



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

CITATION: **Inquest into the death of Roslyn Amelia Law**

TITLE OF COURT: Coroners Court

JURISDICTION: Brisbane

FILE NO(s): 2010/2524

DELIVERED ON: 1 March 2012

DELIVERED AT: Dalby

HEARING DATE(s): 29 February 2012, 1 March 2012

FINDINGS OF: Magistrate John Lock, Brisbane Coroner

CATCHWORDS: **Coroners: inquest, motor vehicle crash, cattle straying on rural roads, fencing & rule in *Searle v Wallbank*, impairment due to cannabis intake, blood tests policy**

### REPRESENTATION:

Counsel Assisting: Mr C Minnery, Office of the State Coroner

Counsel for the Family: Mr C Greatorix, Solicitor

Counsel for Mr L Henschell: Mr R Davies i/b Groom & Lavers

Counsel for Sgt Stevenson: Mr T Schmidt i/b Queensland Police Union

## **Introduction**

1. On 21 July 2010, Roslyn Amelia Law was a front seat passenger in a sedan being driven by her de facto partner, Francis Ronald Maddigan. Her young daughter was in the rear driver-side of the vehicle. They were travelling along a rural road outside of Dalby at approximately 6:45pm when Mr Maddigan suddenly came upon a herd of cattle that had escaped from a nearby property. He was unable to avoid a collision with two of the cattle and as a result lost control of his vehicle that then collided with the rear end of a truck parked on the side of the road nearby. Other local residents travelling along the same road earlier had come across the herd of cattle and had stopped with the intention of moving them off the road.
2. Roslyn suffered fatal head injuries and despite treatment died in Brisbane at the Princess Alexandra Hospital.
3. The issues for the inquest were:
  - (a) The matters required by section 45(2) *Coroners Act 2003*, namely who the deceased person was, how they died, when they died and what caused them to die;
  - (b) The involvement of cattle that had strayed onto the highway in the cause of death of the deceased, including a consideration of whether the coroner may comment (pursuant to section 46 *Coroners Act 2003*) on wider circumstances such as ways to prevent similar deaths in future; and
  - (c) The question of whether the driver of the vehicle the deceased was travelling in ought to be referred to the Director of Public Prosecutions or other agency pursuant to section 48 *Coroners Act 2003*

## **The scope of the Coroner's inquiry and findings**

4. There has been considerable litigation concerning the extent of a coroner's jurisdiction to inquire into the circumstances of a death. The authorities clearly establish that the scope of an inquest goes beyond merely establishing the medical cause of death.
5. An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:- *"It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires."*<sup>1</sup>
6. The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the

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<sup>1</sup> *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, the Act authorises a coroner to make preventive recommendations concerning public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in future.<sup>2</sup> However, a coroner must not include in the findings or any comments or recommendations, statements that a person is or maybe guilty of an offence or is or maybe civilly liable for something.<sup>3</sup>

### ***The Admissibility of Evidence and the Standard of Proof***

7. Proceedings in a coroner's court are not bound by the rules of evidence because the Act provides that the court "*may inform itself in any way it considers appropriate.*"<sup>4</sup> That does not mean that any and every piece of information however unreliable will be admitted into evidence and acted upon. However, it does give a coroner greater scope to receive information that may not be admissible in other proceedings and to have regard to its origin or source when determining what weight should be given to the information.
8. This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt. As already stated, it is an inquiry rather than a trial. If a witness refuses to give oral evidence at an inquest because the evidence would tend to incriminate the person, the coroner may require the witness to give evidence that would tend to incriminate the witness if satisfied it is in the public interest to do so. The evidence, when given, and any derivative evidence is not admissible against the witness in any other proceeding, other than a proceeding for perjury.<sup>5</sup>
9. A coroner should apply the civil standard of proof, namely the balance of probabilities but the approach referred to as the *Briginshaw* sliding scale is applicable.<sup>6</sup> This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.<sup>7</sup>
10. It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.<sup>8</sup> 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*

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<sup>2</sup> s46

<sup>3</sup> s45(5) and 46(3)

<sup>4</sup> s37(1)

<sup>5</sup> s39

<sup>6</sup> *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

<sup>7</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

<sup>8</sup> *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

*McCann*<sup>9</sup> 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.

11. If, from information obtained at an inquest or during the investigation, a coroner reasonably suspects a person has committed a criminal offence, the coroner must give the information to the Director of Public Prosecutions in the case of an indictable offence, and to the chief executive of the department which administers legislation creating an offence which is not indictable.<sup>10</sup>

### **Social History**

12. Ms Roslyn Law was a 20 year old woman. Ms Law had a one-year-old daughter, Jenna Smith. She had been in a de-facto relationship with Mr Maddigan for approximately six to seven months. She lived in Quinalow with Mr Maddigan and her daughter. She was originally from Nelson Bay and had only fairly recently moved to the area.

### **The Crash**

13. Mr Maddigan was driving a 1996 Mitsubishi Lancer sedan in an easterly direction on the Dalby-Cooyar Road approximately nine km east of the town of Kaimkillenbun. The Dalby-Cooyar Road is a sealed section of highway that runs approximately east west in orientation.<sup>11</sup> The road has one lane in each direction of travel separated by a single white broken centreline. The signed speed limit is 100km/hr. There is no system of street lighting.<sup>12</sup> At the area where the crash occurred there is a slight down grade of the road.<sup>13</sup>
14. The weather was reported to be fine and the road was dry at the time of the accident.<sup>14</sup> Mr Maddigan recalls it was dark and he had his lights on. He says it was clear at the time and it was not foggy. All other witnesses agree. The Main Roads Investigator reported that according to the Geoscience Australia website, Civil Twilight was estimated to have occurred at approximately 5.46pm on the afternoon of the accident.<sup>15</sup>
15. Mr Peter Swann and his wife Lucy lived on a five acre property along the Dalby-Cooyar Road. At approximately 6pm Peter Swann was driving home from Dalby with his wife along the same road. He was nearly home and had come over the hill just before his neighbour's property when he noticed there were cattle on the road. He went to his home and rang a friend and nearby neighbour, Kieran Lillis and asked him to come down and help him put the cattle back in the paddock. He then drove his truck back down to where the cattle were and found a section of

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<sup>9</sup> (1990) 65 ALJR 167 at 168

<sup>10</sup> S 48(2)

<sup>11</sup> Exhibit B1, p8

<sup>12</sup> Exhibit B1, p8

<sup>13</sup> Exhibit B1, p8

<sup>14</sup> Exhibit B1, p8

<sup>15</sup> Exhibit B2, p9

fence that had fallen down. This property was owned by Mr Len Henschell.

16. Mr Swann decided to park his truck near the hole in the fence and put on his parking lights and hazard lights. He deliberately did not put on his headlights, so that oncoming traffic was not blinded. There were orange lights on his mirrors. The weather was fine but given this was a rural road there was no street lighting and it was dark. There was no fog or dust around.
17. Mr Swann parked his vehicle off to the left hand side of the road if you were travelling east and on a small angle with the tail of the truck slightly protruding onto the road. The road drops off towards the paddock in this area and he had a load of water on the back and felt he could not safely get in any further. Mr Swann said several vehicles were able to drive past his truck during the incident. His wife Lucy Swann had also come with him and had a torch and she was at the Quinalow end trying to get traffic to slow down.
18. In the meantime his friend Kieran Lillis had brought his motorbike from his own property and was at the Dalby end. His bike had lights on and he was also trying to slow traffic down whilst Mr Swann tried to get the cattle back in the yard.
19. Mr Swann states several motor vehicles made it through safely from both directions. He then saw a car coming from Dalby which did not appear to be going any faster than any other car which had travelled on the road. This was at the end where Kieran Lillis was with his motorbike. He then saw the car hit the cattle and then very quickly hit the rear of his truck.
20. Mr Swann yelled out for his wife to call triple O and he ran up to the vehicle to see what he could do. He remembers Kieran also coming to the car to help. He could see that the roof of the car had been peeled right back. The driver of the car was very distraught and was yelling at his female passenger "don't leave me". He recalls the driver handing him a small child from the back of the car. The Fire Brigade and two ambulances arrived and after treatment took the injured persons away.
21. Lucy Dawn Swann also confirms that she grabbed a torch and had walked back onto the road to try and slow traffic down and warn them about the cattle. A number of cars had driven past and she considered a couple went through too fast in the circumstances. She noticed Mr Lillis on his motorbike with the lights on and the truck parked on the side of the road with its hazard and parking lights on. She then suddenly heard a bang and turned around and saw a vehicle beside the truck. She went immediately back to her house nearby to call triple O and started a conversation but handed over to Mr Lillis.
22. Kieran Lillis says he received a telephone call from Mr Swann asking for his assistance to move cattle off the road back into the Henschell's place

23. He ran over to his neighbour's residence and then went with him down to the road. His recollection was that Mr Swann's truck was completely off the sealed section of the road at this time.
24. They then all started to try and move cattle back towards the paddock.
25. Mr Lillis states two motor vehicles came from the east and they tried to warn them but they did not slow and narrowly missed colliding with the cattle. As a result of this close call the cattle "spooked" and ran off in a westerly direction. He told the court at this time the cattle had been mustered to the edge of the gap in the fencing and were almost in when they were spooked. He decided to go back to his house and get his motorbike and rode past the cattle to stop them from going any further.
26. Mr Lillis then parked his motorbike on the verge with the headlight still activated and started moving the cattle to the east. He then heard a car coming from the east and he ran back to his bike and turned it perpendicular to the road and waved his headlight across the road to warn the driver of the hazard. The vehicle, which he thought was travelling at the speed limit of 100kmh did not appear to be slowing and he tried to frenetically wave it down but it went straight past him and collided with the cattle which were on the sealed section of the road.
27. The car then veered to its left and collided with the rear driver's side corner of the truck tray.
28. Mr Lillis told the court he was bewildered as to why the vehicle did not slow or the driver see him given what he was doing with his lights and then his hands as well as the lights of the truck ahead being on. He accepted the truck lights may have been obscured by the cattle. He estimates the truck was about 150 metres away from him and the nearest cattle were about 50 metres away.
29. Mr Lillis went up to Mr Swann's house and spoke with the triple O operator. He was given instructions to return to the crash scene and provide them with further information. His neighbour Jonathon Bigger who had first aid experience also arrived at the scene and said the condition of the lady was critical. He then went back to the house and provided information to triple O about the situation and directions to the crash location. He tried to use a hands free phone from the house at the scene without success. He then used someone's mobile and continued to relay information that his friend was providing in relation to the condition of the occupant of the vehicle. He thought an ambulance took about 10 minutes to arrive and they then took control.
30. The Queensland Ambulance Service records indicate a call was made at 18:25 and the first ambulance was dispatched two minutes later and arrived at about 18:53. The statements and evidence of all witnesses and the transcript of the triple O call between ambulance operators and

Mr Lillis indicate everyone at the scene provided the best possible care for all concerned including Ms Law. Mr and Mrs Swann and Mr Lillis should be commended for their actions in endeavouring to clear the cattle, warn other road users and provide comfort to the victims of the crash in what was a very upsetting situation. I also commend the actions of Mr Biggar who was the first person to arrive on the scene. He was instrumental in maintaining an airway and supporting Ms Law's head until the Queensland Ambulance Service arrived.

### ***Evidence of Mr Maddigan***

31. Francis Ronald Maddigan was served with a letter from the Office of the State Coroner suggesting he obtain legal advice, given the likely evidence before the inquest could result in him being referred for prosecution. He did not do so but arrived at the inquest and requested a duty lawyer. Counsel Assisting, Mr Minnery made enquiries with the local duty lawyer who contacted Legal Aid but it became evident such services are not available in inquests.
32. Mr Minnery also advised him of his right to refuse to answer questions if the answers may incriminate him subject to being required to do so by the court and given the protections provided as to their use in any later proceedings other than perjury. I similarly gave him the same information in court about s.39 of the Act. At no time did he claim privilege.
33. Mr Maddigan's evidence was to say the least, extraordinary. He made admissions about aspects of his behaviour that were damaging to him but clearly lied to the court about other matters that were not as important. At times in his evidence he was abusive and avoidant. His face was continually contorted in what was apparent rage, glaring at counsel who dared ask him some relevant questions or at myself. He punched the witness box. He was warned by me to behave himself but that enraged him further. He was treated appropriately and politely by all counsel but simply could not control himself.
34. He said in his statement that he has had difficulty coping after the crash and is now on anti psychotic drugs. He stated he was seeing a counsellor and a psychiatrist. He is taking Zyprexa (olanzapine), which is used to treat schizophrenia and other psychoses including those that are drug induced and Bipolar Disorder. He takes alprazolam, which is used to treat anxiety.
35. He told the court he had been a regular user of cannabis since he was aged 16. He told the court he used cannabis almost daily smoking between six to 12 cones. He used it to relax and calm him when angry. He denied that this level of cannabis use affects his driving capacity.
36. A specimen of Mr Maddigan's blood was required by police and taken at Dalby Hospital but was not analysed for drugs until this year. That analysis showed recent cannabis use. Mr Maddigan was then

approached by police. He said in his most recent statement that he had smoked a couple of cones of cannabis an hour before driving. In court he said he had smoked five to six cones earlier in the day from around 4 to 4.30. He disagreed with any suggestion this level would affect his reaction times or perception or negatively affect his ability to drive. He said it would help his concentration.

37. Mr Maddigan said the cannabis he used that day was hydroponic and not bush cannabis. He gave a simply preposterous story that he had found the cannabis in a tobacco pouch down near the creek that day. He had a plastic bottle and by chance also found a piece of hose and fashioned a bong by tearing up some cans lying by for the cone piece. He said it was maybe 2 grams. He was reluctant to say anything about Ms Law's use of cannabis on that day and this was not pressed. It was put to him he had some cannabis in the car with him at the crash and he angrily agreed. It was then put to him he took it with him to Dalby Hospital in the ambulance and then passed it on to his mother. He did not deny this, saying it was possible.
38. Mr Maddigan was driving his own Mitsubishi Lancer with Ms Law in the front and her child Jenna in the back driver's side seat. He was driving from Dalby to Quinalow to have dinner at his place. He had not been working that day and had been in town with Ms Law. He had also seen other people.
39. He stated he was driving at approximately 100 km/h, a speed he always drives at as it is the speed limit. He was unable to concede that given it was dark, in the middle of winter on a country road with possible cattle around, that precautions such as lowering the speed should be considered. He worked on a dairy property and was experienced in the behaviour of cattle including they can be spooked by traffic if they are on a road. He had driven down this road many times.
40. He remembers coming over the hill and dipped his lights because he saw what looked like a motorbike on the left-hand side of the road in the paddock. He said in court he thought someone was looking at the fence. He clearly did not slow down at this time. He agreed that if there was a hazard ahead a driver should slow down. He says he did not see Mr Lillis waving at him or any hazard lights on a truck.
41. He then saw eyes in his car lights straight in front of him, guessed it was a cow but was unable to avoid it and hit it with the front end of his car. His car seemed to pull to the left. He then saw another cow and he turned to the right to avoid it but hit it as well. He had applied the brakes really hard by this time and then saw the truck. He does not recall any lights on the back of it. He was braking hard, turning and sliding and then hit the back of the truck. He said he was not distracted by anything and was not tired at the time.

42. He told police he had not had a drink of alcohol in the previous 24 hours before the crash. A specimen of his blood was requested at Dalby Hospital and an analysis confirmed this. He did not volunteer to police when he gave a later statement that he had smoked cannabis. It was not until my office requested the blood be tested for drugs that the cannabis was detected.

### ***Escaped Cattle and Wild Dogs***

43. Mr Leonard Henschell has owned the property adjacent to where the crash occurred for approximately 16 years. He states he has replaced the fences over the years with five strand barbed wire with split posts. The section where the cattle escaped on this occasion had not been replaced as he had run out of money. He says he does not put cattle in the front paddock at this time.

44. He believed the cattle were pushed through the fence by wild dogs that were seen in the area around that time. He was given information by Max Dorge that wild dogs had been seen in the area. He does not reside on the property but lives in the town of Oakey and visits the property at least four days a week.

45. He said in his statements that prior to this crash he was not aware his cattle had ever escaped from the property. He has received no complaints of any escape of his cattle nor have any of his cattle been involved in any motor vehicle accidents. In evidence he agreed there was an incident years ago when a cow was hit by a slow moving vehicle when there was smoke across the road. He only recalls one telephone call from Mr Swann about cattle on the road. He agreed that on one occasion he gave a gift of fish and waygu steaks to Mr and Mrs Swann to thank them for helping out with stray cattle.

46. Mr Darren Henschell (Mr Len Henschell's son) stated he was at the property on the day in question and the cattle were checked at about 3:30 to 4pm on the day of the crash. He says this was to ensure they had oats for feed, and water. He says he then went into town to meet Mr Lindsay Vonoff.<sup>16</sup>

47. He further stated that when going home at 4:30pm, he was looking up and down the highway checking for cars. He saw no cattle on the road at the time. When he pulled in to home Mr Darren Henschell was told by his mother to go back up to the farm as there were cattle on the highway. He says he headed straight back with his father and this would have been after 7.15 to 7.30.

48. Mr Len Henschell has confirmed on the day of the accident he received a phone call from Mr Swann advising cattle had escaped. He says he advised Mr Swann to leave the cattle where they were and he and his

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<sup>16</sup> Exhibit C2, p1

son would go to the farm to sort the situation out as quickly as they could.<sup>17</sup>

49. It is apparent Mr Henschell senior has some of his times mixed up but it is evident he was told about the stray cattle before the crash occurred and did not know of it until they arrived.
50. Mr Swann stated he had to put cattle back on previous occasions when they had been in the front paddock and knows of previous crashes involving Mr Henschell's cattle on the same road.
51. Mr Swann states he was aware of three previous crashes involving Mr Henschell's cattle. He was not home for two of them but was present for one approximately four years previously. The driver in that crash was not hurt but the car was towed away. He recalls telephoning Mr Henschell informing him that his cattle were out but he did not come out immediately to repair the fence or put his cattle back in the yard so Mr Swann had to put them back into the paddock in the morning.
52. Lucy Dawn Swann also confirms her knowledge of three previous crashes and that she or her husband would have contacted Mr Henschell by telephone when his cattle have been out. He had not always come out to put the cattle back in and her husband has had to put them back sometimes.
53. Mr Swann stated in court that the cattle had strayed many times over the years and almost always he simply put them back into the property and replaced the gate that had fallen over or did some minor repairs to fencing. He did not ring the Henschells complaining about this other than on two to three occasions.
54. Mr and Mrs Swann also stated that in relation to this particular incident they did not hear of any reports about wild dogs chasing cattle and were not aware of any reports of wild dogs in the area.
55. Mr Lillis recalls there have been times in the past where cattle have been able to gain access to the road. Over 15 years ago he recalled an incident involving the Henschell's cattle and a vehicle with the SES and police involved. He had been told by Mr Swann of other occasions when Mr Swann has put cattle back.
56. The issue of wild dogs apparently comes from a discussion Lloyd Klein had with Max Dorge. Mr Klein does not know Mr Henschell or any of the persons involved in the crash. He also has a property located on the Dalby-Cooyar Road closer to Kaimkillenbun than the crash site. He says on 22 July 2010 he had some cattle push through his own fence and into a neighbour's property. He saw a number of wild dogs on his

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<sup>17</sup> Exhibit C8, p1

property that day and the next day he shot two young wild dogs. He related this information to Mr Dorge who then spoke to Mr Henschell.

57. The Western Downs Regional Council was requested to provide any information relating to wandering livestock along the Dalby Cooyar Road. It was only aware of one report where it was called to remove livestock from the road approximately four years previously. There have been no local prosecutions in relation to escaping livestock or fencing requirements. In general a stock proof fence fit for the type of livestock kept is generally required for such properties.
58. The Department of Main Roads has no recorded history of livestock strikes on the Dalby-Cooyar Road in the previous five years.
59. I accept the evidence of Mr and Mrs Swann that there have been a number of occasions over the years where cattle strayed from the property, particularly when they were in the front paddock. I accept it could not be quite to the extent of the numerous occasions described in a general way by Mr Swann, but it was a common if not frequent event. There were other incidents involving vehicles but it would seem only a couple. All of this was spread over a number of years.
60. This is not inconsistent with Mr Leonard Henschell's evidence given that it is agreed Mr and Mrs Swann made no complaints or informed the Henschells other than on a couple of times. They were simply being good neighbours and given the Henschells lived some distance away and the inherent danger of leaving cattle straying on the road, they took steps. I accept the Swann's contacted the Henschells more than once but clearly they may have spoken to Mrs Henschell.
61. I accept both families provided honest evidence to the best of their recollections.
62. I do not accept there is sufficient evidence to suggest wild dogs played a part, although that cannot be absolutely excluded.

### ***Condition of the Fence***

63. Mr Darren Henschell reported seeing on his arrival at the accident scene, the fence busted with a wooden post snapped off at the ground, and in another place a steel star picket bent right over.<sup>18</sup> He says the wooden post was lying on the ground towards the highway.<sup>19</sup>
64. Mr Len Henschell says on his arrival at the accident scene he found a wooden fence post on the side boundary of his property had snapped off at the ground, and in another place a steel star picket was bent right over.<sup>20</sup> He says the wooden post was lying on the ground towards the

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<sup>18</sup> Exhibit C2, p2

<sup>19</sup> Exhibit C2, p2

<sup>20</sup> Exhibit C8, p1

highway.<sup>21</sup> He reports the cattle had been put back in the paddock and they made temporary repairs to the fence.<sup>22</sup> He says the fencing was pretty good generally.

65. Mr Swann reports the fence posts were in the condition as described by the Henschells and photographs were tendered which show the repairs.
66. After the accident on 12 August 2010, the Main Roads Investigator found the fencing to be in a reasonable condition and of an appropriate construction for retaining cattle. He observed the fence posts on the southern fence line to have a slight lean toward the road.<sup>23</sup>
67. Mr Swann agrees the fencing on the Henschell's property is better than most neighbouring properties.
68. Even accepting the varying opinions that the fencing was considered reasonable for its purpose, it may not be coincidence that the one part of the fencing which had not been replaced on the property was that adjoining the main road. In accepting the Swann's evidence that cattle had strayed on a number of occasions in the past, it is evident there may have been issues concerning the condition of the fencing that could have been better addressed. However, that aside, the evidence could not support a finding the fencing was inadequate, and as Mr Davies submitted, the evidence before the court suggests it was reasonable for its purpose. I accept the Henschells were not aware of the extent of the frequency of the straying cattle and have since taken the sensible precaution of not having cattle in the front paddock.
69. I will discuss the issue of the immunity for liability of landowners for straying cattle shortly. This case and others highlights the inherent danger to road users of straying cattle and perhaps a change to the law is warranted given this may give some incentive for landowners to ensure fencing adjoining roadways is suitable to keep cattle off the road.

### ***Blood Alcohol and Drugs Testing***

70. Mr Maddigan provided a blood sample at 8.37pm on 21 July 2010 at Dalby Hospital as directed by Constable Jessica Huth. This was analysed on 26 July 2010 and was negative for the presence of alcohol.
71. Constable Huth stated it was QPS policy to test drivers involved in traffic crashes for alcohol. She stated Mr Maddigan otherwise displayed no indicia of being intoxicated or being affected by drugs and she therefore had no reasonable suspicion to test him for drugs.

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<sup>21</sup> Exhibit C8, p1

<sup>22</sup> Exhibit C8, p1

<sup>23</sup> Exhibit B2, p7

72. A drug analysis was therefore not performed until the coroner requested it and this was performed about 16 months later. This showed the presence of cannabis as follows: –

Δ9 – tetrahydrocannabinol (THC)	0.003mg/kg
11-nor-Δ9 –terahydrocannabinol-9-carboxylic acid	0.090mg/kg

73. Dr Robert David Hoskins, Director of the Clinical Forensic Medicine Unit opined that generally a level of this nature would indicate use within the preceding 24 hours.

74. Mr Maddigan was asked by police about his use of cannabis. He told them in a written statement <sup>24</sup> that he had been smoking cannabis since he was about 15 or 16 years. He used it to deal with issues concerning depression. Prior to the crash he stated he would have had a couple of cones about one hour before leaving town in the motor vehicle. He did not think he was affected by the cones whilst he was driving.

75. Combined with the analysis results and the statement by Mr Maddigan, Dr Hoskins considered the levels detected make it highly probable Mr Maddigan's driving would have been impaired regardless of his subjective opinion that it was not. Impairment due to cannabis persists beyond the subjective high and the latter would normally persist for two to three hours.

76. Dr Hoskins stated that testing some 16 months later was not desirable but any delay would not have produced an inflated reading and if anything it would be less than if tested earlier.

77. Dr Hoskins could not say with any degree of certainty how a level of 0.003 would subjectively affect a person but he could say it was a significant level indicating recent use. Levels of 0.007 to 0.01 are generally the levels where it could be said a person would certainly be affected but a lower level does not exclude impairment.

78. On the evidence from Mr Maddigan, Dr Hoskins thought a person taking five to six cones an hour or two before driving was highly probably impaired but this may not reach the criminal standard of proof. Impairment included slower reaction times and poorer concentration in a person compared to what would be their normal subjective state.

79. Given Mr Maddigan's evidence I suspect this was his permanent state.

80. Dr Hoskins also gives evidence about the current policy regarding the testing of drivers involved in fatal crashes. There has been comment in other coronial findings that there should be full alcohol and drug testing of all drivers and pedestrians fatally injured in traffic crashes. He stated it seems incongruous that a similar policy does not exist in relation to the

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<sup>24</sup> Exhibit C1.1

testing of potentially culpable surviving drivers. Mr Schmidt, counsel representing Sgt Stevenson makes a similar submission.

81. Sgt Stevenson gave evidence that to his knowledge there is no Queensland Police Service (QPS) policy to routinely drug test potentially culpable drivers involved in serious crash incidents.
82. I will be making a recommendation to the effect there should be full alcohol and drug testing of all potentially culpable surviving drivers involved in motor vehicle crashes where someone is seriously injured or killed.

### ***Injuries to Ms Law, Treatment and Autopsy results***

83. The Queensland Fire and Rescue Service (QFRS), the Queensland Ambulance Service (QAS), and the QPS attended the scene. Ms Law, her daughter and Mr Maddigan were all transferred from the accident site by QAS to the Dalby Hospital.
84. Ms Law was transferred by helicopter to the Princess Alexandra Hospital. She had a severe head injury with a Glasgow coma score of three with fixed dilated pupils. A CT scan of her head found a diffuse axonal injury, traumatic subarachnoid haemorrhage, intraventricular haemorrhage, a number of facial fractures and scalp and facial abrasions. No neurological intervention was possible and she developed severe cardiogenic shock, likely due to stress cardiomyopathy based on echocardiography findings and multiorgan failure. Her overall condition continued to deteriorate despite aggressive therapy, mechanical ventilation and other treatment. After a discussion with her family as to the futility of her condition, treatment was withdrawn and she died in the afternoon of 23 July 2010.
85. The cause of death was due to a severe head injury and multiorgan failure as a result of the injuries sustained in the motor vehicle accident.
86. An external and partial examination by way of autopsy was ordered. In particular an examination of the heart was ordered to verify the presence of stress cardiomyopathy.
87. The autopsy examination supported by a CT scan confirmed the presence of severe head injuries. An examination of the heart showed changes consistent with a diagnosis of stress cardiomyopathy with no evidence of pre-existing heart disease. The cardiac condition may well have hastened her death but the head injuries were unsurvivable.
88. An examination of a blood sample taken within two hours of the accident and prior to transfer to Brisbane showed the presence of therapeutic amounts of midazolam and morphine which were likely to have been administered in the course of emergency care. No alcohol was detected but there were significant levels of the active ingredient of cannabis (0.009) and its main metabolite.

## ***Collision Analysis Findings***

89. The Forensic Crash Unit at Dalby investigated the crash and provided a collision analysis report<sup>25</sup> to the coroner. Sgt Brett Stevenson was the investigator. Statements were taken from relevant witnesses. Photographs of the crash scene were taken as well as a forensic analysis of other scene evidence including skid testing results, a forensic map of the same, and a mechanical inspection of both vehicles.
90. There was some criticism of the timeliness of the production of the Collision Analysis Report to the coroner and more particularly of the time it took for Mr Maddigan to be approached to give a statement. Sgt Stevenson obviously had a number of other duties as Officer in Charge of the Dalby Traffic Branch, which may have impacted on his capacity to produce the report earlier. I accept that as being the case and personally have no criticism of the timeliness of the production of the report, it being within the range of reasonable expectations given the complexity of some investigations.
91. Leaving aside the issue of drug testing, I also consider that otherwise the quality of the investigation was well up to an appropriate professional standard.
92. The Department of Main Roads also conducted a Crash Investigation and provided a report.<sup>26</sup> Mr Ben Gesch from the Department was assigned to investigate the accident. He undertook an initial site inspection on 27 July 2010 and a full site inspection on 12 August 2010.<sup>27</sup>
93. Mr Gesch concluded that no remedial works were required to the road or surrounding infrastructure as a result of the crash.
94. A police mechanic inspected the Mitsubishi sedan and found defects to the vehicle which would place it in an unsatisfactory condition, but none of these defects contributed to the crash.
95. The Mitsubishi sedan was extensively damaged. The impact with the cows caused the bonnet skin to become detached from its frame.
96. The impact with the rear of the truck caused the roof area around the front passenger compartment to sustain extensive damage and caused the injuries to Ms Law.
97. The truck sustained impact damage to the rear driver-side underneath the tray. A police mechanic inspection of the truck found it also had defects which placed it in an unsatisfactory condition but given it was stationary at the time those defects could not have contributed to the

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<sup>25</sup> Exhibit B1

<sup>26</sup> Exhibit B2

<sup>27</sup> Exhibit B2, p6

crash. An inspection of the rear taillights and hazard lights found evidence these lights were operational and were on at the time of the crash.

98. The forensic report concluded the Mitsubishi sedan was travelling in an easterly direction at the time of impact. There is no contention the vehicle struck two cows prior to striking the rear of the unoccupied truck parked on the side of the road.
99. The original area of impact with the first cow was able to be located due to cow faeces and two gouge marks made by the front passenger side of the Mitsubishi.
100. The second area of impact with the second cow was not as clear however the investigator believed it could be inferred it occurred while the Mitsubishi was half off the sealed surface and swerving back to the right prior to striking the truck.
101. The third area of impact was at the location where the Mitsubishi has hit the rear of the truck which was about 2.2m from the rear of the final resting position of the truck.
102. Due to gouge marks at the location of the first contact with the cow it is believed the front passenger wheel assembly of the Mitsubishi collapsed and this is evidenced by the tyre marks left on the gravel shortly after this impact.
103. It was the view of the investigator that Mr Maddigan would not have had control of the vehicle after this point.
104. Skid marks evidence indicates the Mitsubishi was back on the road at the time of the impact with the truck and there is evidence the rear of the truck was slightly hanging back over the sealed section of the road.
105. An analysis of the speed of the Mitsubishi was difficult to determine due to the impact with the two cows. The impact with the rear of the Daihatsu was also considered to be more a glancing blow than a genuine rear end impact.
106. The distance between where the Mitsubishi slid to a stop and the first impact with the cow was 55m and on that basis the report considered the Mitsubishi would be only doing 100km/h when colliding with the first cow.
107. There was evidence that 100% braking was not used throughout most of the incident and that the vehicle also went onto the gravel surface. Both of those factors would lower the speed of the Mitsubishi entering the scene. There is no evidence from witnesses that they thought the Mitsubishi was speeding. It was believed it was more likely

than not that Mr Maddigan was on or around the speed limit of 100km/h at the time of the crash.

108. Due to the damage to the front wheel assembly of the Mitsubishi the investigator considered Mr Maddigan would not have had enough control over the vehicle to swerve to avoid the collision.
109. The investigator then considered the question of avoiding the cattle and braking to a stop in the first place. The distance between the initial impact with the first cow to the impact with the truck was about 45m. The distance from the initial impact with the cow to the beginning of the skid marks is about 30m.
110. The length of the crash scene is about 45m long which would take 1.62 seconds to cover this distance at 100km/h. The distance from the impact point to the start of skid marks is about 30m which would take about 1.08 seconds to cover at 100km/h. and to react in about 1.08 seconds the investigator considered the driver of the vehicle would have had to have better than average reflexes or have been expecting the impact to occur.
111. Sgt Stevenson opined that taking average perception reaction times in rural areas at about 1.4 to 2 seconds, the speed of the Mitsubishi may have been actually slower than 100km/h as the time the brakes were applied relative to 100km/hr is 1.08 seconds.
112. It was the opinion of Sgt Stevenson that Mr Maddigan had no criminal liability in respect to his actions on the night. He concluded that *“Taking into account all of the circumstances I believe MADDIGAN has acted as any ordinary person would have in the same circumstances and that after striking the cattle no longer had control over the situation. I do not believe that there is any evidence of MADDIGAN having driven in any other way other than that of the ordinary person leading up to the crash.”*<sup>28</sup>
113. What the forensic collision analysis does not take into account is the level of impairment in the driving capability of Mr Maddigan due to his intake of cannabis in the hours before getting behind the wheel.
114. There is no doubt in my mind that it was highly probable Mr Maddigan’s reaction times, perception and concentration were impaired by recent cannabis use. It perhaps explains why Mr Maddigan did not slow the vehicle as he approached the area and saw lights ahead. It may explain why he did not see Mr Lillis wildly waving at him or why he says he saw no hazard lights.

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<sup>28</sup> Exhibit B1, p25

## **Conclusions**

### **Findings required by s45**

**Identity of the deceased –** Roslyn Amelia Law

**How she died –** Roslyn was a front seat passenger in a motor vehicle driven by her defacto Francis Ronald Maddigan driving along the Dalby-Cooyar Road which came into collision with two escaped cows from a rural property adjoining the road through a hole in fencing. As a result of the collision with the cows the driver lost control of his motor vehicle and came into collision with the rear tray of a truck which had been stationary on the side of the road. Although he was probably not speeding the driver would have had an impaired driving capacity due to recent intake of cannabis which may have been contributory to him not seeing or reacting sufficiently to the warnings being given about the dangers of the cattle ahead.

**Place of death –** The Princess Alexandra Hospital  
Woolloongabba Qld 4102

**Date of death–** 23 July 2010

**Cause of death –** 1(a). Head injuries  
1(b). Motor vehicle accident (passenger)

### **Comments and recommendations**

#### **Exercise of discretion of the Coroner to refer any party in accordance with s 48(2)**

115. Section 48(2) of the Act gives a coroner discretion to give information to the Director of Public Prosecutions if the coroner reasonably suspects a person has committed an indictable offence.

116. The relevant criminal offence in the circumstances of Roslyn Law's death to be considered is s328A of the *Criminal Code Act 1899* 'Dangerous operation of a vehicle'.

117. Section 328(4) of the *Criminal Code Act 1899* states:

*A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime and is liable on conviction on indictment –*

- (a) *to imprisonment for 10 years, if neither paragraph (b) nor (c) applies; or*
- (b) *to imprisonment for 14 years if, at the time of committing the offence, the offender is –*
  - (i) *adversely affected by an intoxicating substance; or*
  - (ii) *excessively speeding; or*
  - (iii) *taking part in an unlawful race or unknown speed trial; or*
- (c) *to imprisonment for 14 years, if the offender knows, or ought reasonably know the other person has been killed or injured, and the offender leaves the scene of the incident, other than to obtain medical or other help for the other person before a police officer arrives.*

118. The term ‘operates, or in any way interferes with the operation of, a vehicle dangerously’ means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances, including:

- (a) the nature, condition and use of the place; and
- (b) the nature and condition of the vehicle; and
- (c) the number of persons, vehicles or other objects that are, or might reasonably be expected to be, in the place; and
- (d) the concentration of alcohol in the operator’s blood or breath; and
- (e) the presence of any other substance in the operator’s body.

119. The elements of the offence are, the accused:

- (1) operated, or in any way interfered with the operation of, a vehicle;
- (2) dangerously;
- (3) in any place; and
- (4) caused the death of or grievous bodily harm to another person.

120. The circumstances of aggravation are:

- (1) whilst adversely affected by intoxicating substance; or
- (2) whilst excessively speeding; or
- (3) whilst taking part in an unlawful race or unlawful speed trial; or
- (4) knowing, or ought reasonably to have known, the other person had been killed or injured, left the scene of the incident other than to obtain medical or other help for the other person before a police officer arrives.

121. An offence of dangerous driving does not require proof of criminal negligence.<sup>29</sup> The proper test to be applied in the case of dangerous

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<sup>29</sup> *R v Wilson* [1965] QWN 42

driving is an objective test.<sup>30</sup> That is, the accused person's mind is not relevant. It is whether in all the circumstances the driving was in fact dangerous.<sup>31</sup> Further, there must be some fault on the part of the driver which caused that danger to the public.<sup>32</sup>

122. Fault is described as involving "*a failure, a falling below the care or skill of a confident, experienced driver in relation to the manner of the driving and the relevant circumstances of the case*".<sup>33</sup>

123. The threshold for referral provided for in s48(2) of the Act is reasonably low and I only need to reasonably suspect a person has committed an indictable offence.

124. After considering the evidence raised in this case carefully I have determined this is a case where such a referral should not be made. It is clear from the evidence of Dr Hoskins there is insufficient evidence at the criminal standard of proof to find that Mr Maddigan was beyond reasonable doubt impaired by cannabis use. The level analysed is not sufficient on its own to make such a finding and there is no evidence of other indicia to support such a finding beyond reasonable doubt. The manner of driving is certainly one which on one view, may be considered imprudent, but given the evidence from the forensic investigation and the evidence of near misses by other drivers that night in similar circumstances, the manner of driving on its own is not sufficient to support a referral.

125. What is clear is that based on the evidence of Mr Maddigan alone, and in combination with the drug analysis results he may have committed an offence under s79 (1) of driving under the influence of cannabis or was a person who has breached s 79 (2AA) of the *Transport Operations (Road Use Management) Act 1995* (TORUM) in that he was a person who while a relevant drug was present in his blood or saliva drove a motor vehicle. It is apparent any referral for that offence could be to the Chief Executive of Queensland Transport, which administers TORUM, or to the Queensland Police Service, which prosecutes such offences under TORUM. As Mr Schmidt points out in his submissions there are statute of limitations issues that come into play but there is still time to commence those proceedings should that be considered appropriate.

126. Accordingly, I refer the matter of Mr Maddigan's conduct to the Queensland Police Service, for consideration as to the possibility that he has committed an offence against s.79(1) and/or s.70(2AA) of the *Transport Operations (Road Use Management) Act 1995*.

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<sup>30</sup> *R v McBride* [1962] 2 QB 167

<sup>31</sup> *R v Ball and Loughlin* (1966) 50 CR App R 266

<sup>32</sup> *R v Webb* [1986] 2 Qd R 446

<sup>33</sup> *R v Webb* [1986] 2 Qd R at 450

## ***Livestock Straying on Highways: Civil Liability for Damages***

127. The law in Queensland as it presently stands is that owners or occupiers of land adjoining a highway are under no legal obligation to fence or to maintain their fences along the highway so as to prevent their animals from straying onto the highway, nor are they under a duty as between themselves and the users of the highway to take reasonable care to prevent any of their animals, not known to be dangerous, from straying onto the highway.
128. This law, known as the rule in *Searle v Wallbank* is based on an old English common law rule which has now been abolished by statute in England and in most Australian jurisdictions, but not in Queensland or the Northern Territory. As indicated in the research paper which forms part of the brief of evidence<sup>34</sup> the continued applicability of the rule was confirmed in a decision of the Queensland Court of Appeal as late as in 2006.
129. The issue was considered by the Queensland Law Reform Commission (QLRC) in a working paper in 1977<sup>35</sup> which advocated that the rule be abolished; concluded that the legal liability for animals should be left to the general law of negligence and recommended the enactment of a draft bill. The recommendations of the QLRC have not been implemented.
130. In a response to a request from my office as to information regarding the status of the Government's consideration of any legislative change in response to the QLRC recommendations, the Director-General of the Department of Justice and Attorney-General advised<sup>36</sup> that it was currently undertaking a review of the continued application of the rule. Subject to the views of any incoming government the next stage of the review would involve consultation with relevant government agencies, insurers, rural representatives, local government and legal stakeholders.
131. The letter said issues that would need to be considered as part of the review included financial impacts on rural and agricultural stakeholders; insurance impacts; road signage regimes; the treatment of stock routes and the interface of any proposals with existing state legislation and the common law framework generally.
132. It was submitted, and I agree, that the language and generality of the response from the Department does not promote any confidence that anything has been done since 1977 or is likely to be done in the foreseeable future.
133. The circumstances relating to this inquest in my view clearly brings into question the continued applicability of this archaic immunity from liability.

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<sup>34</sup> Exhibit H1 Queensland Parliamentary Library e-Research Brief 2010/10

<sup>35</sup> *Civil Liability for Animals*, QLRC WP 18

<sup>36</sup> Exhibit H3

Given this issue has not been considered by the QLRC since 1977, and given there are a number of complex issues that need consideration, it may be the QLRC is best placed to advise Government on the matter.

134. **It is recommended the Queensland Law Reform Commission review its recommendations of the 1977 working paper concerning the abolition or retention of the rule in *Searle v Wallbank* with respect to the civil liability of owners or occupiers for damage caused by animals straying upon highways and what should be put in its place, and otherwise make such recommendations for change as it considers appropriate.**

### ***Blood Alcohol and Drug Testing***

135. Currently the authority for police officers to require specimens of breath for breath test or specimens of blood for blood tests is based on the Queensland Police Service Traffic Manual and the Transport Operations (Road Use Management) Act.
136. Section 80(2A) of TORUM provides that an officer may require a person to provide a specimen of breath where a motor vehicle was involved in an incident resulting in injury to or the death of any other person if the police officer suspects, on reasonable grounds, such person was driving the vehicle at the time of the incident.
137. The current policy is that any decision made to test for other substances other than alcohol is subject to the officer observing indicia which suggests the person is otherwise under the influence of a drug. The manual sets out a number of criteria to assist a police officer to make such assessment.
138. It is accepted that in rural areas there may be practical difficulties in arranging blood tests but that has long been the case yet there are many instances, such as this case, where blood has been taken and subsequently analysed for alcohol. There would seem to be no reason why it should not also be used for drug testing. The circumstances of this case highlight the difficulties for police officers to make such fine assessments of impairment based on indicia. The driver in this case presumably displayed no such indicia, yet the medical evidence of the results of the blood analysis clearly supports the driver was highly probably impaired.
139. Whatever may be the practical difficulties, and accepting there may be resource implications, they should be overcome given we are talking about only the most serious cases involving death or serious injury.
140. **It is recommended that the Queensland Police Service ensure there is performed full alcohol and drug testing of all potentially culpable surviving drivers involved in motor vehicle accidents where serious injuries or deaths occur. This may require amendments to both policy and legislation.**

I close the inquest.

John Lock  
Brisbane Coroner  
Dalby  
1 March 2012