



STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest:	Into the death of Ryan Leo, aged 6 years.
Hearing dates:	31 August, 1-2 September 2015
Date of findings:	4 September 2015
Place of findings:	State Coroners Court, Glebe
Findings of:	Deputy State Coroner Elaine Truscott
Catchwords:	Coronial Law-Cause and manner of death-
File number:	2014/222571
Representation:	<u>Coronial Advocate Assisting:</u> Mr D. Welsh <u>Hurstville City Council</u> : Mr M. Down of Mills Oakley Lawyers <u>Department of Education</u> : Ms A. Bonner instructed by Ms M Baker Ryan's father, Ben Lieu : Ms M. Curry instructed by Ms J. Wyatt of Wyatts Lawyers & Advisors
Finding:	<p>Ryan Leo died on 28 July 2014 at St George Hospital. The cause of his death was head injury occasioned when, as an unaccompanied child crossing the road, he was struck by a motor vehicle near opposite Number 118 Durham Road Hurstville.</p>

Recommendations:

That the Hurstville City Council gives consideration to these findings and recommendations and brings them to the attention of their Traffic Advisory Committee.

That the pedestrian safety improvements at intersection of Forest Road and Durham Street recommended in the Road Safety Audit Report Ref. 14138rsa be implemented as a matter of urgency.

That consideration be given to conducting a further pedestrian safety audit and carrying out its recommendations in relation to the section of Durham Street between the intersection of Lily Road and Forest Road with regard to the safe crossing of Durham Street by users of Kempt Field, and the Scout Hall and businesses, and access to Forest Road from Robert Lane and Lily Street, with particular regard to the next stage of the development of the East Quarter accommodation and its construction and the expected high density population. Such consideration to include whether pedestrian safety would be improved by traffic inhibitors such as a lower speed limit, a pedestrian crossing and both eastern and western facing signage alerting drivers to the presence of children and/or reclassifying Durham Rd from being a "collector road" so that its vehicular access and speed zone are consistent with the area's pedestrian safety.

REASONS FOR DECISION

Introduction

1. This inquest concerns the death of 6 year old Ryan Leo, the cherished son of Ben Liu and Lara Zheng. Ryan was born on 19 January 2008. He was a year 1 student at Oatley Public School, a boy described in his school reports as cheerful, outgoing, and confident. His family loved him greatly and are immensely proud of him.
2. I quote from Ryan's father's statement to the Court: *"Filled with joy, laughter and love, Ryan's life wasn't very long, but it was long enough to brighten up mine and many others. He was a gorgeous boy with charming and breathtaking smiles. He was very thoughtful as well. When he was 2 years old, he could try to draw attention pleasing you when he noticed that you were upset. When he was 4 years old, he had stopped talking cautiously, when he realised his words might have made you unhappy he then rephrased his expression in a pleasing way. His such character was precisely captured in his school master's statement, "He loved to know that he was pleasing other students and teachers"*.
3. Tragically, at about 4.20 p.m. on Monday 28 July 2014, Ryan was struck by a motor vehicle as he attempted to cross Durham Street in Hurstville. He was very excited to be attending his Tae Kwon Do class which was held in the Scout Hall on the opposite side of the street to where the vehicle Ryan had exited was parked.
4. Ms Saiyun Shan was Ryan's after-school nanny and had driven Ryan to his class. Upon the car parking, Ryan left the through the back door onto the kerb and ran around the front

of Ms Shan's car and, according to the only eye witness Ryan ran out onto the road without stopping and looking.

5. At that time, Mrs Xue Lin was driving her car in the same direction as Ms Shan's vehicle was facing. Near the centre of Ms Lin's car struck Ryan and his shoulder and head hit the bonnet of the car which carried him about 16-17 metres before he fell onto the road. Mrs Lin says she did not see Ryan only hearing a boom and a flash of white cloth before applying her brakes coming to a stop about 20m further down the road from where Ryan lay.
6. Mrs Jarvis who was in a nearby business rushed out and saw that Ryan was injured and asked for someone to call emergency services, she then carried out CPR until ambulance personnel arrived. Ms Jarvis said that when she helped Ryan, he was unresponsive and she felt he passed away before the ambulance arrived. The ambulance personnel were able to resuscitate Ryan only to keep his heart barely beating and conveyed him to St George Hospital. CT scans showed massive head injury. Ryan's parents were at the hospital and experienced utter anguish and despair as the doctors could not save their son's life. Ryan's death was declared at 6.22 p.m.

Coroner's Role and Jurisdiction

7. Section 81(1) of the Coroners Act 2009 requires the Coroner to identify the person whose death is the subject of the inquest, the date and place of death and the cause of death. In this inquest, these matters are not controversial. The Coroner is also required to describe the manner of death, which are the relevant surrounding circumstances.
8. Pursuant to section 82 (1) the Coroner may also make recommendations in relation to matters in connection with the inquest including recommendations concerning public health and safety.

The Issues

1. What level of road safety education did Ryan Leo have?
2. Were concerns about Saiyun Shan's supervision of Ryan Leo raised with Oatley Public School? If so, what action did the school take, and who was notified?
3. What was the nature of the "nanny" service provided by Saiyun Shan?
 - What experience did she have in her role as a nanny?
 - What interactions had she had with the school regarding her pick-up and drop-off at the school?
4. What supervision was Ryan Leo receiving on the 28 July 2015 at Durham St at the time of his death?
 - Where was he usually dropped off for Tae Kwon Do practice and what arrangements did the Tae Kwon Do school have for pick-up and drop off?
 - Who usually dropped him off?
 - How did he exit the motor vehicle on this occasion?
 - How did he cross the street on this occasion?
 - What was his usual practice in exiting motor vehicles and crossing the street?
5. Are there any changes that could be made to prevent such a death in the future?

The Location

9. Durham Street is a "collector road" running generally east-west between Forest Road (an "arterial road") Hurstville and Willison Road Carlton.¹ At the intersection of Forest Road and Durham Street is an apartment development called East Quarter. At the time of the collision the development was 2/3 complete with 5 residential blocks consisting of 460

¹ "Road Safety Audit Report Existing Road Audit of School Student Pedestrian Facilities Between East Quarter Development and Hurstville Public School, Forest Rd Hurstville" for Hurstville City Council prepared by Transport & Urban Planning Pty Ltd August 2014; p2

apartments.² The further apartments will be built on the adjacent vacant construction site which occupies the southern side of Durham Street sitting between the current apartments and a park called Kempt Field.

10. On the northern side of Durham Street, opposite the vacant lot, on the corner of Forest Rd is a car sales business, next to which are two auto care businesses, then a dry cleaners business next to which is a funeral parlour then the Scout Hall, another commercial premises (the Bedding company), followed by two semi-detached houses outside of which is a grass verge seating for buses; then Durham Street is intersected by the north-to south running Robert Lane. The area past Robert Lane is occupied by houses and the next intersection on Durham St is Lily St which is an overpass road across the rail tracks to Allawah.
11. The Scout Hall is directly opposite the fence line between the East Quarter vacant lot and Kempt Field. There are footpaths on either side of the road with a grass verge on the southern side. There are driveways between each of the premises along the northern side of Durham Street and one hour parking from 8.30 a.m. to 6 pm Monday to Friday and 12.30 p.m. on Saturdays excepted for the kerb frontage of the funeral parlour which has “No parking funeral vehicles excepted”. On the southern side, in Kempt Park, opposite the Scout Hall is a public toilet block with grass verge seating. The parking along this side of Durham Street at the time of the collision was unlimited.
12. On the southern side the grass verge is interrupted by a large driveway at the entrance of the East Quarter development construction site. The site has a cyclone wire perimeter fence covered in scrim cloth. An uncovered cyclone wire single pedestrian gate and then a double gate occupies most of the driveway, however on the Kempt Field end of the driveway there is sufficient area to park two vehicles adjacent to the scrim covered fence.
13. This part of Durham Street has a sign-posted speed zone of 50 kmh, the road is a two way unmarked bitumen surface, the width being 12.8 metres.

² Ibid

Tae Kwon Do School

14. On Mondays after school Ryan attended the Tae Kwon Do class held in the Scout Hall at 116 Durham Street. In 2013 he was in the white belt class which ran from 4.00-4.45 p.m. Sometime around the July 2014 holidays Ryan moved into the yellow belt class which ran from 4.45 -5.00 p.m.
15. I have heard evidence from the Mr Ischeol Yoo, the Instructor who runs the school. He said there are up to 10 children in each class and he has about 4-5 instructors assisting him. He says that one instructor stands at the front door of the hall to receive a child from the parent or carer and the child is then given to another instructor. There is a waiting room with 10 chairs for parents and carers if they chose to wait on the premises while the child receives instruction.
16. In May 2014 Mr Yoo forwarded a letter and a petition signed by 36 parents to the Hurstville City Council. The letter requested that the Council change the parking rules on Durham Street due to road safety concerns for children crossing the road to get to the school. Mr Yoo says that the construction of the East Quarter had changed the availability of parking because on the southern side of the street the unlimited parking was taken up all day by those undertaking construction. With the new buildings the residents or their visitors would park their cars rather than in the parking levels at West Quarter. Mr Yoo requested that 1 hour parking be installed to prevent this situation. He also requested that the 1 hour parking space directly outside the Scout Hall be changed to a “drop-off and pick-up zone” for students of the school. Mr Yoo explained that there were occasions where the instructors would have to scream or yell out to a child not to cross a road alone and he would hand a letter to the child or a parent or carer setting out that the child must be accompanied and brought to the door for hand over to the instructor.
17. The Council traffic engineer submitted the request to the Traffic Advisory Committee and recommended that both requests be approved. The Committee, comprised of a representative from the Council, the Police, the Roads Maritime Service did not agree with the recommendation, indicating that 1 hour parking would encourage parents to park on the opposite side of the road so children would be required to cross the road.

Rather than lose the 1 hour parking space outside the Scout Hall, the Committee suggests that parents could use the funeral parlours frontage to pick up and drop off which allows a parent to park for 2 minutes and not go further than 3 metres from the vehicle. Given good relations between Mr Yoo and the funeral parlour, the arrangement had been utilised subject to availability since November 2013.

18. I think that the solution to use the funeral parlour frontage was a little ingenuous given that the steps of the Scout Hall are further than 3 m from the nearest parking restriction sign of the funeral parlour as there is a driveway and half the width of the Scout Hall before the entrance where parents and carers are required to accompany and hand over their child.
19. Mr Yoo had a sandwich board sign “No Parking Drop off only” on the driveway which suggests that he preferred that arrangement than the one suggested by the Council.
20. In September 2014 Mr Yoo wrote again with additional parent signatures to the Council and was advised that it had been forwarded to their senior traffic engineer and he would be advised of his request in due course. Mr Yoo says that he has not to date received any response.
21. In his letter of September 2014 Mr Yoo was critical of the Council’s decision to not approve the changes he sought. Mr Down, counsel appearing for Hurstville City Council, elicited from Mr Yoo that he had misunderstood Council’s letter because he did not appreciate that the Council’s traffic engineer had recommended that the changes be made but it was the Traffic Advisory Committee who denied the change.
22. The Council receives delegated authority from the government to make changes relating to road safety through recommendations made by the Traffic Advisory Committee which is a statutory body constituted under the Traffic Administration Act 1988. The Committee cannot direct the Council to adopt its recommendation but the council cannot make changes to any road unless the Committee makes a recommendation. Had the Committee adopted the traffic engineer’s recommendation, the next step would have been whether Council approved and adopted it. Council was never able to take that step given that the Committee denied the traffic engineer’s recommendations. Be that as it

may the Hurstville City Council is still able to request that the Traffic Advisory Committee re-visit the an issue if necessary. U

23. Mr Yoo said that as a result of receiving the response from the Council he began to advise new students' parents that they could drop off and pick up outside the funeral parlour. He didn't send a letter to his current students so he wasn't sure what their practice was. He has kindly provided a letter which he says is the most recently used letter to new parents which does not mention dropping off at the funeral parlour site. The letter makes clear to new students the dangers of the road and the necessity to accompany a child when crossing it.
24. Mr Yoo said he did not witness Ryan's accident because he was inside instructing. He said at the time there was an instructor standing at the door but after speaking with him, he learned that he did not see what had happened because his line of vision was interrupted by vehicles. That instructor has since returned to Korea.

Hurstville City Council Traffic Audit

25. In May 2014 the Hurstville City Council sought an audit of pedestrian safety which included this section of Durham Street. The audit came about because Councillor Lin had raised concerns for the safety of school children now resident in the East Quarter accommodation walking to Hurstville Public School which is on the corner of Forest Road. The audit recommends a symbolic sign be positioned opposite the Scout Hall so that drivers travelling west will be alerted to the fact that children utilise that part of Durham Street – I don't know why there is not a recommendation for a similar sign alerting drivers travelling in the opposite direction. The other recommendation which has been apparently adopted by the Hurstville City Council is placing pedestrian safety islands and crossings across the Forest Rd Durham Street intersection. I am told that work is yet to be commenced as three parties and council are still engaged in costing the project.

Ryan's After School Supervision

26. Ryan's mother had an arrangement with Saiyun Shan to help her with household tasks and picking Ryan up from school and sometimes taking him to after school activities. This arrangement began a few weeks before Ms Zhen's second child was due in May 2013. Ms Shan would sometimes assist in picking Ryan up from school which became more frequent by the end of that year. In 2014, Ms Shan was asked to continue to do school pick-ups. She commenced doing so about the second week of February 2015. Ms Shan would attend another school at 3 pm to pick up her child and 2 other children then drive 10 minutes or so to pick Ryan up from his school at 3.20 p.m.
27. On 24 March 2014, Ms Wong, a mother of Ryan's class mate and best friend at school wrote to his teacher and spoke with her about Ryan accompanying or following her to the road where he would then enter his "aunty's" vehicle. Ms Wong picked up her child 3 times a week and her husband picked him up the other 2. Her husband had also told her that Ryan would go with him.
28. From that day, Ms Shan would stand at the school gate some 70 m from Ryan's class room, wave to his teacher and she would wave back and Ryan would go released from school to Ms Shan. Often he would need to be encouraged to walk faster as sometimes Ms Shan would walk away out of view of the teacher for Ryan to catch up with her. From where she stood the teacher was unable to see where Ryan did catch up with Ms Shan and she was unable to see if Ms Shan's vehicle was parked on Neville Rd.
29. Ms Wong said that she often saw Ms Shan's vehicle parked in the no stopping zone along Neville Rd which was the drop off and pick up zone for Oatley Public School. Ms Wong said that before and after she wrote her letter she would see Ms Shan's car was parked at times on either side of Neville Rd parked in the No Stopping zone. Before her letter of 24 March, Ms Wong was concerned about Ryan's safety so she would walk him across the pedestrian crossing herself.
30. At the commencement of the school year, Ryan's teacher Mrs Huynh-Montgomery sent out slips for parents to indicate to the school the person who was going to pick up their child. When Ryan saw his friend's mum Ms Wong he told Mrs Huynh-Montgomery

(unbeknown to Ms Wong) that she was his aunty which Ms Huynh-Montgomery was consistent with being picked up by a carer. She cannot now recall whether Ryan's mother had returned the slip but given Mrs Huynh-Montgomery's experience and diligence it seems likely that she was aware that Ms Zheng had arranged for Ryan to be picked up by another adult.

31. Mrs Huynh-Montgomery telephoned Ms Zheng who told her that Ryan needed to be collected from her care and Ms Zheng said that the nanny had problems with parking. The following day Ms Shan sent one of the children in her care to attend Ryan's classroom to collect him but Mrs Huynh-Montgomery refused to release him and asked the child to advise Ms Shan that she needed to attend. The child returned with Ms Shan whereupon Mrs Huynh-Montgomery explained to her that she was unable to stay in the car and that the teacher needed to see her before allowing Ryan to leave. An alternative arrangement was made. Ms Shan does not speak English so her daughter and Ryan translated for her.
32. Mrs Huynh-Montgomery's response upon learning that Ms Wong was not the person charged with the responsibility to pick Ryan up was appropriate, immediate and effective and she continued to monitor his pick-ups by Ms Shan and ensure that it was adhered to. To ensure children's authorised pick up adults are properly identified the school now has a list of each child in K-2. That list is kept at the door of each classroom.
33. Ms Shan said she recalled being told by Ms Zheng that she needed to go into the school to pick Ryan up. She said that it was because on one occasion she was late and could not find a park (which is what she may have told Ms Zheng). She denied that she would wait in the car for him saying that she would wait by a tree near the classroom; she said that she would also wait here after she was spoken to by Mrs Huynh-Montgomery.
34. Mrs Shan's evidence was not credible. I accept that Ms Wong and Mrs Virginia Huynh-Montgomery were giving the correct and truthful version of events. Ms Wong was motivated by concern for Ryan's safety. She said given the danger that the school's drop off and pick up zone in Neville Road poses Ms Wong says she parks her vehicle in a side street away from the school rather than use the Neville Road zone.

35. Ms Wong's evidence indicates that Ms Shan was content for Ryan to cross the road on his own while she waited in the car for him – albeit in an area where there was the pedestrian crossing but it was a dangerous area with moving cars for a 6 year old to be negotiating the road alone. The school stopped that from occurring by requiring Ryan to be picked up by Ms Shan.
36. After collecting Ryan from school, Ms Shan would go to Ryan's home with her daughter to cook dinner. On the way she would drop off the other 2 children at their home. Sometimes she would take Ryan to Tae Kwon Do on a Monday. She said that she never stayed at the hall while Ryan had his class. She would also take her daughter and Ryan to art classes on a Tuesday and Ms Zheng would pick them up.
37. Ms Shan said that she had taken Ryan to Tae Kwon Do many times, sometimes she would walk from her home with him and her daughter, and other times she would stop her car on the same side of the road as the Scout Hall and walk him to the steps to the instructor. Other times she would park the car on the opposite side of the road and walk Ryan across. She said in her second statement that most of the time she would drive. She said she never had a problem finding a park so she never needed to turn the vehicle around to park on the Scout Hall side of the road. Ms Shan said that she had not been told by the Tae Kwon Do school that she could use the funeral parlour frontage to drop off and she says she had not used it.
38. Ms Shan said that whenever she and Ryan and her daughter walked from home they would not cross Durham St at the Forest Road intersection because it was too dangerous. She said that there was still no pedestrian crossing and there were too many cars from too many directions. She preferred to walk up Durham Street and cross at the area where the dry cleaners shop is because that gave her better visibility to oncoming traffic. When she was shown a photograph of the Forest Rd and Durham Street intersection she and became extremely upset as she is very fearful for her daughter and other children crossing Durham Street at that intersection.

Ryan's Road Safety Education

39. I have heard evidence from Ms Deborah Hunter the principal of Oatley Public School and Mrs Virginia Huynh-Montgomery, Ryan's year 1 teacher and I received a statement from Ms Robyn Bale, Director, Student Engagement and Interagency Partnerships, Department of Education. Those statements including numerous education documents which I have perused are tendered as part of the Brief of Evidence. The evidence addresses the road safety education programme delivered in the primary school system generally and specifically what Ryan learned.
40. The Oatley Public School campus is divided by Neville Road serviced by a pedestrian crossing bordered by boom gates. During the school zone speed limit period the school locks the boom gates down and raises them at the end of the period or in emergencies. Ryan's class would walk across Neville Road at least 3 times a day. Mrs Huynh-Montgomery said that on each occasion she would articulate the safe crossing message of stopping looking and listening. Each child would be partnered to hold hands.
41. Mrs Huynh-Montgomery said that no child in her class was non-compliant and she said that neither Ryan nor any of the other children in his class stood out as having any difficulty. If he had I am satisfied that Mrs Huynh-Montgomery would have noticed and would have taken the appropriate steps to address the issue.
42. Mrs Huynh-Montgomery said that Ryan would listen to instruction and follow directions. She said he was very creative and loved to sing and dance and play with other boys games such as action heroes and ninja turtles. She was particularly engaged with Ryan and had meetings with his mother to assist Ryan in some other aspects of his schooling for which he was rewarded appropriately.
43. Ryan was taught road safety in Kindergarten and the first term of Year 1 as part of the PDHPE syllabus.³ At Oatley Public School, because the campus is divided by Neville Road, Ryan and his class mates practised crossing the road safely several times a day. He knew

³ Statement of Virginia Huynh-Montgomery 25 August 2015 at [34]-[39]; Statement of Robyn Bale dated 27 August 2015 at [20].

to walk and not run on the road and he knew to stop and look before beginning to cross and while crossing and he knew to hold an adult's hand before crossing the road.

44. The NSW school education material tendered in the inquest certainly indicates that NSW children are well educated in school with well -timed and appropriately delivered programmes. However, this is a timely reminder that the need to teach Road Safety to a child begins as soon as the child can walk. By the time a child enters Kindergarten, the schools are building on hopefully already learned safety knowledge and behaviour and correcting any non-safe practices. It is the responsibility of all adults having care of a child to ensure they are educated and compliant with road safety.
45. Mrs Shan says that Ryan had never run onto a road before or had problems with her instructions though she said in a statement taken in April 2015 that sometimes Ryan would open the car door and get out himself and she would tell him not to do that and on other times she would tell him to wait until she opened the door to get him out. She does not know if he was anxious about being later for Tae Kwon Do or whether he thought he was going to cross the road on his own. Good education and knowledge is no substitute for direct and close adult supervision because as Ms Huynh-Montgomery said of Ryan's excitability about going to Tae Kwon Do may have caused him to forget the road sense rules which it could be said of any of the children in her class by virtue of their age.

The Collision

46. On 28 July 2014 Ms Shan did the usual school pick up and whilst she was at Ryan's home, Ms Zheng told her she didn't need to stay to cook that night but asked her if she could take Ryan to Tae Kwon Do on her way home. Ms Shan agreed to do so. Ms Shan's evidence is that she needed petrol so she drove to Carlton where the petrol station was but did not end up getting petrol as her mobile phone rang and she spoke with a relative which caused her to miss the exit. She turned left onto Lily St or Willison Road and then left onto Durham where she drove down to the Scout Hall.

47. Ms Shan said that there was no parking on either side of the road but she found a park opposite. Her vehicle was a Toyota RAV4 and she parked her vehicle in the last parking space before the driveway of a very large vacant lot which is to be developed next to the East Quarter. Ryan exited the vehicle onto the footpath and ran around the front of Ms Shan's car. A 16 year old school student, Billy, was on the same footpath walking up Durham Street so he was facing the front of Ms Shan's vehicle. He saw Ms Shan come into the park and stop. He does not know whether her engine was on or off when he saw Ryan exit the car from the back passenger door. In his statement Billy said Ryan ran to the front of the car and out onto the road without stopping and looking.
48. In his evidence Billy said that he isn't clear if Ryan was running as soon as he got out of the car door but he heard an aunty's voice say something in Mandarin and he recalls that at least some of the word were "don't run". He said that he thought there were another child in the back seat and an adult male in the front. He didn't see anyone else get out of the car.
49. He said that he saw the car which hit Ryan just as it was close to and passing Ms Shan's vehicle's driver's door. Billy saw Ryan being hit and carried on the bonnet of the car until he rolled or fell off onto the road. Billy immediately went to the road to stop traffic and when he went to call emergency services he noticed somebody else doing so. He gave the attending police his details and told them what he saw and attended the police station the next day to complete his statement. Billy's evidence was very important as he was the only person to see what had happened to Ryan. He gave his evidence carefully and helpfully.
50. Senior Constable Street attended the scene and after ascertaining what had occurred the Crash Investigation Squad was advised of the circumstances and Crime Scene and following protocol Crime Scene were asked to attend. Constable Power gave evidence about how she and her fellow officer took measurements of the road and the accident site to prepare a drawing of the road which was later converted into a map and the calculations used by Mr Lennon from the Police Forensic team to calculate the speed at which Ms Lin was likely travelling.

51. The driver of the vehicle is Ms Xue Lin. Mrs Lin spoke with Constable Street at the scene and she was understandably very distressed. She was then taken to hospital for blood and urine testing and the next day she attended the police station where she participated in an electronically recorded record of interview with Constable Street.
52. Shortly before the Inquest was to commence I received a letter from a specialist medical practitioner seeking my consideration to excuse Ms Lin from attending the hearing due to grave concerns relating to her mental health as a result of the trauma the accident has caused her. In response to this request Mr Welsh, the Coronial Advocate Assisting me, spoke with Ryan's father to provide him an opportunity to set out any questions that he would like to pose to Mrs Lin. He did so and those questions were set out in writing and forwarded to Mrs Lin who then returned that document with her written answers. That document now forms part of the brief. Ms Lin's evidence that she was not speeding was consistent with Mr Lennon's opinion. Having determined that Ms Lin's attendance at the Inquest was likely to jeopardise her health and that she had answered in writing in relevant questions I excused her from attending.
53. The results of Mrs Lin samples were negative to any drugs or alcohol. Her traffic record discloses that she was licensed in 2006, and she has never received any infringement notices or charges during the period of her licence. She denies being tired, distracted or using her mobile phone in the moments before the collision. She says she was paying attention to her driving but that she did not see Ryan at all only realising something had happened when she heard a boom and saw a flash of white cloth upon which she applied her brakes. After her car came to a stop she exited her vehicle and saw Ryan on the roadway. She estimates her speed as between 40-50 kmh.
54. Gavin Lennon gave evidence that in his opinion Ms Lin was travelling at or less than 50 kmh which was the applicable speed zone. He said that a perception time of 1.5 seconds and application of brakes was consistent with the scene and his estimate of speed.
55. Mrs Shan had parked her car so that the kerbside wheels were a little over a metre from the kerb making the driver's side edge of her vehicle about 3 metres from the kerb. The road is about 12.8m wide. Ms Shan had parked opposite the funeral parlour where there

was a hearse parked.⁴ Mrs Lin's vehicle had available about a metre clearance on either side of her vehicle as she drove remaining on the correct side of the road. Both Billy and Ms Shan describe Mrs Lin's vehicle as driving close to her car which is consistent with these measurements.

56. Trisha Jarvis, one of the first civilians at the scene did not witness the collision, but she gave evidence about the events immediately following. Her testimony enabled the parents to hear from the person who last had contact with Ryan before the ambulance arrived. Ms Jarvis said that Ryan gave no response at all and did not suffer any pain. Both Ms Jarvis and Ryan's parents were able to meet after she completed evidence which gave them all some comfort from this traumatic tragedy.
57. Ms Shan's evidence was that she had parked the car with the intention of walking Ryan and her daughter across the road to the Scout Hall. She said that he got out of the car and she told him to wait and not to run, she opened her door and got out and a car came past and she reached out but couldn't grab him. When she gave this evidence she broke down and was so extremely distressed we adjourned for the day and she completed her evidence the following morning.
58. Mrs Shan had told Constable Street in her statement taken 2 days after the accident that she had not opened the door and the car went past. In her April statement she said that when she said "Ryan stop running" she immediately opened the door and stepped onto the roadway as she intended on taking him across the road.
59. I don't accept that Ms Shan did step out on the roadway before Ryan was struck. I do not think her evidence was deliberately untruthful. Her distress in the witness box when she had to describe what had occurred was completely genuine and it is likely that her memory has been affected by her feelings of guilt and trauma which she clearly suffers from this incident.
60. Whilst I do not accept Ms Wong's evidence in relation to waiting for Ryan while he crossed the road at school and picking him up at the fence rather than the tree, there is no evidence to suggest that Ms Shan did not intend to walk Ryan across the road to

⁴ NSW Police Force Forensic Services Group diagram page 3 of 4.

attend Tae Kwon Do. On Billy's testimony it happened very very quickly and I think Ryan was out and hit before Ms Shan could get out of the car in any event. Indeed Ms Lin's vehicle was so close at the time, Mrs Shan would not have been able to safely open her door. Further Mrs Lin said she was paying attention and she did not see anyone. Had Mrs Shan got out of the car and been in the position on the road she claims, Mrs Lin would have seen her.

61. The fact that the first thing Mrs Lin knew was hearing a boom and a flash of white cloth and the positioning of the damage to the front of the car indicates just how close and quickly this event occurred. The height and position of Mrs Shan's vehicle with Ryan, a little boy, running onto the road, Mrs Lin was never going to be able to avoid this accident. Ms Curry, counsel for Mr Liu submitted that that conclusion is the only one available.
62. Ryan may simply have forgotten to stop and look in his excitement to go to Tae Kwon Do. He would have been excited about seeing his friends and instructors after his holiday in China. He did not wait, for what reason I do not know, for Mrs Shan to accompany him across the road to the Scout Hall.

Findings

63. The purpose of the coronial jurisdiction, according to law, is to make formal findings as to the following five aspects of a death: the identity of the person the date of their death the place of their death the manner of their death the cause of their death.
64. I find that Ryan Leo died on 28 July 2014 at St George Hospital. The cause of his death was head injury occasioned when, as an unaccompanied child pedestrian crossing the road, he was struck by a motor vehicle on the southern side of the road opposite Number 118 Durham Road Hurstville.

Submissions

65. Ms Bonner appearing for the Department of Education submitted that I would be satisfied that the school response to Ms Wong's notification of concern relating to the arrangements effecting Ryan's pick up in March 2014 was responded to appropriately by

his teacher Mrs Huynh-Montgomery. She also submits that I would be satisfied that Ryan received appropriate and adequate road safety education whilst a student at Oatley Public School. I accept those submissions without hesitation for the reasons I have expressed earlier.

66. Ms Curry 's submissions query whether the assessment of Ms Lin's perception and reaction time would be effected on the basis of Mrs Shan's evidence of opening the door and getting out of her vehicle. As earlier said I don't accept that Ms Shan did open her door and get out of her vehicle. Ms Curry also suggested that school children be educated of the need to stay in their car seat until their carer opens the door to leave the vehicle. That is part of the safety instruction through the schools. Ms Curry points out that responsibility is not the schools only but shared with parents and carers.
67. Mrs Shan said that she had Ms Zheng never discussed the issue of road safety and Ryan. I suspect that they as parent and carer are not alone in that regard. I think this is a timely reminder for all parents and carers to have the conversation about their child's road safety knowledge and behaviour, for adults to expect the unexpected and if there are issues such as a child not waiting to be held, that the parent be advised of this so they can assist the child in changing that behaviour. It is not clear from Mrs Shan's evidence whether she had any problems with Ryan, in her second statement she said she did but in her evidence she said it had never happened before.
68. Ms Curry submits that the Traffic Advisory Committee might be asked to consider placing a pedestrian crossing at the location of Durham Street. I have not taken expert evidence about whether a pedestrian crossing is the safest solution for children pedestrians at this part of the road. It is timely to refer to Ms Jarvis' evidence that at that time of day, 4.30 p.m. in the middle of winter, the sun is very low, there are a lot of children, and there are a lot of cars, she said that the road is dangerous.
69. I think that the road, particularly given that there is going to be the final stage of construction of the East Quarter commencing in the probable near future, that the Hurstville City Council and the Traffic Advisory Committee revisit this section of Durham Street because of the dangers of the road. However, the earlier petitions from Mr Yoo's Tae Kwon Do School really were about available parking for parents waiting for students

to finish their 45 minute class. Given that he does not have a staggered starting and finishing times for his classes there is always every 40 minutes or so going to be significant coming of going up to 20 students and their parents or carers at a time.⁵ There may be parents who have children in different classes so there may be more than that number. Ms Curry suggests that Mr Yoo provide to his student's carers a map of the area showing available parking. That is a sensible suggestion but I fall short of making a formal recommendation as I do not think that this case is about parking. Ms Shan said that she had no difficulty finding a park, and that was the case on 28 July 2014.

70. Mr Down has perused the proposed recommendation to Hurstville City Council and he has indicated that he is not instructed to submit any changes to it and that the findings will be forwarded to the Traffic Advisory Committee's next meeting.

Recommendation

1. That the Hurstville City Council gives consideration to these findings and recommendations and brings them to the attention of their Traffic Advisory Committee.
2. That the pedestrian safety improvements at intersection of Forest Road and Durham Street recommended in the Road Safety Audit Report Ref. 14138rsa be implemented as a matter of urgency.
3. That consideration be given to conducting a further pedestrian safety audit and carrying out its recommendations in relation to the section of Durham Street between the intersection of Lily Road and Forest Road with regard to the safe crossing of Durham Street by users of Kempt Field, and the Scout Hall and businesses, and access to Forest Road from Robert Lane and Lily Street, with particular regard to the next stage of the development of the East Quarter accommodation and its construction and the expected high density population. Such consideration to include whether pedestrian safety would be improved by traffic inhibitors such as a lower speed limit, a pedestrian crossing and both eastern and western facing signage alerting drivers to the presence of children and/or reclassifying Durham Rd from being a "collector road" so that its vehicular access and speed zone are consistent with the area's pedestrian safety.

⁵ Based on 10 children coming and 10 children leaving

Final Comments

71. The death of any child is devastating and I pass my sincere condolences to Ryan's mother Lara Zheng and father Ben Liu. We started the Inquest seeing photographs of Ryan taken during each year of his happy life. Having met Ryan's parents I can see what lovely parenting Ryan had and why he was always smiling. How utterly terrible his death has been for them and their families and friends. Having an Inquest into your child's death can also be extremely difficult and harrowing but from what they have told me it has brought some measure of comfort to them. Ms Zheng said *"I believe after today I will only need to have happy memories of Ryan, no fears, no regrets, no confusion, no hate at all. (After watching the movie "Frozen") Ryan told me : Love is the most powerful thing in the world.*

72. Ryan was loved and Ryan knew it. May Ryan Leo rest in peace.

Deputy State Coroner

Magistrate Elaine Truscott

4 September 2015