

IN THE CORONERS COURT
OF VICTORIA
AT SALE

Court Reference: COR 2011 002635

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)
Section 67 of the Coroners Act 2008

Inquest into the Death of JUSTIN DANIEL SMITH

Delivered On:	1 November 2012
Delivered at:	Sale Coroners Court
Hearing Dates:	25/09/2012
Findings of:	Mr Clive Alsop, Coroner
Assisting the Coroner	Senior Constable Jason Gibbons

I, Clive Alsop, Coroner, having investigated the death of JUSTIN DANIEL SMITH
AND having held an inquest in relation to this death on 25/09/2012
at the Coroners Court at Sale
find that the identity of the deceased was JUSTIN DANIEL SMITH
born 4 January 1976
and the death occurred On 19 July 2011
at Maffra-Rosedale Road, Nambrok

from:

1a HEAD INJURIES- MOTOR BIKE ACCIDENT

Pursuant to the provisions of the Coroners Act 2008, an inquest into the death was held this day and there is a public interest to be served in making findings regarding circumstances;

At the time of his death, Mr Smith was aged 35 years and was a mechanic by occupation. He lived in Briagolong.

On the evening of the 18th July 2011, Mr Smith and his partner, Ms Teressa La-Rose travelled from Gippsland to Melbourne in Mr Smith's car. The purpose of their trip was to collect a friend's Harley Davidson motorcycle and bring it back to Ms La-Rose's property at Briagolong for safe keeping.

After collecting the motorcycle, Mr Smith rode back to the Gippsland region and was followed by Ms La-Rose in her car. On their way, they stopped at Yarragon. At that time, Mr Smith told Ms La-Rose that he was "going OK but was he very cold".

The couple continued along the Princes Highway until turning off the Highway onto Maffra-Rosedale Road, to travel in a generally northerly direction with Mr Smith in front of Ms La-Rose. Very light rain was falling but Ms La-Rose noted that it was not sufficient for her to put on her windscreen wipers. It was approximately 1.20am.

THE ROAD.

At this point, the Maffra-Rosedale Road is straight and runs north/south. It is in good condition with one lane in each direction. There are no street lights as it runs through flat rural country. A continuous white line runs along the edge of the bitumen on each side of the road and lineal white strips mark the centre of the road.

THE AREA.

The area where this incident took place is generally flat country used primarily for grazing cattle.

THE COLLISION.

There were no witnesses to the actual collision in which Mr Smith died. In response to a question from Senior Constable Gibbons (assisting the Coroner), Ms La-Rose said she was only a short distance behind Mr Smith and could see his tail light. She said she saw the tail-light go on and off a couple of times then disappear. Immediately after that, her car struck something and "everything went black." She had hit a cow on the unlit road. A number of other people arrived to help her and they discovered Mr Smith's body in a table drain. The subsequent investigation confirmed he had also hit a cow and then a power pole. Both the motorcycle and the car had been travelling on the correct side of the road. There is nothing to indicate that either was exceeding the speed limit for the area, 100 kph.

THE CATTLE ON THE ROAD.

The cattle on the road belonged to nearby dairy farmer Mr Neil Glendenning. He gave evidence that the fences keeping his cattle in a paddock on the property were in good condition on the afternoon before this tragedy and that they consisted of at least four strands of wire plus a "hot" (electrified) wire. Crash Investigators discovered that the fence adjacent to open access to the roadway was broken, thus allowing the cattle to wander on to the roadway. Mr Glendenning was asked a number of questions about the state of the fences and the circumstances in which the fences may have been broken. The only conclusion arising from this issue is that, between the time of Mr Glendenning's observations and the collision, the fence had been damaged by the cattle. A number of wires (including the "hot wire") were broken, thus allowing the cattle to get onto the road surface. There is no evidence as to what may have caused the cattle to damage the fence.

THE MOTORCYCLE

A week after Mr Smith's death, then Senior Constable Stuart Neil Jones of the Mechanical Investigation unit of Victoria Police inspected the motor cycle. His statement to the informant includes the following passages.

On Wednesday, the 27th of July, 2011, I attended at Sale Accident and Recovery, York Street, Sale, where I carried out a mechanical inspection of a black coloured 2007 model Harley Davidson Soft Tail motorcycle registered number IX-735.

Prior to and at the time of the collision, this motorcycle would have been classed as being in excellent mechanical condition but unroadworthy due to the after market headlamp assembly that was fitted as a replacement for the original headlamp.

The after market headlamp assembly fitted to this motorcycle comprised of a polished aluminium skull shaped housing incorporating 2 x (12 volt) low voltage residential down light globes which were incorporated as the eyes of the polished aluminium skull. These globes are totally inappropriate for automotive use due to the lack of range and ill defined beam transmitted. Motor cycle head lights require a defined conical beam to provide range and to prevent glare to oncoming traffic. Also there is no adjustment mechanisms (sic) incorporated in the assembly to aim the headlights. This after market headlamp assembly does not comply with the Standards of Registration or Australian Design Rule 55.

Summary of ADR-55: Headlamps for L-Group Vehicles other than Mopeds. Specifies the photometric requirements for headlamps fitted to motorcycles that provide adequate illumination for the driver of the vehicle without producing undue glare for other road users.

Considering the circumstances of the collision which occurred on an unlit country road at 1.40am, the after market skull headlamp assembly fitted may have contributed to the collision. This is not to say that the collision could have, or would have been avoided if the original headlamp was fitted.

My inspection did not reveal any other faults that may have caused or contributed to the collision".

In all rural, farming or grazing regions, especially in the Gippsland region, there is an ever real possibility of animals being on the road. This statement is supported by the number of warning signs in Country regions informing road users of this danger.

In the brief prepared for this hearing by Senior Constable Dessent he makes the following observation: "The road (where this tragedy occurred) is of good condition and configuration. It is a rural area with heavy emphasis on dairy farming with many dairy farms on either side of the road as there is a large population of dairy cattle in the area, there is the possibility of roaming stock on the road on occasions".

These observations are accepted and adopted in this finding. However, the danger is not limited to farm animals alone. There is always the possibility of encountering native or feral animals. A 100 kilometre per hour impact with, for example, a kangaroo can have disastrous consequences.

At post mortem, a substantial amount of cannabis was found in Mr Smith's blood, but in the circumstances of this death, I am unable to conclude that it contributed in any way to his failure to see the cattle in time to avoid a collision.

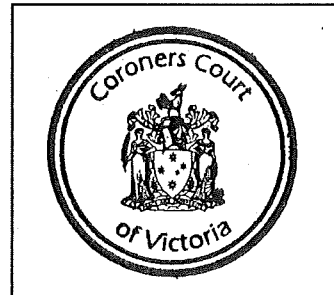
The primary contributing factor in this tragedy is the use of inadequate and inappropriate motorcycle headlights while riding at night on an unlit country road.

RECOMMENDATIONS.

Pursuant to section 72 of the Coroners Act 2008, I make the following recommendations:-

- (a) That Local Government bodies within Gippsland carry out an audit of the number of signs in the region advising motorists of the possibility of the presence of animals on the road and consider whether an increase in the number of signs is necessary.
- (b) That the Motor Cycle Riders Association, motor cycle clubs and other organizations associated with the use of motorcycles, reinforce to their members the ever present need (1) to ensure that the lights of their motorcycles comply with the Australian Design Rules as referred to herein and, (2) to ensure that the headlights fitted to their motor cycles ensure proper illumination on (especially) unlit roadways at night.

Signature:



A handwritten signature in black ink, appearing to read "Clive Alsop", is written over a light blue horizontal line.

Clive Alsop

Date: 16 October 2012