

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 2443/08

Inquest into the Death of MICHAEL JOSEPH BRENNAN

Delivered On: August 25, 2011

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street Melbourne 3000

Hearing Dates: January 28, 2011

Findings of: JUDGE JENNIFER COATE

Representation: Mr Taylor appeared for the Department of Transport

Place of death: Karen Street, Cheltenham, Victoria 3192

Police Coronial
Support Unit (PCSU): Leading Senior Constable Greig McFarlane

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 2443/08

In the Coroners Court of Victoria at Melbourne
I, JUDGE JENNIFER COATE, State Coroner

having investigated the death of:

Details of deceased:

Surname: BRENNAN
First name: MICHAEL
Address: 31 Snowdon Drive, Cheltenham, Victoria 3192

AND having held an inquest in relation to this death on 11 January 2011
at Melbourne
find that the identity of the deceased was MICHAEL JOSEPH BRENNAN¹
and death occurred on 8th June, 2008

at Karen Street, Cheltenham, Victoria 3192

from
1a. MULTIPLE INJURIES²

in the following circumstances:

Background

1. Michael Brennan ("Michael") was born on November 4 1990. He was 17 at the time of his tragic death.
2. During the day of June 8, 2008 at about midday, Michael met up with his best friend Lee-Anthony May ("Lee-Anthony"). Lee-Anthony was aged 18 at that time. The boys met in a park near Southland Shopping Centre. They sat in the park, playing cards and drinking cask wine. Lee-Anthony stated he had commenced drinking at about 11.30am and Michael had joined in at 12.00pm when he arrived in the park.
3. As the day developed, the boys decided to catch a bus to St Kilda later in the afternoon to meet up with friends.

¹ Michael was visually identified by his mother on June 9, 2008.

² See Post mortem report of forensic pathologist Associate Professor David Ranson, Deputy Director of the Victorian Institute of Forensic Medicine dated 2 July 2008.

4. The bus the boys planned to catch left from the Southland Shopping Centre bus terminal. The Shopping Centre contains a large, complex and busy terminal, comprised of 9 separate bays from which buses, operated by different companies, arrive and depart to a number of different destinations.

5. The bus the boys decided to catch was the 5.20pm bus to St Kilda operated by Melbourne Bus link. That bus was being driven by Mr Raymond McIntosh on that day. Lee-Anthony stated that when he and Michael arrived at the bus stop there were a number of people waiting at the stop. He stated that when the bus arrived, he and Michael stood back waiting for people to get on the bus and then approached as the last people were getting on the bus. It was Lee-Anthony's evidence that by the time he and Michael tried to board the bus, the driver³ looked at Michael, saw him standing there but closed the door before Michael had a chance to get in. Michael started knocking on the door and yelling out asking the driver to open the door. There are some conflicting statements about what the bus driver saw or did after the bus took off. The bus drove away and Michael pursued it on foot whilst continuing to knock on the door and ask the driver to let them on the bus. According to Lee-Anthony, Michael began jogging beside the moving bus. The bus then turned a corner and at this stage, Michael's foot caught under the wheel of the turning bus. Michael fell to the ground and both the front left hand wheel and the back left hand wheel travelled over him (according to Lee-Anthony).

6. After the second wheel went over Michael, the bus driver, Mr McIntosh, stopped after being alerted as to what had happened from inside the bus. People were heard to be screaming inside the bus.

7. Despite life saving attempts at the scene by both the bus driver and Lee-Anthony and the paramedics, Michael was unable to be revived and died at the scene.

8. A mechanical inspection of the bus found no evidence of any mechanical fault which could have contributed to the collision.

9. It was just on dusk at the time of the collision but the area was well lit by lighting in both the street and the bus stop area. The road was dry.

10. Upon post mortem examination, Michael was found to have a blood alcohol content of 0.12%.

11. Michael's mother attended the inquest and made some closing comments on her own behalf.

12. The Department of Transport sought and was granted leave to appear as an interested party pursuant to s.56 of the **Coroners Act 2008**. The Department of Transport has statutory objectives and functions that relate directly to the management and continuous improvement of the Victorian bus network and to bus safety generally.

³ The bus was being driven by Mr. Raymond McIntosh. He had been driving for Melbourne Bus Link for three years. As at the time of the Inquest, Mr. McIntosh had passed away.

13. Upon leaving the terminal, the route of the bus required it to turn left into Karen Street Cheltenham and thereafter merge into the Nepean Highway to travel towards St Kilda.

Issues for Inquest

14. The issues identified for examination at the Inquest were (i) to endeavour to establish on the balance of probabilities what actually happened at the bus stop including what the driver knew or saw or intended; (ii) whether or not Michael was affected by alcohol to the extent that his judgment and co-ordination would have been impaired and therefore impacting on his ability to make decisions to keep himself safe and move safely; and (iii) whether any issues arising out of this death could be the subject of recommendations to prevent further deaths in the future.

(i) What happened at the bus stop?

15. There were a range of eye-witness accounts as to what happened at the bus stop. Some of the accounts of those in and around the bus were conflicting. Below is a summary of the accounts of the main eye witnesses.

16. Lee-Anthony gave an eye witness account to the police as to what happened at the bus stop in a statement he made on June 8, 2008 which was a few hours after Michael's death.⁴ He also attended the inquest and gave oral evidence. On his own account, he stated he had commenced drinking at about 11.30am that day. He stated that Michael joined him at about 12pm. He stated that he thought they had drunk about a litre of cask wine between them and that they had about the same amount.⁵

17. Lee-Anthony's account is that when the boys arrived at the Karen Street end of the platform for the bus stop outside Southland Shopping Centre in Cheltenham, there were about 15 people waiting to get on the bus they wished to board. The bus was not there at this time.

18. After the bus arrived, Lee-Anthony states that he and Michael did not line up with the others but rather waited until they had all got on and then moved over to get on the bus themselves.

19. Lee-Anthony states he was standing behind Michael as Michael was about to get on the bus. He thought the bus was pretty full but there were likely to be a couple of spare seats. Lee-Anthony states that, as Michael was about to step onto the bus, the driver closed the doors. Straightaway Michael started knocking on the door and yelling out asking the driver to open the

⁴ Exhibit 3: Statement of Lee-Anthony May 8 June 2008

⁵ Accepting this evidence, given that Michael had a blood alcohol reading of 0.12% at post mortem analysis, and allowing for the range of variables which will impact on blood alcohol content readings for different people, given that Lee-Anthony had started drinking before Michael, a cautious estimate would mean Lee-Anthony was likely to have a blood alcohol content ("BAC") about the same as Michael. The relevance of this goes to the reliability of the eye witness account provided by Lee. That is, where there are conflicts in the evidence as between eye witness accounts, I consider that, all other things being equal, an eye witness not heavily affected by alcohol would be likely to have a more reliable recollection of events than one not affected by alcohol. This of course must be moderated by other considerations such as lines of vision, age and ability.

door before the bus had moved away. Lee-Anthony estimates that Michael knocked 2 or 3 times for a couple of seconds before the bus moved off. Lee states that he was sure the bus driver looked at Michael and saw him there. He stated that the driver looked directly at them and then "sort of just looked away again and started driving off".⁶ Lee-Anthony was adamant in evidence that the driver saw Michael before driving off. He also stated that Michael was not acting aggressively or swearing but just saying "open the door" over and over again as he knocked on the door before the bus took off.

20. When examined about how certain he was that the driver saw them, he was asked whether it was possible the driver closed the doors because he did not realize that they wanted to get on that bus and Lee-Anthony answered:

"I suppose it's a possibility but I'd find it unlikely. I mean, there's a few bus drivers that do it all the time. I'd never actually seen this bus driver before this particular one but there's a couple that do it to me all the time. One guy smiles at me and waves every time he sees me and does not let me on. Never done anything to him. I don't understand why. I've even complained and he still does it." ⁷

21. Lee-Anthony states that after the bus started moving, Michael walked beside it continuing to knock on the door. The bus then began moving quickly, according to Lee-Anthony, quicker than normal take off and Michael began jogging beside it and continuing to bang on the bus. Lee-Anthony agreed in evidence that Michael may have been about a foot behind the door once the bus took off. Lee-Anthony stated that he did not chase after the bus with Michael as he thought the driver would just stop. Michael stayed with the bus as it turned left into Karen Street. It was at this point that Lee-Anthony thinks he saw Michael's foot trip on the front wheel of the bus as it turned left (into Michael) causing Michael to fall forwards under the bus and the front left hand wheel of the bus ran over Michael's head. Michael was seen by Lee-Anthony to roll over and look completely lifeless a second before the back left hand wheel of the bus went over his head without apparently hitting any other part of his body.

22. Lee-Anthony ran to him immediately but Michael appeared unconscious. The bus driver had arrived at Michael's side by this time too. Both Lee-Anthony and the bus driver performed CPR and mouth to mouth resuscitation for a couple of minutes until the paramedics arrived.

23. Lee-Anthony was asked whether or not he could say where the driver was looking after the bus started to take off. Lee-Anthony stated that "he turned back around and just watched the road and started driving off" as the bus took off, although Lee-Anthony was firm in his view that the driver must have heard Michael still knocking.⁸

24. Lee-Anthony agreed with Mr Taylor, Counsel for the Department of Transport that Michael was in an area marked "Keep Clear" when he was banging on the door and trying to attract the driver's attention.⁹ He also agreed that the driver was looking away from Michael

⁶ Transcript P 14-15

⁷ Transcript P 15

⁸ Transcript P 20

⁹ Transcript P 26

and to his right so that he could safely merge into the traffic. He also agreed that the driver would be required to accelerate away as he joined the traffic and would be revving his engine to achieve this.

25. Mr Kenneth Vernon¹⁰ happened to be parked in the car park opposite the Karen Street end of the Bus Terminal on that day at that time. Mr Vernon was an employee of Grenda and Moorabbin Transit Buses. He was parked in that location as part of his duties for his employer. It was part of his duties to observe his employer's buses at the Terminal. Consequently, he observed the bus being driven by Mr McIntosh exit from Bay 8 at about 5.30pm and make its left turn into Karen Street. He saw a male youth run beside the bus and knock on the window and front door area. Mr Vernon stated that it appeared that the young male was either trying to get the attention of the driver or a passenger on the bus. In evidence, he stated that he thought it was "very dangerous" to do what the young male was doing.¹¹ He then saw the bus turning into Karen Street and thus his view of what happened next was obscured by the turning bus. The next thing he saw was the bus stop abruptly and the driver run out to the young male on the road. The bus had not completed its turn into Karen Street. In fact, it was Mr Vernon's evidence that he (i.e. Mr Vernon) drove the bus clear of the left hand turning lane to assist traffic flow which he stated was "heavy" at the time.

26. Mr Vernon gave evidence that he had worked in the bus industry for about the last 10 years and that he had driven buses from time to time during this period. He gave evidence that it was sometimes difficult at a stop to discern who wants to get on and who is otherwise just gathered there. He also gave evidence that at this particular turn, a driver's full attention would be to his right as he was merging with traffic coming from his right. As for what a driver might hear, including a passenger seated opposite you talking to you, the effect of his evidence was it would depend on a range of variables and thus he could not say one way or the other.¹² Mr Vernon also said that once the driver had committed to merge into the traffic, it would be very difficult to make a decision about stopping again safely to pick up someone. Mr Vernon stated that would always be a question of driver judgment.

27. As stated above, Mr Raymond McIntosh was the bus driver. He was a man in his late 20's at the time of the accident. Unfortunately, Mr McIntosh has passed away since the collision. Thus, we only have his account in the statement he made to police in the wake of the collision and not the benefit of having oral evidence from him. However, he was interviewed on tape by the police and he voluntarily participated in that interview and gave his account of the circumstances of Michael's death. That tape was produced into evidence and played during the inquest.¹³

28. Melbourne Bus Link were the company which operated the bus being driven by Mr McIntosh this day.¹⁴ Mr McIntosh had been driving for the company for three years. He stated

¹⁰ Exhibit 15:Statement of Kenneth Vernon June 10, 2008

¹¹ Transcript P 74

¹² Transcript P 76

¹³ Exhibit 18

¹⁴ Melbourne Bus Link were notified of this matter going to Inquest, but did not participate. Melbourne Bus Link advised that Mr. Mc Intosh resigned from the Bus Company on March 29 2009 to take up employment as a Sherriff.

he was meant to take off from the terminal he was in at 5.20pm but was deliberately running a bit late to allow more passengers on board.¹⁵ He stated he took off when everyone had got on board. He also stated that he checked his mirrors before he did so and whilst he could see people standing around, he assumed they were waiting for another service.

29. Mr McIntosh states that as he was making his left hand turn into Karen Street, he thought he could hear banging on the window from the back of the bus. He further states that as he was taking off he heard a female passenger yelling "You've run over someone". He states that he looked in his rear view mirror and could see Michael on the road. He immediately stopped and ran straight to Michael and started administering CPR and mouth to mouth.

30. Ms Piroska Biro was a passenger on the bus. She sat on the same side as the driver but towards the back of the bus. She stated that as the bus took off she heard a loud banging noise and saw a hand banging on the window on the door side of the bus. She said there was still knocking on the window as the bus was turning into Karen Street and then she felt some knocking further along the bus on the side of the bus and it felt like "a speed hump feeling".¹⁶ She thought they may have hit the boy. It was her observation that the driver *did not appear to be aware or was not responding to what had happened*. In evidence, she stated that she saw the driver looking to his right, probably checking for traffic, as he was required to do as he turned left. Ms Bird then heard someone scream "you've killed him". She stated that it was then that the driver stopped the bus and ran back to Michael.¹⁷

31. Mrs Trudy Duesterhaus was also a passenger on the bus. She was sitting opposite the driver in the first seat above the door. She states that as she saw the bus driver shutting the door, she told him that more people were trying to get on the bus. She saw three boys standing there trying to get on. She states that she told the bus driver a couple of times that some more people were trying to get on the bus, but the driver *ignored* her. She was clear that the bus was not in motion when the boys were trying to get on and that the driver had shut the door in front of the boys.¹⁸

32. Mrs Duesterhaus was very firm in her oral evidence that the bus driver saw the boys standing there and shut the door before they had a chance to get in. She stated that after she spoke to him he "just turned his head around like if he didn't want to hear me or look at me". She stated that he then turned his head to the right, away from the door to watch for on-coming cars. She also stated that the bus moved forward quite quickly.¹⁹ Her evidence was that she did not hear any banging on the bus as it took off, only the boys saying "open the door please". She did not feel the bus "bump" or realize the bus had hit Michael until she thought it was someone from the footpath telling the driver he had killed someone.

33. Megan Shellie was a 14 year old student at the time and was also a passenger on the bus.

¹⁵ Statement of Raymond McIntosh, June 8, 2008

¹⁶ Exhibit 14: Statement of Ms Biro 18 August 2008

¹⁷ Statement of Ms Bird August 18, 2008

¹⁸ Exhibit 8: Statement of Ms Duesterhaus

¹⁹ Transcript P 40

She provided a statement to police in which she stated²⁰ that she was seated one seat in front of the middle door on the left hand side of the bus but in the aisle seat. She heard the banging on the middle of the window pane behind the door and saw the boy jogging beside the bus. She felt the bus increase its speed and the boy increase his speed too and described the bus taking the corner "quite sharply". She states that the boy fell forward and she lost sight of him but stated there was a bump and then shouts from inside the bus that someone had been hit and then she felt another bump before the bus stopped.

34. Luke Keltie also a passenger on the bus that day gave a statement to police²¹ stating that he was seated at the back of the bus on the left hand side. He stated that he was deep in his own thoughts but he did not notice any banging on the bus or running beside the bus or yelling to the driver. He only became aware of the incident when he felt a bump like the bus going over the curb.

35. Jaspreet Saini and her friend Maninderjit Singhu did not attend the Inquest but made statements to police. They were standing waiting for another bus when they saw Michael running beside the bus. Jaspreet thought he ran for about 10 metres before knocking on the front door of the bus and then running behind the bus when it turned. She saw him fall but was not sure why he did. Maninderjit saw the bus take off slowly as the boy was knocking on side of the bus or the door.

36. Julie Piper was sitting waiting for another bus and noticed there were a lot of people lined up to get on the bus Mr McIntosh was driving. She stated he was there for about 5 minutes allowing all of the people to get on. She did not see the bus pull off but states the bus was travelling normally.²² Ms Piper also noted that the turn the bus is required to do to get into Karen Street is a very sharp turn.²³

37. Ms Piper noted how distraught the driver was at the scene and how she had seen him vomiting. Senior Constable Steve Mottram noted that when he arrived at the scene he described the bus driver as "extremely distressed and crying and sweating profusely."²⁴

38. As stated above, Mr McIntosh was interviewed after Michael's death by the investigating member Leading Senior Constable Matthew Fitzsimon. He noted that when he asked Mr McIntosh about whether or not he could hear knocking on the bus, he answered that there were always kids banging on the buses and he just assumed that this was the situation this day at Southland. He denied hearing Ms Duesterhaus tell him there were people trying to get on the bus.

39. For the purposes of considering any issues to address for public health and safety purposes, LSC Fitzsimon was asked as to whether he had made enquiries as to whether or not there were any traffic laws aimed at the safety of passengers alighting buses. He stated that there

²⁰ Statement of Megan Shellie June 14, 2008

²¹ Statement of June 12, 2008

²² Statement of Julie Piper June 10, 2008

²³ Transcript P 67

²⁴ Statement of Steve Mottram 24 July 2008

are offences under the Transport Regulations that relate to a passenger's obligations when getting picked up or dropped off by a bus, and specifically conduct that prohibits running on to the road. With respect to bus driver's obligations, LSC Fitzsimon stated that he had researched this area and found relevant provisions in the Transport Passenger Vehicles Regulations 2005 Act, specifically Ss 25 and 37.

40. S 37 of the Regulations relates to the requirement for the setting down and collection of passengers which relevantly relates to the requirement to collect and drop off at the designated pick up point. It was the opinion of LSC Fitzsimon that Mr McIntosh complied with the legislative requirements by stopping at the terminus and observed that in his view, a bus driver stopping at a point other than the designated bus stop may well be in breach of the regulations.

41. LSC Fitzsimon was asked as to whether he had contemplated any traffic offences or criminal charges against Mr McIntosh. He stated that he did turn his mind to both but did not find sufficient evidence to support a prosecution for any traffic or criminal offence against Mr McIntosh. He was also asked as to whether or not he looked at any possible offence under the Occupational Health and Safety Act. LSC Fitzsimon gave evidence that he had done so and had found no evidentiary basis to proceed.

Conclusion

42. The weight of the evidence is that the driver probably did see Michael standing at the bus stop. Lee-Anthony saw the driver see Michael and Mrs Duesterhaus saw the boys and told the driver they were there. Mr McIntosh denies he saw the boys but given Michael's tragic death, that is no surprise. Indeed, he may have seen the boys but not realised they actually wanted to board the bus until he closed the doors and engaged the bus to drive away. It was Lee-Anthony's evidence that they waited behind the crowd and only then moved to board the bus.

43. There is no evidence that the driver would not have let the boys on the bus because the boys were being disruptive as the evidence is quite to the contrary. Further, the evidence is that the bus was about half full. There is no logical reason on the evidence as to why the driver would not have allowed the boys to board with the rest of the crowd. This is especially so given Ms Piper's evidence that she observed the bus waiting at the stop for about five minutes for all of the passengers to get on.

44. Mrs Brennan, made some closing submissions on behalf of the family in which she said she thought the evidence lead to the conclusion that the driver saw the boys, but that she could not say, on the evidence, if he saw Michael after the bus took off or realized that he was running beside the bus and trying to still get him to stop. Counsel for the Department of Transport, Mr Taylor agreed with this assessment of the evidence.

45. I too am satisfied this is a reasonable conclusion on the evidence, that is, that the driver saw Michael standing in the vicinity of the door to the bus at the point at which he decided to drive off. Mr McIntosh denied having heard Mrs Duesterhaus draw his attention to the boy's

wish to board the bus. Mrs Duesterhaus thought the driver "ignored" her. There is no direct evidence that confirms that Mr McIntosh was aware that the boys wished to board the bus and intentionally drove away in that there is no evidence that he made a comment about his intention, or determination to leave the boys behind.

46. Once he moved the bus away from the stop, the weight of the evidence leads me to conclude that the driver, once he decided to leave the stop, was then fully engaged with looking in the opposite direction along Karen Street keeping a look out for the traffic coming from his right. This meant he was looking in the opposite direction to where Michael was running along beside the bus on the driver's inside passenger side.

47. There is evidence that Michael was knocking or banging on the side of the bus such that several passengers could both see and hear this banging. The driver's evidence in response to this was that he did hear banging on the side of the bus but that was not unusual in his experience in that young people were always banging on the side of the bus.

48. Michael was clearly chasing the bus to get it to stop and collect them. Tragically, we cannot know whether Michael had any knowledge of how dangerous his activity was and the danger of running alongside a turning bus in these circumstances.

Michael's ability to make sound judgments; any physical impairment

49. Lee-Anthony stated that he and Michael had known each other for about two years at the time of Michael's death. He stated that they used to drink together about twice a week.²⁵ He stated that on this day he had commenced drinking cask wine at about 11.30am and Michael had joined him at about 12.00pm and started drinking then too. Lee-Anthony stated²⁶ that they drank about a litre of wine and stopped drinking at about 3.30pm. Lee-Anthony stated that he and Michael did not want to get too drunk before travelling to St Kilda. He also stated that although affected by alcohol, they were only a "little bit drunk" by about 5.20pm that afternoon when they arrived at the bus stop to catch the bus.

50. Mrs Duesterhaus gave evidence that the boys were not being rowdy or misbehaving in any way. She saw nothing about their behaviour to suggest they may have been drinking or effected by alcohol.²⁷ Mr Keltie agreed that there was nothing out of the ordinary happening at the bus stop. No-one was being overly loud.²⁸

51. Lee-Anthony stated that he thought that Michael would have acted the same way whether or not he had been drinking.²⁹ What he was also able to say was that he had not ever taken that bus before and he had not ever been with Michael when he had taken any bus before. He knew Michael to ride his bike to work and stated that Michael did not live on that bus line,³⁰ and this

²⁵ Transcript p 10

²⁶ Statement of Lee-Anthony May of June 8, 2008

²⁷ Transcript P 40

²⁸ Transcript P 57

²⁹ Transcript P 21

³⁰ Transcript P 24

would have been unfamiliar with the trajectory of the bus and in particular the need for the bus to take a sharp turn whilst the driver merged with the traffic.

52. When Lee-Anthony was giving evidence about his estimate of how much he and Michael had had to drink, he accepted that he may have been mistaken about the amount they had as he was "pretty frantic" when he made the report.³¹ He also gave evidence that Michael was not someone who could "drink a whole lot." Lee-Anthony stated that Michael, not surprising given his age, was not a "seasoned" drinker and he also noted that he was a lot bigger than Michael.³²

53. Michael's blood alcohol content at post mortem examination was .12%. It was the opinion of Associate Professor David Ranson, the forensic pathologist who examined Michael, that Michael would have been "intoxicated" and the level of his blood alcohol could have impaired his motor skill and intellectual functioning, including his ability to make sound decisions for himself.³³

54. Dr Morris Odell, Senior Forensic Physician, gave an opinion that Michael's thinking and perception and all of his cognitive and psychomotor skills would have been adversely affected in some way by the effects of alcohol at the time of the fatality. Dr Odell said it was impossible to know the specific way or to what extent the effects of alcohol intoxication at a level of 0.12% - 0.13% could have affected his behaviour including his decision to run alongside the bus or the likelihood of falling.³⁴

55. LSC Fitzsimon gave evidence that no witnesses noted anything untoward about the boy's behaviour on this day.

56. Sadly, given the above opinions and the evidence that Michael's blood alcohol content was nearly two and a half times the legal limit to drive for the holder of a full licence, and that he was 17 years old and an inexperienced drinker, it is more likely than not that his ability to make good decisions for his own safety and be physically steady on his feet were impaired by the alcohol.

CONCLUSION

57. The evidence leads to the conclusion that Michael, whilst his judgment and physical ability were impaired by alcohol, engaged in a dangerous pursuit of the bus being driven by Mr McIntosh as it engaged in a tight turning manoeuvre to merge with on-coming traffic and tragically slipped under the turning bus and was fatally injured.

58. Michael's family and friends have lost their precious son and Lee-Anthony lost his best friend right before his eyes on a day the boys were out to enjoy themselves. Lee-Anthony described Michael as his best friend and as "one of the most gentle people ever."

³¹ Transcript P 11

³² Transcript p 12

³³ Post Mortem report of Associate Professor David Ranson 27 June 2008

³⁴ Inquest Brief : Report of Dr Odell November 1 2010

COMMENTS:

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death (including any notification to the Director of Public Prosecutions under Section 69(2) of that Act):

1. In the course of giving evidence, the experience and knowledge of Mr Vernon was sought as to whether or not he thought any aspect of the safety of the area could be enhanced to avoid this occurring in the future. Mr Vernon raised the possibility of having traffic lights to control the entry of the buses into Karen Street, to ensure that the driver is not completely focused on the on-coming traffic, but can also keep a look out around the bus as he/she enters the roadway. Mr Vernon accepted that traffic lights may also create a hazard such as drivers racing to get through traffic lights before they turn red. But Mr Vernon went on to state that unless the driver has great awareness of what is going on around him,³⁵ these sorts of things can happen.

LSC Fitzsimon was also asked about the safety of the actual bus stop area and whether in his opinion it had safety risks inherent in its design or whether he had any suggestions about redesign to enhance safety. The conclusion of the discussion on this issue was that, although Leading Senior Constable Fitzsimon accepted that this question may ultimately be a question for an engineer, he did not urge the changing of the design of the area given the possibility that to do so would potentially create other safety hazards.

2. On the issue of the design generally and the safety of the Karen Street, Southland Shopping Centre Bus interchange, Mr Taylor of Counsel for the Department of Transport responded to an enquiry from me as to whether or not any complaints from passengers or drivers regarding the design of the bus interchange had been received. Mr Taylor advised that an answer had been sought from Mr Eric Moore, the Regional Manager for bus and regional services, Department of Transport. Mr Moore advised that he had not been made aware of any complaints being made to any bus company about the design of the facility.
3. Mr Taylor advised that the Department of Transport had conducted an internal investigation into this fatal incident. Mr Taylor advised the Court that the outcome of this internal review was that this fatality was a tragic error of judgment, but that it did not identify any design features of the interchange which would warrant any change. It was Mr Taylor's advice that there had been no incident in the past 10 years "that was a product of the environs or the infrastructure in place at the time".³⁶
4. I note that the *Bus Safety Act 2009* came into operation on December 31, 2010. This Act assigns safety duties to bus operators, infrastructure providers and other agencies involved in the bus industry. Given this, it would be appropriate for Westfield Group to review the design and operational safety of the bus infrastructure at the Southland

³⁵ Transcript P 78

³⁶ Transcript P 122

complex to ensure that they are meeting the requirements of the new *Bus Safety Act* in light of this finding, and that Transport Safety Victoria, as the safety regulator, in the context of the circumstances of this death provide oversight and independent expertise to this review.

5. Finally, Leading Senior Constable Fitzsimon raised the suggestion that larger signs in the area warning of the dangers of conduct which cost Michael his life might be considered. He also raised the possibility of a safety awareness campaign targeting the perils of dangerous behaviour around bus stops and train platforms and transport venues in general.
6. An enquiry was made of the Department of Transport as to any community safety campaigns and general awareness and education about safety around buses. This information was provided. Relevantly, it identified an Action Plan for 2008-2010 called "Arrive Alive" which identified that VicRoads has conducted public awareness campaigns related to the use of bus and tram lanes. The information provided did not identify general awareness as to pedestrian movement around buses. It was not clear if any such campaign was included in the "Arrive Alive" action plan 2008-2010.

RECOMMENDATIONS:

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

1. That Westfield Group review the current design and operation of that part of the bus terminal at Southland that exits on to Karen Street to consider whether or not safety could be enhanced by traffic lights or signs being used to control the movement of buses on to Karen Street and that the outcome of that review be provided to Transport Safety Victoria for its consideration.
2. That, in the context of the facts in this finding, Transport Safety Victoria review the current safety warning signs and awareness campaigns and literature available around busy and complex bus terminals with a particular focus on inexperienced bus travellers to enhance awareness of the safety hazards for pedestrians around buses taking off.

Signature

Judge Jennifer Coate
State Coroner
25th August, 2011



DISTRIBUTION:

I direct that a copy of this finding be distributed to the following parties for their action:

1. Westfield Group
Mr Robert Jordan, Managing Director (Australia & New Zealand)
Westfield Towers, 100 William Street, Sydney NSW 2001
2. Transport Safety Victoria
Mr Alan Osborne, Director, 121 Exhibition Street, Melbourne, Victoria 3000
3. Department of Transport
Mr Jim Betts, Secretary, 121 Exhibition Street, Melbourne, Victoria 3000

I also direct that this finding be distributed to the following parties for their information only:

1. Mrs Annmarie Brennan, mother of Michael
2. Lee-Anthony May
3. Mr Paul Brennan, father of Michael
4. Melbourne Bus Link
Mr Dale Larkin, chief Executive Officer, Metlink Victoria Pty Ltd,
GPO Box 4693, Melbourne 3001
5. Attorney General, The Hon. Robert Clarke MP
Level 26, 121 Exhibition Street, Melbourne 3000
6. Minister for Public Transport, The Hon. Terry Mulder MP
Level 16, 121 Exhibition Street, Melbourne 3000
7. Bus Association Victoria (BusVic)
Mr Chris Lowe, Executive Director, Bus Association Victoria
450 Graham Street, Port Melbourne 3207