

Australia: Jury acquits truck driver over rail crossing disaster

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A Victorian Supreme Court jury last month acquitted truck driver Christian Scholl of 19 criminal charges—11 counts of culpable driving and 8 of negligently causing serious injury—relating to a railway level crossing crash in June 2007 that killed 11 people near Kerang in northern Victoria.

The 12 jurors' verdict, delivered on June 13, effectively repudiated the efforts of the state Labor government to scapegoat Scholl and vindicated his lawyers' strategy of attributing responsibility to the government itself for the dangerous condition of the crossing.

Scholl, 50, an experienced semi-trailer truck driver, smashed into a three-carriage passenger train at the crossing, which had no boom gates or effective warning measures. Just two days later, however, police charged Scholl with culpable driving while he was still recovering from his injuries in hospital. The driver faced a possible sentence of 20 years imprisonment, and potentially 10 years for each count of negligently causing serious injury.

The day after Scholl was charged, Victorian transport minister Lynne Kosky visited the site of the disaster and declared: "Some people take risks that they should not take; they think they can actually beat trains."

The government's suggestion that "risky" driver behaviour was to blame was decisively refuted in the three-week Supreme Court trial, held in the regional centre of Bendigo.

Scholl's legal team mounted an aggressive defence based on evidence of the state government's neglect of the rail crossing. Terry Forrest QC said the real cause of the accident lay in the "wicked deficiencies" in the

crossing. "That crossing was, in effect, a time bomb and sooner or later an appalling tragedy like this was inevitable," he said.

The *Age* noted: "Questions over the state government's lack of action on the crossing, despite repeated warnings from [train operator] V/Line on its dangers, featured throughout the trial."

V/Line safety manager Lawrence Foley testified that from May 2006 at least six near-misses were reported by train drivers at the crossing. One of the incidents involved a train and vehicle missing each other by just 20 metres. In one five-day period in July 2006, three incident reports were filed by a train driver who later went on stress leave as a result.

V/Line commissioned an audit in August 2006 and reported its findings to the Victorian Department of Infrastructure and also Pacific National, a private rail freight operator. The report warned that the Kerang crossing lights were often effectively invisible as they blended into the landscape, particularly in bright sunlight. It called for the introduction of a number of safety measures. These findings were ignored.

Referring to this record, Scholl's legal representative asked Foley: "The buck was supplied by the state government and it eventually stopped with them?" The V/Line manager replied: "Correct".

The Supreme Court also heard that in September 2006, V/Line CEO Rob Barnett advised the Department of Infrastructure that the crossing had seen at least eight near misses in the previous five months. Department of Infrastructure operations manager Terry Spicer replied the next month. According to the *Bendigo Advertiser*, "In

early October 2006, Mr Spicer had contacted Pacific National to say the accident history at Kerang would not be taken into consideration when assessing its place for priority in expenditure.” In his email, which was read to the court, Spicer wrote: “The whole philosophy of embracing a risk management [approach] to railway crossing safety is to accept that accidents are things that just happen.”

This extraordinary statement points to the government’s contempt for the safety of ordinary people. In the court, the defence barrister Forrest noted: “What in effect is happening is that the Department of Infrastructure are approaching an issue of public safety like a profit-driven insurance company.”

Victoria has the highest number of level crossings in Australia—2,267. Of them, 1,433 have only warning signs, 465 have flashing lights, and just 367 have boom gates. According to one estimate in 2007, to install boom gates at every crossing in the state would cost \$1.5 billion.

The day after the Kerang disaster, Transport Minister Kosky ruled out such a move, warning that it would be a “very, very costly exercise”. This stance has continued despite the rising death toll. Following the death of a mother and her 14-year-old daughter when their car crashed into a V/Line passenger train at an unprotected crossing near Geelong in March 2008, Kosky insisted that warning lights and boom gates “are not necessarily appropriate” at quiet country crossings, and maintained that “nothing can take the place of drivers being alert”.

Prime Minister Kevin Rudd’s federal Labor government allocated just \$150 million in its last budget for the national “*Boom Gates for Rail Crossings Program*,” with \$30.3 million set aside to upgrade 59 “high risk” crossings in Victoria. This sum will leave more than 1,000 railway crossings in Victoria without basic safety measures.

During the Scholl trial, the prosecution’s case rested on its assertion that the truck driver had behaved in an irresponsible manner as he approached the crossing.

This was refuted by the testimony of two motorists travelling behind Scholl at the time of the crash; their evidence showed that he had done everything in his power to avoid the collision. They confirmed the inadequacy of

the warning system, testifying that they too had not seen the approaching train or the roadside warning lights until the last moment.

At the Kerang crossing, the Murray Valley Highway curves before intersecting at a 45-degree angle with the rail lines. From Scholl’s approach, trees obscured the view of the southbound train, while sun glare exacerbated the lack of visibility. The road and rail speed limits at the time—100 and 90 kilometres per hour respectively—were no doubt too high. Scholl only saw the train when it was too late to stop—he unsuccessfully attempted to steer his truck into a gully before the crossing.

Several experienced truck drivers testified that the crossing’s warning bells were only audible when their vehicles came to a halt. The defence also highlighted an email by V/Line train driver supervisor Peter Smith, who wrote in February 2007 that it was, “only a matter of time before a serious accident occurs at this location”.

In his closing address to the jury, Forrest indicted the Labor government. He noted that the Department of Infrastructure was not on trial for the collision. “But if a problem has been identified at this crossing a minimum of 12 months before, and if absolutely nothing was done by the state government, [which was] alerted to it time and time again to the point of being told, ‘There will be a catastrophe,’ it becomes, you might think, a peculiar irony that another arm of this state, the DPP [Director of Public Prosecutions], seeks to point the blame not at itself but at Christian Scholl.”



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