

Form 37

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 1244/2008

Inquest into the Death of Rachael Louise INCOLL

Delivered on: 18 November 2011

Delivered at: Bendigo

Hearing dates: 13 and 14 October 2010

Findings of: Coroner Richard Wright

Representation:

Mr Neil Hutton
Mr Jason Gullaci

Mr John Goetz
Ms Rebecca Rezzi

The Incoll Family
Mr Ian Matfin, Shaun Matfin and Shannon
Matfin
Reliance Petroleum Limited
VicRoads

Place of death: Leichardt, Victoria

Counsel assisting the Coroner Ms Christine Melis
Ms Leah Bloch, Victorian Government Solicitor
In the Coroners Court of Victoria at Bendigo

I, Richard Wright, Coroner, **having investigated** the death of RACHAEL LOUISE INCOLL with an Inquest held at the Bendigo Court House, Bendigo on 13 October 2010 and 14 October 2010.

Find that the identity of the deceased was RACHAEL LOUISE INCOLL and that death occurred on 25 March 2008, at approximately 1645 hours, on the Calder Highway at Leichardt, from:

1a Injuries sustained in a motor vehicle accident

In the following circumstances:

Background

The events leading up to the tragic accident, which took the life of Mrs Incoll, occurred over the Easter Weekend of 2008. The Easter period in any year is a notoriously difficult period on Victoria's roads. Mr and Mrs Incoll were returning to Melbourne, driving on the Calder Highway, north-west of Bendigo. They were in the vicinity of an area known as Leichardt, a

farming district with no urban development. The Incolls were following a vehicle being driven by Mrs Boulton, who in turn was following a vehicle driven by a learner driver, Shaun Matfin.

Circumstances

On a straight stretch of the Calder Highway at Leichardt, at about 1645 hours on 25 March 2008, Shaun Matfin drifted into the path of a 57 tonne gross weight "B-Double" configured fuel transport being driven by Mr Craig Annand. Despite Mr Annand's attempt to avoid a collision, the Matfin vehicle collided with the B-Double prime mover causing it, and the trailers being towed, to tip. The B-Double careered out of control across the highway, into the path of oncoming vehicles.

The B-Double missed the vehicle being driven by Mrs Boulton but collided with Mr and Mrs Incoll's vehicle. Mrs Incoll was driving and was killed instantly. Mr Incoll and their 14 month old daughter survived.

Mr Annand's highly professional reaction immediately after the collision no doubt minimised the risk of further complications, relating to possible spillage of his load. The front tank on the B-Double was carrying diesel fuel and the rear tank was full of unleaded petrol. The truck came to rest on its side, with its front windows shattered. Mr Annand exited the vehicle through the front window, hauling a fire extinguisher. Aware of the flammability of his load, he covered the immediate surrounds with retardant foam, before attending to the wider crash scene.

Investigations

The investigating officer from Victoria Police was Senior Constable Brett Sampson, assigned to the Campaspe Highway Patrol Unit. Senior Constable Sampson prepared the brief for the Coroner. The brief detailed the events leading up to the fatal collision. The Senior Constable received a call in relation to the motor vehicle accident at about 4.50 pm on 25 March 2008. On arrival, he inspected the scene and noted the state and relative positions of three damaged vehicles. He noted that Shaun Matfin was trapped in the vehicle and being attended by ambulance officers. He also saw the B-Double on its side, with one trailer detached from the rig. He also observed the vehicle that had been being driven by Mrs Incoll, on its side and showing signs of heavy damage. He had been advised that Mrs Incoll was deceased.

At the scene, Senior Constable Sampson took a statement from Mr Annand. The Matfins had been conveyed to Bendigo Hospital. With the attending CFA crew in control of the accident scene, Senior Constable Sampson left the scene at about 9.30 pm to return to Bendigo and complete his reports and conduct preliminary investigations.

Later in the evening, at midnight, Senior Constable Sampson returned to the crash scene. There, assisted by Senior Constable Niall King, he took measurements and collected relevant evidence, so that he was in a position to establish what had happened. The observations made by Police at the scene were set out in the Coroner's brief.

Role of a Coroner

The coroner's function is investigative and inquisitorial rather than adjudicative and adversarial. Coroners are required to investigate matters in their jurisdiction and, in the case of a death, determine the identity of the deceased, how the death occurred, the cause of death and the particulars needed to register the death.

It is clear that the identity of the deceased and the cause of death, in this case, are known. The primary inquiry for the Coroner relates to the circumstances of the death.

The Inquest

As noted above, an Inquest into the death of Mrs Incoll was conducted in Bendigo on 13 and 14 October 2010. Ms Christine Melis of Counsel assisted the Coroner.

The following appearances were recognised, with the Parties represented also listed:

Mr Neil Hutton	The Incoll Family
Mr Jason Gullaci	Mr Ian Matfin, Shaun Matfin and Shannon Matfin
Mr John Goetz	Reliance Petroleum Limited
Ms Rebecca Rezzi	VicRoads

The following witnesses were called to give evidence at the Inquest:

Mrs Anna Christina Boulton	Mrs Boulton, a local resident followed the Matfin vehicle prior to the fatal collision and observed Shaun Matfin's driving.
Mr Craig Arthur Annand	Employee of Reliance Petroleum, driver of the B-Double petrol tanker. The collision of tanker with the Incoll vehicle led to the fatality.
Mr Ian Matfin	Father of the driver of the vehicle causing the fatality and "responsible driver" supervising his learner driver son, Shaun Matfin.
Miss Shannon Matfin	Daughter of Ian Matfin and passenger in the Matfin vehicle.
Mr Shaun Matfin	The sixteen year-old learner driver in charge of the Matfin vehicle at the time of the fatality.
Senior Constable Brett Andrew Sampson	Campaspe Highway Patrol. Senior Constable Sampson attended the fatality, investigated the incident and ultimately charged Shaun Matfin with "careless driving". Senior Constable Sampson prepared the Coroner's brief for this inquiry.

Mr Russell John Scott

Senior Policy Advisor, Road User Behaviour, VicRoads. Mr Scott was able to advise the hearing on practice and research into learner driver regulation and training in Victoria.

Preliminary Issues

The major preliminary issue for the Inquest was an application under section 57 of the Coroners Act 2008. The section provides:

57 Privilege in respect of self-incrimination in other proceedings

- (1) This section applies if a witness objects to giving evidence, or evidence on a particular matter, at an inquest on the ground that the evidence may tend to prove that the witness—
 - (a) has committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (b) is liable to a civil penalty under an Australian law or a law of a foreign country.
- (2) The coroner must determine whether or not there are reasonable grounds for the objection.
- (3) If the coroner determines that there are reasonable grounds for the objection, the coroner is to inform the witness—
 - (a) that the witness need not give the evidence unless required by the coroner to do so under subsection (4); and
 - (b) that the coroner will give a certificate under this section if—
 - (i) the witness willingly gives the evidence without being required to do so under subsection (4); or
 - (ii) the witness gives the evidence after being required to do so under subsection (4); and
 - (c) of the effect of such a certificate.

Mr Gallaci, on behalf of Ian and Shaun Matfin, applied for a Certificate under the Act. The parties to the Inquest and Counsel Assisting agreed that a Certificate should issue. I formed the opinion that there were reasonable grounds for the objections to giving of evidence, by the applicants. I informed both Matfins that they need not give evidence unless I required them to do so. Mr Gallaci told the Inquest that both were prepared willingly to give evidence, subject to the issue of a Certificate. I informed them of the effect of the Certificate and issued one to both witnesses.

The Witnesses

Ms Melis called the witnesses to give evidence.

Mrs Anna Christina Boulton

Mrs Boulton was driving immediately behind the Matfin vehicle. She was accompanied by her sister and they were on a journey from Wedderburn to Marong, close to Bendigo. She observed the Matfin vehicle drifting in its lane and two or three times before the collision, noting it crossing the centre dividing line on the highway. She estimated that up to half of the Matfin vehicle was occupying the oncoming lane on these occurrences. Interestingly, her observation was that the vehicle was drifting into and out of the right hand lane. It was not being "jerked" back onto its line.¹

Mrs Boulton gave evidence that she had decided not to overtake the vehicle in front because of her concern with the driving of that vehicle. She saw the B-Double approaching and remarked to her sister that the Matfin vehicle and the transport could collide. She saw the Matfin vehicle diverge into the line of travel of the B-Double and witnessed the subsequent collision.

Mrs Boulton rang "000" and being a trained nurse attempted to render assistance to the occupants of the Ford vehicle. She was not immediately aware of the fact that the truck had collided with a vehicle behind her own, being driven by Mrs Incoll.

Mr Craig Arthur Annand

Mr Annand was the driver of the B-Double. He is an employee of Reliance Petroleum Limited and the firm is responsible for delivery of BP products. He was familiar with the stretch of highway where the accident happened. Mr Annand had left the BP Depot in Yarraville and was heading up the Calder Highway. He had been driving for a little over 2 hours when he observed a white Ford approaching. The Ford had negotiated bend to the right exiting a railway level crossing and was then on a straight section of road.

Mr Annand noted the vehicle drift towards the centre of the roadway, with its wheels on or very close to the centre line. He watched the vehicle and it diverged again, further into his line of travel. In his evidence, Mr Annand observed that there was not much room for him to manoeuvre his vehicle as the white Ford approached. He took as much evasive action as he could, but the Ford collided with his 57 tonne B-Double. He felt the impact on or about the steering and drive wheels of the B-Double, as it rode up over the Matfin vehicle, tipped and skidded down the highway on its side into the vehicle being driven by Mrs Incoll.

¹ Transcript, 13 October 2010 at page 24

Mr Annand's first concern was for the occupants of the white Ford. His attention was later drawn to the Incoll vehicle. He and another un-named person present after the collision managed to open the front door of that vehicle, which was also on its side, to free the passengers.

Mr Annand spoke to a male passenger from the Matfin vehicle, Mr Matfin. Mr Annand's only recollection of what was said was a statement from Mr Matfin that the driver, his son, was a "learner" driver.

The introduction to these findings detail the actions Mr Annand took to stabilise the accident scene, in light of the potentially dangerous fuel load he was carrying. Mr Annand could shed no light on why the collision occurred.

Miss Shannon Matfin

At the time of the accident, Shannon Matfin was travelling in the back seat of the family vehicle. She was able to give evidence to the Inquest relating to the journey from Ouyen, via Wycheproof, to the crash site. Although she slept for some of the time, she does recall the family vehicle crossing the "fog lines" on a number of occasions, but had no recollection as to who was driving at the time of these events. There was a family dog in the vehicle during the trip. In Ms Matfin's view, the dog did not interfere with the driving.

Mr Ian Matfin

As noted above, Mr Matfin was granted a Certificate under section 57 of the Act. Notwithstanding the issue of that certificate, his evidence in the main was unresponsive to questioning and apparently highly defensive. The major form of response to questions put to him by counsel was of the nature of "what he would have done" or "what would have happened". He was not able to provide the Inquest with much insight on the events leading up to the accident. Nor, indeed, was he able to give commentary on the observations of Mrs Boulton concerning his son's driving. Mr Matfin did concede that he had observed Shaun not being in the correct lane on one occasion, leading up to the accident.

When asked if he had observed his son's driving as the family vehicle approached the collision point, he said he did not. His evidence was that he was tuning the radio.²

He gave evidence that the family had frequently made the trip by car to Mildura. He saw the journey on the Easter weekend as a good chance to give his son some exposure to country driving, during his learner permit period.

The evidence was that Shaun Matfin had mainly city driving experience since he became eligible to drive. He had a stint of driving on the highway on the way up to Mildura, and this was his first experience of this type of driving.

² Transcript, 13 Oct 2010, pages 89, 90

A number of questions were put to Mr Matfin on the question of fatigue and Shaun's driving. For example, from Ms Melis:

So back to my question about fatigue. Did you at any point say to Shaun, "If you're tired, let me know"? Or anything along those lines?

The discussion - and it came up. I'm not sure if he brought it up, I brought it up ..., and it was discussed. Cos that's where we were - cos he said something about (indistinct) Farm. ... and I said, "Right, well, do you want a break now, or do you want to stop at" - the name of that town, and he said, "No, no, I'll drive to the town, that's fine, that's fine".³

And from Mr Hutton:

You were asked a question about fatigue, and you indicated that you were going to change - and then you talked about a town which I think we've figured out is the town of Marong. It was your plan to change at Marong?

Ah, yes, around there.

In your evidence you said that you said to Shaun, "If you're tired, let me know", and he said - you said the discussion came up, and he said, "I'm starting to feel tired". Is that your recollection?---

Yes. For some reason he said - whether he was starting to feel tired - and he said that yeah, "I'll need to change soon".⁴

At that time you advised him, did you, that you would effectively change at Marong?---

Yeah, well, ... I can't remember the exact - exact words, but it would've been more, "Are you OK to drive?" "Yeah, yeah, I'm just starting to feel tired". And I said, "Well, you can do it - we can change now, or we can get to Marong".

That was going to be my next question. Did you think to tell him, "Let's pull over here, and we'll swap drivers now"?

Yeah. And that was - I said to him, you know, "Pull over here or Marong, which do you?" - and he said, "Oh, no, I'll be right to Marong".

³ Transcript 13 Oct 2010, page 87

⁴ Transcript 13 October 2010, page 104)]

Was that conversation held before or after you noticed him drift towards the centre of the road?---

I honestly couldn't - couldn't tell you.⁵

Ian Matfin gave evidence that, in a social sense, the visit to Mildura and Underbool was low key. The night before departure from Underbool was occasioned by minimal alcohol consumption and early retirement. The implication was that everyone was refreshed for the journey back to Melbourne.

Mr Matfin could find no fault in his own role in supervising his son's driving on the way to Leichardt. He had no recollection of the erratic driving noticed by Mrs Bouton and could shed no light on the reasons for the collision.

Mr Shaun Matfin

Shaun Matfin was inexperienced in country driving and saw the Easter trip to Mildura and back as a good opportunity to develop his skills in this regard. He drove on the way up to Mildura and was on his second leg of driving at the time of the collision. He says that he had no recollection of events in the immediate period coming up to the point of collision. He did not recall seeing the B-Double approaching. He had some recollection of his vehicle drifting in the traffic lane as he drove towards Leichardt, but did not recall divergences into the oncoming lane to the degree noted by Mrs Boulton.

His evidence revealed that the journey back to Melbourne was apparently "unstructured", as the following exchange illustrated:

When was the next stop planned for on that last leg?

I can't recall the location. Most likely the next (town).

I guess you hadn't actually discussed where you would stop next?

No.

So you in fact could have been driving for a much longer distance after that?

I'm not sure.

If it's true you were struggling, why didn't you stop and let your dad drive?

I felt confident as far as the driving⁶

In his evidence at the Inquest, Shaun was adamant that he was not asleep at the point of the collision. He put down the observations by Mrs Boulton of the Matfin vehicle diverging across

⁵ Ibid, at page 105

⁶ Ibid, at page 132

the centre line of the highway to issues of control, with him struggling to keep the vehicle on line.

Senior Constable Brett Andrew Sampson

Senior Constable Sampson was the officer on the scene at the collision site and was responsible for preparing the Inquest Brief. At the time of the incident, he was attached to the Traffic Management Unit, based in Bendigo. At the Inquest, questioning concentrated on the investigations surrounding the possible causes of the collision and issues relating to the charging of Shaun Matfin with the driving offence of "Careless Driving".

Senior Constable Sampson told the Inquest that he had canvassed the question of the most appropriate charge to be laid with both the Bendigo Police Prosecutions Branch and the Major Collisions Unit. He was confident, in the circumstances, that "Careless Driving" was the most appropriate charge to be laid.

Mr Hutton, for the Incoll Family, asked Senior Constable Sampson if he had an opinion on what caused the careless driving leading to the accident. His response was:

On my view, and this is going to opinion because, it was I believe possibly, fatigue or lack of ...supervision by the supervising driver.⁷

Mr Russell John Scott

As noted above, Mr Scott is Senior Policy Advisor, Road User Behaviour, VicRoads. Mr Scott was able to advise the Inquest of the training regime required of new drivers in Victoria, both at the present time and at the time that Shaun Matfin was learning to drive. Mr Scott described the various strategies Vicroads employed, including outreach work in schools, to ensure that learner drivers were as well equipped as possible before they took to the roads.

It was clear from Mr Scott's evidence that the approach to teaching young people and others how to drive was constantly evolving, as new research developed and new practices were implemented.

Counsel Assisting, Ms Melis, sought Mr Scott's opinion on imposing a legislative requirement on "supervising drivers" to monitor a learner's fatigue level and be responsible for preventing a learner driving whilst fatigued. In his view, the concept of fatigue was a far more nebulous concept than monitoring, for example, speed. A "supervising driver" is liable under the Road Safety Act where a learner speeds.

In his evidence, Mr Scott recognised that fatigue, knowing what it was, how it arose and how its impacted could be mitigated, formed a distinct component of the driving instructions packages supplied to new and prospective drivers. He agreed that the Coroner could usefully make a

⁷ Transcript, 14 October 2010, page 183,

recommendation that learner drivers consider country driving as an important part of their driving education.

Findings

Although Craig Annand was the driver of the vehicle which killed Mrs Incoll in the road accident, I find no fault attaches to his driving up to and including the fatal crash.

The distance from Ouyen to Marong is 286 kilometres. Shaun Matfin, if he had completed the journey to Marong, commencing his driving in Wycheproof, would have driven 121 kilometres or 42% of the trip. Shaun also drove the family vehicle from Underbool to Ouyen, for a refuelling stop, a distance of 50 kilometres. If this additional distance is included, he would have driven over 50% of the distance from Underbool to Marong.

The Calder Highway north-west from Bendigo is a notoriously difficult route for drivers, with long straight stretches of road, vehicles moving at high speeds and big distances between towns. For a young driver, these challenges are heightened. The driving regime on the day of the accident for Shaun Matfin, set out above, without any apparent prior planning, looks more like an endurance course, than a training exercise.

Based on the evidence before this Inquest, I find it is highly likely that Shaun Matfin was in a "micro-sleep" at the point of collision with the Reliance Petroleum vehicle. In my view, a prudent supervising driver, when confronted with Shaun Matfin's observations relating to his tiredness, set out above, would have asked him to immediately pull over.

That Mr Ian Mafin did not do this, is highly surprising. The fact that he had no recall of his son's erratic driving after passing through Wedderburn, is also concerning and inexplicable. That he had no recollection of his vehicle's orientation, position on the road and the danger confronting his son, as the family car was about to collide with the 57 tonne fuel tanker is also inexplicable. His excuse for not being aware of the impending danger of a collision, because he was tuning the car radio, is as difficult to believe as it is banal.

The Matfin evidence notwithstanding, in the light of the observations made by both Mrs Boulton and Mr Annand about the Matfin vehicle, there must a real question as to whether both driver and supervising driver were asleep.

Shaun Matfin's training for his licence followed the traditional pattern in Victoria, driver training with a family member supplemented by driving school lessons. The efficacy of this approach is highly susceptible to the quality of the instruction given by the family member. There is no objective assessment of a supervising driver's ability conducted by a regulatory agency.

There is no legislation setting out the duties of a supervising driver. Although some reliance could be placed on information published by Vicroads, a clear statement of responsibilities set out in the *Road Safety Act* 1986, or the Regulations, could assist in making the driver training program stronger and more accountable.

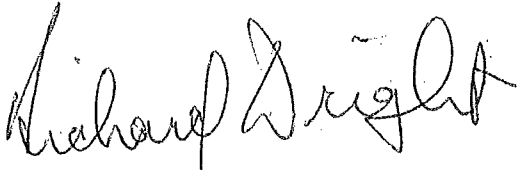
Recommendations

VicRoads should consider strengthening its message on fatigue on long journeys, especially in relation to young and other inexperienced drivers.

Consideration should also be given to some assessment procedure for qualifying prospective "supervising drivers".

VicRoads should consider recommending a legislative amendment to the Minister, setting out clearly the roles and duties of a "supervising driver", either in the Act or the Regulations.

Pursuant to section 72(2) of the Act, I direct that a copy of these findings be provided to the Chief Executive, VicRoads.



Richard Wright
Coroner

