



## CORONERS COURT OF NEW SOUTH WALES

<b>Inquest:</b>	Inquest into the death of Scott Bowden
<b>Hearing dates:</b>	12 and 13 June 2018
<b>Date of findings:</b>	19 July 2018
<b>Place of findings:</b>	NSW State Coroners Court
<b>Findings of:</b>	Magistrate Elizabeth Ryan, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – mandatory inquest - death of a person during a police operation – collision with cattle on road.
<b>File number:</b>	2016/00151275
<b>Representation:</b>	<p>Counsel Assisting the Coroner: Mr J Harris of Counsel, i/b Mr J Herrington Crown Solicitor's Office.</p> <p>Mr J Somerville: Mr B Cochrane of Counsel i/b Mr F Hannigan</p> <p>SC D Tagg and SC M Bailey: Mr B Haverfield of Counsel i/b Ms S Johnson</p> <p>The NSW Commissioner of Police: Ms F Rogers of Counsel i/b Ms A Woodridge</p> <p>The Bowden family: Mr I Judd of Counsel i/b Slater and Gordon</p>

<b>Findings:</b>	<p><b>Identity</b> The person who died is Scott John Bowden, born on 31 May 1964.</p> <p><b>Date of death:</b> Scott Bowden died on 17 May 2016.</p> <p><b>Place of death:</b> Scott Bowden died at Coraki NSW on the way to Lismore Base Hospital.</p> <p><b>Cause of death:</b> Scott Bowden died of multiple injuries mainly to the chest.</p> <p><b>Manner of death:</b> Scott Bowden died in the course of a police operation, after his motor cycle accidentally collided with a cow.</p>
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Section 81(1) of the Coroners Act 2009 (NSW) [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Scott John Bowden.

### **Introduction**

1. Shortly after midnight on 17 May 2016 Scott Bowden aged 51 years died on the road between Casino and Coraki in northern NSW. Mr Bowden was riding his motor cycle home from work when it collided with a cow which had escaped onto the road. Mr Bowden lost control of his motor cycle and was thrown onto the road, then impacted with the front of a stationary police vehicle. Police immediately rendered assistance and called an ambulance, but Mr Bowden died on the way to hospital.
2. Because Mr Bowden's death occurred in the course of a police operation, an inquest must be held, pursuant to sections 23 and 27 of the Act.

### **The role of the Coroner**

3. Pursuant to section 81 of the Act, the Coroner must make findings as to the date and place of a person's death, and the cause and manner of death.
4. In addition the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.

### **Mr Bowden's life**

5. Mr Bowden was born on 31 May 1964. He is survived by his adult son and daughter, Patterson and Shylah. At the time of his death Mr Bowden had just commenced a new job as a night cleaner at the Northern Co-operative Meat Company Ltd at Casino. His supervisor, Cory Cameron, said he was doing a good job and seemed to be enjoying his work.

### **The autopsy report**

6. The autopsy performed by forensic pathologist Dr Brian Beer found Mr Bowden had died from multiple injuries which were mainly in his chest region. He had suffered fractures to his ribs, sternum, clavicle and scapula, collapsed left and right lungs, and a haemothorax.

### **The accident site**

7. The fatal collision took place on the Casino-Coraki Road, about 21 km from Mr Bowden's workplace in Casino and 10kms from his home in Coraki. The Casino-Coraki Road is the main road between the two towns. It runs roughly east-west, with a single carriageway each way and a posted speed limit of 100 kmh. Mr Bowden was travelling eastwards towards his home in Coraki.
8. Not far to the west of the accident site there is a small bridge called Willox Bridge. The road rises to a crest at this point, then descends eastwards in a

straight line for about 680m. It was on the straight section that the accident occurred.

9. Near the collision site on the northern side of the road is a farm property which had been owned for many years by Mrs Joan Monaghan. The property is about 300 acres and is bordered on its southern side by the Casino-Coraki Road, and on its northern side by the Richmond River.
10. Since 2011 Mrs Monaghan had agisted her land to Jasen Somerville for the use of his Hereford brand cattle. Mr Somerville is a stock and station agent and auctioneer, who also has his own business buying, breeding and selling cattle. Under their agistment agreement Mr Somerville was responsible for keeping all boundary fences in a reasonable state of repair.
11. Mrs Monaghan's property was fenced along its boundary with the Casino-Coraki Road, with the exception of a rectangular area at its eastern end which contained cattleyards. The cattleyard was fenced on its three sides which adjoined Mrs Monaghan's property, but not on its side which fronted the road.
12. At the time, Mrs Monaghan employed Christopher Mortimer on a casual basis to carry out farm work, building and lawn mowing.

#### **The accident**

13. At about 11.45pm on the night of the accident a member of the public reported to police that cattle were wandering on a stretch of the road near Willox Bridge. There had been other reports of straying cattle in this area, as will be seen below.
14. Senior Constable Daniel Tagg and Senior Constable Matthew Bailey, both stationed at Casino Police Station, were tasked with going to the site and making it safe for the public. SC Tagg drove them there in a marked four wheel drive police vehicle.
15. That night it was dry, with moderate to heavy fog blanketing sections of the road. Witnesses described the fog as so thick in parts that visibility was restricted to just fifty metres.
16. At about 12.02am the two police officers encountered a group of cows on the side of the road, heading slowly eastward. This was on the straight section of road to the east of the crest of Willox Bridge. SC Bailey recalled the cows were brown with cream markings. As the police vehicle approached, one cow broke away from the group and ran eastwards. SC Tagg drove slowly in its wake.
17. The police officers saw the lights of a small house off the road about 100 metres ahead, and decided to enquire if the cattle belonged to that property. A young woman at the house told them she thought they belonged to someone in town. The police officers then drove back onto the Casino-Coraki Road, turning right in the direction of Casino. SC Tagg re-activated a number of sets of lights on their vehicle. These were the headlights, a set of red and blue lights which flashed at the front of the car, a set of lights mounted on the

car's roof which flashed in 360 degrees, and the car's alley lights which illuminated the two sides of the car.

18. Almost immediately they re-encountered the group of cows, now moving westward on the northern side of the road. SC Tagg drove very slowly after them, keeping them off the road, while he and SC Tagg searched for a suitable place in which to pen them.
19. While still on the straight section of the road the officers saw the glow of a single light advancing eastwards from the other side of the crest. Once over the crest it materialised into the single headlight of a motor cycle. SC Tagg flashed their highbeam lights to warn the rider to slow down, but the motor cycle did not appear to do so. SC Tagg did not activate their siren for fear of startling the cattle.
20. Suddenly one of the cows stepped out onto the roadway. Almost immediately the rider and motor cycle collided with the cow's head or neck area. The rider, Mr Bowden, was thrown into the air and fell heavily onto the roadway, sliding forward before impacting the front driver's wheel of the stationary police vehicle. The motor cycle continued to skid past the police car and came to a halt 20-25 metres behind it.
21. SC Tagg immediately radioed for an ambulance while SC Bailey got out and tried to give assistance to Mr Bowden. In order for SC Bailey to access him, SC Tagg had to reverse the police vehicle half a metre. SC Tagg then got out with a torch to warn any approaching traffic.
22. At this time Mr Bowden was breathing but unconscious, recovering consciousness only for brief periods while they waited for the ambulance. On route to Lismore Base Hospital Mr Bowden suffered a cardiac arrest as a result of his injuries. He failed to respond to CPR and on arrival at the hospital he was declared deceased.
23. Very soon afterwards officers of the Ballina Crash Investigation Unit attended the accident scene. Mr Paul Cowles, a Regulation Ranger employed by Richmond Shire Council, also attended. About 30-40 metres east of the site he encountered six brown and white cows on the northern side of the road. Using his vehicle Mr Cowles herded them into a paddock about 20 metres further east.
24. The next morning Mr Cowles inspected the boundary fences along the roadway. He saw flattened grass and cow manure near the road outside the cattleyards, at the eastern end of Mrs Monaghan's property. He concluded the escaped cattle had got out from that area. He also noted damage to the fence between the cattleyards and the paddock immediately to the west of it, which also fronts the road. This is part of the property agisted to Mr Somerville. I will refer to this paddock as 'the front paddock'.

### **Reports of cattle on the road**

25. Prior to the fatal accident there had been persistent reports of cattle on sections of the road close to the accident site.
26. On the morning of 16 May at about 8.00am Mrs Monaghan's casual employee Chris Mortimer saw five Hereford cows on the road outside the cattleyards. He checked the fences of the nearest paddock, which is the one I have called 'the front paddock'. Mr Mortimer saw damage to the front paddock's fence bordering the roadway, as well as damage to the front paddock's western fence. He also noticed that a gate to a paddock behind the front paddock, which he called 'the lagoon paddock', was bent and was not closing properly.
27. Mr Mortimer herded the five Herefords into the lagoon paddock and did his best to close the bent gate. He then fixed the wire on the western fence of the front paddock, so the cows could not get into the front paddock and from there onto the road via its broken roadside fence. When he finished work at about 1pm he saw the Herefords were still in the lagoon paddock.
28. The next morning, which was the morning after the accident, Mr Mortimer noticed further damage to the fence between the front paddock and the lagoon paddock.
29. In addition to Mr Mortimer's sighting of cows on the road, the farm owner across the road from Mrs Monaghan told Mr Cowles he had seen cattle on the road on the days prior to the accident. He had not reported this to police or to the Council.
30. At 6.45pm on 16 May, just hours before the fatal accident, Mr Cowles had himself spent time patrolling the area, following another report of cattle on the road about ten minutes west of Coraki. It was very foggy and Mr Cowles did not see any cows on the road. The following night there was yet another report of cattle on the road near the accident site.

### **The cow found in Mr McCormack's herd**

31. Mr James McCormack and his brother run cattle on a property located approximately 500 metres west of the accident site. Like Mrs Monaghan's, their property fronts onto the Casino-Coraki Road.
32. On the morning of 18 May 2016 Mr McCormack noticed a section of their boundary fence which was damaged, with flattened grass in front. He then saw a cow in their paddocks which did not belong to their herd. It was a Hereford cow with a yellow ear tag, and it was injured with a bleeding nose. The McCormacks do not keep Hereford cattle.
33. Mr McCormack notified the police and then rang Mr Jasen Somerville, who as I have mentioned keeps his herd of Hereford cows on Mrs Monaghan's property. Mr McCormack said: '*They tell me you own the cattle that was involved in the accident*'. Mr Somerville replied: '*That's what they're telling me*'. Mr McCormack then said: '*I have found a Hereford with a yellow tag in with mine*'. Mr Somerville said he would come over later that day after the

cattle sales and have a look. Mr McCormack put the Hereford cow into a small yard on his property.

34. Later that day Mr McCormack learnt that the cow was still in his yard, and rang Mr Somerville again. Mr Somerville told him he'd been held up at work and would come the following day. The next day Mr McCormack's brother informed him the cow was no longer on their property. Neither of the McCormacks are aware of how the cow came to leave or be removed.
35. Prior to the removal of the injured cow, SC Gerry Kemp came to the McCormack property and examined it as part of the police investigation into the fatal accident. SC Kemp noted the cow was brown and cream in colouring. There was congealed blood on its nostrils and bloodstains on both sides of its face. In addition it had suffered a large laceration on its upper lip and several teeth had been dislodged. The cow had no other injuries and SC Kemp observed it was able to jump over a 1.8m fence to rejoin the McCormack herd.
36. At the inquest Mr Somerville denied that the cow found in Mr McCormack's herd belonged to him. He also denied collecting it from Mr McCormack, or arranging for anyone else to do so. Mr Somerville told the Court he recalled Mr McCormack ringing him to say he had one of his cows on his property, and that he himself '*might have said*' he would come and sort it out after work. He thought it possible Mr McCormack rang him again the following day to ask why he hadn't come as arranged.
37. In his evidence Mr Somerville acknowledged he had never told Mr McCormack the cow was not his. He also claimed that he took no steps at all to establish if in fact it was his. The only explanation he could offer for his inactivity was that he assumed the cow would make its own way back to his herd.

### **Issues at the inquest**

38. The evidence establishes that Mr Scott Bowden died soon after midnight on 17 May 2016 on the way to Lismore Base Hospital. His death was caused by multiple injuries mainly to his chest, which he received when the motor cycle he was riding collided with a cow on the road.
39. The inquest focused on questions related to the manner of Mr Bowden's death. These were:
  - who owned the cow involved in the accident?
  - how did the cow come to be on the roadway?
  - was Mr Bowden travelling at excessive speed for the road conditions?
  - did the police take appropriate action in response to the report that cows were on the road, including steps to warn Mr Bowden and other road users about the risk?

### **Who owned the cow involved in the accident?**

40. The evidence enables a finding on the balance of probabilities that the injured Hereford cow found in Mr McCormack's herd was the cow with which Mr Bowden's motor cycle collided.
41. SC Bailey recalled that the cow involved in the accident was brown with cream markings, as was the injured cow. The injured cow was found at a place and time proximate to that of the accident: that is, on a property about half a kilometre from the accident site, accessible via the Casino-Coraki Road, and on the day following the accident. Furthermore its injuries are not inconsistent with those which might be expected from the collision: both police officers described the motor cycle impacting with the cow's head and neck area.
42. The evidence enables the further finding on the balance of probabilities that the injured cow belonged to Mr Somerville's herd. Counsel Assisting acknowledged it could not be stated with complete certainty that this was the case: there was no direct evidence of ownership of the injured cow, as its yellow ear tag could only be traced to a sale which had occurred several years prior the accident, and in a different part of NSW.
43. Nevertheless, and for the reasons given below, I accept the submissions of Counsel Assisting and those made on behalf of the family, that the evidence is sufficient to find on the balance of probabilities that the injured cow did belong to Mr Somerville.
44. The injured cow is of the same breed as those kept by Mr Somerville. In addition Mr McCormack's property is geographically proximate to the property on which Mr Somerville kept his herd. There is also ample evidence that around the time of the accident Mrs Monaghan's boundary fences were damaged enabling livestock to escape onto the roadway. Mr Somerville's evidence that so far as he was aware the boundary fences were stock-proof is contradicted by the careful observations of Mr Mortimer and Mr Cowles, who each found sections of damage in areas that would enable Mr Somerville's cattle to get onto the roadway.
45. Mr Somerville's evidence at the inquest denying ownership of the injured cow was confused and frankly implausible. He gave contradictory evidence as to whether or not his cattle had yellow ear tags, at first stating they did not and then modifying this to say that his cattle's yellow ear tags had the initials 'JAS' on them. He could not offer any credible explanation to support his assertion that he had taken no action to recover the cow from Mr McCormack. One explanation may have been that he did not believe the cow to have been his, yet he did not assert this to Mr McCormack at the time, nor did he offer this to the Court when pressed for an explanation for his inactivity. Instead he stated that he had got too busy at work to make time to examine the cow; and later in his evidence, that he presumed the cow would make its own way back to his herd. The latter explanation undercuts his assertion that the cow did not belong to him, while the former is implausible in light of his acknowledgement that its value would have been at least \$800.



46. In submissions on behalf of Mr Somerville, Mr Cochrane suggested a further explanation for Mr Somerville's inactivity in relation to the injured cow: that inspecting the cow might have been construed as an implied admission of ownership. This submission is rejected as pure speculation in circumstances where Mr Somerville himself gave no evidence of this as an explanation.

**What are the circumstances that led to the cow being on the road?**

47. There is ample evidence of damage to the boundary fences and gates on Mrs Monaghan's property, of a kind which would have allowed cattle to escape from the property. Furthermore there is ample evidence that cattle had escaped onto the roadway in the period before and after the fatal accident. The sightings of straying cattle all occurred in areas geographically proximate to the Monaghan property. I note further the observations of Mr Cowles of a damaged fence line, flattened grass and cow manure at the eastern end of the Monaghan property, causing him to conclude that cattle had escaped from that point.

48. The above evidence enables a finding on the balance of probabilities that the cow involved in the fatal accident had escaped onto the road as a result of damage to the fences of the property on which it was kept.

49. An issue was raised at the inquest as to who was responsible for maintaining the fences at the Monaghan property. The agreement between Mrs Monaghan and Mr Somerville states that Mr Somerville was responsible for maintaining the boundary fences '*in a reasonable state of repair*'. However this issue is of marginal relevance to the inquest, which so far as the circumstances of Mr Bowden's death is concerned, has established that the cow involved in the accident most likely escaped onto the road as a result of damaged fences. It is no part of the coronial function to inquire into issues of civil liability and whether Mr Somerville's maintenance of his fences had exposed him to such liability.

**Was Mr Bowden travelling at excessive speed for the conditions?**

50. In their evidence to the inquest Senior Constables Tagg and Bailey both described the motor cycle as approaching them '*at speed*'. In his interview SC Tagg stated he thought Mr Bowden had been travelling in excess of 100 kph, but he acknowledged he couldn't be accurate about this.

51. The Court had the benefit of an expert statement from SC Mark Fogarty, who is attached to the Far North Coast Crash Investigation Unit. He and his team attended the accident site and among other investigations, attempted to provide an estimate of the speed at which Mr Bowden's motor cycle had been travelling at the time of its impact with the cow. SC Fogarty was able to conclude only that it would have been moving at a speed above, but not less than 71 kph.

52. The Court did not have the benefit of any expert evidence that travelling at a speed of at least 71 kph in the conditions that prevailed was excessive. I make no finding as to whether at the time of the impact Mr Bowden was travelling at excessive speed for the conditions.

**Did the police officers take appropriate action in response to the report that cows were on the road, including steps to warn Mr Bowden and other road users about the risk?**

53. Counsel for the NSW Commissioner of Police informed the Court that no specific policies exist regarding police procedures for managing strayed livestock. The Court was however directed to a draft set of Straying Stock Procedures, which was authorised by Assistant Commissioner Geoff McKechnie in February 2015. The procedures remain in draft form only and have not been ratified. As such they can provide only limited guidance to the inquest on this issue.
54. According to its foreword, this document is designed to assist officers in clarifying their roles and responsibilities when they are tasked with managing escaped livestock. Police are to take initial responsibility for controlling traffic and locating the owner of the stock so that vehicles do not collide with the animals. Among other steps, attending police are to manage traffic and remain at the scene until an Impounding Authority (in this case the Richmond Shire Council, whose Regulation Rangers have the power to impound cattle) has secured or removed the stock from the roadway.
55. Having carefully considered the evidence I am of the view that the police response and conduct in relation to the strayed stock cannot be criticised. Officers Tagg and Bailey were faced with a difficult situation. The hazard to road users represented by the moving stock was a dynamic one which would have been very difficult for two police officers to contain. In the circumstances they were required to use initiative and remain flexible in their response.
56. Counsel representing Mr Somerville suggested to officers Tagg and Bailey that they might have done more to warn Mr Bowden and other road users of the presence of the cattle. In my view however the measures taken by the officers were reasonable. Fog and darkness reduced the capacity for oncoming traffic to see the cows ahead. Officers Tagg and Bailey utilised all available resources to alert approaching traffic, ensuring that the headlights, roof mounted lights and alley lights of their police vehicle were activated. SC Tagg also flashed his highbeam lights as soon as he became aware of Mr Bowden's approach. He was perplexed when the motor cycle did not appear to slow down.
57. Counsel for Mr Somerville also suggested that by going to the farmhouse to make enquiries about the cows' ownership, the officers may not have complied with the draft document's injunctive not to leave the scene until Council rangers had secured the stock. I note however that the draft document also requires police to take steps to locate the owner of strayed stock. In the circumstances of there being only one police vehicle, it is difficult to see how they could have complied with this step without temporarily leaving the cattle's location.
58. With the benefit of hindsight it is usually possible to identify other steps that might have been taken in an emergency situation. In the present case however I am satisfied that the conduct of officers Tagg and Bailey was

reasonable and appropriate, and that they did all they could in the circumstances to prevent this tragic death.

### **Conclusion**

59. I accept the submission of Counsel Assisting that this is not a matter where any recommendations in relation to public health and safety would be appropriate. It was suggested by Counsel for the Bowden family that increased Regulation Ranger resources in the area may reduce the risk of further such fatal accidents. While this may be the case, I did not hear any evidence on this question and therefore am not in a position to consider it as a recommendation.

60. In closing I thank the assistance given to the inquest by Counsel Assisting and the Crown Solicitor's Office, as well as that given by the legal representatives of the other interested parties.

61. I hope that this inquest has provided Mr Bowden's son and daughter with some answers to their questions about their father's death, and that they will accept the sincere sympathy of all at the NSW Coroner's Court.

### **Findings required by s81(1)**

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

#### **Identity**

The person who died was Scott John Bowden, born on 31 May 1964.

#### **Date of death**

Scott Bowden died on 17 May 2016.

#### **Place of death**

Scott Bowden died at Coraki NSW on the way to Lismore Base Hospital.

#### **Cause of death**

Scott Bowden died of multiple injuries mainly to the chest.

#### **Manner of death**

Scott Bowden died in the course of a police operation, after his motor cycle accidentally collided with a cow.

I close this inquest.

#### **E Ryan**

Deputy State Coroner

Glebe

#### **Date**

19 July 2018