



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2017 1812

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Deceased:	NORMAN MacKENZIE
Findings of:	CORONER DARREN J BRACKEN
Delivered on:	30 October 2020
Delivered at:	Coroners Court of Victoria, Kavanagh Street, Southbank
Hearing date:	25 – 26 June 2019
Appearances:	Mr J Remick appeared for himself
Counsel assisting the Coroner:	Senior Constable D McKenzie – Police Coronial Support Unit
Catchwords	Homicide; death resulted directly from injury; unexpected; not from natural causes.

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HIS HONOUR:

BACKGROUND

1. Mr Norman Leslie MacKenzie was 85 years old when, at about 5.52pm on 18 April 2017, he was walking east across Jacka Boulevard, St. Kilda at a pedestrian crossing (**the pedestrian crossing**) when he was struck by a bicycle ridden by Mr Jarel Remick. Mr MacKenzie fell onto the roadway and hit his head. An ambulance took Mr MacKenzie to the Alfred Hospital where a CT scan showed a closed traumatic head injury with skull fractures, bilateral subdural haematomas, a subarachnoid haematoma, frontal contusion and a midline shift. The scan also showed evidence of possible vertebral fractures and a left haemothorax.
2. Mr MacKenzie died as a result of his injuries at 10:07pm that day.
3. The two most significant issues at the Inquest were whether the speed at which Mr Remick was riding his bicycle immediately before he struck Mr MacKenzie was appropriate in the circumstances and whether Mr MacKenzie was crossing the road against a 'red man' pedestrian light.
4. Many of the circumstances surrounding Mr MacKenzie's death were uncontroversial.

THE PURPOSE OF A CORONIAL INVESTIGATION

5. Mr MacKenzie's death constituted a '*reportable death*' pursuant to section 4 *Coroners Act 2008* (Vic) (the Act); his death occurred in Victoria, it was unexpected, unnatural and resulted directly from an accident and injury.¹
6. The jurisdiction of the Coroners Court of Victoria is inquisitorial.² The purpose of a coronial investigation is to independently investigate reportable deaths and to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred. It is not the role of the coroner to lay or apportion blame, but rather to establish facts and neither is it the coroner's role to determine criminal or civil liability³.
7. For coronial purposes, '*circumstances in which death occurred*',⁴ refers to the context and background surrounding circumstances of the death.

¹ Section 4, *Coroners Act 2008*.

² Section 89(4) *Coroners Act 2008*.

³ *Keown v Khan* (1999) 1 VR 69.

⁴ Section 67(1)(c).

Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.

8. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, by the Coroner making comments and recommendations. This is generally referred to as the '*prevention*' role of the Court.
9. Coroners are also empowered to:
 - (a) Comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice⁵; and
 - (b) 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. These powers are the vehicles by which the prevention role may be advanced.⁶
10. Coronial findings must be underpinned by proof of relevant facts on the balance of probabilities, giving effect to the principles explained by the Chief Justice in *Briginshaw v Briginshaw*.⁷ Those principles explain that 'strength of evidence' necessary to so prove facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.⁸ The principles enunciated by the Chief Justice in *Briginshaw* do not create a new standard of proof; there is no such thing as a "*Briginshaw Standard*" or "*Briginshaw Test*" and use of such terms may mislead.⁹ Facts should not be considered to have been proved on the balance of probabilities by inexact proofs, indefinite testimony, or indirect inferences,¹⁰ rather such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.¹¹

⁵ Section 67(3).

⁶ Section 72(2).

⁷ (1938) 60 CLR 336, 362-363. See *Domaszewicz v State Coroner* (2004) 11 VR 237, *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152 [21]; *Anderson v Blashki* [1993] 2 VR 89, 95.

⁸ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J but bear in mind His Honour was referring to the correct approach to the standard of proof in a civil proceeding in a federal court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at pp170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

⁹ *Qantas Airways Ltd v Gama* (2008) 167 FCR 537, [123]-[132].

¹⁰ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.

¹¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.; *Cuming Smith & CO Ltd v Western Farmers Co-operative Ltd* [1979] VR 129, at p. 147; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at pp170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demands a weight of evidence commensurate with the gravity of the facts sought to be proved and the content of the finding based on those facts.¹²

11. Section 49 of the Act requires the Court's Principal Registrar to notify the Director of Public Prosecutions if the coroner investigating a death believes that an indictable offence may have been committed in connection with the death.

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Identity of the Deceased pursuant to section 67(1)(a) of the *Coroners Act 2008*

12. On 18 April 2017 Rachel MacKenzie identified the deceased as her father, Norman Leslie MacKenzie born 20 August 1931.

Medical Cause of death pursuant to section 67(1)(b) of the *Coroners Act 2008*

13. In her report dated 21 April 2017 Dr Parsons opined that the cause of Mr MacKenzie's death was:

"Multiple injuries sustained when struck by a bicycle."

THE INVESTIGATION & INQUEST

14. I conducted an inquest into Mr MacKenzie's death between 25 and 26 June 2019 during which nine witnesses including Mr Remick gave evidence and 21 exhibits including the Inquest Brief were tendered. Uncontroversial evidence included:
 - (a) Mr Remick's bicycle struck Mr MacKenzie causing Mr MacKenzie to fall onto the roadway and suffer the injuries that caused his death.
 - (b) The cause of Mr MacKenzie's death as nominated by Dr Parsons was "*multiple injuries sustained when struck by a bicycle.*"¹³

¹² *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336, referring to *Barten v Williams* (1978) 20 ACTR 10; *Cuning Smith & Co Ltd v Western Farmers' Co-operative Ltd* [1979] VR 129; *Mahon v Air New Zealand Ltd* [1984] AC 808 and *Annetts v McCann* (1990) 170 CLR 596.

¹³ Exhibit 8.

- (c) Mr Remick's bicycle struck Mr MacKenzie in the south bound bicycle lane of Jacka Boulevard at the pedestrian crossing in the immediate vicinity of the Boulevard Ice-Creamery Kiosk situated at 16/20 Jacka Boulevard St. Kilda ("**the collision**").
- (d) Immediately before the collision Mr Remick was riding his bicycle south in the south-bound bicycle lane of Jacka Boulevard and Mr MacKenzie was crossing Jacka Boulevard from west to east on the pedestrian crossing.
- (e) The collision occurred sometime shortly before 6.00pm on 18 April 2017.
- (f) In the vicinity of the collision;
 - i. the south-bound lane for bicycles was approximate 2.3 metres wide and the lanes for cars 6.6 metres.
 - ii. the north-bound lane for bicycles was approximately 1.7 metres wide and the lanes for cars 7 metres.
 - iii. the north-bound and south-bound lanes for traffic were, and indeed are still, separated by a grassed median strip which is approximately 2.5 metres wide.
- (g) An inspection by police of Mr Remick's bicycle after the collision revealed no mechanical faults.
- (h) At the time of the collision the road was dry, weather was fine, it was daylight, visibility was good and vehicle traffic was heavy and stopped at the pedestrian crossing.

Evidence at the Inquest

Luis Mendez-Chacon

15. Police took a statement form Mr Mendez-Chacon on 28 April 2017.¹⁴ Mr Mendez-Chacon gave viva-voce evidence that at about 5.30 – 5.45pm he was waiting on the east side of Jacka Boulevard at the pedestrian crossing with his partner and other people. Mr Mendez-Chacon and his partner were involved in a conversation and Mr Mendez-Chacon was not looking at the pedestrian lights although he thought that the light for pedestrians must have been red.¹⁵

¹⁴ Exhibit 2.

¹⁵ Coronial Brief pp. 10.

Mr Mendez-Chacon said in evidence that he did not see the colour of the traffic lights at any time¹⁶ and that traffic on the Elwood side (lanes for traffic travelling south) was congested and stopped at a green light at the pedestrian crossing. He said that the lanes for traffic travelling north were empty. Mr Mendez-Chacon said that there were 5 – 7 rows of cars stopped in the lanes for south bound traffic, and that the weather was good, as were conditions and it was still daylight.¹⁷ Mr Mendez-Chacon marked his route to the pedestrian crossing and where he was standing when the Collision occurred on an aerial photograph of the area.¹⁸ In his statement Mr Mendez-Chacon described that the first he knew of the collision was when he was standing at the pedestrian crossing and he heard a ‘HUP’ noise. Mr Mendez-Chacon said that that immediately or shortly after the collision that he did not see the colour of the traffic lights.¹⁹

Anthea Kane

16. Ms Kane provided a statement to police explaining that at about 6.00pm she was driving her Hyundai i20, a “*really small car*”,²⁰ home (south) along Jacka Boulevard. She said that traffic was busy but not too busy. Ms Kane said that it was a nice sunny day - light bright and she did not think that she had her headlights on. In evidence, Ms Kane said that she stopped at the pedestrian crossing in the left lane she thinks at a red light, although she said, it may have initially been green if cars were banked up in front of her.²¹ Ms Kane said that she was in the first row of cars at the pedestrian crossing – there were no cars between her and the crossing but there were cars behind her. Ms Kane gave evidence that a number of pedestrians crossed the road on the pedestrian crossing and that after having been stopped for a minute or two she saw an old man (Mr MacKenzie) crossing the road from the beach side (west to east) with a dog. Ms Kane gave evidence that she first saw Mr MacKenzie when he and his dog were passing in front of the car immediately to her right, that he walked at a ‘normal pace’ and as he passed in front of her car that he quickened his pace.²² Ms Kane gave evidence that she glanced over to check that the pedestrians were off the road in preparation for moving off and, as she was turning back to face forwards, she saw a cyclist (Mr Remick) hit Mr MacKenzie. Ms Kane said that she thought that when the collision occurred that the traffic lights were green for cars but that she was not “...100%”.²³

¹⁶ T. 10 – 11.

¹⁷ T. 11.

¹⁸ Exhibit 2A.

¹⁹ T. 17.

²⁰ T. 25.

²¹ T. 20 & 22.

²² T. 23.

²³ T. 24.

Ms Kane said that there were pedestrians crossing the road in front of Mr MacKenzie but not behind him – he was the last pedestrian crossing in front of her car.²⁴ Ms Kane marked her position on the road the collision occurred on an aerial view of the area.²⁵

Filip Stoimenov

17. Police took a written statement from Mr Stoimenov who also gave viva-voce evidence that he was standing at the pedestrian crossing on the east side intending to cross to the beach, the lights for pedestrians were not green and there were pedestrians on the other side of the road also waiting to cross.²⁶ Mr Stoimenov saw Mr MacKenzie standing on the median strip in the middle of the road and thought that the pedestrian lights were red – there were people waiting on the other side of the road to cross, although Mr Stoimenov said that the court could not take his word 100% that the lights were red – he assumed they were red.²⁷ Mr Stoimenov also agreed with Leading Constable McKenzie’s proposition that at or about this time he “...*saw the red man.*”
18. Mr Stoimenov says that he saw Mr MacKenzie standing on the median strip in the middle of the road for 3 – 5 seconds²⁸, look to his left then try to cross to the Esplanade. I note that when crossing in this direction Mr MacKenzie was crossing toward Mr Stoimenov and that Mr Stoimenov said that he did not hear any cars coming and so assumed it was safe. Mr Stoimenov said that the collision occurred as soon as Mr MacKenzie stepped into the cyclist lane and about a meter in front of him, that the cyclist came from his right and that he, Mr Stoimenov did not hear him coming although he heard the sound of tyres rubbing against asphalt about a second before impact. Mr Stoimenov said that about 5 seconds after the collision the pedestrian lights turned green.²⁹
19. Mr Stoimenov gave evidence that there was nobody crossing at the pedestrian crossing before or after Mr MacKenzie.³⁰ Like other witnesses, Mr Stoimenov also marked on a map where he was standing when he saw the collision.³¹

²⁴ T. 26.

²⁵ Exhibit 3A.

²⁶ T. 30.

²⁷ T. 31.

²⁸ T. 35.

²⁹ T. 32 - 33. I note that Mr Stoimenov earlier said that he was unsure if he had headphones on and was listening to music.

³⁰ T. 35.

³¹ Exhibit 4A.

Jacqueline Rogash

20. Ms Rogash made a statement to police and gave evidence. Ms Rogash told the court that she was driving her car south in the left lane³² of Jacka Boulevard in congested, “...*sort of bumper-to-bumper...*” traffic. Ms Rogash described stopping a short distance north of the pedestrian crossing with two cars between her and the pedestrian crossing.³³ Ms Rogash gave evidence that when she stopped, the traffic lights for vehicles were green but she that she could not see the lights for pedestrians.³⁴ Ms Rogash gave evidence of seeing a woman with a dog standing on the median strip in the centre of the road and looking to the left to see of the traffic was going to move and then starting to cross the road. Ms Rogash saw a cyclist (Mr Remick) travelling south in the south-bound bike lane. Ms Rogash remembered the lights for cars being green when the bicycle went past her towards the Pedestrian Crossing. Ms Rogash remembers thinking that the bicycle was going to collide with the woman she saw crossing from the median strip.³⁵ Ms Rogash did not see the collision but afterward she describes seeing the woman she saw crossing the road; she thought this woman was on the telephone perhaps calling emergency services.³⁶ After the collision, Ms Rogash got out of her car and sought to help Mr MacKenzie. She remembers seeing Mr MacKenzie lying on the road. Ms Rogash said explicitly that she did not remember seeing Mr MacKenzie on the pedestrian crossing although she conceded that “...*the dog and the lady was next to him, um and I’ve just not seen him.*” and indeed that the woman that she described seeing on the median strip could have been Mr MacKenzie.³⁷

Leading Senior Constable Williams

21. Leading Senior Constable Williams contributed a statement to the Inquest Brief and gave viva-voce evidence. Amongst the evidence that he gave was that the time of the collision, at least according to the ‘GPS - bike computer’ (“**bicycle computer**”) attached to Mr Remick’s bicycle was 5.52pm.³⁸ Leading Senior Constable Williams also gave evidence of extracting data from the bicycle computer which Detective Sergeant Hardiman used to calculate the speed of Mr Remick’s bicycle immediately before the collision.

³² T. 39.

³³ T. 38.

³⁴ T. 40.

³⁵ T. 41-42.

³⁶ T. 42.

³⁷ T. 45.

³⁸ T. 55.

Detective Sergeant Hardiman

22. Detective Sergeant Hardiman prepared a statement for the Inquest Brief³⁹ and gave viva-voce evidence of having analysed data from the bicycle computer for 60 seconds prior to the Collision and of concluding that:

- a) The average speed of the bicycle during the 60 seconds immediately before the collision was 41.7 kilometres per hour.⁴⁰
- b) At impact the bicycle's speed was between 33 and 39 kilometres per hour.
- c) During the 2 seconds before the collision the bicycle travelled at an average speed of 40.2 kilometres per hour.
- d) Between:
 - i. 4 and 5 seconds before the collision the bicycle was travelling at an average speed of 40.5 kilometres per hour.
 - ii. 3 and 4 seconds before the collision the bicycle was travelling at an average speed of 39.5 kilometres per hour.
 - iii. 2 and 3 seconds before the collision the bicycle was travelling at an average speed of 40.1 kilometres per hour.
 - iv. 1 and 2 seconds before the collision the bicycle was travelling at an average speed of 39.6 kilometres per hour.
 - v. 0 and 1 seconds before the collision the bicycle was travelling at an average speed of 39.3 kilometres per hour.
- e) If the bicycle was travelling at between 33 and 39 kilometres per hour and braked it may take between 7.4 and 10 metres to stop from when it begins to brake.⁴¹
- f) If the bicycle is travelling at 39 kilometres per hour it will take approximately 15.5 metres to stop from when the rider recognises the need to stop.

³⁹ Exhibit 9.

⁴⁰ T. 110.

⁴¹ T.117. There are a number of variables which prevented Detective Sergeant Hardiman being able to accurately calculate this distance.

- g) If the bicycle were travelling at 24 kilometres per hour it could be brought to a stop in 4 metres from when it brakes and if travelling at 27 kilometres per hour 5 metres from the commencement of braking. If the reaction time – the time from recognition of a need to stop and beginning to brake - were considered both distances would be increased. If the same reaction time used in the calculations referred to in d. above is used the bicycle would take 5 seconds to stop from a speed of 18 kilometres per hour and 4 metres at 16 kilometres per hour.

Martin Chelini

23. Mr Chelini, Manager Signals Services (West) VicRoads provided a statement for the inquest brief⁴² and gave viva voce evidence.⁴³ His evidence dealt with the operation of the traffic lights at the pedestrian crossing. Mr Chelini concluded that, apart from one irrelevant reported fault “...it may be assumed that the signals were operating in accordance with the information...” contained in his statement and its attachments. The documents relied upon by Mr Chelini reveal that:

- a) Lights were green for vehicle traffic between 5.51.25 and 5.52.43.⁴⁴
- b) ‘Green Man’ lights for pedestrians ran from 5.50.56 to 5.51.09 followed by 13 seconds of flashing ‘Red Man’ from 5.51.09 to 5.51.22 followed by 3 seconds of solid ‘Red Man’ before lights for vehicles turned green at 5.51.25.⁴⁵

24. The series of lights set out in a. and b. above constitute a P1 cycle. The time periods associated with the various elements of a P1 cycle, ‘Green Man’ flashing ‘Red Man’ and solid ‘Red Man’ vary according to the amount and speed of cyclists and pedestrians crossing at the Pedestrian Cycle.⁴⁶ The amount of pedestrian traffic is detected by microwave detectors on the traffic light poles.⁴⁷ Sequences of lights are designed for pedestrians to commence crossing Jacka Boulevard during the ‘Green Man’ and finish crossing it, north and south bound lanes, during the ‘Flashing Red Man’.⁴⁸

⁴² Exhibit 7.

⁴³ T. 61. – 88.

⁴⁴ Inquest Brief p.50. If the clock on Mr Renick’s computer and the clock recording the light changes coincided. T. 86.

⁴⁵ Inquest Brief p.50. & T. 85.

⁴⁶ The times of the cycles before and after the collision. are set out at Inquest Brief pp. 48, 49 & 50.

⁴⁷ T. 70.

⁴⁸ T. 73.

Dr. Linda Iles

25. Dr Parsons being unavailable, Dr Iles spoke to Dr Parsons' report dated 21 April 2017.⁴⁹
26. Dr Iles said that the force applied to Mr McKenzie by the collision with the bicycle, separately from him hitting his head on the ground could itself have contributed to the critical head injury. Such an injury could also have occurred if Mr MacKenzie simply fell '*unguarded*' and hit his head on the road.⁵⁰ Mr MacKenzie's age may have contributed to the brain injury he suffered by hitting his head on the ground – in older people a less forceful impact may cause a worse injury.⁵¹

Jarel Brett Remick

27. Mr Remick made a written statement to police dated 24 April 2017⁵² and gave viva-voce evidence.⁵³ Before Mr Remick was sworn, he told me again that he had taken legal advice about giving evidence.⁵⁴
28. Mr Remick read his statement and gave evidence that it was true and accurate and that there was nothing that he wanted to add, alter or delete.⁵⁵
29. Mr Remick agreed that he had been riding bicycles for his whole life and road bikes for about 12 years. He described 'training rides' as riding with the intention of fitness development 'usually a more performance orientated ride' – a speed ride over certain distance in preparation for racing. Mr Remick described participating in road races in Port Melbourne on roads that were closed to public use while the race was underway. Mr Remick described training and preparation for racing during 2015 and 2016 as including riding almost every day of the week over various distances from 60 kilometres to over 100 kilometres at different intensities and including different heart rate training or very high-paced group rides. When later answering questions, Mr Remick agreed that when undertaking fitness rides, he pushes hard because in those types of rides he is trying to increase his fitness.⁵⁶

⁴⁹ Exhibit 8.

⁵⁰ T. 98 – 99.

⁵¹ T. 100. Dr Iles qualified this proposition with reference to injuries to young men.

⁵² Exhibit 10.

⁵³ T. pp. 123 - 157

⁵⁴ I asked him about this earlier at a directions hearing.

⁵⁵ T. 124.

⁵⁶ T. 147.

30. Mr Remick described buying the bicycle which he was riding on 18 April 2017 in 2015 and modifying it to increase performance to maintain speed and reduce speed safely. Mr Remick explained that the brake modifications would cause the front wheel to stop if he applied full braking causing him to be thrown over the front wheel. He reinforced the need to control braking. He said that the front and rear lights of his bicycle were on when the collision occurred. Mr Remick gave evidence that he purchased and used the bike computer for training and fitness and stepped through the information the computer provided such as speed, power, average power, time, distance cadence “...and things like that.”⁵⁷ Mr Remick agreed that a reason that he made modifications to his bicycle included so that he could maximise speed for effort – that the modifications were intended to allow him to go faster to improve his times.⁵⁸
31. Mr Remick agreed that on 18 April he left home at about 5.41pm to do a ‘fitness ride’ to Mordialloc and back.⁵⁹ Mr Remick described a ‘fitness ride’ as distinct from a ‘training ride’ as one where he intends to enjoy the ride and push hard.⁶⁰ Mr Remick agreed that the ride along Jacka Boulevard is one with which he is very familiar and that as he swept around to the left into Jacka Boulevard and downhill that he was riding at near 50 kph.⁶¹ Mr Remick gave evidence that as he approached the pedestrian crossing he slowed because it was his experience that it is a busy area and frequently pedestrians will move across and run through traffic as it banks up. He gave evidence that he rides through the pedestrian crossing three to four times a week out and back and once every ‘...couple of times...’ he sees pedestrians darting across the road in front of him and about one ride in 20 he would have to take evasive action.⁶² Mr Remick disagreed that this was ‘not often’ and said that it was often enough to matter and “...often enough to me. When you are considering a close call.”⁶³
32. Mr Remick gave evidence that as he approached the pedestrian crossing the traffic lights were green and he saw people scattered on the footpath on his left and two standing next to the pedestrian pole and that it was these two people that he was paying attention to.⁶⁴ Mr Remick gave evidence that he was looking at the two people by the pedestrian pole because:

⁵⁷ T. 129.

⁵⁸ T. 147.

⁵⁹ T. pp. 131-132.

⁶⁰ T. 132.

⁶¹ T. 133.

⁶² T. 143.

⁶³ T. 134.

⁶⁴ T. 136.

“...in my experience of riding through pedestrian-heavy areas, um, I just look for body language that’s indicative of somebody thinking, Okay, the traffic’s clear, we’ll run across now.

Its typically when they – they might not be looking for the cyclist or looking at the cars, and they’ll just go, and out of all the pedestrians on that side they had the body language most likely to consider doing that. So my concern was that they would walk in front.”⁶⁵

33. Mr Remick agreed that he had looked to his right and said that he did not see anyone standing on the centre median strip, but that it was difficult to see if someone was standing at the crossing on the beach side explaining that:

“...from where I was at on the road it’s difficult to see that crossing because of the cars, so you might get very brief glances, and I don’t recall seeing anyone standing there but again these are very brief between the cars as you’re moving through.”⁶⁶

34. Mr Remick gave evidence that he was about 5 meters from the pedestrian crossing when he first saw the dog that Mr MacKenzie had with him⁶⁷ and he was less than a metre from Mr MacKenzie when he first saw Mr MacKenzie walk into the bike lane in front of him.⁶⁸ He also gave evidence that he ‘feathered’ the brakes of the bicycle as he approached the pedestrian crossing albeit that he did not know how far he was from the pedestrian crossing when he began to ‘feather’ the brakes.⁶⁹

35. Mr Remick agreed, although it is not completely clear from the transcript that he “...grabbed the brakes...” after he saw the dog but before he saw Mr MacKenzie.⁷⁰ Mr Remick gave evidence that, before having heard evidence in court, that he did not know what distance he would require to bring his bicycle to a stop if he were riding at about 40 kph but that he did not disagree with Detective Sergeant Hardiman’s evidence on the distance nominated.

36. Mr Remick asserted that he didn’t think that slowing down

“...to what I would have considered a speed that would have been accepted by, you know even the commuters in those particular conditions would have avoided a collision.”⁷¹

⁶⁵ T. 137.

⁶⁶ T. 137.

⁶⁷ T. 140-142.

⁶⁸ T. 143.

⁶⁹ T. 142.

⁷⁰ T. 143.

⁷¹ T. 145.

37. Mr Remick gave evidence that since the collision he now rides more slowly in the area of that particular crossing.⁷²
38. Mr Remick conceded that the area of the collision and most of Beach Road is quite dangerous because of people running across the road between cars, and that he knew that to be the case when he was riding down Jacka Boulevard on the night of the collision; he knew that the area was dangerous for pedestrians.⁷³
39. Last Mr Remick suggested that his view in relation to what may have been an appropriate speed in the circumstances had been changed and informed by the inquest.⁷⁴
40. Mr Remick agreed that immediately before the collision he was travelling at something like 40 kilometres an hour along Jacka Boulevard approaching the pedestrian crossing and he then knew that the distance he required to stop from that speed was more than 4 or 5 metres.
41. Mr Remick explained that as he rode round the corner from Beaconsfield Parade into Jacka Boulevard he sighted the pedestrian crossing lights and assumed that the longer the lights stayed green the less likely it was that someone would walk out onto the road to cross it. He conceded that when he made that assumption it was an unwise one to have made.⁷⁵ He conceded that as he approached the pedestrian crossing he saw people standing on the east side of the road at the crossing but did not slow to anything less than about 40 kph.⁷⁶ Mr Remick conceded that he was travelling at about 40 kph when he was approximately 5 metres from the people standing at the pedestrian crossing and that if they had then stepped onto the road, that he would have been unable to stop.⁷⁷ Mr Remick agreed that riding through that area was dangerous for pedestrians and that he needed to be more vigilant than otherwise and be able to deal with unexpected occurrences and that dealing with unexpected occurrences when travelling at 40kph is more difficult.⁷⁸ Mr Remick said that he was aware that when riding a bicycle he was required to ride safely in all circumstances and believed that he was riding the bicycle such that he could deal with unexpected circumstances.⁷⁹

⁷² T. 145.

⁷³ T. 146.

⁷⁴ T. 159.

⁷⁵ T. 149.

⁷⁶ T. 149-150.

⁷⁷ T. 150.

⁷⁸ T. 151.

⁷⁹ T. 150.

Mr Remick gave evidence that he was not riding faster to maintain speed to improve his fitness as he approached the pedestrian crossing and that he could have slowed to 10 or 20 kph without affecting his training regime.⁸⁰

42. I asked Mr Remick whether riding at approximately 40 kph approaching the pedestrian crossing was doing everything he could to avoid colliding with any people who walked onto the road as he referred to in his statement. His response was that “...*they were breaking the law.*”⁸¹ but that his perspective has changed. Mr Remick agreed that in his statement he said that he thought that there was nothing that he could have done to have avoid what happened but agreed that he could have ridden more slowly through this area and that if he had done so, – half the speed or less, things may have been different.⁸²
43. Mr Remick said that he was aware that road users had a responsibility to take into account that other road users may break the law.⁸³
44. He also said that on the basis of his training his perception of that speed (40kph) was not particularly fast.⁸⁴
45. Mr Remick agreed that the use of the types of GPS computers he used was common amongst riders who are serious about racing and training.

The Colour of the Pedestrian Lights

46. Mr Mendez-Chacon gave evidence that he was standing on the east side of the pedestrian crossing waiting to cross Jacka Boulevard talking to his partner and that there were a number of people waiting to cross the road. He said he heard a noise and the collision happened very close to where he was standing. He gave evidence that he did not see the colour of the pedestrian lights or the lights for road traffic but that he thought that lights for pedestrians were red because he was waiting to cross the road.
47. Ms Kane gave evidence that she thought that at the time of the collision the traffic lights for cars were green although she said was not 100% sure.

⁸⁰ T.153.

⁸¹ T. 154.

⁸² T. 155.

⁸³ T. 155 – 156.

⁸⁴ T. 153.

If the lights were green and accepting Mr Chelini's evidence of the way the lights work, the lights for pedestrians would then have been a solid 'red man'.⁸⁵

48. Mr Stoimenov said that he was waiting on the Esplanade side of the pedestrian crossing to cross to the beach and there was no green light for pedestrians. He described seeing pedestrians on the beach side waiting to cross to his side. Mr Stoimenov said he saw Mr MacKenzie look to the left and cross the south-bound lanes of Jacka Boulevard.

In his written statement, (tendered ⁸⁶) Mr Stoimenev describes seeing Mr MacKenzie jog toward him from the median strip when the pedestrian lights were red. When he gave evidence, Mr Stoimenev said that when he saw Mr MacKenzie on the median strip, he believed that the pedestrian lights were red based on seeing a few people waiting on the other side of the road. Mr Stoimenov agreed with Leading Senior Constable McKenzie that in his statement he refers to the pedestrian lights changing to green shortly after the collision although he was less than adamant about this.

49. Ms Rogash gave evidence that she was driving south in the left of two lanes and stopped behind a line of two cars the front one of which was stopped at the pedestrian crossing when the lights for vehicles were green. She could not see the colour of the pedestrian lights but once again accepting Mr Chelini's evidence the lights for pedestrians would have been red, a solid 'red man'. Ms Rogash gave evidence of seeing a woman with a dog standing on the median strip, she later conceded that this may have been Mr MacKenzie. Ms Rogash gave evidence of having seen Mr Remick pass her, heading toward the pedestrian crossing and being concerned that he may hit 'the lady' and that lights for road traffic were then green. Ms Rogash gave evidence that she did not see the collision.

50. Mr Remick gave evidence of rounding the bend in the road at Beaconsfield Parade where it becomes Jacka Boulevard in the bicycle lane and seeing the traffic lights at the pedestrian crossing were green. He gave evidence of approaching the crossing and seeing people on the east side waiting to cross the road, of passing cars immediately to his right that were stopped because of congestion and that the traffic lights were still green and of colliding with Mr MacKenzie very shortly after that.

51. All witnesses gave their best recollections about what they saw, and I accept their evidence. There is no evidence that at the time of the collision the pedestrian lights were green.

⁸⁵ T. 85

⁸⁶ Exhibit 4

Mr Remick's evidence is consistent with that of Ms Kane and Ms Rogash that traffic lights for road traffic were green at the time of the collision.

52. Mr Chelini's evidence that the lights for road traffic and those for pedestrians and the pedestrian crossing function such that if the lights for road traffic are green, lights for pedestrians will be a solid 'red man'. Mr Chelini's evidence was unchallenged and I accept it.
53. Mr Stoimenov's evidence that the pedestrian lights were red for pedestrians when Mr MacKenzie crossed the road is consistent with Ms Kane's, Ms Rogash's and Mr Remick's evidence that the lights for road traffic were green.
54. I find that when Mr Remick struck Mr MacKenzie traffic lights for road traffic travelling south on Jacka Boulevard were green and for pedestrians, including Mr MacKenzie showed a solid 'red man'.

The appropriateness of Mr Remick's speed shortly and immediately before the collision

55. Mr Remick's written statement and his viva-voce evidence made clear that, as at 18 April 2017, he was a very experienced bicycle rider with a considerable history of racing and riding on roads. He gave evidence that he undertook 'fitness rides' and 'training rides' on the roads as training for racing.⁸⁷ He described 'fitness rides' as involving pushing hard to improve fitness⁸⁸ and having carried out extensive modifications to his bicycle to maximise speed for effort.⁸⁹
56. Detective Sergeant Hardiman gave evidence of Mr Remick's speed shortly and immediately before the collision with Mr MacKenzie. That evidence was based on the data retrieved from Mr Remick's bicycle computer and various calculations. Detective Sergeant Hardiman's statement explains that her calculations revealed that between;
- a) 50 -60 seconds before the collision Mr Remick's average speed was 37.1 kph
 - b) 20 -30 seconds before the collision it had increased to 48 kph and
 - c) 0 -10 seconds before the collision it was 40.9.⁹⁰

⁸⁷ T 146 -147

⁸⁸ T. 147.

⁸⁹ T. 147.

⁹⁰ Exhibit 9 p.4.

57. Detective Sergeant Hardiman made similar calculations in relation to the last 5 seconds before the collision which she explained in her evidence. Those calculations revealed that between
- a) 4 -5 seconds before the collision Mr Remick's speed averaged 40.5 kph
 - b) 1 – 2 seconds before the collision it had reduced to 39.6 kph and
 - c) 0 – 1 seconds before the collision it was 39.3 kph.
58. Mr Remick conceded that as he approached the pedestrian crossing he was riding at about 40kph.⁹¹ He gave evidence that as he approached the crossing he saw two women standing at the pedestrian crossing on east side and that he was concerned about whether they might unexpectedly step out onto the road to cross it. He gave further evidence that despite that concern he did not slow down and was still travelling at about 40 kph as he approached to within about five metres of the pedestrians. He conceded that had one or both of the women stepped out onto the road that that he would not have been able to stop. Mr Remick conceded that when he was riding through an area that he knew to be dangerous because pedestrians walked across the road unexpectedly, such as the area in the vicinity of the pedestrian crossing he needed to be more vigilant.⁹²
59. Mr Remick conceded that he was required to ride his bicycle safely in all the circumstances.⁹³ He conceded, albeit perhaps with some surprise, that the 60kph speed that applied to the vicinity of the pedestrian crossing was a maximum and that it was not a compulsory speed. His evidence was that he knew the area to be one where pedestrians walked across the road unexpectedly between cars and was dangerous and that he had been able to deal with them in the past meant that he did not have to ride any differently from how he had ridden in the past in this area and how he had ridden on 18 April 2017.
60. Mr Remick gave evidence that as he came into the area of the pedestrian crossing that he was not riding fast to maintain his speed to improve his fitness,⁹⁴ he had no reason for riding at that speed.⁹⁵ that he could have ridden much more slowly, perhaps 10kph without affecting his training regime. He had no reason for not riding more slowly – at something like 10kph.

⁹¹ T149 - T 150.

⁹² Inquest Brief p36 & T. 151

⁹³ T. 155

⁹⁴ T. 152.

⁹⁵ T. 155.

Perhaps significantly Mr Remick makes clear that he did not consider 40kph (in the circumstances) to be fast but that speeds nearer to the actual road speed limit may be considered fast.⁹⁶

61. I asked him about the previous occasions when he had to avoid people in the vicinity of the pedestrian crossing. He said that those people were breaking the law. I asked Mr Remick about a part of his statement in which he made clear that he could not have done anything more to have avoided the collision.⁹⁷ He conceded that his statement contained such an assertion. He conceded that if he was riding much slower that things may have been different and that the collision may have been avoided.⁹⁸
62. As at 18 April 2017 Mr Remick did not know how far he needed to stop his bicycle when he was riding at 40 kilometres per hour or indeed at other speeds.⁹⁹
63. The import of Mr Remick's evidence is at least twofold. First, that he saw nothing inappropriate about riding his bicycle along the bicycle lane past two rows of stationary cars through an area where he knew that people unexpectedly and not infrequently walked out between cars in circumstances and at a speed such that he did not know how far it would take him to stop his bicycle. Second, that it was appropriate to use a very busy public road for training. These attitudes may be common among bicycle riders on our roads, at least those who are not 'commuters' as described by Mr Remick.
64. Public roads are used by motor vehicle drivers and riders, bicycle riders and pedestrians. The safety of the members of these groups is promoted by their constituent members driving and riding carefully keeping a weather eye out for other road users acting both within the law and outside it; so much is demanded by at least the Road Rules. Community safety is nurtured by those using our roads not doing so with an impunity founded on them acting lawfully combined with an attitude that they need not consider those who are not.
65. Bicycle riders are bound by many of the laws that apply to motor vehicle drivers indeed Rule 19 of the Road Rules makes clear that all the road rules that apply to drivers also apply to riders unless riders are explicitly excluded.¹⁰⁰

⁹⁶ T. 153.

⁹⁷ T. 154.

⁹⁸ T. 154 – 156.

⁹⁹ T. 155

¹⁰⁰ Road Rule 19.

66. Mr Remick could provide no reason for riding his bicycle at the speed determined by Dr Hardiman, and conceded by him, in the circumstances of surrounding the collision. At approximately 40 kph, Mr Remick did not know the distance he needed to safely stop his bicycle and he certainly was not able to do this when he first saw Mr MacKenzie and his dog crossing the road in front of him. Had traffic conditions been different, for example if the lanes of cars immediately to his right were flowing, his speed may well have been unremarkable.

SUBMISSIONS

67. Mr Remick declined to provide written submissions to the court.

68. I invited and received written submissions from:

- a) Mr McKenzie's family,
- b) Bicycle Network¹⁰¹ and
- c) Victoria Walks¹⁰²

Submissions from Mr MacKenzie's Family

69. Mr MacKenzie's family provided written submissions to the court dated 14 October 2018 and 10 July 2019.

70. These submissions are thoughtful, insightful and raise issues properly the subject of public debate in relation to the relationship between bicycle riders, motor vehicle drivers and pedestrians including:

- a) That the Traffic Accident Commission should *'...cover costs for anyone injured or killed on the roads, irrespective of what form of transport is involved.'*
- b) The requirement that all cyclists wear reflective vests bearing a 'registration number'.
- c) Bicycles designed for racing and high speed being barred from use on public roads.
- d) Provision of education in relation to road rules being provided in schools.

¹⁰¹ 'Bicycle Network Submission', *Submission in Inquest-Investigation into the death of Norman Mackenzie*, COR2017/1812, August 2019.

¹⁰² 'Victoria Walks Submission', *Submission in Inquest- Investigation into the death of Norman Mackenzie*, COR2017/1812, 18 August 2019.

- e) Provision of training to those who want to ride bicycles on public roads and bike-paths.
- f) Uniformity of sequencing of pedestrian lights or display of a counting down to change of lights displayed.
- g) Prohibition of cyclists 'training' for races on public roads.
- h) Roadworthy checks for bicycles.

71. Whilst these issues are properly the subjects for public debate the limited scope of this inquest restricts the subject matter of detailed analysis, albeit that many of the issues raised in the previous paragraph were, at least to some degree, canvassed during the inquest. Mr MacKenzie's family also raised issues on which considerable direct evidence was provided including:

- a) The appropriateness of Mr Remick's speed and his ability to stop and avoid collisions.
- b) Operation of the pedestrian lights, including the time allocated for pedestrians to cross from one side of the road to the other across a median strip.

72. Conscious of what I suspected was going to be tension between cyclists' and pedestrians' perspectives of the events subject of this inquest I sought submissions from Victoria Walks¹⁰³ Inc., a registered charity, and Bicycle Network,¹⁰⁴ a non-profit organisation, in relation to the scope of the inquest. I received written submissions from Victoria Walks dated 18 August 2019 and from Bicycle Network dated August 2019.

73. Both sets of submissions are careful, insightful and with reflection credit on the officers of the organisations who prepared them. I thank both organisations for their submissions.

Submissions from Victoria Walks

74. Amongst other things Victoria Walks' submissions canvass the operation of pedestrian crossings that incorporate a midpoint stop between one side of the road and the other, with call buttons for pedestrians, as here. Victoria Walks assert that this form of pedestrian crossing is designed to maximise motor vehicle traffic flow and is linked to nearby intersection signals. In his evidence, Mr Chelini described just such linking at the pedestrian crossing in this case.¹⁰⁵

¹⁰³ Victoria Walks Inc is a walking health promotion charity working to get more Victorians walking every day.

¹⁰⁴ Bicycle Network is Australia's biggest bike riding organisation, supported by nearly 50,000 members nationwide.

¹⁰⁵ T. 77 & T. 78

Victoria Walks suggests that prioritising vehicle movement over pedestrians leads to pedestrians not complying with the pedestrian lights.¹⁰⁶

75. Victoria Walks suggests that pedestrians' failure to comply with pedestrian lights is at least contributed to by pedestrians facing a red light when it is apparently safe to cross and suggest that any decision that Mr MacKenzie made to cross against a red light may have been informed by him facing a 'long red light' when all the traffic on the road in the vicinity of the pedestrian crossing was stationary because of congestion. Clearly the absence of danger that such stationary traffic might suggest was, at least in this case, false. Victoria Walks suggests that pedestrians provided with a change of lights relatively quickly after pressing a button facilitating them walking across a road might ameliorate the danger posed by a misconception of safety. This may be true, however reinforcing that regardless of any perception of safety, pedestrians ought to comply with traffic light signals would minimise the threats vehicles including bicycles would pose to pedestrians.

76. Balancing the relative interests of pedestrians and drivers is a matter for those controlling traffic flow and I do not propose to deal with that issue in any detail here. I will however recommend that VicRoads consider the material that Victoria Walks provided to the court in this matter, including the report entitled 'Safer Road Design for Older Pedestrians', together with the paper it provided to VicRoads last year in the context of the circumstances surrounding Mr MacKenzie's death with a view to assisting VicRoads to balance the interests of pedestrians and vehicle drivers and maximising the safety of both.

Submissions from Bicycle Victoria

77. Bicycle Network makes 6 recommendations set out on page 3 of their submissions. Only recommendations 1, 4 and 5 are within the contemplation of this inquest. I intend to provide the Submissions to VicRoads for their consideration. Addressing the six recommendations separately I note that recommendation number one deals with issues raised by Victoria Walks and canvassed in paragraph 71 above. The second recommendation does not refer to the raised pedestrian crossing over Jacka Boulevard some 250 - 300 metres to the north of the pedestrian crossing. Recommendation 3 refers to greater delineation of bicycle lanes from motor car lanes and is something apparently occurring throughout Melbourne. It is unclear to me if such a strategy is planned for Beaconsfield Parade, Jacka Boulevard, Marine Parade and perhaps Beach Road.

¹⁰⁶ Victoria Walks refers to a paper that it provided to VicRoads on topic in 2018 as a part of ongoing discussion in relation to problems with signals from the pedestrian perspective and possible solutions.

This one road, the name of which changes, is not only a busy road for motor cars by also one much favoured by bicycle riders including in large groups. I endorse the recommendations made in paragraphs 4 and 5 and note the recommendation made in paragraph 6.

COMMENTS

Section 67(3) *Coroners Act 2008*

78. I have been assisted by receiving submissions from groups representing those who ride bicycles and those who walk. To some extent Victoria Walks' and Bicycle Network's submissions broadly considered road use that is each considered road use not only from the perspective of their constituent members but also from the viewpoint of other road users. I cannot help but think that the interests of all road users would be served by promoting respectful and frank communication between road user groups. The tension between some road user groups, perhaps clearest between motor car drivers and bicycle riders, was not evident during this inquest nor was there any suggestion of it in the helpful submissions of Victoria Walks and Bicycle Network. Caution and respect exercised by each and every road user informed by a recognition that other road users do not always do precisely what is expected, and indeed sometimes do exactly what they should not, may underpin safer road use for all. Enhancement of communication between interest groups facilitating discussion of the common goal of making road use safer for all is a normative goal and possibly the key to making the roads safer for all.

79. The speed at which Mr Remick was riding his bicycle was a cause of Mr MacKenzie's death but so was Mr MacKenzie crossing Jacka Boulevard against a red pedestrian light.

FINDINGS AND RECOMMENDATIONS

80. Having held an inquest into the death of Norman Leslie MacKenzie on 25 & 26 June 2019 at Melbourne, I find pursuant to section 67(1) of the *Coroners Act 2008* that:

- (a) Norman Leslie MacKenzie died at the Alfred Hospital on 18 April 2017.
- (b) The cause of Mr Mackenzie's death was multiple injuries sustained when struck by a bicycle.
- (c) Mr MacKenzie's death occurred in the circumstances set out above in paragraphs 14 – 66.


81. I recommend that submissions from Bicycle Network and Victoria Walks be provided to VicRoads for their consideration when planning road and bicycle lane construction in Melbourne and in particular on Jacka Boulevard St. Kilda.

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

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

- (a) Ms Dulcie MacKenzie;
- (b) Ms Rachel MacKenzie;
- (c) Mr Alister Mackenzie;
- (d) Mr Jarel Remick
- (e) Mr Ben Rossiter, Executive Officer, Victoria Walks
- (f) Mr Craig Richards, Chief Executive Officer, Bicycle Network
- (g) Mr Paul Northey, Chief Regional Roads Officer, VicRoads.
- (h) Senior Constable Nicholas Williams

Signature:



DARREN J BRACKEN
CORONER



Date:

30 October 2020
