



CORONERS COURT

CITATION: **Inquest into the death of John Arthur Harvey**

CORONERS COURT at Brisbane

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INDEX

Part 1 – Introduction

Preliminary

Coroner's Jurisdiction

The Inquest

Part 2 – The Hiring Process and the Truck

The previous hiring process

The hire of the truck in August 2007

Collection of the truck

Part 3 – What caused the Accident?

The loading of the truck on 16 August 2007

The Road

The moments before the accident

Characteristics and mechanical condition of the truck

Part 4 – The evidence at the scene

Part 5 – The regulatory framework

Part 6 – John Harvey – the man

Achievements

Family

Driving history

Part 7 – Consideration of the Evidence

Part 8 – Recommendations

Part 9 – Findings required under the Coroners Act 2003

Part 1 – Introduction

Preliminary

1. On 16 August 2007 John Arthur Harvey was driving a 2006 Mitsubishi Canter truck. The truck was owned by Europcar and was one of a number of similar vehicles rented out by that company. The truck was loaded with equipment for a cycle event organised by Geocentric to be conducted in Airlie Beach.
2. While travelling along Dayboro Road, Kurwongbah near the intersection with Dunlop Lane, John Harvey lost control of the truck. After leaving the sealed road surface, and colliding with trees and signposts, the truck again entered the road and eventually rolled landing on the passenger side. Sadly, as a result, John Arthur Harvey then aged 28 years, died from the serious injuries he sustained in the accident.

The Coroner's Jurisdiction

3. A coroner has jurisdiction to inquire into the cause and the circumstances of a reportable death. The *Coroners Act 2003 (Qld)* establishes that jurisdiction. If possible he or she is required to find:-
 - (a) whether a death in fact happened;
 - (b) the identity of the deceased;
 - (c) when, where and how the death occurred; and
 - (d) what caused the person to die.
4. The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the 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 preventative recommendations concerning public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in future (s.46). 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 (s.45(5) and 46(3)).

The admissibility of evidence and the standard of proof

5. Proceedings in a coroner's court are not bound by the rules of evidence because section 37 of the Act provides that the court "*may inform itself in any way it considers appropriate*".
6. 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.¹ 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 that fact to be established.

7. A Coroner is obliged to comply with the rules of natural justice and to act judicially.
8. These findings seek to explain how John Harvey's death occurred and consider whether any changes to policies or practices could reduce the likelihood of deaths occurring in similar circumstances in the future. The *Coroners Act 2003* provides that when an inquest is held into a death, the coroner's written findings must be given to the family of the person who died and to each of the persons or organisations granted leave to appear at the inquest. These findings will be distributed in accordance with the requirements of the Act and also placed on the website of the Office of the State Coroner.
9. I have used the term 'hirer' to refer to a person who rents a vehicle from a vehicle rental company.

The Inquest

10. The Inquest was held over 3 days commencing 13 July 2009.
11. I am grateful for the assistance afforded by Counsel Assisting the Coroner, Mr Mark Green.
12. I make mention of the presence for the duration of the inquest of John Harvey's father and his aspiration for some positive benefit to come from the sad death of his only son. He was supported by other family members who were in Brisbane during the inquest but who did not wish to be present at the inquest because of the distressing nature of the proceedings.
13. I shall return to the personal aspects and achievements of John Harvey's life later.
14. Further, I acknowledge the sensible and sensitive attitude taken by representatives of Europcar, the owner and renter of the vehicle, who conveyed the impression that the company was keen to take whatever

¹ *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 (30 June 1938) But 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

steps could reasonably be taken to minimise the risk of a further death in circumstances such as those in play on 16 August 2007.

15. The Inquest into his death considered various issues which can be placed into 3 broad categories:

- (a) The hiring process
- (b) The cause of the accident
- (c) The regulatory framework relevant to vehicles of the type driven by Mr Harvey on 16 August 2007.

16. There was a comprehensive and thorough report prepared by Snr Const Hollett from the Forensic Crash Unit, who investigated the accident.

17. Statements were obtained from: Glen Douglas Balharry (a truck driver who saw the subject truck immediately before it rolled); Craig Anthony Bycroft, a director of Geocentric Pty Ltd; Brian Lemke (the driver of the other Europcar truck hired the same day); Simon Leech (Europcar's risk manager), Paul Williams (Prestige Truck Bodies) and Brian Creedon (Europcar's Brendale office manager at the relevant time). Queensland Transport provided a response to the investigation report prepared by SC Hollett. Evidence was presented to the inquest in the form of those statements and oral evidence from some but not all of those persons.

18. An autopsy report and other correspondence was also received from relevant persons and considered.

Part 2 – The hiring process and the truck

The previous hiring process

19. Geocentric Pty Ltd was the organiser of outdoor events involving endurance sporting activity, often encompassing kayaking, mountain-bike riding and running. Geocentric Pty Ltd's business had grown over the years, resulting in the company needing increased capacity of vehicles to transport items relevant to the events they organised. One of the directors of Geocentric Pty Ltd, Mr Craig Bycroft, gave evidence about how the company's transport practices and needs had changed from the use of a car to a trailer with a 500 kg capacity to a 1.2 tonne trailer and, ultimately, to light trucks. He referred to his hire in Tasmania of 5 or 6 trucks described as '3 tonne trucks'. His recollection was that when he organised the hire of trucks from Europcar in Tasmania in 2066 he was told that they could carry 3 tonnes or a fraction under. He now has no memory of with whom he spoke, but recalled that he had to speak to someone at the depot in Tasmania, rather than simply finalising it at the central reservations point.

20. He found the trucks on that occasion in Tasmania and subsequently to be excellent and the trucks felt "quite good" in their handling.

The hire of the truck in August 2007

21. Consistent with previous practice, several months prior to August 2007, Craig Bycroft on behalf of Geocentric arranged to hire 2 trucks of the type ultimately driven by John Arthur Harvey and Brian Lemke on 16.08.2007. As with previous events, trucks were required to transport items this time for use at the Airlie Beach event that Geocentric had organised. The items could include tents, marquees, kayaks, tables and chairs, computers and kits for volunteers, first aid kits, fencing and signs.²
22. Mr Bycroft hired for the event what he referred to as "a 3 tonne truck you can drive with a car licence".³ His evidence in relation to the hire of vehicles for use in August 2007⁴ was that he recalled speaking to a woman at the Brendale depot and in response to a question from her told her that he had hired these particular types of trucks previously.

Collection of the truck

23. On the morning of 16 August 2007 John Arthur Harvey and Brian Lemke, who was to drive a second truck, attended the Brendale office of Europcar.
24. Mr Harvey arrived at the Europcar's premises first. At that time the office was staffed by Brian Creedon then in the position of the manager of that branch. In discussions with Mr Harvey, Mr Creedon was told that there was a cycling event in Airlie Beach and that he was carrying "all the gear there". Mr Creedon's statement notes that he had a mental picture of the gear being the bicycles and support equipment.
25. Brian Lemke's evidence about what occurred was that he arrived at Europcar's Brendale office at about 7.30am and John Arthur Harvey was already there. The paperwork was produced by Europcar and signed by John Harvey and Brian Lemke with each being nominated as a driver for both trucks. Mr Creedon undertook various checks of the vehicles and informed Mr Harvey and Mr Lemke of the vehicle's capacity and clearance height.
26. Mr Lemke's impression of these trucks being referred to as 3 tonne is "that they can carry 3 tonne of gear in them separate from what the weight of the truck is".⁵
27. In the past, when trucks from Europcar had been hired and he had been involved in that, he had never been told how much weight an individual truck could actually carry.
28. The rental agreement pertaining to the truck contains the following clauses:

² Bycroft statement, paragraph 5.

³ Bycroft statement, paragraph 7.

⁴ Inquest transcript day 2, p 6.

⁵ Paragraph 6 of his statement.

[The driver] must not:

4.1(d) *"carry more passengers or goods than may be properly accommodated by the restraints provided in the vehicle, or carry a greater load than that for which it was built";*

4.1(h) *"use the vehicle to transport goods, except in compliance with all necessary approvals, permits, licences and government requirements (to be obtained at Your cost) & in accordance with the vehicle manufacturer's recommendations;*

4.1(k) *"operate or permit the vehicle to be operated in breach of any legislation, regulations, rules or by-laws relating to road traffic and use".*

29. The Brendale manager of Europcar, Mr Creedon, has a reputation for paying attention to details; he had taken it upon himself to ascertain the details of the tare when the subject truck first came to his depot and had kept a record of that. That information about vehicles in the fleets at other centres was, apparently, not generally known by Europcar managers elsewhere. His attention to detail was evident on the day the 2 trucks were collected from Brendale by Mr Harvey and Mr Lemke, when knowing the lengthy journey about to be undertaken, he double-checked aspects of the 2 trucks.

30. Mr Creedon's oral evidence included that he had a standard spiel and he was well aware of the carrying capacity (4490 kgs) and dimensions of the truck. His standard spiel was that he would point out to a new customer:

Whilst many refer to the vehicle as a 3 tonner or a 2 tonner, in fact legally they can only carry ... a maximum of four and a half tons and that would give a carrying capacity of 700 odd kilos.⁶

31. He did not specifically recall telling Mr Harvey and Mr Creedon of the carrying capacity of 730 kgs but given that Mr Creedon had asked Mr Harvey what he was carrying, and the response he was given (and construed) he did not consider the weight of the load to be an issue.

32. After leaving the Europcar premises at Brendale, John Harvey and Brian Lemke went to the Petrie Railway Station and met up with people including Lena Gralki who became a passenger in the truck being driven by Mr Harvey. After that, John Harvey and Brian Lemke each drove a truck to Geocentric's premises at Kelly Street, Dayboro to load the trucks, with Mr Harvey driving truck registration number 510 JWU.

⁶ Transcript Day 1, p42.

Part 3 – What caused the Accident?

The loading of the truck on 16 August 2007

33. Craig Bycroft of Geocentric was not present at the time of loading the equipment at Geocentric's premises, he having already travelled to the site of the event at Airlie Beach. He had a practice, where possible, to supervise the loading of the trucks, which occurred whenever he was at the location for the loading.
34. The normal practice was to load all the heavy equipment to the bottom and to the front of the vehicle and then put lighter items on top of that.
35. Mr Bycroft had been involved in the packing of trucks when John Harvey had been present in the past and where Mr Harvey had assisted in that process. He gave evidence that he had a clear recollection of discussing packing techniques, especially in relation the inflatable kayaks that were much heavier than most of the other items carried, so he made sure that they were packed "to the front of the truck and down low, and then put the bike boxes which were much lighter, but sort of greater volume item, on top of those".⁷
36. At Geocentric's premises, Mr Harvey and Mr Lemke collected various items left for them by Mr Bycroft. The loading took place over a couple of hours. They loaded up the truck driven by Mr Lemke using up most of the space inside each truck. Mr Lemke's recollection is that about the same amount of equipment went in each truck. In the course of loading, heavier items were loaded first at the base and spread out evenly on the vehicle, front to back. Some items were tied down where they thought there may be movement, but he could not recall whether the ropes were supplied by Europcar or by Geocentric.
37. The type of equipment required to be transported in August of 2007 up to Airlie Beach included an eclectic array of items provided by the organisers: "kayaks or inflatable kayaks ... bits of fencing and t-shirts and computers, all sorts of signage, tents, all that sort of equipment".⁸
38. In his oral evidence, Mr Bycroft gave information about the weights of various items. The kayaks weighed about 30 kilograms; there were about 100 of those being transported to Airlie Beach. Cumulatively the kayaks would be the heaviest but other items that were also heavy, for example 8 Marquee tents which each weighed about 50 kilos each. Other items such as 20 small camping tents each of 8 kilos were also to be transported.
39. As to whether loads were tied down, Mr Bycroft's evidence was that when he was involved in the packing, sometimes kayaks were packed to the sides of the truck, but quite low, and then everything else would basically

⁷ Transcript Day 2, p5.

⁸ Transcript Day 2, p14.

be stacked on and around those, so that the available space was quite full and "there was no sort of movement at all".

40. The day after the accident, the truck that had been driven by Mr Harvey, and still with the load on board, was weighed. Vehicle weight when measured by Queensland Transport Vehicle Inspectors was 6,310kg.
41. It is not possible at this time to know exactly what items were in the truck driven by Mr Harvey. The loads from the 2 trucks, being items still required for the Geocentric event in Hervey Bay, were transferred to a single large truck that Mr Bycroft had hired specifically, which required a driver with a 'truck' licence. No person connected with Geocentric had oversight of the transfer of the 2 loads. However, having regard to Mr Lemke's evidence, which I accept, there seems no reason to conclude that the loads across the 2 trucks hired from Europcar on the morning of 16 August 2007 were significantly different in weight or load configuration.

The Road

42. The road at the scene of the accident (Dayboro Road, Kurwongbah) is a sealed bitumen road winding in a general east to west direction from the township of Dayboro to Petrie.⁹ There are 2 lanes of traffic one in each direction which are separated by double white lines. On 16 August, 2007, the road was dry; in good condition, with no pot holes or surface irregularities.
43. The posted speed limit is 80 kmh. In the direction of travel of Mr Harvey's truck just past and to the east of the intersection with Dunlop Road, being the part of the road where the evidence shows a loss of control of the vehicle, the road curves to the right and goes slightly downhill. On the bend, the road had a negative camber of about 4.5 degrees, meaning that there was a slope towards the left hand gutter. SC Hollett did not consider that to be a contributing factor.

The moments before the accident

44. After making purchases at a local bakery, because of the way the 2 trucks were parked on the side of the road, John Harvey drove off first. It was then about 12.30pm and was a fine day, and the road was dry. Mr Lemke's evidence is that Mr Harvey got 500-800 metres ahead of him. Dayboro Road was described by him as "fairly hilly and windy" and he lost sight of Mr Harvey.
45. The passenger in the truck driven by John Harvey – Lena Gralki – was a tourist visiting Australia from overseas. Evidence available from her came

⁹ Exhibit 2

from a police notebook statement given to Constable Tipper of Redcliffe Police Station. She is recorded as saying:

We then left the bakery and were travelling on a road that I am not sure of just outside of Dayboro. We were driving down a slight slope going around a bend in the road going right. As we were travelling around the bend I thought the truck was going to tip as I was being pulled to the left against the glass as the truck was going very fast. The bend turned even sharper and the truck went off the left hand side of the road hitting a traffic sign on the way. We were still going fast so I ducked my head down between my knees with my hands over my head because I knew that we were going to hit something else. I then heard some bangs and heard trees hitting the truck. I then felt the truck tip over on its side with my side hitting the ground.

46. There is nothing to suggest that John Harvey had expressed prior concern over how the truck was handling.
47. Ms Gralki apparently left Australia prior to the inquest. She was not able to be located nor was she requested to appear.
48. Further evidence came from Glen Balharry the driver of a truck who was approaching the intersection of Dunlop Road with Dayboro Road. He had slowed down. He then heard the sound of gravel as if a car was "off line or not quite on the road". While almost stationary, he saw the truck out of its lane and in the bus-stop lane. He saw the truck mount the kerb, hitting 2 signs, a Poinciana tree and then a big gum tree. He saw the truck flip and it was then lying on its side in the middle of the road.
49. He then saw another Europcar truck go past. That was the truck driven by Mr Lemke. Mr Balharry's sighting of the other Europcar truck so soon after his seeing the collision is consistent with the truck driven by Mr Lemke being only 500-800 metres behind, as referred to by Mr Lemke in his statement and oral evidence.
50. Mr Balharry contacted the quarry from which he had come with instructions to call for ambulance and police to attend.

Characteristics and mechanical condition of the truck

51. The 2006 Mitsubishi Canter truck was a flatbed truck from the FUSO Series. The truck's registration sticker records that it has a GVM of 4490. I shall return to what this means later.
52. The external van body dimensions were 4.27m long, 2.29m wide and 2.24m high.¹⁰ These dimensions create 21.9 cubic metres of available space. The truck had been modified by Prestige Truck Bodies of Victoria by the fitting of a body in which items can be placed and transported. The

¹⁰ See page 9 of exhibit A2.

truck also had a hydraulic tail lifter to the rear. Fixing points were built into the body of the truck. These could be used to secure loads. The truck is described as a medium wheel base of 3350mm with an overall length of 6015 mm, and from the front of the truck to the rear of the cabin of 1670mm.¹¹

53. According to that specifications for that vehicle the capacity at ground for the front suspension is 1300 kg and for the rear suspension is 2100 kg. The maximum axle load at front is 2300 kg and rear axle load was 3300 kg. The total mass is estimated to be 2230 kg.
54. There is another vehicle in the Canter series with the same wheel base, which has a GVM of 6500 kg, but the axle and suspensions loads stated in the specifications are heavier.
55. Examination of the vehicle after the accident did not disclose any defects that would have contributed to an inability to control the vehicle. Although the right front tyre was partially deflated, it was able to be reinflated to 60 PSI and it remained inflated for duration of inspection indicating it was still intact and had not separated from the wheel rim. There is no evidence to indicate that the truck was in other than sound mechanical condition at the time of hire and at the time of the accident.

Part 4 – The evidence at the scene

56. The investigation report of the crash scene describes the path of travel of the truck after it had passed the intersection with Dunlop Road prior to its rolling onto its side. The path of travel shows 3 tyre marks, which:

appeared to run parallel with a radius that was slightly larger than the radius of the curve in the roadway. These tyre marks ran for a distance of approximately 30 metres before they met with the kerb on the side of the road.

After the tyre marks met with the kerb, there was an obvious set of marks left in the grass verge on the [left] side of the road. ...

[There was] damage to a number of trees. This damage was significant due to the number and size of some of the tree branches that had been broken off by the vehicle as it continued along the grass verge.

57. Later there were signs of the vehicle having moved back onto the roadway.
58. The road showed a series of scrape and gouge marks over a distance of approximately 20 metres. The point at which those stopped the vehicle

¹¹ See Canter 2.01 FE83P specification attached to Exhibit 5 Report of Constable Hollett.

was lying on its passenger side facing back slightly toward the direction from which it had come from and was lying across both lanes on the road.

59. Investigations and analysis of evidence from the scene by officers of the Forensic Crash Unit included that the truck driven by Mr Harvey:

as it was travelling around the right hand bend in Dayboro Road at the crash location and considering the load it was carrying at the time, had a rollover threshold speed of approximately 85.87 kmh.

This means that as 510 JWU was travelling around the corner, if its speed equalled or exceeded 85.87 km/h then it would have rolled over. From the examination of the scene, it was found that a rollover did not occur, therefore the speed of 510 JWU at the time of the crash was under 85.87 kmh.

60. The report writer stated that as the truck had not rolled in the curve, "the speed of the vehicle was probably just under the 85.87 km/h rollover threshold" and that the weight of the load was "more than likely a contributing factor" in the crash.

61. In describing the tyre marks at the scene, the investigating officer drew a distinction between "yaw marks" associated with braking and other tyre marks. In the officer's opinion, the tyre marks visible at the scene:

They just appeared to be left ... by the ... truck just trying to actually get round the corner and just from the sheer load on those outside tyres or the passenger side tyres and they've just left the marks as it's tried to get round the corner.

62. Given the consistency of thickness and darkness of the tyre marks from where they commenced on the road up to the gutter, SC Hollett did not consider that there had been a shifting of the load which would have been a significant contributing factor.

63. As to the manner of loading, his evidence was:

The van was probably that full and there was that much gear in there that as the car got to that corner or through other corners that the load would not have shifted that much because it was – I suppose it was packed in that tightly that it ... just wouldn't have shifted to a degree that I thought would have caused this ... crash.

Part 5 – The Regulatory Framework

64. The following legislation is relevant to this matter:

- *Transport Operations (Road Use Management) Act 1995*

- Transport Operations (Road Use Management – Driver Licensing) Regulation 1999.

66. The holder of a C class licence is entitled to drive a car, with or without a trailer or a “specially constructed vehicle of not more than 4.5t GVM, with or without a trailer”.¹²

67. The word “car” is defined to mean a motor vehicle (other than a motorbike) that “is not more than 4.5t gross vehicle mass”.¹³

68. The GVM (or gross vehicle mass) is defined as meaning:

the maximum loaded mass of a vehicle—

- (a) stated on the vehicle’s compliance plate; or
- (b) stated in a way prescribed under a regulation.¹⁴

69. The truck’s “GVM” was stated on the registration sticker to be 4490kg. The maximum loaded mass includes the unloaded weight of the vehicle. The term ‘tare’ is defined to mean:

the weight of any vehicle equipped for travelling on a road, but not including any load.¹⁵

70. Accordingly the difference between the unloaded (tare) weight and the GVM is the load that is authorised to be carried. That load amount also includes the weight of the driver and any passengers.

71. There does not appear to be any legislative requirement for the tare weight to be displayed on vehicles with a GVM of less than 4.5 tonne and for heavy vehicles with GVM of 4501 kg or higher.¹⁶

72. John Harvey was the holder of a C class licence. Accordingly, he was lawfully permitted to drive a vehicle of the type he was driving on 16 August 2007 with a GVM of 4,490 kgs.

Part 6 – John Harvey, the man

Family, education and interests

73. John Harvey was one of two children. He is survived by his parents and younger sister Katherine. John and Katherine were very close friends. The family is a close one. After high school in Lismore Mr Harvey moved to Queensland in 1997 to study horticulture at the University of Queensland

¹² See s6 of the *Transport Operations (Road Use Management - Driver Licensing Regulation) 1999* and *Schedule 2*

¹³ See the Dictionary in *Transport Operations (Road Use Management) Act 1995*

¹⁴ See preceding footnote.

¹⁵ See preceding footnote.

¹⁶ Queensland Transport Statement forming part of exhibit B3.1

at St Lucia and he graduated at the end of year 2000. He later then gained a PhD scholarship in 2001 with the Cooperative Research Centre for Cotton studying plant pathology, still at UQ in the Botany Department. He was near the end of his PhD at the time of his death.

74. After graduating, Mr Harvey supported himself, firstly, with his PhD scholarship and part time work as a tutor at University of Queensland. He also worked in outdoor shops, and part time for the Queensland DPI and CSIRO. He also earned some money by assisting at outdoor adventure races.

75. John Harvey was a keen outdoor sportsman. He took up rock climbing and joined UQ Sports. He went on many rock climbing trips with UQ sports and climbed in Victoria and New Zealand. He competed in outdoor adventure races and was a very keen mountain bike rider. He cycled a lot; he did not own a car. His passion for physical activities saw him most weekends and many weeknights on the Kangaroo Point Cliffs in Brisbane. He had been a safety officer with University of Queensland Rock Climbing Club. During submissions at the conclusion of the inquest, John Harvey's father referred to John Harvey's safety-conscious nature, as evident by John "when he had no money or was very skint chopping up \$500 pieces of rope because he thought somebody may have exceeded the load limits".¹⁷

John Harvey's driving history

76. Mr Harvey had no traffic offence history. He obtained his licence at age 21. He had driven trucks like the Mitsubishi Canter on behalf of Geocentric previously without incident. He was understood by the director of Geocentric Mr Craig Bycroft to have been a safe and careful driver. Despite not owning his own vehicle, he drove in connection with his work regularly. Having held a Drivers Licence since 2001 without any traffic offences and suggests that he was conscious of his responsibilities as a driver.

Part 7 – Consideration of the evidence

77. The investigation report by Snr Const Hollett states the tare weight is 3840 kgs.¹⁸ Taking into account the GVM of the truck is 4490 kgs the load carrying capacity will be 650 kgs. Mr Creedon stated that the load carrying capacity was 730 kgs, although the tare weight figure he was relying on was not stated. In any event, he acknowledged that the tare weight was not recorded on the vehicle; nor was it recorded in the documentation that remained with the vehicle or in the rental agreement. There was no document given to a customer or driver of the vehicle to allow a calculation of what weight could be lawfully carried.

¹⁷ Day 3, p14.

¹⁸ Exhibit A5, p7.

78. I accept that Mr Creedon had a standard practice of informing new customers of the load carrying capacity of the trucks hired from the Brendale office. However, I find that he did not do so on 21 August 2007 when he was dealing with Mr Harvey and Mr Lemke (no doubt because of their stated previous hiring experience and his perception of what was going to be carried).
79. During the coronial investigation, a response form Queensland Transport (QT) suggested that the truck could have been registered as a vehicle could have had a GVM greater than 4.5t (and therefore could have carried a load greater than the GVM ascribed to it). A significantly greater weight-carrying capacity appears to require different suspension and axle load capabilities. The suggestion that the truck could have been given a higher GVM (and therefore the extent of any overloading would have been less in percentage terms) was premised on the advice from FUSO which advice applied "only to a vehicle that has not been modified in any way from its original specification". That was not the case with the subject truck; it had been fitted with a body by Prestige Truck Bodies. Mr Draheim, on behalf of QT, conceded that the view previously posited by QT was based on incorrect information.
80. Despite the size of the body, the Mitsubishi Canter truck registration number 510 JWU could be loaded legally with only between 650 kgs and 730 kgs. As noted earlier, the total weight of the truck as loaded, as ascertained after the accident, was 6310 kgs. That weight was exclusive of the body weight of Mr Harvey and Ms Gralki. It is reasonable to infer that the combined weight of the 2 occupants of the truck at the time of the accident would have been at least 120kg.¹⁹ The weight of the occupants coupled with the load of the truck would have brought the total load to very close to the maximum load for the Canter truck with the 6500kg GVM and the heavier axle and suspension capacity. With hindsight, it is apparent that the larger capacity truck should have been used to transport the particular load, which in turn would have required at least a LR licence and not the C class licence that was required to lawfully drive the subject truck.²⁰
81. In the absence of clear information as to load limits, the size of the truck-body may well have created an impression that the whole of the capacity can be used with little regard to the weight of the items loaded. I am satisfied that such an impression was generated in the minds of both Mr Harvey and Mr Lemke that there was no problem with filling the trucks in effect to the top. In loading the vehicle, through no fault of his, John

¹⁹ The autopsy report records the weight of Mr Harvey as 77kg.

²⁰ The holder of a LR licence is authorised to drive: a class C vehicle; a bus of not more than 8t GVM, with or without a trailer of not more than 9t GVM; a truck (including a prime mover) of not more than 8t GVM, with or without a trailer of not more than 9t GVM; a specially constructed vehicle of not more than 8t GVM, with or without a trailer of not more than 9t GVM (see Transport Operations (Road Use Management—Driver Licensing) Regulation 1999

Harvey was unaware of the legal load limit. I am satisfied that he would not knowingly have loaded the truck in excess of the legal load limit.

82. There was no evidence about how Mr Harvey and Mr Lemke concluded that the load actually placed on the respective trucks was within the load limits, as they understood them to be, namely 3 tonne, although it is notable that the actual load was noticeably less than that amount (total weight of loaded truck plus estimated weight of occupants less tare: $6310 \text{ kg} + 120 \text{ kg} - 3840 = 2590 \text{ kg}$ actual load).
83. Thus, Mr Harvey and Mr Lemke did not load the truck beyond the maximum load as they understood it to be.
84. At the point at which control was lost, the truck was trying to negotiate a right hand bend on a slight downhill. On the analysis of officers of the Forensic Crash Unit, the truck was near to, but not at, its rollover threshold at that point. It is not possible to determine the exact speed of the truck, but I find that the truck was travelling at or close to (but not exceeding) 85 kmh, being 5 kmh above the designated speed limit. It is not possible to determine whether the slightly excessive speed was from momentum or inattention on the part of Mr Harvey.
85. There is no evidence as to the effect of the handling of the truck having regard to the weight of the load and the particular suspension and axle capabilities of the subject truck.
86. I accept the view of the investigating officer that the weight of the load was "more than likely a contributing factor". There is no evidence to suggest Mr Harvey was affected by any physical incapacity that might have prevented him from being able to control the truck in the ordinary way. There was no evidence on the road to indicate that the load had shifted, such as to make the vehicle difficult to control. The evidence about the negative camber of the road does not indicate that to be contributing factor, although it may have played a small role. In my view, the evidence points to the most likely reason for the loss of control to be the combined effect of the load and the speed. It is, however, not possible to determine with certainty what factor had the greater adverse effect on the ability to control the vehicle, namely whether it was the speed at which it was travelling or the total load that it was carrying or some other reason.

Part 8 – Recommendations

Disclosure by rental companies

87. A brief examination of websites for hire of trucks highlights generally a lack of specific information about what loads can be carried.²¹ Notably the

²¹ Counsel assisting in supplementary submissions referred to information obtained from: <http://www.thrifty.com.au/blackburn/fleet.html>; www.discountcar.com.au/sydney/truck-rental.htm. One site

Europcar site²² as at the day 3 of the inquest did not make any reference to either 3 tonne or the potential carrying capacity of the trucks in relation to trucks for which a 'standard car licence' was required, although through another (apparently unrelated) link there is reference to Europcar having 3 tonne commercial trucks for rent.

88. The evidence indicates a common practice in the vehicle rental industry of referral to vehicles by descriptors such as '2 tonne' or '3 tonne' without any clarity as to what is meant by that. It certainly can be (and was in relation to the vehicle driven by Mr Harvey) construed as the carrying capacity of the subject truck. That misconception should be avoided.
89. While appreciating the practicality of car rental, companies such as Europcar having a generic "one size fits all" rental agreement, a rental agreement that refers to external documents or unspecified legislation or regulations is, at the very least, unhelpful. Even a conscientious hirer, keen to know all the conditions to which the hire of the vehicle was subject, would be unlikely to know what legislation might be incorporated into the terms of the agreement. Further, the assumption that a weekend hirer of vehicles (such as the subject truck) would necessarily understand the reference 'GVM' where it appears on the registration label is misplaced.
90. The tare of the individual trucks is (or ought to be) within the knowledge of the vehicle rental company. The tare weight is something that is required to be ascertained to enable registration of the vehicle as a particular type. At a bare minimum the information provided to a customer should include clear and unequivocal explanation of the tare of the vehicle, the GVM (and their respective meanings) and the consequential available load carrying capacity, including the weight of the driver and passenger(s).
91. Further, it would be neither expensive nor onerous for a rental company to include, for example, by a brightly coloured label or sticker on the paperwork associated with the hire of a vehicle, stating the weight of the maximum load that can be placed on or in the vehicle being hired.

Advice re loading

92. It is not possible to envisage every type of load for which a person may hire a truck. Conceivably a range of bulky, but relatively lightweight items could entirely fill the space available inside the truck-body and not exceed the permissible load weights (eg polystyrene filled 'bean bags'). It would not be feasible, however, to expect a rental company to attempt to control the actual manner of loading any vehicle; there are too many variables to seek to impose specific styles of loading, other than perhaps general guidance about weight distribution, specifically heavier weights on the bottom and methods of securing loads.

seen on the internet referred to 'Nom.Payload' of 1.5 Tonne to 2 Tonne for which only a car licence was required (see www.meteorrentals.com.au/our-range/furniture-trucks)

²² <http://www.europcar.com.au/fleet-guide/default.aspx#commercialTrucks>

93. Mr Creedon from Europcar made the point that the height of the truck-body was to facilitate the standing up inside to allow for packing. Anecdotally, it appears that these particular types of trucks are used regularly by people when moving house, rather than engage specialist furniture removalists. The particular vehicles fulfil a niche market, and are frequently hired by people who are not ordinarily in the transport or haulage industry. They are designed to allow rental by people on ordinary 'car' licences.
94. There was a suggestion in the evidence of a figure used in the furniture removal industry as a guide to weight loads, namely 112kg per cubic metre. Although household goods did not comprise the load in the subject truck, it appears that these trucks are often used for the transport of household goods. Vehicle rental companies could produce a brochure to be made available to customers setting out as a guide the general approach that should be taken to loading and containing approximate weights of standard household goods.

Legislative change

95. Queensland Transport refers to the difficulty with any changes to legislation if it causes inconsistency with legislation in other states. Notwithstanding that vehicles move interstate, that ought not to preclude a State imposing conditions on vehicles registered in that State.
96. When one has regard to internet sites of companies who rent out the same (or very similar) types of vehicles to that relevant here, the impression may reasonably be formed that the description of 3 tonne refers to the actual carrying capacity, exclusive of the unloaded weight of the vehicle.
97. Queensland Transport considered a mandated requirement to display load carrying capacity information such as Tare Mass and GVM rating on the side of all vehicles as unnecessary because, among other things, "Vehicle owners and operators are usually familiar with the load carrying capacities of their vehicles". However, that cannot be said of a hired vehicle, as was the situation here.
98. The presence of mandated information about tare and GVM would facilitate hirers of motor vehicles being able to ascertain the legal load limits and would also overcome the failure of a rental company to disclose the load-carrying capacity because of (a possible) absence of that information, it perhaps being retained by the vehicle rental company at a central location.
99. I make the following recommendations:
- (1) That motor vehicle rental companies:
 - (a) disclose to customers at the point of inquiry and at the time of hire what is the maximum load that the different classes of truck

- can carry (which load must have regard to the weights of the driver and any passenger);
 - (b) include on their vehicles in a visible place and in a clear way in the rental agreement the maximum lawful load that can be carried and the tare (empty weight) of the vehicle
 - (c) develop and distribute to hirers of vehicles a brochure containing average weights of household goods
 - (d) develop and provide to hirers of vehicles general guidelines as to placement of load, particularly those hirers who are not in the general business of transport.
- (2) That Queensland Transport seek legislative change to require:
- (a) the tare mass weight to be included on the registration label of vehicles designed to transport loads (other than passenger cars) in addition to the GVM; and
 - (b) the actual load-carrying capacity to be clearly visible on the vehicle.

100. The recommendations set out above will be forwarded to the National Transport Commission and to motor vehicle rental companies that are identified as operating in Queensland.

101. It is hoped that as result of this inquest having been held and the recommendations made, that some changes to practices in the motor vehicle rental industry are achieved that will reduce the likelihood of inadvertent overloading of rental vehicles leading to accidents such as that in which John Harvey died.

Part 9 – Findings

102. My role as Coroner is to find, if possible, whether or not a death in fact happened and if it did:

- (a) who the deceased person is;
- (b) how the person died;
- (c) when the person died;
- (d) where the person died; and
- (e) what caused the person to die.²³

103. I am satisfied that the evidence establishes to the requisite level the following:

- (a) The person who died was John Arthur Harvey
- (b) He died when he lost control of the hire truck that he was driving and it collided with signposts and trees and eventually rolled onto the passenger side. His ability to control the truck was

²³ Section 45(2) of the *Coroners Act 2003*

adversely affected by the excessive load in the vehicle coupled with the slightly higher than stipulated speed for the road at that point. Alcohol and drugs were not involved.

- (c) He died on 16 August 2007.
- (d) He died at the collision site on Dayboro Road, Kurwongbah, Queensland on the eastern side of Dunlop Road.
- (e) The cause of John Arthur Harvey's death was multiple injuries due to or as a consequence of a motor vehicle in which he was the driver.

104. As stated by his father:

"John Harvey was a son any parent would be proud of. He was a respectable citizen and a good friend and helper to many. He was a tall fellow so always stood out in a crowd but was known for his gentleness and concern for others."

105. Sadly at the age of only 28, John Arthur Harvey died. He is sorely missed by his loving family.

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