



22 March 2018

Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
Brisbane Qld 4000

By email to: tpwc@parliament.qld.gov.au

Dear Committee Secretary,

Submission to Transport and Public Works Committee re: Heavy Vehicle National Law and Other Legislation Amendment Bill 2018

Specifically: Dealing with driving offences which result in death or grievous bodily harm

We strongly plead that legislation in Queensland is changed to close the gap that exists between the existing offences of **Dangerous Driving** under S.328A of the *Criminal Code Act 1899* and **Driving Without Due Care** under S.83 of the *Transport Operations (Road Use Management) Act 1999*; to align with existing legislation in other states around Australia.

We seek the introduction of a third charge of **'Reckless Driving'** as recommended in a number of findings by Central Queensland Coroner, Mr David O'Connell.

Driving whilst disqualified is not currently an 'aggravation' attached to the higher charge of Dangerous Driving. The 'Reckless Driving' charge would come between Dangerous Driving and Driving Without Due Care.

An inquest was held in March 2015 into the death of our mother, Audrey Anne Dow, after a motor vehicle accident on 31 July 2013 at Mackay.

Coroner O'Connell found that the accident was caused by a disqualified driver, who drove across double lines to the wrong side of the road and collided head on with our mother's car.

Coroner O'Connell's findings included a recommendation to introduce a mid-range charge. It would mean that there is a broader range of prosecutorial options for the police when charging these types of offenders and be more likely to be proven in Court.

The disqualified driver who killed our mother should not have been driving, and was a multiple repeat offender (4 previous disqualifications). We feel that the current legislation in Queensland and available offences for this type of repeat offender are simply inadequate and do not reflect the consequences of his actions. Indeed, he kept offending until he killed someone. He was subsequently caught driving while disqualified again 6 weeks later and went on to receive a total fine of \$4,000 and a further driving disqualification.

The matter of disqualified drivers, their tendency to re-offend and statistically the increased likelihood of more serious injury to be a consequence (than when a licensed driver is involved) has been the subject of a number of high level research studies in Australia and world-wide. Findings have shown that disqualified drivers:

1. Are likely to re-offend repeatedly
2. Consider driving a right, not a privilege;
3. Have much higher injury outcomes (grievous bodily harm) when involved in car accidents; and
4. Are statistically more likely to cause a death.

Counsel Assisting the Coroner, Mr John Aberdeen, and [REDACTED], expressed their concerns regarding this gap in Queensland legislation.

[REDACTED] the Coroners Findings of Inquest is attached with this submission to help articulate our point.

In the recent past in Queensland there have been a number of similar Coronial findings handed down. Coroner O'Connell's specific recommendations have not been directly acted upon. While there has recently been work at the edges of the current legislation, this does not adequately address the issue.

We have been keen to ensure that no other family would go through what we have been through - not only the terrible circumstances in the loss of our Mother - but also the gut-wrenching feeling that the justice system let us down and that our mother received no justice.

Since our Mothers accident we have become acutely aware of the gaps in legislation in Queensland with a number of other families who have also had family members killed or injured in similar in road accidents involving suspended and/or reckless drivers. These families no doubt felt similar sickening anguish when realising that the person responsible would simply receive a nominal fine rather than a custodial sentence.

We think there should also be an avenue to expand the options available to the Courts to include imposing suspended mandatory sentences on disqualified drivers so that if they are subsequently caught driving while suspended they go to jail.

As a family we are looking to the Queensland Government to change the legislation as recommended by the Coroner. We feel that a mandatory prison sentence would provide families with some justice while forming a deterrent to those drivers who are reckless and/or disqualified. This would safeguard the wider Queensland community from the horrors brought about by persons driving while disqualified and/or in a reckless way.

Thank you for consideration of our submission.

Yours sincerely,

Angela Meiklejohn, Tony Dow and Jacquie Garnett



**QUEENSLAND
COURTS**

OFFICE OF THE CENTRAL CORONER

Our Reference: 2013/2724
Contact: Vicki Walker
Telephone: 07 4967 1014
Facsimile: 07 4967 0940

06 March 2015

Ms Angela Meiklejohn
1102/42 Refinery Parade
PYRMONT NSW 2009

Dear Ms Meiklejohn,

I have completed my investigation into the death of Audrey Anne Dow.

Please find enclosed a copy of my findings and comments.

If you require any further information please do not hesitate to contact this office
on 07 4967 1014.

Yours sincerely

A handwritten signature in black ink, appearing to be 'POC', written over a horizontal line.

Magistrate O'Connell
Central Coroner

Mackay Magistrates Court
12 Brisbane Street
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OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: Inquest into the death of Audrey Anne Dow

TITLE OF COURT: Coroners Court

JURISDICTION: MACKAY

FILE NO(s): 2013/2724

DELIVERED ON: Friday 6 March 2015

DELIVERED AT: Mackay

HEARING DATE(s): 17 December 2014, 27 January 2015

FINDINGS OF: David O'Connell, Central Coroner

CATCHWORDS: Coroners: inquest, careless, suspended or disqualified drivers, utilising mobile phone whilst driving, law reform recommendation for mid-range driving offences

REPRESENTATION:

Counsel Assisting: Mr John Aberdeen

Family of Audrey Dow: Self Represented – Angela Meiklejohn

Introduction

- [1]. On 31 July 2013 Audrey Dow was involved in a motor vehicle accident when her vehicle collided with another, driven by a man who should not then have been driving as he was a 'disqualified'¹ driver. Mrs Dow died from the injuries she received in that traffic accident.
- [2]. Her family are, understandably, very upset that the disqualified driver responsible² for the accident could only be charged with the offence of 'Driving without due care and attention'³, and that the fact that their mother had died was not legislated as a circumstance of aggravation to be considered in the sentencing for that offence.
- [3]. The driver pleaded guilty to the offence, was convicted and fined \$4000⁴ by the court, and again⁵ was disqualified from driving. The family pointed out to me that the responsible driver has since pleaded guilty⁶ to a further offence of driving whilst disqualified which occurred just seven weeks (he was disqualified for six months) after he was sentenced for the incident involving the death of their mother.
- [4]. The family seeks that the law be changed as they consider it is inadequate to deal with matters such as this. I have no doubt that many members of the wider community share their views.
- [5]. This inquest examined the circumstances of that traffic accident, particularly as to why it ever occurred on such an innocuous stretch of road, and at a seemingly low speed, and also whether the available offences applicable to the circumstances of the incident, namely involving an individual who was 'court ordered' not to drive, should be reviewed.

Tasks to be performed

"The Coronial role"

- [6]. My primary task under the Coroners Act 2003 is to make findings as to who the deceased person is, how, when, where, and what, caused

¹ Mr Kite had been specifically disqualified, for a period 6 months, by court order on 28 February 2013

² Mr Kite pleaded guilty on 15 September 2014 to a traffic offence arising from the incident, see exhibit E1

³ Being s.83 of the Transport Operations (Road Use Management) Act or TORUM as it is called

⁴ Which Mr Kite is paying at the rate of \$50 per fortnight through SPER so the term of imprisonment imposed of 56 days is not enforced

⁵ I say 'again' because he had been disqualified on four prior occasions being 28 February 2013, 30 June 2011, 29 April 2010, and 7 December 2009, see exhibit B1.13

⁶ He pleaded guilty on 19 January 2015, for yet another offence of driving whilst disqualified on 7 November 2014, see exhibit E3

them to die⁷. In Mrs Dow's case there is no real contest as to who, when, where, or what⁸ caused her to die. The real issue is directed to how⁹ she died.

[7]. Accordingly the List of Issues for this Inquest are:-

1. The information required by section 45(2) of the *Coroners Act 2003*, namely: who, how, when, where, and what, caused Mrs Dow's death,
2. Whether either, or both, or the motor vehicles involved in the collision which led to Mrs Dow's death travelled out of the appropriate traffic lane immediately prior to the collision?
3. What caused either, or both of the said motor vehicles (as the case may be) to travel out of the appropriate traffic lane immediately prior to the collision?
4. Whether any feature of the roadway, or any attendant signage or other traffic control feature, on Mulherin Drive, Outer Harbour, should be reviewed in the interest of preventing similar future collisions?
5. Given the deterrent effect of properly instituted prosecutions to the prevention of similar future road incidents, whether any changes should be considered to the law governing the offences which may be committed by careless drivers, or by disqualified or suspended drivers, which result in death or grievous bodily harm to any person?

[8]. The second task in any inquest is for the coroner to make comments on anything connected with the death investigated at an inquest that relate to public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future¹⁰.

[9]. The third task is that if I reasonably suspect a person has committed an offence¹¹, committed official misconduct¹², or contravened a person's professional or trade, standard or obligation¹³, then I may refer that information to the appropriate disciplinary body for them to take any action they deem appropriate.

[10]. In these findings I address these three tasks in their usual order, section 45 Findings, section 46 Coroners Comments, and then section

⁷ Coroners Act 2003 s. 45(2)(a) – (e) inclusive

⁸ For the assistance of the family this is the medical reason

⁹ Again for the family, this is the circumstances of how it come to occur

¹⁰ *ibid* s.46(1)

¹¹ *Ibid* s.48(2)

¹² *Ibid* s.48(3)

¹³ *Ibid* s.48(4)

48 Reporting Offences or Misconduct. I have used headings, for convenience only, for each of these in my findings.

Factual Background & Evidence

“Establishing what actually happened”

- [11]. Audrey Dow was an 81 year old widow, a mother of three, and a grandmother. She can only be described as a “model citizen” which can be very simply demonstrated in the fact that although she was of senior years she had never been involved with the police, and perhaps what most people would find astonishing, is that in her over sixty years of holding a driver’s license she had not received a single traffic infringement notice.
- [12]. Unfortunately on 31 July 2013, whilst driving, her vehicle collided in an off-set head-on accident with a vehicle driven by a man who should never have been there¹⁴.
- [13]. On that day Mrs Dow had collected one of her granddaughters from her place of employment, as an early childhood carer, at North Mackay and was driving her home to the Mackay Marina. As she drove her motor vehicle along Mulherin Drive her vehicle collided almost head-on with a small hatchback vehicle driven by Mr Kite. Mrs Dow suffered significant injuries in the collision, never regained consciousness, and passed away late that evening in the Mackay Base Hospital.
- [14]. The police were tasked with investigating the circumstances of the traffic accident. The police investigation found that there was no mechanical defect in either vehicle which caused or contributed to the accident, and that no factor such as environmental conditions¹⁵, defect in the road surface, third motor vehicle, pedestrian or other road user, nor animal, had either caused or contributed to the accident. The results of their forensic investigation simply pointed to driver error.
- [15]. The passenger¹⁶ in Mrs Dow’s vehicle gave evidence that she saw the other vehicle simply drift, or veer, across the centreline and collided with them in their lane. She said the other vehicle did not appear to steer in any manner and it came across the centreline quickly as it occurred on a bend. She made no suggestion that speed, nor reckless driving, which might be described as ‘hooning’, was at all involved. At the time she was caring for a small dog which sat unrestrained on her lap. The fact that the small dog survived the accident uninjured in some way reflects the relatively low speed at which the two cars collided.

¹⁴ As that driver, Mr Kite, was disqualified from holding or obtaining a drivers licence at the relevant time

¹⁵ Whether sunlight or rain

¹⁶ Miss Brooke Garnett

- [16]. The driver of the second vehicle, Mr Kite, first spoke with the investigating police officer at the scene but when given the appropriate warning under the law he then elected to adopt his right to silence and did not assist further with their investigations. An independent witnesses who was following Mr Kite's motor vehicle, at some distance behind it, gave evidence at the inquest that Mr Kite appeared to be travelling at or below 50 km/h, and there was nothing unusual about the nature of his driving prior to the accident occurring. This independent witness did notice that the brake lights of Mr Kite's car were not activated prior to the collision. Mr Kite was breath tested at the scene and returned a nil reading.
- [17]. The forensic crash unit investigators established from the evidence located at the scene that the point of impact of the accident occurred wholly within Mrs Dow's lane of traffic, that is, Mr Kite had crossed over the double, continuous or unbroken, centrelines and collided in an off-set, head-on, collision with her. This forensic evidence established that the point of impact was well over 1 metre, measured at a minimum of 1.1 metres from the centreline, into Mrs Dow's lane. It occurred approximately 28 metres from the exit point of a roundabout where Mrs Dow had slowed¹⁷ to manoeuvre through the entrance and then exited that roundabout.
- [18]. An examination of Mr Kite's motor vehicle found that the driver's seat belt, and it should be recalled that Mr Kite was the sole occupant of his vehicle, had evidence of fabric stretching (or called a friction burn mark) approximately 4.5 centimetres long. A seatbelt exhibits this following an accident as a seatbelt is designed to stretch a small way in a traffic accident. The fabric stretching was specifically at a point¹⁸ which indicated that the seatbelt had only been partly deployed from its fully retracted position, and it had not been fully utilised such as to be engaged in its buckle, i.e. appropriately worn by the driver. In very simple terms it appeared that the seatbelt was being 'put on' by the driver at the time the collision occurred. It was claimed to be physically impossible for the seatbelt's fabric stretching mark to have occurred in any other way. Mr Kite in his evidence initially said he could not recall fitting the seatbelt before he drove, and then later said that it was likely he would have fitted it properly otherwise the seatbelt warning light would have been activated on the dashboard. Essentially Mr Kite wanted me to accept his vague recollections, and his claimed 'usual' practice, over the laws of physics, the physical evidence found, and the documented dynamics of this car accident.
- [19]. As I stated earlier Mr Kite adopted his right to silence and so his giving of evidence at the inquest was the first time his recollection, or perhaps I should say partial recollection¹⁹, was tested.

¹⁷ The evidence of Miss B Garnett

¹⁸ see images 11 and 13 in the forensic crash unit report which is exhibit B1

¹⁹ I use the word 'partial' because Mr Kite, on a number of occasions, claimed he simply could not recall certain aspects of the accident, which I detail later in my Findings

- [20]. Mr Kite's evidence was very unsatisfactory. Whilst allowance can be made to people who are poor historians, or may become confused but nevertheless are honest in trying to answer appropriately to questions, Mr Kite does not fall within any of these categories. Mr Kite was a witness who, when giving his evidence, became inventive, and I consider deliberately so, in an attempt to somehow lessen, or deflect, his responsibility for the incident which occurred.
- [21]. I formed the clear impression from listening to his answers, and observing him in the witness stand, that he was evasive and unreliable. He lacked credibility and was frequently tested by Counsel Assisting. Often when pushed on a particular aspect of the incident he simply claimed he could not recall. Indeed there were certain aspects of his evidence which were particularly unmeritorious. For instance a simple question was posed to him of what his then girlfriends' occupation was, as she had asked him to leave the accommodation they were staying at while she met a client. He was asked this twice from the bar table. Each time he simply looked away, seemingly pondered, and then did not provide any response at all. It was only when I asked him the same question, and waited until he answered, did her occupation as an escort get divulged. Why he would not choose to answer such a simple question was perplexing, particularly as her occupation was made plain in her statement which had already been tendered as an exhibit at the inquest.
- [22]. An example of his lack of credibility was that during his evidence he claimed that his attention was distracted by having to adjust²⁰ the vehicle's air conditioning controls as it came on suddenly. The specific exchange with Counsel Assisting was as follows:-

Counsel Assisting (CA), Mr Aaron Kite (AK)

CA: Were you on your phone when the accident happened?

KA: No, I was trying to turn the air conditioner down.

CA: Sorry?

KA: I was trying to turn the air conditioner down, trying to turn the air conditioner down.

CA: Trying to turn the air conditioner down. Why was that, too cold?

KA: No cause it was broken, and out of nowhere it came on and I leant forward to turn it down.

²⁰ his evidence was that he was trying to 'turn the air conditioner down'

CA: OK, so how did you have to do that?

KA: Knob

CA: Did it generally work?

KA: No, it was broken for about 3 weeks or however long.

CA: So when you say you were trying to turn the air conditioner down, just describe exactly what you were doing.

KA: I was driving down, well driving down the road and it came on out of nowhere and it was blaring so I went to turn it down.

CA: Okay, so were you looking at the knob?

KA: Yeah I was trying to find the knob yeah, I wasn't familiar with the car.

CA: Alright, so is that why you took your eye off the road?

KA: Possibly.

CA: Possibly? If you've lost, or if your memory is defective as to what happened, is it possible you made these calls and simply don't recall doing them?

KA: Possibly.

CA: It is, and it is possible at 3.16pm you did go into message bank for 25 seconds?

KA: Possibly, yeah.

He even added that he told that to a policeman at the scene. The transcript where he claimed he told the police this information about the air conditioning was:-

Bench: When you gave information, or were interviewed by the Police Officer, you mentioned at the time you didn't know what happened. Today you've answered a lot of questions "you simply can't recall", but today was the first time you mentioned "I was trying to turn down the air conditioner"

AK: I told the Police that.

Bench: You told the Police that,

If this was correct I certainly would have expected it to have been mentioned when he was sentenced in the Magistrates Court for the offence. No mention of the air conditioning malfunction was made at that time²¹, rather the circumstances of the offence was entirely directed to the seatbelt issue as being the cause of distraction.

- [23]. Fortunately the arresting officer, when he arrived at the crash scene, activated an audio recording device. This audio recording was played in full to the inquest. It records from the time the officer arrived at the scene to when Mr Kite adopted his right to silence. At no time in that recording does Mr Kite make any mention of an issue with the motor vehicle's air conditioning, despite him mentioning issues regarding the seatbelt, a discussion regarding whether he was using his mobile telephone, and a discussion regarding his licence²². What was clear to me was that in his evidence given at the inquest Mr Kite's recollection of the air conditioning issue was entirely inaccurate and amounted to simply an invention. As I said his evidence was very unsatisfactory, and I believe deliberately so.
- [24]. In relation to the seatbelt it is clear that the highest Mr Kite could place it was that in practise he wore a seatbelt, but he could not say on this occasion whether he fitted it, or not. The police investigation revealed that very clearly the seatbelt had only been partly deployed towards its' engagement, and I find that clearly he must have been in the process of putting that seatbelt on at the time the incident occurred. This is consistent with the undeniable physical evidence of the friction burn, and its' location in a position which indicated that the seatbelt was neither fully utilised, nor fully retracted into the B pillar²³ of the motor vehicle. The physical evidence presented by the friction burn and its' location means there is no other reasonable conclusion that could be drawn other than Mr Kite was in the process of putting on his seatbelt at the time the collision occurred.
- [25]. There was also raised the question as to whether Mr Kite was utilising his mobile telephone at the time the incident occurred. The police were able to obtain the call history of his telephone which indicated he made a number of calls to a hotel he claimed to be researching, his then girlfriend, and his message bank. The timing of these calls, particularly as to how the crash occurred (with the driver's door being unable to be opened), and how he had to take time to extract himself by climbing over to the passenger side of the vehicle to exit, and his concession at the inquest that he was possibly checking his telephone message bank

²¹ It is simply never mentioned in the sentencing submissions before Magistrate Dwyer, see the transcript being exhibit E1.1

²² of minor interest I note that when discussing his licence he pointed out to the police officer that his address was not current, but failed to point out that he was then a disqualified driver, and in fact the entire licence was not then valid.

²³ the 'B' pillar is the middle, or centre, pillar of the passenger compartment of a motor vehicle, it is immediately adjacent to the driver's right shoulder, on the driver's side, and passenger's left shoulder, on the passenger side.

at the time of the accident, leads to the irresistible inference, which I so find, that he was using his telephone at the time the incident occurred, this being the occasion when he was checking his message bank.

- [26]. There was also evidence given that a second mobile telephone was found in Mr Kite's possession when the incident occurred. This was his then girlfriend's work telephone, but there was no evidence that his girlfriend's work telephone had been used at the time of the collision.
- [27]. At the inquest Mr Kite could offer no compelling reason as to why he was driving whilst disqualified. He claimed that he was driving to the marina to conduct research for his website. For this research he said he walked into the foyer of the hotel and collected brochures. The police reviewed the CCTV footage of the hotel foyer at the time he was allegedly there. He did not appear in that footage despite the cameras providing uninterrupted coverage of the foyer area. Further evidence at the inquest established that the receptionist at the hotel took a telephone call at around 3.00 PM from Mr Kite when he booked a room for that evening. A very short time later, and just prior to the accident occurring (a little after 3:15 PM), the receptionist took a second call from Mr Kite where he cancelled that booking. Following the accident Mr Kite alighted from the vehicle with his wallet and two mobile telephones. Later when the vehicle was searched by police all that was located was a backpack which contained minor, incidental, personal items, but of note there were no items in the car, or the backpack, associated with conducting 'research' which one might expect, such as a notebook, camera, laptop or iPad, and significantly there were no brochures whatsoever from the hotel.
- [28]. I find that Mr Kite was conducting no such research as he alleged, rather his only engagement with the hotel was an attempt to find accommodation for that evening. Certainly there was no 'emergency' as the law recognises, nor necessity, for his driving. He was, I find, simply filling in time whilst his girlfriend had an "appointment" with a client at the apartment they were then staying at. He was driving in direct breach of a court order not to. Had he obeyed that court order then no accident would have occurred and Mrs Dow would not have been killed.
- [29]. Accordingly I find that the cause of the accident was driver inattention by Mr Kite whilst he was in the process of using his mobile telephone, and attempting to put on his seatbelt. These factors were the sole cause of his driver inattention, whereby he failed to take the left-hand bend in the road and moved across the double continuous centrelines and collided in an offset head-on collision with Mrs Dow's vehicle. There is no suggestion at all that speed, alcohol, illicit drugs, tiredness or fatigue, mechanical defect, or hooning were in any way a contributing factor. For completeness I find that in no way did Mrs Dow's manner of driving cause or contribute to the incident occurring. In addition it is clear that there was no feature of the road, its' speed

limits, line markings, nor environmental factors such as rain or sunlight, which caused or contributed to the incident occurring.

- [30]. Due to the circumstances of the incident that the police were able to independently and forensically establish, the Criminal Code offence of dangerous driving, was not be able to be preferred; rather the lesser charge under the Transport Operations (Road Use Management) Act (commonly called by the acronym TORUM) of driving without due care and attention was all they could appropriately consider against Mr Kite. There is no criticism whatsoever of the police, knowing the circumstances of the matter, in preferring that charge in view of the range of offences available to them.
- [31]. The police then charged Mr Kite with that lesser offence, which was dealt with in the Magistrate's Court at Mackay. Mr Kite was fined \$4000 and again disqualified from holding or obtaining a drivers license²⁴. No party has appealed that sentence and I should point out it appears entirely within the appropriate range of penalties applicable for that charge and the circumstances as the law presently stands.
- [32]. It is useful at this point to examine the traffic history of Mr Kite in view of the comments by Mrs Dow's family that he should never have caused the accident as he should never have been driving.
- [33]. At the time of the accident Mr Kite was 28 years of age. He was first granted a drivers licence when he was 17 but it is of interest to look at his driving history since 2007. In that seven year period to 2013 inclusive, his recorded traffic history includes 11 notifications of demerit point or SPER²⁵ 'licence suspensions', and 4 court ordered 'licence disqualification' orders.
- [34]. Mr Kite's traffic history is utterly deplorable, and sits in very dramatic contrast to Mrs Dow's unblemished 63 year driving history.
- [35]. Many people would question whether monetary fines and disqualification from holding a licence are an appropriate penalty in the circumstances of Mrs Dow's death, in view of Mr Kite's deplorable driving history. No doubt people's views would be compounded by his further disqualified driving offence which occurred just seven weeks after he was sentenced for the incident involving Mrs Dow's death, and indeed in evidence Mr Kite admitted that he only stopped driving for just four weeks after he was disqualified by the court.
- [36]. Perhaps persons such as Mr Kite, with their documented history, means that court ordered suspensions have little or no utility. Certainly he demonstrates that they can be ignored. Some may consider that the only way to prevent people like Mr Kite from driving is that he loses his

²⁴ See exhibit E1 – Verdict and Judgment Record

²⁵ SPER is an acronym for the State Penalty and Enforcement Register

liberty, that is, he should be imprisoned. That of course is not a matter for me to comment on, but what is clear is that at present there is a significant legislative gap between the lower driving offence and the higher driving offence, and what circumstances the court can consider which should be addressed. It was recommended to me that this could be done by a new mid-range offence, or that the lower offence be modified to include a 'circumstance of aggravation', which would attract a greater penalty. The circumstances of aggravation would be for any offence committed by a driver who was driving whilst suspended²⁶, or, far more seriously, those who were driving whilst disqualified²⁷, as well as any significant injury caused to others such as grievous bodily harm, or if they cause death.

[37]. I comment further on the available charges later under Coroners Comments (Recommendations)

List of Inquest Issues and Answers

Coroners Act s. 45(2): 'Findings'

[38]. Dealing with the list of issues for this inquest the findings I make are as follows:-

[39]. Issue 1. My primary task is the information required by section 45(2) of the *Coroners Act 2003*, namely:

- a. *Who the deceased person is* – Audrey Anne Dow²⁸,
- b. *How the person died* – Mrs Dow died due to the inattentive driving of Aaron John Kite when he crossed over continuous, double centrelines and collided with Mrs Dow's motor vehicle,
- c. *When the person died* – 31 July 2013²⁹,
- d. *Where the person died* – Mackay Base Hospital, Bridge Road, Mackay, Queensland³⁰, and
- e. *What caused the person to die* – Multiple injuries, due to motor vehicle trauma³¹

[40]. Issue 2. *Whether either, or both, of the motor vehicles involved in the collision which led to Mrs Dow's death travelled out of the appropriate traffic lane immediately prior to the collision?*

[41]. As I stated in my findings above Mr Kite's car was the only vehicle which travelled out of its lane prior to the collision.

²⁶ Suspended can include circumstances such as excessive demerit point accumulation or the failure to renew an expired licence

²⁷ Disqualified involves the court specifically ordering that the licence holder be disqualified, and not drive, for a specified period (that is, it cannot inadvertently occur such as may happen with an expired licence)

²⁸ See exhibit A1 QPS Form 1

²⁹ See exhibit A2 Life Extinct Form

³⁰ See exhibit A2 Life Extinct Form

³¹ See exhibit A3, Form 3 Autopsy Certificate

- [42]. *Issue 3. What caused either, or both of the said motor vehicles (as the case may be) to travel out of the appropriate traffic lane immediately prior to the collision?*
- [43]. Mr Kite's car travelled out of its line due to his inattentive driving, whilst he was distracted by the tasks of utilising his mobile telephone³² and attempting to fit his seat belt.
- [44]. *Issue 4. Whether any feature of the roadway, or any attendant signage or other traffic control feature, on Mulherin Drive, Outer Harbour, should be reviewed in the interest of preventing similar future collisions?*
- [45]. I do not find that any feature of the road, signage, or traffic control feature, played any role in the cause of, or was a contributing factor in, the incident occurring.
- [46]. *Issue 5. Given the deterrent effect of properly instituted prosecutions to the prevention of similar future road incidents, whether any changes should be considered to the law governing the offences which may be committed by careless drivers, or by disqualified or suspended drivers, which result in death or grievous bodily harm to any person?*
- [47]. I specifically address this issue under the heading Coroners Comments (Recommendations) below.

Coroners Act s. 46: 'Coroners Comments' (Recommendations)

"Is there a legislative hole to be plugged?"

- [48]. This incident does provide the opportunity to comment on, and recommend important changes to, the law governing the offences which may be committed by careless, suspended, or disqualified drivers, which result in death or grievous bodily harm to any person.
- [49]. The present situation is that there only exists, very broadly speaking, two offences for which Mr Kite could have been charged, namely driving without due care and attention³³ and dangerous driving³⁴ causing death.

³² the motor vehicle he was driving was not fitted with a hands-free function, or 'Bluetooth', which is a device to allow for the hands-free operation of a mobile telephone

³³ TORUM section 83

³⁴ Criminal Code section. 328A

- [50]. The present situation in Queensland is unusual when compared with other states of Australia. Whilst Queensland has just two offences for this type of driving offence, other states³⁵ effectively have three.
- [51]. Mrs Dow's family strongly advocated to me that this particular offender's circumstances, of driving in defiance of a court order specifically banning him from driving, placed him in a position where his penalty should be more severe. As I said earlier I am sure there are many members of the community who would agree that driving whilst disqualified, where a person suffers grievous bodily harm or is killed, should attract a penalty of greater severity than a driver who was legally permitted to be driving if the same incident occurred.
- [52]. Counsel Assisting highlighted to me that many other Australian jurisdictions have a mid-range offence of negligent driving and that the circumstance of causing death or grievous bodily harm is a specified circumstance of aggravation for that offence. Indeed the laws in England adopt an approach in their Road Traffic Act 1988 s.2B³⁶ of a specific offence of causing death through careless or inconsiderate driving³⁷.
- [53]. In addition Counsel Assisting pointed out an anomaly that the lower offence of driving without due care and attention is contained within the TORUM Act (which colloquially may be thought of by the layman³⁸ as the Traffic Act), and is regulated by the Department of Transport, under the Minister for Transport's direction, whereas the higher offence of dangerous driving is contained in the Criminal Code, under the responsibility of the Minister for Justice and Attorney General. It was pointed out to me that any mid-range offence dealing as it does, with causing death, would best be contained within the Criminal Code, so it is under the responsibility of the Minister for Justice and Attorney General, and can sit as an alternate charge for a jury to consider whenever the prosecution proceeds with a charge of dangerous driving. This is a very sensible, and wise, observation.
- [54]. This case clearly highlights to any reasonably minded individual the deficiency in this area of law as it presently stands. A lady lost her life to a man who should never have then been driving, and this driver

³⁵ South Australia, NT, ACT WA, and New South Wales to name just a few. The NSW Road Transport Act s.117(1) Negligent driving with a circumstance of aggravation of causing death or grievous bodily harm is a fairly straight forward (of course it does not include the licence currency considerations)

³⁶ and for other circumstances see s.3A - s.3ZA

³⁷ There are of course considerations as to the correct application of that legislation as highlighted in Regina v Hughes [2013] 1 WLR at 2461 (see exhibit B.5)

³⁸ of course the Traffic Act 1949 has been repealed, and replaced in 1995 by a suite of legislation, as seems to be the fashion of late which always delights me, dealing with all manner of transport related activity, all of which commence with 'Transport Operations', of which the *Transport Operations (Road Use Management) Act* specifically applies to motor vehicles on a road such as this case

simply ignores court orders as he drove again just four weeks³⁹ after being disqualified by the court. There was evidence and material presented⁴⁰ at the inquest from the Queensland Police Service, who also see this deficiency, which for them it seems all too regularly, and to them has existed for a considerable period of time without being redressed.

- [55]. Clearly the law in Queensland needs to change to allow for a mid-range offence. In addition it may be appropriate that the present driving laws be amended to have a specific circumstance of aggravation:-
- a. For driving without due care and attention where the offending driver causes grievous bodily harm or death⁴¹; and
 - b. the offending driver was then unlicensed; or
 - c. the offending driver was:-
 - i. suspended; or
 - ii. disqualified,
- at the time the alleged offence occurred.
- [56]. Accordingly the matter of law reform shall be referred to the Attorney General.
- [57]. I appreciate that the family would like to know 'when' this will occur. That is a legitimate question for them to ask. It is not appropriate for me to put a time limit on when the review would be concluded but I would hope it could be concluded within six months of being commenced, and then the government should be in a position to act⁴².
- [58]. Clearly change needs to occur, but first careful consideration of that change needs to happen.
- [59]. Accordingly the Recommendation I make is:
- a. That the issue of a new mid-range driving offence⁴³ be referred to the Attorney General to consider changing the law to introduce a new mid-range driving offence between the existing Criminal Code s.328A Dangerous Driving offence, and the TORUM s.83 Driving without Due Care and Attention offence, and in that review to consider whether it is appropriate:-

³⁹ Four weeks was Mr Kite's own admission in evidence

⁴⁰ See exhibit B3.1 statement of [REDACTED]

⁴¹ For TORUM s. 83 as it presently stands it is not a circumstance of aggravation, quite unlike Criminal Code s. 328A 'Dangerous Driving' where it may be applicable

⁴² Although the Government itself may wish to refer it to the appropriate Parliamentary Standing Committee

⁴³ Whether that is to cover careless, inconsiderate, negligent or reckless, being the various terms (and standards) other States, Territories, and England have variously adopted

- i. to include a circumstance of aggravation for offending drivers:-
 1. who cause death or grievous bodily harm in the commission of the offence under s.83 TORUM, and
 2. where they were driving whilst unlicensed or their license was suspended, or
 3. where they were driving whilst their license was disqualified; and
- ii. whether any recommended new mid-range offence, if any, should be legislated in the Criminal Code or the TORUM legislation.

Coroners Act s. 48: 'Reporting Offences or Misconduct'

[60]. The Coroners Act section 48 imposes an obligation to report offences or misconduct. Mr Kite has already been dealt with for an offence arising from the accident. It was not suggested to me that any further offence or misconduct was reportable, accordingly no such referral is made.

Magistrate O'Connell
Central Coroner
Mackay
6 March 2015

¹ Although the Government itself may wish to refer it to the appropriate Parliamentary Standing Committee

¹ Whether that is to cover careless, inconsiderate, negligent or reckless, being the various terms (and standards) other States, Territories, and England have variously adopted