

CITATION: *Inquest into the deaths of Matthew James Neck, Amanda Jayne Bell, Matthew Glen Batson* [2001] NTMC 26

TITLE OF COURT: Coroner's Court, Alice Springs

JURISDICTION: Coronial

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FINDING OF: Mr Greg Cavanagh S.M.

CATCHWORDS:

REPRESENTATION:

Counsel:

Assisting:	Elizabeth Morris
<i>For G Tomes</i>	John McBride
<i>For AAT Kings</i>	John Reeves Q.C.
<i>For Neck Family</i>	Roger Bennett

Solicitors:

<i>For G Tomes</i>	John McBride
<i>For AAT Kings</i>	Halfpennys
<i>For Neck Family</i>	Martin & Partners

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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20000168 – A0001/2000
20000166 – A81/99
20000172 – A0002/2000

In the matter of an Inquest into the deaths of

MATTHEW JAMES NECK
AMANDA JAYNE BELL
MATTHEW GLEN BATSON

FINDINGS

(Delivered 9 March 2001)

Mr G CAVANAGH:

THE NATURE AND SCOPE OF THE INQUEST

1. The deaths of the above-named three persons occurred as the result of injuries received in a motor vehicle accident on 31 December 1999. The deaths are “reportable deaths” within the definition of that term in s.12 of the *Coroner’s Act* (“the Act”) in that they appeared

“to have been unexpected, unnatural, or violent or to have resulted directly or indirectly, from an accident or injury”.

2. This Inquest is held as a matter of discretion pursuant to s.15(2) of the Act, and s.14(4) allows more than one death to be the subject of any particular Inquest. Sections 34 and 35 of the Act set out the limits of my jurisdiction as follows:

“34. CORONER’S FINDINGS AND COMMENTS

- (1) A coroner investigating –
 - (a) a death shall, if possible, find –
 - (i) the identity of the deceased person;
 - (ii) the time and place of death’
 - (iii) the cause of death;

(iv) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*;

(v) any relevant circumstances concerning the death;

or

(b) -----

(2) A coroner may comment on a matter, including public health or safety of the administration of justice, connected with the death or disaster being investigated.

(3) A coroner shall not, in an investigation, include in a finding or comment, a statement that a person is or may be guilty of an offence.

(4) A coroner shall ensure that the particulars referred to in subsection (1)(a)(iv) are provided to the Registrar, within the meaning of the *Births, Deaths and Marriages Registration Act*.

35. CORONER'S REPORT

(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health and safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act* if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner”.

3. This public Inquest commenced on the 4th of December 2000 at Alice Springs and the taking of evidence was completed by the 6th of December 2000. In daily attendance at the Inquest were family members and friends of the deceased persons as well as other interested persons. Counsel assisting me was the Deputy Coroner, Ms Elizabeth Morris. The family of Matthew Neck was represented by Mr Roger Bennett. Mr John Reeves, QC sought and was granted leave to appear on behalf of the AAT Kings Tours Proprietary Limited. Mr John McBride sought and was granted leave to appear on behalf of Ms Gillian Tomes.

FORMAL FINDINGS

First-mentioned deceased:

- (a) The identity of the deceased was Matthew James Neck, a male Caucasian Australian born on 4 September 1981 at Alice Springs in the Northern Territory.
- (b) The time and place of death was at Yulara Medical Centre, Yulara in the Northern Territory at approximately 12.30am on 1 January 2000.
- (c) The cause of death was multiple injuries consistent with the effects of forceful compression of the chest consequent upon ejection during the course of a motor vehicle rollover.
- (d) The particulars required to register death are:
 - i. The deceased was a male.
 - ii. The deceased was of Caucasian Australian origin.
 - iii. The death was reported to the Coroner.
 - iv. The cause of death was confirmed by post-mortem examination.
 - v. The pathologist viewed the body after death.
 - vi. The pathologist was Dr Michael Anthony Zillman of Royal Darwin Hospital.
 - vii. The father of the deceased was Gregory John Neck and the mother of the deceased was Valerie Rae Neck.
 - viii. The usual address of the deceased was 81 Lackman Terrace, Alice Springs, Northern Territory.
 - ix. The deceased was employed as a salesman.

Second-mentioned deceased:

- (a) The identity of the deceased was Amanda Jayne Bell, a female Caucasian Australian born on 25 December 1979 at Mt Gambier, in the state of South Australia.
- (b) The time and place of death was on the Lasseter Highway approaching the township of Yulara in the Northern Territory at approximately 7.35pm on 31 December 1999.
- (c) The cause of death was multiple injuries consistent with at least partial ejection during the course of a motor vehicle rollover.
- (d) The particulars required to register death are:
 - i. The deceased was a female.
 - ii. The deceased was of Caucasian Australian origin.
 - iii. The death was reported to the Coroner.
 - iv. The cause of death was confirmed by post-mortem examination.
 - v. The pathologist viewed the body after death.
 - vi. The pathologist was Dr Michael Anthony Zillman of Royal Darwin Hospital.
 - vii. The father of the deceased was Geoffrey Howard Bell and the mother of the deceased was Anna Maria Bell.
 - viii. The usual address of the deceased was 8 Patterson Crescent, Alice Springs, Northern Territory.
 - ix. The deceased was employed as a shop assistant.

Third-mentioned deceased:

- (a) The identity of the deceased was Matthew Glen Batson, a male Caucasian Australian born on 13 July 1982 Alice Springs in the Northern Territory.

- (b) The time and place of death was Yulara Medical Centre, Yulara in the Northern Territory at approximately 12.25am on 1 January 2000.
- (c) The cause of death was multiple injuries consistent with the effects of the application of severe blunt force to the left side of the body consequent upon ejection during the course of a motor vehicle rollover.
- (d) Particulars required to register death are:
 - i. The deceased was a male.
 - ii. The deceased was of Caucasian Australian origin.
 - iii. The death was reported to the Coroner.
 - iv. The cause of death was confirmed by post-mortem examination.
 - v. The pathologist viewed the body after death.
 - vi. The pathologist was Dr Michael Anthony Zillman of Royal Darwin Hospital.
 - vii. The father of the deceased was David Ian Batson and the mother of the deceased was Bernadette Batson.
 - viii. The usual address of the deceased was 5 Moore Court, Alice Springs, Northern Territory.
 - ix. The deceased was employed as an apprentice carpenter.

RELEVANT CIRCUMSTANCES (INCLUDING COMMENTS AND RECOMMENDATIONS)

Summary:

- 4. The evidence adduced at the Inquest revealed that at about 7.35pm on Friday 31 December 1999 Ms Gillian Fiona Tomes was the driver of a Mercedes Benz bus (“the Bus”). The bus had a seating capacity of 48 persons and was owned by AAT Kings Tours Pty Ltd. The bus was registered at the time with number plate MO-1103. Except for the driver, the bus was empty. The driver was an employee of AAT Kings Tours Pty Ltd and was driving the bus in connection

with her employment; she was going to pick up a number of tourists. The bus was travelling east-bound along the Lasseter Highway with the driver intending to make a right-hand turn off the highway onto an unmarked dirt fire trail.

5. At about the same time, and in the same vicinity on the same highway, Mr Matthew Neck was the driver of a Suzuki four wheel drive vehicle (“the Suzuki”), which was registered at the time with number plate NT 429-358. The owner of this vehicle was Ms Amanda Bell, who was travelling in the vehicle. Also travelling in the vehicle was Matthew Batson and Daniel Radovic.
6. At about 5.1 kilometres east of Yulara the driver of the bus commenced to turn right off the highway onto a dirt fire trail. The driver, Ms Tomes in commencing this manoeuvre had a responsibility to give way to oncoming vehicles on the highway, she did not do so. Ms Tomes (frankly) told me in evidence that she just did not see the oncoming vehicle driven by Matthew Neck. I accept her evidence in this regard. In my view, her manoeuvre in commencing to turn right across the highway caused the oncoming Suzuki driven by Matthew Neck to veer to the left to avoid a collision. In doing so, the Suzuki went onto the gravel shoulder of the highway, the driver lost control and the vehicle rolled. No actual collision occurred between the bus and the Suzuki.
7. During the rolling of the Suzuki, Matthew Neck and Matthew Batson were ejected from the vehicle and Amanda Bell was partially ejected. The evidence revealed that none of these three persons were wearing a seat belt at the time of the accident. These three persons died as a result of injuries received in the accident. The only person wearing a seat belt was Daniel Radovic, who was not ejected and survived with minimal injuries viz. some cuts and bruises. The Suzuki did have seat belts available for all to use.
8. Much factual detail (which is not in doubt) as to the relevant road conditions, vehicle types, scene of accident and emergency response is contained in the extensive report of the Coronial investigator, Senior Constable Potts (and has been made available to interested parties). His investigation was thorough and I commend him for it. I shall not repeat these details in my findings. I note that the Senior Constable’s report contains opinions and suggested recommendations

which are of interest. Of course, conclusions from facts and recommendations are very much a matter only for myself.

The Accident :

9. The four young people in the Suzuki were all friends. They were loved and cherished by their respective families and were well known in Alice Springs where they had grown up. They had determined to travel to Yulara to enjoy New Year's Eve festivities. They left Alice Springs in the afternoon of 31 December 1999; they had some alcoholic beverages in the Suzuki and some of the occupants enjoyed some of the same during the journey to Yulara. It is to be noted that the driver, Matthew Neck, had no trace of alcohol in his blood at the time of his death. Apparently they stopped during their journey and some of them enjoyed a small amount of cannabis; it must have been a small amount as no traces were found in the blood of the deceased bodies. In my view, alcohol and cannabis had no part to play in the accident.
10. Matthew Neck was, and remained until the accident, the driver; Amanda Bell sat next to him and Matthew Batson and Daniel Radovic were and remained in the rear seat. Matthew Neck was provisional licensed to drive in the Northern Territory and was prohibited therefore from driving over 100 kilometres per hour. In fact the driver was consistently travelling at speeds in excess of 100kph up to and at the time of the accident, and somewhere in the vicinity of at least 120kph at the time of the accident. Other than speed, there is nothing much to suggest that Mr Neck's driving was careless, untoward, stupid, inattentive or dangerous and I make no such finding. This is despite Mr Radovic giving evidence of an early incident in regard to some deviation onto gravel (when coming to a stop earlier on in the journey).
11. At an earlier stop in the journey, it is apparent that Matthew Neck and Amanda Bell ingested a small amount of methylamphetamine. Unfortunately in my view, this illegal drug is commonly used for recreation purposes by young people from all walks of life in the Northern Territory. It is a stimulant which, amongst other things, leads to greater energy, feelings of confidence, sense of euphoria, heightened alertness and excitement. The level of this drug found in the blood

of Matthew Neck was just over the therapeutic level and does not indicate anything else but a “small taste” (to use the slang term). It may or may not have effected his driving to some extent either for the better or the worse eg. a sense of bravado leading to over confidence on approaching the bus. I have noted the opinion of Mr Terry Knight in this regard. The relative youth of Neck, his own fatigue, inexperience and high speed may also have played a part in causing the accident. However, it is a matter of speculation as to what might in hindsight have led to better evasive action by the driver (if any better could have been attained).

12. In any event and in my view, the major causative factor leading to the accident was not the driving of Neck, but rather the driving of Tomes.
13. Matthew Neck was driving a Suzuki Vitara four wheel motor vehicle. It was in roadworthy condition at the time of the accident. It is relevant to note that he was not the usual driver of this vehicle, that he was driving it at high speed and expert evidence suggests that such recreational four wheel drive vehicles have a high centre of mass resulting in them being somewhat susceptible to rollovers.
14. The bus was apparently roadworthy and regularly serviced. A tachometer installed in the bus revealed that it was being driven at about 100kph coming up to the position of the fire trail with subsequent slowing down, which I infer is at about the position of the right hand turn with speed slowing to anything between 1-10kph.
15. Ms Tomes was aged 26 years at the time of the accident; she was the holder of a current Northern Territory drivers licence endorsed to allow her to drive the bus. This endorsement had been issued only some three and a half months prior to the accident. On the day of the accident she had risen at 3:15am to prepare for work at 4:30am. Her day consisted of a mixture of driving and non-driving duties including physical labour in washing and cleaning buses; because of pressure of work she did not have a lunch break until 3:30pm. It is to be noted that during the day she complained to her superior of tiredness and asked to be allowed to go home, (not once but twice). Permission was denied, apparently because of staff shortages. It was her third consecutive day of long work hours. At the time

of the accident at 7.35pm she had been on duty for at least 15 hours. I think it important and relevant to quote all of the evidence in this regard.

“All right. And Wednesday 29 December, can you recall what time you commenced your shift, your work shift, that day?---8.45.

And can you recall what time you finished?---9.30 at night.

THE CORONER: In the evening?---Mm.

MR McBRIDE: And during the day you did similar tours and similar duties to what you've described to His Worship on Boxing Day?---Yep. Airport transfers in the morning, and then the afternoon sunset tour.

And lunch break or breaks - how many breaks did you have that particular day? ---I had a 45 minute break that day from 12 o'clock till 12.45.

All right. And Thursday 30 December, do you recall what time you commenced work at that day?---It was a 4am start.

Right. And what time did you cease work that day?---6.30 pm.

Again, during that day, were your duties similar to those duties that you've previously described to His Worship?---Slightly different. It was a morning Japanese sunrise tour. And then the afternoon was doing the afternoon resort shuttle bus where you drive around and round in circles for about four hours.

And you finished at 6.30 pm. And do you recall what you did that evening?---If I've got-

(inaudible)?---A bit of both. I was trying to get it to be an early one because I had an early start the next day. I always prepare my bits and pieces for work the next day, like snacks and lunch and stuff. If I've got an early start, by the time I got home and I cooked myself dinner and had a shower and prepared all my bits and pieces, ironed a uniform, things like that, I got into bed - it was probably 8.30, quarter to nine-ish. And just after 9, a friend of mine rang, a friend that is living in Alice Springs who travelled down to the Rock that day, was only spending one night there and having a bit of a chat to him on the phone. And I said: 'Look, I can't meet up with you because I've got sunrise tour the next day. If I don't see you, have a good New Year. Catch you later' and then by the time we finished the goodbyes and all that, got off the phone, it was about 9.30-ish, just after 9.30 that I got back into bed.

On New Year's Eve (inaudible), you were working that day (inaudible)?---Mm.

And what time did you commence work that day?---It was a 4.30 start.

And what time did you get up to start work?---Quarter past three.

Can you describe to His Worship, please, in your own words, what your duties were that particular day and where they took you?---By the time I got up and got myself ready, had some breakfast, the time I'd normally ride to work, my flatmate was leaving at the same time so she ended up giving me a lift in. So I had a little bit of extra time at the depot that I had a coffee and helped some of the other people prep up their coaches, but it was lucky I went in early that day because the mini bus that I was using that morning hadn't been cleaned out the night before, so I had to clean it up that morning before the tour. And this one was a morning Annanu tour involving sunrise and a 5 o'clock pickup of passengers, take them out to sunrise at Ayers Rock. They see the sun rise, have a drink - coffee or tea - and they jump back on and we drive around to Kumju(?) Gorge, take them into there for a walk and bit of a tour and talk about the area, take them on a base tour where you drive around the base of the Rock pointing things out before making our way over to the Cultural Centre where they have a breakfast stop. It probably would have been 7.15, 7.30ish probably by the time you get there to start your breakfast.

Did you have breakfast with the tourists?---Yep.

And you had that at the Cultural Centre?---Yep.

What did that comprise?---I have cereal - I had a bowl of cereal. They have fresh fruits or tin fruits there.

That was at about 7.30 in the morning?---Yep. Some croissants, small croissants and hot danishes and coffee and toast, stuff like that.

What happened after breakfast?---I take them down where they meet up with their interpreter and Aboriginal guide. They get about 10 minutes to look around the Cultural Centre before I have to bring the bus around and they get all their bits and pieces off the bus that they may need. They then commence a walk on the Liru(?)

track where I don't go. I've always been told to wait where they commence the walk, wait there for 20 minutes just in case - if there's any problems or they have to come back or if it starts

raining or something like that, you're there ready and prepared for them.

Where is the Liru track?---It starts opposite the Cultural Centre and goes through and then comes out at the other end, at the base of the climb point at Ayres Rock.

Thank you. Now, you're still with the same tour group that you commenced with? ---That morning?

That morning, is that right?---You usually end up getting another couple of people. They're called self-drivers. Once - after they do the breakfast, other people which are the self-drivers will join up and will just do the walk part of the tour. But they're not so much in my care in that way. I then make my way - I go to the toilet first at the Cultural Centre and make my way around in the coach to the pickup point at the other end, at the base of the climb. I have to wait there until round about 10 o'clock for their arrival.

Sometimes they're early, sometimes they're late. When you see them walking up, you got to have all the air-conditioning ready and cool and you open up the coach and you go out and meet them and they usually have a little bit of thank you chat, you know, talk about the Rock because that's where they see people climbing and they talk about the Aboriginal beliefs of people climbing the Rock, say goodbye to anyone who's doing - coming from another coach company. They jump on their coach. Everybody else jumps onto the mini bus and we do a little part of the base tour where we drive from there up to the corner - the T-road intersection leading away towards the Cultural Centre and we stop along the way while they say of the their Tjukurrpa stories, their creation time stories, and then return to the Cultural Centre, drop off the guides and any self-drivers, and then I make my way with the passengers that I brought out, I make my way back to the resort and drop them off at their hotels.

And at approximately (inaudible) 31 December, what time did you drop them back to their hotels?---It was round about quarter to 11-ish. By the time I left the Cultural Centre it was about 10.30-ish.

So that's - you'd been with this group of people essentially for about five and a half hours at that time, give or take some time?---Yep.

Right. After that, Ms Tomes, did you have any breaks? Did you have a meal break, a rest break?---I had a few snacks while I was waiting for the people while they were doing their talk but I never had like a lunch break or anything like that. I had to fuel up the bus, take it back to the depot, clean it up and my day sheet said I had to help out on wash bay with the day cleaner so I had to wash

a couple of coaches including the one that I had to wash that afternoon. There was an extended tour in that day and they come in just that morning and their coach was really, really dirty and they also had mechanical problems so the driver was explaining the problems to the mechanics and I helped him clean a coach while he was busy with them because they had to pretty much get straight out and pick up their passengers again.

How long did this take you, this cleaning detail?---A couple of hours.

I'm sorry?---It takes an average of an hour to clean a coach inside and out for one person.

Yes?---And there was two of us there. I think by the time I cleaned my little Annanu bus, and I think we did two others plus this other one that I was doing by myself, the extended bus. So it probably would have been closer to 1 o'clock-ish.

And what happened then? What did you do after that?---When I was ready to finish the coach, I was ready - I thought 'Soon as I finish this coach, I'm going to go home and have a decent lunch break, go home, have a rest, something to eat and lie down, a shower'.

Was that a scheduled lunch break (inaudible) at 1 o'clock?---We don't actually have scheduled times that we have to have a lunch within a certain time. It's where you can find the time in that day that you really get to have your break. It depends on what tours you're doing and whether you're needed in the depot and things like that.

All right, so you decided you wanted a break?---I wanted to, yep.

Did you have a break?---No.

Can you tell His Worship why you didn't have a break?---When I was cleaning the last coach, the second in charge person in the Operations room, Chris Coop, came up and told me I had to do an airport transfer.

Yes?---And I said that I wanted to go home and have a break because I was tired and I'd been running since the small hours. And he said, 'no, you can't, you're the only one we don't have anybody else, you have to do it.'

All right?---It was going to be a Japanese airport in-bound transfer.

I take it by that it required you to (inaudible) Japanese tourists assistance from the airport who were flying to the Territory and bring them to their hotels. Is that what you mean by an in-bound transfer?

THE CORONER: Sorry about this. If you want a break, just let me know right? But - - -?---I'm okay.

Are you sure? Well you actually have to say verbal responses because the tape recorder's going?---Okay.

Nodding is not good enough. Okay?---Okay.

MR McBRIDE: Ms Tomes, you were asked by Mr Coop to do this in-bound transfer?---Yes.

And did you agree to do that?---When he said that it was nobody else, that I had to do it, I couldn't really disagree. He was the one in charge that day. So I finished cleaning the coach that I was cleaning. I waited for the mini that I was going to be driving for the airport transfer. Waited for that to arrive. Jumped in it and drove out to the airport. It was a 1.45 in-bound which means you leave the depot at 1.30 because you've got to be there 10 minutes prior to an airport transfer or to any tour where you've got to be there 10 minutes prior to the pick-up time.

And you got to the airport and was the - was the plane in on schedule?---That plane was.

Yes?---There was no Japanese tourists on it. And there was no Japanese speaking guide at the airport.

What did that mean?---Obviously there was a stuff-up that I'd - there was no Japanese people. That wasn't the flight that I was meant to be picking up from.

So what did you do after you discovered - you discovered there were no Japanese tourists?---One of the Japanese guides then came into the airport and I had, a chat with her to find out if she was doing an in-bound. What in-bound, what passengers, what hotels and it linked up that I was her driver and it was the same amount of people and going to the same hotel. That it was just the wrong flight number that I'd been given and the wrong time that I'd been given on my day sheet.

Right. (inaudible) some other flight came in for you a bit later on that day?---The next one due in - the one that she was meant to be picking up from, was due in at 2 - at 2.30. After the first flight came in and after I'd spoken to the Japanese guide and we worked out on our part what was going on, I rang the depot and I told

them the situation. That I'd been called in for the wrong flight and it wasn't until 2.30 which was the flight that I was meant to be picking up on.

Who did you speak to at the depot, can you recall?---I think it was Robin - Robin Henderson. She was the (inaudible) person in the Operations room.

And did you receive instructions when you went back to make that call? To remain or to come back to the depot?---To stay there because there was still nobody else that could cover the flight.

So you waited at the airport?---Mm mm.

Did you get any rest while you were waiting at the airport for that flight to arrive? ---I wouldn't call it rest. When you're there you - can't really slump all over the place or anything like that because there's always people around. You've always got to look professional. At the front desk there's a plastic chair to sit down on. Not a very comfortable one and I waited there - -

THE CORONER: Were you in a uniform were you?---Yes.

MR McBRIDE: And Ms Tomes, how long did you have to wait for this flight? Well, not so precise, when did the flight arrive?---It was due in at 2.30 and around the 2.30 time it was still no people and I went up to the arrivals TV and just as I was looking at it clicked over to 2.57 arrival. So that meant almost another half an hour before it was due in. So I went back and I told the Japanese guide and then I got back on the phone to the depot again to tell them that it had been delayed yet again.

Waiting at the airport presumably?---Yep.

And the plane eventually arrived and you received the Japanese tourists; is that right?---At 3 o'clock-ish.

3 o'clock. And you took them to the various hotels, I take it?---Four people straight to (inaudible) Hotel.

And after you did that, what did you do? Did you go back to the depot?---I used the minibus just around the corner - the outback side of the resort - that back hotel side and there's where the staff accommodation is, that I was living at the time. I drove around there and parked the minibus up in the college car park and walked home to have a break, that I really wanted earlier.

Okay. Can you recall what time you got home at?---It was around 3.30 that I finished - like -with the passengers, dropping them off and jumping back in the coach to drive off. It was about 3.30.

Now, you went home to have a rest and refreshments that you (inaudible)?---I got home. Took off my shirt because it was hot and made myself - I heated up my last night's leftover dinner which was rice and some mince with a pasta sauce. I had that and then I had a shower and I changed my shirt over because we were doing the 'Sounds of the Millennium' chartered transfers that night and when you do charter work you have to wear your blue shirt - button-up collar shirt and your black - black shoes. Like you have to look really presentable. Like you can't wear your hiking boots for that. So I got all that ready and I had a shower and then got dressed and put my shoes on and then - I had - by that time I had to make my way back to the minibus to start it up to be back at the depot by 4.30.

This charter that was on the Millennium - the Millennium - was it the Millennium Sounds of the Desert?---Sounds of the Millennium.

Sounds of the Millennium is a special event at the time of course, that night, because of the celebrations?---It's a normal - the same sort of thing happens every night. They have the Sounds of Silence tours.

Yes?---This was a special one because it was the New Year's Eve and where you paid a lot more money for it.

Okay. And were you rostered on to work that evening?---Yes.

Your day - your day hadn't in fact concluded had it?---No.

And you returned to the depot at 4.30 for the meeting scheduled at 5, I think you said?---Yes.

And can you tell His Worship please, what you did when you got back to the depot and had this meeting?---There was a few other drivers that had to be there. All the ones that were involved in doing the transfers and because it was like a special event and there was a few drivers involved, we had to get our coordination right as in who goes first, second, third, fourth etcetera. It was for a briefing about all of that and Robin - Robin Henderson who was in - working in Operations - the third person was conducting that meeting. We had to wait a little bit for one driver to finish off doing his stuff and come in. So,, we're sitting in there starting to talk about things and then another driver had to pop out for a second and we waited for him to come back and eventually everyone was in there and ready and settled and we started talking about it. Throwing a few ideas around as who's got to go where and what order is best to do it in. Two drivers, myself and Graeme Harch had to do two transfers, meaning pick up the people from the hotel, drop them out at the site, of the sand dunes. Come back

into the hotels, pick another lot of people up and drop them off again. So that was two transfers that we had to do. The others only had to do one of those and one of the others - one of those and had to go back and pick up people for the normal Sounds of Silence function that happens that evening.

Right. Ms Tomes in the process of deciding who took buses to where - to wherever, was it somebody in overall charge of it - sort of an agreement that the drivers made amongst themselves, or were - were you directed essentially then?---The instructions were given from Robin that she said had been passed on from Chris, Chris Coop who's above her. That we had to go the normal way we go in for picking people up and the fire trails that go by Lasseter Highway and into fire trail 37. And Graeme had been out earlier on that day and stuck - I think it was a (inaudible) certificate or a brochure on a dead branch of a tree so we knew where we had to go off - go through and park our coaches up there and leave the coaches there.

This was at fire trail 37?---(inaudible).

How did you feel at this time? Well how did you feel at the time in the depot when this decision was made to drive - to drive to fire trail 37?---I guess all right - like, exhausted having gone since early in the hour - early hours of the morning. Not much sleep the three nights before. That near the day, it was almost over and I like doing the charter work, you know, I think it's a nice thing to do. Didn't get to do much of it. Seeing people dressed up in fancy - you know, outfits you know, it looked like it was going to be something exciting to see them all happy.

Did you feel alert and capable to have taken them to the - taken the charters as a coach driver?---Exhausted, but yes.

Okay. You commenced those charters what, sometime after 5. Do you recall when?---It was, I think 6.15 that we actually had to be at (inaudible) Desert Hotel(?). The original time that was written on our day sheets was then changed. I **don't know** the reason for that, but we had an altered time written on. So, 6.15 we had to be at sales to pick up the coordinator. We weren't doing any coordinating with passengers, we were just doing the driving. So, once again you leave the depot, 15 minutes before so you're there 10 minutes before you pick up.

All right and where did you take the - where did you take the charter tourists to? ---We started picking up at sales in the Desert Hotel. I honestly can't remember what hotels I picked up from then.

Okay?---When that coach load was full of the people that had to be on that coach, we all then made our way out to - through the resort, past the residential club and along the back of the dirt roads there, to pick up - to drop them off at the Sounds of Silence - like in the sand dunes.

That was the first - that was the first pick-up and transfer?---Yes.

And you did the second one? ---Graeme and I had to turn around and go back to the hotels and do the second transfers. I remember picking up from Emu Walk(?) on the second transfer, because it was like - with the first transfer a lot of the people were taking their time and not really sticking to time schedules so it ended up taking a bit longer. So by the time we got around to do our second - second pick-up, the passengers there were complaining how late we were and things like that. And it's got nothing to do with me being late, I wasn't coordinating it, so I just directed questions to the coordinator of the Sounds of Silence.

Okay. So that was your second pick-up and transfer completed. Now, you and Graeme then - Graeme Harch had to go out to fire trail 37, isn't - isn't that correct? ---Yes.

Do you recall what time you - sorry, can you recall from where you commenced that journey?---Straight after we dropped them off at the Sounds of Silence sight we backtrack along the dirt road until we come out of - when the residential club. Come through the stages, the housing for the staff and around the ring road onto the Lasseter Highway to make our way up to fire trail 37 from the Alice end of the Lasseter Highway.

16. I found Ms Tomes to be a sensitive, sensible and credible witness. She did her best to provide me with a complete picture of the accident as she recalled it. She denied that the bus she was driving actually moved across the centre line of the highway into the oncoming lane prior to the accident. She did not deny some continuing movement or travel of the bus in attempting to complete a right hand turn. This manoeuvre, in my view, would have placed her on a collision course with the Suzuki. Despite her belief that she did not cross into the oncoming lane, on all of the evidence, I think that it is probable that as the bus moved into doing a right hand turn it travelled to about the centre line of the highway and was still moving immediately prior to the Suzuki passing. As to whether it had actually “nosed” into the oncoming lane is unknown. However, the bus’s position and continuing movement would have resulted (and did result) in the oncoming Suzuki, which was some metres away (7 or 8, so Tomes said) having

to take evasive action. Any reasonable driver in Neck's position would also have taken evasive action.

17. Immediately behind the bus being driven by Ms Tomes was another bus (operated by AAT Kings) driven by Mr Graham Harch. He saw the oncoming Suzuki and he saw the accident. He said in evidence that he himself had no trouble at all in seeing the approaching Suzuki prior to the accident. He is an experienced driver and a mature adult. He foresaw the accident as he appreciated that Ms Tomes, after indicating a right hand turn, continued with that manoeuvre without giving way to the oncoming Suzuki. He assumed that Tomes just did not see the Suzuki. He told me evidence, and I accept, (pp.136-137, Transcript):

“37, yes. What happened as you commenced your approach to fire trail 37?

---Coming down to fire trail 37, Gillian was in front of my coach. Approaching the turn off, we slowed down. I noticed Gillian's brake lights come on. Gillian immediately went off to the left-hand side of the road to make her turn into fire trail 37. When she did this, I noticed an approaching vehicle. It seemed to be approximately four, five coach lengths away from us. I immediately looked back at Gillian's brake lights. They were on, then they went off. And I thought to myself: 'she's not going to turn is she?'. She then proceeded to make her turn. The oncoming vehicle went off to the right hand side – my right-hand side of the road into the loose gravel. I sort of lost sight of the vehicle then because Gillian's coach was in front of me and the next I know is the vehicle next to me in the dust on the side of the road and then back on the bitumen and then I lost sight of it as it went out of my mirror behind my coach.

How could you see the oncoming vehicle if her bus in front of you?—At that particular turn off point there, Gillian went off to the left-hand side of the road. A lot of people with coaches have a tendency to turn fairly wide; they always turn – go to the left-hand – if they're making a right-hand turn, they tend to go left and then make their right-hand turn. She actually dropped half her coach of the shoulder of the road so I clear view straight down the side of the road.

How much space do you reckon there was between the right-hand side of her bus and the right-hand side of your bus?---As in her distance from – I was – my coach was directly on the centre line. Her coach was approximately about a metre, a metre and a half

between her right-hand side of her coach and the middle line of the road.

So you had sort of a metre and a half of view?---Of view straight down the road.

Right. Did you have your lights on?---Yes, we did at that stage.

And can you recall – you’ve said that she went – she started her turn – her brake lights came off, she started her turn, you thought: ‘She hasn’t seen the car - - -

THE CORONER: Is that what you thought?---I thought that at that stage, sir, yes, that she’s going to go. Obviously she hasn’t seen the car.

MS MORRIS: How far did she turn before she stopped?---When she had stopped, the front of her coach was half-way across the oncoming traffic’s lane.

THE CORONER: When she stopped? When she actually stopped after the car went past?---That’s – well, she had – she had stopped and there was a lot of dust there, so it was – I’m not sure if she actually saw it and she stopped, but when her coach was finally stopped, when I looked back from looking at the vehicle going past me to her coach, the front of her coach was half way across the oncoming traffic road side.

It was over the centre line, into the other lane?---That’s correct. Half-way between the centre line and their side line.”

18. He also said, in initial statements to police (confirmed at Inquest), pp. 143-144, Transcript:

“And did you say this: ‘As Gillian commenced her right-hand turn and I lost view of the oncoming dark coloured vehicle, but when the front of Gillian’s coach was about half-way across the highway and entering the other side of the highway, I saw her coach stop abruptly’?---That’s correct, yes”.

“In paragraph 3, did you say in the fourth sentence – I’ll go back to the third sentence, “however I do not recall whether Gillian actually stopped her coach at the turn. It appeared to me it was (inaudible) movement. As Gillian commenced her right-hand turn, I lost the oncoming dark coloured vehicle but when the front of Gillian’s coach was about half-way across the highway and entering the other side of the highway, I saw her coach stop abruptly and a

lot of dirt and dust coming from an area in front of her coach'?---
That's correct, yes."

19. He also told of a conversation that he had with Ms Tomes later that evening (a conversation that Ms Tomes could not remember):

"And did you have a conversation with her then about what happened?---We had a short conversation at that stage. I could see that she was still very upset so I wasn't going to hang around very long. I just – Gillian – after she got off the phone she asked me what had happened and I said: 'Well, what do you think happened?' and Gillian said to me that she was coming down to the intersection, said she was having trouble changing down gears, from fourth to third I believe she said, and then she said: 'I didn't see him. I just turned'.

20. Mr Ian Boughen gave evidence; he is the operations director of AAT Kings Tours Pty Ltd. He has much experience in the field of Tourism and Bus Tours. He told me that in the Northern Territory his company employs approximately 140 persons and runs a fleet of approximately 50 to 60 buses. He told me that his company endeavoured to comply with national standards in relation to drivers' hours of work. He told me of only recently receiving a voluntary code of practice in the Northern Territory in relation to fatigue management (ie. well after the deaths). Apparently this code of practice had been around for some time. It is a matter of concern that this code apparently was not made known to the industry within the Northern Territory as soon as practicable. Mr Boughen's comments in relation to lack of consultation are also notable. I quote (pp.176-177, Transcript)

"Now, going back to the question of the fatigue management issue. You're familiar with the code of practice (inaudible) in the Northern Territory?---Yes.

Did you recently become aware of that code?---Yes.

Did you make any enquiries about why it was that you hadn't been informed of the existence of the code before?---Yes we did.

And did you discover certain things about the advertising of the code?---Yes.

And what were they in brief?---Very briefly, we became aware of the code by a letter that came to us very recently and that letter

had said that it had been around for some time. We made some inquiries and through the Health and Work cover Health Work Authority sorry, wrong body there. Work Health Authority - -

Work (inaudible) cover in Victoria. Would it help if I - - -

THE CORONER: Yes?---Yes. They advised us that they had not gone out to any industry -bodies as such. They had placed two advertisements. One in a quarterly magazine and one in a trucking magazine and that they had not approached any of the industry.

Are you the biggest tourist bus operator in terms of this country(?)? ---We, we would be amongst the most recognised, yes. As well as that, Bruce Stapleton himself, along with another - another - other industry people involved in the tourism industry, were involved in a consultative process about 3 years ago, which was the first format of getting this code together. And they were advised that there'd be further consultation. There has been no further consultation.

So you didn't hear a thing until you got a letter recently?---Correct. Now, we got on the phone in the last couple of days and phoned all of the other major operators and I have the names and the - the people we spoke, who are senior management in those companies. Not one of them was aware of this code of practice.

And you found that it had been advertised in a couple of places by the Work Health Authority?---Correct.

MR REEVES: Having now become aware of the code, have you considered the been through the provisions of it?---Yes we have.

And have you, in particular considered the guiding principles that fatigue management set out in section 6 of the code?—Yes.

Have you got a copy of it there?---No, I haven't. Thank you.

THE CORONER: You're being handed one now, being that which is contained in exhibit 15.

MR REEVES: You've read through those guided principles?---I have.

And having read through them and having considered the matter in the period leading up to this hearing, are you able to say whether or not AAT Kings complies with those guiding principles in their operation at Ayers Rock?---Yes, we believe we do.

And did - and whether you did at as at the end of last year?---Yes”.

21. He told me that, in his opinion, he thought it was safe enough for Ms Tomes to be driving the bus at the place and at the time of the accident, despite the times that she had worked.
22. Two gentlemen with expertise in fatigue management were called at the Inquest, Mr Nicholas Mabbott and Professor William Dawson, the latter having more qualifications than the former. They both compiled separate written reports (and one joint report). Mabbott said at (p.211, Transcript):

“THE CORONER: Mr Mabbott, I take it that relevant to whether she was actually fatigued enough for the fatigue to affect her duties, that matters like how hard she worked in washing the buses is something that you just don’t know and therefore can’t take into account?---No. In this area we don’t have a lot of research available that actually discriminates between the time of working, such as washing a bus, and actually driving.

What I’m suggesting is, whatever your opinion about whether she was fatigued in any sense, it’s still to be qualified by unknown variables like how hard she actually worked in washing cars or what was the quality of her sleep like the previous night?---That’s correct, and we have no way of telling that from the evidence that I’ve been supplied.

Yes. And those variables affect your opinion and also Professor Dawson’s opinion, I would’ve thought?---That’s correct, yes.”

Professor Dawson did not appear to completely agree with Mabbott in relation to these variables.

23. Professor Dawson opined (p.221, Transcript):

“Now, further on on that page that I took you to just a little earlier, you then consider the circadian cycle. Very briefly, what is that?---There is in the body, where your brain is, in particular there is a clock that drives our physiology and in effect that body clock is geared to tell the body to sleep at night and to be awake and alert during the day. And what I'm trying to get at there is that if you have missed out on sleep to affect the effects on your performance - for example, in driving a vehicle it's important to know what time of day is when what is actually occurring. So for example, if you have sleep loss and are trying to operate a car for example before 7

o'clock in the morning, then you expect to see performance impaired more than if that same degree of sleep loss was being experience at 7 o'clock at night. This is known in a sort of colloquial literature as the 'sun-up effect'. That is, that people feel at their lowest typically at about 5 o'clock, 7 o'clock in the morning, and then start to increase their level of alertness even though they haven't had sleep until it peaks around 8 o'clock that evening.

So you took that into account in relation to the circumstances of this particular accident and concluded at the bottom of that page that: 'Given that Ms Tomes had the opportunity to obtain at least 10 to 12 hours of sleep over the previous two nights, it's unlikely that her work-related fatigue levels would've impaired her driving behaviour to a point at which she was unsafe'?---Yes, certainly based on the research literature to date, if she'd got that 10 to 12 hours sleep, while she may've experienced moderate levels of fatigue and she may've felt tired, it's unlikely that she would be impaired to the point that (inaudible).

And that is at the time of this accident at about 7.30 pm on 31 December? ---Specifically at the time of the accident”.

24. And further (p.223, Transcript):

“What, in your professional opinion, is the likelihood of fatigue being a contributing factor in this accident?---I think it’s very unlikely to be a cause, in my professional opinion”.

25. However, he did agree that he had compromised his original opinion as to the fatigue factor in relation to the accident by saying (in effect) that he would not rule it out beyond reasonable doubt.

26. He went on to say (p.230, Transcript):

“I think that there are - these are complex areas and I do not want to be a mind-reader, but I would make the suggestion that I have in - in the report. In that if it was the case at the time of the accident she was having trouble with the gears, then I'd argue that fatigue is not the only cause of that and that there may be other possible explanations, but if she indicated that she felt that that was the case, then I'd have to say her, as I say, at face value on that.

MR BENNETT: And it doesn't have to be the only cause but it can be a contributing cause?---I think the important point for me here is that I do - I do not doubt the fact that she reported feeling tired.

What the question for me was, was the level of fatigue likely to be (inaudible) based on the work-related schedule like to be such that she was unsafe to drive, and I think - it's an important point. You can feel tired, but does that make you unsafe? There's a subtle distinction between those two and I have no doubt that she felt tired. At no stage would I argue that she was fully rested and alert.

27. In my view, on all of the evidence, an ordinary person in the position of Ms Tomes, would have and should have seen the Suzuki and stopped and given way. Neck was entitled in the ordinary way to assume that the bus would give way to him; he was on a major sealed highway with the right of way to any oncoming vehicle wishing to turn right onto a minor road/track. He was forced to take unexpected avoidance action at the last moment resulting in the rollover.
28. I infer from all of the evidence that Ms Tomes had looked ahead and had simply not seen the Suzuki. Her attention may have been distracted by gear changes as she slowed down. In my view Ms Tomes did not see the Suzuki because she was not as alert as she should have been. This lack of alertness was caused by physical tiredness and mental fatigue to some extent. She made a simple mistake, a mistake that had catastrophic consequences. On all of the evidence, I am compelled to the view that her working conditions and environment resulted in this lack of alertness.
29. Unfortunately, in terms of the actual deaths, the evidence established that on balance, all of the young persons in the Suzuki would have survived the accident (with varying degrees of injuries) if they had have been wearing seatbelts. It is to be noted that the only person in the Suzuki wearing a seatbelt did survive, and the crush damage to the body of the Suzuki was not such as to have resulted in certain death to those remaining inside. I was helped in this regard by the evidence of Mr Chris Hall, an expert accident investigator.

RECOMMENDATIONS

30. Only in the last month there has been reported to my office two separate deaths on the Lasseter Highway resulting from roll over vehicle accidents where the deceased persons were not wearing seat belts (one a local person, the other a tourist). This fact together with the three deaths the subject of this Inquest

provide compelling reason for the Minister responsible for Road Safety in the Northern Territory to use every means at his disposal (by way of education, advertisement, other publicity and strengthening of legislation relating to the use of seatbelts) to remind people of the need to use seatbelts, and I so recommend.

31. In view of the frequent presence of vehicles driven by tourists (often not used to our Northern Territory roads and conditions), other vehicles and buses on the Lasseter Highway, I recommend that vehicular speed be no longer unrestricted on the Lasseter Highway, or at least within an appropriate radius of Yulara. I especially recommend this given the apparent fact that many vehicles enter and leave the highway via minor tracks to visit places of interest.
32. I recommend that roads, tracks, fire trails and the like which are liable to be used by commercial vehicles or the public generally, where they intersect with major highways, be fully sign posted with due warnings to all approaching traffic.
33. I recommend that the Work Health Authority in accordance with its statutory functions (Section 10 of the *Work Health Act*), and having regard to the preamble of the *Work Health Act* which states, inter alia, “An Act” to protect the health and safety of the public in relation to work activities”, have regard to all of the evidence in this case and urgently review the present voluntary industry code of conduct in relation to driver fatigue with a view to providing further safeguards to protect the public, passengers and drivers.
34. I recommend that any code of conduct in the above regard be mandatory and not voluntary with adequate deterrent penalties for non compliance and I further recommend that compliance with the code by Industry be subject to frequent and strict audit by the Work Health Authority.
35. Finally, without making any further recommendations, I intend to forward all of the evidence adduced at this Inquest to the Minister responsible for the Work Health Authority so that, if he so wishes, he may consider exercising his power to direct an investigation into the work place practices of AAT Kings Tours Pty Ltd within the Northern Territory.

Dated this 9th day of March 2001.

GREG CAVANAGH

TERRITORY CORONER