20 November 2018, Coronial Brief, p 417.

According to SC Pensa, he appeared paranoid.¹³² Once paramedics arrived Mr Boursinos was cooperative and voluntarily went with them to hospital for a psychological assessment.

105. On 31 October 2017 Mr Boursinos was taken to the Emergency Department of the Alfred Hospital by ambulance. Dr David MacDonald, Medico-Legal Consultant with Alfred Health reported that “*Mr Boursinos had been feeling anxious that afternoon and unable to find his olanzapine medication so he had become more anxious and started calling the Ambulance service and calling out to neighbours*”.¹³³ Mr Boursinos told medical staff that he had consumed both alcohol and cocaine, but denied suicidality or having any paranoid delusional thoughts. Further, Mr Boursinos stated that he had recently stopped taking his prescribed diazepam. On examination Mr Boursinos exhibited anxiety and pressured speech but was oriented in time and space and had no delusions and no thought process disorder.¹³⁴

106. It was noted that Mr Boursinos had a past history of regular cocaine use which had resulted in the complications of serotonin syndrome, paranoid behaviour, panic attacks and a cocaine induced non ST elevation myocardial infarct in 2014.¹³⁵ After a period of observation Mr Boursinos was released. A final diagnosis was made of cocaine intoxication and drug related behaviour and that he had presented with a possible panic attack.¹³⁶

Incident at Royal Melbourne Hotel in May 2018

107. Cristian Barrera, Venue Manager at the Royal Melbourne Hotel, provided evidence about an incident that occurred on Friday 18 May 2018, involving Mr Boursinos who was then employed as an events manager. Mr Barrera explained that at approximately 9.12pm, Mr Boursinos was sober and had been in good spirits, when his behaviour dramatically changed into being paranoid and saying that customers were trying to kill him.¹³⁷ Mr Barrera thought it was possible he had taken drugs as he was known to be a cocaine user. Mr Boursinos was taking photographs of customers and running away from staff, and screaming. He jumped over chairs and told customers that he thought

¹³² Statement of Senior Constable Dale Pensa dated 20 November 2018, Coronial Brief, p 417.

¹³³ Statement of Dr David MacDonald, Alfred Health dated 16 July 2019, Coronial Brief, p 386.

¹³⁴ Statement of Dr David MacDonald, Alfred Health dated 16 July 2019, Coronial Brief, p 386.

¹³⁵ Statement of Dr David MacDonald, Alfred Health dated 16 July 2019, Coronial Brief, p 387.

¹³⁶ Statement of Dr David MacDonald, Alfred Health dated 16 July 2019, Coronial Brief, p 387.

¹³⁷ Statement of Cristian Barrera dated 22 November 2019, Coronial Brief, p 366.

they were there to kill him.¹³⁸ Mr Boursinos called triple zero and spoke to police but hung up before running out the building.¹³⁹ Police came within minutes and drove around looking for him. Mr Boursinos' employment was terminated a week later.¹⁴⁰

Early morning of 20 October 2018

108. The evidence and the CCTV footage supports that Mr Boursinos was experiencing some form of drug induced psychosis, with some auditory or hallucinatory behaviour on the early morning of 20 October 2018 which was consistent with previous episodes as described above.
109. The CCTV footage shows Mr Boursinos to pace quickly up and down behind the bar, multiple times. His behaviour was described by many witnesses as paranoid. Various witnesses describe some of that paranoid behaviour. Mr Williams-Werchon said when Mr Boursinos armed himself with a bottle "*it looked like he was flinching [...]. He wasn't threatening anybody specifically, but he was yelling get back as if he was afraid someone or something was going to get him*".¹⁴¹ Mr Gammans said he "*seemed to be in total fear*".¹⁴² Mr Falleti described Mr Boursinos "*like an animal trapped in a corner*".¹⁴³ Mr Bryant's opinion was similar to the others in that Mr Boursinos was not "*threatening the bar staff, he was looking past them, he just seemed to be holding the bottle to protect himself*".¹⁴⁴ He said "*it was as if he was looking at a threat that wasn't there*".¹⁴⁵ Mr Falleti thought Mr Boursinos "*was freaking out, he was tensing his limbs, darting around and screaming constantly. I had never seen anyone behaving like that before*".¹⁴⁶ Relevantly, Mr Bryant observed that Mr Boursinos "*didn't appear to be connected to the reality of the situation*".¹⁴⁷ His behaviour that night was consistent with his previous episodes of severe paranoia and drug induced psychosis.

Presence of Mr Yacob

110. An issue that was examined at inquest was whether Mr Yacob's presence at the scene may have caused an exacerbation in Mr Boursinos' behaviour. At the same time Mr

¹³⁸ Statement of Cristian Barrera dated 22 November 2019, Coronial Brief, p 366.

¹³⁹ Statement of Cristian Barrera dated 22 November 2019, Coronial Brief, p 366.

¹⁴⁰ Statement of Cristian Barrera dated 22 November 2019, Coronial Brief, p 367.

¹⁴¹ Statement of Hayden Williams-Werchon dated 20 October 2018, p 188.

¹⁴² Statement of Jordan Gammans dated 20 October 2018, Coronial Brief, p 183.

¹⁴³ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 178.

¹⁴⁴ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 193.

¹⁴⁵ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 193.

¹⁴⁶ Statement of Sam Falleti dated 20 October 2018, Coronial Brief, p 177.

¹⁴⁷ Statement of Campbell Bryant dated 21 October 2018, Coronial Brief, p 193.

Boursinos was experiencing his psychosis Mr Yaccob, a patron who had been previously banned from the Antique Bar just happened to enter the bar to use the facilities and is seen to try and involve himself with Mr Boursinos. The Coroner's Investigator, Inspector Horan gave evidence at inquest that Mr Boursinos seemed to have become focused on Mr Yaccob.¹⁴⁸ Inspector Horan suggested that Mr Yaccob appeared to be intoxicated and confrontational to Mr Falleti, which seemed to cause Mr Boursinos to fixate on Mr Yaccob and further fuel Mr Boursinos' paranoia.¹⁴⁹ Police investigations did not reveal that Mr Yaccob was previously known to Mr Boursinos or had had any prior interactions with him.¹⁵⁰

111. During and after the inquest, Helen Politis and Steven Boursinos were concerned that the actions of Mr Yaccob may have contributed to an exacerbation in Mr Boursinos' behaviour.¹⁵¹ At Inquest Inspector Horan agreed and said: "*I think it's quite evident that Spiros perceived him as a threat and, um, whether or not there is reality to that, um, certainly within Spiros' mind, I agree here, he would perceive that person and fixated on that person as a threat*".¹⁵²
112. At inquest Steven Boursinos raised the issue of whether some action should have been taken by those attending and the bar owner to prevent an escalation to the situation.¹⁵³ Inspector Horan agreed that he thought potentially more could have been done by management and staff but he considered they were possibly under-equipped to understand what they were dealing with.¹⁵⁴ Aspects of the adequacy of training of bar staff are discussed later in this Finding.
113. I agree that the CCTV footage and the evidence reveal that Mr Boursinos appeared to be fearful of an unknown source. Witnesses describe Mr Boursinos variously as paranoid, fearful, frightened, looking like he'd been cornered, afraid of someone or something, trapped like an animal and not connected to the reality of the situation.
114. Mr Boursinos does appear to become agitated by the presence of Mr Yaccob and his behaviour does appear to have caused an escalation in Mr Boursinos' paranoia and fear. However, there is no evidence Mr Yaccob committed any criminal offence. The evidence also demonstrates that Mr Falleti did attempt to prevent Mr Yaccob from

¹⁴⁸ Transcript of evidence, p 31.

¹⁴⁹ Transcript of evidence, p 31.

¹⁵⁰ Transcript of evidence, p 31.

¹⁵¹ Transcript of evidence, p 38 and email from Ms Politis to the Court on 4 April 2021.

¹⁵² Transcript of evidence, p 39.

¹⁵³ Transcript of evidence, p 39.

entering the bar and when he did enter, he made efforts to remove him from the bar as quickly as he could. Consequently, I do not propose to make any adverse finding about the conduct of Mr Falleti or other bar staff in the circumstances.

Conduct of the bar owner, bar tender and a patron in managing and restraining Mr Boursinos

115. The decision by Mr Falleti, Mr Gammans and Mr Spencer to place Mr Boursinos on the ground appears to stem from protecting themselves and others from his paranoid and unpredictable behaviour. This occurred after he had hit a bottle against the front bar window which caused the window to significantly crack and after he had broken a wine glass which were a cause of great concern to the bar owner, staff and patrons.
116. In evidence Inspector Horan was questioned about whether police had considered whether the conduct of Mr Falleti, Mr Gammans and Mr Spencer constituted a criminal offence. Inspector Horan said one of the key issues in determining whether the conduct constituted a criminal offence was that the cause of death was not entirely certain, as there were three aspects involved in the cause of death; being the cardiac issues, mechanical asphyxia and the cocaine use and that it could be any one of those items individually or in combination.¹⁵⁵ He said that when all the evidence was considered as a whole “*it did not achieve the threshold that [police] would lay charges*”.¹⁵⁶ Another key consideration was that the actions of Mr Falleti, Mr Gammans and Mr Spencer could be argued as self-defence.¹⁵⁷
117. It is important to note, that a Coroner is prohibited from making any findings of guilt¹⁵⁸ or liability.
118. Counsel Assisting submitted that Mr Falleti, Mr Gammans and Mr Spencer all appear to have acted in good faith to protect themselves and patrons of the bar from the potential threat of violence, pending the arrival of police.¹⁵⁹ It was also submitted that Mr Falleti and Mr Gammans did not appear to have the requisite skills to manage the behaviour exhibited by Mr Boursinos during his psychosis and whilst not a direct criticism, no

¹⁵⁴ Transcript of evidence, p 39.

¹⁵⁵ Transcript of evidence, p 33.

¹⁵⁶ Transcript of evidence, p 34.

¹⁵⁷ Transcript of evidence, p 34.

¹⁵⁸ Section 69(1), Coroners Act 2008 (Vic).

¹⁵⁹ Transcript of evidence, p 61.

attempts were made to call emergency services earlier. Further, they did not appear to be aware of the dangers associated with physical restraint.¹⁶⁰

119. I have reviewed the CCTV footage and all of the evidence and it appears that whilst Mr Boursinos was not actually threatening any person in particular, his actions were highly concerning to those in his presence, including Mr Falleti, Mr Gammans and Mr Spencer.
120. I acknowledge that Mr Falleti recognised that Mr Boursinos needed medical attention and he advised a patron, Mr Jonathan Sanz to call an ambulance. I also acknowledge that whilst Mr Boursinos was being restrained, Mr Falleti talked to him and told him that he was safe and help was on its way. There is no evidence that Mr Falleti, Mr Gammans or Mr Spencer called an ambulance themselves, but this understandable due to the fact that they were busy trying to manage Mr Yacob and physically restrain Mr Boursinos. It is possible that an ambulance could have been called earlier but I am unable to determine if they had called one whether it would have changed the course of events. I consider Mr Falleti, Mr Gammans and Mr Spencer acted in good faith and the interests of protecting themselves and others (including Mr Boursinos) from his paranoid and intimidating behaviour.

Conduct of Victoria Police officers

Application of handcuffs

121. To examine the conduct of the police officers in this case, it is important to consider the relevant legislative requirements and policies and procedures in which police members are required to comply to a situation such as this one. Section 458 of the *Crimes Act* 1958 (Vic) gives power to police to arrest (without warrant) any person a police officer finds committing an offence, where he or she believes on reasonable grounds that the apprehension of the person is necessary for any one of the stated reasons, which includes to preserve public order or for the safety or welfare of members of the public or of the offender.
122. The Victoria Police Manual (**VPM**): *Arrests and Warrants to Arrest* provides guidance to police members about when and how to arrest a person. The relevant section for the

¹⁶⁰ Transcript of evidence, p 61.

purpose of this investigation is to either preserve public order or to ensure the safety or welfare of members of the public or the offender.¹⁶¹

123. Guidance on the use and application of handcuffs for police is found in the VPM: *Operational Safety Equipment* which provides that “any person arrested or taken into custody should be handcuffed if it is reasonably believed to be necessary in the circumstances”.¹⁶²
124. The evidence demonstrates that Constable Hart was concerned about the earlier reports of Mr Boursinos being violent and her priority was to ensure everyone was safe and that Mr Boursinos needed to be secured. This evidence is corroborated by SC Patounas who said that when they arrived at the scene they were advised that the male “*had gone crazy*”.¹⁶³ Constable Hart commented: “*I was concerned for the welfare of the patrons of the licensed premises, but I was also concerned for the deceased, as he no longer appeared to be violent.*”¹⁶⁴
125. SC Patounas explained the reason he put the handcuffs on Mr Boursinos was because “*in these situations you never know if the person will lash out when they are given an opportunity to get back up. Given the nature of the job and how it came through from D24, I was concerned because there were reports that he was trying to stab people*”.¹⁶⁵

Consideration of positional asphyxia

126. The arresting police officers were clearly aware of the risks associated with positional asphyxia. SC Patounas stated given three people were on his back when they arrived: “*I also had immediate concerns about positional asphyxia because I didn’t know how long the male had been in that position. This was the main reason I told them to get off and why I put him on his side in the recovery position.*”¹⁶⁶ Constable Hart was also concerned about the potential issues associated with positional asphyxia.¹⁶⁷ The evidence is supported by the CCTV footage.
127. The VPM: *Operational Safety Equipment* provides information on restraint techniques and positional asphyxia. The VPM requires police officers to:

¹⁶¹ VPM: *Arrests and Warrants to Arrest*, Coronial Brief, p 842.

¹⁶² VPM: *Operational Safety Equipment*, Coronial Brief, p 867.

¹⁶³ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 251.

¹⁶⁴ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 239.

¹⁶⁵ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, pp 251-2.

¹⁶⁶ Statement of Senior Constable John Patounas dated 23 October 2018, Coronial Brief, p 252.

¹⁶⁷ Statement of Constable Rachel Hart dated 20 October 2018, Coronial Brief, p 240.

Keep any person who is physically restrained under close observation. Take care to ensure the person is placed in and maintains a position that allows unrestricted breathing. If any restriction or impairment is observed or suspected, immediately seek medical assistance.

Restraint techniques that could impair a person's unrestricted breathing should only be used when absolutely necessary and for the briefest possible time.

*Positional asphyxia occurs when a person is restrained in a manner that interferes with their normal breathing.*¹⁶⁸

128. The same VPM also states that when using handcuffs “*prevent the possibility of positional asphyxia by ensuring subjects: - do not have their face covered; are not left lying face down with their hands restrained behind their back.*”¹⁶⁹
129. Counsel Assisting submitted that the conduct of Constable Hart and SC Patounas was reasonable and justifiable on the basis of the information they had obtained about the incident to which they were responding.¹⁷⁰ It was submitted that they did not have the benefit of the CCTV footage, or the 000 calls or exact details of what was occurring inside the Antique Bar. The only information they had access to was the D24 broadcasts and the information that was provided to them at the time.¹⁷¹ Counsel Assisting submitted it was reasonable and justifiable in the circumstances.¹⁷²
130. Counsel Assisting also submitted that on the basis of the statements of Constable Hart and SC Patounas, and having observed the CCTV footage, which indicates that they kept Mr Boursinos in the recovery position and under close observation at all material times, and they were satisfied he was breathing during that time, that their management of Mr Boursinos was appropriate in the circumstances.¹⁷³ I agree.

Adequacy of training available to staff in the liquor industry specific to a number of aspects related to the circumstances of Mr Boursinos' death

131. It appears on the evidence that Mr Falleti, the bar owner and Mr Gammans the bar attendant have never received any training about the risks associated with positional asphyxia. In evidence, Inspector Horan agreed that Mr Falleti and Mr Gammans appeared to have limited skills and knowledge in respect of how to approach a person

¹⁶⁸ VPM: *Operational Safety Equipment*, Coronial Brief, p 868.

¹⁶⁹ VPM: *Operational Safety Equipment*, Coronial Brief, p 868.

¹⁷⁰ Transcript of evidence, p 45.

¹⁷¹ Transcript of evidence, p 45.

¹⁷² Transcript of evidence, p 56.

¹⁷³ Transcript of evidence, pp 49-50.

who was suffering from a mental health episode such as the one Mr Boursinos experienced on the night.¹⁷⁴

132. Responsible Service of Alcohol (**RSA**) training is mandatory for all licensees and staff selling, offering or serving liquor for general, on premises, late night and packaged liquor licenses.¹⁷⁵ Topics covered in the training includes benefits of responsible service of alcohol, facts about alcohol, intoxication, strategies for responsible service, refusal of service, underage minors, packaged liquor and functions.¹⁷⁶ The scope of RSA training does not encapsulate the issues such as how to manage a mentally unwell person and the dangers and risks associated with physical restraint.
133. Evidence obtained as part of this investigation from the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) revealed that subject to a Ministerial Order that was published in the *Victorian Government Gazette* on 15 October 2014 Advanced RSA training was introduced and mandated for certain classes of licences.¹⁷⁷
134. The rationale for the introduction of the Advanced RSA training was explained in a response from the Department of Justice and Community Safety (**DJCS**) that there:

*continues to be, strong evidence that late-trading licenced premises (that is, post 1am) operate in a higher risk environment in terms of consequential anti-social and criminal behaviour when compared with premises who cease to operate at 11pm. Longer trading hours enable patrons to consume alcohol over extended periods with the risk of greater intoxication and its accordant reduction in inhibitions.*¹⁷⁸

135. Further, they state research has found “*a positive correlation between trading after 1 am and the rate of offences in or near licenced premises*”.¹⁷⁹ Data indicated that in peak entertainment periods, that is Friday and Saturday nights, assaults and alcohol related “*ambulance attendances rose sharply after midnight and peaked in the early hours of the morning*”.¹⁸⁰ One of the reasons for introducing Advanced RSA training was a

¹⁷⁴ Transcript of evidence, p 27.

¹⁷⁵ Section 108AB of the *Liquor Control Reform Act 1998* (Vic).

¹⁷⁶ Transcript of evidence, p 50.

¹⁷⁷ Pursuant to the *Liquor Control Reform Act 1998* (Vic), Coronial Brief, p 737.

¹⁷⁸ Response to questions asked of the Department of Justice and Community Safety by the Coroners Court of Victoria dated 5 February 2021, Coronial Brief, p 824.

¹⁷⁹ Response to questions asked of the Department of Justice and Community Safety by the Coroners Court of Victoria dated 5 February 2021, Coronial Brief, p 824.

¹⁸⁰ Response to questions asked of the Department of Justice and Community Safety by the Coroners Court of Victoria dated 5 February 2021, Coronial Brief, p 824.

recognition that standard RSA training provided inadequate skills and knowledge in dealing with customer behavioural matters.¹⁸¹

136. The VCGLR confirmed that the Antique Bar held a liquor licence on 20 October 2018, that being a late night (on-premises) licence and authorised the licensee to supply liquor on the licensed premises for consumption on the licensed premises until 3am that Saturday morning.¹⁸² The Antique Bar Licence was transferred to Network'd Pty Ltd on 27 August 2010 and Network'd is still the current licensee. Mr Sam Falleti is the sole director of Network'd.¹⁸³

Was Mr Falleti required to undertake Advanced RSA training?

137. The VCGLR confirmed they do not hold any record of Mr Falleti being mandated to undertake the Advanced RSA training.¹⁸⁴ The Ministerial Order only required a licence holder to undertake Advanced RSA training if:

- a) The licence authorises the supply of liquor after 1am and the licence was granted on or after the date of the Ministerial Order was published (15 October 2014); or
- b) The licence authorises the supply of liquor after 11pm and the licence has incurred a demerit point on or after 15 October 2014.¹⁸⁵

138. The VCGLR advised the Antique Bar was initially granted a licence on 9 January 2004 and it was transferred to Network'd in 2010, which was prior to the publication of the Ministerial Order and no demerit point have been recorded against the Antique Bar. Therefore, Mr Falleti was not required to undertake mandatory advanced RSA training pursuant to the requirements of the Ministerial Order at this time.¹⁸⁶

What does Advanced RSA training cover?

139. Analysis of the training material provided by the VCGLR about what the Advanced RSA training covers demonstrated that they currently do not provide any information about the risks and dangers associated with physical and mechanical restraint. Further

¹⁸¹ Response to questions asked of the Department of Justice and Community Safety by the Coroners Court of Victoria dated 5 February 2021, Coronial Brief, p 824.

¹⁸² Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 739.

¹⁸³ Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 742.

¹⁸⁴ Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 742.

¹⁸⁵ Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 742.

¹⁸⁶ Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 742.

there is very limited content in respect of managing persons who appear to be drug affected and/or mentally unwell.

140. The evidence reveals that even if that training had been undertaken by Mr Falleti or his staff it was highly probable, they would not have obtained the necessary skills and knowledge to effectively manage the situation they faced on the night.¹⁸⁷

Was the Antique Bar required to employ licenced security guards or crowd controllers?

141. Security guards and crowd controllers are governed by the *Private Security Act 2004* (Vic) which requires they undergo a probity assessment and training course.¹⁸⁸ That training course covers a range of required skills including conflict resolution, safe restraining holds, the risks associated with mechanical and physical restraint, Level 2 First Aid qualification as well as RSA certification.

142. VCGLR determines whether to impose conditions such as crowd controllers based on a range of factors, such as the category of licence, the authorised trading hours, the maximum patron capacity permitted at the venue, any relevant compliance history, as well as whether the venue provides live or recorded amplified music. Venues with loud music are considered to be venues that may pose a higher risk of alcohol related harm, accordingly crowd controller conditions are commonly imposed.¹⁸⁹ The imposition of conditions is at the discretion of the VCGLR. The VCGLR confirmed that given the Antique Bar Licence “*prohibits the provision of live or recorded amplified music on the premises ... it was determined by VCGLR that it was not necessary to impose crowd controller conditions at the time the licence was granted.*”¹⁹⁰

143. Counsel Assisting submitted that:

- a) where a crowd controller/licensed security guard is not required in a bar such as the Antique Bar; and
- b) the current RSA and Advanced RSA training course does not provide requisite knowledge and skills in respect of the risks associated with:
 - i. managing people who are either drug affected and/or suffering significant mental health issues; and

¹⁸⁷ Transcript of evidence, p 63.

¹⁸⁸ Transcript of evidence, p 57.

¹⁸⁹ Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 743.

¹⁹⁰ Letter to Coroners Court of Victoria from VCGLR dated 4 February 2021, Coronial Brief, p 743.

- ii. the dangers associated with physical and mechanical restraint,

there is, therefore a gap in the skills and knowledge of licensees and bar staff regarding these issues.¹⁹¹ Counsel Assisting further submitted that whilst Mr Falleti and Mr Gammans appear to have acted in good faith, they had limited to no knowledge in respect of safely and effectively managing Mr Boursinos' behaviour. I agree and have made further comments and recommendations about this gap within this Finding.

FINDINGS

144. Having investigated the death of Spiros Boursinos, 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 Spiros Boursinos, born 13 May 1973; and
- b) that Spiros Boursinos died on 20 October 2018, at the Antique Bar, 218 Glen Huntly Road, Elsternwick, from 1(a) *coronary artery disease and mechanical asphyxia in a man using cocaine*;
- c) in the circumstances set out above.

145. I convey my sincerest sympathy to Mr Boursinos' family. It was obvious to me that Mr Boursinos' family had a deep love and affection for him and that he is greatly missed by them.

146. This investigation has revealed that in the ten years prior to his death, Mr Boursinos has suffered from episodes of mental ill health and drug-induced psychosis. I acknowledge the Boursinos families' frustration with the fact that Mr Boursinos did experience regular paranoid and psychotic events but they never received any real answers or explanations for his behaviour due to the requirements surrounding a person's privacy around medical issues.

147. I find that in the early hours of Saturday 20 October 2018, after consuming cocaine, Mr Boursinos experienced a drug-induced psychosis. The CCTV footage speaks for itself and revealed the tragic circumstances of Mr Boursinos' death. The evidence reveals that Mr Boursinos appeared to be fearful of an unknown source. He appeared paranoid, frightened, and not connected to the reality of the situation.

¹⁹¹ Transcript of evidence, p 60.

148. I accept the presence of Mr Yacob did not cause Mr Boursinos' behaviour, but appeared to cause an escalation in Mr Boursinos' paranoia and fear. There is no evidence Mr Yacob committed any criminal offence. The evidence also demonstrates that Mr Falleti did attempt to prevent Mr Yacob from entering the bar and when he did enter, Mr Falleti made efforts to remove him from the bar as quickly as he could. Consequently, I do not propose to make any adverse finding about this.
149. I acknowledge that the Boursinos family feel that Mr Boursinos needed urgent medical attention earlier than what was provided. However, even if this had occurred, I am unable to determine whether this would have altered the outcome.
150. It is clear to me that Mr Boursinos was not threatening any person in particular and did not intend to harm anyone. His actions were caused by fear and paranoia. However, his behaviour was deeply concerning to those in his presence including the owner of the Antique Bar, Sam Falleti, the bar attendant, Mr Gammans and the patron, Mr Spencer. Having considered all of the evidence, I find that Mr Falleti, Mr Gammans and Mr Spencer acted in good faith and were trying to help Mr Boursinos and they apprehended him to prevent him from harming himself or others. I find their intention was not to hurt him but to restrain him until police arrived. I acknowledge that Mr Falleti and Mr Gammans were in a vulnerable position and did not have the sufficient skills and knowledge to manage someone who was having a mental health episode (drug induced psychosis). They were also unaware of the risks and dangers associated with physically restraining someone.
151. Having considered all of the evidence, I find that the police officers also acted reasonably and appropriately in all of the circumstances and once it was apparent to them that Mr Boursinos had ceased breathing, they continued to actively provide him with medical assistance, even once paramedics had arrived.
152. I acknowledge there was a significant delay in the finalisation of the coronial brief which according to Inspector Horan, was regrettable. I further acknowledge that this delay caused considerable distress and concern to the family and exacerbated their grief.

COMMENTS

153. Pursuant to section 67(3) of the Coroners Act, I make the following comments connected with the death.
154. The evidence demonstrated that Mr Falleti and Mr Gammans were not required to, and had not received, any training on how to manage a person who was experiencing a mental health episode (drug induced psychosis). Nor were they trained about the dangers and risks associated with the application of physical restraint.
155. Given that the VCGLR acknowledge that late night licenced premises operate in a higher risk environment in terms of anti-social behaviour and physical assaults, more should be done to educate those who are licenced to operate these premises and employed in this setting to provide them with the knowledge and skills to provide a safe environment for patrons and staff. Given the obvious absence of information about these issues in the training provided to licensees and those employed in the late-night hospitality industry, I have made two recommendations.

RECOMMENDATIONS

156. Pursuant to section 72(2) of the Coroners Act, I make the following recommendations connected with the death.

Recommendation One:

I recommend that the Chief Executive Officer of Victorian Commission for Gambling and Liquor Regulation as part of an awareness campaign, arrange for the production of a Safety Alert/Guidance Note explaining the risks and dangers associated with managing people who experience mental health episodes and aggressive type behaviours, and the risks associated with the apprehension and physical restraint of these types of people, and arrange for its distribution to all licenced bar owners to alert them of these issues.

Recommendation Two:

I recommend the Secretary of the Department of Justice and Community Safety arrange to amend the Responsible Service of Alcohol Training to include information about how to recognise and manage:

- a. a person who may be experiencing a mental health or drug-related episode;
and
- b. the dangers and risks associated with physical restraint.

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

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

The Family of Mr Boursinos;

Ms Catherine Myers, Chief Executive Officer, Victorian Commission for Gambling and Liquor Regulation

Ms Rebecca Falkingham, Secretary of the Department of Justice and Community Safety;

Mr Shane Patton, Chief Commissioner of Victoria Police;

Professional Standards Command, Victoria Police;

Civil Litigation Department, Victoria Police,

Monash Health; and

Inspector Julian Horan, Coroner's Investigator.

Signature:



JACQUI HAWKINS

CORONER

Date: 29 April 2021