

*Final version
J Framingham*



**INNISFAIL CORONER
FINDINGS**

CITATION: Inquest into the death of KRISTIAN BOCK

TITLE OF COURT: Coroner's Court

JURISDICTION: Innisfail

FILE NO(s): COR

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FINDINGS OF: J Brassington Coroner

CATCHWORDS: CORONERS: Inquest
Steering lock – Truck - Collision

REPRESENTATION:

APPEARANCES

Assisting: Sgt O'Rourke
Queensland Police Service

CORONERS FINDINGS AND DECISION

1. On the morning of Tuesday 29 October 2002 Kristian Bock, a German national, was driving a Ford Campervan travelling east on the Palmerston Highway Nerada. His wife was a passenger in that vehicle. A Man prime mover 766-GEG towing a B Double trailer (referred to hereafter as "the prime mover") was at that time travelling west towards the Bock's vehicle. The prime mover suddenly veered right and crossed the double white line colliding with the Bock's motor vehicle pushing the campervan off the road over an embankment. Mr. Bock sustained multiple trauma injuries and died.
2. An inquest was held into this matter on 9 November 2007. Following evidence the inquest was adjourned until 26 March 2008 to investigate whether further expert evidence was available to address certain issues raised at the inquest. A further adjournment was given in order to permit additional submissions from the Queensland Police Service with respect to issues of retention of exhibits. I am now informed that no further evidence would be available or further submissions made and accordingly I will deliver my findings.

PRELIMINARY MATTERS

3. The inquest was conducted pursuant to section 26 of the *Coroners Act 1958* ("the 1958 Act") because Mr Bock's death occurred before 1 December 2003, the date on which the *Coroners Act 2003* was proclaimed. It is therefore a "*pre-commencement death*" within the terms of section 100 of the 2003 Act, and the provisions of the 1958 Act are preserved and continue to apply in relation to the inquest. I must deliver my findings pursuant to the provisions of that 1958 Act. I do so, reserving the right to revise these reasons should the need or the necessity arises.
4. I have jurisdiction to inquire into the cause and circumstances of the death of Mr Bock because under s. 7(1)(a) I consider there is reasonable cause to suspect Mr. Bock died a violent and unnatural death.
5. Section 24 of the 1958 Act sets out the purpose of the inquest is to establish, as far as practicable –
 - the fact that a person has died;
 - the identity of the deceased person;
 - whether any person should be charged with any of those offences referred to in section 24 of the Act – including dangerous operation of a motor vehicle causing death (s. 328A of the Criminal Code);
 - where, when and in what circumstances the deceased came by their death.

6. I was assisted at the inquest by Sgt. O'Rourke from the Queensland Police Service under s. 50 of the 1958 Act.
7. A coroner is not bound by the rules of evidence but may admit evidence that the coroner thinks fit whether or not the same is admissible in any other court.¹ While the proceedings are investigatory the coroner must act judicially and have regard to the rules of natural justice and procedural fairness. This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann* (1990) 65 ALJR 167 at 168 makes clear, that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.
8. The driver of the prime mover truck, Kevin James Bennett, had sufficient interest in the result of the inquest to be permitted to appear, examine and cross-examine witnesses. Mr. Bennett was advised as to his right to retain legal counsel but chose to represent himself. He was warned appropriately with respect to s. 33 of the 1958 Act that while a witness may be compellable under s. 33(2) of the 1958 Act they are not compellable to answer any question tending to incriminate themselves. Mr. Bennett, understanding the privilege, nevertheless chose to answer questions put to him by the officer assisting.
9. Section 43(5) provides that in making my findings I am not permitted, under the Act, to express any opinion on any matter which is outside the scope of this inquest, except in the form of a rider or recommendation. Section 43(6) also provides that the findings I make here are not to be framed in any way which may determine or influence any question or issue of liability in any other place or which might suggest that any person should be found guilty or otherwise in any other proceedings.
10. However s. 41 provides that if I am of the opinion after the inquest that the evidence taken is sufficient to put a person on their trial for murder, manslaughter or the offence of dangerous operation of a motor vehicle (s. 328A of the Criminal Code) then I may order that person to be committed for trial to a court of competent jurisdiction.
11. While ordinarily in an inquest conducted under the 1958 Act no person is permitted to address the coroner where a committal for trial is involved such addresses are permitted under s. 40(1) of the 1958 Act.
12. When making findings the civil standard of proof, the balance of probabilities is applied. However the principles of *Briginshaw v*

¹ Section 34(1) of the 1958 Act.

Briginshaw must be adhered to. In the coronial context these are conveniently set out in the often cited judgment of Gobbo J in *Anderson v Blashki*²:

In Briginshaw v Briginshaw (1938) 60 CLR 336, at 362 to 363, Dixon J, as he then was, provided a classic statement as to the appropriate standard of proof to be used in civil cases: "... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. . . . When, in a civil proceeding, a question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon other civil issues ... But, consistently with this opinion, weight is given to the presumption of innocence and exactness of proof is expected".

In applying Dixon J's decision, Blackburn CJ in the Supreme Court of the Australian Capital Territory decision of Barten v Williams (1978) 20 ACTR 10 held that the balance of probability standard is not to be applied merely mechanically on a serious issue such as a decision which could lead to the cancellation of the builder's licence and determine his capacity to earn his livelihood as a builder. The civil standard is qualified so that the court can regard a fact as established only if it can entertain a reasonable satisfaction of its truth.

These being civil proceedings, the assault allegation is required to be proved on the lesser standard on the balance of probabilities despite the criminal nature of the allegation. But, because of the gravity of the allegation, proof of the criminal act must be "clear cogent and exact and when considering such proof, weight must be given to the presumption of innocence". See Cuming Smith and Co Ltd v Western Farmers Cooperative Ltd[1979] VR 129, at 147."

FINDINGS

13. Before turning to my findings I should make some comment about the delay in the finalisation of investigation. The final report was delivered to the previous coroner in October 2006 due to the rotation of the investigating officer to various positions, location of witnesses (Mr. Bennett, because of his mobile lifestyle, was not interviewed until June 2005) and inquiries with respect to engineering issues. There was some further information that needed to be investigated and

² [1993]2 VR 89 at 95

other material that was sought and provided including obtaining the Suncorp investigatory file in June 2007 with respect to the compulsory third party claim. The Suncorp file provided most useful information and in itself revealed a thorough investigation into this incident. Once all material was available the inquest was held as soon as possible given available court time. Further delay has been occasioned by a quest for further expert evidence and to afford the Queensland Police Service the opportunity to make submissions.

THE EVIDENCE

14. I have considered not just the evidence heard at the inquest but also the tendered sworn statements which were largely not in dispute, the investigatory reports, the record of interview with Mr. Bennett, and the material from Suncorp. I do not intend to summarise all the evidence but set out the evidence that I consider necessary to understand my findings.
15. Mr. and Mrs Bock had been married for twenty nine years when they commenced a driving holiday in Australia in October 2002. Mrs Bock says she and her husband had driven extensively on holidays through Germany, England, Canada and the United States. She considered her husband a very competent and safe driver. Mr. and Mrs Bock were joined on their holiday by their German friends Helga and Eberhard David.
16. After travelling by plane to various locations in Australia Mr. and Mrs Bock (with Mr. and Mrs David) began the driving leg of their holiday on 28 October 2002. They hired campervans and drove from Cairns to Lake Eacham on the first day, had a good nights sleep and began, on 29 October 2002 to drive along the Palmerston Highway to Innisfail.
17. At about 11.15 am Mrs Bock was enjoying the journey and looking at the scenery. She then saw a truck about 10 or 20 metres away, on their side of the road, coming directly for her campervan. She says a collision was inevitable. She cannot recall the collision. She was injured in the collision.
18. Mr. Eberhard David's statement sets out what he saw of the incident:
Just before where we had the accident the road sloped down, there was little traffic coming in our direction...Just before the accident I saw a truck heading in our direction, I only have one eye (right eye glass) and I am constantly looking from side to side as I drive to increase my vision. At the time of the accident I was looking in the driver's side rear vision mirror and to the side of the mirror I saw the truck. I saw the truck go onto our side of the road and I could not see the prime mover as it was in front of Kristian's campervan. The truck turned sharply as if he

was turning off in front of Kristian. Then I see the prime mover drive back onto the correct side of the road as if it was going into the paddock on his side of the road. Then the truck turns sharply back towards our side of the road. I saw the truck cross onto Kristian's side of the road. I saw brake lights on Kristian's van and his campervan drive to the left. The prime mover of the truck collided with Kristian's campervan. The campervan lifted up in the air and I did not see much more of the accident as I was taking evasive action.

19. Mrs David's account is very similar to her husbands:

I saw a truck heading in our direction and came out from behind Kristian's campervan travelling back to the correct side of the road. That is the correct side of the road for the truck. The truck remained on the bitumen and then the truck swerved back toward our side of the road and collided with Kristian's campervan.

20. Anthony Bridgeman, was driving a truck loaded with sugar cane from Atherton to the South Johnstone sugar mill. He was travelling behind the two campervans. He said they appeared to be driving normally and safely. It was a sunny day and the conditions were good. The road was dry.

21. Mr. Bridgeman saw the prime mover come around the bend from Fisher's Creek. It appeared to be driving well within the speed limit and negotiated the corner normally. He then observed the prime mover travel straight up to the Nerada Road turnoff. He then saw it start to veer towards the centre line. Just before it hit the centre line he saw smoke billowing from the tyres of the trailers. The prime mover crossed the double white lines and suddenly turned sharply to the right colliding with the first campervan pushing it down the embankment. He radioed for help and then saw the driver of the prime mover, Mr. Bennett and had the following conversation:

"How are you going?"

He said words to the effect, "My steering went. My steering went. My steering locked up"

22. Behind Mr. Bridgeman's truck was a tipper truck driven by Roger Belbin. He too saw the collision. He saw the prime mover travelling in the correct lane. He said it did not appear to be speeding. He then noticed black smoke pouring off the tyres on the back of the prime mover and it started to veer off to the right into his lane, cross over the white lane and collide with the first of the campervans'. Mr. Bridgeman saw the prime mover after the incident and said the front wheels were "dead straight". When he asked Mr. Bennett what happened Mr. Bennett replied "The steering locked".

23. Mr. Everett was behind Mr. Bridgeman. He saw the prime mover, initially on the correct side of the road, veer onto his lane. He did not see the collision.
24. After the collision the camper van occupied by the Bocks' was extensively damaged. Mr. Bridgeman found Mr. Bock in the back of the camper van. He was deceased. Mrs Bock was pinned but he assisted her out and saw she had cuts and bruises to her stomach, arms legs and shoulders. She was later admitted to Innisfail Hospital. The post mortem upon Mr. Bock was completed by the Government Medical Officer Doctor Birchley who considered the cause of death was bilateral pneumothorax due to a motor vehicle accident. Other significant contributing factors were multiple fractures and laceration to the liver.
25. Ambulance officers arrived and began to treat Mrs Bock and Mr. Bennett. Police also attended the scene. Constable Engelmann spoke to Mr. Bennett who told her:
"I was travelling west at about 75 – 80 km/hour. As I was coming around the corner the steering locked up and the truck just went straight ahead."
26. Constable Engelmann asked him if he had any problems steering and he said *"No. The truck was machinery inspected in May"*.
27. Road side breath testing of Bennett revealed a .000 % result.
28. On 19 November 2002 Mr. Bennett rang Snr. Sgt. Newton who was investigating the matter and told him over the telephone that *"I told the constable at the hospital that the steering locked. I meant the key locked the steering"*.

Mr Bennett's Account

29. Mr. Bennett spoke to Snr Sgt Newton on 4 June 2005. He, in that interviewed, confirmed he accepted the accounts of what he said and adopted the statement he had given Suncorp investigators'. In that statement he said the prime mover he was driving had approximately 639,000 km on the speedometer. On the night before the collision with Mr. Bock he was in Townsville and went to bed at 9pm and got up at about 6am and left Townsville at 7.30am. He was not tired and not in a hurry. He was familiar with the Palmerston Highway and had driven it many times before. It was a fine and clear day.
30. His account of the collision is:

Approximately 200 – 250 metres from the bridge is where the lanes merge into the single lane. The road curves slightly to the left. As I went to follow this left hand curve I found that I could not turn the wheel to the left. At first I could not understand what

was happening. I looked down and saw that the alternator light was on which indicates that the motor had stopped. It was then that I realized that I must have accidentally knocked the ignition key with my knee and turned the motor off. When the key is turned to the off position it not only stops the motor but locks the steering. I was only able to travel straight ahead which was the direction I was going when the steering locked. I applied my brakes immediately. I saw two campervans coming towards me from the direction opposite to which I was travelling. I was moving across the unbroken white double lines into the path of one of the campervans. I was braking but I could not take any other evasive action because the steering was locked. I collided with one of the campervans.

31. In the statement he also sets out the one previous time a similar event had occurred. This was when he was driving his truck from Charters Towers to Clermont down the Belyando Highway on a straight stretch of road. He said his headlights went out and the alternator light had come on which indicated that the motor had stopped. He said he realized that he bumped the ignition key with his knee and turned it to the off position. He turned the ignition back on and continued as normal. On this occasion he did not notice the steering lock. He was travelling in a straight line and saw no reason to turn the wheel.
32. On the 29 October 2002 he thought, although he had no recollection of this, that his right knee might have come into contact with the ignition and turned it off which locked the steering.
33. In the record of interview (taped) Mr. Bennett was also questioned with respect to whether he had ever claimed that the steering had locked up before when driving to escape criminal liability for another matter. He absolutely denied such a suggestion. Investigations by the Queensland Police Service have revealed no evidence of such a claim ever been made by Mr. Bennett.
34. Mr. Bennett, despite being warned as to his right to refuse to answer questions that might tend to incriminate him elected to give evidence at the inquest. He did not refuse to answer any question that the Sergeant assisting me asked him. His account was essentially as I have set out above but certain issues were canvassed at the inquest with respect to the condition of the vehicle:
 - When the key was turned off the engine did not stop. This was because the solenoid that turns the pump was not working and he had put a manual stop to it.
 - He was adamant that he could hit the key with his knee and turn it off despite cross examination that such an action was physically impossible.
 - He was adamant that he never crossed the centre line and then corrected and crossed back to the correct side and then crossed the line again.

The Examination of the Motor Vehicle

35. The Man prime mover was inspected by Keith Worthington (a Transport Inspector and qualified motor mechanic) and Kerry Carlton (vehicle inspection officer for the Queensland Police Service).
36. Mr Worthington found that the engine stop switch within the cab was not operational. To shut down the engine a piece of wire was attached to the injector pump. This meant that in an emergency where the engine had to be shut down the driver would have to alight from the cab and find the wire to shut down the engine.
37. Mr. Worthington recommended that the steering column be removed for further tests.
38. Mr. Carlton examined the Man prime mover at Mourilyan on 19 November 2002. He found that the steering column assembly while loose would not affect steering capabilities. However, in testimony he considered that the looseness of the steering column would mean control was diminished.
39. He found that the steering lock fitted to the vehicle could only be activated by removing the key from the ignition switch. He found that if the ignition key is turned off while the vehicle is being driven then steering wheel can still be turned but the steering will become heavier as the speed of the vehicle decreases. From looking at photos of Mr Bennett positioned in the driving seat he considered it physically impossible for his knee to turn the ignition switch to off.
40. There was at the inquest other relevant evidence given about the Man Prime Mover.
41. In November 2002 the truck was returned to Recar North Queensland, the insurer's selected repairer. The truck was returned intact. That is, nothing was removed for future examination or evidentiary purposes. Mr. Wright, the manager, was curious to test the steering lock after having conversation with Mr. Bennett. His statement, verified again in testimony, what that he turned the key to the on position and the steering unlocked. He then turned the key off, left the key in the ignition and the steering locked. The trucks motor was not running.
42. Mr. Wright had been a diesel mechanic for 28 years. He had never seen the steering lock in any vehicle sequence in the same way as this Man prime mover. Mr Wright knew Mr. Bennett only as a client from a prior job. He provided sworn statements to his observations to the police, the insurance investigators and also gave sworn evidence in Court. He was surprised by his observations but was very certain of what he had seen.

43. Raymond Graham, the workshop manager, was not available to testify at the inquest. He did however provide a statement to the insurance investigator corroborating the testimony of Mr. Wright and noting that the locking mechanism was repaired by cutting off the pin locking mechanism so it would not engage.
44. Finally Mr George Jarentowski, Australian Operations Manager for Man Automotive Imports Pty Ltd provided a statement and testified. Mr. Jarentowski did not examine the Man prime mover involved in the collision. His evidence was to the effect that if the ignition is turned off while the prime mover is moving the power assisted steering does not operate, however, the driver can still steer although there is still control of the steering although it is heavier than normal. In his 10 years in Australia he has not heard one case where the steering locked when the key was in the ignition. In communication with Man engineers in Germany his advice was, as he had observed, that *from construction point of view it is impossible to lock the steering wheel when the ignition key is inserted in the steering lock.*³
45. He further testified that there was no evidence as to steering ever locking in another vehicle in Australia. Mr. Jarentowski was also asked
- Well, you're the expert in this field. What would you say the possibilities of the steering engaging when you're driving the vehicle with a key in the ignition? As I told you, it's impossible for - for properly function mechanism - we are talking about such a mechanism - because if the - something is broken, that - it change everything..*⁴
46. Mr. Jarentowski also made it plain that any malfunction would mean that the mechanism was broken and it would not work. That is, there could be no intermittent malfunction.

FINDINGS

47. Section 43 of the Act provides that
- (1) *After considering all the evidence before the coroner at the inquest the coroner shall give the coroner's finding in open court.*
 - (2) *Where the inquest concerns the death of any person, the finding shall set forth—*
 - (a) *so far as has been proved—*
 - (i) *who the deceased was;*
 - (ii) *when, where, and how the deceased came by his or her death; and*
 - (b) *the persons (if any) committed for trial.*

³ Transcript p. 12 l. 50

⁴ Transcript p.15

48. As mentioned earlier, these are not criminal proceedings and I am therefore to apply the civil standard of proof when considering these issues.

49. I am satisfied to the requisite standard that:

- The deceased was Kristian Bock (born 27 March 1949), a citizen of Germany
- Kristian Bock died on 29 October 2002 on the Palmerston Highway Nerada via Innisfail
- The deceased came by his death in a motor vehicle accident as set out in these findings. The cause of his death was bilateral pneumothorax due to, or as a consequence of a motor vehicle accident. Other significant conditions were multiple fractures and lacerated liver.

50. I turn then to the question should there be any person committed for trial with respect to dangerous operation of a motor vehicle. When determining the question of committal the test to be applied is "*the sufficiency of evidence test*" that is whether, on the evidence, if believed, a reasonable jury could convict. This test involves no assessment of credit or weighing of the evidence by the magistrate: it is simply a question of whether, on the evidence presented, a reasonable jury could convict the person (See *May v O'Sullivan* (1955) 92 CLR 654).

51. In making such a determination I do not ignore the question of reliability of evidence. Such a question is to be treated in the way set out by Justice Ambrose in *Purcell v Vernados* [1997] 1 Qd R 317 at 321:

There is a very long line of authority to support the proposition that indeed in determining whether the prosecution has adduced sufficient evidence to put a defendant on trial, a committing magistrate should have regard to the reliability of the evidence not for the purpose of determining whether he personally is persuaded of guilt but for the purpose of determining whether any reasonable jury properly instructed could return a verdict of guilty upon it. This aspect of the jurisdiction of a magistrate conducting committal proceedings was reaffirmed in R. v. Schwarten, Ex parte Wildschut; R. v. Baker, Ex parte Wildschut [1965] Qd.R. 276 where Douglas J. delivering the judgment of the Full Court comprising Sheehy A.C.J., Lucas J. and Douglas J., adopted observations made by Wills J. in In re Guerin (1888) 58 L.J.M.C. 42, where he said:

"It is contrary to all my ideas and experience of justice for one magistrate to take up an enquiry commenced before another. Every prisoner is entitled to a judicial decision by a magistrate as to whether a prima facie case is made

out against him. The proceeding, although not final, is a judicial proceeding, and can only be satisfactorily conducted by one who has heard the case throughout and heard and seen for himself the witnesses and their demeanour ...”.

52. Mr. Bennett the driver of the Man prime mover has not been charged with any criminal offence by investigating police between the time of the death of Mr. Bock and the inquest – a considerable time. I afforded investigators assisting the coroner additional time to seek further expert evidence that might resolve the conflict between the witnesses as to whether the steering in the Man prime mover could lock. No additional evidence has been available. Thus the determination to be made is upon the evidence available at the inquest.
53. Having seen and heard the witnesses the following points should be made:
- Upon the evidence I am satisfied that Mr. Bock in no way contributed to the cause of the collision;
 - The first person to examine the Man prime mover, Mr. Worthington, recommended the steering assembly be further examined.
 - The steering assembly was not seized and was repaired by Recar;
 - No examination of the motor vehicle addressed the issue of what effect the manual stop had upon the ability of Mr. Bennett to stop the vehicle or steer;
 - While Mr Jarentowski was adamant that the steering could not lock while the key was in the ignition Mr Jarentowski did not examine the motor vehicle, the steering assembly or photographs of the same;
 - The Suncorp investigator records a conversation with the Sydney importers of MAN trucks who was very familiar with the vehicles and said that he had never heard of a similar incident and that *“in their opinion this could not happen as the key had to be removed from the lock to engage the locking mechanism. However, he did qualify by saying that if the locking mechanism was worn, substantially, it could be possible to engage but this would be a very extreme case. He stated that one would have to be very unlucky to line up the pin of the lock and usually would have to driving straight ahead, as in dead centre. He was able to provide no further information.”*
 - Mr. Wright corroborated Mr. Bennett’s account. Their relationship was professional. I accept Mr. Wright’s account given he was himself extremely surprised as to how the key locked the steering.
 - The eye witness accounts have variations as to the path of the vehicle but the witnesses familiar with the road and

conditions generally agree that the truck was travelling in the correct lane and was not speeding. They agree the truck negotiated the corner normally. Then the truck veered to the centre line with smoke billowing out from the tyres. The truck crossed the double white lines and then veered to the right colliding with the campervan. Mr David's description is different: he has some variation of the path of the vehicle with it initially coming into the wrong lane, driving back to the right lane and then veered back.

- Mr. Bennett claimed the steering had locked from the first. This was when he would have known that the truck was available for examination and testing.
- The evidence that the vehicle negotiated the corner without incident suggests the driver was in control of the truck moments before the incident.
- There are photographs showing tyre marks in a relatively straight line and then crossing the double white line. These were not the subject of any traffic accident investigation report but they do support the account of Mr. Bennet and the other eye witnesses (apart from Mr. David) of the trajectory of the truck.

54. Upon all the evidence I have heard and examined I find that cause of the collision is a matter still of speculation. Mr. David's observations are concerning. Nevertheless, given the state of the evidence heard before me, particularly without a conclusive determination on the issue of the steering locking, I am of the opinion that the state of the admissible evidence is such that a properly instructed jury could not convict any person of dangerous operation of a motor vehicle. Accordingly, I do not exercise my powers under s. 41 of the Act.

RIDERS

55. Section 43(5) of the Act provides that the coroner shall not express any opinion on any matter outside the scope of the inquest except in a rider which, in the opinion of the coroner, is designed to prevent the recurrence of similar occurrence.

56. I had cause to notify the Queensland Police Service to invite them to make submissions about certain matters as to recommendations I considered appropriate to make. The Service did not wish to avail themselves of the opportunity to make such submissions.

57. Knowing the cause of any fatal collision is the first step to preventing a reoccurrence of the event. From all the evidence, and Suncorp investigations with the Federal Government, motoring organisations, Monash University and other drivers no similar incident has been identified involving Man trucks. Thus, why this particular incident occurred could only be found in a close examination of the truck and its modifications.

58. In this incident the lack of proper examination of the steering mechanism means that there is some significant doubt remaining as to the cause of the incident. I note the examination of the QPS and Department of Transport inspectors. However, both examinations leave some unanswered questions. The inspector from Transport considered further examination was required. Mr. Carleton is absolute in his evidence but it is directly contradicted by Mr. Wright. In the circumstances the steering mechanism, particularly given the modifications attested to by Mr. Bennett should have been seized and further examined and should have been available for further testing should another party (for example, Mr. Bennett) require such testing.

59. Without that examination I am not prepared find, to the requisite standard, that the steering did not lock in the manner described by Mr. Bennett.

60. Given the critical importance of the exhibit in this case I would adopt the comments of the English Court of Appeal in R v Beckford [1995] RTR 252 in a case involving the destruction of a motor vehicle (leading to a stay application):

It is to be hoped that procedures have been put in place to ensure that cars are not scrapped before express permission has been given by the police and that permission will never be given where serious criminal charges are to be brought which may involve the possibility of some mechanical defect in a car.

61. I should note that the statutory situation since the introduction of the new Coroners Act 2003. Section 60 of that Act provides for the coroner to return physical evidence as soon as the coroner determines such evidence is no longer needed for (a) the investigation; or (b) the investigation of another death under this Act; or (c) a proceeding for an offence relating to the death.

62. I therefore make the following recommendation: **If it has not done so I recommend that the Queensland Police Service hold vehicles involved in fatal collisions where serious criminal charges are to be brought which may involve the possibility of mechanical defect in the vehicle until criminal charges are resolved or the coroner determines under s. 60 that the physical evidence is no longer necessary.**

63. I do not consider that there is any necessity to make recommendations with respect to MAN trucks given the lack of any other episode of a similar matter been uncovered in the investigation.

64. I thank those that have assisted me with this inquest. I know that these findings will go to Mrs Bock in Germany and I extend to her my sympathies for her loss. This inquest is now closed.


J M Brassington
Coroner
16 Jun. 08