



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 8th, 9th, 10th, 11th and 15th days of February 2011, the 8th day of March 2011 and the 6th day of May 2011, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Daniel Buddy Raphael.

The said Court finds that Daniel Buddy Raphael aged 20 years, late of 27 Ningana Avenue, Kings Park, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 2nd day of June 2006 as a result of closed head injury. The said Court finds that the circumstances of his death were as follows:

1. Introduction and cause of death

- 1.1. Daniel Buddy Raphael was 20 years of age when he died on 2 June 2006. He had been involved in a motor vehicle collision that had taken place in the early evening of Thursday 1 June 2006. Mr Raphael had been riding a Yamaha 50cc scooter. He and his scooter were struck by a van. Although Mr Raphael had been wearing a helmet, he suffered severe head injuries as a result of the collision. He was declared deceased at 1400 hours on 2 June 2006 at the Royal Adelaide Hospital (RAH).
- 1.2. A post-mortem examination was conducted with respect to Mr Raphael by Dr Karen Heath, a forensic pathologist at Forensic Science South Australia. In her report¹ Dr Heath states the cause of death was closed head injury. I find that to have been the cause of Mr Raphael's death.

¹ Exhibit C3a

2. **Background**

- 2.1. The motor vehicle collision in which Mr Raphael sustained his fatal injuries occurred at about 5:40pm on the evening in question. It was dark, it had been raining heavily earlier and the road was wet, and it was possibly drizzling at the time. Mr Raphael had been travelling in a northerly direction towards the city along Unley Road. He then stopped and waited to execute a right-hand turn from Unley Road into Maud Street at Unley. This junction was not controlled by traffic lights. At that time there was very slow and heavy traffic proceeding in a southerly direction away from the city along Unley Road in both lanes. The speed limit at this location was and is 60 kilometres per hour. Mr Raphael had to execute his turn across those lanes. Mr Raphael on his scooter was situated in the centre lane of the northbound carriageway of Unley Road close to the centre white line. He was stationary waiting for the southbound traffic to clear when he was struck from behind by a van that was travelling north in the centre lane of the northbound carriageway. It is not known exactly for how long Mr Raphael had been stationary and waiting to turn right before he was struck. Given the large volume of traffic that was proceeding south along Unley Road the opportunities for Mr Raphael to execute his right turn safely may have been limited. It is not inconceivable, therefore, that he might have been waiting there for some time. If so, this would have added to his exposure to danger.
- 2.2. Neither drugs nor alcohol played any part in this collision.
- 2.3. It would be common knowledge among motorists who use Unley Road that as one proceeds north along Unley Road between Cross Road and Greenhill Road one encounters on the right-hand or eastern side of the road a large number of junctions that do not have a dedicated turning lane such as might be provided at junctions that are controlled by traffic lights. Generally speaking, it would be natural for the northbound motorist to choose to occupy the centre lane in preference to the left-hand lane because of parked vehicles encroaching into that left lane and the presence of slow moving and stationary buses in that lane. At that time of the evening, the clearway only operates on the eastern side of Unley Road. There is no clearway on the western side of Unley Road at that time. One has to wonder about the wisdom of that in light of the fact that the northbound carriageway of Unley Road can be blocked in its left lane by parked cars and in the centre lane by vehicles waiting to turn right.

At that time of the evening northbound traffic proceeds along Unley Road by steering a course between motionless obstructions of varying degrees of visibility.

- 2.4. It is pertinent to observe that the large volume of slow moving southbound traffic would also mean that northbound traffic, of which there was comparatively little at the time of this collision, would need to anticipate that at the various junctions on the right there might be stationary vehicles ahead of them in the centre lane waiting for an opportunity to turn right and that such opportunities might be limited. Some of those vehicles might be less conspicuous than others, such as motorcycles. The presence of vehicles that might not be as visible as others would have to be anticipated if not expected by the prudent motorist regardless of the quality of his or her eyesight. The prudent motorist would very much be alive to the possibility that his or her path along the centre lane would be blocked, either wholly or partially, by a vehicle waiting to turn right and it would be the duty of that motorist to keep a proper lookout for such a traffic hindrance. This duty would be all the more acute when conditions were unfavourable as they were here. In keeping that proper lookout, the motorist would be looking for evidence of a vehicle waiting to turn right, not only that provided by direct sight of the vehicle or its outline, but that provided by the tail light, the brake stop light or a flashing orange indicator. Mr Raphael had his tail light, his brake light and his flashing rear right-hand indicator illuminated².
- 2.5. The van that struck Mr Raphael was being driven by Mr Neil Spooner, then aged 53. Mr Spooner was monocular. He had suffered the complete loss of vision in his left eye that was believed to have been caused by the complications of diabetes. Ultimately the eye was surgically removed in October 2002. The remaining eye had also been adversely affected. It required laser treatment to which the eye is said to have responded very well. According to his eye specialist, Mr Spooner's vision in his right eye had remained stable and satisfactory, albeit somewhat unexpectedly having regard to the severe deterioration in his left eye. Monocularity does not of itself preclude a person from holding a driver's licence. The entitlement to a licence depends upon the quality of the vision in the remaining eye. Mr Spooner was licensed to drive a motor vehicle at all material times. Mr Spooner's principal occupation was that of a driver for Toll Fast Couriers. He did not require a special licence, either based on his monocularity or on the commerciality of his driving. He had no

² Exhibit C34, paragraph 3.

restriction except that he was required to wear spectacles and was required to undergo a medical examination every three years.

- 2.6. Mr Spooner was performing a delivery run at the time of the collision. He was the sole occupant of the van. Mr Spooner was very familiar with that stretch of Unley Road. As Mr Spooner proceeded in the centre lane he had a duty to ensure that his path was at all times clear and to take the necessary evasive action if it was not. Mr Spooner asserts that he did not see Mr Raphael until it was far too late for him to take evasive action. He did not see the scooter or its rider. He did not see any of its lights. He would have one believe that this was not due to any defect in eyesight or failure to maintain a proper lookout on his part.
- 2.7. Mr Spooner was charged with the offence of causing Mr Raphael's death by dangerous driving contrary to section 19A(1) of the Criminal Law Consolidation Act 1935. It was not until 24 May 2010 that the proceedings against Mr Spooner relating to that charge were finalised. On that date a Judge of the District Court of South Australia found Mr Spooner not guilty of the offence of causing death by dangerous driving as well as of the alternative charge of driving without due care. Section 21(2) of the Coroners Act 2003 precluded an Inquest being held into Mr Raphael's death until the criminal proceedings against Mr Spooner had been disposed of.
- 2.8. It is no part of this Court's function to undertake any revision of the outcome of the criminal proceedings that have taken place in respect of Mr Spooner. Indeed, section 25 of the Coroners Act 2003 precludes this Court from making any finding or suggestion of criminal or civil liability. However, this prohibition does not act to prevent this Court from making findings of fact that when viewed objectively by the reader of those findings might lead the reader to conclude that an offence has been committed³. As to the question of the civil liability of any individual or entity, it should be understood by the reader of these findings that it is no part of this Court's function to facilitate or otherwise advance any claim that any person might be minded to make in that regard. Rather, the Inquest was held in and these findings are published in the wider public interest. For this reason, I have not felt it necessary to devote unlimited attention to each and every submission that may have been calculated to advance or resist any civil claim that is either on foot or contemplated.

³ Perre v Chivell [2000] 77 SASR 282

3. Reason for Inquest

- 3.1. The Inquest examined generally the circumstances in which Mr Raphael suffered his fatal injuries. This naturally involved an examination of the circumstances in which this collision occurred. In particular the Court examined how it was that the driver of the van, Mr Spooner, ran into Mr Raphael when he was stationary on his scooter and in the same traffic lane in which Mr Spooner's van was travelling. In this regard I examined issues such as whether Mr Raphael and his scooter would have been visible to Mr Spooner, whether the failure to avoid Mr Raphael on his scooter was due to any inattention or defect in lookout on Mr Spooner's part and, in particular, whether Mr Spooner's monocularity contributed to any failure on his part to see Mr Raphael and his scooter.
- 3.2. The Inquest also examined such issues as whether or not any defect in Mr Spooner's vision ought to have precluded him from holding a driver's licence or whether it ought to have precluded him from holding a position of employment that was largely based upon his ability to safely drive a motor vehicle notwithstanding any disability in vision that he may have had.
- 3.3. The third main issue was whether a death occurring in similar circumstances to those relating to Mr Raphael's death might be prevented in the future.

4. The circumstances of the collision on 1 June 2006

- 4.1. The transcript of the evidence taken in the District Court at Mr Spooner's trial was tendered to the Inquest⁴. Mr Spooner did not give evidence in that trial, but a number of statements that he made to the police were tendered to that Court. The transcript of the District Court trial contains a record of the evidence given by three witnesses who were in close proximity to the approximate point of impact between Mr Spooner's vehicle and Mr Raphael's scooter. Those witnesses are Mr John Walker, his wife Ms Robyn King, and Ms Charmain Petralas. The witness statements that these three witnesses originally gave to the police were tendered to the Inquest⁵. Each of those three witnesses had seen Mr Raphael on his scooter at a time just prior to the collision. They had also seen the approach of Mr Spooner's van. I will describe what each witness saw in a moment.

⁴ Exhibit C29

⁵ Exhibits C7a (King), C8a (Walker), C9a (Petralas)

- 4.2. The statements of two further witnesses who had been present in the vicinity at the time of the incident were tendered to the Inquest. They were Mr Kevin Lowe⁶ and Mr Mark Cunningham⁷. These two witnesses had not been called at Mr Spooner's trial in the District Court. Mr Lowe, who was in a vehicle travelling south along Unley Road in the centre lane, did not see Mr Raphael nor the approach of Mr Spooner's van prior to the impact. The first he was aware of the impact was his hearing of a loud bang and then seeing a person sliding along the roadway heading towards his vehicle. Mr Cunningham was on foot and his attention was drawn to the accident for the first time when he heard the loud impact. He states that following the collision Mr Spooner repeatedly stated 'I did not see the guy'. Mr Cunningham also states that following the collision he moved Mr Raphael's scooter from the roadway onto the footpath. When he did so he noticed that the rear tail light was illuminated and that an indicator light was blinking, although he did not know which indicator light was blinking. The motor was still running. A scientific examination of the right rear indicator light established to my satisfaction that this light was operating at the time of the collision⁸.
- 4.3. The Court did not deem it necessary for any of the five witnesses whose names I have mentioned to give oral evidence at the Inquest.
- 4.4. Mr Walker and Ms King are husband and wife. They were together in the same vehicle which was proceeding in a southerly direction away from the city in the centre lane of Unley Road. Ms King was driving and Mr Walker was seated in the front passenger seat. They described the conditions as very dark, such that all cars had lights on. It had been raining but the rain had passed. The vehicle's windscreen wipers were not operating. As he and his wife approached the junction of Maud Street the traffic was very slow. It was stop, start. This meant that the space between succeeding vehicles was less than a car length. Mr Walker noticed that northbound traffic towards the city was occupying the left lane and that the centre lane for northbound traffic was clear. As he and his wife approached the Maud Street junction, he saw the stationary scooter in the centre lane of the northbound carriageway at the junction of Maud Street. Mr Walker observed that the scooter had its headlight on. He saw that the scooter was indicating that its rider intended to turn right into Maud Street. The presence of the scooter was drawn to his attention by his

⁶ Exhibit C10a

⁷ Exhibit C11a

⁸ Exhibit C34, paragraphs 2.4.2 and 3.2

wife. Mr Walker states that the scooter was very close to the centre line but still within the centre lane for northbound traffic. At that point they were a couple of car lengths away from the position of the scooter and they were '*edging along the road, stationary more times than not*'⁹. He said that the scooter was in a very dark area that was not well lit. Nevertheless, he was able to see the scooter. Northbound traffic was at that point occupying the outside left lane of Unley Road. There was nothing behind the scooter. When he and his wife reached the junction, his wife stopped and tried to allow the scooter to cross the southbound carriageway but traffic on the outside lane continued to move making this impossible. The rider did not have an opportunity to execute his right-hand turn. As a result, Ms King proceeded past the junction. The traffic in their lane continued to move very slowly. Mr Walker looked ahead and observed that there was a car in the northbound centre lane waiting to turn right into Marion Street which is the next junction to the south of the Maud Street junction. The junctions are separated by a distance of approximately 65 metres. Mr Walker described that vehicle as a white sedan. He then noticed the van, that we now know to have been driven by Mr Spooner, pass the white sedan at Marion Street on its outside. Once it moved past the white vehicle, the van crossed into the centre lane. Mr Walker said that as it moved into the centre lane, the van accelerated. Mr Walker sensed that the scooter, which was by that time now behind them, was in a state of considerable vulnerability. Mr Walker makes it clear in his evidence that he continued to watch the van as it passed his own vehicle. There was then an impact between the van and the scooter. He said that there was no sound of braking or skidding prior to the impact. He suggested that the van had proceeded into the centre lane almost immediately after it had gone past the vehicle turning right at Marion Street¹⁰. His own vehicle was no more than one or two car lengths past the Maud Street junction when he observed all of this. Mr Walker suggested that after he saw the van pass the vehicle that was waiting to turn right at Marion Street, the van had accelerated to a speed '*at least 60 plus*'¹¹. He did not see anything to suggest that the van had taken any evasive action such as braking or swerving prior to the impact. In cross-examination in Mr Spooner's trial, Mr Walker agreed that he could not see the person of Mr Raphael clearly, although he could make out his silhouette. Mr Walker did not believe that the van had been in the centre lane of the northbound carriageway

⁹ Trial Transcript, page 80

¹⁰ Trial Transcript, page 83

¹¹ Trial Transcript, page 83

the entire time. His belief was that it had entered the centre lane from the outside lane, having gone past the vehicle waiting to turn right into Marion Street. In cross-examination in the trial Mr Walker conceded that the speed of the van may have been less than 60 kilometres per hour.

- 4.5. There are two aspects of Mr Walker's evidence that in my view are significant. Firstly, he was clear that there was no braking or evasive manoeuvre made by the van prior to its striking Mr Raphael's scooter. This is suggestive of the fact that the driver of the van did not see the scooter. Secondly, according to Mr Walker Mr Spooner's van was the only moving vehicle in the centre lane. The northbound traffic on Unley Road was occupying the outside lane. The stationary vehicle waiting to turn right at Marion Street and thereby blocking the centre lane would provide part of the explanation for this, but it is of some relevance that no traffic endeavoured to occupy the centre lane at Mr Raphael's position. This would be consistent with other traffic, aside from Mr Spooner, having seen Mr Raphael at that location and having remained in the outside lane in order to avoid him.
- 4.6. Ms King was the driver of the vehicle containing herself and Mr Walker. In her evidence in the District Court trial she too described the conditions as dark. She confirmed the darkness of the location and the fact that it had been raining, but suggested that the wipers of her vehicle were only on intermittently. Ms King had endeavoured to allow the motorcyclist to execute his right-hand turn but confirmed her husband's evidence that traffic in the other southbound lane did not allow him to do so. She had therefore proceeded past the Maud Street junction. In her evidence in the District Court trial, Ms King described the pattern of northbound traffic as she approached the location in question. She said that as they approached, the northbound centre lane was clear but that the other lane was '*a bit congested*'¹². She went on to say that at the scooter's location '*people were getting in the farther lane to go past him*'¹³. Ms King suggested that the scooter was positioned quite close to the centre lane as it waited to execute its turn but was not on the centre line¹⁴. Ms King told the District Court that she had seen Mr Raphael's indicator on as well as his headlight. However, because of other cars coming towards her, it made him look dark. Like her

¹² Trial Transcript, page 103

¹³ Trial Transcript, page 103

¹⁴ Trial Transcript, pages 117-118

husband, she suggested that the only vehicle that she saw moving in that northbound centre lane was the van that struck Mr Raphael's scooter.

- 4.7. Ms King's account of the collision is not dissimilar to Mr Walker's except that she does not claim to have seen any car waiting to turn right from Unley Road into Marion Street. However, like her husband, she stated that she observed the van move from the 'slow moving left northbound traffic lane'¹⁵ into the right traffic lane and accelerate towards the Maud Street junction
- 4.8. Ms King was aware of the impact mainly through what she heard. She described the movement of the van from the outside lane to the centre lane as occurring very quickly, in a split second¹⁶. She believed that the van was travelling at at least 60 kilometres per hour as it went past her prior to the impact. She did not see it deviate in any way¹⁷. She heard a thud and scraping sounds and she was fairly sure that she heard brakes only after the sound of the impact.
- 4.9. In cross-examination Ms King repeated that she had seen a bank-up of traffic in the left northbound lane and her impression was that northbound traffic was occupying that lane to '*get around the scooter*'¹⁸. This observation lends support to the notion that drivers of northbound traffic were aware of the presence of the scooter and were driving accordingly. As well, she suggested that Mr Spooner's van appeared to be going faster than the traffic in the other northbound lane and this observation would be consistent with Mr Spooner taking advantage of what he believed to be an unoccupied centre lane to enable him to proceed at a faster pace than vehicles in the outside lane. She rejected the notion that Mr Spooner's van had been at all times in the centre lane. She said that she definitely saw the van move from the outside lane to the inside lane of the northbound carriageway¹⁹. In cross-examination she still believed that Mr Spooner's van was doing a minimum of 60 kilometres per hour but suggested that she was no expert²⁰. She confirmed in cross-examination that there was definitely no braking sounds heard prior to the sound of the impact.
- 4.10. Ms King's evidence tends to confirm the impression that northbound traffic was occupying the left-hand lane in order to avoid traffic turning right from the centre lane

¹⁵ Exhibit C7a, page 3

¹⁶ Trial Transcript, page 110

¹⁷ Trial Transcript, page 112

¹⁸ Trial Transcript, page 118

¹⁹ Trial Transcript, page 122

²⁰ Trial Transcript, page 123

and that would have included Mr Raphael's scooter. The exception to this appears to have been Mr Spooner who moved from the left-hand lane to the centre lane.

- 4.11. The third witness who had been called to give oral evidence in the District Court trial was Ms Petralas. Ms Petralas' evidence was not dissimilar to that of Mr Walker and Ms King. However, the impact between the van and Mr Raphael's scooter was to her front. She must have been behind Ms King's vehicle in the line of traffic, although I am not certain whether she was immediately behind Ms King's vehicle. She confirmed the darkness and the fact that it had been raining. She said it was drizzling and she had her windscreen wipers on. She observed the scooter as she slowly approached the junction. As she came closer, she identified a number of features about the rider, including the fact that he was wearing a grey top, a black helmet, had dark hair and she noticed that he was young. She believed that Mr Raphael's scooter was basically on the centre line. However, in cross-examination she suggested that the scooter was not right on the centre line, but was as close to it as possible in a safe position and that he was not blocking the lane²¹. She said it was dark for that time of the night but it was not black. When she saw the scooter she had some concern about him in the sense that she could not work out why he neglected to wear fluorescent clothing. This was from a recent experience in which she had nearly struck a cyclist on a bike with no lights. Nevertheless, it appears from her evidence that Mr Raphael and his scooter were intrinsically visible, notwithstanding the conditions. She then noticed the van. She states that the van was approaching Mr Raphael very quickly and she realised that it was not slowing down. Her immediate reaction was that the driver had simply not seen the scooter. This in fact prompted her instinctively to yell out words to the effect '*Oh my God he can't see you*'. She then witnessed the impact. Ms Petralas said in her evidence in the District Court trial that when she first noticed the van it was coming into the centre lane. She suggested that it was about three quarters into the lane when she noticed the van²². This observation is consistent with the van having moved from the outside lane of the northbound carriageway into the centre lane and is consistent with the evidence of Mr Walker and Ms King. Ms Petralas does not claim to have observed the van pass another vehicle waiting to turn right at the Marion Street junction to the south, although her evidence does not

²¹ Trial Transcript, page 142

²² Trial Transcript, page 136

preclude that as having been a possibility. She did not hear anything that would suggest that the van had endeavoured to stop prior to the impact.

- 4.12. In cross-examination Ms Petralas said that there was no possibility that the van had been occupying the centre lane the entire time because she was one hundred percent certain that when she first saw the van it was in the process of moving from one lane to the other²³. As far as the speed of the van was concerned, Ms Petralas said that she thought at the time that it was travelling at about 50 kilometres per hour which she regarded as '*going quick*'²⁴. Also in cross-examination she confirmed that the van did not brake and suggested that it did not take any evasive action either²⁵.
- 4.13. The evidence of Mr Walker, Ms King and Ms Petralas is consistent insofar as all three witnesses state that the impact between the van and the scooter occurred after the van had moved from the outside lane to the centre lane. The only evidence that the van conducted this manoeuvre after it had passed another vehicle waiting to turn right into Marion Street came from Mr Walker. However, the evidence of the other two witnesses does not in any way preclude that as having been the case because their evidence does confirm that there had been a change of lanes executed by the van prior to the impact, and this of course would be consistent with it having passed a stationary vehicle occupying that lane to the south. Their evidence is consistent with the driver of the van having been in the centre lane and then manoeuvring around the stationary vehicle at Marion Street, or having been in the outside lane and then moving into the centre lane once it passed that stationary vehicle. It is also consistent with the notion that the driver of the van, believing that the centre lane ahead was clear, had moved into that lane in order to travel more quickly than traffic travelling in the outside northbound lane. Their evidence is also highly consistent with the suggestion that the driver of the van did not see the scooter at any time prior to impact.
- 4.14. Mr Spooner gave evidence in the Inquest. He had also given a lengthy interview to police, the transcript of which is set out in the statement of Brevet Sergeant Gary Hancock²⁶. This interview was conducted on 22 August 2006. Mr Spooner's version of events, insofar as they relate to the movement of his vehicle along Unley Road prior to the collision, is different from that of the witnesses I have discussed. Mr

²³ Trial Transcript, page 144

²⁴ Trial Transcript, page 148

²⁵ Trial Transcript, page 149

²⁶ Exhibit C23b

Spooner was and is of the belief that at all material times he had been travelling along the centre lane of the northbound carriageway of Unley Road. He says he does not believe that he had moved from the outside lane to the centre lane just prior to the collision. Nor does he believe that he travelled around another vehicle that had been waiting to turn right from Unley Road into Marion Street, south of the Maud Street intersection.

- 4.15. Mr Spooner told this Court that he would have driven along Unley Road at least half a dozen times in a month²⁷. He had started work at approximately 2pm on the day in question. Just prior to the accident he had picked up an item from an IMVS collection point in the vicinity of the junction of Unley Road and Opey Avenue. The item required delivery to the Royal Adelaide Hospital. Having collected the item, he then turned left into Unley Road and headed towards the city. He moved into the centre lane very shortly after turning onto Unley Road. Traffic heading in that direction was medium to light. He noticed that the southbound traffic was '*extremely heavy*'²⁸. As far as he could tell, southbound traffic was almost at a standstill as far as Greenhill Road. Mr Spooner described the natural lighting conditions as those that one experiences as it changes from light to dark but that there was some light appearing under dense cloud cover. He estimated that he proceeded north along Unley Road between 50 and 60 kilometres per hour, although he had not been looking at the speedometer. Mr Spooner told me that he elected to travel in the centre lane because it would be freer, having regard to parked cars encroaching well into the left-hand lane. He acknowledged that because of the slowness of traffic travelling south, there could potentially be vehicles waiting for an extended period of time in the centre lane for an opportunity to turn right²⁹. As he proceeded along the centre lane, and as he approached the location where the accident was ultimately to occur, he asserts that he saw ahead of him two vehicles in the centre lane waiting to turn right into Young Street. It is suggested that he saw those vehicles from a distance of approximately 300 metres. There was, as far as he could see, no vehicles or other obstructions in the centre lane between his vehicle and the vehicles turning right at Young Street. Notwithstanding the distance, Mr Spooner was able to determine from the orange flashing indicators that the drivers of these vehicles were waiting to turn right. He maintained that he could see that both vehicles had their indicators operating. He

²⁷ Transcript, page 320

²⁸ Transcript, page 325

²⁹ Transcript, page 330

maintained in his evidence that what he in fact was seeing was not Mr Raphael's scooter's indicator. In his evidence at the Inquest Mr Spooner provided a remarkable level of detail about these two vehicles. He states that he was able to see that they were not lined up perfectly and that it was this that had enabled him to see that the indicators of both vehicles were working. If it is to be accepted that Mr Spooner had the ability to see such detail at such a distance, at first blush it seems odd that he did not see anything of Mr Raphael or the scooter that was undoubtedly, on his version, between himself and the vehicles at Young Street turning right. On his own version of events there would be have been no reason for Mr Spooner not to have seen the indicator lights of Mr Raphael's scooter. Mr Spooner acknowledged that if Mr Raphael's indicator was operating, then he certainly should have seen that³⁰. If, as Mr Spooner says, he had at all times been travelling in the centre lane and that his attention had been focussed upon what was directly ahead of him within that lane, one would have thought that a person of ordinary eyesight should and would have seen Mr Raphael and his scooter, or at least the flashing indicator light. To Mr Spooner, Mr Raphael's flashing light would not have been situated against a background of other lights if it was the case that his van was at all times being driven straight along the centre lane.

- 4.16. Mr Spooner told me that having noticed the vehicles waiting to turn right at Young Street, he decided to move from the centre lane to the left-hand lane in order to avoid those vehicles. Mr Spooner said that he was preparing to move from the centre lane to the left lane and had allowed a car to move in front of him before doing so. Mr Spooner told me that he had checked the centre mirror and the left-hand mirror of his van to see if he could execute the lane change safely. This did not require him to check the blind spot by looking over his shoulder³¹. Having checked his mirrors, and at the very last moment, he saw the tail light of Mr Raphael's scooter. The tail light of the scooter was, on his evidence, directly in front of him when he first observed it³². He told me that he had no time to apply the brakes nor to make any evasive manoeuvre to avoid hitting the scooter. He said that he originally thought that he may have been approximately 3 to 4 feet away from the scooter when he first observed it, but said that in hindsight he believed it might have been a little, but not much, further

³⁰ Transcript, page 401

³¹ Transcript, page 403

³² Transcript, page 331

than that³³. It will be remembered, however, that immediately after the accident he was repeatedly heard to say 'I did not see the guy'. The fact that he did not see the scooter until a fraction of a second before the impact, or at all, would accord with the evidence of the witnesses whose evidence I have discussed. The same applies in relation to a failure to take any evasive action.

- 4.17. Mr Spooner proffered this explanation as to why he did not see the scooter earlier than he did:

'Yes, I - I'm assuming that it's because of the headlights coming the other way and the road was wet. A lot of those headlights were maladjusted and there was glare from some of the lights that have since been banned, the under bumper ones. They were banned in January '08 and because of that and the - it was a situation where the tail light was lost in virtually a wall of white lights coming in the opposite direction and there was just an unfortunate situation where - and also the - did you ask me a question regarding anything other than the light?'³⁴

- 4.18. It will be observed that Mr Spooner's account of the accident bears a significant difference from those provided by the independent witnesses. The difference was to have some significance that I will explain in a moment. However, I should record at this point that I unhesitatingly accept the evidence of the three witnesses, Mr Walker, Ms King and Ms Petralas that between the Marion Street and Maud Street junctions, Mr Spooner had changed lanes from the left-hand lane to the centre lane. To my mind the evidence that Mr Spooner changed lanes from the left to the centre lane is overwhelming. Even allowing for a theoretical possibility that the accounts of Mr Walker and Ms King may have been influenced by each other, there is no suggestion of cross-fertilisation of ideas as between those witnesses and the third witness, Ms Petralas. Further, I find that Mr Walker's evidence of the existence of a white car waiting to turn right at Marion Street is correct. In my opinion the presence of this vehicle provides the explanation for Mr Spooner's lane change. Regardless of the lane Mr Spooner had been travelling in prior to reaching the Marion Street junction, I find that he took the opportunity to enter the centre lane having passed the stationary white vehicle waiting to turn right at Marion Street. The evidence would suggest that his reason for so doing was to enable him to travel at a faster speed than the traffic occupying the left-hand northbound lane of Unley Road. In my view, that would account for the observed acceleration by the van as it entered the centre lane. The

³³ Transcript, page 332

³⁴ Transcript, pages 332-333

speed to which it accelerated is another matter which I will return to in due course. Suffice it to say, the maximum speed to which Mr Spooner accelerated in the centre lane was the speed at which he struck Mr Raphael's scooter. There was no braking or other evasive manoeuvre taken prior to impact. I do not know whether there is any truth in Mr Spooner's assertion that he saw, approximately 300 metres ahead, two vehicles waiting to turn right at Young Street. It is possible, even having regard to the evidence of the other witnesses that I accept, that as soon as Mr Spooner entered the centre lane he noticed those vehicles and then decided that he would switch back to the left-hand lane. If Mr Spooner did see those vehicles at Young Street it is difficult to see why he did not see Mr Raphael and his scooter, especially if Mr Raphael's indicator light was on, which I find it was. I will return to the issue concerning Mr Raphael's visibility in a moment. It may well be the case that Mr Spooner checked his left-hand and centre rear vision mirrors just prior to the impact as he says. This might provide some explanation as to why his attention was distracted from what lay immediately ahead of his vehicle, but it would certainly not in and of itself provide an excuse for him not seeing Mr Raphael's scooter. In conducting the manoeuvre from the left-hand to the centre lane, it was incumbent on Mr Spooner to make what lay directly ahead of him in the centre lane his primary focus having regard to two things, firstly the possibility at any given time and at any given intersection that there would be a vehicle endeavouring to turn right and, secondly, the relative proximity of eastern junctions to each other and their frequency along that stretch of Unley Road.

5. The evidence of Mr Christopher Hall

- 5.1. Mr Hall is a mechanical engineer who consults in the field of motor vehicle accident reconstruction. He holds an Honours Degree in Mechanical Engineering from the University of Adelaide. He has been consulting in this field since 1980. Mr Hall's principal area of practice involves examining the circumstances surrounding motor vehicle accidents and providing an opinion on how the accident occurred, the speeds of the vehicles involved and the influence of the collision dynamics on the forces applied to the vehicle occupants, pedestrians, motorcycle riders and passengers. He has previously given evidence on matters involving car to motorcycle collision dynamics, driver response, braking effects and night time visibility.
- 5.2. Mr Hall examined the circumstances of the collision between Mr Spooner's van and Mr Raphael's scooter. In basic terms Mr Hall was asked to provide an opinion as to

the likely speed of the van at impact, the conditions, if any, that would have made it difficult for Mr Spooner to detect the stationary motorcyclist and whether it was likely that circumstances could have arisen whereby the driver of the van reacted in a typical manner but was unable to avoid the collision. Mr Hall prepared a report that was tendered to the Inquest³⁵. Mr Hall had also given evidence in the District Court trial.

- 5.3. At this point I deal with the question of Mr Hall's evidence concerning the difficulty or otherwise that Mr Spooner may have experienced in detecting a stationary motorcyclist and whether the collision could or should have been avoided.
- 5.4. Mr Hall has provided his opinion on the assumption that the version of events as described by the three witnesses, and not Mr Spooner, is correct, that is to say that Mr Spooner moved across from the left-hand lane to the centre lane very shortly after passing a stationary vehicle at Marion Street. Mr Hall's evidence was also premised on the assumption that Mr Spooner was likely to have had an unobstructed view along the centre lane by the time he was within 50 to 55 metres of the approximate point of impact. Mr Hall also assumed that Mr Raphael was wearing dark clothing and a dark helmet, that the scooter was silver and that Mr Raphael was positioned close to the centre line with a continuous stream of vehicles in both lanes travelling south. I note, however, that the evidence appears reasonably clear that Mr Raphael was wearing a light coloured jacket. Mr Hall would also accept for these purposes that the right-hand traffic indicator of the scooter was flashing and that the tail/brake light was illuminated, all of which I find was in fact the case.
- 5.5. In his evidence in the District Court trial, Mr Hall made the point that a darkly clad non-illuminated object with low reflectivity would be difficult to see and its presence difficult to detect. That would even be so against a background of headlights, such that if when Mr Spooner was changing lanes and therefore looking towards Mr Raphael's position at an angle, Mr Raphael would have been seen against a background of light. He suggested that in order to detect such an object without lights it would be extremely difficult to do so³⁶. He acknowledged that the lights of Mr Raphael's own scooter would make the task of seeing him and his scooter much easier, but that if those lights blended in with the light that was in effect behind him, it becomes a difficult task if Mr Raphael is to be viewed at an angle with lights in the

³⁵ Exhibit C32

³⁶ Trial Transcript, page 244

background. He suggested that once Mr Spooner's vehicle had moved completely into the centre lane, reducing the angle of sight towards the scooter's position, then the glare provided by the background lights of the southbound traffic would diminish greatly and it would then be much easier for a driver to detect a scooter with its tail, brake and indicator lamps illuminated. Mr Hall therefore suggested that during the period in which Mr Spooner was conducting his lane change manoeuvre, the scooter would have been difficult to see notwithstanding its lights. A motorcycle is especially difficult to see because of the single tail light. Mr Hall suggested that what happens is that although the lights of the scooter can readily be seen, detecting what they actually belong to is the difficulty, especially with a small motorcycle³⁷. The lights of the motorcycle are set against a background of the lights of the southbound traffic. This would make it a question of recognising what the scooter's lights belong to rather than simply detecting that the lights were there. This would take '*time to organise in your mind*'³⁸. Mr Hall also suggested that complicating the scenario was the effect of a wet road that would have then caused reflections of the lights of the various vehicles. Mr Hall's opinions in this regard were premised on a person's ability to detect the presence of an object using normal and ordinary powers of vision.

5.6. In his cross-examination in the District Court trial by the prosecutor, Mr Hall agreed that he was not so much suggesting that there was an inability to see the scooter's lights against a background of other lights, but it was an inability to distinguish one light from another³⁹. He reiterated that it is not a question of lack of detection, but that it is a question of the lack of recognition of what the lights belong to. Naturally Mr Hall was challenged on the significance of the presence of a flashing indicator light on the scooter against a background of white car headlights. To this Mr Hall suggested that the scooter's flashing indicator might be confused with those of southbound vehicles or with the reflections of the red and yellow indicators belonging to those vehicles.

5.7. Mr Hall's opinion is encapsulated in this answer in the District Court:

'Well, they are detectable because they are out there. Whether you recognise what they are is different. The fact is that you are receiving those lights, so you are receiving some red and yellow and white. And whether you are able to then determine what it is you are seeing and recognise it all depends upon the environment that you are viewing it with.

³⁷ Trial Transcript, page 244

³⁸ Trial Transcript, page 246

³⁹ Trial Transcript, page 300

And when you have all of these other backdrop issues going on it becomes confusing. And, as a consequence of that, it takes a lot longer for a person to recognise what they are looking at.'⁴⁰

On cross-examination Mr Hall reiterated that once Mr Spooner's vehicle had straightened, the driver would have had a better view of the scooter without the distortion caused by glare and the background of lights. The separation of the scooter's tail light, stop light and indicator from those other lights would then become more distinct.

- 5.8. A fair summary of Mr Hall's evidence is that in the process of changing lanes, Mr Spooner would have been looking at southbound traffic at an angle, and that although he would have seen the lights of the scooter, and in particular the orange flashing indicator light, he may not have instantly recognised what vehicle or object the lights belonged to and might not at first have recognised that they belonged to a vehicle in his path. The lights may only have been recognised for what they were once Mr Spooner's own vehicle was completely in the centre lane and when, for the first time, the lights of the scooter would not have been seen against another lit backdrop. By then it may have been too late for Mr Spooner to have avoided the impact. The suggestion on Mr Hall's scenario is that a normally sighted person may have not seen the scooter and recognised it for what it was and that it was ahead in the centre lane.
- 5.9. There are a number of comments that need to be made about this scenario insofar as it said to provide a credible excuse for Mr Spooner's failure to see the scooter and colliding with it. Firstly, it is postulated as a possible explanation competing with other possible explanations, not as a probability. If it were to be suggested, for instance, that the presence of the scooter in Mr Spooner's path would inevitably have been missed by an ordinary prudent driver with normal powers of eyesight, such a suggestion would have to be rejected. Secondly, in changing from the left lane to the centre lane, Mr Spooner had an obligation to ensure that the roadway immediately ahead of him was clear. Even on Mr Hall's scenario, Mr Spooner should at least have detected a flashing orange light. If Mr Spooner had detected a flashing orange light in the near distance, there would be no reason for him to believe that it necessarily belonged to a vehicle not in his path. A flashing light ahead of him needed to be carefully scrutinised and the necessary action taken to avoid whatever it belonged to if

⁴⁰ Trial Transcript, page 302

it belonged to some object in his path. Mr Spooner should have acted on the basis that the flashing light possibly belonged to a vehicle turning right from the lane in which he was driving. Thirdly, I did not understand Mr Hall's evidence as providing any sensible explanation as to why Mr Spooner would not have seen the scooter until it was only a matter of a few feet from him or would not have seen it at all. Mr Hall's evidence was to the effect that once the van had straightened within the centre lane, Mr Spooner's view of the scooter's lights would no longer have been cluttered by the lights of vehicles in the southbound carriageway. It will be remembered in this regard that Mr Walker stated that the van entered the centre lane almost immediately after it had passed the stationary vehicle at Marion Street. Fourthly, although it must be accepted that Mr Raphael's scooter, even with its lights on, would have been less visible than a car with two red rear tail lights operating, Mr Raphael and his scooter would have provided less of a target and thus have been more avoidable than a car. In this regard it will be noted that there is no doubt that Mr Raphael's scooter was close to the centre line. Mr Hall suggested that at best, Mr Spooner only 2 or 3 seconds to react after he saw and identified the scooter for what it was. So, even if it is to be accepted that Mr Spooner would not have had sufficient time to apply his brakes and stop once he recognised the scooter for what it was, the question as to why Mr Spooner failed to take evasive action would still need to be answered. It is difficult to see why Mr Spooner did not take evasive action other than by reference to a failure to see the scooter. In my view, the truth of the matter is that Mr Spooner simply did not see the scooter until a very late point in time prior to impact, if at all. This is very much the scenario described by the three witnesses whose evidence I have mentioned. Mr Spooner himself does not resist the suggestion that he saw the scooter very late in the piece.

- 5.10. While Mr Hall's evidence provides a theoretically possible explanation as to why Mr Spooner did not see the scooter, it is by no means a likely explanation in my opinion. It is more likely that Mr Spooner's failure to see the scooter and its lights was the result of a defective lookout for whatever reason.
- 5.11. As to the question of the speed of Mr Spooner's van, I deal with the issue on the basis that Mr Spooner at no stage applied his brakes at any time before the impact. I find that to have been the case. If I understand Mr Hall's evidence and report correctly, the impact speed of the van was between 38 to 50 kilometres per hour. If he did not

brake, as I find, this would have been the range of his approach speed. I appreciate that the original estimates of the witnesses Mr Walker and Ms King exceeded that range, although Mr Walker was not dogmatic as to speed when giving his evidence in the District Court and Ms King conceded that she was no expert. On the other hand Ms Petralas' estimate was 50 kilometres per hour. I also appreciate that at the District Court trial evidence was adduced from a SAPOL reconstructionist Sergeant Spence that in his assessment Mr Spooner's speed was in the range of 54 to 59 kilometres per hour. In all the circumstances I make no finding as to the speed of the van except to say that there is insufficient evidence upon which it can be confidently concluded that Mr Spooner had exceeded the speed limit of 60 kilometres per hour. Whether he was driving at a speed suited to the conditions and his own ability to see is another question. I would also make the observation that if Mr Spooner was travelling at the lower end in the range of speeds that Mr Hall suggests, his opportunity to see the scooter and to take the necessary braking or evasive action would have been enhanced.

6. Mr Spooner's driving history

- 6.1. Between September 1997 and June 2010 Mr Spooner was issued with a number of expiation notices in respect of offences that were committed contrary to the road traffic law. Most of those expiation notices related to offences of exceed speed. In respect of the majority of those offences of exceed speed, Mr Spooner asserts that he was not the driver of the vehicle on the occasion in question. The offences to which he refers in this regard had been detected by camera and so the actual identity of the driver of the vehicle was not established at the time of the alleged offence. Rather, Mr Spooner was issued with the expiation notice due to the fact that he was the registered owner of the vehicle at the time. I have not found it necessary to have regard to any expiated offences that involved excessive speed. Firstly, it was beyond the scope of this inquiry to investigate any or all of those offences as far as the identity of the person responsible is concerned. Secondly, it seemed to the Court that alleged speeding offences were not particularly material to the issues with which this Inquest is concerned. There is no, or no sufficient, evidence that Mr Spooner was exceeding the speed limit at the time of the collision with Mr Raphael's scooter.
- 6.2. There were, however, a number of expiated offences not related to excessive speed that had involved Mr Spooner as the driver and which in my view were relevant to

this inquiry insofar as they may have involved a defective lookout on his part. I will return to those matters in a moment.

- 6.3. Also tendered to the Court were a number of SAPOL vehicular accident reports spanning the period January 1995 to June 2010 that related to a number of motor vehicle collisions in which a vehicle driven by Mr Spooner had been involved. The reports in most instances contain a very brief summary of the accounts of the accident as given by the individual drivers. There were 14 accidents involving a vehicle driven by Mr Spooner in the period I have mentioned. This includes the accident involving Mr Spooner and Mr Raphael in 2006. As with the expiation notices, the Court has not found it necessary to examine all of these accidents in any great detail. When Mr Spooner gave oral evidence during the inquest he gave an account of each of these accidents. Some of the accidents were either not germane to the issues in this case, were impossible to investigate properly in the context of this Inquest or were attended by circumstances that were open to debate. However, some of the accidents have features that, in the opinion of the Court, are material to at least one issue with which this Inquest is concerned, namely Mr Spooner's intrinsic ability to consistently maintain an adequate lookout while driving a motor vehicle.
- 6.4. There were a total of 7 expiation notices that had been issued to Mr Spooner as at March of 2004 when Mr Spooner's licence had most recently been renewed prior to the fatal accident on 1 June 2006. Mr Spooner had been involved in a total of 6 collisions prior to March 2004 and 7 collisions prior to 1 June 2006.
- 6.5. It will be seen that some of the relevant incidents to which the expiation notices and collision reports relate occurred after the accident in which Mr Raphael lost his life. Although the Inquest was concerned with Mr Spooner's driving ability and aptitude as in June 2006, in my view it is still relevant to inquire into Mr Spooner's competence since that event. I note in this regard that Mr Spooner himself asserts that his eyesight has not deteriorated since 1 June 2006. The following passage of his evidence in the Inquest is pertinent:
- 'Q. Has your eyesight deteriorated since 1 June 2006.
- A. No, not that way. It's been six-nine. No, it has not deteriorated. It's been six-nine in the field of vision and confrontation has been steady.
- Q. Right, so your ability to drive a motor vehicle based upon the quality of your eyesight has not changed since June of 2006.

- A. No it has not. It's been six-nine.
- Q. Right, so your eyesight is as good or as bad as it was on 1 June 2006.
- A. Yes sir.⁴¹

The proposition that Mr Spooner has suffered no significant deterioration both in visual acuity, as aided by spectacles, and visual field between June 2006 and June 2010 is supported by testing of his eyesight by an eye physician that occurred in 2010 at the request of the Registrar of Motor Vehicles⁴². Accordingly, the Court acts on the assumption that Mr Spooner's ability to see while driving a motor vehicle was the same in the period since 1 June 2006 as it was on that date.

- 6.6. I will deal with these matters in chronological sequence. The first incident of relevance occurred on 11 March 2003. This involved an offence of disobeying a red traffic light. The vehicle involved was the same Mitsubishi van that would be involved in the collision with Mr Raphael in 2006. Mr Spooner admits that he was driving the vehicle. The offence occurred at the intersection of South Road and Grange Road at West Hindmarsh. The offence was detected by way of a camera. The offence occurred at 10:59am. The total penalty was \$230. In his evidence at the Inquest Mr Spooner gave an account of this incident. Mr Spooner told the Court that he was travelling north on South Road behind a truck which turned left into Grange Road. There was another truck moving up on the outside of his vehicle. It was Mr Spooner's intention to proceed through the Grange Road intersection. Mr Spooner says that as the truck in front of him was turning left, he lost sight of the traffic lights because the truck obscured his view of them. When he next saw the lights he had already crossed the stop line and the light had turned red. He accepts that he entered the intersection after the light had turned red.
- 6.7. On 19 March 2007 a further offence of disobeying a red traffic light was committed by Mr Spooner while driving his van. The offence was captured by camera. It occurred at the intersection of South Road and Regency Road at Regency Park at about 9:35am. Mr Spooner's total penalty was \$295. Mr Spooner gave an account of this offence. He said he had been travelling east on Regency Road approaching the traffic light controlled South Road intersection. As he approached the intersection the

⁴¹ Transcript, pages 434-435

⁴² Letter of Dr S McGovern to the Registrar dated 23 September 2010, Exhibit C31d

lights were green in his favour. At that time there was a sudden ‘crashing noise’⁴³ at his window. It sounded like a tennis ball. He ascertained that it had probably been a bird flying into the window. He quickly looked to his left to see what had happened. He did not see anything there but braked briefly, released it and then continued on. He then went through a red light at the South Road intersection. From what Mr Spooner said about this incident it appears that he was aware that he had gone through the red light at the time. He accepts that he entered the intersection against the red light. In essence, Mr Spooner’s explanation for not being aware that he had entered the intersection after the light had turned red was that he had been distracted by something hitting the window of his van.

- 6.8. Another incident occurred near Aldinga on 28 February 2009. This incident occurred at 2:53pm in the vicinity of the junction of Main South Road and what is said to be Aldinga Road. I believe it is more accurately called Aldinga Beach Road. Mr Spooner was driving a Ford sedan. The expiation notice in relation to this incident was tendered to the Inquest. It provides some detail as to the circumstances of the incident as recorded by the police officer responsible for issuing the notice and who witnessed the incident. The police officer has recorded that a detour was setup at the junction of Main South Road and ‘Aldinga Road’ to bypass a motor vehicle accident scene to the south of the junction. The detour involved the setting up of a number of traffic cones that were designed to divert southbound Main South Road traffic onto Aldinga Beach Road. This involved southbound traffic being directed to execute a right-hand turn from Main South Road into Aldinga Beach Road. The scene involved police presence, detour signs and emergency flashing lights. Mr Spooner’s vehicle is reported as having approached the detour location travelling in a southerly direction along Main South Road in the left-hand lane. Mr Spooner’s vehicle did not slow down as it approached the location. It is then recorded as having ‘suddenly braked, crashing into cones on roadway’. In doing so Mr Spooner’s vehicle left a skid mark 20 metres in length. It is also recorded that Mr Spooner nearly collided with ‘detour - road closed’ signs. The report does not mention the presence of or involvement of any other vehicle apart from Mr Spooner’s. The officer recorded this conversation with Mr Spooner.

I said: The road is closed here with detour signs, a police car is here with emergency lights flashing. How did you end up crashing through the cones here.

⁴³ Transcript, page 357

He said: I was checking my mirror, when I looked up it was too late.

I said You need to pay more attention as to what is going on around you.'

6.9. Mr Spooner gave evidence about the Aldinga incident. He told the Court that as he proceeded towards the scene along Main South Road at about 75 to 80 kilometres per hour, which at that location is an 80 kilometres per hour zone⁴⁴, he was behind a refrigerated truck that was obscuring his view of the road ahead. He described the vehicle as a '*small refrigerator-style truck*'⁴⁵. As he approached the location of the Aldinga Beach Road junction, the truck deviated into the turn right lane. Mr Spooner said that as the truck did that, he quickly looked in his mirror to observe the vehicle that had been travelling behind him. When he again looked to the front, he saw the road block for the first time. He then applied his brakes causing his vehicle to skid to a halt on gravel on the road. On this account his failure to see the road block, constituted as it was by traffic cones on the road as well as the presence of flashing emergency lights and a sign or signs, is explained by the truck in front of him obscuring his view of the road block. The detour set-up was only exposed to his view when the truck deviated into the right-hand turning lane. His failure to see the road block, even when the truck moved out of his line of vision, is then explained by him looking in his rear vision mirror. In the course of Mr Spooner's evidence, the account that he reportedly gave to the police officer was put to him in cross-examination. He agreed that he told the officer that he was checking his mirror and that when he looked up it was too late. When confronted with the fact that the report makes no mention of a truck having originally obscured his view as he approached the scene, he insisted that he had in fact told the police officer that the vehicle in front of him had prevented him from seeing the cones. He asserted that he had also pointed out the truck to the police officer as it drove away along Aldinga Beach Road. Mr Spooner was reported for the incident and in due course an expiation notice was issued in respect of an offence of driving a vehicle without having proper control.

6.10. Another incident occurred at approximately 1:15pm on 9 June 2009 at Piccadilly in the Adelaide Hills. There are two incident reports relating to this incident. They were compiled based on the respective versions of Mr Spooner and the driver of the other vehicle involved in the incident. The accident occurred at a T-junction at which Piccadilly Road was the dominant thoroughfare. Mr Spooner was in his van

⁴⁴ Transcript, page 439

⁴⁵ Transcript, page 437

preparing to execute a right-hand turn into Piccadilly Road. The driver of the other vehicle was preparing to execute a right-hand turn from Piccadilly Road into the thoroughfare out of which Mr Spooner wanted to turn right. Although the reports do not mention this, Mr Spooner admits that there was a give way sign against him and that he was therefore obliged to give way to the other vehicle. According to the account apparently given by the other driver, as she was turning right Mr Spooner's vehicle was initially stationary but it then moved forward unexpectedly. As a result, Mr Spooner's vehicle struck her vehicle on the driver's door. The report apparently taken from the other driver suggests that Mr Spooner had then told her that his foot had slipped off the brake onto the accelerator.

- 6.11. Mr Spooner's own account to police at the time includes the assertion that his foot slipped off the brake and that this accounted for the collision. In his evidence in the inquest Mr Spooner gave an account of the incident consistent with the original reports to the police. He told the Court that he had seen the other vehicle approaching the junction along Piccadilly Road from his left. He stopped in order to give way and allow that vehicle to execute its right-hand turn. He was stationary at the give way sign with his foot on the brake. He said that his foot momentarily slipped from the brake because it was slippery from a wet leaf, he then lurched forward of the line, he applied the brakes again and came to a halt. However, as he did this the other vehicle that was executing the right-hand turn collided with the front end of his vehicle. In cross-examination Mr Spooner suggested that what had happened was that he '*took up space that was required by the other vehicle to make that right turn*'⁴⁶. Mr Spooner accepted that this accident was his fault⁴⁷. Mr Spooner rejected the suggestion that the reason for the collision was that he had failed to see the other vehicle. He insists that he had seen it approach the junction and that the only reason the vehicles collided was the accidental propulsion of his vehicle into the path of the other vehicle.
- 6.12. The final incident of relevance occurred at about 1:15pm on 18 June 2010 on Grand Junction Road at Gilles Plains. The accident involved Mr Spooner's van 'rear ending' a stationary vehicle that was stopped at traffic lights. Again, there are two police incident reports relating to this accident. According to the report made by the other driver, the other driver was stationary at the traffic lights when a vehicle collided with the rear of his vehicle. As a result, his vehicle was shunted into the middle of the

⁴⁶ Transcript, page 431

⁴⁷ Transcript, page 348

intersection. The tow bar of his vehicle was also reportedly pushed into the back of his vehicle. The account apparently given by Mr Spooner at the time was simply to the effect that the other vehicle ‘stopped before the lights’ and that he collided with the rear of that vehicle. The report does not identify any reason why Mr Spooner ran into the rear of a stationary vehicle. Mr Spooner gave an account of this incident in the Inquest. He told me that as he approached this traffic light controlled intersection, he noticed that the lights had turned red. At that stage there was no traffic in the lane ahead of him. He applied the brake intending to come to a halt at the stop line and as he did so the other vehicle moved from the kerbside lane into the lane ahead of him such that, as I understood his evidence, he was taken by surprise and had to brake harder. However, his foot slipped from the brake pedal to the accelerator pedal and by the time he had re-engaged the brake pedal he was unable to stop in time before colliding with the other vehicle. I would make a number of observations about this incident. Firstly, for the other vehicle to have been shunted forward into the intersection, and from a description of the damage to the tow bar assembly, it was probably struck with some force. Secondly, Mr Spooner would reject any suggestion that the reason he struck the rear of a stationary vehicle was that he had failed to see it or the red light. Thirdly, Mr Spooner’s reported account to police contains nothing about his foot slipping from the brake pedal on to the accelerator.

- 6.13. The reader of these findings would note that, putting Mr Spooner’s explanations to one side for the moment, they could all objectively be explained by a failure on Mr Spooner’s part to see an object, be it a vehicle, a detour scene or a red traffic light as the case may be.
- 6.14. It is necessary to say something about Mr Spooner’s explanations. Two of the incidents, he says, can be explained by his view being blocked by the vehicle ahead of him. I refer here to the red light offence on 11 March 2003 and the Aldinga incident on 28 February 2009. In fact those explanations carry a further similarity insofar as Mr Spooner suggests that it was only when these vehicles deviated from his line of vision that he was able to see for the first time that a traffic light had turned red and that in the other case there was, in front of him, a detour scene. Two of the other incidents, namely those on 9 June 2009 and 18 June 2010, are both explained by Mr Spooner’s foot slipping from the brake pedal onto the accelerator pedal causing his vehicle to lurch forward. These explanations appear to the Court to involve similarity

to a remarkable degree, so much so that their legitimacy attracts a great deal of suspicion, and it is worthwhile observing that if it was not for that same explanation being available to Mr Spooner, the most attractively available explanation for those two incidents would in each case be a failure to maintain a proper lookout for whatever reason. The second red light offence on 19 March 2007 is explained by Mr Spooner having his attention distracted, and his gaze thereby being diverted from what lay ahead, by an object hitting his vehicle.

- 6.15. It has to be acknowledged that looked at individually, Mr Spooner's explanations for these incidents, while in themselves facile, are possible. Examined together, however, they stretch one's credulity. That in each of these incidents Mr Spooner could have been an unfortunate victim of circumstances not of his own making especially stretches one's credulity. Mr Spooner would argue that none of them can be explained by a simple failure to see something that was within his unobstructed view. That none of them can be so explained is inherently unlikely in the opinion of the Court. In particular, it is inherently unlikely that on two occasions separated only by 12 months his foot slipped from the brake to the accelerator in both cases causing collisions. While it is possible that it could have happened the first time, it beggars belief that it happened a second time. All of this causes me to hesitate before accepting Mr Spooner's explanations for any of these five incidents. I think it more likely that some of the incidents are explicable only on the basis of a failure to see what was ahead of Mr Spooner's vehicle. Whether that was due to a limited ability to bestow the appropriate level of attention upon the task of driving a motor vehicle or whether it was due to a defect in eyesight is another matter, but the suspicion that Mr Spooner's driving behaviour before, since and including 1 June 2006 is due to a defect in his eyesight is heightened all the more. One has to ask why it is that Mr Spooner's lookout has been so consistently poor.
- 6.16. Mr Spooner's driving history both in terms of traffic offences and collisions has not, until relatively recently, been taken into account by the Registrar of Motor Vehicles in assessing whether Mr Spooner should continue to hold a driver's licence. The fatal accident of 1 June 2006 was only drawn to the Registrar's attention by Mr Raphael's family in November 2007. SAPOL drew the remainder of Mr Spooner's driving history to the Registrar's attention in 2010.

7. **Mr Spooner's eyesight and the testing of his eyesight**

- 7.1. Mr Spooner has suffered from non-insulin dependent diabetes for several years. He has also been diagnosed with diabetic retinopathy affecting both eyes. Mr Spooner's diabetes would prove to be difficult to control. At one point a condition was imposed on his driver's licence that he be required at 3 yearly intervals to furnish the Registrar of Motor Vehicles with a certificate of fitness to drive a light vehicle. This condition was imposed by reason of his diabetes, not because of his deteriorating eyesight. Other than the commonly imposed stipulation that Mr Spooner wear spectacles, no conditions would be placed on Mr Spooner's licence by virtue of his eyesight until 2010.
- 7.2. Mr Spooner had a Class C licence that entitled him to drive light vehicles including cars and vans of the kind he drove. At one point he was a taxi driver and subsequent to that he became a courier driver, ultimately for Toll Fast. He acquired a Mitsubishi van for this purpose and this was the vehicle that was involved in the accident with Mr Raphael on 1 June 2006.
- 7.3. At all material times Mr Spooner's eyesight difficulties were managed by his eye specialist, Dr Grant Raymond. Dr Raymond gave evidence in the Inquest and provided me with an extensive history relating to Mr Spooner's eyesight. He told me that despite laser treatment to both eyes, Mr Spooner's left eye deteriorated severely to the point where it was surgically removed in October 2002. The treatment to both eyes had included panretinal photocoagulation laser treatment and focal macular laser treatment. Mr Spooner's right eye is said to have stabilised well. He last required laser treatment to that eye in May 2003.
- 7.4. Over the course of his treatment of Mr Spooner, Dr Raymond had occasion to examine him in connection with the renewal of his driver's licence on a 3 yearly basis. Dr Raymond furnished an eyesight certificate, which forms part of the general medical certificate of fitness, in March 2001, March 2004 and March 2007⁴⁸. The most recent certification prior to the fatal accident occurred in March 2004. The next certification occurred in March 2007. As alluded to earlier, the Registrar of Motor Vehicles was not informed of the fatal accident until November 2007. Since then, in March 2010 a further certificate of fitness was furnished to the Registrar in which the eyesight certificate was completed by a general practitioner. Further certification occurred in September 2010 by Dr Stephen McGovern, an eye physician, and this was

⁴⁸ Exhibits C13c, C13d and C13e

accompanied by an explanatory letter from Dr McGovern to the Deputy Registrar of Motor Vehicles. All of these various certifications, including Dr McGovern's letter of September 2010, suggest that Mr Spooner has consistently met the visual criteria to hold a licence to drive a light vehicle (the visual criteria).

- 7.5. The visual criteria are contained within a document tendered to the Inquest entitled 'Assessing Fitness to Drive for Commercial and Private Vehicle Drivers' (AFTD) that has been approved by the Australian Transport Council and endorsed by all Australian driver licensing authorities⁴⁹. In 2003 in South Australia, this document was gazetted and adopted pursuant to Section 80(2) of the Motor Vehicles Act 1959 as the guidelines for the conduct of medical tests of competence to drive. Within that document there is a section entitled 'Medical Standards for Licensing - Vision and Eye Disorders'⁵⁰. There are two standards, one for private and the other for commercial use of motor vehicles. The private standard relates to the ordinary C Class licence to drive a light vehicle. Mr Spooner was required to meet the private standard. The commercial standard relates to the drivers of heavy vehicles, public passenger vehicles or bulk dangerous goods vehicles. Mr Spooner's occupation as a professional driver operating a light vehicle for a courier service meant that he did not need to meet the commercial standard. And, in any case, as will be seen, no regard was ever had to Mr Spooner's occupation when his licence was renewed from time to time.
- 7.6. Within the section of the AFTD relating to medical standards there is a subsection dealing with visual acuity and in particular, monocularly. Clearly this applied to Mr Spooner in 2004.
- 7.7. The certificate that was required to be completed for the purposes of Mr Spooner's driver's licence was naturally meant to reflect the requirements within the medical standards for licensing as contained within the AFTD.
- 7.8. Dr Raymond gave evidence that in completing the certificates for Mr Spooner in 2001, 2004 and 2007, Mr Spooner's eyesight was examined for both visual acuity and visual field. Visual acuity is that quality of a person's eyesight that enables the person to conduct all the fine visual tasks that are required in daily living including reading, recognition of faces and driving a motor vehicle. Visual acuity is tested by examining

⁴⁹ Exhibit C13h, promulgated in September 2003

⁵⁰ Contained within Section 23.2.1, pages 97-99

the person's ability to read letters on the Snellen acuity chart. A level of visual acuity that would not require any form of correction with spectacles is referred to as 6/6. A person's visual field, on the other hand, is the ability to detect objects within the peripheral vision. It can be readily understood that a person's peripheral vision is adversely affected by monocularity. This can be tested by a test known as confrontation which involves the clinician gradually bringing an object, such as bringing moving fingers into the field of vision and testing the subject by asking when for the first time they come into view. There are other more sophisticated methods of testing a person's visual field. It goes without saying that visual acuity and visual field are important aspects of a person's ability to drive a motor vehicle safely.

- 7.9. The guidelines to which I have referred stipulate that the criteria for an 'unconditional' driver's licence are not met if a person is monocular. However, a 'conditional' licence may be granted by the driver licensing authority, taking into account the opinion of an optometrist or ophthalmologist, and the 'nature of the driving task', and subject to periodic review after consideration of the nature of any underlying disorder. The standards are satisfied in the case of the monocular driver if a visual acuity of 6/12 with corrective lenses is achieved. As well, a binocular visual field of at least 120 degrees is expected to be met which may initially be screened by confrontation. The pro forma certificate to be completed by the medical practitioner, as it existed in 2004, stated that peripheral vision of at least 45 degrees to each side of the midline in one or both eyes was required. It was accepted in the inquest that this requirement was expressed less stringently than the actual requirement set out in the AFTD.
- 7.10. In March 2004 Dr Raymond certified that Mr Spooner had aided vision of 6/9. An acuity of 6/9 in the remaining eye fulfils the standard of visual acuity for a monocular person. Dr Raymond stated in the form that Mr Spooner was now monocular. Dr Raymond also certified that Mr Spooner had normal visual fields on confrontation, meaning that in his view Mr Spooner's peripheral vision met the required criteria. Dr Raymond indicated on the form in his own handwriting that Mr Spooner had been blind in the left eye for 3 years but functioned monocularly using his right eye. This endorsement appears to have been engendered by a specific question within the certificate as to whether or not a number of conditions, including the loss of an eye, applied to the applicant. In any event, it appears that on Dr Raymond's assessment in

March 2004 all the guidelines were met because of an aided visual acuity of 6/9 and a field of vision of at least 120 degrees in his opinion.

- 7.11. When Dr Raymond completed the certificate in March 2004 he does not appear to have specifically examined the underlying medical standards as contained in the AFTD document. In my view a correct interpretation of those standards as they existed in March 2004 would have required Mr Spooner to apply for a conditional licence on the basis of his monocularly and that the nature of the driving task that he was performing would have to be taken into account and that a specialist report, meaning that of an optometrist or ophthalmologist, would have to be provided to the Registrar of Motor Vehicles. Dr Raymond, in certifying that Mr Spooner met the visual criteria to hold a licence to drive light vehicles, drew to the attention of the Registrar of Motor Vehicles in the certificate that Mr Spooner functioned notwithstanding his monocularly. The certificate says nothing of the context in which Mr Spooner so functioned, that is to say it said nothing of the nature of his driving task or tasks. I do not say that critically in respect of Dr Raymond because the issue concerning the driving task was in my view a matter for the Registrar of Motor Vehicles to investigate and consider. It was not a matter for Dr Raymond to explore.
- 7.12. Dr Raymond's eyesight certificate of 3 March 2004 formed part of the overall certificate of fitness to drive a light vehicle that was required by the Registrar. The certificate of fitness was signed off on 27 March 2004 by Dr Iain McIntyre, a general practitioner practising in Linden Park. Dr McIntyre examined Mr Spooner with his general medical condition in mind and certified that Mr Spooner suffered from diabetes and high blood pressure and identified within the certificate Mr Spooner's regular treatment and medication in respect of those two conditions. The certificate required the completing medical practitioner to make brief comments on the treatment required that included 'present control and review systems'. The certificate did not provide any information of that kind. In any event Dr McIntyre certified that he considered Mr Spooner to be medically fit to drive a light vehicle and that in his opinion it was not necessary for Mr Spooner to undertake a practical driving assessment. Dr McIntyre had access to, and took into account, Dr Raymond's eyesight certificate which certified that Mr Spooner met the visual criteria necessary to hold a licence to drive light vehicles.

- 7.13. Dr Raymond told me in evidence that if in 2004 he had been required to have actually expressed an opinion as to Mr Spooner's suitability for a conditional licence, his opinion would have been that he was a suitable candidate.
- 7.14. As to the question of Mr Spooner's diabetes control and review, there is no evidence to suggest that Mr Spooner's diabetes had any direct or acute affect on his driving behaviour on 1 June 2006 when he was involved in the fatal accident. There is no evidence that Mr Spooner's diabetes per se, and in particular any lack of control over that condition, affected him on the day in question.
- 7.15. Dr Raymond in essence told me that his assessment of Mr Spooner's vision in his right eye, both in terms of visual acuity and visual field to confrontation, did not preclude Mr Spooner from having a conditional licence issued to him. Dr Raymond also expressed the view that in general monocular vision was not considered to be a problem per se in the function of driving a motor vehicle⁵¹.
- 7.16. Following the accident involving Mr Raphael, Mr Spooner was seen by a general practitioner, Dr Geoffrey Peters, on 6 June 2006. The purpose of this examination was to enable Mr Spooner to obtain a certificate for fitness to return to work as a courier driver in the light of his recent collision. Dr Peters provided a statement to the Inquest dated 5 March 2011⁵². On 6 June 2006 Dr Peters tested Mr Spooner's visual acuity and visual field utilising the confrontation method. Following the examination, Dr Peters compiled a letter of referral to the eye specialist, Dr Raymond⁵³. Dr Peters recorded in that letter that Mr Spooner had said that he felt that his vision had not been a factor in the collision. Dr Peters' own examination revealed that the visual acuity in Mr Spooner's right eye was 6/9 with glasses and his visual fields were 45 degrees on both sides. In his statement dated 5 March 2011 Dr Peters suggests that what he meant by visual fields of 45 degrees was that it was the minimum that he had detected and that perhaps the words 'at least' ought to be added. In any event Dr Peters referred Mr Spooner to Dr Raymond who then examined Mr Spooner for himself.

⁵¹ Transcript, page 160

⁵² Exhibit C25a

⁵³ Exhibit C35a, page 45

- 7.17. Dr Raymond replied to Dr Peters by letter dated 12 July 2006⁵⁴. Dr Raymond reported that Mr Spooner maintained 6/9 vision in the right eye, which I presume was with glasses, and that he had ‘reasonably good peripheral fields’. Dr Raymond told me in evidence that the visual fields on confrontation were again around the 120 degree mark. Dr Raymond felt that Mr Spooner’s visual field was in excess of that reported by Dr Peters. Dr Raymond reported on this occasion that at present Mr Spooner still appeared to meet the standards to maintain his driver’s licence although he expressed the view that if there was any doubt about that, he would have to undergo a practical driver’s test to be arranged through the Registrar of Motor Vehicles.
- 7.18. It will be seen from both Dr Peters’ and Dr Raymond’s tests in June and July 2006 respectively, that Mr Spooner’s visual acuity and visual field was said to be no different from what it had been when Mr Spooner’s licence had last been renewed in March 2004.
- 7.19. Dr Raymond was again to complete the eyesight certificate in March 2007 when Mr Spooner’s next renewal came up. That certificate was produced in evidence⁵⁵. Dr Raymond told me in evidence that on this occasion he could not establish a discernible difference between Mr Spooner’s unaided and aided vision. His acuity at both levels was 6/9. According to Dr Raymond, if anything Mr Spooner’s unaided visual acuity had improved. Dr Raymond suggested that this is not unheard of and was possibly due to the development of a small amount of cataract that may have corrected the refractive error that had previously affected his vision in that eye. Dr Raymond also examined the visual field and was of the belief that Mr Spooner still satisfied the relevant requirement. Dr Raymond wrote on the certificate that while Mr Spooner had suffered the loss of his left eye, the right eye was ‘well sighted with normal field to confrontation’.
- 7.20. Dr Raymond did not see Mr Spooner again after 2007. In early 2008 Dr Stephen McGovern took over Mr Spooner’s management.
- 7.21. A practical driving assessment of Mr Spooner’s ability to drive a motor vehicle, administered by the Department of Transport, Energy and Infrastructure, took place on 15 August 2008. Mr Spooner underwent the examination using his van. Mr

⁵⁴ Exhibit C35a, page 1

⁵⁵ Exhibit C13e

Spooner passed the test and the general remarks on the form⁵⁶ included that the test had involved a 'good and competent drive within the law'. It also asserted that Mr Spooner was a very confident candidate who drove in a safe and competent manner. He had kept up with all other road users and had not breached any major road rules. The recommendation had been that he retain his licence. I do not know of any other practical driving test to which Mr Spooner has been subjected. The nature of such a test was explained to the Court. Whether a single test would necessarily have exposed an intrinsic driving incompetency resulting from an eyesight defect is to my mind unclear. The obvious point would need to be made that, even taking Mr Spooner's driving history into account, it is not as if he has a collision or a near miss every time he gets behind the wheel.

- 7.22. In March 2010 the eyesight certificate that was required for the renewal of Mr Spooner's licence was compiled, on this occasion by a general practitioner. The practitioner reported Mr Spooner's visual acuity with glasses as 6/9 with normal visual fields on confrontation. As I understood the evidence, this certificate was ultimately identified as being unacceptable because it had been compiled by a GP and not by an eye specialist. It was in that context that Dr McGovern was required to write the report to the Deputy Registrar of Motor Vehicles dated 23 September 2010 in which Dr McGovern reported that at that time Mr Spooner's visual acuity was 6/18 unaided but corrected to 6/9 with spectacles. The visual field in the right eye was reported as being normal to confrontation testing. Dr McGovern suggested in the report that:

'Since Mr Spooner has been monocular since 2003 and successfully driving since that time, I would consider that his right vision is satisfactory to hold a conditional private driver's licence, subject to a satisfactory examination of the retina which was not able to be done on 9 September 2010 because of other commitments that he had.'⁵⁷

It is not known whether Dr McGovern knew anything of Mr Spooner's driving history.

- 7.23. It was not until September 2010 that information relating to the nature of Mr Spooner's driving task was sought by the Registrar of Motor Vehicles for the first time. Mr Spooner furnished this information on a form that was sent to him and on which he revealed that he drove a one-tonne Mitsubishi van as a courier, carrying and

⁵⁶ Exhibit C31g

⁵⁷ Exhibit C31d

delivering small parcels for approximately 8 hours per day between the hours of 7am and 5:30pm to all areas.

- 7.24. Since the events of September 2010, the Registrar of Motor Vehicles imposed further conditions on Mr Spooner's licence.

8. The evidence of Professor Stephen Dain

- 8.1. Professor Stephen Dain is the Director of the Optics and Radiometry Laboratory at the School of Optometry and Vision Services at the University of New South Wales. Professor Dain is a registered optometrist. He was employed by the University of New South Wales from 1976 to 2006. From 1978 to 2006 he was fully responsible for the teaching of occupational and environmental optometry, which deals with the interaction of eyes and vision with the environment, including issues relating to vision and driving.
- 8.2. Professor Dain is an independent expert. He was originally engaged by SAPOL to provide an expert report in relation to the fatal accident in question. He provided two reports to SAPOL, one dated 15 May 2007 and the other dated 22 April 2010⁵⁸. Professor Dain was also called by the Director of Public Prosecutions to give expert testimony in Mr Spooner's criminal trial in the District Court. A further expert report was sought from Professor Dain by counsel assisting the State Coroner in the light of the issues that arose in this Inquest. That report is dated 2 March 2011⁵⁹. Professor Dain has at no time examined Mr Spooner.
- 8.3. When Professor Dain prepared his original reports in 2007 and 2010 respectively, and at the time he gave evidence in the criminal trial in 2010, he acted on the assumption that Mr Spooner's field of vision was 45 degrees bilaterally, that is to say 90 degrees totally, as had been reported by Dr Peters in June 2006. However, it will be remembered that Dr Raymond told this Court that Mr Spooner's field of vision may have been something of the order of 120 degrees as tested by confrontation. The revised field of vision of 120 degrees was taken into consideration when Professor Dain provided his most recent report⁶⁰.

⁵⁸ Both reports were tendered as Exhibit C14b

⁵⁹ Exhibit C42

⁶⁰ Exhibit C42

- 8.4. Professor Dain gave evidence about visual acuity and visual fields as they relate to the task of driving a motor vehicle. He also considered the question of monocularity.
- 8.5. Professor Dain told the District Court in Mr Spooner's trial that in terms of visual acuity, vision with one eye is essentially that of vision with two eyes. He said the advantage of two eyes in visual acuity is 'very, very small'⁶¹. Professor Dain explained that one of the consequences of the loss of an eye is the loss of stereopsis, which is the ability to detect depth. However, generally speaking this will only cause a deficit in performing tasks close at hand, such as picking things up or pouring things into a container, whereas stereopsis is very rarely used in driving. When looking straight ahead while driving, monocularity should have little impact provided one's visual acuity in the good eye is satisfactory. Professor Dain pointed out that at all material times Mr Spooner was reported to have visual acuity that exceeded the relevant criteria for driving as set out in the AFTD guidelines⁶².
- 8.6. However, Professor Dain expressed the view that monocularity can present as a disadvantage when it comes to the task of driving a motor vehicle. Professor Dain explained that the most significant deficit presented by monocularity is the loss of visual field, or peripheral vision, on the side of the lost eye. Professor Dain explained that the normal visual field for someone who has two healthy eyes is about 200 degrees, that is to say 100 degrees either side of the head. The normal visual field for a single healthy eye is about 120 degrees. The restriction to the field of vision in a person with a completely healthy right eye will be experienced on the left-hand side. This would mean that in order to focus on an object, the person would need to move his or her eyes or head to a greater extent than a dual sighted person. He said that there has to be a greater effort to cover the loss of field of the left eye. It would require more of a turn to turn the good field of the right eye to replace the missing eye. The consequence of this would be that there would be a corresponding delay in bringing one's focus back to a central position. In this regard it will be remembered that Mr Spooner asserts that just prior to the collision, he took his attention away from what was in front of him to check his central and left side mirrors in order to check whether he could change lanes from the central lane to the outside lane.

⁶¹ Trial Transcript, page 66

⁶² Exhibit C13h

- 8.7. Professor Dain expressed the view that Mr Spooner's reported field of vision equating to 90 degrees would not meet the national criteria contained within the AFTD. However, he noted that the South Australian position appeared to be less stringent insofar as there appears to be a requirement, as set out in the pro forma certificates of fitness that have been referred to, that the peripheral vision must be at least 45 degrees to each side of the midline in one or both eyes. I have already referred to the fact that this does not accord with the requirements of the AFTD guidelines.
- 8.8. Professor Dain also explained that motorists tend to develop highly adaptive strategies that largely compensate for their loss of field after being monocular for a period of time. They develop strategies of head/eye movement and head movement to compensate.
- 8.9. In Professor Dain's first report dated 15 May 2007 he made the point that Mr Spooner's monocularity should have led to more rigorous consideration of his case pursuant to the relevant criteria within the AFTD. Professor Dain pointed out the requirement that appears at page 97 of the document that a conditional licence is granted for a monocular person taking into account the opinion of an optometrist or ophthalmologist as well as the nature of the driving task. I have already made the point that when Mr Spooner's licence was renewed in March 2004 there was no reference made to the nature of Mr Spooner's driving task or tasks and, as will be seen below, the fact of his monocularity was not even fully taken into consideration when his licence was renewed on this occasion by the Registrar.
- 8.10. Professor Dain made some other observations about Mr Spooner's eyesight in the light of the history of panretinal photocoagulation laser treatment and focal macular laser treatment. In his most recent report⁶³ Professor Dain pointed out that there did not appear to be anything to suggest that Mr Spooner's visual field had been investigated by means other than simple confrontation. It will be remembered that this was the test applied consistently by Dr Raymond, and more latterly by Dr McGovern. Professor Dain suggested that confrontation was an initial screening routine designed to quickly and cheaply investigate the possibility of a visual field defect⁶⁴. Once the possibility of a visual field defect is established, then a full visual field test should be carried out. He points out that the procedure is well set out in the

⁶³ Exhibit C42

⁶⁴ Exhibit C42, paragraph 25

AFTD. Professor Dain points to the undoubted and clearly stipulated requirement set out on page 98 of the AFTD that while the AFTD allows for visual fields being initially screened by confrontation, any person who has or is suspected of having a visual field defect should be referred for expert assessment by an optometrist or ophthalmologist and that visual fields should be measured using an automated static perimeter. A further test might be indicated if the automated static perimeter test suggests that the criteria for an unconditional licence are not met. Professor Dain opined that confrontation is only a ‘very rough demonstration of the limits of the visual field’⁶⁵. He suggested that in any person who has had both panretinal photocoagulation and focal macular laser treatment, as in the case of Mr Spooner, visual field defects to some degree are almost inevitable. Professor Dain explains that the scars left by the action of the laser will almost inevitably give rise to defects within the visual field⁶⁶. In Mr Spooner’s case, Professor Dain expressed the view that there was a very high probability that he had visual field defects within his visual field that had resulted from the laser therapy in the periphery and from the diabetic retinopathy itself. Professor Dain suggests that Mr Spooner should have been suspected of having a visual field defect and that confrontation had not been sufficient in his case. He suggests that there is a clear requirement for automated static perimetry to be carried out in a case such as Mr Spooner’s.

- 8.11. As of the time of this Inquest, it is not known whether the visual field in Mr Spooner’s right eye has been tested by automated static perimetry or by any means other than confrontation.
- 8.12. As far as a person’s driving record in general is concerned, Professor Dain suggested that while it is reasonable to say that an isolated accident or incident is to a large extent a purely chance event, the visual characteristics of a person who is repeatedly involved in incidents or accidents merits specific consideration⁶⁷. This seems to be a matter of common sense.
- 8.13. In summary, Professor Dain’s evidence raises a question as to whether, when Mr Spooner’s licence was renewed in March 2004, there had been adequate investigation. Firstly, there is an issue as to whether proper consideration was given to Mr Spooner’s driving tasks, particularly when it is borne in mind that he was a

⁶⁵ Exhibit C42, paragraph 59

⁶⁶ Exhibit C42, paragraph 46

⁶⁷ Exhibit C42, paragraph 21

professional driver driving both in daylight and at night time, and for long periods of time. Secondly, there is a unanswered question as to whether Mr Spooner's peripheral vision had been adequately tested having regard to the laser treatment that had been administered to that eye.

9. The evidence of Mr Ronald Shanks, Deputy Registrar of Motor Vehicles, Manager of Licensing

- 9.1. Mr Shanks is the Deputy Registrar of Motor Vehicles with responsibility for operational and policy aspects of driver licensing.
- 9.2. Mr Shanks gave evidence concerning Mr Spooner's driver's licence and the renewals of that licence over the years. Mr Shanks is familiar with the medical standards for licensing as contained within the AFTD guidelines⁶⁸.
- 9.3. Mr Shanks explained the significance and status of the AFTD guidelines in terms of the Registrars' powers under Section 80 of the Motor Vehicles Act 1959 to require a person to undergo tests, or furnish evidence of ability or fitness to drive. In short, he acknowledged that any medical test required by the Registrar must be conducted in accordance with the AFTD guidelines that were originally gazetted in 2003.
- 9.4. It is beyond debate that between 2004 and 2007 the AFTD guidelines meant that by virtue of Mr Spooner's monocularity alone he could not be issued with an unconditional licence. It will be noted that in 2004 Mr Spooner's licence was already conditional by virtue of his diabetic condition. The only condition imposed by virtue of that circumstance was that he be medically reviewed every 3 years in respect of licence renewals. Mr Shanks confirmed that the Registrar of Motor Vehicles was not aware of Mr Spooner's monocularity until March 2004 when Dr Raymond's eyesight certificate was received. The licence was nevertheless renewed without any further condition being placed upon Mr Spooner's licence over and above the already existing requirement regarding the 3-yearly review. While the information in the certificate that Mr Spooner was now monocular would probably have undergone clerical scrutiny at the time, this information did not find its way into the computerised records of the Registrar of Motor Vehicles. Mr Spooner's monocularity, as revealed in the 2004 certificate, failed to trigger any action on the

⁶⁸ Exhibit C13h

part of the Registrar of Motor Vehicles whatsoever. It was almost as if it was an irrelevancy. I am satisfied that a number of considerations for the renewal of Mr Spooner's licence in 2004 were not properly considered. I here set out the relevant requirements:

'The criteria for an unconditional licence are **NOT** met:

- If the person's visual acuity in the better eye or with both eyes together is worse than 6/12.

A *conditional licence* may be granted by the Driver Licensing Authority, taking into account the opinion of the treating doctor/GP/optometrist, and the nature of the driving task, and **subject to periodic review**:

- If the standard is met with corrective lenses; **and**
- After consideration of the nature of any underlying disorder.

The criteria for an unconditional licence are **NOT** met:

- If the person is monocular.

A *conditional licence* may be granted for a monocular person by the Driver Licensing Authority, taking into account the opinion of an optometrist or ophthalmologist, and the nature of the driving task, and **subject to periodic review** after consideration of:

- After consideration of the nature of any underlying disorder.'⁶⁹ (the italics are part of the original text)

The certificate compiled by Dr Raymond dated 3 March 2004⁷⁰ suggested that if an applicant for renewal, such as Mr Spooner, had suffered the loss of an eye a 'specialist report' would be required if a conditional licence was sought. Such was the case with Mr Spooner. The only opinion or report furnished by Dr Raymond on this occasion was the bare assertion that Mr Spooner functioned monocularly using his right eye. The certificate also affirmed that Mr Spooner met the visual criteria to hold a licence to drive a light vehicle. However, there was no opinion sought beyond that information. Furthermore, the nature of the driving task was not inquired of, let alone taken into consideration. This was a matter that the Registrar of Motor Vehicles had a duty under the AFTD to investigate. The nature of the driving task in my view means something more than the simple act of driving a light vehicle. It plainly refers to the type of driving and the circumstances in which the applicant will be driving. The expression 'the nature of the driving task' is explained in different parts of the AFTD. The nature of the driving task is exemplified in a number of ways. To my mind the fact that Mr Spooner was employed as a commercial driver and was on the

⁶⁹ Exhibit C13h, page 97

⁷⁰ Exhibit C13d

road for several hours of the day, both day and night, and with the pressure and deadlines that must have been imposed upon him as a courier delivering medical specimens, was intrinsically part and parcel of the nature of his driving task. That information should have been sought from, and disclosed by, Mr Spooner at the time of the renewal of his licence in 2004. It was only in September 2010 that the Registrar of Motor Vehicles for the first time sought any such information from Mr Spooner, a measure that seems to have been triggered by the revelation that Mr Spooner had, to say the least, an imperfect driving record. Mr Spooner then provided that information in a document dated 9 September 2010⁷¹. I do not criticise Mr Spooner for any of this. He was never asked for this kind of information prior to 2010.

- 9.5. Moreover, the AFTD guidelines also contemplate that other relevant information not of a medical nature needs to be considered such as the applicant's driving history. I refer here to a flow chart set out within the guidelines⁷². According to the chart one matter that needs to be taken into consideration by the driver licensing authority is driving history. Mr Spooner's driving history was not made known to the Registrar of Motor Vehicles until 2010. Mr Spooner's driving history as of March 2004 was not furnished nor considered at the time. It seems to the Court that the guideline would have placed a responsibility upon the Registrar to enquire about Mr Spooner's driving history whenever his driving licence was to be renewed. It is not difficult to see why this would be a relevant consideration in the renewal of a person's driving licence when there is a question as to the quality of the person's eyesight. This information was not brought to the attention of the Registrar until 2010.
- 9.6. Mr Shanks told me that in 2004 Mr Spooner's monocularly was not considered by the Department's medical review unit.
- 9.7. The requirement that Mr Spooner to be certified once every 3 years meant that no further information about Mr Spooner's abilities to drive a motor vehicle safely was furnished to, or sought by, the Registrar of Motor Vehicles between March 2004 and 1 June 2006.
- 9.8. In November 2010 Mr Spooner's licence was cancelled, but he was issued with a probationary car class licence. A condition was imposed on Mr Spooner's

⁷¹ Exhibit C31ca

⁷² Exhibit C13h, page 18

probationary licence that he not drive between sundown and sunrise. In the advising letter to Mr Spooner from Mr Shanks this measure was said to have arisen after consideration had been given to his long history of offences, his considerable record of vehicle crashes and his medical eyesight conditions.

- 9.9. It cannot now be known with any certainty what the attitude of the Registrar of Motor Vehicles would have been in 2004 to the renewal of Mr Spooner's licence if Mr Spooner's then vision characteristics, the driving task that he was performing and his driving history to that point in time had all been considered. Specifically, it cannot now be known with any certainty whether in 2004 the condition that was ultimately imposed in 2010 that Mr Spooner not drive from sundown to sunrise would have been imposed with the possible result that Mr Spooner would not have been on the road at the time of the fatal collision on 1 June 2006. The Geoscience Australia website reveals that sundown on 1 June 2006 in Adelaide occurred at 5:12pm. The collision occurred at about 5:40pm.
- 9.10. Mr Shanks gave evidence about the possible application of a commercial standard of licensing to persons who have an eyesight deficiency. The commercial standards are more rigorous. They apply to drivers of heavy vehicles, public passenger vehicles or bulk dangerous goods vehicles. There was some debate during the course of Mr Spooner's evidence as to whether or not a monocular person would be able to satisfy the commercial standards. The guidelines in this regard are somewhat confusing but they do not appear to preclude the issue of a commercial licence to a monocular person. Mr Shanks explained that the commercial standard requires more stringent testing when one takes into account the increased risk of commercial driving such as that generated by commercial pressures, rosters, long hours of work and the nature of the vehicles driven. It would seem that at least one of those risk factors might well apply to a driver such as Mr Spooner who is driving as part of his employment and is on the road for extended periods of time and possibly under commercial pressure. With these considerations in mind, on 28 September 2010 the gazettal relating to the adoption of the AFTD guidelines was amended in the following terms:

'Adoption of guidelines for conduct of medical tests of competence to drive

For the purposes of section 80(2) of the *Motor Vehicles Act 1959* ("the Act") the guidelines contained within the publication entitled *Assessing Fitness to Drive* published by Austroads Incorporated in 2003 (ISBN 0 85588 5076), as amended from time to time, are adopted, except when the Registrar of Motor Vehicles ("**Registrar**") is of the opinion that it is appropriate, considering the nature and type of driving tasks performed or to be

performed by the holder or applicant of a licence or learner's permit to require the person to meet the commercial vehicle driver medical standards, contained within this publication (“**commercial vehicle driver medical standards**”). In these circumstances the medical tests required by the Registrar under section 80 of the Act must be conducted in accordance with the commercial medical vehicle standards regardless of the class of licence or learner's permit held or being applied for.’⁷³

Mr Shanks gave evidence that Mr Spooner had been most recently assessed on the basis of the commercial standards.

- 9.11. Mr Shanks told me in evidence that one of the considerations behind the amended gazettal was the fact that in some instances commercial standards ought to be applied to privately licensed drivers who might, for whatever reason, be driving longer hours on the road. Mr Shanks explained that his Department was in the process of reviewing the medical form to require drivers to declare how many hours they spend driving as part of their employment. Mr Shanks also told me that in the context of medical eyesight testing his Department has actually recommended that the distinction between commercial and private standards be abolished and that there should simply be the one standard.

10. Conclusion

- 10.1. Although it cannot be concluded with absolute certainty, it is probable that the collision between Mr Spooner’s van and Mr Raphael’s scooter was caused or contributed to by a failure to maintain a proper lookout on the part of Mr Spooner and that this was in some measure contributed to by a defect in Mr Spooner’s eyesight.

11. Recommendations

- 11.1. Pursuant to Section 25(2) of the Coroners Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.

⁷³ Exhibit C31e, paragraph 3

11.2. I make the following recommendations that I direct to the attention of the following entities:

- The Minister for Transport;
- The Minister for Road Safety;
- The Commissioner of Police;
- The Registrar and Deputy Registrar (Manager of Licensing) of Motor Vehicles;
- The Secretary or other responsible person of the Australian Transport Council;
- The Secretary or other responsible person of the National Transport Commission;
- The Secretary or other responsible person of Austroads;
- The President of the Australian Medical Association;
- The Chief Executive Officer of the Royal Australian and New Zealand College of Ophthalmologists;
- The Chief Executive Officer of the Royal Australian College of General Practitioners.

11.3. That the abovenamed entities confer and consider the following measures:

- a) That in respect of the issuing of a driver's licence, monocular persons be assessed pursuant to the commercial standards as set out in the Assessing Fitness to Drive guidelines as a matter of course;
- b) That monocular persons be required to undergo testing for visual acuity and visual fields more frequently than every 3 years, particularly where the condition of monocularity is due to an underlying disorder such as diabetes which may have affected the vision of the remaining eye. In particular, it should be mandatory for visual fields of a monocular person to be measured using an automated static perimeter and/or other sophisticated testing measures regardless of whether it is suspected that the person has a visual field defect;
- c) That in respect of the issuing or renewal of any driving licence to a monocular person that information be sought from and provided by that person as to the circumstances in which the person will be driving a motor vehicle including, but not limited to, information concerning whether the vehicle is being driven for any commercial purpose, information as to the times of the day or night at which the

vehicle is driven and the duration of any task of driving; and that conditions be imposed upon the person's licence in accordance with the person's driving task;

- d) That the medical review unit of the driving licence authority in South Australia review every such application made by a monocular person;
- e) That in respect of the issuing or renewal of any driving licence to a monocular person that the driving and accident record of that person be obtained and that it be taken into consideration in assessing whether a licence should be issued or renewed;
- f) That the Registrar of Motor Vehicles ensure that certificates furnished by medical practitioners accurately reflect the requirements within the Assessing Fitness to Drive guidelines;
- g) That the AFTD guidelines be amended as necessary in accordance with the above.

Key Words: Motor Vehicle Collision; Driving Licence; Driver Error

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

Seal the 6th day of May, 2011.

Deputy State Coroner