IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2018 004310

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

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

Findings of:	AUDREY JAMIESON, Coroner
Deceased:	Ingeburg Hildegard Muller
Date of birth:	1 April 1933
Date of death:	28 August 2018
Cause of death:	1(a) Staphylococcus bacteremia complicating multiple injuries sustained in a motor vehicle accident.
Place of death:	Alfred Health, Alfred Hospital, 55 Commercial Road, Melbourne, Victoria, 3004

INTRODUCTION

1. Ingeburg Hildegard Muller was 85 years old at the time of her death. She lived with her daughter, Isabel Muller and her family in Glen Iris.

2. On 28 August 2018, Mrs Muller died at the Alfred Hospital due to complications arising from the injuries she sustained from a motor vehicle collision on 20 June 2018, at the three-way intersection of Marquis Street and High Street in Ashburton ('the T-intersection').

3. Mrs Muller had a medical history of arthritis, diabetes, high cholesterol and underactive thyroid gland.

THE CORONIAL INVESTIGATION

4. Mrs Muller's death was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (the Act). Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.

5. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.

6. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.

7. Victoria Police assigned Leading Senior Constable Brett McCormick (LSC McCormick) to be the Coroner's Investigator for the investigation of Mrs Muller's death. LSC McCormick conducted inquiries on my behalf, including taking statements from witnesses – such as family, the forensic pathologist, treating clinicians and investigating officers – and submitted a coronial brief of evidence.

8. This finding draws on the totality of the coronial investigation into the death of Ingeburg Hildegard Muller including evidence contained in the coronial brief. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary

for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.[1]

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

Circumstances in which the death occurred

9. On 20 June 2018, at about 2.48pm, Mrs Muller was crossing Marquis Street at the T-intersection from an east to west direction. A white Hyundai sedan, driven by Albert Meyers was travelling in the southbound lane along Marquis Street towards the T-intersection.

10. A nearby closed-circuit television (**CCTV**) footage depicted the white sedan continued moving forward and subsequently contacted with Mrs Muller. Mrs Muller then motioned Mr Meyers to stop his vehicle from moving forward further.

11. Mr Meyers continued moving forward to the High Street direction. Mrs Muller was knocked and fell onto the road in the path of the vehicle. The white sedan continued moving while Mrs Muller being trapped underneath.

12. Several bystanders ran up to Mr Meyers and knocked on his window to alert him that Mrs Muller was trapped underneath his vehicle and motioned him to reverse his vehicle. Mr Meyers then reversed his vehicle and stopped at short distance behind the stop line.

13. Mrs Muller sustained multiple bilateral rib fractures, bilateral pelvic fractures and multiple thoracic spine fractures. She was conveyed by ambulance to the Alfred Hospital and treated at the Emergency Department.

14. Mrs Muller was subsequently admitted to the Intensive Care Unit (**ICU**) and was placed in an induced coma for 10 days where she underwent three surgical fixations of her fractures on 21, 24 and 26 June 2018 respectively. Her post-operative recovery was complicated by pneumonia, urinary tract infection and sepsis.

15. Thereafter, she was transfer to the general ward for physiological recovery and was observed of getting better.[2]

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[1] Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

[2] Coronial Brief of Evidence (**CB**), Statement of Isabel Muller.

16. On 18 July 2018, ward staff noted Mrs Muller had a superficial thoracic wound infection. A wound swab identified pseudomonas infection[3] and she was treated with a 14-day course of intravenous antibiotics.

17. On 4 August 2018, Mrs Muller was discharged from the Alfred Hospital and transferred to the South Eastern Private Hospital (**SEPH**) for inpatient rehabilitation. At the time of discharge, her wound was noted to be healing well with no evidence of erythema[4]. She was also noted of being medically stable although delirious during admission at the SEPH.

18. Between the week following Mrs Muller admission to the SEPH, she suffered four occasions of thoracic spine wound dehiscence[5].

19. On 14 August 2018, Mrs Muller's inpatient rehabilitation doctor, Dr Richard Clements reviewed her and noted her wound was in a satisfactory state.[6]

20. On 17 August 2018, Mrs Muller's wound broke down again with ooze commencing to leak from the wound. Subsequent blood tests undertaken suggested a deep wound infection in the thoracic spine surgical wound. Dr Clements then commenced broad spectrum antibiotics treatment and arranged Mrs Muller to be transferred back to the Alfred Hospital.

21. On 18 August 2018 Mrs Muller was admitted to the general ward of the Alfred Hospital. She underwent a surgical wound washout the next day and her wound was applied with a vacuum-assisted closure dressing.

22. On 22 August 2018, Mrs Muller underwent a second washout. On 24 August 2018, Mrs Muller developed hypotensive septic shock secondary to oliguric[7] acute kidney injury and was admitted to the ICU for inotropic support.

23. Following discussion with Mrs Mullers' treating medical staff, Mrs Muller refused kidney dialysis and the goals of care were transitioned to palliative care.

24. On 28 August 2018, Mrs Muller passed away in the ICU surrounded by her family.

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[3] Pseudomonas infections are diseases caused by a bacterium from the genus *Pseudomonas*.Pseudomonades are fairly common pathogens involved in infections acquired in a hospital setting.

[4] Erythema is redness of the skin caused by injury or another inflammation-causing condition.

[5] Wound dehiscence is a surgical complication where the incision, a cut made during a surgical procedure reopens. It is also known as wound separation, wound breakdown and wound disruption.

[6] CB, Statement of Dr Richard Clements, page 2.

[7] Oliguria is a subset of acute kidney injury defined by low urine output.

Police investigation

25. Upon attending the site of the collision, Victoria Police officers ascertained that the road was dry, the weather was fine and the visibility was good. LSC McCormick conducted a preliminary breath test upon Mr Meyers which returned a negative result. Mr Meyers was later interviewed under caution by LSC McCormick at the scene.

26. While being interviewed, Mr Meyers stated he was concentrated on his right side and did not apprehend that his vehicle came into contact with Mrs Muller until he was stopped by bystanders. Mr Meyers mentioned that following the raised threshold treatment at the 'Stop' line to the level of the pedestrian footpath, *'pedestrian will come along and treat it like a pedestrian crossing'.* Mr Meyers was released pending further enquiries.

27. At the time of the collision, Mr Meyers held a current and unrestricted full drivers licence. During the investigation it was found that Mr Meyers has hearing difficulties and walks with the aid of a cane.

28. Concerned about Mr Meyers' fitness to drive, LSC McCormick submitted a licence review to VicRoads and his licence was suspended from 16 July 2018 pending the outcome. LSC McCormick also compiled a brief of evidence against Mr Meyers for the criminal charge of Careless Driving, summary charge and Fail to Stop at Stop Sign.

29. Mr Meyers' vehicle was inspected at the scene following the collision. The white sedan was found to be in a roadworthy condition with no evidence of obstruction at the drivers' seat.

The safety of the T-intersection

30. High Street is a four-lane road running in an east to west direction, with two eastbound lanes and two westbound lane divided by a single solid line. There is provision for cars to park at the left-hand side of the east and westbound lanes outside of clearway period.

31. Marquis Street is a two-lane road runs north to south between High Street. The lanes are divided by a single solid line leading to the T-intersection with High Street. There is a 'Stop' sign and a 'Stop' line applicable to the southbound traffic.

32. At the T-intersection, Marquis Street is treated with a raised safety platform[8] (**RSP**), to the height of the pedestrian footpath. There are no pedestrian crossing markings. A waste bin was placed on the north east corner of the T-intersection at the time of collision and was removed following the suggested improvements in the Victoria Police Fatal Collision Audit Report.

33. At the summary of LSC McCormick's coronial brief, I note a comment regarding the safety of the T-intersection which led me to undertake some further investigation. LSC McCormick outlined:

> *'The intersection has been identified by the accused* [Mr Meyers] *and both civilian witnesses all locals, as a dangerous intersection for pedestrians and drivers due to the raised road surface and parked cars reducing visibility…viewed the CCTV footage and attended the intersection post collision and noted that the vast majority of drivers do not stop at the Stop sign unless there is vehicle or pedestrian traffic present'*

Identity of the deceased

34. On 28 August 2018, Ingeburg Hildegard Muller, born 1 April 1933, was visually identified by her daughter, Isabel Muller. Identity is not in dispute and requires no further investigation.

Medical cause of death

35. Forensic Pathologist Dr Sarah Parsons from the Victorian Institute of Forensic Medicine (**VIFM**), conducted an external examination on 30 August 2018. Dr Parsons reviewed a computed tomography (**CT**) scan and reviewed the Victoria Police Report of Death (Form 83). Dr Parsons provided her findings dated 13 September 2018.

36. Dr Parsons commented that the CT scan showed a nail in the left hip, degenerative changes in the left pelvis, subcutaneous tissues, oedema, screws and plates along the spine.

37. Dr Parsons formulated the medical cause of death as 1 (a) staphylococcus bacteremia[9] complicating multiple injuries sustained in a motor vehicle incident.

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[8] Raised safety platform (RSP). RSPs are speed management treatments capable of reducing the maximum comfortable operating speed for a vehicle, thus lowering the overall speed of vehicles to a Safe System collision speed (i.e. should a collision occur, impact forces are within human tolerances).
See VicRoads, *Raised Safety Platforms (RSPs)*, Road Design Note 03-07, December 2019.

[9] Staphylococcus aureus bacteramia (**SAB**) is one of the most frequent causes of hospital acquired and community-acquired blood stream infections

FURTHER INVESTIGATIONS

38. In light of the issues raised during the initial investigation and with Mr Meyers' criminal charges and licence review remain outstanding, I requested that Leading Senior Constable Kelly Ramsey (LSC Ramsey) from the Police Coronial Support Unit[10] (**PCSU**) to obtain additional materials. Specifically, I requested Boroondara City Council ('the Council') to provide a response that outlines the investigation and actions undertaken with respect to the T-intersection following the receipt of any issues, complaints or police reports.

Criminal charges

39. LSC Ramsey advised that Mr Meyers' matter was heard at the Melbourne Magistrates' Court on 21 August 2019 and his charges were dismissed unconditionally.

Licence review

40. Prior to the receipt of the request for Mr Meyers' licence to be reviewed, Mr Meyers had not been reported to VicRoads by anyone at any point to indicate concerns regarding his fitness to drive. VicRoads only became aware of his medical conditions after LSC McCormick's request. VicRoads later requested medical reports from Mr Meyers' treating medical practitioners.

41. In Mr Meyers' ophthalmologist medical review letter to VicRoads, Dr Eric Mayer reported the following:

> *'His visual acuity[11] in the right eye with his glasses is at 6/12[12] and on the left is at counting fingers[13]'*

[10] The Police Coronial Support Unit (**PCSU**) is staffed by members of Victoria Police who assist coroners with their investigations into deaths and fires. The PCSU may attend scenes at the request of the Coroner, support Victoria Police members who are investigating matters on behalf of a Coroner and provide coronial briefs of evidence for the Coroner.

[11] Visual acuity refers to the sharpness of images and does not take into account depth perception, colour vision, or the ability to focus on moving objects or read under different lighting conditions.

[12] 20/20 (or 6/6) vision is a term used to indicate normal visual acuity. In contrast, 20/40 (or 6/12) vision means that a patient who is 20 feet (6 metres) away from a standard eye chart can only read the same-sized letters that someone with 20/20 vision can read from further away (i.e. 40 feet or 12 metres away from the eye chart). In other words, 20/40 vision means you cannot see as well as someone with 20/20 vision.

[13] A method of recording vision in patients who are unable to identify any optotype on an acuity chart. If a patient correctly counts the numbers of the examiner's fingers shown, this is recorded with the distance at which it is performed.

42. Mr Meyers' drivers licence was cancelled on 19 September 2019, following further review by external medical advisors as his vision was below the national vision standards[14].

Boroondara City Council Response

43. By way of letter dated 27 April 2020, Daniel Freer, Environment and Infrastructure Director from the Council provided a chronological account and summary of complaints. The complaints mostly concerned the safety of the RSP and the location of the waste bin, which I observed above, has since been removed.

44. The Council, in summary, advised pedestrian zebra crossings are not considered a suitable treatment at T-intersections and the blocking pedestrian access was not practicable.

45. The Council explained that the RSP provides a disability compliant at-grade crossing for pedestrians and effectively slows vehicle speeds when exiting and entering Marquis Street.

46. The Council also advised that there are pedestrian operated traffic signals at approximately 20 meters to the west of the T-intersection, complemented by pedestrian fencing from Marquis Street to the traffic signal pole to direct and encourage pedestrians using the traffic signals.

47. Noting the current infrastructures as discussed and the crash history from a four-year review between 2012 to 2016 from VicRoads Road Crash Information System (**RCIS**), the Council stated it considers the T-intersection is suitable for pedestrians.

COMMENTS

Pursuant to section 67(3) of the Act, I make the following comments connected with the death.

Safety issues at the T-intersection

48. I note from the reasons of Boroondara City Council's for not incorporating a pedestrian zebra crossing into the raised safety platform, considering there are other nearby infrastructures in place to minimise pedestrian access at the T-intersection.

49. I have reviewed VicRoads' Raised Safety Platforms design note on incorporating a pedestrian zebra crossing into the raised platform. I note that a minimum of one meter separation shall be provided between the pedestrian space and the ramp to avoid the risk of the ramp line

[14] See Austroads & National Transport Commission *2016 Medical Standards for Licencing and Clinical Management Guidelines*, as amended up to August 2017, page 128.

marking being mistaken for pedestrian zebra crossing. I accept the Council's reasons in this regard.

50. However, as evident by Mrs Muller's tragic death and the statements of various witnesses including my coronial investigator that detail the T-intersection as a busy and dangerous area for pedestrian access, I consider the action by the Council of removing the waste bin alone insufficient and the pedestrian safety at the T-intersection remains a concern. As such recommendations to improve the conspicuity of the RSP and the safety of the T-intersection are necessary.

Mr Meyers' fitness to drive

51. In the memo of LSC Ramsey's additional brief, I note the comment that Mr Meyers' eyesight is well below the required medical standards for uncorrected visual[15]. Although I cannot definitely find that Mr Meyers' sub-optimal vision was a causal or contributing factor in the collision. The evidence suggests that it is distinctly possible and as such the discourse on Mr Meyers' fitness to drive is relevant to this investigation.

52. The issue of fitness of elderly drivers to continue to drive has recently been the subject of coronial investigation in Victoria. It is also somewhat controversial to have some form of assessment after a certain age or medical procedures.

53. The loss of fitness to drive is often equal to loss of dependence, especially for the elderly and a self-reporting system relying on individuals or their family members to report concerns about fitness to drive requires significant emotive detachment.

54. In the past, I have made and repeated my recommendations[16] to VicRoads in relation to Fitness to Drive and the inadequacies of 'self-reporting' model used in Victoria, whereby individuals are expected to report their own health conditions or other issues which may affect their ability to drive.

55. On 1 October 2020, Road Safety Victoria Executive, Carl Muller, did not definitively inform me whether VicRoads would adopt a mandatory reporting model for medical practitioners

[15] The Austroads eligibility criteria set out the minimum requirements for obtaining a private driver's licence in Australia is at least 6/12 in one or both eyes, with or without glasses or corrective lenses. See footnote 12 and 14.

[16] E.g. COR 2015 4295, COR 2016 5554, COR 2016 4001. Findings provided to VicRoads on basis of reviewing the model: COR 2016 5539, COR 2017 6004. Most recent Findings repeating previous recommendations: Finding without Inquest in the death of Cameron Andrew MacLellan, COR 2017 5171, delivered 13 July 2020.

concerned about their patients' fitness to drive. Instead, he provided me a detailed outline of activities that VicRoads would undertake in the future to improve the existing system within which concerns about fitness to drive are reported. He further stated that the Department of Transport (**DOT**) has seen a steady increase in the numbers of drivers referred to Medical Review, including those self-referring.

56. Given the recommendations regarding mandatory medical practitioner reporting of patients' fitness to drive were repeated in my Findings delivered on 13 July 2020 and given these indications from VicRoads and DOT, I have determined not to repeat my recommendations of such. Instead, I distribute this Finding to both VicRoads and DOT to inform their activities and enhance their appreciation of fatal consequences of having medically unfit drivers on Victorian roads.

RECOMMENDATIONS

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

57. With the aim of promoting public health and safety and preventing like deaths, I recommend that Boroondara City Council continue review the design and layout of the three-way intersection of High Street and Marquis Street in light of the circumstances of this collision and consider improve the existing infrastructures.

58. With the aim of promoting public health and safety and preventing like deaths, I recommend that Boroondara City Council replace the existing advisory speed limit sign of 40 kilometres per hour between the hours of 7.00am to 7.00pm along the northbound lane of Marquis Street to a warning sign of 'Raised Intersection' with advisory speed limit of 40 kilometres per hour.

59. With the aim of promoting public health and safety and preventing like deaths, I recommend that Boroondara City Council introduce a more contrasting grey coloured pavement marking on the raised safety platform.

FINDINGS AND CONCLUSION

60. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:

    a) the identity of the deceased was Ingeburg Hildegard Muller, born 1 April 1933;

    b) the death occurred on 28 August 2018 at Alfred Health, the Alfred Hospital, 55 Commercial Road, Melbourne, Victoria, 3004; and

c) I accept and adopt the medical cause of death ascribed by Dr Sarah Parsons and I find that Ingeburg Hildegard Muller died from staphylococcus bacteremia complicating multiple injuries sustained in a motor vehicle incident as a pedestrian, in the circumstance where Ingeburg Hildegard Muller was attempting to cross the road on a raised section of the road that was not designated pedestrian crossing; and

d) I further find that the Mr Meyers caused the motor vehicle collision; and

e) I find that the question of Mr Meyers fitness to hold a drivers licence was never reported to VicRoads and he continued driving without restriction on Victorian roads until its suspension.

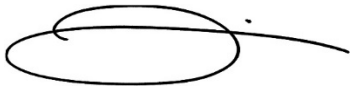
I convey my sincere condolences to Mrs Muller's family for their loss.

Pursuant to section 73(1B) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

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

Isabel Muller, Senior Next of Kin
Leading Senior Constable Brett McCormick, Coroner's Investigator
Leading Senior Constable Kelly Ramsey
Boroondara City Council
Department of Transport
VicRoads

Signature:



AUDREY JAMIESON

CORONER

DATE: 6 DECEMBER 2021

NOTE: Under section 83 of the ***Coroners Act 2008*** ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.