



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

**CITATION:** **Inquest into the deaths of Peter James  
MACZKOWIACK and Pauline Anne  
MACZKOWIACK.**

**TITLE OF COURT:** Coroner's Court

**JURISDICTION:** Rockhampton

**FILE NO(s):** COR 3548/06(6) & 3549/06(2)

**DELIVERED ON:** 14 May 2009

**DELIVERED AT:** Rockhampton

**HEARING DATE(s):** 18 & 19 March 2009

**FINDINGS OF:** Ms A Hennessy, Coroner

**CATCHWORDS:** CORONERS: Inquest – Epilepsy and Commercial  
Truck Driver Licensing

**REPRESENTATION:**

Assisting the Coroner	Constable D. Cox
Mr Sellin & Mr Burgess	Mr F Martin of Counsel (Kelly & Frecklington)

These findings seek to explain, as far as possible, how the motor vehicle incident occurred on the 27<sup>th</sup> December 2006 in which Mr and Mrs Maczkowiack died. Mr and Mrs Maczkowiack were driving south on the Bruce Highway, north of Marlborough, when a Nanango Removals truck, driven by Mr Donald MacFarlane, collided with their vehicle, killing them instantly.

As a result of the evidence in this matter, recommendations may be made regarding matters connected to the deaths with a view to reducing the likelihood of deaths occurring in similar circumstances in the future.

### **THE CORONER'S JURISDICTION**

1. The coronial jurisdiction was enlivened in this case due to the deaths of Mr and Mrs Maczkowiack falling within the category of “*a violent or otherwise unnatural death*” under the terms of s8(3)(b) of the Act. The matter was reported to a coroner in Rockhampton pursuant to s7(3) of the Act. A coroner has jurisdiction to investigate the death under Section 11(2), to inquire into the cause and the circumstances of a reportable death and an inquest can be held pursuant to s28.
2. A coroner is required under s45(2) of the Act when investigating a death, to find, if possible:-
  - the identity of the deceased,
  - how, when and where the death occurred, and
  - what caused the death.
3. An Inquest is an inquiry into the death of a person and findings in relation to each of the matters referred to in section 45 are delivered by the Coroner. The focus of an Inquest is on discovering what happened, informing the family and the public as to how the death occurred, but not on attributing blame or liability to any particular person or entity.
4. The coroner also has a responsibility to examine the evidence with a view to reducing the likelihood of similar deaths. Section 46(1) of the Act, authorises a coroner to “*comment on anything connected with a death investigated at an inquest that relates to – (c) ways to prevent deaths from happening in similar circumstances in the future.*” Further, the Act prohibits findings or comments including any statement that a person is guilty of an offence or civilly liable for something.
5. Due to the proceedings in a Coroner’s court being by way of inquiry rather than trial, and being focused on fact finding rather than attributing guilt, the Act provides that the Court may inform itself in any appropriate way (section 37) and is not bound by the rules of evidence. The civil standard of proof, the balance of probabilities, is applied. All interested parties can be given leave to appear, examine witnesses and be heard in relation to the issues in order to ensure compliance with the rules of natural justice. In this matter, the families of Mr and Mrs Maczkowiack appeared at the Inquest and the witnesses Mr Sellin (owner of Nanango Removals) and Mr Burgess (the co-driver of the

truck) were represented at the Inquest. The driver of the truck, Mr MacFarlane died before the Inquest was held (but not as a consequence of the incident).

6. I will summarise the evidence in this matter. All of the evidence presented during the course of the Inquest and the exhibits tendered have been considered even though some aspects of the evidence may not be specifically commented upon.

### **THE EVIDENCE**

7. Scott Meredith was a witness to the incident. He gave evidence that he left Rockhampton early on the morning of the incident, travelling north. He was following the Nanango Removals truck for a few kilometres over about a 10 minute period. The truck was not speeding but was travelling at about 85-90 kilometres per hour.
8. Mr Meredith has held a HR drivers licence for 10 years. He described the driving of the truck to be erratic, hitting the shoulder of the road, and crossing the centre line pretty regularly. He stated that the truck seemed to go ok for a bit and then the driving would be erratic again. The cabin and trailer were both moving erratically and the trailer was fishtailing a little. There appeared to be something wrong with the trailer on the truck so Mr Meredith backed off a bit and travelled further behind the truck. He stated that the truck and trailer were not under load and that the driving described was more than the usual movement of the vehicle and leaning of the truck around corners. He thought at the time that the manner of driving could be due to driver fatigue.
9. On one section of the road it was quite windy and the road was rough. As they were travelling around a corner, the truck was half way onto the wrong side of the road. Mr Meredith was about 50-60 meters behind the truck at that time. The truck swerved back and Mr Meredith saw an oncoming car try to correct its path and then there was a head-on collision. Mr Meredith stated that as the truck travelled from the incorrect side of the road to the correct side, the car was trying to move to avoid the truck. It moved toward its incorrect side of the road and the truck hooked hard left and steered straight into the car. The collision occurred on the centreline of the road. He could not recall seeing any brake lights ignite on the truck at any time, including during the collision.
10. Mr Meredith stopped immediately and rang 000 for help and then went to assist the occupants of the car. While he was there, the driver of the truck approached the car and Mr Meredith told him not to come over to the car. He said the driver had a blank look on his face, put his hand to his head and walked back to the truck. Mr and Mrs Maczkowiack were deceased and Mr Meredith was unable to render any assistance to them. Mr Meredith did not speak to the driver or anyone else at the scene other than that.

11. David Pike was travelling on the Bruce Highway that morning in the same direction as Mr and Mrs Maczkowiack, south from Sarina, but was some distance ahead of them. As he was about 10 minutes north of Rockhampton, a truck travelling in the opposite direction approached him on the incorrect side of the road. As Mr Pike's vehicle got close, the truck swerved back onto the correct side of the road and the trailer of the truck nearly hit his car. He looked behind and saw the truck snaking all over the road. His son was following in another vehicle, and, such was his concern, he checked on his son to make sure there was no incident with the truck. He stopped in Rockhampton for breakfast and later heard a radio report about the accident and contacted Police. There was no direct evidence that the truck was the one involved in this incident but the timing seems to fit.
12. Senior Constable John Shilton, then stationed at Marlborough, was the first officer to the scene. He spoke to the driver of the truck, Mr MacFarlane and the co-driver, Mr Burgess. Mr MacFarlane was in a state of shock but did not seem to be physically injured. He was given a direction about a breath test which he understood and took. It was negative. Mr Burgess had been asleep at the time of the accident and could not assist with any details. S/C Shilton examined the road and saw a gouge mark which he took to be the point of impact. He indicated that mark was just over the continuous white line in the centre of the road.
13. Mr Burgess was employed by Nanango Removals as a labourer. He had worked with Mr MacFarlane for some months prior to the incident. During the trip in which the incident occurred, Mr MacFarlane had driven the truck to Goomeri from Nanango, a drive of about 40 minutes. Mr Burgess drove to Gin Gin while Mr MacFarlane slept and then Mr MacFarlane drove 60km to South Rockhampton arriving at 5am. Mr Burgess drove for a short while to the transport pads just north of Rockhampton when Mr MacFarlane took over and Mr Burgess slept. He was still asleep when the accident happened near Marlborough.
14. Mr Burgess spoke to Mr MacFarlane after the collision and MacFarlane was not sure what had happened. He said "We just hit another car, I think we might have killed some people". He then got out of the truck and went to look at the other car and Mr Burgess said that it appeared that the shock of the incident then hit Mr MacFarlane. The Police arrived relatively quickly and no traffic had passed in either direction on the road before the Police arrival. Mr Burgess did not ever discuss the incident with Mr MacFarlane again after that time as he only saw him occasionally and those occasions were usually in public.
15. Sgt Sasha Roberts was the Traffic Incident Investigator who attended to the incident investigation. Sgt Roberts investigation revealed that the scene of the collision was on the Bruce Highway through a rural area with a speed limit of 100 kilometres per hour. The roadway was a single lane in each direction through a cutting with a curve in a westerly

direction with a slight rise approaching the cutting in each direction. The lanes were separated by a double white continuous line.

16. The Holden vehicle was located on the edge of the road facing in a north-easterly direction with extensive damage. The Isuzu truck and trailer were stationary at the northern end of the cutting, across both lanes facing northeast. The front end of the truck was damaged but the trailer was not. The trailer was empty.
17. The point of impact was at the southern end of the cutting with a gouge mark just inside the centre line in the southbound lane of the roadway. There were tyre marks and yaw marks on the road which indicated that the truck had crossed the centreline. There were no tyre marks indicating braking from either vehicle prior to the impact point, indicating little reaction time for either driver.
18. There were no defects detected in the vehicles and the weather conditions were fine. There did not appear to be any issues with the road surface which may have contributed to the incident. There did not appear to be any breach of the fatigue management guidelines in place for road transport in relation to this matter.
19. Sgt Roberts concluded that no fault for the collision could be attributed to Mr and Mrs Maczkowiack. There was no indication that there were any fatigue management issues relating to the driver of the truck due to numerous rest stops being taken in the journey and each driver had three days off prior to the incident.
20. A work mobile and Mr Mac Farlane's personal mobile would have been in the truck at the time of the incident but neither were inspected and no checks of phone records made to see if there were any calls or text messages at the time of the incident.
21. Mr MacFarlane was breath tested at the scene with negative result, but a blood test sought by Sgt Roberts was not taken for an unexplained reason. Mr MacFarlane was later approached to participate in a record of interview which he refused on legal advice. He was charged with Dangerous operation of a Motor Vehicle Causing Death. This charge was still before the Court when Mr MacFarlane died of unrelated causes on 22/12/07.

### **Design of truck for "two-up" driving**

22. Sgt Roberts formed the conclusion from her enquiries that the Isuzu truck was not designed to accommodate two drivers to share the driving (called "two up" driving). The accommodations include sleeping facilities in the cabin for the second driver. However, at Inquest, Nanango Removals produced certificates to show that the truck had been modified in accordance with the regulations to provide proper accommodation for two drivers.

## **Department of Transport Investigation of Nanango Removals**

22. Officers from Queensland Transport had previously conducted an interview with Mr Sellin regarding various issues. Following that Department's investigation, a prosecution was not commenced. Mr Cupples of Queensland Transport gave evidence that a search warrant was issued in August 2007 and inspectors went to Nanango Removals and seized documents relating to fatigue management upon which a prosecution would be founded. Before the investigation was complete, a decision was taken by Queensland Transport to discontinue due to an adverse District Court ruling on search warrants similar to the one employed in that investigation. As the material seized under the warrant formed the bulk of the evidence for the prosecution, the matter was withdrawn. That investigation did not relate specifically to this incident.

## **Epilepsy Issue**

23. On 23 September, 2008, Sgt Roberts conducted an interview with Mr Sellin, the owner of Nanango Removals. Mr Sellin indicated that he was aware of Mr MacFarlane's epilepsy. Mr MacFarlane had been cleared to drive by the company's insurer and Mr Sellin was under the impression that there was therefore no issue with him driving. Mr Sellin indicated that Mr MacFarlane did not take sick leave and was an extremely good employee. He had never witnessed Mr MacFarlane taking any fits or seizures.
24. Dr Ogle is a general practitioner in Kingaroy and was Mr MacFarlane's doctor. She gave evidence that Mr MacFarlane had epilepsy his whole life. Several years before the incident, Mr MacFarlane had gone through a period of the epilepsy being quite uncontrolled and he was hospitalised for a period of time. He was prescribed new drugs and they achieved control of the condition.
25. At the time of the incident, Mr MacFarlane was taking Dilantin. Dr Ogle advised that the drug can cause a person to be slightly groggy and can have an adverse affect on balance and concentration. Mr MacFarlane was also taking Lamictil which was an additional drug to control seizures. That drug has few side effects but the commonest one is drowsiness.

## **Driver Licensing Issue**

26. Mr Sellin participated in an interview with Sgt Roberts and provided the history of Mr MacFarlane as an employee of Nanango Removals. Mr MacFarlane started with the company on 29 June 2006, shortly after Mr Sellin purchased it. His application form disclosed that he had epilepsy. His transport records indicated that he held an MR class licence (suitable for the truck he was driving in this incident) and that he was a controlled epileptic with a current medical certificate (as of 8/6/06). He had held such a licence since 2005. Medication being

taken by Mr MacFarlane for epilepsy was also noted on the Employee Checklist. There was a suggestion by Mr Sellin that at the time of obtaining the licence, Mr MacFarlane may not have been driving commercially (as he had indicated not commercial usage on the forms) but could have started driving commercially at a later time, possibly for his sister's company.

27. He stated that the usual procedure in hiring drivers was to obtain a traffic history of the driver from Queensland Transport and forward that to the company's insurer. Once cleared by the insurer as suitable, the driver could be hired. Mr MacFarlane was cleared to drive by the company's insurer. The insurer required six monthly updates of traffic histories for each driver. Such a period had not expired for Mr MacFarlane at the time of this incident.
28. Mr Sellin described Mr MacFarlane as a great fellow who gave no problems to the business as an employee. He was a reliable employee, polite, well-mannered and was not the subject of any complaints. Mr MacFarlane was always healthy and Mr Sellin did not witness any health issues at work. Mr Sellin stated that following this incident, Mr MacFarlane suffered from post traumatic stress disorder.
29. Mr Sellin was aware that Mr MacFarlane suffered from epilepsy (or "something to do with that") and knew that the insurer was pretty strict on such issues in approving drivers. He had not had any discussions with Mr MacFarlane concerning his condition or the effect it had on him. Mr Sellin relied on the fact of his being licensed and the insurer's attitude to assume that there was no potential issue for Mr MacFarlane at work.
30. To say that Mr Sellin was heavily dependent on the insurer's opinion in relation to the suitability of Mr MacFarlane to drive would be a significant understatement. Mr Sellin had no conversations with Mr MacFarlane to see whether his condition and medication might impact on his work or his day to day operations. In addition to this being important information for an employer in planning rosters etc, one would think that from point of view of concern for one's employees as people that such discussions would take place. In the event that there was a concern on behalf of the employer, an authority to release medical information would have facilitated Mr Sellin being able to speak with Mr MacFarlane's doctors about his concerns.
31. Mr Burgess was a labourer who was working with Mr MacFarlane at the time of the incident. He had worked with Mr MacFarlane for some months. He had heard from other people that Mr MacFarlane had epilepsy and MacFarlane confirmed that. Mr Burgess did not witness Mr MacFarlane have any difficulties at all. He commented that he was a very fit person. Mr Burgess knew that Mr MacFarlane took medication for the illness but was not aware how it affected him and did not ask any questions in that regard.

32. Dr Ogle stated that a licence issued to a person suffering from epilepsy would be issued on the advice of a neurologist and that the person would need to be compliant with their medication regime. Dr Ogle had not completed any forms for Queensland Transport on behalf of Mr MacFarlane and was not aware of his licence status.
33. Dr Ogle stated in evidence that she would have had concerns if she had known that Mr MacFarlane was driving commercial trucks due to his previous history of uncontrolled epilepsy, despite Mr MacFarlane suffering no seizures since 2002. She said that she would not have endorsed him to drive commercially and would have referred Mr MacFarlane to a Neurologist for assessment for licensing purposes. She believed that Mr MacFarlane should have been reviewed annually by a neurologist for licensing purposes.
34. Dr Ogle stated that Mr MacFarlane had no seizures in the period after the accident and suffered from post traumatic stress disorder and anxiety as a result of what happened.
35. Mr Stewart Gardiner, Manager of Client Service Delivery for Central Queensland, Queensland Transport, gave evidence in relation to the procedure for licensing for truck drivers ("M" class licence). After answering the road rules questionnaire, a practical test is undertaken by the application. A driver's licence application form is completed and the person's licence is upgraded. At the application stage, there is no reference to whether the driving will be for commercial purposes. Questions on the application address medical fitness of the driver. If those questions are answered in the affirmative then a medical certificate is required.
36. In Mr MacFarlane's case, the application completed on 3/5/05, declared the condition of epilepsy and was accompanied by a medical certificate signed by Dr Beattie, a general practitioner. The Queensland Transport position is that if the general practitioner feels that a specialist opinion is needed for this purpose that it is up to the doctor to arrange that. A certificate signed by a general practitioner is sufficient. In this case, the medical certificate indicated that the licence was for non-commercial purposes and Mr MacFarlane was medically fit to drive unrestricted. The medical certificate was required to be updated in 12 months time.
37. At the time of this application in 2005, the requirements were that Queensland Transport only needed to be notified of a medical condition on renewal of licence. In March 2006, new requirements were implemented requiring Queensland Transport to be advised immediately when a medical condition arose.
38. In circumstances where a non-commercial licence was issued and a driver wished later to drive commercially, the situation should have

been that the driver be medically re-assessed as fit to drive commercially where stricter medical rules apply for fitness. Those criteria include mandatory seizure free time periods. This situation is described in the information booklet for licensing.

39. Mr MacFarlane made further application for the M class licence on 8/6/06 with accompanying medical certificate. That application indicated both commercial and non-commercial driving. Queensland Transport records indicate that the doctor was telephoned to clarify the situation and he confirmed the application related to commercial driving. The licence was issued on the basis of Mr MacFarlane being medically fit with no conditions required. Mr MacFarlane's licence was renewed further on 2/3/07 for commercial driving and noting continuing treatment for epilepsy.
40. The official position was that Mr MacFarlane was licensed to drive a commercial vehicle under an MR licence as at December 2006.
41. During the early stages of her investigation, Sgt Roberts made checks with the Department of Transport regarding Mr MacFarlane's driver licence. Initial enquiries led Sgt Roberts to believe that Mr MacFarlane was not entitled to drive a commercial vehicle due to his medical condition and licence limits. This aspect of the investigation was very poorly investigated. Incomplete documents and informal advices from Departmental officers were relied upon without being formalised and checked. Significant enquiries were required to be conducted at my direction during the course of the Inquest with regard to this issue. If this issue had been properly investigated then an Inquest may not have needed to be held at all or at least it would have taken less time.

### **Causes of the Incident**

42. A report dated 4/5/07 from Dr Morley, Neurologist, was tendered in evidence. Dr Morley indicated that if Mr MacFarlane had a partial seizure, he would have been conscious but not necessarily have had an awareness that the seizure had occurred. Further, it seems that despite being on medication, Mr MacFarlane could still have been having partial seizures and not have been aware of it. It would also not have been apparent to others if a partial seizure occurred.
43. In his report, Dr Morley went on to state that it was significant that Mr MacFarlane did not see the car before the incident. Information from family members to the Doctor indicated that Mr MacFarlane had "occasional brief fadeouts" which he was not aware of. The doctor concluded that taking into account Mr MacFarlane's seizure history, it was likely that his condition was not completely controlled.
44. Dr Ogle stated that on the basis of the description of Mr MacFarlane's condition by Dr Morley and taking into account the facts in this matter, that it is possible that at the time of the incident Mr MacFarlane had a partial seizure. The doctor stated further, though, that often after a

seizure, the person will feel postictal effects, being drowsiness or fatigue, for a period of time (up to an hour) and Mr MacFarlane did not report this occurring.

45. Dr Ogle further commented that Mr MacFarlane had complained to her on several occasions after the accident that he felt that he had fallen asleep at the time of the incident and that the facts were also consistent with that possibility.
46. Dr Ogle was sure that a neurologist should be the medical practitioner to sign off on a person applying for a commercial driver's licence.

### **Changes to Procedures at Nanango Removals since the incident**

47. Since the incident, Mr Sellin has "clamped down" on the procedures in the business regarding checks on drivers. In addition to checking on traffic history, he also checks on health conditions and requires drivers to obtain documentation from Queensland Transport to confirm that they are correctly licensed. However, Mr Sellin admitted still being heavily reliant on Queensland Transport and the insurer in his selection process for drivers.
48. During the course of their investigation, Queensland Transport offered classes to the business on the regulations. Mr Sellin has followed that offer up on numerous occasions but has been told that the classes cannot be conducted until the new work diaries are released by Queensland Transport.

### ***FINDINGS REQUIRED BY S45(2)***

I am required to find, so far as has been proved on the evidence, who the deceased persons were and when, where and how they came by their death. After consideration of all of the evidence and exhibited material, I make the following findings:

**Identity of the deceased persons**– The deceased persons were Peter James MACZKOWIACK and Pauline Anne MACZKOWIACK.

**Place of death** – Mr and Mrs Maczkowiack died at the scene of the motor vehicle incident on Bruce Highway via Marlborough.

**Date of death** – Mr and Mrs Maczkowiack died on the 27<sup>th</sup> December 2006.

**Cause of death** – Mr and Mrs Maczkowiack were driving south on the Bruce Highway, south of Marlborough in Central Queensland, in their Holden Vectra sedan. Their vehicle collided head on with an Isuzu truck and trailer from Nanango Removals driven by Donald MacFarlane. They died instantly. No fault is attributed to Mr and Mrs Maczkowiack for the collision. The collision occurred, possibly as a result of the driver suffering a partial epileptic seizure or due to inattention or falling asleep at the wheel. It is more likely the former given Mr MacFarlane's medical history, the circumstances of his erratic driving leading up to the incident, and the opportunities for rest that Mr

MacFarlane had in the days and hours before the collision. Mr MacFarlane was charged with Dangerous Driving Causing Death but died of an unrelated condition before the charges could be finalised.

Mr and Mrs Maczkowiack both died from multiple injuries due to or as a consequence of motor vehicle trauma.

### **RECOMMENDATIONS**

In an effort to avoid similar deaths occurring in the future, I recommend:

1. **That the owners of Nanango Removals ensure that they pay more attention to the medical conditions of their drivers by having appropriate discussions with the drivers concerning their health and the effects that medical conditions and/or medication may have on their ability to perform their work safely.**
2. **That Queensland Transport review the medical requirements in relation to licensing of commercial truck drivers with epilepsy with a view to requiring medical certificates to be issued by a Neurologist rather than a General Practitioner.**

I thank all of the parties for their assistance in the course of the inquest and express my sincere condolences to the families of Mr and Mrs Maczkowiack for their loss. I close the Inquest.

A M Hennessy  
Coroner  
14 May 2009