

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2023 006984

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Findings of:	Judge John Cain, State Coroner
Deceased:	Zulfiqar Ali Hosseini
Date of birth:	31 May 2021
Date of death:	17 December 2023
Cause of death:	1(a) Injuries sustained in a motor vehicle incident (pedestrian versus car)
Place of death:	Stud Road, Dandenong North, Victoria 3175

INTRODUCTION

1. On 17 December 2023, Zulfiqar Ali Hosseini was two and a half years old when he passed away from injuries sustained in a motor vehicle incident. At the time of his passing, Zulfiqar lived at Dandenong North, Victoria, with his parents.

THE CORONIAL INVESTIGATION

2. Zulfiqar'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.
3. 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.
4. 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.
5. Victoria Police assigned Detective Sergeant Peter Romanis to be the Coroner's Investigator for the investigation of Zulfiqar's death. The Coroner's Investigator conducted inquiries on my behalf, including taking statements from witnesses – such as family, the forensic pathologist, eyewitnesses, and investigating officers – and submitted a coronial brief of evidence.
6. This finding draws on the totality of the coronial investigation into the death of Zulfiqar Ali Hosseini 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

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.

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

Identity of the deceased

7. On 19 December 2021, Zulfiqar Ali Hosseini, born 31 May 2021, was visually identified by his uncle, Idress Jaffari.
8. Identity is not in dispute and requires no further investigation.

Medical cause of death

9. Forensic Pathologist Dr Hans de Boer, from the Victorian Institute of Forensic Medicine (VIFM), conducted an examination on 18 December 2023 and provided a written report of his findings dated 2 January 2024.
10. The post-mortem examination revealed findings consistent with the reported circumstances.
11. The post-mortem CT scan was referred to Dr Timothy Cain, radiologist at the Royal Children's Hospital. His findings included C1 to C2 cervical spine dislocation, fractures of the right first rib and right radius and suspected bilateral haemothorax.
12. Toxicological analysis of post-mortem samples did not identify the presence of alcohol or any commonly encountered drugs or poisons.
13. Dr de Boer provided an opinion that the medical cause of death was *injuries sustained in a motor vehicle incident (pedestrian vs. car)*.
14. I accept Dr de Boer's opinion as to the medical cause of death.

Circumstances in which the death occurred

15. On the morning of 17 December 2023, Zulfiqar was at home with his parents, Fatima Jaffari and Khodabakhsh Hosseini. His father, Khodabakhsh decided to take him to the local playground located next to Dandenong Stadium, on Stud Road. After Khodabakhsh applied sunscreen to Zulfiqar and prepared some food, Fatima drove them both to the playground. She dropped them off near the Stadium with the intention of driving to the shops.
16. Khodabakhsh and Zulfiqar spent between 30 to 40 minutes at the playground. At about midday, they prepared to walk two kilometres to return home. Khodabakhsh and Zulfiqar approached Stud Road, next to Dandenong Stadium, and Khodabakhsh placed Zulfiqar on his

shoulders before they crossed the road. Khodabakhsh waited for six to seven cars to pass before he could cross. He walked across the southbound lanes of traffic, with Zulfiqar on his shoulders, and stopped on the grass median strip. The location of the crossing was not at a pedestrian crossing or traffic light.

17. As Khodabakhsh reached the median strip, he heard someone sound their car horn. He looked around and noticed Zulfiqar's hat was on the road and realised that the wind likely blew it off his son's head. He took Zulfiqar off his shoulders, placed him on the grass median strip, and told him to stay there. In his statement, Khodabakhsh stated that Zulfiqar was behind the metal Armco barrier, however this is not supported by CCTV footage of the incident.
18. Khodabakhsh checked the southbound lanes and once it was clear, he ran onto Stud Road to retrieve the hat. Two seconds after running onto the road, Zulfiqar also ran onto the road after his father. Zulfiqar initially ran in the direction of his father, then took a few steps back towards the median strip.
19. As Zulfiqar took a few steps back towards the median strip, motorist Greg Berwick was driving in the right-hand lane of Stud Road in a southerly direction. He was driving his 2005 Ford F250 dual cab utility, which was fitted with a front metal bull-bar. Greg observed Zulfiqar run out onto the road unexpectedly and was unable to avoid a collision with the boy. After colliding with Zulfiqar, he immediately stopped his car and called 000.
20. The motorist behind Greg, Thomas Garcia, also stopped his car to render assistance. Thomas and another motorist followed the 000 call-taker's instructions to perform cardiopulmonary resuscitation (CPR) until paramedics arrived. Paramedics arrived on scene quickly and took over CPR. Despite their best efforts, they were unable to revive Zulfiqar, and he was declared deceased at the scene.
21. Following Zulfiqar's passing, police attended the scene to investigate the circumstances of his death. Police obtained a blood sample from Greg, which did not contain any alcohol or drugs. Police noted that at the time of the collision, the weather was clear and sunny, with no rain and good visibility. Greg and other witnesses estimated that Greg was travelling at about 40 km/h shortly before the collision.

FURTHER INVESTIGATIONS AND SUBSEQUENT CHANGES

22. Following the collision, police inspected Greg's car, investigated the circumstances of the collision and interviewed Khodabakhsh in relation to his recollection of events. There were

no faults or failures identified with Greg's car that may have caused or contributed to the incident in any way.

23. Police investigated and considered whether Greg should be charged with criminal offences in relation to Zulfiqar's death. Police opined that Greg would not have been able to see, react, and avoid the collision with Zulfiqar, particularly considering his small stature and his height in comparison to the vehicle's bonnet. Police also noted that Greg was not impaired by drugs or alcohol, was not speeding or using his vehicle recklessly, and was not otherwise impaired or distracted at the time of the collision.
24. Police also considered whether there were criminal charges available against Khodabakhsh, namely criminal negligence. The advice provided by the Office of Public Prosecutions was that commencing a prosecution against Khodabakhsh was not in the public interest and that his actions did not fall so far short of the standard of care that a reasonable person would have exercised such that it required criminal punishment. In those circumstances, no criminal charges were pursued.

Changes to Stud Road

25. In response to Zulfiqar's passing, the Victorian Minister for Roads and Road Safety, Melissa Horne MP, announced new speed limits on Stud Road. The speed limit is now 60 km/h on Stud Road, Dandenong North, and was 80 km/h at the time of the collision. I commend this change, although note that the car that struck Zulfiqar was estimated to be travelling at 40 km/h, well below either speed limit.
26. The Coroner's Investigator, Detective Sergeant (**D/Sgt**) Peter Romanis obtained data from a Victoria Police specialist analyst, regarding the prevalence of collisions at the location where Zulfiqar died. D/Sgt Romanis noted a cluster of collisions that have occurred outside the Dandenong Stadium, in the same location as this fatal collision, with further incidents observed along Stud Road in the general vicinity.
27. I note at the location of the incident, there are currently no traffic lights erected, and that motorists leaving Dandenong Stadium are required to give way to oncoming traffic. There is a footpath leading from Dandenong Stadium to the intersection, that terminates at the intersection. There is no clearly demarcated path for pedestrians who are walking to/from Dandenong Stadium and the nearby playground. As this is the main road in and out of Dandenong Stadium, I am of the view that consideration should be given to installing a

pedestrian crossing and/or traffic lights to assist vehicles and pedestrians exiting the Stadium. This would allow safe passage for pedestrians leaving the Stadium to reach the other side of Stud Road.

FINDINGS AND CONCLUSION

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

- a) the identity of the deceased was Zulfiqar Ali Hosseini, born 31 May 2021;
- b) the death occurred on 17 December 2023 at Stud Road, Dandenong North Victoria 3175, from *injuries sustained in a motor vehicle incident (pedestrian vs. car)*; and
- c) the death occurred in the circumstances described above.

RECOMMENDATIONS

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

- (i) That the Victorian Government, in consultation with the Greater Dandenong Council, improve pedestrian access to and from Dandenong Stadium and consider installing traffic lights at the intersection of Stud Road, Dandenong North and the unnamed road leading to Dandenong Stadium.

I convey my sincere condolences to Zulfiqar'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:

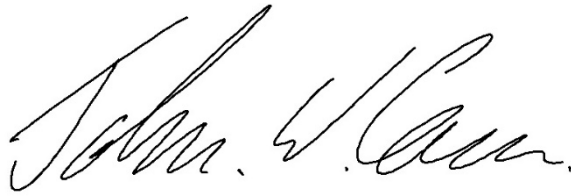
Khodabakhsh Hosseini & Fatima Jafari, Senior Next of Kin

Greater Dandenong Council

Victorian Government

Detective Sergeant Peter Romanis, Coroner's Investigator

Signature:



Judge John Cain
State Coroner
Date: 13 November 2024

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.
