OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: Inquest into the death of Jet Paul Rowland [2002]

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR 605/04(2)

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HEARING DATE(s): 25th and 26th August 2005

FINDINGS OF: Ms Christine Clements, Deputy State Coroner

CATCHWORDS: **CORONERS: Inquest, death of child in motor vehicle accident, management of epilepsy re: drivers licence eligibility**

REPRESENTATION:

Counsel:

Assisting:	Mr Bill Isdale
Mc Cowans Family Lawyers:	W.D.P. Campbell
Flower & Hart Lawyers:	A.J Rafter
Tress Cox Lawyers Lawyers:	T.D. Gardiner
Moray & Agnew Solicitors:	A. Harding

Detailed Summary of evidence

Sergeant J.T. Hickey is the officer in charge of the Beenleigh Accident Investigation Squad who investigated the accident. He provided a detailed report into the accident (exhibit 10) and I am confident to rely on his report and evidence in making findings of fact. He attended the accident scene on the Logan Motorway and saw the three motor vehicles involved in the accident, all on the east bound lanes or slightly off to the side of the roadway.

The Logan Motorway is a two lane highway for traffic travelling to the west, and two lanes for traffic travelling east. A narrow reserve planted with shrubby plants separates the opposite streams of traffic. This is sufficient to screen vision of oncoming traffic. The speed limit in the area was 100 kilometres per hour and conditions were fine. There were no issues arising from the road surface or layout.

The three vehicles involved were;

1. a red Mitsubishi Magan sedan, driven by Ian McLeod
2. a black Toyota Hilux utility, driven by Mark Beauchamp
3. a black Toyota Rav four wheel drive, driven by Anita Rowland

The Rav four, (Rowland's car) was overturned in the 6.8 wide nature strip area, closer to the east bound lanes. The other two vehicles were on the east bound carriageway. There was no barrier fencing between the two carriageways. Since the accident, Armco fencing has been installed along the west bound lanes of the motorway to prevent vehicles travelling from one side of the motorway to the other. This barrier commences at the Pacific Highway and is being installed through to the Mt Lindsay Highway end. Sergeant Hickey expressed the opinion that such barrier fencing is generally thought to be effective in deflecting a straying vehicle back into its correct course. There was no expert evidence on this issue but I am satisfied that I can make the necessary findings without referring to the issue of barrier fencing.

The red Mitsubishi Magna sedan (McLeod's car) was on the left hand side of the marked traffic lanes at an angle facing south west towards the centre dividing area. It had been extensively damaged across the front and front passenger side. Both airbags had been deployed. There was a significant amount of shrubbery on the vehicle.

The black Toyota Hilux (Beauchamp's car) was 12.2 metres to the east of the Magna's position, straddling the line marking the division between the two lanes. The front was facing to the northwest. There was impact damage to the front of the vehicle and swiping damage towards the passenger side.

There were physical rim marks showing where the Rav four had overturned due to frontal impact. Sergeant Hickey stated that the higher centre of gravity of the Rav four wheel drive and the force of the impact explained why the vehicle had overturned. Sergeant Hickey interpreted the scene to conclude that the Rav four had been impacted at the front, overturned and rotated in an anticlockwise direction to end up facing back in the direction from which it had travelled. The impact has been at an angle.

There was a visible track through the shrubbery where the magna had travelled at about a 45 degree angle. There was no evidence to suggest that either the driver of the Toyota Hilux or Rav four had the opportunity to, or took evasive action prior to impact.

When Sergeant Hickey arrived, the ambulance had transferred all the injured from the scene.

There were signs of a fire in the front engine of the Rav four. It appeared to have been extinguished with a dry powder spray. All vehicles were subsequently inspected and were found to be roadworthy.

There were no skid marks associated with the Magna. A pathway through the shrubs was evident. The vehicle was fitted with an antiskid braking system. There was only one set of skid marks at the scene and these were associated with the Toyota Utility, indicating it had braked heavily.

Sergeant Hickey's evidence was that the Magna would not have been able to be seen by the Rav four as it approached from the opposite direction at a forty five degree angle until it came through the shrubbery.

The impact damage suffered by the Hilux utility suggested to Sergeant Hickey that the vehicle had collided with Mr McLeod's magna and not the Rowland's Rav four. The tyre marks from the utility do not suggest it collided with Rowland's Rav four. As well, there was red paint (from Mr McLeod's magna) on the front of the damaged area of the black Hilux.

I accept Sergeant Hickey's evidence in preference to the evidence of the driver of the Hilux Utility (Mr Robert Beauchamp) who I believe is mistaken in his understanding that he collided with the Rav four. There was no damage observed by Sergeant Hickey to the back of the Rav four which could have matched an impact from the utility which was travelling behind the Rav four.

It was not possible to establish the speed of the vehicles from the physical evidence. It was a 100 kmph zone and the damage appeared to be from a 'high speed impact' but the investigating officer could not say more.

Sergeant Hickey spoke with Mr McLeod, driver of the Magna, on two occasions. It was established that Mr McLeod suffered from epilepsy from a very young age and took medication to prevent seizures. Sergeant Hickey's interviews with Mr McLeod elicited information that Mr McLeod has been admitted to the Logan Hospital in September 2003 after suffering seizures. He was licensed to drive and the holder of a current medical certificate which noted his epilepsy but indicated it was appropriate for him to drive. The licence was valid for 5 years until 2008.

Mr McLeod told the investigating officer that his last recollection prior to the accident was paying the road toll some kilometres to the east of where the accident occurred.

Other independent witnesses gave statements that Mr McLeod's vehicle was proceeding normally in a west bound direction before suddenly revving and

accelerating and veering to the left hand side. The car then travelled straight across the lanes towards the median strip shrub area separating the two streams of traffic. It proceeded through the shrubbery onto the opposite carriageway.

The investigating officer told the court that Wayne Delaforce had observed Mr McLeod sitting in the driver's seat of the magna. He was staring straight ahead with his arms on the steering wheel as if locked, making no apparent attempt to control the vehicle as it proceeded across the carriageway onto the incorrect side of the road.

Mr McLeod's next memory, as recounted to Sergeant Hickey, was of being treated at the scene. Mr McLeod told the investigating officer he would always experience some forewarning before am impending seizure. He indicated he had not felt any premonition or indication of a seizure prior to the accident.

Sergeant Hickey also interviewed the driver of the Rav four, Mrs Rowland. Due to the severity of her injuries she had no recall of the accident.

On the issue of seat belts, Sergeant Hickey's investigations confirmed that all three drivers and the older child, Bailey Rowland, were restrained by seat belts. The child Jet Rowland was in a "Safe and Sound" brand child seat. Jet was thrown through the torn open front passenger section of the vehicle in the accident. This raised the issue of the effectiveness of the child safety restraint.

The evidence from Anita Rowland (contained in her statement) was that Jet was an active child and had recently learnt that he could manoeuvre first one, and then the second shoulder free from the restraining seat belt. Once this occurred the effectiveness of the restraint was severely reduced.

The seat itself was secured via a strap fixed to a mounting point on the floor and also secured via the existing seat belt threading through the back of the seat. When Sergeant Hickey observed the car seat, which was still in the Rav four, it was not secured via the seat belt through the back of the seat. Again, this was discussed with Mrs Rowland, who told Sergeant Hickey that she thought Jet had learned to depress the seat belt clasp which would release the seat belt. Sergeant Hickey pointed out there is a difficulty in balancing the need to ensure secure locking of the baby seat and the need to be able to quickly release restraints and extract a child if required .

Sergeant Hickey had investigated the legislative requirements and restraints concerning licensing of drivers who suffer from epilepsy. Although there is a system requiring notification of a condition that could impact on ability to safely drive when obtaining a licence, it appeared that in Queensland, there was no clear legal responsibility on anyone to advise the transport authority that a person was unfit to drive due to some change in their medical condition.

Some other jurisdictions place reporting conditions on medical or other health professionals, for example optometrists. There is then a process for the driver to establish their fitness to hold a licence.

In Queensland, if there is a report from a voluntary source, the authority may then exercise its power requiring a person to show cause. The crux of the issue is the initial report to the transport authority alerting them to a possible problem.

Sergeant Hickey's interpretation of the information available led to him accepting that Mr McLeod was suffering a seizure when he travelled across the median strip onto the incorrect side of the road.

On the two occasions when he spoke with Mr McLeod, Mr McLeod's partner, Janine Worley, (whom he subsequently married,) was present. She volunteered to Sergeant Hickey that they had probably been lax in not raising the issue of resumption of driving with various medical practitioners. Mr McLeod did not resile from that comment by his wife.

Sergeant Hickey's proposal to help improve safety measures was to implement a requirement on medical practitioners requiring them to notify an authority of any condition or change in a patient's condition impacting on the ability to drive safely. This was in addition to a primary responsibility on the driver to report. The responsibility to assess suitability should then pass to an appropriate independent body to review the situation. Presently in Queensland, there is only a requirement on commercial drivers to notify if there is a condition affecting their ability to drive.
I accept Sergeant Hickey's evidence as truthful and his conclusions as reasonable and based on the physical evidence and his experience. I have due regard to his recommendations.

Robert Wall was a motorist who came to the assistance of Mrs Rowland at the accident scene. He gave evidence by telephone. He recalled the accident occurred about 12:30pm on a fine sunny day. He was travelling west towards Ipswich and the traffic was moving at about 90kmph. He stopped at the scene on hearing the noise of impact and seeing smoke from an overturned vehicle. As he ran towards the car he saw the child, Jet lying on some bushes. The child did not show any signs of apparent injury – but he did not appear to be breathing. Mr Wall approached the vehicle which was on its side. He could not immediately see inside until he saw through the popped sun roof. There was a little boy behind the driver's seat and a woman in the driver's seat. He tried to gain entry through the sun roof. He gained entry via the left hand side rear passenger door.

Another man (off duty police officer **Peter Crawford**) then came up behind him to help hold the door up and open. Mr Wall climbed into the vehicle which was still burning. He managed to extract Bailey Rowland from his seatbelt and pass him out to Mr Crawford.

He then turned his attention to the female driver, Anita Rowland. She appeared to be unconscious and was stuck with her feet jammed under the dash. His attempts to free Mrs Rowland were worthy of the description "heroic". He eventually managed to extract her and pass her up to Mr Crawford before escaping from the vehicle.

Wayne Delaforce was travelling in the same direction as Mr McLeod's magna before it cut across the median strip of vegetation. He was initially ahead of the magna and had observed it coming up behind him. He intended to exit soon and was in the right

hand lane waiting for the magna to pass him on his left side before moving over to the left hand lane.

He suddenly heard the magna accelerate. He was travelling in a two tonne truck at about 95kph and had slowed to allow the magna to pass. The magna went first to the left hand side into the emergency lane at full acceleration before veering straight across in front of him to the right hand side and through the vegetated median zone.

As the car went across his path he saw the driver. In his words he described the driver as ; "just basically just solid on the steering wheel with both hands and head back in the chair basically"

He said; "(he) wasn't relaxed or anything, it was just, like, stiff ….
he didn't move at all the whole time he was - went past me, "[1] ….
On, like a 45 degree angle. …. (he) went through the trees."

The engine sound from the magna increased to what he described as 'flat out' and then remained constant. He estimated the speed of the magna at 120-130kilomatres per hour. He described the speed in the following words; "definitely passed me, like fairly quickly" [2]

Mr Delaforce heard the sound of an impact and stopped his vehicle and rang emergency services.
I accept Mr Delaforce's evidence of his observations of the driver of the magna (Mr McLeod.) I accept his evidence on the way the car proceeded and his observations of speed relevant to the speed at which he was proceeding.

Detective Peter Crawford was off duty on the day of the accident and travelling with his family towards the west along the motorway. He saw vehicles ahead were slowing and there was smoke indicating an accident had occurred. He stopped and went up to the scene. He saw baby Jet on the grass verge with a man in attendance. There were no signs of injury to the child and so he went to the overturned vehicle, which was lying on the driver's side. There was smoke coming from the front of the vehicle which escalated to flames. He helped Mr Wall as previously described, by holding open the door above his head while Mr Wall climbed in. First the child Bailey was extracted, and then his mother Anita. There were difficulties in trying to extinguish the blaze and so Mr Crawford went back along the line of traffic to try to locate more extinguishers.

He came across Mr McLeod lying on his chest on the grass verge near a red vehicle (the magna). He was dressed in chef's clothing. He tried to help him as he was clearly injured and in pain. Mr McLeod was rolled into a recovery position while ambulance services were called.

Dr David Roberts is a specialist physician at Logan Hospital. Mr McLeod had been admitted via the emergency department at about 8.32pm on the night of 23 September 2003 and was then in the physician's care between 24 and 25 September 2003. Mr

[1] Page 47, line 9,12,18
[2] page 50, line 45

McLeod was admitted after suffering a tonic clonic classic seizure – typically this was explained to be someone experiencing an 'aura', and then proceeding to the tonic phase when the body goes very stiff. This is followed by the "clonic" phase when the body is jerking the muscles. Throughout this there is a loss of consciousness.

Dr Roberts' reading of all the notes for this admission led him to presume that there was no further fitting during the course of that admission, but I recall the notes from the first evening of admission to include observations consistent with further seizure activity. Other medical comment concluded that there had been a further tonic clonic episode after admission to hospital on 23 September.

Dr Roberts described epilepsy as disordered electrical activity in the brain, affecting the motor part of the brain. In previous terminology the tonic clonic seizure was described as 'grand mal' epilepsy. It can occur when there is a demonstrated lesion of the brain, or may simply be exhibited from onset during childhood.

Mr McLeod was admitted for investigation and treatment of why his epilepsy had become unstable after a period of ten years stability. Dr Roberts saw him on the 25 September 2003, on the day of his discharge. Mr McLeod had been taking anti epileptic carbamazepine and valproate – two anti epileptic medications. The levels of the medication were found to be at sub therapeutic levels. This was in the context of a two day history of diarrhoea. Dr Roberts assumed that drug levels fell during this illness. There was no further seizure and he was discharged the next day. The doctor's recollection was that Mr McLeod was returning to see his long standing neurologist in the near future.

The hospital record documents that during Dr Robert's ward round, Mr McLeod was told not to drive for six weeks or engage in other dangerous activity. Dr Roberts referred to federally produced guidelines not to drive for four weeks. Dr Roberts knew he was to see his treating neurologist within a few weeks and so, in accordance with his standard advice, he said four weeks (the standard) plus a little bit extra which would overlap with the period when he would return to his neurologist. The treating neurologist at this time was Dr Reid. In answer to further questions, Dr Roberts said the period of time would vary depending on the circumstances.

He could not recall specifically whether he said "don't drive until reviewed by the neurologist." What is documented is, "don't drive for six weeks". He explained the recommendation is to achieve some period of stability. He explained the standard to be four weeks fit free after an epileptic event in someone who is otherwise well controlled, *and* there is a clear precipitating event (in this instance, an illness of diarrhoea).

I accept Dr Robert's evidence as truthful that he did warn Mr McLeod not to drive or engage in any dangerous activity for six weeks and until cleared by Dr Reid.

He said as a general rule he gives this advice without necessarily being aware if the patient has a licence. He described the situation as governed by the 'guidelines.'[3]

[3] exhibit 39

As far as Dr Roberts was aware, the guidelines did not require him to make any report to the licensing authority.

On the issue of follow up of Mr McLeod's condition the evidence was that there was no uniform system. At the time of Mr McLeod's admission, the practice was for the discharge summary to be given to the patient to hand on to their doctor. The expectation would be to inform the general practitioner who co-ordinates overall care. The discharge document in Mr McLeod's case was addressed to his general practitioner, Dr. Torbey but the process of delivery was unclear. More recently the hospital's practice is to send a copy to the general practitioner.

Two months prior to this admission, Mr McLeod had been withdrawn from barbiturate type medication used for epilepsy control (phenobarbitone). The change had been due to an Australia wide withdrawal of that type of medication. Dr Roberts said a change in medication can result in break through seizures;
"That's a medical fact that during a period of alteration of somebody's antiepileptic medication there may be instability in the control of their disease" [4]
He explained the risk is greatest during the early parts of withdrawal and diminishes with time.

He referred to the guideline again and said in this type of situation, a period of a month or two is recommended to abstain from driving whilst withdrawing from antiepileptic medication. Given the time frames, Dr Roberts thought it more likely it was the episode of diarrhoea rather than the change in medication that had precipitated the seizure. I note that another of the doctors who gave evidence interpreted the guideline differently and thought that the " withdrawal period" referred to a complete withdrawal of medication rather then a withdrawal of one medication to be substituted by another. (Dr Reid.)

Subsequently on 27 April 2004, Mr McLeod was again admitted to Logan Hospital after suffering an epileptic seizure and discharged the same day. On that occasion he was seen by Dr Yeoh. The plan then was for him to see his neurologist, Dr McLaughlin, the next day. There was no documented advice on this occasion regarding driving, although this does not necessarily mean that the topic was not discussed. The hospital record made by Dr Yeoh noted, "Frequent seizures", then "medications", then "no seizures today." "For review by Dr McLaughlin tomorrow. Has own medication plan. Appointment 4.15pm"

Dr Roberts commented that keeping someone in hospital was not in itself going to stop seizures occurring. Manipulation of the medical therapy is required to control the seizures and he was released on the understanding that he was to see his treating neurologist the next day.

The notes for that admission record "frequent seizures." He was to be reviewed the next day by Dr McLaughlin. (page 74).
Dr Roberts conceded that he could not tell whether the hospital discharge summary from September 2003 had been sent to the general practitioner (Dr Torbey) or to the treating specialist at the time, Dr Reid.

[4] page 68 at line 37

On the issue of the period of time a person should not drive after withdrawing from medication he deferred to the opinion of a specialist neurologist.

The next witness was the driver of the magna sedan which collided with Mrs Rowland's car. **Ian McLeod** was legally represented and he gave evidence. There was no claim to privilege against answering any questions which might incriminate him. He could recall being on his way to work driving on the Logan Motorway on 28 February 2004. He travelled from Alberton where he was living and travelled towards the Arthur Gorrie Correctional Centre where he was working as a supervising chef. The vehicle was his wife's car and he was familiar with driving the car; the car had recently been serviced.

Mr McLeod's evidence was that his last memory of driving that day was when he proceeded through the toll booth. Then he remembers "muffled voices" around him. He could not recall being transported by ambulance. He recalled waking up in hospital and that he was discharged at some time. He is uncertain of when he was discharged and he refers to having received morphine. He had sustained a broken collar bone, a broken ankle, punctured lungs and several broken ribs.

He said he could not remember much about the accident at all. He was discharged home in a wheelchair. He surrendered his licence since the car crash. His wife now drives him when he cannot use public transport. He no longer works as a chef due to physical disabilities that he still suffers since the accident.

Mr McLeod has suffered epilepsy form the age of three. The condition was managed throughout his life with medication. Greater control of seizures was achieved once he reached adulthood.

Mr McLeod was seizure free for a period of about ten years leading up to the hospital admission of September 2003 and subsequent events. The hospital notes recorded " has not had a tonic clonic seizure for twelve years."

He thought he was in his twenties when he got his licence. He disclosed the fact of his epilepsy and obtained a medical certificate. Dr Torbey was his general practitioner from about 1985 and he saw the neurologist Dr Alison Reid from 1999. He said he was always meticulous with taking his medication. That assertion would appear to be borne out with the history of being seizure free for such an extended period.

The significant background circumstance when trying to understand how Mr McLeod came to experience seizures again relates to the availability of a certain type of medication, called Prominal. The evidence is that Dr Reid wrote to the general practitioner Dr Torbey in 1999 advising him that this medication was likely to be phased out. Mr McLeod's evidence to the court is that he did not know this until later- when it became an urgent issue when the drug was no longer available. There was a gap between 1999 and 2003 during which he had not seen the specialist.

He told the inquest he went to see Dr Reid in May 2003, who did an EEG. He said that he was shocked when she told him the medication was no longer available. The doctor's version, contained in her letter to Dr Torbey on 13 May 2003, also confirms

that the withdrawal phase was now imperative. Her evidence was that she always dictated the letters on the day of consultation. By that time Mr McLeod only had a single bottle with three quarters of the contents of Prominal remaining.

Mr McLeod expressed some reservations about the ease of communication with Dr Reid. Later he changed to Dr McLaughlin, and then subsequently to Dr Nigel Johnson.

He saw Dr Reid about two months later on 10 July 2003. By that time the barbiturate (Prominal) had been phased out and he was using Epilim and Tegretol. Mr McLeod's evidence was that he was not clear about Dr Reid's advice, but his evidence was a little troubling in the way it was delivered. It was hard to judge whether he was being reliable or whether his way of presenting his evidence (which was often roundabout and indirect by way of response,) was simply his personality and style of communication. Or perhaps his presentation was affected by the condition of epilepsy itself or the medication he takes. Certainly after hearing Dr Reid give her evidence in a very direct manner and comparing this with Mr McLeod's slow and rambling responses it is not hard to imagine that communication between the two of them might be a mismatch in styles. The effect of Mr McLeod's evidence was that he felt pressured for time during consultations with Dr Reid.

On 17 July 2003 Mr McLeod went to see his general practitioner Dr Torbey for a medical certificate to enable him to renew his licence. At that time he had not suffered any seizures after the withdrawal of Prominal and the substitution of other medications. Accordingly, Dr Torbey provided him with an unconditional medical certificate authorizing him to apply for a licence.

There was then the incident on 23 September 2003 requiring Mr McLeod to be hospitalised for two nights. When Mr McLeod was queried about what medical follow up he had made after his discharge from hospital, his response was evasive and unsatisfactory. He said he "probably mentioned it to the local general practitioner, (Dr Torbey) "[5]

Other evidence showed there was an appointment on 10 October 2003 when Dr Torbey requested blood tests.

On 14 October he saw Dr Reid. Dr Reid's evidence was that Mr McLeod did not tell him about the admission to the Logan Hospital on 23 September (after he had suffered an epileptic seizure.) When pushed on this issue, Mr McLeod conceded that he "probably didn't" (tell Dr Reid about the hospital admission.)

Dr Reid's report from that consultation on 14 October (which I accept was made immediately after the consultation as was her invariable practice) records the following;
"This gentleman came back to see me again today. When I last saw him in July he seemed to be doing extremely well but unfortunately they now state that partial complex seizures are breaking through."

[5] Page 103, line 22-23

Dr Reid conducted an EEG which was unremarkable. The medication was reviewed and the decision made to slowly phase out the Tegretol and replace it with Topamax and continue on the Epilim. Dr Reid explained to both Mr McLeod and his partner that topamax was very potent and effective but had possible side effects that needed to be monitored and considered if troubling. The plan was to review the medication with Dr Reid in a few weeks.

It was suggested to Mr McLeod he did not tell Dr Reid about the tonic clonic seizure and the hospital admission because he feared his driver's licence being taken away. Mr McLeod denied this, asserting that he could access public transport.

By the time of the accident Mr McLeod was working 6.00am to 2.00pm Monday to Thursday at a Retirement village at Victoria Point and afternoons on weekends at the Arthur Gorrie Correctional Centre at Wacol. His wife was working full time at Woolloongabba at this time. Each would drive themselves to work.

Mr McLeod's evidence was that in the period after his admission to Logan hospital (when he was told not to drive) he did not drive. He thought the advice had been given was not to drive for three months. He said he obeyed this until after Christmas. He said he returned to driving in January 2004.

When initially asked in the inquest, Mr McLeod said that nothing had happened between his discharge from hospital on 25 September 2003 and early January that caused him to think he should revise his return to driving.

But it was put to him that he had a number of seizures after the discharge and before the accident occurred on 28 February 2004. Mr McLeod did not deny having seizures during this period, but said he could not remember having them.

Mr McLeod was asked to comment on his attendance on his general practitioner Dr Torbey on 7 November 2003. That doctor recorded that Mr McLeod had informed him about the hospital admission in September. Dr Torbey recorded that Mr McLeod had reported having mild seizures awake but feels unwell. Again on 4 December Mr McLeod saw Dr Torbey and described having mild seizures. On 12 January at a consultation with Dr Torbey he recorded that Mr McLeod referred to a seizure in mid December 2003. This incident was referred to as experiencing a "loss of tone and falling off the bed."

Mr McLeod responded that he had slipped. Mr McLeod was keen to describe this episode in terms of an "absence" rather than a seizure and a reaction of slipping. The note by Dr Torbey uses the word seizure and then goes on to record that there had been no seizures for weeks since then.

Despite this history of episodes of seizures (however described) Mr McLeod resumed driving in early January 2004. He says he did not discuss this with Dr Torbey- or more particularly, he says that Dr Torbey did not ask him about his driving.

Mr McLeod clearly understood that he was not entitled to resume driving after the initial expiration of the period of no driving indicated by the doctor at Logan Hospital

(Dr Roberts) if, during that period he had another major seizure. [6] However he seemed to be able to justify to himself that what he had suffered since his release from hospital in September were "absences" as distinct from seizures. However, the episode reported to Dr Torbey on 12 January which occurred in mid December when he slipped off the bed is more difficult to accept as a mere "absence," although Mr McLeod still asserted that he was awake and aware.

After this appointment Mr McLeod was referred to Dr McLaughlin rather than back to Dr Reid. As Mr McLeod explained, he was not happy with Dr Reid and wanted further advice. Obviously he felt unhappy that he was now suffering episodes against a history of stability and was uncertain about the changing of his medication. Dr McLaughlin was reputedly a specialist in the area of epilepsy. He saw Dr McLaughlin for the first time on 22 January 2004. Dr McLaughlin's report concerning that visit includes the following;
"recently it has been necessary to withdraw the Prominal as the drug is no longer available. And with this he has had a recurrence of seizures."
The source of this medical history must have been from Mr McLeod, although at the inquest he said he could not remember. The report continued, noting that Mr McLeod had attended with his partner and reported a number of seizures quite consistent with complex partial seizures….."These had occurred perhaps as much as once per week."

Dr McLaughlin's report continues; "Typically they are occurring in the evening and often when he is relaxing." Mr McLeod confirmed this as correct.

The medication Trileptal was then introduced, which is still being used by Mr McLeod. He saw Dr McLaughlin again on 26 February 2004, which was two days before the accident.

After that consultation Dr McLaughlin recorded; "Ian appears to have had a good response regards his seizures with the introduction of Trileptal." …."Only a simple partial seizure has been recognised since the drug was started."
Mr McLeod agreed and explained that the simple partial seizure was what he described as "like an absence" during which he is conscious and aware of what's going on around him.

Mr McLeod acknowledged that by the time of his first consultation with Dr McLaughlin in 22 January 2004 he had resumed driving. On this issue he said that he didn't tell any of the doctors that he was driving and none of the doctors told him he shouldn't drive. He said none of them asked if he was driving. He didn't volunteer the information or raise the issue. He said the discussions were about issues of suitable drugs.

Mr McLeod said that he felt he had a warning about any impending episode. In relation to the time he said he fell off the bed he explained that that was probably why he was sitting on the bed. However I note the warning was insufficient for him to avoid falling from the bed and hitting his head.

[6] page 110, line lines 20-30

Mr McLeod said it was only Dr Roberts at the Logan Hospital on his admission in September 2003 who warned him not to drive and gave him a time period. He said the doctor said six weeks but that he, Mr McLeod, extended this to three months. "I made it a bit longer."[7]

The most telling question and answer in the inquest was when Mr McLeod was asked; "You would not want to be driving while you had a simple partial seizure at one hundred kilometres per hour , would you ?"
Mr McLeod responded "No."[8]

During this period Mr McLeod was unable to bring himself to the point of raising the issue with the doctors directly or apparently to accept responsibility for his decision to resume driving without a specific authorisation from any of his treating doctors throughout this period.

There was clear evidence that if Mr McLeod was unable to drive it would cause significant difficulties for him to get to his work relying on other people to drive him.

But even after suffering what he described as "an absence" between the two consultations with Dr McLaughlin, he still drove as long as he felt alright. He would not drive if he did not feel well. He recognised that tiredness, stress and heat could all increase the chances of having a seizure. He did not surrender his licence until December 2004 although his evidence was that he had not driven since the accident. The licence was retained as an aid for identification purposes.

Mr McLeod conceded that Dr Reid's manner of communication did not stop him from telling her anything relevant to his medical condition. He also conceded that there could be no fault attributed to Dr Reid concerning the withdrawal of the medication Prominal, (which had been foreshadowed by that doctor in 2003.) The medication was no longer available. When Mr McLeod saw Dr Reid on 13 May she reduced the Prominal dose to 60 mg daily for three weeks followed by every second day. By the time of the visit to Dr Reid on 10 July the Prominal had been phased out uneventfully.

Mr McLeod was unclear about whether or not he had passed on the discharge summary to either Dr Torbey or Dr Reid. He was evasive about the question whether or not he had told Dr Reid about the hospital admission but finally said no. [9] He denied avoiding the issue with the doctor because he was fearful of losing his licence.

Mr McLeod was asked to explain on what basis he had decided to resume driving in mid January . He said;
"Well, I mean…walking about and you're feeling pretty fit, pretty good and you got to obviously , I got a job and you got to get from A to B and you got to , you know, I was feeling all right."[10]

This was against the history recorded by his various doctors that complex partial seizures of ten minutes, mainly during the evening, were occurring in early

[7] page 120 line 9
[8] page 120 , line 53-54
[9] page 135 line 10
[10] page 137, line 39-42

December. This was followed by the incident in mid December when he lost tone and fell off the bed and hit the wall. Dr Torbey recorded in his notes on 12 January , "last seizures some weeks ago."

Dr McLaughlin even raised the issue of safety at work because Mr McLeod was a chef dealing with sharp implements and hot substances and surfaces. Dr McLaughlin advised that if there was no change in the pattern of evening "absences", then he could continue to work.

Even at this point of discussion Mr McLeod did not raise the issue of driving, although he conceded that he had resumed driving before the first appointment with Dr McLaughlin.

Mr McLeod emphasized that the pattern of partial seizures was in the evening and that he had some feeling by way of premonition.

His manner in giving evidence showed an inability to concentrate but also some degree of evasiveness and apparent selectivity in memory.

On the day of the accident he had been out with his wife and daughter shopping. He was not due to start work until l .00pm.

Mr McLeod's evidence as a whole presented some difficulties. There were times when it appeared he was being evasive, and other times when he appeared not to have a memory of events he was asked to recall. Clearly he was under stress in giving his evidence in court. He also stated he was under treatment and medication and tended to forget things very quickly. He said the forgetfulness "comes and goes[11]." At the time of giving his evidence to the court he explained that he was taking Trileptal, Topamax 25 milligram and 50 milligram, Epilim and Phenobarbitone. He was under the care of his new physician, Dr Nigel Johnson of Shailer Park. Overall, my impression was that I could not feel confident in relying on his evidence where it was in conflict with other witnesses, particularly where medical notes made at the time documented a history contrary to Mr McLeod's evidence in court.

Dr Alison Reid gave evidence. She is a specialist neurologist practising in the field since 1979. She treated Mr McLeod from 1985. She was shown her records of four letters she wrote to Mr McLeod's general practitioner on 13 May 2003, 10 July 2003, 14 October 2003 and 21 November 2003. Her practice was to immediately dictate a letter after each consultation. Prior to 2003 she had last seen Mr McLeod in 1999.

Mr McLeod came to see her for review in May 2003 when it was recognised that one of the drugs he used to control his epilepsy was no longer available, (the barbiturate, methyl phenobarbitone- Prominal.) She explained that although this drug was very effective in managing epilepsy, barbiturates had become unfashionable due to risk of addiction. Ideally the withdrawal from one form of drug to another should occur over a few months, but she was presented with the situation that Mr McLeod only had a three quarter bottle of the drug remaining. The risk in too rapid a withdrawal is of triggering a seizure similar to an alcohol withdrawal seizure. The transition was

managed and Mr McLeod had not suffered a withdrawal seizure when he was next reviewed in July 2003.

In Dr Reid's opinion, any seizure after that period of time would be attributable to the condition of epilepsy itself, not to the withdrawal from medication.

After the next consultation on 14 October Mr McLeod reported to Dr Reid that he was having partial complex seizures breaking through**.** Dr Reid said the patient reported little absences, little episodes when he would just switch off. The doctor demonstrated behaviour by half completing a sentence, pausing and then ending the sentence. She said there may be some physical signs like lip smacking, throat gurgling, and some involuntary movement. The person might experience a feeling of switching off, of light headedness or brief loss of awareness. Mr McLeod reported to Dr Reid that he was "losing time" and switching off. The description of partial complex equates to the old term of petit mal seizures (as distinct from the grand mal or tonic clonic seizures.) The tonic clonic seizure involves stiffness and then jerking with possible associated loss of continence and consciousness.

Dr Reid could not recall, nor did she have any record of being told by Mr McLeod about the admission to Logan Hospital or the tonic clonic seizure. Nor had she any record of receiving a copy of the discharge summary relating to that admission. She said if Mr McLeod had given it to her it would be held on the file with her notes. Given her meticulous demonstrated practice of dictating reports back to the referring doctor on the day of the consultation, I have no hesitation in accepting her evidence. Her letter back to Dr Torbey makes no reference to the hospital admission or the recent tonic clonic seizure. I accept her evidence that had she known about these events her letter would have been different and that Mr McLeod did not inform her of this. She also said her invariable practice would have been to copy the letter back to the hospital doctor as well.

Dr Reid agreed that an explanation of the tonic clonic seizure may be that an episode of diarrhoea illness had lowered medication levels below therapeutic levels. Once the levels had stabilised she would expect the condition to stabilise.

On the question of Mr McLeod driving, Dr Reid stated that she was aware that he had a licence but that when he came to see her on 14 October 2003 he wasn't driving. She could recall Mr McLeod attending with his partner, who was holding the car keys and that it was clearly indicated that Mr McLeod was not driving at the time. He gave the appearance of a down and beaten man who had previously presented as a "very proud man" in her language.

Dr Reid said that he had come back to discuss unstable epilepsy and clearly indicated he was not driving, therefore it "wasn't an issue." "He wasn't driving."
When asked whether she gave him any advice about resumption of driving she responded;
"Resumption of driving was not discussed."[12]

[12] page 154, line 40

Dr Reid's understanding was that Mr McLeod was doing the right thing (by not driving) and there was no obligation on her to report to the Transport Department. "He was a man who had life long epilepsy and I believe that he was well aware of his obligations."[13]

He was further reviewed on 21 November 2003 to see whether the change in medication was effective. Dr Reid could remember this consultation quite clearly. She described it as "horrible." Once again Mr McLeod was there with his partner holding the car keys. He was gloomy, unhappy and moody. He indicated the medication was working but it didn't suit him. He felt it was adversely affecting his mood. She thought he could be described as clinically depressed, although she resisted this term, rather describing him as moody, sullen, dark and unhappy. Both Mr and Mrs McLeod clearly held the view that the medication was responsible for his woes.

Dr Reid tried to persuade him to persist a little longer with the medication at that dose (rather than increasing the dose.) She indicated she would like to see him again before Christmas or January if things settled a little. But the patient did not return to her care.

It was clarified through the correspondence between Dr Reid and Dr Torbey that the general practitioner had responded to the prompting of the specialist by referring the patient back to Dr R Reid in April 2003 for review of medication. This was because it was known that Prominal was going to be withdrawn and thus other arrangements had to be made.

Dr Reid also clarified her letter to investigating police officer Hickey. She said there had not been any discussion with Mr McLeod about the "resumption" of driving in the last two consultations after his hospital admission-(because he was not driving at the time of the consultations.)

Dr Reid was aware of guidelines regarding when it is appropriate to authorise a person with epilepsy or other medical conditions, to drive. She said there was nothing to report to any authority because she believed it was clear that Mr McLeod understood that he was not fit to drive, and to her knowledge, was not driving or seeking to do so.

It was clarified that she had not been told that Mr McLeod suffered tonic clonic seizures in September 2003 and required hospital admission. She was only told of the partial complex seizures breaking through. Had she known of the tonic clonic seizure her evidence was that she would have left the Tegretol as part of his medication and added a third drug.

Dr Reid did not raise the issue of driving because it seemed clear to her that Mr McLeod was not driving. She said while his epilepsy remained unstable it was not appropriate to start discussing resumption of driving, and Mr McLeod did not return to her care after that consultation. Thus the discussion did not eventuate as Mr McLeod did not make a further appointment proposed in January. Dr Reid's experience with Mr McLeod was that he was focused and responsible about his

[13] page 154, line 46-47

condition, but she commented that in withholding information from her he did not help his own treatment. She had no reason to suspect this was the situation at the time.

The description of Mr McLeod's appearance as his vehicle veered across the road and on through the median strip into the oncoming traffic was read out to Dr Reid. She responded that this appearance (of arms locked and looking straight ahead) was consistent with the tonic phase of an epileptic tonic clonic seizure, (previously called grand mal.)

Dr Reid described the various types of epilepsy;
(1) tonic clonic, which is the stiff phase usually followed by the shaking phase. This used to be described as grand mal.
(2) Temporal lobe epilepsy, divided into partial absences, partial seizures or partial complex seizures. A partial seizure is a switching off, an "absence." A partial complex seizure also includes other behaviours like lip smacking, or jerking or walking around. These used to be grouped and described as petit mal.

In all of these types of seizures, Dr Reid says it is inappropriate to drive as they are periods of altered consciousness. The guidelines generally dictate that a patient must be seizure free for a period of six months before it is appropriate to consider resumption of driving. An experienced consultant can reduce the period to three months. She also noted that the guidelines were tougher when considering a licence of a commercial driver, like a truck or taxi driver.

The Medical Standards for Licensing re Epilepsy document, dated September 2003 was referred to Dr Reid. At page 59 it stipulates where there is withdrawal of a medication the person should not drive during the period of withdrawal and for three months after. Where the withdrawal of medication is on the recommendation of a consultant experienced in the management of epilepsy who assesses the risk of seizure recurrence as low, then driving need not be curtailed.

In interpreting that recommendation, Dr Reid read it that this would only apply where all medication was being withdrawn, rather than strictly applying to Mr McLeod's situation where he was on multiple medications and only one was being phased out to introduce another. The standard does not specifically cover the situation like Mr McLeod where medication was being phased out to be replaced by another. As noted previously, Dr Roberts interpreted the guide differently and thought it did apply to a withdrawal of one medication and substitution by another.

Despite Dr Reid's view that the guide was not applicable to the situation where Mr McLeod had changed his medication, Dr Reid's evidence was quite clear concerning the issue of driving. She said that in Mr McLeod's situation of suffering recurring seizures of any description, he was automatically barred from suitability to drive, (until he was seizure free for six months.)

Dr Gerard Torbey gave evidence that he was Mr McLeod's general practitioner over a nineteen year period until about two months prior to the coronial hearing.

He last prescribed Prominal to Mr McLeod in April 2003. He was aware of the likelihood of Prominal being withdrawn and had referred Mr McLeod to the neurologist, Dr Reid to review his medications. This was in April 2003.
Dr Torbey said the referral was about medication review, not for the purpose of review for driver's licence. He undertook a review for licence purposes in July 2003. He completed the form concerning a visual test and then inquired of Mr McLeod regarding his epilepsy condition and made his recommendation. He considered the EEG which had been conducted by Dr Reid. This was reported back to the general practitioner as being normal and stable.

Dr Torbey was satisfied that the condition was stable and therefore the licence could be re-issued for a five year period, which he selected. He did not further review that decision. He said there was a method by which he could have reviewed that recommendation had he chosen to do so.

He agreed that he had seen Mr McLeod after the hospital admission in September 2003. On 7 November his notes record, " saw Dr Reid, major seizure, in hospital seven weeks ago. Four seizures last night. Altered state of awareness. Some tonic spasm with last seizure. On changing doses." Dr Torbey then wrote down alteration to his medication.

Dr Torbey had no record of a discharge summary from the Logan Hospital. When shown the exhibit he could not recall having seen it before. It is worth noting however that Mr McLeod had provided Dr Torbey with information that he had been hospitalised due to a major seizure. This was on 7 November, by which time he had already seen Dr Reid, but I find, had not told that doctor of the major seizure.

Dr Torbey agreed with the proposition that if a person had suffered a major seizure then the person should not drive. When asked for how long, he said he would not make the decision, but would refer it to the neurologist. It would require stabilisation for a considerable period of time. Dr Torbey did not take any steps to inform the Department of Transport that Mr McLeod was unfit to drive. Dr Torbey's explanation is revealing for the potential conflict that treating doctors are placed in. He said;
" A difficult one to answer. I think that at that time that he came in, my focus was one of surprise and I guess empathy for him after so many years of having had no seizures to have had a breakdown in his control of his seizures and I think I just focused on his medical condition. The thought of any other factors would not,- just did not occur to me. I was sort of focusing on helping him restabilize and get his epilepsy under control. The thought of the driving side of it just didn't occur to me at the time."[14]

With the benefit of hindsight Dr Torbey thinks now he would quiz a person in this position about their driving and impress upon them that they shouldn't be driving. He said, - "And depending on what I thought of the person, whether I actually made a submission to the Department of Transport or relied on that person's own common sense to- to go along with it."[15]

[14] page 180- 181
[15] page 181, line 15

He acknowledged that he could notify the Department of Transport if he chose to do so, but that he was not under any obligation to do so. He felt an obligation placed on a treating doctor to report would be unworkable and preferred an independent medical person to be required to make that decision. As explained by Dr Torbey, his focus of attention was on the medical issues for his patient and he expressed difficulty with being expected to also wear the "policemen's hat" and report his patient to the authority.

Dr Torbey's consultations during 2003 with Mr McLeod were on 4 April , 17 July, 12 September, 7 November, 4 December and 12 January 2004. On the first two occasions there were no indications that Mr McLeod was suffering from seizures. During the September appointment Dr Torbey ordered pathology tests to review medication levels. The September consultation recorded that he was now off Prominal and continuing with Epilim. It noted the May EEG result was stable. There was no reference to any epileptic seizures.

The consultation on 7 November noted four seizures the previous night. Then on 4 December Dr Torbey's notes record;
"Still having complex partial ten minute seizures mainly in the evening between five and eight pm."[16]

On 12 January 2004 Dr Torbey's notes refer to an epileptic seizure in mid December with " sudden complete loss of all tone, fell off bed and hit wall, complex partial after that."[17] It was at this time that Mr McLeod wanted a second opinion and he was referred to Dr McLaughlin.

Again when it was raised with the doctor it is evident that the issue of driving was not raised by the patient or by the doctor. The doctor's view (as consistent with Dr Reid's response earlier) was that the thought did not even enter his head that Mr McLeod might consider driving. Had Mr McLeod asked the question it would have been referred to Dr McLaughlin who was due to see him on 22 January 2004.

Dr Torbey explained in answer to questions that a conditional licence given on medical conditions is (implicitly) on condition that the medical condition remains stable. He could have stipulated a shorter period of time for the medical certificate but chose to issue the certificate for the full five year period.

Dr Torbey's impression of Mr McLeod over the years was that he was frank in providing information about his condition, and that he could rely on his information to justify issuing a medical certificate.[18] He described him as a "fairy sensible person who was very genuine"[19] However Mr McLeod did not inform his general practitioner after the Logan hospital admission of September until 7 November. Nor was the issue of driving raised or discussed. Had he done so, Dr Torbery said Mr McLeod would have been referred to the neurologist, Dr Reid and then Dr McLaughlin.

[16] page 186, line 6-7
[17] page 186, 15-16
[18] page 190
[19] page 192

Dr Brendan McLaughlin was the neurologist who saw Mr McLeod in 2004. He first saw Mr McLeod on 22 January 2004. The last appointment prior to the accident was on 26 February 2004.

Dr McLaughlin's notes record that Mr McLeod reported to him that on the first appointment he was "continuing to have seizures occurring approximately once per week for the preceding seven weeks."[20]

Mr McLeod presented with his partner (who had also been important in communication with both Dr Torbey and Dr Reid.) On the basis of the information provided by both of them he confirmed that there were breakthrough seizures. Advice was given about medication and also about risks in his present state. Mr McLeod had reported he was a chef and Dr McLaughlin expressed concern that if he suffered a seizure in his work place he was at risk of burns or sharp instruments. He and his partner insisted that the seizures were only occurring in the evening. Accordingly Dr McLaughlin said it would be reasonable to continue in the occupation but if a seizure occurred during the day then he should report this to the doctor and stop work. There were no particular triggers to episodes but the pattern was when he was tired at night.

Dr McLaughlin was told by Mr McLeod that he believed that it was the withdrawal of Prominal that had precipitated the return of seizures. Dr McLaughlin agreed that this was likely given the long history of stability. He was advising him concerning the introduction of a third drug, after losing the benefits of an effective medication for him.

Dr McLachaln was not informed by the patient that he had been hospitalised in September of 2003 due to a major seizure. He stated that this information would have been helpful to direct appropriate treatment especially when it indicated a major seizure.

There was reporting of a side effect of Topamax, namely Mr McLeod having difficulty in recalling the appropriate word to use in conversation.

On 26 February 2004, Dr McLaughlin's view (when asked by the investigating officer) was that Mr McLeod's condition was not under sufficient control to safely drive a motor vehicle without risk of seizure. However, Dr McLaughlin's evidence to the court was that he did not specifically advise the patient of his view at the time. He said;
"No, I did not discuss the issue of safety with driving and neither was it raised by Mr McLeod or his partner, Janine Worley (subsequently McLeod) on that visit."[21]

He explained;
"The reason that I did not raise it specifically is that from the history he had told me, I would have believed that he would have been aware himself by his experience and his knowledge of his own condition that he was unfit to drive. That is, if he held a licence to drive, which I was ignorant of,…..he would have known that he would have to obtain a medical certificate. As part of the application process it's clear that if you

[20] page 197 at line 25
[21] page 201, line 30

have a medical condition, and epilepsy's named specifically, that you must seek a medical clearance or a medical certificate and as part of obtaining that medical certificate the question includes, "Have you had any seizures?" and therefore the occurrence of seizures would clearly indicate to him that he was unfit to drive. He came to me reporting ongoing seizures occurring on a weekly basis."[22]

Dr McLaughlin also explained to the inquest that even though there was a pattern according to Mr McLeod's version of events, that he had a feeling warning him prior to a seizure, this was not a guarantee that a seizure would not occur without him experiencing any premonition.

Dr McLaughlin was not informed by Mr McLeod of a previous occasion in about 1990 when he had suffered a seizure in the workplace, cut himself, and lost his job as a result if the incident. To the contrary, Mr McLeod told the doctor he had never suffered a seizure while working as a chef.

Dr McLaughlin was helpful in further explaining the distinction between simple and complex seizures as the difference between the patient being aware of what is happening- (simple) and no longer aware- (complex.)

Dr McLaughlin was surprised at the evidence that Mr McLeod had returned to driving in about mid January. The issue had not been raised with him and required Mr McLeod to obtain a medical clearance. He thought that Mr McLeod clearly considered his epilepsy to be a significant problem as evidenced by coming to see him for further advice having already seen another neurologist.

Dr McLaughlin informed the court that it is a difficult task to decide whether or not a person should drive, and depends on specific situations for individual patients. In Mr McLeod's case he required to be free of his complex partial seizures, the ones associated with an altered level of awareness for a much longer period of time, before he would have considered him fit to drive. [23] There is the occurrence of seizures, their pattern, the duration of their history; all have to be taken into account in establishing their fitness to drive.

Mrs Janine McLeod (formerly Worley) gave evidence. She met Mr McLeod in the second half of 2002 and they moved in together in early 2003 at Seals Road. She had no prior experience of epilepsy at that time but Mr McLeod told her he suffered the condition and took medication. She is a social worker and subsequently she commenced work with Epilepsy Queensland and acquired some general knowledge of the condition.

It was on 23 September 2003 that she came home to discover her husband experiencing partial seizures. This was the first time this had happened during their period together. He was panicking and feeling that he was going to have a seizure. There was a build up over four or five hours before a tonic clonic seizure developed. It lasted some seven minutes. She took him to hospital once he was over the tonic

[22] page 201, lines 35-50
[23] page 208, line 30

clonic episode, but still suffering partial seizures. There were repetitive movements and lip smacking and he seemed to have an altered state of awareness.

At the hospital he suffered a further tonic clonic seizure. The episode occurred at a time when he had had a diarrhoea upset and there was the thought that this might have impacted on drug levels. After discharge on 25 September 2003 he had another couple of complex partial seizures in the evenings. He resumed work the following week at the nursing home four days a week.

Mrs McLeod gave the same evidence as her husband that they were told he was not to drive for three months. She said he adhered to this restriction and she could recall still driving him on New Years Day. It was after the first week of January and definitely by 18 January that he resumed driving.

By that time, his wife described his condition as "very good." Her initial evidence was that she did not notice any change in his condition between when he resumed driving and the accident on 28 February 2004.

On the day of the accident on 28 February she said Mr McLeod was well with no signs of an impending seizure. Mr McLeod used her car, which was air-conditioned and an automatic Mitsubishi magna sedan. The car had recently been serviced and was in good order.

Mrs McLeod accompanied her husband to the two appointments with Dr Reid and also to Dr McLaughlin on two occasions. Mrs McLeod thought that they had told Dr Reid on 14 October 2003 about the tonic clonic seizures precipitating the hospital admission to Logan Hospital. She explained it as the reason why the doctor prescribed Topamax. In contrast, Dr Reid said the Topamax was added because she had been told of partial breakthrough of complex partial seizures. When told that her husband had conceded in evidence that he had not told Dr Reid of the hospital admission, Mrs McLeod did not alter her account to the court.

She was asked about when they then saw Dr Torbey on 6 November. She conceded there may have been some tonic spasm at the end of the seizures reported to the doctor, but denies there was ever another tonic clonic seizure.

Tow weeks later, she and Mr McLeod saw Dr Reid again on 21 November 2003. She denied any understanding with her husband that they might understate his symptoms. She denied concern over his job security or that his licence might be at risk. She said she and her daughters helped to drive him until he resumed driving shortly before 18 January 2004. When pushed on the date he resumed driving, it seems to have been a date between the first week of January and 18 January 2004.

Mrs McLeod's recollection was that the discharge summary document was given to her husband at the Logan Hospital and her evidence was that it was given to Dr Torbey. Again, this is contrary to that doctor's evidence.

She recalled the incident in December when he got up during the night. She said she did not know if it was a seizure but that he fell and hit his head against the wall. She could not explain why the incident had been recorded by Dr Torbey as complex

partial seizure when they went to see him on 12 January other than this was on the basis of information they had told the doctor. That consultation also recorded there was still seizure activity, usually at night, with the last seizure some weeks ago.

Mrs McLeod's evidence seemed to downplay the conversation with Dr McLaughlin that complex partial seizures were a risk for her husband in his work as a chef. … "It was just mentioned actually", she said.[24]

She told the court that she did not know the details of what rules applied to driving and epilepsy. She thought he was fine in January and no longer suffering seizures. But when it was pointed out that he had suffered another seizure in between the two appointments with Dr McLaughlin, she again downplayed the significance saying this was a simple partial- just a funny felling. She said otherwise she would not have let him use her car.

She agreed that they discussed between them the issue of driving in the context of the "three month" period having expired and her husband felt he was alright and so decided to resume driving.

Mrs McLeod seemed to be able to convince herself that a complex partial seizure was a fairly minor matter; even though she recognised that this included an altered state of awareness.

She agreed that they went to see Dr McLaughlin for a second opinion.

Mrs McLeod did recall that in September the doctor had told Mr McLeod he needed to go back to his specialist who was Dr Reid at the time. She conceded the doctor might also have said that resumption of driving was subject to the specialist's review. She agreed that driving was not an issue during the period they saw Dr Reid because he was not driving during this time. They did not seek a clearance from Dr Reid. She could not really explain why neither of them had raised the issue of driving with any doctor after discharge from the Logan Hospital. It was simply that the topic had not been raised and they were concentrating on other medical issues. In the interview with police she had conceded, in her husband's presence and without further comment from him, that perhaps they were lax in not raising the issue.

Submissions on findings pursuant to section 45.

It was submitted by counsel for the family of the deceased child that ;

(1) Mr McLeod knew he was suffering recurring epileptic seizures of varying severity since 23 September 2003
(2) The seizures occurred against a background of stability which changed when the medication Prominal became unavailable and alternative medication was introduced as part of his treatment regime
(3) Upon discharge he was advised by a doctor not to drive for six weeks, but he (and his wife) believed the period was three months.

[24] page 223

(4) Mr McLeod knew that the prohibition on driving related to the stability of his seizures and was dependent on him being seizure free rather than the mere expiry of a set period of time
(5) There was evidence that he had suffered less serious seizures (but not tonic clonic seizures) after his discharge from hospital, during October, November, December , January and February.
(6) Mr McLeod resumed driving between first week of January and before 18 January 2004 and drove on a daily basis for considerable distances and periods of time to and from his workplaces.
(7) Mr McLeod has failed to provide treating doctors with information relevant to his condition (and thus to his ability to drive,) in particular:
- failed to inform Dr Reid that he had suffered a tonic clonic seizure requiring hospitalisation in September;
-failed to inform Dr McLaughlin of previous injury and consequent job loss attributable to epileptic illness.
- failed to inform Dr McLaughlin or Dr Torbey that he had resumed driving early in January 2004

Written submissions by counsel for Mr McLeod relating to findings of fact, where they are different to the family's submissions are summarised as follows;

(1) Mr McLeod had a history of experiencing premonitions to indicate he would suffer an epileptic fit which he could rely upon.

(2) Mr McLeod did not experience any sign to indicate to him there was a risk of experiencing an epileptic seizure on the day of the accident.

(3) The evidence was that Mr McLeod had suffered some "mild seizures" after the tonic clonic episode of September 2003.

Section 45 findings of fact

On 28 February 2004 Anita Rowland was driving her Toyota Rav Four cruiser from her home at Springfield to her parent's home at Tanah Merah. She had her two children with her; Jet, who was aged twenty two months, and Bailey aged seven.

Mrs Rowland has no recollection of that day but I find that at about 12.35 pm she was travelling along the Logan Motorway eastbound when an accident occurred at Berrinba, approximately one and a half kilometres east of the Wembley Road overpass.

As a result of that accident Jet was thrown from the vehicle and suffered fatal injuries. He died later that night in the Mater Children's Hospital. Bailey suffered severe injuries resulting in paraplegia and other injuries. Mrs Rowland suffered fractures to both ankles, lower left leg, and left knee. Her right knee required reconstruction. She suffered serious burns and internal injuries.

Sergeant J.T. Hickey is the officer in charge of the Beenleigh Accident Investigation Squad who investigated the accident. I am confident to rely on his written report and evidence in making findings of fact in accordance with his evidence.

The Logan Motorway has two lanes for traffic travelling to the west, and two lanes for traffic travelling east. A narrow reserve planted with shrubby plants separates the opposite streams of traffic. This is sufficient to screen vision of oncoming traffic. The speed limit in the area was 100 kilometres per hour and conditions were fine. There were no issues arising from the road surface or layout.

The three vehicles involved in the accident were;
(1) -a red Mitsubishi Magan sedan, driven by Ian McLeod
(2) -a black Toyota Hilux utility, driven by Mark Beauchamp
(3) - a black Toyota Rav four wheel drive, driven by Anita Rowland

There was no barrier fencing between the two carriageways. Since the accident, Armco fencing has been installed along the west bound lanes of the motorway to prevent vehicles travelling from one side of the motorway to the other. This barrier commences at the Pacific Highway and is being installed through to the Mt Lindsay Highway end.

After the accident the Rowland's car was overturned in the 6.8 wide nature strip area, closer to the east bound lanes.

Mr McLeod's car was on the left hand side of the marked traffic lanes at an angle facing south west towards the centre dividing area. It had been extensively damaged across the front and front passenger side. Both airbags had been deployed. There was a significant amount of shrubbery on the vehicle.

Mr Beauchamp's car was 12.2 metres to the east of Mr McLeod's car, straddling the line marking the division between the two lanes. The front was facing to the northwest. There was impact damage to the front of the vehicle and swiping damage towards the passenger side.

Sergeant Hickey interpreted the scene to conclude that the Rowland's Rav four had been impacted at the front, overturned and rotated in an anticlockwise direction to end up facing back in the direction from which it had travelled. The impact had been at an angle.

There was a visible track through the shrubbery where the magna had travelled at about a 45 degree angle. There was no evidence to suggest that either Mrs Rowland in the Rav four or Mr Beauchamp in the Toyota hilux utility had the opportunity to, or took evasive action prior to impact.

All vehicles were subsequently inspected and were found to be roadworthy.

There were no skid marks associated with the Magna. A pathway through the shrubs was evident. The vehicle was fitted with an antiskid braking system. There was only one set of skid marks at the scene and these were associated with Mr Beauchamp's Toyota Utility, indicating he had braked heavily.

Sergeant Hickey's evidence was that the Magna would not have been able to be seen by the Rav four as it approached from the opposite direction at a forty five degree angle until it came through the shrubbery.

The impact damage suffered by Mr Beauchamp's Hilux utility suggested to Sergeant Hickey that the vehicle had collided with Mr McLeod's magna and not the Rowland's Rav four. The tyre marks from the utility do not suggest it collided with Rowland's Rav four. As well, there was red paint (from Mr McLeod's magna) on the front of the damaged area of the black Hilux.

I accept Sergeant Hickey's evidence in preference to the evidence of the driver of the Hilux Utility (Mr Robert Beauchamp) who I believe is mistaken in his understanding that he collided with the Rowland's Rav four. There was no damage observed by Sergeant Hickey to the back of the Rav four which could have matched an impact from the utility which was travelling behind the Rav four.

It was not possible to establish the speed of the vehicles from the physical evidence. It was a 100 kmph zone and the damage appeared to be from a 'high speed impact' but the investigating officer could not say more.

Independent witnesses gave statements that Mr McLeod's vehicle was proceeding normally in a west bound direction before suddenly revving and accelerating and veering to the left hand side. The car then travelled straight across the lanes towards the median strip shrub area separating the two streams of traffic. It proceeded through the shrubbery onto the opposite carriageway.

Mr Delaforce was travelling in the same direction as Mr McLeod's magna before the magna cut across the median strip of vegetation. Mr Delaforce was travelling in a two tonne truck at about 95kph and had slowed to allow the magna to pass on his left hand side before he intended to move to the left hand lane and exit. Mr Delaforce saw Mr McLeod sitting in the driver's seat of the magna. He was staring straight ahead with his arms on the steering wheel as if locked, making no apparent attempt to control the vehicle as it proceeded. The magna went first to the left hand side and then veered straight across the carriageway, across the vegetated median strip area onto the incorrect side of the road. Mr Delaforce heard the magna accelerate. As the car went across his path he saw the driver. In his words he described the driver as ;
"just basically, just solid on the steering wheel with both hands and head back in the chair basically"[25] ……..
"(he) wasn't relaxed or anything, it was just, like, stiff ….
he didn't move at all the whole time he was - went past me, "[26]….
On, like a 45 degree angle. …. (he) went through the trees."

The engine sound from the magna increased to what he described as 'flat out' and then remained constant. He estimated the speed of the magna at 120-130kilometres per hour.

I accept Mr Delaforce's evidence of his observations of the driver of the magna.

[25] Page 46, line 22
[26] page 47, line 9, 12, 18

I accept his evidence on the way the car proceeded and his observations of speed relevant to the speed at which he was proceeding.

The magna cut across the vegetated median strip and collided at a forty five degree angle with Mrs Rowland's Rav four which was overturned and rotated. A second collision then occurred between the magna and Mr Beauchamp's Toyota hilux. The vehicle caught fire. Jet was thrown from the vehicle.

On the issue of seat belts, Sergeant Hickey's investigations confirmed that all three drivers and the older child, Bailey Rowland, were restrained by seat belts. The child Jet Rowland was in a "Safe and Sound" brand child seat. Jet was thrown through the torn open front passenger section of the vehicle in the accident. This raised the issue of the effectiveness of the child safety restraint.

The evidence from Anita Rowland (contained in her statement) was that Jet was an active child and had recently learnt that he could manoeuvre his shoulder free from the restraining seat belt. Once this occurred the effectiveness of the restraint was severely reduced.

The seat itself was secured via a strap fixed to a mounting point on the floor and also secured via the existing seat belt threading through the back of the seat. When Sergeant Hickey observed the car seat, which was still in the Rav four, it was not secured via the seat belt through the back of the seat. Again, this was discussed with Mrs Rowland, who told Sergeant Hickey that she thought Jet had learned to depress the seat belt clasp which would release the seat belt. Sergeant Hickey pointed out there is a difficulty in balancing the need to ensure secure locking of the baby seat and the need to be able to quickly release restraints and extract a child in an emergency .if

Robert Wall was one of several motorists who came to the assistance of Mrs Rowland at the accident scene. He was travelling west towards Ipswich and the traffic was moving at about 90kmph. He stopped at the scene on hearing the noise of impact and seeing smoke from an overturned vehicle, which was on fire. As he ran towards the car he saw the child, Jet lying on some bushes. The child did not show any signs of apparent injury – but he did not appear to be breathing. Mr Wall approached the vehicle which was on its side. He could not immediately see inside until he saw through the popped sun roof. There was a little boy behind the driver's seat and a woman in the driver's seat. He tried to gain entry through the sun roof. He gained entry via the left hand side rear passenger door. He managed to extract Bailey Rowland from his seatbelt and pass him out to Mr Crawford.

He then turned his attention to the female driver, Anita Rowland. She appeared to be unconscious and was stuck with her feet jammed under the dash. His attempts to free Mrs Rowland were worthy of the description "heroic". He eventually managed to extract her and pass her up to Mr Crawford before escaping from the vehicle.

Off duty Detective **Peter Crawford** helped Mr Wall by holding open the door above his head while Mr Wall climbed into the vehicle. First the child Bailey was extracted, and then his mother Anita. There were difficulties in trying to extinguish the blaze and so Mr Crawford went back along the line of traffic to try to locate more extinguishers.

He came across Mr McLeod lying on his chest on the grass verge near a red vehicle (the magna). He was dressed in chef's clothing. Mr Crawford tried to help him as he was clearly injured and in pain. Mr McLeod was rolled into a recovery position while ambulance services were called. The Rowland family and Mr McLeod were transported to hospital.

After Mr McLeod's discharge from hospital, Sergeant Hickey spoke with him on two occasions. It was established that Mr McLeod suffered from epilepsy from a very young age and took medication to prevent seizures. Sergeant Hickey's interviews with Mr McLeod elicited information that Mr McLeod has been admitted to the Logan Hospital in September 2003 after suffering a major seizure. Mr McLeod was licensed to drive and was the holder of a current medical certificate which noted his epilepsy but indicated it was appropriate for him to drive. The licence was valid for 5 years until 2008.

Mr McLeod told the investigating officer that his last recollection prior to the accident was paying the road toll some kilometres to the east of where the accident occurred. He indicated he had not felt any premonition or indication of a seizure prior to the accident.

Sergeant Hickey obtained statements from the various doctors who provided medical advice and treatment to Mr McLeod concerning his epilepsy. Drs Torbey, Roberts, Reid and McLaughlin gave evidence at the inquest.

Dr David Roberts is a specialist physician at Logan Hospital. Mr McLeod had been admitted via the emergency department on the night of 23 September 2003 and was then in the physician's care between 24 and 25 September 2003.
McLeod was admitted after suffering a tonic clonic classic epileptic seizure – typically this was explained to be someone experiencing an 'aura', and then proceeding to the tonic phase when the body goes very stiff. This is followed by the "clonic" phase when the body is jerking the muscles. Throughout this there is a loss of consciousness.

Mr McLeod was admitted for investigation and treatment of why his epilepsy had become unstable after a period of more than ten years stability. He had been taking two anti epileptic medications. The levels of the medication were found to be at sub therapeutic levels. This was in the context of a two day history of diarrhoea. Dr Roberts assumed that drug levels fell during this illness. Mr McLeod was returning to see his long standing neurologist in the near future.

The hospital record documents that during Dr Robert's ward round, Mr McLeod was told not to drive for six weeks or engage in other dangerous activity. Dr Roberts referred to federally produced guidelines not to drive for four weeks. Dr Roberts knew he was to see his treating neurologist within a few weeks and so, in accordance with his standard advice, he said four weeks (the standard) plus a little bit extra which would overlap with the period when Mr McLeod would return to his neurologist. The treating neurologist at this time was Dr Reid. Dr Roberts said the period of time would vary depending on the circumstances. He could not recall specifically whether he said "don't drive until reviewed by the neurologist." What is documented is,

"don't drive for six weeks". He explained the recommendation is to achieve some period of stability.

He explained the standard advice concerning a period not to drive is a period of four weeks fit free after an epileptic event. This applies where the person's epilepsy is otherwise well controlled, *and* there is a clear precipitating event (in this instance, an illness of diarrhoea).

I accept Dr Robert's evidence as truthful that he did warn Mr McLeod not to drive or engage in any dangerous activity for six weeks until cleared by Dr Reid. As far as Dr Roberts was aware, the guidelines did not require him to make any report to the licensing authority.

At the time of Mr McLeod's admission, the practice was for the discharge summary to be given to the patient to hand on to their doctor. The expectation would be for the patient to inform the general practitioner who co-ordinates overall care. The discharge document in Mr McLeod's case was addressed to his general practitioner, Dr. Torbey.

Two months prior to this admission, Mr McLeod had been withdrawn from barbiturate type medication used for epilepsy control (phenobarbitone). The change had been due to an Australia wide withdrawal of that type of medication. Dr Roberts said a change in medication can result in break through seizures.

He referred to the guideline again and said in this type of situation, a period of a month or two is recommended to abstain from driving whilst withdrawing from antiepileptic medication. Given the time frames, Dr Roberts thought it more likely it was the episode of diarrhoea rather than the change in medication that had precipitated the seizure. I note that another of the doctors who gave evidence interpreted the guideline differently and thought that the " withdrawal period " referred to a complete withdrawal of medication rather then a withdrawal of one medication to be substituted by another. (Dr Reid.)

On the issue of the period of time a person should not drive after withdrawing from medication, Dr Roberts deferred to the opinion of a specialist neurologist.

Dr Gerard Torbey gave evidence. He was Mr McLeod's general practitioner over a nineteen year period until about two months prior to the coronial hearing.

He last prescribed Prominal to Mr McLeod in April 2003. He was aware of the likelihood of Prominal being withdrawn and, in April 2003 referred Mr McLeod to the neurologist, Dr Reid to review his medications.
The referral was for medication review, not for the purpose of review for driver's licence.

He undertook a review for licence purposes in July 2003. He completed the form concerning a visual test and then inquired of Mr McLeod regarding his epilepsy condition and made his recommendation. He considered the EEG which had been conducted by Dr Reid eaerlier that year. This was reported back to the general practitioner as being normal and stable. Dr Torbey was satisfied that the condition

was stable and therefore the licence could be re-issued for a five year period, which he selected.

He did not further review that decision. He said there was a method by which he could have reviewed that recommendation had he chosen to do so.

On 7 November his notes record, " saw Dr Reid, major seizure, in hospital seven weeks ago. Four seizures last night. Altered state of awareness. Some tonic spasm with last seizure. On changing doses." Dr Torbey then wrote down alteration to his medication.

Dr Torbey had no record of a discharge summary from the Logan Hospital

Dr Torbey's explanation is revealing for the potential conflict in responsibilities that treating doctors are placed in. He said;
" A difficult one to answer. I think that at that time that he came in, my focus was one of surprise and I guess empathy for him after so many years of having had no seizures to have had a breakdown in his control of his seizures and I think I just focused on his medical condition. The thought of any other factors would not,- just did not occur to me. I was sort of focusing on helping him restabilize and get his epilepsy under control. The thought of the driving side of it just didn't occur to me at the time."[27]

He acknowledged that he could notify the Department of Transport if he chose to do so, but that he was not under any obligation to do so. He felt an obligation placed on a treating doctor to report would be unworkable and preferred an independent medical person to be required to make that decision. As explained by Dr Torbey, his focus of attention was on the medical issues for his patient and he expressed difficulty with being expected to also wear the "policeman's hat" and report his patient to the authority

On 4 December 2003 Dr Torbey's notes record;
"Still having complex partial ten minute seizures mainly in the evening between five and eight pm."[28]
On 12 January 2004 Dr Torbey's notes refer to an epileptic seizure in mid December with " sudden complete loss of all tone, fell off bed and hit wall, complex partial after that."[29] It was at this time that Mr McLeod wanted a second opinion and he was referred to Dr McLaughlin.

Again when it was raised with the doctor it is evident that the issue of driving was not raised by the patient or by the doctor. The doctor's view (as consistent with Dr Reid's response) was that the thought did not even enter his head that Mr McLeod might consider driving. Had Mr McLeod asked the question, it would have been referred to Dr McLaughlin who was due to see him on 22 January 2004.

Dr Alison Reid gave evidence. She is a specialist neurologist practising in the field since 1979. She treated Mr McLeod from 1985. She was shown her records of four letters she wrote to Mr McLeod's general practitioner on 13 May 2003, 10 July 2003,

[27] page 180- 181
[28] page 186, line 6-7
[29] page 186, 15-16

14 October 2003 and 21 November 2003. Her practice was to immediately dictate a letter after each consultation. Prior to 2003 she had last seen Mr McLeod in 1999. Mr McLeod came to see her for review in May 2003 when it was recognised that one of the drugs he used to control his epilepsy was no longer available, (the barbiturate, methyl phenobarbitone- Prominal.) She explained that although this drug was very effective in managing epilepsy, barbiturates had become unfashionable due to the risk of addiction. Ideally the withdrawal from one form of drug to another should occur over a few months, but she was presented with the situation that Mr McLeod only had a three quarter bottle of the drug remaining. The risk in too rapid a withdrawal is of triggering a seizure similar to an alcohol withdrawal seizure. The transition was managed and Mr McLeod had not suffered a withdrawal seizure when he was next reviewed in July 2003.

In Dr Reid's opinion, any seizure after that period of time would be attributable to the condition of epilepsy itself, not to the withdrawal from medication.
After the next consultation on 14 October Mr McLeod reported to Dr Reid that he was having partial complex seizures breaking through. Dr Reid said the patient reported little absences, little episodes when he would just switch off.

Dr Reid could not recall, nor did she have any record of being told by Mr McLeod about the admission to Logan Hospital or the tonic clonic seizure. Nor had she any record of receiving a copy of the discharge summary relating to that admission. I accept her evidence that had she known about these events her letter back to the general practitioner would have been different and that Mr McLeod did not inform her of this. She also said her invariable practice would have been to copy the letter back to the hospital doctor as well.

On the question of Mr McLeod driving, Dr Reid stated that she was aware that he had a licence but that when he came to see her on 14 October 2003 he wasn't driving. She could recall Mr McLeod attending with his partner, who was holding the car keys and that it was clearly indicated that Mr McLeod was not driving at the time. He gave the appearance of a down and beaten man who had previously presented as a "very proud man" in her language**.**

Dr Reid said that he had come back to discuss unstable epilepsy and clearly indicated he was not driving, therefore it "wasn't an issue." "He wasn't driving."
When asked whether she gave him any advice about resumption of driving she responded;
"Resumption of driving was not discussed."[30]

Dr Reid was aware of guidelines regarding when it is appropriate to authorise a person with epilepsy or other medical conditions, to drive. She said there was nothing to report to any authority because she believed it was clear that Mr McLeod understood that he was not fit to drive, and to her knowledge, was not driving or seeking to do so.

It was clarified that she had not been told that Mr McLeod suffered tonic clonic seizures in September 2003 and required hospital admission. She was only told of the

[30] page 154, line 40

partial complex seizures breaking through. Had she known of the tonic clonic seizure her evidence was that she would have left the Tegretol as part of his medication and added a third drug.

The description of Mr McLeod's appearance as his vehicle veered across the road and on through the median strip into the oncoming traffic was read out to Dr Reid. She responded that this appearance (of arms locked and looking straight ahead) was consistent with the tonic phase of an epileptic tonic clonic seizure, (previously called grand mal.)

In all of these types of seizures, Dr Reid says it is inappropriate to drive as they are periods of altered consciousness. The guidelines generally dictate that a patient must be seizure free for a period of six months before it is appropriate to consider resumption of driving after a seizure. An experienced consultant can reduce the period to three months. She also noted that the guidelines were tougher when considering a licence of a commercial driver, like a truck or taxi driver.

The Medical Standards for Licensing re Epilepsy document, dated September 2003 was referred to Dr Reid. At page 59 it stipulates where there is withdrawal of a medication the person should not drive during the period of withdrawal and for three months after. Where the withdrawal of medication is on the recommendation of a consultant experienced in the management of epilepsy, who assesses the risk of seizure recurrence as low, then driving need not be curtailed.

She said that in Mr McLeod's situation of suffering recurring seizures of any description, he was automatically barred from suitability to drive, (until he was seizure free for six months.)

Dr Brendan McLaughlin was the neurologist who saw Mr McLeod in 2004. He first saw Mr McLeod on 22 January 2004. The last appointment prior to the accident was on 26 February 2004.

Dr McLaughlin's notes record that Mr McLeod reported to him on the first appointment he was "continuing to have seizures occurring approximately once per week for the preceding seven weeks."[31]
He and his partner insisted that the seizures were only occurring in the evening.

Dr McLaughlin agreed that the withdrawal of Prominal had precipitated the return of seizures. This was most likely given the long history of stability.

Dr McLachaln was not informed by the patient that he had been hospitalised in September of 2003 due to a major seizure. He stated that this information would have been helpful to direct appropriate treatment especially when it indicated a major seizure.

The investigating officer asked Dr McLaughlin his opinion about Mr McLeod's epilepsy status as at 26 February 2004, when he last saw him. He told Sergeant Hickey that Mr McLeod's condition was not under sufficient control to safely drive a

[31] page 197 at line 25

motor vehicle without risk of seizure. However, Dr McLaughlin's evidence to the court was that he did not specifically advise the patient of his view at the time. He said;
"No, I did not discuss the issue of safety with driving and neither was it raised by Mr McLeod or his partner, Janine Worley (subsequently Mrs McLeod) on that visit."[32]

He explained;
"The reason that I did not raise it specifically is that from the history he had told me, I would have believed that he would have been aware himself by his experience and his knowledge of his own condition that he was unfit to drive. That is, if he held a licence to drive, which I was ignorant of,……...he would have known that he would have to obtain a medical certificate. As part of the application process it's clear that if you have a medical condition, and epilepsy's named specifically, that you must seek a medical clearance or a medical certificate and as part of obtaining that medical certificate the question includes, **"**Have you had any seizures?" and therefore the occurrence of seizures would clearly indicate to him that he was unfit to drive. He came to me reporting ongoing seizures occurring on a weekly basis."[33]

Dr McLaughlin informed the court that it is a difficult task to decide whether or not a person should drive, and depends on specific situations for individual patients. In Mr McLeod's case he required to be free of his complex partial seizures, the ones associated with an altered level of awareness for a much longer period of time, before he would have considered him fit to drive. [34] He said there is the occurrence of seizures, their pattern, the duration of their history; all have to be taken into account in establishing their fitness to drive.

Ian McLeod was legally represented and he gave evidence. There was no claim to privilege against answering any questions which might incriminate him. He could recall being on his way to work driving on the Logan Motorway on 28 February 2004. He travelled from Alberton where he was living and travelled towards the Arthur Gorrie Correctional Centre where he was working as a supervising chef. The vehicle was his wife's car and he was familiar with driving the car; the car had recently been serviced. Mr McLeod's evidence was that his last memory of driving that day was when he proceeded through the toll booth

He surrendered his licence since the car crash. His wife now drives him when he cannot use public transport. He no longer works as a chef due to physical disabilities that he still suffers since the accident. He suffered serious injury in the accident.

Mr McLeod has suffered epilepsy form the age of three. The condition was managed throughout his life with medication. Greater control of seizures was achieved once he reached adulthood.

Mr McLeod was seizure free for a period of about ten years leading up to the hospital admission of September 2003 and subsequent events. The hospital notes recorded;
"has not had a tonic clonic seizure for twelve years."

[32] page 201, line 30
[33] page 201, lines 35-50
[34] page 208, line 30

Dr Torbey was his general practitioner from about 1985 and he saw the neurologist Dr Alison Reid from 1999. He said he was always meticulous with taking his medication. That assertion would appear to be borne out with the history of being seizure free for such an extended period.

The evidence is that Dr Reid wrote to the general practitioner Dr Torbey in 1999 advising him that t this medication was likely to be phased out. Mr McLeod's evidence to the court is that he did not know this until later- when it became an urgent issue when the drug was no longer available. There was a gap between 1999 and 2003 during which he had not seen the specialist.

He told the inquest he went to see Dr Reid in May 2003. She performed an EEG. The doctor's version, contained in her letter to Dr Torbey on 13 May 2003, also confirms that the withdrawal phase was now imperative. Her evidence was that she always dictated the letters on the day of consultation. By that time Mr McLeod only had a single bottle with three quarters of the contents of Prominal remaining.

He saw Dr Reid about two months later on 10 July 2003. By that time the barbiturate (Prominal) had been phased out and he was using Epilim and Tegretol.

It was hard to judge whether Mr McLeod was being reliable or whether his way of presenting his evidence (which was often roundabout and indirect by way of response,) was simply his personality and style of communication. Or perhaps his presentation was affected by the condition of epilepsy itself or the medication he takes. Certainly after hearing Dr Reid give her evidence in a very direct manner and comparing this with Mr McLeod's slow and rambling responses, it is not hard to imagine that communication between the two of them might be a mismatch in styles. The effect of Mr McLeod's evidence was that he felt pressured for time during consultations with Dr Reid.

On 17 July 2003 Mr McLeod went to see his general practitioner Dr Torbey for a medical certificate to enable him to renew his licence. At that time he had not suffered any seizures after the withdrawal of Prominal and the substitution of other medication. Accordingly, Dr Torbey provided him with an unconditional medical certificate authorizing him to obtain a licence.

There was then the incident on 23 September 2003 requiring Mr McLeod to be hospitalised for two nights. When Mr McLeod was queried about what medical follow up he had made after his discharge from hospital, his response was evasive and unsatisfactory. He said he "probably mentioned it to the local general practitioner, (Dr Torbey) "[35]
Other evidence showed there was an appointment on 10 October 2003 when Dr Torbey requested blood tests.

On 14 October he saw Dr Reid. Dr Reid's evidence was that Mr McLeod did not tell him about the admission to the Logan Hospital on 23 September (after he had suffered an epileptic seizure.) When pushed on this issue, Mr McLeod conceded that he "probably didn't" (tell Dr Reid about the hospital admission.)

[35] Page 103, line 22-23

Dr Reid's report from that consultation on 14 October (which I accept was made immediately after the consultation as was her invariable practice) records the following;
"This gentleman came back to see me again today. When I last saw him in July he seemed to be doing extremely well but unfortunately they now state that partial complex seizures are breaking through."

The medication was reviewed and the decision made to slowly phase out the Tegretol and replace it with Topamax and continue on the Epilim. Dr Reid explained to both Mr McLeod and his partner that topamax was very potent and effective but had possible side effects that needed to be monitored and considered if troubling. The plan was to review the medication with Dr Reid in a few weeks.

By the time of the accident Mr McLeod was working 6.00am to 2.00pm Monday to Thursday at a Retirement village at Victoria Point and afternoons on weekends at the Arthur Gorrie Correctional Centre at Wacol. His wife was working full time at Woolloongabba at this time. Each would drive themselves to work.

Mr McLeod's evidence was that in the period after his admission to Logan hospital (when he was told not to drive) he did not drive. He thought the advice he had been given was not to drive for three months. He said he obeyed this until after Christmas. He said he returned to driving in January 2004.

But it was put to him that he had a number of seizures after the discharge and before the accident occurred on 28 February 2004. Mr McLeod did not deny having seizures during this period, but said he could not remember having them.

On 7 November 2003 Dr Torbey recorded that Mr McLeod had informed him about the hospital admission back in September. Dr Torbey recorded that Mr McLeod had reported having mild seizures awake but feels unwell. Again on 4 December Mr McLeod saw Dr Torbey and described having mild seizures. On 12 January at a consultation with Dr Torbey he recorded that Mr McLeod referred to a seizure in mid December 2003. This incident was referred to as experiencing a "loss of tone and falling off the bed."

Mr McLeod was keen to describe this episode in terms of an "absence" rather than a seizure and a reaction of slipping. The note by Dr Torbey uses the word seizure and then goes on to record that there had been no seizures for weeks since then.

Despite this history of episodes of seizures, (however described) Mr McLeod resumed driving in early January 2004. He says he did not discuss this with Dr Torbey- or more particularly, he says that Dr Torbey did not ask him about his driving.

He saw Dr McLaughlin for the first time on 22 January 2004. Dr McLaughlin's report concerning that visit includes the following;
"recently it has been necessary to withdraw the Prominal as the drug is no longer available. And with this he has had a recurrence of seizures."

The source of this medical history must have been from Mr McLeod, although at the inquest he said he could not remember. The report continued, noting that Mr McLeod had attended with his partner and reported a number of seizures quite consistent with complex partial seizures….."These had occurred perhaps as much as once per week."

Dr McLaughlin's report continues; "Typically they are occurring in the evening and often when he is relaxing." Mr McLeod confirmed this as correct. The medication Trileptal was then introduced, which is still being used by Mr McLeod. He saw Dr McLaughlin again on 26 February 2004, which was two days before the accident.

Mr McLeod acknowledged that by the time of his first consultation with Dr McLaughlin on 22 January 2004 he had resumed driving. On this issue he said that he didn't tell any of the doctors that he was driving and none of the doctors told him he shouldn't drive. He said none of them asked if he was driving. He didn't volunteer the information or raise the issue. He said the discussions were about issues of suitable drugs.

Mr McLeod said that he felt he had a warning about any impending episode. In relation to the time he said he fell off the bed he explained that that was probably why he was sitting on the bed. However I note the warning was insufficient for him to avoid falling from the bed and hitting his head.

The most telling question and answer in the inquest was when Mr McLeod was asked;
"You would not want to be driving while you had a simple partial seizure at one hundred kilometres per hour , would you ?"
Mr McLeod responded "No."[36]

But even after suffering what he described as "an absence" between the two consultations with Dr McLaughlin, he still drove as long as he felt alright. He would not drive if he did not feel well. He recognised that tiredness, stress and heat could all increase the chances of having a seizure. He did not surrender his licence until December 2004 although his evidence was that he had not driven since the accident. He explained that the licence was retained as an aid for identification purposes.

Mr McLeod was asked to explain on what basis he had decided to resume driving in mid January . He said;
"Well, I mean…walking about and you're feeling pretty fit, pretty good and you got to obviously , I got a job and you got to get from A to B and you got to , you know, I was feeling all right."[37]

Dr McLaughlin even raised the issue of safety at work because Mr McLeod was a chef dealing with sharp implements and hot substances and surfaces. Dr McLaughlin advised that if there was no change in the pattern of evening "absences", then he could continue to work.

[36] page 120 , line 53-54
[37] page 137, line 39-42

On the day of the accident he had been out with his wife and daughter shopping. He was not due to start work until l .00pm.

Overall, my impression was that I could not feel confident in relying on Mr McLeod's evidence where it was in conflict with other witnesses, particularly where medical notes made at the time documented a history contrary to Mr McLeod's evidence in court.

Sergeant Hickey included in his report his submissions about the legislative requirements for drivers and doctors with respect to epilepsy. He submitted that in Queensland, there is no clear legal responsibility on anyone to advise the transport authority that a person was unfit to drive due to some change in their medical condition. In Queensland, if there is a report from a voluntary source, the authority may then exercise its power requiring a person to show cause. The crux of the issue is the initial report to the transport authority alerting them to a possible problem.

Sergeant Hickey's interpretation of the information available led to him accepting that Mr McLeod was suffering a seizure when he travelled across the median strip onto the incorrect side of the road.

Sergeant Hickey's proposal to help improve safety measures was to implement a requirement on medical practitioners requiring them to notify an authority of any condition or change in a patient's condition impacting on the ability to drive safely. This was in addition to a primary responsibility on the driver to report. The responsibility to assess suitability should then pass to an appropriate independent body to review the situation. Presently in Queensland, there is only a requirement on commercial drivers to notify if there is a condition affecting their ability to drive.
I accept Sergeant Hickey's evidence as truthful and his conclusions as reasonable and based on the physical evidence and his experience. I have due regard to his recommendations.

In summary;

The accident occurred on 28 February 2004 when a magna sedan driven by Ian McLeod went across the vegetated median strip of the Logan Motorway at Berrinba onto the opposite carriageway.

The magna collided with the Rav four cruiser driven by Anita Rowland. Anita Rowland and her son Bailey suffered serious permanent injury in the accident. Her son Jet Rowland died on 28 February due to injuries sustained in the accident.

Ian McLeod suffered an epileptic fit at the time or immediately before travelling onto the incorrect carriageway and then colliding with the Rav four.

Ian McLeod had a known condition of epilepsy on 28 February 2004. The condition had been stable for more than ten years until September 2003.

In July 2003 his longstanding general practitioner Dr Torbey had provided him with medical clearance to renew his licence for five years on the basis of stable epilepsy with no seizure activity.

In July 2003 Ian McLeod had been forced by circumstances beyond his control to change his medication to control epilepsy. From September 2003 he commenced experiencing break through seizures of varying degree from simple partial, to complex partial and with some suggestion of tonic behaviour in a fall that occurred in December 2003.

In September 2003 Ian McLeod had suffered a tonic clonic seizure and was hospitalised for two nights. The most likely precipitator of that seizure was a period of gastric illness lowering the therapeutic levels of medication in his body.

He was advised by Dr Roberts in hospital not to drive for six weeks and not to resume any dangerous activity until further review by his treating neurologist.

Mr McLeod thought that he had been told not to drive for three months. He did not do so until he resumed driving early in January 2004.

Mr McLeod did not raise the issue of driving with any of the doctors he saw after September 2003, including his general practitioner, Dr Torbey or the neurologists Dr Reid and then Dr MacLachlan. He did not inform either neurologist of his hospital admission in September 2003 or that he had suffered a tonic clonic episode at that time.

None of the three doctors specifically raised the issue of driving with Mr McLeod as all of them assumed from Mr McLeod's overall presentation, history and knowledge that he was not driving and that he was aware that he should not drive.

All treating doctors said he was not fit to drive from the time of recurrence of any seizure activity until the condition had been satisfactorily stabilised.

There was no report to the Transport Department concerning any change in his medical status either from Mr McLeod or any of the treating doctors.

The name of the deceased child was Jet Paul Rowland.

His date of birth was 11 April 2002.

His address was 3 North Court Springfield.

The date of death was 28 February 2004.

The place of death was Mater Childrens Hospital, Brisbane.

The cause of death was multiple injuries sustained as a passenger in a motor vehicle accident.

Submissions on possible referral of information by the coroner to the director of public prosecutions.- Section 48

It was further submitted by counsel for the family of the deceased child that the coroner should have a reasonable suspicion pursuant to section 48 Coroners Act 2003 that Mr McLeod had committed an offence (of recklessly driving in a manner dangerous causing the death of the child Jet Rowland and causing the grievous bodily harm of Bailey and Anita Rowland.)

Pursuant to Section 48 (2) of the Coroners Act 2003 if, in the course of investigating a death, (which can include the inquest phase)[38] a coroner reasonably suspects a person has committed an (indictable) offence, the coroner must give the information to the director of public prosecutions. But a coroner must not include in the findings any statement that a person is, or may be guilty of an offence or civilly liable for something.[39] The Coroners Act 2003 has moved on from the previous 1958 legislation where an inquest could transmute into committal proceedings and a person be charged with an offence in the course of an inquest.

It would seem incongruous for a coroner to consider whether a person might be charged with a criminal offence in the course of an inquest under the current legislation, given the embargo on making any comment in the findings about criminal guilt. Conversely, it could be argued that hearing information and submissions on which a coroner might form a reasonable suspicion that an offence has been committed, can be distinguished from making a statement that a person is guilty of an offence.

In the inquest I expressed my concern on this issue and asked counsel to address the issue whether this submission should be raised in the inquest itself.

Counsel assisting reminded the court to ensure procedural fairness to anyone who might be adversely affected and essentially said that provided this was adhered to, submissions could be made in court. He did not make any submission on the merits of the issue.

Counsel for the family advocated that the court hear the submission in the course of the inquest. Counsel for the driver of the car was not called upon at the inquest to address this issue immediately. Instead he was provided with the opportunity to obtain transcript and then, within seven days of receipt of transcript, make a written submission. That submission was received by the coroner's office on 7 October 2005. It addressed the issue on the merits but did not address the issue about whether or not the matter should be raised at all in the course of the inquest, and if so, whether any pronouncement should be made in the course of the inquest.

I therefore now consider whether or not the inquest should receive submissions on a possible referral of information for consideration of a prosecuting authority.

The State Coroner's Guidelines refer to section 48 in the following terms;

[38] Schedule 2 "investigation"
[39] Section 45(5)

> "The referral of matters to the DPP, another prosecuting authority or a disciplinary body under s48 should also only occur if there is sufficient evidence to warrant such a referral but as the referral does not in itself cause an adverse impact, the standard of proof needed to justify such an action is at the lower end of the sliding scale- perhaps similar to that used in committal proceedings."[40]

The guidelines discuss the prohibition on including any statement that a person is or may be guilty of an offence as follows;

> "Accordingly there is no impediment to coroners providing a full and complete narrative of the circumstances of death nor stating their conclusions as to the responsibility of individuals or organisations for the death provided they refrain from using language that is applicable to decisions made by criminal and civil courts when they adjudicate upon the same issues."

The case of R v Tennent; ex parte Jager in the Supreme Court in Tasmania in 2000 gives some guidance.[41] The applicant asserted that a coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence, and therefore no submissions touching or concerning that issue should be entertained by the coroner.[42]

The Tasmanian legislation was similar to the Queensland Coroners Act 2003 in stating;
Section 28 (4) –"A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence."
and,
Section 30(3)- "A coroner must report to the Attorney-General if the coroner believes that an indictable offence has been committed in connection with a death which the coroner investigated."

Section 52(4) of the Tasmanian legislation is also similar to Queensland's 2003 Coroners Act concerning who has sufficient interest to appear and the extent of that person's ability to address the inquest. The Tasmanian legislation states;

> "A person who the coroner considers has a sufficient interest may appear or be represented by a barrister, or a legal practitioner,…call and examine or cross examine witnesses, and make submissions, at an inquest."

In the case of R v Tennent; Ex Parte Jager the court reviewed previous cases raising the issue.[43] The weight of authority emphasized that the coronial process is a unique and discrete jurisdiction focused on establishing the facts leading up to the death of a person. Throughout Australia the jurisdiction has developed with recent legislative changes to encompass a preventative focus to authorise coroners to make comments aimed to reduce deaths and comment on public safety and the administration of justice. The evolution of coroners' jurisdiction in this area has moved it away from the historical role which led to the charging of people in relation to criminal responsibility for the death.

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[40] 8.8 at page 8.14 of State Coroner's Guidelines
[41] RvTennent; Ex Parte Jager [2000] TASSC 64
[42] at BC200003284 , page 2
[43] Annetts v McCann (1990)170 CL 596

In the case of Annetts v McCann the parents of two young men who perished in a remote area of Western Australia sought to make submissions. Justice Brennan said at page 610;
"the valid exercise of the coronial power to make findings and to express opinions in a rider to the findings does not require a coroner to allow any person who is entitled to attend and to examine and cross examine witnesses to address him on matters unconnected with any contemplated unfavourable finding which is adverse to that person's interests. Counsel's claims to be entitled to address on any aspect of the inquest was too wide."[44]

In the Tasmanian case the mother of a deceased person was seeking to make submissions regarding whether the coroner formed a view and referred information on to the Attorney-General for consideration of criminal prosecution. It was held that the parent could not make public submissions aimed at persuading the coroner to form a belief (or in the case of Queensland, a reasonable suspicion.)

I consider the authority of the decisions in R v Tennent Ex Parte Jager and by Annetts v McCann as persuasive on this court when considering whether or not I should entertain submissions in the inquest to refer information to the director of public prosecutions for consideration of prosecution. I decline to admit those submissions or to consider them in the course of the inquest.

I emphasize however, that the coroner remains with the obligation to consider the information available and must give that information to the director of public prosecutions if a reasonable suspicion is held that an indictable offence has occurred.

Summation of Issues arising in inquest

It would not be appropriate for a coroner to comment on the periods of time that a person should not be driving after suffering an epileptic seizure. That is clearly a matter for expert medical advice varying on an individual's history and treatment.

However, coronial comment is called for regarding whether the existing guidelines adequately address the need to protect a person suffering unstable epilepsy, and the public, in relation to driving a motor vehicle. The federal guidelines are very detailed, but the facts in this case demonstrate how assumptions can be made without making explicit, whether or not a person should be driving at a particular time.

It seemed quite clear to treating doctors what the guidelines mean and when a person should cease driving, namely, when a person has suffered a seizure and until they subsequently obtain a medical clearance to resume driving. But it appears that for many reasons, including financial, emotional and purely practical, a person suffering such a relapse might be able to persuade themselves to the contrary and continue to rely on a medical certificate provided at an earlier time.

The legislation and guidelines need to spell out emphatically that when a person suffers a seizure, a driver's licence is automatically cancelled until such time as the

[44] quoted from Annetts v McCann in Tennent at bottom of page 4

person is reviewed by an appropriately expert medical person who has been fully informed of the person's medical history and recent history. How this can be translated to workable and enforceable law and practice is beyond the scope of this inquest, but it is an important task to be addressed. It needs the input of treating general practitioners and specialists. The issue must remain primarily a medical decision, but there must be consideration of separating the medical treatment from the responsibility to report a change in medical status affecting a person's ability to drive. If a treating doctor feels compromised in making such a decision perhaps there should then be scope for referral to an independently appointed doctor to review the history for the particular purpose of licence eligibility**.**

It is also important to keep separate the functions and responsibility of treating medical personnel so that a person in need of advice and treatment is not deterred from seeking such treatment.

The facts of this inquest have revealed that not unreasonably on the part of the doctors, assumptions were made and inferences drawn that a patient was not driving. But the issue was not ever specifically raised by either doctor or patient.

Comments concerning issues of public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future- Section 46.

A preliminary consideration is noted. Counsel for the Logan Motorway submitted there was insufficient evidence to draw any conclusions about the relevance of whether or not barrier fencing might have changed the outcome in this event. I agree with this submission, but I am also pleased to note that barrier fencing has been constructed along the Logan Motorway since this accident. Although any physical item, including barrier fencing itself, has the potential capacity to reduce or increase the risk of injury or death, it is to be hoped that this barrier will act to deflect wayward vehicles and deflect them safely back onto the correct carriageway.

Pursuant to Section 46 I make the following comments having regard to public health and safety and in the hope of preventing deaths happening in similar circumstances.

1 Review of practices concerning the forwarding of discharge summaries from hospitals in Queensland (both public and private) to ensure uniform consistent practice in forwarding a patient's discharge summary to the patient's general practitioner.

2 Review of legislation to require any doctor becoming aware of a patient suffering any epileptic event which would, in that doctor's opinion adversely impact on the patient's ability to safely drive a motor vehicle , to specifically discuss the issue with the patient at the consultation. The legislation should require the doctor to ;
(i) advise the patient if the doctor considers it inappropriate to continue to drive,
(ii) set a period of time and/ or refer the patient to an appropriate specialist for further management and advice concerning suitability to drive.
(iii) provide written confirmation of the doctor's advice to the patient.

3 Review of legislation to consider whether and in what circumstances a driver, and / or a treating doctor should be required to inform the Transport Department of a medical condition (such as epilepsy) or a change in the medical condition of a person impacting on their ability to safely drive. Consideration of whether sanctions should apply against a driver and / or a treating medical officer if they fail to report relevant information.

4 Review of legislation (after consultation with relevant interest groups) to consider a panel of independent doctors available to accept referrals for assessment of suitability to drive in the context of epilepsy. The panel would be available to review a driver's eligibility to drive and to inform the Department of Transport accordingly.

5 Initiative by the Department of Transport or other appropriate agency or authority to publicise both to the public and the medical profession the Guidelines for Fitness to Drive. Emphasis should be given to a responsibility to review a person's fitness to drive in circumstances where there is *any alteration in the person's medical condition likely to impact on their ability to safely drive a motor vehicle.*

6 Review of current Australian standards of child safety restraint mechanisms taking into consideration world best practice standards.

At the conclusion of this inquest I would like to note the thoroughness of the investigation by Police Officer Hickey. I also commend the efforts of all those who stopped and gave assistance at the accident to Mrs Rowland and her family and to Mr McLeod. In particular I note the bravery and persistence of Mr Wall who was helped by Mr Crawford.

Finally I offer my sincere condolences to the Rowland family. They have suffered a terrible tragedy in this accident losing their young child Jet. His brother Bailey and his mother Anita suffered serious injury. I hope that the family will continue to heal and strengthen and to grow in their support and love of each other.

I thank counsel for their assistance. The inquest is now closed.

Chris Clements

Deputy State Coroner
15 December 2005