

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2017 1790

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

I, AUDREY JAMIESON, Coroner having investigated the death of STANISLAW EDWARD CZUBRYJ

without holding an inquest:

find that the identity of the deceased was STANISLAW EDWARD CZUBRYJ

born 25 May 1927

and the death occurred on 17 April 2017

at The Alfred Hospital 55 Commercial Road, Melbourne, Victoria

**from:**

- 1 (a) COMPLICATIONS OF CHEST INJURIES SUSTAINED IN A MOTOR VEHICLE INCIDENT (DRIVER)

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. Stanislaw Edward Czubyryj was 89 years of age and resided in Frankston with his dog, Tiger, at the time of his death. Mr Czubyryj had a close relationship with his daughter Kim Czubyryj and step-daughter Halina Fader, and they maintained regular contact with their father. Mr Czubyryj was considered an active and fit man for his age; both his

daughters recalled that he regularly played tennis and practiced Tae Kwan Do. However, due to the deterioration of his eyesight, Mr Czubryj had to give up these activities during the final three years of his life.

2. On 7 April 2017 at approximately 6.00pm, Mr Czubryj drove his red Toyota sedan, registration PKH 811, from the Beach Street Shops, where he had purchased groceries, toward his home in Queen Street, Frankston. Mr Czubryj observed the 'Stop' sign at the southern end of Frawley Street and subsequently attempted to make a right hand turn across Cranbourne Frankston Road. A black Toyota utility vehicle, registration XOI 635, struck the driver door of the red sedan as Mr Czubryj attempted to cross the eastbound lanes.
3. The driver of the black utility, Andrew Starkins, and witnesses to the collision immediately came to the aid of Mr Czubryj and attempted to extricate him and his dog from the vehicle. Emergency services attended and SES officers were able to extract Mr Czubryj who was subsequently transported in an ambulance to the Alfred Hospital. Police Officers took photographs and requested statements at the scene.
4. On 8 April 2017 at approximately 2.52am, Mr Czubryj was admitted to Alfred Hospital. Medical professionals gave Mr Czubryj an admission diagnosis that included multiple chest injuries: large volume soft tissue emphysema and pneumomediastinum, large right pneumothorax, right lower lobe pulmonary contusion with pneumatocele, right posterior 3<sup>rd</sup> – 12<sup>th</sup> rib fractures and lateral fractures on right 3<sup>rd</sup> – 10<sup>th</sup> ribs consistent with radiological flail.
5. On 10 April 2017, Mr Czubryj was diagnosed with a bacterial chest infection. He was treated with antibiotics<sup>1</sup> and chest physiotherapy. On 17 April 2017, Mr Czubryj's condition had not improved and medical professionals recommended a palliative care plan to his family, prioritising comfort and pain management. His family agreed to his management plan. Mr Czubryj died in the critical care unit that evening at approximately 10.35pm.

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<sup>1</sup> The generic antibiotic known as tazobactam.

## INVESTIGATIONS

### *Forensic pathology investigation*

6. Dr Gregory Young, Forensic Pathologist at the Victorian Institute of Forensic Medicine, performed an external examination upon the body of Stanislaw Edward Czubryj, reviewed a post mortem computed tomography (CT) scan and referred to the medical notes and the Victoria Police Report of Death, Form 83. Dr Young included Mr Czubryj's admission diagnosis in his comments. He noted that the Alfred Hospital e-medical deposition form included pneumonia as a possible cause of death.
7. Dr Young indicated that the external examination revealed no signs of unexpected trauma. CT scanning identified the presence of flail fractures, subcutaneous emphysema, increased markings on the lungs, loculated right pleural effusion and coronary artery calcification in the heart. Dr Young commented that pneumonia is a known complication of rib fractures, especially in the setting of flail segments compromising respiration. Dr Young stated that the cause of Mr Czubryj's death could be reasonably expressed as complications of chest injuries sustained in a motor vehicle incident as a driver.
8. Toxicological analysis of Mr Czubryj's ante-mortem serum specimens identified therapeutic levels of drugs associated with intensive care: morphine (~0.1mg/L),<sup>2</sup> midazolam (~0.2mg/L),<sup>3</sup> paracetamol (~5.0mg/L),<sup>4</sup> and bupivacaine.

### *Police investigation*

9. Upon attending the site of the collision, Victoria Police officers ascertained that the traffic conditions were medium to heavy, the road was sealed, weather was dry and the light was approaching dusk; the headlights of most vehicles were switched on. Police officers determined that Mr Czubryj was the driver at fault in the collision, as he had entered Cranbourne Frankston Road without a sufficient cessation in the traffic to cross all the way to the break in the median strip. Police conducted a preliminary breath test upon Mr Starkins which returned a negative result. No charges have been laid against Mr Starkins in relation to the collision.

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<sup>2</sup> Morphine is a narcotic analgesic used to treat moderate to severe pain.

<sup>3</sup> Midazolam is a short acting benzodiazepine used intravenously in intensive care patients.

<sup>4</sup> Paracetamol is an analgesic drug available in many proprietary products either by itself or in combination with other drugs, such as codeine and propoxyphene.

10. Leading Senior Constable (LSC) Darren Myers was the nominated coroner's investigator.<sup>5</sup> At my direction, LSC Myers conducted an investigation of the circumstances surrounding Mr Czubryj's death, including the preparation of the coronial brief. The coronial brief contained, *inter alia*, statements made by Mr Starkins, Mr Czubryj's daughters Ms Czubryj and Ms Fader, and his treating ophthalmologist Dr Edward Roufail.
11. In the course of the investigation, police learned that Mr Czubryj had been treated for macular degeneration over the course of the last three years of his life. Ms Czubryj stated that her father had begun to have difficulties with his vision in one eye approximately three to four years prior to his death. Ms Fader stated that Mr Czubryj had glasses but wore them less over the last 12 months of his life. Ms Czubryj believed that her father had renewed his licence in 2015. She recalled that he was happy to pass the test and to continue driving. Both of Mr Czubryj's daughters stated that their father had to discontinue tennis and Tae Kwan Do owing to his deteriorating eyesight.
12. Ms Czubryj stated that she had discussed the issue of driving with her father during the period that his eyesight was deteriorating. She suggested that he did not drive very far nor drive at night. Ms Czubryj remarked that her father did not react well but agreed that it was a good idea. She stated that she would ask Mr Czubryj: '*what if you hit a kid*'? Ms Czubryj said that, as a result of their conversation and his deteriorating eyesight, her father limited his driving to daily trips to his local shops or the park. Despite these conversations, Ms Czubryj stated that she had no concerns about his driving ability and no concerns when she was a passenger in the car with him.
13. Ms Fader was also aware of Mr Czubryj's deteriorating eyesight and treatment for macular degeneration. She stated that, when she spent time with her father, she would drive as she did not feel comfortable letting him do so, owing to the cost of petrol and his impaired eyesight. On the date of his death, Ms Fader drove her father to do some banking and then they had coffee together. Ms Fader stated that he did not need anything else so she drove him home at approximately 4.00pm. She commented that Mr Czubryj

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<sup>5</sup> A coroner's investigator is a police officer nominated by the Chief Commissioner of Police or any other person nominated by the coroner to assist the coroner with his/her investigation into a reportable death. The coroner's investigator receives directions from a coroner and carries out the role subject to those directions.

seemed happy that afternoon and she did not believe that he suffered from mental ill-health.

14. Dr Roufail of the Peninsular Eye Centre treated Mr Czubryj for bilateral wet age related macular degeneration,<sup>6</sup> which was first diagnosed in 2009 at the Southern Eye Centre. Mr Czubryj's treatment was transferred to the Royal Victoria Eye and Ear Hospital and was subsequently returned to the Peninsular Eye Centre on 14 July 2016. Dr Roufail stated that Mr Czubryj was receiving tri-monthly intravitreal anti-VEGF injections (Avastin) to the right eye. He was not receiving any treatment for his left eye.
15. Dr Roufail stated that Mr Czubryj had ignored advice not to drive on a number of occasions, including 6 October 2016 and 12 January 2017. Dr Roufail stated that he had never prescribed glasses to Mr Czubryj as his macular degeneration was advanced and it was unlikely that glasses would improve his distance vision.<sup>7</sup> During his last consultation on 12 January 2017, Mr Czubryj's visual acuity was 6/38 in the right eye<sup>8</sup> and count fingers (three) in the left eye<sup>9</sup>. This represents a significant reduction in visual acuity that is below the level required to drive a motor vehicle. Dr Roufail commented that he believed Mr Czubryj was in denial about his loss of vision.
16. LSC Myers interviewed witness to the collision, Matthew Cole, and subsequently took a statement. Mr Cole was positioned behind Mr Czubryj on Frawley Street at the time of the incident. He told police that Mr Czubryj drove into the path of the black utility. LSC Myers also took a statement from the driver of the utility, Mr Starkins, who indicated that he had pushed his brakes at the time of the collision, but there was insufficient time to significantly reduce his speed. He believed that he was travelling at approximately 60 kilometres per hour and that his headlights were switched on at the time of the collision.
17. LSC Myers interviewed but did not take a statement from Mr Czubryj's general practitioner Dr Igor Andrianov of the Beach Street Medical Clinic. Mr Czubryj consulted Dr Andrianov approximately every 6 months; his last appointment was on

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<sup>6</sup> This means that both of Mr Czubryj's eyes were in (varying stages of) macular degeneration.

<sup>7</sup> A 'visual impairment' is defined by a loss of perception unable to be corrected by glasses.

<sup>8</sup> The distance visual acuity test determines perception at a distance of six metres. A 6/38 result represents a moderate visual impairment.

<sup>9</sup> 'Counting Fingers' or CF is a test conducted for those with severe visual impairment or 'blindness'. It is the third lowest level of visual acuity.

22 February 2017. Dr Andrianov primarily treated Mr Czubryj for blood pressure and a dilated aorta. He did not provide treatment nor consult Mr Czubryj regarding his visual impairment.

18. On 3 October 2017, LSC Myers spoke to a representative of VicRoads from the Medical Review Section, who did not give a statement. LSC Myers ascertained that Mr Czubryj had not been reported to VicRoads by anyone at any point to indicate concerns regarding his deteriorating eyesight. The representative indicated to the police officer that there were no mandatory reporting obligations upon medical practitioners to refer patients for assessment. However, the representative went on to indicate that, in her view, Mr Czubryj's '*severe eye problem*' created an obligation under a practitioner's '*duty of care*' to the '*patient and other road users*' to report him for assessment.

## COMMENTS

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

1. My coronial investigator stated that Mr Czubryj had driven into the path of the black Toyota utility due to his eyesight being of a lower standard than what is required to effectively operate a motor vehicle. Furthermore, LSC Myers was of the opinion that Mr Czubryj's daughters had concerns about their father's eye condition relative to his driving, but did not contact VicRoads. LSC Myers noted that the ophthalmologist was under no legislative obligation to report Mr Czubryj, despite being of the opinion that his eyesight was not of a standard requisite to drive a motor vehicle. LSC Myers commented that, had Mr Czubryj been reported, it is likely that his licence would have been revoked and that he may be alive today.
2. Mr Czubryj was diagnosed with macular degeneration in 2009. At the time of his death in 2017, he had a moderate visual impairment in his right eye and was 'count three fingers' in his left eye; which is the third lowest level of visual acuity and in the 'blindness' category. Mr Czubryj's ophthalmologist Dr Roufail told his patient that he was not fit to drive on several occasions. His daughters expressed concern about their father's eyesight in relation to his driving. Despite the concerns, and Mr Czubryj's knowledge of his visual impairment and consequent lack of fitness to drive, it was never reported to VicRoads.



3. I note there was and is no legislative requirement for a medical practitioner to report concerns about a patient's medical fitness to drive directly to VicRoads. There is arguably an ethical obligation to notify VicRoads if a medical practitioner forms the view that a patient is unfit to drive and will continue to drive despite advice not to do so.<sup>10</sup> A medical practitioner making such a report is legally protected in doing so under Section 27(5) of the *Road Safety Act 1986* (Vic). I make no comment about whether there is such an ethical obligation. However, it is apparent that the reporting system lacks clarity.
4. Mr Czubryj's did not self-report his medical conditions to VicRoads as required under Section 67(2) of the *Road Safety (Drivers) Regulations 2009* (Vic), possibly because he was concerned about the impact on his independence if his licence was restricted or suspended. I acknowledge that this loss of independence is significant to elderly road users.
5. Mr Czubryj's death yet again highlights the fatal consequences of VicRoads relying on self-reporting to identify drivers who may be unfit to drive. Over the past decade, Victorian coroners have investigated a number of motor vehicle collision deaths where medical practitioners expressed concern that a patient was not fit to drive, but neither they nor the patient notified VicRoads of this. Consequently, I have previously recommended legislative change to require a medical practitioner to notify VicRoads when he or she forms the view that a patient is or may not be medically fit to drive.
6. A system that relies on family members to report their concerns about fitness to drive is fraught because it requires significant emotive detachment. There is a significant difference between having a concern about a parent or loved one's fitness to drive and turning that concern into a report to a statutory body.
7. The most recent of such recommendations were made in Findings in relation to the investigation into the deaths of Frederick Hylla<sup>11</sup>, delivered 28 August 2017, and Pamela Elsdon<sup>12</sup>, delivered 7 September 2017. I recommended:

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<sup>10</sup> According to VicRoads response to my Recommendations in the Investigation into the death of Pamela Elsdon COR 2016 5554 dated 24.11.17, referring to the AustRoads & National Transport Commission, 'Medical Standards for Licensing and Clinical Management Guidelines, *Assessing Fitness to Drive for commercial and private vehicle drivers*' (2016).

<sup>11</sup> COR 2016 4011.

<sup>12</sup> COR 2016 5554.

*[...] that consideration be given by the Secretary of the Department of Economic Development, Jobs, Transport and Resources, and VicRoads, to adopting a framework requiring mandatory reporting to VicRoads when a medical practitioner forms an opinion that a person with a permanent or long-term injury or illness, is not or may not be medically fit to drive.*

8. In the VicRoads response, Executive Director Access and Operations Anita Cunrow did not adopt the recommendation but provided a detailed outline of activities that VicRoads would undertake in 2018 to improve the existing system within which concerns about fitness to drive are reported. The Acting Secretary of the Department of Economic Development, Jobs, Transport and Resources, Gillian Miles,<sup>13</sup> similarly described a range of activities being undertaken by Transport for Victoria (the statutory office that as of April 2017 is responsible for road safety legislation and regulation) aimed at developing evidence to inform policy in this area.
9. Given these indications from VicRoads and Transport for Victoria, I have determined not to repeat my recommendation regarding mandatory clinician reporting of patients who are medically unfit to drive. Instead, I distribute this Finding to both VicRoads and Transport for Victoria, as the circumstances of Mr Czubryj's death would inform their activities and enhance their appreciation of the fatal consequences of having medically unfit drivers on Victorian roads. I keenly await the reports from VicRoads and Transport for Victoria as to the outcomes of their activities.

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<sup>13</sup> Dr Gillian Miles is now the Head of Transport for Victoria.



## FINDINGS

The investigation into the death of Stanislaw Edward Czubryj identified clear and cogent evidence, in the form of witness evidence, that the cause of the collision on 7 April 2017, was driver error on the part of Mr Czubryj. The evidence indicates that Mr Czubryj drove into the path of the black Toyota utility vehicle, registration XOI 635, while trying to cross the T-intersection of Frawley Street and Cranbourne Frankston Road.

**I find** that Stanislaw Edward Czubryj continued to drive a motor vehicle with a significant visual impairment. In circumstances where Mr Czubryj's visual impairment, in the context of his driving, was a concern to his family, and where his ophthalmologist had informed him that he was not fit to drive on a number of occasions, it is concerning that no formal referral to VicRoads was made, so that an assessment of his suitability to drive could have been performed.

I accept and adopt the medical cause of death as identified by Dr Gregory Young and **I find** that Stanislaw Edward Czubryj died from complications of chest injuries sustained in a motor vehicle incident as a driver, in circumstances where the evidence supports a conclusion that Stanislaw Edward Czubryj caused the collision by driving with a significant visual impairment.

Pursuant to section 73(1A) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

Kim Czubyj

Dr Edward Roufail

Nicole Rasmussen, Acting Risk Manager, Alfred Hospital

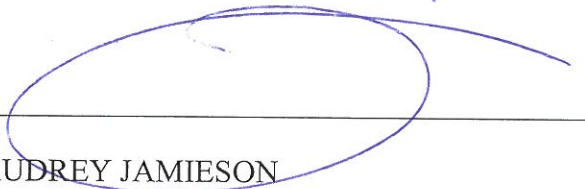
Transport Accident Commission

Anita Cunrow, Executive Director Access and Operations at VicRoads

Gillian Miles, Head of Transport for Victoria

Leading Senior Constable Darren Myers

Signature:



AUDREY JAMIESON  
CORONER

Date: **22 February 2018**

