

Please Quote: VRPC008353
(File No: PC034524)

Mr Dominic Minghella
Coroner's Registrar
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

Dear Mr Minghella

INVESTIGATION INTO THE DEATH OF ERIC FIESLEY: COR 2017 2623

Investigation into the death of Eric Fiesley COR 2017 2623

Thank you for your letter dated 5 December 2017 regarding Coroner Phillip Byrne's findings and recommendation. Firstly, VicRoads extends our sincere condolences to Mr Fiesley's family and friends.

His Honour recommended that Department of Economic Development, Jobs, Transport and Resources, and VicRoads, develop a legislative framework requiring mandatory reporting to VicRoads when a medical practitioner forms an opinion that a person has a medical condition that may render it inappropriate for the patient to continue to drive.

Preliminary matter - Responsibility for Regulation and Policy

In April 2017, Transport for Victoria (TfV) (Part of the Department of Economic Development, Jobs, Transport and Resources) became responsible for road safety policy and regulation, with operational responsibilities remaining with VicRoads. Accordingly, this response has been prepared in consultation with TfV.

Response

There are unresolved issues with the Coroner's recommendation that need to be addressed.

VicRoads has previously detailed considerations and a plan of activities over 2018 regarding mandatory medical reporting in formal responses to Coroner Jamieson submitted in December 2017 [Pamela Elsdon (COR 2016 005554) and Frederick Hylla (COR 2016 004001)]. Many of these considerations and activities are pertinent to the circumstances of Mr Fiesley's death and our response to the recommendation made, hence are restated here.

Motorcycle rider safety

- (1) Mr Fiesley was riding a motor cycle when involved in the collision with the motor vehicle being driven by Mr Ian Lucas. VicRoads has been working closely with both state and national road safety partners and stakeholder groups to improve motorcycle rider safety.

- (2) On 5th December 2017, the Federal Department of Infrastructure and Regional Development announced the introduction of a new Australian Design Rule (ADR) that will see advanced braking systems to be fitted to new bikes from November 2019. The new ADR, developed in part by research sponsored by VicRoads, is expected to see a dramatic reduction in the number of serious injuries and fatalities experienced by motorcyclists. Research has shown an expected 30 per cent reduction in road trauma. This work was agreed to in the National Road Safety Strategy 2011-2020 and has been actively encouraged by VicRoads.
- (3) Protective clothing has been shown to substantially reduce the risk of injury in motor cycle crashes. A nationally led program to develop a star rating scheme for motorcycle protective clothing is under development. When implemented, this program will provide consumer information to motorcyclists that will assist them to make informed purchase choices about protective garments which are fit for purpose. The scheme will also encourage manufacturers and suppliers to improve garments as they come to market (in a similar method to the Australasian New Car Assessment Program).
- (4) In 2016 the Motorcycle Graduated Licensing System (GLS) training and assessment was introduced in Victoria. This replaced the former motor cycle training and test regime. The GLS was developed considering the state's five top novice motorcyclist crash types. Training, coaching and testing activities were based on a review of Australian and international motorcycle licensing systems, literature on motorcycling, behaviour change theories, and observations of current rider training. A key focus of the new learner training is to give greater prominence to development of rider risk management strategies to enhance ride related awareness, judgement and decision making, along with vehicle-handling.

VicRoads Medical Review support for drivers with vision conditions

- (5) Mr Ian Lucas had been under the care of his general practitioner and an eye specialist for a chronic eye condition at the time of the collision with Mr Fiesley. VicRoads is aware that eye conditions can interfere with the integrity of the vision system potentially impacting the skills required for safe driving.
- (6) In consultation with relevant peak health professional groups, VicRoads has recently reviewed and improved the "Eyesight report" to enhance the process whereby medical specialists and optometrists report drivers with long term, chronic eye conditions impacting on fitness to drive to VicRoads.
- (7) Similarly, VicRoads has reviewed customer information regarding vision and driving, producing a new fact sheet which outlines how common eye conditions impact on driving and driver reporting responsibilities. The fact sheet will be distributed to relevant customers and health professionals and will be available via VicRoads customer service centres and website.

Mandatory Reporting Considerations

- (8) TfV and VicRoads are concerned that mandatory reporting has the potential to introduce a disincentive to seeking treatment if patients feel they cannot consult with doctors without fear of being reported to VicRoads. This could adversely affect wider community health outcomes with impacts beyond road safety. Such a requirement would also negatively impact on the doctor-patient relationship.
- (9) Only two Australian jurisdictions (South Australia and Northern Territory) have mandatory medical reporting requirements. Current limitations in data availability

impact the extent to which mandatory medical reporting can be evaluated in South Australia and the Northern Territory.¹

- (10) We know that mandatory medical reporting requirements are not without risks and limitations. Recent research conducted in South Australia with sleep physicians suggests that it is widely disliked by doctors, is inconsistently applied, poses occupational health and safety risks and is potentially ineffective. Doctors reported abuse from patients (80%), and suspecting patients of both doctor shopping (71%) and of withholding information fearing loss of licence (94%).² A large patient based survey investigating the effectiveness of mandatory reporting of drivers, also conducted in South Australia, reported that 9% of respondents would avoid diagnosis, doctor shop or lie to avoid diagnosis.³ Avoiding diagnosis could impact on effective treatment interventions impacting on patient long-term health, productivity and functional abilities.
- (11) Limitations of mandatory medical reporting were also reflected in a recent Victorian Institute of Forensic Medicine (VIFM) Clinical Communique fitness to drive editorial...'[mandatory reporting laws..] have been criticized on the grounds that they involve doctors inappropriately in the policing process, lead to dishonesty and mistrust of their doctors by patients, and only bring a small number of drivers to the attention of the authorities, many of whom could already have become known in other ways". The VIFM circular reinforces regular patient assessment.... "Whether a patient is fit to drive is a clinical question, which should be posed every time we see a patient, whether in an acute hospital, outpatient, or general practice setting." ⁴
- (12) It should also be noted that doctors around Australia have an existing ethical duty to notify licensing authorities if they become aware that a patient has a serious impairment which might impact on safe driving ability. This duty is clearly articulated in the 2016 Austroads/National Transport Commission "Assessing Fitness to Drive Guidelines" (hereafter referred to as the AFTD guidelines). The AMA has recently declared support for this document, and furthermore reinforced the need for doctors to assess a patient's fitness to drive and support driving transitions in its 2018 Position Statement on Road Safety.⁵

Input from potential duty holders

- (13) The potential class of duty holders (medical practitioners) may welcome an opportunity to respond to the recommendation regarding mandatory medical reporting, particularly given the potential adverse impacts, such as professional regulator censure or civil suits, even where no penalty is attached to breach of such a duty.

Regulatory framework pre-requisites to adopting mandatory medical reporting

- (14) TfV and VicRoads consider there are opportunities to improve communications about, and both knowledge and skills related to, the existing self and community referral system into VicRoads Medical Review. This would serve to increase

¹ Personal communication with relevant licensing authority staff 9th and 10th November 2017.

² Mandatory reporting by doctors of medically unsafe drivers is unpopular and poorly adhered to: a survey of sleep physicians and electro-physicians", *Internal Medicine Journal*, 2017 Sep 11)

³ Self-Reporting by Unsafe Drivers Is, with Education, More Effective than Mandatory Reporting by Doctors, *Journal Clinical Sleep Medicine*, 2016, March, 12 (3), 293 – 299.

⁴ 2015 Victorian Institute of Forensic Medicine, Clinical Communique, Vol 2, Issue 3, September, page 1.

⁵ AMA Position Statement Road Safety 2018, downloaded from <https://ama.com.au/position-statement/road-safety-2018> on 17 January 2018.

voluntary compliance with the existing system and should be utilised before consideration of a mandatory reporting model which should be the last response intervention.

- (15) To this end, VicRoads has taken the lead to undertake several fully funded tasks. We have appointed Project Health, an independent consultancy group with extensive experience in national medical fitness to drive, to support VicRoads activities in this work.
- (16) VicRoads has written to the Australian Health Professional Registration Agency and peak medical bodies (including the Royal Australian College of Physicians which represents many medical specialists, Australian Medical Association and Royal Australian College of General Practitioners) for the purpose of:
 - (a) sharing the Coroner's findings;
 - (b) seeking their assistance with understanding barriers/facilitators to compliance with the current reporting system; and
 - (c) obtaining access to registrants/members to distribute communications and fitness to drive education materials.
- (17) Over the next 10 months, VicRoads, together with a working group including representatives from TfV and peak medical bodies will undertake the following in consultation with the Coroner's Prevention Unit (as relevant):
 - a) develop and implement a medical practitioner communication strategy,
 - b) targeted distribution of new "fitness to drive" medical and health practitioner fact sheets and other materials,
 - c) formally seek the views of medical practitioners and their representative bodies regarding the potential public health impacts and consequences of mandatory medical reporting related to driving,
 - d) support disability advocacy groups to deliver fitness to drive education to their members and the general public, and
 - e) improve communication resources for older drivers and their families and friends related to fitness to drive.
- (18) VicRoads and TfV will report back to both Coroner Byrne and Coroner Jamieson regarding these activities and their outcomes by **1 December 2018**.

If you require any further information please don't hesitate to contact VicRoads.

Yours sincerely



ANITA CURNOW
EXECUTIVE DIRECTOR, ACCESS AND OPERATIONS

21/2/2018