

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2008 / 1678

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: ZANE WILL McLAUGHLIN

Delivered On:	16 October 2014
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, 3006
Hearing Dates:	2 July 2014
Findings of:	JUDGE IAN L GRAY, STATE CORONER
Representation:	Ms T Thomas on behalf of Transport Safety Victoria
Police Coronial Support Unit	Leading Senior Constable G McFarlane

I, JUDGE IAN L GRAY State Coroner, having investigated the death of Zane McLaughlin

AND having held an inquest in relation to this death on 2 July 2014

at Melbourne

find that the identity of the deceased was Zane Will McLaughlin

born on 21 August 2002

and the death occurred 19 April 2008

at 1.5 kilometres off Patterson River, Port Phillip Bay

from:

1 (a) HEAD INJURY SUSTAINED IN BOATING COLLISION

in the following circumstances:

Background

1. Zane McLaughlin was the 5 year old son of Anthony and Lisa McLaughlin. On Saturday 19 April 2008 Zane was in a fibreglass bow rider-ski boat, registration number KW863 with his parents, and siblings Max and Indi, and friends of the children.
2. The family, with two friends of the children, Thomas Reeves and Rhys Fildes, departed Patterson Lakes boat ramp with the intention of a days boating. The intention of the trip was to cruise to Melbourne, but Mr McLaughlin decided that after getting to the Cerberus, there was too much chop, so the plans were changed to go to Frankston instead. The children moved position throughout the voyage but it appears when the vessel was underway, they remained seated. All children wore suitable sized Personal Flotation Devices's (PFD) whilst on the vessel. Mr and Mrs McLaughlin were not wearing PFD's and were not required to, but PFD's Coastal Multi Fit jackets were available for them on the vessel if required.
3. Mr Anthony McLaughlin was the holder of a Victorian Recreational Boat Licence. He had owned the boat in question since 2007 and it was in good order and no known problems.
4. A second vessel was involved in a collision with the McLaughlin boat; it was a half-cabin fibreglass fishing boat registration number HB952. It contained two adults, Barrie Thompson and Lynn Thompson. They departed Patterson River around 1.00pm on 19 April 2008. Mr Thompson was the holder of a Victorian Recreational Boat Licence and was a relatively inexperienced vessel operator. He had however completed a safety course with the Coastguard to obtain his licence. The vessel was in good order and had no known problems. All required safety equipment was carried and in good order.

5. Zane McLaughlin died as a result of the collision.
6. A summary of the incident itself is set out by the Coroners Investigator and was read out at the inquest:-

“The day was hazy but warm. Visibility was good, out to a few kilometres and the sea was calm with a small chop. At approximately 1.10 pm Vessel 1, the ski boat, was travelling southerly from Rickett's Point towards Frankston. They were about two nautical miles almost directly off Patterson River and their speed was around 25 knots. The second vessel, the fishing boat, had just departed Patterson River and was heading westerly at around 25 knots. The two vessels collided. It appears neither vessel changed course or speed prior to the collision. Evidence suggest that neither operator was aware of the other vessel's proximity until the moment of collision. The bow of the fishing vessel struck the port shoulder of the ski vessel. The bow penetrated into the ski vessel and struck the deceased causing injuries that proved almost immediately fatal. It appears that the deceased was being, or was very close to his mother, Lisa McLaughlin, at the time of the impact. Occupants of both vessels suffered injuries. Other vessels in the area assisted the two vessels involved in the collision and all parties made their way back to Patterson River boat ramp where emergency services had gathered. It appears that no person witnessed the collision or the acts of either vessel immediately before the collision. Two vessels, each with two adults on board, immediately rendered assistance to Vessel 1. Toran Pugsley and his partner, Mary Jane Favit, took two children on board their vessel and towed the ski boat back to Patterson River. Steven Beath and Wayne Speck took two children on board their vessel. Speck then drove them to Patterson River while Beath bordered the ski boat and performed CPR on the deceased child. Another vessel assisted Vessel 2. A retired nurse assisted the injured Lynne Thompson and whilst Barry Thompson was able to re-start the boat and return to Patterson River.”¹

7. The bow of vessel two struck vessel one midway along its port (left) side. As the summary points out the strongest part of one vessel (driven by Mr Thompson)) struck the weakest part of the other vessel (driven by Mr McLaughlin).
8. Photographs tendered at the inquest clearly showed point of impact and amount of damage done when the collision took place.
9. After the collision, both vessels returned to Patterson River boat ramp and were met by police and ambulance crews.
10. Coroner's Investigator, Leading Senior Constable (L/S/C) Matthew Blythe of Melbourne Water Police was operating a police vessel on the day. His evidence was that he passed through the area when attending Patterson River boat ramp for the incident. As to visibility, he said that at a distance of about 5 nautical miles from Patterson River mouth he could see the entrance. At a distance of about 2 nautical miles he could “clearly see small objects on

¹ Transcript of proceedings, pages 7 & 8.

*the surface of the water, seabirds, rubbish etc*². Mr Thompson stated to police that his vision was not obscured by sun glare even though it was a sunny day.

11. I accept that there is *“no evidence to support that Mr Thompson’s vision was obscured in any manner.”*³ As the brief makes clear, *“In the final 100 metres of approach before the collision, vessel one was almost directly in front of vessel two.”*⁴ While Mr Thompson’s vision was not obscured at all, on the police analysis Mr McLaughlin’s vision was potentially obstructed. That analysis explains why it is possible that he did not see the other vessel. The summary states as follows: *“It also appears that Anthony had a child on his lap; this would have impeded his forward vision, but not his vision in the direction of the other vessel.”*⁵ The point is then made *“Having a child in his lap would have reduced his ability to move around; i.e. to lean forward, to see past Lisa and Zane McLaughlin.”*⁶ The fact that his wife and son were sitting to his immediate left may have partly obscured, or briefly fully obscured vessel two from his sight if he did not lean forward or back to see past his wife and son.
12. The inquest brief deals in detail with boat construction and equipment. Both vessels were found to be mechanically sound. Both vessels carried the required safety equipment, which was in good order.
13. In relation to obligations to give way, the inquest brief states as follows:

“Vessel two, operated by Barrie Thompson, is the give way vessel in this incident. He should have taken early and substantial actions to keep well clear of the stand on vessel.

*Vessel one, operated by Anthony McLaughlin, is the stand on vessel (has right of way) in this incident. When a collision became imminent, he should have taken all required actions to avoid a collision.”*⁷
14. Coroner’s Investigator L/S/C Blythe, whose expertise I accept given his experience as a member of Melbourne Water Police, summarised his opinion as follows:-
 - *“There were no direct environmental factors contributing to the collision.*
 - *There is no evidence to suggest either operator was affected by drugs or alcohol.*

² Inquest Brief page 14.

³ Inquest Brief page 15.

⁴ Inquest Brief page 15.

⁵ Inquest Brief page 16.

⁶ Inquest Brief page 16.

⁷ Inquest Brief page 8.

- *The mechanical condition of the vessels was good and not a contributing factor in the collision.*
- *The design or handling characteristic of the vessels was not a contributing factor in the collision.*
- *The collision would not have occurred if existing Collision Regulations had been obeyed.*
- *Vessel two; Vessel two failed to give way to vessel one. Vessel two failed to take evasive action when a collision became imminent. Vessel two exceeded 5 knots within 50 metres of another vessel. The above three offences appear to be due to the operator, Barrie Thompson, failing to keep a proper lookout.*
- *Vessel one; Vessel one failed to take evasive action when a collision became imminent. Vessel one exceeded 5 knots within 50 metres of another vessel. The above two offences appear to be due to the operator, Anthony McLaughlin, failing to keep a proper lookout.*
- *In summary, the collision occurred because vessel two failed to give way to vessel one and both operators failed to keep a proper lookout.”⁸*

Having considered the evidence I agree with this opinion.

The Issues

15. Zane’s mother Mrs Lisa McLaughlin played a helpful and constructive role at the inquest and I thank her for that. She raised issues consistent with those she had raised in the past. In her request for inquest, she said as follows:-

“I believe the boating laws should be changed. The speed limit is 5 knots on Patterson River from when you leave the boat ramp until you pass under the bridge on the way out to the bay then there is not speed limit at all. This means inexperienced people can drive their boats at whatever speed they choose which can be dangerous for swimmers and people in other boats. The bay is too big to monitor but I’m asking for the speed limit of five knots to be extended another ten to fifteen kms out. The reason is the mouth of the river is packed with boats, jetskis, canoes etc and I would love to see more regulations applied until they have room to spread out and move safely. The second request is about obtaining a boat license. At the moment it’s a test with multiple choice answers. The bay would be safer if drivers had to do a written test and pass a driving test with an inspector in a boat. Australia is surrounded by water so even though I know people may say this is not practical or reasonable, the increase in boat ownership makes it very necessary.”⁹

16. The identified system issue in the case, is that of licensing of recreational boat users in Victoria. During the inquest, Mrs McLaughlin made the submission that the testing regime for recreational boat licensing in Victoria is not rigorous enough, mainly because it has no practical testing component. Both Leading Senior Constable Blackley and his colleague,

⁸ Inquest brief page 19.

⁹ Form 45 Application by Mrs Lisa McLaughlin.

Leading Senior Constable Bell, also from the Melbourne Water Police agreed with Mrs McLaughlin's point.

17. In essence the position is that to obtain a recreational boat users licence in Victoria, does not require testing and proving of skill and knowledge on the water. I raised this with L/S/C Blackley during the inquest and he advised that recommendations had been made by coroners in the past and that the Water Police have held a consistently strong view that the current licensing system is inadequate.
18. Ms Thomas, observing on behalf of Transport Safety Victoria (TSV), also assisted me and offered to obtain responses to the issues raised. I told her I would provide a letter to TSV setting out particular questions and she advised me that they would be answered. This was subsequently done.
19. Two specific questions were formulated for this purpose.

1. Does TSV support the proposition for a more rigours recreational boating licence testing regime to be introduced, including a practical testing component?

20. This question was answered as follows:

“TSV supports the introduction of new measures to improve marine safety outcomes and enhance the safety and knowledge of recreational vessel owners and operators in Victoria. To this end, TSV would support a review of the requirements for recreational boating licence testing including an assessment of the merits of introducing a mandatory practical testing component.

I also note however that TSV is not responsible for legislative policy development and that this is rather a role of the Department of Transport, Planning and Local Infrastructure (DTPLI).

Section 173 of the Transport Integration Act 2010 (Vic) provides that while the Director, Transport Safety (Safety Director) can advise and make recommendations to the Minister in respect of matters relating to transport safety and develop policy in relation to the administration of transport safety regulation, the functions of the Safety Director do not include developing policy for transport safety regulation or the development of legislation relating to transport safety regulation and related matters.

The proposition for a more rigorous recreational boating licence testing regime was canvassed in the Options Paper for Marine Licensing in Victoria for the Marine Safety Regulations 2011, produced by the then Department of Transport (now DTPLI). TSV made a significant contribution to the development of the paper and analysis of the options it presented.

The paper specifically addresses (among other issues) the feasibility of implementing a practical testing component to recreational boating licence testing and the likely effectiveness of such a measure including an assessment of the costs as against the potential benefits to safety outcomes.

The findings of that analysis suggested that the costs of implementing each of the options considered outweighed the estimated benefits for the options considered. In light of these findings, the Department of Transport decided not to proceed with the proposal.”¹⁰

2. Has TSV (independently of coronial recommendations) made representations to Government regarding a more rigorous recreational boating licence testing regime and, if so, when and what were they?

21. This was answered in the following terms:

“I was asked directly for my view on these matters at the Victorian Parliamentary Inquiry into Marine Rescue Services in Victoria on 24 March 2014. I told the Economic Development, Infrastructure and Outer Suburban/Interface Services Committee conducting the Inquiry that TSV would support a practical component to the licensing regime for all recreational boaters.

TSV’s two written submission to that Inquiry, made on 21 March and 17 April 2014 respectively state that the current marine licensing scheme for recreational boaters establishes a base level of safe boating knowledge in the boating community but also note that all other states of Australia have introduced a practical assessment of some degree into their licensing schemes.

Further, TSV highly recommends persons who are considering obtaining a marine licence undertake an approved boating safety training course and lists accredited training providers (ATPs) on the TSV website. ATPs are accredited by the Safety Director to deliver marine licence training and assessment and are required to deliver more comprehensive training. TSV publicises this recommendation in the Victorian Recreational Boating Safety Handbook, which is produced by TSV to assist marine licence applicants.”¹¹

22. I note the reference to the fact that *“all other states of Australia have introduced a practical assessment of some degree into their licensing schemes”*.¹²

23. I note a previous coronial recommendation on this topic. In that case the Coroner recommended the introduction of a practical examination for recreational boaters. The Coroner recommended:-

“That all applicant’s for a recreational boat licence be required to undertake a practical examination and exhibit a reasonable proficiency in the operation of a boat, in addition to the existing written examination, before being issued with a licence.”¹³

24. I note that the correspondence from TSV of 15 August 2014 refers to the paper titled *“Options Paper for Marine Licensing in Victoria for Marine Safety Regulations 2011”* which addressed the issue and that one of the findings, *“suggested that the cost of*

¹⁰ Letter from Mr Peter Corcoran, Director, Maritime Safety, Transport Safety Victoria, 15 August 2014.

¹¹ Letter from Mr Peter Corcoran, Director, Maritime Safety, Transport Safety Victoria, 15 August 2014.

¹² Letter from Mr Peter Corcoran, Director, Maritime Safety, Transport Safety Victoria, 15 August 2014.

¹³ Court Reference Number 2003 2529.

implementing each of the options considered outweigh the estimated benefits for the options considered".

25. In the Options Paper a number of significant points are made by the then Department of Transport. (I note that TSV made a significant contribution to the development of the paper and the analysis of the options contained in it – as referred to in the correspondence).
26. Under the heading “Applicants and Vessel numbers” (1.2 of the Options Papers):-
“More recently, there has been a marked change in the mix of people wanting to gain a recreational boating licence. There is now a much higher percentage of inexperienced, less knowledgeable and less skilled people wanting to operate recreational vessels and PWCs¹⁴. Additionally, with the growth in recreational pleasure boating, the number of family groups attending the courses has shown a marked increase. This change increases the likelihood of less skilled new masters operating recreational vessels on Victorian waters.”¹⁵
27. Section 1.3 of the Options Paper is headed “Human factors as main causal factors for incidents, accidents and death”¹⁶.
28. Examples of human factors are set out. Factor 1 in the list is “Operator inattention or improper lookout, which can cause a collision with another vessel, object or person in the water”¹⁷.
29. The Options Paper contains extensive data on accident and incident types and fatalities.
30. Table six¹⁸ of the Options Paper sets out the “Incident causal factors derived from Victorian Coroner’s report”.
31. At 1.4.5.4 the Options Paper states:
“Following each inquest, the Coroner makes recommendations for marine safety improvements. Within the above time period, there has only been one case where the Coroner has explicitly recommended that the boating licensing scheme be improved. This case involved a drowning in August 2003, where the deceased operator had obtained a recreational boating licence 3 days before the incident. He then bought a 4.4m half cabin vessel and went fishing with another person while anchored 100m off the end of a breakwater. Bad weather and a failure to put in bungs caused the boat to take on water and sink.

¹⁴ PWC otherwise referred to a jet skis or power skis.

¹⁵ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 10.

¹⁶ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 12.

¹⁷ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 12.

¹⁸ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 18.

As a result, the Coroner, in addition to the then existing written licensing examination, recommended that all applicants for a recreational boat licence be required to undertake a practical examination and exhibit reasonable proficiency in the operation of a boat before being issued with a licence.”¹⁹

32. The Options Paper also sets out a jurisdiction-by-jurisdiction comparison of licence requirements.

33. The Options Paper states:-

“It is noteworthy that Victoria is the only Australia jurisdiction to have a recreational boat licensing scheme with no requirement for practical skills training or assessment and/or on-water supervised boat operating experience. SA has similar arrangements for unrestricted licenses but does require a practical assessment of younger boat operators.

The purpose of each Australian State’s licensing scheme is to ensure operators meet the competencies outlined the Guidelines for Recreational Boar Operator Competencies. However, how a scheme addresses those competencies and ensures that they are met is currently left for each jurisdiction to determine.”²⁰

34. Under the heading “Summary of licensing in Australia and the Victorian Model” the following is stated:-

“This comparison illustrates that the Victorian model achieves outcomes which fall well short of the level of competency achieved by successful completion of the WA test. If the practical assessment of competency achieved by the WA model is a reasonable assessment of the national minimum competencies then, from the evidence available, the Victorian model fails to deliver competent operators.”²¹

35. Under the heading “Comparison of schemes” the following paragraph appears:-

“Other skills cannot be tested in a knowledge test, but could be demonstrated as part of a practical test. For example, it may be that being able to apply a safe distance rule is the true measure of the level of competency required.”²²

36. The conclusion on the issue of licensing stated in the Options Paper is set out in these brief terms²³:-

“A higher standard of testing, such as practical training or assessing, in relation to the following competencies, could reduce the number of marine incidents in Victoria in the following ways (these are set out in the following table):-

¹⁹ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 19.

²⁰ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 30.

²¹ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 31.

²² Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 31.

²³ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 33.

Some Training/assessment options	Expected outcome
Person overboard and retrieval procedures	Reduce the risk of drowning and improve the chances of retrieving a person in the water
Boat launching/docking and slow speed manoeuvres training	Minimise collision risks and hand/finger/limb injuries at jetties and “ramp rage”
Basic fuel and battery checks training	Reduce the risk of capsizing due to going broadside after losing power
Setting and retrieving anchor training	Minimise hand and finger injuries
Training in towing people at moderate to high speeds	Reduce the likelihood of injury from towed water sport activities
Training in operating high speed watercraft, particularly PWCs, and the dangers involved in operating in close proximity to others	Reduce the incidence of high speed collisions

37. It needs to be made clear none of the specific training/assessment options and related “Expected outcomes” deal explicitly with keeping a proper lookout when operating boats in open water.
38. The evidence in this case was that both boats were travelling at approximately 25 knots. This is a moderate to high speed on the water. The final item of the list in the table above of “Some training/assessment options” v “Expected outcome” deals with “training and operating high speed watercraft, particularly PWCs, and the dangers involved in operating in close proximity to others” and describes the “Expected Outcome” as “Reduce the incidence of high speed collisions”.
39. In my view it is reasonable to infer that better training of those operating watercraft at moderate (and higher) speeds, and educating drivers about the dangers involved in operating in close proximity to others would be likely to promote the achievement of the “Expected Outcome”, i.e. to “reduce the incidence of high speed collisions”.
40. Under the heading of “Summary of general marine licence options”, the following is set out:-

“Licensing is aimed at improving the competency of recreational vessel masters and operators and thereby reducing the human contribution to incidents. There is evidence that the current marine licensing regime could be improved and a number of options for licence improvements are suggested. However, the evidence used to make a case for licensing

improvements is tempered by the economic analysis which shows that none of the options suggested are economically justifiable.

Case for basic marine licence improvements

- *Analysis shows that incidents resulting from general boating could be decreased by as much as 39% with a resulting decrease in injuries.*
- *Licensing is the only major regulatory tool which directly influence the competency of vessel masters and operators. Stakeholder anecdotal evidence as well as independent assessment of the Victorian licensing scheme point to the Victorian licensing scheme being less effective than other Australian schemes at producing competent masters and operators.*
- *The Victorian testing scheme is primarily aimed at testing for the applicant's knowledge of regulatory requirements rather than assessing their ability to manage operational or emergency response issues. Navigation and other rules (e.g. speed limits) are designed to provide a level of protection against the risk of many marine events. It is critically important to improve the level of compliance with marine safety laws in the future to address the rising occurrence of collisions and associated incidents. Licensing interventions assist in this by increasing awareness and understanding of marine safety laws. However, there is a need to ensure that improved knowledge testing results in an improved safety culture, not merely short term memorisation of laws which happens at present.*
- *Following each inquest, the Coroner makes recommendation for marine safety improvements. There has been a single case where the Coroner has explicitly recommended that the boating licensing scheme be improved. This case involved a drowning in August 2003, where the deceased operator had obtained a recreational boat licence 3 days before the incident.*
- *As a result, the Coroner, in addition to the then existing written licensing examination, recommended that all applicants for a recreational boat licence be required to undertake a practical examination and exhibit reasonable proficiency in the operation of a boat before being issued with a licence.”²⁴*

Response to the Options Paper

41. As stated in the letter dated 15 August 2014²⁵, the Options Paper addressed the feasibility of implementing a practical testing component to recreational boating licence testing and the likely effectiveness of such a measure. As is stated in the letter, “*the findings of that analysis suggested that the cost of implementing each of the options considered outweighed the estimated benefits for the options considered*”. As a result, the Department of Transport did not proceed with the proposal.
42. Mr Peter Corcoran, Director, Maritime Safety, Transport Safety Victoria, expressed his views at the Victorian Parliamentary Inquiry into Marine Rescue Services in Victoria on 24

²⁴ Options Paper for Marine Licensing in Victoria for *Marine Safety Regulations 2011*, page 53.

²⁵ Letter from Mr Peter Corcoran, Director, Maritime Safety, Transport Safety Victoria, 15 August 2014.

March 2014. He told the relevant committee conducting the inquiry that the TSV would support a practical component to the licensing regime for all recreational boaters.

43. In a letter dated 17 April 2014, Mr Adrian Menew, Acting Director Maritime Safety, TSV, to the Chair of the committee conducting the inquiry into Marine Rescue Services, provided a supplementary submission and further comments. He did so “to provide to the inquiry with further information” related to matters raised at the hearing on 24 March 2014.

44. In that supplementary submission he made the following comments under the heading “Recreational marine licensing in Victoria”:

“At the time of introduction, the scheme sought to achieve consistency with similar schemes in other jurisdictions in Victoria by modelling the assessment on the Guidelines for Recreational Boat Operator Competencies, release by the National Marine Safety Committee in November 2000. Since that time all other states of Australia have introduced a practical assessment of some degree into their licensing schemes.

...The Director, Transport Safety (Safety Director), the head of TSV, is not provided with a head of power to prescribe any alternative test, for instance, a test that includes a practical component.

It is important to emphasise that the Safety Director is not empowered to develop or set policy in relation to recreational vessel licensing or any other aspect of transport safety regulation or legislation.

In the context of recreational marine licensing, TSV’s role is to administer the legislative scheme enacted to give effect to government policy, which historically has been developed by the former Department of Transport.

The licensing scheme was reviewed by the then Department of Transport prior to the introduction of the Marine Safety Act 2010 (Vic) (MSA) which came into force on 1 July 2012. The Department considered five options for reform of the scheme with those options ranging from retention of the status quo through to a mandatory training and assessment regime. The options were discussed with the community through the release of the Options Paper for Marine Licensing in Victoria in 2011. Despite consideration of alternative options, the Department was unable to successfully establish a safety case for material change to the existing scheme. It is not within TSV’s remit to revisit the Victorian Government’s decision to continue with current recreational marine licensing arrangements.”²⁶

45. I infer from the material that the Department of Economic Development, Infrastructure and Outer Suburban/Interface Services did not consider that a sufficiently cogent case had been made, in the words of the submission to, “successfully establish a safety case for material change to the existing scheme”. I note also that it is the position of the TSV that it is not

²⁶ Submission by TSV to Inquiry into Marine Rescue Services in Victoria – Supplementary submission – 17 April 2014, pages 6 & 7.

within its “*remit to revisit the Victorian Government’s decision to continue with current recreational marine licensing arrangements*”.

46. The position stands therefore that the decision was to preserve the status quo with one change in relation to a single person operating a vessel without a licence in certain circumstances.
47. It is important to contextualise again the discussion of this issue. The matter was raised by Mrs McLaughlin, and as indicated earlier, there was very strong agreement from the two members of the Melbourne Water Police who were present in court. I note that it was also their opinion that their view would be widely supported within the Melbourne Water Police.
48. In my view, this is an important expert opinion, one based on a focus on rescue, safety and compliance. An opinion of this nature expressed on the part of experienced members the Melbourne Water Police should be accorded significant weight.
49. It is further necessary to ensure that the circumstances surrounding the death of Zane McLaughlin are carefully borne in mind when considering any comment or recommendation arising from this investigation.
50. It is crystal clear that this accident, causing Zane’s death, occurred because both vessel operators failed to keep a proper look out. The circumstances in which they were operating their vessels could not have been more benign. The failure to keep a proper lookout is a function no doubt of experience, immediate circumstance, possibly distraction and possibly attitude. It is fair to infer based on ordinary human experience, that practical experience and reinforcement through training and assessment is likely to enhance the awareness and consciousness of the need to keep a proper lookout at all times.
51. There maybe a degree of speculation in concluding that with a different form of training requirement, namely a practical training component, both or either of these two vessel operators would have keep a better lookout and the accident not have happened. However, there are powerful reasons in my view for concluding, as a general proposition, that a practical component to recreational boat licensing is likely to lower the overall risk of vessel operators failing to remember to keep a proper lookout or failing to take the necessary steps involved in safe vessel operation. The extent to which practical training could contribute to that end is an open question but as a matter of balance and experience, in my opinion it is reasonable to infer that it is likely to increase vessel operator consciousness, reinforce awareness of risk and thereby reduce the likelihood of accidents.

52. In my opinion the requirement for a practical, on the water, assessment as part of the licensing regime would significantly add to the value of the assessment process and I propose to recommend accordingly.
53. In relation to Mrs McLaughlin's proposal for a speed limit of 5 knots out to 10 to 15 kilometres out from the shore, I did not receive sufficient expert evidence to make a specific recommendation about this.

RECOMMENDATIONS

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

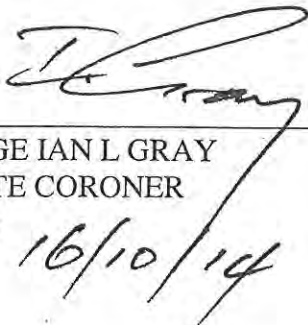
1. I recommend that there be a reconsideration by relevant authorities of whether the estimated benefits of a practical component of the Victorian recreational boat license regime continues to outweigh the costs. I recommend that such a re-consideration take into account the need to strike an appropriate balance between public safety and public cost, which may require a recalibration of the equation and a greater weighting of the public safety component of that equation.

I convey my sincere condolences to the family of Zane McLaughlin.

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

Mr Anthony McLaughlin
Mrs Lisa McLaughlin
Transport Safety Victoria
Melbourne Water Police
Sergeant Greig McFarlane

Signature:



JUDGE IAN L GRAY
STATE CORONER
Date: 16/10/14

