IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 5233/07

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)
Section 67 of the ***Coroners Act 2008***

Inquest into the Death of ROBIN SARA PAUL

Delivered On:	20 December 2011
Delivered At:	Coroner Court of Victoria Level 11/222 Exhibition Street MELBOURNE 3000
Hearing Dates:	14 November 2011
Findings of:	Coroner Paresa Antoniadis SPANOS
Representation:	Leading Senior Constable Amanda MAYBURY, Police Coronial Support Unit, to assist the Coroner Mr Tom KEELY of Counsel, instructed by Holding Redlich, Solicitors, appeared on behalf of the Next of Kin/family of Ms PAUL Mr T. WRAIGHT of Counsel, instructed by DLA Piper, Solicitors, appeared on behalf of VicRoads

I, PARESA ANTONIADIS SPANOS, Coroner,

having investigated the death of ROBIN SARA PAUL

AND having held an inquest in relation to this death on 14 November 2011 at Melbourne

find that the identity of the deceased was ROBIN SARA PAUL

born on 26 December 1981

and that the death occurred on 26 December 2007

at Alfred Hospital, Commercial Road, Melbourne, Victoria 3004

from:

1a. HEAD AND CHEST INJURIESSUSTAINED IN A MOTOR VEHICLE COLLISION

in the following circumstances:

INTRODUCTION

1. Robin Sara Paul was a twenty six year old woman who resided in a share house with six other people, all Indian nationals like her, working or studying in Australia. Ms Paul was a Registered Nurse employed at the Alfred Hospital. After work on 26 December 2007, she met up with some friends in the city to go shopping and to celebrate her 26th birthday. At about 7.26pm, Ms Paul and her friends, Ms Shijomol Jacob and Ms Julie Kuriakose, were standing on the north-west corner of the intersection of Flinders and Elizabeth Streets, Melbourne, waiting to cross Flinders Street. They were standing abreast of each other, Ms Paul slightly forward, having stepped forward to press the pedestrian button on the traffic control signals to cross.

2. At this time, Khanh Truong a twenty six year old man was driving a Toyota Lexus coupe west along Flinders Street, through the intersection with Elizabeth Street, when he crossed over onto the eastbound lanes of Flinders Street, mounted the kerb and struck Ms Paul before impacting a steel tramways pole and coming to rest. His girlfriend Han Zhang was a front seat passenger in the coupe. Ms Paul sustained multiple injuries including a serious head injury, was treated at the scene and transported by ambulance to the Alfred Hospital where she died later that evening. Mr Truong and Ms Zhang were also injured and were conveyed to Royal Melbourne Hospital (RMH) for treatment. They both survived their injuries.

THE EVIDENCE

3. Ms Paul's death was reported to the coroner and investigated by one of the attending police officers Leading Senior Constable Geoffrey Draper from the Major Collision Investigation Unit (MCIU) of Victoria Police. This finding is based on the totality of the material the product of the coronial investigation of Ms Paul's death, that is the brief of evidence compiled by LSC Draper, the statements and testimony of those witnesses who testified at inquest and any documents tendered through them, and the submissions of Counsel. All this material, together with the inquest transcript,

will remain on the coronial file. I do not purport to summarise all the material/evidence in this finding, but will refer to it only in such detail as is warranted by forensic significance and the interests of narrative clarity.

PURPOSES OF CORONIAL INVESTIGATIONS

4. The primary purpose of the coronial investigation of a *reportable death*[1] is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.[2] The practice is to refer to the *medical* cause of death incorporating where appropriate the *mode* or *mechanism* of death, and to limit investigation to circumstances sufficiently proximate and causally relevant to the death, and not merely circumstance which might form part of an open-ended narrative culminating in the death.[3]

5. Coroners are also empowered to report to the Attorney-General on a death they have investigated; the power to comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice; and the power to make recommendations to any Minister, public statutory authority or entity on any matter connected with the death, including recommendations relating to public health and safety or the administration of justice.[4] These powers can be invoked to advance another purpose of the coronial investigation, previously accepted as implicit, now explicitly articulated in the legislation, that is, the *prevention* of similar deaths in the future.[5]

6. The coroner's role is not to determine criminal or civil liability arising from the death under investigation. However, given the circumstances in which Ms Paul died, it is important to stress that coroners are specifically prohibited from including in a finding or comment any statement that a person is, or may be, guilty of an offence.[6]

UNCONTENTIOUS MATTERS

7. A number of the matters I am required to ascertain, if possible, are uncontentious, adequately documented and evidenced in the inquest brief, and were not the subject of further enquiry during the

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1 Section 4 of the Act requires certain deaths to be reported to the coroner for investigation. Apart from a jurisdictional nexus with the State of Victoria, the definition of a reportable death includes all deaths that appear *"to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from accident or injury"*. Clearly, Ms Paul's death falls within this definition.

2 Section 67 of the Act.

3 See for example *Harmsworth v The State Coroner [1989] V. R. 989; Clancy v West (Unreported decision of Harper, J in the Supreme Court of Victoria, 17/08/1994.*

4 Sections 72(1), 72(2) and 67(3) of the Act regarding reports, recommendations and comments respectively.

5 The Preamble of the Act includes the following - *"... to contribute to the reduction of the number of preventable deaths ..."* while the Purposes in section 1 include *"(c) to contribute to the reduction of the number of preventable deaths ... through the findings of the investigation of deaths ... and the making of recommendations by coroners;"*

6 Somewhat paradoxically, this prohibition does not apply to prevent a coroner from referring to a notification to the Director of Public Prosecutions. Such a notification is made by the principal registrar of the court, where the coroner investigating the death *believes* an indictable offence *may* have been committed in connection with the death. See sections 69 and 49(1).

inquest. These are the identity of the deceased person, the date, time, place and general circumstances in which the death occurred and the medical cause of death. I find, as a matter of formality, that the deceased was Robin Sara Paul born on 26 December 1981, residing at 605 Pascoe Vale Road, Oak Park, Victoria 3046, and that death occurred at the Alfred Hospital, Commercial Road, Melbourne, Victoria 3004 at 9.15pm on 26 December 2007.

8. An autopsy was performed by Senior Forensic Pathologist Dr Noel Woodford from the Victorian Institute of Forensic Medicine (VIFM) who reviewed the circumstances as reported by police and postmortem CT scanning of the whole body and advised that it would be reasonable to attribute death to *"head and chest injuries sustained in a motor vehicle collision (pedestrian)"*. Among Dr Woodford's anatomical findings were multiple fractures (left ribs, right tibia, fibula and mandible), bilateral haemothoraces, pulmonary contusions, hepatic lacerations, small haemoperitoneum and head injuries comprising extensive subgaleal bruising, basal skull fractures, acute subdural and subarachnoid haemorrhoid haemorrhage and cortical constuions. Dr Woodford identified no natural disease likely to have caused or contributed to death, and noted that the results of toxicological analysis undertaken at VIFM showed no alcohol or other common drugs or poisons, apart from propofol detected in plasma consistent with therapeutic use.

9. Based on Dr Woodford's autopsy findings, I find that Ms Paul died as a result of head and chest injuries sustained in a motor vehicle collision in which she was a pedestrian.

"CIRCUMSTANCES" - THE CAUSE OF THE COLLISION

10. The brief of evidence contains evidence which amply supports findings that a number of factors did not play a causative or contributive role in this motor vehicle incident. A blood sample was taken from Mr Truong and its analysis revealed no ethanol (alcohol) or other common drugs or poisons. Mechanical inspection of Mr Truong's vehicle indicated that it was roadworthy and there were no apparent mechanical faults or problems.[7] Inspection of the intersection indicated it to have a dry bitumen surface in excellent condition. It was a warm sunny evening with clear visibility. Overhead lighting was available but not operating as it was still light. There was no problem in the operation of the traffic control signals. There is some ambiguity around the possibility of sun glare affecting the driver as he was driving west into the sun.[8]

11. Witnesses to the collision did not describe seeing or hearing any braking or skidding from Mr Truong's vehicle immediately prior to the collision.[9] Nor did attending police or the expert police collision reconstructionist find any physical evidence of braking.[10] This was entirely consistent with Mr Truong's explanation to police that he had "blacked out" a short time prior to the collision, which was in turn consistent with what he told his girlfriend immediately after the collision, and her own

7 Exhibit "E" page 99 and following.

8 Excerpt from Ms Zhang's statement - *"As we drove along Flinders Street I had my eyes closed. I was sleepy but it was also glary from the setting sun ... I looked towards Khanh and saw that he had his sunglasses on ..."* @ pages 40-41 inquest brief Exhibit "E". Compared with investigator's summary at page 4.

9 Exhibit "E" pages 41, 44-45, 47, 51, 69.

10 Exhibit "E" pages 2, 111-115.

observations of him immediately before the collision.[11] A number of other witnesses corroborated these utterances by Mr Truong.[12]

12. Apart from his own statements to the effect that the collision occurred because he had blacked out, other evidence supports a finding that blackout, syncope or loss of consciousness was the probable cause of the collision. As well as treatment for traumatic injuries, Mr Truong's cardiac function was extensively investigated at RMH. Treating Cardiologist Dr Joe Morton provided a statement in which he outlined the investigations undertaken. These included ECG monitoring by 24 hour holter monitor which identified predominantly sinus rhythm with frequent ventricular ectopic beats and three episodes of non-sustained ventricular tachycardia (VT), the longest lasting seven beats with a maximum heart rate during non-sustained ventricular tachycardia of up to 220 beats per minute. While still an admitted patient, Mr Truong was first treated with Sotalol which was later changed to Flecainide and discharged for cardiology follow-up. Dr Morton concluded that Mr Truong most likely had an episode of paroxysmal rapid ventricular tachycardia leading to syncope or loss of consciousness, and that in his "unqualified" opinion if his foot had remained on the accelerator during such an episode, it is possible that acceleration could continue up until the moment of impact.[13]

13. Dr Helen Parker is a Clinical Forensic Physician from VIFM who was asked to provide an expert opinion as to the likelihood that Mr Truong experienced a syncopal episode due to tachycardia whilst driving, causing the collision which resulted in Ms Paul's death. Dr Parker reviewed the relevant statements in the brief of evidence, noting in particular Mr Truong's report that he had blacked out prior to the collision and had experienced dizziness in the weeks leading up to the collision. Dr Parker presumed that this was the basis for extended cardiac monitoring in the RMH where Mr Truong was found to have very frequent ventricular ectopic beats and several episodes of self-limiting yet serious arrhythmia/ventricular tachycardia.[14] Given Mr Truong's well-documented, irrefutable condition which results in paroxysmal episodes of VT; the absence of evidence of braking prior to the collision; spontaneous admissions of "blacking out" to witnesses at the scene; and the absence of drugs or alcohol, Dr Parker concurred with Dr Morton's opinion that he most likely experienced a syncopal episode secondary to VT prior to the collision.[15]

14. I find that the collision involving Mr Truong's vehicle which resulted in Ms Paul's death was caused by a syncopal episode suffered by Mr Truong whilst driving, immediately prior to the collision, which was in turn caused by an episode of paroxysmal rapid ventricular tachycardia.

MEDICAL FITNESS TO HOLD A DRIVER'S LICENCE

15. This conclusion was apparent on the face of the inquest brief, thus the focus of this inquest shifted to a consideration of how it was that Mr Truong came to be licensed to drive a motor vehicle in

11 Exhibit "E" pages 40-41.
12 Exhibit "E" pages 41, 54,63, 67.
13 Exhibit "E" pages 76-80.
14 Exhibit "E" page117- 124. Dr Parker's statment includes very helpful explanation of ventricular tachycardia and the investigations undertaken at RMH.
15 Exhibit "E" pages 123-124.

Victoria, despite his underlying medical condition, and more broadly, on the regulatory regime regarding medical fitness to hold a driver's licence.

16. Mr Truong was not required to testify at the inquest, essentially due to an expectation that he would assert the right against self-incrimination. He cooperated with the investigation by participating in a police interview and providing medical information. Statements were provided by treating clinicians verifying that in 1997 when he was almost sixteen he was investigated for sporadic chest pain on deep inspiration and palpitations. An ECG and chest x-rays were reported as normal but a 24 hour holter study showed sinus rhythm with ectopic beats with a diagnostic conclusion of an *abnormal holter study with frequent ventricular contractions and occasional ventricular couplets.* The treating cardiologist assessed the condition as benign with a likely psychosomatic/anxious component and advised a conservative approach with review as necessary.[16]

17. Other than investigations at RMH after the collision, Mr Truong's report of dizziness in the period preceding the collision and blackout immediately prior to the collision, nothing is known of any symptomatology or medical attention in the ensuing years. According to evidence from VicRoads, Mr Truong obtained a learner's permit in January 1999. On his written Application for a Licence or Permit, under the heading "Medical Details", he answered "Yes" to the question "Do you wear prescription glasses, contact lenses or a hearing aid?" and "No" to the question "Do you suffer from any eyesight, hearing, psychiatric or mental illness or any medical condition or physical disability which could affect your driving?".[17] The question is couched in broad terms, no doubt intended to be expansive and to elicit maximal information, but is not without its difficulties. These were canvassed in cross-examination of Professor Wells.[18] In summary, even assuming an honest applicant with a good understanding of their medical status, the concept of suffering from a condition or disability is ambiguous, and the potential impact on driving invites a lay assessment of a medical matter.[19]

18. It should be noted that the Application for a Licence or Permit current as at the date of the inquest is differently worded. Under a heading "Your Health Details", one of the questions posed is "Are you suffering from eyesight or hearing problems, dizziness, blackouts, epilepsy/seizures, diabetes, head injury, stroke, high blood pressure, a cardiac, psychiatric or mental condition, disorders that may deteriorate over time or any other medical condition or physical impairment which may affect your driving?" The listing of medical conditions which have the potential to compromise fitness to drive makes the applicant's obligation to report clearer and is therefore an improvement.[20]

19. Clinical Forensic Physician Dr Morris Odell from VIFM provided an expert assessment[21] of the circumstances, supported in all material respects by Professor Wells who testified at inquest in his stead.

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16 Exhibit "E" at page 136 and following.
17 Exhibit "B" annexure "A".
18 Transcript page
19 For instance, if a patient has a medical condition which is well-controlled with medication are they "suffering from" the condition. According to Professor Wells, the enquiry should really about the recent past, but the concept may be reasonably interpreted as at the time the application is being completed. See discussion at transcript pages 37 and following.
20 Exhibit "B" annexure "B".
21 Exhibit "E" pages 145 and following, adopted by Professor Wells with some amendment as Exhibit "A" at transcript page 17.

Dr Odell concluded that based on the known history, before the collision Mr Truong's medical condition (which he describes generically as an arrhythmia) would have been considered minor and he would have been passed as fit to drive subject to periodic medical review. Based on investigations following the collision, Dr Odell opined that Mr Truong may have become fit to drive six months after the incident, subject to further investigation to check whether his heart rhythm remained stable. If so, he could be re-licensed subject to periodic review by a cardiologist. This was an example of how the current regulatory regime operates once VicRoads are made aware of a medical condition which may impact a driver's fitness to drive.[22]

20. The salient point is that, absent police involvement or discretionary notification by a medical practitioner or other third party, the gate-keepers of the medical review system as to fitness to drive on medical grounds are the drivers themselves. Professor Wells testified as to the efficacy of the system for medical review and the significant number of medical reviews undertaken each year, of the order of 4000- 6000.[23] He also highlighted the obvious - that the system largely relies on the knowledge, capacity and integrity of the driver.

21. Mandatory reporting by health professionals is often canvassed as a solution to the road safety risk posed by drivers who are medically unfit. As discussed below, I will not dwell on this issue here. Professor Wells did not support mandatory reporting by health professionals and identified a number of problems with such a scheme - its tendency to undermine the doctor/patient relationship, the risk that some will avoid seeking medical treatment or may fail to fully disclose symptoms to their doctor, and the possibility of doctor shopping. Professor Wells testified that he was unaware of any empirical studies which indicated that mandatory reporting where it existed had improved road safety.[24]
Similarly, Mr Russell John Scott, Senior Policy Adviser, VicRoads did not support mandatory reporting. He gave evidence at large about licensing, medical review and the reasons why he did not believe that mandatory reporting would enhance road safety.[25]

COMMENTS:

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

1. Drivers with certain medical conditions contribute to a small but not insignificant proportion of road fatalities in Victoria each year. While coronial investigations concerned with fitness to drive have focussed on older drivers,[26] the present investigation highlights the reality that drivers of any age may present a risk.

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22 It appears Mr Truong has never sought to be re-licensed in Victoria. See Exhibit "D" and Sergeant Carnie's evidence at transcript page 66.

23 Transcript pages 14-15 and following.

24 Transcript pages 32 and following.

25 As was mentioned during the inquest, a report of the Parliament of Victoria Road Safety Committee Inquiry into Road Safety for Older Road USers, September 2003, did not support the introduction of mandatory reporting and was in this reflective of the views of a number of associations/bodies who had made submissions such as the Australian Medical Association, Royal College of Surgeons, Trauma Committee, R.A.C.V., Victoria Police.

26 See reference in footnote 18 below.

2. In common with many jurisdictions, the driver medical review system in Victoria is centred on a legislative requirement for driver to notify VicRoads of any permanent or longterm injury or illness which may impair their ability to drive safely. Others, including medical practitioners, have a discretion to notify the licensing authority if they have concerns about a person's fitness to drive, and notifications in good faith are protected by immunity.

3. The current regulatory regime relies heavily on the knowledge, capacity and integrity of individual drivers to disclose relevant medical conditions to VicRoads when applying for a licence, in response to prompts in the application form, or once they hold a diver's licence, as the condition arises, assuming they will recall their obligation to notify VicRoads or be prompted by, say, a medical practitioner to do so. Self-reporting is generally against interest and compliance can be imperfect and difficult to monitor. Where self-reporting fails, the system relies on a third party being in a position to notify and deciding voluntarily to do so.

4. An alternative regime is mandatory reporting by medical practitioner which imposes an obligation on medical practitioners with patients deemed unfit to drive, to report the matter to VicRoads. This is a controversial policy which is not supported by VicRoads or other relevant experts[27] and which I will not canvass here as it has been extensively canvassed in another coronial finding.[28]

5. Ms Paul died tragically as a result of Mr Truong losing consciousness while driving.. It was entirely fortuitous that more lives were not lost as a result of the collision. Although the available evidence is limited, it appears that Mr Truong experienced intermittent dizziness in the weeks prior to the collision. In an ideal world, he would have sought medical advice and, either turned his mind to the possible implications of this dizziness for his ability to drive safely, or been prompted to do so by a medical practitioner.

6. I would encourage VicRoads to take a more proactive approach to enhancing road safety around the medical fitness of drivers. Possible avenues to support and improve the current regulatory regime might include for example -

6.1 Providing information to drivers around medical conditions and their potential for driving impairment, at the time they apply for a learner's permit or a driver's licence, and on licence renewal.

6.2 Periodic revision of the licence application form to improve clarity of the questions pertaining to medical conditions, ensuring they are worded as unambiguously as possible and designed to elicit the desired response.

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27 For example, neither Dr Odell nor Professor Wells who provided expert evidence, support mandatory reporting by medical practitioners in relation to driver fitness. Transcript page 16 and following.

28 Finding in the death of Scott PEOPLES (case 4776/06) and response from VicRoads available on the Coroners Court of Victoria website: http://coronerscourt.vic.gov.au/home/case+findgins/coroners2+-+477606+scott+peoples

6.3 A broad education campaign, perhaps in conjunction with the Transport Accident Commission, to emphasise to drivers (and the general public) the road safety implication of driving with certain medical conditions, the importance of seeking medical advice, and their reporting responsibilities. Such a campaign should emphasise that unfit drivers are not only putting their own lives at risk, but the lives of all other road users.

6.4 More rigorous enforcement action where drivers clearly breach their legal obligation by failing to notify VicRoads of long term or permanent injury or illness that impairs their ability to drive safely.[29]

6.5 Continued education of health professionals to ensure that fitness to drive is at the forefront of their minds when a patient presents with symptoms or is diagnosed with a condition that is likely to affect their ability to drive safely.[30] The release of the revised national guidelines for "Assessing Fitness to Drive"[31] may present an opportunity for VicRoads to further publicise the important role of health professionals in advising patients accordingly. Similarly, this may provide an opportunity to further promote uptake of the "Safe Drive Medical On-Line Learning Program".[32]

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

The family of Robin Sara Paul c/o Holding Redlich, Solicitors
The Hon. Terry Mulder, Minister for Roads
VicRoads c/o DLA Piper, Solicitors
Transport Accident Commission
Professor David Lawrence Wells, Victorian Institute of Forensic Medicine
Sergeant Christopher John Carnie (20339), Major Collision Investigation Unit

Signature:

PARESA ANTONIADIS SPANOS
CORONER
Date: 20 December 2011

Coroners Court of Victoria

29 See transcript page 41 and following where Mr Russell John Scott, Senior Policy Adviser, VicRoads testifies about the policy approach to enforcement.

30 Professor Wells testified that there was scope for improvement in this area - transcript page 16.

31 See Dr Odell's statement at page 147 of Exhibit "E". "Assessing Fitness to Drive" is a national guideline/publication designed principally to guide and support recommendations made by health professionals regarding fitness to drive for licensing purposes. It sets out clear medical criteria for unconditional and conditional licences which form the medical basis of decisions made to the relevant Driver Licensing Authority - accessible at http://www.ntc.gov.au/viewpage.aspx?documentid=896

32 Referred to at transcript page 31. "Safe Drive Medical" is a VicRoads education program designed to assist health professionals to assess their patient's fitness to drive. The program introduces health professionals to the use of the national guidelines in assessing fitness in relation to all classess of vehicles - accessible at http://www.vicroads.vic.gov.au/Home/SafetyAndRules/AboutSafety/StrategyAndPrograms/SafeDriveMedical.htm