QUEENSLAND COURTS

CORONERS COURT OF QUEENSLAND

FINDINGS OF INQUEST

CITATION:	**Joint Inquest into the deaths of Lardeen Bernadette Glennon and Matthew David Glennon**
TITLE OF COURT:	Coroners Court
JURISDICTION:	Mackay
FILE NO(s):	COR 2011/3315 and 2011/3339
DELIVERED ON:	1 December 2017
DELIVERED AT:	Mackay
HEARING DATE(s):	21 – 23 November 2017
FINDINGS OF:	Magistrate D O'Connell, Coroner
CATCHWORDS:	CORONERS: Fatal motor vehicle collision, speed a contributing factor, receipt of data downloaded from Airbag Control Module showing speed shortly prior to collision in excess of posted speed limit, weight to be placed upon such data, law reform by facilitation of proof of ACM data (i.e. speed, etc.) via legislation
REPRESENTATION:	
Counsel Assisting	Mr J M Aberdeen
Mr Adam Wisley Lawyers)	Mr J R Jones (instructed by Wallace and Wallace
Dept of Transport and Main Roads (DTMR)	Mr S Moon (instructed by DTMR)
Family of Lardeen and Matthew Glennon	Mrs Kathleen McAdam (mother and grandmother to deceased)

[1]. On 25 September 2011 Lardeen Bernadette Glennon and her son Matthew David Glennon were involved in a fatal traffic accident. She was the driver of a vehicle which was struck on the driver's side door whilst she was turning right off a highway. The second vehicle was attempting to overtake multiple vehicles in one overtaking manoeuvre. Why the driver of this second vehicle did not see Mrs Glennon turning and whether excessive speed, and what speed, was involved were issues raised. There was also a question over why electronic data alleged to record this vehicle's speed in the moments before, and at the time of, impact was not led at the subsequent criminal trials, there were also concerns raised about the reception of such evidence in Queensland.

[2]. This inquest examines the circumstances of the traffic accident to establish why it occurred, and whether electronic recording of data from vehicles can be more easily received into evidence at any trial. There was also raised whether the duties of overtaking drivers can be more adequately clarified in the law as it appeared the jury was unclear[1] on which driver had responsibility to 'give way' in the circumstances.

Tasks to be performed

[3]. My primary task under the Coroners Act 2003 is to make findings as to who the deceased person is, and how, when, where, and what, caused them to die[2]. In Mrs Glennon and Matthew's[3] case there is no real contest as to who, when, where, or what caused them to die, the real issue is directed to the 'how' they came to die.

[4]. Accordingly the List of Issues for this Inquest are:-

1. The information required by section 45(2) of the *Coroners Act 2003*, namely, when, where, and how Mrs Glennon and Matthew died, and what caused their death?

2. (a) was signage (including the posted speed limit of 100 km/h) adequate to protect the safety of the travelling public on that section of the Peak Downs Highway?
   (b) was there any feature of the Peak Downs Highway which contributed, either wholly or in part, to the circumstances of this collision?

3. What was the speed, immediately before and at the time of the collision, of:-
   (a) the vehicle driven by Mrs Lardeen Glennon; and
   (b) the vehicle driven by Mr Adam Wisley?

4. Did Mrs Glennon signal her intention to turn right off the highway?

5. What caused the collision between the two vehicles, and in particular, was the speed, or excessive speed, a factor contributing to the collision? and

[1] Exhibit E.5.6
[2] Coroners Act 2003 s. 45(2)(a) – (e) inclusive
[3] As Matthew was 14 y.o I will refer to him by his given name in these Findings

6. (a) Whether the law relating to the reception of evidence provided by Airbag Control Modules (Event Data Recorders) should be reviewed, by reference to their potential admissibility in proceedings arising from the driving or operation of motor vehicles? and
(b) Whether the duties of overtaking drivers, as contained in the Road Rules (e.g. s 140), should be reviewed?

[5]. The second task in any inquest is for the coroner to make comments on anything connected with the death investigated at an inquest that relates to public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future[4].

[6]. The third task is that if I reasonably suspect a person has committed an offence[5], committed official misconduct[6], or contravened a person's professional or trade, standard or obligation[7], then I may refer that information to the appropriate disciplinary body for them to take any action they deem appropriate.

[7]. In these findings I address these three tasks in their usual order, *s.45 Findings*, *s.46 Coroners Comments*, and then *s.48 Reporting Offences or Misconduct*. I have used headings, for convenience only, for each of these in my findings.

Factual background & evidence

[8]. The incident occurred at approximately 11:30 AM on Sunday, 25 September 2011. It was a two vehicle fatal traffic crash which occurred on the Peak Downs Highway[8], Greenmount. The vehicles involved were a 2008 Hyundai Getz model hatchback, driven by Mrs Glennon, and a 2009 Holden Commodore SS[9] utility driven by Mr Wisley. Mrs Glennon was attempting to execute a right-hand turn off the highway into a rural-residential allotment, whilst Mr Wisley was attempting an overtaking manoeuvre, allegedly of a number of motor vehicles in the one manoeuvre.

[9]. There was no suggestion that any external factor such as adverse weather, sunlight, road surface conditions, native animal, wandering livestock, use of a mobile telephone, fatigue, medical episode or event, or defect in either motor vehicle was a causal factor in the crash occurring. Medications, drugs and alcohol were not factors either[10]. There was clear evidence that speed, and the nature of the turning and overtaking manoeuvre, were the crucial factors in the accident occurring. Essentially it was simply driver actions which were relevant. Any suggestion of an external factor being significant, or even contributory, is rejected.

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[4] ibid s.46(1)
[5] Ibid s.48(2)
[6] Ibid s.48(3)
[7] Ibid s.48(4)
[8] This is the major road between Mackay and its' hinterland communities. It is very well trafficked, indeed a traffic survey identified it has 11% traffic volume of heavy vehicles.
[9] An 'SS' model designation of the VE model Commodore indicates it is the 6.0L V8 engine model
[10] Toxicology certificates for both drivers were negative for any relevant alcohol, or medications above therapeutic levels, and no illicit drugs were detected, see exhibits A.5 (Glennon) and B.7 (Wisley)

[10]. The police charged Mr Wisley with the offence of dangerous operation causing death. He subsequently underwent two criminal trials before the prosecutor at the second trial entered a *nolle prosequi*. In the two years and two months since no further trial has been conducted. Mr Wisley suffers from a lack of memory[11] of the specific crash events and so conclusions (where possible) from the evidence presented were required to be reached by me.

[11]. I set out the above in very general terms only and I detail what occurred as to the critical issues in my findings below.

Investigations into the incident:

[12]. The Queensland Police Service (QPS) Forensic Crash Unit (FCU) conducted investigations into the circumstances of the accident. They established that Mrs Glennon was driving her son to a friends' residence at rural lot #25009, Peak Downs Highway, Greenmount. She was travelling westbound on the Peak Downs Highway a little way ahead of a line of westbound traffic. The line of traffic consisted of Mrs Glennon followed at a distance by four motor vehicles and a prime mover B-double fuel tanker configuration.

[13]. As this line of traffic left Walkerston they moved from the 60 km/h zone to a 100 km/h zone over a distance of a few kilometres. For this distance the highway gently undulates and has slight bends to the left and right, such that overtaking for this section of the road is either limited, or prohibited by double continuous centrelines. All these vehicles drove in an orderly and regular way for that section of road. In the stretch of the highway where the incident occurred the vehicles heading westbound come over a crest and there is a slight downhill section before a flat straight section of approximately 1 km. The road then gently rises and bends left (looking westbound). Along the flat straight section of the highway there are a number of rural residential allotments each with a driveway over a large drain. Mrs Glennon was driving to a residence on this straight section so she could drop off Matthew to a gathering of friends. His friends, already at the house, had gathered down at the fence line of the property awaiting Matthew's arrival and so they could also assist in helping identify the correct driveway to turn into. I should point out that there is no legal impediment to Mrs Glennon turning into the driveway as it was then permitted along that section of the highway.

[14]. As a car comes down the slight hill a driver has good visibility, for some distance, of traffic which may be approaching. The driver who was then second in line of the group of vehicles a little distance back from Mrs Glennon was driving a black Chrysler 300C[12] motor vehicle. He safely overtook a white Hilux 4WD utility which had been travelling at 80-90 km/h and pulled back into the left hand lane, behind Mrs Glennon. They noticed Mrs Glennon was slowing, then indicating to turn right, so they slowed behind her. When first seen she was still some distance ahead, perhaps 150 metres.

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[11] Expert evidence and his medical records immediately following the accident show his condition to be genuine and now long standing. See exhibits G.9, G.10, G2-2.22 inclusive.
[12] This vehicle is a sedan configuration

[15]. Mr Wisley who was initially the third vehicle in the line of traffic, then pulled out to overtake. Evidence was that Mr Wisley stayed in the right-hand lane and continued his overtaking manoeuvre to overtake the white ESS Toyota utility and the black Chrysler 300C sedan and also to attempt to overtake Mrs Glennon's vehicle.

[16]. As Mrs Glennon turned right off the highway into the residential allotment, Mr Wisley obviously[13] saw that the vehicle was then turning, because he applied his vehicle's brakes, but he impacted heavily with the passenger side door of the Hyundai Getz driven by Mrs Glennon.

[17]. The impact was heavy and Mrs Glennon died at the scene never regaining consciousness. Matthew, in the front passenger seat, received severe injuries and passed away the next day without regaining consciousness. The young girls at the fence line were showered in glass and debris[14]. Because of the severity of the impact, the air bags in Mr Wisley's Holden Commodore utility deployed. That is significant because what might not be known to many people is that the airbag computer actually 'captures' or records data, much in the way a black box flight recorder captures data. The data records what the vehicle was doing in the moments before the air bags deployed. The reason the air bag management system does this is to ensure that airbags are only deployed when required, and that is dependent upon the severity of the impact[15].

[18]. What is important for me to determine is whether Mrs Glennon had appropriately indicated her intention to turn off the highway, whether it was appropriate to do so at that location, whether the overtaking manoeuvre by Mr Wisley was appropriate, or lawful, and importantly at what speed he was then travelling. The first questions are readily answered, and that is that she did signal her intention to turn off the highway using her vehicle's indicator. It was observed by a number of drivers behind her. Also it was agreed by all that it was lawful for her to turn off the highway at this location as she was attempting on that day.

[19]. The police investigation found a large amount of evidence at the scene which assisted in determining the placement of each of the vehicles at the time of impact, and also assisted to some degree with determining what had occurred. The police also interviewed a number of witnesses, including the occupants of the vehicles that were in the line of traffic and the young children, approximately 13-14 years old, who were at the fence line. Of importance in their observations was their estimation of the speed Mr Wisley's vehicle was travelling at just moments before impact occurred. I appreciate entirely that

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[13] He claims to not recall the specifics of the incident but applied his brakes so clearly had 'reacted' to Mrs Glennon's turning manoeuvre. Therefore I can draw this conclusion.

[14] This indicates how close they were to the incident

[15] The data captured and computer processing power is such that it can also determine which airbags to deploy. This all occurs in milliseconds. In Mr Wisley's car it can be seen that the passenger side curtain and seat airbags deployed, whereas the drivers did not, likely due to the heavier impact on the passenger side front of the green utility.

each of the witnesses are lay people, and merely doing their best to recall an estimate of speed. It makes for very interesting reading the speeds which were estimated all viewing the same scenario. I will then compare that to the crash evidence found at the scene, then the data recorded from the vehicle's EDR itself. I will address later how this evidence was presented to the jury and what occurred at the subsequent two criminal trials involving Mr Wisley.

[20]. Various witnesses gave the following estimates of the speed of the green Commodore utility;

a. Vehicle no.1:- "around 120 km/h, probably accelerating"[16], and "around 80 km/h when (it) collided with the blue car"[17];

b. Vehicle no.2:- (passenger) "under hard acceleration", and "at least 120 km/h–130 km/h, maybe more" [18], and (the driver) "well over the speed limit"[19], and "accelerating faster'[20];

c. Vehicle no.3:- "up to about 95 km/h to overtake the ESS utility"[21];

d. Vehicle no.4:- "put his foot down", "about 90 km/h", "given his car a boot full[22]" "car seem (sic) pretty responsive" "may have got it up a bit faster" "trying to overtake both cars including the blue car", and "green utility would have been the only vehicle exceeding the speed limit"[23]; and

e. The four young girls (aged approximately 14 y.o.) who were standing at the fence described the speed as "really fast", "really fast, like more than 100 km/h", "very fast", "really, really, really, fast", "80 km/h", "flying", "about 110 km/h", "really fast", "thought they would (*sic*) drag racing cause the car was going so fast", "very high speed", and "really quickly"[24].

[21]. All of these witnesses describe the utility, stated very broadly, as driving quickly, and exceeding the speed limit in most people's view. Each witness at the inquest reconfirmed their observations of the vehicle's estimated speed, although their earlier statements did provide a better recollection of their observations. What is very clear is that lay people have very differing perceptions of the actual speed of a vehicle based on their own life experiences. I note that even between the experienced drivers there was a significant variation in estimated speed. No

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[16] Exhibit C.4 at [14]
[17] Exhibit C.4 at [17]
[18] Exhibit C.9 at [11]
[19] Exhibit C.8 at [7]
[20] Exhibit C.8 at [8]
[21] Exhibit C.6 at page 2
[22] Fortunately I have truck drivers amongst my friends (a benefit of being a regionally based coroner) so this colloquial term by the female truck driver I readily understand and interpret to mean '*he depressed the accelerator very hard with his right foot*'
[23] Exhibit C.10 at [13] & [14]
[24] Exhibit D.5A p4 [23], p9 [38], p13 [8], exhibit C.33, exhibit D.6A p5 [3], p11 [5], p12 [38], exhibit C.31, exhibit D.7A p8 [17], exhibit C.32, exhibit D.8A p18 [53]

person, - and I am not being critical of them at all, - could accurately[25] describe the vehicle's speed with any certainty, and each was merely doing the best they could. What I do conclude is that the better observations, or estimations, were those from the experienced drivers in close proximity to the driving of Mr Wisley, and who themselves had a 'gauge' being their own vehicle's speed. These were Mr Clayton (Black Chrysler 300C sedan, vehicle No.1) and Mr Flynn and Mr Grinter, the passenger and driver respectively (White 'ESS' Toyota Hilux utility, vehicle No. 2).

[22]. I should point out that even though some of these witnesses gave estimates of speed, a large proportion of these statements were unable to be led at the criminal trials[26]. That left the jury with little assistance in determining at what speed Mr Wisley was driving. Indeed when deliberating their verdict the jury at the first trial passed a question to the presiding judge of '*was sergent bellert able to determine the speed of the green ute*?'[27]. Fortunately the coronial jurisdiction is able[28] to receive evidence which may be excluded from a criminal trial.

[23]. The police recovered from Mr Wisley's vehicle the Airbag Control Module (ACM). An airbag control module is part of the vehicle's supplemental restraint system. It is one of the many computers within modern vehicles. Evidence was that an ACM (or termed Event Data Recorder[29] or SDM, as it is referred to within General Motors) performs a number of functions including monitoring vehicle dynamics to determine a 'developing' collision using inbuilt accelerometers, and within milliseconds makes decisions regarding the deployment of any supplemental restraint system (airbags) and also determines which airbags within the vehicle should be deployed. Monitoring of the system occurs continuously, and a diagnostic test is done of the system every time the vehicle has the ignition engaged[30]. Recording of crash data is a third function of the EDR module. In this case it was a Bosch brand airbag control module which was retrieved after the accident[31]. The data retrieved captures a number of seconds prior to the incident occurring[32], but importantly records further information about the vehicle speed, and changes in it[33], together with actions from the driver such as throttle input (expressed as a percentage) and brake

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[25] Every person was well below the data recorded speed

[26] Those of the children were excluded, as well as certain aspects of the adults' evidence relating to speed

[27] Exhibit E5.5. Sgt Bellert was the QPS FCU investigator. The 'green ute' is clearly a reference directed to Mr Wisley's vehicle. The question is reproduced exactly as submitted, uncorrected for any grammatical or capitalisation errors.

[28] s.37 Coroners Act 2003

[29] I will use this term as that is the function most relevant to this inquest

[30] Commonly when a vehicle is started, but it occurs when the dashboard lights are activated, merely by turning the key to the 'ignition on' position.

[31] Bosch manufactures these items and supplies them to numerous vehicle makers, such as GM. The particular model VE Holden Commodore was also built in Australia and re-badged a Pontiac G8 and exported from Australia to USA. Accordingly the GM expert called at the inquest was not only familiar with the Bosch EDR, but had in fact monitored testing of the same style or model of vehicle in the USA as it was installed in a model of vehicle sold there (Pontiac G8). Some may consider that to be a remarkable coincidence, or some a reflection of the diligence and thoroughness of the coronial investigation process

[32] It is calculated back from the airbag deployment.

[33] Known as a Delta V calculation

activation (expressed as either the brake circuit being ON or OFF, rather than percentage application).

[24]. The information recorded by the EDR module was not tendered at either criminal trial because before the first trial there was apparently an agreement[34] between the prosecutor and senior counsel for Mr Wisley that the data would not be tendered. At the second trial there was an attempt to 're-introduce' the EDR information but that application was unsuccessful.

[25]. The data recorded is very important for the purposes of the inquest. It is most interesting when compared to the witness versions of the various estimates of speed. As I said earlier the independent witnesses gave estimates between 80 km/h and 'maybe' 130 km/h perhaps more of the speed of the green Commodore utility. The EDR showed:-

Parameter	**-2.5 sec**	**-2.0 sec**	**-1.5 sec**	**-1.0 sec**	**-0.5 sec**
Vehicle speed (mph[35])	98	100	100	91	81
Engine speed (rpm)	5632	5696	4224	3776	3072
Accelerator pedal position (percent)	100	36	0	0	0
Percent throttle	100	51	23	21	18
Brake switch circuit state	OFF	OFF	ON	ON	ON

[26]. This indicates that 2.5 seconds before airbag deployment his vehicle was travelling at a speed of 157 km/h, increasing to 161 km/h at 1.5 seconds before airbag deployment. At 2.5 seconds before the airbag deployed there is 100% throttle application which then trails off to 0% at 1.5 seconds before airbag deployment. There are no brakes being applied until 1.5 seconds before airbag deployment. Accordingly this information shows that Mr Wisley's vehicle was travelling around 160 km/h, 60 km/h above the speed limit and under full acceleration in the few seconds before the airbags deployed. His V8 engine was also exceeding 5600 rpm. It also shows that he must have seen Mrs Glennon, presumably indicating or commencing her turn, as he applies his brakes. No doubt many would consider that this manner of driving is dangerous when in close proximity to other vehicles, and persons standing at the fence line of the

[34] Precisely why such an agreement was made was not explained to me, but presumably there must be a good reason for it.
[35] Mph conversion to km/h is 1:1.609. 98 mph = 157.7 km/h, 100 mp/h = 160.9 km/h

nearby property. Accordingly it is important to determine whether the data recorded[36] is to be accepted as accurate. The inquest spent a deal of time on this issue.

[27]. Counsel for Mr Wisley queried the reliability, and accuracy, of the recovered data. The data was recovered utilising the Bosch specific downloading equipment or program which produced a readily[37] understood Report. The downloading was also conducted by an independent expert, Mr George, which produced precisely the same Report[38]. Each person who downloaded the data confirmed it was not in any way corrupted, and was on its' face accurate. An expert, Mr James Churchwell, very experienced in EDR information, from General Motors in the United States of America also gave evidence on this issue and he confirmed precisely what the QPS and Mr George found.

[28]. It is helpful to approach the matter from consideration of a number of aspects to see if the data recorded is reliable and correct. Firstly I considered the credible witnesses, those who assessed the Commodore's speed by observation, being in close proximity, and having reference to their own speed. All considered the utility was travelling about 120-130 km/h and importantly was seen 'accelerating away'. It clearly could not have been travelling just over 100 km/h as it could not at that speed pass the black Chrysler 300 C. The QPS did calculations based on evidence found at the scene (and excluding the EDR), which found the Commodore to be likely exceeding the speed limit. The scene evidence certainly bore that out but a precise speed could not be stated.

[29]. The EDR revealed the figures I have set out in the table in paragraph 25[39]. These were downloaded by Sgt Stocker, who incidentally is a Bosch accredited trainer on downloading the EDR. The inquest concluded with no question of the values[40] or information downloaded. The data clearly showed the Commodore

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[36] There was no suggestion by anyone that the unit was malfunctioning, such that a dashboard warning light illuminated. The unit conducts a diagnostic test every time the vehicle's ignition is switched on. If there is any suggestion that the data captured is that from when the vehicle was involved in an alleged high speed police chase (purportedly with a 5 metre drop involved) approximately nine months before this incident, that is rejected as the airbags then did not deploy and the data shows its' recorded information is from just 2 ignition cycles before the relevant download, likely due to tow truck operators or police turning the ignition on (it is recorded as 2728 ignition cycles at deployment, 2730 at download as Mr Churchwell explained). If it is suggested that the unit was faulty, or even damaged in the accident I specifically reject that. There was also no modification made to the vehicle's original drivetrain specifications.

[37] Every aspect of the Report was simple to understand except the 'Hexidecimal Data' which once explained as recorded in a base 16 format was also easily understood as to how it recorded speed. The Report format of information merely mirrors the information required by the US Highway Rules or Regulations.

[38] Not surprising since the EDR is configured to produce its information in a certain way.

[39] The speed was also worked using recorded engine rpm, gear ratios, differential ratio and tyre specification to 'mechanically' (if I may use that term), determine the speed. This assumes a nominated gear but the figures worked showed just how close it matched in third gear to the EDR speed. There is no precise way of knowing which gear the vehicle was in at that time, but it is revving hard, and the rpm very heavily points to third gear. In addition accelerometers also determined a similar speed.

[40] There was initially some debate (I was left in no doubt whatsoever) over whether the information in the table of the Bosch Report was correctly in mph or km/h. It is definitely 'captured' in the Hexadecimal Date as km/h, then mathematically converted to mph in the table. There is no difficulty with this as the conversion can be readily made from metric to imperial. Once explained even I could

was speeding moments before the airbags deployed. When one considers the evidence of the credible motorist who stated that when he passed them he was doing 120-130 km/h, possibly more, and accelerating away, indeed '*gave it a bootful and the car was pretty responsive*[41]' stated one witness[42] then there is no doubt whatsoever that the speeds recorded by the EDR (in the table in paragraph 25) are entirely accurate. Any suggestion that Mr Wisley only commenced to accelerate hard 'after' he found himself in an emergency situation where he could not re-join the left lane is not accepted. He began accelerating hard before overtaking the first vehicle, the white Hilux utility. Accordingly there was no 'emergency' as such, rather he simply attempted a totally ill-conceived and dangerous overtaking manoeuvre of three vehicles at one time reaching a speed of 161 km/h. Why he did this I cannot determine, nor can he explain.

[30]. Accordingly after hearing all the evidence I am satisfied that the EDR data recorded, downloaded, and interpreted, by the QPS, Mr George the crash analysis expert, and Mr Churchwell the GM expert, does accurately reflect the speed Mr Wisley was travelling at in the moments prior to impact. I should point out that the experts had a degree of variation in calculating Mr Wisley's vehicles speed at the moment of impact, and the speeds vary from 130 to 153km/h[43], but again all are well above the 100 km/h posted speed limit. This is because under heavy braking the speed data may only 'under-represent' (but never over-represent) the true speed due to tyre braking wheel slip.

[31]. I also need to determine if Mrs Glennon signalled her intention to turn right by the use of her driver's side indicator. Certain witnesses said that they observed her indicating, and this is confirmed by an examination of the filament in that light globe which indicated it was 'heated' or in use, at the moment of impact[44].

[32]. After hearing the evidence it is clear to me that she had signalled her intention to turn right, and that is very evident by the driver following her slowing down. Precisely why Mr Wisley did not see Mrs Glennon's turn signal, or appreciate that her car was slowing down to execute a right-hand turn, I cannot determine, but perhaps his view was directed further up the road. That issue I simply cannot

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readily follow the data and make the calculations. Indeed Sgt Stocker very much impressed with his knowledge of Hexadecimal Data even being able to identify the particular 'line value' of the recorded speed, and converted it from base 16 format. Not even the GM expert could readily remember which was the relevant line of data. Sgt Stocker also impressed as a very persuasive witness who conceded points where necessary and presented in a very straight forward manner. He is certainly appropriately qualified by Bosch, being an accredited trainer of their product.

[41] No doubt it was responsive as it is a modern performance model Commodore utility fitted with a 6.0L V8 engine and at the time the engine was revving at over 5,600 rpm, which is near the peak power and torque points for such an engine.

[42] Just as to the aspect of the nature of the overtaking or acceleration move (see witness Janeen Pelicaan exhibit C.10)

[43] Exhibit E.8 at page 10 paragraph 48, which gives a range of 144-153 km/h at 0.5 seconds prior to Algorithm Enable, when the data capture occurred. 130 km/h is the QPS FCU calculation allowing for the additional 0.5 seconds of deceleration under braking.

[44] Mr Wisley's counsel appropriately conceded that she did indicate her intention to turn, but I cannot defer my duty to determine the facts based on concessions by counsel, although it does narrow the contentious issues.

determine, but clearly at a moment before the impact he appreciated she was turning as he stops 100% accelerator use, and commences braking[45].

[33]. There was no suggestion[46] that the road was a factor in the collision occurring. There was no mechanical or roadworthy issue with either vehicle. Clearly the incident occurred simply due to the driving behaviour of Mr Wisley, not only as to his excessive speed, but his decision to overtake multiple vehicles in one manoeuvre. Mr Wisley's driving showed a total disregard for other road users. It was extremely reckless[47] and that is borne out by the fact that a mother and her 14 y.o. son died solely through his actions.

[34]. As to whether Mr Wisley was required to 'give way' to Mrs Glennon turning right, I would have thought that to be an elementary question, but it was interesting that the jury sought direction from the first trial judge. The road rules clearly state that Mr Wisley was not permitted to overtake a car turning right. Perhaps that road rule[48] was simply not made known to the court at the time.

List of Inquest Issues Answers

Coroners Act s. 45(2): 'Findings'

[35]. Dealing with the list of issues for this inquest the answers are as follows:-

[36]. **Issue 1.** My primary task is the information required by section 45(2) of the *Coroners Act 2003*, namely:

a. Who the deceased person is – Lardeen Bernadette Glennon[49] and Matthew David Glennon[50],

b. How the person died – Mrs Glennon, as the driver, and Matthew, as a passenger, died due to the driving of another road user, Mr Wisley, who I find failed to give way whilst attempting an overtaking manoeuvre at an excessive[51] speed,

c. When the person died – Mrs Glennon 25 September 2011[52], and Matthew 26 September 2011[53],

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[45] This was confirmed by the EDR data
[46] Indeed it was readily conceded by all parties
[47] One driver witness, Mr Grinter, not only had an expressive thought, but stated in colourful language to his passenger, as he saw the overtaking manoeuvre commence, that Mr Wisley's manner of driving was not ideal (I simply don't re-state the specific words of his most colourful expression) contained in exhibit C.8.
[48] Road rule s.142
[49] Exhibit A1 QPS Form 1
[50] Exhibit A.6 QPS Form 1
[51] Travelling at 160 km/h, in a 100 km/h speed zone, just 1.5 seconds before the collision occurred
[52] See exhibit A.2 Life Extinct Form
[53] Exhibit A.7 Life Extinct Form

d. Where the person died – Mrs Glennon - Peak Downs Highway, Greenmount, between Old Rocky Waterholes Road, and Greenmount Drive, Greenmount[54], and Matthew, Townsville Hospital[55]

e. what caused the person to die – Mrs Glennon - Multiple injuries, due to a motor vehicle trauma[56], and Matthew – Hypoxic ischemic encephalopathy, torn aorta, due to a motor vehicle accident (passenger)[57]

[37]. **Issue 2**. (a) Was the signage (including the posted speed limit of 100kph) adequate to protect the safety of the travelling public on that section of the Peak Downs Highway?

The signage was adequate, and it was only the actions or manner of driving by Mr Wisley which caused the accident to occur. All other drivers safely negotiated the situation.

(b) Was there any feature of the Peak Downs Highway which contributed, either wholly or in part, to the circumstances of this collision?

Whilst the feature of turning right off the highway into a rural residential allotment may be thought to have contributed to the circumstances of the collision, it is a very regular feature found on a great number of roads, including those classed as highways, in Queensland and so should be an incident drivers are well aware of and can anticipate. This is particularly so as Mrs Glennon was observed to slow and indicate her intention to turn right.

Notwithstanding this the Department of Transport and Main Roads, to their credit, investigated the incident and have already undertaken a number of 'upgrades' to lessen the recurrence of the incident. These include prohibiting turning right off the highway into the residential allotments.

[38]. **Issue 3.** What was the speed immediately before and at the time of the collision, of –

(a) The vehicle driven by Mrs Lardeen GLENNON; and
(b) The vehicle driven by Mr Adam WISLEY?

The vehicle driven by Mrs Glennon was likely only travelling at approximately 30 kilometres an hour immediately before (when she commenced the turn) and at the time of the collision[58]. Mr Wisley's vehicle was recorded travelling at 161 km/h at two and 1.5 seconds before the

[54] See exhibit A1
[55] Exhibit A.7
[56] See exhibit A4 Autopsy Certificate
[57] Exhibit A.9
[58] This is based on eyewitness estimates and the nature of the turn she was undertaking.

collision and it was estimated to be travelling at approximately 130 km/h[59] at the time of the collision[60].

[39]. **Issue 4.** Did Mrs Glennon signal her intention to turn right off the highway?

It was confirmed by a number of witnesses that they saw Mrs Glennon signal her intention to turn right by the use of her vehicle's driver's side turn indicator[61]. In addition the examination of her driver's side indicator found it was 'heated'[62] (indicating it was being used) at the time of impact[63]. Accordingly I find that she did appropriately signal her intention to turn right off the highway

[40]. **Issue 5.** What caused the collision between the two vehicles; and in particular, was speed, or excessive speed, a factor contributing to the collision?

In the simplest of terms the collision was caused by Mr Wisley attempting a very ambitious overtaking manoeuvre, where he was attempting to overtake three vehicles in one manoeuvre, where he reached an excessive speed of 161 km/h in that manoeuvre. His speed was well above the 100 km/h posted speed limit of that road.

[41]. **Issue 6**. (a) Whether the law relating to the reception of evidence provided by Airbag Control Modules (Event data Recorders) should be reviewed, by reference to their potential admissibility in proceedings arising from the driving or operation of motor vehicles? and

(b) Whether the duties of overtaking drivers as contained in the Road Rules (eg s.140), should be reviewed?

See the Coroner's Comments below.

Coroners Act s. 46: 'Coroners Comments' (Recommendations)

[42]. The jury in the first trial was concerned to know what speed Mr Wisley's vehicle had been travelling at. The Prosecutor at the first trial had agreed with Senior Counsel for the defence that the evidence from the airbag control module would not be led at that first trial[64], and when subsequently attempted to be led at the second trial, upon application, it was not permitted to be led despite a spirited application for it to be used. The concession at the first trial left the jury with no evidence of speed. There was no expert evidence led.

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[59] That is the most conservative estimate, and likely it was more like 140 km/h as Mr George calculated
[60] I have addressed my conclusions regarding his speed earlier in my Findings
[61] This point was, and it is to his credit, appropriately conceded by Counsel for Mr Wisley
[62] It was a filament style bulb which permits forensic examination
[63] Exhibit E.3 at paragraph 17.4(6)
[64] Why this concession was agreed by the prosecutor is unknown to me and I am very perplexed that it was not at least tested in court in some manner at this first trial. Perhaps there was a very good reason for this but that is unknown to me.

[43]. It was very clear to me that when reviewing the evidence, including the EDR information, I could readily assess what evidence was reliable, and could determine the vehicle's speed in the moments prior to the collision occurring. No doubt juries would also find such information, if able to be used, to be a piece of evidence to consider with all the other evidence in making their deliberations.

[44]. Accordingly I see great benefit in this information being available to juries in appropriate cases. Of course if the module was damaged or information downloaded was corrupted, or the unit was not operating appropriately it should be excluded. There could also be instances where the vehicle's drivetrain had been modified and that has affected the sensors and what they record (although it is quite possible to do a mathematical calculation and assessment of the drivetrain components to determine the correct information). As pointed out by Counsel Assisting, this information could be readily accepted in civil trials, and I envisage that over time it will be more readily accepted in criminal trials. It has already been accepted without contest at sentence in Queensland[65] so its admissibility should not be in any doubt in Queensland. Clearly prosecutors need to be made aware of the availability of such evidence and take appropriate steps to ensure that the downloaded data is reliable and accurate to be able to be placed before the jury. This is available now if presented appropriately, and supported by expert evidence. Very significant, in my view, is that such EDR data has already been permitted as reliable and accurate evidence of a vehicle's speed in criminal cases in South Australia[66], New Zealand[67], and the United States[68].

[45]. Could there be a simpler system where, if[69] this evidence is found to be reliable[70], and not corrupted in any way, it could simply be certified[71] so that upon appropriate notice a party could say they wish to contest the evidence. I am not saying the certificate is simply accepted without challenge; rather the party relying on it needs to produce appropriate expert evidence to support the EDR data accuracy and establish a lack of 'corruption' of its information. It may be that in some proceedings it is unchallenged. Each case will be determined on its own particular facts.

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[65] R v Derks [2011] QCA 295 at [15], R v Huxtable [2014] QCA 249 at [6]

[66] See R v Li, Bo Xi DCCRM – 13-2456 at paragraph [46], which starts at [38]

[67] Hohaia v New Zealand Police CRI-2010-441-0037. Interestingly this NZ case involved a HSV Clubsport R8. That is a slightly modified Holden Commodore SS V8, of a similar linage to Mr Wisley's vehicle, HSV standing for 'Holden Special Vehicles'. It has the same engine and EDR unit. Perhaps my knowledge of such subjects indicates a misspent youth and too much time reading *Wheels* Magazine.

[68] Commonwealth v Michelle M. Zimmerman 873 N.E.2d 1215 (Mass.App.Ct 2007) and Bachman v General Motors 776 NE 2d 262 (Ill. App. 2002)

[69] That is the crucial question

[70] Mr Churchwell the GM, USA expert, said its reliability is 4 in 100,000 units. That is just four defective units for every 100,000 in service.

[71] A specific legislative provision would be needed to then allow it to be readily admitted under s.95A Evidence Act 1977 (Qld). There are similar legislative provisions for various other tests or devices such as alco-testing, speed cameras or radar detectors.

[46]. I note that the United States of America already has in their Code of Federal Regulations, 49 Part 563, rules relating to required criteria that event data recorders must meet. The General Motors expert gave evidence where he attested that in all fifty states in the US, EDR data is readily accepted in courts when supported by expert testimony. The USA has had this system for five years and the expert knew of no case where the data was rejected.

[47]. The first logical and readily taken step to data presentation in courts in Queensland by prosecutions is better education of prosecutors that this information is available, and the appropriate experts to interpret the data. This is not difficult. This is an observation I make[72]. The second step is for an appropriate legislative provision specifically for this information to be recognised so it may be admitted through a provision like s.95A *Evidence Act* (Qld) such as already exists for other testing[73] equipment.

[48]. In the reasons for the exclusion ruling by His Honour, Judge Durward SC sets out a number of reasons why the reception of air bag control module download data needs to be viewed cautiously when attempting to be used at a criminal trial. Those matters being a barrier to reception into evidence his Honour identified need to be considered and appropriately addressed through expert evidence, if they can. There are many examples in our laws, including in relation to traffic related matters, where science has developed to an extent where evidence (and I use that term widely) has become 'quantifiable'. You only need to look at the history of how driving under the influence charges have developed over the years from initially indicia of intoxication through to it now being a breath or blood analysis certificate which reduces intoxication to a simple figure of alcohol concentration in the blood. Now for such prosecutions a simple certificate of blood alcohol concentration can be appropriately produced and relied on by a Court[74]. The advancement of computer technology in modern cars means that in certain circumstances relevant data may now be captured and retrieved where the computer has not been affected in the collision.

[49]. The rights of defendants need to be protected, but also juries should have before them satisfactory evidence for them to make their decisions reliably.

[50]. Accordingly I will make a recommendation that the Government review the evidentiary laws relating to the reception of evidence provided by air bag control modules, also known as event data recorders.

[51]. In addition, at the first trial there appeared to be confusion amongst the jury over the responsibilities of drivers undertaking overtaking manoeuvres -

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[72] An 'observation' by me, as opposed to a Coronial Recommendation.

[73] I am not sure 'testing' is the correct word, but radar detectors, speed cameras. Alco-testers etc. Indeed what happens with medical equipment that records heart rate, respiration rate, blood pressure in a surgical theatre? All these are readily accepted in courts through their print-out, or report, generated. There is nothing particular about the machines, nor are they 'calibrated' or kept under operation solely by the QPS.

[74] I appreciate the machine is calibrated and a specific evidentiary provision allows for this evidence to be received, but I make the point of how we have advanced to this position through scientific progress.

essentially, who had right of way. It is very clear in my mind that the starting point for any such rules is that the driver conducting the overtaking manoeuvre must give way to all vehicles they are attempting to overtake. If a review of the legislation suggests that there is a need for greater clarity on the duties of overtaking then that should occur. Accordingly I recommend that the Government conduct such a review to determine if changes, or perhaps better expressed clarification of duties, should be set out in the relevant road rules[75]. Perhaps all that is needed is a clear statement that any driver attempting to overtake another vehicle must give way to any vehicles in front of it. That is something for a review to determine if any changes are needed. Six months is quite adequate for this review to occur.

[52]. The relevant Department has already made significant improvements to that section of road to lessen the repetition of such an accident. This is very pleasing to see and their pro-active actions should be recognised. Accordingly no further improvements to the road are recommended.

[53]. Accordingly I make the following recommendations:-

a. The Queensland Government review, and consider implementing a specific legislative provision to allow for the admissibility, perhaps similar to s.95A *Evidence Act (Qld),* of the downloaded motor vehicle EDR data Report,

b. The Qld Government within 6 months review the laws regarding overtaking (particularly overtaking of multiple vehicles in a single manoeuvre) to determine if they are adequate or should be more appropriately expressed in the *Transport Operations (Road Use Management) Act*.

Coroners Act s. 48: 'Reporting Offences or Misconduct'

[54]. Mr Wisley has already been charged with dangerous driving causing death under the Criminal Code. The prosecution of that charge still currently rests with the Director of Public Prosecutions. There was some discussion at the inquest about whether it is mandatory if I reasonably suspect he has committed an indictable offence that I 'must' refer that material to the DPP. In view of the legislation, and simply out of an abundance of caution, I will refer the information obtained during my investigation to the DPP on precisely the same charge of dangerous operation causing death that currently sits with them.

[55]. It may be that there is very little utility in the doing this as the most relevant information, the EDR data, has been well known throughout the course of the QPS investigation. The data is nothing new, rather this is simply the first court in which it has been openly canvassed. The Director can determine if there is sufficient admissible evidence for the Director to again proceed with the matter against Mr Wisley. That is entirely a decision for the DPP.

[75] Road rules s.140 & 142

Magistrate O'Connell
Central Coroner
Mackay
1 December 2017