

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 4815/06

Inquest into the Death of ROY GILBERT

Delivered On: 31 January 2012

Delivered At: Melbourne

Hearing Dates: 2 & 3 December 2009

Findings of: JANE HENDTLASS

Representation: Sgt Hose assisting the Coroner
Mr Sheales for Sharon Gott
Mr Read and Mr Ogilvy for Racing Victoria

Place of death: Between Deep Creek Road & Dore Road - Outbound Lane, Princes
Highway, Pakenham, Victoria 3810

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 4815/06

In the Coroners Court of Victoria at Melbourne

I, JANE HENDTLASS, Coroner

having investigated the death of:

Details of deceased:

Surname: GILBERT
First name: ROY
Address: 8 Viewmount Crescent, Narre Warren

AND having held an inquest in relation to this death on 2 & 3 December 2009
at Melbourne

find that the identity of the deceased was ROY GILBERT
and death occurred on 19 December 2006

at Between Deep Creek Road & Dore Road - Outbound Lane, Princes Highway, Pakenham,
Victoria 3810

from

1a. HEAD INJURIES SUSTAINED IN MOTOR VEHICLE ACCIDENT (DRIVER).

in the following circumstances:

1. Roy Gilbert was 54 years old when he died. He lived with his partner, Sharon Nixon, at 8 Viewmount Crescent in Narre Warren. Mr Gilbert's medical history included hypertension and kidney disease. He was prescribed prednisolone, cyclophosphamide, allopurinol and perindopril. Mr Gilbert held a full current Victorian drivers licence.

2. Mr Gilbert worked for ESSO as platform service operator on the Marlin rig in Bass Strait. He worked one week on and one week off with 12 hour shifts starting on a Tuesday.

3. Accordingly, Mr Gilbert did not work on the week commencing 12 December 2006. At about 4.30am on 19 December 2006, he left home to drive to Longford where he intended to meet the helicopter to take him to the Marlin rig.

4. In 2006, Sharon Gotts was an owner trainer licensed with Racing Victoria Ltd.¹ In this capacity, she conducted breaking and pre-training of horses for thoroughbred racehorse trainers. Pre-training involves low impact exercise to increase fitness and stamina. This may require the horses to walk or trot but they are not usually allowed to canter or gallop during exercise. There were about 30 horses in pre-training at Ms Gotts' property at 285 Dore Road in Nar Nar Goon North.

5. As well as the legislation that applies to all Victorians, Ms Gotts had agreed and was required to comply with the Rules of Racing of Racing Victoria Ltd (the "Rules of Racing").² These rules include the Australian Rules of Racing made by the Australian Racing Board, the Local Rules and Rules of Race Betting made by Racing Victoria Ltd and the duties imposed on employers and employees by the *Occupational Health & Safety Act 2004*.

6. On or about 24 November 2006, a horse trainer in Cranbourne, Damien Williams, sent two horses to Ms Gotts for pre-training and education. Mr Williams retained the role of registered trainer for these horses.

7. Mr Williams is an experienced race horse trainer registered with Racing Victoria Ltd. He and his family had sent horses to Ms Gotts for training and pre-training for many years and been impressed with her results.

8. At about 4.50am on 19 December 2006, Mr Gilbert was driving alone east on the Princes Highway. There was no lighting and it was still dark. As he rounded a slight curve near Dore Road, Mr Gilbert's car hit a horse that was galloping on the road. There is no evidence that Mr Gilbert saw the horse before his car collided with it.

¹ I accept that, for the purposes of section 72 of the *Coroners Act 2008*, Racing Victoria Ltd is an entity.

² Kane Ashby, statement, 1 December 2009.

9. The horse had escaped while it was undergoing early morning exercise on the road near Ms Gotts' property and was running loose on the Princes Highway.

10. The horse was thrown on to the driver's side roof of Mr Gilbert's car. The car roof and driver's side pillar were crushed and Mr Gilbert sustained head injuries.

11. Mr Gilbert was unresponsive when emergency services arrived. He was unable to be revived.

12. The forensic pathologist who performed the autopsy formed the opinion that the cause of death was head injuries sustained as a driver in a motor vehicle accident. No alcohol or other drugs were detected.

13. Accordingly, I find that Roy Gilbert died from head injuries sustained as a driver in a motor vehicle accident.

14. When Mr Gilbert died the *Coroners Act 1985* was in operation. On 1 November 2009, this legislation was replaced by the *Coroners Act 2008*. Therefore, the police investigation of Mr Gilbert's death on behalf of the Coroner was governed by the *Coroners Act 1985* but the Inquest which was also part of the coronial investigation was held under the *Coroners Act 2008*.

15. Both the *Coroners Act 1985* and the *Coroners Act 2008* require me to determine if possible the cause of death and how the death occurred. The *Coroners Act 2008* also requires me to consider ways in which further deaths can be prevented and to make appropriate recommendations.

16. Therefore, this Finding presents the results of the coronial investigation of the circumstances surrounding Mr Gilbert's death, including the reasons that the horse was running loose on the Princes Highway in the dark on 19 December 2006 and the reasons that Mr Gilbert was unable to avoid hitting it. It also discusses the Rules of Racing that are relevant to the responsibilities of a licensed owner trainer when they are providing pre-training and education services for horses that remain registered to another licensed trainer.

17. The Finding then comments on the reasons for Mr Gilbert's death and makes recommendations intended to prevent further deaths occurring in the same way..

The Circumstances of Mr Gilbert's death

18. At about 4.00am on 19 December 2006, Ms Gotts began to exercise three horses on her property in Pakenham. These horses included the two horses that Mr Williams had sent to her for pre-training and education. These two horses were called Mr Santiago and Mitch.

19. Ms Gotts was driving a black Jeep Cherokee. She was unfit to ride because her leg was in a plaster cast so she was unable to participate in active control of the horses. The headlights on the Jeep were on but there was no other light in front of the vehicle. It was still dark and there was light drizzle.

20. Ms Gotts directed Sarah Lamond to sit in the back of the Jeep and lead Mr Santiago and Mitch side by side behind the vehicle using 10 metre long lead ropes, head collars and anti rearing bits.

21. Mia Sell rode astride a third horse, Rock. They followed behind Mr Santiago and Mitch. Rock had a black saddle and a bridle and no reflective gear. Ms Sell was wearing a helmet with a miner's light and a reflective vest. Ms Gotts regularly used this procedure to exercise the horses she was pre-training. There is no evidence that either of these horses were equipped with reflective gear.³

22. As the horses walked up the driveway of the property towards Dore Road, Ms Gotts increased the speed of the Jeep and they started to trot. However, Ms Sell was unable to keep up and her horse had dropped back some distance from the Jeep and the other two horses.

23. Ms Gotts drove the Jeep on to Dore Road and turned right heading south towards Princes Highway. Mr Santiago and Mitch followed. In so doing she created the circumstances where the road was part of the workplace for which she was responsible under the *Occupational Health and*

³ e.g. Mia Sells, statement, 9/4/2007; transcript 2 December 2009, p. 84.

24. As they entered Dore Road, Mr Santiago began to weave around to the side of her vehicle and back across Mitch's leading rein. Ms Lamond says she tried to tell Ms Gotts she was losing control of Mr Santiago but Ms Gotts did not slow down.

25. At about the intersection with Seymour Road, Mr Santiago broke free from Ms Lamond and pushed through Mitch's leading rein so that Ms Lamond let go of both leading reins and jumped out of the Jeep. Mitch and Mr Santiago cantered off along Dore Road towards the Princes Highway. The two sets of long lead ropes were hanging loose.

26. Ms Sell continued to ride down Dore Road but she quickly lost sight of the other horses and did not see any of the ensuing consequences of the horses' escape.

27. Ms Gotts quickly drove the Jeep down Dore Road and passed Mitch and Mr Santiago. She stopped in front of them in an attempt to divert or stop them. However, Mr Santiago became more agitated when he hit the passenger side of the Jeep. This collision broke off the exterior mirror and dented the front passenger door and panel of the Jeep.

28. Mr Santiago and Mitch galloped down Dore Road on to the Princes Highway. Mr Gilbert's car hit Mr Santiago when he was about 500 metres west of Dore Road in the right hand lane of the eastbound carriageway of the Princes Highway.

29. Mr Santiago was thrown on to the roof of Mr Gilbert's car. The car roof and driver's side pillar were crushed and Mr Gilbert sustained head injuries. He quickly became unresponsive and was unable to be revived.

30. There is no evidence that Mr Gilbert saw the horse before his car collided with it. He did not take evasive action and the following driver says his car seemed to slow to a stop on its own accord about 100 metres from the collision.

⁴ Section 6 *Occupational Health and Safety Act 2004.*

31. Mr Santiago fell on to the right hand lane of the eastbound carriageway of the Princes Highway and died. He was in this position and Mr Gilbert's car was just coming to a stop when Ms Gotts and Ms Lamond arrived at the scene.

32. Ms Gotts and Ms Lamond immediately returned to Ms Gotts' property. As they passed, Ms Sells in the Jeep, Ms Gotts told her:

"Head home. One of the horses is dead and there's been a car accident."

33. Ms Gotts' de facto partner, Tim Wheeler, lived with Ms Gotts at Nar Nar Goon but he did not usually or officially participate in her horse training business. However, after discussing the incident in which Mr Gilbert died, Ms Gotts and Mr Wheeler told Ms Lamond and Ms Sell not to gossip or otherwise tell anyone about what had happened. Ms Lamond also says Ms Gotts told her not to talk to the horses' owners about the incident. Despite these admonitions, Ms Lamond and Ms Sell agreed to provide police with information about Mr Gilbert's death if they were asked.

34. At about 5.30am on 19 December 2006, Ms Gotts and Mr Wheeler left home in Ms Gotts' vehicle to look for Mitch. They drove down the wrong side of the Princes Highway and told a CFA officer that there was another horse loose on the road.

35. Police also spoke to Mr Wheeler in his car at the scene. Mr Wheeler was agitated and abusive and would not answer police questions about where the horse had come from or provide them with any information about the circumstances of Mr Gilbert's death.

36. Police also noticed that Ms Gotts was visibly upset in the car when they were speaking to Mr Wheeler but they did not talk to her further. At about 7.00am on 19 December 2006, Ms Gotts rang Mr Williams. She was still upset. In his statement, Mr Williams said:

"Sharon said that the two horses had got loose and there had been an accident. A man in a car had passed away, and also, that Mr Santiago had been killed. Sharon said that they were bringing them into work and he took fright. The horse then bolted up the road. Sharon told me that they chased after the horse in their vehicle, and that was about it. Sharon said the other horse had gone into the paddock"

37. Mr Williams also said that he did not know that Ms Gotts led two horses side by side in the dark on long leads from the back of a car on the road. Rather, he thought the horses were ridden up and down the hill on Ms Gotts' property.

38. In answer to questions about his opinion of the practice of leading two horses side by side on long leads from the back of a car on the road in the dark, Mr Williams also said:

"Would you be concerned about Mr Santiago in particular being led behind the car on the road in the dark?---For sure.

Would you be also concerned about Mitch being led beside Mr Santiago behind the car?--Yes.

On the road, in the dark?---Yes.

So if you had known that, you would have been concerned?---Yes.

You didn't know that?---No."

39. When he understood the horses were walking or trotting when they were led from the back of the vehicle rather than from the driver and passenger windows, Mr Williams qualified these answers to agree there was nothing really wrong with the practice being used in daylight but:

"I wouldn't do it myself, but I'm not saying - I never told Sharon how to prepare the horses, she always sent them (back) in very good condition, and I was happy the way they were arriving back at the stables."

40. Mr Williams also said he would have preferred they were not on the road in the dark:

"... because horses, they can take fright. They're quite strong animals. They probably average 140 kilos, if they take fright, you know, it could be - things can go wrong....."

41. Further, Mr Williams agreed that two horses would be more difficult to contain than a single horse but they were probably not totally out of control if they were still cantering:

"I know if two horses run off together, they encourage each other"

42. Mr Williams added that horses would gallop and become very difficult to stop when they became frightened or "spooked". This response would be exaggerated by the two horses being together with their reins loose and by the lights and speed of the Jeep:

"If they'd been spooked they'd take off pretty quick, and as I said earlier two horses together they just - -

Once they're spooked, you know, you've really got to hang on to them. Because if you lose them, as I said, with leads hanging they don't stop."

and

"And with leads dangling they will just run. They will. It's quite hard to stop them if that happens."

43. Therefore, in deciding to send Mr Santiago and Mitch to Ms Gotts for pre-training and education, Mr Williams relied on their long term relationship and her good reputation for improving horses' condition. To the degree that he retained responsibility under the Rules of Racing as the trainer of Mr Santiago and Mitch, Mr Williams did not familiarise himself with Ms Gotts' pre-training practices and he was not aware of Ms Gotts' practice of exercising two horses side by side on long reins from the back of a vehicle on the road in the dark.

44. Mr Santiago's body was taken to the Tooradin Knackery. On 21 December 2006, the owner of the knackery denied the horse was there but police found the horse's remains in the bin and photographed identifying information.

45. On 14 February 2007, one of Ms Gotts' previous employees made a statement for police about what she had been told about the events of 19 December 2006. Police then followed up this information as part of their investigation of Mr Gilbert's death.

The Rules of Racing

46. In Victoria, the Rules of Racing are enforced by Racing Victoria Ltd through the stewards.⁵ Stewards have the authority to enter premises and investigate any incident that occurs at a registered horse training facility and penalise any registered horse trainer who breaches the Rules of Racing.⁶ Further, the stewards may penalise any person who breaches of the Rules of Racing or whose conduct or negligence has led or could have led to a breach of the Rules of

⁵ Rules of Racing, Australian Rules 7 (e), 8; Local Rules 7A.

⁶ Rules of Racing, Australian Rules 8 (c), (d), (e), (g); 8B (as amended on 1 October 2007); 10A.

Racing.⁷

47. Therefore, through its stewards, Racing Victoria Ltd is or ought to be responsible for investigating breaches of the Rules of Racing when they become aware of them.

48. On 15 June 2006, Ms Gotts had successfully applied to Racing Victoria Ltd for her trainer's licence to be downgraded to an owner/trainer's licence to train horses outside the suburban radius.

49. Kane Ashby is the Senior Stipendiary Steward at Racing Victoria Ltd. He told the Court that, as a licensed owner trainer, Ms Gotts was only permitted to train her own horses or horses owned by her immediate family. She was unable to train horses for outside clients.⁸

50. However, Mr Ashby also explained that, in circumstances where Mr Williams sent Mr Santiago and Mitch for pre-training and education at Ms Gotts' stables, Mr Williams had not altered the horses' registration cards or notified Racing Victoria Ltd that responsibility for training had been transferred to Ms Gotts. Therefore, from the perspective of Racing Victoria Ltd, Mr Williams retained responsibility for the horses' training. For this reason, Mr Asby said that Ms Gotts did not breach the requirements of her registration when she undertook pre-training of horses which did not belong to her or her immediate family but were registered to another trainer.⁹

51. Racing Victoria Ltd has no record that a steward or other official inspected Ms Gotts' premises after 21 October 1999. Further, there is no evidence that Racing Victoria Ltd investigated Mr Santiago's death after they became aware that it had occurred. Therefore, the evidence before me suggests that Racing Victoria Ltd did not actively enforce the Rules of Racing on Ms Gotts' property.

52. Mr Ashby attributed this failure to actively inspect Ms Gotts' property to her relatively small scale training operation. He also said that Racing Victoria Ltd had no concerns about horse audits, stable hand audits, ensuring the trainers have complied with all the relevant rules, or

⁷ Rules of Racing, Australian Rules 175 (gg), (k), (l)

⁸ Ashby, transcript, 3 December 2009, p. 159.

⁹ Ashby, Transcript, 3 December 2009, p. 175.

positive swab enquiries in relation to Ms Gotts. Racing Victoria Ltd had not received any complaints about Ms Gotts' operation.

Appropriate Equipment

53. The Rules of Racing state:

*"A trainer must ensure that every horse that is being led or ridden outside his stable premises in a public roadway or thoroughfare prior to sunrise wears a rug or other gear with reflective stripes and that its owner or attendant wears a reflective vest of a design approved by the Stewards."*¹⁰

54. Further, the Rules of Racing require every horse being led outside the confines of any stable to have a bit in its mouth which is attached to a lead.¹¹

55. WorkSafe Victoria has advised trainers that:

"While being led, every horse must have a headstall and a bit in its mouth with the bit attached to a lead....

*Ensure a safe distance is maintained from other horses while riding (track work) or when leading a horse"*¹²

56. Racing Victoria Ltd has also published an Occupational Health and Safety Stable Inspection "Check List" which provides for trainers and stewards to assess the stables. This list includes evidence that the employer is managing Occupational Health & Safety issues and training of employees and that the tack room has appropriate safety gear for riders.

57. On 31 March 2003, Ms Gotts attended a compulsory Occupational Health & Safety Seminar. The speakers at this seminar outlined trainers' obligations under the Rules of Racing and the legislation. Ms Gotts was also given an industry video and a Workplace Inspection Checklist to take home.¹³ Therefore, she knew or should have known the safety requirements imposed by the Rules of Racing and the *Occupational Health and Safety Act 2004*.

¹⁰ Rules of Racing, Australian Rules 80D

¹¹ Rules of Racing, Australian Rules 87A(2).

¹² WorkSafe Victoria, "Horse Stables and Track Riding Safety" June 2007, p. 21.

¹³ Ashby, statement, 1 December 2009.

58. On 19 December 2006, Mitch and Mr Santiago were fitted with rearing bits, head collars and long leads. However, they were not wearing rugs or other gear with reflective stripes.¹⁴ Therefore, the evidence before me suggests that the horses' equipment failed to comply with the requirements of the Rules of Racing.

59. The Rules of Racing also require every rider to wear a helmet with a light approved by the Australian Racing Board when mounted at night.¹⁵

60. Ms Sells was riding a horse on 19 December 2006. She was wearing boots, gloves, jodpurs, a helmet with a miner's light and a reflective vest.¹⁶ Therefore, the evidence before me suggests that she complied with the intention of the Rules of Racing in relation to her clothing.

Track work

61. Mr Ashby told the court that there was no definition for track work under the Rules of Racing in 2006.¹⁷ Therefore, the Rules of Racing were silent with respect to the appropriateness of track work which included leading Mr Santiago and Mitch side by side from the back of the Jeep on Dore Road in the dark.

62. Mr Ashby also said that the 2009 version of the Rules of Racing included a definition of track work:

*"Trackwork" means any training activity, excluding an official trial or jump-out, undertaken by a racehorse in the care of a trainer on a racecourse, recognised training track, private training establishment or elsewhere".*¹⁸

63. Under this new definition of trackwork, Mr Ashby said it is arguable that "elsewhere" includes leading a horse on the road and therefore it remains a legitimate practice. However, Mr Ashby also told the Court that the stewards would not exclude investigating a complaint about leading a horse on the road because it was not a breach of the Rules of Racing. Rather, they

¹⁴ e.g. Sells, transcript 2 December 2009, p. 84.

¹⁵ Rules of Racing, Australian Rules 87, 87AAA.

¹⁶ Sells, transcript 2 December 2009, p. 84.

¹⁷ Ashby, transcript, 3 December 2009, p. 176.

¹⁸ Rules of Racing, Australian Rules 1 (added 1/9/09).

would respond to a complaint by considering whether it was safe practice or not.¹⁹ He said this investigation had not occurred in relation to Mr Gilbert's death or otherwise because no one had complained to Racing Victoria Ltd.

Registration of employees

64. The Rules of Racing require licensed trainers to register all employees on 1 August or at the commencement of their employment.²⁰ On 15 June 2006, Ms Gotts indicated that she had two casual employees and no full time or part-time employees in her application for change of registration status.

65. On 19 December 2006, Mia Sell was employed as track foreman at Ms Gotts' property. She worked five days a week and had weekends off. Ms Sell had worked in the horse industry for 12 years and she started work with Ms Gotts in about May 2005. She held a current licence to work for Ms Gotts as a stable hand. Her licence expired on 31 July 2007. Therefore, contrary to Ms Gotts' application for an owner trainer licence on 15 June 2006, Ms Sell considered herself to be a full-time employee.

66. Further, on 19 December 2006, Sarah Lamond was employed as a stable hand at Ms Gotts' property. Ms Lamond had worked for Ms Gotts for six to eight months prior to 19 December 2006. On 18 July 2006, Ms Lamond had completed her application to be a licensed employee at Ms Gotts' stables but Ms Gotts did not countersign the application until 20 December 2006 and it was received by Racing Victoria on 2 January 2007. Therefore, Ms Lamond was not licensed as Ms Gotts' employee until 2 January 2007. Further, Ms Lamond says that Ms Gotts cancelled her employment in January 2007. However, she remained a licensed employee at Ms Gotts' premises until 31 July 2008.

67. Therefore, contrary to Ms Gotts' application for an owner trainer licence on 15 June 2006, the evidence before me suggests that Ms Lamond was not registered as Ms Gotts' employee on 19 December 2006 as required by the Rules of Racing.

¹⁹ Ashby, Transcript, 3 December 2009, p. 173.

²⁰ Rules of Racing, Local Rules 39A, 39B.

68. The Rules of Racing also provide that a registered trainer must notify Racing Victoria and nominate a licensed trainer or trainer's assistant who consents to be left in charge of the race horses in training when they intend to leave Victoria.²¹ Mr Wheeler did not usually or officially participate in Ms Gotts' horse training business. He was not a registered trainer or trainer's assistant. He was not registered with Racing Victoria Ltd as Ms Gotts' employee. However, in her application for an owner trainer's licence dated 15 June 2006, Ms Gotts nominated Mr Wheeler as the person in charge of the stables when she was absent. Further, Mr Wheeler told Ms Sell and Ms Lamond not to talk about the incident in which Mr Gilbert died.

69. Therefore, to the extent that he deputised for Ms Gotts and directed her staff, Mr Wheeler could not comply with the Rules of Racing.

Reporting of the incident involving Mr Gilbert's death

70. Under the *Occupational Health and Safety Act 2004*, death of any person arising from a workplace incident is a notifiable incident.²² Further, the Rules of Racing require the trainer of a horse in training to report its death to Racing Victoria Ltd.²³

71. In September 2007, WorkSafe Victoria funded the racing industry to develop a Stablesafe program and conduct Stablesafe reviews. In particular, Stablesafe publications confirmed that it is the responsibility of the trainer to ensure Worksafe Victoria has been notified when a notifiable incident occurs.²⁴

72. The evidence before me does not indicate that either Ms Gotts or Mr Williams reported the incident in which Mr Gilbert died to Worksafe Victoria or Racing Victoria Ltd.

Police investigation of Mr Gilbert's death

73. On 30 January 2007, Ms Gotts' former employee, Kate Fremlin, contacted police because she had heard that Ms Gotts had been exercising Mr Santiago on the road just before the collision

²¹ Rules of Racing, Local Rules 35D(2).

²² Sections 37 & 38 *Occupational Health & Safety Act 2004*.

²³ Rules of Racing Australian Rules, Local Rule 9.

²⁴ WorkSafe Victoria, "Stablesafe", 2009.

in which Mr Gilbert died. On 14 February 2007, Ms Fremlin made a statement about the information she had been told and the police reinvigorated their investigation.

74. Accordingly, police augmented their investigation of Mr Gilbert's death by actively pursuing information about Mr Santiago's involvement in the collision.

75. As well as obtaining statements from drivers first on the scene, police confirmed the identity of Mr Santiago by matching their photographs of his identifying characteristics with those recorded by Racing Victoria Ltd. Police were then able to identify Mr Santiago's owner and trainer.

76. On 29 March 2007, Ms Gotts and Mr Wheeler volunteered to speak to police at the Pakenham Police Station. Mr Wheeler refused to provide a statement but Ms Gotts made a statement about what she said had occurred on 19 December 2006. This statement was inconsistent with the other evidence before me.

77. In particular, on 29 March 2007, Ms Gotts told police that she was not present when Mr Santiago and Mitch escaped. Rather, she said that Mr Wheeler had told her that two horses with rearing bits, head stalls and leads had got away. She said she went after the horses in the car and saw them half way down Dore Road. She tried to drive past them but the horses ran straight past her and she could not stop them. Ms Gotts told police she then went back to the house before she and Mr Wheeler went to look for the horses again.

78. On 30 March 2007, police identified Ms Sell and Ms Lamond as Ms Gotts' employees from Racing Victoria records and invited them to provide information. On 8 April 2007, Ms Lamond confirmed she had been leading the two horses from the back of the vehicle driven on Dore Road by Ms Gotts when the horses got loose. She made a statement on 6 May 2007. On 9 April 2007, Ms Sell also provided police with a statement.

79. Over two years later, on 15 September 2009, Ms Gotts made a further statement to police. In this statement, Ms Gotts withdrew her earlier evidence that Mr Wheeler had told her that the horses had got away on 19 December 2006 and she had not seen them escape. Ms Gotts also

confirmed she had been working the horses with Ms Sell and Ms Lamond when they escaped and therefore she knew they had rearing bits, head stalls and leads.

80. In her second statement, Ms Gotts also told police she could not stop the horses but she followed them half way up Dore Road towards Princes Highway. Ms Gotts did not say she had seen the horse after it had been hit. She denied driving the Jeep when the horses were training on the road. This statement is also inconsistent with the other evidence before me.

81. Ms Gotts was excused from giving evidence at the Inquest.

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death:

1. Roy Gilbert died at about 4.50am on 19 December 2006 from injuries received when the car he was driving hit a horse, Mr Santiago, that was galloping on the Princes Highway in Pakenham. It was still dark. There is no evidence that Mr Gilbert saw the horse before his car hit it.

2. Damien Williams was the registered trainer of Mr Santiago. Mr Williams is an experienced race horse trainer in Victoria. He had sent the horse to Sharon Gotts for pre-training and education. Pre-training provides the horses with low impact exercise which is intended to improve their stamina and energy.

3. In evidence, Mr Williams said he sent two horses, Mr Santiago and Mitch, to Ms Gotts for pre-training and education because:

" I've known Sharon for a long time, she's very good with the horses, even with the breaking in of horses, she's quite talented with her horse skills."

4. Mr Williams had made no inquiries about the way in which Ms Gotts worked the horses in pre-training. Accordingly, he was not aware of her practice of leading two horses side by side from the back of her vehicle on the road in the dark using 10 metre long leads, head collars and anti rearing bits.

5. On 19 December 2006, Ms Gotts was driving a black Jeep Cherokee down Dore Road in Nar Nar Goon. She had a broken leg and was unable to actively participate in handling the horses.

6. Ms Gotts had directed her stable hand, Sarah Lamond, to lead Mr Santiago and Mitch side by side from the back of the Jeep using 10 metre long leads, head collars and anti rearing bits. A second stable hand was riding a horse behind the led horses but she had to drop back when her horse became fractious. There is no evidence that any of the horses were equipped with gear with reflective stripes.

7. As the horses were trotting down Dore Road behind Ms Gotts' vehicle, Mr Santiago broke free and pushed through Mitch's leading rein so that Ms Lamond lost control of both the horses. They cantered off together down Dore Road.

8. Ms Gotts and Ms Lamond drove the Jeep down Dore Road past the horses. Ms Gotts stopped the Jeep in front of the horses to try to stop them or divert their course. It would have been more difficult to intervene with two horses because they probably encouraged each other to continue down the road. Further the long leads would have further complicated Ms Gotts' chances of success.

9. Mr Santiago became more agitated after he collided heavily with Ms Gotts' vehicle. He and the other horse galloped further down Dore Road and on to the Princes Highway. By then, the horses were frightened or 'spooked' and they would have been very difficult to stop or control.

10. Mr Santiago galloped into the path of Mr Gilbert's car. In the absence of reflective gear on the horse, there is no evidence that Mr Gilbert saw Mr Santiago before his car collided with the horse.

11. Therefore, I find that Mr Gilbert would not have died on his way to work at 4.50am on 19 December 2006 if:

- Ms Gotts' employee had not been leading two horses side by side from the back of her vehicle on a public road using a long lead in the dark, and/or

- Mr Santiago had been equipped with gear with reflective stripes.

Leading two horses side by side from the back of a vehicle on a public road using a long lead

12. In 2006, the Rules of Racing were silent about leading horses on the road during track work. However, the 2009 version of the Rules of Racing includes a definition of track work.²⁵ Under this new definition of trackwork, it is arguable that "elsewhere" includes leading a horse on the road and therefore Kane Ashby, Senior Stipendiary Steward at Racing Victoria Ltd, says it remains a legitimate horse training practice. Accordingly, the stewards would not investigate the practice unless they received a complaint about safety.

13. However, leading a horse from the back of a vehicle is inconsistent with Road Safety Road Rule 301 of the Australian Road Rules which provides:

"(2) A person who is a passenger in, or on any part of, a motor vehicle must not lead an animal while the motor vehicle is moving.

*Penalty: 3 penalty units."*²⁶

14. Therefore, the Rules of Racing should be amended so that they are consistent with Victorian legislation.

Exercising horses in the dark without reflective gear

15. There is no evidence that Mr Gilbert saw the horse on the road before his car collided with it. Further, Mr Williams was particularly concerned about the safety implications of exercising horses on a public road at night.

16. The Rules of Racing require horses to be equipped with a rug with reflective stripes at night. They also require their riders or attendants to wear a reflective vest of a design approved by the stewards.

²⁵ Rules of Racing, Australian Rules 1 (added 1/9/09).

²⁶ Reg 301 (2) Road Safety (Road Rules) Regulations 1999.

17. The horses were not wearing gear with reflective stripes. If Mr Santiago had been wearing a blanket that complied with the Rules of Racing, it is possible that Mr Gilbert would have seen him and avoided the collision in which he died.

Enforcement of the Rules of Racing

18. In 2006, Ms Gotts was a registered owner trainer with Racing Victoria Ltd. However, she was able to perform pre-training duties for Mr Williams because he was a registered trainer and retained responsibility for the horses. On this interpretation, Mr Williams was responsible for ensuring that Ms Gotts complied with the provisions of his trainer's licence in relation to delivering pre-training services.

19. Further, from 1 August 2009, Racing Victoria Ltd issued Ms Gotts with a restricted trainers licence.²⁷ This licence means that she may now train five horses at any one time as well as horses owned by members of her immediate family, and she can race horses.²⁸ Therefore, Ms Gotts was and continues to be required to comply with the Rules of Racing.

20. Racing Victoria Ltd and WorkSafe Victoria have the power to inspect the premises of registered trainers. Further, the worksheets that have been drafted to assist inspectors of stables include checking that the gear for horses and staff complies with the Rules of Racing. However, Ms Gotts' stables had not been inspected since 21 October 1999.

21. Mr Ashby attributed this failure to the relatively small scale of Ms Gotts' training operation. Further, Racing Victoria Ltd had no concerns about horse audits, stable hand audits, ensuring the trainers have complied with all the relevant rules, or positive swab enquiries in relation to Ms Gotts because they had not received any complaints about Ms Gotts' operation.

22. I interpret Mr Ashby's explanation as saying that the stewards do not pro-actively inspect smaller stables for compliance with the Rules of Racing. Rather they act responsively when they receive complaints. I can understand this method of prioritising use of resources where the issue is proper management and supervision of racing standards and integrity.

²⁷ Discussion, Transcript, 3 December 2009, p. 179.

²⁸ Section 6.3, Racing Victoria Ltd Licensing policy, updated 26 May 2009.

23. However, in circumstances where Racing Victoria Ltd issues an owner trainer licence and this licence is a prerequisite to employing stable staff and training horses for racing, Racing Victoria Ltd has accepted responsibility for monitoring compliance by all licensed stables and trainers.

24. Further, Ms Ashby emphasised that the stewards are also concerned about the safety of training operations. Racing Victoria Ltd is working closely with WorkSafe Victoria to implement safe workplace practices. These issues are not confined to racing stables and larger operations.

25. Random monitoring of all licensed trainers and their stables would achieve the safety ambitions of the Rules of Racing better than only selective or targeted inspections. In particular, in the absence of a complaint to Racing Victoria Ltd, an unannounced random inspection of Ms Gotts' practices and stables would have identified her failure to use reflective gear and may have prevented the collision in which Mr Gilbert died.

26. Further, and in the alternative, Mr Williams was a registered trainer and Mr Ashby explained that Mr Williams retained responsibility for his horses' training while they were undergoing pre-training at Ms Gotts' establishment. However, Mr Williams was not aware that Mr Santiago and Mitch were exercised by leading them side by side on a public road using a long lead from the back of Ms Gotts' vehicle in the dark. He also said he was concerned about the practical and safety implications of these practices particularly at night.

27. Mr Williams was not asked and did not volunteer to accept any responsibility for Mr Santiago's management. It is impossible to speculate whether, if he had been aware, he would have prevented Ms Gotts leading Mr Santiago and Mitch side by side on a public road at night using a long lead from the back of her vehicle. I also note that Ms Gotts did not explain the exercise practices associated with Mr Santiago's death to Mr Williams when she reported to him on the morning of 19 December 2006.

28. Therefore, in the absence of a written contract between Mr Williams and Ms Gotts or specific directives about the relationship between trainers and pre-trainers in the Rules of Racing,

I do not accept that Mr Williams retained full responsibility for Ms Gotts' compliance with the Rules of Racing in relation to her pre-training of Mr Santiago and Mitch on 19 December 2006.

29. On the other hand, I am uncertain about the degree to which these responsibilities devolved or ought to devolve in circumstances where Mr Williams retained the role of registered trainer for the horses and did not prescribe or make proper inquiries about Ms Gotts' pre-training practices or the degree to which she complied with the Rules of Racing.

30. This issue would be clarified if Racing Victoria Ltd amended the Rules of Racing to specify the retained responsibilities of licensed trainers who send their horses to owner trainers or other registered trainers for pre-training and education without formally recording the transfer on the horse's registration card or reporting the transfer to Racing Victoria Ltd.

RECOMMENDATIONS:

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

1. Racing Victoria Ltd amend the Rules of Racing relating to track work to prohibit leading horses from a vehicle on a public road.
2. Racing Victoria Ltd implement a program of random inspection of the operations of all licensed trainers with particular emphasis on their compliance with the Rules of Racing associated with safety.
3. Racing Victoria Ltd amend the Rules of Racing to clarify the responsibilities retained by a registered trainer when they send a horse to a registered owner trainer or other registered trainer for pre-training and education without formally reporting the transfer to Racing Victoria Ltd.

Signature:

Dr Jane Hendtlass
Coroner
31 January 2012

