



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Timothy John Wall**

TITLE OF COURT: Coroners Court

JURISDICTION: BRISBANE

FILE NO(s): 2010/3732

DELIVERED ON: 5 April 2012

DELIVERED AT: Brisbane

HEARING DATE(s): 31 January 2012, 26 to 28 March 2012

FINDINGS OF: John Lock, Brisbane Coroner

CATCHWORDS: Coroners: inquest, motorcycle collision with pedestrian, identification of rider

REPRESENTATION:

Counsel Assisting: Ms A. Martens, Office of State Coroner

Counsel for Mr Sweet: Mr MacKenzie of Counsel instructed by D. J. Gilmore & Associates

Introduction

1. Mr Timothy John Wall was walking across Old Cleveland Road, Coorparoo on the night of 30 October 2010 when he was hit by a motorcycle and sustained fatal injuries. The motorcycle rider fled the scene. A person was later charged with dangerous operation of the motorcycle but the charge was dismissed at a committal hearing, largely on the basis the evidence identifying the alleged rider was insufficient.

The Inquest

2. Given there was some uncertainty concerning the circumstances leading up to Mr Wall's death, in accordance with section 28 of the *Coroners Act 2003* ('the Act'), I decided to hold an inquest into Mr Wall's death.
3. On 31 January 2012, a pre-inquest conference was held. Leave was granted to the legal representative for the alleged rider to appear.
4. The issues identified at the pre-inquest conference to be explored at the inquest were:
 - a) The matters required by section 45(2) *Coroners Act 2003*, namely who the deceased person was, how they died, when they died and what caused them to die;
 - b) How the collision occurred which includes:
 - c) who the rider of the motorcycle was;
 - d) the conduct of the rider of the motorcycle before and after the collision; and
 - e) Whether any party should be referred to either the DPP or disciplinary body pursuant to section 48 of the Act.

The scope of the Coroner's inquiry and findings

5. There has been considerable litigation concerning the extent of a coroner's jurisdiction to inquire into the circumstances of a death. The authorities clearly establish that the scope of an inquest goes beyond merely establishing the medical cause of death.
6. An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:- "*It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*"¹
7. The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, the Act authorises a coroner to make preventive recommendations concerning public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in

¹ *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

future.² However, a coroner must not include in the findings or any comments or recommendations, statements that a person is or maybe guilty of an offence or is or maybe civilly liable for something.³

The Admissibility of Evidence and the Standard of Proof

8. Proceedings in a coroner's court are not bound by the rules of evidence because the Act provides that the court "*may inform itself in any way it considers appropriate.*"⁴ That does not mean that any and every piece of information however unreliable will be admitted into evidence and acted upon. However, it does give a coroner greater scope to receive information that may not be admissible in other proceedings and to have regard to its origin or source when determining what weight should be given to the information.
9. This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt. As already stated, it is an inquiry rather than a trial. If a witness refuses to give oral evidence at an inquest because the evidence would tend to incriminate the person, the coroner may require the witness to give evidence that would tend to incriminate the witness if satisfied it is in the public interest to do so. The evidence, when given, and any derivative evidence is not admissible against the witness in any other proceeding, other than a proceeding for perjury.⁵
10. A coroner should apply the civil standard of proof, namely the balance of probabilities but the approach referred to as the *Briginshaw* sliding scale is applicable.⁶ This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.⁷
11. It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.⁸ This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann*⁹ makes clear that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.
12. If, from information obtained at an inquest or during the investigation, a coroner reasonably suspects a person has committed a criminal offence, the coroner must give the information to the Director of Public Prosecutions in the case of an indictable offence, and to the chief executive of the department which administers legislation creating an offence which is not indictable.¹⁰

² Section 46 of the Act

³ Sections 45(5) and 46(3) of the Act

⁴ Sections 37(1) of the Act

⁵ Section 39 of the Act

⁶ *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

⁷ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

⁸ *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

⁹ (1990) 65 ALJR 167 at 168

¹⁰ Section 48(2) of the Act

The Evidence

Social history

13. Mr Wall was aged 43 when he died. He was a much loved son, brother and father. During the inquest a number of members of Mr Wall's family were present for the inquest. Mr Wall's parents are divorced however have remained on good terms. Mr Wall is survived by his parents and stepmother, brother David and sister Kate, his half siblings Susan, Carolyn and James and his daughter Emily who was 9 at the time of Mr Wall's death.
14. Mr Wall worked primarily in retail and hospitality. He spent a significant time living in Cairns and his daughter was born in Cairns. Mr Wall was a very involved father and his daughter Emily idolised her father. Following the birth of Emily, she became the main focus of Mr Wall's life.
15. When Mr Wall's relationship with Emily's mother broke down and they relocated to Brisbane, Mr Wall also relocated to ensure he could remain an involved and hands on father. He spent approximately 3 - 4 nights a week with Emily.
16. At the time of his death, Mr Wall was working as a casual employee at Roger David however he was working almost full time hours.
17. Mr Wall's family remember him as a wonderful father, well-liked by all, a great barista and cook and he is greatly missed.

Timeline of events up to and after the collision

18. Mr Wall died from the injuries sustained when he was hit by a motorcycle as he was attempting to cross Old Cleveland Road, Coorparoo near the intersection of Harries Road ("the collision").
19. At the time Mr Wall was affected by alcohol. It is unknown where Mr Wall was coming from, going to and what he had been drinking. Blood was collected on his arrival at the Princess Alexandra Hospital ("PAH") and analysed as having an equivalent of 0.112%.
20. The collision occurred on 30 October 2010 at approximately 7.50pm. The motorcycle which struck Mr Wall was a red and black 2006 Suzuki Hayabusa Motorcycle ("the motorcycle") with registration plate RV259.
21. The motorcycle rider decamped from the collision scene on foot prior to the arrival of the Queensland Police Service ("QPS") and Queensland Ambulance Service ("QAS").
22. A 000 call was received at 19:53 and an ambulance was dispatched at 19:54. On the arrival of the QAS, Mr Wall was assessed as having serious injuries and was expected not to survive his injuries. Mr Wall was transported to the PAH.
23. On Mr Wall's arrival to the PAH, a CT scan revealed he had suffered a life threatening brain injury. His family were notified and he remained on life support until they could attend the hospital.
24. On 31 October 2010 at 10.10pm, Dr Joyce of the PAH confirmed Mr Wall was brain dead and that life was unsustainable. Mr Wall's family sought to have his organs donated. The surgery to procure his organs was completed at approximately 6.40pm on 1 November 2010. His date of death is 31 October 2010.

25. QPS Criminal Investigation Branch officers and the QPS Forensic Crash Unit were dispatched to commence an investigation into the collision. Senior Constable Troegor who was attached to the Forensic Crash Unit, described the scene. He says on his arrival at 8.40pm, he noted the weather was fine and visibility clear. He reports Old Cleveland Road is a sealed bitumen major arterial road running in an approximate east – west direction. At the collision scene he observed there are two lanes in each direction divided by a concrete centre island and defined by concrete kerbing. The speed limit is 60km per hour which is defined by overhead street lighting.¹¹ Various witnesses to the collision were present and gave information to the QPS at the scene or later and this information was reduced to formal statements. Most of those witnesses gave evidence at the inquest.

The evidence of witnesses to the collision

26. Mr David Beggs, a bystander witness reports at approximately 7.50pm on 30 October 2010 he had just driven through the drive through of the Coorparoo McDonalds store and was pulled over to a side bay to wait for his order.¹² His vehicle was facing towards Old Cleveland Road. He says he became aware of a significant screaming noise of a motorcycle travelling outbound on Old Cleveland Road at great speed. He saw the motorcycle in front of him through the windscreen. He estimates the motorcycle was travelling at least 85 to 90 kilometres per hour.¹³ Mr Beggs says he followed the motorcycle with his eyes and recalls it began swerving somewhere outside the Coles Supermarket store or the rider possibly lost control. He did not see why the motorcycle swerved nor did he see a pedestrian. He then heard a dull sound of impact followed by a distinct sound of metal scaping on bitumen.¹⁴
27. Mr Anthony Hogg was travelling in his car in the opposite direction to the motorcycle on Old Cleveland Road. He agreed it all took place in a split second. He estimates the motorcycle was travelling at approximately 130 kilometres per hour.¹⁵ In his evidence he said in his words the motorcycle was really moving and going 100km/h plus. He then heard a grinding noise and saw sparks near the painted median strip. He then did a u-turn and provided assistance to Mr Wall at the collision scene, placing his vehicle such that other cars travelling past did not hit him on the roadway.¹⁶
28. Mr Robert Smith was standing on the corner of Old Cleveland Road where a Shell Service Station is located when he heard a loud noise of a motorcycle coming down Old Cleveland Road heading east.¹⁷ He says the noise of the motorcycle made him stop and have a look. He estimates the motorcycle was travelling at approximately 150 to 160 km/hr, maybe more.¹⁸ He says he stepped out on to the road to watch the motor motorcycle pass him but lost sight of it. He reports he then heard a loud bang and saw dust and smoke up ahead of him.¹⁹ He says he ran into the service station to call 000 then

¹¹ Exhibit B13, p1

¹² Exhibit C2, p1

¹³ Exhibit C2, p1

¹⁴ Exhibit C2, p1

¹⁵ Exhibit c9, p1

¹⁶ Exhibit c9, p1

¹⁷ Exhibit C14, p1

¹⁸ Exhibit C14, p1

¹⁹ Exhibit C14, p2

returned to his car to go to the collision scene to offer his assistance.²⁰ Due to a late request for Mr Smith to attend the inquest, he was unavailable to give evidence.

29. Ms Maxine Austin was on her unit balcony with friends and family listening to music and having a few drinks. Her unit is situated diagonally opposite to the vicinity of the collision and it would seem some 20 to 30 metres from where the motorcycle came to rest. She says she heard an "almighty noise" which was a rumbling scraping noise. After a few seconds she saw a motorcycle sliding down Old Cleveland Road. Ms Austin observed the motorcycle hugging the island all the way down the road until it stopped at the end of the centre island at the Harries Road intersection. She says the motorcycle was sparking and that she saw the motorcycle before she saw the rider.²¹
30. Ms Austin saw the rider tumbling and then pretty much get up straight away and limp off. She reports there were some "blokes" getting bits of the motorcycle off the road and that they dragged the motorcycle over to the corner in front of the taxi rank.²² Ms Austin reports someone said "*oh my god there's someone lying on the road*" she looked up and saw someone lying there.²³
31. Ms Austin also observed that the motorcycle rider was wearing dark coloured riding gear and helmet and that he was an average build.
32. Ms Austin says she went to where Mr Wall was laying. This was further back towards the city in the area where two trees are located outside the Coles Shopping Centre. She says Mr Wall was almost in the recovery position and she realised he was critical due to the amount of blood coming out of his head. She says two Indian men approached her and that one of the men said "the rider has gone" and that after looking around they just left.²⁴ Despite attempts by QPS, the two men's identities have not been established.
33. Mr Victor Fitzpatrick who was also on the balcony with Ms Austin observed the motorcycle sliding along the road and says the rider was about ten metres behind the motorcycle.²⁵ Mr Fitzpatrick says he observed the motorcycle rider limping and walking on the foot path. He recalls the rider was still wearing his helmet but shaking his head from side to side as if he was dazed and looking around.²⁶ Mr Fitzpatrick says he went down to the collision scene and observed the rider was wearing all black proper racing leathers with a black helmet with a bit of red possibly on it and boots. He describes the rider as being fairly stocky and possibly about 180cm tall.²⁷ Mr Fitzpatrick reports he also saw two Indian men outside the Pineapple Cellars bottle shop.²⁸ Mr Fitzpatrick says he recalls observing Mr Wall on the road and that when he went back to see the rider, he was no longer there. He estimates this was about five minutes prior to the arrival of the QAS.²⁹

²⁰ Exhibit C14, p2

²¹ Exhibit C1

²² Exhibit C1, p2

²³ Exhibit C1, p1

²⁴ Exhibit C1, p3

²⁵ Exhibit C8, p1

²⁶ Exhibit C8, p2

²⁷ Exhibit C8, p2

²⁸ Exhibit C8, p2

²⁹ Exhibit C8, p3

34. Mr Fitzpatrick's partner Ms Sally Willis says from Ms Austin's balcony she saw a black colour motorcycle sliding along the road and a rider tumbling down the road after the motorcycle.³⁰ The motorcycle finished up past the bottleshop just before the intersection with Harries Road. Ms Willis says she saw the rider get up and start limping east towards Harries Road. He seemed to her to be hopping on his left leg. She describes the rider as being about six feet tall and moving like he was of a large build, similar to that of her partner. Further, she recalls he was wearing black coloured motorcycle leathers on top and bottom, boots with a black coloured helmet.³¹ In relation to the pedestrian, Ms Willis recalls the man was lying on the northern side of Old Cleveland Road with the top of his head towards the gutter in front of the Coles building close to a large telegraph pole and the area between the two trees.³²
35. Ms Renee Ward lived in the same unit complex as Ms Austin and was at her unit that evening for a social gathering. She heard a noise of something sliding down the road and thought "here comes another accident". She ran into her courtyard and through her gate onto Old Cleveland Road and recalls seeing the motorcycle rider wheeling his motorcycle around to Harries Road and that two Indian men in their late 20's were assisting the rider by picking up pieces of the bike and placing them with the bike.³³ She says she watched the man then push the motorcycle onto the ground and run away although he was clearly hampered by a leg injury and it was at a slow pace.³⁴ She describes the man as six foot one inch tall, average build, not muscley, wearing blue jeans, a grey and white long sleeve hooded jacket with thin stripes, possibly a fleecy jacket, black motor motorcycle gloves and a black motorcycle helmet which he did not remove.³⁵ She describes the man as looking dirty and sloppy and his clothes looking baggy.³⁶ Ms Ward says she saw the man run diagonally towards and then into the Coles car park bordering on Harries Road. She noticed he pulled out his mobile phone from his right hand jeans pocket and that he looked as if he was preparing to call someone as he was running into the car park.³⁷ He still had his helmet on. She recalls remembering this as she thought it was off the rider would attempt to make a phone call whilst still wearing a helmet.
36. Ms Sandra Parra-Diaz, reports she was crossing Old Cleveland Road on foot at the pedestrian lights at Harries Road when heard a noise to the west, turned around to see the motorcycle came to rest right in front of her.³⁸ She says the rider was very close to her when he got up off the ground. He was 185cm tall, medium build and that he was wearing a full face black helmet with the visor down and dark long pants.³⁹ She reports observing the man pick the motorcycle up and that at this time due to his jacket lifting up she could see he was white and had acne or red spots on that area. She says he was assisted by three other men and that they wheeled the motorcycle into Harries Road and again placed it on the road.⁴⁰ Ms Parra-Diaz is the only

³⁰ Exhibit C16, p1

³¹ Exhibit C16, p1

³² Exhibit C16, p2

³³ Exhibit C15, 2

³⁴ Exhibit C15, 2

³⁵ Exhibit C15, p2

³⁶ Exhibit C15, p2

³⁷ Exhibit C15, p3

³⁸ Exhibit C11, p2

³⁹ Exhibit C11, p2

⁴⁰ Exhibit C11, p2

witness who says she heard the rider talk and clearly identified he was a man who spoke with an Australian accent.

37. Ms Parra-Diaz left the collision scene and continued on her way to the Coorparoo train station, when she turned and looked back, she recalls seeing the rider starting to run away and that he ran into the Coles car park still wearing his helmet.⁴¹
38. Mr Denis Ross says he parked his car in the Coles car park as he was going across the road to the Coorparoo RSL.⁴² He says as he was walking out of the car park he recalls a man breathing very heavily and loudly like an asthmatic from behind him. He describes this in his evidence as if he was in pain. The area where this took place was quite dark and shadowed. As he had his wallet out he was somewhat worried the person may have been after it. He says the man rushed past him on his left side and that he was walking briskly.⁴³ He reports the man had his head down and bent to the left and that he did not make eye contact. He says the man had a full face helmet in his right hand with the visor still attached.⁴⁴ Mr Ross describes the man as wearing dark brown or black three quarter pants, having a thick crop of dark brown hair. He estimates his height to be approximately 5 foot 10 inches and that he was very solid with wide shoulders. Further, he recalls his forearms were bare and that he recalls the man having olive skin although it was dark and shadowed and at that time he did not take a great deal of notice.⁴⁵ He would be unable to identify the rider now.

Evidence of Samantha Hambleton

39. The evidence of Samantha Hambleton is referred to separately for reasons which will become obvious. As it turns out Ms Hambleton was the only witness who saw the motorcycle hit the pedestrian, yet no formal statement was ever taken from her and the knowledge that she was such a potentially vital witness only came about on the second day of the inquest.
40. It is clear that Ms Hambleton remained at the scene of the incident and was spoken to by a police officer. There was reference in the Tactical Running Sheet⁴⁶ of her name, address and telephone number with no other information which would indicate she was an important witness. On the first day of the inquest a request was made by Mr MacKenzie, Counsel representing Mr Sweet, for copies of any notebook entries made by all investigating police. Those were made available on the morning of the second day of the inquest. The notebook of Sergeant Mark Norrish⁴⁷ had an handwritten entry to the effect that Ms Hambleton "*was driving inbound in a motor vehicle, noticed people in the centre painted island and then saw a male run out and a motorcycle hit the pedestrian. The motor cycle had its headlights on and was speeding.*" Ms Hambleton adopted this notebook entry by signing it.
41. Ms Hambleton told the court that she was not available to attend the police station the next day to provide a statement and was surprised that she had not been contacted in the meantime.

⁴¹ Exhibit C11, p2

⁴² Exhibit C13, p1

⁴³ Exhibit C13, p1

⁴⁴ Exhibit C13, p1

⁴⁵ Exhibit C13, p2

⁴⁶ Exhibit B8.4

⁴⁷ Exhibit B13

42. It is certainly very surprising that her vital evidence was seemingly overlooked by investigating police and this is a matter which the Queensland Police Service should investigate, with a view to ensuring it does not happen again.
43. Ms Hambleton was contacted on the Tuesday night of the inquest and very kindly made herself available to give evidence the next day. She was a confident, balanced and articulate witness which made her contribution even more valuable, and the omission of her as a witness even more incomprehensible.
44. Ms Hambleton told the court she had an independent recollection of these events that occurred in October 2010. She was driving from her parents' house to pick up her partner. She had grown up in the area and had travelled on Old Cleveland Road nearly every day over the years.
45. At the time she was travelling inbound and told the court she had witnessed the collision and had observed the pedestrian walking in an area near the kerb outside the Coles supermarket. The area of the kerb that he was walking on was near the curve in the road. She identified the spot on an overhead photograph as near the two trees shown on the photographs.⁴⁸ She identified the street lighting pole and stated the pedestrian was to the right of the pole and to the trees. Her evidence on this point is of course consistent with the evidence of other witnesses and the forensic evidence. When she observed the incident she was only a short distance away and it happened very quickly. She was travelling at less than 60 km/h having stopped earlier at the Harries Road intersection and taking off as the lights turned green.
46. She recalls there were two younger people in the centre painted medium strip before the collision. She says the pedestrian stepped out onto the roadway as the motorcycle came around the corner. She described that he "did not stroll out nor sprint out but he kind of ran out". She saw the motorcycle strike pedestrian who went up into the air and did a bit of a flip and then landed on the ground. She had seen the motorcycle prior to collision.
47. In relation to the motorcycle she saw it coming round the bend and it was travelling quite quickly. She estimated that speed was at least 75 to 80 km/h and it was certainly over the speed limit.
48. Ms Hambleton says she saw the motorcycle veer. It was travelling in the outer lane and then travelled from the right outer lane into the left lane when it came around the corner and struck the pedestrian in the left lane.
49. From her line of sight she was able to see both the motorcycle and the pedestrian. She had not noticed the motorcycle take any evasive action and she did not think the motorcycle rider had seen the pedestrian.
50. She could not recall what the pedestrian was wearing but his clothes were more towards the dark colour.
51. She then did an immediate U-turn and travelled back to provide assistance.

Investigation and evidence as to the identity of the rider of motor cycle

52. QPS Detective Senior Constable ('DSC') Birt who attended the scene with DSC Sala reports he was advised by Sergeants Norrish and Richter that at

⁴⁸ See exhibit C12.1

approximately 7:50pm a person had been riding the motorcycle outbound when Mr Wall was struck causing the motorcycle to crash.⁴⁹

53. DSC Birt says QAS transported Mr Wall to PAH but the driver of the motorcycle had decamped from the scene on foot. Mr Wall's identity was established through a membership fob to a local gym Mr Wall had on his person at the time of the collision.⁵⁰
54. Detective Sergeant Toohey says at approximately 8.45pm he received a call from DSC (as he then was) Sala in relation to the collision and subsequently attended the scene. He was briefed on the collision and after observing the Forensic Crash Unit and Scenes of Crime conducting an examination of the scene, he along with DSC Sala and DSC Birt returned to the Dutton Park Police Station where a Major incident Investigation was commenced. The investigation called operation Ice Pandanis was led by DSC Sala and DSC Birt.⁵¹
55. As a result of investigations to identify the rider and owner of the motorcycle, DSC Birt reports it was established the motorcycle had false registration plates. The plates belonged to a Honda moped.⁵² The vehicle identification number of the motorcycle was JS1A1131400102934.⁵³
56. Mr Daniel Melsen purchased a black and grey Honda Sk50 50cc moped motorcycle, registration RV 259, approximately 2 and half years prior to the collision.⁵⁴ A friend, Mr Crook borrowed the moped on and off from February 2010 and in April 2010, after discovering Mr Crook had broken the front wheel, he sold the moped to Mr Crook for \$600.⁵⁵
57. According to Mr Crook, in November or December 2009, Mr Melsen sold the Honda moped to him for \$800.⁵⁶ Whatever may be the sale price or date of transaction neither Mr Crook nor Mr Melsen submitted any registration transfer paperwork to Queensland Transport.
58. In October 2010 Mr Melsen received a traffic infringement notice for 118km/hr in a 100 km/hr zone on the Pacific Motorway.⁵⁷ Mr Melsen was not responsible for the infringement as he had not ridden the moped since selling it to Mr Crook.⁵⁸ Mr Melsen was of the opinion the vehicle photographed in the traffic infringement notice was not the moped, given it appeared to have twin exhausts and given the moped was a 50cc vehicle and was incapable of reaching any where near that speed.⁵⁹ Mr Melsen contacted Mr Crook about the traffic infringement.⁶⁰ Mr Crook stated he had sold the moped to Mr De Visser.⁶¹ Mr Melsen contacted Mr Crook a number of times to get the

⁴⁹ Exhibit B2, p1

⁵⁰ Exhibit B2, p1

⁵¹ Exhibit B12, p2

⁵² Exhibit B2, p2

⁵³ Exhibit B2, p2

⁵⁴ Exhibit C10, p1

⁵⁵ Exhibit C10, p1

⁵⁶ Exhibit C5, p1

⁵⁷ Exhibit C10, p2

⁵⁸ Exhibit C10, p2

⁵⁹ Exhibit C10, p2

⁶⁰ Exhibit C10, p2

⁶¹ Exhibit C10, p2

number plate back.⁶² Mr Crook told Mr Melsen that he was contacting Mr De Visser to obtain the number plates back.⁶³

59. Two traffic infringements were issued to the Qld registration plate RV259.⁶⁴ The first (number 0144278354) was issued on 30 September 2010 in which the rider was travelling at 118km/hr in a 100km/hr zone.⁶⁵ The second was issued on 4 October 2010 (number 0144780867) in which the rider was travelling at 180km/hr in a 100km/hr zone.⁶⁶ These traffic infringements were issued to Daniel Luke Melsen who was listed as the registered owner of a Honda Moped with the registration plate.⁶⁷ It was clear from the photographs on the infringement notices that vehicle photographed was a motorcycle not a moped.⁶⁸ Mr Melsen provided a statutory declaration for both infringement notices indicating Mr Crook was the person in charge of the registration plate RV259.⁶⁹ DS Sala's enquiries revealed that these infringement notices were waived following the provision of Mr Melsen's statutory declarations.⁷⁰
60. The owner of the Honda moped, Mr Phillip Crook advised police he did not know how the number plate from his moped came to be on Mr Sweet's motorcycle.⁷¹ He reports the moped had been left with a friend Ricky De Visser and he had been chasing Mr De Visser for sometime as a speeding ticket for the registration plate of the moped had been issued in relation to a motorcycle.⁷² Mr Crook says he believes Mr De Visser knew who had the plates but says Mr De Visser would not tell him.⁷³ In his evidence he agreed he made these assumptions with no idea as to whether Mr De Visser was telling the truth or not. Mr Crook made an attempt to complete a statutory declaration regarding the two infringements unsatisfactorily and was then too late to lodge the declarations as required, and eventually took the penalties including a driving suspension. He said he was not driving the motorcycle on the night Mr Wall was killed and was with his then girlfriend Joanna Beattie at the time.
61. Mr De Visser subsequently provided a statement to the QPS stating he had left the scooter chained outside a house at Rocklea attached to a trailer. He later received a call from the QPS after the crash and checked the scooter and saw the number plate was missing. He says he did not know it was missing nor did he know Mark Sweet.
62. Mr De Visser was called to give evidence by video link from the Brisbane Correctional Centre. In his oral evidence he agreed he told police what he said in his statement. The balance of his evidence was unhelpful and dishonest. He repeated in response to almost every question throughout his evidence that he could not recall anything of the events at that time. The only evidence he could remember positively and which I accept was that he was not driving the motor cycle that hit Mr Wall. Although he knew Mr Crook he said he did not recall any of the conversations Mr Crook said he had with him

⁶² Exhibit C10, p2

⁶³ Exhibit C10, p2

⁶⁴ Exhibits J1 and J3

⁶⁵ Exhibit J1, p1

⁶⁶ Exhibit J3, p1

⁶⁷ Exhibits J1 and J3

⁶⁸ Exhibits J2 and J4

⁶⁹ Exhibits J1, p2 and J3, p2

⁷⁰ Exhibit B8.1, p1

⁷¹ Exhibit C5

⁷² Exhibit C5

⁷³ Exhibit C5, p3

concerning the number plate and traffic infringements. I do not accept that evidence.

63. Mr De Visser reiterated that he did not know Mr Sweet or someone known as Buck. In response to the proposition that his mobile telephone number was a particular number as stated by Mr Crook he said he could not recall. In response to the proposition that his number was recorded as having been called or texted by a mobile associated with Mr Sweet at 17:52 on 30 October 2010 he denied it. Again I do not accept this evidence.
64. DCS Sala says further enquiries concerning the motorcycle revealed it had been purchased by Mr Mark Sweet on 23 February 2010 from the Moorooka Team Moto Yamaha dealership for \$9,000.00.⁷⁴ Ms Nicole Bell, the Corporate Accountant of the Team Moto group of companies confirmed the purchase and noted that Mr Sweet had also arranged for the fitting and balance of the rear tyre of the motorcycle on 12 October 2010.⁷⁵
65. Mr Byth a mobile motor mechanic says he had known Mark Sweet for a few years. In his statement to the QPS he said that on Friday 29 October 2010 (the day prior to the collision) Mr Sweet had approached him to repair Mr Sweet's right handlebar of his motorcycle. He says he carried out the repairs and then Mr Sweet left on the motorcycle.⁷⁶
66. From his oral evidence it is apparent that the QPS had found one of his fingerprints on the motor cycle hence their enquiries with him. He recalls it was a Friday night when Mr Sweet called for the repairs. He recalls hearing of the crash on the evening news possibly on a Sunday and worked back to the 29 October and the date is unclear and said the date may have been suggested to him by the QPS. This may or may not be correct given his statement is signed on 8 January 2011. He said he had not discussed the collision with Mr Sweet. What he could not give an explanation about was that his agreed mobile telephone was called or texted by a number associated with Mr Sweet at 20:29 on 30 October 2010 soon after the collision. He said he could not remember but could not deny it. It was suggested he may have only received a message bank message. It is most unlikely Mr Byth was giving truthful evidence on this point.
67. DSC Lima says a partial palm print was taken from the motorcycle and identified as belonging to Ms Tracey Wright (AKA Drury), a known associate of Mr Sweet. QPS officers attended her residence on 31 October 2010 to question her about the motorcycle and Mr Sweet. Ms Wright admitted to previously being on the motorcycle with Mr Sweet however denied knowing anything about the collision and did not know where Sweet was.⁷⁷
68. No statement was taken from Ms Wright by the QPS however she was called to give evidence at the inquest. She said she had been in an intimate relationship with Mr Sweet during 2010. She was another witness who appeared reluctant to give complete evidence and I am certain she knows more than she represented. However there was some evidence extracted from her which is important. She said she had ridden on the motorcycle as a passenger some 3 times, which explains her palm print. She recalls being spoken to by the QPS about her fingerprint and denied being involved or that she was the driver. She gave the QPS Mr Sweet's whereabouts somewhat

⁷⁴ Exhibit B9, p2 and Exhibit C3

⁷⁵ Exhibit C3, p2

⁷⁶ Exhibit C4, p2

⁷⁷ Exhibit B4, p2

reluctantly. She said she had last spoken to him by telephone the day before the QPS contacted her. She tried to contact him by telephone to tell him what was going on. She was aware he handed himself in as it was on the news he had been granted bail.

69. Importantly, Ms Wright says she later spoke to him at a friend's house where he told her he "was feeling bad as he had a bike accident and someone was hurt and he was going to hand himself in". She recalled Mr Sweet had some injuries with skin off his legs. She says she had this discussion with Mr Sweet before the QPS spoke to her and she did not tell them about the conversation.
70. Detective Sergeant Toohey says he knew Mr Sweet as a witness in another matter so sent a mobile phone text to Mr Sweet on 2 November 2010 asking that he call.⁷⁸ He said in evidence the purpose of that contact was not for evidentiary reasons but to try and get him to come in so the QPS could speak to him. He reports at approximately 4.30pm on the same day, Mr Sweet phoned back.⁷⁹ At the time he was at his home. DS Toohey did not record the conversation and made no contemporaneous notes. The first time he made a note of it was when preparing his statement around 17 January 2011. Detective Sergeant Toohey reports the conversation in his statement as follows:

TOOHEY: Hello

SWEET: Hi Chris. It's Mark Sweet.

TOOHEY: Hey mate. Thanks for ringing me. We really need to talk to you. Sorry, first of all how are you? Injury wise I mean.

SWEET: All right mate. A little banged up and a busted ankle.

TOOHEY: Make sure if you need hospital treatment you go and get yourself looked at. I was hoping you would come in and see me.

SWEET: Mate, I was always going to come in, I just need a bit of time. My solicitor is tied up till Thursday, so I was thinking of coming in then.

TOOHEY: No problems. Can you tell me what happened?

SWEET: Not really. I don't remember anything from the night.

TOOHEY: No worries mate. Any dramas give me a yell. Can you call me again tomorrow to confirm a time?

SWEET: Yep no worries.⁸⁰

Attempted Interview of Mr Sweet

71. On 4 November 2010 at approximately 2.20pm, Mr Sweet along with his legal advisor presented to the Dutton Park Police Station. DSC Sala offered Mr Sweet the opportunity to participate in an electronic record of interview with regards to the collision. Mr Sweet declined to do so.⁸¹

⁷⁸ Exhibit B12, p2

⁷⁹ Exhibit B12, p2

⁸⁰ Exhibit B12, p2

⁸¹ Exhibit B6, p1

Examination by a Forensic Medical Officer

72. DSC Sala applied for and was granted approval for a Forensic Procedure Order in relation to Mr Sweet. As a result of obtaining the order, DSC Kirk says Mr Sweet was transported to the Government Forensic Medical Office for examination by a Forensic Medical Officer.⁸²
73. Dr Adam Griffin, a Clinical Forensic Medical Officer performed the examination of Mr Sweet.⁸³ Dr Griffin reported Mr Sweet disclosed a history of migraines (none at the time of the examination) and hepatitis C from intravenous drug use. Mr Sweet denied he was taking any regular medications.⁸⁴
74. Dr Griffin asked Mr Sweet how he sustained his injuries, to which Mr Sweet replied, "*I'd rather not say*".⁸⁵ Dr Griffin proceeded to assess Mr Sweet's injuries and photographs were taken. Dr Griffin noted Mr Sweet had suffered the following injuries:
- Right arm: a greater than 15cm long abrasion running from his right elbow down his forearm. A further abrasion of around 5cm length at the medial aspect (little finger side) of the right wrist;
 - Right hand: a small abrasion to the outer edge of the fifth finger (little finger) near the nail;
 - Left arm: a roughly circular abrasion overlying the left elbow of 5cm diameter. A further abrasion of 1cm diameter in the middle of the forearm in line with the fifth finger, with two narrow, parallel, linear abrasions immediately above it. Further abrasions on the inside of the forearm near the elbow (4cm diameter), the mid-forearm (5cm in length) and at the wrist on the same side as the thumb;
 - Left hand: a 2cm abrasion on the dorsum (nail side) of the thumb;
 - Left and Right knees: abrasions are seen overlying the kneecaps on both knees; and
 - Lower back: Bilateral abrasions across the lower back. The left side 15cm in length.
75. Dr Griffin noted all of the injuries were abrasions and that they were in a healing state of around 48 hours duration. Further, he reported the distribution of the injuries is commonly seen in falls.⁸⁶ Dr Griffin concluded by stating "*A fall from a motorcycle with blunt force sustained by striking the ground, with a shearing force applied by deceleration across the ground would be one explanation for these injuries.*"⁸⁷
76. Dr Griffin stated in his evidence that his reference to 48 hours was inaccurate and should better have been stated as being of a minimum 48 hours duration, with a period of 4 days as being more reasonable estimate of the healing process, given the observed degree of granulation that was seen in the injuries. A fall from a motorcycle was one explanation as could a fall from a cycle or a skate board or such other type of fall. A simple fall to the ground would not explain the injuries.

⁸² Exhibit B6, p1

⁸³ Exhibit A4, p1

⁸⁴ Exhibit A4, p1

⁸⁵ Exhibit A4, p1

⁸⁶ Exhibit A4, p2

⁸⁷ Exhibit A4, p3

77. Following the examination by Dr Griffin, Mr Sweet was transported back to the Brisbane City Watch House where he was formally charged with Dangerous Driving Causing Death and other traffic related offences.⁸⁸

DNA Testing

78. On 30 October 2010 at approximately 11.10pm, Senior Constable Sturdy, a Scenes of Crime Officer attended the collision scene to complete a forensic examination of the scene. As a part of his investigations he took photographs and obtained a number of samples of blood from the collision scene.⁸⁹
79. On 31 October 2010 Sergeant Miley, a Scenes of Crime Officer conducted a forensic examination of the motorcycle. She took a number of photographs, took a number of DNA swabs, and conducted fingerprint examinations.⁹⁰
80. On 5 November 2010, DSC Kirk returned to the Brisbane City Watch House to obtain a DNA mouth swab from Mr Sweet.⁹¹
81. The DNA swabs, and blood samples were submitted to the Queensland Health Forensic and Scientific Services ('QHFSS') for DNA testing on 9 November 2010.⁹²
82. The items tested by the QHFSS for DNA included samples from the road, samples from the motorcycle involved in the collision, and from protective clothing of Mr Sweet.⁹³
83. The testing revealed DNA on certain components of the motorcycle and the clothing was identified as that of Mr Sweet. The DNA from the road samples was identified to come from 'Unknown Male 1'. No other DNA from 'Unknown Male 1' was identified on the items tested.⁹⁴ A request by the Coroner for subsequent testing of the road samples confirmed the blood matched the DNA for Mr Wall⁹⁵

Medical records of Mr Sweet

84. Enquiries were made by me with respect to ascertaining whether Mr Sweet received any treatment as a result of the collision which might establish whether or not Mr Sweet was the rider of the motorcycle.
85. Mr Sweet's medicare record between 31 October and 4 November 2009 were obtained.⁹⁶ This record reveals Mr Sweet did not make any claims for medical treatment or pharmaceutical benefits during this time period.⁹⁷
86. Responses were received from the Logan Hospital, Mater, Princess Alexandra Hospital, Redland Hospital, Prince Charles Hospital and the Royal

⁸⁸ Exhibit B6, p2

⁸⁹ Exhibit B11, p2, and Exhibit E2

⁹⁰ Exhibit B8, and Exhibit E4

⁹¹ Exhibit B7, p1

⁹² Exhibit B8, p3

⁹³ Exhibit A4, p7

⁹⁴ Exhibit A4, p7

⁹⁵ Exhibit A6.1

⁹⁶ Exhibit G2

⁹⁷ Exhibit G2

Brisbane and Women's Hospital indicated Mr Sweet did not receive any treatment at these locations as a result of the collision.⁹⁸

87. Records provided from the QEII Hospital reveal Mr Sweet attended at 8.20pm on 23 November 2010 (some 24 days or 3.5 weeks after the collision) complaining of pain in his left calf since the previous morning.⁹⁹ Whilst he was at QEII, his left leg was observed to be swollen, red and warm to touch.¹⁰⁰
88. Triage nurse Sheela Tuazon queried whether Mr Sweet had received an insect bite to his left calf.¹⁰¹ Mr Sweet was observed to be tachycardic and hypertensive.¹⁰² She noted Mr Sweet had been in a recent MBA [motor bike accident] with abrasions to his left knee and both arms.¹⁰³
89. Mr Sweet was reviewed by Dr Ambrose.¹⁰⁴ Dr Ambrose noted that Mr Sweet had been in a motorbike accident 2 weeks ago and had multiple abrasions and ecchymoses.¹⁰⁵ Mr Sweet had pain in his left lower leg, redness in the leg was then observed and finally it become swollen.¹⁰⁶ Dr Ambrose formed the diagnosis of cellulitis and abscess and developed a treatment plan including intravenous fluids.¹⁰⁷
90. On 24 November 2010, Mr Sweet told Dr Narayan that he had been in a motorbike accident 2 weeks ago which resulted in multiple abrasions all over his body however he did not attend hospital.¹⁰⁸
91. Mr Sweet was treated at QEII however he is recorded as having discharged himself at his own risk on 25 November 2010 at 5.30pm.¹⁰⁹

Mobile telephone records of Mr Sweet

92. Requests were made for an examination of the telephone records for the mobile telephone associated with Mr Sweet on the day of the incident in question.¹¹⁰
93. Those records indicate that he made a number of calls soon after the collision from a base station location in Coorparoo. Further telephone calls were made throughout the evening with base stations indicated in Morningside and later at Sheldon. These records certainly indicate that a person with the mobile telephone of Mr Sweet was in a position physically to make mobile calls and/ or text messages.
94. The evidence is of limited value to indicate any precise location. Sergeant Jeffrey Purchase, an experienced intelligence officer with particular expertise on analysis of telephone records stated that a listed a base station would

⁹⁸ Exhibits G3 - G8

⁹⁹ Exhibit G1, p4

¹⁰⁰ Exhibit G1, p4, 8

¹⁰¹ Exhibit G1, p8

¹⁰² Exhibit G1, p8

¹⁰³ Exhibit G1, p8

¹⁰⁴ Exhibit G1, p9

¹⁰⁵ Exhibit G1, p9

¹⁰⁶ Exhibit G1, p9

¹⁰⁷ Exhibit G1, p9

¹⁰⁸ Exhibit G1, p26

¹⁰⁹ Exhibit G1, p20

¹¹⁰ Exhibit B8.2

often be the most dominant cell tower from where a call was made but if a tower was particularly busy it would go to another overlaying base tower within a theoretical 35 km limit. The indication of a particular base tower on the records cannot prove a person was at a particular geographical location.

QPS Collision Analysis Report

95. Sergeant Stocker, of the Forensic Crash Unit investigated the collision at the request of the Investigating officer, Detective Senior Constable Adrian Sala of Dutton Park Criminal Investigation Branch.¹¹¹ Senior Constable Troeger of the Forensic Crash Unit also attended the scene.¹¹²
96. Sergeant Stocker reported the evidence from the collision scene indicated at the time of the collision the motorcycle was travelling in the left eastbound lane of Old Cleveland Road. Whilst under heavy braking with the rear wheel locked the motorcycle collided with Mr Wall.¹¹³ Senior Constable Troeger says the road surface was void of any damage or debris likely to have contributed or caused the incident.¹¹⁴
97. Sergeant Stocker says the motorcycle was in the process of falling over onto its left side prior to or as a result of the impact with Mr Wall and that the motorcycle and rider have separated post impact with both sliding to rest along the road.¹¹⁵ Senior Constable Troeger notes the tyre/scrape marks commenced northeast of Macaulay Street and spasmodically continued to the intersection of Harries Road where the motorcycle was resting on the northern corner of the intersection.¹¹⁶
98. Senior Constable Troeger say he identified a number of series of tyre friction marks, scrape marks, black and blue scuff marks, gouge marks and blood splatter which he identified with yellow paint.¹¹⁷ Senior Constable Troeger requested Senior Constable Klump to take a number of colour photographs of the collision scene.¹¹⁸
99. Senior Constable Troeger says he took a series of road measurements using a Sokkia Total Station and that he later prepared a forensic map of the collision.¹¹⁹
100. Sergeant Stocker concluded the minimum pre-impact speed of the motorcycle was of 86km/hr to 99km/hr.¹²⁰ he stated he was unable to give an estimate of at what maximum speed the motorcycle was travelling.
101. In his evidence Sergeant Stocker did not resile from those calculations. He was shown various over head photographs of the scene and was able to confirm that the area of blood that was found was in the vicinity of the two trees referred to by a number of witnesses near an overhead lamp post. It is evident it is likely that Mr Wall came from this area between the trees when he entered upon the carriageway.

¹¹¹ Exhibit A6

¹¹² Exhibit B13

¹¹³ Exhibit A6, p18

¹¹⁴ Exhibit B13, p2

¹¹⁵ Exhibit A6, p18

¹¹⁶ Exhibit B13, p2

¹¹⁷ Exhibit B13, p2

¹¹⁸ Exhibit B13, p2

¹¹⁹ Exhibit B13, p2 and Exhibit E1

¹²⁰ Exhibit A6, 19 and Exhibit B10

102. Sergeant Stocker was also asked questions by Counsel for Mr Sweet regarding perception response times based on well-known research. He stated that the perception time between seeing a point of danger and reacting to avoid the danger was between 1.5 to 2.5 seconds. At 60 km/hr an hour this meant a distance of 25 to 42 m before a reaction took place and 86 km/hr a distance of between 36 and 60 m.
103. In this case the tyre marks indicated a braking at approximately 16 m prior to where evidence of blood was found. He was asked questions as to given those estimates that this would take the rider of the cycle some distance back to the bend in the road that occurred prior to the collision spot at whatever speed the rider was travelling at and could not disagree that the rider's sight would be reduced if a person had come suddenly out from the tree area.
104. It is apparent however that the forensic crash analysis has not considered any forensic analysis concerning the line of sight for a driver of a motor vehicle coming into that stretch of road with a person coming onto the road between the two trees. Accepting there is a bend to the left as a vehicle approaches the area, and accepting particularly at night there may have been some obstruction of vision, the evidence is insufficient to make a finding as to how this may have impacted in this case. It may be an issue that needs the QPS to further investigate. For the purposes of this inquest it is unnecessary to make a finding on that issue.

Vehicle Inspections

105. Mr Andrew McDonald, a Vehicle Inspection Officer for the QPS, carried out an inspection of the motorcycle. Mr McDonald noted the motorcycle sustained impact damage to the front mudguard, nose fairing, headlamp assembly, front indicators, left rear view mirror, left handle bar assembly, clutch lever, all side fairings, ducktail fairings, engine radiator, crankcase covers, rear pod cover, left rear indicator, and number plate.¹²¹
106. Mr McDonald found no problem with the brakes on the road wheels of the motorcycle. He concluded by stating: "*As a result of my inspection, I am of the opinion that this vehicle was in a satisfactory mechanical condition and no mechanical defects were found by me which could have been contributory to the cause of the incident*".¹²²

Autopsy findings

107. An external autopsy with a CT scan was performed by Dr Nadine Forde on 2 November 2010.¹²³
108. Dr Forde detailed numerous abrasions to the back of Mr Wall's head, on his forehead and to the right side of Mr Wall's body (arms, back, buttock, leg and foot).
109. Dr Forde confirmed Mr Wall had suffered multiple fractures to the back of the skull as well as bleeding around the brain. Further, he had fractures to the bones of the lower right leg near the knee. Dr Forde states "*The injuries sustained are most consistent with having been struck by the offending*

¹²¹ Exhibit A6, p22 and Exhibit B5

¹²² Exhibit A6, p23 and Exhibit B5

¹²³ Exhibit A2

vehicle on the right leg, with the head injuries to the back of the head indicating that his head had then struck the road".¹²⁴

110. Dr Forde noted Mr Wall had a blood alcohol level of 0.112% but says the level of alcohol detected needs to be interpreted with caution as the concentrations may have been affected by the administration of intravenous fluids at the scene by QAS prior to the blood being sampled.¹²⁵
111. In a report by Dr Griffin¹²⁶, a Clinical Forensic Medicine Officer, he considered that at 19:50 hours the range of alcohol concentration would have been a range of 0.1203 to 0.1369 %. This would produce mild euphoria with increased self-confidence and diminished inhibitions. There would be some reduction in attention capacity and judgement. Speech may be slow and/or slurred. There would be some impairment of perception and the beginning signs of incoordination. Reaction time would be increased. These effects will be most noticeable when attempting a complex multi task such as driving. Although walking is not considered a complex multi tasking activity he agreed that crossing a road may involve more complicated decisions than simply walking in a straight line.
112. The cause of death is stated as:
 - 1(a) Head injuries; due to, or as a consequence of*
 - 1(b) Motor vehicle accident (pedestrian).¹²⁷*

Prosecution

113. Mr Mark Richard Sweet was subsequently charged with dangerous operation of a motor vehicle causing death and other traffic related offences. At the committal hearing, the charge was dismissed, principally for two reasons.¹²⁸ Firstly, on the basis that Mr Sweet had not been sufficiently identified as the rider of the motorcycle, given there was another reasonable hypothesis that someone else was the rider.
114. The second basis was there was no evidence as to how the accident occurred and there could be a reasonable hypothesis consistent with innocence as to what occurred.

Findings relating to identity of the rider, excluding any evidence from Mr Sweet

115. The evidence has demonstrated that the identity of the rider of the motor cycle fits the general description of Mark Sweet. He is Caucasian, around 180cms tall and is of a thick build. He was the owner of the Suzuki motor cycle. The evidence of Mr Byth places Mr Sweet on the motorcycle most probably on the Friday before the collision. His DNA profile was found on the motor cycle as was that of his girlfriend Ms Wright. He suffered injuries

¹²⁴ Exhibit A2, p5

¹²⁵ Exhibit A2, p5

¹²⁶ Exhibit A4.1

¹²⁷ Exhibit A2, p5

¹²⁸ Exhibit H3 page 1-22

consistent with those which would occur if he had come off a motor cycle and healing in a timeframe which fits within the timeframe of the collision.

116. Importantly since the criminal charges were dismissed at committal this inquest has heard of two further pieces of evidence. Firstly, the medical records of Mr Sweet have him stating to hospital staff at QEII Hospital approximately 3 weeks after the collision that he had been involved in a motorcycle accident some two weeks earlier.
117. Secondly, Ms Wright says that sometime shortly after the death of Mr Wall and before Mr Sweet handed himself in to Police the following Thursday, Mr Sweet admitted he was "feeling bad as he had a bike accident and someone was hurt" and she saw injuries with skin off his leg.
118. Having considered all of the evidence, I am satisfied on the balance of probabilities but at a high level of persuasiveness that the evidence is sufficient for me to make a finding based on all admissible evidence that Mark Richard Sweet was driving the motor cycle on the night and it was this motor cycle that hit Mr Wall. I am satisfied the motorcycle was driven by Mr Sweet at a speed in excess of 86 km/h.

The evidence of Mr Sweet

119. Mark Richard Sweet was called to give evidence. In accordance with section 39(1) of the Act he refused to give oral evidence because the evidence would tend to incriminate him. Accordingly I required him to give evidence as I considered it was necessary in the public interest for him to do so. That evidence and any derivative evidence is not admissible against him in any other proceeding, other than a proceeding for perjury.
120. Mr Sweet stated he had some independent recollection of the events of 30 October 2010. He was riding his motorcycle along Old Cleveland Road as he was going to Coorparoo to see a friend who lived on Cavendish Road.
121. He readily admitted that it was this motorcycle that was involved in the collision and he was the rider. He stated that the motorcycle was his and it was not registered. He said he was unsure of whether a registration plate was attached to the motorcycle. He said he was unable to explain why a numberplate belonging to another vehicle was on it and said that 2 to 3 others often rode the motorcycle.
122. He was asked whether he knew a Ricky De Visser and he stated that he knew a Ricky but he was not sure of a surname. He was asked when he became aware of the issuing of traffic infringement notices and he stated that it was not until the QPS told him.
123. He was asked whether he had a driver's license at the time but he said that it was expired. This included a motor vehicle, truck and motorcycle licence.
124. He stated that he had not taken any alcohol, drugs or medication on that day.
125. He agreed he was travelling along Old Cleveland Road and he said he was driving over the speed limit but did not consider he was driving at an excessive speed. He said he had taken off from the lights down before McDonalds some 300 metres away. He does not recall having looked at his speedometer. When asked whether he was travelling over 85 km/h he said that this "was a chance". In relation to travelling at a speed of 95 km/h he said "maybe". He said he would not have been travelling at 130 or 150 km/h. He said he did not think he was travelling in the order of 100 km/h.

126. He said that as he was travelling along Old Cleveland Road after having left the lights, came round a bend and saw a black shadow or a flash and there was an impact. He stated he was travelling in the lane closest to the footpath. He stated that he had no recollection whether he had a chance to brake and his only recollection is from the next day. He still has no recollection as to how he got home to Redbank Plains the next morning. He stated he had no recollection as to whether he had stayed on the motorbike but realised later that he must have fallen off. Someone told him the next day about an accident being on the news and he could see a picture showing his motorcycle. He said he had injuries with skin off his knees and arms and was sore all over. He realised when he got home that he had injuries and that he must have been in a motorcycle accident.
127. He said after the accident the next day he had a thumping headache. He agreed that he did not obtain any medical attention for his injuries and in particular in relation to the alleged memory loss that he was experiencing. He agreed that he did go and see QE II Hospital some weeks later to receive treatment for an infection that had taken on.
128. He stated he was not sure if he had called any friends or anyone else after the accident. He was notified by a friend of a friend that the QPS were later looking for him. When it was put to him that he was contacted by DS Toohey by an SMS message he said that may have been the case. He agreed that in a conversation he had with DS Toohey that he was asked if he was okay and he agreed that he was going to hand himself in on the Wednesday or Thursday of that week.
129. He said he spoke to his girlfriend Michelle Cliff in relation to what had happened but he said he did not know.
130. He agreed that he may have been in contact with and spoken with Ms Wright.
131. It can be readily concluded from this evidence that Mr Sweet was the rider of the motorcycle which hit Mr Wall and he was travelling in excess of the speed limit of 60 km/h and over 86km/h. Given the conservative calculations of the forensic analysis, the eye witness estimates as to the speed, and Mr Sweet's equivocal answers on the issue, I can be satisfied the speed was at the upper limit of the forensic analysis and closer to 100 km/h. The balance of Mr Sweet's evidence is unhelpful and unlikely to be totally true and he knows much more than what he said in court.

Findings required by s45

132. In accordance with section 45 of the *Coroners Act 2003* ('the Act'), a coroner who is investigating a suspected death must, if possible, make certain findings.
133. I make the following findings:
 - a) the identity of the deceased person is Timothy John Wall;
 - b) the deceased person died as a result of:
 1. due to or as a consequence of head injuries sustained following being struck by a motorcycle;
 2. the collision occurred between Mr Wall and a Suzuki motorcycle on the evening of 30 October 2010;
 3. the collision happened when the motorcycle which was driven by Mark Richard Sweet hit Mr Wall as he was

attempting to cross Old Cleveland Road. Mr Wall was affected by a moderate amount of alcohol when he came quickly out from between a lamppost and a tree close to the kerbside and on a sweeping left bend. The motorcycle was being driven at a speed of in excess of 86 km/h and likely to be close to 100 km/h. Mr Sweet then decamped and left the scene of the collision.

- c) the date of death of the deceased person died was 31 October 2010;
- d) the place of death the deceased person died was the Princess Alexandra Hospital, Brisbane;
- e) the cause of death was
 - a) head injuries, due to, or as consequence of
 - b) a motor vehicle collision (pedestrian).

Recommendations in accordance with s46

131. Section 46 of the Act provides that a coroner may comment on anything connected with a death that relates to:
- a) public health and safety,
 - b) the administration of justice, or
 - c) ways to prevent deaths from happening in similar circumstances in the future.
132. Based on the consistent evidence from many of the witnesses, particularly those who lived in the area, this section of Old Cleveland Road was notorious for accidents, often occurring weekly. Ms Ward, Ms Austin, Mr Fitzpatrick, Ms Willis, Ms Parra-Dias and Ms Hambleton all stated as such. They had all seen pedestrians crossing in the vicinity of Coles and McDonalds down the road. Each of them had their own ideas for improvements that could be made and experiences but the area from Harries Road back towards the city to past McDonalds was of particular comment.
133. I have heard no traffic engineer or expert evidence which would support a specific recommendation which could rectify any environmental or roadway issues or flaws. In those circumstances I consider it is appropriate to refer the evidence to the Brisbane City Council and recommend they conduct an audit of this section of Old Cleveland Road for known road incidents for the purpose of considering any changes. The witnesses commented that the gap between the pedestrian crossing and lights at Harries Road and further down past McDonalds, was a few hundred metres. Given the proximity of a major retailer on one side and a fast food franchise on the other, and given the evidence of witnesses suggesting people are often seen crossing the 4 lanes adjacent to those areas, the presence of a set of pedestrian lights or a crossing, better lighting or both may be something that could be considered. .

Exercise of discretion of the Coroner to refer any party in accordance with s 48(2)

134. Section 48(2) of the Act gives a coroner discretion to give information to the Director of Public Prosecutions if the corner reasonably suspects a person has committed an indictable offence. The threshold provided for in s48(2) of

the Act requires a reasonable suspicion as opposed to a belief or knowledge of the commission of an offence. In *Queensland Bacon Pty Ltd v Rees* (1966) 155 CLR at 303 (CLR) Kitto J said: "A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion, but without sufficient evidence'."

135. The relevant criminal offences in the circumstances of Mr Wall's death to be considered is section 328A of the *Criminal Code Act 1899* 'Dangerous operation of a vehicle', and section 92 of *Transport Operations (Road Use Management) Act* "Failing to Remain at the scene of an incident". There are a number of other minor traffic related charges which would largely be time limited by now. The charge under section 92 must be started within 5 years of the offence being committed.
136. In this case Mr Sweet was charged with an offence under section 328A including a circumstance of aggravation that he left the scene when he knew, or ought to have known, that a person had been killed or injured. This charge was discharged at a committal hearing. As my findings indicate the coronial investigation and the evidence at inquest has uncovered further evidence which assists, in my view to a high standard of persuasiveness, in identifying Mr Sweet as the driver. Further an important eye witness to the collision whose evidence was not before the committal court, Ms Hambleton, was also received. These were the two specific issues referred to by the Magistrate that dismissed the charge that caused him concern. On that basis I will refer all of the admissible evidence to the Director for review.

My condolences are expressed to the family and friends of Mr Wall.

I close the inquest.


John Lock
Brisbane Coroner
BRISBANE
5 April 2012

