

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2007 0708

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: DAVID ROBERT JUDGE MCVEA

Delivered On: 2nd October 2014

Delivered At: 65 Kavanagh Street Southbank VIC 3006

Hearing Dates: Between the 5 December 2011 and 12 December 2011

Findings of: PETER WHITE, CORONER

Representation: Ms S Hinchey of Counsel appeared on behalf of VicRoads

Police Coronial Support Unit Leading Senior Constable R Antolini.

I, PETER WHITE, Coroner having investigated the death of DAVID ROBERT JUDGE MCVEA

AND having held an inquest in relation to this death between the 5 December 2011 and 12 December 2011

at Level 11, 222 Exhibition Street, Melbourne 3000

find that the identity of the deceased was DAVID ROBERT JUDGE MCVEA

born on 16 March 1944

and the death occurred 21 February 2007

at Maroondah Highway at Coldstream 3077

from:

1 (a) Multiple Injuries (Motor Vehicle Impact–Passenger)

in the following circumstances:

Background

1. David McVea was an Irish national who arrived in Australia on the 13th of February 2007 to visit his daughter Rachel McVea, who had settled in Australia in 2001. Rachel had her first day off work on 21 February 2007. In the morning, she took her father in her Peugeot 306 motor vehicle¹ to South Melbourne Market and in the afternoon the pair visited the Healesville Sanctuary, departing from the Sanctuary at approximately 5.30 pm. Thereafter they went to a hotel in Healesville, where they sat outside until it started to rain. They left the hotel to head back in the direction of Coldstream at around 6.30 pm, as the rain got heavier.
2. Jason Lowe began working as a delivery driver for Trade link in June 2000. In February 2005 he transferred to the Ferntree Gully store and some 12 months later he was appointed as the Assistant Manager. On the afternoon of 21 February 2007 there was a delivery to be made in Marysville, which Jason determined to undertake after hours to allow the usual delivery driver to complete local deliveries during the day. He left work at around 5.45pm driving a Trade link vehicle, a Toyota Hilux 4 x 2 and later turned on to the Maroondah Highway at Lilydale, passing through Coldstream, heading towards Ferntree Gully. It is relevant that at the time both rear tyres on the Toyota utility lacked serviceable tread depth which rendered his vehicle unroadworthy.²

The Accident

3. On 21 February 2007 at approximately 6.40 pm, Mr McVea was the front seat passenger in a Peugeot vehicle driven by his daughter, travelling west along the Maroondah Highway heading towards Coldstream. At the same time, Mr Lowe was driving the Toyota utility in the opposite direction behind a semi-trailer and travelling at 70 kmph. The speed limit for the Maroondah Highway at this point was 100kph.³

¹ The vehicle in question was three years old and found on examination to be in roadworthy condition.

² Both rear tyres were worn to a tread depth of 4mm on the outer edges and were down to the minimum tread depth indicator bars in the centre of each tyre.

³ See transcript from page 43

4. At the start of an over-taking lane at a point on a bend near Stringybark Creek, past Coldstream, Mr Lowe accelerated to 90kph with the intention of passing the semi-trailer. The road surface was wet from recent rain. There was no other vehicular traffic in the area. The nearest intersecting road was St Hubert's lane.
5. It was in these circumstances that the Toyota utility driven by Mr Lowe lost traction with the road surface and rotated clockwise across double white lines into the path of the oncoming Peugeot driven by Ms McVea, whereupon a collision occurred. As a result, Mr McVea sustained multiple injuries on impact, from which injuries he died at the scene. Both Ms McVea and Mr Lowe suffered serious injury.
6. Senior Sergeant Bellion an expert vehicle and accident scene investigator, examined the highway at the place of the accident on 22 February 2007.

Sergeant Bellion⁴

7. At the scene, he found the bitumen on the northeast bound traffic lane surface, the road surface driven on by Mr Lowe,

'suffering from excessive bitumen binder being present. The bitumen binder had become soft and was squelching when vehicles drove over it. Car tyres and my boots when I walked on it left an imprint in the bitumen. There was very little aggregate or stone left in the surface and what stone was left had been flattened and had no abrasive or rough micro texture left.

I conducted a series of skid tests on the road in dry and wet conditions. All skid tests were conducted from 40kph or less. In all skid tests the vehicle when tested went out of control and finished either completely sideways or nearly completely sideways.

The road surface was of poor quality and in my opinion in need of urgent repair, due to low friction properties on the left hand, north east bound lane in conjunction with the higher friction of the overtaking lane and the grade and cross fall effects on vehicle traction.'

And further,

'It is my opinion that the low friction properties of the north east bound lane in conjunction with the wet conditions, the higher friction of the overtaking lane, the grade and cross fall effects of the road, vehicle acceleration and steering to the right at a speed of around 90kph during the initial overtaking manoeuvre, were factors that led to the loss of control of the Toyota Utility.'

The underlining is mine.

VicRoads management prior to the collision

8. The section of the highway where the collision occurred had been the subject of several complaints from members of the community prior to the date of the accident. One such complaint was made by a Mr Chris Anthony.

Chris Anthony

⁴ See statement of Sergeant Bellion of the Major Collision Investigation Unit at exhibit 6 and transcript from page 43.

9. *'Around June and July 2005, I had three incidents of my vehicle losing traction in the vicinity of an overtaking lane heading towards Healsville after Coldstream. On each occasion, it was in the rain. The first time it was in the left lane and the cruise control was on. I was driving a standard automatic VX Commodore. As the car started to go up the hill, the rear wheels lost transaction. I was towing a trailer and the rear end swung to the left. I corrected it and continued.*
10. *The other two occasions were very similar to this but I was not towing a trailer. I was concerned that the road surface was to blame. I began sending emails to VicRoads. At the request of Police I have reconstructed the correspondence into chronological order to form one document –ninety nine pages in length. On each occasion on the road surface, the car slipped even though I had new tyres on the car.*⁵
11. At the time of Mr Anthony's complaint on 23 June 2005, Vic Roads had responded to this complaint by conducting a site examination. As a result, VicRoads had sought funding for a high pressure water retexturing works or a,

'water blasting repair,'

 to be carried out at the site.⁶ As an interim measure VicRoads had also installed,

'slippery when wet,'

 signage immediately adjacent to the highway, near the collision.
12. It is also relevant however that there was no change temporary or other, made to the permissible speed limit over the same section of highway.⁷
13. The application referred to above had in fact been made in December 2004 for the 2005-2006 financial year, but was unsuccessful. VicRoads again submitted an application for the work to be funded for the 2006-2007 financial year, which application was again unsuccessful. In August 2006, despite the funding bids being unsuccessful, Vic Roads re-arranged its periodic maintenance budget to include a water-blasting repair of the relevant part of the highway. The works were due to commence in January 2007, but were delayed by a failure of the contractor's equipment.⁸
14. On 10 and 11 January 2007, VicRoads SCRIM⁹ testing showed that the road surface in the north east direction, the road surface occupied by the vehicle driven by Mr Lowe on 21 February 2007, was below the investigatory level, and was therefore in need of immediate repair.

⁵ See statement of Mr Anthony with attached emails and notes sent to Vic Roads at exhibit 5. Mr Anthony was 37 years of age at the time of making his statement, an experienced driver and a local resident.

His emails and phone calls dating from June 2005, concerning the road surface at what later became the accident scene now under examination, were received and the dangerous conditions at that place were specifically acknowledged by the VicRoads employee Jim Morse. I further note that in one such email Mr Morse stated that Vic Roads had been aware of the dangers since 5 September 2005, and were now seeking to include remedial work at the scene 'in future maintenance programs'.

⁶ See statement of Duncan Elliot at exhibit 14 page 3.

⁷ See discussion in Finding section below.

⁸ See statement of Duncan Elliot *ibid*.

⁹ SCRIM (Sideways force Coefficient Routine Investigation Machine) is a self contained machine that measures the surface friction of a wet road under standard conditions. Testing is usually undertaken at a constant speed of 50km/hr and both wheel paths are tested simultaneously.

15. On 17 February 2007, VicRoads installed a variable message board in the vicinity of the overtaking lane advising that works were due to commence on 23 February 2007, that is two days after the accident under investigation.

VicRoads management since the collision.

16. From 23 February 2007 to 6 March 2007, VicRoads conducted the re-texturing high pressure water blasting that had earlier been planned. Subsequent SCRIM testing established that the re-texturing works had brought the surface on both carriageways, above the investigatory level. In June 2007, further SCRIM testing established that the road surface on both carriageways remained above the investigatory level.
17. In May 2008, VicRoads conducted further re-texturing high pressure water blasting and subsequent SCRIM testing established that the road surface remained above the investigatory level.¹⁰
18. I also note that in 2006, VicRoads introduced the Enquiry Tracking System (ETS) to replace the Customer Action Request Engine (CARE) database to record any reported public concern regarding the road network.
19. ETS allows VicRoads to identify the location of complaints using a map-based system,¹¹ whereas under the old CARE system complaint recording was focused upon information that the call taker gave to a regional officer who passed it on to a separate office and an 'action' officer.
20. Today all such complaint recording is registered on the ETS and available across the region to all interested persons, and not just to an action officer. This new policy initiative resulted from the finding and recommendation of my colleague Coroner Heather Spooner in the matter of the Inquest into the death of Sabrina Michelle Brady, which again concerned a fatality on a Victorian road resulting from a road surface with little surface friction. In addition to the Register of Flushed Surfaces, the VicRoads Metro South-East Region Director, now receives a monthly report about slippery when wet issues on road surfaces within the region. The report details the location of the site, the nature of the complaint and VicRoads response, any customer interaction and any accumulation of such interaction that has taken place in respect of the site.¹²
21. It is not in dispute that despite the efforts of Mr Anthony and others, that VicRoads did not lower the 100 kph maximum speed at or near the accident location, prior to its occurrence. Mr Duncan Elliot now the Regional Director for VicRoads South East Region, testified that it is likely that the speed limit was not reduced because the risk of collision arising out of the road surface issue was primarily present in wet and not dry conditions and that there are no regulatory speed limits that apply in only wet conditions.¹³

¹⁰ Ibid

¹¹ See transcript page 308.

¹² See Coroners Finding 1719 of 2011. In response to the recommendations of *Coroner Heather Spooner*, Vic Roads also altered the Section 750E standard specification section in its maintenance contracts, which now specifically refers to hazard identification of slippery surfaces by inspection officers.

This means that inspection officers on the network as well as contractors are responsible for reporting low skid resistance involving slick surfaces, which is expected to facilitate an improvement in VicRoads own system response in such situations.

¹³ See transcript pages 265-267.

Finding

22. I am satisfied that the death of Mr McVea occurred on the Maroondah Highway near Coldstream on 21 February 2007, shortly after 6.40 pm, in the circumstances set out above.
23. I also find that the evidence before me does not establish that the driving of Mr Lowe or Ms McVea caused or contributed to his death.¹⁴ I further find that the death was preventable and that more should have been done by VicRoads South East Region, to notify road users of the increased danger in the area caused by the changed condition of the road surface.
24. I additionally find that the road surface friction danger so presented was always likely to be exacerbated by a combination of high speed and localised rainfall. It is also the case that this combination of circumstances was predictable, and should have been met by remedial works undertaken as a matter of urgency, and in the interim, by an immediate reduction of the permissible speed limit on this area of the Maroondah highway.
25. The evidence that a temporary reduction of the speed limit was not considered because wet surface danger is not distinguished from dry surface danger in setting permissible road speed limits, is also troubling.
26. I consider instead that where danger and a significant added risk is associated with a need to repair a road surface and repair is delayed for any reason, (budget approval included), that there is an immediate need for a response albeit a temporary response, which will seek to reduce the likelihood of an accident, while other relevant arrangements are being made.
27. While I am unable to say whether taking such a precaution in regard to the applicable speed limit in this case, would have saved Mr McVea, Ms McVea, Mr Lowe and their families, from the consequences of this tragedy, I find that all road users were entitled to be notified that the existing 100kph speed limit was no longer safe.
28. I further find that the failure of VicRoads to inform drivers that 100kph was not a safe speed limit, took from Miss Lowe the opportunity to drive defensively in the prevailing conditions and the opportunity to lessen the possibility that she would lose control of her vehicle.

RECOMMENDATIONS

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

1. I recommend that VicRoads adopt a working protocol, which would authorise Vic Roads Regional Directors to impose temporary speed limits, in the vicinity of known road friction black spots, such as that which had been identified in this instance.¹⁵
2. I also recommend that emergency funding be made available for expenditure at the exclusive discretion of VicRoads Regional Directors, in respect of road surface friction repair issues, to be applicable in such circumstances to be determined and published as part

¹⁴ There is no evidence on the matter of tyre traction and accordingly, I do not exclude the possibility that the poor condition of the rear tyres on the Toyota utility may have been a contributing factor.

¹⁵ In 2011, VicRoads began a review of speed limits in Victoria. At the time of inquest, it was not known whether the VicRoads review addressed the issue of the efficacy of reducing speed limits in circumstances where road friction black spots have been identified, but not repaired.

of an operational procedure, by the VicRoads Chief Executive in consultation with the Director of Operations.¹⁶

I direct that a copy of this finding be provided to the following:

The family of David McVea

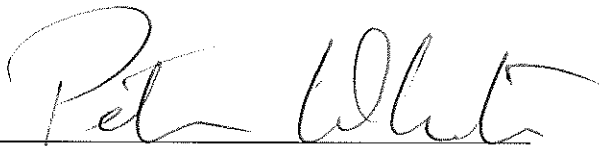
The Chief executive of VicRoads

The Regional Director South East Region VicRoads

Mr Jason Lowe

Mr Chris Anthony

Signature:



PETER WHITE

CORONER

Date: 2 October 2014



¹⁶ I have examined the arguments offered against the provision of an emergency funding authority to Regional Directors, but find myself satisfied that the public interest requires an ability for such persons to be able to respond immediately to initiate repair work outside existing constraints, in such circumstances as were presented in this case.