RURAL AND REGIONAL SERVICES AND DEVELOPMENT COMMITTEE

Inquiry into cause of fatality and injury on Victorian farms

Shepparton – 14 April 2004

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Witnesses
Mr N. T. Sims (sworn); and
Ms G. M. Stephens (sworn).
The CHAIR — I would like to acknowledge the presence at these hearings of Jeanette Powell, the member for Shepparton.

Welcome everybody. I have a statement to make before the beginning of the proceedings. Under the powers conferred on this committee by the Constitution Act and the Parliamentary Committees Act this committee is empowered to take all evidence at these hearings on oath or affirmation. I wish to advise all present at these hearings that all evidence taken by this committee, including submissions, is, under the provisions of the Constitution Act, granted immunity from judicial review. I also wish to advise witnesses that any comments made by witnesses outside the committee’s hearing are not protected by parliamentary privilege. We are an all-party parliamentary committee, including an Independent member, that is hearing evidence today in our inquiry into the causes of fatalities and injuries on Victorian farms. I invite Ms Stephens and Mr Sims to provide us with their full names and addresses before making some brief comments, and afterwards we will ask some questions.

Mr SIMS — My name is Norman Thomas Sims. I live at 18 Ashton Road, Shepparton.

Ms STEPHENS — My name is Gwenda Marie Stephens. I live at 685 Arcadia-Tamleugh Road, Karramomus 3631.

Mr SIMS — I have decided to open. I will refer to the Shepparton News report which was written by a friend from the Shepparton News here tonight, Geoff Adams. It is a very good summary of a report of a coroner’s inquest which affected us all very deeply. I introduce myself as having a farming background until 1988. The deceased, Rodney MacKenzie, was a close friend. His death was a very sad loss to me personally and to Gwenda, who is the mother of his child, and to all his many friends. I am familiar with the tractor involved. I have spent many hours in it helping my cousin over the years. I am satisfied it complied with all the safety standards; I felt safe at all times. I believe, whatever we can learn from this tragedy and others, that all reasonable steps should be taken to avoid farm accidents.

The coroner found no-one was to blame. The fatality happened while our friend was attempting to front-end load a bucket. We feel there was a lack of objectivity by the WorkCover investigators. They seemed to have as an object of a prosecution the pursuit of a scenario without facts, as in the coroner’s report. A copy is supplied, and I quote from the last section:

It is notable that Inspector Noonan and Inspector Darwin of the authority in their evidence ... indicated that they no longer subscribed to the scenario first advanced ...

We feel that there was a lack of proper procedures with the exhibits. We believe there was a perverting of the course of justice — the post-mortem reports were amended and then withdrawn. We feel it was a great waste of resources to the taxpayers and to the tractor owner in legal costs. We believe there was a lack of proper training, ethical standards, due process and accountability. For instance, my cousin was up for $30 000-odd in legal costs to try and clear himself and there is no way he can recover that, whereas in a civil case costs would be awarded against the other side. The tractor owner suffered the enormous grief of the loss of a very close friend and of being hounded relentlessly with unsubstantiated allegations. He suffered tremendous pain and suffering and financial costs.

We recommend that the committee investigate the policy of WorkCover, the manner in which WorkCover investigators operate. We ask the committee to investigate to what extent WorkCover has implemented the recommendations of the coroner in this case. On the last page of the coroner’s report there is a recommendation that certain protocols be put in place, particularly in the training of WorkCover officers.

We recommend that the dangers of using excessive speed causing impact to a front-end loader bucket be included in owner-operator manuals. Several operators I have spoken to have said they will buck if you hit the load too hard. There were skull marks on the roof of the cabin where he was thrown upwards. There was an open finding — it could well have been a heart attack. I am not saying this is what caused it, I am saying it is a possible cause. We recommend that WorkCover use a more cooperative approach to farm safety than the one used in this case. We recommend that WorkCover investigators use the same protocols as Victoria Police to ensure fairness and public confidence.

The police do not comment to the media on their own scenarios. We present newspaper reports of the claims by WorkCover investigators of their scenarios which they subsequently no longer subscribed to in the coroner’s report.
We criticise WorkCover investigators for failing to test machinery for blood staining and failure to preserve mechanical exhibits — that comes directly from page 8, point 31 of the coroner’s report. In a police operation they seal exhibits and have them forensic tested for body tissue to either rule in or rule out the scenario. This was not done, and criticism was made of that by the coroner. The police would not seek a second post-mortem report to support the scenario which contradicted their original report and have it presented with an affidavit. The coroner ultimately dismissed the WorkCover investigator’s second report.

Attached to the documents I have provided is the original pathologist’s report, which quite clearly states that there were no skull fractures; it says ‘no fracture identified in the skull’. A subsequent report by the same pathologist — brought into court on a sworn affidavit by the WorkCover investigator — stated:

... fracture of the skull ... consistent with a ... solitary impact of broken rod from the tractor.

The coroner dismissed that and said the second report was in error. I quote from point 25 on page 7 of the coroner’s report:

The reference to there being a ‘fracture of the skull’ in the second report appears to be in error.

The coroner found that the first report of 28 November is the accurate reflection of the post-mortem findings. In other words, they were claiming that it was a faulty part on the tractor which caused the fatal blow, but there was no evidence to support it.

In this case WorkCover investigators ordered fitting of chains to the linkage arms which were not to manufacturers specs. This has the potential to become a safety hazard that the owner of the tractor believed could even be lethal. This is not in the best interests of farm safety. We are only reinforcing the coroner’s recommendations. There is substantial criticism of the manner in which WorkCover investigators conduct themselves. Their behaviour would have a profound effect on rural employment.

Ms STEPHENS — I hope I can do this all right.

Mr MITCHELL — Take your time.

Ms STEPHENS — I decided to go into this because I felt that people do not know what happens when something like this happens. Luckily, not too many people have to go through this. I come from a farming background. I have plenty of family in it. The last thing they need is WorkCover inspectors coming and giving them a hard time about things. When we find that they do the opposite to what you are expecting, it is very hard to cope with, so I thought it was time I sat down and wrote a few things out and tried to help people understand what it is like to go through a tractor accident through no fault of anybody’s and yet be taken to court by a government — —

Mr SIMS — Statutory body.

Ms STEPHENS — Statutory body, because I feel farmers and the WorkCover guys have to learn to work together, both to the same end, rather than fighting each other the minute it happens.

Rod had always gone out to Roger’s farm. He knew the tractors, he knew the whole farm and he loved to do things for Roger. He went over that day and the day before to help milk cows while Roger was away. Roger had not given him any jobs, but Rod tended to just race around trying to find little things he knew would help. We do not know why he did what he did, but he did do it because he must have thought there was a hole to fill up or something like that. He was found deceased. The police were called in, the WorkCover inspectors were called in, and as far as we know the WorkCover inspectors basically decided on the spot that it was an employer-employee relationship because they did not seem to be able to believe that a friend could help on a farm without getting paid. That is what Rod did continually over many years. So they basically said to the police, ‘Well, it is our area. We will do it’. The police backed away, which is a pity in some ways, so they saw what they thought had happened, they went forward and only saw that scenario.

I know of two or three gentlemen who work with four-wheel-drive tractors who talked to them, who said, ‘No, this is probably what happened’, and they said, ‘No, no, no, this bit has been broken. It must have happened that way’. I know it was very hard reading in the newspapers — and you have got copies of pretty well every report that went through a newspaper — to be shown that something hit him either beside the tractor or through the back window.
Mikayla, our daughter, was only four at the time but she heard these things and it was pretty difficult when she would come up and say; ‘Why did that stone hit Daddy?’ or, ‘Why did that piece of tractor hit Daddy?’ because she was going by what was in the paper, and it has been proven wrong. I do not feel they should have had the right to put what they thought was the reason in the paper before anything had been investigated. Again, it does not help farmers because they do not trust them.

WorkCover worked on the case for over two years. I have felt great sympathy with Roger all the time because they were great mates just like Norman and Rod were. It has cost Roger so much money just to prove that he was innocent — not try and save himself from a fine, but just to prove that he was innocent. Why he had to do that and then at the end find out that they must have been mistaken or they must not have looked at the right thing, so therefore they are sorry but they just did not do it right, whereas Roger had to spend all this money.

They changed a lot of things before they went into court. A lot of things they admitted to on the stand, ‘No, sorry, we must not have looked hard enough in that area’. It was very difficult to sit and listen to them try to give a scenario that just would not happen. They came out and took an affidavit from me right at the start, but all they were interested in was finding out whether Rod got paid. They never checked to see how fit he was. He could not have done what they did a video of to prove that that is how he got hurt. He could not have done it. He had a back injury. The tractors are not that big, and he was a big-shouldered man. There was no way he could turn around and do all those sort of things, still have his head out the window, get hit, turn around, put the tractor in gear and then keep going. It was just ridiculous, and yet they just walked away.

One part that Norman mentioned was the damage in the post-mortem account. I have taken that on myself. I have written to the state medical board. They are getting statements from the pathologist who did the autopsy. He has to prove to me or to them that he was not coerced into making a second statement, because by reading the coroner’s report, it looks like that, because after they had visited him he changed his autopsy report. It would be really good to find out what was going on like that.

We have had a letter back from WorkCover to say that they are taking on the recommendations. As to how long that takes, I do not know. It could be many more years before they even start to think of doing that — the same with the police. From what I can gather these things take many years to sort out. I have highlighted a bit of the printing here, and I think it is so true. It has made us all so angry that WorkCover put us through this ordeal and then could not support their own scenario in the end. It just does not make sense at all how they can do that.

Losing her father to a tractor accident was very traumatic for Mikayla, but it has put me under extreme stress and concern because I care about all his mates. He had four really great mates, and they have all suffered just as much but in a different way to me. She hears a lot of things she should not hear. She is very determined, very sensible, but she also cares, and she likes to know what is going on. I try to explain to her, but it is again very difficult, and I just do not want her to be more exposed to this sort of thing. As to what we can do, as I say there is a distrust of the WorkCover inspectors. All the farmer friends that I talk to are frightened of one of them walking onto their property because as far as they are concerned, they will be basically closed down straight away. They might have a right to, but the way they go about it is just too — —

Mr SIMS — Heavy handed.

Ms STEPHENS — Heavy handed. They should be able to sit down and talk to the farmers to try and work out problems on either side. Farmers are stubborn old coots, a lot of them. They do not like being told what to do. If the inspectors can learn to work through problems rather than telling them to do something, I think they will get a lot further with sorting things out.

As to money, there are a lot of different courses, but farmers are pressed for time and pressed for cash, especially at the moment, and it can be very difficult, and it is going to be very hard for them to go through that. I would like to thank you for this opportunity. As I said, it was very difficult. I thought I had got through the inquest and that was it and I could sit back, but this coming up again has brought out a few more little problems, but I will get through them. What scares me is the fact that other farmers and other people in the industry could have been railroaded like Roger was, and not had the money to sit up and fight, and be jailed or fined when WorkCover had just done a snow job on them. Thank you.
Mr SIMS — There is a file about 12 inches thick of documents, ‘Roger Sims’, with reports. If the committee wishes to have access to any of those, he said he would readily make them available.

The CHAIR — Thank you very much for putting yourself back through this for us.

Mr McQUIL TEN — Gwenda, I know this is really hard, but today is the first time I have seen the information that you have been giving us. It appears that originally there were two scenarios as to your partner’s death: one is what you think happened and the other is what the WorkCover inspectors thought happened. Could you explain those two scenarios to us?

Ms STEPHENS — Scenario 1: WorkCover felt he had got the scoop stuck in the dirt — I am not absolutely sure on a lot of this — but basically that he heard a noise behind the tractor. The tractor was fully enclosed. He put the tractor out of gear, turned around, knelt on the seat, opened the back window — it had to be held open with his left hand — leant down, looked down, and that is when a piece of the machinery broke, flew up and hit him in the head. That is basically what they believed. They believe Roger had fixed one part of it and perhaps he had not done it properly, therefore that is why it broke.

Mr McQUIL TEN — What is your view of it?

Ms STEPHENS — I believe he went into it, got the bucket stuck, the tractor jerked very badly — I am hoping that that broke his neck straight away — and then he was shaken to death — shaken for many minutes after that. By the amount of damage that was done to him and the inside of the tractor, et cetera, as far as I know, and all the farmers that I have talked to, that is the way they feel it had to have happened.

Mr McQUIL TEN — I thank you.

Mr SIMS — Could I add to that? It is very important that the WorkSafe people did not explore the forensic procedure or protocol to firstly determine whether there was a skull fracture made by the impact as their scenario suggested. The original report said there was no skull fracture. The second procedure would have been to have sealed the offending arm in a bag so it would not be contaminated and sent off to forensic for body tissues because there would have been some trace at impact. That was not done, and the coroner criticised them for not doing that, so there was really no evidence to support their theory. I am just trying to clarify a point there. If I can add my own opinion, it appears he was attempting to load a bucket and the dirt was very hard and it appears he got some speed up so that the impact occurred. It would be like hitting a brick wall at, say, 10 or 12 kilometres an hour. There are no shock absorbers or energy absorption panels or anything like that, and the way that people catapult in that situation is upwards and there were dints in the roof where his skull impacted there, and that would be consistent with the broken neck. To read that coroner’s report you would have to have a doctor to explain the different sections, but we have gone through that, and Roger engaged a forensic pathologist to examine it and those reports are available. I just wanted to contribute to that.

Mr McQUIL TEN — Thank you.

Mr INGRAM — Thank you very much.

Dr NAPTHINE — Can you clarify for me why the police would not investigate a death? Is it normal, to your knowledge? You may not know the answer.

Ms STEPHENS — I honestly do not know why. All I heard was the fact that WorkCover had decided that it was an employee-employer situation, therefore the police were not needed, and the police stepped back for some reason.

Mr SIMS — It is very noticeable in the coroner’s report that she has criticised the officers for not establishing that from the outset, and she has made the recommendation that they include that in their protocol in future investigations. That is on page 9 under the recommendations and observations.

Dr NAPTHINE — Are you aware of whether the two WorkSafe officers are still employed by WorkSafe or whether there has been any action?

Mr SIMS — We do not know.
Ms STEPHENS — As far as I know one of them — he had not been there long — had to take about 12 months leave after it because he was shocked. He was never brought to the Coroners Court. I do not think they could find him to get him to come. He was summoned, but he did not turn up.

Dr NAPTHINE — Have you received any formal advice from WorkCover in terms of an apology?

Ms STEPHENS — No. I was upset just for the fact that the police did not come out and tell me. I got upset right from the start by the authority.

Dr NAPTHINE — Given that WorkSafe has said that it withdrew its original scenario which has caused so much grief to yourself, your family and to Mr Sims, you have received nothing formally from WorkCover with respect to that?

Mr SIMS — We do have a letter saying that they have received the coroner’s recommendations.

Ms STEPHENS — No, I have not had anything from them at all in any way, shape or form.

Dr NAPTHINE — And Mr Roger Sims has received nothing either?

Ms STEPHENS — Not that I know of, no.

Mr SIMS — But we can certainly check that out.

Ms STEPHENS — If I was brave enough I would go into their offices and talk to them about it, but I am not brave enough yet. It would take a few years before that would happen.

The CHAIR — Thank you very much for giving us your time this evening. I am sure it was a big lead-up for you. In due course you will get a copy of the transcript and will be able to correct any matters of fact or grammar but not of substance.

Mr SIMS — Thank you for giving us the time.

Mr McQUILTEN — We are very grateful to you, Gwenda. Well done.

Witnesses withdrew.