



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Albert Edward
BARRIE**

TITLE OF COURT: Coroner's Court

JURISDICTION: Rockhampton

FILE NO(s): 2009/1309

DELIVERED ON: 10 May 2011

DELIVERED AT: Rockhampton

HEARING DATE(s): 15 March 2011

FINDINGS OF: Mrs Annette Hennessy, Coroner

CATCHWORDS: Facilities for Crossing public road in vicinity of
social venue; visibility around crossing area on
public road at night; pedestrian safety.

REPRESENTATION:

Counsel Assisting: Sgt C Elder

Family: Mrs Hazel Barrie – Wife in
person

Other Appearances:

Mr Vagg – Driver – In person

1. These findings seek to explain, as far as possible, how the motor vehicle incident occurred in which Albert Edward BARRIE died.
2. Mr Barrie was killed when struck by a motor vehicle towing a horse trailer when he was crossing Lion Creek Road, Rockhampton outside Brothers' Leagues Club with his wife on the evening of the 9th July 2009.
3. A Coroner is required under s45(2) of the Act when investigating a death, to find, if possible: the identity of the deceased, how, when and where the death occurred, and what caused the death. The focus of an Inquest is on discovering what happened, informing the family and the public as to how the death occurred, but not on attributing blame or liability to any particular person or entity.
4. The Coroner also has a responsibility to examine the evidence with a view to reducing the likelihood of similar deaths. Section 46(1) of the Act, authorises a coroner to "*comment on anything connected with a death investigated at an inquest that relates to – (c) ways to prevent deaths from happening in similar circumstances in the future.*" Further, the Act prohibits findings or comments including any statement that a person is guilty of an offence or civilly liable for something.
5. Due to the proceedings in a Coroner's court being by way of inquiry rather than trial, and being focused on fact finding rather than attributing guilt, the Act provides that the Court may inform itself in any appropriate way (section 37) and is not bound by the rules of evidence. The rules of natural justice and procedural fairness apply in an Inquest. The civil standard of proof, the balance of probabilities, is applied.
6. All interested parties can be given leave to appear, examine witnesses and be heard in relation to the issues in order to ensure compliance with the rules of natural justice. In this matter, the family of Mr Barrie and Mr Wagg, the driver of the vehicle, appeared at the Inquest unrepresented.
7. All of the evidence presented during the course of the Inquest, exhibits tendered and submissions made, have been thoroughly considered even though all matters may not be specifically commented upon. Consequent on the court hearing the evidence in this matter where learnings can be made to improve safety, changes may be recommended with a view to reducing the likelihood of similar incidents occurring in future.
8. The issues for determination in this Inquest are:
 - A. How did the motor vehicle collision occur?
 - B. Did the physical characteristics of the scene, particularly the lighting and road crossing facilities, contribute to the incident?
 - C. What are the formal findings?

- D. Are there any matters connected with the death in which there can be improvements to public safety by changes in policy or procedure.

A. How did the motor vehicle collision occur?

9. Mr Vagg was driving a white 2008 Mazda BT-50 4x4 utility at the time of the incident on 9 July 2009. He was accompanied by his wife who was the only passenger. They had taken some horses to Mackay for a race meeting that day. They rose at 5.30 – 6am, did their jobs around the house, connected the horse float to the vehicle and went into Rockhampton. They collected the horses and left for Mackay around 7am. They arrived in Mackay about 11am and went to the races. After the races, they reloaded the horses and returned to Rockhampton arriving at about 6pm. They dropped the horses off at the stables and were there for about 20-30 minutes. They were driving home at the time of the incident. They had done a similar trip to Mackay on about 5 occasions in the previous 4 years. Mr Vagg gave evidence that he was used to driving long distances from his previous employment as a horse lorry driver. He was not tired on this day as he rested for some hours in Mackay while at the races and they made at least one stop in each leg of the journey.
10. Mr Vagg gave evidence that he passed over the railway line at the intersection of North Street, heading towards Brothers' Leagues Club. He and his wife were talking in the car. He was looking ahead and driving slowly as he knew that the football club was coming up. Two people appeared on the road in front of him about a car length away when he was almost level with the Club. He had not seen the people before that point. They were in the middle of the lane in which Mr Vagg was driving, slightly towards the passenger side of the vehicle. He swerved onto the wrong side of the road and hit the brakes in an effort to avoid the pedestrians. Mrs Barrie appeared to be pulling Mr Barrie along by the arm in the direction of the carpark. He thought he might have missed them but Mr Barrie hit the corner of the bulbar and then the passenger side mirror. Mr Vagg stopped the vehicle and let his wife out and then parked on the correct side of the road a short distance away near the corner of the side street. He engaged his hazard lights and went back to the scene to assist.
11. Mrs Vagg first saw the pedestrians as they were halfway across the road and in front of the vehicle. She saw them in the headlights of the vehicle. She said that Mr Barrie was closest to the vehicle and Mrs Barrie was pulling and pushing at him from slightly in front of him. They both had dark clothing on. She heard a noise on the passenger side of the car but thought they had missed the pedestrians until she saw that the mirror was damaged. Mrs Vagg went to assist Mr Barrie, she had nursing experience. He was lying with his head against the kerb and his feet towards the middle of the road, a little on his side. She rolled him over and commenced CPR until the QAS arrived.

Another motorist had called the ambulance and was attending to Mrs Barrie who was uninjured.

12. Hayley Gyemore was in a vehicle following the Vagg's. She saw the pedestrians come out of the Club and waiting on the kerb to cross the road. She next saw them on the road about 40-50 metres in front of the car in front of her. She saw the result of the collision and pulled up to render assistance. She stated that the Vagg's vehicle was not travelling fast.
13. The medical evidence was that Mr Barrie died as a result of the injuries sustained in the incident, in particular a transection of the thoracic aorta. The disruption to the aorta occurred in an area of aneurismal dilation which was a pre-existing natural illness condition. The side impact led to the transection.
14. There was some question by the Police mechanic about the braking system of the trailer attached to the vehicle but there was no evidence of any interference with the brakes at the time of the incident. Both Mr and Mrs Vagg and Ms Gyemore gave evidence that the vehicle did brake in an attempt to avoid the collision.

B. Did the physical characteristics of the scene, particularly the lighting and road crossing facilities, contribute to the incident?

15. The incident was investigated by Constable Easthaugffe who has since left the Queensland Police Service. Senior Constable Dallas Trembath conducted a peer review of the investigation report. He gave evidence that the photographic evidence of the scene shows the lighting to be better than it is in situ. He considered the lighting to be poor with the canopy of trees interfering with the light from the few street lights that are present, mainly on the Club side of the road. He says the area is quite dark at night. The pedestrian crossing prior to the club was well lit but there was no light between that area and the carpark at the Club. The carpark on the opposite side of the road where Mr & Mrs Barrie were parked was quite dark. The Club carpark was well lit and there was some spillage of light onto the road area near the Club. Further, there is a street light on the corner of Exhibition Road, the side street past the carpark across the road from the Club.
16. Mr Vagg had travelled on Lion Creek Road often at night. He knew that the lighting situation was difficult and so he slowed to about 50km per hour after the railway crossing approaching the Club. He said that the effect of the street lighting from the large trees along both sides of the road was such that the road appeared to come in and out of light as one travelled along. He could not recall whether the zebra crossing was lit but remembered that he could see it in his headlights. Mr and Mrs Barrie were crossing the road between the pedestrian crossing and the Club.

17. Mrs Vagg confirmed that the lighting was irregular and patchy with lit areas followed by dark areas. There was also little light in the area where she was attending to Mr Barrie after the incident.
18. Mr Vagg was not charged with any traffic offences. The forensic crash investigation report was not completed within the 12 month timeframe in which any charges would need to be laid. It may have been that the Police may not have charged Mr Vagg in any event but they did not have a choice given the delays in the preparation of the report on the incident. There were internal staffing reasons why this occurred but the family of Mr Barrie were particularly unhappy that charges were not considered.

C. FORMAL FINDINGS

129. The deceased person was Albert Edward BARRIE born on the 9th day of July 1927.
130. Mr Barrie died as a result of multiple injuries sustained by him in a motor vehicle collision which occurred on the evening of 9th July 2009.
131. Mr Barrie died on Lion's Creek Road, Wandal, outside Brothers' Leagues Club, while crossing the road to the carpark opposite the Club. A vehicle towing a horse trailer travelling in a northerly direction and driven by Mr Vagg, collided with Mr Barrie in Mr Vagg's lane of travel. The area was poorly lit and had large trees lining the Club grounds. The effect was regular interruptions to the street lighting by the overhanging trees causing light and dark areas on the footpath and roadway. Mr Vagg did not see Mr Barrie until he was in his lane of travel about 50 metres away due to the poor lighting. He braked and tried to take evasive action but the passenger side of the vehicle clipped Mr Barrie causing him to collapse on the side of the road. There was no involvement of speed in the accident. The lack of safe crossing facilities, especially for elderly people, and the lighting of the road were issues in the collision.
132. The death was caused by multiple injuries sustained in the motor vehicle collision.

D. RECOMMENDATIONS

133. I thank the parties for the submissions made regarding recommendations which were of significant assistance. I have adopted some of the recommendations proposed in those submissions. In one instance, the family of Mr Barrie sought a state-wide recommendation relating to all Clubs with offsite car parking. Whilst I am sure this would be ideal, there is no evidence before me as to the existence or extent of the problem at sites other than the one under examination in this Inquest and the recommendation is limited to that site.

134. I make the following comments by way of recommendations pursuant to section 46 of the Coroners' Act to assist to prevent similar occurrences in the future and in the interests of public safety on the roads. To the extent that the parties have already taken remedial action, the court expects that those actions are bona fide and implemented long term.

IT IS RECOMMENDED:

1. That a safe pedestrian crossing facility, perhaps with an island and crossing lights and appropriate for use by elderly and infirm people, be constructed close to the Brothers' Leagues Club (now known by a different name) in Lions' Creek Road Wandal. Barriers should restrict access to the road from other areas of the footpath in the vicinity of the Club.
2. That additional street lighting be installed in the area of the Club including the carpark on the High School side of Lion Creek Road and that the tree canopy or lighting or both be modified to ensure a constant source of light to the roadway for pedestrians and motorists.
3. That consideration be given by Department of Transport to reducing the speed limit for Lion Creek Road to 50km per hour in the area of the Club.
4. That forensic crash investigation reports be prepared and considered by Queensland Police Service in a timeframe which allows traffic charges to be laid within the legislative time limits.

A M Hennessy
Coroner
10/05/2011