



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 61/19

*I, Sarah Helen Linton, Coroner, having investigated the death of **Aaron Stephen MARSH** with an inquest held at the **Perth Coroner's Court, Court 85, CLC Building, 501 Hay Street, Perth** on **17 October 2019** find that the identity of the deceased person was **Aaron Stephen MARSH** and that death occurred on **24 August 2018** at **Royal Perth Hospital** as a result of **multiple injuries** in the following circumstances:*

**Counsel Appearing:**

Mr T Bishop assisting the Coroner.

Mr E Cade (State Solicitor's Office) appearing on behalf of the Western Australia Police Force.

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**SUPPRESSION ORDER**

**On the basis it would be contrary to the public interest, I make an order that there be no reporting or publication of the details of any of the versions of the WA Police Emergency Driving Policy and Guidelines, including, but not limited to, any cap on the speed at which police officers are authorised to drive.**

## INTRODUCTION

1. In the early hours of the morning on 24 August 2018 Aaron Stephen Marsh (Mr Marsh), was riding a motorcycle in Carlisle. At approximately 2.45 am he stopped at a set of traffic lights on Orrong Road. He stopped next to a Mitsubishi Lancer being driven by his cousin. A police vehicle, containing two police constables stationed at the Cannington Police Station, pulled up behind them. Constable Travis McDiarmid (Constable McDiarmid), was driving and Constable Benjamin Lynn (Constable Lynn), was in the passenger seat. They checked the registration of the Lancer but were unable to check the registration of the motorcycle as the licence plate was bent upwards. The police officers decided to pull over the motorcycle to investigate why the licence plate was bent and determine the registration.
2. When the lights turned green, both the motorcycle and Mitsubishi Lancer moved forward. The police officers activated their emergency lights and sirens, calling on Mr Marsh to stop the motorcycle. Mr Marsh did not heed their request and accelerated away from the police.
3. Constable McDiarmid accelerated the police vehicle with the intention of intercepting Mr Marsh. At the same time, Constable Lynn advised police communications of what was occurring, and asked about the availability of the Police Air Wing to assist. They were advised that the Air Wing were not available to assist. They were also told there were no other police vehicles in the area that could assist.
4. The police officers considered their options and made a decision to abort their attempted intercept of the motorcycle. Constable McDiarmid executed a u-turn and they began to travel in the opposite direction to try to find the Lancer and ask some questions of the driver.
5. Mr Marsh continued riding in the same direction he had been travelling on Orrong Road. He sped past a member of the public who was driving a small truck on Orrong Road. The truck driver saw Mr Marsh approach the off ramp to Great Eastern Highway at high speed and was concerned that the motorcycle would not successfully make the turn. The truck driver looked down the off ramp as he passed it and could see the stationary tail light of the motorcycle, which indicated that something had gone wrong. He stopped his truck and reversed back in the emergency lane, before getting out of his truck and going to help. He found Mr Marsh on the ground and believed he was dead. He asked another motorist to call emergency services for assistance.
6. When ambulance officers arrived, they provided emergency treatment to Mr Marsh and took him to hospital. He could not be revived and his death was confirmed by a doctor at the hospital.
7. As the death occurred immediately following the police officers' attempt to intercept the motorcycle, a public inquest was required in order to investigate whether the death was caused or contributed to by any action of a member of the police force, pursuant to (s22(1)b) the *Coroners Act 1996* (WA). I held an inquest at the Perth Coroner's Court on 17 October 2019.

8. The circumstances of the death were relatively clear and there was no dispute that Mr Marsh died from multiple injuries he sustained when he lost control of the motorcycle he was riding and crashed.
9. The inquest focussed primarily on the conduct of the police prior to the crash, and whether the police officers had complied with WA Police Emergency Driving Policy and Guidelines. I heard evidence from the police officers involved, another police officer who investigated the incident, and a number of civilian witnesses who were in the area at the time and saw some of the attempted intercept and were first at the crash scene.
10. At the conclusion of the inquest hearing, I observed that there was nothing in the evidence before me to suggest that the police officers involved caused or contributed to the death. All of the evidence supports the conclusion that the police officers had aborted their attempt to intercept the motorcycle and were no longer following Mr Marsh well before he crashed. It is possible he was unaware they had aborted the intercept attempt, but he would have been aware that they were certainly not close behind him. Nevertheless, Mr Marsh made a choice to continue to drive at excessive speed while riding a motorcycle, which made him inherently more vulnerable to serious injury in the event of a crash. His lack of a valid driver's licence, and licence suspension, probably factored into his decision.
11. Mr Marsh's decision-making was also likely to have been affected by the methylamphetamine found in his system. This would have significantly impaired his physical and mental faculties and negatively affected his ability to properly control the motorcycle. It suffices to say at this stage, that methylamphetamine use makes a person more likely to engage in risk-taking behaviour, and the impairment of their driving/riding ability means they are more likely to have a serious crash if they are driving/riding while under its effect.

## **EVENTS LEADING UP TO POLICE INVOLVEMENT**

12. Mr Marsh was the third of four children and grew up as a ward of the state, living in a number of different foster homes throughout his childhood. He was educated at Kwinana High School. At the time of his death he worked casually as a sales assistant at a store in Cannington. He did not participate in sport much himself, but he enjoyed watching football and was an avid West Coast Eagles supporter.<sup>1</sup>
13. Mr Marsh was divorced and had four children but only kept in regular contact with one of them. He was engaged to be married to his new partner. Mr Marsh was described as creative and mechanically minded and he would often purchase items off Gumtree and fix them up to then sell for profit.<sup>2</sup>
14. Mr Marsh's fiancé believed he suffered from epilepsy and depression but he did not take any medication for either. Mr Marsh was known by his fiancé to smoke cigarettes and use methylamphetamine. He did not generally drink

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<sup>1</sup> Exhibit 1, Tab 10.

<sup>2</sup> Exhibit 1, Tab 10.

alcohol. He had taken up ‘vaping’ more recently to try to give up both smoking and methylamphetamine. However, a week prior to his death he had reconnected with an old friend and begun using methylamphetamine again. Although he denied any drug use, his fiancé believed he had been using illicit drugs in the week leading up to his death.

15. A friend had been staying with Mr Marsh around this time before travelling up north for a few weeks. The friend owned the black Yamaha motorcycle that was involved in Mr Marsh’s death, although he had recently sold it to another person. The friend had brought the motorcycle to Mr Marsh’s home with the hope that Mr Marsh could fix a few things on the motorcycle before it was passed on to the new owner. It appears Mr Marsh borrowed the motorcycle to take it for a ride on the night that he died.<sup>3</sup>

### **EVENTS LEADING UP TO POLICE INVOLVEMENT**

16. On Thursday, 23 August 2018, Mr Marsh’s fiancé worked the later shift and got home at about 11.00 pm. When she arrived home Mr Marsh told her he was going to a convenience store to buy some cigarettes. He walked down the road and then walked home. Mr Marsh’s fiancé was asleep by the time he returned. She assumes that after he returned he rolled the motorcycle down the driveway, so as not to wake her, but does not know what time he left the house or where he was going. He never made it home.<sup>4</sup>
17. Mr Marsh went to a friend’s home on Harris Street in Carlisle, where he met up with a person he considered to be his cousin, Craig Walton (Mr Walton). He seemed his normal, happy self. Mr Marsh and Mr Walton smoked amphetamine while at the house in Carlisle. They both left the home in the early hours of the morning on Friday, 24 August 2018 with a plan to head to Mr Walton’s house. Mr Marsh was riding the black Yamaha motorcycle and his cousin was driving a white Mitsubishi Lancer.<sup>5</sup>
18. They stopped side by side at traffic lights on Orrong Road and spoke to each other through the open window of the Lancer. When the light turned green, Mr Walton said he saw Mr Marsh take “off really fast.”<sup>6</sup> Mr Walton saw that there was a police vehicle behind them and he noticed the police vehicle turn on its red and blue lights and follow Mr Marsh. Mr Walton told police that he did not know why Mr Marsh accelerated away like he did, but speculated that it may have been because he didn’t have a licence or because of the amphetamine they had used earlier.<sup>7</sup>
19. Mr Walton had followed along behind Mr Marsh and the police vehicle on Orrong Road. He could see the lights of the police vehicle and Mr Marsh’s motorcycle in the distance as they travelled through two sets of lights,

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<sup>3</sup> Exhibit 1, Tab 11, Tab 16 and Tab 17.

<sup>4</sup> Exhibit 1, Tab 11.

<sup>5</sup> Exhibit 1, Tab 12 – note the statement is unsigned; in the report of Senior Constable Patten it is noted that Mr Walton did not wish to endorse his witness statement but the information contained in it came from his conversation with police – see Exhibit 1, Tab 9, p. 4.

<sup>6</sup> Exhibit 1, Tab 12 [17].

<sup>7</sup> Exhibit 1, Tab 12 [19]

including one near a BP Service Station. Just after passing the service station, Mr Walton saw the police vehicle turn off its flashing lights. He was uncertain where Mr Marsh was at this stage. Mr Walton turned right off Orrong Road at this time, as this was the route he normally travelled to his house. He continued driving home with the expectation that Mr Marsh would meet him there. Mr Marsh never arrived.<sup>8</sup>

20. A number of other civilians were also in the vicinity of Mr Marsh when he was being followed by police and just prior to when he crashed.
21. Krystal Wallam (Ms Wallam), was driving on Orrong Road and had been stopped behind Mr Marsh's motorcycle at the traffic lights. She also recalled that Mr Marsh took off on his motorcycle at a fast speed from the lights. She had already seen the police vehicle and noticed it turn on its lights and 'give chase.' Like Mr Walton, Ms Wallam followed behind the motorcycle and police vehicle along Orrong Road at the speed limit, and she could see them both ahead of her. It appeared to Ms Wallam that the motorcycle got away from the police vehicle.<sup>9</sup> She lost sight of both the police vehicle and motorcycle as she came up to a small rise in the road. When she crested the hill she could still see the single tail light of the motorcycle riding up Orrong Road but she could no longer see the police vehicle and assumed it must have turned off Orrong Road. The Lancer had also gone.<sup>10</sup>
22. Ms Wallam continued driving along Orrong Road at a normal speed until it turned into Graham Farmer Freeway. She then went to take the exit ramp to Great Eastern Highway. As she entered the exit ramp to her left, Ms Wallam saw a man in the middle of the road run towards her waving his hands. She initially thought it was the motorcycle rider and then realised the man was the driver of a small truck parked nearby and he was calling out to her to ring emergency services as the motorcycle had crashed and the rider needed medical assistance. Ms Wallam saw the motorcycle and the rider lying on the ground and assumed it was the rider she had seen earlier being followed by police. She rang emergency services and requested assistance.<sup>11</sup>
23. Ms Wallam confirmed in her evidence at the inquest that at no stage did she see the police vehicle close the gap between it and the motorcycle, and there was no police vehicle in sight at the crash scene. She also confirmed she could not hear any sirens in the vicinity.<sup>12</sup>
24. Jarryd Ralph (Mr Ralph), was parked at a BP service station on Orrong Road when he heard the loud sound of a motorcycle coming down Orrong Road. It appeared to Mr Ralph the engine was 'revving' a lot and it sounded abnormally loud. He looked up and saw the motorcycle pass through the intersection at high speed. Mr Ralph said that shortly after the motorcycle sped past he saw a police vehicle pass by. It was a marked police vehicle with its lights and sirens activated. The motorcycle and police vehicle were

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<sup>8</sup> Exhibit 1, Tab 12.

<sup>9</sup> T 13.

<sup>10</sup> T 15; Exhibit 1, Tab 13.

<sup>11</sup> T 15 – 16; Exhibit 1, Tab 13.

<sup>12</sup> T 16.

close enough together for Mr Ralph to assume the police vehicle was “in pursuit”<sup>13</sup> of the motorcycle.<sup>14</sup>

25. Mr Ralph said although it was difficult to estimate the speed of the motorcycle, he believed it was travelling at around 140 km/hr as it passed through the intersection. In evidence, Mr Ralph said the motorcycle was travelling “very, very fast.”<sup>15</sup> He believed a few seconds elapsed between the motorcycle passing through the intersection and the police vehicle coming into view, and estimated they were separated by 50 to 70 metres and the police vehicle was travelling a bit slower than the motorcycle.<sup>16</sup>
26. Shortly after, Mr Ralph got into his vehicle and drove onto Orrong Road, heading in the same direction as the motorcycle and police vehicle. He drove at the speed limit of 70 km/hr. He was expecting to see the police and motorcycle ahead but was surprised to find that he could not see any lights in the distance. He assumed that the motorcycle and police vehicle had already travelled into the city. Mr Ralph believes he drove for about a minute or minute and a half before he came across the crash site. Like Ms Wallam, he was flagged down by the truck driver. He saw Ms Wallam had already stopped and was calling emergency services. Mr Ralph saw no police vehicles in the vicinity when he stopped.<sup>17</sup>
27. Brett Pusey (Mr Pusey), was the driver of the small truck that was first on the scene of the crash. Mr Pusey was driving along Orrong Road just before 3.00 am and was travelling around the speed limit of 70 km/hr. He was at a point approximately 150 metre before the off ramp to Great Eastern Highway when the motorcycle came past his truck in the right hand lane. Mr Pusey said the noise of the motorcycle scared him as it came up and headed past his truck at speed. Mr Pusey described the motorcycle as “flogging past”<sup>18</sup> him, and estimated its speed was at least 120 km/hr at that time.<sup>19</sup>
28. Mr Pusey noticed that while the motorcycle was still travelling in the right hand lane the rider kept looking behind him. Mr Pusey checked his mirrors and couldn’t see anything coming up behind the motorcycle. Mr Pusey then saw the motorcycle swerve into the left hand lane in front of him and at that stage the rider was still looking over his shoulder behind Mr Pusey’s truck. Mr Pusey then saw the motorcycle “dart off down the bypass road”<sup>20</sup> towards Great Eastern Highway. It didn’t appear to Mr Pusey that the rider had made a last minute decision to turn down the ramp, but rather it appeared to be a planned left turn.<sup>21</sup> Mr Pusey was approximately 100 metres behind the motorcycle when it entered the ramp.

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<sup>13</sup> Exhibit 1, Tab 13 [19].

<sup>14</sup> T 17.

<sup>15</sup> T 17.

<sup>16</sup> T 18.

<sup>17</sup> T 19.

<sup>18</sup> Exhibit 1, Tab 15 [13].

<sup>19</sup> T 21; Exhibit 1, Tab 15.

<sup>20</sup> T 20.

<sup>21</sup> Exhibit 1, Tab 15 [17].

- 29.** Mr Pusey was concerned because of the speed at which the motorcycle was travelling, commenting that it was “fairly flying.”<sup>22</sup> He has ridden motorcycles himself and he was concerned that the motorcycle was going too fast and might not safely negotiate the off ramp at that speed. As he passed the off ramp he looked down and could see a red tail light that he thought was from the motorcycle, and he noted it was stationary. Mr Pusey assumed the motorcycle had crashed, so he stopped his truck just passed the off ramp in the emergency lane of Orrong Road. He reversed his truck back along the emergency lane until he was close to where he had seen the tail light. He then stopped his truck, put on his hazards lights, grabbed a head torch. He got out of the truck, jumped the wire fence and ran down the embankment.<sup>23</sup>
- 30.** Mr Pusey confirmed in his evidence that he did not see a police vehicle in the vicinity at any time before the crash, despite looking in his mirrors when he saw the motorcycle rider checking behind him. He didn’t recall seeing any other vehicles behind him at that time.<sup>24</sup>
- 31.** Mr Pusey found the motorcycle and the rider on the embankment. He checked on the rider first and it did not appear to Mr Pusey that he was breathing. The rider was lying on his back and he saw no movement and he was not making any sound. The rider was still wearing his motorcycle helmet and when Mr Pusey lifted it up, he could see a large pool of blood behind the rider’s head and it appeared to Mr Pusey that the rider had died.<sup>25</sup> The black motorcycle was about five to ten metres away and the engine had stopped running.<sup>26</sup>
- 32.** Mr Pusey saw Ms Wallam approach in her vehicle, so he stopped her and asked her to call emergency services. Mr Ralph came up shortly afterwards and also stopped. They waited for the ambulance to arrive and some police vehicles also arrived at the scene a few minutes later.<sup>27</sup>
- 33.** St John Ambulance were notified at 2.50 am and an ambulance arrived at the crash scene at 2.54 am. Mr Marsh was lying prone on the ground next to a pole, with his motorcycle a couple of metres away. On assessment, Mr Marsh was not breathing and showed no signs of life but a note was made that he had been seen still moving by bystanders at the time the ambulance was requested, although it is unclear who made this statement to the ambulance officers. Mr Marsh was still wearing a full face motorcycle helmet, which was removed by the ambulance officers. A large amount of blood was present around the head and inside the helmet and there was an obvious head injury and facial injuries. Mr Marsh was taken by ambulance to Royal Perth Hospital with CPR in progress. His prognosis was extremely poor. Despite medical treatment at the hospital, he could not be revived.<sup>28</sup>

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<sup>22</sup> T 21.

<sup>23</sup> T 21.

<sup>24</sup> T 21 - 22.

<sup>25</sup> T 23; Exhibit 1, Tab 15.

<sup>26</sup> T 22; Exhibit 1, Tab 15.

<sup>27</sup> T 22 – 23; Exhibit 1, Tab 15.

<sup>28</sup> Exhibit 1, Tab 32.

## **ATTEMPT TO INTERCEPT**

- 34.** The police officers who had been in the police vehicle following Mr Marsh provided reports after the crash, and they both also gave evidence at the inquest.
- 35.** Their evidence was slightly different from the other witnesses as to the timing of when they first began to follow Mr Marsh, but in all other respects were consistent with the civilian accounts.
- 36.** Constable Lynn and Constable McDiarmid had come on duty at 6.00 pm and were patrolling in a marked police vehicle at about 2.50 am on 24 August 2018 when they came across Mr Marsh. Constable McDiarmid was driving and Constable Lynn was in the passenger seat. They saw the white Mitsubishi Lancer turn from a side street into Orrong Road, followed by Mr Marsh on a black sports motorcycle. They both initially pulled into the right hand lane.
- 37.** Mr Marsh then moved into the left hand lane as they were travelling north along Orrong Road approaching the intersection of Orrong Road and Wright Street. Mr Marsh pulled up next to the Lancer as they stopped at the lights and the police officers observed the registration plate on the motorcycle was bent upwards, making it difficult to read the numbers.<sup>29</sup> Constable Lynn knew from working in the area that the street from which the motorcycle and Lancer had come was a known area for criminal activity, and this knowledge, coupled with the bent licence plate, made him suspicious. They pulled up behind the motorcycle and Constable Lynn did a registration check on the Lancer, which showed nothing of interest. They then focussed their attention on the motorcycle, due to the bent plate, and decided they would pull him over because his plate was obscured.<sup>30</sup>
- 38.** The police officers saw Mr Marsh appear to speak to the occupant or occupants of the Mitsubishi Lancer while they were stopped at the traffic lights. The police vehicle was behind the Lancer at this stage. As the lights turned green the motorcycle and Lancer moved forward and Constable McDiarmid moved his vehicle into the left hand lane behind the motorcycle. Constable McDiarmid recalled he activated the emergency lights and sirens, directing the motorcycle to pull over, and at the same time Mr Marsh accelerated away from the police vehicle.<sup>31</sup>
- 39.** Constable McDiarmid's evidence was that at this stage he was definitely intending to conduct a vehicle intercept on the motorcycle and ascertain who the driver was, the reason why the licence plate was bent up and, from there, if any other offences had been committed.<sup>32</sup>
- 40.** Constable McDiarmid believed he accelerated up to a maximum speed of 140 km/hr in order to try to catch up to the motorcycle while Constable Lynn communicated the situation to over the police radio to VKI. Constable

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<sup>29</sup> Exhibit 1, Tab 18, Tab 19, Tab 20 and Tab 21.

<sup>30</sup> T 7 - 8.

<sup>31</sup> T 28; Exhibit 1, Tab 18, Tab 19, Tab 20 and Tab 21.

<sup>32</sup> T 28.

Lynn asked if the Police Air Wing was available as the motorcycle was accelerating away from them. They were hoping that if the Air Wing (Polair) was available they could take over following the motorcycle from the air, which was a safer option.<sup>33</sup> He was told that Air Wing were not available. Constable Lynn then asked if any pursuit drivers were in the area and was told they were the only vehicle in the area.<sup>34</sup>

41. Constable McDiarmid estimated they had travelled at speed for approximately 800 metres until the police vehicle caught up with the motorcycle, which had slowed down but was swerving left and right across both lanes. Constable McDiarmid slowed to about 90 km/hr and had closed the gap to about 10 metres behind the motorcycle. Constable McDiarmid and Constable Lynn gave evidence they believed the motorcycle was going to pull over.<sup>35</sup> Constable McDiarmid had seen Mr Marsh look back at the police vehicle before he slowed down, which added to that impression.<sup>36</sup> It was obvious he was aware the police were following him and he appeared to be slowing down in order to stop.<sup>37</sup>
42. However, instead of stopping, Mr Marsh accelerated away again heavily. Constable McDiarmid accelerated to approximately 120 km/hr and saw the motorcycle was swerving left and right over both lanes. This appeared to be a deliberate action. Mr Marsh's behaviour made it clear to Constable McDiarmid and Constable Lynn that he did not intend to stop. Constable McDiarmid conducted a risk assessment and decided to discontinue his attempt to intercept the motorcycle due to the manner of the riding, which was particularly dangerous given it was a motorcycle, and because he did not hold the appropriate intercept driving qualification. Constable Lynn was in agreement with this decision.<sup>38</sup>
43. Constable Lynn was still communicating with VKI over the radio. The VKI operator asked Constable Lynn if they were in pursuit of the motorcycle. He told them that they were aborting the intercept and turning around as he deactivated the emergency lights and sirens while Constable McDiarmid slowed the speed of their vehicle to the posted speed limit. Constable McDiarmid then performed a u-turn on Orrong Road. Constable Lynn recalled the motorcycle was still continuing at excessive speeds as they turned around and began to head south along Orrong Road. They were intending to try to locate the Mitsubishi Lancer, with the hope that the occupant of the Lancer might help to identify the motorcycle rider. They were still looking for the Lancer when they were dispatched to attend the motorcycle crash on the off ramp. They were given priority two to attend.<sup>39</sup>
44. When Constable McDiarmid and Constable Lynn arrived, there were three ambulances in attendance but they were the first police vehicle. They could see ambulance officers conducting CPR on Mr Marsh and saw the severely

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<sup>33</sup> T 29.

<sup>34</sup> Exhibit 1, Tab 18, Tab 19, Tab 20 and Tab 21.

<sup>35</sup> T 7; Exhibit 1, Tab 18, Tab 19, Tab 20 and Tab 21.

<sup>36</sup> T 27.

<sup>37</sup> T 30.

<sup>38</sup> T 31 - 32; Exhibit 1, Tab 18, Tab 19, Tab 20 and Tab 21.

<sup>39</sup> Exhibit 1, Tab 18, Tab 19, Tab 20 and Tab 21.

damaged motorcycle approximately five metres away. They could see it was the same motorcycle they had tried to intercept a few minutes earlier.<sup>40</sup>

## **CAUSE OF DEATH**

- 45.** An Emergency Department Registrar certified Mr Marsh's death at 3.27 am on 24 August 2018.<sup>41</sup>
- 46.** A Forensic Pathologist, Dr White, performed a post mortem examination on Mr Marsh's body on 29 August 2018 and found multiple injuries, including fracturing of the skull associated with traumatic brain injury and fracturing and disruption of the cervical spine.<sup>42</sup> Dr White formed the opinion the cause of death was multiple injuries.<sup>43</sup> I accept and adopt Dr White's opinion as to the cause of death.
- 47.** At Dr White's request, routine toxicology was conducted. Toxicology testing detected methylamphetamine, amphetamine and methadone in the blood, with the amphetamine likely to have been a by-product of the methylamphetamine once in the body. No other common drugs or alcohol were detected.<sup>44</sup>
- 48.** Professor David Joyce, a Clinical Pharmacologist and Toxicologist, has given advice to the WA Police that any measurable amount of methylamphetamine or amphetamine in the blood may be associated with driver impairment. Further, a reading of more than 0.1 mg/L of methadone may also be associated with impairment, and I note Mr Marsh's reading was 2.4 mg/L, so well above that level.<sup>45</sup>
- 49.** Professor Joyce has provided expert advice to this Court in other coronial matters where the deceased drivers have evaded police and been found later to have had methylamphetamine in their system. Professor Joyce noted that methylamphetamine intoxication passes through a series of phases, each of which brings its own particular risks to driving. "Suspiciousness, a propensity to violence, impetuosity, risk-taking and suicide are all intrinsic to all phases of intoxication with methylamphetamine."<sup>46</sup> In the period of acute intoxication, methylamphetamine will induce wakefulness, but afterwards, users pass into a state of slowness, inattention and impaired reactions. With recurrent use, the user cycles between the two states, and the most prominent psychological change is "constant suspiciousness and paranoia."<sup>47</sup> It can also lead to toxic delirium.
- 50.** Professor Joyce commented that the literature shows methylamphetamine users "are at particular risk of involvement in high-speed police pursuits," often resulting in death, although they have also been noted to engage in "extraordinarily risky, high-speed driving even when they are not under

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<sup>40</sup> Exhibit 1, Tab 22, pp. 69 – 70.

<sup>41</sup> Exhibit 1, Tab 4.

<sup>42</sup> Exhibit 1, Tab 5.

<sup>43</sup> Exhibit 1, Tab 5.

<sup>44</sup> Exhibit 1, Tab 6.

<sup>45</sup> Exhibit 1, Tab 9.

<sup>46</sup> Exhibit 1, Tab 33.

<sup>47</sup> Exhibit 1, Tab 33, p. 16.

pursuit.”<sup>48</sup> Some of the effects of methylamphetamine intoxication that may contribute to the decision to undertake and continue a high-speed flight include:

- Firstly, perhaps a good reason to avoid apprehension (eg: drugs in the vehicle, no licence, aware of intoxication);
- Paranoid beliefs about the pursuing vehicle and police;
- Impetuosity and preparedness to take dangerous risks;
- Energy, aggression and a propensity to violence;
- An indifference to personal safety that merges into suicidality;
- True suicidal intent; and
- Indifference to the safety of others.<sup>49</sup>

51. I will return to some of these factors that might have applied to Mr Marsh below.

## **MAJOR CRASH INVESTIGATION**

52. Police officers from the Major Crash Investigation Section conducted an investigation into the fatal traffic crash, headed by Senior Constable Patten. The investigation found Mr Marsh had been riding a registered Yamaha motorcycle, but the motorcycle was registered to a person other than Mr Marsh.<sup>50</sup> The motorcycle was examined by a police vehicle investigator, who is a qualified automotive mechanic, and no defects were detected.<sup>51</sup> The Major Crash investigators also inspected the police vehicle driven by Constable McDiarmid and confirmed there was no evidence of contact with the motorcycle.<sup>52</sup>

53. Mr Marsh did not hold a licence to ride a motorcycle and had never held a motor driver’s licence for any vehicle type. Nevertheless, he had been convicted many times for driving offences in Western Australia, including multiple convictions for driving without a licence and driving whilst his ability to hold or obtain a driver’s licence was court suspended. The most recent court suspension was in force until 15 December 2019. Mr Marsh also had three prior criminal convictions for drug offences, although they related to cannabis, not methylamphetamine or amphetamine.<sup>53</sup>

54. The voice extract from the radio communications transmitted between the police vehicle and the Police Operations Command (POC) was analysed and found to corroborate the accounts of Constable McDiarmid and Constable Lynn.<sup>54</sup>

55. The police vehicle was also fitted with an automatic vehicle locator (AVL). The server report was extracted from this, which recorded data detailing the route and speed of the police vehicle prior to Mr Marsh’s crash. This data

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<sup>48</sup> Exhibit 1, Tab 33, p. 18.

<sup>49</sup> Exhibit 1, Tab 33, pp. 18- 19.

<sup>50</sup> Exhibit 1, Tab 9.

<sup>51</sup> Exhibit 1, Tab 9.

<sup>52</sup> Exhibit 1, Tab 28.

<sup>53</sup> Exhibit 1, Tab 9.

<sup>54</sup> Exhibit 1, Tab 9.

further corroborates the accounts given by the two police constables. The AVL data shows that the attempted intercept began at the intersection of Orrong Road and Wright Street, where the police vehicle initially accelerated. The police vehicle was recorded as reaching a maximum speed of 122 km/hr at the intersection of Orrong Road and Francisco Street before it decelerated. If, as Constable McDiarmid believed, he reached speeds of 140 km/hr at this time, it was very brief as it was not logged in the AVL data.<sup>55</sup>

- 56.** Further, CCTV footage obtained from a local BP service station situated along Orrong Road in Carlisle was analysed and it also corroborated the accounts of Constable McDiarmid and Constable Lynn and the civilian witnesses.<sup>56</sup>
- 57.** The speed of Mr Marsh's motorcycle at the time of the crash could not be determined from the physical evidence available at the crash scene. However, it must be that Mr Marsh's motorcycle must have been travelling in excess of 122 km/hr at an earlier stage, given the police vehicle was recorded travelling at that speed approximately 2.3 km earlier, and the motorcycle pulled away from it. Further, the CCTV footage from the BP service station at the intersection of Orrong Road and Archer Street in Carlisle, approximately 1.8 km prior to the crash site, captured Mr Marsh's motorcycle passing through the intersection at a speed of between 155 km/hr and 180 km/hr.<sup>57</sup>
- 58.** It appeared to the crash investigators that the motorcycle had braked sufficiently to lock the rear wheel. Mr Marsh then lost control of the motorcycle, which has then mounted the kerb and impacted with a light pole on the verge, throwing Mr Marsh from the motorcycle. While his exact speed could not be determined from the physical evidence, Mr Pusey expressed his opinion that Mr Marsh was travelling well above the speed limit as he entered the ramp. A Main Roads WA investigator noted that the light pole is non-frangible, meaning the kinetic energy that was caused by the impact would have been redirected back into the motorcycle and rider.<sup>58</sup>
- 59.** Senior Constable Patten concluded that there was sufficient evidence to support a degree of separation between the police vehicle attempting to intercept the motorcycle and the crash occurring. The cause of the crash was attributed to Mr Marsh's drug intoxication in association with speed and inattention to the road layout. Professor Joyce's expert opinion on the effects of methylamphetamine are relevant in this regard, noting his risky driving behaviour and willingness to evade police. It was also noted that Mr Marsh was not licensed to ride a motorcycle and would have had little experience riding this particular motorcycle, so inexperience may also have played a role.<sup>59</sup>
- 60.** Based on the findings of the police investigation, I am satisfied that Mr Marsh's death arose by way of misadventure.

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<sup>55</sup> Exhibit 1, Tab 8 and Tab 23.

<sup>56</sup> Exhibit 1, Tab 9.

<sup>57</sup> Exhibit 1, Tab 9.

<sup>58</sup> Exhibit 1, Tab 9, p. 4.

<sup>59</sup> Exhibit 1, Tab 9, pp. 10 – 11.

## INTERNAL AFFAIRS UNIT INVESTIGATION

61. Due to the police attempting to intercept Mr Marsh in the period prior to his death, Internal Affairs Unit officers attended the crash scene and conducted an investigation into the conduct of Constable McDiarmid and Constable Lynn. Detective Sergeant Harnett took charge of the investigation and prepared a report.<sup>60</sup>
62. Detective Sergeant Harnett found the entire attempted intercept lasted for approximately 23 seconds and occurred over a distance of approximately 1 to 1.2 kilometres. The evidence supported the conclusion they aborted the attempt when it became apparent Mr Marsh was not going to stop and the risks of continuing to follow him were too great. Their decision was consistent with the WA Police Force Intercept Driving Policy and Guidelines. No breaches of the Code of Conduct were identified for either officer and no other issues were identified.<sup>61</sup>
63. Detective Sergeant Harnett gave evidence at the inquest and confirmed his opinion that the conduct of Constable McDiarmid and Constable Lynn was reasonable and in accordance with WA Police policy. Detective Sergeant Harnett suggested that from his own experience as a pursuit driver and police officer, Mr Marsh's behaviour in weaving the motorcycle from side to side was possibly done to warm his tyres to get more grip on the road in anticipation of accelerating, which would reinforce further the conclusion that he did not intend to stop for police.<sup>62</sup>
64. Detective Sergeant Harnett confirmed that the officers followed appropriate procedure in attempting to get Polair involved, as this is the preferred and safest way of tracking an evade police incident because they can monitor the vehicle and arranged to get other resources in place and implement pursuit resolution strategy.<sup>63</sup> When they were not available, they conducted a risk assessment and made the correct decision to downgrade and abort.<sup>64</sup>

## CONCLUSION

65. I was required to hold an inquest into this death to consider whether the conduct of the police officers could be said to have caused or contributed to the death. There is no evidence before me to support the conclusion that the conduct of the police officers directly caused or contributed to the death.
66. It could be argued that the conduct of the two police officers indirectly contributed to the death, in the sense that their attempt to get him to pull over prompted him to accelerate away and drive the motorcycle at excessive speed, which was certainly a factor in why he lost control of the motorcycle and crashed.

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<sup>60</sup> Exhibit 1, Tab 8.

<sup>61</sup> Exhibit 1, Tab 8.

<sup>62</sup> T 40.

<sup>63</sup> T 41.

<sup>64</sup> T 41.

- 67.** However, I am satisfied that it was appropriate for Constable McDiarmid and Constable Lynn to try to pull over Mr Marsh to find out more details about the motorcycle. It was reasonable, from a law enforcement perspective, for them to want to ascertain whether the licence plate had been deliberately manipulated and to find out more about the motorcycle registration and the rider. If they had succeeded in pulling Mr Marsh over, they would have found that he did not have a valid licence and no doubt he would have been charged with traffic offences.
- 68.** I am also satisfied that, when it became clear to Constable McDiarmid and Constable Lynn that Mr Marsh had no intention of stopping, and that he was prepared to drive in a dangerous manner to get away from them, they properly decided to cease their attempt to intercept Mr Marsh and very clearly signalled that intention by turning off their lights and sirens and executing a u-turn before riding away in the opposite direction.
- 69.** Mr Marsh made his own decision to continue to drive at excessive speed and try to exit the off-ramp at a speed that was too fast to safely negotiate the road. His ability to make good decisions was affected by the illicit drug he had taken. Mr Marsh was looking behind him prior to approaching the exit ramp, so he would have been aware that the police were not close behind him. Nevertheless, he continued to drive dangerously and lost his life as a result.
- 70.** Mr Marsh's death is a tragic example of one of the dangers of taking methylamphetamine, a drug that is increasingly prevalent in our society. Sadly, this is not the first coronial inquest involving the death of a methylamphetamine affected driver fleeing from police, and probably won't be the last. As an example, in 2017 an inquest into six deaths that followed police pursuits and/or intercepts highlighted the prevalence of methylamphetamine in these incidents, as four of the five drivers (including the one motorcycle rider) who were evading police had taken methylamphetamine that had significantly impaired their physical and mental faculties.<sup>65</sup>
- 71.** It is incumbent on police officers to be alert to the possibility that drivers may be affected by drugs and to give careful consideration to balancing the need to enforce the law and the risks to all road users. I am satisfied in this case the police officers properly performed a risk assessment and made the right decision. Unfortunately, it did not prevent Mr Marsh's death, but the police officers did not cause or contribute to the death.

S H Linton  
Coroner  
22 November 2019

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<sup>65</sup> Inquest into the deaths of Kuldeep Singh, Sean Duncan Barrett, Gavin Wayne Fryer, Jordan Damon Rundell, Kyra Marjorie Narrier and Hassan El Bakdadi, delivered 29 December 2017.