



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 20th, 21st and 22nd days of July 2015, the 22nd and 23rd days of September 2015 and the 19th day of September 2016, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Edmund Smordowski.

The said Court finds that Edmund Smordowski aged 63 years, late of 79 Woodside Road, Nairne, South Australia, died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 16th day of June 2012 as a result of blunt head and chest trauma. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for Inquest

- 1.1. Mr Edmund Smordowski of Nairne, aged 63 years, was a cyclist who was struck from behind by a car driven by Mr Kevin Rice, aged 83 years. The incident which claimed Mr Smordowski's life occurred in Nairne at about 11:15am on 16 June 2012. The speed limit at that location was 60 kilometres per hour. The weather was clear and dry. Mr Smordowski was plainly visible on his bicycle. He was cycling at an appropriate position on the road. There is no evidence that alcohol or drugs played any part in this accident.
- 1.2. Mr Rice was a licenced driver whose competence as such had recently been seriously brought into question. This Inquest involved the complex issue as to when and in what circumstances a driver's licence held by an elderly or infirm person should be removed from that person thereby frequently curtailing a person's independence. It will be seen from the circumstances of the accident that led to Mr Smordowski's death that this was

a death that manifestly would have been avoided if Mr Rice had been a driver of even basic competence. The conclusion that at the time of this accident Mr Rice should not have been permitted to drive is one that unfortunately is difficult to resist.

- 1.3. Just prior to the collision Mr Rice's driving behaviour was observed by a motorist whose car was situated behind Mr Rice's vehicle and travelling in the same direction. That motorist was Ms Jordana Davis. Ms Davis observed Mr Rice's vehicle to be venturing too close to the left hand side of the road with both left side wheels encroaching over the fog line on that side of the road. It was seen occasionally to veer right towards the centre of the carriageway and then back over the fog line on the left. The behaviour of that vehicle was noted to involve continual swerving as the car straddled the fog line, giving Ms Davis the impression that the driver was really old or really drunk. Either way, Mr Rice was unable to maintain the car in the centre of the lane.
- 1.4. As all this was taking place Ms Davis could plainly see Mr Smordowski on his bicycle ahead of Mr Rice's vehicle. Mr Smordowski was travelling in the same direction as Mr Rice. After following Mr Rice's vehicle for about 200 metres Ms Davis overtook it. The cyclist was then in even plainer view. The cyclist, Mr Smordowski, was observed to be consistently riding to the left of the fog line. He maintained that position relative to the line as he progressed. Ms Davis then overtook the bicycle without incident. Ms Davis then looked into her rear view mirror. She could see that the car that she had at first observed, that is to say the car driven by Mr Rice, was still behind the cyclist and was straddling the left hand fog line. Ms Davis kept both vehicles in view. It occurred to her that the driver of the car behind the bicycle was in such a position relative to the carriageway and to the cyclist that a collision appeared imminent. She exclaimed.
- 1.5. Through her rear vision mirror Ms Davis then saw the front left of Mr Rice's car hit the back wheel of Mr Smordowski's bicycle. The cyclist flipped onto the car and hit the windscreen with the back of his head. The cyclist's legs flew up as he was flipped. The cyclist fell to the ground. Ms Davis then pulled over. Mr Rice continued to drive past her position. Mr Rice at first simply kept driving, but he ultimately pulled over in the distance.

- 1.6. Mr Smordowski received fatal injuries as a result of the collision. I find that the cause of his death was blunt head and chest trauma.
- 1.7. It is clear from Ms Davis' observations that the collision occurred when Mr Smordowski's bicycle was correctly situated to the left of the fog line and that Mr Rice's vehicle had encroached over that line. Crime scene investigations were consistent with that scenario.
- 1.8. An examination of Mr Rice's vehicle was performed after the collision. The mechanic who examined the vehicle formed the opinion that the vehicle was in good condition prior to the collision and found nothing mechanically wrong that would have contributed towards or have caused the collision. In particular, the steering, suspension and brake systems were in good condition and operating correctly. The tyres had good tread depth and were in good condition. The vehicle had a broken windscreen with the principal area of damage being the passenger side upper windscreen that was forced in and crazed. There was also left front mudguard damage. The damage was the result of the collision with Mr Smordowski and his bicycle.
- 1.9. At the time of the collision Mr Rice, who is now deceased, had a front seat passenger in his car. That person was Ms Joyce Howe who was also elderly. Apart from Ms Davis, Ms Howe is the only other eye witness to the event. It is clear that Mr Rice saw nothing of the collision despite the fact that he was driving one of the involved vehicles. He would tell investigating police that he did not see the cyclist even though he had been looking straight ahead. Ms Howe asserts in her statement that during the journey, which had commenced at Angaston, Mr Rice had said that the steering of his vehicle was '*playing up*' and that '*he was going to take the car back because it wasn't fixed*'¹. Ms Howe asserts that the steering in this vehicle had been particularly bad that day, by comparison to what it had been like a couple of weeks prior. Ms Howe says that she noticed that the car was pulling to the left and that Mr Rice was having trouble driving his car and keeping it on the road. She says that during the journey he was travelling too close to the left hand side of the road. There were times when the tyres went onto the gravel. She had to tell him on more than one occasion to move over. Mr Rice kept insisting that the mechanics had not fixed his car properly. Ms Howe states that on a number of occasions she exclaimed when Mr Rice repeatedly ventured

¹ See Exhibit C7a, page 3

off the road. Ms Howe says that she did not see the bicycle and that the first she realised that something had taken place was her noticing that the windscreen was smashed on her side of the car. That event had been accompanied by a loud bang. I would hazard that Ms Howe's own failure to see the cyclist was possibly due to her preoccupation with Mr Rice's erratic and dangerous driving behaviour.

- 1.10. The fact that there was nothing wrong with this car when mechanically examined after the event would refute any suggestion that the erratic behaviour of the vehicle could have been due to anything other than Mr Rice's conspicuously bad driving. Mr Rice's son, Mr Joshua Rice, states that the last time he had driven the vehicle before the crash was late 2011 and that the vehicle had then been roadworthy. After the accident Mr Rice senior himself told investigating police that his car was mechanically '*extra good*' and that it had no mechanical failures. He did not tell police of any tendency on the part of the vehicle to pull to one side, that it had experienced any other steering issue or that it had required further work from his mechanics. One wonders, therefore, whether his assertions to the contrary to Ms Howe had been calculated to disguise what in reality was an intrinsic inability on his part to drive a car in a straight line.
- 1.11. The evidence of Ms Davis, which I accept, demonstrates that Mr Smordowski and his bicycle were there to be seen and that Mr Smordowski's cycling behaviour did not in any way contribute to this collision. I find that at the moment of impact Mr Smordowski was situated correctly and safely to the left of the fog line. I find that the left hand side of Mr Rice's vehicle had encroached over the fog line at the time of impact. I find that the collision was due entirely as a result of the erratic driving behaviour of Mr Rice. In particular, Mr Rice failed to drive in a straight line, failed to maintain the path of his vehicle within the marked carriageway and generally failed to exercise effective control over the motor vehicle. He also failed to keep a proper lookout.
- 1.12. Mr Joshua Rice describes his father's competency to drive in uncomplimentary terms. He gave examples. He had a belief that his father had once driven up the wrong way on a major road in Victoria. He asserted that Mr Rice senior drove at a speed and in a manner that frustrated motorists behind him², a characteristic of his driving, as will be seen, that had also been noted by Department of Planning Transport and Infrastructure

² See Exhibit C10a

(DPTI) during licence testing. Mr Joshua Rice had not been supportive of his father continuing to drive because of his age and his general lack of awareness. He had urged his father to give up driving but his father had stubbornly refused.

- 1.13. Mr and Mrs Liebelt of Nairne, who knew Mr Rice, both viewed Mr Rice as a driver of very limited competence. They variously described Mr Rice as '*a nuisance driver*'³, that '*he definitely should not be driving now*'⁴ and that he had '*a tendency to drift back and forth in his driving lane*'⁵. Mrs Liebelt said that his driving made her nervous and that it was not safe⁶. The unsatisfactory facets of Mr Rice's driving behaviour, as described by Mr and Mrs Liebelt, were on display at the time of his collision with Mr Smordowski.
- 1.14. As stated earlier, at the time of the collision Mr Rice held a driver's licence. This was in spite of the fact that he had failed two practical driving assessments conducted by DPTI. Notwithstanding those failures, he had been permitted to sit for a third driving test and had somehow passed.
- 1.15. The need for Mr Rice to undergo a practical driving assessment was triggered by the fact that in August 2011 he had suffered a stroke which had left him with a weakened left arm. The licence testing was the result of a recommendation made by Mr Rice's general practitioner that he should undergo that testing. However, it is clear from the evidence that Mr Rice's general incompetence as a driver pre-existed his stroke and had been evident for some time. His son, Mr Joshua Rice, states that prior to his stroke his father would:

'... potter around, about 10km/h under the speed limit. I was hardly ever in the car with him, but friends of mine would tell me that they drove past him and there were 10+ cars stuck behind him.'

- 1.16. In his statement Mr Liebelt asserted that although he had not recently been in a vehicle driven by Mr Rice, on the odd occasion in the past when he had been a passenger in Mr Rice's vehicle he would notice that Mr Rice drove very slowly and that cars would bank up behind his vehicle everywhere he drove. Mrs Liebelt states that throughout the time she knew Mr Rice he exhibited the poor driving behaviour already mentioned. I mention this to illustrate the point that when Mr Rice was tested on the first two

³ See Exhibit C33, page 3

⁴ See Exhibit C33, page 3

⁵ See Exhibit C33, page 3

⁶ See Exhibit C34, page 2

occasions his driving behaviour could not be attributed to his having had a bad day or to an acute health issue. Rather, the driving behaviour so exhibited typified his driving behaviour in recent years, even before he had the stroke. In particular, as will be seen, his propensity to drive at unreasonable speeds resulting in a bank up of traffic behind him was a driving behaviour that was to the fore in his first two tests, more so in the first. It is to be accepted that there is no evidence that the Registrar of Motor Vehicles had prior knowledge of Mr Rice's driving propensities before he was tested in November 2011. It will be noted that driving in such a manner is a contravention of the Australian Road Rules. Rule 125 of the Australian Road Rules renders it an offence for a driver unreasonably to obstruct the path of another driver. It is clear from this provision that unreasonable obstruction can be constituted by a driver driving abnormally slowly in the circumstances, particularly where there is no good reason for the driver to drive in that manner. Any intrinsic discomfort that a person might experience from driving at a speed that is proper and objectively reasonable is not a valid excuse for driving at an abnormally slow speed when that speed unreasonably obstructs other traffic. I am not certain that this is universally understood by the general motoring public. In addition, there seems little doubt that a contravention of Rule 125 of the Australian Road Rules might, depending on the circumstances, also amount to driving a vehicle without due care or attention or without reasonable consideration for other persons using the road, contrary to section 45 of the South Australian Road Traffic Act 1961.

- 1.17. It could be inferred quite readily that Mr Rice, for whatever reason, had a chronic aversion to driving at a speed that was reasonable in the circumstances. One would therefore question the appropriateness or desirability of a person such as Mr Rice being required or encouraged to drive at a speed or in a manner which he was uncomfortable with, which he could not handle with safety or was generally ill equipped to deal with.
- 1.18. This Inquest examined how it was that a driver so lacking in competence was on the road at all.

2. Mr Rice's driver's licence

- 2.1. Mr Rice had a valid driver's licence at the time of the fatal collision. However, due to the fact that he had been diagnosed with heart disease his licence was not an unconditional licence. The conditional licence meant that Mr Rice had to be medically examined and assessed on a yearly basis.

- 2.2. On or about 5 August 2011 Mr Rice suffered a stroke that required his hospitalisation. The stroke left Mr Rice with a weakness in his left arm. On 29 August 2011 Mr Rice consulted his general practitioner, Dr Stephen Daniels, who practised in the Adelaide Hills. Dr Daniels gave oral evidence before the Court. He told the Court that when he saw Mr Rice on 29 August 2011, Mr Rice had recovered from his stroke and that most of his symptoms had resolved. Mr Rice was again seen by Dr Daniels on 12 September 2011.
- 2.3. Dr Daniels, as in previous years, was tasked with completing Mr Rice's Certificate of Fitness in respect of a Light Vehicle Driver's Licence (the fitness certificate). Dr Daniels did this at the consultation of 12 September 2011. This consultation also involved the completion of an eyesight certificate (the eyesight certificate), a matter that I will deal with separately. In the fitness certificate Dr Daniels certified that Mr Rice was medically and psychologically fit to drive a light vehicle but indicated that he considered it prudent or necessary for Mr Rice to undergo a practical driving assessment. He did not recommend that any other conditions should be placed upon Mr Rice's licence. Dr Daniels' fitness certificate stated that Mr Rice had recently suffered a right cerebrovascular accident (stroke) leaving a mild weakness in his left arm but not his leg. There was also reference to Mr Rice's already existing angina and hypertension that was '*well controlled*' with medication.
- 2.4. As a result of the submission of the fitness and eyesight certificates to the Registrar of Motor Vehicles (the Registrar), Mr Rice was required by the Registrar to undergo a practical driving assessment pursuant to section 80 of the Motor Vehicles Act 1959. This requirement was notified by way of letter to Mr Rice for an on behalf of the Registrar.
- 2.5. It was as a result of Dr Daniels' fitness certificate and the Registrar's direction to undergo a practical driving assessment that in November 2011, December 2011 and January 2012 Mr Rice underwent the three successive driving tests that I have already mentioned. Prior to the first assessment Mr Rice was still permitted to drive by virtue of his licence. However, his licence would be suspended following the first failed assessment and would continue to be suspended until he passed the third test in January 2012.

3. Mr Rice's practical driving assessments

- 3.1. Before dealing with each of the three practical driving assessments that Mr Rice underwent it is necessary to say something of the structure in which these assessments occur. Evidence about this was provided by Ms Jean Phillips who at the time of the Inquest was the Licence Regulation Manager at DPTI. Ms Phillips had a delegation from the Registrar to evaluate practical driving assessments and to make decisions concerning the licensing of an individual driver so assessed.
- 3.2. Ms Phillips explained that she was the official who in effect exercised the Registrar's discretion as to whether or not a person who had been subjected to practical driving assessments would retain their licence. She told the Court that this discretion was not exercisable by the individual accreditation audit officers who conduct the practical driving assessments. Rather, she would take into consideration the recommendation of that officer as disclosed in the officer's practical driving assessment report.
- 3.3. It will be noted that Mr Rice underwent three practical driving assessments, the first two of which he failed. The recommendations of the accreditation audit officers involved in those first two tests were that Mr Rice's licence should be suspended, that he should be restricted to driving only while accompanied by a motor driving instructor and that a further reassessment could be conducted after the completion of training or practice, although in the case of the second assessment, there was some ambiguity about that last recommendation. However, after the second assessment there was certainly scope for Mr Rice to undergo a third assessment should he wish to do so. He would avail himself of that opportunity.
- 3.4. Mr Rice's licence would remain suspended from 18 November 2011 until the successful assessment on 4 January 2012. In that time he was only permitted to drive while accompanied by a motor driving instructor. Any other driving would have been unlawful. I should add here that the accreditation audit officers who conducted the practical driving assessments were, depending upon their assessment of a driver's competence or otherwise, permitted to recommend that the issuing of a licence be refused as distinct from suspended. Needless to say, a recommendation of refusal would have carried significant weight in the eyes of someone in Ms Phillips' position. Ms Phillips told the Court that although there was no written policy as such, the practice was that there was a 'three strikes and you're out' situation, as it were. She said that

the practice was that generally there would be no more than three assessments permitted⁷. She explained that the unwritten policy is that once a person has attempted three assessments, and had been unable to demonstrate their competency, no further assessments would be offered.

- 3.5. It will therefore be understood that in the nature of things a third failed practical driving assessment, even with a recommendation for suspension of licence as opposed to outright refusal, would place the individual's driver's licence in significant jeopardy, whereas first and second failed assessments coupled with a recommendation for suspension pending reassessment, would not create the same risk of loss of licence when the tests came to be assessed by someone in Ms Phillips' position.
- 3.6. Each of the three practical driving assessments that Mr Rice underwent were conducted by three different accreditation audit officers. Although there was no formal restriction against the same officer conducting serial practical driving assessments of the one applicant, and that there was no structure in place to ensure that this did not happen, from a practical point of view serial practical driving assessments would be conducted randomly by officers, and so the likelihood of the same officer serially conducting such assessments was not high. In fact, during the course of the Inquest it was said on more than one occasion from more than one source that the same officer conducting serial tests in respect of the same applicant was to be considered undesirable having regard to the need to avoid any suggestion of prejudgment or bias. This to my mind is a notion that is difficult to support. Serial assessments should be conducted by the same officer so that a proper evaluation can be made of a driver's improved performance or otherwise. I intend to recommend accordingly.
- 3.7. Each of the three practical driving assessments that Mr Rice underwent occurred over the same route within the township of Mount Barker.
- 3.8. The first assessment occurred in the afternoon of 11 November 2011. The assessor was a Mr Bill Georgopoulos. Mr Georgopoulos provided a statement⁸ to police and gave oral evidence in the Inquest. Mr Georgopoulos compiled a practical driving assessment report which was tendered in evidence. Mr Georgopoulos failed Mr Rice. Mr Georgopoulos explained that an assessment is conducted by way of directing the

⁷ Transcript, page 373

⁸ Exhibit C24

driver to negotiate a set route. The assessment is based upon an accumulation of penalty points that must not exceed 19 points. Any commission of a traffic offence automatically attracts 20 points. This means that one traffic law contravention automatically fails the candidate. As well, points can be deducted for other driving failures not amounting to a traffic offence, for example a failure to look in the mirrors for following traffic. Points are deducted in respect of driving behaviour that results in the examiner having to intervene verbally or physically. Such physical intervention could consist of the assessor having to apply the handbrake to avoid a situation of danger.

- 3.9. Mr Rice failed Mr Georgopoulos' test because he accumulated 84 penalty points. He would have failed had he accumulated 20 such points. Mr Georgopoulos recorded two instances of what he characterised as dangerous driving. This accounted for 40 points. He also characterised another instance of bad driving as driving without due care which also attracted 20 points. The disobeying of a give way line also attracted 10 points. There were other less significant unsatisfactory driving behaviours that included instances of failing to check the road behind by use of the central mirror or other mirrors. There were also instances of driving unreasonably slowly. The matters that Mr Georgopoulos recorded as involving either dangerous driving or driving without due care included continually travelling well below the speed limit resulting in the obstruction of following traffic, disobeying the give way line to which I have already referred and giving insufficient signals when merging or diverging and at the same time obstructing following traffic.
- 3.10. Mr Georgopoulos recorded slow speeds involving 20 and 30 kilometres per hour in both 50 and 60 kilometres per hour zones. This occasionally involved the obstruction of traffic behind. The provision of insufficient signalling when merging with traffic also involved a failure to observe so as to avoid risk of a collision.
- 3.11. Mr Georgopoulos elaborated on some of these matters in his oral evidence. He told the Court that the failure to stop at the give way line had involved Mr Rice stopping well past the give way line and into the intersection itself. He also told the Court that he warned Mr Rice about his speed telling him that he should travel at the safe speed for the particular road in question, but that Mr Rice nevertheless chose to drive at speeds well below the speed limit. When Mr Rice changed lanes in Adelaide Road he did not check his side mirror. There was also one instance where Mr Rice did not follow

Mr Georgopoulos' instructions about the route where, although signalling left at a roundabout, Mr Rice went straight ahead. Interestingly Mr Georgopoulos said that in a pre-brief to all clients he always advises them that they should drive to their comfort levels and not do anything differently only because he is in the vehicle. Such was Mr Rice's consistency in driving slowly, Mr Georgopoulos deduced that this was how Mr Rice normally drove. Mr Georgopoulos stated in his evidence that he may have asked Mr Rice why he was driving so slowly, but if he did ask him that question he could not recall the answer. That is a pity because no doubt the answer would have been revealing. Mr Georgopoulos also told the Court that it was apparent that Mr Rice had no awareness of the fact that he was obstructing traffic. In fact the failure to signal when changing lanes occurred when Mr Rice was driving at an unusually slow speed. Mr Georgopoulos acknowledged that having regard to the build-up of traffic behind when this occurred, there was a possibility that one of the vehicles behind might attempt to overtake in the right-hand lane as Mr Rice executed his lane change. When asked as to how Mr Georgopoulos would have felt at that point, he said '*well, that's where self-preservation comes into it*'⁹. In fact Mr Georgopoulos cut short the assessment because there was no point in continuing as Mr Rice had manifestly failed the test. In addition, Mr Georgopoulos said that he also might have thought that '*it was getting a bit too dangerous for me as well*'¹⁰.

3.12. Nevertheless, Mr Georgopoulos, although recommending suspension of the licence, was prepared to recommend that a permit be issued to Mr Rice that would allow him to drive only while accompanied by a motor driving instructor. He acknowledged to the Court that this had the potential to result in Mr Rice being encouraged to drive at a speed or in a manner that he was not comfortable with, or that he would never be comfortable with. He said that in fact this consideration underlay the purpose behind his other recommendation that Mr Rice could be re-assessed after completion of training or practice. His thinking was that training might induce Mr Rice to drive at a reasonable and safe speed; and if he was unable to do so it might mean that he should probably not be licensed¹¹.

3.13. Although Mr Georgopoulos had the option of recommending that Mr Rice be permitted to drive while accompanied by a qualified supervising driver, that is to say a licensed

⁹ Transcript, page 147

¹⁰ Transcript, page 108

¹¹ Transcript, pages 170-171

driver who might, say, be a friend or family member, he recommended that Mr Rice be restricted to driving while accompanied by an instructor. He recommended this because Mr Rice's breaches of the road law were considered dangerous as distinct from merely having involved minor offences.

- 3.14. In the event Mr Georgopoulos' recommendations were followed. Mr Rice's licence was formally suspended and he was issued with a temporary driving permit pursuant to section 80 of the Motor Vehicles Act 1959 that restricted him to driving while accompanied by a motor driving instructor at all times. This took effect from 18 November 2011. Mr Rice was advised by letter. A letter was also sent on behalf of the Registrar to Dr Daniels advising him that Mr Rice had failed the test, that his licence had been suspended and that a further driving assessment was available to him. The letter did not invite Dr Daniels to comment or furnish any further information or recommendation about his patient's capacity to drive.
- 3.15. A further practical driving assessment was scheduled for 6 December 2011. This was duly carried out. Mr Darren Breeding was the officer on this occasion. Mr Breeding would also fail Mr Rice. In the intervening period Mr Rice booked a driving lesson with DriveEASY training centre in Mount Barker. The lesson occurred on 30 November 2011. This is the only occasion that Mr Rice had a lesson with that organisation. The statement of Mr Mark Cipriano¹², an accredited motor vehicle driving instructor and sole proprietor of DriveEASY, indicates that he provided Mr Rice with a lesson at 9am on that date. The duration of the lesson was 50 minutes. It was conducted in Mr Cipriano's own vehicle. Mr Cipriano was aware that Mr Rice was driving pursuant to the section 80 permit. Mr Cipriano has no record of what took place in the course of the lesson, although he assumed that Mr Rice had booked the lesson to gain some confidence before sitting for a further test. There is no evidence of what the lesson consisted of or of what issues regarding Mr Rice's driving behaviour were addressed.
- 3.16. At the practical driving assessment conducted by Mr Breeding on 6 December 2011 Mr Rice scored 24 points which meant that he failed the test. Twenty of those points were accounted for by a failure to give way at an intersection. This incident involved both the need for verbal and physical intervention by Mr Breeding. Points were also

¹² Exhibit C32

lost for driving unreasonably slowly, displaying lack of judgment, failing to engage the appropriate gear and riding the clutch.

- 3.17. Mr Breeding had little if any recollection of this test and was largely reconstructing from notations within his report.
- 3.18. Mr Breeding told the Court that at the intersection of Walker Street and Gawler Street in Mount Barker Mr Rice failed to give way in accordance with a give way sign. The give way sign meant that Mr Rice was obliged to give way to any traffic on the intersecting street. Mr Breeding told the Court that in approaching a give way situation he would look for the usual reactions from a motorist such as foot movement from the accelerator. Due to Mr Breeding's limited recall, I was unsure whether Mr Rice's driving behaviour here had actually embarrassed another motorist or not, but the implication in any accusation of failing to give way must involve embarrassment to another road user by a failure to give way to that user. In any event it was clear to Mr Breeding that Mr Rice had approached the intersection at a speed that was unsafe and that he had detected that Mr Rice was simply going to sail through the intersection without stopping or slowing down regardless of his obligation to give way and regardless of the presence or otherwise of traffic that he might have to give way to. He said that it was possible that the vehicle eventually stopped over the intersection and that this was the result of his own verbal and physical intervention. His verbal intervention would have consisted of saying words to the effect of, 'stop' and 'give way'. The physical intervention would have involved Mr Breeding actually applying the handbrake in order to stop the vehicle. It was this contravention that attracted the accumulation of the 20 demerit points which automatically failed Mr Rice. Mr Breeding told the Court that at this particular intersection visibility is quite limited such that even if there was no traffic, the intersection would still have to be negotiated as a hazard. He said:

'Q. So are you saying that it was likely that you actually saw a vehicle coming along Gawler Street and it was because you saw that, that you intervened.

A. Possibly not, because my view was obscured but the approach speed was quick so what had happened I've already basically intervened, depending on where the car - but if there was a vehicle coming, definitely, it would have been 'Failed to give way', 'Drive manner dangerous' anything like that in regards to that hazard.'¹³

¹³ Transcript, page 209

- 3.19. In his evidence Mr Breeding agreed with the proposition that the failure to give way was possibly due to Mr Rice either not seeing the give way sign, not recognising the road feature as an intersection that required care, or that having appreciated all of that he was prepared to take the risk by going straight across the intersection¹⁴. Whatever the explanation, Mr Breeding agreed that there would be no guarantee that that type of driving behaviour would never be repeated by Mr Rice. One can easily imagine the level of discomfort that an incident such as this would have engendered in a passenger in Mr Rice's vehicle.
- 3.20. Mr Breeding explained that the episode of driving unreasonably slowly involved Mr Rice driving at a speed below 40 kilometres per hour in a 60 kilometres per hour zone. He told the Court that his characterisation of Mr Rice's driving may have been more serious than simply driving unreasonably slowly had Mr Rice actually impeded or obstructed other road users by driving at such a slow speed for no apparent reason. He said that had there been vehicles behind, Mr Rice's slow driving would have amounted to a breach of the road law¹⁵. No doubt Mr Breeding was alluding either to driving without due care or consideration for other users of the road or obstructing traffic contrary Rule 125 of the Australian Road Rules.
- 3.21. Mr Breeding's report contained recommendations that Mr Rice's licence should remain suspended and that he should be restricted to driving only while accompanied by a motor driving instructor, in other words a preservation of the status quo. Mr Breeding explained to the Court that the reason he recommended that Mr Rice be restricted to driving while accompanied by a motor driving instructor was due to the manner in which Mr Rice had negotiated the intersection at which he had failed to give way. He believed that rather than placing, say, a family member at risk, Mr Rice should undergo the professional instruction of a motor driving instructor¹⁶. However, Mr Breeding left blank that part of the report that concerned whether a further reassessment could be conducted after the completion of training or practice. This was probably an oversight because Mr Breeding told the Court that his judgment had been that if Mr Rice sought tuition from a motor driving instructor, there was potential for him to pass. Mr Breeding acknowledged that in endorsing the report in the way that he did the Registrar might not cancel Mr Rice's licence. He stated that he was comfortable with

¹⁴ Transcript, page 229

¹⁵ Transcript, page 193

¹⁶ Transcript, page 215

the possibility that Mr Rice's licence might not be cancelled altogether and that he could be given yet another chance '*after seeking a little bit more of training*'¹⁷. Mr Breeding was asked to contemplate the situation if Mr Rice chose not to seek training or practice but nevertheless presented for another test. He said:

'If I was assessing this person again and there was no willingness to seek extra help, then depending on what occurs, if this was the same drive again, possibly refuse issue of licence. It is a little bit difficult to say what would occur on that third drive.'¹⁸

3.22. Although Mr Breeding and his colleagues had no responsibility for making the ultimate decision as to whether a driver's licence should be revoked or not, or whether a driver might be given another opportunity to undergo another test, in exercising his own discretion as to what recommendation he might make to the Registrar, and in considering whether he should recommend that a licence be refused, Mr Breeding acknowledged that he would want to take into account the number of previously failed assessments¹⁹. He said:

'Depending on their drive, how they demonstrated their drive if - if on the referral it has previous dates, if they've had numerous times and I'm thinking 'No, look, you're not driving safely, you've had this amount of opportunities to show' then I would tick 'Refuse issue'. The other thing I also look at am I putting my other fellow colleagues in danger by allowing them to go out with this person.'²⁰

However, Mr Breeding told the Court that he knew nothing about the details of Mr Rice's previous test, in particular of his having driven unduly slowly with traffic banking up behind him and of his having proceeded from left lane to right lane without looking or giving a signal. He told the Court that if he had known all of that when he conducted his own assessment, he would have taken that into consideration. He said:

'Can it influence my overall decision? Quite possibly, do I take in consideration at what you pointed out potentially could be dangerous to me? Absolutely so I need to be a lot more aware. So yes to answer your question, I would have taken that into consideration making a decision if I knew that was the outcome.'²¹

In the event the Registrar accepted Mr Breeding's recommendation and a letter similar to the letter that Mr Rice had been sent after the first failed test was sent to him.

¹⁷ Transcript, page 217

¹⁸ Transcript, page 218

¹⁹ Transcript, page 221

²⁰ Transcript, page 222

²¹ Transcript, page 228

Mr Rice's licence remained suspended on the same basis as before and the possibility of a third test was left open to him. Another letter was sent to Dr Daniels.

- 3.23. Mr Rice's third, final and successful practical driving assessment was conducted on 4 January 2012. There is no evidence that Mr Rice received any training in the period between his test in December and the date of his third test. There is no evidence that he drove at all in that period. It would have been unlawful for him to have done so unless accompanied by an instructor. I pause here to observe that there was no actual requirement that Mr Rice undergo training before the second or third tests could be made available to him. All Mr Rice needed to do was pass a third test regardless of whether it was the result of good driving, good luck, more favourable traffic conditions or as the result of an accumulated familiarity with the same route. In many senses it was almost as if the first two tests had never occurred. Mr Breeding clearly should have endorsed his report with the recommendation that reassessment be conducted after completion of training or practice. Both Mr Georgopoulos and Mr Breeding had detected driving on Mr Rice's part that on any analysis was dangerous. Both assessors had concluded, and had endorsed their reports with the stipulation, that if Mr Rice was to continue to drive before any further assessment it should only occur while accompanied by a qualified instructor, in Mr Georgopoulos' case because he felt that if Mr Rice drove with a lay driver it would put that person at risk. One asks, therefore, how it could be that a further assessment should be permitted to take place, and the result stand as a basis for licence reinstatement, when no instruction and no lawful driving in the period between assessments has occurred. It simply does not make sense. I intend making a recommendation that in cases where an assessor's report includes a recommendation that a person only be permitted to drive while accompanied by a motor driving instructor, a further practical driving assessment should only be permitted by the Registrar where (a) the driver demonstrates that he or she has received such instruction and (b) a report has been furnished by the instructor that contains (i) a description of the nature of the instruction and of the issues that have been addressed during instruction and (ii) an expression of an opinion as to competence taking into account not only the performance of the driver during instruction but the driver's known history.
- 3.24. This third test was conducted by a third accreditation audit officer, Mr Martin Taylor. Mr Taylor told the Court that he had no recollection of Mr Rice's test. He did

acknowledge that he must have known that Mr Rice had undergone two previous failed tests. Mr Taylor also acknowledged that he would have known that Mr Rice only had a section 80 permit as he ticked the relevant box on his report. He also acknowledged that he must have established through Mr Rice that he had not undergone any training since his last assessment. He circled the word 'NO' in that regard.

- 3.25. The same Mt Barker route as in the previous two tests was utilised. On this occasion Mr Rice accumulated 14 points which meant that he passed. Mr Taylor told the Court that he did not detect any Australian Road Rules offences and that Mr Rice displayed '*only minor faults*'. In his report to the Registrar Mr Taylor identified 14 items that each attracted one point. This included two instances of driving unreasonably slowly, five instances of failing to check the road behind with his mirror while diverging and turning left or right and there was another instance of failing to use the mirror to check the road behind during straight ahead driving. So there were six instances of Mr Rice's failure to check for following traffic in circumstances where Mr Taylor considered it either appropriate or necessary for Mr Rice to have done so. There were also three instances of displaying a lack of judgment.
- 3.26. In identifying two instances of driving unreasonably slowly, Mr Taylor must have formed the view that there was no sensible or rational explanation for driving slowly in each of the two instances. Mr Taylor told the Court that in Flaxley Road Mr Rice was recorded as driving at 40 kilometres per hour in a 60 kilometres per hour zone. Mr Taylor speculated that this may have been explained by the presence of another vehicle coming from the left. Mr Taylor's evidence about that was based on an assumption and I had difficulty understanding it. All I can conclude is that whatever prompted the slow driving, it was something that did not sensibly prompt it. There was another instance of driving unreasonably slowly. Mr Rice drove at 25 kilometres per hour through a school zone when it was school holidays and there were no children present. An assessment of driving unreasonably slowly in both of these sets of circumstances might be seen as harsh. So to my mind, for Mr Rice's driving to be so characterised, there must have been more to it than that. It will be observed in this regard that if a person's driving behaviour is characterised as driving unreasonably slowly, then but for the absence of a bank up of traffic behind that driver's vehicle, there would be the commission of an offence. It must follow that Mr Rice's avoidance of having committed an offence contrary to Rule 125 is to be attributed to happenstance

if not good fortune. There was also the matter of six instances of failing to check traffic at the rear. One can only conclude that Mr Rice was oblivious to the need to establish what traffic there was behind him, or was at least inconsistent as to that need.

- 3.27. In my view an analysis of Mr Rice's driving as observed by Mr Taylor fits with what was already known about Mr Rice's driving behaviour as demonstrated in his previous two failed tests. This is so in the sense that Mr Rice still exhibited a tendency to drive unreasonably slowly and still exhibited a failure to be alive to the need to check for the presence of traffic behind him. It will be recalled that on earlier occasions Mr Rice had actually blocked traffic behind him and had on one occasion changed lanes without signalling or looking in that very situation. One would have thought, therefore, that the driving behaviour observed by Mr Taylor remained symptomatic of an inability or an unwillingness on the part of Mr Rice to drive at a reasonable speed and to be alive to the embarrassment to other traffic as a result. This would of course be in keeping with Mr Rice had not having received any training or having not driven lawfully, if at all, since his previous test. In fact, if Mr Rice had honoured his driving restriction and had only driven with a motor driving instructor since his licence had been suspended in November, his driving would have been confined to a bare 50 minutes of instruction in the period between his first test in November 2011 and his third test in January 2012. This raises a very obvious and very serious question as to whether there had been a realistic opportunity for Mr Rice to have corrected his driving faults.
- 3.28. To my mind this is all illustrative of the need for these assessments, as far as possible, to be conducted by the same assessor on each occasion so that the applicant's driving behaviour, say on a third test, can be placed into proper context, namely in the context of previously exhibited poor driving behaviour. To my mind it was fortunate that Mr Rice passed this third test, fortunate because his driving behaviour did not embarrass any other road users. Had it done so, Mr Rice clearly would have failed because such driving behaviour would have involved the commission of a traffic offence. Following this third test, there was good reason to believe that Mr Rice's lack of competence was incorrigible.
- 3.29. In short, notwithstanding the fact that Mr Rice passed this third test, little confidence could have been placed in his ability to avoid accidents in the future. Although that is a harsh assessment, and would have been considered as harsh at the time, it was an assessment that would have been in the interests of motoring safety.

- 3.30. In the event, due to the fact that Mr Rice only accumulated 14 points, Mr Taylor probably had no realistic option other than to recommend that Mr Rice's licence be reinstated. He so recommended. Had the third test been conducted either by Mr Georgopoulos or Mr Breeding, or even over a different route, the result may have been different because Mr Rice's driving would have been placed in a proper context.
- 3.31. Mr Taylor's attention was drawn to the results of the first two tests that he was not involved in. In particular his attention was drawn to the fact that in the first test Mr Rice's unreasonably slow driving had been accompanied by a build-up of traffic behind him. His attention was also drawn to the fact that Mr Rice had 50 minutes of instruction between the first and second tests. Mr Taylor was asked:

Q. Are you going to rectify all that in 50 minutes, do you think.

A. Well after seeing that first assessment, one lesson wouldn't cut it with me. But that's not to say it's not impossible. The instructor may have even run them around the same route that we've got which –

Q. Which what.

A. Which makes it a bit more simplistic for - I do have a disagreeance (*sic*) with using the same route continually and this -'²²

Mr Taylor went on to say that in his view using the same route three times in a row over an eight week period was undesirable in his experience. It is hard to disagree.

- 3.32. Mr Taylor told the Court that he had been aware of the '*three strikes and you're out*' scenario. He said that that existed '*years ago*'²³. However, as seen earlier, this practice was in existence at the time with which this Inquest is concerned. Although Mr Taylor acknowledged that he had known of the previous two failed tests, he told the Court that it did not enter his mind during his own test that a third failure would probably see Mr Rice's licence cancelled. In essence, Mr Taylor's position was that in passing Mr Rice he was not unduly influenced by the probability that any other result would mean that Mr Rice would lose his licence.
- 3.33. Evidence was given by Mr Ronald Liebelt, to whom I have already referred, that he accompanied Mr Rice to Mount Barker on the day of Mr Rice's third test on 4 January 2012. At the time Mr Liebelt was aware of Mr Rice's two failed tests. Mr Liebelt told the Court that after the January 4 test, the person whom he believed had been Mr Rice's

²² Transcript, page 319

²³ Transcript, page 321

assessor pulled him aside and said words to the effect that he should tell his mate, Mr Rice, that he will not get his licence next year because it was '50/50' with the test that had just occurred, but that he had passed him regardless. The implication behind any such comment would be that Mr Rice had been passed despite his overt incompetence. Such an attitude would have been highly unprofessional. I would require powerful evidence before making such a serious finding. Mr Liebelt was unable to identify this male person other than by reference to his belief that it was Mr Rice's assessor. We know of course that Mr Taylor was that assessor. Mr Taylor was naturally asked about this in cross-examination by Ms Cacas of counsel assisting. Mr Taylor said it was simply not possible that he had used those words. He said that he did not or could not know that Mr Rice would not be successful in retaining his licence the following year. He did acknowledge that in some cases he might say words to the effect '*look, you've scraped through this year but you might want to think about giving up next year*'.

- 3.34. It is difficult to know where the truth lies in respect of this alleged conversation. It would not be surprising if Mr Taylor said something along the lines suggested by Mr Liebelt. This would be so having regard to Mr Rice's age, to Mr Taylor's knowledge of his two previous failures and the less than encouraging driving behaviour exhibited during his own test of Mr Rice that had included unreasonably slow driving and a failure to make himself aware of the situation behind his vehicle, together with a number of instances of a demonstrated lack of judgment when driving. On the other hand, Mr Taylor's more benign version of what could conceivably have been said is not impossible either. Mr Liebelt's version may have been coloured by his own views of Mr Rice's incompetence and by the surprise that he undoubtedly felt when he was told that Mr Rice had passed. However, regardless of where the truth lies about what if anything he may have said to Mr Liebelt, I do accept Mr Taylor's evidence that Mr Rice only scored 14 points and by virtue of that fact he regarded Mr Rice as having passed the test. There is no evidence that Mr Taylor overlooked or suppressed any driving behaviour that would have amounted to a road traffic offence for which Mr Rice would automatically have been failed. That said, there does seem to be an inherent undesirability in placing pressure upon third assessors such as Mr Taylor to pass applicants in the knowledge that a further third 'strike' might well see the applicant's licence removed for good.

- 3.35. In the event it is plain that Ms Phillips, to whom I have already referred, accepted Mr Taylor's recommendation that Mr Rice's licence be reinstated.

4. Mr Rice's licence is reinstated

- 4.1. Ms Phillips' decision to allow Mr Rice's licence to be reinstated, or more strictly for its suspension to be lifted, must be examined against the following scenario. Mr Rice's suitability as a driver had been brought into question by his general practitioner. That was the reason he was required to undergo a practical driving assessment. Mr Rice failed the first assessment, essentially because he was unable to demonstrate that he could comfortably drive at a reasonable speed. Moreover, his inability to drive at such a speed meant that he embarrassed other road users and in Mr Georgopoulos' opinion, created situations of danger. He demonstrated that same inability on the second occasion, albeit he did not commit any road traffic offences as a result of it. This driving trait persisted despite the fact that Mr Rice had undergone 50 minutes of instruction. For the second test he failed to give way at an intersection by dangerously sailing straight through it. It was fortunate that no other car was involved. He received no instruction subsequent to that second test. Therefore, his lawful driving amounted to 50 minutes in the two months prior to his third successful test. Even in his third test he demonstrated a propensity to drive unreasonably slowly. That he passed that test probably owes more to the fact that his driving on that occasion was not placed into the context of his previous two failed tests, the fact that he was now familiar with the route taken during the test, the fact that three different assessors had assessed him, and the fortunate fact that in the third test traffic conditions were such that he did not embarrass any other road users by virtue of his driving faults, including the persisting inability to drive at a reasonable speed.
- 4.2. Despite the fact that Mr Rice had passed that third test, there was little assurance that he would, as a licensed driver, drive in a manner and at a speed that would not embarrass other road users, or that he would necessarily give way to other traffic that he was lawfully obliged to give way to, or that he would be a safe driver in circumstances other than those that were reproduced in the tests on three occasions. In short, it would have been difficult to conclude that Mr Rice had demonstrated that he was a safe driver based merely on that third test. In fact, if anything, there was still reason to suppose that Mr Rice would not be a safe driver. Indeed, if one thought about the matter carefully it was obvious that if Mr Rice, for example, were to drive at a speed that was reasonable

in the circumstances and one that would not embarrass other road users, he would be driving at a speed that he was not comfortable with and one which could therefore give rise to a situation of danger.

- 4.3. It is against that background that Ms Phillips came to make her ultimate decision to reinstate Mr Rice's licence. Ms Phillips acknowledged that her decision was very much based on a desktop exercise. The actuality is that any such exercise would intrinsically be carried out without regard to the reality presented by Mr Rice on the road at the time of these tests. If due regard was had to all relevant circumstances as indicated in paragraph 4.1 a different decision may have been arrived at.
- 4.4. When questioned by me, Ms Phillips agreed that if a person was in effect being encouraged to drive at a speed that he or she was not comfortable with and was driving so habitually, a question mark about their competency to drive safely would exist²⁴. She also agreed that serious consideration would especially need to be given to that issue in the case of an individual who drove at such an unacceptable speed that it was considered to be driving without due care and attention²⁵. I do not believe that when Mr Rice's three driving tests are examined holistically it can be said that he demonstrated an ability to drive at an acceptable speed, being a speed that he was comfortable with and at which he could safely drive. As a measure of the correctness of Ms Phillips' acknowledgements, it was no accident that the first two assessors regarded Mr Rice's driving ability as so questionable that they recommended that he be prohibited from driving with an ordinary member of the public for reasons connected with their safety. To my mind that is a very significant restriction and one that ought to give rise to considerable pause before that driver's licence could be reinstated in full and without restriction, and indeed reinstated merely on the basis of one successful test that possessed all the hallmarks of flukiness. Asked as to what Mr Rice's success in his third test could be attributed to other than good fortune, Ms Phillips said as follows:

'A number of things, as I mentioned earlier, his conscious understanding of the errors he was making, all of us accumulate bad driver behaviour and bad habits along the way, and some of us are never corrected. Part of his process may have been coming to terms with an understanding what he was doing wrong, he may have spoken with other people, he may have done non sitting in a car training if he chose to. It's very difficult to know what it is that triggered him to be able to drive safely on another event. '²⁶

²⁴ Transcript, page 545

²⁵ Transcript, page 545

²⁶ Transcript, page 563

This might be so if at his third attempt Mr Rice's driving behaviour was unblemished, or close to unblemished. But even in this test he demonstrably lacked judgment, he continued to drive unreasonably slowly consistent with prior assessments and failed to check the road behind him on numerous occasions. As indicated earlier, there must have been a fine line between Mr Rice passing that test and failing it, simply by virtue of the fact that he fortuitously did not allow build-up of traffic to occur behind him.

- 4.5. Nevertheless, Ms Phillips insisted that the exercise was not simply a question of her looking at the score from the third test, but that it was a case of looking at the entire file and then making a determination not based purely on the score. Asked as to what else she had taken into account apart from the score, she said that the assessor had only indicated minor faults which were predominantly what one would expect a good portion of licensed drivers to exhibit, such as failure to look in mirrors. She did acknowledge that it was not possible for her to have been able to determine whether there would not be a repetition of Mr Rice's abnormally slow driving and a failure to give way at a give way sign²⁷. When it was put to Ms Phillips point blank that in spite of the pass in the third test she could not be confident that Mr Rice could safely drive a motor vehicle to an acceptable standard and to a standard that did not place other road users at risk, she said:

'I can only make my determination based on the evidence in front of me, and I had no evidence at that point in time that had me believe that he had not corrected his behaviour and adjusted his driving to demonstrate his competency. '²⁸

Ms Phillips, in respect of Mr Taylor's recommendation that Mr Rice's licence be reinstated after the third and successful test, also said:

'That's exactly what I was looking at. He has recommended the reinstatement without conditions, which lines up with the assessment that he's undertaken and there's no reason to go outside that recommendation and, as a result, the licence was reinstated. '²⁹

- 4.6. To my mind those assertion demonstrate a fundamental misunderstanding of section 80 of the Motor Vehicles Act 1959. It was pursuant to this provision that the obligation upon Mr Rice to undergo testing was triggered. In addition, it was pursuant to this provision that the Registrar, through Ms Phillips, considered the question as to whether Mr Rice's licence should be suspended, refused or whether the licence should be

²⁷ Transcript, page 565

²⁸ Transcript, page 565

²⁹ Transcript, page 378

granted. It is of particular note that section 80(2a) stipulates that where the ability or fitness of a person to drive a vehicle is in question, the Registrar's discretion to refuse or suspend a licence is only enlivened where the Registrar is satisfied, (i) after considering the results of tests or evidence required under the provision, or (ii) from information furnished to the Registrar by a health professional or from any other evidence received by the Registrar, that the person in question 'is not competent to drive a motor vehicle'. That meant in Mr Rice's case that the Registrar, through Ms Phillips, must have determined that each of Mr Rice's failed tests had demonstrated to the satisfaction of the Registrar that Mr Rice was not competent to drive a motor vehicle. It was only after this determination had been made that the Registrar could lawfully suspend Mr Rice's licence which, through Ms Phillips, he did. Based on each of the first two tests, that determination had clearly been correct and it was thus that Mr Rice's licence had been suspended.

- 4.7. Section 80(2a)(e) stipulates that the suspension of a person's licence to drive a motor vehicle by reason of incompetence may be imposed for such a period as the Registrar considers necessary in the circumstances of the case, or until the person satisfies the Registrar that he or she is competent to drive a motor vehicle. Mr Rice's suspension was not for a specified period. It must follow that the reinstatement of his licence by way of the lifting of the suspension was due to the Registrar's satisfaction, based as it could only have been on the result of the third test, that Mr Rice was competent to drive a motor vehicle. In other words, it was not a case of the Registrar, in considering the question of the lifting of the licence suspension, needing to have evidence that Mr Rice was incompetent. That determination had already been made at the time his licence had been suspended. Rather, in considering reinstatement by way of the lifting of the suspension, it was a case of the Registrar needing to be positively satisfied that Mr Rice was competent. So, rather than it being a case of Ms Phillips having no evidence that had her '*believe that he had not corrected his driving behaviour and adjusted his driving to demonstrate his competency*', it was a case of her needing to be positively satisfied that Mr Rice had in fact demonstrated his competency. In failing two tests so egregiously, and having adduced no evidence that through training he had corrected his underlying driving faults, the reality was that Mr Rice had a very high threshold of demonstrated competence to climb over. If anything had been demonstrated, it was that Mr Rice had an intrinsic inability to drive comfortably and safely at a reasonable speed. This Court respectfully suggests that no conclusion of competency could have

been reached from his passing one doubly repeated test and certainly not in all of the circumstances when considered as a whole.

The point also needs to be made that Ms Phillips' approach must mean that Mr Rice, as of the date of his second failed test, had proceeded from a state of demonstrated incompetence to drive a motor vehicle to a state of competence to drive a motor vehicle in circumstances where he had not lawfully driven a motor vehicle in the intervening period, nor in all probability received any instruction. If anything, the traits of incompetence were still evident during his third test. This apparent transmogrification of competence has all occurred in the absence of any information from Mr Rice's medical practitioner that might explain that change. No such information was sought.

5. Mr Rice's eyesight

- 5.1. I have already referred to Dr Daniels' examination of Mr Rice of 12 September 2011 and the certificate of fitness that Dr Daniels compiled. This was the document in which Dr Daniels made the recommendation that it was prudent or necessary for Mr Rice to undergo the practical driving assessment. The document also required Dr Daniels to complete the eyesight certificate. This document indicated in Mr Rice's case that he was not required to wear glasses or contact lenses whilst driving. This was an accurate statement insofar as no requirement that Mr Rice wear glasses while driving was in place. However, it is clear that Mr Rice did wear glasses for certain purposes. In the eyesight certificate Dr Daniels indicated that Mr Rice's binocular vision was 6/6 unaided by glasses. In his evidence before the Court Dr Daniels said that he had tested Mr Rice's eyesight using a chart that was not a Snellen chart. During the course of his evidence the Court was quite unable to reconstruct or understand exactly what the test was that Dr Daniels had administered and what Mr Rice had actually been able to read. However, Dr Daniels told the Court that Mr Rice was able to read the chart sufficiently to enable a 6/6 determination to be made in respect of his unaided binocular vision. This assertion was quite untestable. This result effectively would have meant that Mr Rice had unaided vision that essentially could not be improved upon.
- 5.2. Although Dr Daniel's eyesight assessment was untestable in and of itself, the assessment is not congruent with previous eyesight tests and with a test that was subsequently conducted by an optometrist on 12 November 2011, some two months after Dr Daniels' test. On this occasion the optometrist, Dr Allen who gave oral

evidence in the Inquest, determined by use of a Snellen chart that Mr Rice's unaided vision was 6/15, but that with glasses the vision in his right eye was 6/6 and in the left was 6/12. All of these figures signify a visual acuity worse than Dr Daniel's 6/6. Mr Allen gave evidence that his testing, which I would regard as inherently more reliable than that of a general practitioner, meant that Dr Daniels' results were not likely to be accurate having regard to the fact that Dr Daniels' recording of binocular vision of 6/6 was without glasses. I accept that evidence. I do not believe that Mr Rice's unaided visual acuity was 6/6 at September, at November, at any of his driving tests or at the time of the fatal accident.

- 5.3. The point is somewhat moot in this case because as Mr Allen testified, even Mr Rice's unaided visual acuity as of 12 November 2011 meant that he was still permitted under the existing criteria to drive without glasses. He was also asked to comment on Mr Rice's ability to drive and see effectively for the purpose of driving with the 6/15 unaided vision that he detected on his testing in November. He said:

'During the day - he was an experienced driver, so I'd say he would be quite capable to drive normally during the day without glasses, but at night then the glasses would've been recommended for night driving.'³⁰

The criteria were changed in March 2012 to stipulate that the requirements for an unconditional licence were not met if a person's visual acuity in the better eye or with both eyes together was worse than 6/12. Thus at the time of this fatal collision Mr Rice would not have met the criteria for unaided vision whilst driving if one were to have acted upon Mr Allen's testing on 12 November 2011. However, all the Registrar believed from September 2011 onwards was that Mr Rice's unaided vision was essentially perfect. The decision to reinstate his licence in January 2012 was thus made independently of any considerations relating to vision.

- 5.4. In Mr Rice's record of interview with police he told police that he did not wear glasses whilst driving and that he only needed them for reading. It is evident from the tests conducted by the three assessors that Mr Rice was probably not wearing glasses during those any of the tests. Why Mr Rice would not wear glasses when driving is beyond the comprehension of this Court. If he was told in the September that his unaided vision was 6/6, which in my view it was not, this might explain it. But the Court simply does

³⁰ Transcript, page 481

not know. Also difficult to understand is why having failed one driving test and then a second test, Mr Rice did not think it was in his interests to drive with his glasses.

- 5.5. All that can be said is that there was an element of uncertainty about Mr Rice's ability to see without glasses at the time of his tests and at the time of the accident and that he was not wearing glasses at either.
- 5.6. I do infer that Mr Rice was not wearing his glasses at the time of the fatal accident. His licence was not dependent upon his wearing glasses. There was no requirement as such. This was because the Registrar would have been acting upon Dr Daniels' assurances in his certificate of fitness that Mr Rice had 6/6 unaided binocular vision. The reality was that it was worse than that. As from March 2012 the new criteria would have meant that Mr Rice would have had to have been wearing his glasses at the time of the accident. It is ironic that Mr Allen's optometrist's eyesight test occurred the day after Mr Rice's first failed driving test on 11 November 2011.

6. Recommendations

- 6.1. 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. The recommendations are directed to the Registrar of Motor Vehicles and the Minister for Transport and Infrastructure.
- 6.2. I recommend that serial practical driving assessments conducted pursuant to section 80 of the Motor Vehicles Act 1959 which have involved a failure or failures, be conducted by the same assessor.
- 6.3. I recommend that serial practical driving assessments conducted pursuant to section 80 of the Motor Vehicles Act which have involved a failure or failures, be conducted over different routes.
- 6.4. I recommend that serial practical driving assessments conducted pursuant to section 80 of the Motor Vehicles Act which have involved a failure or failures, should invite particular scrutiny by the Registrar. This is especially so in cases where the driver has demonstrated a propensity to drive habitually at a speed which in all of the

circumstances is unreasonably slow and which has the potential to create situations of danger.

- 6.5. I recommend that the Registrar be reminded that in cases where a driver's licence has been suspended by reason of a demonstrated incompetence to drive, that pursuant to section 80(2a)(e) of the Motor Vehicles Act the onus is on the driver to satisfy the Registrar that he or she is competent to drive a motor vehicle.
- 6.6. I recommend that in cases where an assessor's report includes a recommendation that a person only be permitted to drive while accompanied by a motor vehicle instructor, a further practical driving assessment should only be permitted by the Registrar where (a) the driver demonstrates that he or she has received such instruction and (b) a report has been furnished by the instructor that contains (i) a description of the nature of the instruction and of the issues that have been addressed during the instruction and (ii) an expression of an opinion as to competence taking into account not only the performance of the driver during instruction, but the driver's known history.
- 6.7. I recommend that in cases where a person's licence has been suspended pursuant to section 80 of the Motor Vehicles Act 1959 following a failed practical driving assessment, a further Certificate of Fitness should be sought from the person's medical practitioner before the person's licence can be reinstated. In addition, in such cases the eyesight certificate should be completed by a specialist.

Key Words: Drivers - elderly; Drivers - test; Driving licence

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

Seal the 19th day of September, 2016.

Deputy State Coroner