

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2010 003341

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: Ming Shan YUAN

Delivered On: 26 November 2014

Delivered At: Coroners Court of Victoria
65 Kavanagh Street
Southbank Victoria 3006

Hearing Dates: 13, 14, 15, 16 and 19 March 2012

Findings of: Coroner Paresa Antoniadis SPANOS

Representation: Mr M. SHARPLEY of Counsel, instructed by
Mr Tim Smurthwaite of Rainer Martini, Lawyers,
appeared on behalf of Ms Yi Nian (Annie) YUAN.

Police Coronial Support Unit Sergeant Tracey WEIR, assisting the Coroner

I, PARESA ANTONIADIS SPANOS, Coroner,
having investigated the death of MING SHAN YUAN
and having held an inquest in relation to this death at Melbourne
on 13, 14, 15, 16 and 19 March 2012:

find that the identity of the deceased was MING SHAN YUAN
born on 22 June 1922, aged 88
and that the death occurred on 27 August 2010
at Box Hill Hospital, Nelson Road, Box Hill, Victoria 3128

from:

1 (a) TUBERCULOUS PNEUMONIA IN THE SETTING OF MULTIPLE RIB
FRACTURES, OSTEOPOROSIS AND CACHEXIA

in the following circumstances:

BACKGROUND AND PERSONAL CIRCUMSTANCES

1. Ming Shan Yuan was an 88-year-old retired man who lived with his wife Hui Ying Fu and their younger daughter and primary carer Yi Nian Yuan at 43B Begonia Street, Box Hill South. Yi Nian Yuan was also known as Annie and will be referred to as such in this finding. Mr Yuan and Ms Fu were elderly and frail and largely dependent on their daughter Annie for meeting their day to day needs including meal preparation, toileting and attendance at their various medical appointments.
2. Mr Yuan and Ms Fu had migrated to Australia under the sponsorship of their older daughter Yi Ming Yuan in 1994. They lived with her and her family for about two years before moving into their own premises. In due course, the family sponsored Annie to come to Australia and become the primary carer of Mr Yuan and Ms Fu. She arrived in Australia in about 1999-2000, and assumed the role of primary carer for both her parents thereafter, more recently with support from Uniting Care Community Options, Brandon Park, through the Commonwealth Aged Care Assistance Scheme (ACAS). This support commenced in February 2008 and included the provision of meals, cleaning, gardening, allied health assistance in the form of physiotherapy and podiatry, and assistance with transportation in the form of taxi vouchers.

3. At the time of Mr Yuan's death, Yi Ming Yuan was living with her husband and family at another address in Box Hill, had a strained relationship with her sister Annie, and consequently had little contact with her parents. The reasons for this are discussed in some detail below.

MEDICAL HISTORY

4. Mr Yuan had a significant past medical history that included hypertension, hypercholesterolaemia, congestive cardiac failure, osteoarthritis associated with back pain, bilateral inguinal hernias, gastric ulcers and a tibial plateau fracture sustained in a fall in January 2009. Following the fracture, Mr Yuan was treated acutely at Box Hill Hospital, transferred to the Strathdon Rehabilitation Centre and from there to a high-level care placement at Bellevue Nursing Home from about June 2009.¹
5. While it is difficult to pinpoint the time when things started to go very wrong for this family, with the benefit of hindsight, Annie's unilateral decision to remove Mr Yuan from Bellevue on 25 October 2009 was a pivotal event. Firstly, it appears to have deepened the rift between the sisters and reinforced Yi Ming's belief that Annie was being difficult or contrary. In the second place, Mr Yuan's ACAS package lapsed upon entry into 'permanent' residential care and he had no entitlements on returning home, apart from an entitlement to join a waiting list for re-assessment and/or support services. Moreover, Mr Yuan's mobility had deteriorated significantly, and the burden of caring for two elderly parents had become even more demanding than it had been.

ADMISSION TO BOX HILL HOSPITAL ON 8 AUGUST 2010

6. According to Annie's account, Mr Yuan used a walking frame to move around and had a history of recurrent falls. At about 10.00pm on Saturday 7 August 2010, while she was making preparations to take her parents out the next day, Mr Yuan fell and she made several attempts to help him up, over several hours, but to no avail.
7. By about 3.00am on Sunday 8 August 2010, she realised it was hopeless, and her mother who was sitting in the kitchen, suggested that she ask their neighbour for help. The neighbour referred to was Mr Peter Keane who lived in the unit in front of theirs, and Annie did not consider it appropriate to knock on his door at that hour. She made further attempts to help

¹ This is addressed in the evidence of Uniting Care staff, see for example Exhibit M at page 4 and transcript pages 180 and following.

her father up but he kept falling and injuring himself several times in the process, including head strikes.²

8. Some time between 8.00 and 9.00am, Annie approached Mr Keane who came over to help her lift Mr Yuan. Mr Keane noticed that Mr Yuan had two black and very swollen eyes, bruising extending to his forehead and cheekbone. Mr Yuan was gaunt and his health appeared to have deteriorated since Mr Keane had last seen him. He asked Annie if her father needed an ambulance and she said no.³
9. Some hours later, Annie suspected that Mr Yuan may have broken some bone/s as he could not stand up, and spoke to her mother about the need for an ambulance. According to records provided by Ambulance Victoria, this call was received at about 3.22pm.⁴ There is no real explanation for this delay, and how Mr Yuan was faring in the meantime.
10. The history conveyed by Annie to the ambulance paramedics was of a fall today and injury to the left knee and back, in the setting of recurrent falls up to 4-5 times per week. The paramedics documented that Mr Yuan complained of pain to the left knee and lower back, but was haemodynamically stable and fully conscious. Mr Yuan was taken to Box Hill Hospital arriving at about 4.05pm, being triaged at 4.16pm and assigned a cubicle in the Emergency Department at 4.20pm.⁵
11. According to the medical deposition provided by treating clinicians, Mr Yuan had extensive bruising with left sided chest pain consistent clinically with fractured ribs, confirmed on subsequent CT chest. His clinical condition deteriorated with the development of hospital-acquired pneumonia, though secondary to left sided lung atelectasis attributed to the pain of rib fractures. Mr Yuan further deteriorated with the development of sepsis that proved refractory to intravenous antibiotics. Thereafter, active treatment was ceased and a palliative approach taken. Mr Yuan was kept comfortable with midazolam and morphine until his death on 27 August 2010.⁶

² The transcript of the Record of Interview conducted by Detective Senior Constables Faba and Webbers is at pages 238-278 of the inquest brief, Exhibit HH. See especially Annie's fulsome answer to Q 91 at page 251 and following.

³ See pages 3-4 of Exhibit I, Mr Keane's statement dated 28 October 2010.

⁴ See the VACIS Electronic Patient Care Report (an Ambulance Victoria document) regarding this episode of care at page 179 of Exhibit HH, remainder of the inquest brief.

⁵ Ibid.

⁶ Medical Deposition from Box Hill Hospital dated 27 August 2010, authored by Dr Gujadhur Anuksha, Medical Registrar. I note that the clinical summary includes the following – *“Previously not unwell gentleman with recurrent admissions for falls for investigation, nil clear etiology found although patient noted consistently to have suffered from*

INVESTIGATION – SOURCES OF EVIDENCE

12. This finding is based on the totality of the material the product of the coronial investigation of Mr Yuan's death. That is the brief of evidence compiled by Detective Senior Constable Nino Faba from the Whitehorse Crime Investigation Unit (CIU) of Victoria Police, the statements, reports and testimony of those witnesses who testified at inquest and any documents tendered through them, and the final submissions of Counsel. All of this material, together with the inquest transcript, will remain on the coronial file.⁷ In writing this finding, I do not purport to summarise all the material and evidence, but will refer to it only in such detail as is warranted by its forensic significance and in the interests of narrative clarity.

PURPOSE OF A CORONIAL INVESTIGATION

13. The purpose of a coronial investigation of a *reportable death*⁸ is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.⁹ The *cause* of death refers to the *medical* cause of death, incorporating where possible the *mode* or *mechanism* of death. For coronial purposes, the *circumstances* in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the death, and not merely all circumstances which might form part of a narrative culminating in death.¹⁰
14. The broader purpose of any coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of

extensive bruising, inconsistent with his fall mechanism. His current admission was similar to previous ones, with notable deconditioning, poor nutritional status and weight loss, Of note was his extensive bruising and ecchymoses, with left sided chest pain consistent clinically with fractures, confirmed on subsequent CT chest. His admission was complicated by a hospital acquired pneumonia, likely secondary to left sided lung atelectasis from pain issues..."

⁷ From the commencement of the *Coroners Act 2008* (the Act), that is 1 November 2009, access to documents held by the Coroners Court of Victoria is governed by section 115 of the Act.

⁸ The *Coroners Act 2008*, like its predecessor the *Coroners Act 1985*, 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 in section 4 includes deaths that appear *to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from accident or injury* and the *death of a person who immediately before death was a patient within the meaning of the Mental Health Act 1986*".

⁹ Section 67(1) of the *Coroners Act 2008*. All references which follow are to the provisions of this Act, unless otherwise stipulated.

¹⁰ This is the effect of the authorities – see for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J.)

recommendations by coroners, generally referred to as the *prevention* role.¹¹ Coroners are also empowered to report to the Attorney-General in relation to a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.¹² These are effectively the vehicles by which the prevention role may be advanced.¹³

15. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death, and are specifically prohibited from including in a finding or comment any statement that a person is, or maybe, guilty of an offence.¹⁴ However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions *if the coroner believes an indictable offence may have been committed in connection with the death.*¹⁵

FINDINGS AS TO UNCONTENTIOUS MATTERS

16. In relation to Mr Yuan's death, most of the matters I am required to ascertain, if possible, were uncontentious from the outset. His identity and the date and place of death were not at issue. I find, as a matter of formality, that Ming Shan Yuan born on 22 June 1922, aged 88, late of 43B Begonia Street, Box Hill South, Victoria 3128, died at Box Hill Hospital, Nelson Road, Box Hill, Victoria 3128, on 27 August 2010.

THE MEDICAL CAUSE OF DEATH

17. There were some contentious aspects around the formulation of the medical cause of Mr Yuan's death. On 30 August 2010, a full post-mortem examination, or autopsy, was performed by Dr Linda Iles from the Victorian Institute of Forensic Medicine (VIFM). Dr

¹¹ The 'prevention' role is now explicitly articulated in the Preamble and purposes of the Act, cf: the *Coroners Act 1985* where this role was generally accepted as 'implicit'.

¹² See sections 72(1), 67(3) and 72(2) regarding reports, comments and recommendations respectively.

¹³ See also sections 73(1) and 72(5) which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

¹⁴ Section 69(1).

¹⁵ Sections 69 (2) and 49(1).

Iles also reviewed the circumstances as reported by the police to the coroner, the medical deposition and medical records from Box Hill Hospital and post-mortem CT scanning of the whole body (PMCT) performed at VIFM, and provided a detailed report of her findings.

18. Dr Iles summarised her findings at autopsy as including - widespread *Mycobacterium tuberculosis* pneumonia, bilateral pleural effusions, multiple bilateral rib fractures of varying ages on a background of osteoporosis, cachexia (BMI 18.5), peripheral oedema, bilateral peri-orbital bruising, and numerous areas of healing abrasions and excoriation and bruising about the legs.¹⁶ Dr Iles formulated the medical cause of Mr Yuan's death as *tuberculous pneumonia in the setting of multiple rib fractures, osteoporosis and cachexia*.
19. In her autopsy report, Dr Iles made a number of comments explaining her formulation of the medical cause of death, that are also relevant to the circumstances surrounding Mr Yuan's death, in the sense that they are an expert opinion about the cause or mechanism by which his various injuries may have been sustained.
20. As regards the multiple rib fractures on both sides of Mr Yuan's body, Dr Iles advised that they were of varying ages and stages of healing and consequent to multiple blunt force injuries to the chest. However, Dr Iles described Mr Yuan as notably osteoporotic and advised that the force required to sustain these rib fractures is less than that required in someone with healthy well-mineralised bones.
21. On pathological grounds, Dr Iles stated that the fractures bore no features that allowed her to discriminate definitively about whether the rib fractures were the result of multiple falls or multiple assaults.¹⁷ Similarly, although there were multiple bruises about Mr Yuan's body, there was nothing specific about the pattern of bruising to allow Dr Iles to discriminate between multiple falls versus multiple assaults.¹⁸ At inquest, Dr Iles expressed the opinion that given the number of fractures, a scenario involving multiple assaults was more likely than multiple falls, but the latter could not be excluded.¹⁹

¹⁶ The remaining findings listed under the heading "Anatomical Findings" are evidence of extensive medical intervention, Alzheimer's type changes within the temporal parietal and occipital cortices, chronic small vessel cerebrovascular disease and non-specific patchy axonal injury. See pages 16 to 17 of Dr Iles' autopsy report, Exhibit A.

¹⁷ Comment no. 2 on page 17 of the autopsy report, Exhibit A and transcript pages 8 to 12.

¹⁸ Comment no. 4 on page 17 of the autopsy report, Exhibit A.

¹⁹ Transcript pages 12, 18-20.

22. Of relevance to the broader allegation of neglect, Dr Iles commented on Mr Yuan's body habitus, describing him as considerably underweight at 48 kg with the body mass index within the cachectic range at 18.5. While Dr Iles recognized that this may have been as a result of reactivated tuberculosis infection, she also recognized that Mr Yuan may have been underweight as a result of decreased oral intake, which may in turn be a significant factor in reactivating a latent tuberculosis infection.²⁰
23. At inquest, Dr Iles explained that tuberculosis may be endemic but latent, in a young person or one with a competent immune system, only to be activated (or reactivated) when the person becomes older or when they are sick or rundown and the latent infection overcomes the person's immune response.²¹

FOCUS OF THE CORONIAL INVESTIGATION AND INQUEST

24. In common with many other coronial investigations, the primary focus of the coronial investigation and inquest into Mr Yuan's death was on the circumstances in which he died. Specifically, the investigation and inquest examined the possibility of neglect and/or physical abuse at the hand of Annie, and whether or not she had thereby caused or contributed to his death. The relevant evidence will be examined under the following headings, depending on its nature or source:

- a. Yi Ming Yuan's Evidence
- b. Uniting Care Community Options
- c. Hearsay Evidence of Complaints
- d. The Neighbours' Evidence

²⁰ Comment no. 3 on page 17 of the autopsy report, Exhibit A

²¹ Transcript pages 12-13 " Tuberculosis is endemic in a number of countries around the world and particularly in Asia and a large number of people actually um get initially infected when they're relatively young and people who have a competent immune system at that time will ward off the infection and it may stay silent for ever. However, it is not uncommon for when people get older or when they become sick and rundown, for that latent infection to overcome the immune response that was keeping silent and for it to progress and it can progress to widespread tuberculosis throughout the body or it might just remain localised in the lungs as it appears to have in this case... the old-fashioned name for tuberculosis is consumption and that's when - and people do present as being really very thin because of the biochemical things and the immunological things that are happening inside the body as a result. So people can become markedly thin with tuberculosis infection. Conversely, if someone is undernourished then that could be a stimulus to reactivate an old infection which has been vacant for several decades, or many decades."

e. Expert Evidence

YI MING YUAN'S EVIDENCE

25. Whatever it may have been in the past, during the last few years before Mr Yuan's death, the relationship between Annie and her older sister Yi Ming Yuan was strained to say the least, and probably, more appropriately described as dysfunctional.²² Yi Ming testified that she was not aware of her father's admission to hospital on 8 August 2010, until advised by Rebecca Chan from Uniting Care four days later.²³
26. During the period immediately preceding Mr Yuan's death, Yi Ming did not see her parents regularly, did not feel welcome to visit and largely communicated with them by telephone, all for fear of upsetting Annie and making the situation worse for her parents.²⁴ Yi Ming felt her sister had too many rules about how the household should run.²⁵ The kindest thing that she said about her sister, the only indication of any empathy, was her evidence that Annie was obsessive about cleanliness and that she may have a mental illness.²⁶
27. According to Yi Ming Yuan's evidence at inquest, it was in about 2002 when she first became aware that Annie had been behaving inappropriately towards her parents. At that time, she complied with her mother's request not to disclose what was happening out of respect for her parents' wishes. She specifically denied the suggestion put to her in cross-examination that this was because she put losing face above their safety.²⁷
28. Yi Ming also testified that about two years before her father's death, a Uniting Care worker other than Rebecca Chan, told her of a suggestion that Annie was abusing their parents.²⁸ However, it was not until her father needed stitches in his finger in July 2009 (or 2010) and disclosed that Annie had hit him, that Yi Ming realised that violence and physical assaults were involved, and not just arguments and mistreatment.²⁹ While he made the disclosure,

²² Transcript page 32 and following, 65.

²³ Exhibit C statement of Yi Ming Yuan dated 27 August 2010 at page 1, and transcript pages 29-30, 39, 74.

²⁴ Exhibit C at pages 4-5, and transcript pages 31-35, 82-83.

²⁵ Exhibit C at page 4 and transcript pages 32-33.

²⁶ Transcript page 24.

²⁷ Transcript page 40.

²⁸ Transcript page 48.

²⁹ Transcript pages 39, 84. The evidence is unclear as to whether Yi Ming Yuan was referring to an occasion in July 2010 or July 2009.

Mr Yuan told his daughter that she was not to report the matter to police and that he would fight back if Annie hit him again.³⁰

29. On or about 12 August 2010, when she visited Mr Yuan in hospital, Yi Ming became aware that he had told hospital staff that his injuries were sustained in a fall. However, when she asked him how he fell, Mr Yuan immediately told her Annie hit him. According to Yi Ming, Mr Yuan did not want the matter reported to the police initially, but later, when he felt worse, he asked her to report the matter. Yi Ming denied that this was at her behest, or that she had suggested that her father blame Annie for his injuries.³¹

UNITING CARE COMMUNITY OPTIONS

30. Wina Ka Yan Kung, gave evidence in her capacity of Team Leader, Uniting Care Community Options, Brandon Park. Although not involved at the time, Ms Kung gave evidence based on their records that Uniting Care had become involved in providing care for the Yuan family from February 2008; that their first case manager was Helene Yong; and that the services provided were some meals, domestic cleaning, gardening, some medical/allied health assistance and taxi vouchers.³²

31. Other than assisting the Yuan family to purchase a refrigerator in November 2008, as far as Ms Kung was concerned, there were no significant issues with the family until February 2009. In January 2009, Mr Yuan had been admitted to Box Hill Hospital for a tibial plateau fracture sustained in a fall. At the end of February 2009, Mr Yuan underwent an aged care assessment and was found unsuitable for discharge home, as he was still unable to weight bear, and needed a hoist. Consequently, Mr Yuan was transferred to Strathdon Rehabilitation (Strathdon) where he remained until June 2009 when he was transferred to a high-level care placement at Bellevue Nursing Home (Bellevue).³³

32. According to Ms Kung's evidence, Mr Yuan's transfer to Bellevue was confounded by Annie who, firstly refused to inspect any prospective nursing homes, and then refused to

³⁰ Transcript pages 39-40.

³¹ Transcript pages 69-73. She also denied any animus towards her sister. See transcript page 78 – "Q I'm suggesting that the reason you typed up this statement, or had your son type it up at your dictation and have your father sign it, the reason was that you wanted your sister to get into serious trouble. To be facing criminal charges. That's right, isn't it? - - A This problem has been going on for a long, long time. Shouldn't we punish her for that? That's what it was all about. You wanted your sister punished, didn't you? - - A No. I was thinking if my father got better then we will let the matter go. Q Really? - - A That's why I had not been to the police about the other previous."

³² Exhibit M is the statement of Wina Kung dated 13 October 2010, page 1 and transcript page 171.

³³ Exhibit M at page 2 and transcript pages 173 and following.

sign any forms to facilitate Mr Yuan's admission into care, and/or to pay for his place, saying that these were Yi Ming's responsibility. In the end, Yi Ming signed the requisite forms. Although she controlled Mr Yuan's finances at the time, Annie paid for his first few weeks at Bellevue but thereafter refused to pay, saying that she did not have enough money. Annie also refused to sign an authority allowing Centrelink to deduct the nursing home fees directly from Mr Yuan's pension.³⁴

33. On 25 October 2009, Annie collected Mr Yuan from Bellevue, ostensibly to take him home to celebrate Chinese National Day. As had been suspected by Bellevue staff, Annie failed to return him. When he had taken up residence at Bellevue, Mr Yuan's entitlement to an ACAS care package ceased, and once he returned home, he had to be re-assessed and placed on a waiting list for a care package.³⁵

34. According to Ms Kung, apart from these difficulties, Annie was difficult to engage with generally in that she made demands for additional supplies, did not like undergoing assessments and made unusual demands like requiring all the washing to be done by hand despite the existence of a washing machine.³⁶

35. Ms Yong had left Uniting Care in November 2009 and was replaced by a locum, until March 2010, when Chi-Yan Rebecca Chan was allocated as the new case manager for the Yuan family. Ms Chan provided a statement and testified at inquest.³⁷ Her experience was that Annie was quite dominant and would do all the talking for her parents. While she did not draw the inference at the time, with hindsight, she agreed that this could have been an indication that Annie was controlling her parents.³⁸

36. Ms Chan also described Uniting Care's difficulty in finding an agency or service to meet Annie's demand that the laundry be washed by hand, and accommodating Annie's refusal and/or reluctance to accept services that might have eased her burden, for example her

³⁴ Exhibit M at page 3 and transcript pages 178 and following.

³⁵ Exhibit M at page 4 and transcript page 180 and following.

³⁶ Exhibit M at page 4 and transcript pages 182-183.

³⁷ Exhibit N statement of Chi-Yan Rebecca Chan dated 16 September 2010 and transcript pages 209 and following.

³⁸ Transcript pages 214-215, 248.

refusal of a personal care worker to assist Ms Fu with showering, or respite care to allow her to leave her parents at home when she went shopping.³⁹

HEARSAY EVIDENCE OF COMPLAINTS

37. Apart from Yi Ming Yuan's evidence of disclosures made by her parents about abuse at the hand of Annie, there was a body of hearsay evidence, in the form of disclosures made by Mr Yuan and Ms Fu, either to, or in the presence of other witnesses who provided statements and testified at inquest.⁴⁰
38. On 6 August 2010, Ms Chan conducted a home visit accompanied by a nurse and a Mandarin-speaking interpreter. Their intention was to conduct a nursing assessment of Ms Fu and to review the adequacy of the services being provided to her.⁴¹ Annie told them that her mother was in bed she was not well, and also mentioned that her father was not well, that he had suffered a fall and had been to the GP for stitches on his hand. Ms Chan noticed that Mr Yuan's eyes were bruised on this occasion.⁴²
39. At some point during the visit, Ms Chan was left alone with Ms Fu in her bedroom. Ms Fu told her that Annie hit her and showed Ms Chan her arms, knee and back. Ms Chan saw bruising on her arms and knee, but could not see her back as she was lying in bed. When Ms Chan asked Ms Fu how this happened, she could not understand Ms Fu's response as both of them had limited Mandarin. However, Ms Fu demonstrated the hitting by moving her hand back and forth.⁴³
40. Later, during the same visit, Ms Chan spoke to Mr Yuan in his bedroom and asked him if Annie hit him or his wife. He denied this, and in response to Ms Chan telling him that Ms Fu had disclosed that she did, said that his wife had a bad memory. He did however

³⁹ Exhibit N at pages 2-3, and transcript pages 219, 223, 262-263. The inference was that Annie wanted the taxi vouchers to go shopping but would only be entitled to these if she was accompanying her mother. If respite care or personal care was provided for Ms Fu, to free Annie up to go shopping on her own, there would be no entitlement to a taxi voucher.

⁴⁰ See paragraphs 23-25 above.

⁴¹ As has been mentioned above – paragraphs 5 and 31 - Mr Yuan was not in receipt of an ACAS package at the time and was on a waiting list following his departure from Bellevue and return to private accommodation in October 2009.

⁴² Transcript page 222.

⁴³ Exhibit N at pages 3 to 4, and transcript pages 211, 213, 224-225. According to Ms Chan, Ms Fu went on to say that she wanted to live in a nursing home together with her husband.

disclose that Annie would speak loudly to them, and in response to a question from Ms Chan, said he did want to go to a nursing home with his wife.⁴⁴

41. Ms Chan returned with Ms Kung and a Shanghainese-speaking interpreter on 17 August 2010.⁴⁵ By this time, Mr Yuan was in hospital and had started making disclosures to hospital staff and his older daughter Yi Ming.⁴⁶ Ms Chan and Ms Kung, asked to speak to Ms Fu alone, and with reluctance, Annie went to the laundry to deal with the domestic helper who happened to be there at the time.⁴⁷

42. Ms Chan's and Ms Kung's evidence regarding this visit is broadly consistent. They both observed injuries to Ms Fu's head and face. Ms Chan stated that she saw 'more bruises on her right ear and her jaw',⁴⁸ and Ms Kung described 'a lot of bruises on her face, deep purple bruises on her ears, chin and one eye', and also described Ms Fu as pale, frail and reluctant to talk.⁴⁹ Both testified that Ms Fu expressed a wish to leave the house and to go to a nursing home.⁵⁰ There was one significant inconsistency in their accounts of the visit, which, unfortunately and inadvertently, was not resolved during the inquest. Whereas Ms Chan testified that, through the interpreter, Ms Fu admitted that Annie hit her and her husband,⁵¹ Ms Kung did not.⁵²

43. The Uniting Care staff made urgent arrangements for a respite care placement for Ms Fu at the Waverley Hills Supported Residential Service (SRS) from 17 August 2010. Ms Kit Sui,

⁴⁴ Exhibit N at page 4.

⁴⁵ In the interim, Ms Chan advised Uniting Care management of the disclosures and/or suspicion of elder abuse and they, in turn, obtained advice about their obligations and how to proceed. This is set out in Ms Kung's statement Exhibit M and transcript at pages 186 and following, and in Ms Chan's statement Exhibit N at pages 4-7.

⁴⁶ See paragraphs XX

⁴⁷ Exhibit M at page 7 and transcript page 193.

⁴⁸ Exhibit N at page 8. By inference, this means "more" than the bruises she had observed on 6 August 2010. See transcript page 264 where this is clarified by Ms Chan.

⁴⁹ Exhibit M at pages 6-7.

⁵⁰ Ms Chan's account is at page 8 of Exhibit N – "I asked Ms Fu if she wanted to stay in respite care for weeks or a month and she said "yes"... Whilst we were talking Annie spoke Shanghainese to Ms Fu and according to the interpreter Annie told her mother she may not be able to come back if she decided to go now. Ms Fu stated to Annie that she'd "prefer to die out there"". Ms Kung's account is at pages 7-8 of Exhibit M – "Rebecca told her that she could make her own decision if she wanted to stay or go. Ms Fu then said that she wanted to leave the house... Ms Fu started talking to the interpreter continually telling her that "She will call it off" meaning that Annie would stop her from getting to respite care. We assured Ms Fu that this time she couldn't..."

⁵¹ Exhibit N page 8. I note Ms Chan's evidence is also that

⁵² Exhibit M at page 7 – "I asked Ms Fu what happened on that day [when Mr Yuan fell, before his admission to hospital]. She couldn't answer me. She didn't say anything she was just looking at me and didn't say anything... Ms Fu was very reluctant to talk... she seemed very scared to talk to us..." Also transcript pages 192 and following.

Marketing and Development Coordinator of that facility, testified that she was able to communicate with Ms Fu in Mandarin and that she seemed cold, hungry and thirsty on arrival.⁵³ Ms Sui stated that she observed a significant bruise on Ms Fu's left forehead, ears and the back of one hand. When Ms Siu asked Ms Fu what happened, she told her 'that she was beaten up by her daughter'.⁵⁴

44. Similar observations of Ms Fu's state on arrival, were made by Ms Qing Ning Zhu, Director of the SRS, who stated that she was able to communicate with her in Mandarin. Ms Zhu described Ms Fu as very alert in her mind. When Ms Zhu asked Ms Fu how she came by her bruises, she said her daughter hit her. By way of explanation for her hunger, Ms Fu said that her daughter had not fed her enough for a number of days.⁵⁵
45. On 19 August 2010, Ms Chan visited Ms Fu at the SRS. On this occasion, Ms Fu reiterated that Annie had been abusive to both her and her husband, specifically that she hit them daily and used abusive words to talk with them.⁵⁶
46. Mr David Jian Zhong Dai is the Shanghainese speaking interpreter who interpreted for Mr Yuan on 16 August 2010 at an interview with Ms Edith Ellis, a social worker at Box Hill Hospital. At this interview Mr Yuan admitted that he was bashed by his daughter but did not want the matter reported to police as he wanted to give his daughter another chance and did not want to get her into trouble. It has to be said that Mr Yuan was initially reluctant and made to this disclosure after Mr Dai and Ms Ellis had already said that they knew he had been abused by his daughter and would only contact the police if he wanted them to.⁵⁷

⁵³ Exhibit O is Ms Siu's statement dated 16 September 2010. I note that Ms Fu was seen by a locum GP on the night of 17 August 2010 and prescribed antibiotics for a chest infection. A similar description of Ms Fu on arrival at the SRS was provided by Ms Kylie Benson, Facility Manager, whose statement appears at pages 73-74 of Exhibit HH, the remainder of the inquest brief.

⁵⁴ Exhibit O and transcript pages 231-232.

⁵⁵ Exhibit T is Ms Zhu's statement dated 16 September 2010 and transcript page 291.

⁵⁶ Exhibit N at page 10 – "I visited Ms Fu on the 19th of August 2010, and asked her if she wanted Annie to know where she was. She expressed fears of the passed [sic] experiences with Annie and told me that Annie hit her and her husband daily and used abusive words to talk with them. She told me that Annie would say "fuck" to her in English. I clarified that it was said in English. She told me that she understood what this means. Ms Fu told me that Annie didn't allow her to tell the situation to anyone. She was only allowed to say what any wanted her to say in front of other people. She told me that she had suicidal thoughts in the passed [sic] when she was with Annie. She told me that Annie had told her that if she lived in the nursing home she wouldn't live long. She was also concerned about her financial status saying that Annie had all her money. I just clarified with Ms Fu that she wanted Yi Ming involved in her care and finance and she said "yes". Ms Fu told me that she didn't want Annie to know where she was." Incidentally, Ms Fu remained at the SRS until 30 August 2010 before transferring to a permanent care placement at Regis Amaroo. She died on 27 September 2010.

⁵⁷ Exhibit H and transcript pages 95-99.

Throughout this conversation, Mr Yuan was adamant that he and his wife should live in a nursing home.⁵⁸ Both in his statement and at inquest, Mr Dai expressed the opinion that Mr Yuan had all his faculties and that there were no communication difficulties between them.⁵⁹

47. Mr Yuan made a statement to DSC Nino Faba on 22 August 2010, with the assistance of a Mandarin-speaking nurse from Box Hill Hospital.⁶⁰ Although, relatively brief and lacking in specificity as to the particulars of any individual assault, Mr Yuan's statement substantiates abuse by Annie over the "past few months" leading up to his admission to hospital on 8 August 2010. In his statement, Mr Yuan reiterates his concern not to get Annie into trouble with the police and, as far as the available evidence is concerned, raises concerns about Annie's mental health for the first time.

48. Mr Dai also interpreted for Ms Fu when she made a reasonably detailed statement to the police on 27 August 2010.⁶¹ Focussing on those aspects of the statement that pertain to abuse of Mr Yuan, Ms Fu stated that her husband was constantly bashed by Annie, pulled and dragged around, bashed with a stick and a broken umbrella, yelled at, deprived of food and treated with cruelty. As regards the incident that led to Mr Yuan's hospitalisation, Ms Fu stated that Annie was angry with Mr Yuan for not turning off the tap properly, allowing it to drip and wasting water and money. She forced/dragged Mr Yuan out of bed to see the dripping tap and left him shivering from cold on the floor. When Ms Fu told Annie she

⁵⁸ Ibid.

⁵⁹ Exhibit H at page 2 – "the conversation went for about 15 to 20 minutes. I remember that Mr Yuan had bruising on his face. I also recall that throughout the conversation Mr Yuan was very clear and knew what he was talking about. He was very thoughtful in his responses. I had no trouble at all communicating with him." Transcript pages 96 and 99.

⁶⁰ Mr Yuan's one page statement dated 22 August 2010 appears as "Exhibit 1" at page 162 of Exhibit HH, the remainder of the inquest brief. That statement, witnessed by Dr D Lewis one of Mr Yuan's treating doctors, reads as follows – "I, Ming Shan Yuan, would like to report that my youngest daughter and designated carer, Yi Nian Yuan, has been violent against me. She has been hitting me and my wife (Hui Yung Fu) over the arms and legs for the past few months but I have stayed silent because I did not want my daughter to get into trouble. However, recently Yi Nian Yuan has hit me on the chest with a walking stick, resulting in the rib fractures. She has also hit me in the eyes, head and arms with her fists. As a result of these abuses, I have a large egg-sized swelling on my temple, bruises on my arms, damage to my kidneys and almost caused blindness in my right eye. I had to be rushed to hospital by ambulance on the 8th August 2010. Today, 14 days later, the nurse says my condition has still not improved and is still considered serious. Infection within my chest means I require antibiotics and blood transfusion. I believe Yi Nian Yuan did these things because she is not of sound mind and requires mental help. I authorise my eldest daughter, Yi Ming Yuan, to apply for an intervention order against Yi Nian Yuan on my behalf."

⁶¹ Ms Fu's six page statement dated 27 August 2010 appears as "Exhibit 2" at pages 164-169 of Exhibit HH, the remainder of the inquest brief. Unfortunately, this was also the date on which Mr Yuan died and it fell to Mr Dai to advise Ms Fu of her husband's passing. She was understandably distressed at the time she made the statement.

wanted to report the matter to the police, she was taunted about not knowing how to report the matter to the police and not knowing the language.⁶²

49. Some of Annie's behaviours described by Ms Fu lends support to the notion that Annie may have been suffering the symptoms of mental illness. For example, Ms Fu stated that Annie would bash or verbally abuse them, if they spilt food or made a mess. On one occasion, Annie pulled her mother by the hair and abused her for not sitting straight in her chair. According to Ms Fu, if Annie was happy she would let them eat, but if she was not happy they could be without food for the whole day.⁶³ Annie's cruel and controlling behaviour, as described by Ms Fu, is also consistent with concerted effort to force her parents out of the house and back into the care of Yi Ming.⁶⁴

THE NEIGHBOURS' EVIDENCE

50. Five of Mr Yuan's neighbours provided statements when approached by the police after his death. Four of the neighbours also testified at the inquest, and gave evidence about hearing a female voice coming from the unit, yelling, generally at night, and over a period of some months before Mr Yuan's hospitalisation. Other than Mr Peter Keane, the occupant of 43A Begonia Street who was somewhat acquainted with the family, the other neighbours did not know the family at all, and had no apparent motive to give evidence detrimental to Annie, or to collude with each other.

51. Although of minimal forensic value, in terms of differentiating between a scenario of elder abuse, and one of Annie not coping with the burden of caring for both parents and/or suffering the symptoms of mental illness, the various neighbours' accounts were broadly

⁶² Ibid at pages 2-3. Ms Fu went on to state – "she left him there for so long that he was so cold that he was begging the daughter to help him. Because of the results of the bashing there was blood and the daughter was scared so she sent the father by ambulance to hospital... My father [sic] was injured on that occasion from being dragged out of bed. He did not fall on his own. This started when she was questioning me about giving her father's food she told me his hands were very dirty and that he shouldn't have been given any food. My husband was already on the floor from her bashing him."

⁶³ Ibid at page 4.

⁶⁴ Ibid page 1 – "My husband was bashed by my younger daughter. She was trying to drag my husband to my older daughters house because she did not want to look after us any more. She wanted to take him to my older daughter's house because she thought that her sister was too relaxed and that they should share the burden and responsibility together. My younger daughter tried to push us out of the house but it was out [sic] house, why should we be pushed out." and at page 4 – "My daughter wanted us to live with my elder daughter. I used to get some money from the government and so did my husband but my younger daughter said, you do not know how to use the money you do not know how to go shopping anyway. My younger daughter then kept the money. She used to give us \$500 a month but later on she stopped. She stopped last April... My daughter would not let us have visitors she did not like it she told me my friends were all useless. She did not like my older daughter to come and visit either she would complained that she would make the floor dirty when she walks in and out. She told us "if you like to stay with your older daughter you stay with them." I would say to her "why should I go this is my house"."

consistent as to when the yelling commenced, that the voice was that of an adult female speaking an Asian language, that there was rarely or never any other voice heard and that the yelling ceased at about the time when Mr Yuan was hospitalised.⁶⁵

EXPERT EVIDENCE

52. Dr Sanjeev Gaya is an experienced Clinical Forensic Physician from VIFM who examined both Mr Yuan⁶⁶ and Ms Fu,⁶⁷ provided a written report in respect of his examinations and testified at inquest. Dr Gaya documented a number of injuries, mostly bruises and abrasions, observed on Mr Yuan when he examined him on 22 August 2010 at Box Hill Hospital. Without doing justice to the detail of Dr Gaya's report, he documented 27 separate injuries or injury sites/clusters of injuries to Mr Yuan's body. Apart from the pressure sore and signs of medical intervention, Dr Gaya's evidence was that the injuries were consistent with having been sustained on or before 8 August 2010, when Mr Yuan was admitted to hospital.
53. While Dr Gaya could not state definitively if any of the individual injuries bore the indicia of non-accidental as opposed to accidental trauma, in his statement he made the following relevant comments –
54. Mr Yuan's emaciation and low muscle mass could be due to poor nutrition or poor access to nutrition but may also arise from a myriad of medical conditions.
55. The key to understanding elder abuse is the context in which it occurs. The history from the main carer may give clues about the possibility of abuse. For example, an implausible explanation to account for an injury or delay in seeking medical attention.
56. When viewed as a whole and in context, the injuries (other than the injuries to the upper arms attributable to medical intervention) may have a non-accidental aetiology.⁶⁸

⁶⁵ Exhibits I, J, K and L and transcript pages 114-161. Not surprisingly, Mr Keane who was the nearest neighbour provides the most fulsome account. He also expresses some sympathy for Annie's position, caring for two elderly parents, with what he described as little in the way of supports.

⁶⁶ Dr Gaya's report regarding Mr Yuan is dated 26 October 2010 and is Exhibit AA. It contains his formal qualifications and experience, a detailed list of the injuries observed on the various parts of Mr Yuan's body and his comments and opinion about how the injuries could have been sustained.

⁶⁷ Exhibit CC is Dr Gaya's report regarding Ms Fu dated 28 October 2010, documenting his examination of Ms Fu on 1 September 2010.

⁶⁸ Exhibit AA at pages 7-8.

57. At inquest, Dr Gaya expanded and clarified his opinion as to the possibility or likelihood that the injuries resulted from non-accidental trauma or assault. Dr Gaya reiterated the opinion that the distribution of injury, at different sites, on different planes and of differing severity, was something usually found in non-accidental events most commonly found in assaults.⁶⁹

58. He also reiterated the need to consider the whole context and questioned whether in his emaciated and weakened state Mr Yuan was mobile enough to fall, get up and fall over again in accordance with Annie's account. Dr Gaya conceded that it was fair to characterise his attempt to establish the cause of the injuries as educated guesswork.⁷⁰ While he was not prepared to say that it was impossible that Mr Yuan's injuries were sustained in the process of Annie helping him up off the floor and falling again, he found the account an unlikely explanation for the injuries he observed.⁷¹

CONCLUSIONS

59. The standard of proof for coronial findings of fact is the civil standard of proof, on the balance of probabilities, with the *Briginshaw* gloss or explication.⁷² The effect of the authorities is that Coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

60. I note that Annie was interviewed by the police, and a transcript of that interview formed part of the inquest brief.⁷³ It is fair to say that she denied causing injury to Mr Yuan and maintained that he suffered frequent falls, and that the injuries that led to his hospitalisation resulted from a fall and her unsuccessful efforts to help him up, prior to conscripting the assistance of Mr Keane.

⁶⁹ Transcript page 344.

⁷⁰ Transcript page 367. He also testified that the combination of injuries to Mr Yuan and Ms Fu, that pattern of injuries was such that "bells have to be ringing and bells were ringing for me". See transcript page 364.

⁷¹ Transcript page 370.

⁷² *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336 *esp* at 362-363. "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences..."

⁷³ "Exhibit 7" at pages 238-278 of Exhibit HH, the remained of the inquest brief.

61. At inquest, through Mr Sharpley, Annie asserted the right against self-incrimination and indicated that she refused to give evidence. While I was satisfied that there were reasonable grounds for the objection, I was not satisfied that the interests of justice required Annie to give evidence and I was not prepared to issue a certificate of indemnification pursuant to section 57 of the *Coroners Act 2008* (the Act).
62. Having reviewed the available evidence and Counsel's submission, and as indicated at the conclusion of the inquest, I do not propose referring this matter to the Director of Public Prosecutions pursuant to section 49 of the Act. The available evidence lacks the requisite specificity, particularly as to Annie's state of mind and any intention accompanying the relevant assaults or acts of neglect.
63. The available evidence does, however, support a finding that Mr Yuan was abused by Annie, both verbally and physically, and/or neglected by her over a period of months leading up to his hospitalisation and that the injuries sustained by him on 8 August 2010 were not accidental, but resulted from at least rough handling, and likely from an assault or assaults by Annie.
64. I find that the cause of Mr Yuan's death is *tuberculosis pneumonia in the setting of multiple rib fractures, osteoporosis and cachexia*. Mindful of the caveats articulated by Dr Iles in her autopsy report, and of the constraints imposed by her formulation of the cause of death, I nevertheless find that Annie contributed to her father's death. That said, I am unable to ascertain the reason for her actions; whether they arose from an inability to cope with the increasing demands of caring for both parents, from the symptoms of an undiagnosed mental illness (or both), or from some other more sinister place.

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

Yi Nian Yuan

Yi Ming Yuan

Uniting Care Community Options

Box Hill Hospital c/o Eastern Health

Detective Senior Constable Nino Faba from the Whitehorse Crime Investigation Unit

Signature:



PARESA ANTONIADIS SPANOS

Coroner

Date: 26 November 2014

