QUEENSLAND COURTS

CORONERS COURT OF QUEENSLAND

FINDINGS OF INQUEST

CITATION:	**Inquest into the death of Pasquale Giorgio**
TITLE OF COURT:	Coroners Court
JURISDICTION:	SOUTHPORT
FILE NO(s):	2016/1388
DELIVERED ON:	11 September 2018
DELIVERED AT:	Brisbane
HEARING DATE(s):	1 March 2018 (Brisbane), 3-5 July 2018 (Southport), 1-2 August 2018 (Brisbane)
FINDINGS OF:	John Lock, Deputy State Coroner
CATCHWORDS:	Coroners: inquest, death in custody, arrest for street offences, mental health concerns, homelessness, morbid obesity, positional asphyxia

REPRESENTATION:

Counsel Assisting:	Ms M Jarvis
Counsel for Constables Williams, Zairis, Walsh & Mulheran:	Mr T Schimdt i/b Gilshenan & Luton
Counsel for Commissioner of Police:	Mr I Fraser, QPS Legal Unit
Counsel for Constable Engels:	Mr D Garratt, Howden Saggers Lawyers

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Introduction

1. On 5 April 2016 Pasquale Rosario Giorgio was arrested by a member of the Queensland Police Service (QPS) for wilful exposure in a public place, disorderly behaviour and obstructing police at Victoria Park, Broadbeach on the Gold Coast, Queensland.

2. Mr Giorgio was a man with a background history of schizophrenia and homelessness. The incident was recorded on QPS body worn camera and video. During the arrest process, Mr Giorgio required physical restraint and was brought to the ground and handcuffed behind his back. He was lying face down on the ground for some time. He was then placed in the rear of a police paddy wagon (POD). Queensland Ambulance Services (QAS) were asked to attend due to concerns he seemed unwell but not critically.

3. A more senior police officer arrived and instructed that Mr Giorgio be brought out of the POD and the handcuffs removed. Mr Giorgio was found to be unconscious. Cardio-pulmonary resuscitation (CPR) was commenced by QPS officers. QAS were now requested to attend urgently. An automated external defibrillator (AED) was brought to the scene by a local hotel and applied. The AED did not recommend a shock, indicating a non-defibrillatable cardiac rhythm was present.

4. A medical practitioner who was passing by arrived on the scene and performed cardiac compressions. QAS staff then arrived at the scene. The staff included advanced care and critical care paramedics, along with a QAS specialist emergency physician. Despite resuscitative efforts, no return of spontaneous cardiac output was achieved and Mr Giorgio was declared deceased at the scene.

5. When QAS arrived it was evident Mr Giorgio was critically unresponsive but CPR commenced as in accordance with QAS cardiac protocol until it was clear further CPR was futile. The period of time between Mr Giorgio being first approached by police and his death certification was approximately 45 minutes.

6. Mr Giorgio had a long history of chronic paranoid schizophrenia with numerous admissions to hospitals in both South Australia (SA) and New South Wales (NSW) related to his mental health. It appears Mr Giorgio was difficult to care for as he denied having a mental illness and would refuse to take medications or comply with community treatment orders. Mr Giorgio had made his way to Queensland in early March 2016.

Issues for Inquest

7. As Mr Giorgio died whilst detained by the Queensland Police Service under an arrest, his death is a 'death in custody' under the *Coroners Act 2003*[1] and must be investigated by the State Coroner or Deputy State Coroner[2] and an inquest must be held.[3] The death was reported to me as Acting State Coroner and the investigation was continued in my role as Deputy State Coroner.

8. The following issues were determined for the inquest:-

   i. The findings required by s. 45(2) of the *Coroners Act 2003*; namely the identity of the deceased, when, where and how he died and what caused his death.

   ii. The circumstances surrounding the death of the deceased whilst in police custody in Victoria Park, Broadbeach on Tuesday 5 April 2016 (including police interaction with the deceased on the day of his death and the day prior, Monday 4 April 2016).

   iii. Whether there are any matters about which preventative recommendations might be made pursuant to section 46 of the *Coroners Act 2003*.

9. The following witness were called :-

   Queensland Police Service

   - Detective Sergeant Sandra PFEFFER (author of the QPS Ethical Standards Command (ESC) investigation report)
   - Constable Glenn ENGELS (interacted with Mr GIORGIO the day prior, 4 April 2016)
   - Constable David WILLIAMS (one of the two arresting officers)

[1] s10
[2] S11(7)
[3] s27(1)(a)(i)

- Constable Michael ZAIRIS (one of the two arresting officers)
- Constable Simon WALSH (attended the incident after the arrest but before the death)
- Constable Mark MULHERAN (attended the incident after the arrest but before the death)
- Senior Sergeant Damien HAYDEN (provided advice to the QPS ESC investigation as to use of force policies, procedures and training within QPS)
- Inspector Michael DWYER (to provide further information as to training provided to first response officers)

Queensland Ambulance Service

- Advanced Care Paramedic Kate SCRIVEN (QAS first response officer)
- Advanced Care Paramedic Mathew GAMBLE (QAS first response officer)
- QAS Medical Director, Dr Stephen RASHFORD (provided advice to the Deputy State Coroner as to QAS' review of its response to the incident as well as an expert review of the clinical course that ended in Mr Giorgio's death and if there are any learnings that might help prevent deaths from happening in similar circumstances in the future).

Queensland Health

- Senior Forensic Pathologist, Queensland Health Forensic and Scientific Services, Dr Alex OLUMBE (performed autopsy and formed opinion as to cause of death)

Autopsy results

10. The senior forensic pathologist who performed the autopsy, Dr Alex Olumbe, also had the benefit of attending the scene of the death, arriving at 1320hrs on 5 April 2016. He was able to observe the body (which had been moved from the police van in order to provide emergency medical care), as well as the interior of the van and the traffic island where Mr Giorgio was initially restrained by the two police officers. Dr Olumbe also received a short briefing from officers with QPS ESC, and reviewed footage of Mr Giorgio being restrained, placed in the police van and the subsequent attempts to resuscitate him.
11. An external and full post mortem examination was performed the following day, 6 April 2016, and a number of other investigations were arranged including

neuropathology, toxicology and CT scans. Of note, the toxicology analysis did not detect any alcohol in the blood, and no other drugs apart from flupenthixol, a medication used in the treatment of schizophrenia.

12. With reference to the results of these post mortem investigations, Dr Olumbe made a number of observations he considered relevant to Mr Giorgio's death, including:

- Mr Giorgio was restrained in a prone position (lying on the front of the torso/face down) with his wrists behind the back but his legs unrestrained.
- There was bruising on his right lower back, consistent with local pressure being applied.
- The presence of fresh abrasions on the front of the knees suggests there could have been a struggle while being restrained before his efforts subsided.
- Mr Giorgio was morbidly obese, which in view of the circumstances is a possible risk factor for death, having been exposed to positional asphyxia where excessive body weight makes chest wall movement more difficult and triggers a chain of events from being in the prone position and the excess abdominal fat limits diaphragmatic motion, culminating in difficulty breathing.
- There was some pin point bleeding in the eyes consistent with a possible asphyxial episode, however this could also be due to resuscitation attempts, especially considering the fact there was prolonged cardiopulmonary resuscitation.
- There was no injury to the head, neck or any other significant structures that would have contributed to the death.
- Fractures to the front of the right hand side of the rib cage would be associated with either resuscitation efforts and/or the fall to the ground in the process of being restrained.
- There was evidence of pre-existing heart disease in the form of hypertensive cardiomyopathy related to his high blood pressure.
- Mr Giorgio's obesity also placed him at increased risk of sudden cardiac death in activity, related to the physiological effects obesity has on both the respiratory system and the heart.

13. Dr Olumbe concluded: "[T]he cause of death is not a single entity but a chained/linked series of events and/or interaction of factors between pre-

existing conditions in the form of cardiovascular disease (obesity related dilated cardiomyopathy/ischaemic cardiomyopathy), morbid obesity, severe coronary atherosclerosis and potential consequences arising from the restrained prone position in a man with a history of chronic paranoid schizophrenia and hypertension (high blood pressure). There is no objective conclusion to determine which is a potential or equally probable cause of death. Therefore, the cause of death is undetermined."

14. At inquest and also with the benefit of Dr Rashford's clinical opinion as to Mr Giorgio's clinical course, Dr Olumbe on reflection felt more confident to describe Mr Giorgio's death as being due to ischaemic cardiomyopathy following a period of restraint on a background of morbid obesity.

15. I am satisfied, on the balance of probability, that this can be described as Mr Giorgio's medical cause of death.

Personal History

16. The ESC investigation obtained documents from South Australian (SA) and New South Wales (NSW) mental health authorities and spoke to a number of persons in South Australia who had responsibility for decision making for Mr Giorgio. Detective Sergeant Pfeffer also travelled to South Australia and spoke to Mr Giorgio's family.

17. Mr Giorgio was aged 54 at the time of his death. He had three older surviving sisters and they have been kept informed of issues being examined at the inquest. Mr Giorgio had never married and did not have any children. His mental health issues were long-term. Mr Giorgio was passionate about opals and travelled throughout opal mining areas in various states for extended periods of time and traded in opals for a period. It was reported that when he was not travelling he resided with his mother until her death in 2006. After 2006 he was subject to a Level 2 Community Treatment Order (CTO) under the SA mental health legislation, which allows for involuntary treatment if the person refuses treatment. He was not on a CTO at the time of his death.

18. After his mother's death Mr Giorgio's mental health was in severe decline and it was considered he was not capable of caring for himself. He received a

Disability Support pension. He had limited contact with other family members. At this stage he was residing in the family home. There was reference to an estrangement in the family after Mr Giorgio was bequeathed his mother's house and a caveat was placed on the dwelling by his sisters. His family explained, and I accept, this was simply to prevent its sale in circumstances where there was a potential estate dispute. I also accept no one from the family sought to prevent Mr Giorgio from living there. However, it is evident there were times he was not living in the home and there were reports he was at times living in squalid conditions and exhibited bizarre behaviours. This appears to have been decisions made by Mr Giorgio, no doubt in the context of his unwell mental health.

19. Mr Giorgio was diagnosed with schizophrenia and in June 2008 he became subject to a Guardianship and Administration Order in SA. The SA Public Trustee administered his finances and the SA Public Advocate had limited guardianship over some aspects of his accommodation and lifestyle decisions.

20. Mr Giorgio had developed a distrust of medication and therefore did not take his medication. He developed diabetes and a testicular tumour, for which he refused treatment. His weight increased.

21. Mr Giorgio also had a distrust of police and had been taken into custody by police on a number of occasions. Public exposure of his genitals was a common behaviour. He could at times also act aggressively at financial institutions such as banks due to his difficulties in dealing with his finances. He often requested assistance from his manager at the Public Trustee.

22. Family had also asked the SA Public Advocate to prevent him from leaving SA but were told this was not possible as Mr Giorgio had not harmed anyone and was not at risk of doing so.

23. Alternative accommodation had also been arranged for him but he often left to return to opal mining towns. In August 2015 he made his way to Lightning Ridge, NSW and quickly came to the attention of police. He received some treatment at Lightning Ridge Hospital but it was considered there were insufficient grounds to involuntarily treat him. He was offered a bed in hospital but declined and left. One of his sisters last saw him in September 2015.

24. On 6 November 2015 he was in Gilgandra and had contact with police due to his behaviour including running in front of vehicles, exposing himself, not eating, drinking or taking medication, soiling himself and paranoia. He was taken to Dubbo Hospital but it is unclear what treatment he received.

25. By December 2015 he had once more left his accommodation in SA. A nephew received a letter from him about a month prior to his death but it had not made any sense.

26. Mr Giorgio made his way to Queensland, with police investigations revealing a flight booked with Qantas in Mr Giorgio's name from Dubbo to Coolangatta on 9 March 2016.

Mental Health History

27. Mr Giorgio had a past history in relation to mental health care received in SA and NSW.

28. From review of his mental health records it is clear Mr Giorgio had a long history of chronic paranoid schizophrenia and numerous admissions to hospitals in both SA and NSW related to his mental health. It appears Mr Giorgio was difficult to care for as he denied having a mental illness and would refuse to take medications or comply with community treatment orders.

29. Mr Giorgio's last known contact with mental health services was in November 2015 in NSW, when he was conveyed to the Dubbo Base Hospital by police officers concerned about his antisocial behaviours (including running in front of vehicles, exposing himself, not eating/drinking or taking his medication, presenting to a service station covered in his own faeces, constantly soiling his trousers and exhibiting paranoia). He was living homeless in the Gilgandra area. Mr Giorgio was reported to have assaulted one of the police officers as they were trying to speak with him.

30. During Mr Giorgio's admission to the Dubbo Hospital, hospital staff made contact with SA mental health services as well as the SA Public Advocate, who

had limited guardianship of Mr Giorgio with regards to accommodation and some lifestyle decisions following an order made in June 2008. The Public Advocate was advised that following psychiatric review, it was decided there were insufficient grounds to hold Mr Giorgio involuntarily under NSW mental health legislation, and he was released from the Dubbo Hospital.

31. Mr Giorgio's family made contact with the Public Advocate in January 2016 whilst he was still living in NSW, expressing concerns for his safety, but were advised the guardianship order could not be enforced in NSW and he could not otherwise be forced to return to SA.

Contact with QPS

32. From 15 to 29 March 2016 there are a number of recorded interactions with police in the Nerang and Canungra areas of South East Queensland. All were recorded as street checks related to anti-social behaviours and homelessness.

33. The first interaction was a street check at Nerang Plaza on 15 March 2016. This resulted in QPS creating a '*flag*' on its computer systems in relation to Mr Giorgio having '*psychological/psychiatric disorder, schizophrenia, warning from interstate SA*'. There was a further check the next day when he was stated to be causing a disturbance outside the ANZ Bank and he stated he was homeless. He was moved on from the area.

34. On 28 March 2016 he was in Canungra and was located in the public toilets in a park, seated on a cubicle with the door open. There were numerous families in the area and he was moved on.

35. On 29 March 2016 he was still in Canungra and a number of local businesses had complained about him loitering and asking for food. Police discussed with him about returning to the Gold Coast where he would have access to Centrelink and other services. He accepted a lift from Police to Southport on 30 March 2016.

36. Also on 30 March 2016 at 1830hrs, Mr Giorgio is recorded as being spoken to by members of the Australian Federal Police (AFP) at the Gold Coast Airport in relation to reports he was harassing passengers for money. Mr Giorgio told

police he wanted to travel to Adelaide but had insufficient funds. He was referred to a hostel and left the airport in a taxi. AFP officers conducted checks, which confirmed Mr Giorgio had numerous mental health warnings and other confrontations with police, however his interaction with officers on this occasion was described as 'fairly benign'.

37. Mr Giorgio's last contact with police prior to his death was one day earlier, on 4 April 2016, in Cavill Avenue at Surfers Paradise. Police received a report of a male behaving strangely outside the McDonald's Restaurant, including pulling faces at the customers of the restaurant. Constables Glenn Engels and Corey Glen of Surfers Paradise station took up with Mr Giorgio at that location. This interaction was recorded on the officers body worn cameras and subsequently investigated by QPS following concerns expressed by Mr Giorgio's family, after his death, as to why police did not take him into custody for mental health issues on that occasion and whether this was a missed opportunity to take Mr Giorgio into custody for mental health issues, which may have prevented the tragic events that occurred the very next day.

38. A copy of the audio recording of an interview with one of the attending officers Constable Engels has been provided and is summarised in the Police Investigation Report into Mr Giorgio's death. Constable Engels was completing the end of his first year as a QPS officer and was on a four month rotation in the Surfers Paradise station.

39. In summary, whilst the officers observed some odd behaviours, Mr Giorgio was otherwise coherent and explained that he was homeless and wanted some help with a 'community assist'. Constable Engels stated Mr Giorgio was calm when approached and Mr Giorgio said he did not believe he had bothered anyone. He walked back into McDonald's to approach any staff who made the complaint and was escorted out by Constable Engels. He accused Constable Engels of assaulting him when he placed his arms on him to escort him out. At this stage Constable Engels activated his body worn camera. Mr Giorgio expressed some paranoia regarding mobile telephones. Mr Giorgio was told that the complaint about him had come from building management and Mr Giorgio stated he owned the building.

40. Constable Engels did not otherwise deem it necessary to refer Mr Giorgio to a mental health service as he '*had a slight touch of humour in his conversation, was calm and (ultimately) cooperative with no mention of self-harm*'. As well it was noted that the behaviour complained of was not an offence as such and was well down the list of seriousness of behaviours investigated by police. Mr Giorgio also appeared fine physically aside from obvious signs of being homeless. There was nothing in his behaviour that gave officers cause to detain him for an Emergency Examination Order under the (former) *Mental Health Act 2000* (now an Emergency Examination Authority under the *Public Health Act 2005*). To do so meant they had to be satisfied he was at an immediate risk of self-harm or harm to others, or was making threats of harm to himself or others. Constable Engels properly identified there was no evidence to support this. Constable Engels therefore did not consider it necessary or lawful to refer him to a mental health service.

41. Constable Engels stated that Mr Giorgio was at all times coherent and stated he was homeless and requested help with a "community assist". Constable Engels considered referring him to Support Link but as Mr Giorgio did not have a mobile telephone or fixed address for support agencies to contact him, this was not able to be utilised.

42. Mr Giorgio then said he did not need shelter but he needed a lot of money and asked the police to give him cash. The police told him they could not do that and recommended he go to the Southport Courthouse to obtain more information on support services. Mr Giorgio said he would do that and walked off in a northerly direction along the Esplanade. Constable Engels believed he knew the location of the courthouse so made no attempt to transport him.

43. Constable Engels stated it was an amicable discussion and Mr Giorgio was voluntarily leaving the area. He was comforted in the knowledge that in referring him to the courthouse he would also have been able to access Rosies, which operated from a carpark across the road from the courthouse.

44. The ESC investigation found there was nothing in Mr Giorgio's behaviour, which would have given the officers cause to detain him under an Emergency Examination Order under the then *Mental Health Act 2000*. It is noted that under the legislation for police to complete an EEO the officer has to

reasonably believe a person has a mental illness and there is an imminent risk of significant physical harm being sustained by the person or someone else.

45. The QPS Operational Procedures Manual (OPM) 6.6 provides that where an officer considers a person may be in need of assessment or treatment but there is no immediate risk to persons or property, they should ask the person if they will voluntarily obtain an assessment or treatment from the nearest mental health service. Officers can also make a referral to an authorised mental health service provided the person is informed by the officer they intend to make such a referral and the person is informed they can refuse an offer of service if they are contacted.

46. OPM 6.3.11 also notes that officers who come in contact with a homeless person should refer that person to an agency for assistance so that emergency accommodation and resources can be provided.

47. In this instance Constable Engels ultimately referred him to the courthouse but admitted during his interview he had no idea how the courthouse would be able to assist. As far as he was aware he did not believe there was any accommodation for homeless people in the Surfers Paradise District. He stated that he knew there were a percentage of homeless people that live at Surfers Paradise and the policy was to try to move them on, out of Surfers Paradise. He had not received any specific training on how to directly deal with homeless people in Surfers Paradise. Police were told to street check them, gather information, try to get them to leave to go to somewhere in Southport or somewhere where there were shelters but he was not aware of the whereabouts of such shelters. In hindsight, Constable Engels agreed it would have been better if he knew more of the resources available in the area.

Positional Asphyxia

48. In recent years policing services, including those in Queensland, have recognised a correlation between restraint positions and the sudden, unexpected death of subjects in police custody. This is referred to as “Positional Asphyxia” (PA). PA is defined as a potential critical situation when

the position of a subject's body interferes with respiration. The result can be a loss of consciousness and death, due to asphyxia or suffocation.

49. As a result QPS had developed a *Good Practice Guide Positional Asphyxia*.[4]The guide sets out a number of contributing factors including relevantly for this case:

    a. Evidence of psychosis or a mental illness;
    b. Obesity - subjects with large protruding stomachs or 'beer bellies" are at risk from PA as the contents of the abdomen can be forced up within the abdominal chest cavity when the subject is in the prone position;
    c. Diaphragm muscle fatigue - this may occur after a foot chase or violent struggle with police;
    d. Multiple police – sometimes situations arise where several police are required to hold a subject down in the prone position, placing pressure on the subject's rib cage and restricting respiration. The policy and guide states that police should be aware the more officers holding the subject down, the higher likelihood that the person will not be able to breathe sufficiently.

50. The guide notes that there is a common sequence of events associated with PA related deaths. In the first stage the subject exhibits violent, irrational behaviour accompanied by aggressive and/or delusional episodes resulting in vigorous agitation and physical exertion. Drug abuse and/or a mental illness are the most likely cause of the subject's behaviour.

51. In the second stage the police recognise the need to restrain the subject and a struggle begins. Often the subject is out-numbered and expends considerable energy running from, or grappling with, the responding police. In an attempt to further restrain and handcuff the subject, police place the subject in the prone position. More police may be summoned to achieve this. Experiencing breathing difficulty and pain, the subject may struggle harder to get relief.

52. In the third stage, due to continued psychosis, panic, or desperation, the subject continues to struggle in an attempt to breathe. Responding police may perceive this as a continued threat and apply even more force to restrain the

[4] Exhibit C41

subject. The subject, totally restrained in the prone position, is unable to move and expends what energy they have the left trying to inflate the chest in an attempt to breathe. It is at this point the subject may become lethally exhausted and die.

53. The guide states the police should be aware of and pay close attention to various signs and symptoms including:
    a. Gurgling and/or gasping sounds;
    b. Cyanosis-lips and face turned blue due to lack of oxygen;
    c. Subject saying they cannot breathe;
    d. Prolonged resistance;
    e. Sudden tranquillity where a violent struggling subject suddenly stops moving;
    f. Profuse sweating accompanied by high body temperature.

54. Police are advised they should never compromise their own safety, or that of the public, in an attempt to avoid physically restraining an individual where no other option is viable.

Events of 5 April 2016

55. The QPS ESC was tasked with investigating the death on behalf of QPS and the Acting State Coroner. Having spoken to numerous witnesses and reviewed body worn camera footage retrieved from the police officers involved in Mr Giorgio's arrest and detention, the ESC investigation report completed by Detective Sergeant Sandra Pfeffer describes the circumstances of Mr Giorgio's death in some detail.

56. Police first became aware of Mr Giorgio that morning after receiving a telephone call from the manager of the Mantra Hotel in Broadbeach, stating a male person had entered a closed restaurant within the hotel complex and was refusing to leave.

57. Two officers, Constable David Williams and Constable Michael Zairis, attended the restaurant a short time later and were advised the male person had left. Constable Williams had one year of operational experience and Constable Zairis three years. Constable Williams recalls being given information that Mr Giorgio was quite aggressive but he cannot recall any detail

of the information he was provided. Staff of the restaurant pointed the officers to a male walking northbound along the Gold Coast Highway. The two police officers got into their vehicle and drove a short distance to where Mr Giorgio was standing on a traffic island close to the highway on the corner with Victoria Avenue.

58. Prior to approaching Mr Giorgio one of the officers activated his QPS issued body worn camera. The officers then engaged in conversation with Mr Giorgio who was standing at the intersection of Victoria Avenue and the Gold Coast Highway. Constable Williams told Mr Giorgio they wanted to talk to him about his behaviour at the restaurant. Mr Giorgio was asked for ID and he begins looking for it amongst a number of folded pieces of paper he pulls out of his pockets.

59. Constable Zairis stated he was mindful of their position close to the highway and whilst Mr Giorgio was retrieving his paperwork Constable Zairis suggests they walk over to a bench and get off the corner of the intersection. Mr Giorgio said "no" stating he wanted to go to the bank to collect his money. Mr Giorgio then handed a document to the officers, which identifies him to the officers by name. Constable Zairis then begins explaining the complaint that was received and asked Mr Giorgio questions about the incident at the restaurant. At that point Mr Giorgio says something along the lines of '*I'll tell you what I was doing there*' and stepped backwards and pulled his shorts down and lifted his shirt up, exposing his genitals to the officers. Mr Giorgio then pulled his pants back up again.

60. Constable Zairis used the back of his right hand to flick Mr Giorgio on his shoulder, as a distraction technique designed to facilitate restraint. Mr Giorgio raised his two hands, and Constable Zairis placed his left hand on Mr Giorgio's left inner wrist and his right hand on Mr Giorgio's upper forearm in what was referred to as a "come along" hold. Mr Giorgio at the same time took hold of Constable Zairis' left forearm with his right hand. Constable Williams was writing information in his notebook but then also came onto Mr Giorgio's right side and took the same hold. Constable Zairis stated he needed to secure Mr Giorgio to stop him going onto the highway.

61. The ESC report describes that Mr Giorgio 'began to resist against Constable Zairis', and that he was transitioned to the ground and after a struggle of almost three minutes handcuffed behind his back. Upon being handcuffed, Constable Zairis told Mr Giorgio he was under arrest for wilful exposure in a public place, disorderly behaviour and obstructing police.

62. Constable Williams was unable to say how they came to have Mr Giorgio on the ground as it happened quickly but he said it was not a heavy fall and was controlled. Mr Giorgio then thrashed around with his hands underneath him. Back up was then called for as well as QAS. Constable Williams stated he was aware of the issues regarding positional asphyxia on noting Mr Giorgio's obesity and likely health issues. They applied a three point pin with a knee on one shoulder, a knee on the buttocks and a hand where the handcuffs were to go. After some further thrashing around the officers felt Mr Giorgio relax enough to enable them to get his arms away from underneath him and apply the handcuffs. Soon after Constable Zairis lifted his knees and Mr Giorgio was placed on his side.

63. Once handcuffed, the officers moved Mr Giorgio further away from the roadway. Mr Giorgio remained lying face down on the ground for about a minute during which time another officer, Constable Simon Walsh, arrived with a police transport van (POD). Around this time, Mr Giorgio can be heard asking the officers to '*turn me over*' and to '*get off me*'. The officers pulled Mr Giorgio on to his side and then sat him up to search him, in preparation for placing him in the police van.

64. After the search Mr Giorgio is assisted to stand up. He was asked to step up into the POD through the rear of the police van but was unable to do so, telling officers he could not get into the POD because he was disabled. The ESC report describes the police officers then '*lean Mr Giorgio forward on his stomach and push him into the pod*'. As the door to the POD was closed, Mr Giorgio can be seen lying on his right hand side against the driver side wall of the POD with his legs extended to the rear and positioned upon a built-in seat. Constable Williams noted Mr Giorgio was breathing quite heavily. This did not cause him any concern as he thought the heavy breathing was a good sign that Mr Giorgio was recovering.

65. QPS officers then made a decision to call for QAS after noticing some bodily fluid on them (blood or vomit) that Mr Giorgio may have coughed up, with one of the officers mentioning a concern that he may be '*overdosing on something*'. The officer who calls for QAS via the Police Communications Centre asks for QAS attendance '*to check this male out*', stating he has '*a little bit of bleeding from abrasions and is a bit short on breath*'. One minute later officers call again for QAS attendance, this time requesting a 'Code 2'. They state '*this guy's started to froth at the mouth*', and that he is still conscious and breathing but '*doesn't look too well*'.

66. From this point on, the report describes efforts made by the officers to monitor and communicate with Mr Giorgio, who had been able to get himself into in a semi-upright seated position, leaning against the driver side wall of the pod. He remains apparently conscious and breathing but otherwise unresponsive to questions asked by officers. Discussion occurs as to whether Mr Giorgio should be sat up further or taken outside and put into a recovery position, but a decision is made to leave him where he is as he appears comfortable and is still able to breath. Constable Walsh continues to check his pulse and breathing and make attempts to communicate with him, but Mr Giorgio remains unresponsive and was not moving. Constable Walsh states he was able to find a pulse at his carotid artery. He was adamant about this despite the opinion of Dr Rashford that this was unlikely due to Mr Giorgio's body habitus. At some point white froth begins coming out of Mr Giorgio's nose, and officers wipe this away. Neither Constables Williams nor Zairis had come across a case where white froth was coming from the mouth and nose. Constable Williams assumed it had something to do with a drug overdose and Constable Zairis thought it was not great and this prompted a further call to QAS to upgrade the incident to a Code 2 in police terms, being "lights and sirens".

67. A more senior officer, Sergeant Stephen Wright, then arrives at the scene and almost immediately instructs the officers to remove Mr Giorgio's handcuffs and get him out of the van. Mr Giorgio is placed on the grass and Constable Walsh states he was then unable to obtain a pulse. CPR is immediately commenced, with Sergeant Wright providing chest compressions only. QAS is again updated and asked to attend urgently. Further emergency medical assistance is provided by a doctor who happened to be passing by, and a defibrillator device is also brought over from the Mantra Hotel. The defibrillator is automatic

and advised that no shockable rhythm was present and to continue chest compressions. Police were unable to find a face mask to provide breathing resuscitation. Two QAS paramedics arrive on scene and continue first aid. Within a short period of time the paramedics decide that further resuscitation attempts would be futile, and treatment is ceased. Mr Giorgio's life is then declared extinct at 1131hrs, which is roughly 45 minutes from the time Mr Giorgio was first approached by police that morning.

68. The ESC investigation then examined the actions of the first response officers with reference to policy and legislation. In particular it was found it was appropriate for Mr Giorgio to be placed into the police vehicle with the intention of transporting him to the watch house for charges to be preferred.

69. Similarly to Senior Sergeant Hayden, who provided a report, the ESC investigation found the officers complied with legislation and policy with respect to their use of force against Mr Giorgio. The ESC report stated that the use of a threat assessment process using *Person, Object, Place (POP)* was relevant to the circumstances. Using that process it was considered:

- Person: Mr Giorgio had displayed irrational behaviour when he exposed himself and it was not possible to determine what he would do next
- Place: The proximity of the highway heightened the risk to all persons including Mr Giorgio
- The initial attempts to restrain Mr Giorgio was by using open hand techniques to secure his arms while in an upright position, which is consistent with QPS policy to use the minimum amount of force necessary to resolve an incident

70. Constables Zairis and Williams stated their initial intent was to restrain Mr Giorgio using open hand techniques by securing his arms while in an upright position. Mr Giorgio was transitioned to the ground when the officers were unable to restrain him in an upright position.

71. Looking at the video it is possible the transition was intentional but equally could have occurred due to a fall as a result of the struggle. The officers state Mr Giorgio continued to resist them on the ground by thrashing his body around and holding his arms underneath his body. Constable Zairis attempted

pressure points techniques to get him to comply but this was ineffective. Ultimately, Constable Zairis decided that since Mr Giorgio was controlled, but not yet restrained on the ground, it was prudent to call for back up to affect the arrest. While the officers were waiting for assistance, Mr Giorgio moved his arms sufficiently to allow handcuffs to be placed on him. QPS policy is that a person should be handcuffed behind the back and it was stated this action was appropriate and in accordance with the policy to apply handcuffs.

72. On the issue of positional asphyxia the ESC report noted that there was a specific QPS *Good Practice Guide: Positional Asphyxia*. The guide states it was developed on the basis that it was recognised there was a correlation between restrained positions and the sudden, unexpected death of the subject in police custody. The guide stated it is well known positional asphyxia is a risk associated with restraining a person on the stomach. Despite the risk, the guide emphasises *'police should never compromise their own safety, or that of the public, in an attempt to avoid physically restraining an individual where no other option is viable'.*

73. The ESC report noted that due to the inevitability of police having to restrain certain people, they are trained in risk management and reduction strategies for Positional Asphyxia. The report noted that Constables Zairis and Williams stated they received training in this regard and were conscious of the risk of Positional Asphyxia. The report stated this was displayed by Constable Zairis when he made a decision to stop struggling with Mr Giorgio and to wait for assistance. Constable Zairis also cautioned Constable Williams to lessen his weight upon Mr Giorgio and they made a decision to place him on to his side.

74. The report further noted that following the arrest the officers continually assessed Mr Giorgio as recommended in the guide. This led to the decision to request medical assistance and to move the van into a safer position on the highway to monitor his health, as opposed to transporting him straight to the watchhouse.

75. The ESC report concluded the actions of the officers were consistent with their training and QPS policy.

Review by Senior Sergeant Damien Hayden

76. Additional QPS review of the incident by Senior Sergeant Hayden was conducted, particularly focused on the level of force utilised in the arrest of Mr Giorgio on 4 April 2016.

77. Senior Sergeant Hayden is the Officer in Charge of the Operational Skills Section located at the Queensland Police Service Academy. The Section runs basically as an instructor school, facilitating Operational Skills and Tactics training courses. The Section is also responsible for the generation of the ongoing Operational Skills Training, in-service skills, and tactics training curriculum. Senior Sergeant Hayden has lengthy experience and qualifications suitable for his role. He has been recognised by the courts as an expert witness with respect to use-of-force, police arrest and control techniques and tactics and TASER matters and has given expert evidence over a wide range of Court jurisdictions including coronial inquests.

78. Senior Sergeant Hayden stated there are no official mandated subject behaviours limited as a benchmark that requires police officers to undertake specific actions regarding use of force. As examples he stated there is no requirement that states police must always shoot armed offenders, or police must handcuff every person they arrest. The preferred position is to organisationally support officers by providing operationally relevant tools (such as the *Situational Use of Force Model 2009* and the *Threat Assessment and Technical Decision* making process) to assist them in continually assessing the circumstances to inform the selection of a use of force option, and to reassess those circumstances following initial deployment and prior to the application of any other use of force.

79. While avoiding the artificial creation of a maximum use, the QPS does contextualise all use of force options within a paradigm of using the minimum amount of force necessary to resolve the incident and emphasising the decision to apply force is an individual one for which every officer will be held accountable.

80. Officers are instructed that it is good policing practice to perform a continual threat assessment as to the level of risk both real and potential. Threat assessment requires continuous re-evaluation being mindful that threat levels rise and fall during use of force incidents. The product of the continuous threat

assessment process is the creation of situational awareness. As with all use of force options, the decision must be judged on according to the circumstances characterising the incident at the specific time, and may be influenced by risks either actual or potential.

81. The policy requiring the QPS Use of Force matters is contained within the *Operational Procedures Manual* chapter 14. This specifies the five conditions that must be satisfied for application of force to be regarded as appropriate and in accordance with the QPS organisational position as it relates to the law for application of force.

82. The first condition is that all use of force applications must be authorised. Senior Sergeant Hayden stated the Constables were performing a function of the QPS in that they were on duty at the time and were investigating a report relating to Mr Giorgio entering a premises and causing a disturbance. He stated the decision to use force during the arrest was reasonably necessary to take Mr Giorgio into custody. When taken into custody he began to struggle and resisted the efforts of police to control him.

83. The second condition is that all use of force applications must be justified. Senior Sergeant Hayden stated he formed the view the Constables were able to justify the decision to apply physical force including the initial restraint holds, take down to the ground, ground restraint and application of handcuffs to obtain control of Mr Giorgio.

84. The third condition is that all use of force applications must be reasonable/proportionate/appropriate. Senior Sergeant Hayden was of the view that the actions of the Constables were a reasonable response and due to the escalating nature of the incident and the potential threat posed to police the decision to take Mr Giorgio to ground was an appropriate response. He was also of the view the decision to handcuff Mr Giorgio at that particular time was not a disproportionate or an inappropriate response to his actions of bracing up and locking his arms to prevent the application of handcuffs.

85. Senior Sergeant Hayden considered the level of force used to insert Mr Giorgio into the rear of the POD was appropriate in that the officers moved him to the door of the POD, requested he enter the van, gave clear directions as to what

they wanted him to do and explained the process. Mr Giorgio appeared to acknowledge this and would not/could not comply. As a result, he was inserted into the POD face first on his belly and his legs were lifted into the van. He was observed to reposition himself and sit himself up with his back against the rear of the van.

86. The fourth condition was that all use of force applications must be legally defensible. Senior Sergeant Hayden was of the belief the level of force used was reasonably necessary and was not excessive or gratuitous.

87. The fifth condition is that all use of force applications must be tactically sound and effective. Senior Sergeant Hayden was of the view the techniques and tactics utilised were in accordance with established QPS operational skills, training and doctrine. The decision to take Mr Giorgio to ground with a view to restraining him and applying handcuffs was the most tactically sound and effective method of rapidly establishing control over him. The method of insertion into the rear of the POD was found to be appropriate for the circumstances.

88. In this case Senior Sergeant Hayden stated Mr Giorgio was non-compliant and pulling away. Officers are instructed that the safest and most effective way to establish control over a resisting subject is to have the person pinned face down on the ground, with their hands behind the back. This position also facilitates the application of handcuffs. In this instance the takedown was appropriate as Mr Giorgio was not thrown, slammed or tackled to the ground using a high impact technique. He was delivered to the ground under control of police.

89. Senior Sergeant Hayden also reviewed the body positioning of the two Constables during the restraint to see if Mr Giorgio was subjected to the unnecessary application of body weight. Caution is required when applying compressive body weight techniques during restraint situations due to the potential risk of death or serious injury. Body weight can rapidly fatigue the diaphragm muscle and restrict the person's ability to maintain ventilation.

90. In this case Senior Sergeant Hayden stated the officers are seen to apply body weight with their knees in accordance with their training. Officers are taught to

perform a three point pin with the knees of the officer being placed on the rear of the hips and the shoulder blade of the person who is face down. Officers are instructed not to unnecessarily maintain this position once they have the subject person under control or when they are compliant, due to the risk of injury to the person. In this case he was of the view the Constables acted appropriately and were mindful of unnecessarily exposing Mr Giorgio to body weight and unnecessary stress. As an example, at one stage a Constable is observed to tell Constable Williams to "just get off him a bit". Mr Giorgio is then rolled to the side to allow him to breathe easier. Lateral positioning of a prone subject is encouraged during training to facilitate ventilation of person's breathing, particularly where they have a 'beer belly' or obese build.

91. Senior Sergeant Hayden stated that police officers are specifically instructed during training that if they are required to restrain a person on the ground for a period of time they should be mindful that the subject is not placed in a position where they are unable to breathe effectively. This takes into account the phenomenon identified as "restraint asphyxia", "positional asphyxia" or "compressive asphyxia".

92. Senior Sergeant Hayden noted in situations where persons are engaged in muscular activity at maximal effort over a period of several minutes such as was the case here, the body undergoes several significant physiological changes that can considerably increase the risk of sudden death in certain persons particularly those with pre-existing underlying illnesses, general obesity and suffering a mental illness. These matters have been identified on a number of occasions in coronial inquests. Summarised, he stated these incidents can be typified by: deaths usually involving a violent or irrational individual; deaths usually involving police who have restrained or are attempting to restrain a person; the deaths occurred proximal to the arrest or very shortly after; and in the event of a post arrest sudden death, data indicates the subject either died at the scene, during transport or very shortly after arrival at a police facility or hospital.

93. Senior Sergeant Hayden stated that in 2008, QPS introduced education and training with a view of minimising the risk of sudden in custody deaths generally, and especially arising from use of force situations including restraint asphyxia, positional asphyxia and excited delirium. Officers are given

instruction regarding the potential health issues of subjects who have been taken into custody and are instructed to continually assess and monitor every arrest/custody situation, and are instructed in what health issues may occur during and immediately after an arrest situation that has involved exertion and heavy physical restraint. Officers who observed/detect health risks are instructed they should exercise diligence regarding the person's health and obtain medical attention where appropriate.

94. Senior Sergeant Hayden was of the view the Constables used appropriate techniques to restrain Mr Giorgio and he was not exposed to prolonged or unnecessary body weight, and as soon as control was effectively established pressure was released.

95. Senior Sergeant Hayden stated they also exercised due diligence with regards to the health and welfare of Mr Giorgio in accordance with their training. They asked him if he was on any medication prior to inserting him in the POD. After he was in the van they observed him to check on his welfare as they were concerned he may have overdosed on drugs. They confirmed he was not face down or in a position that would compromise his health. They took steps to get him water. Doors were opened to better observe and monitor his condition. Medical assistance was summoned to attend to him. When observations were made that he was frothing at the mouth and non-responsive, a request was made to increase the urgency of the ambulance response. At no stage after the doors of the van were re-opened was he left unattended by police.

96. Senior Sergeant Hayden stated at one point Constable Zairis is observed applying a "Closed Hand Tactic" to Mr Giorgio. Closed Hand Tactics are skills used by police officers to overcome resistance and achieve control of policing situations. Pressure points controlled tactics are taught to police officers. In this instance pressure was applied to the mandibular angle (at the base of the earlobe between the mastoid and the mandible). This pressure can stimulate the hypoglossal, vagus and the glossopharyngeal nerves causing pain. This was applied in this case for continuously over 30 seconds and Senior Sergeant Hayden stated this was an incorrect application of the technique. Officers are instructed to apply the technique in short applications for a few seconds only whilst giving a clear verbal command. Although the decision to use a pressure

point controlled tactic was appropriate, the preferred option would have been for the technique to be used as instructed.

97. Having heard from both Constable Zairis and Senior Sergeant Hayden on this issue, it is evident the incorrect application of a pressure point control tactic to Mr Giorgio's neck region was more in the nature of a technical breach, and was not a factor in Mr Giorgio's subsequent deterioration. Constable Zairis gave evidence about the proactive steps he had taken following the incident to ensure he now has a correct understanding of the technique.

98. Senior Sergeant Hayden stated that from information provided to him, Mr Giorgio was suffering from significant pre-existing medical conditions that could have significantly contributed to his sudden collapse and subsequent death. Multifactorial issues including mental illness, diabetes, dehydration, morbid obesity, lack of cardiovascular fitness combined with sudden physical exertion of being restrained would have a role in triggering the medical emergency that led to his death.

99. Senior Sergeant Hayden stated he did not detect any breach of policy or legislation with regards to the actions recorded on the body worn video cameras. He is of the view Constables Zairis and Williams acted in accordance with their training.

QAS response to attending incident

100. The QPS ESC investigation identified a potential issue regarding the time it took QAS to respond to the incident, noting there was a lapse of approximately 19 minutes from when the first request for assistance was made through the Police Communications Centre until the arrival of QAS officers at the scene.

101. Further information was therefore requested from QAS, and a covering letter and QAS documentation on the incident, including statements from the QAS officers who attended the scene, was subsequently provided by Dr Stephen Rashford, Medical Director for QAS.

102. Dr Rashford noted QAS first received a call about the incident at 1054hrs and were at the scene at 1110hrs, a response time of 16 minutes. The officers who were first in attendance were a second crew consisting of Advanced Paramedics, Matthew Gamble and Kate Scriven. The first crew was diverted to a higher priority based on the triage of information then known. They were dispatched at 1100 hours. The code was a 1C which was lights and sirens and upgraded at 1107 as a 1A (the highest priority). This made no difference to the speed they got there but gave the QAS officers an indication this was now a high acuity event.

103. Dr Rashford stated the way in which information was categorised by the QAS Operations Centre on allocation of a 'Code 1C' response for the incident was appropriate based on the information received at that time (namely that the patient was bleeding from minor abrasions, conscious and breathing but frothing from the mouth).

104. The QAS ambulance vehicles available at that time and the way in which they were allocated (both to this incident and to other competing priorities) was also reviewed and found to be appropriate. Once QAS received information that CPR was in progress, the case was immediately upgraded to a Code 1A (the highest response category available) and two additional units were allocated to respond.

105. Once the officers arrived it was noticed QPS were giving effective CPR. The officers shifted Mr Giorgio back up the footpath to a safer area and given his status moved into the cardiac protocol. Paramedic Gamble's impression was Mr Giorgio was in a very critical condition but they proceeded according to the cardiac protocol until it was clear no response was possible.

106. At least one QPS officer was in a distressed state and concerned they (QPS) had not been able to activate the defibrillator and he was given reassurance they were performing effective CPR and the defibrillator was not in error and only worked in certain situations and not when there was no heart rhythm.

107. A clinical audit of the care provided to Mr Giorgio by QAS officers once they arrived at the scene found that all cares provided were appropriate.

Review of incident by Dr Rashford

108. Dr Stephen Rashford is the Medical Director for the Queensland Ambulance Service. He is also a registered Emergency Medicine Specialist. He has extensive experience in emergency medicine and in one form or another has been involved with the QAS since 1999. Dr Rashford has a very broad understanding of the cultural and operational requirements of the service. Apart from his role to provide the QAS Commissioner advice on all aspects of clinical care and governance, he has provided expert medical reports to external organisations, including in coronial matters. He regularly attends pre-hospital resuscitation scenes and has attended well in excess of 10,000 such cases. Dr Rashford was requested by the Coroners Court to review the incident.

109. Dr Rashford stated that it was important to understand the context of his opinion in that he was an experienced emergency physician and his observations are based on a significantly better understanding of the background medicine and its practical application to scenarios such as the presentation of Mr Giorgio than the attending QPS officers. Dr Rashford acknowledged his opinion was also given with the benefit of hindsight.

110. Dr Rashford's opinion was that the QPS officers acted with good intent at all times. He noted however, there are a number of learnings from this case that can contribute to better care and performance in the future. The QPS have both mental health education and first aid training. Whilst medical assessments and patient care are not their primary role, it must be understood that by the very nature of their evolving work, QPS officers have become emergency medical first responders by default. QPS officers are not paramedics, but they must now be able to recognise individuals suffering acute illness above a basic level of understanding. Dr Rashford is concerned that the current level of QPS education does not provide the staff with a tailored understanding in this area, often resulting in delayed recognition of the patient with a deteriorating clinical status. This potentially results in delayed requests for the attendance of paramedics and delays in basic life support intervention. Mr Giorgio's case demonstrates many of these principles.

111. Dr Rashford was asked to give an opinion as to Mr Giorgio's clinical course from the time he was first approached until he was declared deceased. Dr Rashford noted that when Mr Giorgio was physically restrained the procedure involved forcing Mr Giorgio to the ground in a prone position with his hands cuffed behind his back. He understands this to be a standard initial QPS position for control in this scenario. In this position, downward pressure was applied to Mr Giorgio's head and lower back.

112. Dr Rashford stated the prone position, with arms handcuffed behind the back is a potentially dangerous position for certain individuals susceptible to airway and respiratory insufficiency. These factors include underlying medical illness, acute clinical insult (trauma, overdose etc.) and body habitus. In Mr Giorgio's case, Dr Rashford said his body habitus was the primary concern. He was significantly overweight and in poor physical condition. The initial struggle completely exhausted him. Dr Rashford reported that whilst QPS officers were concerned about recurrent agitated behaviour and an ongoing physical distress, there was evidence to the contrary. Mr Giorgio became very breathless, finding it difficult to utter any words. The words he did utter were related to his shortness of breath and the 'feeling' he was dying. Mr Giorgio's obesity contributed to impaired respiratory ventilation by just being placed in the prone position. Dr Rashford thought it likely Mr Giorgio suffered undiagnosed sleep apnoea and had not laid flat, let alone prone, for some time. There were quite significant pathophysiological consequences of this action.

113. Dr Rashford stated this is an invidious position for the police officers. There were significant human factors at play in this situation. The QPS officers have just undertaken significant physical activity to restrain an individual who was perceived as a threat. There is no doubt there were concerns about an ongoing threat to themselves, should Mr Giorgio re-engage. Dr Rashford stated it is an incredibly difficult scenario, but with Mr Giorgio there were clues that he was in real trouble at this early stage. This included the impaired voice, his cries for help, suffused red/blue face, morbid obesity and his respiratory distress. Mr Giorgio was completely exhausted, which made his respiratory embarrassment worse in the prone position. This would have placed significant strain upon his body, particularly his cardiovascular system.

114. Dr Rashford noted importantly, the QPS officers did move Mr Giorgio into the lateral position once they realised his distress. This provided some relief from the physiological issues of being restrained in the prone position, but his exhaustion and his arms cuffed behind his back will still have caused issues for his cardio-respiratory system. At a minimum, Mr Giorgio should have been sat up against the concrete wall at this point.

115. Mr Giorgio was assisted to his feet and helped to walk to the rear of the police wagon. To get into the POD, Mr Giorgio was required to raise his leg to enter. Dr Rashford stated the reason Mr Giorgio could not do this was that he was physically exhausted and had just underwent significant stress to his cardio-respiratory system. Given his underlying conditions of morbid obesity, cardiomyopathy, coronary atherosclerosis and probable undiagnosed sleep apnoea, it is not surprising to find his physical inability to lift himself up. He was then essentially manhandled to assist him to enter the POD headfirst. The position he found himself in the POD, essentially given the arms restrained behind his back, would have done little to assist his status at that time.

116. It was Dr Rashford's opinion that it would have been more prudent for the QAS to have been called at that time to assess Mr Giorgio and that he be placed in a seated position in an area of adequate ventilation outside of the vehicle, with the ability of the QPS officers to constantly monitor him.

117. Dr Rashford stated he was not recommending QAS assessment of all individuals who require restraint by police, but Mr Giorgio's obvious physical status at the time was not good. Placing Mr Giorgio in a confined poorly ventilated space, complicated by very awkward positioning was not appropriate given his condition at that time. There were both historical and physical clues that he was not well. The most obvious clue was that his condition was completely changed from one of agitation to one of physical exhaustion and compliance associated with breathing difficulty. The QPS officers at this point requested QAS assessment, but not as a high priority.

118. Dr Rashford said that given Mr Giorgio's compliance at this stage there was no advantage of having him inside the POD and there were significant disadvantages.

119. Dr Rashford noted that once in the POD Mr Giorgio was reviewed by the attending QPS officers. The position he was in was one of sitting semi-recumbent, right leg extended and left leg flexed at the knee. At this point Mr Giorgio can be seen breathing, albeit it is abnormal. It is at this stage that a police officer is heard to tell Constable Zairis to get the QAS quicker. A request was then made for an upgraded QAS response. The request was for an ambulance Code 2. It was described that Mr Giorgio was starting to froth at the mouth and he is still conscious and breathing but he does not look too well. Dr Rashford stated that at this point Mr Giorgio should definitely have been removed from the POD, from a clinical perspective. This was the start of a rapidly downward spiral in his condition.

120. At this stage the police van is repositioned a short distance off the road. When re-examined by one of the police officers, he is concerned that Mr Giorgio is not breathing. Dr Rashford stated the most striking feature was that he was non-responsive, with foam and froth emanating from his nose and mouth. His head is in a flexed position against the wall of the POD, with it almost being certain that his airway was partially obstructed. This is a very ominous situation and he almost certainly had inadequate breathing.

121. The QPS officer attempted to give Mr Giorgio a drink of water and then tips the water over his head when there was no response. Dr Rashford stated that given his lack of response and obvious physical features of illness, he should have been immediately removed from the POD at this point.

122. The other attending QPS officer recognises Mr Giorgio's position is suboptimal but cannot change his position. He then undertakes a left-sided carotid pulse check, stating that Mr Giorgio had a pulse. Dr Rashford stated the taking of a carotid pulse in a morbidly obese man, who was heavily bearded and had his neck significantly flexed would be extremely difficult, even for a skilled medical provider. Mr Giorgio's unconsciousness, inadequate breathing and foaming at the mouth are more in keeping with a man verging upon cardiac arrest.

123. Dr Rashford then stated that compared to previous vision, there is no movement of Mr Giorgio's stomach with breathing. Given Mr Giorgio was obviously suffering from fulminant pulmonary oedema (fluid backing up into the lungs due to cardiac insufficiency), a marked respiratory effort would have

been expected, not minimal as what was present. Dr Rashford was of the opinion that a normal carotid pulse would not have been palpable under the circumstances.

124. Constable Walsh was adamant he could feel a pulse. I accept Constable Walsh held a genuine belief that he could feel a pulse from Mr Giorgio's carotid artery but he was probably mistaken. Unfortunately this appears to have been a factor in the officers being falsely reassured that Mr Giorgio's condition was not as dire as was subsequently realised.

125. I heard evidence from both Dr Rashford and Inspector Dwyer that officers are now trained, consistent with ANZCOG guidelines and as part of the tactical first aid training, that CPR is to be given in all circumstances where a person is unresponsive and with abnormal breathing, with a pulse check no longer being part of that decision making process. Dr Rashford explained that it has been recognised that individual assessments as to whether someone can in fact feel a pulse are often incorrect and therefore unreliable, and a better approach is just to instruct people to commence CPR on persons who are unresponsive and not breathing properly.

126. Constable Walsh and his fellow officers had not had the benefit of that tactical first aid training at the time of this incident in April 2016, and Constable Walsh reasonably sought to monitor Mr Giorgio's pulse at his carotid artery, not knowing he might be falsely reassured by what he thought he could feel. I am therefore not critical of Constable Walsh's actions in this respect.

127. Shortly thereafter the QPS officers consider drug overdose as a possible cause of his changing condition. Whilst possible, it would be highly unlikely given the recent history. The change in condition was immediate and followed the period of restraint. Attempts to rouse him failed to elicit a response. The QPS officers did not remove Mr Giorgio from the POD at this time, as they felt it would be too stressful. Dr Rashford opined this was flawed logic, albeit well intentioned at the time.

128. Although the QPS officers thought Mr Giorgio was either awake or semiconscious, he still had not moved from the position he was in a few minutes earlier. Dr Rashford considered this was very suspicious and should

have been a marker for significant concern. Dr Rashford stated that he can see no evidence of adequate breathing at all. He can see minimal head movement, consistent with head bobbing. This movement of the head was an accessory muscle usage during periods of respiratory distress. His accessory movements were grossly inadequate and he was rapidly proceeding to cardiac arrest.

129. One of the QPS officers then undertakes repeated pulse checks and tells police communications that his pulse was steady and he is in a much more relaxed position but was not coherent or able to communicate. Dr Rashford stated that this summary by the QPS officer drastically underestimates Mr Giorgio's condition. Mr Giorgio is not settled but is critically unwell, verging or now in cardiac arrest. In Dr Rashford's experience in reviewing such cases, this level of false reassurance is a common factor after an initial struggle. A rapid change in condition is assessed as compliance rather than the acute medical event that the physical interaction has precipitated or contributed to.

130. As soon as Sergeant Wright arrives on the scene, he immediately recognises that Mr Giorgio is critically unwell and directs the officers to immediately remove the handcuffs and Mr Giorgio from the POD. This action was rapid and direct and Dr Rashford stated Sergeant Wright should be commended for swiftly identifying the salient issues.

131. Mr Giorgio had now been in exactly the same position for almost 10 minutes. He had not made any purposeful movement during that time. This should have been identified significantly earlier than occurred.

132. Mr Giorgio is then removed from the POD rapidly. An enormous amount of pulmonary oedema can be seen draining from his nose and mouth. Once on the ground it is now correctly identified he is suffering cardiac arrest. Chest compressions were commenced but no ventilation was performed. Dr Rashford stated that CPR involving chest compression only was appropriate. Mouth-to-mouth ventilation would not have been appropriate due to cross contamination issues nor would it have been successful, given the level of pulmonary oedema present. A mouth to mask with filter should have been available to the police in the first aid kit. Even so, that device would have been difficult to use in the circumstances.

133. At this stage a defibrillator was brought to the scene and no shocks were recommended. Dr Rashford stated this means the underlying cardiac rhythm was either asystole (no electrical activity) or PEA (pulseless electrical activity). In the circumstances the known survival rates vary between 0-5% and in Mr Giorgio's case likely survival was closer to 0% at this point. Overall, Dr Rashford opined the QPS undertook effective CPR given the circumstances. He suggested a basic resuscitation mask should be available in every responding police vehicle.

134. Dr Rashford noted the treatment by the QAS paramedics met the current cardiac arrest guidelines and the cessation of treatment under the direction of the QAS specialist emergency physician was appropriate.

135. Dr Rashford was asked to give an opinion as to the adequacy and effectiveness of communication and information sharing between QPS and QAS during that period. He stated that overall, the information was accurately passed to QAS from QPS but perhaps a simplified approach would be better. Rather than using QPS response codes, a simple description of the actual clinical problem and either a request for road speed or lights and sirens response. Since this case, the computer aided dispatch systems of the QAS and QPS have been linked and this allows messages to be immediately sent between organisations attending the scene. This results in faster activation and significantly more information to be passed between the responding agencies, ultimately improving the ability of the respective operatives to undertake their roles.

136. Dr Rashford stated the QPS officers' actions were well intentioned but they failed to notice the significant change in Mr Giorgio's condition. In cases like this there is a common theme. The QPS officers currently received first aid training and have now been educated in initial medical care. However, such cases as Mr Giorgio, are more complex and are more common. Dr Rashford felt simple first aid courses are not contextualised enough for incidents such as this. Reassuringly, Dr Rashford noted the QPS officers in this case did recognise the dangers of prone positioning of a morbidly obese man but then failed to recognise his significant change in condition, subsequent to the initial restraint. This was coupled by a false reassurance of compliance. Sadly, Mr Giorgio exhibited very significant signs of critical illness yet only Sergeant

Wright recognised this. Mr Giorgio therefore suffered a very significant delay to the treatment that he required. Dr Rashford stated it is impossible to prognosticate as to whether or what contribution this made to the death.

137. Similarly to other recommendations made in coronial inquests, Dr Rashford said this case reinforces the education of QPS officers must evolve from its traditional paradigms. There are very well intentioned caring QPS officers but they require better education regarding the identification of the deteriorating individual.

138. Dr Rashford strongly recommends that the QAS assist the QPS in the development of these education packages. A nuanced approach to the actual scenarios confronted by QPS officers must be the aim.

139. Dr Rashford also recommends that the first aid capability of the QPS vehicle be reviewed. He stated it is inconceivable that the emergency response vehicles do not have basic equipment such as a mouth to face mask available, purely on a workplace health and safety perspective, let alone the patient care principles.

Conclusions on the issues

140. In reaching my conclusions it should be kept in mind the *Coroners Act 2003* provides that a coroner must not include in the findings or any comments or recommendations, statements that a person is or maybe guilty of an offence or is or maybe civilly liable for something. The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths.

141. A coroner should apply the civil standard of proof, namely the balance of probabilities but the approach referred to as the *Briginshaw* sliding scale is applicable. This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.

142. When determining the significance and interpretation of the evidence the impact of hindsight bias and affected bias must also be considered, where after an event has occurred, particularly where the outcome is serious, there is an inclination to see the event as predictable, despite there being few objective facts to support its prediction.

Whether there was a missed opportunity, the day before Mr Giorgio's death, for QPS officers to take him into custody for mental health issues

143. This was an issue that was raised by Mr Giorgio's family. Whilst Constable Engels observed some odd behaviours from Mr Giorgio he was otherwise coherent and explained that he was homeless and wanted some help with a 'community assist'. The officers gave Mr Giorgio verbal information in relation to accommodation, food and other support services, and recommended he go to the Southport Courthouse to obtain more information about these. Mr Giorgio said he would go to the courthouse and started walking in that general direction.

144. The officers did not otherwise deem it necessary to refer Mr Giorgio to a mental health service as he '*had a slight touch of humour in his conversation, was calm and (ultimately) cooperative with no mention of self-harm'* (which is consistent with what can be seen of Mr Giorgio in the BWC footage taken during that interaction). There was nothing in Mr Giorgio's behaviour that day that gave officers cause to detain him for an Emergency Examination Order under the (former) *Mental Health Act 2000* (now an Emergency Examination Authority under the *Public Health Act 2005*).

145. I am satisfied there were no grounds for police to detain Mr Giorgio for a mental health examination and the steps they did take to refer Mr Giorgio to services that may be able to help him were reasonable and in accordance with policy.

Were there alternatives to arresting Mr Giorgio

146. Mr Giorgio was being arrested for what are classed as public nuisance offences. Given the gravity of the outcome relative to the offences for which Mr Giorgio was arrested that day and that his vulnerabilities related to his mental illness and homelessness, it is open to consider whether there were diversionary alternatives to arresting Mr Giorgio, such as moving him on, referring him on to a welfare agency or simply taking no further action.

147. There has been debate and research over many years concerning the policing of public order laws and the impact on disadvantaged populations such as the homeless and mentally ill people.[5] Concerns have been identified over time regarding public order laws and the penalties imposed and how they are policed. I of course am dealing with one case and I did not hear evidence on these matters sufficient for me to comment. This is for others to advocate about.

148. In the case of Mr Giorgio it is noted that diversionary alternatives were utilised by police in Nerang and Canungra as well as in Surfers Paradise the day before he died. He was moved on by police at each of these locations; he was brought to Southport where it was thought he could avail himself of better welfare options; and in Surfers Paradise he was referred to Rosies and otherwise moved on. Mr Giorgio was very new to the area but had been flagged in the QPrime system early on as having mental health and homelessness vulnerabilities.

149. What occurred on this tragic day was different to the earlier contact with police. A complaint had been made by the restaurant about Mr Giorgio and police were asked to intervene. He was approached by police officers on the side of the Gold Coast Highway only steps away from fast flowing traffic. His behaviours during that interaction, including exposing himself and resisting efforts to be physically restrained in a "come along" hold, were likely related to his mental illness. Neither of the two police constables knew Mr Giorgio. He had just provided paperwork to enable him to be identified but before police were able to check him in their system he exposed himself. They presumed he may have mental health and homelessness issues. In the very short period of time they had available to them, the officers assessed a risk of harm to both Mr Giorgio and themselves and attempted to minimise this risk by then physically restraining Mr Giorgio on the ground. As Senior Sergeant Hayden explained, whilst bystanders might see police officers take someone to the ground and be concerned at how violent or possibly harmful such action looks, police policy and training suggests this is a relatively safe method of controlling a person or situation and reducing risk of harm.

[5] *Policing Public Order*, Crime and Misconduct Commission review, 2008; *From Park Bench to Court Bench*, Tamara Walsh 2004

150. The ESC investigation, which relied in part on the review undertaken by Senior Sergeant Hayden regarding the use of force that day, found the officers acted in accordance with legislation, policy and training (apart from the technical breach regarding the pressure point tactic, and there is no suggestion that would have in any way contributed to Mr Giorgio's deterioration).

151. The ESC investigation considered in particular the decision to apply force to and then arrest Mr Giorgio after he exposed himself, including whether those decisions would have been better informed by earlier knowledge of Mr Giorgio's mental health warnings on the QPS computer system. The ESC investigation noted:

- The officers did not have time to conduct computer checks prior to Mr Giorgio's arrest due to the rapid escalation of the incident
- The officers only had a very brief moment to comprehend and interpret Mr Giorgio's behaviour when he suddenly exposed himself and, even if that behaviour was interpreted as that of a person suffering a mental illness, this only reinforced the need to restrain and control Mr Giorgio given the close proximity of the highway
- They applied the Person Object Place threat assessment process
- The use of force and subsequent arrest (for wilful exposure, disorderly behaviour and obstruct police) was otherwise lawful having regard to the Police Powers and Responsibilities Act 2000 (Qld) PPRA and the Summary Offences Act.

152. Whilst post-restraint sudden deaths were a known risk to the service and to those officers at the time, they happen only infrequently and it was not for the officers to predict that their arrest and restraint of Mr Giorgio might trigger a chain of events that would subsequently result in his death, and then take this into account in those few seconds they had to make that decision.

153. It is clear that the police officers acted in accordance with their training, legislation and policy when they lawfully arrested Mr Giorgio. It can also be said that police utilised a restraint method they had been trained in and it is evident there was no gratuitous or excessive violence perpetrated. The police

properly enabled their body worn camera. In this case, there was no evidence of any disregard for Mr Giorgio's wellbeing.

154. The real problem in this case is what occurred subsequent to his arrest.

Whether Mr Giorgio should have been removed from the van earlier than he was

155. With hindsight and with all his years of clinical experience, Dr Rashford was able to point to a number of markers or clear signs that Mr Giorgio was in a very poor condition, including very soon after he was placed in the police van. Dr Rashford suggested Mr Giorgio should have been removed from the van and provided medical treatment much earlier than he was. He also questioned whether there was any advantage to having Mr Giorgio in the van.

156. Senior Sergeant Hayden was not critical of the officers' decision to place Mr Giorgio in the van, stating this was consistent with their training which emphasises gaining control of a person or situation. Senior Sergeant Hayden pointed out that having someone in a van means they pose less of a risk of harming themselves or others or escaping police custody.

157. Dr Rashford acknowledged that whilst he observed a number of missed opportunities for Mr Giorgio to be removed from the van and provided medical treatment much earlier than he was, the actions of the officers that day appeared well-intentioned and they did appear to be genuinely trying to monitor his condition and 'work things out'. I accept this is the case.

158. Dr Rashford and Inspector Dwyer agreed that ideally as soon as Mr Giorgio became unresponsive and with abnormal breathing he should have been removed from the van and given CPR. Unfortunately this did not happen.

159. Counsel Assisting, Ms Jarvis, submitted the failure to identify Mr Giorgio's clinical deterioration and remove him from the POD earlier was not a failure of any individual officer, but rather attributable to a number of broader systems factors including:

- that police are there to perform a law enforcement and community safety role and will naturally approach situations through that particular lens

- that police are trained to consider risk of harm to themselves and others when dealing with a "high risk" person or situation, which may result in them making decisions that give particular weight to reducing that risk (such as placing and keeping Mr Giorgio in the van)
- that whilst sudden deaths in custody in situations involving use of force was a known risk to the QPS, and training was developed to alert officers to that risk, there will always be inherent limits to what such training can achieve in terms of arming officers with the necessary information and skills to be able to identify a deteriorating individual in every single circumstance.

160. I accept that analysis. The actions and decisions of the officers were consistent with their training and experience (both relatively junior in operational terms) but with hindsight it is evident there was a missed opportunity to remove Mr Giorgio from the POD earlier and this resulted in a delay in him receiving the medical treatment he required.

161. Dr Rashford was careful to point out that clinically it is very difficult to say whether this would have made any difference to the outcome, as Mr Giorgio may have died even with earlier medical attention.

162. Dr Rashford stated*, 'we have very well-intentioned caring QPS officers' who will continue to be placed in situations where they are required to care for someone who is gravely unwell or at risk of becoming gravely unwell, and it is important we arm them with the knowledge and skills to be able to carry out that role to the best of their ability, particularly where there are some relatively simple things they can effectively do (such as protecting someone's airway and providing CPR) to save someone's life.*

163. In this case, the officers were potentially in such a position but unfortunately did not recognise that Mr Giorgio needed that assistance. This was a tragic outcome not only for Mr Giorgio and his family, but also for the officers involved.

Findings required by s. 45

Identity of the deceased – Pasquale Giorgio

How he died – Pasquale Giorgio suffered from a number of medical and mental health co-morbidities making him a particularly vulnerable person in the community. He was homeless, mentally unwell, and morbidly obese with consequent heart disease. On 5 April 2016 he came to the attention of police and was arrested on public nuisance offences. He struggled with police and was brought to the ground, placed in the prone position on his stomach and continued to struggle for some minutes until he stopped struggling and he was handcuffed. The arrest itself was lawful and the ensuing struggle involved some degree of force applied to him but this was not excessive or gratuitous.

The police were aware that Mr Giorgio was a person who was vulnerable to the effects of positional asphyxia and monitored him in the back of a police van and requested paramedics to attend. Unfortunately police considered his lack of continued agitation as compliance and believed his breathing was not abnormal and he had a pulse. This reassured them that he could remain where he was in the back of the van. When his condition appeared to deteriorate and he began frothing at the mouth more urgent attendance of an ambulance was requested.

The attending police did not recognise that Mr Giorgio's unconsciousness, inadequate breathing and foaming at the mouth were strong indicators of a man verging upon cardiac arrest and he should have been removed from the van and CPR commenced immediately. It was not until a more senior experienced police officer arrived that this was recognised and CPR was commenced but by this time it was too late. Whether earlier commencement of CPR would have been able to change the outcome is unable to be determined with any clinical certainty.

Place of death – Gold Coast Highway BROADBEACH QLD 4218 AUSTRALIA

Date of death– 05 April 2016

Cause of death – 1(a) Ischaemic cardiomyopathy

1(b) Following a period of restraint

1(c) Morbid obesity

Comments and recommendations

164. Witnesses to the inquest, including the officers themselves as well as those who reviewed the incident from both a clinical and policing perspective, all agreed that better education and training would increase the likelihood that police officers, faced with a similar set of circumstances in the future, would have the knowledge and skills to be better able to identify and help someone who is gravely unwell, like Mr Giorgio was that day.

165. Dr Rashford suggested emphasising to officers that, when someone goes from 100 to zero, they should immediately treat this as "suspicious" and assume it was a medical issue rather than compliance, unless and until they established otherwise. Senior Sergeant Hayden pointed out that this would still need to be balanced with officers' need to ensure the safety of themselves and others, but otherwise did not take issue with this suggestion. Inspector Dwyer agreed that current training provided to officers in relation to tactical first aid and positional asphyxia could easily be reviewed and enhanced in some way, to incorporate learnings arising from Mr Giorgio's death.

166. Rather than making a specific recommendation as to what training, guidelines, instructions or tools should be developed and incorporated into the QPS' training and education program and to what extent, Ms Jarvis submitted it may be better to make a broad recommendation, consistent with Dr Rashford's suggestion that he would assist in reviewing the QPS training program.

167. I therefore recommend that education specialists from both QPS and QAS jointly review the circumstances of Mr Giorgio's death and identify the most appropriate means for enhancing the ability of police officers to respond more effectively to similar circumstances in the future.

168. I also recommend consistent with the opinion of Dr Rashford that the first aid capability of the QPS vehicle be reviewed to ensure they carry basic equipment such as mouth to face masks.

I close the inquest.

John Lock
Deputy State Coroner
BRISBANE
September 2018