



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2017 4024

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:	IAIN TRELOAR WEST, DEPUTY STATE CORONER
Deceased:	Junichi YOSHIMURA
Date of birth:	4 December 1975
Date of death:	On or about 27 July 2017
Cause of death:	1a UNASCERTAINED
Place of death:	Port Phillip Bay, 3018 Victoria.

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THE PURPOSE OF A CORONIAL INVESTIGATION

1. Mr Yoshimura's death constituted a '*reportable death*' under the *Coroners Act 2008* (Vic) (the Act), as the death occurred in Victoria, and appeared to be unnatural and unexpected.¹
2. The jurisdiction of the Coroners Court of Victoria is inquisitorial.² The Act provides for a system whereby reportable deaths are independently investigated to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.³
3. It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁴ It is not the coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
4. The expression '*cause of death*' refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
5. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate to be considered relevant to the death.
6. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the '*prevention*' role.
7. Coroners are also empowered:
 - (a) to report to the Attorney-General on a death;
 - (b) to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and

¹ Section 4 *Coroners Act 2008*.

² Section 89(4) *Coroners Act 2008*.

³ See Preamble and s 67, *Coroners Act 2008*.

⁴ *Keown v Khan* (1999) 1 VR 69.

- (c) to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice. These powers are the vehicles by which the prevention role may be advanced.
8. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁵ 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 that they caused or contributed to the death.
9. In conducting this investigation, I have made a thorough forensic examination of the evidence including reading and considering the witness statements and other documents in the coronial brief.

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

Identity of the Deceased, pursuant to section 67(1)(a) of the Act

10. Junichi Yoshimura born 4 December 1975, has never been found and is presumed deceased at sea.

Medical cause of death, pursuant to section 67(1)(b) of the Act

11. As Mr Yoshimura's body has never been found, his medical cause of death remains unascertained.

Circumstances in which the death occurred, pursuant to section 67(1)(c) of the Act

12. Junichi Yoshimura was a 41-year old Japanese man who resided in Torquay. He was in Australia on a skilled migrant visa and was a talented artisan baker who had worked around the world. Mr Yoshimura's employer stated "*his work performance was excellent and he was a valued member of the team.*"
13. Mr Yoshimura's true passion was fishing. To that end, on 14 December 2016, he purchased a yellow "2 Monks" (Castor Double Fishing) open kayak soon after arriving in Victoria and would often spend free time out in the kayak fishing. The kayak was purchased new and is similar to kayaks that are sold in shops around Australia. The type of kayak has become popular over the last few years and is constructed to be used in mainly calm conditions.

⁵ (1938) 60 CLR 336.

14. Mr Yoshimura worked as usual on 25 July 2017 between 10.00am and 6.00pm. He then had 26 and 27 July off work and was due to recommence work at 6.00am on 28 July 2017.
15. On the evening of 26 July 2017, Mr Yoshimura was at home with his housemates. He told them he was going to go fishing the next morning, in his kayak around the Altona and Werribee area. His house mates saw Mr Yoshimura prepare for his fishing trip, including charging up his trawling motor batteries. He appeared to be in good spirits.
16. At some time before 5.00am on 27 July 2017, Mr Yoshimura's housemates heard him leave the house. At around 5.00am, Mr Yoshimura was seen on CCTV to arrive at Altona boat ramp. Mr Yoshimura was then seen to load up his kayak. The weather that morning was initially cool with the wind blowing at about 10 knots from the north, but as the day progressed the wind increased, meaning conditions in Port Phillip Bay, particularly further away from shore, would have been reasonably rough and likely challenging in a kayak of this size. As it was so cold, a passer-by, Mr Graham Gunthorp, asked Mr Yoshimura if he was going fishing. Mr Yoshimura confirmed he was and was warned to be careful as it was so cold. Although it was dark, Mr Gunthorp did not recall seeing a life jacket. Although there is evidence of Mr Yoshimura previously using a life jacket, it cannot be concluded that he was wearing one at the time he went missing.
17. At approximately 2.00pm, a firefighter on his break saw a yellow kayak approximately 2 kilometres away from the Altona boat ramp. The kayak was stationary. The weather conditions were windy, estimated to be about 15 to 20 knots per hour. The occupant of the kayak did not appear to be in any distress and if this was Mr Yoshimura, it is the last known sighting of him.
18. On 28 July 2017, Mr Yoshimura did not attend for work. His employers found this to be out of character for him, as he was known as a responsible and reliable employee. Consequently, at approximately 4.00pm, after making a number of enquiries, his employers reported Mr Yoshimura as missing to the police. Altona Police attended. Thereafter, a Marine Search and Rescue response was commenced, co-ordinated from the Rescue Co-Ordination Centre. It lasted three days and involved police from Altona, Williamstown and the Mounted Branch as well as State Emergency Services volunteers, the Water Police, Coast Guard, Volunteer Marine Rescue Mornington, Southern Peninsula Rescue, the Police Air Wing and an AusSAR⁶ aircraft.

⁶ Australian Search and Rescue

19. During the course of the search, investigations undertaken by the police revealed the following:

(i) On 28 July 2017, Mr Yoshimura's vehicle, a White Subaru Forester, was located at the car park in Altona. The kayak was not present.

(ii) Mr Yoshimura's home was attended. His house mates had not heard from him and his room was still locked. His passport was located.

(iii) The last purchase on his bank card was to pay for the parking at the Altona car park on 27 July 2017. No other activity or withdrawals since this date were identified in his bank records held by the National Australia Bank.

(iv) The last activity on his mobile phone was at 12.00pm on 27 July 2017.

(v) Australia Border Force officials confirmed that Mr Yoshimura was listed as "onshore" meaning he had not left Australia via any official departure point.

20. Search coordinators engaged timeframe survival specialist, Dr Lukien, to consider the prevailing conditions and temperature and to advise on Mr Yoshimura's estimated period of survival. In the expert's opinion, survival time would be 72 hours from departure if Mr Yoshimura remained in his kayak, however, if he was in the water, his estimated period of survival was 6 hours.

21. Significant search attempts were conducted between 27 and 30 July 2017, without success. On 29 July 2017, Port Phillip Bay experienced severe weather with winds of gale force and in excess of 100 km/h.

22. At 10.03am on 31 July 2017, Mr Yoshimura's yellow kayak was located by police helicopter observers approximately 6 nautical miles south of Fawkner Beacon. It was retrieved thereafter. The kayak was found upside down and had a paddle attached to it. It was heavy and full of water. However, there was no damage to it. Mr Yoshimura was not located with the kayak.

23. Since that date, Water Police have continued regular patrols of Altona and the broader Port Phillip Bay area but nothing further relevant to Mr Yoshimura's disappearance has been located. In addition, internet searches have been undertaken by analysts and there has been no updating of any social media account by Mr Yoshimura. His Facebook account was last updated in May 2015.

COMMENTS

Pursuant to *section 67(3) of the Coroners Act 2008*, I make the following comments connected to the death:

24. Detective Sergeant Adrian Sinclair, an expert in Marine Investigations, commented that in recent years there has been a large increase in human powered vessel fatalities compared to other boat related incidents. In order to reduce such fatalities, he is of the view that it should be made compulsory to carry an Emergency Position Indicating Radio Beacon (EPIRB) or a Personal Locator Beacon attached to a personal location device for all human powered vessel activities, regardless of the classification of waterway or distance offshore. The current requirement is that any recreational vessels heading out more than 2 nautical miles from the coast are required to carry an approved 406MHz EPIRB⁷.
25. There have been a number of deaths in Victoria that relate to recreational boating, with many related to a poor understanding of what constitutes 'heightened risk'. In respect of one of the deaths, that of Ashton Meadows (COR 2014 002978), Coroner Spanos made the following recommendations:

(a) That Transport Safety Victoria progress the implementation of EPIRB and Personal Locator Beacons (preferably those with GPS capability), amongst recreational boaters in Victoria, to ensure that each vessel has an EPIRB and that, at times in heightened risk, crew members wear Personal Flotation Devices, with at least one Personal Flotation Device per boat being fitted with a Personal Locator Beacon (preferably one with GPS capability).

(b) That Transport Safety Victoria consider promoting the use of EPIRB and Personal Locator Beacons (preferably with GPS capability) within the Victorian recreational boating community, so that devices are carried by all recreational boats, not just vessels operating further than two nautical miles from the shore.

⁷ <https://transportsafety.vic.gov.au/maritime-safety/recreational-vessel-operators/powerboat/trip-preparation/safety-equipment/emergency-position-indicating-radio-beacons-epirbs>

26. I adopt these recommendations and note that Transport Safety Victoria, also support both recommendations and have acted accordingly.⁸

RECOMMENDATION

Pursuant to section 72(2) of the *Coroners Act 2008*, I make the following recommendation connected with the death:

27. That Transport Safety Victoria liaise with the Department of Economic Development, Jobs, Transport and Resources with a view to seek amendment of the Maritime Safety Regulations 2012 (Vic), to require the compulsory carrying of an EPIRB or a Personal Locator Beacon (preferably with GPS capability) for all human powered vessel activities, regardless of the classification of waterway or distance offshore.

FINDINGS AND CONCLUSION

28. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the *Coroners Act 2008* (Vic):

- (a) Mr Yoshimura is deceased;
- (b) the identity of the deceased was Junichi Yoshimura, born 4 December 1975;
- (c) the death occurred on or about 27 July 2017 at Port Phillip Bay, Victoria, 3018;
- (d) the cause is unascertained;
- (e) the death occurred in the circumstances described above and
- (f) the evidence does not support a finding that Mr Yoshimura intended the tragic consequences of his actions.

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

Mr & Mrs Yoshimura, Senior Next of Kin

Mr Yuichi Nemoto & Ms Shoko Ishida, Consulate General of Japan in Melbourne


Leading Senior Constable Matthew Waller, Water Police, Coroner's Investigator

⁸ Transport Safety Victoria response to recommendations dated 25 May 2016 from Peter Corcoran, Director, Maritime Safety.

Maritime Safety Victoria

Minister, Department of Economic Development, Jobs, Transport and Resources

Signature:



IAIN WEST

DEPUTY STATE CORONER

Date: 5 April 2018