

- 10.23. Closely associated with the question of heavy vehicle maintenance and roadworthiness is the need for annual heavy vehicle inspection as part of registration requirements. This practice might only be enforceable in respect of South Australian registered vehicles, but if a requirement was imposed in respect of vehicles registered in other States to the effect that before they are driven on the South-Eastern Freeway they must identify compliance with the most recent inspection and registration regime in the State of registration, then the jurisdictional difficulty might be obviated. Clearly, in any event, annual vehicle inspection is better than no inspection. Annual inspections could also be augmented by the random inspections that take place at the hands of police from time to time.
- 10.24. Other measures were discussed in the evidence taken at the Inquest. They included a proposal that an alternative route be sought for heavy vehicles. Such a proposal would need to take into consideration that according to the evidence of Mr Shearer much of the heavy vehicle traffic on the freeway is local traffic that would be inappropriately diverted to another more remote and unsuitable route.
- 10.25. I refer to the preliminary recommendations that the Court has made in respect of the Posnakidis matter. I repeat below those recommendations here with the modifications that I have made within the Posnakidis finding.
- 10.26. The Court makes the following recommendations that are directed to the Minister for Transport and Infrastructure, the Minister for Road Safety and the Attorney-General.
- 1) That the penalties for contraventions of Rule 108 of the Australian Road Rules, as they apply to South Australia, be increased to include possible imprisonment for such contraventions. I add that in the Court's opinion contraventions of Rule 108, at least insofar as they are committed and detected in respect of the descent on the South-Eastern Freeway, should not be the subject of expiation pursuant to the Expiation of Offences Act 1996. In addition, a period of driver's licence disqualification in respect of such contraventions should be the norm, as distinct from simply involving the attraction of three demerit points;
 - 2) That the necessary legislation be introduced to the effect that a driver of a heavy vehicle that exceeds a speed limit of 60 kilometres per hour between the commencement of that zone and the down stretch of the freeway to the traffic lights at the intersection of Mount Barker Road/Cross Road/Glen Osmond

Road/Portrush Road, and beyond, shall be deemed conclusively, as a matter of law, to have been driving in a manner dangerous to the public, for the purposes of a charge of driving in a manner dangerous to the public, causing death by such driving or causing serious bodily injury by such driving, regardless of the reason for that manner of driving. The conclusive deeming provision that the Court envisages might appropriately arise in cases where the driver in question has had, but has failed to utilise, an opportunity to stop an uncontrolled heavy vehicle by use of a safety ramp;

- 3) That initiatives be undertaken to enable the compulsory third party bodily injury insurer of a heavy vehicle to recover the amount of compensation paid in respect of death or bodily injury as a result of negligent driving on the section of the South-Eastern Freeway to which these findings relate, from the driver of the heavy vehicle involved; the registered owner of such vehicle, be it a corporation or real person; the actual owner of such vehicle, the operator of the business to which the vehicle relates; or other person in the chain of responsibility in respect of the use of that vehicle, such persons to be jointly and severally liable in respect of that recovery. Such recovery should be enabled in circumstances where the death or personal injury could have been prevented by the use of either arrester bed along the South-Eastern Freeway. It is to be acknowledged that there may be difficulty in enforcing such a measure in relation to heavy vehicles that are not registered or insured for third party bodily injury in South Australia. However, it will be observed that the South Australian legislature has an ability to impose whatever conditions it might think fit in relation to the use of heavy vehicles on the South-Eastern Freeway, regardless of the state of origin of those vehicles;
- 4) That in relation to the necessary training in respect of the acquisition of heavy vehicle licences, that it be a compulsory part of that training for trainee drivers to undergo tuition in respect of the required manner of driving on downhill gradients, including the use of safety ramps;
- 5) That in relation to the necessary training and assessment in respect of the acquisition of heavy vehicle licences, that it be a mandatory part of training for trainee drivers to undergo specific tuition in relation to the required manner of driving on the descent of the South-Eastern Freeway specifically and to

demonstrate competence in the same. Such competence should include a thorough understanding of and demonstrated ability to comply with the requirements of Rule 108 of the Australian Road Rules. It should also include tuition in respect of the purpose of, locations of and the consequences of not using safety ramps.

- 6) I recommend that it should no longer be permissible for a driver of a heavy vehicle to negotiate the descent on the South-Eastern Freeway for the first time while not accompanied and supervised by a trained and experienced driver actually in the vehicle. This prohibition should apply in respect of drivers regardless of State of origin or of the jurisdiction in which their heavy vehicle licence is issued. The accompanying driver should be a driver who has demonstrated experience and competence in negotiating that descent. The accompanying driver should have knowledge of the location of safety ramps and should draw the attention of the driver to the location of and the purpose of the same.
- 7) I recommend that no heavy vehicle licence of any kind should be issued to any person unless that person has demonstrated competence in the safe negotiation of the descent on the South-Eastern Freeway and has done so in the presence of, under the supervision of and to the satisfaction of a trained instructor who also has experience and demonstrated competence in relation to the safe negotiation of the freeway. These requirements should apply not only to licensing regimes in South Australia, but should be a requirement that is also imposed on interstate drivers. An interstate driver should be required to possess a certificate of demonstrated competence in respect of the ability to perform a safe descent of the South-Eastern Freeway including the ability to comply with Rule 108 of the Australian Road Rules. Drivers should be obliged to maintain a log in respect of all descents performed in relation to the South-Eastern Freeway. The log should at all times be located in the vehicle driven by the driver.
- 8) I recommend the implementation of the measures described as Option 1) through to Option 10) as identified in the documentation raised for the purposes of discussion at the community information session of 25 October 2014, those options being the 10 prioritised at the industry stakeholder workshop on 10 October 2014. I acknowledge that some of those measures have already been

implemented including aspects of an education campaign directed towards compliance with Rule 108 of the Australian Road Rules, improved signage, the indication that Government will cover the cost of removing a heavy vehicle from a safety ramp and the implementation of the CASR investigation. In respect of 'Option 9: Third arrester bed', I recommend that further consideration be given to the feasibility and desirability of a third safety ramp taking into account the matters that I have identified above;

- 9) I recommend in respect of 'Option 1: Education Campaign', that specific attention should be drawn to what in the Court's view should be the norm in respect of any contravention of Rule 108 of the Australian Road Rules, namely prosecution and disqualification from holding or obtaining a driver's licence;
- 10) I recommend in respect of the implementation of 'Option 2: Speed limit reduction' that the speed limit for heavy vehicles be reduced to 40 kilometres per hour on the descent of the South-Eastern Freeway and that the speed limit for light vehicles be reduced to 80 kilometres per hour for that section of road and that this be introduced immediately on a trial basis;
- 11) I recommend in relation to 'Option 3: Improved signage' that the words 'heavy penalties apply' be added to signage that trucks and buses must use low gear;
- 12) I recommend in respect of 'Option 4: Promote arrester bed use and bust myths' that drivers of heavy vehicles be advised that if the second safety ramp is not utilised there is no chance of recovery of the control of a vehicle, that the use of a safety ramp does not involve undue risk of injury to the driver but that in any event the alternative to not using the safety ramp when it needs to be used will involve much more dire consequences. It should be made clear to drivers of heavy vehicles that the incentives to using a safety ramp overwhelmingly outweigh the disincentives;
- 13) I recommend that roadworthiness and maintenance be brought within the chain of responsibility regime within the Heavy Vehicle National Law (South Australia) Act 2013 and that this be undertaken on a national basis as a matter of priority.

- 14) I recommend that all heavy vehicles be the subject of a periodic and frequent inspection regime. Such an inspection should include but not be limited to inspection as a prerequisite for registration.
- 15) I recommend that further consideration be given to the implementation of those options for discussion as identified in the document South-Eastern Freeway Industry Stakeholder Workshop, 10 October 2014 that were not prioritised 1) to 10).
- 16) I recommend that an investigation be undertaken as to the feasibility of installing technology that was capable of detecting the speed of a heavy vehicle and which would incorporate signage warning the driver that his or her speed is excessive and that directs the driver to utilise a safety ramp.
- 17) I recommend that consideration be given to the creation of an area situated between the Heysen Tunnels and the second arrester bed to be used for the mandatory stopping of all heavy vehicles with a further requirement that if the vehicle is incapable of stopping at that area, the driver must use the second safety ramp.

Key Words: Heavy Vehicle; Arrester Beds (Safety Ramps)

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

Seal the 12th day of January, 2015.

Deputy State Coroner