



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 6th, 9th, 11th, 12th, 13th, 16th and 17th days of December 2013 and the 3rd, 4th and 5th days of February 2014 and the 12th day of January 2015, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of John Posnakidis.

The said Court finds that John Posnakidis aged 42 years, late of 3 Adaluma Avenue, Pooraka, South Australia died at Princes Highway, Urrbrae, South Australia on the 12th day of October 2010 as a result of multiple injuries. The said Court finds that the circumstances of his death were as follows:

1. Introduction

- 1.1. These are the Court's findings in relation to the cause and circumstances of the death of John Posnakidis, aged 42 years, who was killed as a result of multiple injuries that he sustained when he was struck by a semi-trailer on Tuesday 12 October 2010. At the conclusion of the Inquest the Court delivered the preliminary findings and recommendations that are set out below. These preliminary findings and recommendations are incorporated within these findings and recommendations.

'These are the Court's preliminary findings and recommendations in respect of the cause and circumstances of the death of John Posnakidis. Mr Posnakidis was 42 years of age when he met his death on 12 October 2010. Mr Posnakidis sustained multiple injuries which were rapidly, if not immediately, fatal when he was struck by a heavy vehicle.

This Court conducted an Inquest into the cause and circumstances of Mr Posnakidis' death. A post mortem examination of Mr Posnakidis was conducted by a forensic pathologist at Forensic Science South Australia, Dr Neil Langlois. Dr Langlois' report

was tendered to the Inquest¹. Dr Langlois expressed the cause of Mr Posnakidis' death as multiple injuries. Dr Langlois' report describes those injuries and it is clear that they are consistent with having been inflicted by a significant impact with a vehicle moving at considerable velocity.

I found that the cause of Mr Posnakidis' death was multiple injuries.

The incident that gave rise to Mr Posnakidis' death occurred on Tuesday, 12 October 2010 at approximately 8:40am. It occurred at a bus stop and lay-by on the western or downside of Mount Barker Road at Glen Osmond. At that point Mount Barker Road consists of three lanes of traffic for each direction of travel with eastern and western carriageways being separated by a concrete barrier. The speed limit at that location was and is 60 kilometres per hour.

Mount Barker Road at that point is the effective culmination of the South-Eastern Freeway. At that time the speed limit for all vehicles using the section of the freeway from Stirling to near Glen Osmond, regardless of whether they were cars or heavy vehicles, was 100 kilometres per hour. Following that speed zone, respective zones of 80 kilometres per hour and then 60 kilometres per hour for all vehicles were encountered. Since these events the speed limit for buses and certain heavy vehicles, including semi-trailers and B-Doubles, has altered to 60 kilometres per hour from Stirling some kilometres above the bottom of the freeway. The section of the freeway from the Crafers interchange to Glen Osmond involves a steady downhill incline.

Mr Posnakidis himself was a truck driver. He had parked his truck in the lay-by overnight as it had broken down. He was waiting for assistance and, just prior to the incident in which he met his death, he had been sitting in the bus shelter situated at the lay-by. Also situated at the lay-by was a private vehicle in respect of which a wheel was being changed by a Mr Ward.

Traffic on the downward section of Mount Barker Road adjacent to the lay-by was heavy as would be expected on a week day at that time of the morning. It was also slow moving traffic.

The truck that struck Mr Posnakidis was a semi-trailer consisting of a prime mover and trailer that was carrying steel. The rig including the load had a mass of 37.8 tonnes. The journey of the truck had commenced in Victoria during the previous day. The truck was being driven by Mr Daniel James Walsh. Mr Walsh was the only occupant of the prime mover at the time of the incident.

It is plain, and I so find, that Mr Walsh drove this truck down the long descent on the downward section of the South-Eastern Freeway at a speed which was uncontrolled. Otherwise, I find that Mr Walsh had control of the vehicle in the sense that he was able to steer an appropriate course overtaking other vehicles where necessary. Mr Walsh also steered the vehicle without incident through the downward Heysen Tunnel.

At the fatal location on Mount Barker Road Mr Walsh steered the vehicle into the lay-by I have described, possibly with the intention of avoiding built up traffic in each of the lanes on Mount Barker Road. It was here that Mr Walsh's vehicle struck Mr Ward when he was changing the wheel of the private vehicle, thereby causing Mr Ward serious injury, and struck Mr Posnakidis causing immediately fatal injuries. It is clear that Mr

¹ Exhibit C3a

Walsh lost total control of the truck at that point and it inevitably crashed against an embankment naturally causing serious damage to the truck. As well, Mr Walsh was seriously injured himself and was hospitalised for a period of time. Mr Walsh claims to have little or no recollection of these events.

The speed at which Mr Walsh's truck entered the lay-by, and therefore the speed at which he struck Mr Posnakidis, is calculated to have been approximately 124 kilometres per hour in a 60 kilometres per hour zone for all vehicles. I so find. Speeds approaching this magnitude were also in evidence as the truck descended the South-Eastern Freeway from approximately Crafers.

Notwithstanding that it must have been plain to Mr Walsh that the speed of the vehicle he was driving was uncontrollable and therefore presented as a significant danger, and notwithstanding his limited lack of memory of the incident, Mr Walsh failed to steer the vehicle into either of the two arrester beds that were and are present at two locations along the down section of the South-Eastern Freeway. In particular Mr Walsh failed to steer the vehicle into the second and lower of the two arrester beds when it must have been evident to him, notwithstanding his now claimed lack of recollection, that the speed of his truck was not going to be brought under control and that the truck would only be stopped by an impact with an object or objects. The speed of Mr Walsh's vehicle at the second arrester bed was calculated to be approximately 108 kilometres per hour. Had Mr Walsh steered his vehicle into either of the two arrester beds Mr Posnakidis' death would have been prevented and the injuries to Mr Ward would also have been prevented.

There was no reason why Mr Walsh could not have utilised either arrester bed, especially the second or lower of the two arrester beds. I add here that had Mr Walsh done so, the injuries to himself would also very likely have been prevented.

Alcohol was not detected in the sample of Mr Walsh's blood taken after the incident.

Following this incident Mr Walsh was charged with causing the death of Mr Posnakidis by dangerous driving and causing bodily injury to Mr Ward by dangerous driving, contrary to section 19A of the Criminal Law Consolidation Act 1935. As I understand the position, these charges remained in the Magistrates Court until ultimately the charges were downgraded to two counts of aggravated driving without due care contrary to section 45 of the Road Traffic Act 1961, the circumstances of aggravation being the death of Mr Posnakidis and the serious injuries sustained by Mr Ward. Accordingly, the prosecution against Mr Walsh could be and was dealt with in the Magistrates Court. Mr Walsh was finally dealt with in the Magistrates Court on 16 April 2013. While the charges against Mr Walsh remained unresolved this Court was precluded from conducting any Inquest into the cause and circumstances of Mr Posnakidis death by virtue of the prohibition contained in section 21(2) of the Coroners Act 2003.

Mr Walsh pleaded guilty to the two counts of aggravated driving without due care. Tendered to the Inquest were the sentencing remarks of the learned Magistrate. The factual basis underlying Mr Walsh's pleas of guilty as described in the sentencing remarks, and as evidently agreed between the prosecution and the defence, thereby, as it were, tying the hands of the Court, were that the driving without due care was constituted by Mr Walsh having selected the incorrect gear by which to negotiate the descent down the South-Eastern Freeway to Glen Osmond and then being unable to get the truck back into the proper gear. As well, forming part of the factual basis for

sentencing was that Mr Walsh failed to exercise due care by being unreasonably unaware of his surroundings, including relevant signage and the two arrester beds to which I have referred. It will be observed that these two elements of Mr Walsh's offending in reality amounted to explanations for the manner of his driving at the time of the fatal collision as distinct from that manner of driving. I pause here also to observe that when Mr Walsh gave evidence in the Inquest before me, he asserted that it was not a case of him having selected the wrong gear, but that the gear he had selected popped out of gear and could not be reselected. In addition, he admitted in his evidence that he was perfectly aware of the existence of the two arrester beds and their purpose, the use of either of which would have prevented these tragedies. But he could give no sensible reason why he did not utilise them, having regard to his asserted lack of memory of the incident.

Mr Walsh, among other penalties, was sentenced to a suspended term of imprisonment of five months, he was disqualified from holding or obtaining a drivers licence for a period of two years.

Evidence given in the Inquest by Mr Andrew Excell, who was a civil engineer employed by the Department of Planning, Transport and Infrastructure, suggests very strongly that arrester beds are effective in arresting the progress of a vehicle the speed of which cannot be controlled, and can do so without injury to the occupants. Mr Excell knew of only one incident where the driver of a truck had received injuries when utilising the second or lower arrester bed and that was at a time before the arrester beds were upgraded. Mr Excell's evidence suggests that the arrester beds have been used by both cars and trucks. In the period since August 2013 a number of heavy vehicles, to the knowledge of the Department, have used both arrester beds with good effect. Although the usage of arrester beds does not appear to be a daily occurrence, the frequency of use over the past nine years, the period covered by Mr Excell's evidence, suggests that the driving of heavy vehicles at an uncontrolled speed along the descent between the Crafters interchange and Glen Osmond does occur from time to time. The evidence presented suggested there was no reason to suppose that the frequency at which trucks have been driven at an uncontrolled speed down the freeway will diminish unless something is done about it. There is an air of inevitability that at some point in the future the driver of a heavy vehicle that is being driven at an uncontrolled speed will, for whatever reason, not utilise either arrester bed and that as a result there will be a repeat of the kind of incident that occurred here, or worse.

The speed at which a heavy vehicle can be driven safely down the stretch of the South-Eastern Freeway between Crafers and Glen Osmond is governed for the most part by the gear in which the vehicle is driven and the braking effect of the engine in that low gear. It has been said that if the speed of a vehicle of this description is sought to be controlled merely by use of the primary brakes of the prime mover and trailer, a likely result is that the brakes will have failed by the time the vehicle reaches the bottom of the South-Eastern Freeway at Glen Osmond. The need to utilise the gears of such a vehicle to arrest the speed of the vehicle is the subject of legislation. Section 108 of the Australian Road Rules as they apply to South Australia states that 'if the driver of a truck or bus is driving on a length of road to which a truck and buses low gear sign applies, the driver must drive the truck or bus in a gear that is low enough to limit the speed of the truck or bus without the use of the primary brake'. This provision applies to the South-Eastern Freeway between Crafers and Glen Osmond and has done so for some time. I add here

that Mr Walsh's prime mover was noted to have been in neutral when it was examined after this incident. And so the inference that it descended the South-Eastern Freeway not in gear, but in neutral and therefore not in a gear low enough to limit the speed of the truck, is one that I draw. Indeed, Mr Walsh testified that as far as he could remember he was at no stage able to get the vehicle into gear once he started descending the freeway and once the vehicle, according to him, popped out of gear. I was told during the course of the Inquest that a contravention of section 108 of the Australian Road Rules is met with an expiable fine of \$325. If this is correct, this penalty seems wholly disproportionate to the seriousness of the matters that section 108 of the Australian Road Rules is intended to address. In this regard it would be observed that section 108 is so important that compliance with that rule would have prevented Mr Posnakidis' death. The penalty for a contravention of that provision is in the opinion of the Court, woefully inadequate.

According to an extract from the Department website, certain initiatives regarding the South-Eastern Freeway came into effect on 1 May 2011. One of the measures includes the alteration of the speed limit to 60 kilometres per hour in respect of heavy vehicles travelling along the section of the South-Eastern Freeway to which these findings relate. The same document indicates that for a safe descent the right gear must be used. It does not refer to the legislative obligation in that regard. The other salient feature of the document relates to the use of arrester beds and indicates that drivers of heavy vehicles who have experienced brake failure or related mechanical issues, must enter an arrester bed at the earliest opportunity. The document also goes on to state that drivers of heavy vehicles attempting to 'ride it out' to the bottom of the hill, risk serious injury or death to themselves or other road users. I know of no legislative provision that specifically supports the proposition that drivers of heavy vehicles who have experienced brake failure or related mechanical issues must enter an arrester bed at the earliest opportunity. The evidence in this Inquest has demonstrated that there is a very strong case for the introduction of measures that are designed to deter dangerous and careless driving of heavy vehicles along the South-Eastern Freeway descent, regardless of the explanation for that type of driving behaviour. As well there is, in the opinion of the Court, a very clear need for drivers of heavy vehicles using this stretch of road to be encouraged to use arrester beds in order to prevent further dangerous or careless driving. Further, in the opinion of the Court, there is a need for serious and condign consequences to be visited upon both the drivers and operators of heavy vehicles in respect of dangerous and careless driving along this stretch of the freeway, especially when death or serious injury is caused, and where the incident that results in death or serious injury could have been prevented by the use of an arrester bed. Such measures could include the promulgation of stringent criminal penalties for driving of the kind I have described, as well as insurance consequences in respect of death, personal injury or damage to property. Nobody would suggest that a person seriously injured as the consequence of negligent driving should not be compensated, but where a death or serious injury could have been prevented by the use of an arrester bed, there is a strong case for saying that the financial burden of that compensation should be imposed upon the person or persons responsible for that death or serious injury, as distinct from the compulsory third party insurer of that person or those persons.

Accordingly, the Court makes the following preliminary recommendations:

- 1) That the penalties for contraventions of section 108 of the Australian Road Rules, as they apply to South Australia, be increased to include possible imprisonment for such contraventions;
- 2) That the necessary legislation be introduced to the effect that a driver of a heavy vehicle that exceeds a speed limit of 60 kilometres per hour between the commencement of that zone and the down stretch of the freeway to the traffic lights at the intersection of Mount Barker Road/Cross Road/Glen Osmond Road/Portrush Road, and beyond, shall be deemed conclusively, as a matter of law, to have been driving in a manner dangerous to the public, for the purposes of a charge of driving in a manner dangerous to the public, causing death by such driving or causing serious bodily injury by such driving, regardless of the reason for that manner of driving;
- 3) That initiatives be undertaken to enable the compulsory third party bodily injury insurer of a heavy vehicle to recover the amount of compensation paid in respect of death or bodily injury as a result of negligent driving on the section of the South-Eastern Freeway to which these findings relate, from the driver of the heavy vehicle involved; the registered owner of such vehicle, be it a corporation or real person; the actual owner of such vehicle, the operator of the business to which the vehicle relates; or other person in the chain of responsibility in respect of the use of that vehicle, such persons to be jointly and severally liable in respect of that recovery. Such recovery should be enabled in circumstances where the death or personal injury could have been prevented by the use of either arrester bed along the South-Eastern Freeway. It is to be acknowledged that there may be difficulty in enforcing such a measure in relation to heavy vehicles that are not registered or insured for third party bodily injury in South Australia. However, it will be observed that the South Australian legislature has an ability to impose whatever conditions it might think fit in relation to the use of heavy vehicles on the South-Eastern Freeway, regardless of the state of origin of those vehicles;
- 4) That in relation to the necessary training in respect of the acquisition of heavy vehicle licences, that it be a compulsory part of that training for trainee drivers to undergo tuition in respect of the required manner of driving on downhill gradients, including the use of arrester beds.

I will deliver the definitive written findings of the Court in due course, together with further recommendations in the light of those findings.’

2. The manner in which the section of the South-Eastern Freeway between Crafers and the traffic lights should be driven

- 2.1. Mr Philip Neill is a Driving Training Officer with Transport Training Solutions. That entity conducts training in respect of the licensing for vehicles and includes heavy vehicle training. Mr Neill is a driving instructor. He has held qualifications for that role since 1998. Mr Neill was a Driver Training Officer with the Department of

Transport, Energy and Infrastructure. Mr Neill in that capacity issued qualifications to driving instructors for them to become licensed examiners. He was also a driving instructor for that same Department. Mr Neill provided a statement to police in relation to this matter² and gave oral evidence at the Inquest. Mr Neill spoke of the manner in which a heavy vehicle should be driven down a steep descent and, in particular, along the down section of the freeway. Mr Neill explained the operation of the vehicle's gears, brakes and 'jake' brake in particular.

- 2.2. Mr Neill succinctly explained how one should negotiate the down section of the South-Eastern Freeway in this passage of his evidence:

'The way to do it is to come down the hill without needing to press your foot brake, selecting the appropriate gear to retard your progress and with subsequent use of the supplementary braking system, the engine brake - Jacobs brake, (*known as the jake brake*) whatever you like to call it - that thing which gives you the big barking exhaust note - using that to retard your progress coming down the bottom of the hill so that when you get to the bottom of the hill your brakes are no warmer than any other part of your drive line.'³ (the italicised portion has been added)

- 2.3. Mr Neill said in his statement that the appropriate gear to select is the gear that enables the driver to safely come down the hill without the use of the vehicles primary brake. This of course is a reflection of the obligation contained within Rule 108 of the Australian Road Rules. If Mr Neill was driving along the down section of the freeway in a laden vehicle of the kind under discussion here, he would have selected third or fourth gear in the low range prior to commencing the descent. He pointed out that there is in existence an incline along the freeway before the descent commences and that this incline provides drivers with ample opportunity to down change. A selection of third or fourth gear in the low range would provide a forward speed of between 20 and 40 kilometres per hour, maintaining the engine revs below 2000 rpm.
- 2.4. The other matter that Mr Neill emphasised in his evidence is that if for whatever reason a low enough gear cannot be selected, the driver should immediately apply the brakes hard and virtually stop the vehicle, thereby providing the driver with another opportunity to select the appropriate gear. This approach is to be distinguished from endeavouring to control the downhill speed by use of the primary brake, which is of

² Exhibit C54

³ Transcript, page 264

contrary to law in any event. Mr Neill said that when a gear is missed the proper approach should involve an instantaneous action to the effect:

'You have a very instantaneous reaction and say well hang on, I've missed my gear, I've lost gears, slow it right down while everything is still working appropriately, select a gear and then take it from that point.'⁴

Mr Neill added to this that on a semi-trailer such as the one Mr Walsh was driving there ought to be no less than 12 working brakes, so that even if half were worn out, there would still be 6 brakes that could perform a significant amount of braking work. In addition, they would be cold at that point⁵. It is not possible to determine from the evidence whether Mr Walsh tried to adopt that suggested approach. This is due to his asserted lack of memory. In any event, it seems apparent that what Mr Walsh was endeavouring to do was to ride out the descent, either in neutral or in an inappropriately high gear, by using the primary brake most if not all of the time. There was no evidence that Mr Walsh had at any stage actually attempted to stop the rig at the point in time when he first realised he was unable to select the appropriate gear.

3. Nick Gray Transport and Logistics and In Front Transport Pty Ltd

- 3.1. At the time with which this Inquest is concerned Mr Walsh was employed by a transport business known as In Front Transport Pty Ltd (IFT), the sole shareholder and director of which was a Ms Donna Gray. This entity commenced operations at the end of August 2010, only a matter of weeks before the fatal incident.
- 3.2. IFT was a corporate entity that in effect assumed the business of a firm known as Nick Gray Transport and Logistics (NGT). To all intents and purposes there was an almost seamless transition from one business to the other. Earlier in 2010 the business of NGT had failed. As the name suggests, NGT had also been a transport business. The proprietor of NGT had been Mr Nicholas Gray. This business had operated for a number of years. In 2010 Nicholas Gray and his wife Donna Gray resided on a property at Smythes Creek in Victoria. This property comprised a number of acres. NGT had a premises situated at 11A Michaels Drive, Alfredton near Ballarat. This premises consisted of a shed, workshop and an admin area. Mr Gray operated a number of prime movers and trailers and also operated a hay distribution

⁴ Transcript, page 279

⁵ Transcript, page 279

business out of the Alfredton location. In 2010 the business of NGT operated four prime movers, two single trailers and two B-Double sets. One of the prime movers and one of the trailers would constitute the combination that was involved in the fatal incident in October 2010. The business also employed a number of drivers that included Mr Gray himself. In 2010 the business employed Mr Robert Morley. Mr Morley was a truck driver. At some point in 2010 he assumed administrative responsibilities that he conducted out of an office situated within the Alfredton depot. Ms Donna Gray performed bookkeeping duties in respect of the business of NGT.

- 3.3. The most important asset of the business known as NGT was its fleet of prime movers and trailers. These vehicles were registered in Mr Nicholas Gray's name. The evidence suggested that although Mr Gray was the actual owner of these vehicles, they were nevertheless subject to finance. The vehicles constituted security in respect of Mr Gray's indebtedness to the financiers. As well, it appears that some of the indebtedness was secured by way of a mortgage on the Gray home at Smythes Creek.
- 3.4. Major maintenance and repair work in respect of the vehicles was outsourced, but routine maintenance that included brake adjustment in relation to the prime movers and trailers was performed for the most part by Mr Gray himself. There was little or no record keeping in relation to such in-house maintenance.
- 3.5. NGT had employed a number of drivers including a Mr Ray Appleby, a Mr Ian Graham, a Mr Paul Gray, who is Nicholas Gray's brother, and a Mr Anthony Marsden. At the time with which this Inquest is concerned Mr Marsden no longer worked either at NGT or IFT. His employment had ended in acrimonious circumstances in 2010 before IFT came into being. Mr Ian Graham was both an employee of NGT and then IFT. He still had a connection with the business of IFT in October 2010.
- 3.6. In late August 2010 the business of NGT came to an end. In his evidence before the Court Mr Gray explained what had precipitated this business failure. The failure was connected to the need to repair, at considerable expense, some of the prime movers. This had occurred unexpectedly and, as things transpired, catastrophically as far as the business of NGT was concerned. There were also late payments and difficulty collecting debts in general. In the event Mr Gray sought professional advice from a Melbourne entity known as Your Business Angels. A scheme was arranged whereby

Mr Gray would declare himself bankrupt in respect of his personal indebtedness. To enable the transport business of NGT to continue notwithstanding Mr Gray's personal bankruptcy, the corporate entity of IFT was established. The principal structural difference between this business and NGT was that IFT was an incorporated entity as distinct from the business name that had been NGT, the proprietor of which had been Mr Gray. Ms Donna Gray was installed as the sole shareholder and director of IFT. Mr Nicholas Gray would have no legal connection with the corporate structure but would be employed as a driver. Mr Morley was retained. He would have some administrative responsibility in respect of the business operated by IFT. The premises at Alfredton was retained. The NGT drivers were also retained save and except for Mr Marsden who had already left NGT.

- 3.7. It was explained to me in evidence that it was intended that the corporate entity IFT would in due course acquire ownership of the prime movers and trailers and presumably take over the payments, but that this did not in fact take place prior to the fatal incident. It appears that the financiers of the vehicles, over which they had some proprietary interest as security, were agreeable to this proposed arrangement and so had refrained from exercising their right to repossess the vehicles. It is fair to infer that it was this arrangement that enabled the business of NGT to be assumed into the business of IFT.
- 3.8. In essence, the business of IFT carried on the business of NGT.
- 3.9. Mr Gray told the Court that due to his personal bankruptcy he remained at arm's length from the management of IFT. It was asserted that Mr Morley was effectively the manager of the business and that Mrs Donna Gray was effectively the proprietor of that business. Mr Gray told the Court that he saw himself as something of a senior driver at IFT. He acknowledged that one of his tasks was to keep an eye on the drivers to ensure that they were not damaging the equipment. He asserted that if IFT proved to be profitable, the profits would have been enjoyed by his wife, Mrs Donna Gray. When asked twice by me as to whether, notwithstanding these arrangements, it was nevertheless in Mr Gray's own personal interest to see that this new corporate entity was profitable, he eventually acknowledged that this was the case⁶. In my opinion any conclusion to the contrary would have been absurd. This is especially so

⁶ Transcript, page 680

having regard to the fact that Mr Gray still remained the owner of the prime movers and trailers.

- 3.10. On the fateful journey to Adelaide in October 2010, Mr Gray would travel in his own truck in convoy with Mr Walsh. Although for the most part Mr Gray had led on that journey, shortly before the fatal incident Mr Walsh had overtaken Mr Gray's truck. He had done so due to his inability to control the speed of the truck.
- 3.11. Ms Donna Gray gave evidence. She told the Court that she did not remember giving any instructions for the formation of the new company⁷. While acknowledging that she personally assumed the financial risk in relation to the new business⁸, and that ultimately her own personal bankruptcy occurred when IFT also failed, she had not known what her role as a director had been and that as far as she was concerned she had been just 'a name on a piece of paper'⁹. On a day to day basis her task was as before, bookkeeping and selling hay.
- 3.12. Mrs Gray told the Court that she did not know anything of the maintenance regimes at IFT, and she did not know where IFT obtained its work. She also said that driver fatigue policy was not her area¹⁰. She was insistent, however, that her husband's role at IFT was that of a driver only¹¹ and that as far as she knew her husband had nothing to do with business decisions that were made¹². She did concede that her husband had a 'vested interest' in IFT¹³. She said:

'When you've been in a business for over 20 years you've got an interest.'¹⁴

- 3.13. Mrs Donna Gray was also insistent that Mr Morley was the primary decision maker at IFT. She referred to him as the manager of operations¹⁵. She acknowledged that he could not sign cheques, but that she herself could. She believed that matters such as driver fatigue were Mr Morley's responsibility¹⁶. Overall she denied that her husband ran the business of IFT.

⁷ Transcript, page 330

⁸ Transcript, page 331

⁹ Transcript, page 337

¹⁰ Transcript, page 341

¹¹ Transcript, page 327

¹² Transcript, page 328

¹³ Transcript, pages 339-340

¹⁴ Transcript, page 340

¹⁵ Transcript, page 338

¹⁶ Transcript, page 341

3.14. Mr Robert Morley gave evidence in the Inquest. He is a truck driver by occupation. He began work with NGT in early 2010, at first on a casual basis. Ultimately his employment became a fulltime driving job. Mr Morley enjoyed a number of connections within the Victorian transport industry. He claims to have introduced his employer to K & S Freighters, the transport firm that would subcontract the carriage of the load that was ultimately involved in the fatal incident in October 2010. Mr Morley explained that to begin with, interstate trips within NGT were relatively uncommon but that their frequency increased over the course of 2010. During the course of his employment Mr Morley noticed that Mr Gray appeared to owe money to a number of people and was ‘getting himself into a little hole’¹⁷. Mr Morley suggested that the firm should increase its involvement in interstate transport. Mr Morley also told the Court that he provided some guidance in respect of a more professional operation of the business¹⁸. Mr Morley explained that when the business had been run as NGT, Mr Gray had always been in charge and that his wife Donna did the books. Mr Morley also stated that although he himself assumed some administrative responsibility within the office, he did not have any managerial role as such. He acknowledged that his position could be called ‘operations manager’¹⁹ but explained that his task was to line up work and make endeavours to collect moneys owed. He also performed some driving duties. He did not receive any greater remuneration for taking on administrative responsibilities. Ultimately, as Mr Morley explained, a point of no return had been reached in respect of the business of NGT and so My Business Angels was approached. He there attended a meeting with Mr and Mrs Gray. The company IFT was setup. It was contemplated that this company would ultimately receive transfer of the vehicles. Mrs Gray was installed as the director of IFT. Mr Morley told the Court that Mr Gray agreed to the suggestion that he place himself in bankruptcy as it was the only way he could continue to do business. Mr Morley believed that Mr Gray owed money to entities who had supplied hay, fuel and tyres. This was in addition to the payments that had to be made on the vehicles. There was insufficient equity in the vehicles to be sold. His belief was that the financiers of the vehicles preferred the idea of continuing to receive repayments as distinct from repossessing the vehicles²⁰. Mr Morley understood that as Mr Gray was placed in bankruptcy he could not be seen to have any involvement in the

¹⁷ Transcript, page 378

¹⁸ Transcript, page 380

¹⁹ Transcript, page 386

²⁰ Transcript, pages 389-391

management of the new business. When the new business came into being Mr Morley continued to line up work. Mrs Gray did not have any involvement in this²¹. Mr Morley stated:

'So, Donna Gray was the director, but Nick Gray was still there every day, still did exactly the same as when it was Nick Gray Transport.'²²

- 3.15. Mr Morley told the Court that Mr Gray drove a truck and continued to perform maintenance work on trucks. He said that the creation of IFT was just a name change and that virtually everything stayed the same. He himself remained as the operations person within the office and occasionally drove. He was paid in exactly the same way as before and at the same rate²³. He denied that he was essentially the manager of IFT. He agreed that he organised some lines of credit for the supply of parts after the commencement of IFT, but said that he had done this at Mr Gray's instigation.
- 3.16. Mr Morley denied that he had any role of responsibility in the firm and he denied that he was known as the boss. He said that Mr Gray was known as the boss²⁴. It is clear that Mr Morley had no financial interest or investment in the business other than as a wage earner.
- 3.17. Mr Morley added that in 2010 Mr Gray was under extreme pressure in the light of his bankruptcy, was under pressure from creditors and he struggled for new finance. There was also an extra workload.
- 3.18. When police searched the IFT premises at Alfredton following the death of Mr Posnakidis they found among other things five speed governor rings. A speed governor ring is a device that, depending upon its number of teeth and grooves, plays a role in governing the maximum speed of a prime mover. The maximum speed of a prime mover is meant to be 100 kilometres per hour. The speed governor rings in conjunction with other electronic devices within the vehicle ensure that the maximum allowable speed of 100 kilometres per hour is not exceeded. In the case of the five speed governor rings that were located at the IFT premises, such a ring would have been capable of allowing the prime mover to achieve a maximum speed marginally in excess of 100 kilometres per hour, possibly as much as 110 kilometres per hour. Investigations in January 2014, conducted during the currency of this Inquest,

²¹ Transcript, page 395

²² Transcript, page 395

²³ Transcript, page 401

²⁴ Transcript, page 457

revealed that six speed governor rings had been supplied to NGT, as it then was, in July 2010. These rings were supplied by an entity known as Fabtec Engineering in Delacombe, Victoria. A statement taken from Mr Douglas Keith Baker²⁵ who is the joint owner of that firm describes the circumstances in which the six governor rings came to be supplied to NGT. The rings were supplied at a total cost of \$990 including GST. On a copy of the invoice kept by Fabtec Engineering, an endorsement is written as follows:

'PICKED UP BY ROB
10/7/10.'

This endorsement is said to have been a reference to the collection of six items by a Rob. The only Rob that one knows from NGT at that time was Mr Robert Morley. During the course of the Inquest an unedifying dispute arose as to the circumstances in which these speed governor rings came to be supplied. Mr Morley told the Court in his evidence that he knew of the existence of the box of speed governing rings at NGT. He said that Nicholas Gray had them made at an engineering works. Asked as to the purpose of the rings, Mr Morley told the Court that they would make a truck move faster. He said that Mr Gray had wanted one for the truck that he personally drove and that he intended to sell the others. Mr Morley said that he did not agree with any of this. Mr Morley believed that Mr Gray had one device installed in the truck that he drove, namely the truck that was nicknamed 'Cattitude'. This in fact would be the truck that on the day of the collision Mr Gray was driving in convoy with that driven by Mr Walsh.

- 3.19. The statement of Mr Baker indicates that Nicholas Gray did not have any communication with Fabtec Engineering in relation to the supply of the six speed governor rings, but that another employee of NGT did and that Mr Morley in the event had collected them on 10 July 2010.
- 3.20. Mr Gray in his evidence denied all knowledge of the existence of these devices and said that he had not been involved in their acquisition.
- 3.21. I emphasise that a speed governing ring was not installed in the prime mover that was involved in the fatal incident. For that reason, the Court did not find it necessary to resolve any dispute about the origin of the speed governor rings, and in particular the

²⁵ Exhibit C57

identity of the person who had commissioned their construction and supply to NGT in the first instance. However, the fact that they existed at all and had been ordered from within NGT is a fair indication of the type of enterprise that was being conducted and exemplifies the dysfunctional nature of that business. As will be seen, work practice diaries and the manner in which they were completed by individual drivers whose responsibility it was to complete them, including Mr Walsh and Mr Gray, and particularly in relation to the events of the day in question in this Inquest, are also a measure of the chaos that existed within this enterprise, both in its form of NGT or IFT. So is the fact that no records were kept in respect of routine maintenance.

- 3.22. I have conducted this analysis of the evidence relating to NGT and IFT for a number of reasons. Firstly, the evidence demonstrated that the business of IFT was in strained financial circumstances and was operated at a dysfunctional level. As will be seen, it was under pressure to ensure that Mr Walsh's load on the day in question was delivered on time and that nothing occurred which might upset a new and potentially lucrative business arrangement with the principal contractor for that load. Secondly, despite Mr Gray's distancing himself from the operation of IFT, it was nevertheless still in his personal interests to see that its operations were successful.

4. Mr Daniel Walsh

- 4.1. Mr Daniel Walsh, the driver of the semi-trailer that was involved in the fatal incident, gave evidence at the Inquest. Mr Walsh was badly injured in that incident. He was employed for only a short period prior to the incident. He commenced his employment with IFT on or about Monday 4 October 2010. At the time of the events with which this Inquest is concerned he was 30 years of age.
- 4.2. Prior to commencing employment with IFT Mr Walsh had performed some work as a truck driver. He had worked for the Northern Grampians Shire Council in St Arnaud driving water carts and Volvo tippers. He had possessed a heavy rigid (HR) licence since about 2008. He also had a heavy combination (HC) licence that he obtained through the Victorian licensing authorities in October 2009. He was from time to time required to drive semi-trailer combinations for the Shire consisting of a water truck and 'dog' which is a type of trailer. He had also been casually employed with a transport company driving a truck, although he told the Court that he had only performed one run with that latter company. Prior to working for IFT he had never

undertaken any interstate truck driving and had not driven a heavy combination down the South-Eastern Freeway into Adelaide.

- 4.3. Mr Walsh's heavy vehicle driver training is explained in the statement of Mr Andrew Petrie who is a driving instructor in respect of the Victorian licensing requirements in respect of heavy vehicles²⁶. Mr Petrie's statement does not inspire confidence that in satisfying the testing requirements for a HC licence Mr Walsh demonstrated competence in negotiating a road with the characteristics of the down section of the South-Eastern Freeway. Nor do the statements of employees of the Northern Grampians Shire Council who were involved in Mr Walsh's training and allocation of driving duties²⁷.
- 4.4. Mr Walsh told the Court that he had responded to an advertisement from IFT for the services of a driver. The position had been advertised locally in the Ballarat Courier. Mr Walsh presented at IFT where he said he spoke to both Mr Gray and a Rob, who is obviously Mr Robert Morley. Mr Walsh provided IFT with his resume, a copy of which was tendered to the Court²⁸. The resume referred to Mr Walsh's work with the Northern Grampians Shire Council from July 2009 that included among a list of tasks, truck driving. The resume also referred to the following:

**'Licenses Currently Held
H.C – semi – Truck and dog – 4 years experience'**

This information was incorrect insofar as it asserted that Mr Walsh had 4 years experience driving articulated trucks. This could not have been the case as his HC truck licence was only obtained in 2009. In his testimony before the Court Mr Walsh had some difficulty explaining this discrepancy. He agreed that as of October 2010 he could not have had 4 years experience as he had only possessed an HC truck licence for a year²⁹. When asked whether in his resume he had lied about his experience in order to secure the job, he said:

'I can't explain that. That could have been a typo or anything. I'm not sure.'³⁰

One would think that the length of time over which Mr Walsh had held a truck licence, and his actual experience in driving a truck, could easily have been checked

²⁶ Exhibits C27 and C27a

²⁷ Statement of Colin Forster, Exhibit C28a and Statement of Hayden Harvey, Exhibit C29a

²⁸ Exhibit C53d, pages 402-403

²⁹ Transcript, page 645

³⁰ Transcript, page 645

by a prospective employer such as IFT, and would have been done so as a matter of course, especially if the driver was expected to negotiate a loaded semi-trailer down the freeway into Adelaide. The inaccuracy of his assertions in that regard could have been readily revealed. Plainly no check, or no effective check, could have been made within IFT, or if there was such a check, Mr Walsh was employed notwithstanding. In truth, although Mr Walsh did have a truck licence, he had little relevant experience in respect of the driving duties he would be tasked to perform at IFT. He had not conducted any interstate truck driving or driving that had required him to travel distances in excess of 100 kilometres from his home base, thereby triggering the driver fatigue regulations. He had not previously driven a semi-trailer down the South-Eastern Freeway, although, as will be seen, in the week leading up to the fatal incident he would do so on two occasions prior to the fatal incident when delivering IFT loads to Adelaide. And as will also be seen, even then one of those previous descents had born elements of inexperience, and the suspicion that Mr Walsh had ridden the brakes of the semi-trailer down the freeway, causing the brakes of the trailer to overheat and smoke on that occasion, cannot be easily dismissed. I will return to that issue below.

- 4.5. When Mr Walsh was being considered for the driving position that he was applying for he was taken for a test drive by Mr Morley and it was evident that he had limited skill or familiarity with an 18 speed gearbox. He had trouble with the gearbox of that prime mover. He was not taken on any significant inclines or declines, the test route being essentially flat³¹. The test that he underwent could not possibly have exposed any deficiency in Mr Walsh's ability to safely negotiate a decline such as the lower section of the South-Eastern Freeway. In any event he was employed and was at work the following Monday. He was soon to be tasked to deliver a load of steel to Adelaide. It is evident from DTEI cameras situated in South Australia that his first journey to Adelaide commenced on Tuesday 5 October 2010, the day after he started work at IFT. This first journey required him to negotiate the South-Eastern Freeway.
- 4.6. Mr Walsh's work diary under the relevant Regulations is dated 5 October 2010 and describes his driver base as ALFRATON (sic). Mr Walsh evidently had no previous experience in completing work diaries and there was no explanation given to him about that through IFT.

³¹ Transcript, page 509

- 4.7. Although it appears that on Mr Walsh's first journey to Adelaide he travelled in convoy with another IFT driver, there does not appear to have been any meaningful explanation provided to Mr Walsh as to how the South-Eastern Freeway should be safely negotiated with a loaded semi-trailer, as might have been provided, say, by another experienced driver sitting in the cabin with him. This is not to say, however, that Mr Walsh could be absolved of all personal responsibility in respect of the safe negotiation of the South-Eastern Freeway. He was the person who, after all, would be controlling the rig down the hill.
- 4.8. I have referred so far to the presence of arrester beds on the freeway. Since these events they have been renamed 'safety ramps'. In this document I will refer to these devices as safety ramps. As indicated above, Mr Walsh claims he knew of the existence and purpose of the safety ramps on the freeway. There is no evidence to explain why he did not utilise either of them, especially the lower bed when it must have been abundantly clear to him that the speed of his semi-trailer was uncontrollable. As seen, he asserts a lack of memory in relation to that part of the journey. If the agony of the moment is to be viewed as a possible excuse for not using an obvious and available means of controlling the speed of the rig, it is in my view a lame one.
- 4.9. The inquest did not uncover evidence that there was any discouragement within IFT in respect of the use of safety ramps, nor of any general reluctance on the part of its drivers, for any other reason, to use them.

5. The mechanical condition of Mr Walsh's prime mover and trailer

- 5.1. The prime mover and trailer driven by Mr Walsh was examined by a police mechanic at the scene of the incident and later at a police compound. That person was Mr Eliot McDonald. Mr McDonald is the Senior Vehicle Examiner within SAPOL Major Crash Investigation Unit (MCIU). He has been with that Unit since 1998. He was promoted to the position of Senior Vehicle Examiner in 2001. Mr McDonald is a qualified motor mechanic. His first witness statement³² sets out his qualifications. His original motor mechanic qualifications were obtained in 1988 after serving an apprenticeship of 4 years. Since that time he has successfully completed an electronic engine control systems training course, a computer command control training course,

³² Exhibit C52

a total wheel alignment course, an electronic control fuel injection training course, an updated electronic engine control systems (EEEC1V) training course, a vehicle inspection techniques course, a heavy vehicle braking course (Brakes 2 and Brakes 3), a steering and stability systems training course as well as a number of other courses. Mr McDonald has had 22 years experience as a mechanic. He has worked on all types of motor vehicles including cars, motorcycles and heavy vehicles. Between 1993 and 1995 he worked as a motor mechanic at the SAPOL workshops at Novar Gardens. During that time he maintained part of the police vehicle fleet and also examined vehicles in connection with criminal offences when required. In September 1998 he transferred to MCIU as a vehicle examiner. His duties have included the examination of vehicles in relation to fatal and other serious collisions as well as vehicles used in the commission of criminal offences. Since 1998 he has successfully completed a number of courses relevant to his work within SAPOL including a vehicle inspection techniques course, the heavy vehicle braking courses to which I have referred, relevant modules of the crime scene investigators course conducted in February 2007 by the Forensic Services Branch of SAPOL, included in the syllabus of which were photographic and forensic science subjects relating to the collection and preservation of trace materials and physical evidence so as to avoid contamination. In his capacity as the Senior Vehicle Examiner at SAPOL he has attended training workshops run by Bendix who were the manufacturers of air braking systems most commonly used in Australia. He has also attended workshops operated by Eaton Fuller who construct 18 speed and 13 speed gearboxes used in heavy vehicles in Australia. Mr McDonald himself holds a heavy vehicle combination licence. He has held that licence for approximately 2 years as at the time of the Inquest. Mr McDonald explained that during his training he was required to drive a semi-trailer combination on a number of occasions down the South-Eastern Freeway with heavy loads. I regarded Mr McDonald as an expert in respect of the examination of heavy vehicles for the purpose of assessing the roadworthiness of heavy vehicles.

- 5.2. Mr McDonald provided two statements to the Inquest³³. As well, he gave oral evidence.
- 5.3. Mr McDonald examined a number of vehicles in connection with this investigation, the most relevant of which was the prime mover and trailer driven by Mr Walsh.

³³ Exhibits C52 and C57

- 5.4. Mr McDonald's first statement dated 17 May 2011³⁴ comprised a detailed analysis of the roadworthiness of the prime mover and trailer in question, that included an analysis of the effectiveness of the brakes of both the prime mover and trailer. In his first statement he expressed certain opinions about that subject that I will discuss in a moment. In his oral evidence Mr McDonald expanded upon those opinions. Following evidence given by Mr Nicholas Gray in which he asserted that he had adjusted the brakes on the trailer prior to its fatal journey, Mr McDonald compiled a further witness statement³⁵ that dealt with certain aspects of the evidence given by Mr Gray.
- 5.5. I deal firstly with Mr McDonald's evidence about the prime mover insofar as it is relevant to the issues in this case. The vehicle was a Freightliner prime mover, Victorian registration UPG-695. It was a tri-axle prime mover with a single steer axle at the front and double drive axles at the rear. The prime mover had an 18 speed gearbox. Mr McDonald told the Court that when he examined the prime mover following the incident, the gear lever was still connected to the gearbox and that the gearbox was in neutral. He also told the Court that the gearbox was set in low range and was also in the low setting for the splitter. I am not certain that Mr McDonald's evidence that the gearbox was set in low range is correct. The gearbox was subsequently examined by Mr Simon Stribbling, a representative of Eaton Industries, the manufacturer of the gearbox³⁶. When pulled down, the front or main part of the transmission was found to be in neutral, but was in high range and in low split. He explains that this effectively means that the whole gearbox was in neutral as the range and split only take effect when the box is in gear. Although Mr Stribbling states in his report that he cannot say categorically that the gearbox was in neutral at the time the prime mover negotiated the hill, he is of the view that if it was in any gear at all it would have been in a gear too high to control the speed of a loaded vehicle safely using the engine brake while descending steep gradients. As will be seen, it is my opinion that when the evidence is viewed as a whole, the likelihood is that the prime mover was in neutral as it negotiated the hill.
- 5.6. An external examination of the gearbox by Mr McDonald did not reveal any evidence that the gearbox itself had played a role in the fatal collision. However, Mr McDonald explained that the prime mover would have needed to travel at a speed

³⁴ Exhibit C52

³⁵ Exhibit C57

³⁶ Exhibit C62

under 40 to 50 kilometres per hour for a gear in low range to be have been successfully selected. This of course would have meant that having regard to the high speed of the vehicle as it negotiated the down section of the freeway, it would have been impossible for Mr Walsh to have selected any gear in the low range.

- 5.7. From Mr McDonald's external examination he saw nothing in respect of this gearbox that would indicate any tendency on the part of the vehicle to come out of a properly selected gear. He explained that with extremely worn gearboxes this can happen. However, jumping out of gear is usually the product of a driver endeavouring to select a gear that is too low and, as a result, being unable to fully engage the gear. This might cause the vehicle gear to jump out of gear when load is placed upon the engine and gearbox. I would add that the evidence is that the truck's gearbox had been replaced in the recent past and that there was no evidence given by any person who had subsequently driven this prime mover to suggest that its gearbox had a problem.
- 5.8. Mr Stribbling, the Eaton Industries representative, makes reference in his report to his impression that the transmission had been recently repaired or overhauled. As will be seen in a moment, we know this to have been the case. Mr Stribbling, with one immaterial exception relating to the prime mover's 1st gear, states that in his view the transmission appeared to be in very good condition. He further states that from the condition that the transmission was in, that it would not be able to spontaneously jump out of gear. The detent springs which assist in holding the gear lever in position were all in good condition. He opines that the only way the transmission could have come out of gear was if the driver pulled it out of gear.
- 5.9. Mr Benjamin Spence is a diesel mechanic who replaced the gearbox on the prime mover earlier in 2010. Mr Spence provided a statement³⁷ to police and gave oral evidence at the Inquest. In 2010 he worked as a diesel mechanic employed by a firm known as P&D Diesel, situated on the Western Highway in Victoria. Mr Spence now operates his own business. In addition to his responsibilities as an employee of P&D Diesel, Mr Spence also performed mechanical work in his own time. Some of that work had been performed for Nick Gray Transport and Logistics (NGT) as it then was. Although Mr Spence did not perform regular maintenance in respect of the vehicles belonging to that firm, he performed work in respect of more significant mechanical failures. He did not perform any maintenance work as such in respect of prime movers and trailers. He did not do any work at all on the trailers.

³⁷ Exhibit C55

- 5.10. The work that Mr Spence performed in respect of NGT's prime movers had generally involved a failure that needed to be rectified to restore the vehicle to its operating capabilities – *'like, if the engine blew up or gearbox or whatever, I'd go in and have a look and we'd sort of what we've got to do to get it back on the road'*³⁸. Mr Spence kept a set of tools at the shed occupied by NGT at Michaels Road, Alfredton.
- 5.11. Mr Spence told the Court that on 1 May 2010 he fitted a reconditioned gearbox to the Freightliner prime mover. The gearbox was supplied by P&D Diesel and it was an 18 speed Roadranger. Upon the completion of the installation of the reconditioned gearbox, Mr Spence and one of the firm's drivers took the truck for a test drive. Although Mr Spence did not drive the truck himself, from what he saw the operation of the gearbox was satisfactory. He also checked the gearbox after it returned from trips to both Melbourne and Sydney. No complaints were made in respect of the operation of the gearbox. No person told him at any time after he had replaced the gearbox that it had jumped out of gear³⁹. If anybody had complained about that, Mr Spence would have done something about it, especially having regard to the fact that the gearbox was under warranty through P&D Diesel. Mr Spence was at no stage aware of any complaint made about the splitter of the gearbox being *'sticky'*⁴⁰.
- 5.12. Mr Spence also told the Court that in September 2010 he replaced the engine head of the prime mover after water had been detected coming out of its exhaust. The vehicle was also test driven after this work had been done and *'it seemed to run fine'*⁴¹.
- 5.13. Mr Spence remembered Daniel Walsh as a man who had worked at IFT for approximately two weeks before the fatal incident and the man who was the driver involved in the subsequent fatality that occurred in South Australia. Mr Spence formed an impression about Mr Walsh's competence as a driver of a prime mover. On more than one occasion he saw Mr Walsh drive off in the prime mover. Mr Spence formed the view that Mr Walsh did not really know how to drive it. He said:

'As he drove around the corner I can just remember he missed a couple of gears, and yeah, just, he wasn't very competent in driving a Roadranger.'⁴²

³⁸ Transcript, pages 292-293

³⁹ Transcript, page 319

⁴⁰ Transcript, page 304

⁴¹ Transcript, page 306

⁴² Transcript, page 301

Mr Spence explained that Mr Walsh took off in one gear and when he went to select the next gear the gears would grind⁴³. Mr Spence told the Court that Mr Gray was present on one of the occasions that he saw Mr Walsh move off in the prime mover. He said:

I did mention it to him. I said “that’s a bit rough” because he was standing right next to me when he took off, like he had never driven one before.’⁴⁴

- 5.14. I will return to the question of the performance of the gearbox when discussing Mr Walsh’s evidence about that.
- 5.15. Mr Spence also gave some general evidence about practices in the transport industry. He told the Court that it was his understanding that many transport companies, around 90%, perform maintenance and servicing tasks in-house in order to avoid the extra cost of a mechanic. Mr Spence said that if he had been asked to perform such maintenance tasks he would have charged for his services. Mr Spence did add that in his experience many people who are not qualified to perform those types of tasks might be better at it than people who are so qualified. Mr Spence agreed that it was not very difficult to adjust brakes on a trailer and that it would take him approximately 15 minutes to perform an adjustment on eight brakes. Mr Spence said that it was ‘*pretty easy*’⁴⁵, but that you would nevertheless have to know what you were doing⁴⁶.
- 5.16. Mr McDonald examined the brakes of the prime mover and those of the trailer. In respect of the prime mover, Mr McDonald describes three axles all of which were fitted with left and right drum brakes. Mr McDonald did not report anything of significance in respect of the front steer axle. The two drive axles at the rear of the vehicle both had 17mm of material on the brake shoes which is adequate. These brakes were adjusted within appropriate adjustment parameters for the type of actuator connected with the brakes. However, the brake shoes and brake drums were ‘blued’. In Mr McDonald’s opinion this indicated that the drive axle brake components had been severely overheated. This is consistent with the brakes having been applied during the prime mover’s final journey down the freeway and would have accounted for the smoking from the brakes that had been observed during the

⁴³ Transcript, page 302

⁴⁴ Transcript, page 322

⁴⁵ Transcript, page 317

⁴⁶ Transcript, page 317

course of that journey. The signs of overheating in respect of both drive axle brake assemblies would have led to brake fade and have dramatically reduced the braking efficiency of the prime mover and have increased stopping distances. This finding is of significance as it contrasts with the fact that Mr McDonald did not find any evidence of overheating in the brakes of the trailer. This was an indication that the brakes of the trailer had not been operating effectively.

- 5.17. Mr McDonald told the Court that the braking system of the trailer was in extremely poor condition prior to the collision. In his opinion all six brakes connected to the trailer had been out of adjustment at the time of the collision. This meant that in each case the brake shoes had been too distant from the brake drum, such that at the time the brake shoes moved to apply force to the brake drum, there was little pressure applied so as to force the brake shoes onto the drums.
- 5.18. In his oral evidence Mr McDonald explained the process of brake adjustment. He told the Court that the push rod stroke length for brakes such as those connected to the trailer should be adjusted between a range of 30mm and 40mm. In brakes of this type the maximum push rod stroke length after which there is no pressure exerted by the push rod is 64mm. The push rod is the rod that, through a camshaft and cam assembly, exerts the forces that apply the brake shoes onto the brake drum. Once the rod is adjusted too far it loses its mechanical advantage and less pressure is applied to the brake shoes. When the adjustment exceeds 51mm the brakes are considered to be in need of adjustment.
- 5.19. The trailer attached to the prime mover driven by Mr Walsh was a tri-axle flatbed trailer, registration number VIC 70037-S. The trailer had one single axle at the front and two axles at the rear meaning that there were a total of six brake assemblies comprising six sets of brake shoes and brake drums.
- 5.20. Mr McDonald examined the condition of each of the six individual brake assemblies. As far as the front axle on the trailer was concerned, Mr McDonald noted accident damage that involved the right brake actuator on the front axle of the trailer. This meant that Mr McDonald was not able to assess by measurement the state of adjustment of the right front axle brake. However, in his oral evidence he told the Court that if this brake had been working effectively at the time of the incident, it ought to have been in the same overheated condition as the prime mover drive axles.

It was not in that condition. This led him to conclude that this brake had been out of adjustment. The front left brake had a push rod stroke length of 59mm which means, in his opinion, that this brake was also out of adjustment.

- 5.21. Both the centre axle left and right brakes had push rod stroke lengths of 57mm and were therefore out of adjustment in Mr McDonald's opinion. As well, Mr McDonald observed the left upper brake shoe was also missing the securing pin, nuts and washers. This had allowed the brake shoe to move around and to wear unevenly. Whereas the brake shoe had 16mm of lining overall, which is adequate, the end section of the shoe had worn down to the metal backing of the shoe. As a result, the shoe had scored the brake drum. In Mr McDonald's opinion this brake shoe had been in this condition for some time. The uneven wear to the brake lining was consistent with the absence of the securing pin, nuts and washers over a period of time, and was not due to wear occasioned by the journey down the freeway. In the opinion of the Court this is a telling observation as it tends to negate the suggestion that the brakes of the trailer had been the subject of recent and adequate inspection and rectification.
- 5.22. The rear axle push rod stroke lengths for the left and right rear brakes were 57mm and 58mm respectively meaning that both rear axle brakes were out of adjustment in Mr McDonald's opinion.
- 5.23. It will be noted that all of these measurements exceeded the 51mm adjustment threshold. The effect of these poorly adjusted brakes was that the braking system of the trailer was, in Mr McDonald's opinion, '*in extremely poor condition*'⁴⁷. Mr McDonald explained that the brakes were in poor condition at the start of the fatal journey and were in poor condition at the end of the journey. He opined that the trailer brakes '*were not working at all*'⁴⁸. This meant that the entire load of the combination, both prime mover and trailer, had put pressure on the brakes of the drive axles of the prime mover which caused the overheating of the brakes on those axles.
- 5.24. Mr McDonald explained that the other consequence of the poor condition of the trailer brakes was that it had robbed the ability of the driver of the rig to slow the rig sufficiently either to stop or to slow down to a lower speed that would have allowed a lower and more appropriate gear to be selected. If one was driving such a combination at the top of the freeway and an appropriate gear could not be selected,

⁴⁷ Transcript, page 121

⁴⁸ Transcript, page 109

with correctly adjusted brakes the driver could have stopped the truck and have started again in first gear⁴⁹. It will be remembered that this is the strategy that Mr Neill spoke of.

- 5.25. Mr McDonald expressed the opinion that even before the journey down the freeway had been attempted, the poor braking capacity of the entire rig should have been obvious to the driver. Counsel assisting, Ms Cacas, asked Mr McDonald:

'Q. So you might get away with it, with brakes like these until you come to a descent like the one into Adelaide.

A. It would be possible but you would still know there was an issue on the flat even by your first application, that the weight is pushing them along.⁵⁰

Mr McDonald agreed with counsel assisting that the braking deficit would have been apparent regardless of the road surface or the incline or otherwise of the road⁵¹. Mr McDonald told the Court that there was a simple test available to a driver to test the efficiency of the brakes on a rig. This is known as a '*tug test*'⁵² whereby the driver of the prime mover attempts to drive off with the trailer brakes applied. As I understood Mr McDonald's evidence, with properly adjusted brakes on the trailer such a manoeuvre should not be possible. With maladjusted brakes, as was the case with this particular rig, a tug test would have revealed that the rig would move when it should not move. He suggested that if this had been the result of a tug test, the appropriate course of action would have been to seek mechanical assistance in adjusting the brakes⁵³. Mr McDonald told the Court that the adjustment of brakes on a trailer is not a difficult and time consuming task for a mechanic. The adjustment of brakes is part of the training of a qualified diesel mechanic. In his opinion it would take approximately 15 minutes to adjust the brakes on this trailer.

- 5.26. Mr Anthony Marsden in as interstate truck driver who drove for NGT between 29 April 2010 and 14 July 2010. Mr Marsden is an experienced truck driver. For a period in 2010 he was employed by NGT. Prior to commencing employment with NGT he worked for a firm known as K & S Freighters and then O'Neil Transport, which company he left of his own accord. His employment with NGT terminated in

⁴⁹ Transcript, page 125

⁵⁰ Transcript, page 129

⁵¹ Transcript, page 130

⁵² Transcript, page 130

⁵³ Transcript, page 131

July 2010. He worked for NGT for a total period of about 12 weeks and it appears that he was replaced, in due course, by Mr Walsh. He has since worked for Palm Transport in a full time capacity. Mr Marsden has been driving trucks interstate for approximately 35 years. In that period of time he has been based in Victoria. He has undertaken a number of journeys in trucks to Adelaide using the South-Eastern Freeway.

- 5.27. Mr Marsden gave evidence and expressed very strong views about the manner in which NGT had been operated, especially in relation to maintenance issues. It was clear on the version of anyone who gave evidence on the topic of Mr Marsden's employment with NGT that Mr Marsden had left that employment in acrimonious circumstances. I approached Mr Marsden's evidence with caution.
- 5.28. Mr Marsden told the Court that at no stage during his employment at this firm did he see any log books in the trucks or any record in which he was supposed to record maintenance. He emphasised that he drove all of those trucks. This situation was to be contrasted to his current employment where the trucks have maintenance repair request slips in them and that these have to be completed every week, regardless of whether anything about the truck needs to be repaired or not. K & S Freighters had similar maintenance repair slips.
- 5.29. In the course of Mr Marsden's employment at NGT he had occasion to drive various combinations of the four prime movers and trailers that the firm possessed, including the fatal prime mover and trailer in combination. Mr Marsden gave evidence about the condition of that prime mover and trailer combination. As far as the prime mover's gearbox was concerned, Mr Marsden told the Court that he had been aware that the gearbox in the Freightliner had been changed at around the time he commenced employment with NGT. He was asked how the gearbox performed when he drove the vehicle and Mr Marsden said that the '*gearbox was alright*'⁵⁴. Asked as to whether it popped out of gear at any time when he drove it, Mr Marsden said he did not believe that had been the case and that he would remember if it had done so.
- 5.30. As to the brakes on the Freightliner prime mover, Mr Marsden said that it had brakes but that they were not good. This had the effect that when one put one's foot on the

⁵⁴ Transcript, page 947

brake pedal, one could be pushing hard and, while the truck was slowing down, it was not stopping. Mr Marsden said:

'It just kept going down the road, like as I said, it was slowing down and eventually it would stop, but if you had to stand on the brakes in a hurry in that Freightliner, you would never stop.'⁵⁵

Mr Marsden explained what it was like to drive the Freightliner. He said that you would '*drive accordingly*'⁵⁶, meaning that you would drive to the conditions and to the vehicle's capabilities. This would mean that one would have to use the gears and engine brake to stop the truck when it was necessary. He said:

'If you've got it going slow, like at 20 or 30 km an hour, you'll stop it, you know? But when its fully loaded it was, was an awful truck to drive.'⁵⁷

5.31. Mr Marsden spoke of an occasion when he was asked to take the trailer with a load of potatoes from Ballarat to Bendigo and to be at Bendigo by a set time. There were 20 tonne of potatoes on the trailer. In Mr Marsden's opinion '*that trailer had no brakes whatsoever*'⁵⁸. He also told the Court that in his view the brakes on the Freightliner prime mover were also very suspect⁵⁹. The morning following the Bendigo journey Mr Marsden went underneath the trailer and discovered that he was able to put a finger between the brake pads and brake drum. He said it had no brakes. In his view they were totally worn out. Mr Marsden said that he did not tow that trailer again⁶⁰.

5.32. Mr Marsden was asked how he would perceive the performance of the prime mover and trailer, in the condition as he knew them to be, on the downhill section of the South-Eastern Freeway with a load. Mr Marsden told the Court that one would have an appreciation of the rig's capabilities by the time one arrived at that point and that if one selected the appropriate gear for the truck and used the engine brake, the driver would only touch the brakes once or twice. If on the other hand the driver, once over the top of the hill had decided to select the appropriate gear at that point, he said:

'That's too late – you're dead and so's someone else.'⁶¹

⁵⁵ Transcript, page 929

⁵⁶ Transcript, page 929

⁵⁷ Transcript, page 929

⁵⁸ Transcript, page 925

⁵⁹ Transcript, page 926

⁶⁰ Transcript, page 928

⁶¹ Transcript, page 931

- 5.33. Mr Marsden said that he had drawn the inadequacy of the trailer brakes to the attention of Mr Rob Morley.
- 5.34. I have already referred to a Mr Ian Graham as having been a driver at NGT and IFT. Mr Graham was asked to provide two witness statements to the Inquest⁶². Both statements are dated 30 January 2014. The first statement⁶³ was taken on 12 January 2014 by telephone from Queensland. Mr Graham has driven heavy vehicles in various configurations for approximately 20 years. As explained in his first statement, in 2010 he approached NGT for employment. He states that the manager of the company at that time was Rob Morley. He commenced employment at around the time that NGT became IFT. We know that to have been towards the end of August 2010. Mr Graham states that he worked at NGT/IFT for about one or two months. His employment concluded approximately one or two weeks following the fatal incident. He recalled that Nicholas Gray performed general maintenance and that they also had employed a mechanic for large jobs, Mr Ben Spence. During his employment Mr Graham drove each of the trucks belonging to IFT, including the Freightliner involved in the fatal incident. He said that he never had a problem with brakes or gearboxes on any of the trucks. He added that he believed that the trucks at IFT were maintained well. Mr Graham's evidence is naturally to be contrasted with that of Mr Marsden. I believe it likely that Mr Graham commenced his employment at a time after Mr Marsden had left. Mr Marsden's employment ended some weeks before the fatal incident. Whatever the condition of the brakes of the rig were at the time of Mr Marsden's employment, the fact is that all brakes on the prime mover and all brakes on the trailer, with the exception of that brake which had worn unevenly, had adequate brake linings when examined by Mr McDonald following the accident.
- 5.35. In his evidence before the Court Mr Nicholas Gray said that a week before Mr Walsh commenced employment at IFT they had relined the brake shoes on the trailer. The thickness of linings on some of the brakes, as observed by Mr McDonald, would not be inconsistent with that claim. Mr McDonald found that in respect of the centre axle brakes of the trailer there was 16mm and 17mm of brake linings respectively and that on the rear axle brakes there was also 16mm and 17mm of material respectively. On the front axle left brake shoe there was 10mm of material. There is no suggestion that the amount of brake lining on the six brakes of the trailer was insufficient except in respect of the uneven wear to the end section of the left upper brake shoe due to the

⁶² Exhibits C58 and C58a

⁶³ Exhibit C58

absence of the securing pin, nut and washers. Rather, the suggestion is that the trailer brakes were out of adjustment at the time of the descent down the South-Eastern Freeway due to excessive push rod stroke lengths.

5.36. Mr Gray also told the Court that on the Saturday morning 9 October 2010 he would have performed his customary maintenance work and that he had taken the rig from his home premises to the Alfredton depot that morning. He said that he had changed the oil and filters and had checked the trailer brakes and that their adjustment was satisfactory⁶⁴. His recollection was that he had wound the brakes off and had then wound them back on to reset the adjustment⁶⁵.

5.37. When Mr McDonald's evidence about the state of the trailer brakes was put to Mr Gray in cross-examination by counsel assisting, Mr Gray responded by saying that the action of Mr Walsh in driving the rig down the freeway with his foot on the brake would account for the state of the brakes as seen by Mr McDonald. He said the 7 kilometre run down the hill meant that the brakes were naturally going to be irreparable at the end of it⁶⁶. He argued that when the truck came down the hill the whole system had heated up. He endeavoured to exemplify this by pointing to the photograph of the brake that had the missing brake shoe pin. He argued that this brake had been under so much pressure and so much force that it had become hot and had burst apart. Mr Gray denied that he had neglected to replace the bolt when the brakes had last been serviced⁶⁷. It will be remembered, however, that Mr McDonald was of the opinion that the grossly uneven wear on the brake shoe, caused by the missing pin, indicated that this individual brake had been in this condition for some time. This brake is therefore a poor example of what Mr Gray was endeavouring to argue. As to the state of poor adjustment as witnessed by Mr McDonald, Mr Gray responded by saying that one could not obtain an accurate assessment from something that had essentially been destroyed⁶⁸. He reiterated that he was positive that before the accident all brakes had been within the proper adjustment specifications. He added:

'I don't know how anyone can get an accurate measurement on something that has probably reached 300°F or 400°F coming down a hill.'⁶⁹

⁶⁴ Transcript, page 712

⁶⁵ Transcript, page 729

⁶⁶ Transcript, page 733

⁶⁷ Transcript, page 863

⁶⁸ Transcript, page 740

⁶⁹ Transcript, page 741

- 5.38. In light of the evidence given by Mr Gray, Mr McDonald provided a further statement to the Inquest⁷⁰. He states that although in his 30 years of experience he had seen brake components catch fire, he had never seen them explode. He points out that the only brake shoes that had been glazed, highlighting severe overheating, were the brake shoes fitted to the prime mover drive axle brake assemblies. Both the brake shoes and the brake drums had excessively overheated. He opined that this had been caused by the weight of the combination having overloaded those axles' brakes and that this was due to the fact that they were the only brake assemblies that had been working effectively as the rig proceeded down the freeway on its fateful journey⁷¹. He said that if the trailer brakes had been working effectively, they would also have shown signs of overheating. He said there was no evidence to suggest that the trailer brakes had overheated⁷². Moreover, the brake drums fitted to the trailer also showed no signs of overheating. Furthermore, as there was no evidence to suggest that the trailer brakes had overheated, there would have been nothing that would have affected push rod travel which was the measure by which adjustment could be determined. In other words the excessive push rod travel that he observed could not have been caused during the descent. As to Mr Gray's theory about the missing brake shoe pin having been caused by the descent down the freeway, Mr McDonald again pointed out that the extent of uneven wear had been caused over an extended period of time and not as a result of a 7 kilometre run downhill. In other words, that brake lining damage, as well as the absence of the pin, had existed prior to the descent. As well, if a broken bolt had been within the brake drum and wheel assembly as it had rotated at speed, it ought to have exhibited scrape marks or scratches. Mr McDonald stated that there was no such evidence located within that brake assembly.
- 5.39. I am mindful of the statement of Mr Davis, the driver who attempted to call Mr Walsh over the UHF. Mr Davis said that there was smoke billowing from the rear axles of the trailer. Yet Mr McDonald found no evidence of overheating in the trailer brakes. It is known that there was overheating within the brakes of the prime mover's two axles. In my view what Mr Davis witnessed was probably the product of the overheating of the prime mover's four driving axle brakes.

⁷⁰ Exhibit C52c

⁷¹ Exhibit C52c, page 8

⁷² Exhibit C52c, page 10

- 5.40. I have accepted the evidence of Mr McDonald that there was nothing that he observed in respect of the brakes of the trailer that was consistent with severe overheating of a kind that was plainly exhibited within the brakes of the driving axles of the prime mover. The inference is available, which I draw, that the explanation for a lack of evidence of severe overheating in the brakes of the trailer was poor brake adjustment at a time prior to, and at the time of, the descent down the South-Eastern Freeway. This state of poor adjustment is reflected in the excessive push rod stroke lengths that Mr McDonald was able to identify in respect of five of those brakes. I have also accepted Mr McDonald's evidence that the uneven wear on the upper brake shoe on the left centre axle of the trailer was the result of a missing brake shoe pin. I accept his evidence that this wear had been caused over a significant period of time and was not the result of the descent down the freeway. The only conclusion I can reach is that the brake assembly had been in that condition for a significant period of time. All this naturally causes me to doubt Mr Gray's evidence that on the morning of Saturday 9 October 2010 he inspected the brakes of the trailer and found them to have been in proper working order.
- 5.41. Mr Daniel Walsh gave evidence about a number of matters that naturally included a description of what he claims he remembers, and does not remember, about the incident in question. He also gave evidence in relation to the mechanical performance of the prime mover and trailer in question.
- 5.42. Mr Walsh told the Court that he drove the rig to Adelaide on three occasions during his two week period of employment with In Front Transport (IFT), the last occasion being the journey involving the fatal incident. On each of those three occasions he drove the loaded rig down the South-Eastern Freeway. The DTEI Safe-T-Cam sighting report relating to the prime mover UPG-695⁷³ records that the prime mover was captured in the system travelling west towards Adelaide late in the evening of Tuesday, 5 October 2010 and in the early hours of the morning of Wednesday, 6 October 2010. It was then recorded as having travelled east along the same route during the afternoon and evening of Wednesday, 6 October 2010. It is recorded that the same prime mover was again captured travelling west along the same route towards Adelaide in the late evening of Thursday, 7 October 2010 and the early hours of the morning of Friday, 8 October 2010 and then at Globe Derby North, also in the

⁷³ Exhibit C53d, page 20

early hours of the same morning. It was again captured travelling east along the freeway and through towns on principal route towards Melbourne in the afternoon and early evening of Friday, 8 October 2010. Its final recorded sighting within this system was at the Bordertown site at 12:21am on Tuesday, 12 October 2010 when the vehicle was travelling west towards Adelaide. It will be observed that this sighting occurred approximately 8 hours and 20 minutes prior to the fatal incident.

- 5.43. I was satisfied that this sighting report captured the three journeys to and from Adelaide that Mr Walsh said were those that he had performed during the course of his brief period of employment with IFT.
- 5.44. Mr Walsh gave evidence in relation to two aspects of the mechanics of this prime mover and trailer rig, being the gearbox and the trailer brakes. Mr Walsh told the Court that prior to commencing work with IFT he had some familiarity with an 18 speed truck gearbox. He had experience with other trucks in previous employment. He told the Court that at first he had trouble with the gears on the prime mover. He ascribed this to his own lack of familiarity with the truck⁷⁴. He told the Court that he ‘*crunched a couple of gears at times*’⁷⁵. He put that down to the fact that he had not driven that particular prime mover before⁷⁶. He said that thereafter, during the course of the following week, he had no further difficulty with the gears, and in fact told the Court that he had found them to be ‘*terrific*’⁷⁷. On the two occasions that he drove down the freeway prior to the fatal incident he said that he had used fourth gear low at speeds of about 30 or 40 kilometres per hour⁷⁸. He said that fourth low was not too fast for the descent⁷⁹. On the first two occasions he had loads of steel on the trailer. On the morning of the fatal incident, again when he had a significant load of steel on the trailer, he told the Court that he had selected low fourth gear as he had with his previous journeys down the freeway. He said that he selected that gear at a point approximately one kilometre prior to the crest of the hill⁸⁰. He said that he was still in that gear when he commenced the descent and that approximately 100 metres into the descent he heard the gear stick ‘go bang’ and pop out of gear. He told the Court that

⁷⁴ Transcript, page 509

⁷⁵ Transcript, page 511

⁷⁶ Transcript, page 511

⁷⁷ Transcript, page 521

⁷⁸ Transcript, pages 524, 540

⁷⁹ Transcript, page 525

⁸⁰ Transcript, page 620

when he had originally selected low fourth he had no difficulty selecting it⁸¹. He told the Court that he was unable to reselect fourth gear after it had spontaneously come out of gear. As I understood Mr Walsh's evidence the truck, now in neutral, quickly picked up speed, preventing the selection of that gear. When he attempted to reselect fourth low using the clutch, the speed was too fast for that particular gear with the result that there was crunching when he made the attempts to select it. Mr Walsh was asked in evidence whether he had attempted to select a higher gear. He said 'no'⁸² and when pressed as to why he did not make that attempt he said '*I don't know, I was in panic mode then*'⁸³. Counsel assisting, Ms Cacas, asked Mr Walsh as to whether he had any explanation for why the prime mover might have popped out of gear, he said:

'Maybe it might not have been put in correctly, but I had it in low fourth for quite a bit before the descent, so I just, yeah.'⁸⁴

- 5.45. On Mr Walsh's evidence relating to the performance of the gearbox prior to the fatal incident, there is no suggestion that there was any defect in the gearbox that had manifested itself in anyway. However, as with other aspects of Mr Walsh's evidence, he has not always been entirely consistent about the performance of the gearbox both prior to the day of the incident and on the day of the incident. Firstly, having acknowledged in his evidence that the failure of the prime mover to remain in the selected gear was possibly as a result of his not having selected the gear properly⁸⁵, he later said in evidence that he was positive that he had been able to put the truck in low fourth properly prior to approaching the crest of the hill⁸⁶. Mr Walsh's oral evidence before the Court was that he had deliberately and consciously selected low fourth to negotiate the descent as he had on two previous occasions without incident. It will be remembered, however, as referred to in the Court's preliminary findings, that when he was before the Magistrates Court in April 2013, he was dealt with by that Court on an agreed factual basis that his driving without due care had been constituted in part by his having originally selected the incorrect gear by which to negotiate that descent and then having been unable to select an appropriate gear. There was nothing there said about a correct gear having been selected and it having popped out of gear. Nowhere in his oral evidence before the Court did Mr Walsh allude to any difficulty with the

⁸¹ Transcript, page 619

⁸² Transcript, page 620

⁸³ Transcript, page 620

⁸⁴ Transcript, page 622

⁸⁵ Transcript, page 622

⁸⁶ Transcript, page 627

gears other than that which had been the result of his initial unfamiliarity with the vehicle, and specifically he denied that he had experienced any difficulty with the splitter facility that the gearbox possessed.

- 5.46. Mr Walsh's curial statements, both when he was dealt with in the Magistrates Court and those made in the course of this Inquest, need to be contrasted with what he said in an interview with investigating police on 20 October 2010 and with what he said in a statement to an insurance assessor on 8 November 2010⁸⁷. I have taken into account the fact that when Mr Walsh gave those statements, particularly the statement given to police shortly after the incident, he may have been suffering from the effects of his injuries, but I also take into account the fact that the incident would have been fresher in his mind then than it was in 2013 when he was dealt with by the Magistrates Court and when he gave evidence in this Court. In his interview with police Mr Walsh told Brevet Sergeant Light of the MCIS that he had experienced a problem with the splitter '*all that week*'⁸⁸. When asked to explain what he meant by that Mr Walsh said that the gear would not split '*it would just stick, the splitter was sticky, so yeah....*'⁸⁹. Also in that same interview Mr Walsh told Brevet Sergeant Light that on the previous occasions he had driven the truck down the freeway, he had selected second gear in low range which was the lowest he could find and which restricted his speed to about 35 kilometres per hour⁹⁰. It will be recalled that in his evidence he was firm that the gear that he had selected on previous occasions was low fourth and that was the gear that he originally selected during the fatal descent. And as far as the fatal descent is concerned, he told Brevet Sergeant Light that he had commenced the descent in a gear but that he thought he had been in the wrong gear. When asked as to what gear he thought he had been in, he said '*oh, I couldn't tell you to be honest*'⁹¹. He said that he was moving at a speed of approximately 30 kilometres per hour travelling behind Mr Gray's truck when he said that he felt the truck jump out of gear. When he looked down he saw that he was in neutral and that he then attempted to select a gear and successfully selected one. Asked as to what gear he had selected as he descended the hill he answered '*way too high for that pace*'⁹².

⁸⁷ Exhibit C53b

⁸⁸ Exhibit C51c

⁸⁹ Exhibit C51c, page 18

⁹⁰ Exhibit C51c, page 11

⁹¹ Exhibit C51c, page 17

⁹² Exhibit C51c, page 18

- 5.47. In Mr Walsh's statement to the insurance assessor, the draft of which he himself altered in places, indicating that he had read it, it is stated:

'About 1 hour out of Tailem Bend we came to the descent into Adelaide on the South-Eastern Freeway. I was behind Nick all the way to this point. We had to go up a hill before we started the descent. I used a low range gear, I think second, to go up the hill and then I must have gone into a high range gear.

As I started the descent I had problems engaging a low range gear. I could not engage second gear in low range as the gear stick kept on popping out. It got back in but it popped out again into neutral. I had the switches on for the exhaust brakes.'⁹³

- 5.48. This account tends to suggest that what had actually taken place was that Mr Walsh had originally selected an appropriate low range gear, such as second gear, but that he had then selected an inappropriate high range gear at the start of the descent. Thereafter the speed of the rig increased to a point where he was unable to select an appropriate low range gear as the gear stick kept popping out. This would not be surprising if he was travelling at a speed that was no longer appropriate for that low a gear. In other words, it was not a case of the vehicle unexpectedly popping out of an appropriate gear, but a case of incorrect selection of gear in the first instance followed by an inability to reselect the appropriate gear because the speed of the vehicle would not allow for it. This is in keeping with the basis of Mr Walsh's plea of guilty in the Magistrates Court.

- 5.49. Mr Neill, the experienced driving instructor, also commented upon Mr Walsh's statements about the performance of the gearbox and his operation of it during the course of the fatal descent. Mr Neill expressed the view that Mr Walsh's description to Brevet Sergeant Light that he had used second gear low range on the previous occasions on which he had descended the down section of the freeway was unlikely because the maximum speed one could do in second low would be 15 kilometres per hour and that would be to over rev the engine. Mr Neill opined that this would seem too slow. As to claims made by Mr Walsh that during the fatal descent he had trouble engaging second gear low range, again Mr Neill expressed the opinion that in order to do so one would have to be travelling at a speed of about 10 kilometres per hour and that it would be a physical impossibility to select second gear low range at speeds above that. With respect to the claim that the vehicle popped out of gear, Mr Neill said the gearbox would only spontaneously do this if it had a mechanical fault or was

⁹³ Exhibit C53b

very worn. The other circumstance in which this might occur is where the driver had only partially selected the gear in question and where the gear had not fully engaged. In that instance the vehicle may jump out of gear when the clutch is released and the gears are consequently placed under load. Mr Neill stated that it is not uncommon for drivers to believe that they have engaged a gear properly, but to find that when the power is applied to the gear it will jump out, all of which is a matter of driver error.

- 5.50. Mr Allen of counsel for Mr Posnakidis' family suggested to Mr Walsh, based upon what he had said to Brevet Sergeant Light, that Mr Walsh had simply selected the wrong gear and had proceeded down the hill too quickly. At first Mr Walsh said '*I don't know what you want me to say*'⁹⁴, but when pressed again about the issue Mr Walsh acknowledged that this scenario was a possibility⁹⁵. When pressed further, Mr Walsh suggested that he did not think Mr Allen's scenario was right, but again said he did not know what to say⁹⁶. He was adamant, however, that whilst it was a possibility that he had simply selected the wrong gear⁹⁷, he was sure that the gear had popped out⁹⁸. To my mind the probability is that the popping out of gear was caused by Mr Walsh's endeavours to select the appropriate gear for the descent when it was too late to do so due to the increased speed of the truck.
- 5.51. In short, I was unable to rely on Mr Walsh's evidence in this Court that he had selected low fourth for the descent and that for unknown reasons it had popped out of gear. As to why Mr Walsh would have possibly selected an inappropriate gear in the first instance, fatigue combined with inexperience springs to mind as one possible explanation. I deal with the issue of fatigue separately below. As to why Mr Walsh would have been unable to recover the vehicle by slowing it to an appropriate speed, and then either stopping or selecting an appropriate gear in the low range, this could possibly be explained by maladjustment of the brakes of the trailer. Another possible explanation is that Mr Walsh naively thought he would be able to ride it out to the bottom of the hill by using the primary brake.
- 5.52. In any event, there is insufficient evidence to support the proposition that this accident was caused by, or had as a contributing factor, a mechanical gearbox failure. I accept Mr Stribbling's statement that there was no reason why a gearbox in the condition that

⁹⁴ Transcript, page 634

⁹⁵ Transcript, page 635

⁹⁶ Transcript, page 635

⁹⁷ Transcript, page 636

⁹⁸ Transcript, page 634

this one was in should have spontaneously popped out of gear. I do not believe that the gearbox unexpectedly popped out of an appropriately selected gear. The more preferable explanation, and the explanation that I find to have been the case, was that Mr Walsh selected the wrong gear in the first place and that the rapid accumulation of the speed of the rig prevented him from selecting an appropriate gear. I find that the probability is that Mr Walsh descended the hill in neutral, or, at best, in a high range gear that was incapable of controlling the speed of the rig.

- 5.53. Mr Walsh also gave evidence about the brakes on the trailer. He said that on the first trip to Adelaide with this same rig, he did not have any difficulties with the truck or trailer⁹⁹. Specifically, when asked how the brakes performed down the freeway on this first occasion he said ‘*yes, good, from memory*’¹⁰⁰. On that occasion he had no difficulty selecting gears and he had the jake brake on which worked¹⁰¹.
- 5.54. However, Mr Walsh said that on the second trip to Adelaide, when he stopped at the lights at the bottom of the freeway, he could smell brakes notwithstanding that he had only sparingly used the footbrake during the descent and only to slow the vehicle down¹⁰². He said that on this occasion he had come down the hill no faster than 40 kilometres per hour, he believed in low fourth. When asked as to whether he had smelt the brakes of the trailer or those of the truck, Mr Walsh said it was the trailer¹⁰³. He described what had happened in these terms:

‘No, everything seemed normal, yeah, I had the correct gear, and everything seemed normal, except my brakes every now and then when I needed to slow myself down and, yeah, it was - when I got to the bottom set of lights I just noticed that the brakes smelt, big time.’¹⁰⁴

Mr Walsh told the Court that not long after he negotiated that intersection he pulled up near a service station and attempted to look at the brakes underneath the trailer as well as the truck, but could not see anything, and in particular could not determine whether the brakes were properly adjusted or not, but that the smell was very strong. He could not see any evidence of smoking. When he had earlier pulled up at the intersection the brakes had seemed to be satisfactory in terms of performance, but that when he pulled up at the service station to inspect the rig he felt that they were

⁹⁹ Transcript, page 520

¹⁰⁰ Transcript, page 521

¹⁰¹ Transcript, pages 522-523

¹⁰² Transcript, page 540

¹⁰³ Transcript, page 541

¹⁰⁴ Transcript, page 542

‘spongy’¹⁰⁵. He told the Court that later during that same journey, and after he had unloaded his steel, all of the trailer axles’ brakes had locked up, that the wheels were dragging and that they were smoking. He had pulled up and then had attempted to disengage the brakes from the trailer. Eventually the brakes came off. He proceeded to another location where he loaded pipes and made his way back to Victoria. He could not recall there having been any further problem with the brakes during the course of that return journey.

- 5.55. Mr Walsh denied the suggestion that what had taken place on this occasion was that he had ridden the brakes all the way down the hill upon his entry into Adelaide, but could not give any explanation as to why they had started to smell when he had only used them sparingly¹⁰⁶. The evidence before me did not readily provide a sensible mechanical explanation for what Mr Walsh says he experienced in respect of the trailer brakes during his second trip to Adelaide. The suspicion, therefore, that on that second journey down the hill Mr Walsh had excessively ridden the brakes, while not in an appropriate gear, is one that cannot lightly be put to one side.
- 5.56. Mr Walsh said that upon his return to Ballarat following his second journey to Adelaide, he parked the truck at Nick Gray’s premises with the load still on the trailer and the trailer still attached. The plan was that he would pick up the whole rig on the Monday morning at which time he would drive to the Geelong area and unload there. Mr Walsh told the Court that at some point during this second return journey from Adelaide, he had a telephone conversation with Mr Rob Morley in which he claims he informed Mr Morley of the brake issue¹⁰⁷. Mr Walsh also asserted that he wrote on a piece of A4 paper a description of the problems that he had with the brakes and that he left the note in the truck with some other paperwork. He asserted that he did this in the expectation that the management of IFT would collect the paperwork and act on it before he next worked in that truck. However, on the Monday morning the rig was situated in the same spot where Mr Walsh had left it and the paperwork had not been disturbed¹⁰⁸. Mr Walsh said that he had been upset at the fact that nothing had been done in respect of the truck’s issues.

¹⁰⁵ Transcript, page 545

¹⁰⁶ Transcript, page 548

¹⁰⁷ Transcript, page 578

¹⁰⁸ Transcript, page 555

- 5.57. Mr Gray told the Court that he knew nothing of any difficulty that Mr Walsh had allegedly encountered in respect of the brakes during the week prior to the collision except that he had said something about the trailer brakes smoking to which Mr Gray had responded by telling Mr Walsh that he had pushed too hard on the brake pedal and was locking the trailer brakes up and that the smoke that he had seen had come from the tyres. He said that there was nothing wrong with the brakes of the trailer. Mr Gray said that he had received no report about the brakes locking up on any other occasion and suggested that Mr Walsh's experience of smelling brakes on one of his journeys down the hill was caused by human error in that Mr Walsh had descended down the hill too quickly. Mr Gray also said that he did not notice any paperwork in the cabin of the prime mover over that weekend. The police found no paperwork of the kind Mr Walsh described in the wreck of the prime mover.
- 5.58. On the following Monday, which was Monday 11 October 2010, the day before the fatal incident, Mr Walsh collected the rig and proceeded to the Geelong area where the pipes from Adelaide were unloaded. There were some other stops that he was required to make including the loading of steel for delivery in Adelaide. Mr Walsh would make his way back to Alfredton where he stayed for a little time which he used, among other things, to clean the truck. Following this he set out with Mr Gray in convoy to Adelaide. I discuss the details of this journey below. Mr Walsh did not claim to have experienced any difficulty with the truck and brakes during the course of the Monday, but acknowledged that most of the driving had involved flat terrain. However, although Mr Walsh told the Court that he did not have any difficulty with the brakes locking up while the rig was moving, he did say that he remembered that the brakes would not come off when he had first unloaded his pipes. He said that the trailer brakes kept '*staying on and dragging*'¹⁰⁹ and that he had to leave the trailer brakes off for them slowly to come off. He said he had to do this probably twice. That was the only problem he had during the course of that day. There had been no smell associated with that event. Mr Walsh also claimed that he performed a tug test on the rig before he set out on the Monday morning and that the rig had passed that test.
- 5.59. Mr Walsh told the Court that there was no difficulty with the brakes until he performed a tug test at Tintinara in South Australia when setting off after a sleep. The

¹⁰⁹ Transcript, page 583

wheels of the trailer would not rotate when he endeavoured to move off. He described it in these terms:

'So when you do a tug test once it's all done, you let your brakes off and your wheels roll; they didn't keep rolling when I let my brakes off.'¹¹⁰

He and Mr Gray had one more stop at Tailem Bend where the brakes '*did seem to be good*'¹¹¹. I did not understand Mr Walsh to have experienced any further issues with the brakes until the incident in question when he claims the vehicle popped out of gear and picked up uncontrollable speed. Mr Walsh asserts that his memory from that point forward is deficient. Mr Walsh did say that the Jake brake had been on for the whole journey. Asked whether he used the footbrake to slow to a speed that might have enabled him to select fourth gear, Mr Walsh said that he was gaining a lot of speed and that with 30 tonne on board he could not slow the running speed going down a decline like that. He could not remember whether he had attempted to use the footbrakes, but said he broke his right ankle so he was certain that he would have used them¹¹². In fact, Mr Walsh told Brevet Sgt Light that he had been '*standing on them, I was literally standing on them*'¹¹³.

5.60. Mr Walsh's earlier out of Court statements about the issue regarding the roadworthiness of the rig and in particular in respect of its brakes also bear scrutiny. His statement to the insurance assessor originally recorded that during the second trip to Adelaide when driving slowly through the city the brakes had locked up on a few occasions. It also recorded him saying that he remembered pulling up at lights on occasions and that he had seen smoke coming from the trailer's brakes¹¹⁴. The statement then went on to assert:

'This is not a common occurrence. I did not have any concerns about the prime mover and trailer's braking performance.'

When Mr Walsh was asked to examine this statement it is apparent that he crossed out that last sentence and wrote in:

'BRAKES WERNT RITE! I TOLD ROB AT INFRONT!'

¹¹⁰ Transcript, page 601

¹¹¹ Transcript, page 612

¹¹² Transcript, page 621

¹¹³ Exhibit C51c, page 18, line 6

¹¹⁴ Exhibit C53b

As far as the final and fatal journey was concerned the insurance assessor's statement contains an assertion by Mr Walsh that at Tailem Bend he was not having any problems driving the prime mover and trailer. The statement says nothing about the performance of the brakes to that point of this journey. Following the description of his inability to select the appropriate gear as recorded in paragraph 23 and 24 of Exhibit C53b, the statement asserts:

'I was holding down the foot pedal to apply the prime mover and trailer brakes to try and slow the vehicle. I have very little recollection of anything else.'¹¹⁵

- 5.61. In an interview with Brevet Sergeant Light Mr Walsh spoke of the two previous journeys into Adelaide down the freeway and, in respect of the performance of the brakes when coming down the hill into Adelaide, he said that they seemed to lock up all the time. He added:

'And at times it just felt like there was nothing to me, so.'¹¹⁶

He said the trailer brakes would lock up with '*lots of smoke*'¹¹⁷. Mr Walsh could not say where exactly on the freeway this had occurred, but asserted that it occurred when he was '*coming down the hill*'¹¹⁸. Mr Walsh mentioned the incident on South Road and of other incidents where he had pulled up at lights and the brakes had locked up. He also described looking through his rear vision mirror and seeing smoke everywhere and that this was explained by the brakes. He said they '*seemed really touchy*'¹¹⁹. Mr Walsh asserted to Light that the problem had been with the trailer brakes but acknowledged the possibility that the trailer brakes had not been working, but that the prime mover wheels were locking¹²⁰. He did say that the smoke that he had seen was back near the trailer¹²¹.

- 5.62. Significantly, when asked as to whether he had performed a tug test with these loads, Mr Walsh said '*no*'¹²².
- 5.63. Mr Walsh asserted to Brevet Sergeant Light that he had told Mr Robert Morley that the brakes were tight at times¹²³. Mr Walsh also asserted that he had told either Mr Gray or Mr Morley that he had left a note in the truck about this¹²⁴.

¹¹⁵ Exhibit C53b

¹¹⁶ Exhibit C51c, page 11, answer 118

¹¹⁷ Exhibit C51c, page 11, answer 119

¹¹⁸ Exhibit C51c, page 11, answer 121

¹¹⁹ Exhibit C51c, page 12, answer 139

¹²⁰ Exhibit C51c, page 12, answer 141

¹²¹ Exhibit C51c, page 13, answer 142

¹²² Exhibit C51c, page 13, answer 145

- 5.64. As to the fatal descent on the freeway Mr Walsh said that he was following Mr Gray and that he would tap the brakes on and off. Mr Walsh was vague about the details of that descent.
- 5.65. As with the second Adelaide trip during the previous week, the evidence does not reveal a ready mechanical explanation, consistent with poor adjustment, for Mr Walsh's experiences with the brakes locking up during Monday 11 October and at Tintinara the following morning.

6. Mr Walsh's working hours – the question of fatigue

- 6.1. To set the scene in respect of this topic it is necessary to say something of the legal requirements that were in force at the time with which this Inquest is concerned.
- 6.2. The Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008 (South Australia) governed this subject at the time with which this Inquest is concerned. The regime under these regulations has been replaced and modified and is now contained within the Heavy Vehicle National Law (South Australia) Act 2013. I examine this issue by reference to the law as it existed at the time. The regulations that were State based applied to Mr Walsh's vehicle and his driving behaviour within South Australia. Regulation 6 imposed a duty upon a driver not to drive a regulated heavy vehicle on a road if that person was impaired by fatigue. Regulation 7 imposed a duty upon a party in the chain of responsibility in relation to a regulated heavy vehicle to take all reasonable steps to ensure that a driver of such a vehicle did not drive a regulated heavy vehicle on a road while being impaired by fatigue. Regulation 8 imposed a duty upon an employer or prime contractor of a driver to take all reasonable steps to ensure that the business practices of the employer or prime contractor did not cause the driver to contravene regulation 6 or to contravene any of the work/rest hours exemption requirements. The same obligations were imposed on the operator of a regulated heavy vehicle. Again, the same obligations were imposed upon the schedulers in respect of regulated heavy vehicles.
- 6.3. The Regulations also contained requirements in relation to work times and rest times of the driver of a regulated heavy vehicle whether on a road or otherwise. Regulation 14(3) deemed that for the purposes of the Regulations, any time that was not work

¹²³ Exhibit C51c, page 13, answer 150 and 152

¹²⁴ Exhibit C51c, page 23, answer 291

time of a driver would be taken as rest time. Regulation 14(1) in essence defined the work time of a driver as being any time spent driving a regulated heavy vehicle whether on a road or otherwise and any time spent doing tasks related to the operation of a regulated heavy vehicle. Tasks related to the operation of a regulated heavy vehicle are stipulated to have included the loading or unloading of the vehicle, inspecting, servicing or repairing the vehicle, inspecting or attending to the load of the vehicle, cleaning the vehicle, refuelling the vehicle, performing marketing tasks in relation to the operation of the vehicle, assisting with or supervising any of those tasks and recording information, or completing a document, in accordance with a requirement of the Road Traffic Act or any other Act in relation to the vehicle.

- 6.4. There were certain regulations in relation to the calculation of time periods for the purposes of assessing work time and rest time of a driver. Firstly, for the purposes of the Regulations, any time spent by a driver in another jurisdiction of the participating zone is to be treated in the same way as if the time had been spent in South Australia. This meant that Mr Walsh's activities while in Victoria during the course of the Monday were to be taken into consideration.
- 6.5. Schedule 1 of the Regulations related to the work time / minimum rest time for solo drivers. It stipulated that the maximum work time in a 24 hour period should be no more than 12 hours. The minimum rest time was stipulated to be 7 continuous hours of stationary rest time in a 24 hour period.
- 6.6. The Regulations also imposed duties upon drivers to maintain written work diaries that were to consist of sequentially numbered daily sheets for the making of daily records. Regulation 40 stipulated that a driver was obliged, for each day that the driver was engaged in 100-plus kilometre work, to record in the work diary information that included the amount of work time and rest time spent anywhere by a driver, the time and place of a work/rest change and the odometer reading of the regulated heavy vehicle at the time of that change.
- 6.7. The Regulation also required the work diary to be kept in the driver's regulated heavy vehicle. The identification within the diary of the base or record location of the driver, which in Mr Walsh's case was the premises of IFT at Alfredton, Ballarat, Victoria, was also a requirement. The reference to 100-plus kilometre work was a reference to driving work that would take the driver to a location more than 100

kilometres from his or her base. The above requirements were triggered both in respect of Mr Walsh and Mr Gray because the journey to Adelaide for both of them would exceed a distance of 100 kilometres from their base.

- 6.8. Mr Walsh ceased his first working week's activities on Friday evening 8 October 2010 which was the Friday before the fatal collision. He parked the loaded prime mover and trailer at Mr Gray's premises at Smythes Creek. Mr Walsh told the Court that he took sufficient rest over the ensuing weekend. There is no reason to doubt that assertion. Mr Walsh collected the loaded prime mover and trailer from Mr Gray's premises on the Monday morning. Notwithstanding Mr Gray's assertion in his evidence that on the Saturday he had driven the rig into the Alfredton depot, among other things to look at the brakes, according to Mr Walsh the prime mover and trailer had not moved from the exact position in which he had parked them on the Friday evening. Mr Walsh told the Court that he arrived for work on the Monday morning at about 6am. During the course of that morning and early afternoon he made a number of journeys that took him to Geelong and to places near Melbourne. He asserted that when he commenced work that morning he did not know that, as well, he would be required to travel to Adelaide that night. Regardless of whether he knew that in advance or not, that is what ultimately transpired. In the event the work diary requirements would be enlivened by the fact that Mr Walsh would be driving to a location more than 100 kilometres from his base. His work/rest hours requirements would also become an issue.
- 6.9. Mr Walsh told the Court that the first task that he performed that morning was to drive from the Ballarat area to Geelong which took him about 40 minutes. There the trailer load that had been obtained in Adelaide during the previous week was unloaded. Mr Walsh's task was to unstrap the pipes on the trailer, roll the straps up and pack them. He remained with the truck for the entire duration of the unloading. The unloading took place with the use of forklifts. Mr Walsh told the Court that he had a number of cups of coffee during the course of this attendance.
- 6.10. Mr Walsh then drove into Geelong itself where he picked up another load. In respect of that loading, Mr Walsh told the Court that he was working and getting his chains organised. He believed that it may have been an hour or two hours that he was at the Geelong location.

- 6.11. Mr Walsh then drove the Geelong load to the premises of a company by the name of OneSteel at Laverton where his trailer was unloaded. The drive to Laverton took approximately 40 minutes. The unloading process at Laverton took less than an hour. He remained with the truck while it was being unloaded there. Mr Walsh asserted that he was picking up chains and putting them back in the box and, on his interpretation, this constituted rest.
- 6.12. Mr Walsh then proceeded to another OneSteel depot at Somerton which is a suburb of Melbourne. The drive from Laverton to Somerton took approximately one hour. It was at Somerton that Mr Walsh picked up the load that he would take to Adelaide that night. The OneSteel despatch department log in sheet¹²⁵ that includes reference to activities on Monday 11 October 2010, records a 'time in' respect of Mr Walsh's rig at 11:15am with a 'time out' of 3:30pm. The document provides a description in respect of the activity involved. In this case it simply states 'LOAD'. As this was the first occasion that Mr Walsh had attended the Somerton depot, he was there required to undergo a driver induction. This may have taken an hour or so. At one point Mr Walsh said that he received a phone call from Mr Morley who informed him that the load needed to be tarped down and that tarps had to be brought from Ballarat for that purpose. During the loading of the steel Mr Walsh was with the truck. The load required changing around at one point, and in fact unloading and reloading was ultimately required. The process could have taken two hours. Once the loading was completed Mr Walsh moved the rig to the side so that other trucks could be loaded. In due course the tarps from Ballarat arrived. The tarping took a long time because Mr Walsh had not performed this activity before. He suggested it could have taken 2 to 2½ hours. He and the person who brought the tarps performed the tarping together. Mr Walsh agreed that the tarps would have been heavy and that the tarping had involved strenuous work. Mr Walsh acknowledged that there would not have been much time for rest or for a break during his time at OneSteel¹²⁶. Certainly there would not have been time for continuous rest of 7 hours; he was there only between 11:15am and 3:30pm.
- 6.13. The Somerton load consisted of coiled steel and pipe. This is described in a carrier manifest¹²⁷. The manifest refers to two separate deliveries in Adelaide, one to

¹²⁵ Exhibit C53d, page 41

¹²⁶ Transcript, page 573

¹²⁷ Exhibit C53d, page 42

Gillman which is near Port Adelaide, and the other to Port Adelaide. A handwritten entry suggests that the delivery to the Gillman location was expected to take place between 7am and 2pm on Tuesday, which was the following day. A similar handwritten entry suggests that the delivery to the Port Adelaide depot was required by 9:30am on the Tuesday. A Somerton despatch transport request¹²⁸ also stipulated a delivery time to Port Adelaide at 9:30am. Mr Walsh told the Court that these drop-off times were strict. He said:

'Yes, very strict, yes. You had to be there.'¹²⁹

6.14. After the trailer was loaded at Somerton Mr Walsh drove the loaded rig back to the Alfredton depot near Ballarat. He told the Court that he arrived back at the depot between 5pm and 6pm¹³⁰. He said that he spent about 40 minutes at the Alfredton depot before he and Mr Gray set off for Adelaide in separate semi-trailers. In that 40 minute period Mr Walsh said that he washed his truck and added some oil to it. He considered that to be a rest period. He agreed that from 6am that morning until 6pm that evening he had not slept. That said, he argued that the period from approximately 11:15am to 3:30pm at Somerton had involved 'a fair rest'¹³¹. However, he did acknowledge that in that period he had experienced the induction to that facility, that he had been with his truck predominantly and that the activity in respect of the truck had included the physical exertion in tarping the load. He acknowledged that this had involved him working¹³². Mr Walsh was asked these questions by counsel assisting, Ms Cacas:

'Q. Did you ask anyone while you were stopped at Alfredton about the fact that you had been working since six o'clock that morning and you were now going to embark on a drive to Adelaide.

A. No.

Q. Did that concern you.

A. No, I just thought that was the way it was. I didn't know. I had only just started there.'¹³³

Mr Walsh did say that he felt good at the time he set off for Adelaide.

¹²⁸ Exhibit C53d, page 43

¹²⁹ Transcript, page 577

¹³⁰ Transcript, page 586

¹³¹ Transcript, page 592

¹³² Transcript, page 592

¹³³ Transcript, page 591

- 6.15. The journey to Adelaide was unexpectedly interrupted near Great Western in Victoria. One of the IFT trucks, driven by Ian Graham, had run out of fuel. Both Mr Walsh and Mr Gray stopped and assisted. The truck required the engine to be bled of fuel and for this purpose a mechanic had to be fetched from Ararat. Mr Walsh said that they were at the side of the road for approximately an hour to an hour and a half, during which time he was watching what was taking place and speaking to the other two men. He did not undertake any physical work in respect of any of the trucks. In his work diary Mr Walsh recorded a rest break of 2 hours duration at Great Western.
- 6.16. Mr Walsh and Mr Gray next stopped at Nhill where they had a meal. He said that the break was of approximately 1 hour's duration. In his work diary Mr Walsh recorded a rest break at Nhill of that duration. The journey from Great Western to Nhill had taken approximately 2 to 2½ hours. Mr Walsh recorded a duration of 2.5 hours for that part of the journey.
- 6.17. After the meal at Nhill Mr Walsh and Mr Gray drove their respective rigs into South Australia. Their next stop occurred at Tintinara where both men spent some time sleeping in the cabs of their rigs. The stop at Tintinara is not recorded in Mr Walsh's work diary. Rather, it refers to a rest stop at Keith in South Australia, a stop which did not in fact occur.
- 6.18. A DTEI Safe-T-Cam sighting report recorded both Mr Walsh's prime mover UPG695 and Mr Gray's rig at Bordertown at 12:21am on the morning of Tuesday 12 October 2010. The town of Tintinara is west of Bordertown, that is to say closer to Adelaide on the Dukes Highway. I heard evidence from Mr Pavlos Economou who was a police officer attached to the SAPOL Heavy Vehicle Enforcement Unit that Tintinara is approximately 80 kilometres from Bordertown, meaning that a truck limited to 100 kilometres per hour travelling at that speed over that distance would have taken approximately between 50 minutes and an hour to reach Tintinara. In that event Mr Walsh and Mr Gray would have arrived in Tintinara at approximately 1:10am to 1:20am.
- 6.19. Mr Walsh told the Court that while they were at Tintinara he was able to sleep without difficulty¹³⁴. Mr Walsh also told the Court that he believed that he and Mr Gray were up again at about 6am. If this is correct, and there is no particular

¹³⁴ Transcript, page 598

reason to doubt the accuracy of that time, it means that Mr Walsh rested at Tintinara for approximately 4½ to 5 hours.

- 6.20. The only other stop prior to the fatal collision was an approximate 15 minute stop for coffee at Tailem Bend.
- 6.21. The fatal collision occurred at approximately 8:40am.
- 6.22. Mr Walsh, at best, had approximately 4½ to 5 hours sleep in the period between 6am on Monday 10 October and 8:40am on Tuesday 12 October 2010. There were in that time a number of periods that could fairly be characterised as periods of rest as contemplated within the Regulations to which I have referred, insofar as there must have been times at which Mr Walsh was not performing any of the functions listed within those Regulations as involving work. Certainly his periods of driving were periods of work, as were periods when he was attending to the loading or unloading of the trailer. What is clear, however, is that all of Mr Walsh's activities in the period I have described were undertaken in connection with his employment and, save for the duration of the stop at Tintinara, they did not provide him with any opportunity to sleep. In the 24 hour period prior to 8:40am on Tuesday 12 October 2010 it is difficult to judge whether Mr Walsh performed a total period of work, in terms of the Regulations, that was more or less than the maximum allowable 12 hours. Mr Walsh's work diary makes no reference to his work activities between Alfredton, Geelong and Melbourne during the Monday. The first entry for that day records his departure from Ballarat to Adelaide. If he and Mr Gray left Alfredton/Ballarat that evening at approximately 6pm South Australian time, 14 hours and 40 minutes transpired between that time and the time of the fatal incident. If in that time Mr Walsh spent about 2 hours near Great Western, about 1 hour at Nhill and approximately 4½ hours at Tintinara with a further 15 minute break at Tailem Bend, there must have been at least 6 or 7 hours driving time. This is on top of the amount of driving time and other work that Mr Walsh had undertaken since 6am on the Monday. While it is difficult to conclude that Mr Walsh worked in excess of 12 hours in the 24 hours leading up to the fatal incident, it can be said with certainty that Mr Walsh did not have 7 continuous hours of rest in that 24 hour period. This did not accord with the Regulations' requirements. Naturally, if Mr Walsh's work diary had reflected all of his activities in the 24 hour period prior to the accident, it would have revealed non-compliance with the fatigue regulations in so far as the diary could not

have demonstrated 7 continuous hours of rest in that period. In any event, it goes without saying that Mr Walsh's 26 or 27 hours leading up to the fatal incident had involved a tiring regime.

- 6.23. It is significant that in giving evidence before the Court, Mr Walsh acknowledged that his difficulty in selecting the appropriate gear on the freeway may have resulted from his judgment being impaired by lack of sleep¹³⁵.
- 6.24. Before dealing with Mr Walsh's work diary in more detail, and the diary of Mr Gray, I should say something of Mr Gray's evidence about various times that are material to the question of fatigue. Mr Gray himself had been at work at the Alfredton depot of IFT where he told the Court he had been working on a vehicle that he described as a 'dog'. This was a project that he had been working on, as I understood it, from time to time. Mr Gray did not seem to have any compunction about setting off on a significant journey to Adelaide in the early evening of the Monday, notwithstanding the fact that he had been at work during the day. Mr Gray did not see Mr Walsh on the Monday until Mr Walsh came back to the Alfredton depot with the loaded semi-trailer. Mr Gray told the Court that he believed that Mr Walsh returned to the Alfredton depot at about 5:30pm¹³⁶. There was some divergence between his evidence and that of Mr Walsh about what Mr Walsh did after he returned, but the difference is of no consequence. Mr Gray said that they both set out for Adelaide at about 6:30pm, Victorian time. Mr Gray confirmed Mr Walsh's evidence that they had to stop in the vicinity of Great Western to assist another IFT driver. He also confirmed the meal break at Nhill and the fact that they stopped at Tintinara to rest for a number of hours. Mr Gray believed that they had reached Tintinara by about midnight but had to acknowledge that it would have been significantly later than that having regard to the Safe-T-Cam records as to the time of the presence of the two semi-trailers at Bordertown¹³⁷. Mr Gray expressed the belief that he had slept for 6 hours. Ms Cacas, counsel assisting, suggested to Mr Gray that he and Mr Walsh had next stopped at Tailem Bend at about 6:30am. This time seems to have been utilised as a benchmark from which the time spent resting at Tintinara could be accurately calculated. It is difficult to determine the precision of this asserted time of 6:30am at Tailem Bend. That time appears to emanate from the statement that Mr Walsh gave

¹³⁵ Transcript, pages 627-628

¹³⁶ Transcript, page 755

¹³⁷ Transcript, page 764

to the insurance assessor, Mr Paul Hacce¹³⁸. Mr Gray was asked whether or not he agreed with that time of 6:30am and stated that he could not remember precisely from three years before¹³⁹.

- 6.25. Neither Mr Walsh's or Mr Gray's work diaries illuminate the issue as to the length of the continuous rest period that was experienced in the early hours of the morning of Tuesday 12 October 2010 prior to the fatal collision. Mr Walsh's diary for Monday 11 October 2010¹⁴⁰ which covers a 24 hour period from midnight the day before to midnight on 11 October 2010 asserts, in Mr Walsh's own handwriting, that he left Ballarat at 6:30am. The next entry is a reference to being in the vicinity of Great Western with an odometer reading difference from Ballarat of 182 kilometres. As seen above, the solo work time recorded is of one hour. Thereafter there is a purported rest period of 2 hours to 9:30am which one assumes was intended to reflect the time spent in the Great Western vicinity during which time assistance was provided to one of the other IFT drivers. A solo work period of 2½ hours until noon representing the journey from Great Western to Nhill with an odometer reading difference of 98 kilometres is then recorded. The recorded rest period at Nhill is one hour. The next entry relates to solo work representing a drive from Nhill to Keith in South Australia over a period of 1½ hours with an odometer reading difference of 215 kilometres. These entries are plainly incorrect because they record all of these events as having taken place during the morning and early afternoon on Monday 11 October 2010. In reality, the journey began at Ballarat in the evening and the stops at Great Western and Nhill occurred that same evening. As well, it was common ground between Mr Walsh and Mr Gray that no stop occurred at Keith at all. Rather, the stop occurred at Tintinara in South Australia and that this occurred in the early hours of the morning of Tuesday 12 October 2010. The reference to Keith is the last entry on the page of Mr Walsh's diary that relates to 11 October 2010. The journey towards Adelaide is not recorded, nor are the stops at Tintinara and Tailem Bend, let alone their duration. The following page of the work diary was totally blank. This page, commencing at midnight on 11 October 2010, should have made reference to the stop at Tintinara and the stop at Tailem Bend and to their durations. This is a particularly unhelpful document that should have recorded matters of great importance. The most

¹³⁸ Exhibit C53b, paragraph 22

¹³⁹ Transcript, page 764

¹⁴⁰ Exhibit C53e

important matter that should have been recorded was the stop at Tintinara and the duration of that stop.

- 6.26. Mr Gray's own work diary was equally unhelpful¹⁴¹. The last completed page was that relating to activities on 4 October 2010. It recorded nothing in respect of the journey that he made with Mr Walsh in a separate semi-trailer commencing at Alfredton/Ballarat on the evening of 11 October 2010. It too is deficient insofar as it fails to record any stops at all, let alone their duration. Mr Gray, of course, could not lay any claim to inexperience as an excuse for not completing his work diary.
- 6.27. Mr Gray told the Court that he believed that the time spent resting at Tintinara was as much as 6 hours, but acknowledged that if the Tailem Bend stop occurred at approximately 6:30am, which he did not dispute, the duration of the rest period would have been closer to 5 hours¹⁴². Naturally it was in the interests of both Mr Walsh and Mr Gray to endeavour, in their testimony, to maximise the duration of that rest period at Tintinara in order to mitigate any non compliance with the fatigue regulations.
- 6.28. In any event whichever way the matter is examined or the rest period is calculated, it was less than 7 continuous hours in the previous 24 hours prior to 8:40am SA time, certainly in the case of Mr Walsh.
- 6.29. Quite apart from Mr Walsh's relative inexperience with the South-Eastern Freeway, there is a powerful suggestion that his inability to control the speed of the semi-trailer that he was driving was contributed to by fatigue of his own making. Mr Walsh was under a personal obligation to ensure that he took sufficient rest and in particular to ensure that he had at least 7 hours continuous rest in the 24 hour period prior to the accident. It would be tempting to dismiss Mr Walsh's failure to take sufficient rest and his failure to properly complete his work diary as mere technical breaches of the fatigue rules. They are not to be so characterised. They are not mere technical breaches; nor are they immaterial, particularly having regard to what was also, as I have already indicated, a tiring if not gruelling work schedule that had commenced at approximately 6am the previous morning.
- 6.30. I have already referred to what was something of a 9:30am deadline for the delivery of part of Mr Walsh's load to OneSteel at Port Adelaide. It will be remembered that

¹⁴¹ Exhibit C53f

¹⁴² Transcript, page 765

the journey of Mr Walsh and Mr Gray was unexpectedly interrupted at the Great Western location which no doubt would have been unwelcome in terms of the ability to meet that deadline. This break in the journey was recorded by Mr Walsh as comprising 2 hours that he recorded as rest time. Although Mr Walsh was not necessarily participating in any work that was taking place in respect of the broken down truck, he was certainly not resting in the ordinary sense insofar as he was standing around while the matter was being rectified. Mr Walsh told the Court that when he woke up at Tintinara Mr Gray had already left and was calling him on the UHF radio asking where he was and urging him to hurry up. At that point Mr Walsh had difficulty unlocking the trailer brakes for reasons that were not clear. He had not completed his log book at that point. At one point in his evidence Mr Walsh said that Mr Gray was screaming at him to get going¹⁴³. The impression Mr Walsh gives is that at that point of the journey he was under some pressure to keep up with Mr Gray. He acknowledged that he was somewhat flustered by Mr Gray's demeanour that morning¹⁴⁴. For Mr Gray's part, in his evidence he explained that he and Mr Walsh had left Tintinara at the same time and that the difficulty with Mr Walsh's trailer brakes was that air had not built up sufficiently within the brake components but that this was readily rectified. There is no independent evidence to support what the difficulty, if any, was and I make no finding about that. The impression that Mr Gray's evidence leaves is that at Tintinara he did not place any undue verbal pressure on Mr Walsh to continue the journey. In order to find otherwise, I would have to be satisfied of the accuracy of Mr Walsh's evidence. I am not so satisfied. Mr Gray did acknowledge, however, that Mr Walsh's load was a particularly important one in the context of the continued viability of the business of IFT. He too regarded the 9:30am delivery time at Port Adelaide as a 'big deadline'. Mr Gray told the Court that he had hoped and expected that the load that Mr Walsh had on his truck that day would be the first of many out of Melbourne. Whereas they had business from K & S Transport out of Mount Gambier and Adelaide, they had recently secured it from K & S Transport out of Melbourne. Mr Gray regarded this as an opportunity that had fallen into his lap. The opportunity was one which would, as he told the

¹⁴³ Transcript, page 601

¹⁴⁴ Transcript, page 610

Court, have guaranteed money for IFT and which would have guaranteed wages. He said:

'... if that load had of reached its destination and been unloaded in a safe way and got there, the opportunity would have been far greater than what a lot of opportunities are given to small transport businesses.' ¹⁴⁵

He said that there was a lot riding on that load¹⁴⁶. Asked as to what may have happened if the deadline at Port Adelaide had not been met, he said:

'We had a big deadline, so it didn't matter, you've seen the deadline on the paper there and it was -' ¹⁴⁷

When asked by me as to whether if 7 continuous hours of rest had been taken during the course of the night at Tintinara they would have made the deadline, Mr Gray said:

'I can't say honestly, I don't know. It depends on traffic conditions on the way in.' ¹⁴⁸

Objectively, it would seem unlikely that if 7 hours rest had been taken the deadline would have been met. Mr Gray acknowledged that at the point in time when he and Mr Walsh left the depot at Alfredton on the Monday night, Mr Walsh had been attending to the duties associated with his employment from at least 8am that morning¹⁴⁹. To the obvious issue that was raised by the commencement of a long journey after a full day of work, Mr Gray, as with other issues, stated that none of this was his responsibility as the senior driver at IFT but that this was a matter for the works manager, Mr Morley. He said:

'... that's not my issue.' ¹⁵⁰

- 6.31. I have already made the comment that Mr Gray had an obvious interest in the business of IFT that exceeded that of a mere senior driver. That Mr Gray was being disingenuous when he repeatedly asserted that he had no responsibility in relation to Mr Walsh and in respect of any issues of fatigue associated with Mr Walsh's activities, this was exposed in cross-examination by Mr Allen of counsel for Mr Posnakidis' family when Mr Allen pointed out that it was in Mr Gray's own personal interest that Mr Walsh should not be behind the wheel of the prime mover and trailer to which Mr Gray had an obvious financial connection, notwithstanding his purported

¹⁴⁵ Transcript, page 847

¹⁴⁶ Transcript, page 847

¹⁴⁷ Transcript, page 847

¹⁴⁸ Transcript, page 848

¹⁴⁹ Transcript, page 853

¹⁵⁰ Transcript, page 869

dissociation from the management of IFT. Mr Gray was asked this question by Mr Allen:

- 'Q. That would mean that you would have even more reason to make sure that the trucks weren't put in harm's way by being driven by fatigued drivers.
- A. That would be correct but you don't think that people are going to do what happened on that day.'¹⁵¹

7. **Mr Walsh's failure to use a safety ramp**

- 7.1. As indicated in the Court's preliminary findings, Mr Walsh told the Court that he knew of the existence of the safety ramps and of their purpose, yet he did not use either safety ramp. It must have been obvious to him that at the time he passed the second safety ramp it was extremely unlikely that he would be able to regain control over the speed of the semi-trailer.
- 7.2. As indicated elsewhere, there was no evidence that the use of safety ramps was discouraged within NGT or IFT on grounds of cost, inconvenience or any other reason.
- 7.3. Mr Morley told the Court that he was aware of the existence of the safety ramps along the down section of the South-Eastern Freeway. He was aware that there were two. He understood their purpose. He never had to use a safety ramp on the South-Eastern Freeway because, as he put it, '*I always went down the hills in the correct gear where you don't have to use your brakes at all*'¹⁵². He told the Court that when Mr Walsh first commenced employment they had sat down and spoken about the Adelaide journey. Mr Morley claimed that he asked Mr Walsh whether he had been down the hill into Adelaide before and he said that he had. If Mr Walsh had said that, it was not true. Mr Morley said that he also explained to Mr Walsh about the use of gears and the Jake brake and the need not to use the brakes. He said he also explained to him the opportunity for selecting the appropriate gear that was provided by the slightly uphill section of the freeway just prior to the summit. Mr Morley said that he could not recall whether he had explained the use of safety ramps to Mr Walsh¹⁵³. Mr Morley said that there had been no discussion within NGT or IFT about the cost of using a safety ramp and said that he did not know whether any cost was involved. Mr

¹⁵¹ Transcript, page 870

¹⁵² Transcript, page 482

¹⁵³ Transcript, page 484

Morley opined that there would be little difficulty involved in a truck, travelling between 110 and 120 kilometres per hour, using the second safety ramp.

- 7.4. Mr Nicholas Gray told the Court that before Mr Walsh undertook his first journey to Adelaide, Mr Walsh had been spoken to about the safety ramps, or ‘sand traps’ as Mr Gray called them¹⁵⁴. Mr Gray asserted that he personally told Mr Walsh that if for some reason he got into difficulty with his truck, he should use the sand traps and, for that purpose, to always travel in the left hand lane. He said that he had told Mr Walsh not to worry about any possible damage to the truck that might be caused by driving the truck into a sand trap. He said that they spoke to all drivers about that issue. When asked about his state of knowledge in October 2010 as to whether there was any cost associated with using a sand trap, he said:

‘What’s a cost compared to someone’s life and someone’s livelihood? You can pay a cost off.’¹⁵⁵

He added to this that he did not know about a cost, but assumed that the trucking company would have to pay for the removal of the truck from the trap. He did not know what the quantum of such a cost would be¹⁵⁶. He had not heard any anecdotal evidence throughout the industry of a reluctance to use safety ramps due to the cost of removal.

- 7.5. As far as the fatal descent is concerned, Mr Gray told the Court that once he had seen Mr Walsh fail to put the semi-trailer into the uppermost safety ramp, he was on the UHF radio ‘*begging*’¹⁵⁷ Mr Walsh to use the bottom safety ramp, and was also urging him to get the rig into an appropriate gear. Mr Gray believed that there were other drivers on the UHF radio telling Mr Walsh to take his foot off the brakes. Mr Gray also said that just before the crash, he had tried to telephone Mr Walsh. The only response that Mr Walsh had given was on the UHF radio saying that he could not get the vehicle into gear. Mr Gray also gave evidence of hearing multiple urgings on the part of other drivers on the freeway for Mr Walsh to use the safety ramp.
- 7.6. Mr Lindsay Scott Davis was a truck driver for Linfox Australia. At a time just prior to the accident, Mr Davis was driving a Linfox B-Double west on the South-Eastern Freeway. As he negotiated the apex of the hill to begin his descent down the freeway,

¹⁵⁴ Transcript, page 804

¹⁵⁵ Transcript, page 805

¹⁵⁶ Transcript, page 806

¹⁵⁷ Transcript, page 809

he could smell brakes. This was unusual at that point on the road. However, as he approached the Heysen tunnel he saw a flatbed semi-trailer enter the tunnel with smoke billowing from the rear tri-axle. This was undoubtedly Mr Walsh's semi-trailer. By way of his truck's UHF radio, Mr Davis endeavoured to call the driver of the truck, addressing the driver by referring to the flatbed trailer entering the tunnel. He told the driver that he had smoke pouring from the rear of his rig and that he would not make it to the bottom. In his statement Mr Davis says that he could not recall whether he urged the driver to use the safety ramp or whether he had simply thought this at the time. He received no response from the driver of the rig. Mr Davis heard no other calls on the UHF radio.

- 7.7. Regardless of what information had been verbally imparted to Mr Walsh in advance, it is clear that Mr Walsh as the driver of the semi-trailer had an obligation to inform himself by whatever means of the characteristics of the road that he was tasked to negotiate. This requirement would apply to all other drivers negotiating the South-Eastern Freeway. If Mr Walsh knew about the safety ramps why he did not use the second of them is beyond the comprehension of this Court. As I say, to my mind an excuse that might be provided by the agony of the moment would be a lame one. Any person negotiating that stretch of road should know in advance, or at least have some forward planning as to, what they would do in an emergency in terms of using a safety ramp. This means that each and every driver negotiating that section of the freeway needs to know of the existence of the safety ramps, their purpose, their position and to know that if the speed of a heavy vehicle is out of control at the time the second safety ramp is passed, there is no other means of stopping a semi-trailer other than by violent and catastrophic means at the bottom of the hill. All of this in my view dictates that there ought to be a regime of significant penalties for the non-use of a safety ramp where its use would have prevented a fatality.
- 7.8. In circumstances where the speed of a truck cannot be controlled by mechanical means intrinsic to the truck, it is not an offence to fail to use a safety ramp. However, the failure to utilise a safety ramp may result in the commission of serious traffic offences once the safety ramp has been passed. Such offences could include exceeding the speed limit, driving without due care, dangerous driving or serious traffic offences involving the death of a person or the causation of personal injury. Indeed, it would almost be inevitable that where a safety ramp is not utilised in

respect of a vehicle the speed of which cannot be controlled, that a serious traffic offence will ensue. Thus it is that the failure to use a safety ramp in circumstances where its use is required is a very serious matter indeed. That in my view would not be in any way mitigated in the case of a driver who did not know of the existence of a safety ramp, did not know of its purpose or did not know of its position. Clearly, it is incumbent upon any driver utilising the down section of the South-Eastern Freeway to familiarise oneself with those matters. That is why drivers could rarely be heard to say by way of an excuse in respect of dangerous driving at the bottom of the freeway that they did not know of, or have the necessary temperament or presence of mind to utilise, the second safety ramp.

8. Conclusions

- 8.1. The Court's preliminary findings delivered on 5 February 2014 are repeated. I would add the following.
- 8.2. I find that there was no malfunction in the gearbox of the prime mover that Mr Walsh was driving. I find that the gearbox did not disengage from a properly selected gear. Rather, I find that Mr Walsh's difficulty with the gearbox was due to poor gear selection in the first instance. To my mind Mr Walsh selected too high a gear and that any sensation that he experienced involving the gear lever popping out of gear was as a result of his not being able to reselect an appropriate gear due to the speed of the vehicle.
- 8.3. I find that Mr Walsh's inability to select an appropriate gear for the descent on the South-Eastern Freeway was at least in part due to inexperience and a lack of proper familiarity with both the gearbox in question and the features of the South-Eastern Freeway. I have also found that Mr Walsh failed to take the appropriate number of hours rest within the 24 hour period prior to the accident. In addition to that, the day prior to the accident had involved Mr Walsh in a heavy work schedule which was then compounded by the requirement that he, together with Mr Gray in convoy, drive the loaded semi-trailer to Adelaide. In respect of part of that load there was an important deadline for its delivery in Port Adelaide. I think it more probable than not, and I so find, that the insufficient rest that Mr Walsh took during the course of the night prior to the accident was due to the need for the delivery deadline to be met.

The possibility that Mr Walsh's inability to select the appropriate gear for the descent on the South-Eastern Freeway was contributed to by fatigue has not been eliminated.

- 8.4. Due to Mr Walsh's asserted lack of memory in respect of the descent on the South-Eastern Freeway, the following cannot be known with certainty:
- a) Whether when Mr Walsh realised that he had selected the wrong gear and then endeavoured to select the appropriate gear he attempted to bring the semi-trailer to a halt by using the primary brakes of the semi-trailer, and if he did so with what result;
 - b) Why it was that Mr Walsh did not utilise either of the two safety ramps, particularly the second safety ramp, when he knew of the existence of and the purpose of the safety ramp and when it would have been obvious to him that he was unable, and would continue to be unable, to control the speed of the semi-trailer.
- 8.5. Mr Walsh proceeded down the descent of the freeway in neutral. I find that he endeavoured to select an appropriate gear for the vehicle but was unable to do so because of its speed. Mr Walsh endeavoured to control the speed of the vehicle by constant use of the primary footbrake connected to the brakes of the prime mover and those of the trailer.
- 8.6. At a point along the descent on the South-Eastern Freeway the brakes of the prime mover and trailer failed. I find that the only brake shoes that were found to be in a condition consistent with severe overheating through constant application down the South-Eastern Freeway were the brake shoes fitted to the prime mover at the four drive axle brake assembly sites. The prime mover drive axle brake shoes had excessively overheated along with the brake drums. I find that this was due to the weight of the combination overloading the drive axle brakes. No evidence of overheating of the kind observed in respect of the prime mover drive axle brakes was detected in the brake assemblies of the trailer. What was found in respect of the trailer brakes was that five of them had excessive push rod stroke lengths consistent with maladjustment. One brake assembly could not be properly examined due to accident damage. In respect of one brake assembly being the centre left brake, one of the brake shoes was missing the securing pin, nut and washers. I find that this had allowed the brake shoe to move and to wear unevenly and score the brake drum. As a

result, the end section of the left upper brake shoe had worn down to the metal backing of the shoe. I find that this defect had been in existence for a significant period of time and predated Mr Walsh's use of the same prime mover and trailer combination on Monday, 11 October 2010.

- 8.7. I find that the state of adjustment in respect of the trailer was such that there was imperfect effectiveness of each brake assembly, as evidenced by lack of severe overheating in any of those assemblies.
- 8.8. It cannot be determined with any degree of certainty whether a semi-trailer laden in the same manner as that driven by Mr Walsh and fitted with properly adjusted and well-maintained brakes would have traversed the decline into Adelaide without loss of brakes. However, the question as to whether the terminal speed of Mr Walsh's semi-trailer would have been significantly less and have been more controllable is an open question.

9. Recommendations

- 9.1. 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.
- 9.2. The preliminary recommendations of the Court are repeated. However, there needs to be some modification.
- 9.3. In these findings I have referred to the penalties for contraventions of Rule 108 of the Australian Road Rules as they apply in South Australia. I would simply add that in the Court's opinion contraventions of Rule 108, at least insofar as they are committed and detected in respect of the descent on the South-Eastern Freeway, should not be the subject of expiation pursuant to the Expiation of Offences Act 1996. In addition, a period of driver's licence disqualification in respect of such contraventions should be the norm, as distinct from simply involving the attraction of three demerit points.
- 9.4. In respect of recommendation 2) of the Court's preliminary recommendations, the conclusive deeming provision that the Court envisages might only appropriately arise

in cases where the driver in question has had, but has failed to utilise, an opportunity to stop an uncontrolled heavy vehicle by use of a safety ramp.

- 9.5. As to further recommendations and initiatives that might be considered in order to prevent or render less likely a repeat of the circumstances of this death, I would refer the reader to the Court's findings and recommendations in the matter of James William Venning¹⁵⁸ which have been delivered by the Court this day.

Key Words: Heavy Vehicle; Arrester Beds (Safety Ramps)

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

Seal the 12th day of January, 2015.

Deputy State Coroner

Inquest Number 33/2013 (1591/2010)

¹⁵⁸ Inquest 9/2014