

CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title: Inquest into the death of Michael Richard Hall

Citation: [2019] ACTCD 2

Hearing Dates: 24 to 26 September 2018

Decision Date: 28 February 2019

Before: Coroner Boss

Recommendations: [61]

Legislation Cited: *Australian Road Rules*
Coroners Act 1997 (ACT)
Crimes Act 1900 (ACT)
Legislation Act 2001 (ACT)
Road Transport (Road Rules) Regulation 2017 (ACT)
Road Transport (Safety and Traffic Management) Act 1999 (ACT)

Cases Cited: *Director of Public Prosecutions v Spong* [2018] ACTCA 37
George v Rockett [1990] HCA 26
The Queen v Coroner Maria Doogan; ex parte Peter Lucas-Smith & Ors; the Queen v Coroner Maria Doogan & Ors; ex parte Australian Capital Territory [2005] ACTSC 74

Parties: Counsel Assisting the Coroner
The Australian Capital Territory
Dragon Face Pty Ltd
Anna Haslock
Shegu Bobb

Representation: Mr K Archer as Counsel Assisting the Coroner, instructed by Mr M Kamarul of the ACT Coroner's Court.
Ms K Musgrove for the Australian Capital Territory, instructed by ACT Government Solicitor.
Ms A Upton for Dragon Face Pty Ltd.
Mr C Lynch for Ms Anna Haslock, instructed by Snedden Hall & Gallop Lawyers.
Mr J Stewart for Mr Shegu Bobb.

File Number: CD 80 of 2017

CORONER BOSS:

Scope of Enquiry

1. The death of Michael Richard Hall was reported to me, an ACT Coroner, on 31 March 2017. The death was reported to me because Mr Hall died in circumstances engaging the coronial jurisdiction and requiring the coroner to hold an inquest into the death.
2. The primary legislation regulating my tasks as a Coroner is the *Coroners Act 1997* ("the Act"). However, that statute is not a Code and I retain all the powers at common law of a coroner which do not conflict with the provisions of the Act.
3. I am required by section 52 of the Act to make findings in relation to the manner and cause of death of a person whose death has been reported to me, and whether a matter of public safety is found to arise in connection with the inquest.
4. It has been a long recognised common law function of coroners to also make comments and recommendations on appropriate matters, and certain provisions of the Act such as section 57 complement that power. That section also provides a process whereby I may report my findings to Government, and the Government may respond via the Legislative Assembly to my report. However, as the ACT Supreme Court said in *The Queen v Coroner Maria Doogan; ex parte Peter Lucas-Smith & Ors; the Queen v Coroner Maria Doogan & Ors; ex parte Australian Capital Territory* [2005] ACTSC 74 ("*The Queen v Maria Doogan*") at [28], I am not authorised "to conduct a wide-ranging inquiry akin to that of a Royal Commission, with a view to exploring any suggestion of a causal link, however tenuous, between some act, omission or circumstance and the cause or non-mitigation" of the death of Mr Hall.
5. Unlike other Australian jurisdictions, I am not prohibited by statute from making a comment adverse to a person identifiable from my findings. I am, however, required by section 55 of the Act to provide a form of procedural fairness to any identifiable person against whom I intend to make an adverse comment, whereby I must issue a formal notice with a copy of the proposed comment and invite submissions or statements in relation to the proposed comment. In this matter, I determined that I would not make any adverse comments against any identifiable person.
6. Although section 34A(1) of the Act provides that a Coroner may decide that it is not necessary to conduct a hearing for the purpose of an inquest if the Coroner is satisfied that the manner and cause of death are sufficiently disclosed and a hearing is unnecessary, I decided in this matter that it was appropriate to hold a hearing. Accordingly, a hearing was held on 24 to 26 September 2018.
7. The following parties sought and were granted leave to appear at the hearing: the Australian Capital Territory, Dragon Face Pty Ltd (as the entity who organised the 2017 Indian Pacific Wheel Race), Ms Anna Haslock (Mr Hall's partner), and Mr Shegu Bobb (the driver). I appointed Mr Ken Archer as Counsel Assisting me in this matter under section 39 of the Act.

Facts

8. The facts surrounding Mr Hall's death were not in dispute. I adopt Counsel Assisting's summary:
 - (a) At 6am on 18 March 2017 Michael Hall set off from Fremantle in Western Australia, intending to ride to the Sydney Opera House. Mr Hall was

competing in the Indian Pacific Wheel Race, an ultra-endurance cycle race designed to test people to their limits. There is no prize or reward offered for “winning” or indeed even for completing the race. The rules of the race required participants to travel alone. It might be inferred that this added to the mental as well as the physical stamina required to complete the distance. Mr Hall was an exceedingly experienced ultra-endurance cyclist and was rated as being one of the most experienced in the world. The race was designed as an individual, unsupported challenge. Competitors had to travel some 5500 kilometres along indirect and challenging routes, being expected to do so in 14 days (approximately 400km per day).

- (b) As the race was unsupported, participants carried their needs on their bike or purchased anything they needed en route. Stopping, starting and sleeping times were at the discretion of the participants, and the rules made it very clear that riders were entirely responsible for their own safety, logistics, welfare and how they chose to approach the journey.
- (c) Mr Hall was equipped with a GPS tracker and fans were able to remotely track his progress in the event. The GPS data indicates that he arrived in Cooma at approximately 7.48pm. He was in second place in the race at this time. At 2.53am Mr Hall began to travel north on the Monaro Highway towards the ACT. At 6.20am Mr Hall was struck by a car in the northbound lane at a point very close to the intersection of Williamsdale Road and the Monaro Highway. The driver of the car was Shegu Bobb.

Manner and Cause of Death

- 9. At my direction an autopsy was performed by Professor Johan Duflou on 4 April 2017. Professor Duflou reported that Mr Hall had multiple injuries to his head and intracranial contents, fracturing of the spine, and multiple chest and abdominal injuries. In Professor Duflou’s opinion, Mr Hall’s death was almost instantaneous. I accept that opinion.
- 10. Based on the evidence before me, I find that Michael Richard Hall died on 31 March 2017 at approximately 6.20am near the intersection of Williamsdale Road and the Monaro Highway in the ACT, as a result of head and other injuries suffered when he was struck by a car as he rode his bicycle on the Monaro Highway.

Matters of Public Safety

- 11. I note the submissions made with regard to the nature of the roads that were travelled over during the race and the inevitable fatigue experienced by participants in the extreme sport of endurance cycling. I note also the submission made in relation to the rules of the Indian Pacific Wheel Race and, specifically, the lack of any rules aimed at setting a standard of conspicuousness above that required by the Road Rules. However, I am of the view that any investigation of this particular race in the circumstances of Mr Hall’s death would be inconsistent with the principles enunciated in *The Queen v Maria Doogan* and therefore I restrict my findings to the general issue of cyclist safety.

Design of the Road

- 12. The evidence before the Court relating to the Monaro Highway was to the effect that it was typical of many rural arterial roads in Australia. From Cooma to the outskirts of Canberra the road is a single carriageway with short stretches of

overtaking lanes. The road is relatively busy with commuter traffic during the week and a reasonably steady flow of holiday makers and the transport of goods to and from the Southern New South Wales coast and the Snowy Mountains, particularly during the ski season.

13. Commuters can travel daily from as far away as Cooma to work in Canberra and there are a number of sizable semi-rural communities close to and just over the New South Wales-ACT border. In the seasons with shorter daylight hours, commuters often need to travel both to and from work in the dark. The majority of the road is unlit, including at rural intersections, and this was the situation at the area of the collision. There have been a number of fatal accidents on the section of the Monaro Highway between Canberra and the NSW border.
14. As the road cuts through open country there is an abundance of wildlife in the area, with kangaroos being a particular hazard to traffic, especially outside daylight hours. Evidence was given of significant quantities of roadkill being visible on the side of the road between Canberra and the ACT border at the material time. Witnesses experienced in travelling the road gave evidence that they were watchful for wildlife and some of them had enhanced (additional) lighting fitted to their vehicles to assist in early detection of wildlife on the road.
15. The speed limit between Canberra and Cooma is generally 100kph except through built up areas such as the village of Bredbo. The collision occurred at a section of the road where the posted speed limit is 100kph. Drivers experienced in the route gave evidence that traffic generally travelled at the posted speed and some drivers employed vehicular 'cruise control' systems during the daily commute.
16. The road in the vicinity of the collision site was 3.7 metres wide with verges of between 1.3 and 0.8 metres width. A short distance to the south of the collision site is a disused service station which provided a much wider area of verge. After the disused service station the verge narrows significantly, with less than the 0.8 metres recorded in other parts of the road in the vicinity. The verge at this point is unlikely to be suitable for a cyclist to ride on and cyclists would be forced further to the right at the approximate area of the collision than on other parts of the road.
17. Where the verge to the left narrows, the northbound lane is divided to facilitate traffic turning in and out of Williamsdale Road. Along the left side of this section of the road are arranged guideposts with round reflective discs marking the left side of the road. The discs attached to the guidepost are at or about the height of a bicycle rear light. These guideposts are most likely in place to warn drivers of a culvert on that side of the road. This hazard is likely to have contributed to the narrowing of the verge at that point.
18. A report was prepared at my direction and was tendered with the title *Submission to the ACT Coroners Court, Review of Cyclist Fatality Case* dated 15 December 2017, as well as a supplementary report dated 18 September 2018 (together "the ARC Reports"). These were prepared by Associate Professor Jennie Oxley and Dr Steve O'Hern, both of the Monash University Accident Research Centre (MUARC). The reports identified elements of the Austroads Guides that relate to cyclists. In relation to roads with 100 kph limits, the recommendation is for a two metre clearance from faster vehicle traffic to be provided for cyclists and physical separation with a verge to provide a safe cycling environment compliant with Safe System principles. This clearance is expressly recommended for rural environments on un-kerbed roads.
19. The authors of the reports specifically considered the vicinity of the collision site and noted that the "partial seal, variable condition of the shoulder" rendered it a

road that would not be suitable for bicycle riding, particularly at night. Of significance, the authors also noted that the static rear light of the bicycle could have been misinterpreted by a driver for the static red reflectors on the guideposts, described above, which were set at much the same height and colour as the bicycle Mr Hall was riding.

20. While the authors of the reports were generally of the view that the relevant section of the Monaro Highway was compliant with Austroads recommendations, they opined that had there been wider, sealed shoulders and street lighting at the intersection with the Williamsdale Road, the risk to a cyclist may have been mitigated.
21. Mr Michael Day, Manager of Traffic Signals for Roads ACT, gave evidence to the Court in relation to his attendance at the scene of Mr Hall's death. His evidence was to the effect that he checked the road line marking, traffic facilities and signage to ensure they complied with ACT plans. Mr Day was asked questions in relation to the guide posts and culvert area, and he confirmed that the narrowing of the road, barrier and reflectors were present to prevent drivers from colliding with the culvert. He agreed that the culvert arrangement effectively eliminated the area for cyclists to be separated from motorised traffic on the road at that point.
22. The conclusion that inevitably flows from the physical evidence is that at or about the point of impact, Mr Hall had little choice but to be in the main traffic lane, having been forced into it by the structure of the road close to the intersection with Williamsdale Road.
23. Evidence given in the proceeding was to the effect that the allocation of funding for road maintenance and design is linked to usage. Cyclists make up a very small percentage of road users on the Monaro Highway, therefore cycle traffic was given a low priority for funding. Although funding priority set on this basis has logic to it, there was no evidence of a risk-based assessment in terms of outcome. Although the likelihood of an incident involving a cyclist is low because there are relatively few cyclists on the road, the likelihood of death or serious injury to a cyclist colliding with a motor vehicle travelling at 100kph is very high. Given the ARC Reports opining that the physical structure of the road at the collision site may have contributed to Mr Hall's death, it seems that some review of the intersection to evaluate the risk and further assessment of funding priority would be appropriate. I will come back to this matter in my recommendations.

Speed Limits

24. While there was no evidence to suggest that the speed limit of 100kph was inappropriate for the Monaro Highway, there was evidence that 100kph at major intersections may be more controversial. While the ARC Reports did not raise any adverse issues in relation to the speed limit at the Williamsdale Road intersection, Associate Professor Oxley gave evidence that drivers should be slowing at major intersections. As Counsel Assisting has noted in submissions, neither the authors of the expert reports nor Mr Day expressed certainty as to whether the Williamsdale Road intersection should be viewed as "major".
25. In circumstances where works have been performed to create a separate turning lane to facilitate exit and entry to and from the Monaro Highway and Williamsdale Road, in my view it seems likely that the intersection should be viewed as a major intersection of rural roads.
26. Associate Professor Oxley gave evidence in support of the work being undertaken in Victoria to slow traffic for safety purposes at major intersections. Counsel

Assisting also submitted that I should have regard to the significant fatality rate on the Monaro Highway, the volume of heavy traffic using the road, the lack of significant separation space for cyclists from traffic, and the complicated traffic arrangements at the Williamsdale Road intersection when considering whether to make recommendations in relation to lowering the speed limit at such intersections.

27. I have carefully considered these issues and it seems to me that it is appropriate to make a recommendation that what constitutes a major intersection on the Monaro Highway in the ACT be defined, such roads be identified, and consideration be given to the speed limit that should apply to such intersections.

Lighting on Mr Hall's Bicycle

28. There was no evidence that Mr Hall's bicycle light was not compliant with the applicable legislation including the Australian Road Rules. These have since been incorporated identically into ACT legislation as the *Road Transport (Road Rules) Regulation 2017* (ACT). Road Rule 259 relevantly provides:

259 Riding at night

The rider of a bicycle must not ride at night, or in hazardous weather conditions causing reduced visibility, unless the bicycle, or the rider, displays—

- (a) a flashing or steady white light that is clearly visible for at least 200m from the front of the bicycle; and
 - (b) a flashing or steady red light that is clearly visible for at least 200m from the rear of the bicycle; and
 - (c) a red reflector that is clearly visible for at least 50m from the rear of the bicycle when light is projected onto it by a vehicle's headlight on low-beam.
29. As referred to in the ARC reports, the relevant Australian Standard relating to bicycle lighting is AS3562-1990. This Standard is extant, although it is due for review. Section 4.1 of AS3562 specifies the luminous intensity requirements for rear bicycle lamps and requires rear bicycle lamps to comply with five criteria:
- (a) At the distribution point A, the luminous intensity shall be not less than 4 cd.
 - (b) At any position within the zone bounded by the limits 5oU and 5oD, and between 5oL and 5oR, the luminous intensity shall be not less than 2 cd.
 - (c) At any position within the zone bounded by the limits 10oU and 10oD, and between 10oL and 10oR, the luminous intensity shall be not less than 0.25 cd.
 - (d) At any position within the zone bounded by the limits 10oU and 10oD, and between 45oL and 45oR, the luminous intensity shall be not less than 0.075 cd.
 - (e) At any position within the zone bounded by the limits 10oU and 10oD, and between 110oL and 110oR, the luminous intensity shall be not less than 0.025 cd.
30. A question arises as to whether Mr Hall's rear lighting arrangement met the required standard. The rear light was a seat post mounted "Supernova E3 tail light 2". This brand of light is powered by dynamo and does not flash. The power to the light is provided by the wheels turning. There is a reflector built into the light. Road Rule 259, set out above, can be interpreted either as requiring a separate reflector or simply that a reflector must be on the back of the bicycle, allowing for it to be

incorporated into the rear light. I am of the view that it is beyond the scope of my inquiry to settle this point but I recommend that the matter be considered and an amendment made to clarify whether a light and a separate reflector is to be fitted to achieve compliance.

31. While Mr Hall's rear light may have met with the standards required by law, it was noted in both the ARC Reports and the AFP reconstruction that the rear light was difficult to see at 200 metres. This difficulty would have been exacerbated for a vehicle travelling at 100 kph, again as can be seen in the AFP reconstruction, and by the difficulty in distinguishing the rear light from the guideposts with red reflectors on the side of the road, also demonstrated in the AFP reconstruction. It is an important component of rider safety that any mandated lighting system achieve a high level of conspicuousness (or conspicuity, the term used by the authors of the expert reports). Having received evidence on this issue, including the photographs and videos of reconstructions, I am of the view that it is appropriate to make a recommendation that flashing rear lights should be set as the standard for bicycles ridden in low light conditions on rural roads.
32. Mr Hall's front light appears to have been compliant with the relevant standards. It has been submitted that the front light pooling at the front of the bicycle would have added to conspicuity. The conspicuity of the front light was not considered in the ARC Reports. A documentary filmed during earlier segments of the race was tendered into evidence and a relevant portion played to demonstrate Mr Hall's conspicuity, including the pooling of light at the front of his bicycle. I have approached this evidence with some caution as the documentary crew were clearly travelling well below 100 kph when filming and were using camera equipment, which may have been more sensitive to light than the naked eye. Based on the evidence from other drivers who saw Mr Hall, it does not appear that the light pooling in front of the bicycle added to Mr Hall's conspicuity.

Headlights on Low Beam

33. The driver of the vehicle, Mr Bobb did not give evidence at the hearing and was not required for cross examination. He did provide a statement to police.
34. Mr Bobb told police that his circumstances at the time were that he was living with his wife and small child to the south of the Williamsdale Road turn-off. He was working as a tiler and left his home early to head to his work site. Mr Bobb speaks English as a second language. He was listening to music as he drove his car. He is not an experienced driver and held a valid provisional licence.
35. During the interview Mr Bobb stated that he was in the habit of dimming his lights as he came up to the intersection with Williamsdale Road in case there were vehicles at the intersection. While it is not certain that he did not return his lights to high beam before the collision, the inquiry and hearing of the matter has proceeded on the assumption that the lights were on low beam at the time of impact. Mr Bobb expressed the view during his interview that his lights did not project light very far in front of his vehicle.
36. As Mr Hall's bicycle was embedded into the passenger side headlight, that light was not operational after impact and could not be tested. The driver's side headlight was tested by police and was found to be operating to the standard required for registration.
37. Mr Bobb stated to police that he had noticed a truck parked to the side of the disused Williamsdale service station and shortly after he had felt an impact. He

thought that he had hit a kangaroo and was shocked to see a bicycle embedded in the front of his vehicle. He got his phone and attempted to call for help.

38. There was no evidence that Mr Bobb had been using his phone prior to stopping his vehicle after the impact. It was suggested at hearing that the parked truck had distracted him from the road up to the point of impact. This was not supported by the expert witnesses' evidence of distraction times.

Clothing Worn by Mr Hall

39. Mr Hall was wearing dark coloured clothing. Regrettably, the clothing worn by Mr Hall was not dealt with in accordance with normal police procedures for retaining evidence. As a result, it has not been possible to test the clothing for reflective properties and therefore to conduct completely accurate reconstructions. Submissions were made that Mr Hall's leggings had a reflective band at mid-calf and that the material over his shoulders was also reflective. This cannot be confirmed. It is accepted that coloured clothing in low light situations does little to enhance conspicuity; the use of reflective materials is a different matter.
40. In one of the photographs tendered in evidence Mr Hall can be seen wearing the same or very similar leggings to those he was wearing at the time of the collision. The flash light used in this photograph returned a very high level of reflection from the bands at calf level. As the clothes were not retained, it has been impossible to conduct any test to establish whether a car light would have elicited the degree of reflectiveness seen through flash photography.

Visibility of Mr Hall

41. As the clothing was not retained, photographs of his body and evidence of witnesses passing a cyclist who is inferred to be Mr Hall on the Monaro Highway is all that is available to assess his clothing. Evidence from other drivers who passed Mr Hall close to the impact site was mixed in relation to his conspicuity.
42. Mr Quis gave evidence that he passed Mr Hall after he left his home in Michelago traveling north. Mr Quis had enhanced lighting that came on automatically with his high beams. At the time he passed Mr Hall, his lights were on high beam. He described Mr Hall as wearing dark clothing and being barely visible with dim lights. He stated that he had to take evasive action at the last minute to avoid him. He was surprised to see a cyclist on the Monaro Highway in the dark.
43. Mr Crivici's evidence was to the effect that he had enhanced lighting fitted to his vehicle, although he could not recall if it was on at the time he passed Mr Hall. He stated that he had thought he saw a red light and thought it was a deer in the distance and was surprised when it turned out to be a cyclist. He stated that he was nearly on top of the cyclist when he saw that it was a cyclist. He did not recall any reflective material, only dark clothing. He confirmed that all he had seen was a white glow from the light, apparently the pooling of light from the front light of the bicycle.
44. Mr Spulak's evidence was that he was driving a six month old Hyundai i30. He was driving with high beam lighting along the Monaro Highway about five kilometres from Michelago. He stated that he was being watchful as there was a risk of kangaroos on the road. Suddenly Mr Spulak saw a cyclist in the road. By the time he saw the cyclist, he was almost on top of him and he had grave fears that there would be a collision. He was, however, able to swerve into the middle of the road and avoid a collision. He was unable to explain why he did not see the cyclist and was only able to speculate that the rider's lights were covered by the position in

which he was cycling. Mr Spulak was visibly shaken and distressed by the recollection.

45. Mr Smith gave evidence to the effect that he saw a cyclist just before Michelago while he was driving his truck from Cooma to Tumut. He had his lights on high beam at the time. He described the cyclist as wandering in the lane and he moved his truck over to the south bound lane to give the bike a wide berth. He stated that he was surprised that the cyclist was not wearing reflective material. He stated that he saw the cyclist at the last moment. He found the cyclist very hard to see.
46. Constable Craig Slater, a member of the NSW Police Force, was travelling south on the Monaro Highway. He gave evidence of his observations of a cyclist presumed to be Mr Hall a short distance from the collision site. He stated that he saw a light source and had difficulty recognising what it was. When he looked in his rear-view mirror he had difficulty making out the bicycle's rear red light or distinguishing it from the guide posts on the side of the road. He was of the view that the cyclist was hard to see, given the cyclist's dark clothing and lack of distinguishable lighting. Constable Slater expressed regret that he did not stop the cyclist to speak to him about his lack of conspicuity.
47. Mr Maxwell gave evidence to the effect that he was a daily commuter on the Monaro Highway to and from Canberra. Mr Maxwell was driving a Nissan X-Trail fitted with spot lights on the front that came on automatically with the high beam. When he first encountered a cyclist Mr Maxwell was uncertain what he was seeing, but as he got close he saw a reflective material on the back of the legs in the calf region, moving up and down. Mr Maxwell was positive that the cyclist was wearing reflective material on his legs or shoes. He stated that he realised he was seeing a cyclist about 100 to 200 metres from him and had time to dip his lights and manoeuvre to overtake.
48. Ms Perrin gave evidence that she was driving a 2016 Mitsubishi Triton fitted with a light bar about 80 centimetres in length. She had the light bar fitted to illuminate the road better due to the hazards posed by wildlife on the Monaro Highway. About 200 metres past Lenanes Creek, Ms Perrin saw a cyclist. At the time she saw the cyclist, her lights were on full beam and the lights on the light bar were engaged. Consistent with other witnesses, Ms Perrin noted that it was odd to see a cyclist on the road in the dark. Ms Perrin stated that she could clearly see that it was a cyclist. Ms Perrin did not notice any reflective material on the cyclist's back but she was certain she saw reflective material on his legs.
49. From the evidence of the witnesses it can be concluded that drivers with additional lighting to their cars were able to see Mr Hall well and in particular that he had reflective strips on his legs. Some drivers noted very specifically reflective material on or about the calf region. Drivers without enhanced lighting engaged had more difficulty seeing him and were left with an impression of dark clothing with few reflective properties.
50. It is more likely than not that Mr Hall was wearing material with reflective properties situated at calf level. This area is consistent with the grey coloured band that can be seen in photographs of Mr Hall's clothes taken at the scene and at autopsy. There is no evidence of reflective material elsewhere on Mr Hall's clothes. The clothing was not retained by police so its reflective capacity could not be tested, however, it is visible in the documentary footage tended. Clearly visible in photographs taken of Mr Hall's bicycle at the scene is a single stripe of reflective tape-like material attached vertically to the back of Mr Hall's rear saddle bag. It does not, however, appear to have been separately seen by any of the witnesses.

51. As Mr Hall's clothing was not retained it has not been possible to conduct accurate analysis of Mr Hall's conspicuity as he was riding on the Monaro Highway.

Possible offence

52. My role is not to determine the guilt or innocence of any person, however, I am required to do certain things if in the course of an inquest I come across evidence of an indictable offence.

53. Section 58 of the Act relevantly provides:

58 Procedure where evidence of indictable offence or indictment to be presented

- (1) Subsection (3) applies if, during an inquest or inquiry, a coroner has reasonable grounds for believing that, having regard to the evidence given at the inquest or inquiry, a person mentioned at the inquest or inquiry has committed an indictable offence.
- (2) For subsection (1), the coroner must have regard to—
 - (a) the admissibility at trial of the evidence given at the inquest or inquiry; and
 - (b) whether the director of public prosecutions, or a person who may be affected by the referral to the director of public prosecutions of evidence relevant to the alleged offence, is, or has been, given the opportunity to present or give evidence in connection with the alleged offence.
- (3) The coroner—
 - (a) must, by written notice, tell the director of public prosecutions about the coroner's belief; and
 - (b) for a related indictable offence—must not proceed further with the inquest or inquiry until the day worked out under section 58A, other than to establish the following facts:
 - (i) for an inquest—the death of a person, the person's identity and the date and place of the person's death;
 - (ii) for an inquiry—the date and place of a fire or disaster.
- (4) Subsection (5) applies if, during an inquest or inquiry—
 - (a) the director of public prosecutions, by written notice, tells the coroner holding the inquest or inquiry that an indictment will be presented against a person for a related indictable offence in relation to—
 - (i) the death of a person who is the subject of the inquest; or
 - (ii) the matter the subject of the inquiry; or
 - (b) the Attorney-General presents an indictment against the person for a related indictable offence.
- (5) The coroner must not proceed further with the inquest or inquiry until the day worked out under section 58A unless the coroner limits the inquest or inquiry to establishing only the facts mentioned in subsection (3) (b) (i) or (ii).
- (6) A coroner must not continue holding an inquest or inquiry if satisfied that the inquest or inquiry should not be continued.
- (7) In this section:

related indictable offence, in relation to an inquest or inquiry, means an indictable offence that raises the issue of whether a person caused a death, suspected death, fire or disaster the subject of the inquest or inquiry.

54. The Act does not define the meaning of “an indictable offence”. Section 190 of the *Legislation Act 2001* (ACT) defines indictable offence as an offence that is punishable by imprisonment for longer than two years. The only offence with a penalty of more than two years that criminalises *negligent* driving causing death is the offence of culpable driving, created by section 29 of the *Crimes Act 1900* (ACT). That section relevantly provides:

29 Culpable driving of motor vehicle

- (1) In this section:

drug—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

- (2) A person who, by the culpable driving of a motor vehicle, causes the death of another person is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

...

- (6) For this section, a person shall be taken to drive a motor vehicle culpably if the person drives the vehicle—

(a) negligently; or

(b) while under the influence of alcohol, or a drug, to such an extent as to be incapable of having proper control of the vehicle.

- (7) For this section, a person shall be taken to drive a motor vehicle negligently if the person *fails unjustifiably and to a gross degree to observe the standard of care that a reasonable person would have observed in all the circumstances of the case* (emphasis added).

55. In *Director of Public Prosecutions v Spong* [2018] ACTCA 37 the Court of Appeal noted that the standard of negligence required to found a successful prosecution under this section was high.
56. There is no evidence that Mr Bobb was driving furiously, recklessly, or with alcohol or prescribed drugs in his system.
57. Section 6 of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) creates an offence of negligent driving. Negligent driving causing death is punishable by a term of imprisonment not exceeding two years. It is not therefore an offence that may be dealt with on indictment and as such not subject to section 58 of the Act.
58. In order to make a referral to the Director of Public Prosecutions (DPP), I must have reasonable grounds for believing that an indictable offence has been committed. When a statute prescribes that there must be “reasonable grounds” for a belief, “it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person”, per *George v Rockett* [1990] HCA 26 at [8]. For reasonable grounds to be established, the potentially relevant evidence must be something more than a theoretical possibility.
59. I am of the view that there is an argument that Mr Bobb was negligent in his driving. However, having regard to all the evidence before me and noting in particular the conflicting evidence in relation to Mr Hall’s conspicuity for other drivers, the loss of evidence crucial to determining the conspicuity of Mr Hall’s clothing and accoutrements, the physical environment of the road at the relevant location, and

the high standard of negligence required by section 29, I do not have reasonable grounds for believing that Mr Bobb has committed an indictable offence.

60. I am not at liberty in the coronial jurisdiction to make a referral to the DPP in relation to summary matters. I will, however, refer the matter to the AFP for consideration as to whether a section 6 charge has been committed. All the submissions made to this inquiry will be forwarded to the AFP to assist in their consideration.

Conclusion

61. Mr Hall's death was avoidable, which makes the loss of this remarkable person even more keenly felt by his family and the community. It is unfortunate that the investigation into his death has been to some degree compromised by the loss of significant evidence in the form of his clothing and bicycle accoutrements. There is, however, sufficient evidence for his death to be the catalyst for changes that will enhance rider safety into the future.

Recommendations

62. Drawn from the facts and circumstances of Mr Hall's death I make the following recommendations:
- (a) The ACT Government should conduct a review of the intersection of the Monaro Highway and Williamsdale Road to evaluate risk to road users, and a reassessment of funding priority in accordance with the review's findings.
 - (b) The ACT Government should define a clear outline of what constitutes a major intersection on the ACT portion of the Monaro Highway.
 - (c) The ACT Government should give consideration to the speed limits that should apply to major intersections along the ACT section of the Monaro Highway.
 - (d) Standards Australia should conduct a review of AS3562-1990 relating to bicycle lighting, and the Standard be either updated or replaced.
 - (e) The ACT Government should amend its relevant legislation to require a flashing rear light when riding a bicycle in low light conditions on rural roads. However, I also commend this recommendation to all Australian State and Territory Governments, for consideration of changes to the Australian Road Rules.
 - (f) The ACT Government should amend its relevant legislation to clarify whether bicycles require a wholly separate reflector to be on the back of the bicycle, or whether the reflector may be integrated into the rear light. However, I also commend this recommendation to all Australian State and Territory Governments, for consideration of changes to the Australian Road Rules.

I certify that the preceding sixty-two [62] numbered paragraphs are a true copy of the reasons, findings and recommendations of her Honour Coroner Boss.

Associate: Olivia Sparrow

Date: 28 February 2019