

IN THE CORONERS COURT  
OF VICTORIA  
AT SWAN HILL

Court Reference: 2213 / 2011

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 60(2)*

*Section 67 of the Coroners Act 2008*

I, Jennifer Tregent, Coroner having investigated the death of Elaine O'Driscoll

without holding an inquest:

find that the identity of the deceased was Elaine O'Driscoll

born on the 26<sup>th</sup> of April 1983

and the death occurred on the 18<sup>th</sup> day of June 2011

at a location on the Kenley Road prior to the intersection with the Murray Valley Highway

**from:**

1 (a) Motor vehicle accident related chest injuries

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

The deceased Elaine O'Driscoll was 28 years of age and an Irish national who was on a working holiday in Australia at the time of her death. On the morning of the 18<sup>th</sup> of June 2011, Ms O'Driscoll was collected from her then residence in Swan Hill.

Ms O'Driscoll was collected, along with five others, by Vinu Varkey who was driving a Nissan mini van. The group were travelling to a farming property located approximately an hour and fifteen minutes from Swan Hill. They arrived at the farm at about ten past eight and commenced work picking mandarins.

The group finished working some time shortly after 4.00pm and got into the Nissan van for the drive back to Swan Hill. Mr Varkey was again driving this van. Ms O'Driscoll was seated on the passengers side, middle seat next to the window. There were seat belts fitted but not all passengers were wearing those provided, Ms O'Driscoll being one.

The vehicle travelled west along Kenley road, which is approximately 5 kilometres from the Murray Valley Highway intersection. Kenley road is a narrow bitumen road approximately 4 metres wide, with a 2.4 metre gravel verge on either side which falls away to mallee scrub and small trees. The speed limit is 100km per hour and is characterised as being winding in sections with several "S" bends along its course.

The vehicle was approximately 600 metres from the Murray Valley Highway intersection. As the driver came out of the last "S" bend he noticed a large truck approaching. The truck was between 23 metres and 26 metres long and is referred to as a "B" double. Due to the limited extent of the bitumen surface it is not possible for two vehicles to pass and remain on the bitumen. In recognition of this fact Mr Varkey moved the vehicle he was driving on to the gravel verge, as did the driver of the truck. At the time, Mr Varkey estimates he was travelling between 80 to 90 km per hour and was applying the brakes to slow the vehicle further.

After the truck had passed, Mr Varkey started to move his vehicle back onto the bitumen surfaced road when he lost control of the vehicle and skidded 72 metres in the gravel before over correcting in an attempt to get the vehicle back on the bitumen. The vehicle skidded sideways for 11.5 metres and as it left the bitumen, the side of the van dug into the gravel causing the vehicle to roll twice travelling 22 metres before coming to rest upright 6 metres from the road.

The police officer investigating this matter, Senior Constable Ian Slorach attended the scene shortly after the collision. He described the Nissan van as having received some damage to the roof but overall the damage was not extensive.

At some point during the roll over of the vehicle the deceased has been ejected from the van and become trapped under the front passenger side wheel. Prior to the collision, as mentioned previously, the deceased was not wearing a seat belt and neither were any of the rear passengers. The investigations by S/C Slorach of the scene indicated the deceased was most likely to have exited the vehicle through the shattered front windscreen during the rollover and this is how she became trapped under the passenger front wheel.

The other occupants of the vehicle, together with the driver of the B-double truck who had arrived to offer assistance, managed to push the vehicle off the deceased who was conscious and breathing at the time. Ambulance officers arrived and treated Ms O'Dricoll for approximately ten to fifteen minutes before she was pronounced dead at the scene as a result of the injuries she had sustained.

Another female occupant was also ejected from the vehicle and was transferred to the Swan Hill hospital in a critical but non life threatening condition. The remaining occupants all received minor injuries, but did not require hospitalisation.

The deceased was taken to the Swan Hill hospital where her death was certified.

The vehicle involved in the collision was a 1986 Nissan Mini bus capable of seating up to 13 passengers. It was provided by their employer, Murray Valley Agricultural Contracting, and was in a road worthy condition with good tyres. Mr Varkey was the holder of an Indian driver's licence and a disqualified Victorian Learners Permit. He was charged by police for licensing offences, but returned to India several days before the scheduled court hearing. It is concerning that his driving credentials were not adequately reviewed by his employer before being tasked to drive his fellow workers to and from the worksite.

It appears clear that driver error caused the collision, but death may have been avoided had the deceased been wearing the seat belt as fitted. The outcome of this collision could have led to more fatalities given the majority of the occupants in the vehicle had not been wearing seat belts at the time.

It is these sentiments which are echoed in the statement of Senior Constable Slorach. Senior Constable Slorach comments of his concern, and that of other police in the area, that it is common for itinerate workers who are being transported to and from work on local farms to fail to comply with seat belt regulations. He further noted that it is frequently the preferred method of transport to use mini vans. It is also from my own experience not uncommon for such a type of higher set vehicle to be more prone to roll in circumstances such as those outlined above.

It is unfortunate in this case, as with many other motor vehicle collisions that result in death or serious injuries, that the mandatory requirement of utilising seat belts is still not being complied with. That requirement was as a result of recommendations that flowed from Coronial enquiries and ultimately formed the law in the State of Victoria in 1970. In addition, there are extensive road safety campaigns utilising all forms of media and road side signage to re-enforce the message. It is under these circumstances that it is difficult to see how any further recommendations could assist in emphasising the need for seat belt use compliance.

There are several areas, however, where there is clearly scope for further efforts to improve the safety of working holiday makers and itinerant workers.

A 2007 horticultural development "Masterplan" in the Mid-Murray region identified a range of road safety issues,<sup>1</sup> particularly in the vicinity of large orchard developments.

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<sup>1</sup> Swan Hill Rural City Council - Horticultural Development in the Mid-Murray Region: Community Issues Masterplan, Final Report September 2007, RMCg Consultants.  
[http://www.swanhill.vic.gov.au/services/forms/images/Final\\_Validated\\_Issues\\_Paper\\_reduced1\\_28\\_September\\_2007.pdf](http://www.swanhill.vic.gov.au/services/forms/images/Final_Validated_Issues_Paper_reduced1_28_September_2007.pdf) - accessed 4 April 2012.

Specific concerns included movement of trucks entering and exiting the highway network, and the culturally-diverse nature of the workforce who may not be aware of their road safety obligations. The plan noted that “*appropriate safety measures could include sealing shoulders along left hand carriageways in close proximity to property entrances of the highway*”, and that community road safety education programs for people born overseas have been undertaken by VicRoads in the area, and that they should continue.

It also identified that freight activity in horticultural areas is expected to increase significantly over the next decade, along with increased labour needs. Clearly there is scope for local planning authorities, industry and VicRoads to closely examine the adequacy of the current road network that services large agricultural developments to manage the potential conflict between freight and other road users, including agricultural workers.

Horticultural producers in regional Australia rely heavily on itinerant seasonal labour for harvesting. The Commonwealth Department of Education, Employment and Workplace Relations, through Job Services Australia, fund the Harvest Labour Service, a national network of private employment brokers who match workers to primary producers or to labour hire companies. While it is not known the degree to which this Service is representative of the agricultural labour hire sector, it does offer the opportunity to provide education and guidance to labour hire companies and host employers in the network.

The above recommendations will be forwarded to the appropriate authorities for consideration.

#### \*COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death:

WorkSafe Victoria have developed extensive guidance for labour hire companies to assist them in meeting their occupational health and safety obligations. The 2005 *Inquiry into Labour Hire Employment in Victoria* by the Victorian Parliament identified that many small labour hire companies, particularly those with transient employees, are not easily “visible” to the occupational health and safety regulator.<sup>2</sup> While the circumstances of this matter largely involve road safety, I would encourage WorkSafe Victoria to consider whether more needs to be done in regards to smaller labour hire companies who contract out horticultural labour, particularly in circumstances where “self-drive” transport arrangements are provided.

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<sup>2</sup> *Inquiry into Labour Hire Employment in Victoria – June 2005*. Economic Development Committee, Parliament of Victoria.

## **\*RECOMMENDATIONS**

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

1. That Swan Hill City Council engage with VicRoads and the local horticultural industry to review the need for road infrastructure upgrades in areas adjoining large horticultural developments to appropriately manage the potential conflict between freight vehicles and passenger vehicles transporting workers.
2. That the Commonwealth Department of Education, Employment and Workplace Relations provides information through the Harvest Labour Service to participating workers, labour hire companies and host employers regarding basic road safety in Australia, particularly the need to wear seatbelts.

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

The Family of Elaine O'Driscoll

S/C Ian Slorach

Murray Valley Agricultural Consulting, Mr Zoyeb "Afrika" Yamani.

Job Services Australia, Commonwealth Department of Education, Employment and Workplace Relations

The Hon. Bill Shorten MP, Commonwealth Minister for Employment and Workplace Relations, Financial Services and Superannuation

Victorian Farmers Federation

MADEC Pty Ltd, Swan Hill

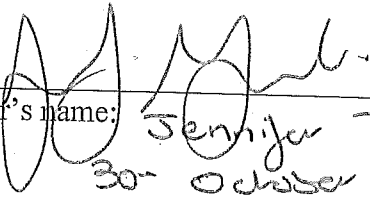
WorkSafe Victoria

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

VicRoads

Swan Hill Rural City Council

Signature:

  
Coroner's name: Jennifer Tregent  
Date: 30 October 2012.

