



## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 19<sup>th</sup>, 20<sup>th</sup> and 23<sup>rd</sup> days of November 2009 and the 26<sup>th</sup> day of October 2010, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Harvie Frederick Haselgrove.*

*The said Court finds that Harvie Frederick Haselgrove aged 88 years, late of 5 Iluka Street, Glenelg North, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 24<sup>th</sup> day of August 2005 as a result of left ventricular failure complicating head and soft tissue injuries. The said Court finds that the circumstances of his death were as follows:*

### **1. Introduction**

- 1.1. Mr Haselgrove was out on his gopher on 23 August 2005. Mr Haselgrove, who was 88 years of age, had held a licence to drive a motor vehicle until quite recently and, indeed, had been trying to obtain a renewal of his lapsed driving licence only four days before. Sometime in late July 2005 his family had hired a gopher/motorised wheelchair for Mr Haselgrove. Mr Haselgrove had moderate Parkinson's disease but he was very independent and wanted to be able to 'get around', even though he had lost his driver's licence<sup>1</sup>. Mr Haselgrove had had some mishaps on his gopher. He had fallen off it whilst negotiating a kerb and been hit by a van which was reversing out of a driveway. Mr Haselgrove thought that the gopher did not go fast enough and had told his daughter he might ride a push bike. Around 10am that day Mr Haselgrove was riding his gopher along the footpath at Tapleys Hill Road, Glenelg North. He rode his gopher across a pedestrian crossing on Tapleys Hill Road near

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<sup>1</sup> Exhibit C1a, Statement of Mr Haselgrove's daughter, Shelley Perkins

MacFarlane Street, Glenelg North against a 'Don't Walk' sign. As he crossed the northbound lanes in an easterly direction he was struck by an International prime mover towing a trailer. The prime mover was carrying a load of rocks from Wynward Quarry at South Brighton to Pelican Point at North Haven. Although the truck braked heavily and moved onto the median strip of Tapleys Hill Road, it was unable to avoid Mr Haselgrove. Mr Haselgrove suffered fatal injuries as a result of the collision and died the following day. An autopsy was undertaken by forensic pathologist, Dr John Gilbert, who gave the cause of death as left ventricular failure complicating head and soft tissue injuries and I so find<sup>2</sup>. At first glimpse this seems to be a tragic and unfortunate collision involving an elderly man who was new to the gopher as a mode of transport, having recently lost his driver's licence, and who, for reasons that will never be known, entered a pedestrian crossing against the Don't Walk sign when it must have been obvious that vehicles were approaching the intersection, particularly the truck, and that it would not be possible for him to clear the crossing before the arrival of the truck.

- 1.2. However, the matter is not that simple. The very same truck had been involved in another incident earlier that day. On that occasion the truck had been travelling north on Brighton Road at Seacliff. Witnesses who gave evidence at the Inquest described seeing the truck swerve onto the wrong side of the road as it approached a pedestrian crossing regulated by traffic lights. The truck swerved onto the side of Brighton Road reserved for southbound traffic, in order to avoid colliding with traffic which had banked up on the northbound lanes at the pedestrian crossing, the lights of which were red. The truck came to a stop just before the crossing itself and well past the last of the motor vehicles which were stopped on the northbound lanes. As soon as the pedestrian crossing had cleared of pedestrians, the truck was driven diagonally from the southbound carriageway to the northbound carriageway, across the pedestrian crossing, to resume its correct carriageway for northbound travel. Two witnesses were sufficiently shocked by the event to make a note of the registration details for the truck. They subsequently made statements to police.
- 1.3. Armed with information about this earlier incident, one starts to consider the fatal accident involving Mr Haselgrove in a different light.

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<sup>2</sup> Exhibit C3a, Dr Gilbert's post-mortem report dated 10 April 2006

- 1.4. The complications do not end there however. The truck consisted of a prime mover and a separate trailer. Altogether, the loaded weight of the truck and trailer when filled with rocks was in the order of 40 tonnes. The evidence taken at the Inquest showed that the trailer was subject to a current defect notice on 23 August 2005 and it should not have been on the public roads at all. The prime mover was found by a police mechanic to have a faulty braking system with the result that of a possible total of six brakes (one for each of the six wheels on the prime mover), three were not operating at all. Police issued a defect notice for the prime mover following the fatality. Two of the four brakes fitted to the trailer were also ineffective.
- 1.5. The driver of the truck was a man called Norman Wilson. Wilson was prosecuted as a result of the incident for the offence of driving at a dangerous speed. For reasons which are not clear, the matter was not dealt with until 5 October 2009 when Wilson was fined \$300 and disqualified from holding or obtaining a driver's licence for 6 months. The truck was owned by a company, Lowan Transport Pty Ltd, which in turn was owned by a man called Paul Smart<sup>3</sup>. Smart gave evidence at the Inquest. Although the trailer was being driven contrary to a defect notice, and was owned by Smart's company, neither the company nor Smart suffered any penalty. Furthermore, neither the company nor Smart suffered any penalty for the unroadworthy state of the prime mover which was without an effective braking system.

## **2. The earlier incident involving the truck**

- 2.1. The evidence concerning the earlier incident was given by two witnesses, Sandra Holberton and her partner, Donald Holberton. On the morning of 23 August 2005 both of them were travelling in a northerly direction on Brighton Road in separate motor vehicles. Mrs Holberton was driving her daughter to school and herself to work at approximately 8:10am that morning<sup>4</sup>. She and her daughter had to stop at the pedestrian crossing at Seacliff. There were two cars in front of her vehicle, one of which was a car driven by her partner, Donald Holberton. All of a sudden there was a truck that came down the hill fairly quickly and it appeared not to be able to stop because it jumped the kerb onto the opposite side of the road and then it kept going and jumped the kerb again and kept going down Brighton Road<sup>5</sup>. She said that traffic

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<sup>3</sup> Smart was the Managing Director of Lowan Transport Pty Ltd

<sup>4</sup> Exhibit C15, Statement of Sandra Mann - She had changed her name to Holberton by the time she gave evidence at the Inquest

<sup>5</sup> Transcript, page 9

on both sides of Brighton Road was stopped at that time by the pedestrian crossing lights and commented that:

'... it was very lucky that the traffic on the other side had stopped as well and the pedestrian had already crossed. So it was just lucky that it didn't crash into anything and it just kept going.'<sup>6</sup>

Mrs Holberton said that the pedestrian crossing is at the bottom of what is known as cement hill on Brighton Road at a point where the road is beginning to level out, although still gently sloping. There are two lanes on either side of the road and a concrete median strip in the middle of the road<sup>7</sup>. Mrs Holberton's attention was drawn to the truck by a banging noise behind her and then she saw the truck on the opposite side of the road coming down next to her<sup>8</sup>. She estimated the truck's speed when it went past her at 30 kilometres per hour<sup>9</sup>. After the truck crossed back onto the correct side of Brighton Road and the lights turned green, Mrs Holberton continued her journey in a northerly direction. She asked her daughter to write down the registration number of the truck. An opportunity to do this arose some short distance down Brighton Road when the truck was stopped at the railway crossing for the Brighton train line. Her daughter recorded the registration number of the truck as (SA) YFA-634<sup>10</sup>. Mrs Holberton said that while the truck was stopped at the railway crossing she observed the driver get out of the truck. He walked around the back of the trailer and appeared to look underneath the truck.

2.2. Later that day at approximately 2:30pm Mrs Holberton was driving north on Tapleys Hill Road to pick her daughter up from school when she came upon the scene of the accident involving Mr Haselgrove. She contacted her partner, Mr Holberton, who had also made a note of the registration number, and confirmed that the truck at the scene was the same truck. She pulled into a side street and walked to the scene of the accident and spoke to a police officer to report what she had observed earlier in the day<sup>11</sup>.

2.3. Mrs Holberton said that after the earlier incident on Brighton Road she continued to follow the truck down Brighton Road and Tapleys Hill Road until she turned into Sir Donald Bradman Drive. She said that for that part of the journey the truck was

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<sup>6</sup> Transcript, page 10

<sup>7</sup> Transcript, page 11

<sup>8</sup> Transcript, pages 11-12

<sup>9</sup> Transcript, page 13

<sup>10</sup> Exhibit C15

<sup>11</sup> Transcript, page 22

‘travelling at a fairly good speed’ and was ‘just pushing - kept pushing along at a fairly good pace I would say’<sup>12</sup>. She estimated the truck’s speed as a little more than 80 kilometres per hour in the 80 kilometres per hour speed zone governing Tapleys Hill Road near the airport<sup>13</sup>. She thought that the truck was travelling above 60 kilometres per hour on the earlier part of Tapleys Hill Road where that speed limit was applicable.

- 2.4. Mr Holberton also gave evidence at the Inquest. He described the earlier incident. He said that he was slowing down for red lights at the pedestrian crossing at the bottom of cement hill and, as he was almost stationery, he heard a loud bang. He looked behind his vehicle and then to his right and saw a truck with a tipper trailer on the back and:

‘... it was bounding, literally it’s all I can say. The front brakes on the prime mover were locked up and smoking, and the trailer was literally bouncing along behind it, like slow bounces.’<sup>14</sup>

He said that the truck stopped and that fortunately both sides of the traffic were stopped at the pedestrian crossing. Mr Holberton said that the truck had eventually come to a rest on the opposite side of Brighton Road at the pedestrian crossing, about 3 metres back from the pedestrian walkway with the front of the truck level with the driver’s seat of Mr Holberton’s car<sup>15</sup>. The driver swung the truck back between the pedestrian lights onto the correct side of Brighton Road. Mr Holberton caught up with the truck again when it was stopped at the Hove railway crossing. He observed the driver get out of the truck and walk around, apparently look underneath the trailer and then drive off. As soon as the truck moved back in front of Mr Holberton on Brighton Road he took note of the registration number and wrote it down<sup>16</sup>. The note was produced as part of a statement made by Mr Holberton on 11 October 2005 which was admitted as Exhibit C16. It records the registration number (SA) YFA-634.

- 2.5. Mr Holberton said that he kept abreast of the truck, or near it, for the remainder of the northerly journey until he crossed the road bridge on Tapleys Hill Road, immediately south of the airport where the speed limit changes to 80 kilometres per hour. At that

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<sup>12</sup> Transcript, page 24

<sup>13</sup> Transcript, page 25

<sup>14</sup> Transcript, page 31

<sup>15</sup> Transcript, pages 35-36

<sup>16</sup> Transcript, pages 38-39

point Mr Holberton said that the truck moved off far more quickly than he did and he thought to himself 'I'm not getting near you' because 'he was moving as fast as he could, left hand, right hand'<sup>17</sup>. Mr Holberton said that the truck had 'already cleared off from me' by the time he reached Harbour Town. He said that he was doing between 80 and 85 kilometres per hour but by the time he had reached West Beach Road he had lost sight of the truck completely<sup>18</sup>. He confirmed that he received a call from his partner later that day and was informed by her that it appeared that the same truck had been involved in an incident.

2.6. I will now consider the account of the earlier incident as given by Wilson, the driver of the truck. Wilson said that as he was approaching the pedestrian crossing lights at the bottom of cement hill he started to slow down and then one car followed by a second moved into the lane in front of him and took part of his 'braking space' and 'gave me less time to slow up'<sup>19</sup>. He said that he realised he was not going to stop in time and went over on to the other side of the road. He described then driving across the pedestrian crossing onto his own side of the road<sup>20</sup>. He said that he did not think there was anything wrong with his brakes because he was actually stopping and he also thought that the brakes were wet from the truck having been put through a wash bay before it left the quarry<sup>21</sup>. Wilson said that he never actually came to a stop on the wrong side of Brighton Road but because the pedestrian crossing was clear he continued straight through it<sup>22</sup>. He estimated the number of vehicles banked up on the northerly carriageway for Brighton Road at the pedestrian crossing at 15 or more<sup>23</sup>.

2.7. Wilson claimed that his wheels were not locked as he effected this manoeuvre. He was told of Mr Holberton's account about seeing the wheels locked and the tyres smoking and the trailer bouncing and responded:

'Yes, well he's lying because the trailer would not bounce with 24 tonne of rock on it.'<sup>24</sup>

2.8. Wilson gave evidence that shortly after this incident he made a telephone call on the mobile phone provided to him by Smart. He called Smart and told him what had

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<sup>17</sup> Transcript, page 44

<sup>18</sup> Transcript, page 45

<sup>19</sup> Transcript, page 194

<sup>20</sup> Transcript, page 194

<sup>21</sup> Transcript, page 195

<sup>22</sup> Transcript, page 196

<sup>23</sup> Transcript, page 196

<sup>24</sup> Transcript, page 199

happened. He said Smart just told him to have a look at the truck<sup>25</sup>. Wilson said that he was frightened by the incident<sup>26</sup>. He said that he also contacted another driver working with Smart, by the name of John Harrison, via UHF radio and that Mr Harrison had urged him to continue to finish the job. Wilson claimed to have told Smart that he did not want to continue and wanted to pack up for the day and go home<sup>27</sup>. However, he claimed that Smart told him to continue. Wilson claimed to have felt sick as a result of the incident<sup>28</sup>.

2.9. Wilson's account of what he told Smart on the telephone is as follows:

'I just said I'd had a near accident coming down the bottom of Cement Hill because I couldn't stop in time because there were cars in front ... I jumped across the median strip before I hit the cars and I got a hell of a fright and I want to go, I says I just want to pack up for the day. I said I want to go, I said I got a scare out of that. He told me to keep going.'<sup>29</sup>

Smart also asked him if there was anything wrong with the truck from going across the median strip. Wilson claimed to have called Smart when he was still on Brighton Road<sup>30</sup>.

2.10. Wilson gave evidence that he had not previously applied his brakes coming down cement hill until he reached the pedestrian lights<sup>31</sup>. He claimed that he drove the rest of the journey northwards to Pelican Point travelling below the speed limit<sup>32</sup>. He disagreed that he would have been exceeding 80 kilometres per hour on Tapleys Hill Road as described by Mr Holberton<sup>33</sup>.

2.11. The owner of the truck, Smart, gave evidence that he did not receive any telephone call from Wilson<sup>34</sup>. In fact, Smart claimed not to have known anything about the earlier incident until he gave evidence at the Inquest<sup>35</sup>. Mr Harrison also gave evidence at the Inquest. His evidence was that he could not recall whether Wilson had contacted him immediately after the earlier incident or not. He confirmed however that Wilson had told him about the incident either that day or the following

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<sup>25</sup> Transcript, page 200

<sup>26</sup> Transcript, page 200

<sup>27</sup> Transcript, page 201

<sup>28</sup> Transcript, page 202

<sup>29</sup> Transcript, pages 204-205

<sup>30</sup> Transcript, page 205

<sup>31</sup> Transcript, page 216

<sup>32</sup> Transcript, page 218

<sup>33</sup> Transcript, pages 220-221

<sup>34</sup> Transcript, page 113

<sup>35</sup> Transcript, page 109

day, but he could not recall which. Mr Harrison said that the incident as described to him by Wilson was that Wilson was coming down cement hill and that he had to stop quickly and drove up around the median strip and then back down onto the road and said that it scared him and he was very happy that nothing happened<sup>36</sup>.

### 3. **The mechanical evidence**

3.1. I heard evidence from Christopher Graham, who is employed by the South Australia Police as a Vehicle Examiner. He has qualifications as a mechanic. He examined the prime mover and the trailer and also the gopher. He prepared a report for each vehicle. They were admitted as Exhibits C18, C18a and C18b.

3.2. Exhibit C18 relates to the prime mover, Exhibit C18a relates to the trailer and Exhibit C18b relates to the gopher. The report in relation to the prime mover concluded as follows:

'The overall condition of the brake system was poor. The front steer brake assembly and the left front drive axle brake assembly were in good condition, however the three remaining brake groups were in poor condition. Due to poor maintenance on the brake system the brake shoes at the three remaining rear drive brake groups were not contacting their corresponding brake drums when full system air pressure was applied at the brake actuators. I formed the opinion that the prime mover brake system was in poor condition prior to the collision.'<sup>37</sup>

3.3. Earlier in the report Mr Graham deals individually with the braking systems. He deals first with the front axles at page 7 and notes that:

'... the right front axle brake shoes were not contacting the brake drum when the brake system was operated.'

He reports that with the right front brake assembly fully applied he was able to insert a 002 feeler gauge<sup>38</sup> and move it around the brake assembly between the brake shoes and the brake drum. At page 7 the report deals with the rear axles. It states that:

'The right rear drive axle were good however the left and right rear axle brake shoes were not contacting the brake drums when the brake system was operated. With the left and right rear drive axle brake assemblies fully applied I was able to insert a 002 feeler gauge and move it around each brake assembly, between the brake shoes and the brake drums.'

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<sup>36</sup> Transcript, page 290

<sup>37</sup> Exhibit C18, page 9

<sup>38</sup> A feeler gauge two thousandths of an inch thick

- 3.4. In summary there are six brake groups altogether, one for each of the six wheels of the prime mover, and of those, three of the brake drums were not being touched by their respective brake shoes and were thus completely ineffective.
- 3.5. Mr Graham reported that of the four brake groups on the trailer, only two were effective. Putting the reports for the Prime Mover and the trailer together then, of a potential total of 10 brake groups, only 5 were working effectively.
- 3.6. I now turn to the report provided by Senior Sergeant Graham England about the braking efficiency and likely stopping distance for the prime mover and semi-trailer<sup>39</sup>. Senior Sergeant Graham England's report stated that there were some measurements that were required for his calculations that had not been taken by the police mechanic or the Major Crash investigators and these included the rolling radius of each wheel on the prime mover and semi-trailer, the radius of the brake drums and the length of the slack adjuster. In order to make calculations he used certain average measurements that he selected based on his previous experience<sup>40</sup>.
- 3.7. Senior Sergeant Graham England's report said that he took note of the specific measurements that Christopher Graham had made of the braking components. He noted that the measurements were taken from the braking system for the purpose of determining the efficiency of the system after the brakes were applied and that in an air operated braking system, if the brakes are not correctly adjusted, it is possible that there might be little or no braking at a particular axle<sup>41</sup>. The report said that:

'The mechanic recorded that the brake shoes did not touch the brake drums on either side of axle 3 or on the right side of axle 2, so I ... effectively disable those brakes.'<sup>42</sup>

In saying that he effectively disabled those brakes, I interpret Senior Sergeant Graham England to be saying that for the purposes of his calculations he notionally 'disabled' those brakes. This is made clear once more at page 5 of Exhibit C12a where Senior Sergeant Graham England says that:

'The information supplied to me by the mechanic is that the brake shoes on the right side of axle 2 and on both sides of axle 3 did not touch the brake drums. In my calculations I have effectively disabled these brakes.'

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<sup>39</sup> Exhibit C12a

<sup>40</sup> See page 3 of Exhibit C12a

<sup>41</sup> Exhibit C12a, page 3

<sup>42</sup> Exhibit C12a, page 3

Senior Sergeant Graham England concluded that the brakes on the prime mover and the semi-trailer had an efficiency of between 34% and 53%. He said that the stopping distance when travelling at a speed of 60 kilometres per hour on Tapleys Hill Road would have been between 49.52 and 73.14 metres.

#### **4. The truck driver's account**

- 4.1. The driver of the truck was Mr Norman Wilson. He had in excess of 12 years' experience driving trucks prior to working for Lowan Transport in 2005. He gave evidence that he was put in touch with Paul Smart, the owner of Lowan Transport, by John Harrison, a friend of his<sup>43</sup>. He said that John Harrison held a contract with Boral for transporting rocks and he wanted Paul Smart of Lowan Transport to assist with the contract and Paul Smart required a driver for that. As a result, he introduced Wilson to Smart<sup>44</sup>. Wilson said that when he contacted Smart, Smart said that he would be driving trucks from Monday to Friday and would be required to perform maintenance on the trucks. Wilson said that he responded immediately that he did not do maintenance on trucks and never had. He said that Smart agreed to appoint him to the position despite that and said he would make other arrangements for maintenance of the trucks<sup>45</sup>. Wilson told John Harrison the same thing<sup>46</sup>. Wilson said that he would report maintenance issues to Smart and most of the time they would be fixed, but that it was 'pretty slack'<sup>47</sup>. He elaborated:

'I don't like working for dodgy companies which obviously Paul was; I was just trying to keep going until I found something better.'<sup>48</sup>

He said that on occasions he would arrive at the yard and leave immediately because something he had requested to be attended to had not been fixed. He gave the example of problems with the tyres being worn and that fact being reported yet nothing having happened when he next attended for work<sup>49</sup>.

- 4.2. Wilson said that he was provided with a mobile phone by Smart to contact the yard in the event of any problems occurring<sup>50</sup>.

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<sup>43</sup> Transcript, page 181

<sup>44</sup> Transcript, page 181

<sup>45</sup> Transcript, page 182

<sup>46</sup> Transcript, page 182

<sup>47</sup> Transcript, page 183

<sup>48</sup> Transcript, page 183

<sup>49</sup> Transcript, page 185

<sup>50</sup> Transcript, page 189

- 4.3. Wilson said that the Boral contract involved transporting rocks from the Boral quarry at the top of ‘cement hill’, Seacliff to Pelican Point at North Haven<sup>51</sup>.
- 4.4. I have referred earlier in this finding to Wilson’s account of the earlier incident at the pedestrian crossing at the bottom of cement hill. In my opinion, Wilson was at pains to minimise the significance of that incident. I believe that he was minimising that incident in order to deflect criticism of his decision to continue driving the truck and so being on the road at the time of the fatal collision with Mr Haselgrove later that day. I prefer the versions given by Mr and Mrs Holberton to that of Wilson. In particular, I find that had Wilson not manoeuvred his truck onto the wrong side of the road prior to the pedestrian crossing, he would have collided with the vehicles that were banked up at the red pedestrian crossing light. I also accept Mr Holberton’s account that his vehicle was the first in line at the pedestrian crossing and that Wilson’s truck did not stop until it was level with Mr Holberton’s position in the driver’s seat of his vehicle. In other words, some 3 metres prior to the pedestrian crossing and on the incorrect side of the road for vehicles travelling north. Furthermore, I find that those of the truck’s brakes that were actually working were locked and that smoke was coming from those wheels. I also accept the evidence of Mr and Mrs Holberton about what occurred subsequently and the manner of driving of Wilson after the incident. I do not accept Wilson’s evidence that he would not have been forced onto the wrong side of the road had two vehicles not taken up his ‘braking space’. That evidence simply does not sit logically with the versions provided by Mr and Mrs Holberton of a truck, with wheels locked and smoking, finishing only just prior to the pedestrian crossing. Wilson also denied that his wheels were locked at all<sup>52</sup>. Wilson also suggested that, but for his manoeuvre onto the wrong side of the road, he would have only nudged the rear-most of the vehicles banked up at the pedestrian crossing<sup>53</sup>. In my view that is simply implausible and does not fit with the evidence of the other witnesses. Furthermore, Wilson claimed to be scared by the incident<sup>54</sup> and that he felt sick<sup>55</sup>. In my opinion, that was truthful evidence, but it was consistent with the incident being far more serious than Wilson would have had me believe. In fact, it simply does not make sense that Wilson would be scared to the point of feeling sick if the incident were so trivial as he suggested in

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<sup>51</sup> Transcript, page 192

<sup>52</sup> Transcript, pages 202-203

<sup>53</sup> Transcript, page 197

<sup>54</sup> Transcript, page 196

<sup>55</sup> Transcript, page 202

his evidence. His evidence was clearly contradictory on this point. At one stage he said:

'No, I got a fright, other people were going to get hurt. I got scared.'<sup>56</sup>

This evidence stood in contrast to his earlier evidence that he would merely have 'nudged' the rear-most of the vehicles<sup>57</sup>.

- 4.5. As I have said previously in this finding, the accounts of Wilson and Smart were at odds on the matter of the phone call after the earlier incident. Wilson said that he contacted Smart on the mobile phone but Smart denied that Wilson had done so. Smart's evidence was that the first he knew of the earlier incident was when he was told about it while giving evidence at the Inquest. I will return to this issue later after I have dealt with Smart's evidence in more detail.
- 4.6. Wilson also gave an account of the collision with Mr Haselgrove. Once again he maintained that the wheels of his truck did not lock up on that occasion, yet the evidence of skid marks on the road showed that at least some of them did. This merely serves to demonstrate that Wilson's evidence was generally not satisfactory and should be treated with some caution.
- 4.7. Wilson's driving record, as it happens, was also referred to in the evidence. After the incident involving Mr Haselgrove he was involved in a motorcycle accident as a result of which he lost one of his legs. Blood alcohol tests were taken immediately after this accident and his blood alcohol reading was found to be .156%<sup>58</sup>. As a result of that incident he was disqualified from driving for 7 months<sup>59</sup>. It is an extremely poor reflection on Wilson that he would engage in a further episode of dangerous and irresponsible driving after having been involved in the fatality involving Mr Haselgrove and the near miss at the pedestrian crossing on the very same day. Finally, it reflects no credit on Wilson that he failed to inform police officers who attended at the scene of Mr Haselgrove's collision of the incident involving the truck earlier that day<sup>60</sup>.

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<sup>56</sup> Transcript, page 201

<sup>57</sup> Transcript, page 197

<sup>58</sup> Transcript, page 209

<sup>59</sup> Transcript, page 209

<sup>60</sup> Transcript, page 254

## 5. **The evidence of Paul Smart**

- 5.1. Smart was an unimpressive witness. His evidence was characterised by a tendency to obfuscation.
- 5.2. Contrary to the evidence of Wilson, it was Smart's evidence that responsibility for maintenance, including maintenance of the brakes of his truck, was Wilson's responsibility and, indeed, that Smart had been there when Wilson had done maintenance on the truck<sup>61</sup>. It is difficult to know where the truth lies on this question. However, the evidence of Mr Harrison corroborated Wilson's evidence that he would not do maintenance on the trucks<sup>62</sup>. For that reason only I accept the evidence of Wilson in preference to Smart on that point. I find that Wilson made it plain at the outset that he would not do maintenance on the truck, including brake maintenance, and that he never did any maintenance.
- 5.3. Smart's evidence was that he conducted all of his own general maintenance work on trucks, that he had always done so and that he still does. He is not a qualified mechanic but is self-taught<sup>63</sup>.
- 5.4. At the outset of his evidence Smart asserted that the brakes on the prime mover and trailer that was being driven by Wilson were 'alright' because he had seen the skid marks on the road at the scene of the accident<sup>64</sup>, yet later in his evidence he acknowledged that Mr Graham, the police mechanic, had attended at his yard shortly after the crash and told him that the brakes on the truck were not working properly<sup>65</sup>. When it was put to him that he had previously told the Court that there were skid marks and therefore the brakes on the truck were working properly, and yet he later admitted that Mr Graham had told him that they were not working properly, he qualified his previous answer by saying that the brakes were not working 'properly'. This is an example of his obfuscation in giving evidence.
- 5.5. Smart was shown the report of Mr Graham<sup>66</sup> and he acknowledged that the truck should not have been on the road and, further, that it was not surprising that the earlier

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<sup>61</sup> Transcript, page 107

<sup>62</sup> Transcript, page 295

<sup>63</sup> Transcript, page 105

<sup>64</sup> Transcript, pages 109 and 163

<sup>65</sup> Transcript, page 163

<sup>66</sup> Exhibit C18 and C18a

incident at the pedestrian crossing lights at the bottom of cement hill had occurred earlier in the day<sup>67</sup>.

**6. Smart's evidence in relation to the defect notice on the semi-trailer (SA) YFA-634**

- 6.1. The evidence tendered at Inquest<sup>68</sup> showed that the semi-trailer (SA) YFA-634 was defected at 1317 hours on 25 July 2005 and remained defected as at the date of the collision with Mr Haselgrove, namely 23 August 2005. The evidence was quite clear that the semi-trailer part of the truck-trailer combination should not have been on the road that day. Of course, had the trailer not been on the road that day, Mr Haselgrove would not have been run over by that truck-trailer combination. When this simple proposition was put to Smart he refused to accept the clear documentary evidence, records of the South Australia Police Department and the Motor Vehicles Registrar, that the trailer was the subject of an active defect notice at the relevant time. He maintained that position on the basis of nothing more than an assertion that it was his invariable habit immediately to rectify defects when any of his vehicles is defected. That evidence in itself was implausible having regard to the history of defect notices relating to the semi-trailer (SA) YFA-634. The evidence showed that the trailer had been defected again on 4 April 2008 and remained subject to the defect notice at the date of the Inquest. The evidence also showed that the same trailer had been the subject of at least five defect notices between 21 June 2004 and 4 April 2008.
- 6.2. On the second day of his evidence it became clear that Smart was not even aware of the identity of the trailer that was involved in the collision involving Mr Haselgrove, the trailer the subject of the defect notices upon which he was asked many questions and gave many answers the preceding day<sup>69</sup>. Smart asserted after a day's evidence that the trailer involved in the collision was registration number TJJ-034. When Smart was shown a copy of Exhibit C18c, a photograph of the scene of the aftermath of the collision involving Mr Haselgrove, which depicts the trailer and shows quite clearly the registration number of the trailer as being (SA) YFA-634, he finally conceded that he was wrong<sup>70</sup>.

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<sup>67</sup> Transcript, page 157

<sup>68</sup> Exhibit C19 and C19a

<sup>69</sup> Transcript, pages 134-135

<sup>70</sup> Transcript, page 135

- 6.3. Smart denied any knowledge that the trailer had been written off in 1995 and rebuilt in 1997 despite that clearly being a matter of record according to the documentary evidence of the police and the Registrar of Motor Vehicles<sup>71</sup>. In the end Smart admitted that he had no idea one way or the other whether the trailer was in fact the subject of a defect notice on 23 August 2005 and was in no position to deny the veracity of the documentary evidence, although he had attempted to do so for some hours in the witness box previously<sup>72</sup>.
- 6.4. Interestingly, Smart asserted that if he had been aware that the trailer was subject to a defect notice on 23 August 2005 ‘it wouldn’t have been on the road either’<sup>73</sup>.
- 6.5. Even after having made the admission that he did not know one way or another whether the trailer was subject to a defect notice, as it most clearly was, he returned to the assertion that the defect notice was in fact cleared on 25 July 2005<sup>74</sup>. It was plain that Smart was misreading the computer printouts comprised in Exhibit C19a and, in particular, was confusing the date of the defecting of the trailer with the date on which it was cleared. The absurdity of this became apparent<sup>75</sup> when it was put to him that the trailer was in fact defecting at 1317 hours on 25 July 2005 and he himself was asserting that it was cleared from that very same defect notice at precisely the same time. In the end it was clear that Smart was simply unable to understand the documents that he was being shown. In the result, I have absolutely no doubt, and the evidence is clear beyond doubt, that the trailer was in fact the subject of a defect notice from 25 July 2005 up to and including 23 August 2005 and was not cleared from that defect notice until sometime in October 2005.
- 6.6. Finally, Smart would not concede that the mechanical fault in the brakes of the prime mover, that had resulted in the brakes and the shoes of three of the brake-shoe combinations on the prime mover not being in contact with one another when the brakes were applied, was a fault that would not happen in a hurry or overnight, but would develop over time<sup>76</sup>. He maintained that position despite being informed that Mr Graham, a qualified motor mechanic of some 32 years’ experience, gave evidence

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<sup>71</sup> Exhibit C19 and C19a

<sup>72</sup> Transcript, page 140

<sup>73</sup> Transcript, page 145

<sup>74</sup> Transcript, pages 147-151

<sup>75</sup> Transcript, pages 149-150

<sup>76</sup> Transcript, page 166

to the Court that this cannot occur spontaneously and does occur over a period of time<sup>77</sup>.

- 6.7. I conclude that Smart gave evidence that was unreliable and self-serving.
- 6.8. Smart ran his trucking business poorly and his prime mover and trailer combination that collided with, and was responsible for the death of Mr Haselgrove, had defective brakes. Furthermore, the trailer part of that combination was subject to an active defect notice and should not have been on the road at all that day. The prime mover part of the combination was defected when Mr Graham observed the fact that three of the six drum brakes on that vehicle were completely inoperative due to poor maintenance which must have been a state of affairs that had existed for some time.

7. **Conclusions as to the safety of the truck-trailer combination that collided with Mr Haselgrove**

- 7.1. I conclude that the truck-trailer combination that collided with Mr Haselgrove was quite unsafe and should not have been on the road on 23 August 2005. It should not have been on the road because it was inherently unsafe. A further reason why it should not have been on the road was that the trailer itself was subject to an active defect notice. Had the prime mover been inspected by a competent mechanic immediately prior to 23 August 2005 it would also have been subject to a defect notice.
- 7.2. These matters are extremely concerning. The truck-trailer combination when fully loaded weighed 40 tonnes. It would be no exaggeration to describe it as a behemoth, particularly when hurtling down cement hill fully loaded and with ineffective brakes. Such a truck-trailer combination is a potentially lethal piece of machinery even when well-maintained. When in a state of disrepair, it goes without saying that it is a far more dangerous instrument.
- 7.3. This state of affairs may not have arisen if there were a compulsory regular system for the safety inspection of heavy vehicles operating in South Australia. I will return to that in due course.

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<sup>77</sup> Transcript, page 168

## **8. The police investigation**

- 8.1. In my opinion, there were a number of deficiencies in the police investigation in this matter. The truck and trailer were not taken from the scene of the accident to secure premises under the control of the police for examination. Instead the examination was conducted on the side of the road and the vehicle was allowed to be returned to Smart's premises. Subsequently, Mr Graham returned and issued a defect notice. Some of the evidence suggests, although it is not clear, that he carried out further examinations of the vehicle at Smart's premises. The potential clearly existed for the vehicle to have been interfered with by Smart and/or others in the intervening interval.
- 8.2. In my opinion, when a heavy vehicle is involved in a fatal accident, or a potentially fatal accident, it should immediately be taken to a police compound for careful mechanical examination and not released to the owner until all necessary inspections have been carried out.
- 8.3. In the present case it appears that no action was taken against Lowan Transport nor against Smart for causing or permitting the semi-trailer (SA) YFA-634 to be on the road on 23 August 2005, contrary to a defect notice. Nor was any such action taken against Wilson. I am at a loss to understand why nothing was done about this.
- 8.4. One of the issues that was of significance in this Inquest was the truth, or otherwise, of Wilson's assertion that he rang Smart immediately after the earlier incident at the bottom of cement hill. If he did not do so then his decision to continue to drive the truck-trailer combination, knowing that the brakes were faulty, may be viewed more seriously than might be the case if he were directed by his employer to continue to do so. If Smart had directed him to do so, as asserted by Wilson, then Smart's own actions would require a proper accounting. Although Wilson refused to answer questions when interviewed by police<sup>78</sup>, and as a result his assertion that he contacted Smart and was directed to continue to drive was not known until the hearing of this Inquest, it was always on the cards that some contact may have been made by Wilson to Smart in view of the witnessed seriousness of the earlier incident. A basic investigation involving a questioning of Smart, an examination of his telephone equipment and an examination of telephone records would have been sufficient to establish whether a call was made from the phone issued by Smart to Wilson during

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<sup>78</sup> Instead he provided a brief written statement

the period shortly after the earlier incident. Furthermore, Smart's answer to the question of whether any contact was made with him or whether he was aware of the earlier incident would have been something that should have been followed up shortly after the accident. However, no statement was taken from Smart until 18 May 2006, some 9 months after the collision involving Mr Haselgrove. Even that statement does not address the question of whether any telephone call was made to him by Wilson in relation to the earlier incident. It does not even refer to the earlier incident beyond a bland statement that Smart had not been informed by Wilson that the brakes had been a concern of his during that day or days prior to 23 August 2005. The statement makes no reference to the fact that the semi-trailer (SA) YFA-634 was the subject of a defect notice at the relevant time, nor any explanation as to why the trailer was on the road on 23 August 2005, or whether Smart was even aware of that fact.

- 8.5. These were serious defects in the investigation. In my opinion, an investigation involving a heavy vehicle where there is a fatality, or a potential fatality, must be conducted far more rigorously than this investigation was. I intend to make a recommendation in relation to that matter.

## **9. Recommendations**

- 9.1. I recommend that the Minister for Road Safety consider the introduction of compulsory roadworthy inspections for heavy vehicles.
- 9.2. I recommend that the inspections should be carried out at least once per year.
- 9.3. I recommend that when a heavy vehicle is involved in a fatal crash, or a potentially fatal crash (in the present case Mr Haselgrove did not die at the scene, but in hospital the next day), SAPOL impound the vehicle in a safe and secure location where police mechanics can conduct a thorough inspection without feeling undue pressure through the need to restore traffic flows and other distractions associated with roadside inspections, and where proper equipment is available to assist in the examination.
- 9.4. I recommend that when a heavy vehicle is involved in a fatal crash SAPOL should carefully consider who, apart from the driver, may be accountable in some way for what has occurred. In particular, the owner of the vehicle should be looked at with a view to determining whether the vehicle has been adequately maintained.

- 9.5. I recommend that when a heavy vehicle is involved in a fatal crash SAPOL should investigate the existence of any defect notices applicable to the vehicle, or in the case of a vehicle comprising more than one component, to any components of the vehicle, and take proper enforcement action immediately.
- 9.6. In this case, the prosecution against Wilson was not resolved until nearly the end of 2009, with the result that the Inquest could not be held until after that time, nearly four years after the crash. I recommend that SAPOL investigate how this prosecution took such an unacceptably long time to resolve.

*Key Words: Police (investigation); Semi-Trailer; Gopher*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 26<sup>th</sup> day of October, 2010.*

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*State Coroner*