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24th February 2013

Reference: COR 2011 002635

Coroners Court,
Level 11, 222 Exhibition Street
Melbourne, 3000
Attn: Kylie Keating

Dear Ms Keating,

The Victorian Motorcycle Council (VMC) has taken over from the Motorcycle Riders Association Victoria as the peak body for rider advocacy and representation in Victoria, and is pleased to provide a response to the Victorian Coroner in regards to the case of JD Smith, COR 2011 002635. The VMC is an active member of the Australian Motorcycle Council, is represented on the Vicroads Motorcycle Advisory Group and includes and counts several eminent riders and riding experts as both members and associates, so is perfectly placed to offer a response.

In summary, we are rejecting the Coroner's recommendation b) on the following grounds:

- After consulting widely within the riding fraternity, we do not believe that the roadworthiness of the motorcycle was a fair and reasonable causal or ancillary factor in the fatal collision between JD Smith and a cow on an unlit country road, particularly if the colouring of the cow was dark.
- That attributing primary cause to the unroadworthy headlight, is inconsistent with publically available, anecdotal and official reports showing that vehicular/animal collisions occur at night, despite perfectly roadworthy headlights. These collisions occur sufficiently frequently that it must throw some doubt on the Coroner's conclusion.
- That the following driver still crashed into a cow despite driving a vehicle with presumably perfectly roadworthy headlights, thus throwing the primary cause further into doubt.
- That in the base case, maintaining and operating a roadworthy vehicle is the law, which all road users, let alone riders, would be expected to know and comply with. Therefore a reminder about roadworthiness from the VMC to all riders, would be ineffective and in the view of consulted riders (including members of the VicRoads Motorcycle Advisory Group) would be ineffective at avoiding similar incidents in the future.
- That having the VMC attempt to communicate the Coroner's recommendation to all riders, would be a highly impractical and potentially ineffective undertaking. It may, importantly, also be prejudicial to the relationship between the Coroners court and motorcyclists. The report blames the motorcycle without apparent due consideration and investigation into the reasons why the cows were on the road and without generating specific recommendations that may help avoid this circumstance in the future, and

- The recommendation for the VMC to communicate to all riders is practically impossible. The only organisation with the effective means to communicate to all riders is VicRoads through its license and/or registration renewal notices.

General Discussion:

In this section we wish to explore a number of issues in greater depth, primarily for the Coroner's consideration, but also to indicate that the matter has been given extensive consideration and that this response isn't just a rebellious rejection. The VMC and its associates will of course be available to discuss any issue in greater depth should the Coroner wish it.

- Primary Concern:

One of the main concerns expressed by those consulted was that the Coroner's finding apportioned significant blame to the motorcycle rather than the failed fence. In respect of the causal chain of events, if it wasn't for the failed fence, there would not have been a/any cows on the road and presumably the rider would have made it safely to his destination. This is a reasonable conclusion given that he had successfully negotiated long unlit sections of the Princes Highway prior to his collision, notably, with an unroadworthy headlight. The focus on the motorcycle's headlight may at best be considered an ancillary issue, a view that we believe is supported by the non-conclusive statements to this cause from both the investigating Police officer and the officer from the Motor Vehicle Mechanical Investigation unit. The VMC and its associates are concerned that the finding unjustifiably elevates the roadworthy condition of the headlight to a causal factor.

- Animal / Vehicle crashes happen, even with roadworthy vehicles:

The Coroner's report indicates that rural areas erect signage warning of animal / vehicle crashes, presumably since these crashes occur often enough that it is an ongoing concern. It wouldn't be unreasonable to assume that the majority of these collisions occur with perfectly road worthy vehicles. Indeed, JD Smith's partner was following in a car with presumably two roadworthy headlights and it too crashed into a/the cow. Why are these crashes occurring if road worthy cars with TWO headlights are failing to see these cows? Although speculation isn't generally helpful, it does serve in this case to demonstrate that the Coroner's report does not appear to explore and rule out other potential and relevant possibilities.

For example, in the dark of night, a dark coloured cow would be highly obscured and camouflaged – it would for all intents and purposes, blend into the background. One farmer that was consulted on this matter pointed out that in the dead of night, even with well performing head lights, the only way to see his Friesian cows was by the reflection of their eyes. This is telling. Although the exact location of the crash has not been pinpointed, a Google street view snap shot along the Maffra-Rosedale road has been included below and shows a dark coloured bovine grazing in a front paddock. This gives somewhat circumstantial credence to the possible colouration issues.

But let's assume that the cow wasn't black, it was most likely brown, so even if it was standing dead centre of the road, it may take some amount of time for an alert driver in a roadworthy vehicle to recognise the potential obstacle in their path - an obstacle that is both unreflective and resolving itself out of the darkness. Whether there would be sufficient time to avoid the obstacle rests solely

on chance and the combination of time, space and reflexes. If the cow was off to the side of the road instead and ran onto the road startled by the noise of a vehicle, then the available time and space would be substantially reduced. In effect, the cow would be appearing out nowhere in such a scenario and the likelihood of avoiding a collision would be very very low. If either scenario is possible with a roadworthy car, how can it be stated with confidence that the roadworthiness of the motorcycle headlight was a causal factor?

Another factor reducing the available response time and space is the style of motorcycle. The steering geometry of a cruiser style motorcycle leads to a more stable and slower steering bike compared to other more conventional bike styles. In such a case, even if the rider noted the obstacle and responded rapidly, the bike would be disadvantaged by its reduced manoeuvrability. It is therefore entirely plausible that even if the headlight was entirely roadworthy, JD Smith might not have had sufficient time to see and avoid the cow. In such a case, the root cause must fall onto the aberrant uncontained cow/s.

The public record has quite a number of cow/vehicle crashes, a few of which are listed below – the first one being notable given that it quotes the TAC on this matter:

http://www.weeklytimesnow.com.au/article/2011/08/11/366681_national-news.html

<http://www.dailymercury.com.au/news/wandering-cows-causing-crashes-across-region/1074517/>

<http://www.abc.net.au/news/2011-10-17/man-in-hospital-after-crashing-car-into-cow/3574758>

<http://www.couriermail.com.au/news/queensland/two-women-escape-injury-in-crash-that-killed-cow-on-bruce-highway/story-e6freoof-1226547448509>

<http://news.smh.com.au/breaking-news-world/man-killed-in-nz-car-crash-with-cow-20100525-w9ch.html>

And also of interest is a published research paper from CARRS-Q which in part explores animal related crashes: <http://eprints.qut.edu.au/15299/1/15299a.pdf> The paper lends further support that these kinds of crashes occur, even with fully road worthy vehicles/motorcycles, therefore further suggesting that the headlight's roadworthiness is at best an ancillary issue, not a causal one.

These unexplored possibilities, and silence on the potential involvement of the colouration, behaviour, breed and movement of the cow, suggest that it is unreasonable to attribute a potentially non causal roadworthiness issue as a main cause of a fatal crash. Such a cause sets a precedent that is highly unpalatable and the possible implications are theoretically far reaching in a political environment already hostile towards motorcyclists, a legitimate and fast growing road user group. This precedent gives rise to grave concerns given that there are many procedural reasons a motorcycle may be deemed technically unroadworthy without compromising the intrinsic safety of the motorcycle or the rider. For these reasons, the VMC and its associates do not agree that the unroadworthy headlight was a genuine and bonafide root cause of JD Smith's untimely death.

- Other Coroners Cases

We bring the Coroner's attention to the case of the death of Roy Gilbert, Court reference 4815/06. It is interesting in that it involves a horse loose on the road at night and a car driver – a Mr GILBERT - killed after crashing into it. In essence, the Coroner's finding is that if the horse was not loose on the road, Mr Gilbert would not have died, which concurs with the consensus of rider opinion obtained in

preparing this response to the JD Smith case. In Roy Gilbert's case, the Coroner's findings do not mention anything to do with Mr Gilbert's vehicle, headlights or any aspect of roadworthiness. The parallels between this case and JD Smith's case are not inconsequential and we'd asked the Coroner to consider his findings in light of the Roy Gilbert case.

In Conclusion:

The VMC wishes to thank Ms Wendy Taylor - MAG representative, for her help in preparation of this response. We would also like to thank the Coroner's Court for the opportunity to make a response in this case. The VMC and its associates, finds overwhelmingly that we cannot support the conclusion that the unroadworthy headlight was a primary cause of Mr JD Smith's death, and as a result cannot support the subsequent recommendation b) directed at the VMC and rider clubs. We hope that this response will be considered as reasonable and relevant, and possibly/hopefully encourage the Coroner to investigate the fatality anew.

Should the Coroner or any member of the court wish to discuss any aspect of this response, the VMC would be only too happy to respond.

Yours Sincerely,



Rob Salvatore – B.Eng Mech (Hons)
VMC – Deputy Chair.

Figure 1: Dark coloured bovine on a property along the Maffra – Rosedale Rd.

