



STATE CORONER'S COURT NEW SOUTH WALES

Inquest:	Inquest into the death of Matthew DONNELLY
Hearing dates:	20 & 21 October 2015
Date of findings:	23 June 2016
Place of findings:	State Coroner's Court, Glebe
Findings of:	Deputy State Coroner HCB Dillon
Catchwords:	CORONERS – Cause and manner of death – Motor vehicle accident – Trailer towed by large vehicle unstable due to loading – Whether P2 drivers should drive large vehicles – Whether P2 drivers of large vehicles should be supervised for a period – Whether changes ought be made to licensing testing requirements – Whether P2 drivers of large vehicles ought to be permitted to tow trailers
File numbers:	2013/298913
Representation:	Sgt E. Mulligan (Advocate Assisting) Mr S. Hunt, instructed by Mr J. Renshaw, McInnes Wilson Lawyers (Donnelly family) Mr P. Cowdery , Hicksons (Roads and Maritime Services, Transport for NSW)

Findings:	I find that Matthew Donnelly died on 3 October 2013 at Ferrers Road, Horsley Park, New South Wales, as a result of blunt force trauma to the chest he sustained in a collision with the rear of an improperly-loaded trailer that swung onto the wrong side of the road, the surface of which was slippery, while being towed behind a medium rigid truck being driven by a P-plate driver.
Recommendations:	<i>To the Minister for Roads, Maritime and Freight</i> 1. In light of the findings in this inquest that inexperienced Medium Rigid licence holders may not have the capacity, training or experience to load trailers attached to their vehicles correctly and safely, I recommend that Transport for New South Wales refer to the Transport Logistics Industry Skills Council, in consultation with the Austroads Registration and Licensing Task Force, for review and consideration the following: (i) Whether the content of the competency-based training and assessment regime for MR licences is adequate; and (ii) Whether competence in loading and towing trailers should be included in the training and assessment regime. 2. I also recommend that Transport for New South Wales consider whether P2 Medium Rigid licence holders ought be permitted to tow trailers behind Medium Rigid heavy vehicles. 3. If this recommendation raises issues of national consistency, I further recommend that Transport for New South Wales raise this question (with reference to the coronial findings of fact in this inquest) with Austroads Registration and Licensing Taskforce for its consideration.

REASONS FOR DECISION

Introduction

1. This is an inquest into the death of Matthew Donnelly who was killed in a collision with a heavy vehicle on 3 October 2013. There is no suggestion that Mr Donnelly was driving dangerously or recklessly or that he contributed in any way to the accident. Nor is there any evidence that the driver of the truck and trailer was driving recklessly or at an excessive speed. Yet the accident occurred because he lost control the trailer he was towing.
2. Heavy trucks constitute about 2% of vehicle on NSW roads but account for about 20% of fatalities.¹ The real questions this tragedy raises, therefore, are to do with how this accident came about, whether it was preventable and whether there are improvements that can or should be made to the regulation of the heavy vehicle industry.
3. An inquest is an independent judicial inquiry by coroner. A coroner investigates sudden and unexpected deaths to establish, if possible, the identity of the deceased person, the date and place of the person's death; and the manner and cause of the person's death. There is no controversy in this case as to identity, date, place, cause of death or manner of death. Indeed, there is little controversy about the facts at all.
4. At an inquest, a coroner may also make recommendations relating to the death in question to relevant persons or organisations.
5. Inquests are one way our society shows respect for human lives, for the lives of those whose deaths are investigated, but also for the people who love and care about the ones they have lost. If a member of our society dies unnaturally it affects not only the victim but many others. That person is lost to all who love him or her but also the wider community. But we also need, if possible, to find out what has happened so as to prevent or reduce the risk of this sort of event happening again and taking more lives. To investigate that possibility is the least we can do as a society to show respect for the victims and their loved ones, and for human lives more generally.

¹ NSW Centre for Road Safety *Heavy Truck Fatal Crash Trends and Single Vehicle Heavy Truck Crash Characteristics* Sydney: NSW Government, 2014 p4

6. Before considering the facts and issues that arise out of this tragic accident, however, it is important to acknowledge that at the heart of any inquest is a sad human story about a living human being whose life was cut short.

Matthew Donnelly

7. Liz Donnelly, Matthew's wife of more than 16 years described him in this way for those of us who did not meet him:

Matthew was a devoted husband and a dedicated father to our three boys, Ryan, William and Jack. He worked long hours for the things we had but always did his best to make it to a cricket match, an Oztag game, the footy to watch his favourite teams or a round of golf with his boys or his mates. He didn't think twice about coming home from work and throwing on the barbecue for dinner, tossing on a load of washing or doing the ironing. Nothing was ever too much to ask. A game of backyard footy, cricket or a wrestling match was always a standard ritual for him and the boys at the end of most days. Matthew enjoyed life. He was an all-round good bloke who had the ability to talk with anyone he met, easily make friends and more often than not would be the life of the party. He had a quick humour, an infectious laugh and was well known for his cheeky grin and smart one-liners. He had no problem entertaining a crowd on cue.

On his more serious side he had a strong work ethic and gave his employers 100% commitment to the task at hand. That same work ethic extended to helping out as much as possible at home. He was never one to sit around when there was work to be done. Not until he was satisfied with his day's work did he sit down to watch the footy, the golf or the cricket and reach for a well-earned beer.

Matthew was great at maths and would help the boys with their homework. Matthew encouraged our boys to follow his passion for golf. Only a few weeks before his passing Matthew and all three boys played their first ever round of golf together.

8. The whole family has been deeply affected by his death and he remains much loved and greatly missed by them.

The facts

9. The salient facts in this case are uncontroversial and are not disputed by the driver of the truck, Mr Joshua Savage.
10. At about 1pm on 3 October 2013, Matthew Donnelly was driving in a southerly direction on Ferrers Road in Horsley Park in his maroon Holden Commodore. He had his two young sons Jack and William in the vehicle with him. Ten year old William was in the front seat and nine year old Jack was in the passenger seat directly behind Jack. Approaching his vehicle from the opposite direction was a Mitsubishi table-top

truck being driven by Joshua Savage. The truck was towing a single axle trailer containing mainly empty 'skip' bins and some wooden pallets.

11. Whilst the truck was negotiating a sweeping right then left hand bend, the trailer attached to the truck swung onto the incorrect side of the roadway, directly into the path of the Commodore being driven by Mr Donnelly. The Commodore collided with the rear section of the trailer. The impact caused the Commodore to spin 180 degrees clockwise, coming to rest on the grass on the western side of Ferrers Road. The driver's side of the Commodore sustained most of the damage done, resulting in immediately fatal injuries to Mr Donnelly.
12. Both boys were removed from the car and looked after by other motorists who had stopped to assist. They received minor injuries and were taken to Westmead Hospital for treatment.
13. The only witness to the accident was spoken to at the scene. Mr Kulenovic was travelling behind the truck on Ferrers Road and saw the trailer cross onto the opposite side of the road while negotiating the left hand bend. Mr Kulenovic stated that he was doing the speed limit and he thought the truck was doing the same. He stated to police that the Commodore had nowhere to go and there was nothing anyone could have done to prevent the accident once the trailer had 'jack knifed'.
14. Joshua Savage was interviewed by Police. At the time Mr Savage was the holder of a current NSW Medium Rigid (P2), or 'Green P' driver's licence. He told police that he had unloaded the skip bins on the truck prior to the accident. He stated that he had put the truck into low gear and slowed to negotiate the bend in Ferrers Road. Mr Savage estimated that he was travelling at about 50 to 55kms per hour around the bend. As he negotiated the bend, he had heard and felt a bang. In his evidence at the inquest he said that it had felt like the trailer had temporarily run off the road but then he had realised the trailer had locked up. He stopped on the side of the road and it was only then, when he heard someone scream, that he realised the trailer had collided with Mr Donnelly's vehicle.
15. Mr Savage supplied mandatory blood and urine samples which returned a negative result for drugs and alcohol.
16. Ferrers Road at Horsley Park is sealed bitumen in reasonable condition. The road runs from Huntingwood in the north to Wetherill Park in the south and is continually used by heavy vehicles to travel between these two suburbs, which encompass large industrial areas, and to gain access to the M7 and M4 Motorways. At some points the surface is not smooth due to the wearing effect of trucks on it.
17. On 3 October 2013 the road surface was probably slippery at points due to a combination of rain, hail and hot weather.

18. There is no evidence that Mr Savage's manner of driving was inherently dangerous or careless. He was observed to be driving at about the speed limit. The road was one very familiar to him. He appears to have been slowing as he approached the left-hand bend. This was indicated by two small marks on the road and on his trailer tyres indicating that the brakes had been applied. Those marks are well back from the bend on which the accident occurred.

The issues

19. During this inquest, we have explored a number of issues which are dealt with in turn below:
- Is it appropriate for P2 licence holders to drive medium rigid vehicles?
 - Should consideration should be given to a minimum period of supervision prior to drivers being licensed to drive heavy vehicles alone?
 - How much did the distribution of the load carried by the Mitsubishi truck contribute to the accident?
 - Are there any other factors to consider which may have contributed to the accident?
 - Are there any recommendations that should be made?

Is it appropriate for P2 licence holders to drive medium rigid vehicles?

20. While Mr Savage was a relatively inexperienced driver, he had the legal qualifications for an MR licence and had passed the relevant driving skills test necessary to graduate to a P2 licence and the additional testing needed to operate a heavy vehicle.
21. In a statement prepared for this inquest, Acting Principal Manager of Driver and Vehicle Policy in the Department of Transport, Ms Irene Pang Fung Ping Siu commented that 'NSW [licence] requirements are among the most stringent in Australia.'²
22. Licensing and assessment of drivers of heavy vehicles is governed by national standards. In January 2013, NSW implemented the National Heavy Vehicle Competency Framework which incorporates the nationally recognised Heavy Vehicle Licensing 'Units of Competency' from the Transport Logistic Industry Skill

² Irene Pang Fung Ping Siu, statement of 15 October 2015, para 11.

Council's Training Package. Under that framework, heavy vehicle driving instructors are accredited as assessors with a Registered Training Organisation.

23. To pass the relevant tests, applicants must demonstrate that they have sufficiently mastered a range of skills and competencies including braking, gear-changing and securing loads. They must also demonstrate knowledge of the road rules and special rules for heavy vehicles.
24. A P2 driver can qualify for a Medium Rigid licence by satisfying those tests. By the time a driver qualifies for a P2 licence, he or she will have completed at least 120 hours of supervised driving as a learner, passed the P1 driving test, held a P1 licence for at least a year, passed a hazard perception test and attained the age of at least 18 years of age.
25. Ms Siu also stated, 'P2 licence holders driving heavy vehicles (including MR) constitute a small proportion of the crash burden attributable to heavy vehicle drivers,'³ and 'restricting access to MR licences to standard licence holders may simply delay the intrinsic reduction in risk that occurs as experience increases.'⁴
26. This suggests that P2 holders of heavy vehicle licences are not a particular danger to the general public as a class of drivers.
27. To qualify for a medium rigid ('MR') vehicle licence, Mr Savage completed the Heavy Vehicle Competency Based Assessment ('HVCBA'). This entails a written test, a period of supervised driving and a formal driving assessment. While the length of the supervision period will vary depending on the competency of the driver, all drivers must complete it.
28. In Mr Savage's case, there is no indication or evidence that suggests either that he was incompetent as a driver or driving in a careless or erratic fashion. As will be discussed further below, however, the unforeseen hazard seems to have arisen from the way his trailer was loaded rather than his manner of driving.

A minimum period of supervision for heavy vehicle licences?

29. Unlike, for example, the requirements for a P1 licence, there is no minimum period of supervised driving instruction required for heavy vehicle licences. This is both because applicants have established a foundation of experience under supervision while learning to drive and qualifying for a P1 licence and because the qualification for an MR or other heavy vehicle licence is competency-based.

³ 'P Plate Driver Involvement in Accidents', page 1.

⁴ 'P Plate Driver Involvement in Accidents', page 4.

30. Ms Siu strongly submitted that ‘introduction of any minimum periods of supervision ... would be incongruent with the concept of competency based assessment as well as the [National Heavy Vehicle Competency] Framework.’⁵
31. In arguing against the utility of a minimum supervision period, Ms Siu also highlighted the lack of evidence supporting its introduction, costs of an additional training scheme, potential discouragement to drivers from upgrading to an MR licence and stakeholder concerns from the heavy vehicle industry about inefficiencies caused by delayed licensing of competent drivers.⁶
32. Although there may be theoretical merit in establishing a minimum period of supervised driving before full MR and other heavy vehicle licences are issued to drivers, I accept that there are strong arguments against recommending the introduction in NSW of what would be an exception to the national heavy vehicle regime and that multiple significant unintended consequences may flow from such a recommendation if it were implemented. For this reason, I infer from Ms Siu’s statement that the Roads and Maritime Service would not accept such a recommendation even if it were to be made.

Did the distribution of the load on the trailer contribute to the accident?

33. Mr Shane Brereton, owner of Just Scrap Metal, gave evidence to the effect that the company’s practice was for senior employees – in this case, himself and the manager – to load the trucks before deliveries: ‘We feel qualified to load the truck correctly to disperse the weight evenly’.⁷ He stated that Mr Savage was not qualified to load the truck.⁸ One Steel (the steel company to whom Mr Savage had delivered the contents of the skips before the accident occurred) was responsible for re-loading the truck after emptying the skips.⁹
34. On the day of the collision, one skip bin and several empty wooden pallets had been re-loaded onto the trailer by employees at the One Steel yard. They were loaded at the very front of the trailer. This shifted the load weight towards the tow bar and left ‘no weight’ above the axle.¹⁰
35. Skid marks consistent with the rear trailer wheels found on the road before the point of the collision suggest that the trailer wheels may have locked up after Mr

⁵ Irene Pang Fung Ping Siu, statement of 15 October 2015, para 32.

⁶ Irene Pang Fung Ping Siu, statement of 15 October 2015, para 32 (a)-(e).

⁷ Police interview with Shane Brereton of 5 August 2015, Q12.

⁸ Police interview with Shane Brereton of 5 August 2015, Q14.

⁹ Police interview with Shane Brereton of 5 August 2015, Q31.

¹⁰ Statement of Senior Constable Wayne Stephenson of 23 November 2014, para 19.7

Savage began to brake as he approached the turn. SC Stephenson believed that these factors contributed to the trailer sliding in a 'sway style' onto the opposite side of the road.¹¹

36. In the course of his evidence at the inquest, he explained what he thought had happened to cause the loss of stability of the trailer:

If I use the tissue box as a trailer if that's all right and it'll have its frame there to hook up to the tow ball. There's an empty ..(not transcribable).. pallet and I think two or was it three timber pallets. They were loaded onto the trailer, but they were pushed right up to the front of the trailer. The axle of the trailer is somewhat in the middle ..(not transcribable).. ties, that leaves no weight over the ties okay and puts all the weight at the front of the trailer and with the truck itself already being loaded up with skip bins, they were empty, but I think there was one skip bin that still had metal in it. So all the weight is then concentrated on the truck and on the tow ball area. So it then gives that trailer a bit of bounce and a bit of free way. As you know now I think with police they've got a taskforce where we're looking at trucks and pulling them over, looking at their restraints and the way they are loading. Their loads should be concentrated over the rear, over the axles to allow that weight to be over the tyres.

37. While Mr Savage was responsible for 'strapping down' the now-emptied skips, there was no evidence one way or the other concerning whether the load had shifted during the drive preceding the accident.¹²
38. Mr Savage did demonstrate some knowledge of load distribution, stating that when the trailer was to be partially filled, he would place items 'in the centre so that ... it can't ... move around, because it has the same tension on both sides'.¹³ However, as a relatively inexperienced driver, he appears not to have noticed that the trailer had been re-loaded in a manner that was not stable or might lead to instability of the trailer in certain conditions.
39. The Heavy Vehicle Driver Handbook contains the following guidance: 'For stability, the load should be spread close to the centre line of the vehicle'.¹⁴ One competency

¹¹ Statement of Senior Constable Wayne Stephenson of 23 November 2014, para 28.12

¹² Police interview with Shane Brereton of 5 August 2015, Q32.

¹³ Police interview with Joshua Savage of 4 October 2013, Q305.

¹⁴ Heavy Vehicle Driver Handbook, page 97.

tested in the HVCBA is 'Securing the load: ... to confirm ability to check and, if necessary, adjust load restraints'.¹⁵

40. The Handbook also advises drivers that:

*You can reduce the chances of jack-knife or trailer swing by making sure that all brakes and tyres are in good condition and that the load is evenly distributed between axle groups. You should be especially careful in wet weather.*¹⁶

41. These bald statements, however, do not cover the complexities of loading trailers and heavy vehicles. Experience in such matters counts, as Mr Brereton understood.

Weather may have contributed to the accident

42. On the day of the collision, there had been a brief period of hail and heavy rainfall in western Sydney, including Horsley Park.¹⁷ Senior Constable Wayne Stephenson stated that it was 'likely' that the rain had caused the road to become more slippery than usual due to water mixing with oils accumulated on the road's surface. The surface was also worn and somewhat uneven in the bends during to wear caused by heavy vehicles. Although Mr Savage does not appear to have been speeding, a slippery surface at any speed can result in instability or temporary loss of control of a vehicle or trailer.

Systemic issues that may have contributed to the accident

43. All humanly designed systems, especially complex ones, contain latent defects or flaws that are not obvious. The fact that a system has hidden flaws does not imply fault or negligence on the part of those who designed it. No designer can anticipate every possible combination of circumstances that may arise in future. Hence the need to build in defences against unknown flaws that may arise.
44. As we have discussed, Mr Savage was not an experienced driver, still being on his P plates, and was even less experienced as a heavy vehicle driver. Although he was not driving recklessly or carelessly, he had insufficient experience as a driver to detect from the feel of the trailer behind him that it was not properly balanced.
45. Because of his inexperience, as Mr Brereton explained, he was not in effective charge of the loading of his trailer. As Senior Constable Stephenson noted during the

¹⁵ Heavy Vehicle Driving Competencies, 41.

¹⁶ Heavy Vehicle Driver Handbook, page 49.

¹⁷ Statement of Senior Constable Wayne Stephenson of 23 November 2014, para 18.

inquest, Mr Savage did not have a forklift licence and therefore did not load his own vehicle. He said:

Yes he has to make sure they're strapped down and everything like that and everything's down secure, but with HR driver's licence with the trucks they're held accountable for all their loads, what's in them, however way they're tied down, where they're placed in the vehicle, everything like that... this is where I find with the training of a P plate driver it takes the blame off them because they're not responsible for loading their vehicles because he doesn't hold that qualification to load his vehicle.

46. Although Mr Savage was legally responsible for how his vehicle was loaded, in practice he did not have the training or qualifications or experience to manage that responsibility as well as was appropriate and, indeed, necessary to ensure that the load was properly balanced in the trailer. That demonstrates that there is at least one flaw in the licensing system.
47. The flaw may be in the competency testing or assessment system. It may be in a system that results in inexperienced drivers not managing their loads properly.
48. If improving the system is difficult because the national heavy vehicle regulation regime requires the road transport authorities of the all the States and Territories (or a majority of them) to meet, examine the issue and find a solution, that may also constitute a flaw in the system. Strict adherence to a large, cumbersome, inflexible system is a disincentive to incremental adjustments that reduce risk and may save lives.

Conclusion

49. Reducing the gross number of accidents involving heavy vehicles, and the proportion of casualties caused by these vehicles, is a key element of national road safety policy and regulation. What can reasonably be done towards this goal should be done. Where systemic flaws in the system are disclosed, they should be addressed with urgency and careful attention.
50. While Mr Savage was not an experienced driver at the time of collision, evidence has suggested that his manner of driving was not dangerous or careless. He was not speeding, had no drug or alcohol impairment affecting his handling of the truck and was not distracted at the time of the collision. Rather, the incorrect loading of the trailer caused it to be unbalanced and more inclined to swing and skid across the road. This, in combination with the wet road conditions, led to the collision causing the death of Mr Donnelly.
51. This raises the question of whether Mr Savage had the necessary experience or training to manage a trailer safely in the conditions in which he found himself. Or, to

put it another way, ought he to have been permitted by law to tow a trailer when he had not supervised the loading of the trailer himself? If his employer, or those loading the trailer at One Steel did not regard him as being sufficiently well-trained or experienced to load a trailer, or if he was not qualified to load his own trailer, why was he required or permitted by them – and the law -- to drive away towing one?

52. In my view, this tragic accident exposes systemic flaws in the current licensing system that should be addressed by Transport for NSW (and its interstate counterparts). How exactly those flaws can best and most effectively be addressed I do not have the expertise to say, especially in the light of the complexity of the debates about driver safety and the national regulation system. For these reasons I propose to recommend that Transport for NSW (which may have to consult with other State and Territory counterparts through the Austroads Registration and Licensing Taskforce) examines the problem and, using its own expertise, develops an appropriate solution.
53. Thousands of motor vehicle collisions occur per annum across Australia and several hundred fatal casualties are among the costs of those events. A huge effort goes into road traffic safety research. The temptation for a regulator of a highly complex system may, therefore, be to conclude that the system ought not be changed on the basis of a single accident and to maintain that the status quo is acceptable.
54. But Matthew Donnelly and his family, and indeed perhaps Joshua Savage and other young drivers, deserve better than that. Not only because a completely innocent man has died but because his death, in my opinion, suggests that there is a latent defect in the system regulating heavy vehicle drivers, I am hopeful that this case will not be ignored or placed in a “too hard” basket or regarded as some sort of “acceptable casualty” by government or the transport safety authorities.
55. If, however, it is thought by anyone that the death of one person is insufficient to justify reviewing the system of heavy vehicle driver training and competency assessment, the words of the poet John Donne are worth pondering:

No man is an island, entire of itself... any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls; it tolls for thee.¹⁸

56. I make this frankly emotive appeal to the relevant authorities to see Matthew Donnelly not as a statistic but as a living and much-loved human being. He was unlucky but he should not have been died the way he did. He was not reckless, or

¹⁸ John Donne “Meditation XVII” *Devotions upon Emergent Occasions* (1624)

stupid, or careless. He happened to be at the wrong place at the wrong time. His death could have happened to anyone -- public servant or truck driver or road safety expert or regulator or parliamentarian or police officer or coroner or lawyer or anyone who reads this coronial report.

57. The RMS requested time to consider the recommendations that I propose to make. That request was reasonable and appropriate. The inquest was adjourned to enable those draft recommendations to be considered by the relevant experts at the RMS and Transport for NSW.
58. I have now had the benefit of careful submissions made on behalf of Transport for NSW and the Roads and Maritime Authority for which I thank them. As a consequence I now propose to make recommendations to the Minister for Roads, Transport and Freight concerning the question of competency training and testing of heavy vehicle licence holders and the question of P-plate drivers being permitted to tow trailers. Coroners have no professional expertise in relation to these questions. I have therefore framed the recommendations not in rigidly prescriptive terms but putting the serious issues Mr Donnelly's death raises before the experts in the field for them to consider and resolve.
59. Finally, the coronial team and staff of the Coroners Court hope that Mrs Donnelly and her boys, and all Matthew's family and friends, will accept our very sincere condolences on the loss of a man who was so much-loved and is so much missed now.

Findings s 81 Coroners Act 2009

60. I find that Matthew Donnelly died on 3 October 2013 at Ferrers Road, Horsley Park, New South Wales, as a result of blunt force trauma to the chest he sustained in a collision with the rear of an improperly-loaded trailer that swung onto the wrong side of the road, the surface of which was slippery, while being towed behind a medium rigid truck being driven by a P-plate driver.

Recommendations s 82 Coroners Act 2009

To the Minister for Roads, Maritime and Freight

1. In light of the findings in this inquest that inexperienced Medium Rigid licence holders may not have the capacity, training or experience to load trailers attached to their vehicles correctly and safely, I recommend that Transport for New South Wales refer to the Transport Logistics Industry Skills Council, in consultation with the Austroads Registration and Licensing Task Force, for review and consideration the following:

(i) Whether the content of the competency-based training and assessment regime for MR licences is adequate; and

(ii) Whether competence in loading and towing trailers should be included in the training and assessment regime.

2. I also recommend that Transport for New South Wales consider whether P2 Medium Rigid licence holders ought be permitted to tow trailers behind Medium Rigid heavy vehicles.
3. If this recommendation raises issues of national consistency, I further recommend that Transport for New South Wales raise this question (with reference to the coronial findings of fact in this inquest) with Austroads Registration and Licensing Taskforce for its consideration.

Magistrate Hugh Dillon
Deputy State Coroner