



SOUTH WEST CORONER

FINDING OF INQUEST

CITATION: Inquest into the death of **Ian Charles WILLS**

TITLE OF COURT: Coroner's Court

JURISDICTION: Roma

FILE NO(s): COR 001/07

DELIVERED ON: 26 November 2008

DELIVERED AT: Roma

HEARING DATE(s): 29 September 2008 and 18 August 2008 and 29 September 2008

FINDINGS OF: O Rinaudo. Coroner

CATCHWORDS: CORONERS: Inquest, Motor Vehicle (Truck rollover), state of brakes, state of road.

REPRESENTATION:

Appearances:

Assisting:

Sergeant C A Searle
Roma Police Prosecutions

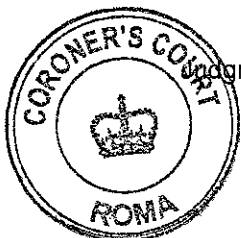
For Next of Kin

Mr J Barrettt, solicitor, of Maurice
Blackburn Lawyers.

For origin Energy

Mr Ian Bloemendal, solicitor, Clayton
Utz Lawyers.

Judgment Category Classification:



Judgment ID Number:
 Number of Paragraphs:
 Number of Pages:

HISTORY

The deceased was driving his articulated truck at about 6.35 pm on Strathblane Road, which is an internal road to the spring Gully gas fields near Injune run by Origin energy. The deceased has driven down a steep decline curving to the right. The truck has left the road way and rolled. The deceased was killed as a result of injuries sustained in the incident. The pathologist ruled out any sudden death. Toxicology was clear.

Police investigated. They concluded that the incident occurred around 6.30 pm on Saturday 13 January 2007 at the place described above, that the cause of the accident was unknown and that no other vehicle was involved. They also said; *The braking system that operates on the vehicle was not activated at any time preceding the collision. The lack of skid marks, at the scene of the incident, are testimony to this.*

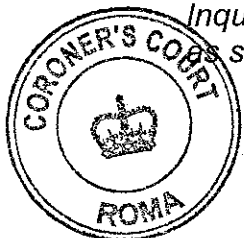
Mr A R McLaren, vehicle Inspection officer, concluded; *As a result of my inspection, I am of the opinion that the prime mover and trailer combination was in a dangerous condition due to the condition of the trailer brakes and the prime mover bogie drive left front brake adjustment. No other defects were found by me, which could have contributed to the cause of the incident.*

HISTORY OF REQUEST FOR INQUEST

The Solicitors for the next of kin of the deceased, Maurice Blackburn lawyers asked that an Inquest be held into the death of deceased. They advised that the road was dangerous and described as such by police and other fatalities had occurred on that road.

Initially after consideration of the submissions made by those Solicitors I wrote to them in the following terms;

“...The coroner also has the role of making recommendations, if appropriate, as to how such accidents can be avoided in the future. It is this aspect you have addressed in your correspondence to date. It seems there are two issues, firstly whether the truck was defective and secondly, whether the road itself is dangerous (given that there have been other accidents in the past) and the road has been described as ‘atrocious’ by police. These things seem to me to be inescapable facts which are well known. Police have, as you say, condemned the road and there is expert evidence to establish the mechanical worthiness of the truck. Given that at Inquest, I am not allowed to comment on anything which might be construed as suggesting either criminal or civil fault (see section 46 of the coroners Act



2003), *what more do you say an Inquest will achieve. Vehicles should at all times be properly maintained in good and serviceable order and roads should not be dangerous*".

In reply the Solicitors wrote that, provided I make recommendations about the state of the road and the vehicle, they *will not push further for an Inquest*.

On the available evidence it seemed to me that a recommendation about the road may be warranted. However, to do this without making some enquiries to ascertain the correctness or otherwise of the Solicitors assertions and without affording the owner of the road "Natural Justice" would have been premature and inappropriate.

I decided to hold a preliminary hearing to obtain submissions from interested parties about these issues.

Preliminary hearing was held on 18 August 2008. The Police prosecutor who was assisting the coroner was asked to find out the following things;

1. Ownership of the road.
2. Chase up the scenes of crime officer to get a report.
3. Check for any other deaths on the road
4. Check if police had described the road as dangerous or atrocious.

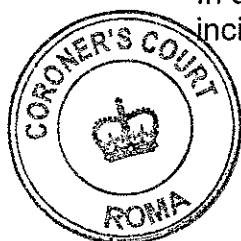
By report dated 7 August 2008 I was advised that:

- The road was on land owned by Origin energy. (They were invited to be heard and their Solicitors Clayton Utz lawyers sought to appear and were granted leave.)
- Senior constable Tracey Graham was identified as Scenes of crime officer who attended and photographed the scene. It was reported that records of Queensland transport showed no other reported deaths on the road and investigations failed to reveal any officer commenting on the state of the road.

After receiving a further letter from the solicitors nominating a particular officer as having made comment about the road, a further report was requested from police.

It was subsequently reported that the nominated officer had not made any comment about the state of the road as he had never visited that road in the past (this accords with information from the solicitors for Origin who say the road was recently completed). It states; *Sergeant Arnold is an experienced police officer who is aware of service policies and procedures and would not make flippant or ignorant remarks concerning matters of which he had little knowledge.*

In addition the report advised that there were no other reports of traffic incidents on the road.



In a letter dated 12 September 2008, Maurice Blackburn lawyers further advised of incidents on the road.

I authorised the release of all of the material to both parties and listed the matter again for further preliminary hearing on 29 September 2008. The solicitors for the parties appeared by phone and made submissions. It was ordered that any further written submissions be made by 19 November 2008 with the decision in the matter to be handed down on 26 November 2008.

PURPOSE OF INQUESTS

The purpose of an inquest, is to establish, as far as practicable –

- Whether or not a death happened;
- The identity of the deceased person;
- How the person died;
- When the person died;
- Where the person died, and
- What caused the person to die. [Section 45 (1) and (2)]

It should be kept firmly in mind that an inquest is a fact finding exercise and not a method of apportioning guilt. 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. [Section 45(5)]

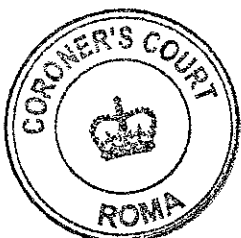
The procedure and rules of evidence suitable for a criminal trial are not suitable for an inquest. The Coroners Court is not bound by the rules of evidence and may inform itself in any way it considers appropriate. [Section 37]

In an inquest there are no parties; there is no charge; there is no prosecution; there is no defence; there is no trial. An inquest is simply an attempt to establish facts. It is an inquisitorial process, a process of investigation: These observations were confirmed by Justice Toohey in *Anetts v McCann* ALJR at 175.

A Coroner's inquest is an investigation by inquisition. It is not inclusive of adversary litigation. Nevertheless, the rules of natural justice and procedural fairness are applicable. Application of these rules will depend on the particular circumstances of the case in question.

A Coroner may, whenever appropriate, comment on anything connected with the death that relates to-

- a) Public health or safety, or
- b) The administration of justice, or
- c) Ways to prevent deaths from happening in similar circumstances in the future. [Section 46 (1)]



If, from information obtained while investigating a death, a coroner reasonably suspects a person has committed an offence the coroner must give the information to-

- a) for an indictable offence – the Director Public Prosecutions, or
- b) for any other offence – the chief executive of the department in which the legislation creating the offence is administered.

A Coroner may give information about a person's conduct in a profession or trade, obtained while investigating a death, to a disciplinary body for the person's profession or trade if the coroner reasonably believes the information might cause the body to inquire into, or take steps in relation to the conduct.

DISCUSSION AND DECISION

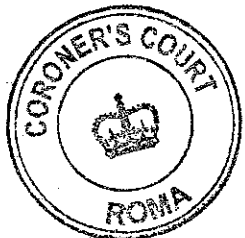
A further statement from Nick Francis was provided by Maurice Blackburn lawyers. That statement does not take it much further given the submission from Clayton Utz lawyers dated 23 October 2008. That submission says that the road in question, Strathblane Road was designed and constructed by the Bungil Shire Council for Origin Energy on private land (under authority of Petroleum lease 204). A number of photos and plans were attached.

At paragraph 7 of that submission those solicitors deal with the reported previous accidents. There does not appear to be any other accident on this road.

They say at paragraph 5 of the submission that, *the road was opened to restricted traffic under certain limited conditions prior to the accident and that temporary signage ("Steep Descent") and ("trucks use low gear") had been installed prior to the crest of the road at the time of the accident. Final signage, approximately 250 metres further down the initial incline, together with guide posts and railings, were attended as a normal completion activity.*

They say at paragraph 6; *In the premises, we do not apprehend that the roadway gives rise to public interest issues that warrant the cost and expense of an inquest. As noted above, pending the completion of the road works, the private road was opened as a restricted roadway under particular limiting conditions by the constructing Council. The final signage was installed as the road was completed (as one would expect). Prior to the incident in question, the deceased had driven down the same road on previous occasions.*

They conclude at paragraph 8, *Given that the likely cause of the accident appears to have been determined by expert report (defective trailer brakes), in the absence of any other comparable accident on Strathblane Road, there appears to be no need for an inquest to be held.*



Whilst this comment may or may not be so, it highlights the issue, namely, is there anything useful that can be said about the road that might prevent similar accidents occurring. There is no evidence before me which would suggest that any such comment should be made. On the contrary (also being an answer to what Mr Nick Francis asserts) the road has been completed with all adequate signage and protective guard rails and finishes.

Since it is now apparent that no other accident has happened on this road there does not appear to be any reason an Inquest should be held.

To consider the matter further would cause me to delve into the realms of civil liability which I cannot do.

For these reasons I do not intend to hold an Inquest.

FINDINGS

I make the following formal findings:

| | |
|---------------------------------------|--|
| The deceased person; was: | IAN CHARLES WILLS DOB 15 October 1952 |
| How the person died: | From injuries sustained in a motor vehicle accident |
| When the person died: | 13 January 2007 |
| Where the person died: | Strathblane Road, Injune QLD. |
| What caused the person to die: | The cause of death was due to massive soft tissue and bony injury. Scar was visible in the wall of the heart in keeping with healed myocardial infarction at least several months old. Evidence of acute myocardial infarction was not identified. Coronary arteries were affected by calcific stenotic atherosclerosis but not sufficient degree to be associated with sudden death. |



RECOMMENDATIONS:

Pursuant to section 46 of the Act, the following comments about *anything connected with a death investigated at an inquest that relates to, public health or safety; or the administration of justice; or ways to prevent deaths from happening in similar circumstances in the future.*

COMMENTS:

1 Nil



Orazio Rinaudo
Coroner
26 November 2008

