

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 2987/09

Inquest into the Death of LEFTERY HARKOU

Delivered On: 8 MARCH 2011

Delivered At: CORONERS COURT, MELBOURNE

Hearing Dates: 1 DECEMBER 2010

Findings of: CORONER K. M. W. PARKINSON

Place of death: BIRRARRUNG PARK, TEMPLESTOWE
VICTORIA 3106

PCSU: LEADING SENIOR CONSTABLE KING TAYLOR

Appearances: MR CLARKE FOR PARKS VICTORIA
MS FOY FOR THE FAMILY OF MR HARKOU

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 2987/09

In the Coroners Court of Victoria at Melbourne

I, KIM PARKINSON, Coroner

having investigated the death of:

Details of deceased:

Surname: HARKOU
First name: LEFTERY
Address: 9 Norweena Street, Doncaster, Victoria 3108

AND having held an inquest in relation to this death on 1st December, 2010
at Melbourne

find that the identity of the deceased was LEFTERY HARKOU

and death occurred 16th June, 2009

at Birrarrung Park, Templestowe, Victoria 3106

from:

1a. MULTIPLE INJURIES SUSTAINED IN A MOTOR CYCLE COLLISION

In the following circumstances:

1. An inquest was conducted into the death of Mr Leftery ('Terry') Harkou on 1st and 2nd December 2010. The purpose of a coronial inquiry is to establish to the extent possible, the medical cause of death and the circumstances causing or contributing to the death. If appropriate, the coroner may make comment and recommendations connected with public health and safety.

2. The following witnesses were called to give evidence in the proceeding: Senior Constable Joshua Renfrey and Senior Sergeant Robert Le Guier of Victoria Police; Mr Richard Young of Parks Victoria; Mr Christakis Harkou; Mr Jaye Gibson; Mr Niki Jackson and Mr Jamie Kahui.

CIRCUMSTANCES

3. Mr Leftery ('Terry') Harkou was born on 26 February 1985 and he was 24 years of age at the time of his death. He resided with his parents at 9 Norweena Street, Doncaster.

4. On 16 June 2009 at approximately 8.00pm, Terry left his home address and rode his Lifan brand motor cycle to a friends home at Sheahans Road, Templestowe. The motor bike was described as a trail bike by police and as a 'kids' trail bike by family and brochures provided to the coroner by the family. The bike had been modified and whilst it was reported by family as being a 50cc bike, police investigators had described it as a 150cc bike. I am satisfied that the motor cycle, whatever its cubic capacity had the ability to reach speeds of up to 50kph.

5. At approximately 8.30pm the friends decided to go the Birrarrung Park, located a short distance away at Templestowe Road, Templestowe. Mr Jaye Gibson drove his motor vehicle with 4 passengers. Terry travelled in advance of the others, riding his motor cycle from the house along Sheahans Road and across Templestowe Road, to the lower car park located within the parklands. The group reported to police that they arrived at the park at approximately 8.30pm.

6. Terry was not wearing a helmet, the motor cycle had no lights and was not a registered or registrable motor cycle. The front brakes had been made inoperable during the course of repair works Terry had earlier undertaken on the bike. He did not hold a motor cycle licence and he was subject to suspension of all Victorian licences for a period of 6 months from 1 May 2009.

7. The Birrarrung Park is managed by Parks Victoria and is a public nature reserve. It is configured with paved roadways to enable motor vehicle access and contains within it a number of designated parking areas, picnic areas and natural trails and walkways. It is anticipated that persons using the parkway will also walk along the roadways. The speed of vehicles travelling on the roadways is limited by the strategic placement of speed humps throughout the park.

8. The entry roadway to the park is paved roadway with east/west traffic divided by lane markings. There is a small car parking area located at the entry to the park, which is lit by artificial lighting. Approximately 15 metres from that car parking area, there is an entry/exit boom barrier gate. This gate, which is within the boundary of the park is not lit by artificial lighting. There are speed humps located approximately 42 metres approaching the boom gates on entry and 36 metres approaching the boom gates on exit.

9. The boom gate operates automatically and is programmed to open at 8.30am and to close at 9.00pm each day. It is comprised of a steel barrier mounted in a central concrete pylon located at the centre of the roadway. The centre support pylon is painted in yellow paint, which is reflective to vehicle headlights. The barrier has red reflective strip tape on the inside of the boom of the gate, which is illuminated in vehicle headlights.

10. The boom gate spans across the two entry and exit lanes to the park. It is approximately 20 centimetres wide and 10 centimetres in diameter. The barrier operates on a sliding mechanism, that is, it retracts from a fully extended position when the gates are open to vehicular traffic.

11. The opening and closing times of the gate are signposted by way of a large sign located on roadside verge to the right of the entry gate. This sign is located to be visible to drivers upon entering the park.

12. There is an induction loop in the road pavement on the inside of the gate, which will activate the gate opening mechanism when a vehicle approaches. This allows for 24 hour egress should a vehicle get caught behind the gate after it closes. Vehicles need to stop to enable sufficient time for the boom to retract. Perhaps because of the location of the motor cycle or the size of the bike this mechanism did not operate.

13. Whilst some of the young persons accompanying Terry, gave evidence that it was light when they arrived at the park at 8.30pm, this does not accord with the meteorological observations for that time of year. However despite this discrepancy, I am satisfied that Mr Gibson's car headlights would have allowed for observation of the opening and closing times of the gate.

14. The group proceeded to the 'lower' car park. The car park utilised by the group is located in the lower reaches of the park. Evidence was given that this car park was preferred by young people as the other 'upper' car park was visible to patrolling police cars. The evidence is that at the time they spent an hour to two at the park and then at approximately 10.00pm decided to travel home. Mr Gibson was driving his car, it may be he was intending to light the path for the motor cycle, however Terry rode ahead of the group, out of the sight of the car driver and beyond any ability to use the car headlights to light his way.

15. Witnesses walking in the park reported to police that they heard his motor cycle accelerate as it approached the boom gates and he had previously been observed to become airborne when he went over a speed hump as he left the car park. His speed was estimated at approximately 40 to 50 kilometres per hour. Terry travelled over the last speed hump before the boom gates and rounded a slight turn. Without any headlights he was unable to see the closed boom gate. Mr Gibson following behind at approximately 20kph, rounded the turn seconds after him and illuminated the boom gates with his vehicle headlights as Terry collided with the gate.

16. Terry hit the boom gate at chest height, causing him to fall backwards onto the bitumen roadway. Upon falling he struck the back of his head on the roadway. Terry suffered severe head injury and despite resuscitation attempts by a passing doctor, police and ambulance officers he was deceased at the scene.

17. The family made application pursuant to s29 of the *Coroners Act 1985* that no autopsy be performed. That application was granted by the Coroner and Dr Matthew Lynch, Senior Forensic Pathologist of the Victorian Institute of Forensic Medicine, undertook an inspection and reported:

"I have made an external examination and there is evidence of head injury. I have reviewed the post mortem CT scan which reveals skull fracture (right temporal/occipital) and pneumocranium. There are also bilateral haemothoraces".

18. Toxicological analysis of post mortem blood samples reported a blood alcohol concentration of 0.02g/100mL. The blood alcohol requirement for an unlicensed (or suspended driver) is 0.0g/100mL. Cannabis was also detected at 3ng/mL. The toxicologist reported that the presence of THC in blood concentrations suggests recent use of cannabis (within a few hours). Persons who have consumed cannabis within a few hours are likely to still be adversely affected by cannabis. The effects of cannabis include impairment of skills used in driving motor vehicles, such as reduced cognitive and psychomotor functions. Whilst the level detected in this case was low 3ng/mL it is possible that the residual effect of the cannabis use, together with the alcohol consumption, may have impaired Terry's capacity to identify and respond to risk.

19. Senior Sergeant Robert Le Guier of the Victoria Police Mechanical Investigations Unit, examined the motor cycle after the collision. It had not been extensively damaged in the collision. His evidence was that he observed that the front disc rotor had been removed prior to the collision, rendering the front brakes inoperative. He observed that this would have considerably reduced the braking efficiency of the vehicle, which may have contributed to the collision. He reported that the motor cycle was rendered unsafe as a result. The motor cycle was described as unroadworthy.

20. I am satisfied that the collision occurred because Terry was unable to see the exit/entry barrier gate because he had no lights on his motor bike and there was otherwise no lighting. It is also likely that he was travelling at a speed which did not allow for him to dismount to avoid collision or give him any opportunity to observe the barrier prior to impact. Whilst the motor cycle is unlikely to exceed 50kph, the evidence is that he outpaced the motor vehicle travelling behind and that his speed at collision was approximately 40kph. At this speed he would have no opportunity to respond and avoid impact.

21. It was submitted on behalf of the family, that there ought to have been lighting on the barrier gate in view of the park being able to be legitimately accessed by walkers and cyclists after hours and as a result of vehicles already being in the park.

22. Mr Richard Young of Parks Victoria, gave evidence that the absence of lighting was a deliberate decision made by the authority in view of the purposes and uses of the park. His evidence was that these metropolitan parks are established to enable park users to enjoy the natural environs and part of that use is the accommodating of the resident wildlife, particularly nocturnal animals. Parks Victoria evidence was that there is a public interest in those parks encouraging wildlife and particularly nocturnal wildlife and to this end the use of artificial lighting is limited.

23. Parks Victoria evidence was to the effect that they rely upon vehicles being in the park at authorised times. The evidence was that there was an expectation that persons who are driving or riding motor vehicles in the park precinct will be utilising vehicles which are roadworthy and that in the night-time, will have their own lighting to enable safe conduct on the internal roadways and at the exits.

24. The police investigator, Constable Joshua Renfrey stated that he re-attended the scene in darkness with the boom gates closed to assess their visibility with vehicle lighting. He stated:

"Travelling in a vehicle with low beam headlights on, the gate is visible from approximately 50 metres away where the speed humps are located. With high beam headlights the gate is highly visible from this distance."

He further stated:

"I believe that the signage at the park is adequate to alert park users that the gate closes at 9pm. I also believe that the gate is clearly visible when approached with a vehicle with headlights from a sufficient distance that allows a vehicle to come to a complete stop and await the gate to open. I believe the red reflective tape on the boom gates makes the gate conspicuous at a distance of up to 50 metres when lit with headlights. The speed humps are also in a position that forces the road users to slow for an oncoming hazard."

25. There is evidence that the gates were on occasions open, when signposted times indicated otherwise. The evidence is that at the time of the incident the gateway was signposted with the opening and closing times of the boom. It is not suggested on this evening that the gates were closed at a time earlier than that sign-posted.

26. It was suggested that variation to the opening and closing times of the park and the boom gate contributed to the death, because it raised an expectation amongst the group and in particular Terry, that the gates would remain open. The evidence as to the number of times the group had previously visited the park is uncertain, although the witnesses appear to suggest that they had visited the park most recently in summertime when the closing time may well have been later. The evidence was also uncertain as to what time of the year they may have observed the boom gate remaining open after closing time. Mr Gibson's evidence was that he had also been at the park on occasions when the gate had been closed at the nominated time.

27. Mr Christakis Harkou provided the court with material charting the opening and closing times of the boom gates on 12 days when he observed that they were open after the nominated closing times. This occurred on 18 June, 2009; 12 to 13 September, 2009; 14 November, 2009; 16, 17, 18 September 2010 and 21, 27 and 30 September 2010 and on 16 October 2010. The times associated with the gates being open varied over the 18 month period. It does not appear that there is any regularity of the opening after hours and the evidence is that for one significant period they were opened as a result of damage.

28. I am not satisfied that there was any frequent variation to opening or closing times of the gates and nor am I satisfied that there was any variation which may have reasonably been expected to lull visitors into a belief that the boom gates were never closed. Any variation to opening or closing was intermittent and I am not satisfied that any such variation of itself contributed to the death in this case. I am satisfied that there was a visible and clear sign indicating the opening and closing time of the gate on the evening of the incident.

29. It was also submitted that there may be design faults with the gates such as to make them inherently unsafe for the location. There was some evidence, although imprecise, of other collisions at the boom gate, however these incidents apparently occurred during daylight hours and there is no evidence to suggest that the design of the barrier, its bollard or the failure to light or otherwise signpost played any role in the incidents.

30. I am satisfied that there were existing safety measures in place to attempt to ameliorate risk to vehicles approaching the barrier gate. These included sign posting the opening and closing times of the gate barrier, strip reflectors on the barrier which are highlighted at night by approaching motor vehicles using headlights and safety road humps designed to slow vehicles in their travels through the park and on their approach to the barrier and the exit.

31. The park was signposted to close at certain times and whilst there is some evidence of disparity in closing times and the barriers being open from time to time before or after specified times, this is not in my opinion, the issue in this case. The issue is the failure to have lights on the motorcycle and that Terry was not wearing a safety helmet.

32. Whilst the family submit that Parks Victoria were under a duty to have artificially lit the entry/exit barrier, I am not satisfied that the evidence before me supports a finding that the existing arrangement is inherently unsafe for the location, or in the context in which it is being operated. Terry was riding an un-roadworthy motor cycle, not intended or entitled to be used on public roads or in public places. He was also unlicensed as a motor cycle rider and suspended from driving or riding on any Victorian road, including a roadway in a public place. The toxicological analysis satisfies me that he had consumed cannabis and alcohol. He was not wearing a motorbike helmet.

33. I am satisfied that the principal cause and contributing factor to the death in this case was the motorcycle rider's failure to take reasonable care for his own safety by riding the motor bike in the parkway after dark without adequate lighting on the bike and without proper safety equipment, including a helmet.

34. I find that Mr Leftery Harkou died on 16 June 2008 at Birrarrung Park, Templestowe, and that the cause of his death was injuries sustained in a motor cycle collision and that no other person caused or directly contributed to his death.

COMMENT

I make the following comment(s) connected with the death (including any notification to the Director of Public Prosecutions under 67(3) of the Coroners Act 2008

35. The death of Terry Harkou is tragic and a reminder of the need for all road users to take care and to be responsible in their road use.


36. It is however possible that he may have seen the boom if there had been artificial lighting on the gate. Having regard to the speed he was travelling I am unable to conclude definitely that the collision would have been avoided.

37. Whilst I am satisfied that Parks Victoria had taken reasonable steps to ensure the safety of park users in relation to entering and exiting the park, the organisation may consider reviewing the practicality and appropriateness of gate lighting, having now become aware of the possibility of an incident such as this occurring.

I make the following recommendation(s) connected with the death under s72(2) of the Coroners Act 2008:

1. That Parks Victoria undertake a review of the appropriateness of installing lighting at the entry/exit barrier at Birrarrung Park, Templestowe.

Signature:



K. M. W. PARKINSON
Coroner



8th March 2011