

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference:3518 /2007

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: MARTIN YIM**

Delivered On:

Delivered At:

65 Kavanagh Street  
Southbank 3006

Hearing Dates:

September 6, 7, 8, 22 and 24, 2010 in Melbourne

Findings of:

PETER WHITE, CORONER

Representation:

Ms J Forbes appeared on behalf of VicTrack and the  
Department of Transport.

Ms S Hinchey appeared on behalf of VicRoads

Ms M Schilling appeared on behalf of Yarra Trams.

Police Coronial Support Unit

Senior Constable K Taylor

I, PETER WHITE, Coroner having investigated the death of MARTIN YIM

AND having held an inquest in relation to this death on September 6, 7, 8, 22 and 24, 2010  
at Melbourne

find that the identity of the deceased was Martin Yim  
and the death occurred on Tuesday September 4, 2007  
at the Alfred Hospital, Melbourne  
from:

1 (a) Multiple Injuries (Motor Vehicle Impact -Tram)<sup>1</sup>

**in the following circumstances:**

1. Martin Yim died on 4 September 2007, from injuries sustained when a moving tram struck him, (at the pedestrian crossing located on Clarendon Street between the Crown Casino and the Melbourne Exhibition Centre) as he walked against a red light across the pedestrian crossing, away from exit of the Crown Casino. He was 70 years of age.
2. The primary issue under consideration at inquest was whether Martin Yim had received adequate warning of the presence of the tram at this time and of the fact that it was moving towards him.
3. It is relevant that this accident occurred in somewhat unusual circumstances.
4. In this regard I note that prior to the Super Stops opening at the end of July 2007,<sup>2</sup> the tram stop serving both the Casino building and the Melbourne Exhibition Centre situated on the Western side of Clarendon Street, had its southern most border adjacent to the pedestrian crossing.<sup>3</sup>

---

<sup>1</sup> This determination was reached by forensic pathologist, Dr Malcolm Dodd, who conducted an autopsy examination on Mr Yim on the morning of 10, September 2007. Dr Dodd found significant trauma, *'involving cranium, brain, ribs and spleen, in tandem with significant (internal) blood loss.'*

See attachment to exhibit 19. I agree and adopt this finding.

<sup>2</sup> See the evidence of Mr Boyd Power of Yarra Trams at exhibit 10 (a). I also understand that following this opening for use, a post construction stage Road Safety Audit phase was undertaken by Road Safety Audits Pty Ltd, an independent company engaged by Yarra Trams, which continued until a further audit report was issued to Yarra Trams on 4 October 2007.

<sup>3</sup> I note that certain design related documents issued prior to the building of the Super Stop, contemplated that the level of pedestrian traffic using the crossing necessitated the widening of the crossing. It was said for example in a letter addressed to Mr Nigel Barich of Connell Wagner, (who represented Yarra Trams in respect of the development of design concepts at the West Casino stop), from the City Council, dated 29 April 2006, that it was understood that Vic Roads was developing a proposal to widen the pedestrian crossing,

*'to better accommodate the number of pedestrians crossing at this point'*. See exhibit 6(i) at page 1. This matter was also alluded to by Road Safety Audits Pty Ltd in exhibit 6(f) paragraph 5, its road safety audit report dated 1/12/2006. See also the statement of Road Safety Audit employee Mr Darren Vella at exhibit 9 para 30.7 and again at paragraph 36 where he refers to being informed of a

5. By the end of July however, a significantly larger Super Stop had been built to the north of the original stop, with a new platform ramp located for the most part in the position previously occupied by the old stop. This meant that the platform's new southern extremity, at which the front entrance of a stationary tram and its driver's cabin, had been altered, and would now be located some 15 metres further away from the crossing, to the north.<sup>4</sup>
6. Putting to one side the over reaching failure in care indicated by Martin Yim's own actions, the question then turned to one of whether the (unannounced) departure from what had become normal practise, concerning the use of the gong when the tram was about to cross the crossing, and the yellow lines which preceded it, also contributed to Martin Yim's actions.
7. A further question about the driver's use of a discretion concerning when movement was safe to begin was also considered and I have also reviewed the pedestrian traffic levels in the area and the suitability or other, of the then existing crossing, to deal with those traffic levels.

Ms Lai Wah Tse

8. Ms Lai Wah Tse was Martin Yim's partner and had been in a relationship with him for some 29 years. On Tuesday 4 September 2007, after lunch, Martin informed her that he wanted to go into the City and at his request she dropped him off at the Nunawading Railway Station. She further informed that he had friends in the city he liked to visit, and that sometimes he just went to the Casino.
9. At around 5.30 pm Ms Tse was starting to get worried about where he was and she started calling his mobile telephone. Shortly after she found out that he had been hit by a tram and was in the Alfred Hospital. I note here that Martin Yim was transferred to the Alfred by the

---

'possible plan' to widen the crossing to 12 meters, by Mr Nester Ioannou, the Yarra Trams project manager responsible for the Casino West stop upgrade.

I further note that significant widening work was subsequently undertaken by VicRoads, in response at least in part to their own investigation into this accident. That investigation was carried out by VicRoads employee, Mr Emiliyan Gikovski.

As to the nature of the changes made by VicRoads following this accident, see evidence of Nial Finegan of VicRoads, discussed below.

<sup>4</sup> See photographs at exhibits 3(a)-(c) and report of Dr George Rechnitzer, exhibit 10 at figure 8.

Metropolitan Ambulance Service, (assisted by MICA Paramedic P Neyland), and that he was transferred from the scene at approximately 4.10 pm.<sup>5</sup>

10. Ms Tse later attended the Hospital and learnt that he had died.

11. At lunch on this day he was,

*'his normal happy self',*

he had been for his daily walk and swim and as always, he was smiling. He was a very happy man and they had talked over lunch just like any other day. She described him as a very healthy 70 year old.

Mr Graham Wood <sup>6</sup>

12. Mr Wood was the driver of the tram that struck Martin Yim. At the time he had just commenced his afternoon shift after having spent his lunchbreak at home. He stated that he felt well and rested.

13. He was wearing his prescription glasses and had the trams sun visor down about a third of the way.<sup>7</sup> He further stated that he felt that he had good visibility of the road ahead and of his immediate surroundings.<sup>8</sup> Mr Woods' tram stopped at the West Casino stop immediately adjacent to the start of the ramp, i.e. at the southern most position along the platform, to take on passengers, which included a group from the tram behind. This stop was at a position about 15 meters to the north of the yellow lines in front of the crossing, which is where trams used to stop before the introduction of the Super Stop.<sup>9</sup>

14. The tram behind was terminating its routing at the West Casino stop.<sup>10</sup>

---

<sup>5</sup> See exhibit 19 page 15.

<sup>6</sup> See statement at exhibit 3, page 1. I note that Mr Wood was an inexperienced tram driver having qualified to drive both A and B class trams, only some 5 weeks before the incident under examination. He was 31 years of age and had been driving in England and Australia for a period of 13 years. He held a valid Victorian motor vehicle license. See also discussion of his level of inexperience as a tram driver, at page 2 of his statement made to Mr Sweetnam, found within exhibit 8. I further note that Mr Wood was wearing glasses at the time under examination and was reported to have no sight problems while wearing glasses. See statement of Dr G Rechnitzer at exhibit 10 page 18,

<sup>7</sup> See transcript page 71.

<sup>8</sup> See transcript page 54.

<sup>9</sup> Exhibit 3 page 1.

<sup>10</sup> His primary purpose was to pick up 15-20 passengers who by previous arrangement were to alight from a rear tram, driven by Yarra trams employee Ms Gina Johnson, and board his tram, so that they might continue south towards South Melbourne. See transcript at page 71-2.

15. Mr Wood further stated that he then checked his tram and surrounds to ensure that all passengers had boarded and looked at the light in front which was green. He then pressed his gong and accelerated to a speed of approximately 15 kmph.<sup>11</sup>

16. I note here that, Ms Gina Johnson driving the tram immediately behind, corroborated the version offered by Mr Wood. She stated that Mr Wood accelerated away from the Casino stop at,

*'a normal speed'*.<sup>12</sup>

17. She was also able to confirm that she heard the gong when Mr Johnson's tram left the new stop, and again, before he came to an emergency stop.

18. According to Mr Wood, when his tram had travelled a distance estimated to be approximately half the length of the ramp and had reached a speed of approximately 15 kmph, he saw Martin Yim on the eastern side of the traffic island, walking across the pedestrian crossing in a westerly direction, against a red pedestrian signal.

19. Again, according to Mr Wood, Martin Yim was seen looking back over his left shoulder towards the Casino, after which he turned towards the tram. Mr Wood immediately formed the view that he was distracted, as he did not appear to be aware of his (oncoming) tram.<sup>13</sup>

20. Mr Wood's further testimony was that on seeing these events he immediately applied his trams emergency braking mechanism.<sup>14</sup> This action automatically activated the trams gong. Mr Wood stated that he turned towards him, and the front left side of his tram struck Martin Yim immediately thereafter.<sup>15</sup>

21. Mr Wood continued braking and stopped a further 10 meters to the south. He immediately knew he had hit the man earlier seen, and alighted and found a person later identified as Martin Yim, lying unconscious on his back

*'about 5 to 6 metres back from the front of the tram'*.<sup>16</sup>

---

<sup>11</sup> See transcript page 56 and again at page 72. Dr Rechnitzer puts the speed of the tram when it reached the 15 meter distance to the crossing, at 20 kmph See Dr Rechnitzer's report exhibit 10 page 44

<sup>12</sup> See her statement at exhibit 2 paragraph 7. Ms Davies also a passenger in Mr Wood's tram stated that she felt no, '*hard acceleration*' and that Mr Wood travelled, '*slowly*'. See Ms Davies statement at Exhibit 19 page 9, and also at transcript page 13.

<sup>13</sup> Exhibit 3(c) a diagram marked by Mr Woods, his statement at exhibit 19 page 7 and also his further evidence at transcript page 19.

<sup>14</sup> See exhibit 19 page 7 and transcript page 58.

<sup>15</sup> See again his statement at exhibit 19 page 7. See also transcript page 7 and at page 58. See also his statement to Mr Sweetnam at page 3.

<sup>16</sup> Exhibit 3 page 2.

22. A bystander arrived and identified himself as a Doctor from St Vincent's Hospital. This person then attended to Martin Yim, who was seen by Mr Wood to be still breathing. Later Mr Wood spoke to an Ambulance telephone operator and thereafter both Ambulance and Police officers arrived at the scene and rendered assistance.
23. The accident occurred at approximately 3.35 pm. At the time, the road was dry and the weather was fine, with good visibility.<sup>17</sup> Mr Wood was breath tested for alcohol and recorded a negative result. I further note that Yarra Trams tested the brakes and gong of Mr Wood's tram, and that no mechanical failure or defect was shown. As 'B' class, trams were said not to have data log mechanisms, it was further suggested that it was not possible to independently verify the speed of the tram at the time it hit Mr Yim.<sup>18</sup>
24. Mr Wood additionally stated that prior to the opening of the West Casino Platform Stop, trams would always stop just before the crossing, where there were two yellow lines.<sup>19</sup> He further stated that these yellow lines also reflect that it was compulsory for trams to stop at the crossing, but that this particular requirement was discontinued from the time of the opening of the new Super Stop.<sup>20</sup>

Merryn Lee Davies

25. At around 3.35 pm on September 4, Merryn Davies was a passenger on tram 112 from Brunswick to St Kilda. After her tram passed Flinders Street just south of the railway bridges, her tram stopped and then followed the red tram, driven by Mr Wood to the next stop, which was the West Casino Platform stop. Her tram was terminating and the passengers got off and moved on to the red tram in front, which was to travel to St Kilda.

*'We didn't seem to sit there that long when the doors shut and the tram began moving off. The tram was moving normally. It was not a hard acceleration or jerky. I don't recall hearing the "ding" noise that the trams usually make. It was an older style tram and it was all pretty normal.'*

---

<sup>17</sup> See exhibit 3 at pages 2 and 3.

<sup>18</sup> See report of WS Scott at exhibit 19 paragraph 20.

See however, the contrary evidence of expert witness Dr George Rechnitzer of AV Experts, at exhibit 10 page 19.

<sup>19</sup> See again exhibits 3(a)-(c). See also exhibit 3 page 2.

<sup>20</sup> See exhibit 3 page 1. See also exhibit 10(a) a report from Yarra trams, and attached photographs. The line markings indicating a compulsory stop, were removed by Yarra trams on 15 September 2007, (but still identifiable on the road surface at the time of judgement), with the stopping point having, 'become redundant upon the opening of the platform stops'.

26. There were many people in the area outside the tram, as there normally is at Southbank. The tram travelled about 10-20 meters when it came to a normal stop. It was not violent, just a normal stop. All the doors on the left side opened but the tram was not at a normal stop.

*'I looked out of the left window and saw people rushing towards the tram. It was then that I saw a middle aged guy lying on the ground. He was face up and his legs were sort of under the tram, his face was red and swollen and his eyes were open.'*<sup>21</sup>

Senior Constable Darren Esler<sup>22</sup>

27. Senior Constable Esler arrived at the scene at 3.45 pm, almost at the same time as the accident occurred. On arrival, he spoke with a number of the pedestrians who were using the crossing to cross Clarendon Street. He found that the vast majority of these people were tourists or persons in the City area for a specific reason. Senior Constable Esler further stated that it was clear from his observation that pedestrians had a tendency to use the crossing without regard to the traffic control signals operating there.

28. He also offered the opinion that the positioning of the tram stop, in relation to the pedestrian crossing was problematic. In this regard he suggested that where a tram came to a stop to pick up or drop off passengers, at the crossing, the possibility of a pedestrian and tram collision was greatly reduced because the tram would then have moved from a stationary position at the actual crossing.

*'In the present case the tram stop is situated in a position where the front of the tram is approximately 15 to 20 meters from the crossing when it starts off and commences to accelerate. By the time it reaches the pedestrian crossing, it has sufficient speed to cause serious or fatal injury.'*<sup>23</sup>

Mr Nial Finegan<sup>24</sup>

29. VicRoads was responsible for any road related infrastructure installed or constructed on Clarendon Street. This included the amendments to the pedestrian crossing but not the Super

---

<sup>21</sup> See statement of Merryn Davies, at exhibit 1. I note here that it is evident from the Autopsy report that Mr Yim did not suffer from injury to his legs, as a result of this accident.

<sup>22</sup> Senior Constable Esler is attached to the Melbourne Traffic Management Unit.

<sup>23</sup> See (hearsay) discussion of Senior Constable Esler's opinion referred to in the report of Dr Rechnitzer, at exhibit 10 page 28.

<sup>24</sup> At the time under examination, Mr Nial Finnegan was the Regional Director Vic Roads for the metropolitan north west region.

Tram Stop, and all tram related infrastructure.<sup>25</sup> Funding for this work was provided to Yarra Trams by the Department of Transport.<sup>26</sup>

30. In July 2007, Yarra Trams had upgraded the West Casino tram stop to a Tram Platform Stop.
31. An investigation into the accident was undertaken by VicRoads and a report prepared by Mr Emiliyan Gikovski.<sup>27</sup>
32. According to Mr Finegan it was in reponse to these recommendations that the VicRoads development team undertook an audit of the road related infrastructure on Clarendon Street, and identified a number of issues.
33. *'This work formed the basis of a bid under the Governments black spot funding programme, with the work approved and completed by May 2009.'*
34. *The work so completed included,*

- *Pedestrian Fencing*

*In February 2009, VicRoads had Federation style pedestrian fencing installed along Clarendon Street between the U-Turn lane to Crown Casino and the tram stop at Normanby Road/ Whiteman Street. Attached to Mr Finegans statement is a photograph, which shows the Federation style pedestrian fencing installed along Clarendon Street.*

*The fencing is intended to prevent pedestrians from crossing Clarendon Street at a location other than the signalized crossing points at the tram stop and further down at Whiteman Street Intersection.*

- *Widen Cross Walk from 5 metres to 12 metres*

*In May 2009, VicRoads' widened the pedestrian crossing from five metres to 12 metres to the south. The increased width was designed to increase the crossing capacity and improve safety between two high pedestrian generators, being Crown Casino and the Exhibition Centre*

---

<sup>25</sup> See exhibit 11 at page 2.

<sup>26</sup> See exhibit 5 page 2.

<sup>27</sup> See discussion at footnotes 2 and 3 above.



*Widening the crossing consequently impacted on various other components of the road related infrastructure, which were also modified as part of these works. This included:*

- *Relocating the right turn lane into Crown Casino further south, to accommodate the increased crossing width.*
- *Realigning the kerb at Crown Casino, to facilitate the modified location of the right turn lane.*
- *Relocating various traffic islands and bollards.*
- *Installing red surface paint over the tram tracks for the right turn vehicle lane into Crown Casino, to indicate the conflict between trams and cars across the tram tracks.*
- *Increasing the width of the zebra crossing on the Exhibition Building side of the intersection, to maintain consistency with the increased crossing width.*
- *Installation of LED Lanterns*

*In May 2009, VicRoads replaced the quartz halogen (QH) signal lanterns at the pedestrian crossing with LED lanterns to improve visibility of the lanterns for both drivers and pedestrians.*

*The LED lanterns are brighter and have a longer life cycle than the QH lanterns. LED lanterns are also made up of multiple globes, unlike the old lanterns which operated with a single bulb. In the event that one of the LED bulbs malfunctioned, the signal display will continue to operate'.<sup>28</sup>*

## **FINDINGS**

35. I have reviewed all of the evidence as well as Counsels submissions. I direct myself as to the law concerning the standard of proof.<sup>29</sup> I also direct myself on the law concerning

---

<sup>28</sup> See exhibit 11.

<sup>29</sup> I direct myself in regard to the standard of proof in terms of the decision of Dixon J in the High Court of Australia decision, *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 331, where his Honour stated,

circumstantial evidence, and as to in what circumstances sufficient weight can properly be given to such evidence, as may be sufficient to find that a particular fact is proven by an inference properly drawn.

36. The pedestrian crossing where this accident occurred is on a very busy tram route with trams travelling in both directions, often just minutes apart. It is also located between two major venues and ran from the heavily trafficked riverside pedestrian pathways, which factors led to a confluence of high-level pedestrian activity at the crossing, as well as heavy tram and motor vehicle use, all traversing the crossing.
37. The tram stop is located partly on the crest of the roadway with the tram track itself having a downhill slope, towards the pedestrian crossing, which is about 15 meters away from where the tram stops at what is now the raised platform. There is also a steel fence, which separates the tram passenger ramp from the tram, which terminates at the pedestrian crossing. The traffic signals comprise red-green traffic lights for the cars and trams travelling north and south. The green light facing the tram corresponds appropriately with the green light facing motor vehicle traffic.<sup>30</sup>
38. I have considered the advice of Mr Sweetman, a forensic investigator engaged by Yarra trams to report on the cause of the accident.<sup>31</sup> I accept his opinion that the primary cause of the accident was the failure of Mr Yim to comply with the pedestrian light, signalling red when he commenced to walk across the tram tracks.
39. I further note here that I find myself satisfied, that when Mr Yim walked forward and in front of the moving tram, that he did so without actually being conscious that by these his own actions, he was putting himself in harms way.
40. Coming now to the scene circumstances and the reasons behind Mr Yim's conduct, I find that the perfectly appropriate practise of instructing drivers to use their warning gong system, whenever a tram was about to leave a tram stop together with the impact on this

---

*'when the law requires the proof of any fact, the tribunal must feel an actual an actual persuasion of its occurrence or existence before it can be found.'*

And at page 362,

*'the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity T OUT AT of the consequences following from a particular finding are considerations which must affect the answer to the question whether the issue has 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 references.'*

<sup>30</sup> See report of Dr Rechnitzer at Exhibit 10 page 32.

<sup>31</sup> See exhibit 8 and the photographs taken at the scene by Mr Sweetman, on the day of the accident. See also the discussion by Mr Sweetnam in the Collision Scene section of his report, exhibit 8, concerning the so called 'cavalier' pedestrian jay walking observed at the scene on 4 September 2007, and of the increased care shown by tram drivers seen departing the Casino Super Stop, so taken to avoid hitting such persons. See also the similar observations of witnesses Emiliyeen Gikovski at transcript page 92, Johnson at transcript page 61 and the opinion of expert witness Mr G Rechnitzer at exhibit 10 page 34.

practise caused by the introduction of the re-located West Casino Platform stop, were factors that may have contributed to Martin Yim's death.

41. In this regard however and having considered the various submissions put to me in respect of this matter, I find that there is insufficient evidence to allow myself to be satisfied that this was the case.
42. We know that Mr Yim was a regular visitor to the Casino. Having directed myself in respect of the law on circumstantial evidence, I find that he like others, walked from the Casino entrance without regard to the pedestrian signal light facing him, and that he began to walk across the crossing in a similarly careless fashion on the afternoon of September 4, 2007. While I find that I can be satisfied that he so walked on this occasion, I am not satisfied that he did so having previously come to understand that all trams would come to a stop just before the crossing and would thereafter employ a gong to sound a warning before moving forward from that (stationary) position.<sup>32</sup> This may have been the case but equally I find that he may have walked across the crossing without any thought processes, conscious or unconscious, guiding that movement.
43. If it had been the case that he was in fact influenced by his previous history of using the crossing, prior to the introduction of the super stop, and the movement of the (predominant) stopping position, some 15 meters to the north of the northern edge of the crossing, then it follows that the changes introduced might be said to have unwittingly denied him the warning he had previously received.<sup>33</sup>
44. Again, I find however that I simply cannot be satisfied to a comfortable satisfaction that this is what occurred at the time under consideration.
45. The facts surrounding these possibilities are however relevant to issues of public safety and proper matters for my further consideration.<sup>34</sup>

---

<sup>32</sup> In the past the warning gong was rung as the tram was about to depart, from the then nearly adjacent tram stop. Mr Vella's evidence notwithstanding the movement of the tram stop, as described above, had the potential to unwittingly deny jay walking pedestrians, this information. See discussion on this issue from transcript page 145.

I further note Dr Rechnitzer's comments on the systematic misuse of the crossing, where he says,

*'Most pedestrians and tram users ignore the traffic signals (at the West Casino crossing) and cross in an uncontrolled manner. The area is a tourist precinct with a large mixed pedestrian traffic, both familiar and unfamiliar with pedestrian crossings, traffic etc. See exhibit 10 page 34, at paragraph 5.2.'*

See also the evidence of tram driver Ms G Johnson, who described the stop as the worst in Melbourne in terms of pedestrian behaviour.

<sup>33</sup> See also discussion on this matter by Mr Darren Vella and the issue of design checklists, at transcript page 295 line 26 to page 298.

<sup>34</sup> See Coroners Act at section 67(3).

46. I note from the evidence of Dr Rechnitzer that trams travelling from the West Casino stop were likely to reach a speed of between 22 to 23 kmph as they cover the 15 meter distance to the pedestrian crossing, (which may be possibly faster because of the down hill gradient). The braking distance, at such speed, was calculated at 16 meters. I further note and accept his evidence that the tram driven by Mr Wood was likely travelling at a speed of 20 kmph, when it struck Martin Yim, and that on seeing the danger that Mr Wood would have had insufficient time to brake to avoid the collision, which followed.<sup>35</sup>

*'As this time is even less than the average perception – reaction time of 1.5 seconds , the driver would have barely perceived and reacted to the hazard of the pedestrian, before impact occurs, let alone reduced speed by braking.'*<sup>36</sup>

I note Dr Rechnitzer's further view that the pedestrian crossing was not safely designed to deal with the poor conduct of many pedestrians coupled with the high level of use, and I accept this evidence also.

47. It is additionally relevant and I take judicial notice of the fact, that tram drivers taking off from the old stop, which I am satisfied was (predominantly) adjacent to the north boundary of the crossing, would not have commenced to move forward until the passage immediately in front was seen to be free from the risk that a pedestrian would be struck as a result of such action.<sup>37</sup>

48. I note here that I have no reason to doubt Yarra trams submission that upgraded stops like the Casino West stop provide a safer environment for pedestrians and passengers than the roadside tram stops they replaced. I also find however that the failure to widen the pedestrian crossing at Casino West, before the movement of the stop some 5 weeks earlier, added to the difficulty for the many pedestrians wishing to use this crossing on the afternoon in question. I additionally find that the need for this work, (which had earlier been

---

<sup>35</sup> See Dr Rechnitzer at Exhibit 10 page 44.

<sup>36</sup> See Dr Rechnitzer at Exhibit 10 page 38-9.

<sup>37</sup> See also discussion by Mr Sweetnam in the Collision Scene section of his report, exhibit 8, concerning the so called 'cavalier' pedestrian jay walking observed at the scene, and of the increased care shown by tram drivers seen departing the Casino Super Stop, (so taken to avoid hitting such persons). See also Mr Sweetnam's evidence concerning tourists and visitors to the City of Melbourne from transcript page 222 and the discussion, and broad acceptance of this behaviour, by witnesses Gikovski at transcript page 92, Johnson at transcript page 61, and Rechnitzer at exhibit 10, page 34.

identified), was an important precaution, which should have been introduced before the alteration of the trams stopping position was brought into effect.

49. I find then that it was in these circumstances that Martin Yim walked out in front of the then moving tram without looking, and having then turned back and to his right, that he unexpectedly found himself in front of the tram, which continued moving quickly towards him. In such circumstances the heavy and forceful contact that then took place, was inevitable.
50. In conclusion then I find that the evidence before me does not establish fault in the driver, Mr Wood, but rather a failure to take appropriate care by Martin Yim. I am also satisfied that the level of then existing danger to the public, which I associate with chronic pedestrian misconduct, was contributed to by a systems error concerning the manner in which these significant changes were introduced to an already problematic environment and to its community of pedestrians, which included Martin Yim.

## COMMENTS

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

51. I note the changes instituted by Yarra Trams following the death of Mr Yim.
52. I have now further considered the positions taken by interested parties on the additional use of the tram warning device, and speed and the regulation of speed, in the moments before trams cross the pedestrian crossing,- as a means of offering further protection to those many people who continue to access this area of Southbank. I also note the ongoing concerns of the tram drivers, who testified before me.
53. I find that the evidence given in this case, coupled with further anecdotal evidence suggests that the problem for tram drivers, posed by pedestrians approaching and departing from this stop without sufficient care, calls for a further adjustment to the existing tram driver protocol.<sup>38</sup>
54. I have further reviewed the new protocols in place in respect of Yarra tram driver's use of a trams warning gong (at all stops) generally.

## RECOMMENDATIONS

---

<sup>38</sup> See also the statement of Mr Gikovski at exhibit 4 page 2 where his findings of a previous history of some 11 casualty crashes at this stop, is discussed. Eight of these involved a pedestrian hit by a vehicle or tram, with most of these involving a pedestrian who entered the crossing against a red light.

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

1. Having regard to all of the evidence and to Counsels submissions, I consider that the pedestrian conditions, which existed at the time of the accident and remain to the present time, call for a tram stop specific strategy to be employed to protect both pedestrians, as well as drivers approaching and departing in a southerly direction from this particular stop.<sup>39</sup>  
  
I therefore recommend that when departing from the West Casino stop in a southerly direction, that drivers are directed to use their tram warning gong continuously, until such point as the driver's cabin has passed over the pedestrian crossing situated to the south of the platform ramp, and that they travel at a speed not exceeding 10 kmph until that time.
2. I further endorse the recommendation made by Dr Rechnitzer concerning the need for a review by VicRoads of Vic Roads Design note RDN 32 Accessible Tram stops in Medians, having regard to the lessons emerging from his own investigation and report into this accident. If it is the case that review and adjustment to RDN 32 has not already occurred, then I recommend that a further such review now take place.<sup>40</sup>

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

Dr Che Sang Yim on behalf of the family of Martin Yim

Mr Graham Wood

The Chief Executive of Yarra Trams

The Chief Executive of VicRoads, Metropolitan North West Region

The Chief Executive Road Safety Audits Pty Ltd

The Chief Executive Department of Transport, in the State of Victoria

The Manager Compliance, Public Transport Division, Department of Transport, in the State of Victoria

The Informant, Senior Constable Darren Esler

Dr George Rechnitzer

---

<sup>39</sup> I note Yarra Trams recently received advice (now new exhibit 20), that change has occurred to driver protocols concerning driver conduct in respect of their use of a trams warning gong.

Specifically the rule which applied at the time of the accident that directed that drivers should only use a gong when judged to be 'needed', has been replaced with a direction that requires, (among other things), that gongs be used every time a tram stops at a platform stop, and when ever pedestrians are seen to be on, 'or close to the tracks'.

I further note Yarra trams concern about any possible recommendation suggesting the limiting of speed to a speed less than 10 kmph, as set out at page 3 of its submission. I also note the evidence concerning the variety of tram types, which continue in use on this line.

I advise that the acceptance of Yarra Trams proposition as to minimum speed in recommendation 1) should not be viewed in isolation, but instead read in conjunction with the recommendation that tram drivers use their gong warning system on departure, and then continuously until they have passed over the Casino West crossing.

<sup>40</sup> See exhibit 10 at page 45.

Signature:



PETER WHITE  
CORONER

Date: 29<sup>th</sup> September, 2015.

