



Case No: 3086/98

**The death of a recycling collector (*runner*) during a reversing manoeuvre
by a recycling truck**

FINDINGS

The death of Glenn Chapman occurred on 12th October 1998 in Eldorado Street, Strathmore from 1(a) blunt head injury.

Summary of circumstances

Mr. Chapman, aged 19, was working as a recycling collector (or *runner*) for CityWide Service Solutions Pty. Ltd. His duties required that he work as a runner at the back of a Recycling Compactor (recycling truck) collecting paper and other recyclable waste. At about 7.30am on Monday, 12th October Chapman was riding on the rear of the truck in the area of the compactor, when he slipped and fell to the roadway as the recycling truck was reversing. The truck, which was being driven by Emmanuel Rosmarakis, then ran over him.

The truck in question was maintained and operated by CityWide and driven by one of its employees, Mr. Rosmarakis. Chapman was employed by Labour Hire Pty. Ltd. and had been contracted by that company to CityWide.

Mr. Chapman was working with another runner, Justin Tapner. Tapner was aged 20 at the time.

CityWide was in the process of collecting paper for the Moonee Valley City Council. The contract between the Council and CityWide was entered into in May 1997.

At the rear of the truck are two single steps or small platforms (one positioned on each side of the truck). The steps are designed for the recycling collector to stand on and ride on the back of the truck whilst it is moving from collection point to collection point. There also is a handhold for the collector to hold onto whilst riding on the back. The handhold runs from right to left across the back of the truck.

It appears that Mr. Chapman and his fellow runner were attempting to load paper in the rear of the truck when the incident occurred. Chapman was not on his usual step as he was attempting to help his fellow runner and, as the vehicle reversed, he attempted to jump across to the step on the opposite side (his usual position), slipped and fell under the reversing truck.

The compactor recycling truck was manufactured by ACCO and was a Model 2350G registered number OKG754. It was delivered to CityWide in 1997.

At the time of the incident it had been drizzling and the steps were slippery. The handhold was also likely to be wet and slippery.

At some stage, in the day prior to the incident Mr. Chapman had consumed cannabis. Whether the drug was a factor in the incident is a matter of speculation.

At the time of his death, Mr. Chapman had only been in the workforce for a few months.

The detail of the parties, work systems and circumstances of the incident

Introduction - the parties

Mr. Chapman started as a 'runner' or 'loader' with Labour Hire (also called the 'Municipal Contractors Group of Companies'). He had been working for the company for approximately two months (previously he had worked for a few weeks as cook in the food industry). In the early stages of his work as a runner he had worked at the Darebin Council on behalf of Labour Hire on a couple of occasions. He was then hired to CityWide Service Solutions Pty. Ltd.

Labour Hire (Victoria) Pty. Ltd. employed Chapman as a 'runner' or 'loader' and he was placed with a 'host employer,' which, in this case, was CityWide Service Solutions Pty. Ltd.

The customer was Moonee Valley City Council who entered into a contract with CityWide for the recycling work.

The incident

(a) Direct Evidence

Mr. Emmanuel Rosmarakis, Truck Driver, was about 36 years old at the time of the incident. Rosmarakis stated, that almost immediately before the incident:

"Almost immediately I saw in my right mirror Justin and Glen standing on the driver's side plate. They were leaning out from the truck. Justin was on the outside and Glen was on the inside".

And:

"Both, Justin and Glen on the same step, both were making faces at me and laughing."

In evidence Mr. Rosmarakis stated that Chapman "was really funny" and that his opinion was that "he was stoned." He indicated that Chapman "never listened to me." He said that he told Bourke (CityWide) that "Glenn looked a bit funny" and he said, "you have to use runners and go on job." Rosmarakis considered that he had no choice in the matter. He also indicated that Tapner and Chapman were good friends.

Mr. Rosmarakis explained that Tapner picked up papers and that he was normally positioned on the driver's side with Chapman on the opposite side. Just before the incident Rosmarakis stopped at end of street and Tapner picked up some papers. Apparently Chapman then jumped to Tapner's side and, according to Rosmarakis, gave him the thumbs up signal. Rosmarakis said that he observed this in the mirror and on the video. He indicated that both runners were "*hanging together*" on the step and that Chapman "*said lets go Manny.*" Rosmarakis said he was reversing when Chapman jumped across. He also indicated that it was drizzling and Chapman was wearing runners. Tapner said "*what you done Manny.*" Rosmarakis said that he drove the truck forward because of the shock. He "*didn't look before drove forward.*"

Mr. Rosmarakis said that he told Bourke about fixing the truck before the accident. He said that the bar needed to be lower and full platform provided. Rosmarakis noted that the other truck was already fixed. He also noted that the reversing buzzer was not working. This had been the position for six weeks "*on an off*" and at that time of the incident it was not working.

Mr. Rosmarakis agreed that the driver was in charge of truck. On the issue of rests during the working day he noted that they always stopped for a "*smoko*" and lunch for about 20 minutes to half an hour. Rosmarakis commented that he "*looked after runners.*"

Mr. Rosmarakis also commented that he had an argument with Bourke and the leading hand about the "*two mates in the truck.*" He noted that he "*told Justin to be careful a couple of streets before*" and "*feel something happen.*" Rosmarakis remarked that he "*Didn't stop when saw them mucking around*" and it "*happened that second.*" He was "*looking at all of them when reversing*" (video and rear vision mirror). He noted that you "*can see in video the middle...?can't see 100 percent road in monitor...can see maybe head and arms...?*"

In evidence Mr. Rosmarakis explained the incident thus:

Q: Mr Rosmarakis, do you recall when I asked you earlier, when you saw them mucking around on the back plate, whether that made you angry?

A: No angry, for upset. Angry just for the job, you know? Just to be careful for to protect them. Not for me.

Q: So do you say it made you angry or it didn't make you angry?

A: Half/half.

Q: Because in your statement to WorkCover at page 3, in the first paragraph, you say, "I sang out to them through my driver's window, still looking in the rear vision mirror. I became very angry, raised my right hand out of the window and sang out to them, 'What are you fucking doing?'"?

A: I never say the "fucking". Sorry. Just me say be careful. Maybe I was - that time I was in a trauma with the statement. You can understand my position? Already I been through somebody dead behind my truck.

Q: All right. This is the statement you made to WorkCover?

A: Yes, all right.

Q: Do you remember making your statement to WorkCover, Mr Phillips?

A: Yes, I remember I make the statement.

Q: Did you go through the statement very carefully with your sister-in-law before you signed it?

A: No.

Q: You didn't?

A: No.

Q: In your statement to the police on page 8, paragraph 3, the last sentence there is, "I am however sure that they were on the -" the sentence before, "I can only assume that Glenn has

swung across to the other plate whilst I was reversing slowly, and joined Justin on his plate. I am, however, sure that they were on the same plate when I got angry with them." Now this is ---?

A: Yes, I got angry because, you know, I was thinking maybe something happen. It will happen.

Q: So you did get angry?

A: Yes.

Q: You said earlier that Glenn was wearing runners, running shoes, at the time?

A: Yes. I think?.

Q: Do you know if Justin was wearing runners or safety boots?

A: Justin he wear runners always.

Q: Bear with me a moment, please, Your Worship. You said that you saw Glenn give you the thumbs up?

A: Yes, I remember.

Q: When you were reversing?

A: Yes.

Q: You stopped the truck because you felt something was wrong?

A: Yes.

Q: How long after you saw Justin on the back plate, how long until you saw him on the footpath?

A: Split seconds. Only happen this.

Coroner: Do you say that you were told that the runners weren't to be on the back of the truck when it was reversing?

A: Not hundred per cent. Tell me, but after, when happen the accident, I hear this course for long long time, but when happen the accident, before the accident, I no hear this in the course. But after I know. And in Council was working before I never hear."

And:

"Q: You'd got to the end of the street and you'd stopped, and you say in your statement to the WorkCover Authority, at the bottom of page 1, before you started to reverse the truck you noticed in your TV monitor. So you looked in the TV monitor, and you noticed that Glenn had moved from his step on the left side of the truck to Justin's step on the right side?

A: Yes. Correct.

Q: So you saw that through the monitor?

A: Yes.

Q: Then the next thing that you notice, as this goes on, "As I started to reverse slowly back down the street I noticed in my driver's side rear vision mirror both Justin and Glenn were standing on the right rear step." You could see them both?

A: No. When I was reversing I saw he jump.

Q: Well I'll read you exactly what you said in your statement?

A: Yes. Maybe I was in the trauma at the time, I done a mistake.

Q: I'll just clarify it with you. We'll find out what you can and can't remember?

A: M'mm.

Q: You say in the statement this, "As I started to reverse slowly back down the street I noticed in my driver's side rear vision mirror both Justin and Glenn were standing together on the right side rear step"?

A: I done a mistake there.

Q: So you could only see - who could you see there?

A: When I start to do reverse it was both (indistinct) same position. And after he jump.

Q: Well let's see how much you say of this is correct and how much is not. Firstly, you saw Justin move to the right-hand side step, yes?

A: Justin was in the right side step. Always.

Q: Well Justin had got off and picked up some paper. Was he back on the step when you saw Glenn cross?

A: He was on the step, yes.

Q: So they were both on the step?

A: No both.

Q: Anyway, certainly you said, "I noticed in my TV monitor Glenn had moved from his step on the left side to Justin's step on the right side", do you agree with that much?

A: Yes.

Q: Now, was there any reason that you can think of why Glenn should have been - why Glenn would have done that?

A: I don't know.

Q: No reason that you can think of?

A: No.

Q: So then the next sentence says, "As I started to reverse slowly back down the street I noticed in my driver's side rear vision mirror both Justin and Glenn were standing on the right side rear step, leaning over the side making fun at me"?

A: Yes. That (indistinct). But the first statement was correct. That one, maybe because I was in the trauma.

Q: So you could see Glenn in the right rear vision mirror? You could see Glenn Chapman making fun at you?

A: Yes. (Indistinct).

Q: Could you see Justin as well?

A: Yes.

Q: Where was Justin?

A: Together hanging there.

Q: On the step?

A: Yes.

Q: And it says in the statement, "I sang out to them through my driver's window, still looking at the rear vision mirror, became very angry, raised my right hand out of the window and sang out to them "What are you fucking doing?"

A: I never say this."

As to how he used the mirrors and monitor, Mr. Rosmarakis said:

"Q: The statement goes on and says this, "I looked into my left mirror to see where the cars were and at the same time I stopped the truck because I felt something was going to happen"?

A: Yes.

Q: You had been looking out - you'd been looking into your right-hand rear vision mirror on the door of the truck?

A: M'mm.

Q: Then you changed and you said you looked into your left-hand rear vision mirror as well?

A: Yes, I look both.

Q: Did you look at the monitor at that time?

A: Yes.

*Q: Could you see where they were when you looked at the monitor?
A: I saw that Glenn to jump on side to one the other one. I remember that one. I no lie. Maybe the statement I was too sick the time.*

Q: In your police statement, just about where they were located, at page 8 of your statement you say this. "I could only assume that Glenn has swung across to the other plate while I was

reversing slowly and joined Justin on his plate. I am, however, sure that they were on the same plate when I got angry with them"?

A: Yes.

Q: And that plate is the plate on the driver's side, isn't it?

A: Yes.

Q: You thought that they were mucking around, didn't you?

A: (Indistinct) was mucking around.

Q: Because there was no reason for Glenn Chapman to be over on Justin Tapner's side of the truck, was there?

A: Yes.

Q: You were annoyed, I suppose, because you'd had to warn Glenn Chapman before about mucking around?

A: Yes.

Q: You've said in your statement to the police that runners are not supposed to go from one plate to the other when the truck is moving, because of the gap between the plates?

A: Yes.

Q: And you said you've instructed - I'll quote here, "I instruct all my runners, Glenn and Justin included, not to move between the plates when the truck is in motion"?

A: Yes.

Q: Then you say, "I do that as a matter of course, not because management have told me to do it, and because I don't believe management had instructed them not to do it"?

A: Yes. Managers never give instruction."

As to company meetings and instructions:

"Q: Mr Burke has meetings from time to time before the drivers go out on jobs, doesn't he?

A: Now. Not that time.

Q: And at that time too, Mr Rosmarakis?

A: I never (indistinct) many meetings when I was there.

Q: There were meetings where different aspects of the work were brought up and he would give the drivers and the runners instructions about what to do and what not to do?

A: Well I never see these things.

Q: Do you recall at one stage that there was - there had been an accident where one of the trucks - or there'd been two accidents, I think, where trucks had backed into parked cars? Do you remember that??

Q: Where Citywide trucks had backed into parked cars?

A: Yes.

Q: Do you remember that having happened?

A: Not my truck.

Q: Not your truck but Citywide trucks?

A: Yes.

Q: And Mr Burke was concerned about that issue, wasn't he?

A: Yes. I'm not saying Mr Burke - he give us - for the full timers he give us lesson but he never give for the Labour Hire people instruction (indistinct).

Q: Do you recall at a meeting with drivers and runners Mr Burke saying - talking about these accidents while trucks were reversing?

A: Yes.

Q: And that he gave the instruction that the runners were to be off the back of the truck and standing to guide the truck when it was reversing, do you remember that?

A: Yes.

Q: For the runners to stand so that the driver could see them in his mirrors and so that they could direct the truck while it was reversing?

A: Yes?.

*So you remember a meeting where he gave those instructions?
---Yes.*

And that was prior to the accident, wasn't it?---What do you mean prior? I don't understand.

Before the accident?---(Indistinct) Yes.

Mr Rosmarakis, there was another meeting too, wasn't there, where there were issues raised by Mr Burke about drugs and alcohol?---Yes?." (Mr. Rosmarakis was uncertain on this issue and had to be reminded).

Mr. Rosmarakis noted that *"Mr. Chapman never listened, was playing was not careful for the cars?...he was laughing..."* Apparently Rosmarakis was reasonably happy with Tapner's work but not with Chapman. Generally on these issues Rosmarakis said:

"Q: In terms of the situation when you've repeated a number of times that you raised, I think, the issue - firstly, can I clarify this. Your problem with the morning was because they were two mates working together?

A: -Yes.

Q: Why do you have a problem with that, if they're mates working together?

A: Because hang around. No listen each other. You know. For the job. No - Justin was different when he was by yourself with a different runner. With him, he was different.

Q: You've indicated in your evidence that you had issues with, if I can put it, if I think you refer to being stoned?

A: Yes.

Q: And you had issues with runners being stoned?

A: Even now. That's why I left Citywide.

Q: When did you leave Citywide?

A: Before six months?. Because - - -

Q: You mean six months from today or ??

A: Yes, from today. When happen the court case here last time, the next week I left. I tell Fiona to put me another position, I don't want to be with this - with the runners any more. And she said to me, "No, I can't give you another job. This is your job you have." And I left."

On the issue of involvement in training and in his level of control of the work, Mr. Rosmarakis gave the following evidence:

"Q: ?This is a statement dated 13 October. It's the statement taken by a Mr Andrew Gildier, Inspector authorised to take affidavits. That's a three page statement, if that assists. Now what he says there is that, "This induction covers the use of equipment that the employees are expected to use. This induction takes up to half an hour." Are you aware of that situation applying to new runners? That they did receive a short induction?

A: Anybody come my truck for Labour Hire, always I have to teach them what have to do. And Mr Burke sometime.

Q: So you in effect conduct your own induction course as well, do you?

A: No courses, just I tell what have to do through my experience. Just be careful.

Q: And through your experience it's a situation where it's quite a simple task to explain what's involved in terms of the job, is that correct?

A: Yes.

Q: And that you in fact gave evidence to the effect, and correct me if I'm wrong, firstly, you're in charge of the truck?

A: Yes.

Q: The runners answer to you?

A: Yes.

Q: Indeed I think your evidence earlier today was to the effect that you would even check footwear, et cetera, is that right?

A: Yes. If - the people with the boots, I don't like my truck. You can't run.

Q: Yes. And in terms of the situation, were you aware in terms of Labour Hire employees, that they'd be provided with footwear?

A: The (indistinct) for me never give it. When I was working with the Labour Hire.

Q: All right. In terms of when you were working with Labour Hire, when was that period?

A: Before, 18 months, when happen the accident.

Q: So about 18 months prior to October 1998?

A: Before.

Q: In terms of the situation, in your duties as the - if I put it as the truck driver, you weren't necessarily involved in terms of - and I'm talking about Citywide at this stage, in terms of what Citywide provided by way of training to the runners? They just came to your truck, did they not?

A: Yes.

Q: You don't have any direct knowledge associated with that issue, in terms of training?--A: People come Labour Hire before, now have training, before never. I never see. Before happened the accident."

It is noted that Mr. Rosmarakis gave evidence that he told Bourke about Chapman appearing "a bit funny" on the morning of the incident. However it appears that Bourke was not at the depot on that morning. However, Rosmarakis did speak to Bourke about the faulty reversing beeper about 6 weeks before the incident.

Mr. Justin Tapner, Runner, gave evidence, on the issue of drug taking, that:

"Q: Was there anything about Glenn's appearance on this morning that made you concerned at all about him being able to perform his duties?

A: Definitely not. He seemed a hundred percent, just like he always was. There was nothing - well if there was, it didn't come across to me and I'd say I know him pretty well and that he's definitely all right about the situation, especially because we were - going in together as well. We were just all happy that we were being together on that day as well, so.

Q: Were you in court for the previous witness, Mr Rosmarakis, when he gave his evidence?

A: Yes.

Q: He gave evidence that he thought Glenn seemed - sorry, looked a bit funny and he was concerned because he looked a bit funny. What do you say - or did you form an impression as to whether Glenn looked a bit funny or not?

A: No. I always seen Glenn, he was always a happy person, you know, he was a good character and, you know, like there wasn't a day that went past where he wasn't different and that's what made him such a good person. He's a - he just made the way of life, because he was just an easy enthusiastic person to get along with, and no matter what, I don't think there was any day that could bring him down or put him in any way - in any bad state of mind. To me, he was always a hundred and twenty percent accurate in what he wanted to do and always was with it.

Q: Now this incident occurred Mr Rosmarakis said, about a quarter of the way through the run. Are you able to comment on that?

A: I'm not too - too sure how far through the run, but, yes, we were so far through the run, yes, we were (indistinct) through it.

Q: Say a couple of hours into the run?

A: Yes, definitely a couple of hours.

Q: During those couple of hours, was there anything that you saw about Glenn doing the work that caused you concern that he might've been affected in some way?

A: Definitely not, no.

Coroner: Did you know him to smoke marijuana?

A: There was occasionally there that we do - we do - we would have the smoke of marijuana. We would have a smoke occasionally on the Tuesday, Thursday after footy training and occasionally on the Saturday after a function, but I can guarantee you right now there was no way known that we smoked way before work because for one simple fact. It was just way too early before for work and I know that is a dangerous factor."

And:

"Q: Were the two of you together the night before?

A: There was a big possibility, yes - there was a big possibility we could have been together the day before, yes.

Q: Had you smoked at all the day before?

A: I couldn't say whether it was yes or no. But I don't think - I don't think we did smoke the night before.

Q: What about the day before that were you together?

A: Can I just hear what day it was on the 12th?

Q: The 12th was a Monday?

A: Was a Monday, no we wouldn't have had a smoke the day before, no.

Q: What about the day before that?

A: On the Saturday if - there's a possibility we could have had a function and we might have had a joint or two after the game, yes."

On how the incident occurred Mr. Tapner explained that he was working on the driver's side while Chapman was on the near side. In evidence, Tapner explained:

"We entered Eldorado Street. You can see just as we were driving up into the court that there was more work on my side - my side than Chappie, and it was (indistinct) - like he only had to work as we more or less entered into the court way. You can see it was only halfway up where mine was fully all the way up, where he continued on doing his run. I continued on doing my run on the inside. I then - I'm grabbing mine, not, We entered Eldorado Street. You can see just as we were driving up into the court that there was more work on my side - my side than Chappie, and it was (indistinct) - like he only had to work as we more or less entered into the court way. You can see it was only halfway up where mine was fully all the way up, where he continued on doing his run. I continued on doing my run on the inside. I then - I'm grabbing mine, not, you know I could see him grabbing his, but we're not actually making contact because we're both too busy picking up our own loads of work as we're making our way back to the truck to load - to load it into the truck and we've got up towards the end where the truck possibly couldn't go any further. There was three bundles where there was - it happened that I knew there was none on Chappie's side. He was on - on the left hand step at this time. I was up the front of the truck, I was collecting the three bundles which only were short bundles and I could manage to pick the whole three of them up in - in one go on my own and as I was carrying them back to the truck, I did see the truck starting to reverse back and I did see Chappie on the left hand side and he's only

jumped across, you know, to see if I've needed any extra hands with carrying on that side of the truck, which he seen that I was all right. I was making my way back into the truck. I got to the back of the truck. As I've gone, the - he - Chappie's gone to jump from the left - from the right over the back onto his left hand side, where I've got one foot up onto the thingo, the paper's gone in by then and through that stage, that's when - I don't know if he's lost his hands or his footing between this stage and I've jumped, I've hit the - I don't know if I've actually hit the emergency button or I haven't hit the emergency button, but there - and then that's when the incident happened. I seen him, and I wasn't - I was - I was coming back to the truck. I - I was entering on the truck and I was - I can't say a hundred percent if I had the one foot onto the truck as he was jumping across or whether I - he was jumping across and then I've got onto the step and emptied me load and that's when I've seen him lose his balance. I've quickly jumped off the side of the truck and that's where I don't know if I've hit the emergency button, but that's where I've ran to the side and I've seen and then - that was - and that's when I've - I've seen Chappie laying there and he gave me that glare, and I just couldn't stand to see him. I don't know. There was something inside me that just told me to run and I didn't - I didn't run off. I ran into a house - there was only two, probably two houses down from where the truck was parked. I've sat in the driveway and I was really - I was messed up and I was just laying there and I can't even say what I was thinking or how I was feeling at this stage and I just waited. I seen the ambulance pull up in the street and then that's when I took off and done my runner."

And:

"Q: So when the truck got to the end of the street, Chappie was still on the left hand?

A: Chappie was still on the left hand side, yes, as we were coming up.

Q: You were off to the right of the truck?

A: I was on the right of the truck more or less at the front, because he was at the back. He'd finished his side and I don't know when he had jumped across into the left, but as I was coming back - I mean onto the right, but as I was coming back with the paper, I did see him on that right step and - and I've just said it's OK, it's all right, and then that's when I was making my way back to throw the paper into the back of the skipper when he was making his way back over onto the left hand side of the step.

Q: So, it's when he was going back from your side to his side, from the right to the left?

A: Yes, from the right to the left.

Q: That's when he slipped?

A: That's when he's either lost his hands or his footing, yes.

Coroner: So whose side's whose?

A: I'm on the - I'm on the right hand side, the driver's side and Chappie was on the left hand side, on the passenger's side.

Q: Well, when you read your statements, you get the impression that you're not, you're on the left hand side and he's on the right?

A: Yes - no, I'm on the driver's side and he's on the - he was on the left side and I was gathering the paper at the front of the truck on the right hand side where he had the left side. There was - there was no more paper on his side and I can't say when he had jumped across, but as I was coming forward with the three loads of paper that was at the front of the truck, he was on the right side and I've saw that the truck was reversing - I've had to run sort of behind the truck, follow it in and as I was making my way up to the step that's when he's made his - his move across from the right step to the left hand side.

Q: So you two are moving while the truck was reversing?

A: Well, yes, the truck was reversing back as I was coming back with the three loads of paper, yes.

Q: So, really what's happening is you're exchanging positions while the truck's reversing?

A: Well, Chappie's jumped across to see if I've needed a hand which that's what you usually do. You - you've - if you could see you've got no work on your side you will make your way across if no-one's on that step, but there was no way known you'd have the two on a step together. There'd be one making their way across to the right side or me making my way across to the left side to see whoever needs a hand at the front of the truck and Chappie didn't have none on the left hand side where I had the three loads and that's where he's obviously came across to see if I've needed a hand which - that's what any other worker would've done, he can see that I've picked up the three loads, I was making my way back, the truck was reversing and that's when I've made my - chuck into the paper. He's gone to come across and that's where he's either lost his footing or his hands."

During further questioning Mr. Tapner explained:

"you know I could see him grabbing his, but we're not actually making contact because we're both too busy picking up our own loads of work as we're making our way back to the truck to load - to load it into the truck and we've got up towards the end where the truck possibly couldn't go any further. There was three bundles where there was - it happened that I knew there was none on Chappie's side. He was on - on the left hand step at this time. I was up the front of the truck, I was collecting the three bundles which only were short bundles and I could manage to pick the whole three of them up in - in one go on my own and as I was carrying them back to the truck, I did see the truck starting to reverse back and I did see Chappie on the left hand side and he's only jumped across, you know, to see if I've needed any extra hands with carrying on that side of the truck, which he seen that I was all right. I was making my way back into the truck. I got to the back of the truck. As I've gone, the - he - Chappie's gone to jump from the left - from the right over the back onto his left hand side, where I've got one foot up onto the thingo, the paper's gone in by then and through that stage, that's when - I don't know if he's lost his hands or his footing between this stage and I've jumped, I've hit the - I don't know if I've actually hit the emergency button or I haven't hit the emergency button, but there - and then that's when the incident happened. I seen him, and I wasn't - I was - I was coming back to the truck. I - I was entering on the truck and I was - I can't say a hundred percent if I had the one foot onto the truck as he was jumping across or whether I - he was jumping across and then I've got onto the step and emptied me load and that's when I've seen him lose his balance. I've quickly jumped off the side of the truck and that's where I don't know if I've hit the emergency button, but that's where I've ran to the side and I've seen and then - that was - and that's when I've - I've seen Chappie laying there and he gave me that glare, and I just couldn't stand to see him. I don't know. There was something inside me that just told me to run and I didn't - I didn't run off. I ran into a house - there was only two, probably two houses down from where the truck was parked. I've sat in the driveway and I was really - I was messed up and I was just laying there and I can't even say what I was thinking or how I was feeling at this stage and I just waited. I seen the ambulance pull up in the street and then that's when I took off and done my runner."

Also:

"Q: You were off to the right of the truck?

A: I was on the right of the truck more or less at the front, because he was at the back. He'd finished his side and I don't know when he had jumped across into the left, but as I was coming back - I mean onto the right, but as I was coming back with the paper, I did see him on that right step and - and I've just said it's OK, it's all right, and then that's when I was making my way back

to throw the paper into the back of the skipper when he was making his way back over onto the left hand side of the step.

Q: So, it's when he was going back from your side to his side, from the right to the left?

A: Yes, from the right to the left.

Q: That's when he slipped?

A: That's when he's either lost his hands or his footing, yes."

Mr. Tapner said that he was never *"told by his employer that he was not to ride on the back of a truck"*. He also indicated that they did not really talk much to Rosmarakis because *"he was inside the cabin where we're practically outside."* He said that Rosmarakis:

"did not tell me how to do the job, but they - like, I'd already known how to - how to operate the truck, like the day that I worked with Mannie, because I'd worked with a lot of truck drivers prior to that incident and - but I can tell you that the day that I did rock up to work with Kingston Council, the first day, I was told by Rod Bourke or Craig, I think it was, one of the supervisors at the time, just to go over, you're on that truck and the driver - and the runner that's on the back of the truck will teach you what to do, and I've gone on with that experience and that's how I learnt to get to where I was. There was no training involved and there was nothing told to me on how to work or operate behind the back of the truck, no."

And:

"Q: Were you at all told at any stage that you shouldn't ride on the back of a truck when it's reversing?

A: No, not while I was working, no.

Q: Were you ever told of at any stage that there should be a spotter standing off making sure the back of the truck was clear before you reversed?

A: No, no I didn't.

Q: Were you told at any stage that you shouldn't move or exchange positions as you have while the truck's moving?

A: Never, never been told. I found - I found, like, you couldn't really bring up any solution anyway, being in a part time and that's what I thought, you're just better off keeping your mouth shut, doing the work, because if you were to bring up more questions there was a chance that you thought you'd lose your job so you'd go along with the person that had been working the longest and you'd go along by what they had to say."

Also that:

"Q: Did Mannie ever tell you what to do?

A: Mannie never told me what to do, no.

Q: I'll get back to the question. Did you understand if Mannie told you to do something, did you understand what he was saying?

A: I would understand what he was saying, yes.

Q: Why is that?

A: Because I would understand what he was saying.

Q: But he never told you various things?

A: He never told me to do anything in particular in work practise or nothing, no.

Q: Did you get any written work instruction from your employer?

A: No, I didn't.

Q: Did you ever see your employer watching the two of you or one of you doing the job of runner?

A: I never take any notice, no."

That:

"?...there was probably a couple of days there where I'd have a couple of casuals that were coming in where one of the other runners were off, where they would just be taught the same thing. They'd be jumping, they'd come onto the truck and I would have to teach them what to do or the driver would get out roughly and give them a - the run over of what to do."

Mr. Tapner considered that there was a possibility that Rosmarakis mistook what he saw:

"Q: What about the driver's explanation about the two of you being on the one spot?

A: We weren't on the one spot together.

Q: Do you think he might have thought you were on the one spot together?

A: There is a possibility he could have thought that we were on the one step together as he was jumping from one step to the other step when I had the paper work as I was making me way onto the step before the incident occurred. So there was a possibility he could have misjudged it through the camera work in the back of the truck or via the mirrors.

Q: So the driver is doing what he'd normally do?

A: The driver is doing what he'd normally do, yes."

Apparently it was common practice for the two runners to change position on the rear or the truck:

"Q: Was that a common practise for the two of you to exchange positions on the back of the truck?

A: Definitely it was common, because like I said there was a lot of streets prior where there would always be more work- more work load on one side than the other side, so you are constantly jumping from one step to the other step to check out - well, we're never on the same steps at the same time. One would be off and you'd have to move, because the truck was constantly moving slowly so you would have to take that little bit of a swing, because in the middle you couldn't actually just hop across because there was a V cut out where it used to be the ex garbo truck, where it had the arms. And I often cut me leg and I did report that to one of the supervisors going back at that time and nothing was ever done. Yes, you would constantly jump from one step to the other step, yes.

Q: One step to the other because there was a gap between?

A: There was a gap between, yes.

Q: But that was part of your regular work?

A: That was part of the regular work, yes.

Q: You were never told not to do it?

A: Never told not to do it, no."

Mr. Tapner commented on the incident as follows:

"All my views - well, like I said I see it as Citiwide - I don't know, it was just a spur of the moment thing that happened so quick and I can't really blame Manning, but in a way you sort of can - not sort of can, it's just the way the council had sent you out to do that kind of work, it was always in a rush way instead of in a safety manner. And, yes, I think that Citiwide, if they'd had that full length step which I think we did - there was talk about it in the truck and I'm not sure if Manning

did get back to the supervisors, because like I said I didn't feel that I had any part of saying except for when I did cut me leg on that part in the middle I did notify that, and I left up to Manning whatever he did, I thought to the supervisor about it, but I do feel if they had the proper secure truck none of this would be occurring today, yes."

(b) Evidence following the immediate aftermath

There are two witnesses who gave evidence of events immediately following the incident who throw some light on the incident.

Ms. Wendy Young, who lived about one kilometre from the incident, was visited by Tapner at about 9.20am on the morning of the incident. Tapner, who was a former boyfriend of Young's daughter was visibly upset and *"said that truck had run over his mate Chappie."* Tapner indicated that *"Chappie had slipped and that he tried to stop the driver and could tell that Chappie was dead and he ran away."*

Mr. Rob Irvine, Ambulance Officer, who attended the scene soon after the incident, noted that the *"deceased? lying on stomach, at rear R side of garbage truck."* Irvine also had a conversation with Rosmarakis and noted he said:

"the truck had to be reversed, as it was no through road. Pt advised he looked at the side mirror, and saw the two attendants who were working on the truck, "fooling around" ? having a play fight.

Driver advised he saw two collectors move to rear of vehicle. (? Collectors moved into the usual position on the back of truck. Driver did not state) - driver lost sight of Collectors. Driver then commenced to reverse truck.

As he was reversing, he checked mirror, and sighted deceased on road. (It appeared as though truck has reversed two rear right side tyres over deceased). Driver then moved truck forward - (? Uncertain if truck drove over deceased again)."

Mr. Irvine's statement about the discussion with Rosmarakis, in the heat of the moment and shortly after the event, may tend to confirm the driver's version of the events. The Ambulance Officer's description of the position of the body also confirms that the right rear wheels of the truck passed over Chapman. However, in his evidence at the inquest Irvine explained more about the incident.

"Q: Can you tell His Worship what he told you?

A: Just from the notes and my recollections, the patient - sorry, I can't remember the gentleman's name, he advised that he was the driver of the vehicle and the vehicle had to be reversed and it was a no-through road, so he looked into the side mirrors and he'd seen the two attendants who were working on the truck, he wasn't sure if they were fooling around, having a bit of a play fight, a bit of a muck-around. He advised he saw the two collectors move to the rear of the vehicle and he believed that they moved into the usual positions at the back of the truck, and then he lost sight of the collectors. He checked in his mirrors again, and then he commenced to reverse the truck.

Q: Just in relation to him saying that they moved into their usual position, I note you've got there "query collectors moved into usual position on back of truck"?"

A: That was my understanding of what he was saying to me at that stage. At that stage, as I say, he was quite distraught and - I mean it wasn't my - my job to question him, but that's just what I could make out from what he was inferring. That's what I believed he was saying.

Q: And what did he say then?

A: As he was reversing, he checked the mirrors and he saw that the deceased was lying on the road.

Q: Did he say anything prior to that, after the area that you have in brackets there?

A: Sorry, "Driver lost sight of collectors and then commenced to reverse the truck"?

Q: Yes. What sort of recollection do you have - well when did you make these notes, firstly?--

A: Fairly much straight after the incident occurred.

Q: So when you made these notes, do you say the conversation was fresh in your mind at that time?

A: Fairly fresh, yes.

Q: And how accurate a representation of that conversation do you say that these notes are?

A: I think they're as accurate as they could be under the circumstances. I also had a Patient Care Record that was sent in with the statement as well, so - I don't have that with me though.

Q: Did he tell you that he'd lost sight of the collectors and then commenced reversing the truck?

A: I believe so. That's what I have written down, yes. I believe that he - he was of the opinion that they'd moved to their usual positions on the rear of the truck.

Q: You said that he was reversing, he checked the mirror, and saw the deceased on the road?

A: That's correct.

Q: You've got there, "It appeared as though the truck had reversed two rear right-side tyres over the deceased". Is that from your observations?

A: That was from my observations and from my partner's observations too.

Q: So it wasn't something that the driver said to you?

A: No. No."

That:

"Q: About half-way down, "Patient" - - -?

A: Were working on the truck, fooling around, query having a play fight, a bit of a muck-around" for want of a better description, you know, just a play fight.

Q: Did you understand from what he said that this was occurring when they were working on the truck?

A: I believe - what I believe I've written there was that that had occurred prior to them hopping onto the truck.

Q: He was expanding, as you understood it at least, on the - you've put "fooling around" in inverted commas?

A: Yes.

That - again, that was my reference - what I believed the gentleman was saying to me.

Q: So you think he actually - you put those in quotes because you thought that he actually used the words "fooling around"?

A: I think so, yes.

Then you haven't put the next words in inverted commas, but you're summarising what he said to you by saying having a play fight?---That's why I put the question mark there. That was my understanding of what was going on.

All right. Is there any other information about what was going on there that you can recollect at this stage?---Not that I can recollect, no.

Q: About half-way down, "Patient" - - -?---"Were working on the truck, fooling around, query having a play fight, a bit of a muck-around" for want of a better description, you know, just a play fight.

Q: Did you understand from what he said that this was occurring when they were working on the truck?

A: I believe - what I believe I've written there was that that had occurred prior to them hopping onto the truck.

Q: But it's clear that he was telling you this is what he had seen as he looked into the side mirrors?---Yes."

Mr. Irvine said that he had a conversation with the Truck Driver. It was a "No Through Road" and it is noted that Irvine also said that the driver "wasn't sure whether they were fooling around" then he "moved into usual position...?reversing...?" Apparently he "lost sight of the collectors and then commenced reversing" and "believed they had moved to usual positions." Irvine's observations were that two rear right side tyres drove over Chapman and that the truck moved forward again. Irvine considered that Chapman was "run over again as truck moved forward." Irvine believed the incident occurred prior to getting on truck and that there was no mention made of a video monitor.

Training, work practices and supervision

Labour Hire had a 'Health and Safety Handbook' which is general in nature and does not deal with the particular work that Chapman was required to undertake.

CityWide Service Solutions Pty. Ltd. did not have an established training manual for this particular work (although it does appear that some brief on the job training was provided). (See the detailed evidence of Mr. McCarthy, Team Leader, CityWide, whereby he stated that "a training session that would last approximately 10 minutes covering the back of the truck, explain the control buttons for the compactor and how to jump off and on the truck in a safe manner...?" etc?.)

CityWide had commenced the process of introduced a Safety Manual about 3 weeks prior to incident. At the time of the incident the Manual was going through development under the 'Safety Map' procedure. Although it had not undertaken an independent risk analysis for the work.

Mr. Rodney Bourke, Operations Manager, Waste Management Centre, CityWide, stated that the:

"...normal issue of safety footwear is BLUDSTONE 505, the majority like to wear a runner style shoe called PUMA ACE. These are provided when ever required by the employee. This equipment is available on the day the employee starts. Normally all of the employees are employed by City Wide Services but if required we get extra from Labour Hire. At the moment I think we have six employees from Labour Hire working from the yard in Dynon Road. These employees are not entitled to be supplied with any of the protective equipment I have described earlier. These employees are expected to turn up to work with their own foot wear. They are provided with gloves and a safety vest if need be."

And:

"If a truck is required to enter a court and they can turn the truck around to drive out they would do so. It is my understanding that the drivers would back into a court they could not turn around in. They would normally back to the end of the court or back halfway depending on how long the

court is then unload. If the runners were doing the job properly they would get off the truck and stand alongside on the kerb once the driver indicated he was to reverse. I don't know how the driver would indicate to the runners how they intended to know the truck was to reverse. I have driven this type of vehicle before, when I have done this I have sounded the horn to get the attention of one of the runners, I would then wait till he came up to the door and I would tell him what I expected to do."

Mr. Bourke also said that if the employee was:

*"...a person who I had not worked with before I would tell them to wait by the side on the truck and be visible in the mirrors. If it was someone I had worked with I would still give the warning but I would wait till I could see them in the mirrors. I have used the camera mounted on the rear of the truck which puts a picture on the dashboard I don't like using these because I don't like the depth perception. I am not used to using the camera and I prefer to use the mirrors. I don't know what the general attitude of the other drivers is. Only one of the two compactors is fitted with a camera for reverse view?.there is no instruction either in writing or **verbally to any employee to not ride on the rear of the truck while it is in reverse.** I would not accept any person riding on the rear of a vehicle while in reverse, I have not seen any employees riding on a vehicle in reverse. The drivers have been instructed verbally by me for them not to allow any person to ride on the step when the vehicle is in reverse. I expect the runners to be placed in an area where they can assist the driver to reverse so for example he may not back into a parked vehicle."*

In the briefing process Mr. Bourke did not address the problem of riding on rear of a truck while in reverse. On the issue of riding on the rear of trucks, Bourke's evidence is as follows:

"Q: How was the work system managed so that you avoided a runner jumping on a moving truck? I'm just asking a fairly simple question and you're not answering?"

A: I'm not sure what you're trying to arrive at.

Q: I think you are?

A: Your Worship, we?

Q: How do you manage the work system so that you avoid a runner jumping on a moving truck or off a moving truck?

A: It's an instruction to the driver.

Q: How do you avoid it?

A: Nowadays or prior to the accident?

How did you avoid it then?

Q: If the team leader or myself in our observations when we went around, we would have addressed it with the drivers if we perceived it was dangerous. There was no written procedure?...

Q: Did you design any system to avoid?

A: No, Your Worship, we didn't.

Q: Why not?

A: It hadn't occurred to us to do so.

Q: But it had occurred to you to address the issue of the danger of slips or trips mounting moving trucks?

A: We addressed a lot of things in general terms. To address a specific danger, unless we perceived it as a specific danger, we didn't address it in that manner.

Q: How often did you get reports of runners mounting moving trucks?

A: Rarely. We had - more often we had reports of the drivers taking off before the runner could load the truck?..."

And on the related matter of injury rates and monitoring:

"Q: What were your injury rates in relation to slips and trips associated with mounting the back of a truck?"

A: I'd have to look it up, Your Worship. I have no idea.

Q: You should be able to do that this evening, should you not, or early tomorrow morning?"

A: Yes.

Q: Or have someone do it?"

A: Yes.

Q: I think it's proper, because I'm asking you to do that, have that undertaken this evening or early tomorrow morning. I want the injury rates associated with moving trucks; sprains, strains, cuts, breaks??"

Q: Falls from or slipping from moving trucks, associated with the runners and garbage collection?"

A: I understand."

Mr. Brent McCarthy, Team Leader, City Wide Service Solutions, was involved in training. He stated that:

"...a training session that would last approximately 10 minutes covering the back of the truck, explain the control buttons for the compactor and how to jump off and on the truck in a safe manner. Firstly only jump off and on when the truck is stopped, look out for on coming vehicles and I also give instructions on how they will assist the other runner picking up paper on the opposite side to them, if their side is not busy. I tell them if they require assistance to ask the other runner or vice versa. Then I would tell the experienced guy who would be working with the new guy, to look after him and to keep an eye on him and at the end of the day to report back to me on his ability."

And that Mr. McCarthy:

"...would provide the necessary training on most occasions, however we have had new employees start and the only training provided would be on the job with experienced runner and driver."

Mr. McCarthy stated:

"The first time Glenn worked on a paper truck was a half day, where I picked him up from the city and took him out to Niddrie on a paper recycling truck which consisted of a compactor on the rear of the vehicle. This particular truck I am not sure which one it was, as one truck has a full length step across the rear for the runners to ride on and the other recycling paper truck has two single steps on the rear, as this vehicle was originally designed with two bin lifters on the rear however they were taken off, as they were no need for their use.

Glenn predominately worked on the bottle truck which have their steps on the left side of the truck. The feed back I got from the people he was working with both on bottles paper was he was polite and a good worker. On one occasion I ran with him for a period of 4 hours and I found him to be ok. On occasions the driver and other runners would not give correct feed back on a person due to don't DOB in a mate."

Mr. McCarthy also noted that about 4 months before the incident:

"Rod Bourke the supervisor called all the drivers and runners together before starting work and told them, if any one was found to have alcohol on their breath, or drinking on the job and smoking dope, prior to commencement of work would be instantly dismissed and anyone from Labour Hire would be sent home and Greg Petrie would be notified. I am not sure why Rod raised this issue at the time."

Mr. McCarthy indicated that for a range of different trucks there were different work systems. The job of runner required physical working time of about 4 to 5 hours.

Mr. Gregory Petrie, Administrator, from Labour Hire gave evidence that he visited CityWide in June/July 1998 and observed that company's induction process. He said that he did not go on a run for this particular job. However he had observed runners at a different location. In that instance he noted that a runner was pulled up and counselled for a safety breach.

Mr. Petrie indicated that he did not check work times. However, he considered that as 95 percent of work finished within scheduled time on the day he therefore did not see the need to check.

Mr. Petrie noted that discussion was had with CityWide that on the job training would be done on site. He said that he regularly visited CityWide sites and had received no complaints about the work from Chapman or Tapner. Petrie noted that little experience was required for the work and that it was *'basic labouring'* with *'not a high level of skill required.'* He said that the induction process was geared to the inherent dangers. Petrie indicated that he was *"satisfied the inductions were comprehensive and responsive."*

Expert evidence and Police and WorkCover investigators' reports

Senior Constable David Ackland, Motor Engineer, Major Collision Investigation Unit (Victoria Police) noted that the reversing buzzer on the truck *'worked but intermittently.'* He also said that it was *'not a requirement to have a reversing buzzer on a vehicle...'* in accordance with any Australian Standard. Ackland indicated the when he was at the scene the truck reversed and buzzer worked but intermittently. He also noted that Tapner said that the buzzer sounded at the time of the incident.

Mr. Matthew Payne (a former sergeant of police and the investigating police member), indicated that Chapman was possibly stationed on the rear of the garbage compactor on the driver's side. Payne said that Tapner was extremely upset when he saw him on day of accident. Payne investigated an allegation that the two collectors were mucking around on the back of the truck but could not find anyone who saw the two operators *'mucking around'*. Police canvassed streets and found no witnesses. The skid marks were 2.9 metres in length.

Mr. Payne thought that the *"AIS told"* him *"that the vehicle initially reversed and then went forward?..."* He thought the *"skid marks occurred when vehicle braked when it went forward...?truck facing up the incline?..."*

Mr. Barry Phillips, WorkCover Inspector was of the opinion that Chapman was *"killed when the truck reversed over him."* According to Phillips, Chapman was *"effectively occupying driver's side rear step at the rear of the truck..?"* Also he thought that the incline would require the truck to

have the handbrake on and the skid marks occurred in forward motion by rapid acceleration rather than braking.

On the vehicle safety design issues, Mr. Phillips considered that the surface of the step was not adequate as *"it didn't prevent slips as it was designed to..."* He said that *"it was a slippery step"* and the *"handrails were a smooth painted surface...?paint had worn off and did not give a good grip..."* Phillips considered that whether the conditions were *"wet or not"* the smooth metal surface was not adequate. He also considered that the height of horizontal bar was *"OK for a tall person"* but noted that there was *"not appropriate Australian Standard for the height of bars."*

On the issues of personal protective equipment, Mr. Phillips noted that the sole on the footwear Chapman was wearing *"would not give a good grip on the step"* as the soles were *"quite worn."* Phillips indicated that the runners he had talked to after the incident thought that the issued boots were not appropriate for the work. Chapman used 'Nike' runners for the work and not the issued footwear.

Mr. Phillips also gave evidence that Chapman was *"not trained in the guidelines and did not have the guidelines?..."* He considered that the *"endurance factor makes the job not simple?..."*

Mr. Gerald Fitzpatrick, Senior Field Officer with the Transport and Storage Division of WorkSafe. Fitzpatrick commented on future safety developments:

"My perception would be that by and large a side lifter would be adopted, which will remove the need for a runner at all. Where that cannot be managed, because of physical constraints, we may need to persist with a runner, but we're reducing the number of runners and the number of vehicles required to do those runs. Where a runner is required, what this document is proposing, that they either use a - what is called a low entry vehicle, where the runner can literally hop into the cabin alongside the driver, hence the name low entry, or, if that's not suitable, they will fix or build in a custom-built cabin at the rear side or left-hand side of the vehicle which will allow the runner, again, to be carried in a safer (indistinct). We're not saying it's a 100 per cent, but it's a vast improvement on what exists today."

And as to the history of the original Guidelines:

"I don't know if you want me to go into the history from our side of this. Inasmuch as if we go back to the New South Wales/Victorian joint document, which was released, I think it was in 97, there was some very heated debate by parties at that point in time on the very subject of removing both side steps and rear steps on these vehicles. It was put to WorkCover at that point in time that under no circumstances could industry proceed without rear steps or side steps. And I suppose for want of better words, we may have capitulated on that point. Having gone through the years from that point in time and having been involved more and more with this industry, it's become apparent to me, and a number of other people, that in a lot of areas we can in fact do away with these rear steps and side steps. I go back to a week ago today where we had the final reading of that draft document previously mentioned, and there was still opposition from councils at that point in time to the removal of these steps."

On the development of a 'Chain of Responsibility' applying to Councils and Shires, Mr. Fitzpatrick makes an interesting point:

"Q: So the suggestion about a chain of responsibility process between Labour Hire company, the contracting companies, whatever you like to call it, the principal collection company, being Citywide, and the council, would persist in that regard, if you had a chain of responsibility process very similar to the process adopted in the transport industry?"

A: Well we believe that that chain of responsibility exists in law today and has done since 1985 with the Occupational Health and Safety Act. However - - -

Q: I understand what you say. But what spells it out in terms that it says it's a chain of responsibility?"

A: That would clearly assist the industry as a whole because there is no doubt in my mind, having spoken to both contractors and various councils, that the degree of ignorance, if you like, that exists in that quarter, in this day and age, is still unbelievable. I've had councils put to me, "Why do you think we engage contract labour?" Because they believe that it's no longer their responsibility."

On training (both industry wide and specifically to this case) Mr. Fitzpatrick was somewhat critical:

"When we talk about training, I think that there are huge gaping areas in the area of training. I see young people being virtually fed into the system. They go for an interview, they're given a piece of paper, they're told to present themselves at such-and-such a depot, and they may be given a five minute overview of a vehicle and what the expectation of their task is, and quite frankly, it frightens me.

A: You don't regard that as training?---I don't regard it even as an introduction. I see these people on the road every day and it greatly concerns me.

Q: Yes. Again, if one accepts the evidence of Mr Tapner, the issue may be far more widespread?"

A: I didn't have a lot - a lot of disagreement with what Mr Tapner was saying at all.

Q: So you've seen this yourself, with your own eyes?"

A: Yes. I have, on a number of occasions, seen fit to actually pull vehicles over for the very reason; young men jumping on and off.

Coroner: It did seem to me, I had the impression, it may have been the wrong impression, but I had the impression that Mr Tapner was getting a lot off his chest?---No doubt.

Bottled up for a number of years?"

A: Well I had no difficulty with what he was saying, given the fact that I've viewed it on a number of occasions. You don't have to look too far and too long to see it."

On the issue of the guidance provided by the earlier Guidelines, Mr. Fitzpatrick said:

"Q: And in relation to rear steps and grab rails, the recommendations or the guidelines still contemplated that there could be two rear steps, 400 by 300?"

A: I think in the 2000 edition, the graphics indicate a single step across the rear of that vehicle.

Q: Yes. But the words and the paragraphs remain virtually unaltered and they refer throughout to "steps" plural? I'm at 8.3?---The word is "steps". "Rear steps should have non-slip surface and be at least 400 by 300 so a person can stand while holding suitable grab rail." In the third dot point, "Steps should be mounted 500 mills above the ground at acceptable angle from the vehicle"?"

A: That's correct.

Q: In fact paragraph (a) says, "Where the risk is justified, the most appropriate position for steps to carry off-siders around the refuse collection area is at the rear of the vehicle to minimise the danger of being struck by passing traffic. Side steps are not acceptable"?"

A: Correct.

Q: For the sake of completeness, the guidelines also say, and they had said in 1987, that, "The vehicle should not be driven in reverse while the off-siders are riding on the rear steps"?

A: Correct.

Q: That's what's referred to in the business as an administrative control, isn't it?

A: That's correct.

Q: I think in your evidence that you've given to His Worship today you've said that you'd accept that there are some circumstances where it's not possible to use side loading vehicles?

A: That's true.

Q: Indeed, in a street like the street in question, Escalona Street, if you were to use a side loading vehicle, given the nature of the street, it would be necessary to firstly go up the street collecting the refuse, if you were using a side loader, collecting the refuse on the left, then there'd have to be a backing process until there was an opportunity to turn the truck somewhere in that street, and then another backing process to go up the street to collect the rubbish on the other side. That's right, isn't it?

A: I couldn't comment on the street in question, I don't know it.

Q: Well in streets where, essentially, there's only space for the truck to go up in one direction ---?

A: Where you've got that situation prevailing, it would depend on just how demanding the council is inasmuch as those streets do exist where residents, or tenants as the case may be, will all take their bins to one side of the street.

Q: That would be another possible administrative control to deal with that issue, if you can get people to do that. The councils are resistant to that, aren't they?

A: Some are.

Q: And where that can't be done, it does require two lots of backing, doesn't it?

A: It probably would."

Clearly, Mr Fitzpatrick, was of the view that there should not be any outside riding as the runners would *"be in the cabin or within a specifically designed cabin on the near side of the vehicle."*

Mr. Fitzpatrick noted that a very careful risk assessment and management process was *"one of the key areas"* that *"we seem to have glossed over"* and where a situation applies *"where a vehicle does need to double-back down, if we can use that terminology, there needs to be an in-depth hazard (indistinct) Risk Assessment carried out on that process."*

Dr. John Culvenor, Ergonomist and Engineer, prepared two reports on the incident. The reports detailed injury rates and examined the various work practices and fall risks. Culvenor also made a number of recommendations on safety improvements.

Dr. Culvenor considered that there was a reasonable or even great danger of manual handling risk, possibility of falls, danger of being struck by a vehicle. He considered that there needs to be a change to the system of work. But, Culvenor considered, if the existing work practice of runners were to persist then a great reliance on perfect behaviour was needed by those who are at risk.

The Doctor stated:

"?...essentially the job as it stands is one of reasonable or even great danger..?. The dangers arise from the manual handling risk. That even if the job was conducted as set out as intended, in other words, pick up the paper from the road and put it in the truck, that the performance of these duties would involve a great risk of a manual handling injury eventually. Secondly, there is a great possibility of falls from running on various surfaces, from bitumen to grass, jumping over kerbs, avoiding road signs, parked cars, and of course getting off and on and perhaps jumping

between the steps. And the third danger, and the most significant although not necessarily the most probable one, is the danger of being struck by a vehicle, either a passing one or, as eventuated, the truck itself. So we have a job that essentially involves a great level of danger and if we want to reduce that possibility then a change to that entire system would be the way that I would prefer it had been done. But if it was not done?..."

If there was no change to the entire system of work and *"if we were to persist with...?essentially, this system of collecting the material manually, then in order to make the system as safe as possible there is a very great reliance on perfect behaviour, if you like, of those who are at risk. So there must be safe - I mean I'm hesitant to use the word "safe", but safe work methods, safe as possible perhaps work methods devised and the people who need to do these need to be trained in them."*

It is noted that, during Dr. Culvenor's evidence counsel confirmed that in this case, *"induction takes up to half an hour or so."* Culvenor was critical of the training and regarded as being *'minimal'*.

The following questions and answers are apposite:

"Q: Doctor, just in terms of your first report dated 13 August, you describe the nature of the duties involved as follows, and this is at page 4 of your report, "The runners job consisted of running behind the truck, lifting the bundles of paper from the roadside, carrying these to the rear of the truck and throwing the paper into the truck. The work also required the operation of a paper contractor built into the truck." That, essentially, was the full duties of this position as you understood it?

A: Yes.

Q: You would agree, would you, Doctor, that the position itself is a very basic position in terms of what's required, the duties involved?

A: In terms of achieving the objectives of getting paper from the roadside into the truck, yes, there was little to it.

Q: In terms of those duties, and this is at page 8 of your report, and I'm still speaking of the first report, you refer to the fact that "Training appears to have been minimal. A brief induction at some time with an experienced runner and driver seems to have been the usual process." You refer to statements of McCarthy, Wolowitski and Bonnett. Did you also, as part of your report, and I noted in your list of attachments to your report you looked at the statement of Mr Petrie in terms of the issue of training?

A: I can't remember the statement or its contents, but if it's listed then yes.

Q: In terms of the situation, would you agree, Doctor, you understand that in terms of this situation, and I'll go to your second report shortly, but you understood in terms of the situation involved in the circumstances of this matter, that there were two companies involved, there was the Labour Hire company who is, if I could put it this way, placed Mr Chapman with the host employer, Citywide Services. You understood that to be the position?

A: Yes.

Q: And you understood that in terms of that situation, that there was further training, if you like, conducted by Citywide?

A: Well that training, though, as I said, seems to have been minimal.

Q: Yes?

A: Yes.

Q: But in terms of when you say minimal, we are speaking about a position which was minimal in the duties involved, was it not?

A: Well in terms of getting the paper into the truck, that's not overly complex. However, if we're attempting to do that safely when the job in itself is one of reasonable danger, perhaps even great danger, then it would be in that area where the training would perhaps be needed.

Coroner: So what are you suggesting to me, Dr Culvenor? Are you suggesting that there should be that scenario training to alert employees of potential areas of risk in (indistinct)? Should there be training relating to how you handle wet weather or unusual traffic situations? Should there be training involved in identifying hazards that are unusual or odd, and how you manage your way around those?

A: I think - - -

Q: Should there be training in relation to the issues associated with sharps? Should there be training in relation to all of these sort of potential scenarios and risks that you might be faced with? Is that what you're saying to me or are you saying something different?

A: I think, sir, there should be - there should be training in all that and more training in the normal circumstances of the job. The job - - -

Q: But should there be training that recognises issues such as understanding when you're getting fatigued and what to do about it? Should there be training relating to what you're doing with your home life and your recreational activities and how they may affect your work performance and your safety at work? Should there be all these sorts of things, or is that all too complex?

A: I don't think I'd be prepared, sir, to go quite as far as your last contention, but what I'm saying here is that essentially the job as it stands is one of reasonable or even great danger.

Q: Where are the dangers?

A: The dangers arise from the manual handling risk. That even if the job was conducted as set out as intended, in other words, pick up the paper from the road and put it in the truck, that the performance of these duties would involve a great risk of a manual handling injury eventually. Secondly, there is a great possibility of falls from running on various surfaces, from bitumen to grass, jumping over kerbs, avoiding road signs, parked cars, and of course getting off and on and perhaps jumping between the steps. And the third danger, and the most significant although not necessarily the most probable one, is the danger of being struck by a vehicle, either a passing one or, as eventuated, the truck itself. So we have a job that essentially involves a great level of danger and if we want to reduce that possibility then a change to that entire system would be the way that I would prefer it had been done. But if it was not done?..."

Dr. Culvenor thought that the thrust of the contractual documents is for the host to make the job safe and the labour hire firm to make sure the job is safe and that it supplies suitable contractors.

Dr. Culvenor considered that if "we want to do it safely then there is a greater requirement for training." Training should be on the job and the Council could influence what could happen. Under the 'Chain of Responsibility' a council could have imposed as a requirement of tender that the material should be collected mechanically. Thus "every party in the contractual chain is "doing what they can in arrangement of very broad work system." Basically Culvenor was of the view that the introduction of a driver only system or a side loading system would be needed to improve safety.

There was also some discussion on the nature of the Council's tender documentation and the specifications for the work. This would have effected the methodology used by the contractor. Dr. Culvenor was asked the following questions:

"Q: That's the one, yes. Your first report. Now, firstly you've said that, "The tender invitation did not restrict collection of paper to a manual collection". Do you recall what you based that on?

A: Based on the invitation to tender.

Q: Did you have a copy of the contract itself?

A: I had a copy of the items listed on page 16. MST1 Copy of Contract for the City of Moonee Valley.

A: Yes.

Q: Because I'm looking at a copy of that contract, Dr Culvenor. I suspect we'll be able to clarify this pretty quickly, but Clause 8.1.1 requires that, "The contractor shall collect recyclables from receptacles placed at the kerbside or as directed by the superintendent. All residential households will have been provided with 60 litre recycling crates for their use in putting out their recyclables. Paper and cardboard will be placed at the kerbside by the residents, however the contractor shall also collect recyclables which may have been placed in bottle bags, cardboard boxes, plastic bags and other containers which the contractor can reasonably be expected to determine that these materials are recyclables." Did you look at the contract?

A: Yes.

Q: It does seem there to require that the contractor who's doing the collecting basically works in with the council which provides receptacles to residents. That's my understanding?

A: That would be my reading too of the clause that you've just read out, although - and I can't remember specifically what part of the contract that was, but I think it - from memory that the manual collection was, yes, part of the eventual contract but not - but the invitation to tender for this work was not restricted to a manual collection. Eventually that was the proposal that was adopted, I believe.

Q: You're aware, aren't you, that the 60 litre crates that are referred to here, they're the brown crates that we see commonly in many municipalities for the collection of paper and recyclable material?

A: I couldn't say.

Q: Certainly you're not aware that the council involved in this case was providing bins for recyclables? Wheelie bins?

A: No. No, as far as I can remember the tender invitation was for the collection of the materials, but the methods were not specified in the invitation.

Q: The contractors are bound, to some extent, aren't they, by the infrastructure provided by the council's aren't they?

A: Well I don't remember it being bound that way in the invitation, that's all I'm saying.

So if the contract provides as I've described, it would seem that at least by the contract stage that had changed?

A: Yes. The contract did outline the collection methods.

Q: Perhaps you're aware or perhaps you won't be, but basically the cost of the receptacles is something that's decided on by the councils and fixed in accordance with the rate structure, that's the basic method, isn't it?

A: Well I think once - the council invited people to submit for the collection of this material, I assume that who would provide what facilities would be part of that - part of that negotiation.

Q: And as we've discussed, it would appear that by the time of the contract that the position had been taken to use 60 litre receptacles for the collection of the paper?

A: Well excuse me. I didn't - I reviewed my own report but not all the - - -

Q: Documentation?

A: All the brief. But I believe the paper was collected in cardboard boxes, bundles and the like. I think it was the recyclable material other than paper that was in bins. But both of them were collected from the ground."

Post-mortem report and toxicology

Dr. Malcolm Dodd, Forensic Pathologist, undertook an autopsy on the body of Chapman and found that death occurred as a result of blunt head injuries. Following toxicology testing, Dodd commented:

"Cannabinoids and metabolites of cannabis were detected in both blood and urine. The presence of cannabinoids in blood may indicate that the administration of this drug had occurred several days previously."

It is noted that Mr. Tapner gave evidence he and Chapman consumed cannabis on the Saturday night. The driver indicated that Chapman had glassy eyes on the morning of the incident. Tapner said that his workmate was not effected.

Professor Olaf Drummer, Toxicologist, Victorian Institute of Forensic Medicine, gave an opinion that, although the marker was present in Chapman's system, as THC was not detectable in Chapman's blood it was entirely possible that there was *"no direct adverse effect from the cannabis he consumed"* on the previous Saturday night. Drummer said that glassy (or reddened) eyes does persist for some time after consumption. He also acknowledged that the background reading detected (800) was a very high level. With the high background levels there may be residual effects but with a long term user there will be a developed tolerance.

Submissions

Written submissions were received from the parties. The following is a summary of some of the main points from each of the submissions.

CityWide Solutions

Counsel for CityWide Solutions submitted:

"The identification of the appropriate standards of proof and satisfaction is important, a matter which at all times must be borne in mind by any coroner who has to consider findings of contribution which must not be lightly made and only be made when there has been established the necessary degree of satisfaction of mind."¹

That it is 'particularly important in this case' where:

"at a number of points in the evidence, the Coroner commented that he was faced with conflicts in the evidence, particularly the evidence of Mr Rozmarakis and Mr Tapner regarding 'mucking around?'. There was also a conflict between the evidence of Mr Tapner, on the one hand and Mr Bourke (Citywide) and Mr Petrie (Labour Hire) regarding their monitoring of work practices at Citywide. Mr Bourke testified that he and his deputy were on the road on a daily basis observing the work practices of the crews on their rounds. He said it was not possible to empty a bin into a truck if it was moving backwards, that he would have stopped any person he saw getting on and off moving trucks, and while he had reason to correct practices of crews from time to time, getting on and off moving trucks was not the practice. Mr Peetrie of Labour Hire corroborated these observations from his monitoring of Labour Hire employees working for Citywide."

¹ *Hallenstein* [1996] 2 VR 1 at 19.23-.36.

And:

"Mr Fitzgerald from the VWA gave the general evidence of his observations of practices in the industry but not of any specific company, much less Citywide. Significantly, although he said that he had spoken to some crews, he did not say that he had issued a Prohibition Notice or laid charges against any company in relation to these observations. Given this conflict, there could not be the reasonable satisfaction demanded by the cases in relation to the mucking around on this occasion, or on the question of industry practices, or practices at Citywide specifically."

Counsel, whilst acknowledging that there was a duty to take "reasonable care for the safety of its employees and sub-contractors, including Mr Chapman", submitted that in:

"the case of Citywide and its employees, the analogy to the position of professionals and the significant consequences of a finding of contribution against a company whose business is recycling that the standard of care be set at a realistic level, and a comfortable degree of satisfaction that had that standard of care been achieved, the death would not have occurred. There can be no room for speculation about these questions under the principles established by the authorities."

And said that the:

"question of whether a company or person contributed to a death is quite different from a finding that a person has breached the Occupational Health and Safety Act. Failure to provide a system of work which is as safe as practicable is the sole requirement under the Occupational Health and Safety Act. The Act is stringent and it is breached if any aspect of the system of work is not as safe as practicable. There is no need for the prosecution to prove that a person was injured. Even when a person is injured, the defendant may have committed a breach but that breach may not have been causally related to the injury at all, or it may have been one of the background circumstances, rather than a sufficiently substantial cause."

Citywide pointed to industry standards and explained that there are "no relevant Australian Standards". Counsel say that:

"The relevant standards are the Guidelines issued by the Victorian and NSW Workcover Authorities in 1997 and revised in 2000. It should be noted that there had been no deaths, or evidence of near misses similar to this accident prior to 1997. (Calvenor Reports and Appendices) The evidence of injuries at the company was that there were none in the paper recycling division, and the four others were minor."

And:

"Although the risk of a death was apparent to everyone associated with the industry over a long period if safety measures were not followed – including contractors, employees, unions, Councils and the Workcover Authorities – all of them believed that the risk was properly covered by the measures and systems in place, including the VWA Guidelines. There is no evidence that this method of collection has been banned anywhere. Even two year after this incident, the revised Guidelines accepted the pre-existing system of work on rear loading vehicles with two step trucks, with minor modifications. After this accident, an Improvement Notice was issued in relation to the rear beeper, but no other Improvement or Prohibition Notice was issued. Mr Phillips said that to his knowledge, no other notices or prosecutions had occurred in relation to this system of work on any company. (T 52, 64-5) The practice has continued to the present, although the

forthcoming report in 2003, almost 5 years after the accident, will recommend it be restricted in the future. This is opposed by some Councils, according to Mr Fitzpatrick."

That, significantly:

- *Citywide complied with and exceeded both the 1997 and 2000 Guidelines, especially in respect of the TV Monitor;*
- *Citywide had taken over the safety systems operated previously by the City of Melbourne in 1995 and had substantially completed a major overhaul of those systems prior to the date of the accident;*
- *It embarked on and achieved the first level of the SafetyMAP accreditation process prior to the accident. It achieved Transition Level in 2000. That process requires external audit and in the course of achieving that accreditation, had engaged an external consultant to assist in the development of the system;*
- *It had issued its Safety Manual in July 1998;*
- *It had received the NSW/Vic VWA Guidelines and was satisfied that it achieved or exceeded those Guidelines;*
- *The JSA formalised in November 1998 documented previous practice;*
- *It had purchased new equipment, especially new trucks in 1997 and 1998.*

On the issue of 'Design' CityWide submitted:

- *The truck was 12 months old and Citywide was entitled to rely on the manufacturer's equipment.*
- *In particular, in relation to the steps, the steps complied with the configuration and measurements contained in the Guidelines. In relation to slip resistant materials, the Guidelines offered, and still offer, no assistance. The steps were made of a material supplied by a specialist manufacturer in 1997 which was designed for the purpose and believed by the company to be the latest standard. The company had no reason from its experience to doubt the quality of that material. The issues in relation to appropriate surfaces are not straightforward because waste material and mud can get onto the surface. The search for the most appropriate material has continued since the accident and is by no means a straightforward issue.*
- *The TV monitor exceeded the Guidelines. Indeed, the absence of a specification for a monitor in the Guidelines is a puzzling omission. Messrs Phillips and Bourke both checked the monitor on the day of the accident and found it gave a good view of the rear of the truck. If the perceived risk of serious injury was high, one would expect the 2000 Guidelines at least to have required a TV monitor.*
- *The truck was equipped with functioning warning buzzers and reversing beeper. The beeper was faulty but was working at the time of the accident. The company had appropriate checklists for equipment which had to be completed daily, and had maintenance facilities to repair defects. Drivers were aware that they could and did take their trucks to a nearby workshop for minor repairs.*

On the issue of 'Training' CityWide submitted:

"All Labour Hire employees were provided with an Induction Handbook, and general training by Labour Hire.

New employees went through training by Citywide which had taken over the safety systems operated previously by the Melbourne City Council. This training was appropriate to the particular job and their level of previous experience prior to commencement. (Mr Bourke's evidence) Mr Chapman had done this type of work for Darebin Council for a few months prior to commencing with Citywide. (Mr Petrie's evidence)

The Citywide training was administered by either Mr Bourke or Mr McCarthy. Mr McCarthy did the majority of the training. He had been trained as a trainer.

Mr McCarthy's statement says that he had taken Mr Chapman for a half a day on the paper run and that he had worked directly with Mr Chapman on one day for 4 hours and found him to be OK. (p2)

New workers were then placed with an experienced crew who were required to supervise."

On the surrounding facts of the incident CityWide submitted that:

"Both Mr Bourke (evidence and statements) and Mr McCarthy (statement) testify that fillers and drivers were trained not to get on or off moving vehicles. In addition, Mr Bourke's evidence was that he held a meeting prior to the accident regarding fillers directing reversing trucks. Mr Rozmarakis recollected that meeting. Mr Tapner did not. What occurred on this day contradicted Mr Bourke's specific instruction regarding reversing. Mr Rozmarakis was in a position of authority and should have enforced the company's instruction.

Both Labour Hire (Mr Petrie) and Citywide (Mr McCarthy's statement) made complaints procedures known to employees. The workforce was unionised. None of the complaints by Mr Tapner about failure to take breaks or undue pressure was made to Mr Petrie or to Mr Bourke. The tachographs taken by Mr Bourke contradict the claim by Mr Tapner that crews were not taking their breaks. The evidence of Mr Bourke and Mr Petrie, based on the scoping of the original work, time sheets and clock offs, and general experience testify that 95% of jobs were completed within the 8 hour shift, that two trucks were teamed to allow for uneven distribution of work and that the company paid overtime where required. In his Police Statement (p4), Mr Rozmarakis said that he was familiar with the run and that it normally took 6-7 hours.

Citywide does not benefit from the job and finish culture in the industry. It sees that the entrenched practice provides an incentive to go faster than necessary, but faces significant pressures against removing the practice. The availability of overtime supplies a countervailing incentive and is freely available.

Citywide accepts that some employees may be reticent to complain and may perceive that complaints will disadvantage them. It points out that unfair dismissal laws provide a countervailing pressure but accepts that the perception is a problem. It is open to recommendations about how to deal with the problem of perception.

Fatigue is a consideration in the job generally. Because the accident occurred at 9.30 am, and because Mr Chapman's work in Eldorado St was light, it is not a likely factor in this accident. Citywide accepts the Coroner's suggestion that there be an investigation of fatigue as a factor in this work.

Nothing in the system or design required a filler to jump from one step to another. The distance between these steps is some 6 feet. Mr Bourke said he did not believe it was possible and neither he nor Mr McCarthy who was 27 at the time had been able to do it. It was clearly not something he had seen nor expected as possibility. The fact that the collection process required collection on one side of the street rebuts the suggestion that this was a normal, much less a required process. Further, as the example of the collection in this street demonstrates, there was no need to collect any material during the reversing phase because it had all been collected on the way up the street."

On the issue of 'mucking around' CityWide submitted:

"There is a clear conflict in the evidence about 'mucking around' between Mr Rozmarakis and Mr Tapner. Mr Rozmarakis immediately gave this account of events after the accident to Mr Irvine. (Notes 12/10/98 and evidence) The impact of the rear driver's side wheels and position of Mr Chapman's body on the road - to the right of the centre of the truck while not conclusive - is more consistent with Mr Rozmarakis account than Mr Tapner's account of a strong jump towards the passenger's side. Both Mr Rozmarakis and Mr Tapner are profoundly affected by this accident and have strong psychological reasons for wishing to minimise their role in the death. This is perfectly understandable but has to be weighed in choosing between their accounts. Given the state of the evidence, it is not possible to make that choice with the requisite degree of certainty.

Mr Tapner, for example, sought to resile from his clear Police and VWA statements saying that the beeper was operating. He also minimised the extent of Mr Chapman's marijuana usage, describing it as light. Professor Drummer testified that he was a medium to heavy user and that his metabolite reading of 820 ng/mL for urine was some 8 times higher than the reading for a first time user of less than 100ng/mL. Mr Tapner also testified that he and Mr Chapman knew that marijuana usage was dangerous in the workplace. The notes of Mr Smith state that Mr Chapman had been affected by marijuana at work on a previous occasion. (cf the evidence of Mr Tapner, that there was 'no way known that we smoked before work because for one simple fact its just way too early before work and I know that it is a danger factor.')

Mr Tapner's account of his movements immediately before the accident leaves out of the account how the 3 bundles of paper he had been carrying got into the truck. He must have put them in the truck. Mr Rozmarakis repeats in his police statement (p5 and 8) that he had not commenced reversing when Mr Tapner returned to the back of the truck. This tends to rebut Mr Tapner's account that the truck was already reversing when he returned to it.

Mr Tapner said in evidence that as he got back to the truck, that Mr Chapman was either already off his step, or that his foot reached the step just as Mr Chapman jumped. If that is so, Mr Chapman must still have had the bundles of papers in his hands. It is not plausible to think that he went around Mr Chapman on the step to place the papers in the hopper before he got up onto the step. If Mr Chapman was on the step, it is not plausible to think that Mr Tapner could have thrown the 3 bundles of paper around or over him. He did not have time to place the bundles of paper in the hopper before Mr Chapman fell. It is not plausible to think that he placed the papers in the hopper after he saw Mr Chapman fall.

Mr Rozmarakis in his Police Statement (p5) said that Mr Tapner was already back on his plate when Mr Chapman moved across to the driver's side plate. He had seen Mr Chapman in his left mirror on the passenger side step. Then Mr Chapman crossed and he saw the two of them in his right mirror start mucking around. Mr Tapner then went to footpath on the right of the truck, again tending to suggest that Mr Chapman had gone under the driver's side wheels.

Mr Rozmarakis' evidence is unsatisfactory in a number of respects. However, he gave an immediate account of mucking around and he has been consistent with that account. His account is also supported to some extent by the physical evidence. Further, there is nothing in the normal one-sided system of work which would require fillers to cross from one side to the other or any established practice of doing so, much less jumping from step to step. Mr Tapner acknowledges that he had not requested assistance.

Given the unsatisfactory state of the evidence, it would be too speculative to conclude that that there was no 'mucking around'. Certainly the Coroner could not be 'comfortably satisfied' of that conclusion, or that the system of work in any way required Mr Chapman to jump 6 feet between the steps while the truck was moving. Indeed as Mr Rozmarakis acknowledges (Police Statement p8), 'runners are not supposed to go from one plate to the other when the truck is moving because of the gap between plates.' I note that Mr Rozmarakis uses the word 'go' and not 'jump'. Despite his assertion, this is consistent with the training instruction that fillers were not to get on and off a moving vehicle. If Mr Rozmarakis saw this occur, he should have stopped the vehicle when it occurred, told the fillers not to do it and reported the matter to his employer, as he had done with numerous other issues in the workplace."

Citywide explained its role in 'Supervision' as follows:

- The supervision of workers away from the workplace is a significant problem.*
- Citywide attacked the problem by establishing a chain of command. It broke workgroups into teams with a Contract Team Leader (Mr Bourke) and his Team Leader Deputy (Mr McCarthy). In addition, the driver was in charge of the crew.*
- Messrs Bourke and McCarthy assigned the teams. They trained and supervised the crews. They gave morning briefings to the teams on the various requirements of the work and any issues that had arisen (eg a truck backing into a taxi, alcohol and drug policy). They both had experience as drivers and fillers, and on occasions themselves worked with the crews as drivers or fillers.*
- On a daily basis, Mr Bourke or Mr McCarthy would observe the trucks as they drove around the various runs – without forewarning – in the course of their duties. Mr Bourke testified that from time to time he would have to correct a work practice, but in general the training was followed. He said he had never seen fillers riding on the back of a reversing truck and that if he had he would have corrected it. Mr Petrie confirmed Mr Bourke's observation with respect to Citywide trucks. Mr Fitzpatrick generally agreed with Mr Tapner, although he was not specific in terms either of (i) the practices he had observed, or the company or companies concerned. He certainly did not identify Citywide as one of the companies. It does not appear that any of these observations led him to instigate a prosecution or issue a Notice.*

In conclusion, CityWide submitted:

"The general practices of recycling followed by Citywide in this case have been practised all over Australia for many years. Citywide complied with or exceeded the Guidelines applicable at the time of the accident, the re-issued Guidelines of 2000.

It also followed general good practice with regard to safety systems, training and supervision.

In the circumstances, it cannot be comfortably concluded that the company breached the standards which a reasonable recycling company would have achieved."

Submissions from Labour Hire

Labour Hire, in its submission, explained that:

"Mr. Glenn Chapman's job as a runner consisted of running behind a truck lifting bundles of paper from the roadside, carrying these to the rear of the truck and throwing the paper into the truck. (See Ex 8 – Dr Culvenor's report dated 13 August 2001 at p.4.)

It was not a job that required previous experience or qualifications. Both Mr. Rosmarakis and Mr. Tapner gave evidence as to the ease with which they learnt the job. Mr. Tapner stated that he learnt a runner's duties in less than five minutes and they were pretty straight forward and basic.

Mr. Petrie gave evidence that to fulfil the duties of a runner very little experience is required. He gave evidence that when it comes to training it is conducted at the host employer's work site due to the fact that that is where the equipment that Labour Hire employees will use is kept.

Mr. Petrie gave evidence that he interviewed Mr. Chapman at the end of July 1998 and Mr. Chapman commenced work on 25 August 1998. Mr. Petrie provided Mr. Chapman with Labour Hire's Health and Safety Handbook (Ex 24) and went through the handbook with Mr. Chapman. The Handbook contains specific instructions in clause 43 that alighting or climbing on to moving equipment is not permitted. Mr. Tapner stated in his evidence that he did have to be told in a training course not to jump on and off a reversing truck because there is an obvious risk involved in such an activity.

Mr. Petrie gave evidence that in May 1998 he approached Citywide because he was aware they were going through a safety accreditation process and Labour Hire at that time had quite a high number of employees within the Citywide organisation.

As a result of discussions between Mr. Petrie and Mr. Joe Walukiewicz of Citywide, it was agreed that on-site inductions and specific job training would be provided to Labour Hire employees by Citywide. Mr. Petrie stated that he visited on a number of occasions various Citywide work sites where Labour Hire employees were working. He personally observed the induction process conducted by Citywide for Labour Hire employees.

Mr. Petrie gave evidence that he would visit all sites where Labour Hire employees worked on a fortnightly basis and it wasn't unusual that he may visit specific Citywide sites three or four times in the one fortnight."

And:

"Mr. Petrie gave evidence that Labour Hire had provided Mr. Chapman with safety equipment, which amongst other items included safety footwear. Mr. Petrie's viva voce evidence was consistent with his written statement dated 13 October 1998 (Ex. 22) and with his additional written statement taken by Mr. Phillips (Ex. 23)."

Labour Hire made the point that Dr. Culvenor in his report made the following observation:

"As long as runners are to be used to collect paper, serious risks remain. Safety is difficult to ensure in these circumstances. There are so many possibilities for serious traumatic injury to occur as the result of a simple mistake – a slip from a step – a moment of forgetfulness stepping from behind the truck into traffic – and so on."

And that it submitted that:

"...Dr. Culvenor's observations are particularly apposite in the circumstances of this case. It is clear from the evidence of both Mr. Rosmarakis and Mr. Tapner that this accident took place in a matter of seconds not minutes?."

That the Court is faced with *"the conflicting evidence of Mr. Rosmarakis and Mr. Tapner as to the events leading up to Mr. Chapman's death."* That:

"Mr. Rosmarakis gave evidence that Mr. Chapman "seemed funny"? on the morning of 12 October 1998, that he seemed ?"a bit stoned?". Mr. Tapner gave evidence that Mr. Chapman was a good mate and they would occasionally engage in smoking marijuana on a Tuesday, Thursday after footy training and on a Saturday after a function. Your Worship has before him toxicology reports dated 18 December 1998 from Mr. Phelan (Ex 14) and supplementary report dated 11 September 2002 from Senior Toxicologist Ms. Kerryn Crump (Ex 20). Your Worship also has an opinion from Professor Olaf H. Drummond dated 7 April 2003 (Ex 21).

Mr. Rosmarakis stated in his evidence that shortly prior to the accident he had reason to speak with Mr. Chapman to tell him to stop mucking around.

Mr. Rosmarakis in his Police statement dated 28 October 1998 (Ex. 10) and his statement dated 14 October 1998 taken by Mr. Phillips (Ex 11) described how he saw both Justin and Mr. Chapman together on the right side step leaning over and making fun at him. He swore at them and told them they were ?fucking idiots? (Ex 10, P6). Mr. Rosmarakis, when giving evidence before His Worship did not materially deviate from his recollection of the events leading up to Mr. Chapman's death. His evidence was consistent with his written statements as to what Mr. Tapner and Mr. Chapman were doing immediately before the accident.

Mr. Rosmarakis' version of events is supported by the contemporaneous statement taken from Mr. Rodney Irving, Ambulance Officer on 12th October 1998. Mr. Irving's notes in part state as follows:

? "P+ advised he looked in side mirror, and saw the two attendants who were working on the truck, 'fooling around' having a play fight".?

Mr. Tapner's version of events is that he is adamant that he and Mr. Chapman were not mucking around. Mr. Tapner stated in his evidence that:

? "he did give me that glare and it did give me that uncomfortable feeling and I just felt something was wrong and that's when I ran into the house and then I seen the ambulance and as I was running off I seen the truck on the other side of him and I just had to keep running." "

Labour Hire argued that:

"...the flight of Mr. Tapner is just as consistent with someone who may feel some responsibility for the accident. One can understand the shock Mr. Tapner may have had at seeing his friend under the truck but that does not explain why, after the ambulance had arrived, that he took flight. It is more plausible that he felt sick at the notion that somehow because he had been mucking around that he may have caused the tragedy or at least played some role in it."

And that as to the immediate events prior to the accident, *"Mr. Rosmarakis' version of events is to be preferred to that of Mr. Tapner for the aforementioned reasons."*

On the issue of work pressures on runners, Labour Hire noted that:

"Your Worship during the course of the inquest alluded to the fact that should he accept Mr. Tapner's evidence in relation to work pressures on runners to complete their round in time there would be a problem for Citywide and Labour Hire.

It is submitted Mr. Tapner's evidence as to the work culture is inconsistent with that of Mr. Bourke and Mr. Rosmarakis of Citywide and Mr. Petrie of Labour Hire.

Mr. Tapner's statement to Police, dated 12 October 1998 (Ex 12) makes no reference to work pressures relating to the size of the round and the time to complete it in. Mr. Tapner's statement to Mr. Barry Phillips dated 18 October 1998 (Ex 13) also fails to make reference to work pressures relating to time needed to complete a round.

Mr. Tapner's statement to Police dated 2 November 1998 (Ex 14) also fails to make reference to time pressures. Mr. Tapner attributes his leg injury to the truck's design and not because he was under time pressure to get his job done. Mr. Tapner in response to a question that Mr. Rosmarakis had said the round takes something like five to six hours to complete did not disagree with that view.

Mr. Rosmarakis gave evidence that he would always take smoko and lunch breaks.

Mr. Bourke gave evidence that there was no benefit to Citywide in crews finishing early because Citywide was still obliged to pay them the full eight hours for their shift. Mr. Bourke gave evidence that Citywide tried to change this industry practice but was met with opposition from the employees and their Union.

Mr. Petrie gave evidence that Mr. Tapner had not raised with him concerns over time pressures to finish a round.

Mr. Petrie gave evidence that 95% of rounds were completed within time but Labour Hire had no input into Citywide contract tender negotiations for rounds. Mr. Petrie stated that Labour Hire was not involved in determining the size of rounds and equipment to be used.

It is submitted that the evidence of Mr. Bourke, Mr. Rosmarakis and Mr. Petrie is to be preferred to that of Mr. Tapner over the question of work practices. It is submitted that it is not open on the evidence to make a finding that this accident was caused through runners having to meet unrealistic time schedules to complete their round and that it was time pressures that forced runners to cut corners by running and jumping on moving vehicles. Mr. Petrie and Mr. Bourke both gave evidence they would not condone such a practice if viewed by them in their spot checks on crews."

In conclusion, Labour Hire submitted:

"Labour Hire was at the time of Mr. Chapman's death his employer by legal definition, however, Labour Hire at the time of death did not have control over Mr. Chapman's duties or of the equipment that he was required to work with. Mr. Chapman was working under the supervision of Mr. Rosmarakis, a Citywide employee. Mr. Chapman was working on a truck supplied and maintained by Citywide.

The truck in question exceeded the standard guidelines jointly developed by the Victorian WorkCover Authority and the New South Wales WorkCover Authority (Ex GF1 to Mr. Fitzpatrick's statement dated 18th December 1998 – Ex 26). The truck was fitted with a TV monitoring system, which exceeded the requirements set out in s. 8 of the guidelines.

Your Worship has the uncontested evidence of Mr. Petrie as to what measures he took to ensure Labour Hire employees, when placed with Citywide, did receive appropriate induction training. He personally sat in on an induction training program to satisfy himself as to the training being given to Labour Hire employees placed with Citywide. Mr. Petrie gave evidence that he did, on a regular basis, visit Citywide sites and observe Labour Hire staff.

Mr. Petrie did arrange for Labour Hire employees including Mr. Chapman to be supplied with safety equipment. Mr. Petrie provided Mr. Chapman with the Labour Hire safety handbook (Ex 29) and took him through the contents of the handbook.

It is submitted, based on the Briginshaw standard, there should be no finding against Labour Hire that it has contributed to the death of Mr. Glenn Chapman on 12th October 1998. Whilst there may be some criticism of Labour Hire and/or specific individuals, it would be wrong to elevate such criticism to a finding of contribution.

It is submitted that it cannot be said that additional training and supervision would have prevented this accident when one looks at the circumstances of this case. We have two young men who are very good friends, who would see each other every day of the week and smoked marijuana together. On the morning of the 12 October 1998 Mr. Tapner requested Mr. Chapman be allowed to work with him on the same round. Mr. Tapner gave evidence that it was possible on the Saturday he and Mr. Chapman could have had a function and they might have had a joint or two. Mr. Rosmarakis gave evidence that he thought Mr. Chapman seemed a bit stoned and he had reason to speak to Mr. Chapman prior to the accident to stop fooling around. We have an accident that took place in a matter of seconds and Mr. Tapner who after seeing the Ambulance arrive at the scene takes flight.

It cannot be said a spotter and a single full-length step (rather than two single steps) would have prevented this accident. A spotter could not provide a better view of the back of the truck and the rear steps as provided by the T.V. video system and a person can just as easily slip from a single step. Mr. Chapman committed a spontaneous act when he decided to move from Mr. Tapner's step back to his own step with tragic consequences however one cannot ignore that he made that decision and it cannot be said that additional training and supervision would have prevented this accident.

It is submitted Labour Hire through Mr. Petrie in his professional capacity as Administrator did take appropriate and reasonable steps to satisfy himself there was no impressionable risk to

runners based on the occupational health and safety processes and work practices and system that Citywide had in place as at May 1998."

Family Submissions

Mrs. Chapman, Glenn's mother, provided a submission to the Coroner highlighting some of the trauma she and her family have experienced as a result of this incident and its aftermath and also during the coronial and other legal processes. Her comments should cause a time of reflection to all concerned.

Mrs. Chapman's submission pointed to the driver, Mr. Rosmarakis as (allegedly) being:

"concerned about Glenn and Justin working together and also about Glenn being stoned. It was drizzling. He knew the back of the truck was unsafe. According to him he knew both workers were on one step, which was dangerous. He says he was angry and shook his fist and yelled at them but didn't stop the truck?..."

Also, Mrs. Chapman suggested that:

"City Wide Solutions and Labour Hire Contributed to Glenn's death, by not providing enough training, and by allowing a system where, in a dangerous occupation, haste is rewarded over safety by allowing workers to knock off when they have finished their run...?"

This method of work is called the 'work to finish' rule. Whilst there is insufficient evidence to enable a conclusion that the 'work to finish' rule significantly affected the outcome in this case, Mrs. Chapman makes an interesting and valid observation for the future safety of workers in this area.

Conclusion

Messrs. Tapner and Rosmarakis had different explanations of how the incident occurred and saw it from different positions on the truck (one as a runner and the other a driver). On balance, after having viewed these two witnesses in court, the explanation of Tapner is preferred. Whilst Tapner hastily left the scene, immediately after his fellow worker and friend was killed, ultimately nothing turns on that issue as far as the explanation of how the incident occurred. It is noted that whilst Rosmarakis accurately identified the fact that Chapman had been on drugs (effectively the day before the incident), the forensic toxicologist was not able to clearly say that he was affected. Also Tapner was in a far better position on the back of the truck to observe the whole event than Rosmarakis who only was able to see snippets of what occurred and could have easily mistaken the actions of the two runners.

Mr. Chapman, whilst working as a recycling collector and riding on the back step of a garbage truck slipped and fell under the wheels of the truck as it was reversing. At this time it appears that he was in the process of jumping from one step to the other. The steps were slippery and the soles of Chapman's footwear (runners) were worn. It was drizzling at the time of the incident.

Mr. Chapman was attempting to assist his fellow runner, Tapner with his work when the incident happened.

There was an allegation that the two recycling collectors (runners) were *'mucking around'* immediately prior to the incident and that this was the principal factor. On the state of the evidence it does not appear that this is the most likely explanation for the incident, rather that the two *'runners'* were working at a fast rate, swapping positions from step to step on the back of the reversing truck. Mr. Chapman's unwise action of attempting to rapidly swap steps with his co-worker during the reversing operation obviously was a significant causative factor in the incident. It appears that Chapman and Tapner may not have been warned by the principal contractor about the fact that they should not ride on a reversing vehicle. Although it must be noted that Tapner did recognise the danger. Whether Chapman was cognisant of the danger at the time the incident happened or was just concentrating on the work and assisting his fellow worker is a matter of speculation.

Whilst Mr. Chapman had smoked cannabis in the past, and within a day or so of the incident, it is not possible to determine whether or not he suffered from any deleterious effects from the drug consumption and that consumption played a part in his death.

Significantly, the work practice in the recycling and garbage collection industry of having *'runners'* positioned on a small step on the back of a moving vehicle is fraught with risk of death and serious injury. It encourages a work practice of jumping on and off a moving vehicle as the runners are required to be constantly on the move, loading the vehicle and proceeding to the next collection point by riding on the back of the truck. The danger is something that is obvious, even to the casual observer. This case serves to highlight the already existing and obvious danger and its worst possible consequences. It is now recognised by the WorkCover Authority as being a practice that should be *'eliminated'*. However, it is noted the 1997 and 2000 Waste Management Guidelines did not adequately address this issue. It is noted that the Final Draft (April 2003) of the *'Occupational Health and Safety Guidelines for the Collection of Non-Hazardous Waste and Recyclable Materials'* (Second Edition 2003) specifically notes:

"This guide is designed to assist the industry to improve occupational health and safety performance generally and to prevent serious injuries and fatalities through the adoption of the following:

- *A "No Riding on the outside of vehicles" approach..."²*

The existence of this new, 2003 draft guide has not been taken into account in formulating these findings but is included for the purpose of confirming WorkCover's intention to eliminate the practice of riding on recycling vehicles.

However, the work practice of riding on the back of recycling and garbage collection vehicles is dangerous (as it always was) and needed to be eliminated from the industry long before the death of Glenn Chapman. Unfortunately, this did not occur.

It must be said that the WorkCover Guidelines (at the time of the Chapman incident) did not address the safety issue and CityWide Solutions, to its credit, had begun to introduce a number of other safety and training measures for this area of work prior to the incident (including some levels of supervision). However, in view of the potentially dangerous nature of the work of runners the level of training and supervision could not be regarded as necessarily adequate. It is noted that the

² Irrelevant material (for the facts of this particular case) excluded from this note by the Coroner.

training for Chapman was *'on the job'* and somewhat brief by way of induction. Although CityWide managers did daily spot checks and morning briefings they did not ride with this crew as part of the supervision process.

It should be noted that the issue (of riding on the back of recycling vehicles on small steps) must also be seen in the context of a regulator not spotting the problem and providing adequate design guidance. However, it is still clear that the dangerous nature of the work practice also should have been recognised by the principal contractor, CityWide Solutions, and eliminated (providing a safe system of work by designing out the problem). Designing out the problem would have been a far more satisfactory and workable solution than by the use of supervision.

The obvious dangerous nature of the work practice of riding on the back of constantly moving recycling and garbage collection vehicles on a small step places the system of work at a level far above that of *'background circumstances'* (whether on a reversing or forward moving vehicle). Working in wet conditions (which would not be uncommon and thus foreseeable) further exacerbates the existing danger.

Labour Hire, as the principal employer of Mr. Chapman appears to have been involved in ensuring that CityWide had training and supervision systems in place but did not have direct day to day control over the method of work and the equipment involved (a recycling truck). It appears to have regularly inspected the system of work by making spot checks. Whilst it should have recognised the dangers associated with the runners' work and ensured the method of work being used by the principal contractor minimised the risk it could not be said it contributed to the death as its involvement and measure of control is one further step removed from the incident.

It is clear that Mr. Rosmarakis, after having reversed over Mr. Chapman, ran over him on a second occasion more out of panic and shock than any deliberate action. Equally, it could be said that Mr. Tapner ran away from the scene as he was affected by what he saw occurring to his friend and the sudden shock of the moment, rather than as a result of a guilty conscience as to his own role in the incident.

Contribution

The following parties contributed to the death:

1. Mr. Chapman by slipping and falling whilst jumping from one step to the other whilst the truck was reversing;
2. Mr. Rosmarakis, the driver of the recycling truck, by reversing the truck over Chapman;
3. The *'host'* or *'principal'* contractor, CityWide Service Solutions Pty. Ltd., by not providing a safe system of work.

COMMENTS AND RECOMMENDATIONS

A copy of the finding, comments and recommendations will be forwarded to the:

- Attorney General,
- Minister for WorkCover,
- Minister for Local Government,
- Minister for Roads,
- Chief Executive Officer, WorkSafe,
- Chief Executive Officer, VicRoads,
- Chief Executive Officer, Transport Accident Commission,
- Transport Industry Safety Group,
- Secretary, Trades Hall Council (for distribution to Peak Unions), and
- The Director, Monash University Accident Research Centre.

The preventable nature of the death of Mr. Chapman

Mr. Chapman's death was preventable. The use of `runners' in the recycling and garbage collection industry is dangerous (without protective engineering solutions combined with a failsafe system), and it was so at the time of the Chapman's death.

There has been a recent inquiry by WorkSafe in relation to the Waste Collection industry and it is noted that there have been considerable changes and developments in the garbage collection and recycling industry since the death of Mr. Chapman. However, this does not alleviate the obvious dangerous nature of this work and the need to have undertaken significant improvements in work practices well before 1998. This comment applies to the employer (Labour Hire) the principal contractor (CityWide) and the regulator (WorkCover).

It is noted that Dr. Culvenor in his report made the following observation:

"As long as runners are to be used to collect paper, serious risks remain. Safety is difficult to ensure in these circumstances. There are so many possibilities for serious traumatic injury to occur as the result of a simple mistake – a slip from a step – a moment of forgetfulness stepping from behind the truck into traffic – and so on."

To its credit WorkCover has now assisted in the drafting of new guidelines for the recycling industry which will, if followed, make the riding on the outside of vehicles a thing of the past. The guidelines (already mentioned) Final Draft (April 2003) of the `Occupational Health and Safety Guidelines for the Collection of Non-Hazardous Waste and Recyclable Materials' (Second Edition 2003) provide that:

"This guide is designed to assist the industry to improve occupational health and safety performance generally and to prevent serious injuries and fatalities through the adoption of the following:

- *A "No Riding on the outside of vehicles" approach..."*

Riding on a small step on the back of any vehicle (and especially a recycling or garbage truck) is fraught with danger as the smallest of human errors in the context of a moving vehicle can result in a slip which, as we have seen in Mr. Chapman's case, has almost certain consequences of death or serious injury. There have been other cases, in the transport industry, where coronial comment has

been made in the area of riding on the outside of moving vehicles. One such case is Reginald Morgan, a railway shunter, who was killed in July 1988 at the Melbourne Freight Terminal whilst 'riding foul' on the steps of a goods carriage at the rear of a reversing train. An error was made in laying the points and the train crashed into stationary carriages crushing Morgan. Whilst 'riding foul' was against the relevant regulations then applying in the railway industry, at the same time, shunters were provided a training video which conflicted with the regulations in that it warned to them exercise caution when doing so (riding foul). This video was produced in 1986 to deal with the introduction of New South Wales and Australian National Line freight carriages into the Victorian Rail System. The coroner's finding noted the unsafe work practice of 'riding foul' and recommended 'clear and complete' banning of this work practice.

Whilst the Morgan case involves the railway and is factually different from Chapman, it illustrates another aspect of the danger of riding on moving vehicles.

It is noted that Mr. Fitzpatrick from WorkSafe commented on the acceptance and the future of safety developments in the following two passages from his evidence:

"My perception would be that by and large a side lifter would be adopted, which will remove the need for a runner at all. Where that cannot be managed, because of physical constraints, we may need to persist with a runner, but we're reducing the number of runners and the number of vehicles required to do those runs. Where a runner is required, what this document is proposing, that they either use a - what is called a low entry vehicle, where the runner can literally hop into the cabin alongside the driver, hence the name low entry, or, if that's not suitable, they will fix or build in a custom-built cabin at the rear side or left-hand side of the vehicle which will allow the runner, again, to be carried in a safer (indistinct). We're not saying it's a 100 per cent, but it's a vast improvement on what exists today."

And as to the history of the original Guidelines and some tensions with the introduction of a new system:

"I don't know if you want me to go into the history from our side of this. Inasmuch as if we go back to the New South Wales/Victorian joint document, which was released, I think it was in 97, there was some very heated debate by parties at that point in time on the very subject of removing both side steps and rear steps on these vehicles. It was put to WorkCover at that point in time that under no circumstances could industry proceed without rear steps or side steps. And I suppose for want of better words, we may have capitulated on that point. Having gone through the years from that point in time and having been involved more and more with this industry, it's become apparent to me, and a number of other people, that in a lot of areas we can in fact do away with these rear steps and side steps. I go back to a week ago today where we had the final reading of that draft document previously mentioned, and there was still opposition from councils at that point in time to the removal of these steps."

Clearly the new 2003 'Occupational Health and Safety Guidelines for the Collection of Non-Hazardous Waste and Recyclable Materials' have general and specific relevance for the industry in which Mr. Chapman worked. It is to be hoped that the guidelines will be well distributed throughout the industry and the work practices will reflect those current guidelines and be flexible enough to rapidly adopt any ongoing improvements identified as a result of working with the guidelines. They should be used by industry and Councils alike as one of the main focus of their business operations.

The need for a redesigned system of work and protective engineering solutions

Whilst a '*No riding on the outside of vehicles*' approach by WorkCover, in view of the danger, is fully supported there may be other options, by way of engineering and design solutions that need to be explored which allow for a work system that provides that:

- (a) the workers ride in the fully protected environment of the vehicle (eg: a properly designed platform with full protection);
- (b) the vehicle cannot move (forward or in reverse) without **all** workers being protected by that environment; and
- (c) a fail safe system that cannot be overridden.

A carefully considered, re-designed system with protective engineering solutions may permit a more flexible approach to the use of runners or spotters (in some more limited situations where a full risk analysis has been undertaken and the protective engineering solutions apply).

As this case illustrates, the driver is not in a position to fully observe everything that is happening around his vehicle (his evidence was not accepted for this reason, as there was a possibility he was mistaken). This limited vision applies especially when the driver is reversing (even with a video monitor and rear vision mirrors). Whilst, ideally the use of runners is to be eliminated, there may still be some situations where pedestrians are in the vicinity of moving recycling or garbage trucks (i.e.: members of the public - see comments under the sub heading in this finding '**Other fatality incidents involving recycling and garbage trucks**' below). Accordingly, it may be necessary to also look at re-designing the layout and coverage of the video monitor (and develop standards) and look at using current technology (proximity devices are already being used in some motor vehicles and forklifts) to provide a warning to the driver when a pedestrian comes too close to a reversing or moving recycling or garbage vehicle.

Recommendation 1

That 'riding on the outside of vehicles' should, as a matter of urgency, be generally eliminated from the recycling (and garbage) industry.

In this context, alternative engineering and design solutions which can, after careful consideration, provide full protection to workers, may also need to be considered. Other protective design solutions that may generally improve safety for workers and the general public (as pedestrians) should also be considered.

Proximity warning devices (which would have a wider application to other pedestrians in the vicinity of the vehicle should also be considered.

The '*work to finish*', '*work to stop*' or '*job to finish*' rule - a problem in a dangerous occupation

During the inquest the family also pointed to the '*work to stop*' or '*job to finish*' rule system whereby drivers and crews are, in effect, rewarded by '*knocking off early*' if they work quickly and finish their allotted round before the expected normal completion time. Mrs. Chapman wrote, in part, that she was critical of the principal contractor and employer:

"...by allowing a system where, in a dangerous occupation, haste is rewarded over safety by allowing workers to knock off when they have finished their run.?"

Whilst Mrs. Chapman, has understandably been critical of CityWide (amongst others) it should be noted that the company has agreed with her position on the future of the unsatisfactory '*work to finish*' rule.

Clearly this work practice, whilst it may have attractive features from a worker's perspective, may well have the effect, as Mrs. Chapman says of "*rewarding*" haste "*over safety...*" In a dangerous occupation it may (if a regular feature) but serve to exacerbate the situation and potentially create a greater level of risk.

Recommendation 2

*The '*work to finish*' rule should be reviewed by an appropriate committee made up of representatives from WorkCover, appropriate Employer and Union Groups (and other relevant experts) with a view to providing a set of guidelines having the aim of minimising any potential deleterious effects (to safety) of this particular work practice.*

A '*chain of responsibility*' between labour hire companies, principal contractors and councils

The evidence of the '*runner*' Mr. Tapner and that of WorkSafe Field Officer Fitzpatrick leads to a conclusion that far more may need to be done in relation to improving safe work practices within this industry. Fitzpatrick considered that Tapner's evidence about the aspect of runners mounting moving vehicles was effectively common. That having viewed the practice himself, "*on a number of occasions*" Fitzpatrick said that you "*don't have to look too far and too long to see it?...*"

Unless all parties involved in the contractual arrangements (and in the very necessary continuing relationship developed as a result of those arrangements) take a degree of shared and ongoing responsibility for safety, problems by way of injuries and deaths will continue. Those parties include not only the employer, principal contractor or sub-contractor but also the party contracting out the work - the Council or Shire. In fact CityWide (the principal contractor in this case) noted that it agreed "*with the Coroners suggestion that Councils be brought within the chain of responsibility.*" It made the point that:

"Citywide was bound by the terms of the Tender conditions to which it responded. Clause 8.1.1 of the contract in this case specified the method of collection from plastic containers provided by the Council to ratepayers. Provision of split bins in the Manningham Council area cost \$3.5 million. Citywide is able to comply with any requirements in terms of equipment specifications, provided that uniform requirements apply to all contractors. It is a matter for Councils and their ratepayers to specify the method of collection that they require."

And:

"The general practices of recycling followed by Citywide in this case have been practised all over Australia for many years?..."

As this case has illustrated these work practices are dangerous and fraught with the risk of injury and death. Councils and Shires need to be made aware of their role in the 'Chain of Responsibility.' As recycling and garbage collection work is but a sector of operations of the transport industry the Chain of Responsibility probably applies.

CityWide comments:

"In terms of recommendations for the future, the specifics of fatigue, the practice of 'job and finish?', and including Councils in the chain of responsibility are accepted by the company. The imminent industry report – to which Citywide has contributed by way of submissions and service on the committee preparing the Report - will make recommendations on the use of rear loading trucks, which will still be necessary to some extent, at least while existing contracts and plant and equipment is phased out."

Councils and Shires need to be aware of their role and potential to improve occupational and public safety in the recycling industry. However, there may still be some tension from a knowledge perspective, as Mr. Fitzpatrick, alludes to in his evidence (on the issue of 'Chain of Responsibility'):

"That would clearly assist the industry as a whole because there is no doubt in my mind, having spoken to both contractors and various councils, that the degree of ignorance, if you like, that exists in that quarter, in this day and age, is still unbelievable. I've had councils put to me, "Why do you think we engage contract labour?" Because they believe that it's no longer their responsibility."

In the area of safety, contracts, negotiations and ongoing relationships between Councils and contractors need to highlight safety and safety management and reflect an ability to constantly reassess these important issues.

Recommendation 3

That all Councils and Shires be made aware of the facts in this case and of their potential and ongoing role in the area of Occupational and Public Safety in view of the development of the 'Chain of Responsibility' for the Transport Industry.

The development of road design standards that avoid the need for recycling and garbage trucks to reverse

This case, whilst applying to a worker on the recycling truck, also illustrates the need, for the road infrastructure design standards to consider a `court' or `cul de sac' road layout that provides adequate turning circle for large service vehicles such as recycling and garbage trucks and avoids the need for these vehicles to reverse.

Recommendation 4

That VicRoads (with other relevant regulatory agencies, experts and groups) examine the desirability developing a standard for the design of courts or cul de sacs providing an adequate turning circle for large service vehicles such as recycling or garbage trucks in order to avoid the need for these vehicles to reverse (see also the comments under the sub heading in this finding `Other fatality incidents involving recycling and garbage trucks' below).

Young workers - a need to concentrate on training and supervision

Mr. Chapman was in the very early stages of his working life when he was fatally injured. The level of training and induction to this particular job could have been far more intensive and ongoing. For a young worker, beginning his working life in a potentially dangerous occupation, there needed to be a far greater concentration on induction time and quality in the induction process.

With the young worker, on the job training for such an operation necessary requires very careful supervision over a lengthy period of time by a senior worker (or `mentor') who is well versed in **risk management and in training techniques**. There is far more to training in this context than putting the fledgling worker with another experienced worker who has been working with the particular equipment and system of work for sometime and expecting that worker to `show the new boy the ropes.'

It is noted that WorkSafe has a copy of recently introduced (2003), proposals for new `Initiatives for Young Workers - a Young Worker Safety Certificate Program' developed by the Workers Compensation Board of British Columbia³. The issues are being discussed in an options paper by that organisation's Health and Safety Centre. It is also understood that WorkSafe has also been developing programs for young workers - specifically relating to work experience students. There may also need to be programs relating to young workers designed to help improve health and safety for young persons in their first years in the work force.

³ It is noted that WorkSafe WA has developed a `Code of Practice' relating to children and young workers - "The Code of Practice for the Safety and Health of Children and Young Workers in Workplaces" (1999).

As is demonstrated by the facts in this and other cases before the Coroner⁴, young workers frequently are fatally injured at work and any programs designed to highlight risk management and occupational safety relevant to young workers to young people, employers and unions are to be applauded.

Perhaps more consideration should be given to the pairing of working teams where potentially dangerous operations are occurring. The **pairing of the two young workers (who were also friends) may have encouraged a more enthusiastic and less cautious approach to the work** on this occasion. Effective supervision and work practice should take into account the nature, relationship and age (maturity) of those working together in teams where potentially dangerous work is to be undertaken or there is an increased risk in certain aspects of the job.

Recommendation 5

That WorkSafe develop programs aimed at improving safety for young workers (any such program should consider the development of a 'Code of Practice' for the safe employment of young workers).

Consideration should be given to involving Employer and Union groups in the development of any such programs or in a Code of Practice.

Other fatality incidents involving recycling and garbage trucks

Victoria since 1997

It should be pointed out to all concerned (Councils, Shires, Contractors, Transport Industry [employee associations and unions], Regulators and injury prevention specialists) that there have been a number of fatalities in Victoria involving pedestrians and recycling or garbage industry trucks. These are:

- **Steven Berry** (3316/97) - a 'truck surfer' struck by a garbage truck
- **Jason Donald Hore** (3889/97) - a bicycle rider (child) struck by a garbage truck
- **Marguerite Johnston** (3183/99) - a pedestrian struck by a recycling truck
- **Bryan Charles Maxfield** (3736/99) - a pedestrian struck by a recycling truck
- **Lydia Lorenc** (2953/02) - pedestrian struck by a garbage truck

There are two cases which are not closed in 2003:

- **Ricky Amaru** (3521/03) - child (7 months) struck by a reversing garbage truck
- **Noah Deluca** (69/03) - child (5 years) riding a pushbike struck by a garbage truck

⁴ For example, Attilio Unali (Coroners Case No. 2517/95) and Linton Inquest Findings (Coroners Case No. 3659/98 - Matthew Armstrong, aged 17)

Whilst the facts in each of these cases may vary, the number of pedestrian deaths in Victoria associated with recycling or garbage trucks is concerning and needs to be addressed by the industry, the relevant regulators, councils and shires.

National

In addition, a search was undertaken of the **National Coroners Information System** which disclosed an additional 2 cases (since 2000) in New South Wales. These are:

- **William Carl Thomas** (PM No. 0013961) - run over by garbage truck whilst attempting to throw a bag of garbage into the truck (NSW, 2000)
- **Emilie Kirk** (PM No. 0115614) - a pedestrian struck by a reversing garbage truck (NSW, 2001).

The facts as disclosed in the summaries or findings⁵ in each of these cases demonstrate common threads and accordingly there is a need for industry, occupational health and safety professionals, engineers and designers, plant manufacturers, work safety and road safety regulators to work together on the safety and design issues associated with working with recycling and garbage trucks.

Graeme Johnstone
State Coroner
21st November 2003

Dr. David Neal for CityWide,
Mr. Gerard McKeown for Labour Hire (Victoria) Pty. Ltd., and
Senior Constable John Gibson, Assisting the Coroner.

⁵ There is also a finding in relation to the death of Jason McNee, a seven year old child who was killed when a garbage truck reversed over him in December, 1987. The coroner made recommendations for audible reversing warning devices for such vehicles (Coroner's Case. No. 5271/87). The summaries or findings are available to relevant safety agencies on request. Please contact Katrina Beesley on 9684 4410 or email: katrina.beesley@coronerscourt.vic.gov.au