

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court Reference: 2490/2009

In the Coroners Court of Victoria at Shepparton

I Ms Stella Stuthridge, Coroner having investigated the death of:

Details of deceased:

Surname: RIAL
First name: Jock William Brunton
*Address: Kooyonga Chapel Winery- RMB 2369
Samaria RD Moorngag VIC 3673

AND having held an inquest in relation to this death on 6th July, 2010

at Benalla

find that the identity of the deceased was Jock William Brunton RIAL

and death occurred on 16/5/2009 at Moorngag

from

1a INJURIES SUSTAINED IN MOTOR VEHICLE ACCIDENT (PASSENGER)

I make the following findings :

The *Coroners Act* 2008 prescribes my functions. This statutory role is investigative and inquisitorial rather than adjudicative and adversarial. A coroner must find, if possible, the identity of the person, the cause of death and the circumstances in which the death occurred.¹ A coroner may comment on any matter connected with a death, including matters relating to public health or safety.²

Jock William Brunton Rial was born on the 14 October 2002. Jock was 6 years old. He lived with his parents, Anthony and Fiona Rial and his older brother Tom and younger sister Kate. The family lived in Moorgag.

On Saturday 16th May 2009, Anthony Rial was cutting firewood in a paddock approximately 600 meters from the family home. There was a graded gravel track between the house and the paddock gate. All three children spent time playing in the paddock whilst Anthony Rial cut and loaded firewood into the rear tray of a 4-wheel drive utility.

¹ *Coroners Act* 2008, s. 67(1)

² *Coroners Act* 2008, s. 67(3)

At about 3.30 pm, after a load of wood was taken to the home, the children all returned with their father to the clearing. Tom and Jock were in the rear of the utility, Kate was inside the cabin with her father. At the paddock gate, Jock hopped off the tray and opened the gate. Anthony drove through the gate and stopped. Kate banged her head on something in the cabin and Anthony picked her up and put her on his lap. Kate was very distressed and needed to be consoled.³

Anthony could see Tom seated on the left side of the toolbox behind the cabin. Anthony looked in the mirror, he could not see Jock, but presumed he was sitting on the toolbox behind him.⁴ He said, "Are you all right" he heard Jock say "Yeah Dad" and he then drove off slowly back to the wood cutting area.⁵

When Anthony stopped the utility, Jock was not there. He asked Tom where he was. Tom said he did not know. Anthony began calling for Jock and climbed on top of the utility to look back along the track. He then put Kate back in the car and drove off looking for Jock.

At about 60 meters back along the track, Anthony found Jock lying motionless but still breathing. He picked Jock up and returned to the house. Both parents commenced Cardio Pulmonary Resuscitation and Fiona rang for an ambulance.

The ambulance arrived at about 4.24 pm and Air Ambulance at 4.38 pm. Jock was unable to be resuscitated. Resuscitation stopped at 4.54 pm.

Doctor Lynch undertook the post mortem examination. Jock had sustained extensive injuries including fractures to his skull, jaw and ribs. He also suffered substantial chest injuries including a lacerated right lung, ruptured upper right chamber of the heart and liver. There were abrasions on Jock's chest consistent with having been run over by a motor vehicle.

Police undertook an extensive investigation and a full brief of evidence was prepared. Anthony Rial cooperated fully with the police investigation and gave frank answers to questions asked of him by police and attending emergency personnel. There is no evidence of any alcohol, drugs or fatigue being a factor in the accident. There is no evidence suggesting speed or other driving conduct contributed to the accident.

The exact circumstances of how Jock came to be under the vehicle is not clear. It is unlikely that Jock fell out of the tray to a position under the vehicle. The pattern of injuries

³ ROI at answer 36, 93 to 100

⁴ ROI at answer 37, 77

⁵ ROI at answer 36, 83 to 92

makes it more likely that Jock fell from the side of the vehicle under the rear driver's side wheel.

The Director of Public Prosecutions reviewed the matter and concluded that in all the circumstances public interest does not require a prosecution.⁶ I have considered my statutory duty to refer a matter to the Director of Public Prosecutions, if I believe an indictable offence has been committed in connection with the death under investigation. I do not consider a referral is warranted in all the circumstances.

The practise of small children travelling unrestrained in the cargo areas of farm vehicles, including in the back of utilities is inherently dangerous. This was a short journey on level ground and travelling at slow speed.⁷ Young children are unlikely to understand the dangers involved in travelling in vehicles unrestrained.⁸


The public, in particular farming communities, should be reminded of the dangers involved in children travelling unrestrained in the back of utilities.

RECOMMENDATION

The Transport Accident Commission and Work safe should include this issue in their regional road and work safety campaigns. Consideration should be given to an intensive awareness campaign aimed at farming families with young children, in this region.⁹

FINDING

In all the circumstances I am satisfied that Jock William Brunton Rial died as a result of injuries sustained as a result of the motor vehicle accident, namely falling from the utility.


STELLA STUTHRIDGE
CORONER



⁶ Letter to O.I.C, Major Collision Investigation Group from the Office of Public Prosecution, dated 31 December 2009.

⁷ ROI at answers 104 to 108, investigators statement of scene?/

⁸ Farmsafe Farms for Kids: evidence based solutions for child injury on Australian farms, Australian Centre for Agricultural Health and Safety, May 2003, pg 62

⁹ Ibid, pg 60