



**CORONERS COURT  
OF NEW SOUTH WALES**

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| <b>Inquest:</b>           | Inquest into the death of Solomon Te Kohekohe SHORTLAND   |
| <b>Hearing dates:</b>     | 17,18,19,20 September 2018  |
| <b>Date of findings:</b>  | 31 October 2018   |
| <b>Place of findings:</b> | State Coroner's Court, Glebe  |
| <b>Findings of:</b>       | <b>State Coroner Les Mabbutt</b>  |
| <b>Case number:</b>       | 2017/5348   |
| <b>Catchwords</b>         | CORONIAL – Death in the course of a police operation – Highway patrol traffic stop - Police procedures for stopping motor vehicles - Heavy vehicle load restraint   |
| <b>Representation:</b>    | Counsel Assisting the Coroner Mr C Gardiner instructed by Ms K McCrossin of the Crown Solicitor's Office<br><br>Dr S Blount instructed by Dr K Thompson for the family of Mr Shortland<br><br>Mr R Hood instructed by Mr S Robinson of the Office of the General Counsel for the NSW Commissioner of Police and Senior Constable Heron<br><br>Mr M McAuliffe instructed by Mr M Vo for General Flooring Pty Ltd |

**Access and Non-Publication Orders (sections 65 & 74 of the *Coroners Act 2009*)**

*Pursuant to s. 65 of the Coroners Act 2009, I order that volume 3 of the coronial brief of evidence should not be supplied or copied to any person seeking access under this section.*

*Pursuant to s. 74(1)(b) of the Coroners Act 2009, I order that there be no publication of volume 3 of the coronial brief of evidence in these proceedings.*

*Pursuant to s. 65 of the Coroners Act 2009, the following documents should not be supplied or copied to any person seeking access under this section:*

1. *Tab 62 of the coronial brief of evidence, the document entitled “Motor Vehicle Stopping Techniques and Procedures” dated February 2007.*

*Pursuant to s. 74(1)(b) of the Coroners Act 2009, I order that there be no publication of the following parts of the coronial brief of evidence in these proceedings (other than by means of submissions to the Coroner by or on behalf of persons or agencies granted leave to appear in the proceedings):*

1. *Tab 62 of the coronial brief of evidence, the document entitled “Motor Vehicle Stopping Techniques and Procedures” dated February 2007.*

*Pursuant to s. 74(1)(b) of the Coroners Act 2009, there shall be no publication of any evidence given by officers touching on specific aspects of the document entitled “Motor Vehicle Stopping Techniques and Procedures” dated February 2007.*

## **Introduction**

1. On Thursday 5 January 2017 at 10.09am Mr Solomon Te Kohekohe Shortland was driving an Isuzu 6.2 tonne light rigid truck travelling east on Vardys Road, Kings Park. The rear tray was loaded with various flooring material Solomon was delivering to Westmead Hospital. Solomon had just driven a short distance from his place of employment at General Flooring, 1/8 Turbo Road, Kings Park.
2. Senior Constable Shane Heron was driving a fully marked highway patrol vehicle in the area. He noticed Solomon’s truck and the load in the rear. Senior Constable Heron considered the load was not properly secured and pulled the truck over to the side of the road. Vardys Road at that point has two lanes of traffic in each direction separated by a large median strip. Both vehicles stopped in the kerbside lane (lane 1).
3. Senior Constable Heron got out of his vehicle, approached the truck and spoke to Solomon who got out of the truck. A discussion took place about the load on the truck. During this discussion both persons moved from the offside to the nearside of the vehicle and back. Traffic continued to pass in the adjacent lane (lane 2).
4. Senior Constable Heron told Solomon to secure the load and then went back to the police car for several minutes. Solomon used a tarpaulin and a webbing strap in an attempt to secure the pallet of cement bags in the tray of the truck.
5. After several minutes Senior Constable Heron returned to Solomon who was on the offside of the truck at the front portion of the load tray with his back to lane 2.

Solomon was informed he would be issued an infringement notice. Solomon became frustrated and upset and the tone of the conversation changed. Senior Constable Heron turned to return to the police car but then turned around again to speak to Solomon. The time was 10.18am.

6. At that point Solomon pulled with some force on the tie down strap that he had placed over the tarpaulin and pallet. Solomon had not secured the strap to the near side of the truck and the strap was loose offering no resistance. The momentum used to pull the strap caused Solomon to lose his balance and fall/stumble backwards into lane 2. Solomon's head and shoulders landed in the middle of the lane.
7. A semi-trailer was traveling in lane 2 and struck Solomon. The nearside front of the semi-trailer impacted Solomon's head and shoulders. Solomon went under the truck. The driving wheels of the prime mover ran over Solomon's body and the nearside trailer wheels over his legs.
8. Senior Constable Heron called for urgent immediate medical assistance and attended as best he could to Solomon. Paramedics attended the scene at 10.30am. Dr Weatherall via the Careflight helicopter attended Solomon at 10.41am. Solomon had sustained a critical head injury and major blood loss. Tragically, despite the best efforts of the emergency and medical personnel, Solomon died at the scene at 11.09am. Solomon was 56 years of age.

#### **Why was an inquest held?**

9. The role of the Coroner pursuant to s. 81 of the *Coroners Act 2009* is to make findings regarding:
  - The identity of the deceased;
  - The date and place of that person's death; and
  - The cause and manner of that person's death.
10. An inquest must be held where a death occurred as result of, or in the course of police operations in accordance with s. 23 (as it was prior to amendment on 1 July 2017) and s. 27 of the *Coroners Act 2009*. The stopping of Solomon's truck by Senior Constable Heron was a police operation.

11. Pursuant to s. 82 of the Act, a Coroner has the power to make recommendations, including any public health or safety issue arising out of the death in question.

## **Background**

12. Solomon was born on 11 February 1960 in Hamilton, New Zealand. He came from a large family of 10 children and attended high school leaving at 16 years of age to begin working to support the family. Solomon was a deeply devout person and dedicated two years of his life whilst a young man to serve as a missionary in the Church of Jesus Christ of Latter-day Saints.
13. Solomon married Rayva Fleming in 1984 and had six children. In 1991 Solomon and his family emigrated to Australia to reside in West Pennant Hills. Solomon and Rayva divorced in 1994. All six children lived with Solomon who supported his children as a single parent. Solomon dedicated his life to providing for and raising his children. In 2003 Solomon married Ms Connie Westergard. Sadly Connie passed away in 2005 due to a rare heart condition.
14. In 2010 Solomon met and married Mercia Ann Kavanagh and they moved into the premises at 6/142 Glossop Street, St Mary's. In November 2011 a daughter Nevaeh was born.
15. Solomon had been employed at General Flooring for 17 years and was very well regarded by his employer Mr Richard Hooker. General Flooring supplies and installs commercial flooring. Solomon had held a heavy vehicle licence since 1997. Mr Hooker described Solomon as a fantastic employee, hard-working, reliable, very good at his job and throughout the entire time he worked for Mr Hooker not one person complained about Solomon's conduct.
16. Solomon was the only person who drove the truck owned by the business and was responsible for deliveries and loading the truck. Whilst Solomon had been employed initially as a truck driver, his role changed over the years ultimately to a contracted supervisor, jack of all trades and delivery driver.

## **Events leading up to the death of Solomon**

17. On Thursday 5 January 2017, Mr Hooker was overseas and Solomon was entrusted with running the business and other duties. No other employees were working on that day. A list of jobs and deliveries had been left for Solomon to attend to in Mr Hooker's

absence. Solomon left home at 5.30am and arrived at General Flooring at 1/8 Turbo Road, Kings Park at 6.55am. A delivery of flooring material was due to leave the warehouse on Friday 6 January 2017 and be delivered to a jobsite at Westmead Hospital.

18. For reasons that remain unclear, Solomon decided to undertake that delivery on the morning of Thursday 5 January 2017, despite the flooring contractor at Westmead Hospital indicating he did not want the delivery made on the Thursday. It is unknown if Solomon loaded the truck that morning or on a date prior.
19. Solomon loaded the truck with a pallet of 48 bags of cement adhesive, four rolls of vinyl flooring material and four drums of flooring adhesive. The evidence is that prior to Mr Hooker going on leave, pallets of cement adhesive had been delivered wrapped in plastic wrap in the usual way to prevent individual bags being dislodged in transit. For an unknown reason Solomon had removed that plastic wrapping from the pallet. The pallet was not rewrapped.
20. Solomon drove out of the premises of General Flooring around 10am. Having travelled on only a short distance Solomon's truck came under notice of Senior Constable Heron. Senior Constable Heron prior to joining the police had several years of experience loading heavy vehicles and driving medium rigid trucks.

### **The vehicle stop**

21. The location chosen by Senior Constable Heron was a position nearly opposite a 7/11 service station. The position was just before the crest of a slight rise on a straight piece of roadway. The speed limit is 60 km an hour. The roadway was dry. The police vehicle was placed in an offset position. That is the driver's side of the police car was against the right edge of lane 1. Solomon's truck was pulled over in front of the police car near the gutter. In that offset position the police car provided a corridor of safety that allowed Senior Constable Heron to approach down the driver's side of the truck and remain wholly within lane 1 without the danger of being struck by a vehicle in lane 2.
22. The entire incident is captured on an In Car Video camera (ICV) operating from the highway patrol vehicle. Background noise prevented every word spoken being audible on the ICV footage. Senior Constable Heron advised Solomon he had

stopped him as his load appeared unsecured and for a random breath test. A full viewing of the ICV footage illustrates the following:

23. After the random breath test, which was negative Senior Constable Heron said “*Lets have a look at this load together*”. Solomon got out and with Senior Constable Heron inspected the back tray of the light truck. Both persons did this standing on the offside of the vehicle in the small corridor provided by the offset positioning of the police car behind the truck. Traffic continued to pass in the adjacent lane, lane 2. Senior Constable Heron removed one bag of adhesive cement from the top of the pallet and placed it on the roadway next to the truck to demonstrate the lack of restraint for the load.
24. Both persons move to the nearside of the truck and stand on the nature strip where a further discussion and a demonstration by Senior Constable Heron takes place of items in the truck that are loose and could fall from the truck. Senior Constable Heron followed by Solomon then walks back to the offside of the truck. Senior Constable Heron picks up the bag of adhesive from the roadway and sits it back on top of the pallet in the back of the truck.
25. A further conversation takes place about securing the load properly and Senior Constable Heron walks back to the police car and Solomon walks around the nearside of the truck. Solomon obtains a tarpaulin in the back of the truck and starts to place it over the pallet and other items. He walks around to the offside of the truck again.
26. Solomon spent some time with the tarpaulin and again walked back the nearside further attending to securing the load. Solomon then walked around to the offside of the truck once more and starts to place a webbing strap over the pallet that is now covered by the tarpaulin. That process takes just under four minutes. Senior Constable Heron remained in the police car during this time.
27. Solomon secures the ratchet of the webbing strap to the offside of the truck and throws the loose end of the webbing strap across the tray to the nearside of the truck. The strap on the nearside of the truck tray is not secured by Solomon. Senior Constable Heron leaves the police car and approaches Solomon.

28. A further conversation takes place. Solomon is informed he will be issued with an infringement notice for \$433 with three demerit points. Up to this point the conversation had been amicable. The conversation now changes. Solomon becomes frustrated and upset:

Solomon: *"is that what you do, mate? you just go around making other people's life hard... so...."*

SC Heron: *"no I go around and make the road safe"*.

Solomon: *"yeah....yeah....why don't you just give me a chance mate. You don't really care. Everybody's going to work, mate, to make a living"*.

SC Heron: *"you haven't made an effort. You've made no effort.... dumped it on and you've driven. No effort....You're a professional driver. This is not professional"*.

Solomon: *"thanks for this, thanks for making my day, mate, like you've made everybody else's... no consideration"*.

SC Heron: *"my consideration is to make the road safe"*.

Solomon: *"no, really, I hope it comes back on you too, mate, like a big broom... eh a big broom....."*

SC Heron: *"all right, well..... I'm, I'm going to leave before you say anything more stupid than that"*.

Solomon: *"no you're the one who is stupid...."*

SC Heron: *"I'm not the one driven around with a pallet of...."*

29. Senior Constable Heron had begun to go back to the police car but turned around and walked a few steps back to Solomon. At that point Solomon pulled on the webbing strap. The ICV captures the webbing strap on the nearside of the vehicle coming up as it is not secured to anything. Solomon loses his balance and the momentum of his action causes him to fall/stumble backwards landing in the active traffic lane, lane 2. Solomon's head and shoulders land in the middle of the lane.

30. Travelling in lane 2 at that time was an empty Mack prime mover (semi-trailer) driven by Mr Robert Cruise. The trailer was empty. Mr Cruise had noticed the police vehicle ahead in lane 1 and slowed down as lanes 1 and 2 merged into lane 2. Mr Cruise estimated his speed at that time around 47 to 48 km an hour. As Solomon fell into lane 2 in front of Mr Cruise, he attempted to avoid Solomon.

31. Despite Mr Cruise's best efforts the front left corner of the truck struck Solomon, who fell under the vehicle and was run over by the wheels of the truck.

32. An inspection of the prime mover by Roads and Maritime Service officers revealed a fault with a brake 'travel' indicator on the third axle, however this would not have affected the braking ability of the vehicle as the trailer was empty. Given the suddenness of Solomon stumbling/falling into lane 2 Mr Cruise could not avoid him. Mr Cruise sadly passed away in 2017.

### **Cause of death**

33. A post mortem was conducted at the Department of Forensic Medicine on 9 January 2017 by Forensic Pathologist Dr Lorraine Du Toit-Prinsloo. Dr Du Toit-Prinsloo determined the cause of death was multiple injuries. Toxicology detected no drugs or alcohol.

34. Detective Sergeant Doug Allen of the Region Enforcement Squad - Penrith was appointed the Senior Critical Incident Investigator to investigate the circumstances of Solomon's death. Senior Constable Heron was interviewed later that day. An extensive brief of evidence was prepared, witnesses interviewed and other evidence obtained.

### **Was the stopping of Solomon's vehicle conducted appropriately considering:**

#### **A. The reason for conducting the stop, was the load properly restrained on the truck?**

35. Mr Mike Robertson, an engineer who specialises in safety and efficiency of road transport, was engaged by the Court to provide an expert report on the loading and restraint available on the truck on the date of the incident.

36. Standards are set for the restraint of loads on heavy vehicles (such as Solomon's truck) in accordance with the Load Restraint Guide. As at 5 January 2017, the current edition of the Load Restraint Guide was the 2<sup>nd</sup> edition. That is prepared by the National Transport Commission and gazetted. A driver operating a heavy vehicle was responsible for ensuring the load on the heavy vehicle was appropriately secured to the performance requirements.

37. Mr Robertson's evidence was there were three separate loads on the truck. The heaviest being the pallet of cement bags weighing approximately 1000 kg. That pallet was unrestrained and carried the risk of bags dislodging from the top of the pallet. Many of these bags were stacked higher than the tray sides of the truck. Mr



Robertson was of the opinion that the pallet needed to be wrapped with stretch wrap plastic or similar to prevent bags dislodging. Further the pallet was not blocked or strapped properly in the rear of the truck to stop it moving in the tray. In addition, in this case it may have been advisable to have two pallet angles under the webbing straps to prevent the straps cutting into the bags. No angles were in place and the pallet had not been strapped down. No plastic wrapping was in place.

38. Senior Constable Heron stopped the truck on the basis he considered the load was unsecured. Mr Robertson's opinion was the decision to stop the vehicle by Senior Constable Heron was appropriate. The load on the truck was not secured and constituted a clear risk to public safety including a risk to Solomon in the event of a motor vehicle accident.

39. I find on the evidence there was a proper reason (aside from conducting a random breath test) to stop the truck due to the unsecured load. That Senior Constable Heron was tasked to undertake speed enforcement that morning in no way affected that decision.

**B. Was the location where the truck was stopped safe taking into account the reasonable likelihood Solomon would have to step out of the vehicle?**

40. Senior Constable Heron is a Highway Patrol officer with 10 years of experience. He has worked in the general area of Quakers Hill for that period of time and has conducted numerous vehicle stops on Vardys Road.

41. Senior Constable Heron considered the location he selected for the stop a good location. The roadway is straight, slightly elevated and provides a good view to approaching vehicles to see the police car in plenty of time. Positioning the police car in the kerbside lane forces approaching traffic in both lanes to slow down and merge (which he described as "traffic calming"). He was aware given the nature of the traffic stop he was about to conduct involving an unsecured load on a heavy vehicle that he would ask Solomon to get out of the vehicle at that location.

42. Approximately 40-50 metres beyond the location where Solomon's truck was stopped is another area also used by the Highway Patrol to stop vehicles. It is a slip lane which branches off the kerbside lane to turn into a private commercial business, BOC Gas and Gear. The slip lane allows vehicles to diverge off the road in preparation to enter the commercial premises as opposed to braking and slowing traffic to the rear

as they turn directly off lane 1. The slip lane is not a designated parking area, a lay-by lane or a stopping zone. It is designed to facilitate entry into private premises.

43. Between the two sites there is a slight crest on the road. Senior Constable Heron in the past had utilised the slip lane location to stop vehicles. His evidence was he no longer uses it to stop heavy vehicles. It has advantages and disadvantages. He had been requested previously by BOC Gas and Gear to no longer take vehicles into their private premises in the course of conducting a vehicle stop.
44. Senior Sergeant Scott Walker, the Senior Supervisor of the Hawkesbury Highway Patrol Cluster, and an experienced highway patrol officer, undertook a drive past which was recorded on ICV of both locations. The footage demonstrated a clear line of sight approaching east on Vardys Road to the first location. Past that point there is a slight crest. For the purpose of Senior Sergeant Walker's demonstration video a police vehicle was parked in the slip lane to recreate what an approaching motorist would see when a traffic stop was being conducted. There is some obstruction to vision given the crest of the hill. The roof bars on the top of the highway patrol vehicle still remain visible, but not both vehicles. With vehicles stopped in the slip lane two lanes of traffic continue unrestricted past the point where the vehicles are stopped.
45. Senior Sergeant Walker's opinion is using the slip lane does not provide approaching drivers a clear unobstructed view of the stopped vehicles and has the disadvantages of traffic that has not been slowed down, or "calmed" passing the stopped vehicles adjacent to the slip lane. Both vehicles in that situation are off the roadway but stopped in the slip lane. Sergeant Walker provided evidence that the slip lane is 3.2 metres wide. At the spot where Solomon was stopped lane 1 is 3.3 metres wide and lane 2 is 3.4 metres wide.
46. Senior Sergeant Walker also preferred the first site over the slip lane due to the forced merger of lanes 1 and 2 by a police car parked in lane 1 that slows and calms traffic. He indicated his preference is for a good clear view to the rear of a stopped police vehicle to allow approaching drivers to be aware that vehicles are stopped ahead.
47. Mr Robertson considered the narrow corridor on the offside of the truck was not ideal but the task of securing the load was possible in the circumstances. He did not consider standing close to passing traffic was suitable if there was a safer practical

alternative. His opinion was the slip lane was also not ideal but a safer location. Whilst I accept Mr Robertson's expertise in road transport safety and efficiency (in particular in relation to load restraint safety), I note that this expertise does not extend to traffic management, nor does he have any experience in selecting locations for or conducting traffic stops.

### **Motor Vehicle Stopping Techniques and Procedures**

48. [REDACTED]

49. [REDACTED]

50. [REDACTED]

51. Sergeant William Watt is a Senior Operational Safety Instructor with the NSW Police Force. His evidence was no two traffic stops are the same and stopping vehicles is dangerous. Further there is a difficulty in formulating any policy that must encompass so many different variables.

52. For instance, it was suggested, in evidence, to Sergeant Watt that a policy mandating that heavy vehicles should be directed off the roadway in the circumstances of an unsecure load could be formulated. In response, Sergeant Watt gave a straightforward example of such a situation occurring on a country road where directing a heavy vehicle off the road after rain might result in the vehicle becoming bogged on the verge, or due to the nature of the road, there is simply no available or safe location for a heavy vehicle to be taken off the roadway. Sergeant Watt also

cited the circumstances where the serious danger presented by an unsecure load may require the vehicle to be stopped immediately where no ideal location is available.

53. [REDACTED]  
[REDACTED]  
[REDACTED] Police officers must make a decision to stop a vehicle and the circumstances under which that stop may occur. Traffic stops can be unpredictable. A driver may pull to the side of the road immediately leaving a police officer with the choice of conducting the stop right there or trying by various means to communicate to the driver to move the vehicle to a more appropriate location, if one is available. Or a driver may continue on past a preferred location to stop further up the road in a location not of choice by the police officer.

54. To ensure the safety of police officers is not compromised whilst conducting a vehicle stop the procedure of providing a “corridor of safety” is set out. Senior Constable Heron followed that procedure when he stopped Solomon.

55. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Conclusion**

56. The fact another stopping location was a short distance from where Solomon was stopped resulted in Solomon’s family submitting it was a safer and better location than the site that was selected and should have been used. Senior Constable Heron knew of both and had used them previously. As set out above both sites have advantages and disadvantages. The slight crest prior to the slip lane partially obstructs the view of a vehicle stopped in the slip lane and traffic is not slowed by the forced merging of two lanes into one. I find that had the vehicle stop occurred in the slip lane in the same circumstances, this would still have resulted in Solomon falling into an active traffic lane (lane 1). I do not find in those circumstances the slip lane was a safer location.

57. The safety of the location used by Senior Constable Heron I find was appropriate in the circumstances that Solomon was reasonably likely to exit the vehicle. The site

had an unobstructed clear view to approaching traffic up a slight rise with the use of the police car to slow and merge traffic. Mr Cruise's statement confirms this. The ICV footage illustrates the positioning of the police vehicle provided safety to both persons whilst they remained within lane 1.

**Was the manner and method in which the stop was conducted appropriate including the general road conditions at the time?**

58. Vardys Road, Kings Park at the point where the stop was conducted ran east/west with a large median strip separating two trafficable lanes in the eastbound direction and two trafficable lanes in the westbound direction. Commercial and industrial premises are set back from the roadway at some distance. A viewing of the ICV footage indicates the traffic flow was not light. However, probably due to the phasing of traffic lights at the intersection to the west, passing traffic was not a continual unbroken heavy stream and there are breaks in the flow. I find the traffic conditions at the time involved moderate traffic. The roadway was dry. The speed limit was 60km an hour. There was a clear unobstructed view up to the stopping point for approaching traffic.

59. Solomon got out of the vehicle and inspected the load with Senior Constable Heron. The ICV footage illustrates the first discussions between the two persons as amicable and friendly. Senior Constable Heron tells Solomon what needed to be secured in the tray and returned to the police car. In the next approximately four minutes Solomon attempted to properly secure the load and Senior Constable Heron remained in the police car doing checks and entered details of an infringement notice. Just prior to leaving the car again Senior Constable Heron stated it became apparent to him that Solomon did not have the proper equipment or know how to properly secure the load.

60. After informing Solomon about the infringement notice, Solomon became very upset. Senior Constable Heron decided he just wanted to leave at that point as Solomon had become angry and emotional. He did not want to leave on a bad note and realised as the load was not secured properly he had not given Solomon a final instruction about the load. Senior Constable Heron turned back to Solomon to do that. At that point Solomon pulled on the unsecured strap and fell into lane 2.

61. Mr Robertson's opinion was for the purpose of properly securing the pallet in the position it was on the truck, the ratchet should have been fitted on the near side to allow for greater tension on the strap.
62. In examining the manner of Solomon's death I find that Senior Constable Heron's conduct up to the point where Solomon fell into lane 2 is the relevant conduct to examine. What direction or directions Senior Constable Heron was about to give Solomon does not impact on the circumstances that resulted in Solomon being struck by the semi-trailer in lane 2.
63. However, submissions were made on behalf of Solomon's family critical of Senior Constable Heron's decision-making process on the side of the road. It was submitted Senior Constable Heron's decision to stop the truck because the load was dangerous and unsecure and then subsequently deciding the truck should be moved as Solomon could not secure the load impacted upon his credit as a witness. It was submitted in reacting to Solomon's change of demeanour, Senior Constable Heron did not exercise clear judgement on the day in exercising his duty.
64. Senior Constable Heron in his initial interview said he directed Solomon to get out of the truck. In evidence, Senior Constable Heron stated he had requested or asked Solomon to leave the truck. It was put this variance was consistent with him tailoring his evidence during the course of the proceedings.
65. This point is resolved by reference to the ICV footage. What Senior Constable Heron actually said was recorded. It was: "*Lets have a look at this load together*". I find a request was made to Solomon to get out of the truck. Solomon did so. It was not a formal direction. I do not find Senior Constable Heron's recollection of that part of his conversation with Solomon impacts on his credit as a witness. Overall I found Senior Constable Heron a credible witness.
66. Senior Constable Heron had decided just before Solomon fell to direct Solomon to move the truck off the roadway as Solomon could not secure the load. He was not going to allow Solomon to complete his journey. The nearest location where the truck could be taken off the road and the load properly and fully secured was a McDonalds carpark about 2km away. I find given the inability of the load to be secured and the choices available to Senior Constable Heron at that point in time, that this was an

appropriate decision. The alternative was to direct Solomon to abandon the truck on the side of the road.

67. It was also submitted on behalf the family that Senior Constable Heron should have stopped/prevented Solomon using the offside of the truck in his attempts to secure the load and should have terminated Solomon's efforts earlier. Senior Constable Heron had no statutory power once Solomon was out of the truck to specifically direct him where to stand or where to walk unless he placed him under arrest. The only direction he could give Solomon at that time was to secure the load, drive on to another place or leave the vehicle where it was.

68. A viewing of the ICV footage once again illustrates that the decisions of how and in what manner to properly secure the load were made by Solomon. The responsibility for the initial loading and then addressing any deficiencies in the restraint of the load were Solomon's. Solomon made the decision to place the ratchet of the webbing strap on the offside of the vehicle.

69. Whilst on the offside of the vehicle Solomon remained entirely in lane 1 where by default he was protected by the corridor of safety provided by Senior Constable Heron's police vehicle. The situation evolved and it was only after approximately seven and a half minutes just before Senior Constable Heron got out of the car again that it became apparent Solomon was unable to properly secure the load with the equipment he had. I do not find that Senior Constable Heron should have intervened at an earlier stage and stopped Solomon's attempts to secure the load in those circumstances.

70. Whilst remaining within the boundaries of lane 1, which was what occurred just prior to Solomon pulling on the strap, Solomon was safely protected from passing traffic in lane 2 to the same degree Senior Constable Heron was. I find there was no requirement for Senior Constable Heron to advise Solomon about the "corridor of safety" in the circumstances. The manner and method used during the stop I find appropriate in all the circumstances and in accordance with the procedures and practices Senior Constable Heron was required to consider.

71. Solomon's response to receiving the infringement notice illustrates how quickly the dynamics of a vehicle stop can change. This is not a criticism of Solomon. All the evidence heard at the inquest demonstrates it was totally out of character. His

reputation as an honest, hard-working, reliable and trustworthy person stands out. The \$433 fine probably negated any monetary benefit Solomon may have obtained for working that day. Solomon had gone to work on a day of the year when most people in the community are on holidays which accorded with his strong commitment to provide for and support his family.

72. I find on the evidence that once Solomon was made aware that he would receive a fine he simply forgot he had not secured the webbing strap on the near side of the truck.

73. Throughout the stop Senior Constable Heron spoke and acted in my view in a professional manner. The ICV footage captures most of what was said and importantly the tone in which it was said. Senior Constable Heron's decision to walk away to de-escalate the situation I find entirely appropriate. I find in the circumstances there was no warning to Senior Constable Heron of what was about to happen.

74. I find the manner and method used by Senior Constable Heron for the stopping of Solomon's truck taking into account the purpose of the stop and the road conditions were appropriate and in accordance with procedures utilised by the NSW Police Force at that time.

**Where police policies, guidelines and training regarding roadside stops of heavy vehicles adequate to ensure the safety needs of officers, drivers and the community, as well as the need for effective enforcement of road rules and regulations?**

75. The evidence confirmed that the primary purpose of the "corridor of safety" [REDACTED] [REDACTED] is to ensure the safety of police officers during the course of vehicle stops. The corridor of safety, by default also provides a degree of safety for drivers and/or passengers of stopped vehicles. In circumstances where a driver is arrested, for instance after failing a breath test the arrested person is removed from the vehicle and the offset of the police car provides safety to both police and the person in custody.

76. The MVSTP does not provide any specific guidance to police to ensure the safety of drivers and their passengers who alight from stopped vehicles, or specific advice when loads will be required to be secured by the side of the roadway. Given the



particular circumstances of Solomon's death I am satisfied the MVSTP is deficient in this regard.

**Was the load restraint equipment available to Solomon on the truck fit for purpose?**

77. Mr Robertson's opinion was that, because the pallet of cement bags was not against the headboard of the truck, it would have required three webbing straps to secure it properly. Solomon only had three in the truck and one (that was not fit for purpose) was already in use at the rear of the truck. Mr Robertson did not consider the tarpaulin offered adequate restraint in all the circumstances. In his opinion the equipment available in the truck would not have allowed the load to be properly secured.

78. There were no pallet angles in the truck. For some reason Solomon had removed the plastic wrapping from the pallet. I find the restraint equipment on the truck at that time was not sufficient to secure the load.

79. Mr Hooker stated any restraint equipment considered necessary was purchased by Solomon and reimbursed by the company. I accept his evidence there were additional webbing straps, approximately 8, available for use at the warehouse. Some of the webbing straps were in the company utility that Solomon drove or were in the warehouse. Plastic wrapping was available as were angles to place on top of pallets. I am satisfied there was sufficient and appropriate restraint equipment available for Solomon to use on that day. Despite his extensive experience, a good record of safe loading and his excellent professional reputation Solomon did not use the necessary equipment that was available to him. The ICV footage also illustrates he was not wearing a high visibility vest that day which was his usual practice at work.

**Did the equipment or Solomon's use of it contribute to the fall?**

80. Mr Robertson stated industry practice is the ratchet winch is placed on the kerb or nearside of the vehicle. This is specifically to allow the driver to check and adjust the straps whilst standing on the footpath. Roadway camber also results in the movement of loads to the nearside. After travelling some distance from a depot webbings straps or load restraints should be checked and tightened. However there is no legal requirement that load restraint adjusters be positioned on the nearside of a vehicle.

81. Mr Robertson also stated given the location of the pallet closer to the offside of the truck the proper positioning of the strap for the appropriate tension and downforce required the ratchet to be put on the nearside of the vehicle. Solomon placed the ratchet on the offside.

82. Taking into account all the evidence received at this inquest I find Solomon's decision to place the ratchet on the offside of the truck combined with the obvious and tragic oversight of forgetting to secure the strap to the nearside before pulling on the strap is what caused him to over balance and fall/stumble out of the corridor of safety in lane 1 and into lane 2.

**Did the stopping of Solomon's vehicle for the purposes of rectifying an unsecured/dangerous load and for random breath testing have any causal relationship with Solomon falling into the path of an oncoming truck?**

83. The determination of this issue requires close consideration of whether Senior Constable Heron in performance of his duties undertook any actions that contributed to Solomon's death. The role of a Coroner is not to determine criminal responsibility, civil liability or negligence.

84. For the reasons set out above, I find Senior Constable Heron acted appropriately and in the proper execution of his duties as a police officer in deciding to stop Solomon's truck. Solomon had not restrained the load on the truck properly. It was unsecure and potentially dangerous to other road users and Solomon, particularly in the event of an accident.

85. For the reasons set out above I find the location selected and the actions of Senior Constable Heron appropriate in the circumstances of that particular vehicle stop. The load was not properly secured. I do not find Senior Constable Heron's actions caused Solomon to fall into the path of the truck. How to rectify the load was Solomon's responsibility. What occurred was a tragic accident.

86. I find Solomon placing the ratchet on the offside of the truck and pulling on the unsecured strap having forgotten to secure it is what caused him to fall into the path of the oncoming truck.

**The nature of the police investigation into Solomon's death and media reports on various news websites.**

87. A number of contemporaneous reports of the incident from various media outlets (The Sydney Morning Herald; Yahoo 7; Channel 9; and Skynews) were provided to the inquest. These reports were seen by a friend of the family on the day of Solomon's death. Attention was specifically drawn to a comment attributed to a NSW Police Assistant Commissioner to the effect that there was nothing to indicate that the site was an inappropriate place to stop the vehicle. One report carries a timestamp of 8:22pm on 5 January 2017. Another, 1:54pm which was notably, before Detective Sergeant Allen had even interviewed Senior Constable Heron.
88. This issue was raised by Solomon's family with Detective Sergeant Allen during the course of Detective Sergeant Allen's evidence. I accept Detective Sergeant Allen's evidence that the first he became aware of these media reports was during the course of the inquest and that these reports in no way influenced the course of his investigation. Solomon's family take no issue with that.
89. There is no evidence before this inquest that the officer to whom the comment was attributed attended the scene or was in any way involved in the investigation. There is also no evidence as to what contributed to the formation of that opinion. Consequently, I am unable to make any findings regarding these media reports, nor have they affected any assessment of the issues on the evidence received.
90. It was submitted by Solomon's family that Detective Sergeant Allen failed to consider the alternate slip lane location in the course of his investigation. In the circumstances of what had actually occurred and where it had occurred, I consider the investigation focusing on the actual site used for the vehicle stop was appropriate. I am satisfied the investigation conducted by Detective Sergeant Allen was thorough and undertaken in a professional manner.

**Should any recommendations be made pursuant to s. 82 of the *Coroners Act 2009*.**

Having determined there is a deficiency in the current MVSTP the following recommendation pursuant to s. 82 is made to the NSW Commissioner of Police for the MVSTP to be amended:

*To the New South Wales Commissioner of Police*

*I recommend the Commissioner consider inserting the following information in the Motor Vehicle Stopping Techniques and Procedures:*

**On Page 2:**

*In addition to your own safety, and that of any colleague working with you, consideration needs to be given to the safety of any driver, or passenger should they leave the vehicle. Such persons may become upset simply because they have been stopped or by action you may take. They may move outside the “corridor of safety” you have created and place themselves at risk by being struck by passing traffic. Whilst you have no specific power to direct these persons to a particular place (unless you have placed them under arrest for a specific offence) it is recommended you suggest that they either remain within the vehicle or stand on its nearside until the stop has been completed.*

**On Page 3:**

*In circumstances where it is envisaged that the driver of the vehicle you have decided to stop will be requested to exit the vehicle for example, to inspect or rectify an unsecured load, a stopping location off the roadway where possible, should be selected.*

**Conclusion**

91. Solomon’s death was a tragic accident. Throughout the inquest Solomon’s large and close-knit family attended every day. His sudden death has and will continue to affect the family enormously. I cannot adequately describe in words the level of their grief. Their love and respect for Solomon and the cherishing of his memory shone out throughout the hearing. Solomon’s devotion to his family and the dedication to his faith illustrate the person he was.
92. I offer my most sincere condolences to all of Solomon’s family for their loss.
93. I thank counsel assisting Mr Gardiner and Ms McCrossin of the Crown Solicitor’s Office for their assistance in this matter. I acknowledge the assistance of Detective Sergeant Allen in providing a comprehensive brief.

## **Findings pursuant to s 81 of the *Coroners Act 2009***

### **Identity**

Solomon Te Kohekohe Shortland

### **Place of death**

Vardys Road, Kings Park, NSW

### **Date of death**

5 January 2017

### **Cause of death**

Multiple injuries

### **Manner of Death**

Solomon Te Kohekohe Shortland died in the course of a police operation, accidentally falling into an adjacent lane of moving traffic, and was struck by a truck whilst attempting to restrain a load on a vehicle.

Les Mabbutt

**State Coroner**