

IN THE CORONERS COURT  
OF VICTORIA  
AT WARRNAMBOOL

Court Reference: COR 2011 003616

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

I, Jonathan Klestadt, Coroner, having investigated the death of Rex Foster

without holding an inquest:

find that the identity of the deceased was Rex William Foster

born on 10 March 2006

and the death occurred 27 September 2011

at Princes Hwy, Port Fairy

**from:**

1a Multiple injuries sustained in a motor vehicle incident (pedestrian)

Pursuant to section 67(2) of the **Coroners Act 2008** there is a public interest to be served in making findings with respect to **the following circumstances:**

The family of Rex Foster came to Port Fairy on the 24<sup>th</sup> of September 2011 to stay with father Martin Foster's brother during the school holidays. The family comprised father Martin, mother Lauren, and children James, aged 12 years, Cassandra, 8 years, Rex 5 years, and Jesse 2 years. During their stay they resided at 141 Princes Highway, Port Fairy, which is on the eastern side of the road.

The Princes Highway where it passes through Port Fairy is a major arterial road for all types of light and heavy vehicles. In the vicinity of number 141 it runs north south and is a two way, undivided road with one lane for vehicles to travel in each direction. The two lanes are separated by a broken white line with an unbroken white "fog line" delineating the left hand or outside extremity of each lane. The road surface is bitumen with a good surface; each lane is approximately 3.5 metres wide with a gravel shoulder between the fog line and the grassed verge of approximately 1.2 metres. This grassed verge extends from the edge of the gravel shoulder for a distance of between 3 and 4 metres to the property line.

The speed limit is 60 kilometres per hour. In September 2011 and currently the roadway is experiencing increased usage by heavy vehicles involved in the transport of materials related to the construction of wind farms in the Macarthur area to the north of Port Fairy.

On the morning of Tuesday the 27<sup>th</sup> of September the three youngest members of the Foster family awoke at about 6.00am and to provide an opportunity for the other members of the household to

remain asleep Mrs. Foster decided to take the three children for a walk. They left 141 Princes Highway at about 7.00am and headed south, towards the centre of the town. Jesse was in a pusher controlled by Mrs. Foster with the two older children walking alongside.

Approximately 50 metres south of the residence the family crossed the road to walk on the western side. Rex and Cassandra held onto the pusher to ensure that everybody was linked up safely. The family then walked another 150 metres to the intersection of Albert Road, turning left and travelling west for about 100 metres to a vacant block where alpacas were grazing. They then retraced their steps back to the highway and walked south again along its western side.

Approximately 30 metres south of Albert Road the highway crosses a small creek, ["Reedy Creek"], via an unnamed 18.5 metre long road bridge. The bridge is approximately 10.6 metres wide and has a concrete balustrade on each side. The roadway conforms to the dimensions given above and is displaced slightly to the east, leaving an extra 1.2 metres of width on the western side which is a dedicated footpath separated from the traffic flow by a metal "Armco" type barrier approximately 750 millimetres high.

The family walked south over the bridge via the footpath and continued south for approximately a further 300 metres before crossing again to the eastern side of the highway and turning to walk north back towards number 141. On each occasion that the family crossed a road they had linked up as described earlier.

Upon approaching the creek and its bridge from the south Mrs. Foster decided against crossing the highway again to utilise the footpath on its western side. Instead she decided it would be safer to wait until there was no south-bound traffic in the immediate vicinity and cross the bridge on the eastern side utilising the 1.2 metres between the fog line and the balustrade. When the opportunity presented itself she crossed onto the bridge, pushing Jesse in the pusher ahead of her with Cassandra and Rex behind and instructed to hold each others hands.

At about this time a Large Volvo heavy rigid tipper truck was approaching the bridge from the south. The vehicle comprised a 3 axle "prime mover" with a tipper body towing a 3 axle "dog" trailer. The vehicle was being driven by highly experienced, local heavy vehicle driver and had only travelled approximately 5 kilometres that day. It was lightly loaded having only half a load of wet soil in the trailer, but still had a gross vehicle mass of 24.5 tonnes at the time.

On approaching the bridge the driver saw the Foster family waiting for southbound traffic to clear. He observed them move onto the bridge and was keeping towards the left hand side of the north-bound lane at a speed of between 45 and 50 kilometres per hour. Suddenly and without any warning Rex Foster broke free from his sister and ran across the southbound lanes and into the path of the truck. The driver reacted with commendable speed and braked heavily and steered further to the left in an attempt to avoid the child. Tragically the boy was struck by the right front corner of the truck knocking him to the ground where the wheels of the truck passed over him killing him instantly.

I am satisfied that this death occurred because of the unexplained actions of the deceased, a five year old child, who may have misunderstood his instructions, and who, in any case, was too young to fully understand the dangers of his position and who was clearly unaware of the approach of the heavy vehicle from behind him. I am satisfied that in the circumstances the driver of the truck bears no responsibility for these events. My condolences go to Rex's family for this tragic death.

From the materials before me the following points are apparent. The straight stretch of the Princes Highway where this collision occurred is approximately 1.5 kilometres long and contains a variety of visitor accommodation sites on both its western and eastern sides, including two major caravan

parks on the eastern side, north of the bridge where the incident occurred. Access to the centre of Port Fairy and it's coastal environs can only be had by travelling south from these sites across the bridge. In the absence of some kind of pedestrian-safe way of crossing the bridge on it's eastern side both pedestrians and young cyclists are forced to cross the highway twice to access the safer western side footpath. This being the case many, if not most, will choose to behave exactly as Mrs. Foster did and utilise the narrow, un-guarded strip of roadway on the eastern margin of the bridge, sharing a small space of roadway with vehicles travelling at speeds in the vicinity of 60 kilometres per hour. This is clearly unsafe.

## RECOMMENDATIONS

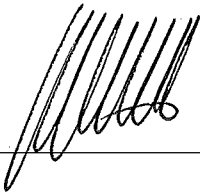
Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

In recent days announcements have appeared in the media of an intention to construct a footbridge across "Reedy Creek" to the east of and separate from the road bridge to avoid similar tragedies. I recommend that this project be given the highest priority by those who are responsible for such works.

Pursuant to rule 64(3) of the Coroners Court Rules 2009, I order that the following be published on the internet: *(please specify)*

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

Signature:



Date: 5 June 2012

