



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref Nos: 12/2017

I, Rosalinda Vincenza Clorinda Fogliani, State Coroner, having investigated the deaths of:

***Kuldeep SINGH**, with an Inquest held at Perth Coroners Court, Central Law Courts, 501 Hay Street, Perth on 7-30 March 2017 and 3-11 April 2017 find that the identity of the deceased person was **Kuldeep SINGH** and that death occurred on 19 October 2012 at Orrong Road, Kewdale as a result of Multiple Injuries; and*

***Sean Duncan BARRETT**, with an Inquest held at Perth Coroners Court, Central Law Courts, 501 Hay Street, Perth on 7-30 March 2017 and 3-11 April 2017 find that the identity of the deceased person was **Sean Duncan BARRETT** and that death occurred on 19 October 2012 at Orrong Road, Kewdale as a result of Multiple Injuries; and*

***Gavin Wayne FRYER**, with an Inquest held at Perth Coroners Court, Central Law Courts, 501 Hay Street, Perth on 7-30 March 2017 and 3-11 April 2017 find that the identity of the deceased person was **Gavin Wayne FRYER** and that death occurred on 12 February 2013 at Harris Street Bicton as a result of Multiple Injuries; and*

***Jordan Damon RUNDELL**, with an Inquest held at Perth Coroners Court, Central Law Courts, 501 Hay Street, Perth on 7-30 March 2017 and 3-11 April 2017 find that the identity of the deceased person was **Jordan Damon RUNDELL** and that death occurred on 11 January 2014 at Hepburn Avenue and Waraker Road Hillarys as a result of Multiple Injuries; and*

Kyra Marjorie Carmen NARRIER**, with an Inquest held at Perth Coroners Court, Central Law Courts, 501 Hay Street, Perth on 7-30 March 2017 and 3-11 April 2017 find that the identity of the deceased person was **Kyra Marjorie



Carmen NARRIER and that death occurred on 13 November 2014 at Thomas Road, Orelia as a result of Multiple Injuries; and

*Hassan EL BAKDADI, with an Inquest held at Perth Coroners Court, Central Law Courts, 501 Hay Street, Perth on 7-30 March 2017 and 3-11 April 2017 find that the identity of the deceased person was **Hassan EL BAKDADI** and that death occurred on 21 December 2014 at Illawarra Crescent Ballajura as a result of Multiple Injuries*

in the following circumstances -

Counsel Appearing :

Mr T Bishop assisting the State Coroner

Ms R M Hartley and Ms S J K Teo (State Solicitors Office) appeared for the Western Australia Police Service and the individual police officers

Mr A Crocker and Mr P A Sofield appeared for the Western Australia Police Union

Ms A Barter (Aboriginal Legal Service of Western Australia) appeared for Ms T Narrier

SUPPRESSION ORDERS

1. The driver of TK112 be referred to as Officer G
2. The driver of VC105 be referred to as Officer R
3. The passenger of US110 be referred to as Officer A.

That there be no recording or publication of any information or image which may identify or tend to identify Officer G, Officer R or Officer A

AND

That there be no reporting or publication of the details of any of the versions of the WA Police Emergency Driving Policy and Guidelines, the number and rank of police officers trained for the purposes of the Policy and Guidelines (including the outcomes of such training) and the operational capacities of the Police Airwing.



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INTRODUCTION

1. This inquest was held to investigate the circumstances of the deaths of six persons:
 - a. Mr Kuldeep Singh who was 28 years old at the time of his death and who died on 19 October 2012 whilst driving his taxi, after a collision with a motor vehicle that was in the course of evading police;
 - b. Dr Sean Duncan Barrett who was 36 years old at the time of his death and who died on 19 October 2012 whilst a passenger in a taxi that was being driven by Mr Kuldeep Singh, after a collision with a motor vehicle that was in the course of evading police;
 - c. Mr Gavin Wayne Fryer who was 28 years old at the time of his death and who died on 12 February 2013 after the motor vehicle he was driving collided with a motor vehicle that was in the course of evading police;
 - d. Mr Jordan Damon Rundell who was 28 years old at the time of his death and who died on 11 January 2014 whilst riding a motorcycle in the course of evading police;
 - e. Ms Kyra Marjorie Narrier who was 23 years old at the time of her death and who died on 13 November 2014 whilst a passenger in a motor vehicle that was being driven in the course of evading police;
 - f. Mr Hassan El Bakdadi who was 29 years old at the time of his death and who died on 21 December 2014 whilst driving a motor vehicle in the course of evading police.

2. The deaths are reportable deaths within the meaning of section 3 of the *Coroners Act 1996* (the Coroners Act) because they resulted from injury. They were reported to the coroner as required by the Coroners Act. By reason of s 19(1) of the Coroners Act I have jurisdiction to investigate the deaths.

3. The deaths occurred following an attempted police intercept or a police pursuit. Therefore, pursuant to s 22(1)(b) of the Coroners Act an inquest into each death was mandated because it appeared that the deaths were caused, or contributed to, by an action of a member of the Police Force (the police).



4. Section 22(1)(b) is enlivened when the issue of causation or contribution in relation to a death arises as a question of fact, irrespective of whether there is fault or error on the part of the police.
5. Pursuant to s 40 of the Coroners Act the six deaths were investigated at one inquest. This allowed for a consideration of the operation and efficacy of the Western Australia Police Emergency Driving Policy and Guidelines, and the balance it endeavours to strike between the law enforcement imperative giving rise to pursuits, and the risk to the community of undertaking pursuits.
6. My primary function is to investigate the deaths. It is a fact-finding function. Pursuant to s 25(1)(b) and (c) of the Coroners Act, I must find, if possible, how each death occurred and the cause of each death.
7. Pursuant to s 25(2) of the Coroners Act, in this finding I may comment on any matter connected with the deaths including public health, safety or the administration of justice. This is the ancillary function.
8. Section 25(5) of the Coroners Act prohibits me from framing a finding or comment in such a way as to appear to determine any question of civil liability or to suggest that any person is guilty of an offence. It is not my role to assess the evidence for civil or criminal liability, and I am not bound by the rules of evidence.
9. Two of the deaths were of persons who were themselves in the course of evading police (Mr Rundell, Mr El Bakdadi). One death was of a passenger in a motor vehicle that was in the course of evading police (Ms Narrier). Three deaths were of persons in motor vehicles that collided with a motor vehicle that was in the course of evading police (Mr Singh, Dr Barrett, Mr Fryer).
10. The deaths of Mr Singh, Dr Barrett, Mr Fryer and Ms Narrier were the subject of criminal proceedings in which the question of whether the accused person caused the death was in issue. Those proceedings were concluded prior to the commencement of the inquest. Pursuant to s 53(2) of the Coroners Act, my findings on



inquest must not be inconsistent with the results of those earlier proceedings.

11. The focus of the inquest was upon the reasons for the police involvement, the actions of police during the course of the intercept or pursuit, an assessment of whether the Western Australian Police Emergency Driving Policy and Guidelines had been breached and if so, whether that breach, or indeed any other police action, caused or contributed to any of the deaths of the deceased. Consideration was given to ways of preventing deaths in similar circumstances.
12. I held an inquest at Perth on 7 to 30 March 2017, and 3 to 11 April 2017. I heard from 72 witnesses and received 16 exhibits into evidence, containing a total of 364 tabs.
13. Between 11 April and 9 May 2017 I received written submissions from counsel assisting and the legal representatives of the interested persons under s 44(2) of the Coroners Act.
14. My findings appear below.

THE ROLE OF THE POLICE OPERATIONS CENTRE

15. At the material times, under the Emergency Driving Policy and Guidelines of the WA Police Manual permission was required from the Police Operations Centre in order for appropriately qualified police officers in specified police vehicles to drive under Priority 2 Driving conditions or continue to drive under Pursuit Emergency Driving conditions (also referred to as "*Priority Pursuit*").¹
16. Priority 2 Driving conditions refer to a category of Emergency Driving that is approved by the Police Operations Centre for the purpose of responding to an incident, but not for pursuit. A range of conditions are required to be met in order to properly carry out the function, and there is a specified speed cap, which is lower than the speed cap for Pursuit Emergency Driving.
17. Pursuit Emergency Driving conditions refer to a category of Emergency Driving that is approved by the Police Operations Centre in circumstances where the driver of a vehicle being intercepted

¹ Exhibit 14, tabs 1 to 4



does not stop for police when called upon to do so. There is a specified speed cap unless otherwise approved.

18. The Police Operations Centre retains oversight of the emergency driving and can instruct that it be terminated at any stage.
19. A range of factors that impact upon ongoing risk assessment are required to be taken into account by the police in the vehicle, in deciding whether to engage in that driving and for the entire period of that driving, and by the Police Operations Centre in deciding whether to grant the permission, and for the entire period of their oversight.

METHYLAMPHETAMINE AND IMPAIRED DRIVING

20. In respect of five of the six deaths, the driver of the vehicle fleeing from police was found to have a degree of methylamphetamine and amphetamine intoxication that rendered that individual incapable of safely driving a vehicle under normal circumstances.
21. Professor David Joyce, clinical pharmacologist and toxicologist assessed the evidence of the levels of intoxication in each driver and provided written reports for the coroner. He also gave evidence at the inquest.
22. Methylamphetamine (speed, ice) and amphetamine are two potent intoxicating drugs of the stimulant family. Professor Joyce explained that the amphetamine is formed from methylamphetamine in the body, so is commonly found in people who have used only methylamphetamine.²
23. Amphetamine-type drugs are abused because of their capacity to produce increased confidence, a sense of well-being, euphoria, a sense of invulnerability and a subjective sense of increased alertness. A person who is intoxicated with amphetamines may be over-active, talkative, apparently agitated and trembling.³
24. In Professor Joyce's opinion methylamphetamine and amphetamine may influence driving capacity through a number of physiological

² Exhibit 14, tab 7

³ Exhibit 14, tab 7



and behavioural effects. Common manifestations of intoxication include speeding, reckless driving, high-speed pursuits and crashes.⁴

25. In Professor Joyce's experience, methylamphetamine intoxication can result in driving behaviour that defies all reason. Examples include driving on the wrong side of the road, racing through red traffic lights, complete indifference to the outcome of a crash, giving attention to some completely incidental activity rather than attending to the driving of the vehicle and proceeding in the face of overwhelming danger.⁵
26. At the early stage of methylamphetamine intoxication, common consequences include risk-taking behaviour, recklessness, aggression and violence. After the period of acute stimulation, users pass into a stage of slowness, inattention, impaired reactions and lower mood. Later still, as the sleep-preventing effects of the amphetamines pass, there may be an overwhelming tendency to suddenly fall asleep, and defects in vehicle control may arise from inattention, impaired reaction and sudden sleep.⁶
27. In the course of his work, Professor Joyce has had occasion to review numerous instances of driving behaviour under the influence of methylamphetamine. He has formed considered opinions of driving behaviour that is highly characteristic of stimulant intoxication with methylamphetamine, and his evidence was material to my findings concerning the manner of the deaths and the factors that contributed to the deaths.
28. The court was also assisted by information provided by consultant chemical pathologist and toxicologist Dr Jonathan M. Grasko. From Dr Grasko's inquiries, in Australia, which is similar to the experience throughout North America and Western Europe, the amphetamine-type drugs are among the most prevalent drug classes found in impaired drivers.⁷
29. Professor Joyce explained that chronic heavy methylamphetamine users acquire tolerance to the acute stimulating effects and need

⁴ Exhibit 14, tab 7

⁵ Exhibit 14, tab 7

⁶ Exhibit 14, tab 7

⁷ Exhibit 14, tab 7



larger amounts to cause them: “Thus, we sometimes see examples of over-stimulated, highly risky driving with low blood concentrations, and also see habituated users falling asleep with concentrations that would threaten the life of a naïve user through overstimulation.”⁸

30. Professor Joyce pointed to UK driving laws that recognise that 0.01 milligrams per litre of methylamphetamine is deemed to be impairing. By reference to this threshold, the Professor compared the methylamphetamine levels of the drivers in this inquest, and provided the following analysis:

- a. The methylamphetamine level of the driver whose driving caused the deaths of Mr Singh and Dr Barrett was 16 times higher;
- b. The methylamphetamine level of the motorcycle rider who died, Mr Rundell, was 79 times higher;
- c. The methylamphetamine level of the driver whose driving caused the death of Ms Narrier was approximately 50 times higher; and
- d. The methylamphetamine level of the driver who died, Mr El Bakdadi, was 260 times higher.⁹

31. Professor Joyce cites expert opinion that I accept, based upon literature review and cases as follows: “...methamphetamine at any concentration is likely to produce symptoms that are inconsistent with safe driving.” The Professor’s opinion is that there is probably no phase of methylamphetamine intoxication that is safe from the risk of high speed pursuit. At the inquest he also testified as follows, in response to questions:¹⁰

“... you say methamphetamine intoxicated drivers sometimes exhibit extraordinarily risky high-speed driving even when they are not under pursuit. So it fair to say – another way of putting that would be it’s certainly not the case that if police didn’t pursue such drivers – methamphetamine intoxicated drivers – they would all drive safety and pose no risk to the public?---That’s correct. Methylamphetamine using drivers are just plain dangerous.

In all sorts of circumstances?---Yes.”

⁸ Exhibit 14, tab 7

⁹ Exhibit 14, tab 7

¹⁰ ts 997 to 998; Exhibit 14, tab 7, citing Logan, BK. *Methamphetamine and Driving Impairment*. Journal of Forensic Sciences, 1996; 41: 457 - 464



32. At the inquest, Professor Joyce gave evidence about the relationship between methylamphetamine intoxication and voluntariness of the driver's actions. Relevantly, he opined that under methylamphetamine intoxication: "...the driver always has the option of desisting". I am satisfied that this opinion applies with equal force in the case of all of the methylamphetamine affected drivers under consideration in this inquest and I accept Professor Joyce's explanation, as follows:

*"...the intoxication doesn't carry with it the obligation to drive fast or drive dangerously. That's still under voluntary control. It carries with it the encouragement to take a dangerous course of action in response to any stimulus."*¹¹

33. The driving behaviours in connection with the deaths investigated at this inquest were therefore voluntary.

CASE 1: KULDEEP SINGH AND SEAN DUNCAN BARRETT

Mr SINGH

34. Mr Singh was born on 2 September 1984 in India. He arrived in Australia in 2006 and initially resided in Melbourne until 2009 when he moved to Western Australia. On 7 August 2011 Mr Singh married in India and his wife arrived in Perth on 23 March 2012 to be with her husband.
35. Mr Singh was family oriented and worked hard. He was a sociable person who enjoyed the company of friends. He played cricket and had an appreciation for a broad range of music. In August 2012 he had sponsored his mother and father for visas to come to Australia. He had applied for Australian citizenship the day before his death.¹²
36. At the time of Mr Singh's death his wife was pregnant with his child and was due to give birth within one month's time. His daughter was born in November 2012 and will feel the sorrow of growing up never having known her father.
37. At the time of his death Mr Singh was employed as a full time taxi driver with Swan Taxi Company working nightshift commencing at

¹¹ ts 993

¹² Exhibit 6, tab 12



6.00 pm. His family relied upon him for their financial security. Mrs Singh endured significant grief and loneliness in Australia, without her family, after his passing.

Dr BARRETT

38. Dr Sean Duncan Barrett (Dr Barrett) was born on 25 February 1976 in Harringay, England. He was employed as a lecturer in physics at the Imperial College in London, England. He had an abiding interest in quantum physics and at the age of 19 he went to Cambridge University to begin his four year degree. He obtained his Bachelor in physics and achieved his Masters in science and later obtained his Doctorate in Physics. His vision was to build a quantum computer.
39. In September 2011 Dr Barrett took up an appointment as lecturer at the Imperial College. In 2012 he was asked to travel to Perth to address a conference of physicists about his work. He travelled a day early to avoid jet lag and the trip to Australia was to last three weeks.
40. Tragically, upon his arrival at Perth Dr Barrett was collected by taxi in the early hours of 19 October 2012, and shortly after leaving the airport, the taxi was involved in the collision that resulted in his death.
41. Dr Barrett's family have described him in loving terms. Undoubtedly he had a brilliant mind, and his death was a loss to science. However, the heartache caused by his passing is so much more than that. He was family-oriented, an affectionate and reliable son and brother, who left behind a grief stricken family.
42. Dr Barrett enjoyed swimming, running and he had a passion for cricket. He did sponsored swims to raise money for the Macmillan nurses to help with cancer support. He enjoyed the arts, was a member of the Tate Gallery, he was knowledgeable about music and he shared these interests with his family. He was generous and good-humoured.
43. Dr Barrett's mother describes his mathematical excellence: "*Sean's creativity showed through in anything to do with numbers.*" He was



frequently on his laptop working on mathematical equations for improvements in areas that included engineering and medicine. He had an exceptional thirst for knowledge.¹³

Outline of the Events

44. Late at night on Thursday 18 October 2012, police sighted a Toyota Cruiser that was believed to have been stolen and involved in a number of burglaries. Police endeavoured to intercept the Toyota Cruiser but the driver evaded police, driving away at speed.
45. Police Airwing (helicopter) were tasked with assisting in locating the Toyota Cruiser. The pilot sighted the Toyota Cruiser at 1.40 am on Friday 19 October. The information was relayed to police on the ground and a number of brief police pursuits were undertaken by different police vehicles at different stages between 1.40 am and up to the time of the collision, at 1.52am.
46. As this was happening, Mr Singh had collected Dr Barrett from the Perth International Airport in his taxi. Dr Barrett had arrived as a passenger on an incoming flight and was on his the way to a hotel in Perth.
47. At the time of the collision the taxi that Mr Singh was driving was executing a right turn off Leach Highway onto Orrong Road to travel towards Perth. Shortly afterwards, the taxi collided with the Toyota Cruiser that was in the course of evading police.
48. The taxi entered the intersection as the lights were turning from green to amber, whilst the Toyota Cruiser entered the intersection in contravention of a red traffic control light and travelling at significant speed.
49. The collision resulted in immediate fatal injuries to both the taxi driver Mr Singh and his passenger Dr Barrett.
50. The details of the pursuit appear below.

¹³ Exhibit 1, tab 6



The Pursuit

51. In early October 2012 police had identified a number of burglaries that had been committed in circumstances where a range of different reportedly stolen motor vehicles had been used. One of those vehicles was a silver Toyota FJ Cruiser (Toyota Cruiser).
52. A police operation was commenced on 18 October 2012 that included surveillance and recovery of the Toyota Cruiser. The intent was to locate the Toyota Cruiser, wait for the occupants to alight and then take possession of the vehicle. The operation did not include specifics as to police pursuing the Toyota Cruiser. Accordingly, the standard operating procedures for any pursuit were to apply, and at the material time they were contained in the Emergency Driving Policy and Guidelines.¹⁴
53. Just before midnight on 18 October 2012, the Toyota Cruiser had been sighted at a petrol station on the South West Highway by police in a marked vehicle, who noted that the driver saw them and accelerated away from them. A number of police out on patrol that night had been made aware of a stolen Toyota Cruiser that had been involved in serious offences including burglaries, and that had evaded police on the previous nights.¹⁵
54. After midnight, in the early hours of 19 October 2012, the next police officers to relevantly sight and report on the Toyota Cruiser were Detective First Class Constable Kalwin Dhillon (then a Constable) and the driver of unmarked police vehicle call sign JC101, and Detective First Class Constable Kaillen Clarke, (then a Probationary Constable) and passenger in JC101.¹⁶
55. At the material time, Detective First Class Constable Kalwin Dhillon and Detective First Class Constable Kaillen Clarke were both qualified to engage in Priority 2 Driving. This is a category of approved emergency driving under the Emergency Driving Policy and Guidelines for the purpose of incident response (not pursuits) that allowed the driver, amongst other things, to proceed to an incident at a specified speed that is above the posted speed limit.¹⁷

¹⁴ Exhibit 14, tab 1

¹⁵ ts 55 to 56

¹⁶ ts 55; ts 79

¹⁷ Exhibit 14, tab 1



56. At about 12.15 am on 19 October 2012, the police officers in JC101 spotted a vehicle that appeared to fit the description of the Toyota Cruiser driving west along Manning Road which was the opposite direction to which they were travelling. They executed a U-turn on Manning Road, near Centenary Avenue just past the Curtin University, and pulled in behind the Toyota Cruiser, still on Manning Road, but now with both vehicles driving west.¹⁸
57. JCC101 proceeded to follow the Toyota Cruiser along Manning Road for the purpose of obtaining its registration details, to verify whether it was the stolen motor vehicle that had been involved in the serious offences the previous nights.¹⁹
58. The Toyota Cruiser's registration details were made out and placed by police in JC101 into their computer system which confirmed it was the stolen motor vehicle. Whilst JC101 was endeavouring to get close enough to Toyota Cruiser so as to make out its registration details, it exceeded the posted speed limit, and was driving in a Priority 2 manner, but did not activate its lights and sirens. JC101 had not sought or received authorisation from the Police Operations Centre to engage in Priority 2 Driving.²⁰
59. Based on information that had been previously conveyed to him, Detective First Class Constable Kalwin Dhillon formed the view that the Toyota Cruiser would not stop if he attempted a vehicle intercept (that is, if he attempted to engage with and stop the Toyota Cruiser). In such a case he would still have been subject to the speed cap applicable to Priority 2 Driving. This was a reasonable assessment, given that he had been informed the Toyota Cruiser had evaded police in the course of a pursuit on previous nights.²¹
60. Consequently, once the police in JC101 ascertained that the Toyota Cruiser was identified as being stolen, at 12.12.24 am on 19 October 2012 they made a radio call requesting back up from pursuit drivers in the area (neither Detective First Class Constable Kalwin Dhillon nor Detective First Class Constable Kailen Clarke

¹⁸ ts 56

¹⁹ ts 56

²⁰ ts 58 to 59; Exhibit 14, tab 1

²¹ ts 58



were qualified to undertake Pursuit Emergency Driving). A qualified and authorized pursuit emergency driver (Priority Pursuit driver) is able to be authorised to drive at speeds that exceed those of a Priority 2 driver.²²

61. The calls were over a radio system that was accessible to the Police Operations Centre and to a number of police vehicles in the area. These calls are referred to in this finding as broadcasts.
62. Records reflect that within seconds, a number of police officers in other police vehicles responded, broadcasting their own availability. With respect to the police in JC101, two minutes after their first call, at 12.14.25 am on 19 October 2012, they broadcast that the Toyota Cruiser had picked up speed, going past the Raffles Hotel on Canning Highway, that their own speed was 80 kilometers per hour and the Toyota Cruiser was “*flying ahead*” of them. JC101 confirmed it had “*not engaged.*” I am satisfied that this meant that JC101 had not activated lights and sirens.²³
63. In response to this information, at 12.14.34 the Police Operations Centre instructed JC101 to “*stand down*” if they are not going to engage. Police in JC101 continued to drive under Priority 2 conditions along Manning Road, in the driver’s words “*slightly more than the speed limit*”, in order to seek to monitor the Toyota Cruiser for about one minute with the aim of broadcasting its location in the hope that a Priority Pursuit driver could make their way there, and then lost sight of the Toyota Cruiser and stood down.²⁴ The details of their actions appear immediately below.
64. During this period Detective First Class Constables Kalwin Dhillon and Kaillen Clark, in JC101 on Manning Road, saw the Toyota Cruiser stop at the green and amber lights and then drive through the red traffic light as it turned left from Manning Road onto Canning Highway, heading west. At this point it is likely that the Toyota Cruiser’s driver became aware that he was being followed by police. Whilst police in JC101 were at least 100 metres behind the Toyota Cruiser, I take into account the evidence that they were the only other vehicle on the road and that the Toyota Cruiser was

²² Exhibit 1, tab 17.1; Exhibit 14, tab 1

²³ Exhibit 1, tab 17.1

²⁴ ts 59 to 60; Exhibit 1, tab 17.1



observed by them to speed up and slow down while they were following it.²⁵

65. Police in JC101 stopped at the red traffic light and then followed the Toyota Cruiser down Canning Highway, activating emergency lights and sirens and driving in a Priority 2 manner for approximately one minute, with the intent of causing the Toyota Cruiser to stop. By the time JC101 reached the intersection with Riseley Street they had lost sight of the Toyota Cruiser and they broadcast that information, at 12.16.05 am on 19 October 2012. This is the point at which JC101 stood down.²⁶
66. Some three minutes later (at 12.19.37 am) the Police Operations Centre issued a general broadcast to all vehicles, describing the Toyota Cruiser: “...to all vehicles, looking for a stolen motor vehicle, Leach highway, not sure if he is going east or west...”. Police officers from a number of vehicles responded by broadcast, to endeavor to assist with locating the Toyota Cruiser. It was at one point observed to be travelling at significant speed along Canning Highway (at 12.19.57 am) but it was not located again until 1.34.38 am on the Canning Bridge.²⁷
67. Specifically, the Toyota Cruiser was next sighted by a police officer in vehicle call sign TK106 at 1.34.38 am on 19 October 2012 on Canning Highway this time travelling east over the Canning Bridge. The police officer in TK106 began to follow the cruiser onto Manning Road, but without engaging in any intercept or pursuit. Senior Constable Rohan Gamble, a qualified Priority Pursuit driver with the Canine Unit was the driver and sole occupant of TK106, a Class 2 vehicle. His broadcasts assisted with initially locating the Toyota Cruiser on this second occasion.²⁸
68. Senior Constable Rohan Gamble’s intention upon the initial sighting was to maintain proximity pending the arrival of additional resources. He also considered that his police dog would be able to assist in locating the driver, if he alighted from the Toyota Cruiser and sought to evade police on foot. At around the Canning Bridge location, Senior Constable Rohan Gamble formed the view that the

²⁵ ts 63; ts 79 to 81

²⁶ ts 63; ts 81

²⁷ Exhibit 1, tab 17.1

²⁸ ts 314 to 318; Exhibit 1, tab 17.1



Toyota Cruiser's driver became aware of the police presence, causing him to decide to accelerate away.²⁹

69. At 1.36.03 am, following the information from Senior Constable Rohan Gamble, a general broadcast was made by the Police Operations Centre to police vehicles in the South East Metropolitan District to advise that the Toyota Cruiser was coming across the Canning Bridge.³⁰
70. A few seconds after that (at 1.36.14 am) Polair (the Police Airwing helicopter) broadcast that it was coming in on the area and would provide a situation report shortly. Within seconds Police Airwing advised of a sighting on Canning Bridge.³¹
71. A few seconds after that (between 1.36.30 am and 1.36.42 am) the police in Class 1 unmarked police vehicle call sign JC452, being Sergeant Christan Marzo as driver and Constable Troy Adams as passenger, having heard the broadcast, requested and were granted Priority 2 permission to get to the area by the Police Operations Centre. First Class Constable Ash Lynn was in the back seat. Sergeant Christan Marzo was also a qualified Priority Pursuit driver.³²
72. Very shortly after that (at 1.36.55 am and again at 1.37.57 am) the police in Class 1 unmarked police vehicle call sign JC454, being Senior Constable Clint Whalley as driver (then a First Class Constable) and First Class Constable Logan Henderson (then a Constable) as passenger, also having heard the broadcast, made two requests for Priority 2 permission to get to the area. They were promptly granted permission by the Police Operations Centre (at 1.38.08 am). Senior Constable Clint Whalley was also a qualified Priority Pursuit driver.³³
73. Meanwhile, at 1.38.10 am police in Class 1 unmarked police vehicle call sign JC460 requested Priority 2 permission to get to the area. There was no response from Police Operations Centre due to all of the other radio communications. The driver of JC460 was Detective

²⁹ ts 314 to 318

³⁰ Exhibit 1, tab 17.1

³¹ Exhibit 1, tab 17

³² ts 95 to 96; ts 114 to 115; ts 125; Exhibit 1, tab 17.1

³³ ts 140 to 141; ts 168 to 169; Exhibit 1, tab 17.1



Senior Constable Mike Fisher (then a First Class Constable) and a qualified Priority Pursuit Driver. The passenger in JC460 was Detective First Class Constable Christopher Greenshaw (then a Constable).³⁴

74. Police in JC460 had previously been in contact with police in JC461, and were aware of the police operation concerning the Toyota Cruiser. Police in JC460 decided to become involved, and began to drive under Priority 2 conditions to get to the area.³⁵
75. Whilst police in JC452 started to head to the Manning Road area from Cannington where they had been patrolling, police in JC454, who were closer, drove down Manning Road and caught up to Toyota Cruiser which had executed a U-turn and was now heading west again on Manning Road back towards TK106 (at 1.39.02 am).³⁶
76. At 1.39.26 am and again at 1.40.19 am police in JC454, who were behind the Toyota Cruiser, requested Priority Pursuit permission from the Police Operations Centre. During this time, Police Airwing was monitoring and calling the Toyota Cruiser's location (it was now west bound on Canning Highway). At 1.40.29 am the Police Operations Centre granted permission to police in JC454 to drive under Priority Pursuit conditions (that is, Pursuit Emergency Driving conditions) to continue its pursuit of the Toyota Cruiser.³⁷
77. At approximately 1.40 am on 19 October 2012, police in JC454 pursued the Toyota Cruiser, at speed and travelling west along Manning Road and then onto and west along Canning Highway, assisted by reports from Police Airwing with respect to the direction of travel and factors impacting upon risk assessment. JC454's emergency lights and sirens were activated. The driver of JC454 estimated that the Toyota Cruiser was travelling 40 to 50 kilometers faster than the police vehicle.³⁸
78. Very shortly after 1.40 am as police in JC454 were travelling west along Canning Highway, they lost sight of the Toyota Cruiser, and

³⁴ Exhibit 1, tab 17.1

³⁵ Exhibit 2, tab 57

³⁶ Exhibit 1, tab 17.1

³⁷ Exhibit 1, tab 17.1; this permission was reconfirmed between 1.40.55 am and 1.40.59 am

³⁸ ts 147 to 148



they turned left into Stock Road, travelling south and coming to a stop at the intersection of Stock Road and Leach Highway.

- 79.** Shortly after that, and unexpectedly, the driver of JC454 saw the Toyota Cruiser come out of a side street approximately 200 metres west of his location, travelling towards him, driving erratically. The Toyota Cruiser turned left into Stock Road heading back north towards the Canning Highway intersection. Police Airwing was continuing to assist with broadcasting information concerning direction of travel and risk factors.³⁹
- 80.** During the period that JC454 had lost sight of the Toyota Cruiser, its driver had entered a side street to apparently let out a passenger (observed to occur at 1.43.35 am). Police in JC460 had also joined in the pursuit at about 1.41 am along Canning Highway, with emergency lights and sirens, after the Toyota Cruiser turned left onto Canning Highway in front of them. Police in JC460 pursued the Toyota Cruiser at significant speed, but within the speed cap. Nonetheless, the Toyota Cruiser began pulling away from them and they too lost sight of it a short distance later around the intersection of Canning Highway and North Lake Road.⁴⁰
- 81.** Police in JC 460 had requested Priority Pursuit permission, but did not receive a response from Police Operations Centre, possibly due to congestion on the radio communications. At one point (approximately 1.44 am) police in JC460 stopped in one of the side streets and spoke with a person who was believed to be a passenger recently alighted from the Toyota Cruiser.⁴¹
- 82.** Meanwhile, police in JC454, who did have explicit Pursuit Emergency Driving permission, and who saw the Toyota Cruiser turning left into Stock Road, continued their pursuit. At 1.44.23 am and again at 1.44.47 am the Police Operations Centre re-confirmed Pursuit Emergency Driving permission for JC454.
- 83.** Police in JC454 had executed a U-turn from where they were parked at the intersection of Leach Highway and Stock Road, and pursued the Toyota Cruiser north along Stock Road, at speed, with emergency lights and sirens. However, upon observing the Toyota

³⁹ ts 144; ts 150

⁴⁰ts 183 to 185; ts 205 to 207; Exhibit 1, tab 17.1

⁴¹ ts 183 to 185; ts 205 to 207; Exhibit 1, tab 17.1



Cruiser breach the red traffic light whilst executing a right hand turn onto Canning Highway and noting other factors impacting on risk assessment, the driver of JC454 elected to terminate the pursuit and downgraded at 1.46.27 am. This pursuit by JC454 was just over one minute.⁴²

84. Meanwhile, as JC454 had been pursuing the Toyota Cruiser north along Stock Road, police vehicle call sign VC105 had become involved. They had been following the broadcasts. The driver of VC105 was Officer R and he was a qualified Priority Pursuit driver. The passenger in VC105 was Acting Sergeant Tara Spencer (then a First Class Constable). Officer R had considered deploying stingers across the road at the intersection of Stock Road and Leach Highway, but deemed it too dangerous.
85. At 1.45.42 am police in VC105 requested Priority Pursuit permission, advising the Police Operations Centre it was second in line. At 1.45.49 am Police Operations Centre gave VC105 permission for Priority Pursuit. VC105 continued in the pursuit of the Toyota Cruiser along Stock Road heading north, as the secondary pursuit vehicle after JC454.⁴³
86. A third police vehicle then followed the Toyota Cruiser along Stock Road, behind JC454 and VC105 but not under Priority Pursuit conditions. TK112 was a Class 2 marked police vehicle with a dog cage at the rear. The driver was Officer G and the passenger was Senior Constable Philip Johnson. Officer G drove under Priority 2 conditions, with the intent of deploying his dog should the Toyota Cruiser's driver alight and flee.
87. At 1.46.22 am TK112 requested Priority 1 permission, but at 1.46.47 am Police Operations broadcast back to instruct that the canine vehicle had no priority. TK112 was not in pursuit, and quickly lost sight of the Toyota Cruiser.⁴⁴
88. After the driver of JC454 terminated the pursuit, on the green light he executed a right hand turn onto Canning Highway, travelling east in the same direction that the Toyota Cruiser had taken, but no longer pursuing it. Police in JC454 had broadcast the

⁴² ts 144; ts 151 to 154; Exhibit 1, tab 17.1

⁴³ ts 357 to 360; Exhibit 1, tab 1A

⁴⁴ ts 218 to 220; ts 228 to 229; Exhibit 1, tab 17.1



termination of their pursuit at 1.46.27 am and two seconds later Police Operations Centre issued a general broadcast to the effect that no other police vehicles had “*Priority 1.*” A few seconds later, the Toyota Cruiser was approaching the intersection of Riseley Street and Canning Highway, and its driver will likely have observed police vehicles blocking traffic from Riseley Street from entering Canning Highway.⁴⁵

89. The driver of VC105 had seen JC454 move over and terminate its pursuit but, being unsure of the reasons, he continued to pursue the Toyota Cruiser along Canning Highway, until his passenger clarified that Police Operations Centre had instructed all vehicles to disengage. This clarification occurred shortly afterwards when VC105 was approaching the Canning Bridge. Throughout this part of the pursuit along Canning Highway, the Toyota Cruiser was a significant distance ahead of VC105, and on occasion so far ahead that police in VC105 were unable to see it along a straight stretch of road.⁴⁶
90. Meanwhile, when JC454 turned right into Canning Highway heading east, having disengaged, its driver slowed down to the posted speed limit. As this was happening, at 1.47.14 am police in JC452 broadcast that they were right behind the Toyota Cruiser. At 1.48.16 am and again at 1.48.38 am police in JC452 requested Priority Pursuit permission from the Police Operations Centre. The Toyota Cruiser was a couple of hundred metres ahead of JC452. The response to JC452 came back at 1.48.42 am: “*negative, negative.*”⁴⁷
91. Also, at 1.48.25 am, in between JC452’s two unsuccessful requests for Priority Pursuit permission, the Police Operations Centre had issued a general broadcast: “*no vehicles to have priority pursuit.*” This was based upon a range of information concerning risk assessment, primarily provided by Police Airwing. At 1.49.08 am and again at 1.49.24 am Police Operations Centre reiterated this position, issuing two general broadcasts respectively: “*PolAir only to keep pursuit*” and “*....no vehicles are to pursue, leave the chase to PolAir....*”⁴⁸

⁴⁵ ts 154 to 155; Exhibit 1, tab 17.1

⁴⁶ ts 360 to 361; Exhibit 1, tab 1A

⁴⁷ Exhibit 1, tab 17.1

⁴⁸ Exhibit 1, tab 17.1



92. Earlier on, shortly after Priority Pursuit permission had been re-confirmed for JC454 at 1.44.23 am, a number of other police cars had converged on the general area. In that same communication (at 1.44.23 am) Police Operations Centre had also broadcast: “...*any other vehicle Priority 2 to get to the offenders.*”⁴⁹
93. Accordingly, at the time that Police Operations made it clear that no police vehicle was permitted to pursue the Toyota Cruiser, due to risk assessments, there were still a number of outstanding authorisations for Priority 2 Driving to get to the area.
94. By this stage the plan with respect to apprehending the Toyota Cruiser’s driver had changed. The plan was now to disable the Toyota Cruiser by deploying stingers on the road, with the assistance of Police Airwing for ascertaining an appropriate location, but with no further on-road pursuit by any police vehicle. The stingers contain spikes that are designed to puncture in a manner that slowly deflates a vehicle’s tyres.⁵⁰
95. At 1.48.46 am Police Airwing was continuing to broadcast the Toyota Cruiser’s location with further information impacting upon the Police Operation Centre’s ongoing risk assessment. At this stage the Toyota Cruiser was continuing to travel east along Canning Highway, approaching the Thelma Street intersection, at speed. This prompted Police Operations to issue a general broadcast at 1.48.46 am advising that “*any vehicle with a stinger on board*” may drive under Priority 2 conditions, and to reiterate, at 1.49.08 am that only PolAir was to keep the pursuit.⁵¹
96. The police in JC454 responded immediately at 1.49.08 am to advise they had a stinger on board and would upgrade to Priority 2 Driving. JC454 continued driving under these conditions along Canning Highway. They were qualified to deploy the stinger. Again at 1.49.24 am Police Operations Centre issued a general broadcast to remind that no vehicles are to pursue and the “*chase*” was to be left to PolAir.⁵²

⁴⁹ Exhibit 1, tab 17.1

⁵⁰ ts 165 to 166

⁵¹ Exhibit 1, tab 17.1

⁵² Exhibit 1, tab 17.1



- 97.** The police in Class 1 unmarked vehicle call sign TE225 had a stinger on board, and they also responded by broadcast at 1.49.30 am. The driver was First Class Constable Nathan Gilmour (then a Constable), a qualified Priority Pursuit driver and the passenger was Senior Constable Zelko Delic. They were also qualified to deploy the stinger.⁵³
- 98.** As this was happening, the Toyota Cruiser was continuing to drive in an easterly direction along Canning Highway, and TE225 was further up Canning Highway, aware that the Toyota Cruiser was heading towards it. At 1.49.42 am the Toyota Cruiser set off a speed detection camera traveling at 170 kilometers per hour, at the intersection of Canning Highway and Douglas Road (eastbound). This type of driving was consistent with Police Airwing's observations.⁵⁴
- 99.** At 1.50.04 am police in TE225 received confirmation from Police Operations Centre that they could deploy the stinger if the Toyota Cruiser was in sight.⁵⁵
- 100.** At the same time (1.50.04 am) police in VC105 (who were initially in pursuit) confirmed they had downgraded from Priority Pursuit and were driving under Priority 2 conditions with a stinger on board. The driver of VC105 considered he would only be able to deploy the stinger if the Toyota Cruiser turned back towards them, given that it was so far ahead.⁵⁶
- 101.** Given the location of the police vehicles and the manner in which the Toyota Cruiser was being driven, police in TE225 and VC105 had no reasonable opportunity to deploy the stinger.
- 102.** It is clear that the Toyota Cruiser's driver could no longer see JC454 or VC105 once he accelerated away from them, and once police in both vehicles downgraded to Priority 2 Driving along Canning Highway. By this stage, after the Toyota Cruiser drove east at speed across the Canning Bridge at 1.50.10 am, no police vehicle was close to it, or pursuing it, and only Police Airwing had vision of

⁵³ ts 284 to 285; ts 269 to 270; Exhibit 1, tab 17.1

⁵⁴ Exhibit 1, tab 1A

⁵⁵ Exhibit 1, tab 17.1

⁵⁶ ts 361



it. Police Airwing kept broadcasting its location and speed. The Toyota Cruiser's driving was erratic and its speed was excessive.⁵⁷

103. However, police in TE225 then decided to endeavor to deploy their stinger and to that end, when the Toyota Cruiser sped past them near the Berwick Street intersection just after 1.50.12 am they executed a U-turn and followed it (but without emergency lights or sirens, unlike JC454 or VC105). Their initial intention was to perform a speed check, and to seek to intercept the Toyota Cruiser. They also formed the intention to remain in the vicinity of the Toyota Cruiser, should the vehicle be abandoned.⁵⁸
104. By 1.50.46 am the Toyota Cruiser crossed the Causeway and continued east bound on Canning Highway, approaching the Graham Farmer Freeway intersection. Police in TE225 drove at up to Priority Pursuit speeds in pursuit of the Toyota Cruiser, starting at Canning Highway near the intersection with the Causeway, up to the Graham Farmer freeway intersection and then turning right to follow it onto Orrong Road. It is clear that the Toyota Cruiser's driver gave no indication that he would stop for a police intercept; in fact it was the opposite.⁵⁹
105. As the Toyota Cruiser was now in the South East Metropolitan District, the Police Operations Centre again reiterated in its broadcast at 1.50.58 am that no police vehicles are to pursue and that only PolAir was permitted to pursue.⁶⁰
106. By 1.51.08 am when the Toyota Cruiser had reached the Graham Farmer Freeway intersection, its driver made a right hand turn into Orrong Road and accelerated up to approximately 120 kilometres per hour. That night police had set up a Breath and Drug Operations Mobile Breath Testing Station Bus (commonly known as a "Booze Bus") on Orrong Road located approximately 590 metres from the Great Eastern Highway intersection.
107. Police from that Booze Bus reported a "*silver blur*" go past them. The Toyota Cruiser was driving in a dangerous manner, with an estimated speed of 140 to 160 kilometres per hour. The Toyota

⁵⁷ Exhibit 1, tab 17.1

⁵⁸ ts 269 to 273; ts 284 to 288; Exhibit 1, tabs 1A and 17.1

⁵⁹ ts 269 to 273; ts 284 to 288; Exhibit 1, tabs 1A and 17.1

⁶⁰ Exhibit 1, tab 17.1



Cruiser continued unimpeded along Orrong Road heading towards the Leach Highway intersection, with Police Airwing continuing to broadcast its location and information relevant to risk assessments.⁶¹

108. Police in TE225 were driving under Priority Pursuit speed conditions following the Toyota Cruiser along Orrong Road, but without emergency lights and sirens, except for a brief engagement of the emergency lights when they approached the Booze Bus, to warn them of their approach, due to a concern for their safety. I am satisfied that at the time of the collision, police in TE225 were on Orrong Road, but well behind the Toyota Cruiser.⁶²
109. At 1.52.45 am Police Operations Centre asked PolAir to confirm that there were no police vehicles in pursuit of the Toyota Cruiser. At 1.52.52 am just as Police Airwing was broadcasting back to confirm no police were pursuing the Toyota Cruiser, the collision occurred, at the intersection of Orrong Road and Leach Highway.
110. TE225 had not engaged emergency lights and sirens, and this would explain Police Airwing's response to the effect that no police were observed to be pursuing the Toyota Cruiser. At the time of the collision at the intersection of Orrong Road and Leach Highway, records reflect that TE225 was approaching the intersection of Orrong Road and Roberts Road, meaning it was more than two kilometres behind it.⁶³
111. These facts surrounding the collision are addressed immediately below.

The Collision

112. The collision between the Toyota Cruiser and the Ford Falcon taxi being driven by Mr Singh (the Ford Taxi) occurred on Orrong Road in Kewdale at the intersection of the Leach Highway southwest bound off ramp, at approximately 1.52 am on Friday 19 October 2012. Dr Barret was a passenger in the taxi. Mr Singh and Dr Barrett both died at the scene immediately as a result of injuries sustained due to the collision.

⁶¹ Exhibit 1, tabs 1A and 17.1

⁶² ts 272 to 276; ts 290 to 291; Exhibit 1, tab 1A; Exhibit 14, tab 18

⁶³ Exhibit 1, tab 1A; Exhibit 14, tab 18



- 113.** The confluence of the Leach Highway off ramp and Orrong Road forms a large intersection controlled by traffic lights. It was confirmed that no faults were recorded with that traffic light system at the material time. The weather was fine and clear and street lighting provided reasonable illumination. The surrounding area was primarily industrial. The roads were of sealed bitumen and in good condition. The posted speed limit was 70 kilometres per hour.⁶⁴
- 114.** For vehicles approaching the intersection in either a southeasterly direction on Orrong Road (such as the Toyota Cruiser) or along the Leach Highway off-ramp (such as the Ford Taxi), the visibility of the approaching vehicles from the other direction would only be marginally limited by the concrete structure of the overpass (subject to alignment and approach speed of each vehicle).⁶⁵
- 115.** The Major Crash Investigation Section investigated and reported that the Toyota Cruiser was travelling at a calculated speed of 140 kilometres per hour at the time of the collision. This was based on the data from the Toyota Cruiser's airbag module. I accept this evidence.⁶⁶
- 116.** Immediately prior to the collision, the Toyota Cruiser was travelling in a southeasterly direction along Orrong Road, in the left kerb-side lane, and it entered the intersection with the southeast bound off-ramp of the Leach Highway.
- 117.** The Ford Taxi had exited Leach Highway along the southwest bound off-ramp and entered the intersection with the southeast bound carriageway of Orrong Road. The Ford Taxi was travelling in the right hand lane of the two provided right turn lanes. The Ford Taxi entered the intersection in order to execute a right hand turn onto Orrong Road just as the traffic lights facing Mr Singh changed from green to amber. The Toyota Cruiser entered the intersection as the traffic lights facing its driver were red.
- 118.** Both vehicles entered the intersection at the same time, with the result that the front of the Toyota Cruiser collided heavily with the driver's side of the Ford Taxi. The force of the collision caused both

⁶⁴ Exhibit 5, tab 138

⁶⁵ Exhibit 5, tab 138

⁶⁶ Exhibit 5, tab 138



vehicles to move in a south-easterly direction along Orrong Road, coming to rest 42 metres (in the case of the Toyota Cruiser) and 44 metres (in the case of the Ford Taxi) from the initial point of the collision.

- 119.** Investigations disclosed that the Toyota Cruiser's driver applied his brakes somewhere between 0.7 and 1.7 seconds prior to impact. Given that the Toyota Cruiser was travelling at 140 kilometres per hour at the time of impact, it is likely that the approach speed was even higher than that. This made the collision unavoidable.⁶⁷
- 120.** The Major Crash Investigation calculated that the distance required to skid to a complete stop at a speed of 140 kilometres per hour would be 98 metres. This calculation is based upon the tested skidding coefficient of friction, being the tyre/road interface. I accept this evidence.⁶⁸
- 121.** Mr Lane was driving a charter vehicle right behind the Ford Taxi being driven by Mr Singh and he witnessed the collision. Mr Lane had also collected his passenger, Mr Hay, from Perth International Airport. Mr Lane saw the traffic control light change from green to amber and therefore braked in order to stop, just as the Ford Taxi went through the traffic control light, and collided with the Toyota Cruiser.⁶⁹
- 122.** The collision resulted in maximum impact and Mr Lane saw the Toyota Cruiser pushing the Ford Taxi directly in front of him and along Orrong Road. Mr Lane quickly assessed the surroundings, positioned his vehicle in the middle of the intersection with the hazard lights on to alert others to the danger, and immediately went to offer his assistance, as did his passenger, Mr Hay.⁷⁰
- 123.** Mr Lane and Mr Hay were the first persons at the scene of the collision and saw that the driver of the Toyota Cruiser had fallen out of his vehicle and onto the road. They went to the Ford Taxi to see if they could help the occupants but it was obvious to them that the occupants of the Ford Taxi were deceased.⁷¹

⁶⁷ Exhibit 5, tab 138

⁶⁸ Exhibit 5, tab 138

⁶⁹ Exhibit 1, tab 1A; Exhibit 5, tab 105

⁷⁰ Exhibit 1, tab 1A; Exhibit 5, tabs 105 and 107

⁷¹ Exhibit 1, tab 1A; Exhibit 5, tabs 105 and 107



- 124.** Police were on the scene within seconds, given that Police Airwing were able to broadcast the collision, location and its obvious seriousness as it happened. At 1.53.31 am Police in vehicle TE225 (amongst others) requested Priority 1 permission in order to get to the scene of the collision (they were close by). Permission was granted within seconds. Being on Orrong Road, they quickly reached the scene.⁷²
- 125.** Tragically, the attending police found no signs of life when each of Mr Singh and Dr Barrett were examined and they were pronounced dead at the scene.⁷³
- 126.** A subsequent examination of Toyota Cruiser and the Ford Taxi by qualified vehicle examiners did not disclose any pre-existing contributing vehicle defects.⁷⁴

Cause and Manner of Death of Mr SINGH

- 127.** On 23 October 2012 forensic pathologist Dr D. M. Moss made a post mortem examination on the body of Mr Singh at the State Mortuary. Examination revealed evidence of severe non-survivable injuries to the head, neck, chest, abdomen and pelvis. There was no evidence of any pre-existing natural disease that would have a bearing on the cause of death.⁷⁵
- 128.** On 23 October 2012 the forensic pathologist formed the opinion that the cause of Mr Singh's death was multiple injuries but noted that toxicology analysis would be performed as part of the post mortem examination.⁷⁶
- 129.** The toxicological report became available on 28 November 2012. No common drugs or alcohol were detected.⁷⁷
- 130.** I accept Dr Moss' opinion and I find that the cause of Mr Singh's death is multiple injuries.

⁷² Exhibit 1, tab 17.1; Exhibit 6, tabs 26 and 27

⁷³ Exhibit 5, tab 128; Exhibit 6, tabs 26 and 27

⁷⁴ Exhibit 5, tab 138

⁷⁵ Exhibit 5, tab 133

⁷⁶ Exhibit 5, tab 133

⁷⁷ Exhibit 5, tab 134



131. Mr Singh was the driver of the Ford Taxi that was hit by the Toyota Cruiser. The Toyota Cruiser's driver was driving under the influence of drugs that would have made him incapable of safely driving a motor vehicle under normal conditions.⁷⁸
132. On 14 February 2014 the Toyota Cruiser's driver was sentenced in the Supreme Court of Western Australia to terms of imprisonment for the unlawful killing of Mr Singh and Dr Barrett. The driver was sentenced to a term of imprisonment of 10 years on the charge that on 19 October 2010 he unlawfully killed Mr Singh, and to a term of 10 years on the charge that on the same date and at the same place he unlawfully killed Dr Barrett. The sentences are partially concurrent, with the result that the driver will serve a total effective sentence of 11 years' imprisonment, with eligibility for parole.⁷⁹
133. I therefore find that the manner of Mr Singh's death is by way of unlawful homicide.

Cause and Manner of Death of Dr BARRETT

134. On 23 October 2012 forensic pathologist Dr D. M. Moss made a post mortem examination on the body of Dr Barrett at the State Mortuary. Examination revealed evidence of severe non-survivable injuries to the head, neck, chest, abdomen and pelvis. There was no evidence of any pre-existing natural disease that would have a bearing on the cause of death.⁸⁰
135. On 23 October 2012 the forensic pathologist formed the opinion that the cause of Dr Barrett's death was multiple injuries, but noted that toxicology analysis would be performed as part of the post mortem examination.
136. Toxicological analysis was duly performed and a report was produced on 27 November 2012. The presence of the intoxicating principal active constituent of cannabis or marijuana, being tetrahydrocannabinol (4.6 micrograms per litre) was detected. A low level of alcohol was detected in the urine, but none in the blood. The carbon monoxide level was not raised. The results of the

⁷⁸ Exhibit 14, tab 7

⁷⁹ Exhibit 6, tab 14

⁸⁰ Exhibit 5, tab 135



toxicological analysis were considered Dr Moss and they did not change his opinion on Dr Barrett's cause of death, and on 13 December 2012 he confirmed his opinion.⁸¹

137. I accept Dr Moss' opinion and I find that the cause of Dr Barrett's death is multiple injuries.
138. Dr Barrett was a passenger in the Ford Taxi that was hit by the Toyota Cruiser. The Toyota Cruiser's driver was driving under the influence of drugs that would have made him incapable of safely driving a motor vehicle under normal conditions.⁸²
139. On 14 February 2014 the Toyota Cruiser's driver was sentenced in the Supreme Court of Western Australia to terms of imprisonment for the unlawful killing of Mr Singh and Dr Barrett. The driver was sentenced to a term of imprisonment of 10 years on the charge that on 19 October 2010 he unlawfully killed Mr Singh, and to a term of 10 years on the charge that in the same date and at the same place he unlawfully killed Dr Barrett. The sentences are partially concurrent, with the result that the driver will serve a total effective sentence of 11 years' imprisonment, with eligibility for parole.⁸³
140. I therefore find that the manner of Dr Barrett's death is by way of unlawful homicide.

Did Police Cause or Contribute to the Deaths of Mr SINGH and Dr BARRETT?

141. A blood sample was collected from the Toyota Cruiser's driver at 3.59 am on 19 October 2012, approximately two hours after the driving and the results were analysed by Professor David Joyce, expert clinical pharmacologist and toxicologist. Professor Joyce produced a written report and he gave evidence at the inquest.⁸⁴
142. The analysis of the Toyota Cruiser driver's blood sample revealed, relevantly:

⁸¹ Exhibit 5, tabs 135 to 137

⁸² Exhibit 1, tabs 12 and 13; Exhibit 14, tab 7

⁸³ Exhibit 6, tab 14

⁸⁴ ts 971 to 999; Exhibit 1, tabs 12 and 13; Exhibit 14, tab 7



- a. the presence of two intoxicating drugs of the stimulant family, methylamphetamine (0.16 milligrams per litre) and amphetamine (0.04 milligrams per litre). The concentration of the amphetamine was consistent with derivation from the methylamphetamine; and
- b. the presence of the intoxicating principal active constituent of cannabis or marijuana, being tetrahydrocannabinol (THC) (3.8 micrograms per litre).

143. In Professor Joyce's opinion the concentration of methylamphetamine detected in the Toyota Cruiser driver's blood sample is around the middle of the concentration range found in impaired drivers. In the Professor's experience, the presence of methylamphetamine at this concentration in the blood predicts impairment of capacity for safe driving through effects on attention, behaviour, emotional stability and performance. Characteristic behaviours under these circumstances may include risk taking and excessive speed.⁸⁵

144. Professor Joyce reviewed the witness statements that contained information regarding the driving and actions of the Toyota Cruiser's driver leading up to the collision. In his opinion, the observed driving behaviour was highly characteristic of stimulant intoxication with methylamphetamine.⁸⁶

145. Professor Joyce also considered the likely effect of the THC intoxication. With respect to THC generally, the blood concentration is highest shortly after finishing smoking. In Professor Joyce's opinion intoxication with cannabis causes a complex derangement of cognitive functions, psychomotor functions and behaviour. It may impair coordination, balance, reaction time, visual pursuit, judgement and stability of mood, all of which are important to safe use of machinery and safety in any pursuit that has intrinsic risks.⁸⁷

146. Professor Joyce explained that whilst recent work has helped to define the relationship between THC blood concentration and impairment, it still remains less distinct than the well-known

⁸⁵ Exhibit 14, tab 7

⁸⁶ Exhibit 14, tab 7

⁸⁷ Exhibit 14, tab 7



relationship between alcohol concentration and impairment. Citing a study that analysed the effect of THC on driver responsibility for fatal accidents, whilst the results are not well defined, there is a reasonable basis for implying that THC concentration of five micrograms per litre carries a greater risk than 0.10 – 0.15% alcohol.⁸⁸

- 147.** With respect to the THC concentrations detected in the Toyota Cruiser driver's blood, Professor Joyce opined that there was cannabis intoxication sufficient to impair driving skills under normal driving conditions, and that it was very likely to be present at the time of his driving. Further, that the THC alone would predict driving impairment even if it were the only drug present.⁸⁹
- 148.** When the Toyota Cruiser driver's methylamphetamine and THC intoxication is taken together, Professor Joyce was able to predict, with a very high degree of confidence, that the faculties required for safe driving were impaired.
- 149.** I accept Professor Joyce's opinion and am satisfied that the Toyota Cruiser's driver was incapable of safely driving a motor vehicle under normal driving conditions, and that the methamphetamine had an effect on his risk taking, inattention, preparedness to travel at speed and propensity to flight.
- 150.** During the police pursuit, the Toyota Cruiser's driver was under the influence of drugs. Taking account of his driving behaviour (the evasion of police, the speeds and other factors affecting safety) Professor Joyce opined that the influence of the drugs in his system were consistent with that behaviour:

"... the fact that he has that amount of methylamphetamine in his blood does not oblige him to drive like that. It's still within his own will to decide to drive or not to drive, but the effects of the drug on his mood, behaviour, confidence and so on will bend his mind towards deciding to do it."⁹⁰

- 151.** I am satisfied that, by reason of the broadcasts from Police Airwing and the police who observed the Toyota Cruiser being driven erratically, police at the Police Operations Centre had accurate

⁸⁸ Exhibit 14, tab 7

⁸⁹ Exhibit 14, tab 7

⁹⁰ ts 989



information about the risks posed by continuing the pursuit. Those risks became apparent with the broadcasts describing the erratic driving behaviour.

- 152.** Senior Constable Dave Eggett was the Police Operations Centre Dispatcher for the South Metropolitan Channel, being the area of the latter part of the pursuit, and the collision. Inspector Malcolm Anderson was the on duty Police Operations Centre Inspector with supervisory responsibility.
- 153.** I am satisfied that both the Dispatcher and the Inspector became aware that the risks of continuing the pursuit outweighed the benefits to the community in apprehending the Toyota Cruiser's driver by way of a pursuit. At this point, a series of instructions were broadcast to all police vehicles in the area, to the effect that no police vehicle was to pursue the Toyota Cruiser.
- 154.** Specifically, 1.44.47 am the Dispatcher broadcast, by way of instruction, that only police vehicle JC454 had priority pursuit. This was followed by individual responses, by way of broadcast, to that effect. Approximately four minutes later, at 1.48.25 am the Dispatcher unequivocally instructed that no vehicles had priority pursuit and explicitly stated that only PolAir was to monitor the Toyota Cruiser.⁹¹
- 155.** The Inspector had formed the view that with no police vehicle pursuing, the Toyota Cruiser might start slowing down and driving normally. It was clear to him that the mere fact of police presence behind the Toyota Cruiser was not going to achieve this.⁹²
- 156.** Unfortunately after these broadcasts, police in TE225 did keep following the Toyota Cruiser at speed along Orrong Road, without lights and sirens being activated.
- 157.** However, I take into account the fact that TE225 was approximately two kilometres behind the Toyota Cruiser at the time of the collision. This together with the likely effect of methylamphetamine on the manner of driving of the Toyota Cruiser's driver immediately

⁹¹ Exhibit 1, tab 17.1

⁹² Exhibit 1, tab 1A



prior to the collision persuades me that the collision was caused solely by his actions.

158. Further, I cannot discount the fact that in approaching and then passing the Booze Bus at significant speed seconds before the collision, the Toyota Cruiser's driver was impelled to continue to drive in a dangerous manner, to evade all police.
159. The police did not cause or contribute to the deaths of Mr Singh or Dr Barrett.

CASE 2: GAVIN WAYNE FRYER

Mr FRYER

160. Gavin Wayne Fryer (Mr Fryer) was born on 24 September 1984 in Perth. He maintained a close and affectionate relationship with his parents and spent time with them regularly prior to his death. He had an older brother with whom he had also been close as he was growing up.
161. Mr Fryer had a loving relationship with his de facto partner with whom he had lived in the three years prior to his death. He also enjoyed good relations with her family. He was sociable and popular. He had a good network of close friends from high school, and associates from his workplace.
162. Mr Fryer had completed his schooling up to the end of year 10, and then he completed a number of TAFE courses related to Mechanics. Immediately before his death he was employed as a second year apprentice diesel plant mechanic with Komatsu Australia.
163. By all accounts Mr Fryer was a diligent worker, who was willing to take on extra work in order to provide for himself and his partner and in pursuance of his future plans with her, which were to be married and have children. He had a keen interest in mechanics and his main hobby involved working on his own or other people's cars.
164. Mr Fryer had a kind disposition, and displayed a generous, neighbourly attitude. He was known to go out of his way to help



others. He was also quite assertive and prone to fight for a cause or argue a point if he believed he was correct. He had some convictions for driving related offences and in 2007, and had served a three-year custodial sentence followed by a two years parole period in relation to a serious assault.

- 165.** By all accounts Mr Fryer was an active and physically capable person who could be relied upon by his friends and family. He had been a lively, spirited youngster. In recent years he had quietened down and spent a lot of his time at home, or working around the home. His partner and his mother describe the shocking impact his death has had on the lives of their families, and they continue to mourn his loss.⁹³

Outline of the Events

- 166.** On the day of his death, 12 February 2013, Mr Fryer had been involved in an altercation with another person in the vicinity of Point Walter Reserve after having a drink with a friend. The result of the altercation was that this person was assaulted, his motorised bicycle was taken by Mr Fryer and his friend and loaded into the rear seat of the friend's vehicle, a Holden Commodore Sedan (the Holden Commodore).⁹⁴
- 167.** The Holden Commodore's driver accelerated away at speed. Mr Fryer, who drove his partner's Holden Astra Sedan (the Holden Astra) followed his friend, at speed. The victim was conveyed to hospital, where he was subsequently treated for his injuries. Witnesses to the assault called the police.
- 168.** As a result on 12 February 2013 police attached to the Palmyra Police Station were tasked to attend Point Walter Reserve. Whilst driving on Point Walter Road police noticed a Holden Commodore heading toward them with the rear door open and a black metallic object protruding from the rear door.
- 169.** The Holden Commodore was being driven by Mr Fryer's friend and the black metallic object was the motorised bicycle that had been taken from its rider following the assault.

⁹³ Exhibit 7, tabs 7 and 15

⁹⁴ Exhibit 7, Tab 15



170. Slightly in front of the Holden Commodore police saw the Holden Astra. This vehicle was being driven by Mr Fryer.
171. Police observed that both vehicles were being driven erratically, at speed and swerving over the road. Both vehicles turned left into Pembroke Street and the police vehicle activated the emergency lights and siren in an attempt to intercept the Holden Commodore, but the Holden Commodore did not pull over.
172. The Holden Commodore, the Holden Astra and the police vehicle continued to drive along the surrounding streets, by different routes.
173. At one point, the Holden Commodore's driver, who was driving south along Harris Street, travelled into the intersection of Harris Street and Pembroke Street without stopping at the "STOP" sign, just as the deceased, driving the Holden Astra, crossed that intersection, travelling east along Pembroke Street.
174. As a consequence the Holden Commodore collided with the left side of the Holden Astra at high speed, causing immediate fatal injuries to Mr Fryer.
175. The details of the attempted intercept appear below.

The Attempted Vehicle Intercept

176. At approximately 6.37 pm on 12 February 2013 police from Palmyra police station were tasked with attending at Point Walter Reserve in Bicton due to a report of three males fighting. Detective First Class Constable Michael Valastro (then a Constable) was on duty conducting general duties in the Palmyra area, in company with First Class Constable Brendan Packard (then also a Constable).⁹⁵
177. At the time they were dispatched to the job, Detective First Class Constable Valastro, a qualified Priority 2 driver was driving Class 2 marked police vehicle call sign VP103, being a van fitted with a security pod. First Class Constable Packard, was the passenger.

⁹⁵ Exhibit 8, tabs 1A, 1.1, 1.2, 7 and 8



- 178.** Police in VP103 drove towards the site of the disturbance call. As police drove in a northerly direction on Point Walter Road, from Canning Highway, at approximately 6.38 pm they saw the Holden Commodore on the same road heading towards them, approximately 30 metres away from them. They also saw the Holden Astra heading towards them, about one car length in front.⁹⁶
- 179.** The police officers' attention was drawn however to the Holden Commodore because its rear right door was open and part of a dark metal object appeared to protrude from it. It was later found to be one of the wheels of the bicycle that the deceased and his friend had taken from the rider at Point Walter Reserve.⁹⁷
- 180.** Police in VP103 observed both the Holden Commodore and the Holden Astra being driven erratically in a southerly direction along Point Walter Road, coming towards them. Both vehicles appeared to be driving at excessive speed and swerving along the road.
- 181.** Very shortly afterwards, at approximately 6.39 pm police in VP 103 observed the Holden Astra and the Holden Commodore turn left into Pembroke Street, travelling in an easterly direction. First Class Constable Packard described the Holden Commodore as having "*hooked the corner*" without appearing to slow down.⁹⁸
- 182.** Police in VP103 decided to intercept the Holden Commodore, having regard to its right rear door appearing to open and shut as it drove along, the protruding object and its erratic driving manner. Their aim was to cause the Holden Commodore's driver to stop, to ascertain what was protruding from the rear door, and conduct their traffic enforcement duties.⁹⁹
- 183.** Police were not at that point aware that the drivers of the Holden Commodore and the Holden Astra were the subject of the disturbance call they had earlier received. Police executed a right hand turn into Pembroke Street, following both vehicles.¹⁰⁰

⁹⁶ Exhibit 8, tabs 1, 7 and 9

⁹⁷ Exhibit 8, tabs 1, 7 and 9

⁹⁸ ts 503; ts 555 to 556

⁹⁹ ts 503; ts 555 to 556

¹⁰⁰ ts 505; Exhibit 8, tabs 1, 7 and 9



- 184.** Once on Pembroke Street, still at approximately 6.39 pm, police in VP103 activated emergency lights and shortly afterwards their sirens, in an attempt to stop the Holden Commodore. At this point they were directly behind the Holden Commodore and observed that it had no rear registration plate. In an apparent response to the police presence, the Holden Commodore rapidly accelerated to approximately 80 to 100 kilometres per hour.¹⁰¹
- 185.** At approximately 6.40 pm First Class Constable Packard contacted the Police Operations Centre to provide a report on the situation. As this was occurring, the Holden Commodore overtook the Holden Astra on Pembroke Street and again the driving manner was erratic and unsafe. The Holden Astra promptly executed a left hand turn into Harris Street and police continued to follow the Holden Commodore along Pembroke Street.¹⁰²
- 186.** The Holden Commodore's driver failed to stop for police and next turned left into Murray Road, under heavy acceleration, contravening the "STOP" sign and sliding sideways as it turned. Its rear right hand passenger door continued to flap open and closed. Police stopped at the "STOP" sign and then also turned left into Murray Road.¹⁰³
- 187.** At this point the Holden Commodore was approximately 200 metres ahead of police on Murray Road, still travelling at high speed and driving close to the centre of the road. Given the relative speeds of both vehicles, police quickly lost sight of the Holden Commodore.¹⁰⁴
- 188.** Detective First Class Constable Valastro assessed the risks and formed the view that the Holden Commodore's driver had no intention of stopping for police and that it was too dangerous to continue following it, having regard to the built up area. First Class Constable Packard was of the same view. Police in VP103 terminated the attempted intercept, deactivated emergency lights and sirens, and Police Operations Centre was informed of this at approximately 6.40pm.¹⁰⁵

¹⁰¹ Exhibit 8, tabs 1, 7 and 9

¹⁰² Exhibit 8, tabs 1, 7 and 9

¹⁰³ Exhibit 8, tabs 1, 7 and 9

¹⁰⁴ Exhibit 8, tabs 1, 7 and 9

¹⁰⁵ ts 564; Exhibit 8, tabs 1, 7 and 9



- 189.** Police in VP103 then turned their attentions to the original disturbance call and whilst the Holden Commodore was last seen to be travelling in a northerly direction along Murray Road, they executed a left hand turn from Murray Road into Beach Street, to make it clear that they were no longer following the Holden Commodore.¹⁰⁶
- 190.** Police travelled west along Beach Street. However, about a minute afterwards, just as police approached the intersection of Beach Street and Harris Street, the Holden Commodore drove in front of them at high speed, in a southerly direction along Harris Street, through the Beach Street intersection.¹⁰⁷
- 191.** Police were not expecting to sight the Holden Commodore again. Detective First Class Constable Valastro re-assessed the risks and decided to attempt another vehicle intercept, given the speed at which the Holden Commodore was travelling. It involved balancing the need to stop a speeding vehicle in a built up area, and the risk of the vehicle increasing its speed in response to the police action.¹⁰⁸
- 192.** Detective First Class Constable Valastro re-activated the emergency lights and sirens and executed a left hand turn from Beach Street into Harris Street to follow the Holden Commodore, with the aim of getting the driver's attention.¹⁰⁹
- 193.** Police in VP103 again contacted the Police Operations Centre, but as Detective First Class Constable Valastro turned into Harris Street, he observed that the Holden Commodore was still travelling at approximately 80 to 100 kilometres per hour (where the posted speed limit was 50 kilometres per hour) and that it was approaching a "STOP" sign (at the intersection of Harris Street and Pembroke Street).¹¹⁰
- 194.** At the inquest Detective First Class Constable Valastro explained that he had reactivated emergency lights and sirens, but that he was likely not out of first gear before he quickly decided to again

¹⁰⁶ ts 512 to 515; ts 560; ts 569

¹⁰⁷ Exhibit 8, tabs 1, 7 and 9

¹⁰⁸ ts 564

¹⁰⁹ ts 564

¹¹⁰ Exhibit 8, tabs 1 and 7



terminate the attempted intercept, and he again deactivated his emergency lights and sirens.¹¹¹

- 195.** Moments later the Holden Commodore, travelling in a southerly direction along Harris Street, breached the “STOP” sign at the intersection with Pembroke Street, just as the Holden Astra (driven by the deceased) was driving through that intersection, in an easterly direction along Pembroke Street. Both vehicles entered the intersection at the same time and collided.¹¹²

The Collision

- 196.** The collision occurred at the intersection of Harris Street and Pembroke Street, which is a residential area. It is a four way intersection controlled by “STOP” signs erected to face traffic travelling along Harris Street. A white stop line associated with the signage facing south bound traffic was painted on the road surface and clearly visible. The roads were dry and in good condition and visibility was good.¹¹³
- 197.** The front of the Holden Commodore collided with the left passenger side of the Holden Astra, at approximately 6.40.51 pm on 12 February 2013.
- 198.** The Major Crash Investigation Section investigated and reported that at the point of the collision the Holden Commodore was travelling at a calculated average speed of 90 to 92 kilometres per hour. The Holden Astra was travelling at a calculated average speed of 64 kilometres per hour. These calculated average speeds were based upon time over distance analysis of CCTV footage, which I accept.¹¹⁴
- 199.** Both vehicles rotated out of the collision. The Holden Astra was seen to spin around in the air with all four wheels off the ground, coming to rest in the front yard of a house after hitting trees in the front verge of a house. CCTV footage shows that after the Holden

¹¹¹ ts 563

¹¹² Exhibit 8, tab 3

¹¹³ Exhibit 8, tab 3

¹¹⁴ Exhibit 8, tab 3



Astra came to rest police vehicle VP103 came into view, and a police officer is seen to run towards the Holden Astra.¹¹⁵

200. Police in VP103 saw the collision and at approximately 6.40.51 pm, immediately as it happened, informed the Police Operations Centre, and requested an ambulance, fire engine and another police vehicle. They got out of the police vehicle to render assistance and to apprehend the Holden Commodore's driver. Detective First Class Constable Valastro ran towards the Holden Commodore and First Class Constable Packard ran towards the Holden Astra.¹¹⁶
201. First Class Constable Packard located Mr Fryer in the Holden Astra's driver's seat. He checked for signs of life, but did not find any. The St John Ambulance arrived promptly, and the paramedic comprehensively checked for signs of life, with the same result. Tragically Mr Fryer suffered serious fatal injuries and he was pronounced dead at the scene.¹¹⁷
202. The Holden Commodore's driver exited his vehicle and endeavoured to flee, on foot. He was stopped by bystanders, apprehended by police and taken into custody.¹¹⁸
203. A subsequent examination of Holden Commodore and the Holden Astra by qualified vehicle examiners did not disclose any pre-existing contributing vehicle defects.¹¹⁹

Cause and manner of death of Mr FRYER

204. On 14 February 2013 forensic pathologist Dr D. M. Moss made a port mortem examination on the body of Mr Fryer at the State Mortuary. Examination revealed a non-survivable head and neck injury. There were multiple rib fractures, tears to the major blood vessels in the chest and abdomen (aortic lacerations) and fracture to the pelvis. There was no evidence of significant natural disease.¹²⁰

¹¹⁵ Exhibit 8, tab 3

¹¹⁶ Exhibit 8, tabs 1, 7 and 9

¹¹⁷ Exhibit 7, tabs 2 and 13

¹¹⁸ Exhibit 8, tabs 1A and 8

¹¹⁹ Exhibit 8, tab 3

¹²⁰ Exhibit 7, tab 4



- 205.** On 14 February 2013 the forensic pathologist formed the opinion that the cause of Mr Fryer's death was multiple injuries, but noted that toxicology analysis would be performed as part of the post mortem examination.¹²¹
- 206.** The toxicological report for Mr Fryer became available on 8 April 2013 and it showed a positive result for alcohol, with a concentration of 0.118% detected in the blood, and 0.161% detected in the urine. This did not alter the forensic pathologist's opinion on the cause of death.¹²²
- 207.** I accept Dr Moss' opinion and I find that the cause of Mr Fryer's death is multiple injuries.
- 208.** On 5 June 2014 the Holden Commodore's driver, who was a friend of Mr Fryer, was sentenced in the District Court of Western Australia to a term of three years and six months' imprisonment in respect of a conviction for dangerous driving causing Mr Fryer's death in circumstances in which he was attempting to escape pursuit by a member of the police service (the head sentence), and nine months' imprisonment in respect of a conviction for failing to stop and render assistance to Mr Fryer.¹²³
- 209.** On that date the Holden Commodore's driver was also sentenced in connection with some other offences arising from the events of that day, and the learned sentencing judge imposed two terms of imprisonment, namely six months and three months respectively, to be served concurrently with each other, but cumulatively with the head sentence, and a number of fines.¹²⁴
- 210.** The Holden Commodore's driver was therefore sentenced on 5 June 2014 to a combined term of four years and nine months' imprisonment. He was made eligible for parole. He was disqualified from holding or obtaining a motor vehicle licence for a total period of two years.¹²⁵
- 211.** The learned sentencing judge accepted that the Holden Commodore's driver played a secondary role in the events at Point

¹²¹ Exhibit 7, tab 4

¹²² Exhibit 7, tabs 4 and 5

¹²³ Exhibit 7, tab 15

¹²⁴ Exhibit 7, tab 15

¹²⁵ Exhibit 7, tab 15



Walter Reserve, concerning the theft of the motorised bicycle, but that afterwards, knowing he had a stolen bicycle in his Holden Commodore, he attempted to escape the police. Being distracted by the chase and travelling too fast, and dangerously, the Holden Commodore's driver failed to notice the "STOP" sign at Pembroke Street, leading to the collision with the Holden Astra.¹²⁶

212. I therefore find that the manner of Mr Fryer's death is by way of unlawful homicide.

Did Police Cause or Contribute to the Death of Mr FRYER?

213. A blood sample was collected from the Holden Commodore's driver at approximately 9.00 pm on 12 February 2013, approximately two and a quarter hours after the driving and the results were analysed by Professor David Joyce, expert clinical pharmacologist and toxicologist. Professor Joyce produced a written report and he gave evidence at the inquest.¹²⁷

214. The analysis of the Holden Commodore driver's blood sample detected a blood alcohol level of 0.091%. Professor Joyce calculated the estimated blood alcohol level at his time of driving, using the deemed rates of rise and fall contained in the *Road Traffic Act 1974*, arriving at 0.065%. This was accepted by the learned sentencing judge.¹²⁸

215. At the inquest Professor Joyce explained that in total driver population studies at a blood alcohol of 0.065% there is a three or four times increased risk of having a crash or getting killed in a crash. At the range of 0.065%, the alcohol intoxication effects are mostly behavioural, and include getting angry, misjudging things due to a level of cognitive impairment, and taking risks due to overconfidence.¹²⁹

216. No other common drugs were detected in the Holden Commodore driver's blood sample, and therefore the only drug that might have played a role in his behaviour and impairment was alcohol.

¹²⁶ Exhibit 7, tab 15

¹²⁷ ts 971 to 999; Exhibit 14, tab 7

¹²⁸ Exhibit 7, tabs 6 and 15; Exhibit 14, tab 7

¹²⁹ ts 989 to 990



Professor Joyce's evidence was that the adverse effects of alcohol on driving risk are very well known and supported by a great deal of objective research. The Professor described alcohol as a pervasive intoxicant, affecting practically all of the higher brain functions, including the ability to observe, interpret and process information, reaction time, decision-making abilities and driver-related skills.¹³⁰

217. In the context of the Holden Commodore driver's behaviour however, it is the emotional effects of alcohol intoxication that are important. Professor Joyce described that as follows:

*"...the way it emboldens the drinker to act without restraint to a small emotional stimuli. On the road, this interprets to overconfidence, with speeding and risk-taking. The attempt to flee a pursuing police vehicle is an extreme manifestation of this."*¹³¹

218. Professor Joyce reviewed the witness statements that contained information regarding the driving and actions of the Holden Commodore's driver leading up to the collision. In his opinion, the alcohol was a contributor to the driving behaviour and decision-making, and the driver's emotional state.¹³²

219. The Holden Commodore was unlicensed, the licence having expired on 7 October 2012. It did not have a rear registration plate. Further, a motorised bicycle reasonably suspected of being stolen (as at that stage) was on the rear passenger seat, with the right rear passenger door flapping open and closed.¹³³

220. I am satisfied that these factors, combined with alcohol intoxication caused the Holden Commodore's driver to misjudge the circumstances and take unacceptable risks, leading to the fateful decision to evade the police intercept.

221. I take account of the fact that police in VP103 attempted two vehicle intercepts, that were momentary, and that both attempts were promptly terminated, based upon the police's own risk assessments. Police in VP103 did not at any stage engage in a pursuit (and were not qualified to do so).

¹³⁰ Exhibit 14, tab 7

¹³¹ Exhibit 14, tab 7

¹³² ts 990 to 991; Exhibit 14, tab 7

¹³³ Exhibit 8, tab 1A



- 222.** I am satisfied that whilst VP103 was reasonably close to the Holden Commodore at the time of the collision, this was not as a result of a pursuit, but rather it arose because the Holden Commodore, unexpectedly, drove past VP103 at speed, and police decided to make a second attempt to intercept it.
- 223.** This second attempt to intercept the Holden Commodore was a reasonable law enforcement action. The only other immediate option was to allow the Holden Commodore to drive dangerously in a built up area, unimpeded.
- 224.** The Holden Astra, being driven by Mr Fryer, was not under police pursuit, nor had police attempted to intercept it. Professor Joyce considered the post mortem alcohol concentrations for Mr Fryer and opined that whilst he did have an elevated blood alcohol level that would confirm driver impairment, the available evidence does not indicate whether he might have avoided the crash if he had the preserved driving skills of a perfectly sober person.¹³⁴
- 225.** Given the Holden Commodore driver's speed and his breach of the "STOP" sign, I consider it unlikely that Mr Fryer would have been able to avoid the collision, irrespective of his known blood alcohol levels. The question of whether Mr Fryer might have avoided the collision had he been driving at the posted speed limit of 50 kilometres per hour is speculation, but it is reasonable to infer that it would have given him better prospects of avoiding the collision.
- 226.** The Holden Commodore's driver decided to continue evading police, and by driving dangerously collided with the Holden Astra, tragically resulting in the death of his friend, Mr Fryer.
- 227.** The police did not cause or contribute to the death of Mr Fryer.

¹³⁴ Exhibit 14, tab 7



CASE 3: JORDAN DAMON RUNDELL

Mr RUNDELL

- 228.** Jordan Damon Rundell (Mr Rundell) was born on 27 July 1985 in Perth. He was a healthy, fit 28 year old when he died on 11 January 2014 at approximately 9.25 pm.
- 229.** Mr Rundell left behind family and friends who mourn his loss. He had completed his year 11 at high school, and was gainfully employed as a crane driver. He had recently returned from a holiday on Bali two weeks previously.
- 230.** Mr Rundell was a sociable person and he liked the outdoor lifestyle. He enjoyed surfing, golf and fishing. He had a keen interest in motorcycles, and at the time of his death he was riding his Ducati motorcycle.

Outline of the Events

- 231.** On Saturday 11 January 2014 at about 8.39 pm as Mr Rundell was riding his Ducati motorcycle (the Motorcycle) along West Coast Highway in Scarborough in a northerly direction he came across a Breath and Drug Operations Mobile Breath Testing Station Bus (the Booze Bus). He initially rode into the designated testing line and stopped momentarily. Then he accelerated out of the line, travelling north on West Coast Highway.¹³⁵
- 232.** Police in an unmarked police vehicle attached to the Booze Bus activated emergency lights and sirens in an attempt to intercept the Motorcycle. They followed the Motorcycle for a short distance along West Coast Highway and left into Karrinyup Road, then lost sight of it and terminated the pursuit.
- 233.** A short time later the same police officers saw the Motorcycle again. They did not reactive emergency lights and sirens but requested assistance by contacting the Police Operations Centre.

¹³⁵ Exhibit 10, tab 1



- 234.** Police in a marked police vehicle responded to the request for assistance and initially attempted to stop the Motorcycle at a roundabout by blocking the road, but this was unsuccessful and Mr Rundell evaded them.¹³⁶
- 235.** At one point police in the unmarked vehicle pursued the Motorcycle north along West Coast Highway, but they quickly terminated due to their own risk assessment.¹³⁷
- 236.** A short time later, the same police in the unmarked vehicle again sighted Mr Rundell on the Motorcycle and this time, on the basis of their ongoing risk assessment, they engaged in another pursuit travelling east along Hepburn Avenue, and they received permission to continue that pursuit from the Police Operations Centre.¹³⁸
- 237.** Shortly afterwards, the Motorcycle collided with another vehicle that had been travelling west along Hepburn Avenue and had turned right into Waraker Road into the path of the Motorcycle, resulting in immediate fatal injuries to Mr Rundell.
- 238.** The details of the pursuit appear below.

The Pursuit

- 239.** On 11 January 2014, the Western Australia Police had set up a Breath and Drug Operations Mobile Breath Testing Station Bus, commonly referred to as a Booze Bus, on West Coast Highway just north of the Scarborough Beach precinct, near the West Coast Drive intersection.¹³⁹
- 240.** At approximately 8.40 pm as the deceased was riding in a northerly direction on West Coast Highway on his Motorcycle, police directed him into a safety lane to stop for random breath testing. Mr Rundell initially appeared to comply. He entered the safety lane on his Motorcycle and slowed down considerably which gave the police the impression that he was going to stop for the random breath testing.¹⁴⁰

¹³⁶ Exhibit 10, tabs 1, 31 and 33

¹³⁷ Exhibit 9, tab 7

¹³⁸ Exhibit 9, tab 7

¹³⁹ Exhibit 9, tab 7

¹⁴⁰ Exhibit 9, tab 7; Exhibit 10, tab 1



- 241.** However, before submitting himself to the random breath testing, Mr Rundell accelerated heavily and rode out of the safety lane and into the normal traffic lane heading north on West Coast Highway, in an apparent attempt to avoid the testing, and in breach of his obligations.¹⁴¹
- 242.** At the material time, the police officers responsible for conducting supervisory duties of Booze Bus staff were Senior Constable Rodney Endall, and Sergeant Stuart Johnson (then a Senior Constable), both qualified Priority Pursuit drivers. They observed Mr Rundell suddenly accelerate away as he got to the front of the queue.¹⁴²
- 243.** In response Senior Constable Endall (as driver) and Sergeant Johnson (as passenger) immediately got into Class 1 unmarked police vehicle call sign TB202 that was close by, activated the emergency siren, mounted a blue light on top of the roof and followed the Motorcycle in a northerly direction along West Coast Highway, with the aim of intercepting it and causing the rider to pull over and stop.¹⁴³
- 244.** That section of West Coast Highway curves to the right, and after the Motorcycle accelerated out of the safety lane, police in TB202 next saw its tail light about half a kilometre ahead of them on West Coast Highway and nearing the Karrinyup Road intersection. The posted speed limit on that section of West Coast Highway was 80 kilometres per hour.
- 245.** At the inquest Sergeant Johnson testified that the Motorcycle was travelling at speed, and he confirmed that the police's aim at that stage was to engage in an intercept. In his experience, "*9 times out of 10*" the vehicles pull over. Estimates by another witness indicated that along this stretch of road, the Motorcycle was travelling at approximately 100 to 120 kilometres per hour.¹⁴⁴
- 246.** Sergeant Johnson outlined the risk assessment he made at the material time, bearing in mind that there is an obvious elevated risk when a motorcycle rider is involved. At the inquest he referred to

¹⁴¹ ts 699 to 702

¹⁴² ts 699 to 702; Exhibit 9, tabs 7 and 30;

¹⁴³ Exhibit 10, tab 1;

¹⁴⁴ ts 703 to 706; Exhibit 9, tab 7; Exhibit 10, tab 1; Sergeant Johnson's experience was based upon 17 years with the police service, four of them in traffic enforcement



his assessment of Mr Rundell's safety clothing and helmet, competent riding, light traffic, good street lighting, hence good visibility and he also took account of the Motorcycle's speed.¹⁴⁵

- 247.** Police in TB202 followed the Motorcycle at speed but not in pursuit. The Motorcycle turned left from West Coast Highway into Karrinyup Road and by the time police in TB202 had also turned left on Karrinyup Road, the Motorcycle was some 400 metres ahead of them. Police observed that Mr Rundell was not weaving along the roads and that he made a “smooth turn” onto Karrinyup Road.¹⁴⁶
- 248.** The Motorcycle then turned right from Karrinyup Road into Arnott Street and police in TB202, who were still following the Motorcycle, observed that Mr Rundell's right hand turn was competently executed and that he was in control of the Motorcycle. After police in TB202 followed the Motorcycle into Arnott Street they reviewed their risk assessment because they were now in a built up residential area. They could see the Motorcycle head of them in the distance, and they terminated the intercept by reverting to the posted speed limit and deactivating emergency lights and sirens. Consequently they then lost sight of the Motorcycle.¹⁴⁷
- 249.** At the inquest Sergeant Johnson suggested that Mr Rundell may have known of the police presence, on the basis that he would have seen the emergency lights reflected in the Motorcycle's mirrors, if he had looked. However, on the night in question, at this stage Sergeant Johnson had not formed the view that Mr Rundell was failing to stop for police, or that he intended not to stop for police. Sergeant Johnson believed that if police in TB202 caught up to the Motorcycle, experience suggested that it would tend to pull over.¹⁴⁸
- 250.** I am satisfied that at this stage, police in TB202 had attempted to intercept the Motorcycle but the attempt was unsuccessful. Further that the police actions had not yet escalated to a pursuit of the Motorcycle.
- 251.** Police in TB202, having lost sight of the Motorcycle, then drove to West Coast Drive and started heading in northerly direction along

¹⁴⁵ ts 706

¹⁴⁶ ts 707

¹⁴⁷ ts 708; Exhibit 9, tab 7

¹⁴⁸ ts 708 to 709



that road. As they approached the intersection of West Coast Drive and Marine Terrace, unexpectedly they saw the Motorcycle pull out on to West Coast Drive heading in a northerly direction, in front of them, with several vehicles in between them, including another motorcycle.¹⁴⁹

- 252.** On this occasion police in TB202 decided not to engage the Motorcycle and records reflect that at 8.38.45 pm they instead contacted the Police Operations Centre by radio transmission to inform them of the location, and circumstances (including that the Motorcycle had fled from the Booze Bus). During this radio transmission, TB202 requested assistance from a police vehicle in the Hillary's area with capacity to get in front of them.¹⁵⁰
- 253.** At the inquest Sergeant Johnson explained that as they were in an unmarked police vehicle, they did not want to "spook" the Motorcycle and his preference was to arrange for a marked police vehicle to stop the Motorcycle further up West Coast Drive. He considered this a safer course of action, as it would avoid TB202 having to overtake a number of vehicles in order to get behind the Motorcycle. At this stage the Motorcycle was "*a couple of kilometres*" ahead of TB202, but still visible to police.¹⁵¹
- 254.** As this radio transmission was by way of broadcast, police in Class 3 marked police vehicle call sign UQ102 in the Hillarys Boat Harbour area heard it as they approached their vehicle and records reflect that at 8.39.06 pm they responded to the request for assistance. Senior Constable Nathan Hicks (then a First Class Constable), a qualified Priority 2 Driver, drove UQ102 in a southerly direction along Whitfords Avenue and then through the roundabout into West Coast Drive (the Roundabout), towards the Motorcycle. First Class Constable Kristina Duncan (then a Constable) was the passenger in UQ102.¹⁵²
- 255.** Just as they were approaching the Roundabout, police in UQ102 saw the headlights of two motorcycles and four or five motor vehicles driving in a northerly direction along West Coast Drive,

¹⁴⁹ ts 709; Exhibit 9, tabs 7 and 50

¹⁵⁰ ts 709 to 711; Exhibit 9, tab 49

¹⁵¹ Exhibit 9, tab 50

¹⁵² ts 733 to 735; ts 747 to 748; Exhibit 9, tabs 31 to 34 and tab 49



about 100 metres south of the Roundabout, heading towards it. They all appeared to be travelling at the posted speed limit.¹⁵³

- 256.** Police in UQ102, having traversed the Roundabout heading south, promptly activated emergency lights, crossed the median strip and stopped their vehicle approximately 20 to 25 metres south of it, with the effect of partially blocking the entry to the Roundabout.¹⁵⁴
- 257.** Their aim was to slow down all of the approaching traffic, allowing the motor vehicles to filter through one by one, but stopping both motorcycles and breathalysing each rider. This initially appeared to have been successful, in that all oncoming traffic (including the Motorcycle) came to a stop about 15 metres away from the police vehicle.¹⁵⁵
- 258.** However, as police in UQ102 came out of their vehicle to approach the stationary traffic, the Motorcycle second in line, being ridden by Mr Rundell, accelerated heavily, mounted the median strip and rode past their location on the incorrect side of the road, in a northerly direction along Whitfords Avenue at speed. Shortly afterwards the Motorcycle returned to the correct side of the road, and continued to accelerate away.¹⁵⁶
- 259.** Police in TB202, who were just two vehicles behind the Motorcycle in the line at the Roundabout, observed the Motorcycle evade the police from UQ102 at the Roundabout. In response, Police in TB202 activated emergency lights and sirens, followed the same path taken by the Motorcycle and at 8.42.19 pm informed Police Operations that the Motorcycle had failed to stop for police. At this point, police in TB202 were in pursuit of the Motorcycle.¹⁵⁷
- 260.** At the inquest Sergeant Johnson gave evidence about his risk assessment at this point. He testified that he took account of certain conditions that limited the capacity for excessive acceleration on the part of the Motorcycle and he concluded that it was safe to pursue. Records reflect that Sergeant Johnson had

¹⁵³ ts 736 to 737

¹⁵⁴ ts 736 to 738

¹⁵⁵ ts 736 to 737; ts 749 to 750; Exhibit 9, tab 32

¹⁵⁶ ts 739 to 741; ts 750 to 751; Exhibit 9, tabs 31 and 32

¹⁵⁷ ts 712 to 713; Exhibit 9, tab 50



regard to the speed of the Motorcycle at that point, which supported his risk assessment.¹⁵⁸

- 261.** After travelling a short distance in a northerly direction along Whitfords Avenue, the Motorcycle turned around when it reached the roundabout at the intersection of Whitfords Avenue and Tenerife Boulevard and re-traced its path, proceeding in a southerly direction along Whitfords Avenue.
- 262.** One of the eyewitnesses described the Motorcycle travelling north towards the roundabout on the incorrect side of Whitfords Avenue, then mounting the pedestrian island of the roundabout, getting stuck for about 30 seconds, and then turning around to travel in the southerly direction along Whitfords Avenue.¹⁵⁹
- 263.** This eyewitness testified that he observed two police vehicles stationary at this roundabout, about 20 metres away from the Motorcycle, apparently observing the Motorcycle as the rider changed direction to head south. Police testified that they did not have emergency lights and sirens engaged at this point.¹⁶⁰
- 264.** There was some inconsistency in the evidence given by eyewitnesses and police regarding the placement of the vehicles, which is unnecessary to resolve, given that all witnesses were consistent in their evidence to the effect that police were not acting to close in on the Motorcycle when Mr Rundell was struggling to make his U turn at the Tenerife Boulevard roundabout.
- 265.** As the Motorcycle reached the roundabout police in TB202 terminated their pursuit due to their ongoing risk assessment, related to new circumstances attending the Motorcyclist's manner of riding. Records reflect that Police Operations was informed of the termination of the pursuit at 8.42.38 pm. Accordingly, the duration of this portion of the pursuit was less than one minute.¹⁶¹
- 266.** TB202 executed a U turn by going around the Tenerife Boulevard roundabout and they continued to follow the Motorcycle in a southerly direction along Whitfords Avenue, initially not under

¹⁵⁸ ts 714 to 715; Exhibit 9, tab 50

¹⁵⁹ ts 688 to 693

¹⁶⁰ ts 692; ts 717

¹⁶¹ Exhibit 9, tab 50



pursuit conditions; police in UQ102 caught up and followed TB202, but not under priority conditions.¹⁶²

- 267.** Very shortly afterwards, as police in TB202 observed the Motorcycle again accelerate away from them, they re-assessed the risk factors, and again decided to pursue the Motorcycle. Police in TB202 re-activated emergency lights and sirens and drove under pursuit conditions in a southerly direction along Whitfords Avenue.¹⁶³
- 268.** The decision to re-engage the Motorcycle under pursuit conditions occurred prior to the intersection between Whitfords Avenue and Hepburn Avenue. Records reflect that police in TB202 made a radio transmission to the Police Operations Centre seeking permission to continue the pursuit.¹⁶⁴
- 269.** Specifically records reflect that at 8.42.52 pm TB202 sought permission from Police Operations Centre to “*re-engage*” and that they reported a number of factors, including that the vehicle was travelling at 91 kilometres per hour in circumstances where the speed limit was 70 kilometres per hour. They did not make specific reference to the fact that it was a Motorcycle in that communication, although they had done so in an earlier communication. Police Operations Centre promptly responded at 8.43.20 pm to the effect that the pursuit by TB202 was “*authorised*”.¹⁶⁵
- 270.** Immediately afterwards, police in UQ102 sought permission from Police Operations Centre to “*keep up*” under Priority 2 conditions, but this was declined at 8.44.05 pm: “*negative 102, no pursuit.*”¹⁶⁶
- 271.** Inspector Paul Kosovich from the Police Operations Centre gave evidence at the inquest concerning the risk assessment he made when granting permission to police in TB202 to continue the pursuit. He granted that permission in the final stages when the vehicles had reached Hepburn Avenue. At that time, as Supervising Inspector, he was unaware that the vehicle being pursued was a

¹⁶² ts 715; Exhibit 9, tab 31

¹⁶³ ts 716 to 718

¹⁶⁴ ts 716 to 718; Exhibit 9, tab 49

¹⁶⁵ Exhibit 9, tabs 49 and 50

¹⁶⁶ Exhibit 9, tabs 49 and 50



Motorcycle (although the Dispatcher knew that fact due to earlier communications).¹⁶⁷

- 272.** Inspector Kosovich testified that he would normally expect to be told it was a motorcycle and in hindsight, that he should have asked that question. However, he did not believe, again with hindsight, that he would have acted differently at that point in time.¹⁶⁸
- 273.** I take into account the fact that these are split second decisions that need to be made, and care is to be taken when assessing decision-making with the benefit of hindsight. Inspector Kosovich was awaiting further information, and he was making his ongoing risk assessment, when tragically, the collision occurred.
- 274.** The Motorcycle, travelling south along Whitfords Avenue at speed, had quickly reached the roundabout at the intersection with Hepburn Avenue and Mr Rundell turned left into Hepburn Avenue. The Motorcycle accelerated up the hill, heading east.
- 275.** As the Motorcycle went over the crest of the hill on Hepburn Avenue, TB202 was approximately 300 metres behind it, and Senior Constable Endell and Senior Constable Johnson lost sight of it. Police in TB202 continued to drive under pursuit conditions that were authorised, following the direction of the Motorcycle. Police in UQ102 were approximately 400 to 500 metres behind TB202.¹⁶⁹
- 276.** Eyewitnesses driving along Hepburn Road at this juncture estimated the speed of the Motorcycle to be approximately 150 kilometres per hour. This is consistent with the Major Crash Investigation Section's subsequent estimate that suggested a speed range for the Motorcycle of between 104 and 163 kilometres per hour, before the brakes were applied.¹⁷⁰
- 277.** Whilst the evidence is not sufficient for me to determine the Motorcycle's speed along Hepburn Road, I am satisfied that Mr Rundell was travelling at a dangerous speed significantly above the posted speed limit.

¹⁶⁷ ts 777 to 782; Exhibit 9, tab 49

¹⁶⁸ ts 782 to 783

¹⁶⁹ ts 719 to 721; Exhibit 10, tab 1

¹⁷⁰ Exhibit 10, tabs 1 and 5



- 278.** Very shortly afterwards, the Motorcycle collided with a motor vehicle. Police in TB202 were still in pursuit at the time of the collision, and when they next sighted the Motorcycle, the collision had just occurred.¹⁷¹
- 279.** Records reflect that at 8.44.20 pm the collision was reported to Police Operations Centre and an ambulance was urgently requested. This portion of the pursuit was just under two minutes.¹⁷²

The Collision

- 280.** The collision occurred at the intersection of Hepburn Avenue and Waraker Road Hillarys, at approximately 8.44 pm on Saturday 11 January 2014. The Motorcycle, traveling in an easterly direction along Hepburn Avenue collided with a BMW sedan (the BMW Sedan) as the BMW Sedan, travelling in a westerly direction along Hepburn Avenue, made to execute a right hand turn into Waraker Road, crossing the path of the Motorcycle.¹⁷³
- 281.** The Major Crash Investigation Section investigated the collision and prepared a Vehicle Crash Report. It was noted that the carriageway was in a sealed condition and in a good state of repair. The posted speed limit where the collision occurred was 70 kilometres per hour, the incident occurred during the hours of darkness, and street lighting by way of dual-lamp post situated along the median strip provided reasonable lighting. The immediate surrounding area was residential. I accept the conclusions in the Vehicle Crash Report.¹⁷⁴
- 282.** In the area of the collision Hepburn Avenue has two marked lanes for traffic to travel in each direction. The opposing lanes are separated by a raised median strip, which is comprised of sand, scrub grass and large planted palms. Waraker Road intersects with Hepburn Avenue to form a T-junction.¹⁷⁵

¹⁷¹ ts 721

¹⁷² Exhibit 9, tab 50

¹⁷³ Exhibit 10, tab 5

¹⁷⁴ Exhibit 10, tab 5

¹⁷⁵ Exhibit 10, tab 5



- 283.** For westbound traffic on Hepburn Avenue intending to turn right into Waraker Avenue, such as the BMW Sedan, there is provision of a right hand turn lane leading to the gap in the median strip. For eastbound vehicles on Hepburn Avenue approaching the intersection (such as the Motorcycle) the road is the subject of an upward gradient and a curve to the right. This serves to restrict, to some degree, the view of the approaching vehicle for a driver (such as the BMW Sedan's driver) waiting at the intersection to turn right into Waraker Road.¹⁷⁶
- 284.** The Motorcycle and the BMW Sedan collided in the eastbound median lane of Hepburn Avenue, within the intersection. The Motorcycle collided with the rear passenger side of the BMW Sedan. The Motorcycle rider, Mr Rundell, braked heavily but was unable to avoid the collision.¹⁷⁷
- 285.** I am satisfied that as a result of the collision, the rear of the BMW Sedan was rotated clockwise about 90 degrees, with the Motorcycle near the rear passenger side of the BMW Sedan and the rider coming to rest about 11 metres from the point of the collision.¹⁷⁸
- 286.** The BMW Sedan came to rest within the intersection. The Motorcycle came to rest alongside the rear left passenger side corner of the BMW Sedan. The Motorcycle was lying on its right side, facing approximately north-east, and had suffered extensive damage as a result of the collision. The BMW Sedan had significant damage to its left rear passenger door as a result of the collision.¹⁷⁹
- 287.** There was no obvious crash or contact damage to the police vehicles TB202 and UQ102.¹⁸⁰
- 288.** A subsequent examination of the scene showed a 24.5 metre single straight locked wheel mark consistent with having been made by the rear tyre of the Motorcycle. This is supported by the friction damage found to the rear tyre tread surface of the Motorcycle. This mark commenced in the eastbound median lane close to the median kerb, and was angled slightly to the right, moving towards

¹⁷⁶ Exhibit 10, tab 5

¹⁷⁷ Exhibit 10, tab 5

¹⁷⁸ Exhibit 10, tab 5

¹⁷⁹ Exhibit 10, tabs 1 and 5

¹⁸⁰ Exhibit 10, tab 1



the centre of the median lane. The mark became darker as it progressed.¹⁸¹

- 289.** At the end of the single straight locked wheel mark the examination showed that there was a slight deflection to the left, indicative of the change of direction in the Motorcycle as a result of the collision forces.¹⁸²
- 290.** The force of the collision also caused a separate single tyre scuff mark at the end of the Motorcycle's tyre mark. This scuff mark was made by the rear passenger side tyre of the BMW Sedan as it was forced sideways as a result of the collision.¹⁸³
- 291.** Immediately before the collision, the Motorcycle was travelling close to the median strip on the approach to the intersection, and this position may have served to restrict the Motorcyclist's view of the turning BMW Sedan. The Motorcycle's headlight was on and working properly. The vehicle examiners subsequently found the Motorcycle to be in fifth gear of six manual gears.¹⁸⁴
- 292.** The Major Crash Investigation Section undertook a momentum analysis that supported the proposition that the BMW Sedan had fully decelerated at the moment of impact. When considering the braking attempts by Mr Rundell on the Motorcycle, the evidence indicated that the rear brake was applied locking the rear wheel, but there was insufficient evidence to indicate front wheel brake application to the same degree of certainty.¹⁸⁵
- 293.** Given the variables involved, it was not possible for the Major Crash Investigation Section to determine the exact speed of the Motorcycle in approach to the intersection, but the author of the report opined that the Motorcycle was travelling at a speed significantly in excess of the posted speed limit and that this may have been an important, if not primary, casual factor of the incident.¹⁸⁶
- 294.** The BMW Sedan's driver gave evidence at the inquest. He testified that as he entered the slip lane to turn right into Waraker Road, he

¹⁸¹ Exhibit 10, tabs 1 and 5

¹⁸² Exhibit 10, tabs 1 and 5

¹⁸³ Exhibit 10, tabs 1 and 5

¹⁸⁴ Exhibit 10, tab 5

¹⁸⁵ Exhibit 10, tab 5

¹⁸⁶ Exhibit 10, tab 5



could see incoming traffic for a distance of approximately one kilometre. At that distance, he saw, by reason of their headlights, one motor vehicle in the left hand carriageway and the Motorcycle in the right hand carriageway.¹⁸⁷

- 295.** The BMW Sedan's driver did not see any emergency police lights behind those vehicles. He thought he had sufficient time to execute his right hand turn, and in all of the circumstances, I am satisfied that this was a reasonably held belief.¹⁸⁸
- 296.** Police from TB202 and UQ102 arrived on the scene within moments, and made arrangements for an ambulance. Police located Mr Rundell on the road, unresponsive, and they immediately took steps to administer CPR. They were assisted by a passer-by who was a nurse.¹⁸⁹
- 297.** Records reflect that the ambulance was called for at 8.46 pm on 11 January 2014, and that it departed promptly arriving at the scene at 8.56 pm. When the paramedics arrived, CPR was in progress and they took over. Despite all attempts by paramedics to revive Mr Rundell, he had suffered serious fatal injuries and he remained in asystole. Mr Rundell was tragically pronounced dead at the scene.¹⁹⁰
- 298.** I am satisfied that Mr Rundell endeavoured to apply his brakes when at the last minute he saw the BMW Sedan coming across his path, but given the speed of his Motorcycle, and the stopping distance that would have been required, the collision was unfortunately unavoidable. Given his drug intoxication, Mr Rundell was incapable of safely controlling the Motorcycle under normal riding conditions.
- 299.** A subsequent examination of the Motorcycle and the BMW Sedan by qualified vehicle examiners did not disclose any pre-existing contributing vehicle defects.¹⁹¹

¹⁸⁷ ts 696 to 697

¹⁸⁸ ts 697 to 698

¹⁸⁹ Exhibit 9, tabs 25 and 31;

¹⁹⁰ Exhibit 9, tabs 2, 31 and 49; Exhibit 10, tab 7

¹⁹¹ Exhibit 10, tabs 5 and 6



Cause and Manner of Death of Mr RUNDELL

- 300.** On 15 January 2014 forensic pathologist Dr D. M. Moss made a post mortem examination on the body of Mr Rundell at the State Mortuary. Examination revealed severe injuries to the head, chest, abdomen and limbs. There was no evidence of significant underlying natural disease.¹⁹²
- 301.** On 15 January 2014 the forensic pathologist formed the opinion that the cause of Mr Rundell's death was multiple injuries, but noted that toxicology analysis would be performed as part of the post mortem examination.¹⁹³
- 302.** The toxicological report for Mr Rundell became available on 25 February 2014 and it showed a positive result for tetrahydrocannabinol (7.8 micrograms per litre), methylamphetamine (0.79 milligrams per litre and amphetamine (0.09 milligrams per litre). This did not alter the forensic pathologist's opinion on the cause of death.¹⁹⁴
- 303.** I accept Dr Moss' opinion and I find that the cause of Mr Rundell's death is multiple injuries.
- 304.** I find that the manner of Mr Rundell's death is by way of accident.

Did Police Cause or Contribute to the Death of Mr RUNDELL?

- 305.** Toxicological analysis of the post mortem blood specimen from Mr Rundell was analysed by Professor David Joyce, expert clinical pharmacologist and toxicologist. He also reviewed the witness statements that contained information regarding Mr Rundell's riding and actions at the material time. Professor Joyce produced a written report and he gave evidence at the inquest.¹⁹⁵
- 306.** The toxicological analysis showed:

¹⁹² Exhibit 9, tab 4

¹⁹³ Exhibit 9, tab 4

¹⁹⁴ Exhibit 9, tabs 4 and 5

¹⁹⁵ Exhibit 14, tab 7; ts 972 to 998ff



- a. the presence of two intoxicating drugs of the stimulant family, methylamphetamine (0.79 milligrams per litre) and amphetamine (0.09 milligrams per litre). The concentration of the amphetamine was consistent with derivation from the methylamphetamine; and
- b. the presence of the intoxicating principal active constituent of cannabis or marijuana, being tetrahydrocannabinol (THC) (7.8 micrograms per litre).

307. At the inquest Professor Joyce relevantly noted that whilst in different concentrations, they were the same drugs detected as for the Toyota Cruiser's driver in connection with the deaths of Mr Singh and Dr Barrett.¹⁹⁶

308. In Professor Joyce's opinion, the methylamphetamine and amphetamine concentrations for Mr Rundell are high, and approximately three times the average that he sees in methylamphetamine affected drivers. They bore the signature of heavy consistent methylamphetamine use and the Professor opined that Mr Rundell was impaired by methylamphetamine at the time of riding his Motorcycle.¹⁹⁷

309. Whilst noting that the methylamphetamine concentrations for Mr Rundell were higher than those for the Toyota Cruiser's driver, Professor Joyce explained that the degree of impairment is not very linear, and could not say that Mr Rundell was more impaired. He could however say that both persons were very substantially above the threshold value of 0.01 milligrams per litre which is recognised to confer risk.¹⁹⁸

310. In Professor Joyce's opinion this post mortem blood specimen disclosed that Mr Rundell had an intoxicating dose of cannabis in the two to three hours before riding his Motorcycle and that he was still intoxicated with it at the time of his death. He was impaired by cannabis at the time of his riding, but the exact blood concentration at that time cannot be known.¹⁹⁹

¹⁹⁶ ts 991

¹⁹⁷ ts 992

¹⁹⁸ ts 992

¹⁹⁹ ts 991 to 992



311. Professor Joyce opined that the evidence he reviewed for Mr Rundell supported a role for drug intoxication in his decision to flee, take great risks and continue in flight. The Professor noted that on occasion, Mr Rundell was observed to ride at or above 100 kilometres per hour, and in his view, despite the intoxication, Mr Rundell's actions were under his voluntary control.²⁰⁰
312. At the time of the collision, Mr Rundell was wearing a helmet and protective jacket, but only shorts and joggers. A subsequent search of Mr Rundell located a quantity of illicit drugs including two clip seal bags containing white crystalline powder. They were subsequently analysed and found to contain methylamphetamine as a component. The weights of the powders were 0.08 and 0.85 grams respectively. This was a factor likely to have contributed to Mr Rundell's decision to evade police.²⁰¹
313. The Motorcycle was under pursuit at the time of the collision, and that pursuit had been authorised. The pursuing police vehicle was not close to the Motorcycle at the time of the collision. It was at least 300 metres behind it, and no longer visible to Mr Rundell. The police vehicles did not at any point come into contact with the Motorcycle, and at the moment of impact, police in TB202 had lost sight of it due to the distance between them, and the crest of the hill.
314. The police did not cause or contribute to the death of Mr Rundell.

CASE 4: KYRA MARJORIE CARMEN NARRIER

Ms NARRIER

315. Ms NARRIER was 23 years of age at the time of her death. She was a passenger in a vehicle which crossed to the incorrect side of the road and collided with another vehicle. She was not wearing a seat belt at the time of the collision.
316. The driver of the vehicle was her partner. His four year old nephew was in the rear of the vehicle.

²⁰⁰ ts 992 to 993

²⁰¹ Exhibit 10, tab 1;



317. I am assisted by submissions made by Ms Narrier's mother, through her counsel, the Aboriginal Legal Service of Western Australia, addressing the inherent dangers of high speed pursuits.

Outline of the Events

318. On 13 November 2014 at approximately 8.56 pm police in a Class 1 pursuit vehicle were travelling north on Kwinana Freeway near Thomas Road, Anketell. The officers observed a Hyundai Lantra motor vehicle (the Hyundai) also travelling north on Kwinana Freeway.

319. A check of the Hyundai Lantra's registration revealed it to be an allegedly stolen motor vehicle. Police manoeuvred their vehicle into a position where they could maintain observations whilst they attempted to coordinate other police vehicles to form a containment area. The Hyundai exited the freeway and its driver detected the police vehicle.

320. Police officers in their vehicle activated their emergency lights and siren. When the Hyundai failed to stop a police pursuit was commenced and authorised by Police Operations Centre. The Hyundai was pursued by police for approximately 11 minutes, before it crossed to the incorrect side of the Thomas Road, at the intersection of Colchester Avenue, Orelia.

321. Police terminated their pursuit but shortly afterwards the Hyundai collided with an oncoming motor vehicle at high speed, causing immediate fatal injuries to Ms Narrier, who was a passenger in the Hyundai. The collision also resulted in serious injuries to a four year old child, who was also a passenger in the Hyundai, and serious injuries to the driver and passenger of the oncoming motor vehicle, and to the driver of the Hyundai.

322. The details of the pursuit appear below.

The Pursuit

323. On Thursday 13 November 2014, Sergeant Brett Forrest as driver, and Officer A as passenger, were on general patrol duties in a Class 1 marked police vehicle, call sign US110. Sergeant Forrest was a



qualified Pursuit Driver. Officer A was qualified to deploy a stinger.²⁰²

- 324.** As police in US110 were travelling east along Thomas Road and onto the freeway north on ramp shortly before 9.00 pm that night, they observed a silver motor vehicle in front of them, the Hyundai, being driven quite slowly and below the posted speed limit. The manner of driving caught the attention of police in US110 and in the course of their routine duties, they checked its registration.²⁰³
- 325.** As US110 drove in a northerly direction along the Kwinana Freeway, Officer A entered the Hyundai's registration details into the computer system, which generated a response to the effect that the Hyundai was stolen and had a number of alerts on it. By this stage, given the relative speeds, US110 had overtaken the Hyundai along the freeway.²⁰⁴
- 326.** Upon receiving this information police in US110 decided to intercept the Hyundai (which they had now overtaken). To this end, Sergeant Forrest moved into the left lane of the Kwinana Freeway, and then onto the Anketell Road off ramp. As they did this, the police officers endeavoured to identify the Hyundai's headlights amongst the motor vehicles coming towards them along the freeway, but were unable to do so.²⁰⁵
- 327.** In the circumstances, police in US110 decided that they would get back onto the Kwinana Freeway to see if they could locate the Hyundai, and they did so by means of the Anketell Road on ramp. Once they were back on the Kwinana Freeway (travelling north) police in US110 saw the Hyundai in their rear vision mirror, apparently stopped under the Anketell Road off ramp bridge.²⁰⁶
- 328.** It was impractical at that point for police in US110 to double back towards the Hyundai and they therefore used the police radio to seek assistance from other police vehicles in the area, south of their location. Records reflect that 8.56.51 pm on 13 November 2014

²⁰² ts 846 to 847; ts 892 to 894; Exhibit 12, tabs 39.5.1 and 39.5.2

²⁰³ ts 847

²⁰⁴ ts 847 to 848; ts 895 to 896

²⁰⁵ ts 847 to 848; ts 895 to 896

²⁰⁶ ts 848 to 849; ts 896; Exhibit 11, tab 59; Exhibit 12, tab 39.5.5



police in US110 broadcast a request for assistance, describing the Hyundai, and its location, including that it was a stolen vehicle.²⁰⁷

- 329.** Police in Class 1 marked police vehicle call sign US105 responded by way of broadcast at 8.57.18 pm and advised they would head that way. US105's driver was a Priority 2 qualified driver, and he was stinger qualified. The broadcasts were also noted by the Police Operations Centre.²⁰⁸
- 330.** Police in US110 continued in a northerly direction along the Kwinana Freeway and then onto the Rowley Road off ramp. There they briefly stopped on the bridge to see the oncoming traffic along the freeway, with a view to possibly identifying the Hyundai. After a moment, the Hyundai came up the off ramp onto Rowley Road and turned left, heading west along Rowley Road, and police in US110 quickly identified it to be the vehicle they were looking for.²⁰⁹
- 331.** At 9.00 pm police in US110 activated their emergency lights and then sirens, and as they followed the Hyundai west along Rowley Road, they informed the Police Operations Centre that they had sighted the Hyundai. They followed this with information related to their risk assessment. Initially, the Hyundai was travelling at approximately 60 kilometres per hour, but it was not stopping for police.²¹⁰
- 332.** Then the Hyundai rounded the right bend onto Frankland Avenue, and it accelerated heavily. Police in US110 activated emergency lights and sirens and commenced their pursuit of the Hyundai. They continued to provide relevant information to the Police Operations Centre. At 9.02.08 pm on 13 November 2014, Police Operations Centre authorised Priority Pursuit, meaning that they permitted police in US110 to continue its pursuit of the Hyundai.²¹¹
- 333.** The Hyundai, travelling at speed, turned left from Frankland Avenue into Russell Road travelling west, and police in US110 pursued it, at speed. The pursuit continued at speed as the Hyundai turned left onto Rockingham Road, travelling south for some distance, and then left onto Thomas Road, travelling east.

²⁰⁷ ts 848 to 849; Exhibit 12, tab 39.3

²⁰⁸ ts 849

²⁰⁹ ts 849; ts 896; Exhibit 11, tab 39

²¹⁰ ts 849; ts 896; Exhibit 11, tab 39; Exhibit 12, tab 39.3

²¹¹ ts 849; ts 896; Exhibit 11, tab 39; Exhibit 12, tab 39.3



Throughout this period, police in US110 continued to provide the Police Operations Centre with relevant information related to risk assessment.²¹²

- 334.** At the intersection of Thomas Road and Colchester Road in Orelia, the Hyundai braked as if it was going to turn, but then went onto the incorrect side of Thomas Road heading east in the westbound lane. This occurred at 9.11.07 pm and police in US110 elected to terminate their pursuit, deactivating emergency lights and sirens and informing the Police Operations Centre.²¹³
- 335.** As US110 slowed down the Hyundai drove further and further ahead of them, but could still be seen by the officers. When the Hyundai was approximately 500 metres ahead them, police in US110 witnessed a “*head on crash*” into something. This occurred at 9.11.27 pm, and police in US110 who were in radio contact with the Police Operations Center, informed them of the collision. Arrangements were made for an ambulance. Police in US110, staying on the correct side of the road, immediately drove up to the scene and promptly rendered assistance.²¹⁴

The Collision

- 336.** The collision occurred at approximately 9.11 pm on 13 November 2014 in the west bound median lane along a straight stretch of Thomas Road in Orelia, just east of the intersection with Colchester Avenue, and very shortly after the Hyundai went onto the incorrect side of the road.
- 337.** Thomas Road is a dual carriageway with two lanes in each direction separated by a median strip. On either side of the scene of the collision, Thomas Road is the subject of bends. The posted speed limit is 70 kilometres per hour. The road was sealed and in good condition, the weather was fine and street lighting was adequate.²¹⁵
- 338.** The Major Crash Investigation Section investigated and produced reports on the incident. The Hyundai was travelling in an easterly direction at speed, on the incorrect side of Thomas Road and

²¹² ts 854 to 859; Exhibit 12, tab 39.3

²¹³ ts 860 to 861; Exhibit 12, tab 39.3

²¹⁴ ts 861 to 862; Exhibit 12, tab 39.3

²¹⁵ Exhibit 11 , tabs 8 and 35



collided with a Holden Commodore utility vehicle (the Holden Utility) travelling in the opposite direction. It was a head-on collision. Immediately before the collision the Holden Utility had been travelling in a westerly direction along Thomas Road, on the correct side of the road.²¹⁶

- 339.** The Holden Utility's driver gave evidence at the inquest and testified that he did not see police emergency lights, nor hear sirens immediately before the collision. That night, alarmingly, he suddenly saw the Hyundai's headlights coming towards him, extremely fast and well and truly over the speed limit, in the wrong direction.²¹⁷
- 340.** The Holden Utility's driver saw the Hyundai swerving and he tried to avoid it, by braking and serving towards the right, into the median lane. At the last minute the Hyundai also travelled into that same median lane, and both vehicles collided, each one sustaining significant impact damage to its front.²¹⁸
- 341.** Both vehicles came to rest within the westbound carriageway. The Holden Utility was facing generally west within the median lane. The Hyundai was facing generally east, to the front of the Holden and straddling the central lane markings.²¹⁹
- 342.** Investigators observed a 28 metre single tyre scuff mark on the roadway, leading in an easterly direction, curving from the kerb lane into the median lane and stopping in proximity to the passenger side of the Hyundai. At the inquest the Sergeant from the Major Crash Investigation Section explained that this tyre mark shows there was emergency braking that was sufficient to lock the wheels.²²⁰
- 343.** Whilst there were no corresponding skid marks for the Holden Utility, this does not establish that there was no pre-collision braking, because this vehicle was fitted with an anti-lock braking system to avoid uncontrolled skidding. I accept the Holden Utility

²¹⁶ Exhibit 11, tabs 8 and 35

²¹⁷ ts 809

²¹⁸ ts 810

²¹⁹ Exhibit 11, tab 35

²²⁰ ts 842; Exhibit 11, tab 35



driver's evidence: *"I was straight on the brakes, so my vehicle wasn't gaining momentum and it was closing up extremely quick"*.²²¹

- 344.** At the inquest the Sergeant from the Major Crash Investigation Section opined that both vehicles were slowing from prior speeds, and that this was supported by the evidence of them not moving very far post collision.²²²
- 345.** I am satisfied that the Hyundai, travelling east on the westbound carriageway moved (under braking) from the kerb to the median lane, and that the Holden Utility was travelling west on the westbound carriageway (under braking) in that same lane, immediately prior to impact.
- 346.** The evidence was not sufficient to allow for an objective determination of the speeds of either vehicle. Having regard to the Major Crash investigation and the evidence at the inquest, I am satisfied that, given the Hyundai's dangerous manner of driving, a collision was unavoidable.
- 347.** Police from US110 were the first on the scene and they endeavoured to render assistance to the drivers and passengers of the Hyundai and the Holden Utility, pending the arrival of the emergency services.²²³
- 348.** Police from US110 noted that Ms Narrier appeared seriously injured and unresponsive in front passenger foot well, her head behind the driver's seat of the Hyundai. It appears she was not wearing a seat belt at the time of impact. Police were not able to gain immediate access to the interior of the Hyundai because none of its doors could be opened.²²⁴
- 349.** Police in US110 were able to render first aid assistance to the driver and passenger of the Holden Utility, because they gained immediate access to the interior of that vehicle. Both persons had suffered serious injuries, and were later transported by ambulance to Armadale Hospital for treatment.²²⁵

²²¹ ts 809 and 842

²²² ts 839 to 840

²²³ Exhibit 11, tabs 14, 15, 35 and 39.2

²²⁴ Exhibit 11, tabs 14, 15, 35 and 39.2; Exhibit 12, tab 40

²²⁵ Exhibit 11, tabs 10, 11, 14, 15, 35 and 39.2; Exhibit 12, tab 40



- 350.** Whilst police from US110 were seeking to gain access to the Hyundai, other police and emergency services arrived. The priorities were identified to be the extraction of the four year old child, as well as the need to gain access in order to render first aid to Ms Narrier and the Hyundai's driver. The four year old child was the Hyundai driver's nephew.²²⁶
- 351.** Ms Narrier suffered fatal injuries and tragically died at the scene. The Hyundai's driver suffered serious injuries and had not been expected to survive; he was airlifted to Royal Perth Hospital for treatment. The unrestrained four year old child in the Hyundai was also injured; he was transported by ambulance to Princess Margaret Hospital for treatment.²²⁷
- 352.** In connection with Ms Narrier, records reflect that St John Ambulance received the call for emergency assistance at 9.13.05 pm on 13 November 2014, and that an ambulance departed immediately, arriving at the scene at 9.17 pm. Shortly afterwards a second ambulance crew arrived, but the first ambulance crew focused on Ms Narrier. The paramedics were initially able to feel a brachial pulse, but were unable to gain access to commence treating her.²²⁸
- 353.** Access to Ms Narrier was gained by approximately 9.50 pm when she was able to be removed from the Hyundai after assistance from fire and emergency services. At this stage, a secondary assessment of Ms Narrier revealed extensive injuries, but her pupils remained reactive. When Ms Narrier was placed in the ambulance at approximately 9.55 pm her breathing ceased and paramedics promptly commenced CPR.²²⁹
- 354.** Despite extensive attempts by paramedics to resuscitate Ms Narrier, she remained in asystole and tragically was unable to be revived. Ms Narrier was pronounced dead at the scene at 10.25 pm on 13 November 2014.²³⁰
- 355.** As responding emergency services were required to cover the area with grit to absorb oil and fluid that had been spread from the

²²⁶ Exhibit 11, tabs 10, 11, 14, 15, 35 and 39.2; Exhibit 12, tab 40

²²⁷ Exhibit 12, tab 40

²²⁸ Exhibit 11, tab 3A

²²⁹ Exhibit 11, tab 3A

²³⁰ Exhibit 11, tab 3A



damaged vehicles, it was not possible to identify a specific point of collision, but I am satisfied it likely occurred in the median lane.²³¹

- 356.** At the inquest, counsel for Ms Narrier's family questioned a number of witnesses as to whether there was any evidence that the police vehicle came into contact with the Hyundai. The Sergeant from the Major Crash Investigation Section testified that there was no such evidence. The police officers from US110 both testified to the same effect. I am satisfied that on the night of 13 November 2014 there was no contact between any police vehicle involved in the intercept or pursuit on the one hand, and the Hyundai on the other hand.²³²
- 357.** A subsequent examination of the Hyundai and the Holden Utility by qualified vehicle examiners did not disclose any pre-existing contributing vehicle defects.²³³

Cause and Manner of Death of Ms NARRIER

- 358.** On 19 November 2014 forensic pathologist Dr D. M. Moss made a post mortem examination on the body of Ms Narrier at the State Mortuary. Examination revealed multiple injuries to the head, chest, abdomen and limbs. There was no evidence of significant pre-existing natural disease.²³⁴
- 359.** On 19 November 2014 the forensic pathologist formed the opinion that the cause of Ms Narrier's death was multiple injuries, but noted that toxicology analysis would be performed as part of the post mortem examination.²³⁵
- 360.** The toxicological report for Ms Narrier became available on 19 January 2015 and it revealed a blood methylamphetamine level (0.14 milligrams per litre) with a blood amphetamine level (0.07 milligrams per litre). Alcohol and other common drugs were not detected. The carbon monoxide level was not raised. This did not alter the forensic pathologist's opinion on the cause of death.²³⁶

²³¹ Exhibit 11, tab 35

²³² ts 840, 885 and 909

²³³ ts 839 to 840; Exhibit 11, tab 36

²³⁴ Exhibit 11, tab 4

²³⁵ Exhibit 11, tab 4

²³⁶ Exhibit 11, tabs 4 and 6



361. I accept Dr Moss' opinion and I find that the cause of Ms Narrier's death is multiple injuries.
362. On 21 January 2016 the Hyundai's driver, who was Ms Narrier's partner, was sentenced in the District Court of Western Australia to a term of five and a half years' imprisonment in respect of a conviction for dangerous driving causing Ms Narrier's death, in circumstances in which he was attempting to escape pursuit by a member of the police service.²³⁷
363. On that date the Hyundai's driver was also sentenced to two years' imprisonment in respect of a conviction for dangerous driving causing grievous bodily harm to one of the passengers in the incident. The learned sentencing judge ordered this sentence to be served cumulatively.²³⁸
364. The Hyundai's driver was therefore sentenced on 21 January 2016 to a combined term of seven and a half years' imprisonment. He was made eligible for parole. He was disqualified for life from holding or obtaining a drivers' licence.²³⁹
365. I therefore find that the manner of Ms Narrier's death is by way of unlawful homicide.

Did Police Cause or Contribute to the Death of Ms NARRIER?

366. A blood sample was collected from the Hyundai's driver at approximately 11.55 pm on 13 November 2014, approximately two and three quarter hours after the collision. The toxicological analysis of the blood sample from the Hyundai's driver was analysed by consultant chemical pathologist and toxicologist Dr Jonathan M. Grasko.²⁴⁰
367. Professor David Joyce, expert clinical pharmacologist and toxicologist also reviewed the toxicological analysis, and the witness statements that contained information regarding the Hyundai driver's driving and actions at the material time. Dr Grasko

²³⁷ Exhibit 12, tab 40

²³⁸ Exhibit 12, tab 40

²³⁹ Exhibit 12, tab 40

²⁴⁰ Exhibit 11, tabs 7 and 31; Exhibit 14, tab 7



produced a written report and Professor Joyce gave evidence at the inquest.²⁴¹

- 368.** The toxicological analysis showed the presence of two intoxicating drugs of the stimulant family, methylamphetamine (0.5 milligrams per litre) and amphetamine (0.03 milligrams per litre). The concentration of the amphetamine was consistent with derivation from the methylamphetamine. Whilst Dr Grasko also noted that the small amount of amphetamine present would have made some contribution to the Hyundai driver's state, he could not rule out co-ingestion of both drugs.²⁴²
- 369.** Dr Grasko's opinion, that I accept, is that the Hyundai driver's driving pattern was consistent with acute methylamphetamine intoxication and would therefore have been expected to have significantly impaired his physical and mental faculties to properly control the vehicle, even under normal driving conditions.²⁴³
- 370.** At the inquest Professor Joyce testified that the methylamphetamine concentrations for the Hyundai's driver were about two-fold higher than average for an impaired driver, and that they were within the range that reflects that he was a regular user of methylamphetamine. The driver was therefore open to all of the consequences of intoxication and sustained use (that are addressed earlier in this finding).²⁴⁴
- 371.** The duration of this pursuit, being approximately 11 minutes, was significantly longer than the other pursuits the subject of this inquest. Records reflect that an ongoing risk assessment was undertaken by police in US110, and that it was contemporaneously communicated by way of broadcast to the Police Operations Centre, and other police vehicles in the district.²⁴⁵
- 372.** I am satisfied that the ongoing risk assessments regarding the continuation of the pursuit and the decision to terminate the pursuit were consistent with the expectations outlined the Emergency Driving Policy and Guidelines.²⁴⁶

²⁴¹ Exhibit 11, tab 31; Exhibit 14, tab 7; ts 971 to 998

²⁴² Exhibit 11, tab 7

²⁴³ Exhibit 11, tab 31; Exhibit 14, tab 7

²⁴⁴ ts 994

²⁴⁵ Exhibit 12, tab 39.3

²⁴⁶ Exhibit 14, tab 3



- 373.** It is clear that police gave consideration to the deployment of stingers to bring the pursuit to an end. To that end a number of police vehicles with stingers on board were permitted to drive under Priority 2 conditions with the aim of deploying a stinger. Unfortunately, none of these police vehicles were able to manoeuvre into a position to get in front of the Hyundai in order to deploy their stingers, by reason of their respective locations.²⁴⁷
- 374.** I am satisfied that at the material time, none of the police vehicles with the stingers were understood by the Hyundai's driver to be involved in assisting in the intercept or pursuit of his vehicle. I am also satisfied that throughout the pursuit police in US110 were broadcasting the Hyundai's location with the aim of having stingers deployed by one of the authorised vehicles.
- 375.** Clearly, the Hyundai's driver was acutely aware that police in US110 were pursuing him, and made the decision to attempt to evade them. His decision to flee the police and his dangerous manner of driving were likely affected by his methylamphetamine intoxication, but his actions were voluntary. He was also motivated to flee because he was driving a stolen motor vehicle, and he did not hold a valid a driver's licence, and had been in trouble for that previously.²⁴⁸
- 376.** At the inquest, police in US110 testified to the effect that the closest their vehicle came to the Hyundai was close to the end of the pursuit, when the driver applied the brakes at the Colchester Road intersection with Thomas Road and went onto the correct side of the road. By reason of that manoeuvre, police in US110 came within approximately 20 or 30 metres of the Hyundai.²⁴⁹
- 377.** The police did not cause or contribute to the death of Ms Narrier.

²⁴⁷ Exhibit 11, tab 39; Exhibit 12, tabs 39.2 and 39.5

²⁴⁸ Exhibit 12, tab 40

²⁴⁹ ts 885 and 909



CASE 5: HASSAN EL BAKDADI

Mr EL BAKDADI

- 378.** Mr El Bakdadi was born on 9 April 1984 into a close and loving family. He was the eldest of six children, having five younger sisters. He was 34 years old at the time of his death.
- 379.** Mr El Bakdadi had completed his high school education and was in the process of studying Business Management at Central College of Technical and Further Education (TAFE). He was not in employment at the time of his death.
- 380.** Mr El Bakdadi was in reasonable physical health and he liked to play golf. Sadly, however he had started to use illicit drugs, and these had a destabilising effect on his life, ultimately leading to his death.

Outline of the Events

- 381.** At about 10.26 pm on Sunday 21 December 2014 police officers were conducting patrols in the vicinity of an address that had been previously linked to drug and stolen vehicle activities. Officers were using an unmarked Class 1 pursuit vehicle.
- 382.** The police noticed a silver Suzuki Swift hatchback vehicle (the Suzuki) on Fenchurch Street in Alexander Heights that was bearing a rear numberplate which was not affixed properly. The police followed the Suzuki as it turned right onto Alexander Drive, where it immediately accelerated away from them, and then turned left into Illawarra Crescent. The driver and sole occupant of the Suzuki was Mr El Bakdadi.
- 383.** Police attempted to intercept the Suzuki along Illawara Crescent in Ballajura passing through a roundabout at the intersection with Marangaroo Drive. With this aim police activated their emergency lights and sirens and followed the Suzuki.
- 384.** The Suzuki did not stop for police. Whilst taking a sweeping right hand bend at approximately 100 kilometres per hour, the Suzuki



overtook another motor vehicle and Mr El Bakdadi lost control of his vehicle.

- 385.** The Suzuki slid and collided with a large roadside gum tree, impacting heavily on the passenger side. Despite efforts by police to provide first aid, tragically Mr El Bakdadi died at the scene.
- 386.** The details of the pursuit appear below.

The Pursuit

- 387.** On the night of 21 December 2014, shortly after 9.00 pm Detective Senior Constable Michael Basden (then a Detective First Class Constable) as driver, and Sergeant Jamie Paterson (then a Detective Senior Constable) as passenger, were on patrol in Alexander Heights. They were in unmarked Class 1 police vehicle, call sign AU405. Detective Senior Constable Basden was a qualified Priority Pursuit driver.²⁵⁰
- 388.** At approximately 10.26 pm police in AU405 observed the Suzuki driving in an easterly direction along Fenchurch Street, approximately 200 metres in front of them. Their attention was drawn to the Suzuki because its rear number plate was askew, and not correctly affixed. This raised the possibility that the Suzuki's number plate has been swapped, and that it was a stolen vehicle, or alternatively that the driver wished to conceal the identity of the vehicle.²⁵¹
- 389.** Police in AU405 decided to catch up to the Suzuki in order to check its number plate details, with a view to conducting a vehicle intercept, depending on the outcome of those inquiries. With that intention, police in AU405 drove along Fenchurch Street behind the Suzuki, towards the Alexander Drive intersection.²⁵²
- 390.** The Suzuki slowed down at the intersection and then turned right, from Fenchurch Street into Alexander Drive. At this stage, and while police in AU405 were driving along Fenchurch Street, they were approximately 50 metres behind the Suzuki.²⁵³

²⁵⁰ ts 929 to 930; ts 1000 to 1002; Exhibit 13, tab 27

²⁵¹ ts 932 to 934; ts 1000 to 1001

²⁵² ts 1001 to 1002; ts 993 to 994

²⁵³ ts 1003



- 391.** Once police in AU405 reached the intersection, they observed that the Suzuki, having executed a right hand turn from Fenchurch Street into Alexander Drive, was now travelling in a southerly direction above the posted speed limit, and with increasing speed. Police in AU405 accelerated with the intention of closing the gap between the respective vehicles in order to check the Suzuki's number plate details, but without at this stage activating emergency lights and sirens.²⁵⁴
- 392.** Shortly afterwards, the Suzuki executed a left hand turn from Alexander Drive into Illawarra Crescent, continuing to drive at speed. At this stage, police in AU405 were at least 50 metres behind and they formed the view that the Suzuki's driver had ascertained their presence and decided to evade them.²⁵⁵
- 393.** Police in AU405 therefore decided to pursue the Suzuki along Illawarra Crescent. As they executed the left hand turn from Alexander Drive into Illawarra Crescent, they activated emergency lights (by placing blue light on the AU405's roof) and they activated sirens. At the same time, they contacted Police Operations Centre for permission to continue the pursuit. Records reflect that at 10.27.32 pm on 21 December 2014 police in AU405 made contact with the Police Operations Centre by way of broadcast and began to provide information relevant to a risk assessment.²⁵⁶
- 394.** Whilst police in AU405 were providing the Police Operations Centre with details relevant to that risk assessment, they accelerated along Illawarra Crescent, through the roundabout at the Marangaroo Drive intersection, and arrived at position approximately 100 to 150 metres behind the Suzuki, in pursuit. Police in AU405 observed the Suzuki driving at speed along a sweeping right hand bend and seeming to overtake another vehicle, by veering off to the right hand side.²⁵⁷
- 395.** At the inquest Detective Senior Constable Basden explained that on occasion he momentarily lost sight of the Suzuki along Illawarra Crescent, due to the bends in the road, and/or the crest at the Marangaroo Drive intersection, but that once the corner opened up,

²⁵⁴ ts 935 to 936; ts 1004

²⁵⁵ ts 936 to 937

²⁵⁶ ts 937 to 940; ts 1006 to 1007; Exhibit 13, tab 27.35

²⁵⁷ ts 942 to 943



he was able to see the Suzuki again. Witnesses estimated the Suzuki was travelling at approximately 100 kilometres per hour.²⁵⁸

- 396.** Detective Senior Constable Basden observed the Suzuki cross to the incorrect side of the road and overtake a four-wheel drive vehicle, on Illawarra Crescent, approaching Kingfisher Park. From his observations once the Suzuki attempted to come back to the correct side of the road, that vehicle lost traction and slid sideways and then collided with a tree.²⁵⁹
- 397.** This happened very quickly. Approximately one minute after police in AU405 made initial contact with the Police Operations Centre for permission to continue the pursuit, the Suzuki's driver lost control of his vehicle and collided with a tree. Records reflect that the collision occurred 10.28.05 pm, that it was immediately communicated to Police Operations Centre and that urgent arrangements were made for an ambulance.²⁶⁰
- 398.** Police in AU405 were on the scene within seconds, as was a female resident nearby, who identified herself as a nurse. Together, they endeavoured to assist Mr El Bakdadi.²⁶¹

The Collision

- 399.** The collision occurred at approximately 10.28 pm 21 November 2014 as the Suzuki was driving in a southerly direction on Illawarra Crescent in Ballajura, and negotiating a moderate right hand bend near Kingfisher Park. The Major Crash Investigation Section investigated the collision and provided a report.²⁶²
- 400.** At this location, Illawarra Crescent is a single two-lane carriageway that runs predominantly in a north south direction and is constructed from bitumen. On the approach to the collision location for south bound traffic, there is a gentle long sweeping left hand bend followed by a short straight section that leads to a moderate right hand bend.²⁶³

²⁵⁸ ts 1008; Exhibit 13, tabs 8, 27.3, 27.6 and 27.18

²⁵⁹ ts 1008 to 1009

²⁶⁰ Exhibit 13, tab 27.35

²⁶¹ Exhibit 13, tab 9

²⁶² Exhibit 13, tab 27.18

²⁶³ Exhibit 13, tab 28.18



- 401.** On both sides of the carriageway are grassed verges that give way to concrete footpaths. The Ballajura Primary School is on the eastern margins with residential properties to the western side. I accept the evidence of police from AU405 to the effect that the road where the Suzuki lost control was wet, and that the water likely came from sprinklers at Kingfisher Park.²⁶⁴
- 402.** The posted speed limit on the relevant section of Illawarra Crescent was 50 kilometres per hour. The Suzuki came to rest on the western verge of the carriageway where the passenger side was hard up against the northern side of a mature tree. This was on the residential side, opposite Kingfisher Park.²⁶⁵
- 403.** The Suzuki sustained significant impact damage to the left passenger side. There was extensive intrusion damage to the occupant compartment such that the lower part of the left front passenger door was forced up against the centre console with the upper column area up against the driver's seat.²⁶⁶
- 404.** The Major Crash Section investigators noted that all four tyres of the Suzuki had lateral striation marks running across the tread face which is caused when the tyre is rotating and slipping across the road surface. The investigators further noted that although this does not preclude some form of braking occurring, it indicates that the tyres were not locked as the vehicle was sliding sideways.²⁶⁷
- 405.** A subsequent vehicle examination of the Suzuki noted that the outer tread depth of the left front tyre was worn below 1.5 millimetres.²⁶⁸
- 406.** The Major Crash Section investigators noted several curved tyre scuff marks, commencing from the eastern margins and middle of the north bound lane. As those scuff marks progress in a southerly direction, they curve towards the right (west) leading onto the grassed verge, and leading directly toward the Suzuki. The investigators formed the opinion, that I accept, that the tyre marks indicate that the Suzuki's driver was on the incorrect side of the

²⁶⁴ Exhibit 13, tabs 27.2, 27.3, and 27.18

²⁶⁵ Exhibit 13, tab 27.18

²⁶⁶ Exhibit 13, tab 27.18

²⁶⁷ Exhibit 13, tab 27.18

²⁶⁸ Exhibit 13, tab 24



road, and that he applied substantial steering input to the right which caused the vehicle to veer sharply in that direction in an uncontrolled state and enter a yaw.²⁶⁹

- 407.** I accept the Major Crash Investigation section's conclusions and am satisfied that the Suzuki's driver lost control of his vehicle resulting in the Suzuki entering into a clockwise yaw, where it slid passenger side first into a large tree located on the western verge.²⁷⁰
- 408.** Police from AU405 found Mr El Bakdadi to be unresponsive, and he was not observed to have been wearing a seatbelt. They endeavoured to render first aid. Senior Constable Paterson extracted Mr El Bakdadi from the wreckage of the Suzuki and with assistance from the nurse he commenced CPR, which he continued until the ambulance arrived a short time later.²⁷¹
- 409.** Records reflect that the St John Ambulance received a call at 10.31.00 pm on 21 December 2014, and that an ambulance departed promptly arriving at the scene at 10.37.00 pm. Upon arrival, paramedics instructed Senior Constable Paterson to continue CPR while they checked Mr El Bakdadi. Paramedics determined that Mr El Bakdadi was in asystole. CPR was continued but tragically, Mr El Bakdadi injuries were not compatible with life, and he was unable to be revived. He was pronounced dead at the scene at 10.47 pm.
- 410.** A subsequent examination of the Suzuki by qualified vehicle examiners did not disclose any pre-existing contributing vehicle defects, save for the outer tread depth of the left front tyre being worn. However, the degree of any contribution cannot be known in light of all of the other factors, including Mr El Bakdadi's erratic and dangerous manner of driving. It was also noted that the Suzuki's airbags failed to deploy.²⁷²

²⁶⁹ Exhibit 13, tab 27.18

²⁷⁰ Exhibit 13, tab 27.18

²⁷¹ Exhibit 13, tab 9

²⁷² Exhibit 13, tabs 8, 24 and 27.18



Cause and Manner of Death of Mr EL BAKDADI

411. On 23 December 2014 forensic pathologist Dr C. T. Cooke made a post mortem examination on the body of Mr El Bakdadi at the State Mortuary. Examination revealed severe injuries to the head, chest and abdomen, with fractures of the skull, ribs and pelvis, with injuries to the base of the brain and the lungs, liver, spleen and bladder. There was no evident natural disease.²⁷³
412. On 23 December 2014 the forensic pathologist formed the opinion that the cause of Mr El Bakdadi's death was multiple injuries. Toxicology analysis was ordered as part of the post mortem examination.²⁷⁴
413. The toxicological report for El Bakdadi became available on 16 February 2015 and it relevantly showed a positive result for methylamphetamine (2.6 milligrams per litre) and amphetamine (0.36 milligrams per litre), morphine (total) (approximately 1.5 milligrams per litre), morphine (free) (approximately 0.08 milligrams per litre), codeine (total) (1.4 milligrams per litre) and codeine (free) 0.32 milligrams per litre. A number of other metabolites were detected, that are further addressed in the analysis of Professor Joyce's evidence, below. This did not alter the forensic pathologist's opinion on the cause of death.²⁷⁵
414. I accept Dr Cooke's opinion and I find that the cause of Mr El Bakdadi's death is multiple injuries.
415. I find that the manner of Mr El Bakdadi's death is by way of accident.

Did Police Cause or Contribute to the Death of Mr EL BAKDADI?

416. A mortuary admission preserved blood sample was collected from Mr El Bakdadi at 3.00 am on 14 November 2014, approximately four and a half hours after the collision. The toxicological analysis of the post mortem blood sample from Mr El Bakdadi was analysed by Professor Joyce, expert clinical pharmacologist and toxicologist,

²⁷³ Exhibit 13, tab 27.24

²⁷⁴ Exhibit 13, tab 6

²⁷⁵ Exhibit 13, tabs 6 and 8



along with witness statements that contained information regarding his driving and actions at the material time. Professor Joyce produced a written report and gave evidence at the inquest.²⁷⁶

- 417.** The toxicological analysis showed the presence of two intoxicating drugs of the stimulant family, methylamphetamine (2.6 milligrams per litre) and amphetamine (0.36 milligrams per litre). The concentration of the amphetamine was consistent with derivation from the methylamphetamine. ²⁷⁷
- 418.** At the inquest Professor Joyce gave evidence about the drug concentrations detected. In his opinion, that I accept, the post mortem methylamphetamine and amphetamine concentrations are very high meaning that Mr El Bakdadi had a methylamphetamine use habit which was probably getting up into grams per day. The Professor testified: *“The methylamphetamine concentration itself would be sufficient to kill somebody who is not accustomed to using methylamphetamine.”*²⁷⁸
- 419.** Professor Joyce outlined his experience in connection with the traces of ephedrine that were detected on toxicological analysis. He has found that ephedrine is one of those drugs that methylamphetamine is created from in illicit synthesis. With people who have got a great deal of methylamphetamine in them, the Professor sometimes sees that there is a trace of ephedrine still there as well.²⁷⁹
- 420.** In considering Mr El Bakdadi’s methylamphetamine blood concentration of 2.6 milligrams per litre, Professor Joyce took account of the fact that post mortem drug redistribution may artefactually increase the blood concentration of this drug, but this level still indicated to him that Mr El Bakdadi had reached the stage of severe methylamphetamine addiction.²⁸⁰
- 421.** At the inquest Professor Joyce, having regard to the levels of methylamphetamine detected, testified that in his opinion paranoia can emerge with any usage of methylamphetamine, and that it

²⁷⁶ Exhibit 14, tab 7; ts 971 to 998

²⁷⁷ Exhibit 14, tab 7

²⁷⁸ ts 994

²⁷⁹ ts 994

²⁸⁰ Exhibit 14, tab 7



would be practically universal among people using it as heavily as Mr El Bakdadi. The Professor explained that his reference to paranoia was not a reference to psychiatric criteria being established, although anyone using methylamphetamine to this degree would be psychiatrically very abnormal. In general terms, suspiciousness is almost always present.²⁸¹

- 422.** The toxicological analysis also showed the presence of the heroin metabolite, monoacetylmorphine in the urine. In his report Professor Joyce explained that this means that the opioids morphine and codeine found in the body have partly or entirely arisen from heroin administration and that heroin had been taken recently by Mr El Bakdadi.²⁸²
- 423.** Professor Joyce found the morphine (total) (approximately 1.5 milligrams per litre), morphine (free) (approximately 0.08 milligrams per litre), codeine (total) (1.4 milligrams per litre) and codeine (free) 0.32 milligrams per litre, to be extremely high. In his experience, there would be few people who would survive those concentrations. They are only ever seen in somebody who has habituated to heavy consistent use of heroin or related drugs.²⁸³
- 424.** Therefore, in addition to Mr El Bakdadi being open to all of the consequences of methylamphetamine intoxication and sustained use that are addressed earlier in this finding and that would have significantly impaired his physical and mental faculties to properly control the vehicle, even under normal driving conditions, consideration was given to the combined effects of the heroin.²⁸⁴
- 425.** Professor Joyce opined that, notwithstanding the tolerance that Mr El Bakdadi had to the heroin, morphine and codeine, he must have been impaired by those drugs as well, as there was simply so much of them: *“Heavy, consistent opioid users are less impaired than naïve users, but these levels are so high that driving impairment seems inevitable.”*
- 426.** To the impairing effects of the methylamphetamine therefore are added the effects of the heroin, a sedating drug, which include

²⁸¹ ts 995

²⁸² Exhibit 11, tab 7

²⁸³ ts 995

²⁸⁴ ts 995 to 996



inattention, carelessness, slowness to respond, poor motor control and poor capacity for judgment-making and for evaluating road events.²⁸⁵

- 427.** Professor Joyce concluded that the toxicological analysis and the circumstances, as described by the materials that he reviewed, support a role for drug intoxication in Mr El Bakdadi's decisions to flee, take great risks and continue in flight.²⁸⁶
- 428.** Subsequent investigations, that I accept, established that Mr El Bakdadi's driver's licence was suspended at the material time. A subsequent search of Mr El Bakdadi's body located a bag of white crystal powder that was tested and found to be heroin (total weight 1.63 grams) and a bag of white crystal powder that was tested and found to be methylamphetamine (56.36 grams).²⁸⁷
- 429.** The pursuit by police in AU405 lasted approximately one minute and after its commencement, police in AU405 did not arrive at a position closer than approximately 100 metres behind the Suzuki.
- 430.** The police did not cause or contribute to the death of Mr El Bakdadi.

EMERGENCY DRIVING POLICY AND GUIDELINES

- 431.** The Western Australia Police maintain policy which governs all aspects of operating police vehicles. Police are required to comply with the Western Australian Emergency Driving Policy and Guidelines.
- 432.** The Emergency Driving Policy and Guidelines are regularly reviewed in response to changes in legislation, government policy, technology and policing practices. The Western Australian Police Emergency Driving Review Committee sits bi-monthly to oversee all aspects of emergency driving to identify trends and issues that require rectification. The Committee also monitors policy in other jurisdictions.²⁸⁸

²⁸⁵ ts 995; Exhibit 14, tab 7

²⁸⁶ Exhibit 14, tab 7

²⁸⁷ Exhibit 13, tabs 8 and 27.32

²⁸⁸ Exhibit 14, tab 8



- 433.** In accordance with usual practice, the Internal Affairs Unit (IAU) carried out a number of investigations into the actions of police during the above pursuits, with a view to ascertaining whether there had been breaches of legislation, regulations and/or the Emergency Driving Policy and Guidelines, and if so, recommending that action be taken. On occasion the IAU investigations were conducted jointly with the Major Crash Unit.
- 434.** Where breaches of the Emergency Driving Policy and Guidelines were identified, managerial intervention by way of letters of corrective advice, managerial notices or Assistant Commissioner's Warning Notices were recommended, and issued. Some officers were recommended for re-training, and were required to complete mandatory critical skills and priority pursuit refresher training. Some officers had their relevant driving status suspended pending re-training.
- 435.** I am relevantly informed, but not bound by the outcome of the IAU's disciplinary proceedings.
- 436.** At the inquest I received into evidence the various iterations of the Emergency Driving Policy and Guidelines, as they applied at the times of each incident, together with a report from the Commander of State Traffic, Commander Scott Higgins, who also gave evidence at the inquest.²⁸⁹
- 437.** Compliance with the Emergency Driving Policy and Guidelines is of paramount importance. The Emergency Driving Policy and Guidelines incorporate requirements for a comprehensive risk assessment, and requirements for police officers to be appropriately trained and qualified and for vehicles to be tested and found suitable for emergency driving.²⁹⁰
- 438.** It is underpinned by the public expectation that police will act to enforce the law for the benefit and security of the community and to ensure the roads are safe. It takes account of the fact that police are entrusted with special powers that members of the public do

²⁸⁹ Exhibit 14, tabs 1 to 5.2 and tab 8; ts 1291 to 1351

²⁹⁰ Exhibit 14, tab 8



not have, and being entrusted with those powers, that they will be used appropriately.²⁹¹

- 439.** The most recent iteration of the Emergency Driving Policy and Guidelines was implemented state-wide on 1 December 2016. After it was broadcast, all officers were required to complete the on-line emergency driving requalification module, to reconfirm their understanding of the current version of the policy.²⁹²
- 440.** If a police officer breaches the Emergency Driving Policy and Guidelines, it does not follow that he or she has caused or contributed to a death in the course of (or following) that pursuit or intercept. However, the manner in which such breaches are identified and addressed by IAU reflects upon the level of governance that is applied, and the measures that are taken to seek to ensure compliance.
- 441.** If a police officer complies with the Emergency Driving Policy and Guidelines, it does not follow that he or she will not cause or contribute to a death. Full compliance does not guarantee that outcome, but it significantly reduces the risk of causing or contributing to a death.
- 442.** I am satisfied that the evidence in connection with the IAU's disciplinary proceedings for breaches of the Emergency Driving Policy and Guidelines, and the outcomes, did not bear upon the question of whether police caused or contributed to the deaths investigated at this inquest.
- 443.** I am satisfied that the intercepts and pursuits were initiated in furtherance of a legitimate law enforcement action, and that in each case, a risk assessment was undertaken by police as required by the Emergency Driving Policy and Guidelines.
- 444.** I am also satisfied that within the context of this inquest, the driving skills of police officers undertaking pursuit driving were not called into question.
- 445.** As a result of evidence at the inquest and submissions before me, I am informed that the Western Australian Police Service are

²⁹¹ Exhibit 14, tab 8

²⁹² Exhibit 14, tab 8



referring the following issues to the Emergency Driving Review Committee for consideration as to whether the Emergency Driving Policy and Guidelines should be changed:

- a. The issue of whether both lights and sirens must be activated when police are conducting a vehicle intercept (as opposed to a pursuit); and
- b. The issue of specific guidance to police regarding the employment of additional or alternative resolution strategies, meaning strategies for bringing the pursuit to a safe conclusion in addition to, or as an alternative to a high speed on-road pursuit.

446. For this reason, there is no need for me to make recommendations on these issues.

RECOMMENDATION

447. A pursuit, now referred to as “*evade police intercept driving*” is a category of intercept driving undertaken in circumstances where for whatever reason, the driver of the motor vehicle (or rider of the motorcycle) being intercepted does not stop when called upon to do so.²⁹³

448. Within the context of pursuits and vehicle intercepts, the risk assessment to be undertaken by the individual police officer is a matter of judgement, dependent upon the unique circumstances, and made in the context of a dynamic environment, meaning that the assessment is ongoing and changes as the conditions evolve. Split second decisions are a feature of risk assessment and police are trained to make them.

449. On each occasion police must balance the necessity to immediately apprehend a suspected offender, against the risk of not undertaking the pursuit emergency driving. There are risks under both scenarios.

450. It is self-evident that a pursuit significantly increases the danger to all persons, being those directly involved and those indirectly and unintentionally exposed to risks. It is an immediate and obvious

²⁹³ Exhibit 14, tab 8



inherent risk with all pursuits, and one that has tragically crystallised on a number of occasions. The deaths following such pursuits have occasioned immeasurable grief and loss to families.

- 451.** The risk of not undertaking the pursuit emergency driving to apprehend a suspected offender is not as self-evident, but it is not to be ignored. There are longer term consequences that may have a deleterious impact upon the law enforcement function if all reasonable steps are not taken to apprehend offenders.
- 452.** There is an inbuilt system of checks and balances, in that the actions of police undertaking a pursuit on the roads are required to be monitored in real-time by police located at the Police Operations Centre, who obtain their information concerning the surrounding circumstances from a range of sources, including but not limited to a running commentary from the passenger of the primary police vehicle.
- 453.** The Police Operations Centre Communications Controller undertakes his or her own independent risk assessment, and will grant or refuse permission to police to engage in pursuit driving, and is empowered to require the termination of the pursuit at any stage.
- 454.** I am assisted by information from the Commander of State Traffic who informs me that for the period 1 January 2010 to 31 December 2016, there were a total of 5,278 pursuits. Of these:
 - a. a total of 2,048 pursuits resulted in law enforcement outcomes, totalling 6,020 charges;
 - b. a total of 881 pursuits resulted in an accident or collision;
 - c. a total of 23 pursuits resulted in 27 deaths.²⁹⁴
- 455.** Each one of those deaths was an unmitigated tragedy and these figures, although broad, go to show that the risks of pursuits are very real. What cannot be quantified are the injuries and/or deaths avoided as a result of the law enforcement actions.

²⁹⁴ Exhibit 14, tab 8



- 456.** The persistent grief that is endured in the wake of the deaths investigated in this inquest is manifest in the information before me. Where it has been available to me, I have set out some information about the background of the deceased persons in this finding. It is my hope that by doing so, it becomes possible for the reader to better understand the depth of the loss that has been sustained by the families and loved ones of all of the deceased.
- 457.** It is also to be borne in mind that four of the six deaths investigated in this inquest were of persons who were either other road users not involved in the intercept or pursuit (in the case of Mr Singh, Dr Barrett and Mr Fryer) or not the driver of the motor vehicle evading police (in the case of Ms Narrier). This goes to show the breadth of the risk endured by the community.
- 458.** At the inquest Inspector Mark Bordin, duty inspector attached to the Police Operations Centre gave evidence about the oversight of pursuits. Relevantly, some of that evidence concerned the use of “*exit strategies*”, otherwise referred to as resolution strategies. The role of the duty inspector with oversight of the pursuit is to employ available resources to bring the pursuit to a safe conclusion, and if the risk cannot be managed, then to terminate the pursuit.²⁹⁵
- 459.** In terms of exit strategies, the Inspector nominated the use of Police Airwing and stingers, and a range of other options. Self-evidently, the ability to accurately locate and then safely disable a speeding vehicle with minimal on-road high speed pursuit maximises the prospects of bringing a pursuit to a safe conclusion. This was supported by the evidence of the Commander of State Traffic, who referred to such exit strategies and drew attention to the dynamic nature of a pursuit, the changing circumstances, and the desirability of commencing with the on-road driving, and then considering the other options depending on the circumstances.²⁹⁶
- 460.** At the inquest the Superintendent in charge of Police Airwing, Superintendent John Leembruggen testified as to the capabilities of the police helicopter and I am satisfied that it is a valuable resource in the pursuance of risk mitigation in the course of a pursuit.²⁹⁷

²⁹⁵ ts 1217

²⁹⁶ ts 1217; ts 1317

²⁹⁷ ts 1257 to 1290



- 461.** This was supported by Commander Higgins, who posited that, without the pressure of the police vehicle being close behind or nearby, it is hoped that the dangerous driving behaviour is reduced. Quite logically, he explained that Police Airwing involvement is not a panacea, but he believed it would help reduce the likelihood of driving in that manner.²⁹⁸
- 462.** Overall, Commander Higgins was generally supportive of the greater use of Police Airwing in pursuit settings. Superintendent Leembruggen gave evidence concerning the operational capacities of the Police Airwing, and the resources presently available.²⁹⁹
- 463.** At the inquest, in considering the question of the desirability of resources for an additional police helicopter in support of resolution strategies and operational readiness, Superintendent Leembruggen drew attention to the surrounding costs, including the consequential need for additional staffing and training.³⁰⁰
- 464.** I take account of the fact the Western Australian Police Service inform me, through their counsel, that following the evidence at the inquest, the issue of specific guidance to police in the Emergency Driving Policy and Guidelines regarding the employment of additional or alternative resolution strategies, meaning additional or alternative strategies for bringing the pursuit to a safe conclusion, is now before the Emergency Driving Review Committee for consideration.
- 465.** I encourage the ongoing consideration and promotion of additional or alternative strategies where appropriate, being alternatives to high speed pursuits on the roads and/or resolution strategies that are in addition to high speed pursuits on the roads. In furtherance of that, I make the following recommendation, which is supported by the Western Australia Police Service through its counsel:

²⁹⁸ ts 1323

²⁹⁹ ts 1322 to 1323

³⁰⁰ ts 1269 to 1270



I recommend that the Police Airwing be allocated greater resources for the acquisition and operation of an additional helicopter and to this end, that consideration be given to allocating appropriate funding to the Western Australia Police Service.

CONCLUSION

- 466.** This inquest into six deaths that followed police pursuits and/or intercepts highlighted the inherent risks of high speed, on road pursuits and the finely balanced decisions that police are required to make when deciding whether to engage with a driver that is evading them.
- 467.** There are risks to the safety of the occupants of the vehicle being pursued, other users of the roads and the police themselves.
- 468.** Whilst they cannot be quantified, there are also longer term risks to be borne by the community if laws are not adequately enforced.
- 469.** On occasion, this may mean that all reasonable steps are to be taken to apprehend a suspected offender by way of a high speed on road pursuit. On such occasions, the exercise of prudence and restraint is called for, at every stage of the police's ongoing risk assessment.
- 470.** Care is to be taken when, with the benefit of hindsight, the split second decisions that police are required to make are examined. The situation is further complicated by the unfortunate pervasiveness of methylamphetamine abuse, and the attendant risks faced by all road users from the actions of drivers who are intoxicated with this illicit drug.
- 471.** In this inquest, four of the five drivers (including the one motorcycle rider) who were evading police had taken methylamphetamine that significantly impaired their physical and mental faculties to the point where they would have been unable to properly control their



vehicle even under normal driving conditions, let alone the escalated and dangerous conditions they adopted.

- 472.** Studies have shown that methylamphetamine has been found to be among the most prevalent of drugs found in impaired drivers. Methylamphetamine abuse is a problem of far greater depth and breadth than shown through the facts surrounding these deaths, and very sadly, it played a significant role in five of the six deaths.
- 473.** Given the prevalence of methylamphetamine abuse, and its association with other illegal behaviours, careful consideration must continue to be given to the balance between the law enforcement imperative and the risks to all road users. In this regard, the consideration of exit or resolution strategies once a pursuit commences are of manifest importance.

R V C FOGLIANI
STATE CORONER
29 December 2017

