

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court Reference: 2746/09

Inquest into the Death of Tony FISHWICK

Delivered On:	23 December 2010
Delivered At:	Mildura Law Courts 56 Deakin Ave
Hearing Dates:	22, 23 November and 17 December 2010
Findings of:	Mr Peter Couzens
Place of death:	Koorlong
Counsel Assisting the Coroner	Sgt Tim Edgworth
Representation:	Mr Morgan McLay on behalf of Mr Fishwick's family
Representation	Mr Bruce McTaggart on behalf of Mildura Rural City Council



FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court Reference: 2746/09

In the Coroners Court of Victoria at Mildura

I Mr Peter Couzens, Coroner having investigated the death of:

Details of deceased:

Surname: FISHWICK
First name: Tony
Address: 451 Dow Ave Irymple VIC 3498

AND having held an inquest in relation to this death on 22, 23 November & 17 December 2010

at Law Courts Mildura

find that the identity of the deceased was Tony FISHWICK

and death occurred on 02/06/2009

at Koorlong

from

1a Injuries Sustained in a Motor Vehicle Collision (driver)

in the following circumstances:

On the date of his death, Mr Fishwick was 39 years of age. He resided at 451 Dow Ave, Irymple and was employed as an Engineering Teacher at Sunraysia Tafe Mildura. Although Mr Fishwick lived alone he was in an ongoing relationship with Ms. Kim Knights and had been so for approximately 8-9 years.

The fatal accident occurred at approximately 11.30am on Tuesday, 2nd June 2009 on Dow Avenue, a short distance west of the business premises of Pisconeri Transport Services (hereafter referred to as Pisconeri's) and approximately 750 meters east of the intersection of Dow and Benetook Avenues.

Dow Avenue is used as the main thoroughfare for commuters travelling between Cardross and Mildura. It runs east/west.

The road is approximately 7.1 metres wide with provision for one westbound lane and one eastbound lane.

It has no centre dividing line.

The speed limit applicable to the road is 100kph.

The area in which the accident occurred can best be described as rural with an emphasis on grape growing.

Pisconeri's stands in marked contrast to the surrounding area. It is a large trucking operation featuring a depot and associated administrative building.

Pisconeri's is situated on the south side of Dow Ave. and commences a short distance west of a right hand bend for vehicles travelling in a westerly direction (hereafter referred to as "the bend").

Amongst the vehicles operated by Pisconeri's are large transports with prime movers and large enclosed trailers.

The extent of truck movements associated with Pisconeri's depends on the season.

Mr Dennis Tuit who at the time of the accident was employed by Pisconeri's as Fleet Manager gave evidence during the Inquest. He later told the court, inter alia, that the number of truck movements per day associated with Pisconeri's depended on the season. At the peak of the picking season, he said there could be as many as 50 - 60 truck movements per day into and out of Pisconeri's whilst in the off-season which includes the winter, the movements reduce to approximately 20 - 30 a day.

Mr Fishwick was very familiar with the area in general and the road in particular. His residence in fact, was located approximately 1 kilometre east of Pisconeri's.

His partner Ms Knights told investigating police officer Senior Const. Nigel Hoyle that during the six years prior to the accident Mr Fishwick probably drove on the road about six times a day, every day, and he knew the road very well.

The weather conditions on the day in question were overcast and wet.

It had been raining for several days prior to the date of the accident.

Although rain does not appear to have been falling at the time of the accident, drizzling rain had fallen earlier in the morning.

As a consequence of several days of rain the road was wet with pools of water having formed along the southern edge of the west bound carriageway in the area adjacent to the western end of Pisoneri's where a number of cars were parked in an off road area.

One particularly large pool of water extended well onto the western carriageway.

Photographs 10 – 17 both inclusive of the book of photos marked as exhibit A graphically depict the area where the pooling had occurred, with photos 12 and 15 capturing the large pool of water, which covered a significant part of the west bound carriageway.

In addition to water, dirt and mud had accumulated on the road surface due to the combination of rain and the movement of trucks from Pisoneri's as well as from the movement of general traffic coming off farming properties in the area. As a result, the road surface was wet and slippery.

The fatal accident involved two vehicles, one driven by Mr Fishwick, the other by Mr Leslie Garsed. The vehicle driven by Mr Fishwick was a 1998 silver Holden Commodore sedan. It was in roadworthy condition. The vehicle driven by Mr Garsed was a white 2005 Holden Rodeo utility.

Immediately prior to the accident Mr Fishwick was travelling in a westerly direction on Dow Ave, whilst Mr Garsed was travelling in an easterly direction.

There is no direct evidence as to where Mr Fishwick's journey commenced from or what his destination was. It may be that he was travelling from his residence which as earlier stated, was situated approximately one kilometre east of Pisoneri's but that is speculation.

Mr Garsed, on the other hand was returning to his home from doing his supermarket shopping in Mildura.

Immediately prior to the occurrence of the accident, Mr Fishwick lost control of his vehicle whilst travelling around the bend causing it to career out of control in an easterly direction. Whilst out of control the vehicle hit the large pool of water which was covering much of the west bound carriageway causing the vehicle to spin before crashing into Mr Garsed's vehicle.

The front of Mr Garsed's vehicle impacted with the middle of the offside of Mr Fishwick's vehicle in what is commonly described as a T-Bone impact. Tragically, Mr Fishwick took the full impact of the collision and died at the scene.

Understandably and appropriately, a great deal of attention was paid during the inquest to the following:

- A. Identifying the point on the bend where Mr Fishwick lost control of his vehicle;
- B. Estimating the speed at which Mr Fishwick's vehicle was travelling when he lost control of it;
- C. Establishing the cause or causes of Mr Fishwick losing control of his vehicle.

I shall now proceed to deal with each of these areas of interest and where open on the evidence, make findings in regard of same.

A. At what point on the bend did Mr Fishwick lose control of his vehicle?

Senior Constable Hoyle arrived at the scene of the accident approximately 15 minutes after it had occurred. Amongst the many tasks that he performed at the scene was the taking of measurements of skid marks leading from the point of collision for the purpose of assisting the Major Collision Investigation Unit to determine, inter alia, the approximate speed at which Mr Fishwick's vehicle was travelling when he lost control of it.

Senior Constable Hoyle gave evidence that he and Constable Gowers traced skid marks which they determined had been left by Mr Fishwick's vehicle to a point 139.5 metres from the point of collision.

Although Senior Constable Hoyle told the Inquest that he and Constable Gowers reached a consensus that the skid marks commenced 139.5 metres from the point of collision, he also told the Tribunal that he found evidence of a scuff mark on the road surface approximately 146 metres from the point of collision which caused him to believe that it was at that point that Mr Fishwick commenced to lose control of his vehicle.

Mr William Keramidas, Motor Accident Reconstructionist, was called to give evidence at the inquest. He had been requested by Mildura Rural City Council to prepare a report in respect of the accident and to give evidence at the inquest. Having regard to Mr Keramidas' qualifications and experience as outlined in his report (exhibit T) he was accepted as an expert Forensic Engineer and Reconstructionist.

Having been informed during the first day of his evidence of Senior Constable Hoyle's evidence regarding the measurements of 139.5 and 146 metres, Mr Keramidas was requested to re-assess his original opinion regarding Mr Fishwick's vehicle's motion and speed. To assist him with his re-assessment Senior Constable Hoyle provided him with a full set of digital photos. To quote from Mr Keramidas' Addendum dated 8 December 2010 (exhibit W)

"On review of the digital photographs the marks can indeed be seen to run to an area near to that identified by Police. The writer was also informed by Senior Constable Hoyle that the mark observed was a single mark which followed an arc to the area where the marks become more prominent. Again this description is consistent with the digital photographs."

FINDING

Having regard to the evidence of Senior Constable Hoyle and Mr Keramidas, I find that Mr Fishwick commenced to lose control of his vehicle approximately 146 metres from the point of the collision and that from approximately 139.5 metres from the point of the collision the vehicle was totally out of control rendering Mr Fishwick, in the words of Senior Constable Hoyle, "a passenger".

B. At what speed was Mr Fishwick's vehicle travelling when he lost control of it?

There were three eye witnesses to the speed of Mr Fishwick's vehicle near to the collision, namely the driver of the other car Mr Garsed and two employees of Pisoneri's, Mr Nick Cavallo and Mr Alan Witte.

1. Mr Leslie Garsed.

In his statement dated 31/8/2009 (exhibit B), Mr Garsed says, inter alia, as follows:

"On my way back home, as I approached Pisoneri Transport I saw a silver commodore come around the bend and it appeared to be going fast, but I couldn't say what speed. He was out of shape coming out of the bend and was sliding so his left rear was facing me. The car then looked to fish tail or spin as I saw underneath his car. I thought it was airborne. I don't know how I hit the driver's side, but I hit the brakes and clutch at the same time. I didn't have any chance of avoiding him and after he hit me. I was pushed back a fair distance.....He was going to quick for the bend and the conditions. Even when dry, I don't think it should be 100kph along there".

Under cross-examination by Mr McTaggart, Mr Garsed said that when he first saw Mr Fishwick's vehicle it was in the bend travelling too fast but not seemingly out of control. However as the vehicle was about to come out of the bend he described it as coming into contact with mud which had been brought onto the road by trucks leaving Pisoneri's "...and that's where he lost it" causing the vehicle to skid and fishtail.

I accept Mr Garsed's evidence that immediately prior to the accident he was travelling at a speed of 65 – 70 kph in the eastbound carriageway and that there was absolutely nothing he could have done to avoid the collision with Mr Fishwick's vehicle.

2. Mr Nick Cavallo.

Mr Cavallo is a long-term employee of Pisoneri Transport Services having worked for them for approximately 20 years. On the date of the accident, he was employed as Yard Manager.

Immediately prior to the occurrence of the accident Mr Cavallo was operating a forklift to take a pallet off a truck parked on the front concrete apron area at Pisoneri's. He estimated that he was positioned approximately 10 – 15 yards from the road.

In his statement to police dated 25 August 2009 (exhibit B) which he adopted when called to give evidence at the Inquest he stated, inter alia, as follows;

"...I was on a forklift taking a pallet off one of the trucks on the front apron area when I heard (a) vehicle coming over the hill on Dow Avenue towards the bend where PTS is located. It was flying. I heard the car, turned my head, saw the silver commodore fly past and then I heard a bang. I heard the car slide or skid on the wet road. It all happened so quick. I didn't see where or when he started to slide, but it was all over very quickly. It was wet that morning as we had a bit of rain that day and over night. It wasn't raining at the time of the collision. The road isn't bad. I mean there are no holes in it or anything. I am very familiar with the road having driven it for 20 years to and from work. The road is a 100kph road, I have no problem with that, but the bend isn't, not just because of the bend but because PTS is located on the bend. It shouldn't be 100kph. It was wet and was probably pretty slippery. Which is not uncommon for the area due to having trucks and tractors etc. coming off blocks onto the road. It's not unusual for dirt and mud to be on the road, you just have to drive to the conditions. There are no signs either way. I mean you can see PTS going toward Mildura (west) but you can't really see the depot going towards Cardross. The guy in the commodore was driving too fast and too quick for the bend.....".

Under cross-examination from Mr McLay, Mr Cavallo described hearing what turned out to be Mr Fishwick's vehicle approaching Pisoneri's from further away (east) than normal. "It was going so loud" he said. He agreed with the proposition put by counsel that it was not so much a gradual noise but a loud noise. Mr Cavallo explained in the course of his cross-examination that it was the loud noise that caused him to turn his head towards the corner. Upon turning his head, he saw Mr Fishwick's vehicle "right on the bendit had just reached the bend". As to his impression of the speed when he saw it Mr Cavallo told the inquest "As he was flying I said shit he's going fast". When asked whether he thought the driver had lost control of the vehicle when he turned his head and saw it Mr Cavallo responded "Not at the time when I turned my head".

3. Mr Alan Witte.

Mr Alan Witte was on the date of the accident employed by Piscoeneri Transport Services as the depot or operations Manager. He told the inquest that immediately prior to the occurrence of the accident he was on the concrete apron at Piscoeneri's walking towards Mr Nick Cavallo when he heard what he described in his statement to police dated 25 August 2009 (exhibit C). "A loud revving vehicle coming towards me from the Cardross end (east). He went on "I didn't see the vehicle go past but it was revving loudly. I didn't have time to look, it just happened so quickly. I heard the vehicle skid/slide most of the way around the bend. It wasn't a screech, but more of a wet road skidding sound. I then heard the impact of two cars smashingIt was wet and had not long stopped raining.....I never saw the car approach or pass, just the result.....The road (Dow Ave.) is very up and down but like every thing you get to know it. It's a typical country road. I know that there's a couple of dips in the road and would never hit that bend at 100kph in any vehicle. The bend is not a 100kph bend. We get a few cars that go pretty quick past the depot and you can tell by the sound of the engine that they're speeding. The bloke was going pretty quick by the sound of the car. Most cars go past and you don't even notice, but you get one that's out of the ordinary or a Harley or something and it gets your attention. On the day, the commodore was out of the ordinary. It was revving loudly, but I couldn't or wouldn't hazard a guess as to how fast it was actually going. It'd be fair to say that it was going too fast for the bend and the wet conditions".

4. Mr William Keramidas.

In his original report (exhibit T), Mr Keramidas opined that the likely speed range of Mr Fishwick's vehicle at the time where it finally lost control was 111 to 138kph. However upon becoming aware of Senior Constable Hoyles evidence and studying the digital photos supplied by Senior Constable Hoyle he reviewed his original calculations and calculated that the likely speed range (whether accelerating or not) of Mr Fishwick's vehicle at the point where it lost control was between 123kph and 140kph.

During his cross-examination of Mr Keramidas, Mr McLay suggested that the loud sound coming from Mr Fishwick's vehicle was probably attributable to Mr Fishwick having applied acceleration to his vehicle in an effort to regain control of it. He further suggested that if in fact that had occurred the speed at which Mr Fishwick's vehicle was travelling at the time he lost control would probably have been different than that assessed by Mr Keramidas.

In the Addendum to his original report, Mr Keramidas addressed the issue raised by counsel as follows;

".....the writer is aware of a suggestion made by counsel for the Family that the deceased may have attempted to extract himself from the situation by applying acceleration after the initial loss of control. The marks observed in the final 80 metres or so of the Holden's travel are definitely not acceleration scuffs and therefore no acceleration would have occurred through that segment of the vehicles path. It is not possible to say, however, whether any acceleration occurred through the initial 59.5 to 66 Metres. Assuming that there was acceleration attempted at the maximum rate available from the roadway (of about 0.2g across the back tyres) then the vehicle while not being capable of increasing its speed would also not have "washed off" as much speed as calculated above. The difference as about 10kph, meaning that the vehicle approach speed would be in the range of 125kph to 140kph".

5. Senior Sergeant Peter Bellion.

Senior Sergeant Peter Bellion is a senior member of Victoria Police's Major Collision Investigation Unit where his principal task is to investigate and reconstruct motor vehicle collisions. Suffice to say that he is a widely recognised and highly acclaimed expert in his chosen field.

Pursuant to a collision reconstruction, speed estimate request received from Senior Constable Hoyle on 5 June 2009, Sen. Sgt. Bellion prepared a report, which was contained in his statement dated 27 July 2010 (exhibit O).

In his report, he estimated the speed of Mr Fishwick's vehicle as being in the range of 111kph to 124kph.

In light of Senior Constable Hoyles evidence regarding his discovery of a scuffmark attributable to Mr Fishwick's vehicle 146 metres from the point of the collision, the evidence of which was confirmed by Mr Keramidas, Sen. Sgt. Bellion was asked to reconsider his original assessment. He did so and on the final day of the Inquest, he told the Court that he was now in agreement with Mr Keramidas estimate of 123 - 140kph.

FINDING

Having regard to the evidence, I find that at the time when Mr Fishwick commenced to lose control of his vehicle, which was approximately 146 metres from the point of collision, his vehicle was travelling at a speed of between 123 - 140kph.

C. What caused Mr Fishwick to lose control of his vehicle?

In short, there was insufficient evidence presented at the inquest to allow me to make a definitive finding as to what caused Mr Fishwick to lose control of his vehicle. Having said that, however, I do find that the estimated range of speed at which I have found Mr Fishwick's vehicle to have been travelling at the time he lost control namely 123 - 140kph, placed him, as Mr Keramidas stated in the Addendum to his initial report, "at or very near to the critical limits for the bend for wet conditions, regardless of any undulations or substances on the road surface. At the above speed range there would be no recovery if anything were to destabilise the vehicle "Critical speed" being defined by Mr Keramidas as the speed at which loss of control was inevitable.

It is most relevant to note in the context of the passage quoted above from Mr Keramidas' Addendum;

1. That Dow Ave has undulations leading up to the bend, through the bend and after the bend.
2. that it had dirt and mud on its surface, to the extent that Sen. Sgt Bellion described it as a road that had more contaminants on it than any road surface he'd seen in 24 years.

Although the evidence falls short of allowing me to make a definitive finding that it was speed alone in the prevailing conditions which caused Mr Fishwick to lose control of his vehicle, I do find that, at the very least, the speed at which he was travelling even at the lower end of the estimated range would have been a significant contributing factor to his eventual loss of control and that having lost control regaining it would have been virtually impossible.

In the course of his cross examination of Mr Keramidas, Mr McLay suggested that the contact by Mr Fishwick's vehicle with the large pool of water that extended well into the west bound lane was the cause of Mr Fishwick's vehicle spinning or rotating into the path of Mr Garsed's vehicle. In response, Mr Keramidas rejected counsel's suggestion stating that contact with the pool of water did not alter the trajectory of Mr Fishwick's vehicle and that it would have finished "pretty much" as it did even if it had not contacted the pool of water.

CONCLUSION

I find that in the prevailing conditions, conditions which Mr Fishwick must be taken to have been aware of, the speed at which his vehicle commenced to travel around the bend was manifestly excessive to the point of being highly dangerous, putting at great risk the safety of himself and other road users. It was that excessive speed in the prevailing conditions which either caused Mr Fishwick to lose control, or significantly contributed to his doing so which in any event denied him of any realistic opportunity of regaining control.

***RECOMMENDATIONS:**

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

It became apparent to me during the conduct of the Inquest, including my attendance at the scene for the purpose of conducting a view, that the location where the accident occurred was and remains unique in a rural setting.

The uniqueness stems from Pisconeri's close proximity to the bend and the associated movement of vehicles, including large slow moving transports in and out of Pisconeri's.

These two factors when combined with interrupted lines of sight for vehicle travelling in both directions create an ongoing danger for road users.

To reduce the dangers posed by the presence of Pisconeri's and its operations I make the following recommendations which are directed to Mildura Rural City Council and Vicroads.

1. Speed Limit Reduction:

Although the speed limit of 100kph appears to be generally an appropriate one for Dow Avenue that limit should be reduced to 80kph for an appropriate distance leading up to Pisconeri's for vehicles travelling in either direction.

In support of this recommendation I rely on:

- a. The opinion of Senior Sergeant Peter Bellion that "a responsible road authority should look at reducing the speed limit".
- b. The opinion of Senior Constable Nigel Hoyle that Dow Avenue in the vicinity of the bend and Pisconeri's is not a suitable 100kph zone for west bound vehicles whether conditions are wet or dry.

He based his opinion on:

- (i) The presence of Pisconeri's and the movement of heavy vehicles including large trucks in and out of their premises.
 - (ii) The rise and then fall of Dow Ave. for west bound traffic giving drivers less opportunity of observing the bend and Pisconeri's beyond it than would otherwise be the case.
 - (iii) The presence of undulations prior to, during and after the bend.
 - (iv) The presence of a clump of trees on the northern side of Dow Ave. at or close to the eastern end of Pisconeri's which obstructs or at least interferes with the line of sight that west bound drivers should ideally have of vehicles approaching Pisconeri's from the opposite direction.
- c. The unanimous views of Messrs Garsed, Cavallo and Witte, all long term users of the road that the bend is not a 100kph bend.
 - d. The results of speed histograms obtained in November 2001 and June 2009 which reveal that the 85th percentile speed in both instances was marginally below 100kph.

2. **2. Improvement to sight line:**

The clump of trees on the northern side of Dow Avenue at or close to the eastern end of Piscoeneri's should be either removed or substantially thinned to improve the line of sight for vehicles travelling in either direction on Dow Ave. The trees in question are clearly depicted in photos SP10 and SP12 forming part of Mr Keramidias' initial report.

3. **3. Road Markings:**

An unbroken white line should be painted down the centre of the road prior to and around the bend to clearly delineate the west and east bound carriageways. In addition more guide posts should be added to the existing ones to further delineate the bend.

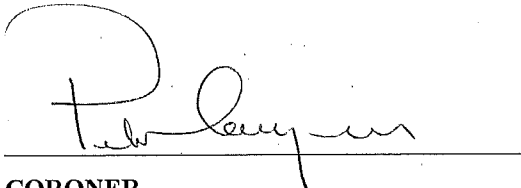
4. **4. Road Signs:**

A sign carrying a warning of trucks entering the highway ahead should be placed east of the bend for west bound traffic and west of Piscoeneri's for east bound traffic. The present sign posted east of the bend bearing the word "TRUCK" is inadequate for the purpose.

5. **5. Pooling:**

Attention should be given to the northern edge of the bitumen road surface adjacent to the area where cars park at Piscoeneri's to prevent the pooling of water falling heavy rainfall. The particular area referred to is clearly depicted in photos 12 and 15 of Exhibit A.

Signature:



CORONER

Date: 23, 12, 2010

