



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
MALCOLM DONALD KAMP**

TITLE OF COURT: Coroners Court

JURISDICTION: Brisbane

FILE NO(s): 2011/1848

DELIVERED ON: 3 December 2014

DELIVERED AT: Brisbane

HEARING DATE(s): 24 March 2014, 29 April 2014, 11 September 2014
8 October 2014

FINDINGS OF: Mr John Hutton, Coroner

CATCHWORDS: CORONERS: cyclists, road safety, semi-trailer, failure to allow sufficient clearance, inappropriate road design, inappropriate traffic restrictions, inappropriate risk management processes, safe use of highways and motorways by cyclists

REPRESENTATION:

Counsel Assisting: Mr Anthony Marinac

Department of Transport and Main Roads: Ms Kay Philipson

Mr Aaron Sutton:

Mr Malcolm Harrison

Findings pursuant to s. 45(2) of the Coroners Act 2003 in relation to the death of Malcolm Donald Kamp

The deceased person is Malcolm Donald Kamp, DOB 22 May 1959.

Malcolm Donald Kamp died as a result of multiple injuries arising from a collision between his bicycle and a semi-trailer vehicle, travelling at high speed.

Malcolm Donald Kamp died during the early afternoon of 5 June 2011.

Malcolm Donald Kamp died beside the Warrego Highway, near the Kholo Road offramp, at Kholo in the State of Queensland.

The principal cause of Malcolm Donald Kamp's death was by the driver of the semi-trailer vehicle who was following Malcolm Kamp who failed to provide sufficient space between the two vehicles when he overtook Malcolm Kamp on the Warrego Highway.

Evidence and discussion of general circumstances of death

Mr Malcolm Donald Kamp was a keen recreation bicyclist, who regularly trained on the Warrego Highway, which was near his home in Karalee, near Ipswich. On 5 June 2011, Mr Kamp had been riding for some time, and by 1pm he was returning towards Karalee along the Warrego Highway, approaching the Kholo Road offramp.

At this time, he was approached from behind by a semi-trailer, consisting of a prime mover and a trailer designed for the carriage of motor vehicles. A single motor vehicle was on the trailer. The driver of the semi-trailer was Mr Aaron Sutton, who had his young son in the vehicle as a passenger. Behind Mr Sutton's vehicle was a car driven by Mr Scott Glendinning, with his wife Mrs Marion Glendinning in the passenger seat.

As Mr Sutton passed Mr Kamp he reports hearing the sound of some impact on the left hand side of his truck's cabin. He then saw, in the rear-view mirror, that there had been a collision between the bicycle and his truck. He pulled the truck off the road. Mr Glendinning also pulled over. Emergency services were called. Mrs Glendinning sat with Mr Kamp and it seems she was with him as he died. Queensland Ambulance Service and Queensland Police Service officers arrived a short time later.

Driving conduct of the parties

On the evidence before me, there are only two vehicle operators whose conduct might have contributed to this collision: the riding of Mr Kamp himself, and the driving of Mr Sutton.

I commence with Mr Kamp. There is evidence before me, by way of a statement which I requested, which indicates Mr Kamp was a particularly meticulous cyclist. He maintained his bicycle in a manner which clearly exceeded the minimal safety requirements. It was indicated to me in evidence that Mr Kamp's practice would have been to ride along the "fog line" or left-hand perimeter line of the road, to stay away from traffic while also avoiding debris on the read shoulder. Evidence of Mr Sutton and Mr Glendinning, in a trailing vehicle, indicates that Mr Kamp was riding on, or very close to, the fog line. On balance, I find that Mr Kamp did not stray into the path of the semi-trailer.

Another possibility is that Mr Kamp may have spilled from his bike, as a result of some factor entirely separate from Mr Sutton's truck. The Forensic Crash Unit report, however, gives no indication of any such cause; and no witness claims to have seen Mr Kamp fall in this manner. On the balance of probabilities, I find that the collision was not due to Mr Kamp falling from his bicycle.

In short, I find that Mr Kamp's own riding conduct did not in any way contribute to his death.

I turn now to Mr Sutton's driving conduct. It is a fundamental responsibility of every road user to drive their vehicle in a safe manner. Every road user has a duty to consider the safety of other road users, in their driving conduct. This responsibility particularly pertains to a vehicle which is approaching another vehicle from the rear, in order to pass it.

This duty of care to drive safely, must be at its highest when a semi-trailer or motor vehicle approaches a bicycle form behind. The driver of a semi-trailer must, as a simple matter of logic, be aware of the very great differential in speed between the vehicles, and the very great differential in mass. The semi-trailer driver must be aware that there is no such thing as a "minor" collision between a semi-trailer and a bicycle. Every time a semi-trailer passes a bicycle, the cyclist is effectively entrusting his or her life to the semi-trailer driver.

As a result, questions about the exact position of Mr Kamp on the road; or even the question of whether cyclists should have been on the Warrego Highway at all; do not relieve Mr Sutton of his duty of care to drive safely. Even if Mr Kamp had been riding dangerously (and there is no evidence whatsoever to suggest that he was) then Mr Sutton would still have been required to adjust his own driving in order to ensure he did not harm the cyclist.

Mr Sutton's view, expressed to police on the day of the collision, and reiterated during the inquest, was that he did drive safely. His initial evidence

was that he moved to the right to “straddle” the lane marker between the left and right lanes. Later his evidence was that he moved to the extreme right-hand side of the left lane, but was unable to change lanes due to traffic in the right-hand lane. The following driver, Mr Glendinning a witness, saw no such movement. The Forensic Crash unit report was unable to assist. The only suggestion of a movement to the right, comes from Mr Sutton himself. He did not indicate an intention to change lanes. I do not accept Mr Sutton’s evidence. If he moved to the right at all, it was a marginal movement, unable to be detected by the traffic behind him.

Mr Sutton stated in evidence that he reduced his speed using a “Jake Brake” which would have reduced the speed from 101kph (the speed at which the limiter was set) to about 90-95kph. He did not otherwise brake. I consider this reduction in speed to be negligible in the circumstances – it amounts to not having braked at all.

I find that the most substantial single cause of Mr Kamp’s death was the failure, by the semi-trailer driver, to brake sufficiently, or to leave sufficient room between the truck and the bicycle, to pass safely.

For completeness, I note a suggestion made in evidence by Mr Mike Carter of the Department of Transport and Main Roads, to the effect that a committee convened by that Department had formed the view that Mr Sutton deliberately drove close to Mr Kamp, in order to scare him. Mr Carter then appeared to distance himself from that view. There is no evidence before me to suggest Mr Sutton deliberately harmed, Mr Kamp.

Use of the Warrego Highway

A second issue for the inquest was the question of whether the Warrego Highway should have been used by cyclists at all.

I accept that decisions about cyclist access to the network are politically and socially complex. Governments currently seek to promote cycling, both for health and recreation, and in order to reduce commuter pressure on the roads. These policy imperatives, together with the pressure of a well-organised cycle lobby, have resulted in a basic principle, explained to me in evidence, whereby cyclists should be able to use roadways as of right, unless there are particular reasons for their prohibition. The result in practical terms is that an over-cautious, overly restrictive approach to the use of roadways by cyclists, will meet with opposition.

Set against this are safety concerns, and resource constraints. Any time cyclists and motor vehicles share a road space, there is risk to the cyclist. The ideal solution would be off-road cycle paths sufficiently convenient to suit both recreational and commuter cyclists. Such infrastructure is expensive, however, particularly (as in the current case) where structures such as additional bridges would be required to be built. It will not, in most cases, be possible to ameliorate risks by providing off-road cycling.

Evidence before me was that where new roads are constructed, or old roads substantially upgraded, new engineering standards are implemented to make the roadways safer for use by cyclists and motor traffic. This is welcome, although it creates the somewhat unusual situation (which prevailed in this case) where cyclists can use existing roadways, even when the design of those roadways would not be considered safe for new roads.

These considerations provide the general policy context for the specific consideration of whether cyclists should be able to use the Warrego Highway between Blacksoil and the Ipswich Motorway. I turn now to more specific considerations.

A decision was made in 2006 to designate the relevant part of the Warrego Highway as a Motorway (rather than as a rural highway). There was some confusion in evidence as to whether the road was designated as a Rural Motorway or an Urban Motorway; I accept that it was the former. A redesignation of the road reflects, among other things, the changes in volume and type of traffic using the roads.

As part of the consultation process, the Department of Transport and Main Roads (“the Department”) contacted the Ipswich City Council and sought its input. The Council relevantly identified that one concern was that cyclists, who were at that time able to use the rural highway, might be prohibited from using the road once it became a motorway. The Council requested that if the re-designation proceeded, some appropriate solution must be found for cyclists. The Council did not attempt to prescribe any particular solution.

The relevant policy at the time was later encapsulated in a memorandum written by Robin Stone, the Acting Executive Director for Planning, Design and Operations. The relevant policy in relation to existing motorways was as follows:

Main Roads will, as necessary, restrict or prohibit cycle access to parts of the state controlled road network where there is an unacceptable safety risk. Main Roads will not do this unless a risk assessment, including consideration of any crash records and alternative routes, indicates that cycling on the road presents an unacceptable safety risk to riders. This risk assessment will be undertaken in consultation with cycle groups, road user groups and other stakeholders.

On the basis of this policy, the Department formed the view that no restriction of cyclists’ use of the Warrego Highway was being contemplated, and a letter to that effect was written to the Council. The result was that when the Motorway was gazetted, traffic restriction signs were erected prohibiting various types of transport on the Motorway, but *not* prohibiting cyclists.

I consider the policy expressed in Mr Stone’s email to be problematic from the perspective of logic. Following the policy, the following sequence of decisions was to be made:

1. The relevant decision maker determines whether there may be a need to prohibit cyclists from the motorway.
2. If a preliminary decision is made to prohibit cyclists, a risk assessment and consultation process is undertaken.
3. Following the risk assessment and consultation process, a decision is made.

The effect of this is that if the initial decision is to *permit* cyclists on the road, no risk analysis is ever required or undertaken. The entire question of risk can be avoided, simply by permitting cyclists to use the motorway.

At worst, this reasoning becomes almost circular – cyclists are not banned from the road because there is no risk assessment requiring a ban, and no risk assessment is undertaken because cyclists are not to be banned from the road. This reasoning persisted right up to the Department's final written submissions, in which the Department stated [at para 26]:

It is submitted that it is reasonable for DTMR not to restrict or prohibit cycle access to parts of the road network unless there is a risk assessment, including consideration of any crash records and alternative routes, undertaken in consultation with cycle groups, road user groups and other stakeholders

And yet, completing the circle of reasoning, the Department also stated [at para 19]:

There was no cause to undertake a risk assessment prior to the incident – the only meaningful change was the designation of the motorway.

As a matter of logic, the risk analysis ought to be undertaken *first* in order to form a view as to whether cyclists should be prohibited. If the risk analysis suggests that prohibition is necessary, then consultation on the effects of such a prohibition might follow.

I should also state at this point that I do not accept that “the only meaningful change was the designation of the motorway”. The redesignation resulted in the erection of signs prohibiting other forms of traffic from using the motorway. Clearly, the redesignation was sufficiently important to change the road use access for *those* road users. It cannot be maintained that this was simply an administrative change, without direct implications for road users.

In this case, following the policy, no risk analysis was undertaken. Cyclists were not prohibited, and Mr Kamp was therefore on the roadway lawfully.

After Mr Kamp’s death, however, Sergeant Morrison of the QPS forensic Crash Unit, and Mr David Tulloch, Principal Adviser (Crash Investigations) both stated that the road shoulder along the Warrego Highway was

dangerously narrow in places. They called for cyclists to be immediately prohibited. This did not occur.

Instead, a risk analysis process began. A report was not produced until August 2014 – well after the commencement of this inquest. The report found:

"cyclist use of this section of the Warrego Highway [should] be prohibited due to the combined effect of the high traffic volume and speed in addition to the associated safety risks associated with ... narrow shoulder width especially at pinch points such as bridges and underpasses ... conflicts at ramps and intersections ... [and] high number of heavy vehicles."

In evidence, Mr Mike Carter of the Department indicated that he did not intend to act on this risk analysis, as he was unhappy with its methodology and findings. I consider his position to be deeply disturbing. The Department now has specialist advice – from its own contractors – as well as advice from police, and advice from its former Principal Adviser (Crash Investigations). They all state that the roadway is dangerous for cyclists, and that cyclists should be prohibited.

I therefore recommend that the Department of Transport and Main Roads should immediately prohibit cyclists from using the Warrego Highway between Blacksoil and the Ipswich Motorway. With the prohibition in place, the Department should then begin exploring, with stakeholders, ways to either deal with the safety concerns, or provide an alternative route.

Based on the numbers exhibited to me during this inquest, this recommendation is likely to impact on a bare handful of cyclists – for their own protection.

At the very least, signage should be erected on on-ramps to advise cyclists that the roadway is dangerous for cyclists. If cyclists choose, in spite of such signage, to cycle on the roadway, they might be held to have done so at their own peril. In the current situation, where no alternative is provided to potential danger, and no prohibition is in place, cyclists may use the road in the (clearly mistaken) belief that it is safe for them to do so.

I close the inquest

John Hutton
Coroner
Brisbane
3 December 2014