



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 14/15

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the death of **Justin Aaron KING** with an Inquest held at Perth Coroners Court, CLC Building, 501 Hay Street, Perth on 13 - 15 April 2015 find the identity of the deceased was **Justin Aaron KING** and that death occurred on 30 September 2011 at the intersection of Great Eastern Highway and Bullarra Road, Greenmount, as the result of Multiple Injuries in the following circumstances:*

Counsel Appearing:

Mr T Bishop assisted the Deputy State Coroner
Mr M Holgate appeared on behalf of the Commissioner of Police and Police Officers Inspector Anderson, First Class Constables Sutton, Hounsham, Morrell and Senior Constable Brown.

Table of Contents

SUPPRESSION ORDER.....	2
INTRODUCTION	2
BACKGROUND	3
30 SEPTEMBER 2011.....	4
Pig and Whistle Tavern.....	6
Approach to the Great Eastern Highway.....	12
Great Eastern Highway.....	18
The Crash.....	27
POST MORTEM EXAMINATION	31
POLICE ACTIONS	32
CONCLUSION AS TO THE DEATH OF THE DECEASED	41
COMMENTS ON THE ACTIONS OF POLICE.....	43

SUPPRESSION ORDER

**No publication of any discussion in relation to
the Police Emergency Driving Policies and
Guidelines or Operations.**

INTRODUCTION

At about 10:38pm on Friday 30 September 2011 Justin Aaron King (the deceased) was riding his Harley Davidson Motorcycle (Harley) in a westerly direction down Greenmount Hill, in the east bound lanes of the Great Eastern Highway (GEH).

At the intersection of GEH and Bullarra Road the deceased's motorcycle collided with a Toyota Rav 4 Station Sedan being driven in an easterly direction up Greenmount Hill. The deceased was thrown from his Harley onto the road. He died at the scene.

The deceased was 36 years of age.

In the minutes before the crash the deceased had attracted the attention of police while performing a burnout in the carpark of the Pig & Whistle Tavern in Swan View. When police, in an unmarked Class 1 police vehicle, activated their lights in an attempt to stop the deceased and speak with him, he rode away and disappeared from view.

When police again sighted him he continued to attempt to evade police and entered the GEH, on the incorrect side of the highway, before crashing.

Under the provisions of the *Coroners Act 1996* there is no doubt the death of the deceased was a reportable death.

In addition, by provisions of section 22 (1)(b), where it appears the death was caused or contributed to, by any action of a member of the police force, there must be an inquest into the circumstances of the death to enable independent review of the actions of the police officers involved.

BACKGROUND

The deceased was born on 2 August 1975 in Perth, Western Australia. He had one younger sister and left school at the age of 14 to commence work as a brick paver. The deceased excelled in sport, particularly football and cricket, and there is no doubt the deceased came from a close knit, loving and supportive family environment.¹

The deceased commenced his own business in 2006, arising out of his brick paving work, and expanded his interests into land scaping and stone work.

¹ t 14.04.15, p120-130

In 2009 he bought his own home in Swan View where he lived in a defacto relationship and was father figure to four children. He treated his partner's children as his own and endeavoured to provide them with the loving, supportive environment he had experienced as a child.

The deceased had grown up around motorbikes, was a good rider and entirely comfortable riding. He owned two Harley Davidson Motorcycles and on the night of his death was riding his black Harley Davidson Nitro Tail Motorcycle 1500cc registration number 1DG741 (Harley).

The deceased had a significant traffic related record involving prior suspensions of his motor vehicle driver's licence and was in danger of further suspensions at the time of his death.

30 SEPTEMBER 2011

The deceased had been working on Friday 30 September 2011 and had contacted his partner to arrange they meet at the Pig & Whistle Tavern in Swan View for dinner. The arrangement was for the deceased to go home from work, prior to going out, to enable him to clean up before he went to the tavern. His partner had suggested he ride his pushbike from home because she would attend the tavern in her vehicle and be in a position to drive him home.

The deceased's partner drove passed the tavern on her way home at approximately 4:30pm and saw the deceased in the beer garden in his orange fluoro work shirt. She noted it was obvious he had not ridden his pushbike, but ridden his motorbike instead.

The deceased's partner went home where she changed and arrived at the tavern at approximately 5:30pm. She had a meal but the deceased did not because he had a large lunch.² The deceased and his partner had an enjoyable evening with friends at the tavern.

The deceased's partner believed she left the tavern at approximately 10:15pm. She saw the deceased with his motorcycle against a wall and starting to do a burnout. The deceased's partner drove home.

² Exhibit 1, Tab 29

Pig and Whistle Tavern

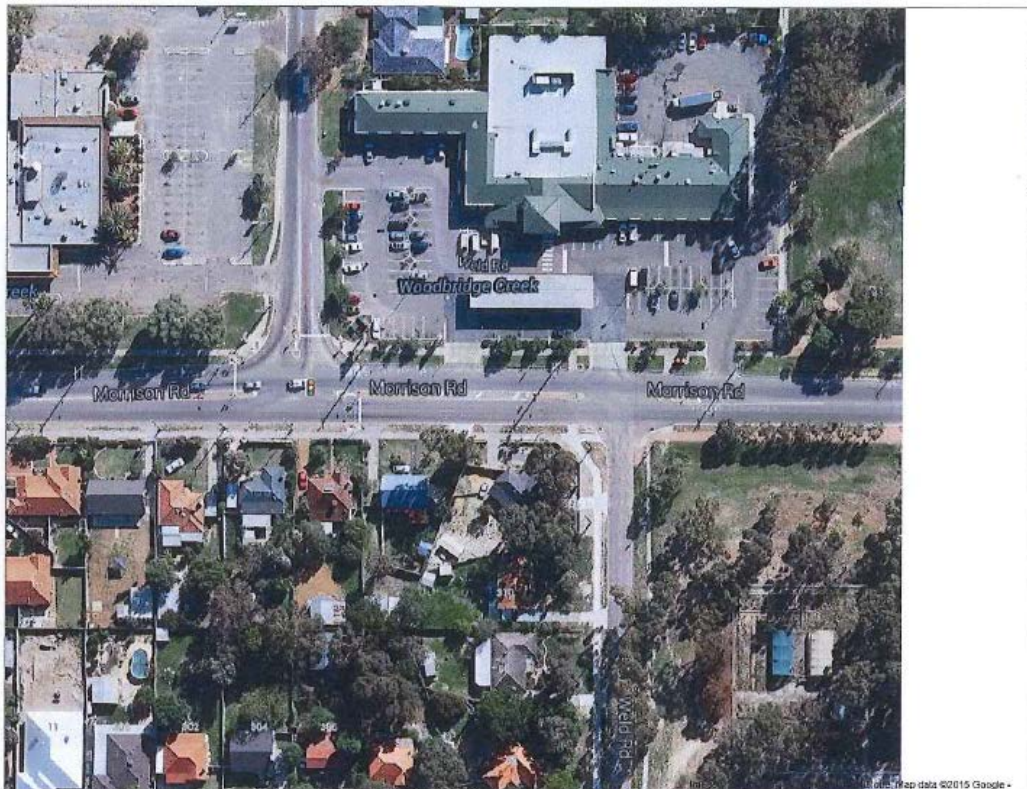
There were a number of regulars at the tavern that night and the noise of the deceased performing a burnout attracted attention, as did the resulting thick smoke.

Google Maps

Page 1 of 1

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



PIG AND WHISTLE HOTEL, MYLES RD, MORRISON RD AND WELD RD

Exhibit 3, Photo 1

Witnesses described the deceased performing burnouts against the wall/fence which bounded the garden of the outside part of the tavern alongside the bistro and public bar.

Ms Cara Price, who was working in the public bar of the tavern, described being behind the public bar, directly opposite the two front doors into the tavern where she could both see and smell the smoke coming in through the entrance. She described the sound first and then looked over to discover the source of the noise. *“I didn’t know it was a motorbike, and then I could smell rubber so I sort of got a look in-between everybody and I realised it was a motorbike....it was quite loud, very loud”*.³ Ms Price went on to describe how she could hear the noise of the burnout over the noise in the public bar generally.

Mr Austin Hyslop stated he was located in the tavern when he heard the noise. He then went into the bistro outside area to see what was happening. By the time he reached the area he said the motorbike was beyond revving and was doing a skid, or burnout. He indicated the motorcycle was pretty much blocking the entry to the tavern and pointed out *“well, you wouldn’t walk out past the bike when it’s doing a skid...he could just let go and crash”*.⁴ Mr Hyslop described it as a long burnout for a motorcycle, and the overall view of the witnesses is there were two burnouts.

Mr Hyslop said that although he was separated from the bike by a metre or two he was unable to see the bike or the rider due to the amount of smoke being produced by burning rubber.

³ t 13.04.15, p25

⁴ t 13.04.15, p11

Mr Lachlan Botting advised the court there was still a groove in the carpark surface where the deceased had performed the burnout on the night of 30 September 2011.⁵ Mr Botting confirmed that from his vantage point, again looking over the wall/fence separating the garden area from the carpark, he was unable to see the rider or the motorbike clearly due to the amount of smoke from burning rubber.

All witnesses at the pub confirmed both the noise and the smoke were thick and prevented clear observation of the rider of the Harley although it seems clear there were two burnouts and the deceased was standing astride his Harley. It was while the deceased was doing the second burnout an unmarked police vehicle drove passed the tavern on Morrison Road and observed a motorcycle in the carpark of the Pig & Whistle Tavern performing a burnout. As a result the unmarked police car turned from Morrison Road left, into Myles Road, and entered the carpark by the most northerly entrance.

*“At that point there was quite a large amount of smoke coming from the motorbike, and I stopped the car just out front of the entrance to the bistro area. The lights-the primary lights had been activated, the red and blue lights, to signal the driver to stop-cease what he was doing”.*⁶

⁵ t 13.04.15, p38

⁶ t 15.04.15, p150

While the majority of the witnesses agreed the deceased was being encouraged in his actions, Ms Joanne Curry, Manager of the bistro and the Pig & Whistle Tavern, stated there were also a number of patrons who were yelling at the deceased to stop and abusing him.⁷ Other witnesses also indicated not everyone was supportive of the noise and smoke being produced by the burnouts.

Mr Botting stated he became aware of an unmarked police car in the carpark once it had stopped and the lights were on. He had been watching the Harley when he noted a yelp on the police car siren and then observed the police car lights. Mr Botting indicated the police car approached the vicinity of the Harley but stopped far enough away not to be damaged by the stones thrown up by the tyres during the burnout.⁸ Mr Botting believed the police had to activate the sirens before the deceased noticed the police car. The rider backed up and attempted to ride off. Mr Botting explained Harleys have a wide turning circle and the rider was unable to perform an effective turn without again striking the wall, before he was in a position to ride out of the carpark. Mr Botting pointed out that gravity, on acceleration of a motorcycle, made it stand up which would have made it appear whoever was riding was in control, whether they were or not.

⁷ Exhibit 1, Tab 24, para 22

⁸ t 13.04.15, p37

Mr Kyle Hek confirmed he was unable to see the rider of the Harley through the smoke but he had observed the unmarked police car when it first entered the northern most entrance of the carpark. The next time he noticed the police car it was in the carpark, outside the garden area, and he estimated it stopped approximately five metres away from the Harley.⁹ He confirmed the rider of the Harley continued doing the burnout until the police vehicle had stopped, had turned its light on and yelped its siren, by which time it was stationery.

Mr Hek registered the burnout as continuing for a second or two until the rider became aware of the police due to the siren yelp. He described the smoke as clearing once the burnout had been stopped at which stage he was able to see more of the bike. He described the deceased as walking the bike back and then riding off in a southerly direction out of the carpark through the southernmost entrance to the carpark. He stated the police car was still stationary when the Harley left the carpark. The Harley turned right across the intersection with Myles Road to turn left onto Morrison Road before turning right again on to Weld Road.

Mr Hek was clear the traffic lights at the intersection of Morrison and Myles Road were red at the time the Harley went through the intersection.¹⁰ He indicated the Harley was at the southern exit of the carpark before the police

⁹ t 13.04.15, p43

¹⁰ t 13.04.15, p44, p20, p45

vehicle moved “*as the smoke was still kind of clearing*”.¹¹ Mr Hek did not see the police vehicle move until the Harley was just going through the red traffic lights.

The consensus of the witnesses was the police car followed the path of the bike out of the carpark but was moving fairly slowly. As one witness indicated there were people and obstacles through the carpark.

Mr Botting stated the Harley would have triggered the traffic lights to turn green and by the time the police vehicle was at the intersection the police had a green light to turn left into Morrison Road. All witnesses confirmed the police vehicle still had its lights on when it followed the path the Harley had taken, but did not recall the sirens after the yelp in the carpark. Mr Hek stated the Harley was already out of sight on Weld Street by the time the police car had reached the southern exit of the carpark onto Myles Road. He observed the police car follow the same route as the bike onto Morrison Road and then right onto Weld Road. He commented the police vehicle was going “*nowhere near as fast (as the bike).*”

Mr Alex Clausen had been at the tavern since approximately 7:30pm and believed he became aware of the burnout at approximately 10:30pm. He estimated he was a couple of metres from where the burnout occurred. He confirmed the

¹¹ t 13.04.15, p45

ridder was standing up whilst performing the burnout and it was a long burnout. He stated it was only just possible to see the lights of the unmarked police car when it arrived through the smoke because it was so thick.¹² The rider took a few seconds to notice the police car and then sat on the bike, after walking it backwards, before he rode off on the Harley. He estimated the police car as being a few seconds behind the Harley. It was not moving as quickly as the Harley.

Mr Clausen could not recall any sirens but could recall the police lights as the police car followed the bike in the direction it had taken down Weld Road.

Approach to the Great Eastern Highway

The unmarked police car (HM106) driven by Constable Sutton (Sutton) followed the deceased from Morrison Road, right onto Weld Road, and there observed the tail lights of a motorcycle turn right onto Buckingham Road and then left onto Innamincka Road.¹³ The passenger in HM106, Constable Hounsham (Hounsham) contacted Police Operations Centre (POC) to advise them as to what was happening.

Sutton lost sight of the Harley on Weld Road due to an incline that effectively placed the Harley out of sight. He

¹² † 13.04.15, p70

¹³ † 15.04.15, p150

followed what he presumed was the deceased's route down Buckingham and left onto Innamincka because there were tail lights and that was the way he presumed the bike had taken. Once they lost sight of the tail lights the police officers in HM106 turned off their lights and sirens, reduced speed and advised POC they had effectively disengaged.

Sutton drove down Buninyong Road, at the speed limit to ensure there had been no accident, and continued under the GEH Bridge, down Miller Street and onto Purton Place where he turned left onto Henkin Street. As Sutton approached the roundabout on Henkin Street he and Hounsham, observed a motorcycle riding down Clayton Street in an easterly direction around the roundabout directly in front of them. They recognised the outline of the rider and the Harley and the fact he was wearing a fluoro jacket. They decided it was probably the deceased so reactivated their lights and sirens in an attempt to stop the motorcycle and question the rider. Hounsham advised POC they were re-engaging with the bike they have seen previously.

Sutton explained the rider on the bike had looked directly at them as they approached the roundabout and then accelerated away heavily when he observed them turn the police car lights on. Sutton described the bike as being 3-400 metres in front of them when he turned left onto Jinda Road. This is a difficult road to negotiate and slowed the

bike enough for the police car to gain on the bike slightly. They were able to see the motorcycle turn onto Scott Street but by the time they reached that point the motorcycle was already half way up Scott Street and out of sight due to a large incline.

Hounsham was “*calling*” the details of the engagement over the police radio channel to POC as he is required to do by the Police Emergency Driving procedures and guidelines. The interchange between Hounsham in HM106 and POC was overheard by other police vehicles in the vicinity. Sutton was a Priority 2 driver and POC enquired as to whether there were any more highly qualified drivers within range.

Pending that information, HM106 was provided with authority to observe the Harley. That authority was not able to be communicated to HM106 until Scott Street due to the difficulty with cross radio transmissions.

Senior Constable Michael Brown (Brown) and Constable Jacki Morrell (Morrell) were in police vehicle HM105 which is a fully marked Class 1 pursuit sedan and Senior Constable Brown, a qualified pursuit driver. They had overheard the interchange on the radio channel but had been unable to cut across the radio exchange to advise POC of their availability in the locality. Similarly police officers in

HM454 also overheard the exchange and were able to notify POC of their availability.

Brown drove east towards Scott Street on the GEH and stopped HM105. HM105 was stationary for 5-10 seconds in the right turn filter lane for Scott Street with emergency lights activated a few metres down from the median access.



To see all the details that are visible on the screen, use the "Print" link next to the map.



SCOTT ST AND GRT EASTERN HWY INTERSECTION



Address **5 Scott St**
Address is approximate



SCOTT ST LOOKING TOWARDS GRT EASTERN HWY



Address **Scott St**
Address is approximate



GRT EASTERN HWY VIEWED FROM SCOTT ST

Exhibit 3, Photos 3, 2 & 4

As the deceased rode out of Scott Street, at speed, he appears to have overestimated his ability to make an appropriate left hand turn into the west bound lanes of the GEH. He continued across the intersection and turned left into the east bound lanes. That is, the deceased rode his Harley passed HM105 and continued downhill, in a westerly direction, in the east bound lanes travelling up Greenmount Hill.

Brown, in HM105, activated both lights and sirens, did a U-turn through the intersection, and followed the path of the Harley from the correct side of the road. He travelled west in the west bound lanes, down Greenmount Hill after the deceased, who was in the east bound lanes travelling west down the hill.

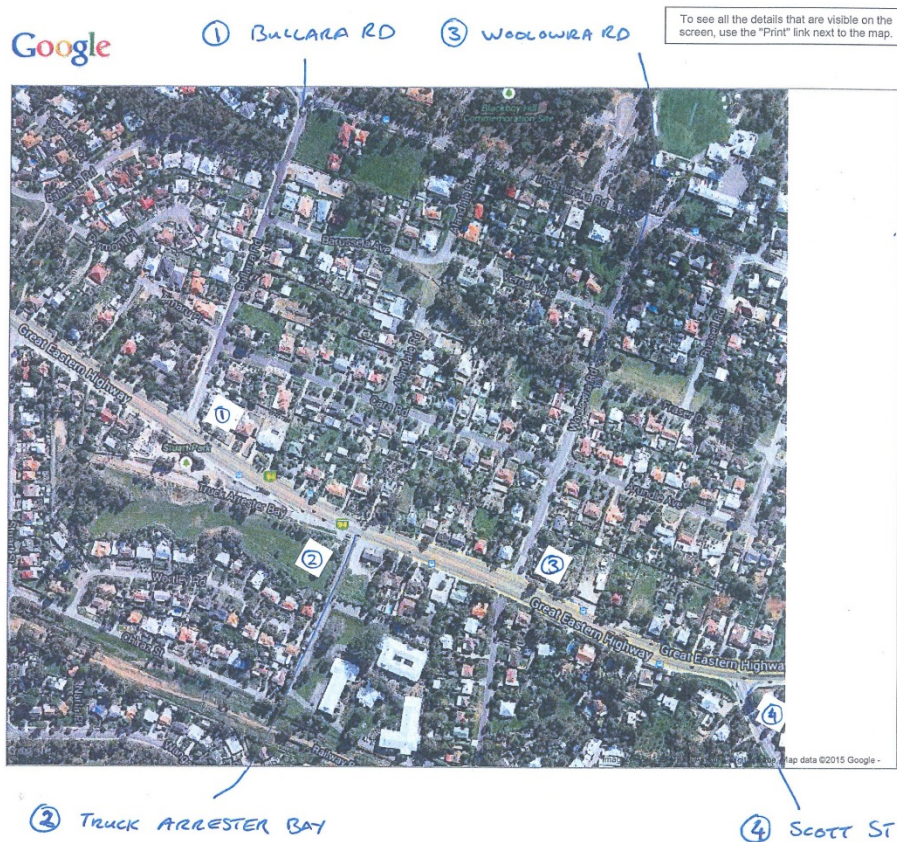
Sutton, in HM106 on Scott Street, did not observe the deceased on the Harley, but did see HM105 perform a U-turn and travel down Greenmount Hill with lights and sirens activated. Morrell, the passenger in HM105, began transmitting to POC they had seen the Harley. This was heard in HM106 who fell into place behind HM105 on the GEH.

POC heard that transmission cut across other transmissions and was about to issue a priority pursuit to Brown in HM105 when Morrell advised everybody the deceased and his Harley were travelling on the wrong side of the GEH, down Greenmount Hill.

Great Eastern Highway

GEH at the point at which it intersects Scott Street in Swan View is a marked carriage way running approximately east-west and inclined up (east) Greenmount Hill.

It is a dual carriage way with two lines of travel in each direction separated by a median strip, with high impact kerbing along both the inner and outer aspects of each carriage way. Beyond the high impact kerbing are concrete footpaths bounding residential properties. There are a series of sweeping bends.





Address **Great Eastern Hwy**
Address is approximate



GRT EASTERN HWY AND SCOTT ST INTERSECTION, LOOKING NW

Exhibit 4 & Exhibit 3, Photo 5

For people travelling in an easterly direction, up Greenmount Hill towards the Scott Street intersection on the right, the road is a steady incline with differing degrees of incline and bend.¹⁴

The deceased, when he exited Scott Street to his left onto the incorrect side of the GEH, was faced with a steady decline with sweeping bends.

¹⁴ Exhibit 1, Tab 14

As the deceased rode his Harley west, down the wrong side of the GEH on Greenmount Hill, he passed a number of other vehicles containing people travelling east.

Travelling from Midland towards Mundaring was a Mazda 3 driven by Alaina Varr, with her fiancé Scott Clarke, while in the rear was her fiancé's father, Ian Clarke, and a friend.

Ms Varr had first noticed a fully marked police car travelling alongside her on the GEH up Greenmount Hill. Ms Varr was in the right hand lane and the marked police car was initially alongside her in the left hand lane. Shortly thereafter Ms Varr noticed the marked police car speed up, but without emergency lighting, and then change into the right hand lane ahead of her.¹⁵

A short while later she saw police car emergency lights flashing approximately 500-600 metres ahead of her. She was unable to tell whether the police car had stopped or was going slowly, but realised it was in the vicinity of the turning lane into Scott Street off to the right. As Ms Varr approached the Scott Street intersection herself she saw a motorcycle headlight immediately in front of her. She had not seen where it came from and she was travelling at about 80km/h. Ms Varr swerved hard to the left as the motorcycle swerved slightly to her right and her reaction

¹⁵ Exhibit 1, Tab 32

alerted the other occupants of the Mazda 3 to the fact they had almost crashed.

Mr Clarke Snr stated he heard a motorcycle travelling towards them at high speed and saw the single headlight which he recognised as belonging to a Harley Davidson. Mr Clarke estimated the motorcycle barely missed the Mazda 3 in which he was being driven, and as the bike passed their vehicle he looked behind and saw the bike “bounce” off the centre median strip several times, although the rider appeared to regain control of the motorcycle.¹⁶

He watched the motorcycle travel out of sight behind them on the bend, and then saw a fully marked police car, with emergency lights, executing a U-turn at the GEH/Scott Street intersection and travel west, back along the GEH in the direction the motorcycle had taken, but on the correct side of the carriageway. Mr Clarke, who is a police inspector, estimated the police car to be at least 400-500 metres behind the motorcycle, which was well out of sight at the time the police car commenced its travel. Mr Clarke then saw a plain police car with a portable light on the roof travelling passed their vehicle, again in a westerly direction on the west bound carriageway of GEH. Mr Clarke did not hear the sirens, but did observe the lights. Mr Clarke did not know where the unmarked police car had come from

¹⁶ t 14.04.15, p83

because his attention had been behind him on the bike and marked police vehicle.

Donna Lee Kirwan was the front seat passenger in a Toyota Prado being driven by her friend Amanda Martino with a number of children in the back seat. It was around 10:35pm when they were in the left hand lane driving east (kerb side) when they both saw flashing blue lights ahead of them, near the Scott Street intersection on their right. Ms Martino had been driving in the right hand lane earlier, but had just moved to the left lane when they saw a single head light appear in front of them, apparently travelling towards them on the wrong side of the highway. Travelling east, they were approaching a left hand bend before they were able to see the intersection of Scott Street on the right. They had just passed Woolowra Road to their left as they went up the highway. Ms Kirwan estimated the visibility up the GEH in the vicinity of Woolowra Road was approximately 100-150 metres, when they first observed the headlight of the Harley in the right hand lane.

Ms Kirwan described very little time in which to react with the speed at which both vehicles were approaching one another.

“we virtually saw it come-because there was a bit of a bend, it came round the bend and it was right there”... “We didn’t

have much warning. We just saw this headlight come straight towards us".¹⁷

Ms Martino stated she did not really notice the motorbike until it was upon them because of the bend in the road. She estimated their speed at approximately 70km/h, and believed the motorcycle rider was probably going faster than their vehicle at approximately 100km/h.¹⁸

Ms Kirwan advised the court that after the bike had passed the Toyota Prado they looked further up the road and saw police emergency lights on the correct side of the road travelling down the GEH. She estimated the police car to be about 100-150 metres behind the bike. It had its emergency lights on although she cannot remember whether the siren was audible. She believed the vehicle she observed following the path of the Harley, but on the correct side of the road, to be a fully marked police car. She estimated the police vehicle speed to be between 70-80km/h and a fair way behind the Harley.

Ms Kirwan described how she and her friend lost sight of the Harley as they continued through their left hand bend. They continued on their way. From Ms Kirwan's perspective the police were behaving appropriately, in that they were

¹⁷ t 13.04.15, p51

¹⁸ Exhibit 1, Tab 36

“keeping an eye on him” but not harassing the motorcycle rider in any way.¹⁹

Melinda Lee Olsen was also travelling up Greenmount Hill, travelling east, at approximately 10:40pm on Friday 30 September 2011. She was travelling in her Honda Jazz motor car, at approximately 70km/h in the left kerbside lane, and initially noticed the reflection of the flashing lights of a police car coming down the hill, heading west, in the opposite carriageway. She observed there were two police vehicles one behind the other which alerted her to the fact there may be a problem.²⁰

Ms Olsen then scanned to her left and noticed a single headlight approaching her on her side of the road. She registered it was a single headlight and in the right hand lane approaching her, which meant she was not going to come into contact with the motorbike. She felt the motorbike was going approximately 90km/h in the wrong direction, but that the rider was in control of the bike. She believed it passed her approximately 100-150 metres before she reached Woolowra Street.

The police cars she had observed the lights of earlier passed her on the correct side of the road, some distance behind the motorbike, approximately four to five seconds behind

¹⁹ † 13.04.15, p55

²⁰ † 13.04.15, p60

him, and she estimated a couple of hundred metres. Ms Olsen continued on her way.

Also travelling on the GEH that evening, between Bullarra and Woolowra roads was Ricky Manu Tumata. Mr Tumata is a long distance truck driver and was driving a Kenworth truck with trailer, east. He was with another driver who was asleep in the back bunk of the cabin. Aside from being an experienced driver, Mr Tumata is also an experienced motorcycle rider. Mr Tumata considered his truck was about half a kilometre further east than the Bullarra road intersection when he saw the deceased's motorcycle light. From his position, high up in the cab, Mr Tumata could see immediately the deceased was coming down hill in the up hill carriageway. Mr Tumata estimated the deceased was going pretty quickly, wearing an open faced helmet and riding a black Harley. Mr Tumata was concerned the deceased came close to hitting his truck which was in the left hand lane heading up hill. Mr Tumata described the deceased as *“pretty close to the traffic island and he was hard - he was leaning hard to make that bend”... “When I first saw him probably 50, 70 metres maybe. He was tanking. He was flying.”*²¹

At that point the deceased had just appeared around the bend and Mr Tumata had no prior sight to warn him of a problem. Mr Tumata stated he was not able to see the bike

²¹ † 13.04.15, p65

and rider and the police cars at the same time. The police were well back and the bike had passed him by the time he observed the police car. Mr Tumata considered it to be the speed at which the deceased was riding, which caused him the need to lean hard to take the bend. Aside from Mr Tumata believing the deceased was going to crash into the front of the truck he also stated the deceased's Harley made so much noise his co-driver leapt out of the bunk to find out what was happening.

Mr Tumata said he watched the Harley in his rear vision mirror for as far as he could see behind him. It was another three to four seconds before he saw the first of the following police cars, a fully marked police vehicle with its lights on. The police were in the correct carriage way to travel downhill and were sitting at about 70km/h, at least four hundred yards behind the deceased. Behind the fully marked police car he could see another unmarked car with a blue light on the roof.

Although Mr Tumata considered the deceased to be in control when riding passed him he believed there was no room for error and that even the tiniest mistake would result in a fatality. He was conscious the deceased had an open faced helmet with no glasses, which meant that at high speed he would not be able to see very well what was in front of him coming up the hill.

The Crash

Behind Mr Tumata's truck, also coming up Greenmount Hill was a Toyota Rav 4 driven by Selena Clohessy. Ms Clohessy had spent the evening in Perth and was travelling home along the GEH. She had just left the Farrall Road lights towards the bottom of the hill and was travelling, she believes, in the right hand lane in the east bound carriage way. She saw a light coming around a bend towards her which was, from her perspective, a left hand bend. It took Ms Clohessy a moment or two to understand what she could see was a motorcycle on the incorrect side of the road. She didn't actually realise it was on the incorrect side of the road until too late for her to avoid it. The motorcycle hit the Toyota Rav 4 in the front right hand corner which caused the airbags to deploy. The Toyota Rav 4 spun to a stop in the median island at the Bullarra Road intersection. Ms Clohessy never registered the fact of the motorcycle, only the single headlight, as it hit. At no stage before the impact had Ms Clohessy seen police cars or their lights on the other side of the road.²²

Ms Clohessy suffered some minor cuts to her arm and a problem with her ankle which made it difficult to walk until she was fully recovered. While Ms Clohessy did fully recover physically from the crash with the deceased's motorcycle, she has still not recovered psychologically. She finds the sound of a loud motorcycle distressing, and initially became

²² t 14.04.15, p77

very distressed when driving at night. Although she finds she is now able to cope when driving there were times when she had to stop to allow herself to recover. Although she has significantly recovered, she still thinks about the crash “*pretty much every day*”.²³

The police inspector on duty at POC that night was Malcolm Anderson. When he understood HM105 was positioned at the Scott Street GEH slip right hand turn lane and then notified POC of the appearance of the Harley from Scott Street onto the GEH it was his intention to advise Brown he had a priority pursuit to follow the Harley. It was also his intention to stand HM106 down. However, before he could do so Constable Morrell in HM105 continued transmitting and advised POC the deceased had ridden his Harley onto the wrong side of GEH, travelling west.

Before Inspector Anderson could issue any further instruction, Morrell continued with her report which indicated the motorcycle had crashed at the intersection of Bullarra Road.²⁴

Brown believes he had only travelled about 500-600 metres before he saw a cloud of dust and realised the motorcycle must have crashed. He continued driving in the direction he had seen the dust and came across the Harley and the deceased lying on the road in the westbound carriageway.

²³ † 14.04.15, p78

²⁴ † 14.04.15, p 111

Brown did not realise there had been an impact with another vehicle in the east bound carriageway.

Brown immediately went to the deceased to assist but was satisfied he was deceased. He had not sighted the deceased between the time the Harley rounded the front of HM105, as it waited in the right hand turn lane before Scott Street, until he saw him on the west bound carriageway, deceased.

It was when HM106 also pulled up the police officers realised there was another vehicle involved and went to the assistance of Ms Clohessy.

The distance between Scott Street, where the deceased on his Harley had entered the GEH, and Bullarra Road, where the crash occurred, is approximately 712 metres. There is a 70km/h speed limit in operation along that stretch of the GEH, and Bullarra Road intersects with the GEH on the left hand side travelling east. It is a wide intersection with a large median opening to accommodate vehicles turning on and off the GEH. The centre of the Bullarra Road intersection contains a concrete traffic island and is controlled by a stop sign onto GEH. For motorists travelling in an easterly direction up GEH the road inclines but is relatively straight leading into a long sweeping left hand bend.

From Scott Street downhill on the GEH the road is a decline with a series of long sweeping bends, the first of which is a long sweeping right hand bend, followed by a long sweeping left hand bend, before a long sweeping right hand bend on the approach to the Bullarra Road intersection.²⁵

The area has street lighting and visibility is good but distance is obscured by the bends and road structure.

The area of impact was identified as occurring in the right hand lane of the east bound carriage way, approximately 10 metres prior to the median opening where vehicle fluid and debris were located, with no scuff marks, gouges or scrapes on the road to identify the point of impact. After the impact point, travelling east, there were two tyre scuff marks which appeared to relate to the movement of the Toyota Rav 4. The Toyota Rav 4 came to rest in the middle of the median opening on the GEH facing back down the hill.

The Harley was found on the GEH in the kerb side lane (left) of the west bound carriage way, about 50 metres west of the Bullarra Road intersection on its right hand side. The deceased was located in the right hand lane of the west bound carriage way, about 30 metres left of the median opening.²⁶

²⁵ Exhibit 1, Tab 14

²⁶ Exhibit 2, Tab 10

Due to the lack of physical evidence on the road surface it was impossible for motor vehicle examiners and crash investigators to determine the speed at impact of the motorcycle and the only skid or scuff marks appeared to relate to the Toyota Rav 4. It is clear, however, the impact occurred in the east bound carriageway and the deceased was thrown from his motorcycle, where both landed on the west bound carriageway.

Examination of the Toyota Rav 4 and the Harley revealed crash damage only. There were no faults which would have contributed to the crash.

POST MORTEM EXAMINATION

The post mortem examination of the deceased was carried out on 6 October 2011 by Dr Gerard Cadden of the PathWest Laboratory of Medicine.

The deceased incurred severe traumatic head injury, severe chest injury with extensive rib cage injury causing lacerations to the internal organs in the thorax. Severe abdominal injury with laceration to the liver and severe skeletal injury of the skull, long bones and pelvis. The injuries sustained were incompatible with life and reflected impact with a hard surface.

Toxicological examination revealed a blood alcohol level of 0.156% and a higher level in the urine.²⁷ This level of alcohol, even in an experienced drinker, would impair judgement and driving ability.

POLICE ACTIONS

The actions of the police officers involved in the events which culminated with the deceased's death on the GEH in the vicinity of Bullarra Road intersection were routine law enforcement activities. The outcome wasn't. It is because of the tension between community safety by way of law enforcement, and the risk to safety which sometimes arise from the process of law enforcement that the community has a right to request, and expect, there will be independent review of law enforcement activities to ensure safety considerations from the community perspective are properly weighted.

In this case the deceased did have reason to wish to evade police. He had only recently regained his driver's licence from prior suspensions, and had been charged eight days earlier with additional offences for which it is likely he would receive similar penalties. However, the police in HM106 were not aware of the identity of the deceased at the time they observed a motorcycle doing a burnout in the carpark of the Pig & Whistle Tavern. From their perspective

²⁷ Exhibit 2, Tab 7

an offence was being committed²⁸ which was also producing a quantity of toxic smoke affecting the surrounding environment. Additionally, it was likely whoever was behaving in that way, outside a tavern on a Friday night, would be intoxicated and consequently a danger on the road.

The perpetrator was potentially a threat to himself and other road users. From both a law enforcement and community safety aspect the two police officers in HM106 had good reason to approach the deceased and ask him to desist from his behaviour and examine his intentions before he rode in public. The deceased and the motorcycle were stationary, but vision was obscured by the smoke, and as Mr Botting pointed out there was likely to be flying stones as a result of the burnout.²⁹

The intention of the police officers was to stop the deceased. As an indication they wished to speak to him the lights of HM106 were activated in an attempt to both attract his attention and request him to cease from what he was doing. To ensure he knew they were there they also activated the yelp function of the siren. All witnesses agreed visibility was obscured. The police officers were not able to identify the rider or the registration of the Harley. The deceased made a decision to not only ignore the police, but to actually ride

²⁸ Section 62(A) Road Traffic Act 1974

²⁹ † 13.04.15, p37

his motorcycle out onto the road where he became a potential danger to himself and others.

In those circumstances police, from both a safety and law enforcement perspective, were bound to at least follow the deceased. By the time the deceased had ridden his Harley onto Morrison Road and up Weld Road the police were just exiting the southern carpark of the tavern onto Myles Road to access Morrison Road. The deceased by then had driven through a red light, according to the witnesses, however, the police were not aware of that, and only confident the light was green when they passed through the same intersection.³⁰ Also confirmed by the witnesses. It is not even clear the deceased knew he was to be followed, however likely it would appear.

The deceased was demonstrating a disregard for road safety which would support the police view he may become a danger to himself and the community at large. Police have stringent Emergency Driving policies, procedures and guidelines in place in an attempt to ameliorate the inherent dangers which they confront when faced with a “pursuit” situation. Without entering into the semantics of what is and is not a pursuit, from the community’s perspective there are occasions upon which police believe, as a matter of law enforcement and community safety, they need to follow vehicles. In response the Commissioner of Police has

³⁰ † 15.04.15, p156

issued guidelines to manage those situations in a way which is intended to put safety at a premium, as far as risk assessment is involved.

In Western Australia those guidelines are extensive and any breaches by police officers are investigated. There are numerous checks in place to verify the facts, but risk assessment is a continuous value judgement by both the police officers involved, and those who supervise them in an attempt to introduce some objectivity and remoteness from the tension of the events.

The fact the deceased was out of sight by the time the police had followed him would indicate he intended his actions. He intended to evade the police, and the fact they were following him was irrelevant to the fact he expected them to follow him, and took and made his decisions from that perspective.

The two police officers in HM106, Sutton driving and Hounsham, as the passenger, proceeded as per the guidelines and contacted POC for the provision of information and to ensure a senior officer understood what was occurring and was in a position to supervise from a broader perspective.

At POC, when Hounsham began transmitting, the policies and guidelines at POC also began to operate. The actions of

the police officers in HM106 were monitored as they occurred. HM106 was not an approved unit to engage in an authorised pursuit and the intention was to determine if there were suitably qualified vehicles and drivers to assist. At POC, Inspector Anderson, was assessing the risk factors involved when HM106 reported they no longer had sight of the motorcycle. At that point no authorisations had been issued.³¹ That incident lasted for less than a minute and the police officers in HM106 deactivated their lights and sirens.

At that point in time police officers in HM106, POC, and other vehicles who had heard the transmissions, understood there was a motorcycle rider somewhere in the vicinity of Buninyong Road who had committed an offence, but deliberately avoided police contact.

A short while later Sutton and Hounsham saw the motorcycle, which they believed had been involved in the earlier incident, as it passed them on Clayton Road, as they approached an intersecting roundabout. To the police officers the rider looked directly at them and then accelerated away heavily indicating he was not prepared to stop. The officers in HM106 again activated the lights to indicate to the deceased they wished him to stop so they could speak with him. Again the deceased did not stop but accelerated away up Clayton Road.

³¹ † 14.04.15, p109

The police officers in HM106 again contacted POC to describe the situation and the emergency driving policies procedures and guidelines again began to operate with the police officers recounting information from their observations and relaying it back for a duty inspector's supervision.

Other police vehicles in the area which had heard the earlier transmissions also heard the renewed transmissions and understood there was a need for an appropriately classed police vehicle and properly qualified driver to assist HM106. Two police vehicles with appropriately qualified drivers were approaching the area. HM454 and HM105 were both fully marked police vehicles, with suitably qualified drivers.

All police officers now graduate from the academy with a basic priority capability. They can be used for emergency driving within their specific capability. More advanced driving requires more advanced training.

Hounsham, in HM106, then provided POC with information he understood the duty inspector would require to appropriately supervise the incident. This allows the duty inspector to risk assess the immediate environment but also assess the broader environment and supports which may be used to stop, in this case a motorcycle and rider, of concern.

The duty inspector made enquiries as to the availability of both, other vehicles and the police air wing. These are all aimed at bringing an incident to a safe conclusion without the direct involvement of police vehicles in proximity to a vehicle of concern.

All these risk minimisation strategies were in the process of being considered at the time the police officers in HM106 were attempting to track the course the motorcycle was taking. The duty inspector provided an authority for HM106 to drive to the capability of its driver to enable that to occur. They again lost sight of the deceased but were confident he was on Scott Street driving towards the GEH. This allowed the police officers in HM105 to position themselves on the GEH, in proximity to the Scott Street intersection. Those officers had not yet been able to interrupt transmissions to advise POC they were in a position, and qualified, to pursue the deceased and motorcycle should they enter onto the GEH.

The various driving priorities carry with them limits related to speed and activities as part of the risk minimisation strategy employed by POC. It was during the course of these events the police officers breached their respective capabilities. Prior to the deceased's exit onto the GEH police speeds had not been significant and any breaches would not have been within the knowledge of the deceased and therefore cannot have influenced his behaviour.

It was presumably as a result of the speed at which the deceased was travelling that he overshot the turn from Scott Street onto the GEH. He emerged and instead of turning left onto the west bound carriageway he turned left onto the east bound carriageway. HM105 was in the right turn lane at that intersection and the deceased had to ride around the police vehicle, with its lights flashing, to continue his journey. That also must have been a conscious decision.

In response Brown in HM105 executed a U-turn down GEH, in the westbound carriageway, some distance behind the deceased on his motorcycle. Morrell started transmitting to POC they had now observed the motorcycle and were in a position to pursue, but the deceased travelled down the wrong side of the highway before the duty inspector was in a position to issue any directives.

The police officers in HM105 followed, within their capability guidelines, the path of the motorcycle although it was out of sight.

HM106, on exiting Scott Street, saw the situation and followed behind HM105, both vehicles with lights and sirens activated. While none of the witnesses on the highway appear to have heard sirens, I am satisfied from listening to the transcript of those events lights and sirens were activated, a requirement for emergency driving and

necessary to warn surrounding road users of the potential for there to be vehicles on the road acting outside the road rules. Indeed Ms Olsen became aware of the police lights before she became aware of the motorcycle.

Brown, in HM105, saw a dust cloud and realised there had been a crash. He stopped HM105 to assist and discovered the deceased in the west bound carriageway, separated from his Harley. It was the following police officers in HM106 who realised another vehicle had been involved and went to the assistance of Ms Clohessy.

POC arranged for other police and emergency services to attend the scene and manage events from that point. This included a full assessment of the police actions during the events. It was as a result of data gathered it became apparent police officers had breached their capability authorisations during the events. These were irrelevant to the deceased's activities. The police were appropriately dealt with by the Commission of Police for those breaches.

Aside from the disciplinary actions it is apparent some of the police officers involved in the events were traumatised by the outcome.

It is the seriousness of the potential outcomes of these incidents which warrants the strict scrutiny of Emergency

Driving Policy Procedures and Guidelines with a view to risk minimisation.

I am satisfied from the above the actions of the police were, for the majority, in accordance with their Emergency Driving Policies, Procedures and Guidelines and the breaches which occurred were not relevant to the actions of the deceased.

The fact of the lights and sirens were a necessary safety factor once on the GEH, and the proximity of the police vehicles to the crash, although it occurred out of their sight, ensured prompt attention for the deceased, should he have needed it, and ensured Ms Clohessy was appropriately dealt with at the scene.

CONCLUSION AS TO THE DEATH OF THE DECEASED

I am satisfied the deceased was a 36 year old male who enjoyed riding, and riding hard, and had a desire for risk taking, not diminished by his age or responsibilities in life. He was an employer in a business and a father figure in a family. It is clear he loved his life, his family and friends. However, it would seem his love for speed had consistently caused him difficulties with his driver's licence and he was aware of the risks to his driving authorisation should he again come to the attention of police.

On the evening of 30 September 2011 the deceased made plans to meet his partner at the Pig & Whistle Tavern for a meal after work. Although he appears to have gone home after work he did not ride his bicycle, as had been suggested, but rode one of his Harleys.

The deceased had a good evening and at the end of the evening was intoxicated to the extent his decision making was impaired. By way of a sense of fun he performed a burn out in the carpark of the Pig & Whistle Tavern which brought him to the attention of a passing police vehicle.

When the officers in the police vehicle attempted to stop the deceased he ignored them and attempted to evade them by riding away at high speed.

The police followed, but had lost sight of the deceased and his Harley. The matter would have ended there had they not crossed paths and the deceased again accelerated away heavily, rather than stopping when asked to do so by the activation of the emergency lights on HM106.

The deceased sped away and again was lost from view of those in HM106. However, the deceased does not appear to have desisted, slowed down or stopped, but rather continued along Scott Street, which he must have known exited onto the GEH. While the GEH may be seen as a safer road upon which to speed, it is also a heavily used road and

difficult to navigate at excessive speed due to the decline and bends. There is a truck arrester bed in the westbound carriageways as an indication of the difficulties sometimes experienced on that section of Greenmount Hill.

Due to his speed the deceased overshot the left turn onto the GEH and instead turned left into the east bound carriageway, where HM105 was positioned with its lights activated. The deceased went around HM105 and again he did not stop. He accelerated downhill in the wrong direction causing consternation with a number of motor vehicle occupants in the less than kilometre ride before he struck the front of the Toyota Rav 4 driven by Ms Clohessy. The deceased impacted with the right front driver's side of that vehicle and spun it 180°. Very luckily Ms Clohessy was not more severely injured.

Unfortunately, the deceased was thrown from his motorcycle onto the road surface where he suffered extensive injuries and died on impact.

I find death arose by way of Accident.

COMMENTS ON THE ACTIONS OF POLICE

The fact the deceased was effectively stationary and confined when first observed by the police officers in HM106 indicates there was minimal risk involved to the safety of

the deceased, the police officers or other road users should he just stop. The deceased however chose his course of action and quite deliberately mounted his bike and rode off.

I have already made it clear I do not consider any breaches of the Police Emergency Driving Policy and Guidelines to be of relevance to the fact of the deceased's death and, accordingly, I do not find the police actions caused or contributed to the death of the deceased in this particular case.

The issue more recently has been whether there should be police pursuits at all. If a driver/rider knows police will not chase them, will the driver/rider drive or ride appropriately? It may be considered the offence of the burnout in the Pig & Whistle Tavern carpark was relatively minor. It certainly did not warrant a risk of death.

While that may be correct in theory, in practical terms it was highly likely the deceased was intoxicated, due to both his location and actions. It should be of concern to police somebody in that condition would then ride on public roads. The manner in which the deceased rode off meant it was unlikely he would know whether HM106 had followed him. It did not alter his riding.

There did arise during the course of the inquest some issues with respect to the detail of the current Emergency Driving

Policies and Procedures and Guidelines. It was canvased in some detail and, without going into specifics, it would seem that in practice priority 1 and 2 driving is authorised during the progress of a pursuit, despite there being some lack of clarity in the guidelines as to the extent that is permissible. There are also distinctions between different types of driving and a technical 'pursuit'.

The way the guidelines are implemented in practice emphasises continual risk assessment by all those involved in emergency driving practice, whether they be drivers, passengers, or supervisors. Consequently, it would seem the parentheses attached to some of the definitions maybe superfluous and confusing. All police officers involved in the inquest appeared to understand relevant limitations, and the distinction between different types of driving. They also understand their driving capabilities. In view of this I would anticipate the new policy document, in the process of production, does not contain the same apparent contradictions which in theory look unworkable, but have been made to work in practice by various verbal strategies. The new policy should reflect the practise which appears to be workable.

I am satisfied police officers engaging in emergency driving in 2015 understand continuous risk assessment. The issue is always a tension between the inherent dangers of a pursuit and the availability of other strategies whereby an

offending motor vehicle driver may be prevented from harm to the community, including himself.

While the community still accepts the concept of pursuits, then the way in which they are conducted in Western Australia appears, in practise, to minimise the inherent risks, but they can never be entirely removed. That is the tension.

E F Vicker
Deputy State Coroner
2 June 2015