

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2014 0690

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

I, PETER WHITE, Coroner having investigated the death of SCOTT THOMPSON
without holding an inquest:

find that the identity of the deceased was SCOTT THOMPSON

born on 23 August 1986

and the death occurred on 4 February 2014

at the Timboon Colac Road, Bungador, Victoria

from:

1 (a) MULTIPLE INJURIES

Pursuant to section 67(1) of the *Coroners Act 2008* I make findings with respect to the following circumstances:

1. Scott Thompson arrived in Australia from England in November 2013. He and his girlfriend Samantha Allott had been travelling the world and arrived in Australia on working holiday visas. In January 2014, a friend of Scott's, Ryan Monk, organised a job for him at a dairy farm in Bungador. Ryan had previously worked at the same farm.
2. The dairy farm, situated at 1285 Timboon Colac Road is owned by Foscor Pty Ltd (Foscor). The directors of Foscor are Jan and Michael Foster. Their son, Paul, managed the day to day business of the farm. Foscor employed 457 visa¹ workers to work for three months at a time on the farm. The workers would live in a property across the road from the dairy farm. The farm operated two quad bikes for use by the labourers on the farm. One quad bike was automatic and the other was manual. The quad bikes did not have functioning brakes. I will return to the quad bikes below.

¹ A Temporary Work (Skilled) visa (subclass 457) allows skilled workers to come to Australia and work for an approved business.

3. Scott started at the dairy on 20 January 2014. Ms Allott accompanied Scott to the farm and stayed in the house across the road from the dairy with Scott for about two weeks. Scott would start work at 6.30am to milk the cows. He would then return to the house at about 9am for breakfast and a break until about 10 – 10.30am when he would return to the farm to do labourer jobs. He would return home in the afternoon for another break and then go back to the dairy to milk the cows again at 4.30pm.
4. On 4 February 2014, Scott attended the milk shed at 6.30am as usual. They finished milking the cows at about 8.30am and Scott returned to the house riding the quad bike. In order to get to the house on the quad bike, he had to ride it across the Timboon Colac Road. At approximately 10.30am, Scott had attempted to return to the dairy farm on the quad bike. Witnesses reported that Scott rode out of the property driveway at a fast speed, without looking for traffic or slowing down. At that point, a semi-trailer truck was travelling west along the Timboon Colac Road. The truck was travelling between 90 and 100kph. The truck driver saw the quad bike coming out of the driveway and the driver attempted to take evasive action by braking and veering to the right. The truck collided with the quad bike.
5. The truck driver and a passer-by stopped to render assistance. Paul, who was working in the dairy, heard the collision and called emergency services. Scott was lying on the ground unconscious and with the quad bike over his legs. Scott passed away at the scene.

Medical Investigation

6. Associate Professor David Ranson of the Victorian Institute of Forensic Medicine performed a post mortem medical inspection. Assoc Prof Ranson provided me with a report of his findings. The post mortem CT scan showed extensive soft tissue injury to the left thigh. He noted that such an injury would be expected to cause severe damage to vascular structures and would result in rapid death from blood loss. There were also a range of other injuries present. Assoc Prof Ranson concluded that the cause of Scott's death was 1(a) multiple injuries. I adopt Assoc Prof Ranson's findings in relation to the cause of death.

Coronial Investigation

7. As part of my investigation, the coroner's investigator, Leading Senior Constable John Lee, provided me with a coronial brief of evidence. WorkSafe Victoria (WorkSafe) also provided me with a brief of evidence at the conclusion of its prosecution of Foscor. I note that the coronial brief and the Worksafe brief contain overlapping material.
8. I was advised by WorkSafe that on 24 August 2015, Foscor pleaded guilty to three charges pursuant to section 21(a) and 21(2)(a) of the *Occupational Health and Safety Act 2004* (OH&S Act) at the Colac Magistrates' court. Foscor was fined \$40,000 without conviction and was order to pay \$5,051 in costs. I note that the certified extract of order from the Magistrates' Court notes that but for the plea of guilty, the sentence the Magistrate would have imposed was \$60,000 fine with conviction. As a Coroner, I have no jurisdiction to

comment on the adequacy of any sentence imposed; this is a matter entirely for the presiding Magistrate.

The quad bikes

9. Sergeant Leigh Booth of the Mechanical Investigation Unit inspected the Suzuki, 400FS quad motor cycle. The quad bike was unregistered and therefore could not be driven on roads. Sergeant Booth provided a report of his inspection. He noted that the front brake assemblies were covered in a large amount of dried mud and they were heavily corroded. Sergeant Booth stated that he was of the firm opinion that there had been no maintenance on the braking system for a considerable period of time. The condition of the braking system would have rendered the brakes inoperative.
10. Ms Allott stated that Scott was aware that the brakes did not work on the quad bikes. On one occasion when she was riding the quad bike, Scott told her that, as the brakes did not work, she had to accelerate to cross the road. Statements from previous workers on the farm indicate that employees were aware that the brakes on the quad bikes did not work and that they drove them regardless.
11. Invoices from Quad Wreckers reveal that the company did work on the quad bikes owned by Michael Foster on 19 September 2013 and 11 November 2013. Quad Wreckers were not asked to do any work on the braking system.
12. Paul Foster stated that in the week that Scott started work, he told Scott he was only to ride the quad bike if he was spraying thistles. He further stated that no work is done across the road as it was not a workplace and the bike is not used at the property across the road. He stated he told Scott he was not to ride the bike across the road and that the bike was not registered. Ryan Monk stated that he was not so informed and that Paul Foster had earlier condoned his use of the quad bikes in this manner.
13. Regardless of whether this discussion occurred, it appears on the material before me that an informal practice of using the quad bikes to cross the road to the worker's house developed. This is supported by neighbours who told Worksafe inspectors (though would not provide formal statements) that they had observed quad bikes crossing the road on a daily basis. Furthermore, a statement from Ryan Monk indicates that during his time at the farm, Paul Foster knew that he rode the quad bike across the road and that he would simply come and collect the quad bike from the house when needed to use the bike, without comment.
14. Given the condition of the quad bikes, this was a particularly dangerous activity, which Paul Foster on behalf of Foscor, should not have allowed to occur.
15. On the material before me, I am satisfied that the truck driver did what he could to avoid the collision but due to the lack of warning that Scott was crossing the road, the truck driver had limited opportunity to avoid hitting Scott. Similarly, Scott, if he had seen the truck coming, would have been unable to brake to avoid the collision.

Workers on 457 visas

16. Paul Foster stated that he did not give any written instructions or formal written induction for 457 workers. He had a Staff Duties/Training Sheet filled out for the full time worker at

the farm but not for foreign workers employed for a short amount of time. This practice appears to me to be substandard. Workers from foreign countries should expect the same safety inductions and training as Australian nationals while employed in Australia. A worker's visa status should not detract from their right to enjoy a safe workplace nor the employer's responsibility to provide a safe workplace.

17. As noted above, WorkSafe has prosecuted Forscor for failing to provide a workplace without health risks. The investigation of the adequacy of safety systems in place workplaces in Victoria falls within WorkSafe's jurisdiction. I offer no further comment on this issue.
18. I acknowledge that Scott's death in a foreign country has been particularly painful for Scott's family in England and for Ms Allott. The death of a loved one is always painful however these circumstances have caused particular stress to Scott's family and partner. I intend to publish this finding in order to draw attention to the circumstances in this matter and highlight the dangers of failing to provide adequate protections to employees.

Pursuant to section 73(1A) of the Coroners Act 2008 I order that this finding be published on the Internet in accordance with the rules.

I direct that a copy of this finding be provided to the following:

Ms Samantha Allott

Scott Thompson's family

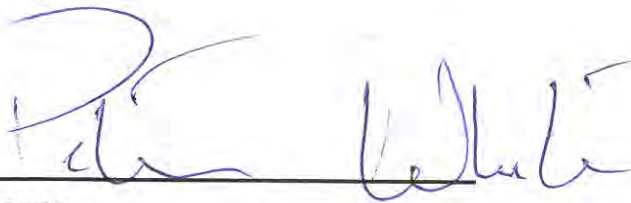
The Chief Executive WorkSafe Victoria

Foscor Pty Ltd

Mr Paul Foster

Leading Senior Constable John Lee

Signature:



PETER WHITE
CORONER
Date: 19 April 2016

