



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Robert Webster, Coroner, having investigated the death of Pamela Bernice Gee

Find, pursuant to Section 28(1) of the Coroners Act 1995, that

- a) The identity of the deceased is Pamela Bernice Gee (Mrs Gee);
- b) Mrs Gee died as a result of injuries she sustained when she was hit by a truck as she walked across Cattley Street, Burnie at its intersection with Mount Street;
- c) Mrs Gee's cause of death was multiple organ failure; and
- d) Mrs Gee died on 25 August 2021 at Burnie in Tasmania.

In making the above findings I have had regard to the evidence gained in the investigation into Mrs Gee's death. The evidence includes:

- The Police Report of Death for the Coroner;
- Tasmanian Health Service (THS) Death Report to Coroner;
- affidavits as to identity and life extinct;
- affidavit of the forensic pathologist Dr Donald Ritchey;
- affidavit of the forensic scientist Neil McLachlan-Troup of Forensic Science Service Tasmania;
- affidavit of Michael Leonard;
- affidavit of Meredith Spencer;
- affidavit of Raymond Oliver;
- affidavit of Stephen Murrell;
- affidavit of Terence Hynes;
- affidavit of Leon Good;
- affidavit of Virginia Good;
- affidavit of Rebecca Busuttil;
- affidavit of Patricia Zaviscky;
- affidavit of Constable Rory Carr;

- affidavit of Senior Constable Neil Evans;
- affidavit of Lisa Padden;
- affidavit of Senior Constable Bridget Gunn;
- affidavit of Senior Constable Haydn Barnard;
- affidavit of Constable Robert Oberrauter;
- affidavit of Senior Sergeant Mark Forteath;
- affidavit of Sergeant Katrina Chivers;
- affidavit of First-Class Constable Dean Wotherspoon;
- collision analysis report prepared by Senior Constable Haydn Barnard;
- ambulance Tasmania (AT) electronic patient care record;
- medical records obtained from the general practitioner of Mrs Gee;
- correspondence from the Department of State Growth;
- correspondence from JJ Richards and Sons Pty Ltd (JJ Richards);
- WorkSafe Tasmania Investigation file; and
- Photographs, records obtained from JJ Richards and forensic evidence.

Introduction

This investigation concerns a motor accident which occurred at approximately 11.30 am on 24 August 2021 at the intersection of Cattley Street and Mount Street in Burnie. At that time Mrs Gee was walking South across Cattley Street on a pedestrian crossing when she was hit by a 2014 Volvo truck registration number C09ZH (the truck), driven by Eric Flight who turned left from Mount Street into Cattley Street. Mr Flight was, at the time of this accident, working in the course of his employment with JJ Richards.

The truck was fitted with a front mounted refuse loader so that dumpsters can be lifted using tynes like those on a forklift truck and emptied into a refuse compactor which was mounted on the truck's chassis.

The governing speed limit was 50 km per hour. The weather at the time of the accident was mild and clear and the road was dry.

Background

Mrs Gee was the second of 6 children born to Winifred and Stacy Cumming. She was born at the Wynyard Hospital and grew up on the north-west coast of Tasmania. At the date of her death Mrs Gee was aged 79 (date of birth 10 December 1941), widowed and she resided on her own.

While growing up Mrs Gee lived in a number of towns on the north-west coast as her father worked on a number of different farms which resulted in the family living in a number of different homes. Mrs Gee attended a number of schools including Stowport Primary School, Somerset Primary School, Burnie State School and Burnie High School. During her working life Mrs Gee worked at Associated Pulp and Paper Mills and at *The Advocate* newspaper in Burnie where she held a number of secretarial roles.

Mrs Gee met Lawrence Gee in the early 1960s and they were married on 2 November 1963 in Burnie. They had 3 children together and remained married until Mr Gee died in a motor accident which occurred on 29 December 2016. Mrs Gee's daughter, Meredith Spencer, says Mrs Gee was injured in this motor accident however after 6 months of treatment she made a full recovery.

Mrs Spencer says the only ailment her mother had was bronchiectasis¹ which had improved over time. She says her mother always sought treatment when required so that it did not affect her daily life. Otherwise she was well. Her general practitioner, Dr Dow, confirms this and says Mrs Gee had no major medical problems. She did suffer from thyroid insufficiency but was on medication for that and she also suffered some moderate airway problems which had been diagnosed as chronic obstructive airways disease. In addition she was on symptomatic treatment for a chronic cough which Mrs Spencer says was the only symptom the family would notice from time to time and which was caused by bronchiectasis.

Mrs Spencer says her mother still drove, made all her own meals, babysat her grandchildren regularly, gardened, attended social groups and church and she enjoyed knitting, sewing and crafts. In addition she loved taking photographs.

Circumstances Leading to Death

Mrs Spencer says on the date of this accident, which was a Tuesday, her mother got out of bed, had breakfast, got dressed and was going into Burnie to pay her bills, pick up some grocery items and then return home to babysit her youngest grandchild which was what she normally did on a Tuesday. She drove her motor vehicle into Burnie and parked, on Wilson Street, between the Burnie Gospel Hall and the Burnie post office on a parking meter at approximately 11.03 am. She then walked to the Burnie post office and paid a bill at 11.05 am before attending the Burnie Council, also in Wilson Street, where she paid another bill at 11.09 am. Mrs Gee then withdrew some money at the Bendigo bank ATM at 11.12 am before attending the Commonwealth Bank in Wilson Street and then the Coles supermarket

¹ Bronchiectasis is a condition in which the airways in the lungs are damaged, causing them to become permanently widened. It is usually caused by long-term lung infections.

in Mount Street at approximately 11.25 am. She then spoke to a friend before leaving the supermarket and proceeding in a southerly direction on Mount Street where she has stopped at its intersection with Cattley Street in order to await a green walk signal.

Once faced with the green walk signal Mrs Gee has proceeded to cross Cattley Street when she was hit by the truck driven by Mr Flight. Bystanders rushed to Mrs Gee's aid and stopped traffic. A number of calls were made to emergency services. Mrs Gee was conscious but had suffered very severe injuries. Mrs Gee was transported to the North West Regional Hospital in a serious condition. There she was assessed and treated. It was determined she had suffered a number of head injuries, a fracture at C2, a number of rib fractures, a left scapula fracture, a bilateral haemo-pneumothorax and a left diaphragmatic rupture. In addition she had lumbar spine fractures, comminuted pelvic ring fractures and a left tibial plateau and fibula fracture with a degloving injury. She underwent an exploratory laparotomy, her degloving injury was washed and dressed and the pelvic fracture was treated. She required a number of blood transfusions and was transferred to the intensive care unit where she underwent cardiovascular support and continued ventilation. Despite that support there was multiorgan failure after which treating doctors agreed Mrs Gee had a poor prognosis due to the severity of her injuries. There was then a family meeting between members of Mrs Gee's family and medical staff at which it was determined that due to her age, multiorgan failure and the severity of her injuries she would be provided with palliative care. She passed away at approximately 6.52 pm on 25 August 2021.

Investigation

On the advice of his legal representative Mr Flight declined to be interviewed by police or make a written statement about the accident. When the police investigation was complete the file was referred to the Director of Public Prosecutions who recommended Mr Flight be charged with causing death by negligent driving contrary to section 32 (2A) the *Traffic Act 1925* and drive without due care and attention contrary to regulation 367(1) of the *Road Rules 2019*.

Mr Flight was subsequently charged with those offences and pleaded not guilty. The complaint proceeded to hearing and on 24 April 2023 Magistrate Topfer found those charges proved. Her Honour found Mr Flight's negligence stemmed from a failure to keep a proper lookout and a failure to take account of the blind spot in the truck of which he was or should have been aware. She accepted Mr Flight did not see Mrs Gee but she found he had a responsibility to ensure there were no pedestrians at the crossing and a responsibility to ensure it was safe to turn the corner and that he had failed to comply with those obligations. On 16 May 2023 Mr Flight was sentenced. The charge under the Road Rules was

subsumed and dismissed because its elements were similar to those on which the more serious charge of causing death by negligent driving was based. On that charge Mr Flight was convicted and sentenced to a period of imprisonment for 3 months which was wholly suspended for 12 months on condition he not commit another offence punishable by imprisonment during that 12 month period. He was also disqualified from driving for a period of 6 months.

AT received the call to attend the accident scene at 11.32 am. Paramedics were at the scene 7 minutes later. After assessing and treating Mrs Gee at the scene she was transported to the North West Regional Hospital arriving at 12.17 pm.

Senior Constable Barnard was the on duty crash investigator and he was advised of this accident at 11.55 am. He arrived at 12.20 pm. On his arrival he says the weather was fine and clear and the road was dry and the temperature was approximately 12°C. Cattley Street between Mount and Wilson Streets had been closed to all traffic. By the time of his arrival Mrs Gee had been transported from the scene. He arranged for Mr Flight to be taken from the scene so that blood samples could be taken for alcohol and illicit drug testing. Those tests revealed that neither alcohol or illicit drugs were present in Mr Flight's blood.

Senior Constable Barnard observed the truck parked on the bus stop outside the Reject Shop in Cattley Street. It was facing east. The truck was fitted with a front lifting mechanism and a compactor body. The truck was registered. On his arrival he noted the truck's hazard lights were flashing and the engine was idling. No impact damage was evident.

Senior Constable Barnard organised for the truck to be inspected by Mr Leonard who is a safety and compliance officer with the National Heavy Vehicle Regulator. He is a qualified automotive mechanic with 38 years' experience in the motor vehicle industry. Mr Leonard inspected the truck on 25 August 2021. He also did not detect any impact damage. As a result of his detailed inspection of the truck he expressed the following opinion, which I accept:

“Prior to and at the time of impact, this vehicle as inspected would have been classed as mechanically sound and roadworthy except for the crack in the windscreen on the passenger's side, although my inspection did not reveal any fault or failure that may have caused or contributed to the incident.”

Senior Constable Barnard marked the position of the truck on the roadway, was advised where the truck had first come to a stop after the collision, which he marked, and he marked all other relevant points at the scene. He noted the road was constructed of bitumen and it was in good condition. The pedestrian crossing which Mrs Gee was using at

the time of the collision was constructed of grey pavers and that was also in good condition. The crossing was 12.9 m in length from curb to curb and it was 2.4 m wide. Cattley Street is relatively flat in the vicinity of the collision. At the point where the truck stopped on Mount Street, waiting to turn, the road ran uphill. In addition Senior Constable Barnard observed the operation of the traffic lights and the pedestrian lights and he says they were functioning normally. The pedestrian light was operating automatically without needing to push the button. Traffic and pedestrian lights were synchronised so as when traffic driving on Mount Street got a green light pedestrians crossing Cattley Street got a green light at the same time. The green walk signal illuminated for approximately 4 seconds then the flashing red signal illuminated for approximately 6 seconds before it went solid red.

Senior Constable Barnard conducted a speed analysis and obtained camera footage from 3 different sources. Burnie City Council CCTV cameras captured the accident from 2 different angles, and a Metro bus parked on the Cattley Street bus stop facing west also captured the accident. From that footage Senior Constable Barnard says the truck comes to a stop for the red light and remains almost stationary, although it creeps forward, for 7 seconds before moving off when the lights turned green. The truck then collides with Mrs Gee. Although she is just out of view on the CCTV footage, footage taken from cameras on the truck show her already waiting at the corner prior to the truck arriving.

In addition the truck was fitted with its own cameras which faced the front, the rear and both sides. Footage from the front camera is obscured by a lifting mechanism and tynes however Mrs Gee can first be seen at the corner 8 seconds before the truck arrives at the red light. Footage from the left side camera on the truck shows Mrs Gee standing at the corner waiting to cross, as the truck approached the intersection, slowed and then stopped for the red light. She is visible for at least 5 seconds before the lights change to green and she begins crossing the road at the same time as the truck moves off and turns left. Footage from the front camera clearly shows Mrs Gee crossing with a green walk signal. She is walking on the far left or eastern side of the grey paved crossing. From the footage Senior Constable Barnard calculates Mr Flight had a window of at least 15 seconds in which to observe Mrs Gee.

The accident was recreated using the same truck in December 2021. The driver wore a go pro camera on a headband to replicate as close as possible the driver's view from the driver's seat. A police officer was seated in the passenger seat while another video recorded the proceedings from the southern side of Cattley Street. A person of similar stature to Mrs Gee who was wearing similar clothing and carrying a white shopping bag stood at the pedestrian crossing. The distance from the stationary truck at the intersection to the pedestrian waiting to cross was measured from the front left corner of the cab to be 6.7 m.

On reviewing this footage Senior Constable Barnard was able to determine there was 8 seconds for Mr Flight to see Mrs Gee prior to the truck stopping at this intersection, there was another 7 seconds at the stop line and 5 seconds between moving off and the collision. Therefore there was an approximate 20 second window in which to see Mrs Gee. While stationary at the intersection the lifting mechanism of the truck does create a blind spot which can obscure a pedestrian however on the last of 6 runs the driver lent forward in his seat as far as possible and this enabled him to see the pedestrian.

From his investigation Senior Constable Barnard determined Mr Flight commenced work at about 4.45 am at his employer's depot at Spreyton. He was working with Mr Oliver who he was training. The pair commenced their rubbish collection run, emptying bins at the required points in the run, before taking a break at 9.45 am. They then continued with Mr Flight driving into the Burnie central business district (CBD). They drove north on Wilson Street, intending to turn left into Cattley Street, to empty bins from the alley way next to the Reject Shop however there was a ute parked in the way so they instead turned right into Cattley Street and emptied bins from Shiploads in Wilmot Street. They then drove west along Wilmot Street, left into Mount Street and south toward Cattley Street. Mr Oliver says when they turned left into Cattley Street Mr Flight dropped him off so he could collect the bins out of the alleyway. The ute was still parked where the truck would normally park. Mr Flight said he would just do a block and come back so he did not hinder the traffic flow. Mr Oliver planned to have the bins ready when Mr Flight returned. He went down the alley and collected 4 bins and had them ready out on the footpath. Mr Oliver goes on to say he could see the truck down near the intersection of Cattley and Mount Streets and it was facing him on Cattley Street but it was not parked off to the side. It was still in the eastbound lane. Mr Oliver motioned for Mr Flight to drive towards him when he noticed Mr Flight was not in the truck. He then saw him and Mr Flight made a motion for Mr Oliver to come to him. Accordingly he did so and asked Mr Flight what was up and his reply was he had run somebody over. Mr Oliver went to check on Mrs Gee and then returned to Mr Flight and asked him if he was okay as *"he was in a mess"*. Mr Flight advised Mr Oliver he did not see Mrs Gee. Mrs Zavisky, who was a passer-by, also checked whether Mr Flight was alright and his response was *"I don't know what happened, I didn't see her"*.

Mr Flight's employer, JJ Richards, is a waste management company that provides commercial, domestic and industrial waste management services. It has advised the truck is the only vehicle in its' fleet where the lifting mechanism, when the vehicle is being driven, can be positioned in a lower position where the tynes of the lifting mechanism can be positioned underneath the windscreen. In this position the arms of the lifting mechanism create the blind spot referred to above. All their other vehicles are configured in such a way whereby the tynes are positioned above the windscreen when the vehicle is being driven on the

roadway; therefore the lifting mechanism does not cause any blind spot for either the driver or the passenger. The truck was set up in such a way that there were 2 different travel mode positions for the tynes; the first being the lower position referred to above and the second being the upper position where the tynes are positioned above the windscreen of the truck. The employer advised the lower position provides the option for the lower arm travel height and faster transition from the travelling position to picking up a bin.

WorkSafe Tasmania conducted an investigation in this matter given Mr Flight was working in the course of his employment when the accident occurred. That investigation determined the set-up of the tynes on the truck did not infringe the Australian Vehicle Design Rules. JJ Richards was permitted to operate the truck and it was registered for road use. Mr Flight was appropriately licensed to drive the truck. The investigation determined JJ Richards had attempted to control the risk of injury to others while using the truck by using a suitably qualified person to operate it, as well as having a comprehensive system of driver training, review and assessment, combined with risk assessments of the task which was being carried out at the time of the accident. Cameras and fatigue monitoring equipment had been installed in the truck to assist in further reducing this risk. In addition documentation established the truck was regularly serviced, there was a system of documenting and attending to required maintenance and repairs and Mr Flight had undergone training with respect to the risks of driving the truck, which included interactions with pedestrians, and he had an extensive history of operating trucks in similar conditions for multiple employers. In addition he had extensive experience operating this truck in the locality where the accident occurred. The investigation concluded the primary cause of the accident was Mr Flight not ensuring the truck's path of travel was clear while he was driving it.

Further information was sought from the Department of State Growth about whether it was possible to stagger the lights at this intersection so a pedestrian receives the green walk signal in Cattley Street before the traffic lights on Mount Street turn green. This would permit pedestrians to be part the way across Cattley Street before traffic in Mount Street could move and importantly the moving pedestrian would be a source of movement in a driver's peripheral vision which might perhaps raise an awareness in the driver that he or she needs to give way to the pedestrian. I was advised by Mr Verdouw, the manager of Network Performance in the Infrastructure Tasmania Division of the Department that the Department and the Burnie City Council reviewed the traffic signals in and around the Burnie CBD in September 2022. One of the key outcomes of the review was the implementation of "delayed start" for drivers at key intersections within the CBD. This included the Mount Street and Cattley Street intersection. I was advised as part of this delayed start, pedestrians receive 3 seconds of what was termed "green time" before the motorists receive a green traffic signal and this permits the pedestrian to get well into the

intersection. This system was implemented in October 2022. There were subsequent discussions with the Devonport, Launceston and Hobart City Councils and the delayed start system is in place at many intersections in Tasmanian city CBDs.

Further information was also sought from JJ Richards. I was advised the truck involved in this accident was still in service but its usage is low² as it is a spare vehicle. JJ Richards designs and manufactures the majority of its heavy vehicles and all those vehicles now have the lifting mechanism and associated tynes positioned above the windscreen when the vehicle is travelling; that is when the lifting mechanism is not being used. JJ Richards purchases some vehicles and therefore it investigated and determined that with some of those vehicles the lifting mechanism and associated tynes sat below the windscreen; that is those vehicles were configured in a similar manner to the truck. JJ Richards has now modified all but 4 of those vehicles so that the lifting mechanism and its associated tynes sit above the windscreen. Those 4 vehicles are currently based in Victoria however their configuration is due to be modified in the near future. Finally JJ Richards advised it had previously investigated blind spot detection systems however it had not identified any system which could be utilised on its heavy vehicles. The manufacture of heavy vehicles and the modification of vehicles purchased by JJ Richards so that the lifting mechanism and associated tynes are positioned above the windscreen removes the obstruction to the driver's view which is present when the lifting mechanism and associated tynes sit below the windscreen.

Comments and Recommendations

I am satisfied that this accident occurred when Mr Flight failed to observe Mrs Gee and then he failed to give way to her as he turned left from Mount Street into Cattley Street while she was crossing Cattley Street at the pedestrian crossing on a green walk signal. Mr Flight had between 15 and 20 seconds to observe Mrs Gee as he approached the intersection. Had the lifting mechanism and tynes of the truck been in the upper position then the arms of the lifting mechanism would not have obscured Mr Flight's view of Mrs Gee as Mr Flight was waiting for the lights on Mount Street to turn green. Alternatively if he had lent forward in the driver's seat, prior to executing the left-hand turn into Cattley Street, then Mr Flight's view of Mrs Gee would not have been obscured.

I had considered making recommendations with respect to staggering the operation of the traffic lights and modifying trucks in JJ Richards' heavy vehicle fleet however my enquiries revealed those matters had already been largely attended to. The circumstances of Mrs

² The truck had been used for 126 hours in a 12 month period.

Gee's death are therefore not such as to require me to make any comments or recommendations pursuant to Section 28 of the *Coroners Act 1995*.

I extend my appreciation to investigating officer Senior Constable Barnard for his comprehensive investigation and report.

I convey my sincere condolences to the family and loved ones of Mrs Gee.

Dated: 15 September 2023 at Hobart, in the State of Tasmania.

Robert Webster
Coroner