



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

**CITATION:** **Inquest into the death of Carey Scott Nixon**

**TITLE OF COURT:** Coroners Court

**JURISDICTION:** Brisbane

**FILE NO(s):** 2012/1426

**DELIVERED ON:** 21 March 2014

**DELIVERED AT:** Brisbane

**HEARING DATE(s):** 3 February 2014, 17-18 March 2014

**FINDINGS OF:** John Lock, Deputy State Coroner

**CATCHWORDS:** Coroners: inquest, motor vehicle/motor cycle crash, road rage

### REPRESENTATION:

**Counsel Assisting:** Dr A Marinac, Office of the State Coroner

**For Geoffrey Hickey and Jade Dunlop:** Mr Rashleigh of Counsel i/b McInnes Wilson

## **Introduction**

Carey Scott Nixon was aged 39. On 25 April 2012 he was riding a motorcycle which came into collision with a Toyota Land Cruiser driven by Geoffrey Hickey.

The collision occurred at approximately 1:00pm as both vehicles were proceeding northbound on the Cleveland-Redland Bay Road, a four lane road with two lanes in each direction. At some point shortly after the vehicles passed through the roundabout at the intersection of Cleveland-Redland Bay Road and Boundary Road, the 4WD commenced to change into the right lane from the left lane at the same time as the motorcycle approached in the right lane from behind.

There is evidence to suggest that Mr Nixon then commenced an overtaking manoeuvre in the right hand lane as it turned to three lanes with a right hand turning lane approaching a set of traffic lights ahead, and during this procedure he rode abreast of the 4WD drive. The evidence then suggests that Mr Nixon abused the 4WD driver both verbally and with hand gestures through his open side window. The abuse may have been reciprocated. The evidence also suggests that Mr Nixon has then hit the 4WD's side mirror with his left hand. At the time he was clearly extremely close to the 4WD. There is evidence to suggest the 4WD moved to the right and made contact by way of a handlebar scratching the black mudguard of the 4WD and the left side mirror of the motor cycle also scuffing the black mudguard. Mr Nixon was driving at the time with his right hand on the accelerator but his left hand was not on the handlebars.

Mr Nixon then fell to his right side and slid along the ground before colliding with a traffic light pole. He could not be resuscitated at the scene and was pronounced deceased on arrival at hospital.

The Forensic Crash Unit considered there were a number of scenarios possible on the basis of the evidence but none of the witness versions or forensic evidence were conclusive as to which version of events should be accepted.

Given the uncertainty as to what happened I decided to hold an inquest.

## **Issues**

The issues for the inquest are as follows:

- Firstly, the findings required by section 45(2) of the Coroners Act, namely the identity of the deceased person; when, where and how he died; and what caused his death;
- Secondly, to examine the circumstances leading up to the death including the driving and riding conduct of Mr Hickey and Mr Nixon prior to this incident;
- Thirdly, to examine the nature and effect of what appears to have been an altercation between them;
- Finally to examine the precise cause of the collision, including the question of whether that collision was accidental or intentional.

## **The scope of the coroner's inquiry and findings**

A coroner has jurisdiction to inquire into the cause and circumstances of a reportable death. If possible he/she is required to find:-

- a) whether a death in fact happened;
- b) the identity of the deceased;
- c) when, where and how the death occurred; and
- d) what caused the person to die.

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.

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.*

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 future. 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.

## **The admissibility of evidence and the standard of proof**

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*. 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.

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.

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. 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.

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially. 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* 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.

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.

## **Autopsy results**

An autopsy examination of Mr Nixon noted severe injuries to the head, spine and hips and a lacerated abdominal aorta with extensive blood loss. The death would have been rapid.

Toxicological analysis did not detect any alcohol but detected low levels of amphetamine and a metabolite of cannabis indicating past use.

Dr Hall, from the Clinical Forensic Medicine Unit, provided a report commenting on the toxicology report for Mr Nixon.

Dr Hall was of the opinion that the level of methylamphetamine detected was extremely low. Because of the long elimination half life of the drug and the effects of tolerance, one cannot ascertain the timing of methylamphetamine dosing. He was of the view that it was most likely that the level of methylamphetamine seen here does not represent recent use however the concentration of methylamphetamine in the blood will not reflect whether one is in the acute phase of methylamphetamine toxicity or within the rebound phase. Thus, although the level is low, Mr Nixon may have been exhibiting the effects of withdrawal (rather than acute effects) which cannot be quantified. Dr Hall noted the level of methylamphetamine may be higher due to the effects of post mortem redistribution.

Dr Hall noted that the level of cannabis was low and does not reflect very recent use. Bearing in mind that there may be an element of post-mortem redistribution, the significance of such a low level to Mr Nixon's ability to safely control a motorcycle is minor.

Dr Hall noted the levels were low and in the absence of indicia to suggest intoxication, one cannot state with any degree of certainty that the driver would be impaired.

## **Forensic Crash Unit (FCU) investigation**

The investigation was completed by Senior Constable Peereboom of the Brisbane FCU. Notebook statements as well as field interviews were taken at the scene from various witnesses by first response police who attended. More formal statements were later signed. Mr Hickey took part in a lengthy field interview and at one point was warned of his right to silence.

A Random Breath Test of Mr Hickey taken at the scene was negative.

Mr Nixon was wearing a helmet and was in shorts and thongs. The motorcycle was a 2006 Kawasaki 1000cc Ninja

The road conditions were regarded as good and the weather was overcast but there had been no rain. None of these aspects contributed to the crash. All witnesses agreed the speed of the vehicles concerned at all times was at or about the respective speed limit for the road being 60kmh.

A mechanical inspection of the 4WD found that the vehicle was in an unsatisfactory mechanical condition prior to the incident due to the condition of the steering, right hand tyres, and left front axle, however these conditions were not yet serious enough to have contributed to the cause of the incident.

The FCU investigation noted that it was apparent that at one point the 4WD commenced to change into the right hand lane and was straddling two lanes and failed to return to the left lane upon discovering the motorcycle also in the right lane. This appears to rely on the version of David Leishman and resulted in a minor traffic infringement notice being issued.

It is apparent that the motorcyclist commenced an overtaking manoeuvre in the right hand lane and/or turning lane and during this procedure he rode abreast of the 4WD. The evidence then suggests that the motorcycle abused the 4WD driver both verbally and with hand gestures through his open side window with his left hand. The evidence also suggests the motorcyclist has then hit the 4WD's mirror with his left hand. The 4WD's glass part of the mirror was dislodged as a result. SC Peereboom suggested this action would have required significant force.

At the time, the motorcyclist was extremely close to the 4WD and made contact by way of a handlebar scratching the black mudguard and the left mirror also scuffing the black mudguard. SC Peereboom gave evidence this was consistent with a slight side swipe. However, as the rider was driving at the time with his right hand on the accelerator but his left hand was not on the handlebars this would result in a loss of balance and was consistent with the wobbling impression of a number witnesses.

There were scrape marks on the road surface from where the motor cycle fell to the bitumen surface and this indicated the motorcycle was within the right hand lane and on the edge of the line between it and the turning lane.

The evidence of most witnesses including Mr Hickey is that there was a movement of the 4WD to the right followed by a greater movement to the left, all at the time when the motor cycle lost control.

The FCU considered there were a number of scenarios on the basis of the evidence.

- The first scenario was that the motorcycle had lost control and rode into the side of the 4WD.
- The second scenario would indicate that the 4WD drove into the motorcycle deliberately.
- The third scenario was that there was an involuntary manoeuvre by the motorcycle with an involuntary response by the 4WD.

- The fourth scenario was that there was an avoidance manoeuvre by the 4WD, which somehow connected with the motorcycle.

The FCU noted that none of the witness versions were conclusive as to which version of events should be accepted.

The physical evidence of the contact between the 4WD and the motorcycle was consistent with but not conclusive of a version with the front and right wheel of the 4WD turning to its left when the vehicle contacted with the motorcycle. In other words the collision did not occur when the 4WD made the movement to the right but when the correcting movement to the left occurred. The FCU considered the physical evidence and witness statements indicate that scenarios one to four are all possible causes of the collision. The physical evidence of contact between the vehicles is consistent with scenario four.

The FCU was of the opinion that due to the level of doubt which exists as to the exact cause of the crash, there was insufficient evidence to charge the 4WD driver with an offence relating to the collision. The only offence for which a traffic infringement notice was given in relation to this matter was for failing to drive within marked lanes of a multilane road.

Mr Hickey's traffic history from 1988 to 2001 included a number of speeding offences, drink driving, unlawful use of a motor vehicle, and careless driving. Prior to the collision, the only additional traffic offence the driver had been convicted off was in 2004 for failing to keep left of double continuous lines.

Mr Nixon had a far lengthier traffic history, which was also more recent in time. He had been convicted of numerous speeding offences, attempting to drive under the influence of alcohol, unlicensed driving on a number of occasions, and disqualified driving. In March 2011, Mr Nixon was fined for failing to keep left of double continuous dividing lines.

## **The evidence of eye witnesses**

The eye witnesses gave different versions of the events that must have occurred over a matter of seconds. The fact the versions differ is unsurprising as it is self evident witnesses will see and recall things that happen in such short time frames somewhat differently.

### **Luke Bell**

Mr Luke Bell's statement was consistent with the notebook statement taken at the scene. He was travelling in the opposite direction. He first saw the 4WD when it was in the right hand lane. The motorcycle then came up pretty quickly into the right hand lane beside the 4WD driver's window. It was only 30 – 50cms from the side of the 4WD. The motorcyclist had his head turned towards the driver of the 4WD, and they could have been talking or yelling, but Mr Bell was not sure. It was pretty instantaneous that the motorcyclist extended his left arm and the 4WD driver extended his right arm towards each other. He thought they could have been trying to hit each other or to high five.

He then saw the 4WD swerve a little to its right followed by a big swerve to its left. When the 4WD swerved to its right, Mr Bell saw it connect with the motorcycle, somewhere between the front engine bay to the driver's door.

On the swerve to the left, it was like the 4WD fishtailed a bit to get out of it but Mr Bell believed the 4WD stayed within the right hand lane.

In evidence Mr Bell says he saw the motorcycle coming up the turning lane and the 4WD was in the right lane completely. He then saw the motorcycle close to the vehicle and largely in the right-hand lane. He saw both of the drivers with arms extended towards each other and could not tell if they touched but they would have intersected. He did not hear anything or see their faces just the two arms extended. He saw the 4WD swerve a bit to the right and then swerve to the left. The swerve to the right was slightly inward and then the move was greater to the left. He again estimated the move to the right was 30 to 50cm with the swerve to the left a metre or so. He thought that the swerve to the right was not out of the lane and he was still travelling in the right-hand lane.

### **Samantha Bell**

Ms Bell was travelling with her brother. Her notebook statement and written statement were largely consistent. She saw the motorcycle and 4WD travelling very close to each other. She watched what they were doing because it was so unusual to see a motorcycle and car so close and still moving forward together. They looked like they were talking to each other and saying hello. The motorcyclist's head kept turning to face the car driver like he was talking to him.

She was not sure if they were saying hello or not until she saw what happened next and realised they must not have been friends.

She said she saw the 4WD driver put his whole arm out of the window and waved it around. He extended it and shook it towards the motorcyclist about two or three times. She stated it was as if he was trying to hit the motorcyclist or push him away. Then the motorcyclist was waving his arm too and he stretched out his left arm towards the 4WD driver. The 4WD driver looked really vicious because his arm movements looked like he was trying to hit the motorcyclist.

Ms Bell was clear about the 4WD driver extending his arm. She recalls the driver did not have long sleeves and saw the person who was the passenger in the vehicle at the scene was wearing long sleeves.

Ms Bell stated the 4WD then swerved right and hit into the motorcycle. It was a big swerve because she observed the whole car move and it wasn't just a little tap. The front driver's side area of the 4WD hit the motorbike. Ms Bell did not see anything that would have caused the 4WD driver to swerve like it did. As soon as the motorcycle was hit, it fell straight over.

In her evidence she confirmed that she had not seen the rider of the motorcycle rider speaking. She just saw the motorcycle rider's head turning as if he was talking. She said she saw the arm from the 4WD come out first. She did not see the damage to the side mirror and thought it was finished when the 4WD moved right. She saw the motor cyclist had both hands on the handlebars.

When the 4WD moved to the right it was a fast movement and the vehicle moved over the lane line marking and the motorcycle was hit, the bike wobbled, skidded and crashed as the 4WD swerved back away. She said the swerve to the right was not a small one.

## **Levi Lee Eveans-Mellonie**

Mr Eveans-Mellonie also provided a notebook version and a formal statement. He was travelling in the opposite direction to the 4WD and motorcyclist. In his statement he expanded on what he provided in notebook form at the scene. He observed the 4WD get into the part of the road where a right turning lane merged and the motorcycle appeared from behind and travelled on the right hand side. The motorcycle was at this time in the right hand turning lane. The motorcyclist positioned himself beside the 4WD driver door about half a metre away from the car and maintained that position. The motorcycle rider turned his head to look at the driver. The motorcycle rider maintained his position for two to three seconds and then took a big swing with his left arm and swiped the driver's side mirror with his open hand with a big slap. The mirror came off the 4WD.

The motorcyclist then returned his hand back to the handlebars, accelerated and moved forward from beside the driver's side door and appeared to be leaving his position beside the car. The motorcycle moved forward into a position slightly in front of the car with its back wheel in line with the 4WD front wheel and still about half a metre beside the 4WD. He stated that he saw from his position, the 4WD suddenly jerk to the right and swerve into the motorcycle. The front right wheel area of the 4WD collided into the rear wheel area of the motorbike. The 4WD then immediately returned to its original path of travel. The motorcycle did a little fishtail, the motorcyclist lost control and then came flying off.

In his evidence he says he did not see an arm come out from the 4WD. Once the mirror was struck both hands went back to the handle bars and he appeared to be leaving his position beside the 4WD when it jerked to the right for no reason. He said at this point there was a collision between the two and then the 4WD moved back left to the same line of travel.

## **Reagan Gould**

Mr Gould was 15 at the time of the incident. He gave a field interview and notebook statement and later a formal statement. He was a friend of the son of the motorcyclist and knew the motorcyclist for about eight years and had been to his residence on many occasions. He had previously observed the motorcyclist to go fast and to do 'mono's'.

He was walking on the footpath towards his home. He heard the distinctive sound of this particular motorcycle and waved but the driver did not acknowledge him. The motorcycle was not speeding.

He watched the motorcycle speed up and get beside the 4WD, and slowed down to stay beside the 4WD driver's window. He saw Mr Nixon take his left hand off the handlebars, left hand pointing towards the driver's window. He was not close enough to touch the other car. He could see Mr Nixon turn his head towards the driver of the 4WD and was yelling and shouting swear words.

Then the 4WD moved closer to the motorcyclist or the motorcyclist moved closer to the 4WD. He was unable to tell from where he was standing and could not see the lane markings. The motorcyclist placed his left hand on the front bottom corner of the driver's window, near the side mirror. Mr Nixon appeared as though he was either holding on or trying to balance himself.

Mr Nixon appeared to take his left hand off the car, and the motorbike accelerated. The motorcyclist moved forward suddenly up beside the side mirror. The motorcyclist



kept his left hand up on the car. Then the motorcyclist and the 4WD came together a lot more. It looked like the 4WD had swerved him off with the front side of the car.

Before the motorcyclist came off, his left shoulder and left arm brushed against the side mirror of the 4WD. Either the 4WD swerved to the right and pushed him off from the car or the motorcyclist threw himself off the car. Mr Gould was not sure, however it looked like the 4WD moved against Mr Nixon. In his notebook statement he thought the 4WD driver may have got a fright.

Mr Nixon then left the 4WD and started to get the wobbles and fell.

### **David Leishman**

Mr Leishman provided a notebook statement and a written statement. He was travelling in the same direction. He was overtaken on the roundabout by the motorcycle which was not speeding. He saw the 4WD in the left lane, and the motorcycle moved into the right lane to overtake and started to pass the 4WD. When the motorcycle was beside and to the rear of the 4WD, the 4WD started to move into the right lane also. It did so without any indication lights. It appeared to Mr Leishman that the driver of the 4WD did not see the motorcycle.

When the 4WD was half way into changing into the right hand lane, it stopped merging right and maintained its line of travel by straddling over the dividing line. It remained half in the left lane and half in the right lane. He said in evidence he thought the 4WD had seen the motorcycle and was holding his line. The motorcycle remained in the right lane. He expected the motorcycle to zip up in the right hand lane and go past the 4WD as there was plenty of room.

Mr Leishman was approximately 50 metres behind them with no cars in between. The motorcyclist was gesturing either through the driver's window or touching the driver's window with his left hand. It appeared as though the motorcyclist knew the 4WD driver.

The motorcyclist started to accelerate forward and hit or grabbed the side mirror of the 4WD. He accelerated and then both vehicles came together. The motorcyclist never put his left hand back on the handlebar. Then the motorcycle went down. The motorcycle then collided into the front side of the car.

He said it appeared as though the rider lost his balance when he hit the mirror then they came together on the front guard and he went down.

### **Anita and Martin Whitfield**

Martin and Anita provided police notebook statements and only more formal statements after a decision was made to hold an inquest. They were overseas at the time of the inquest and were not called.

Martin Whitfield was travelling in the opposite direction. He saw the 4WD as it was approaching the traffic lights at Beverage Road. He had just pulled up at the lights. He saw the 4WD move from the left lane to the centre lane but cannot recall if he indicated or not. Straight away he saw the motorcycle come from behind the 4WD and then the motorcycle travelled next to the car window. He could see the motorcycle rider facing towards the driver and he was gesturing and looked as if he was saying something to the driver.

He says he saw the 4WD come across towards the right with a small but quick jerk to the right and back to his original position again. When this all happened the motorcycle rider only had his right hand on the handlebars. He then saw the motorcycle wobble and then it slipped onto its right side and the rider was flicked up or into the air.

Anita Whitfield says she saw the motorcycle rider shouting and waving his left arm at the 4WD driver and then the impression she got was the 4WD driver made a sudden move towards the right. She did not see the 4WD hit the bike but saw it became unbalanced and the rider was flicked into the air.

### **Richard Henry Cash**

Mr Cash is a constable of police and had just finished his shift of traffic duties for an Anzac Day parade. He was travelling south and was approaching the intersection when he saw a black motorcycle and a 4WD approaching from the north. The 4WD appeared to be in the right-hand lane. He then was looking to the left-hand side and his left side mirrors to check for vehicles coming beside him and as he was performing these checks he heard a noise and saw a black motorcycle going down and sliding towards the intersection. He saw the motorcycle rider collide with the traffic light pole. He had not seen any altercation or any movement or contact between the two.

### **Jade Dunlop – passenger in 4WD**

Ms Dunlop was a passenger in the 4WD and was travelling with her daughter in the rear.

Ms Dunlop provided two interviews on a field tape at the scene and rang QPS two days later and gave more detail. Her statement was based on her recorded recollections within days of the incident.

The motorcyclist was to the right of the vehicle and accelerated until in line with the 4WD. She says the driver's window was open and the motorcyclist yelled something like 'you fucking asshole or idiot'. It was hard to hear what the motorcyclist was saying. The motorcyclist started to drop back and then accelerated again and placed his hand onto the window/door frame. He started to yell something but all Ms Dunlop heard was 'my lane'. Mr Hickey then said something back along the lines of 'ok go away'. The motorcyclist let go of the window frame, raised his left arm and fist. She said it looked like he might hit Mr Hickey however he accelerated slightly and hit the side mirror with his left fist. It then swung back, and the motorcyclist then opened his fist and grabbed the side mirror. It then swung back into place making a loud bang sound and the mirror broke away from the housing. The motorcyclist then said 'oh shit'.

She states Mr Hickey had his eyes on the road and it was not until the mirror made a banging noise did he turn towards the motorcyclist. Mr Hickey then said 'fuck no' and the 4WD started to drift towards the left. At this point Mr Hickey tried to keep straight and swerved slightly to the right – this happened around or just after the mirror moved back into place making the loud sound.

After the mirror came away from the side housing, the motorcyclist was in line with the driver window, Ms Dunlop saw him put his left arm back down. He then sped up and was in line with the engine/front of the car. About two seconds later she observed his right arm and the front of the bike start to wobble. The motorcyclist

started to slow down and the 4WD sped up to get away. Ms Dunlop observed in mirrors that the motorcyclist came off the motorcycle.

In her evidence she stated that the vehicle was in the left lane coming out of the roundabout and stayed in that lane for a short distance when it changed to the right-hand lane. She stated that she was looking at Mr Hickey and that the driver clearly indicated. She was not aware of the motorcycle until some five seconds after changing lanes when she heard a loud roar. She stated that there was no straddling of the lanes and it was a smooth changeover.

She became aware of the motorcycle after it came up behind the vehicle and travelled into the turning lane and as he approached he said something about 'my fucking lane'. She assumed he was on the line of the lane or in their lane. He sounded very angry. Mr Hickey was paying attention to the road and briefly looked over and said something dismissive.

She said the motorcyclist waved a closed fist towards the vehicle. She stated Mr Hickey had his hands on the steering wheel the whole time and he did not extend his hand or arms outside the window. At some point the motorcycle rider placed his hand on the window.

After the mirror had been damaged she said the 4WD moved to the left and then to the right but she was not aware of any direct contact.

### **Geoffrey Hickey – driver of 4WD**

Mr Hickey provided a field interview which was digitally recorded over a period one hour and 10 minutes. He also provided a notebook statement. Subsequently he provided a formal statement in August 2013 following a formal request by my office. He had been warned at the scene during the field interview that he did not have to say anything.

At the inquest he wished to claim privilege against self incrimination. I directed him to provide his evidence pursuant to section 139 of the Act.

In his statement he stated he observed a 4WD towing a boat that had stopped in the left hand lane at a set of lights ahead. He decided to change lanes so he would not get stuck. He said he checked his mirrors and did not see any vehicles in the right hand lane. As he started to merge right, he noticed a motorcycle coming off the roundabout. As it was some distance away, Mr Hickey finished merging. By the time he finished merging into the right hand lane, the motorcycle was hard against the back of the 4WD.

In his statement and notebook statement he stated he indicated his intention to change lanes. In his interview at the scene he was less specific about this and said he would have indicated as this was his usual practice. In his evidence he stated he definitely indicated.

The motorcyclist then drove alongside Mr Hickey in the right hand turning lane. He was yelling and shouting at Mr Hickey and was within a foot of the vehicle. Mr Hickey never had a motorcycle so close, and thought it was completely reckless and aggressive.

Mr Hickey maintained his line of sight and kept both hands on the steering wheel. He could see the motorcyclist with his peripheral vision. The motorcyclist had a full

helmet with visor up – he leant towards the open window and was almost in the window, only a couple of inches away from the window. The motorcyclist shouted in a loud and aggressive voice words to the effect of ‘you fucking idiot, you fucking arsehole’.

Mr Hickey took a quick glance at the motorcyclist and was taken by surprise and shocked at what was happening. He thought that maybe the motorcyclist was cranky because he had prevented him from going fast up the right hand lane because he caught the 4WD so quickly from the roundabout. Mr Hickey said ‘whatever’ and continued looking where he was going. He tried to move a little to the left to create some distance from the motorcycle.

In evidence he said he saw the motorcyclist extend his arm towards him as if he was waving. He denied extending his arm towards the motorcyclist.

Mr Hickey then heard a loud bang that was the motorcyclist smashing Mr Hickey’s right hand side mirror and revving his motor at the same time. Because of the loud noise and shock, Mr Hickey jerked on the steering wheel. He did not mean to, it just happened. Mr Hickey spun his head and saw the motorcyclist’s hand was still in the air from swinging it against Mr Hickey’s mirror.

In his evidence he agreed this movement was slightly towards the right. He described it as a jerk to the right and then corrected to stay in his lane.

Mr Hickey tried to focus on driving straight. The motorcyclist accelerated half way up and alongside the bonnet of the vehicle. He was still holding onto the handlebars with his right hand. He got a wobble and then he went down.

## **Conclusions**

At approximately 1:00pm both vehicles were proceeding northbound on the Cleveland-Redland Bay Road. Mr Hickey passed through the roundabout at the intersection of Cleveland-Redland Bay Road and Boundary Road in the left hand lane first. It is evident Mr Nixon has come through the intersection behind Mr Hickey and at a significantly shorter distance than the 100 metres Mr Hickey says or believes.

There is varying evidence as to whether Mr Hickey indicated his intention to change lanes from the left to the right. In his initial interview at the scene, Mr Hickey stated that he would have indicated, as this was his usual practice. In later evidence he says he did indicate. Ms Dunlop was specific he indicated. Another witness, Mr David Leishman provided evidence that Mr Hickey did not indicate his intention to change lanes. Given the angry overreaction by Mr Nixon it is probable Mr Hickey did not indicate his intention to change lanes.

At the same time as Mr Hickey executed his lane change, Mr Nixon, was advancing from behind him on his motorcycle. There is no evidence Mr Nixon was speeding over the speed limit or excessively but he would have been accelerating faster than the 4WD given the nature of the two different vehicles.

It is clear from all of the witnesses before this inquest that Mr Nixon continued to accelerate, and moved to the right hand side of the 4WD vehicle. Witnesses vary slightly in terms of the exact positioning of the motorcycle on the road, but he was either sharing the right hand lane alongside the 4WD; or he was riding in the right-hand-turn lane or perhaps both at different times.

Virtually all witnesses then agree that Mr Nixon placed his motorcycle very close to the driver's side window of Mr Hickey's car. The window was open, and at this point the witness accounts agree that the vehicles were travelling relatively slowly at about 40 kmh as they were approaching the lights at the intersection. Mr Nixon clearly swore at Mr Hickey, indicating his anger at having been cut off. Mr Hickey claims that he either said nothing in return, or that he simply said 'whatever' to Mr Nixon. In her statement, Ms Jade Dunlop states that Mr Hickey said words to the effect of 'Go away'. There is no evidence to suggest Mr Hickey's response was other than this.

During this exchange, there is varying evidence that Mr Nixon and Mr Hickey both extended their arms towards one another in a threatening, pushing or punching motion. Mr Luke Bell and Ms Samantha Bell both recall seeing both Mr Hickey and Mr Nixon extending their arms in this fashion. Other witnesses only refer to seeing Mr Nixon doing this and Mr Hickey and Ms Dunlop deny Mr Hickey behaved in this fashion.

I find it is likely both Mr Nixon and Mr Hickey extended their arms towards each other but Mr Hickey's involvement was of a shorter duration and less obvious to other witnesses given the side window panel and mirror would impede their vision. As these events occurred over a matter of seconds, the arm movements were likely very brief. They did not connect with each other.

I accept the verbal and physical altercation did not directly lead to Mr Nixon's death, but it formed part of the escalation of this driving dispute. In Mr Nixon's case in particular, he placed himself in a particularly vulnerable position as he was riding with only his right hand on the handlebars and he would have had reduced control over the motorcycle in the event something else happened. Unfortunately it did.

It is uncontroversial to find that there was a further escalation, again over a matter of seconds, as Mr Nixon struck at the driver's side mirror of Mr Hickey's car with his hand or fist, causing the mirror to break away from its plastic housing and fall to the roadway.

What now happened is the crux of the case.

Immediately after the mirror was damaged, all witnesses agree that the 4WD vehicle moved to the right and then moved back to the left. Both of these were sharp movements, given the timeframe, but the overall impression of most witnesses is that the move to the right was of less distance than the move back to the left.

In one or possibly both of these movements the 4WD came together with the motorcycle. The move to the right may have been deliberate as a warning to Mr Nixon. It may have been simply an instinctive reaction of Mr Hickey to what had happened to his mirror in the context of the altercation itself. The latter in my view is the most likely. I do not accept Mr Hickey's explanation about the proximity to the 4WD and boat to his left as being one of the reasons why he moved to the right as all of the forensic evidence indicates this altercation was occurring close to the right side of the lane and what was happening to his left was unlikely to have been a factor. The gouge and scrape markings on the roadway clearly indicate the motorcycle went down inside the right lane and not within the turning lane.

However, the physical evidence from an examination of the various markings on the 4WD and motorcycle also leads to the very real possibility that it was the correction back to the left that connected with the motorcycle, reducing the suggestion of culpability on the part of Mr Hickey. The evidence suggests the contact was in the

form of a slight side swipe but Mr Nixon already had reduced control over the motorcycle when he struck the mirror, and although he may have been seeking to fully control the motorcycle the collision that occurred, albeit slight was sufficient for loss of control to occur. Mr Nixon was then thrown from the motorcycle into the traffic pole, where he sustained fatal injuries.

Whether or not Mr Nixon felt justified in addressing Mr Hickey about his driving indiscretion, and even if he had simply expressed his anger verbally, all of this could have been avoided if Mr Nixon had not placed himself in such a dangerously close and vulnerable position to the vehicle.

## **Findings required by s. 45**

**Identity of the deceased** – Carey Scott Nixon

**How he died** – Mr Nixon's death was caused principally by his unsafe driving conduct during a road rage altercation between Mr Nixon and Mr Geoffrey Craig Hickey. Mr Nixon felt aggrieved about an earlier lane change, which had not been indicated by Mr Hickey and probably cut him off. There followed a verbal altercation between the two with some degree of waving of arms by both of them but principally by Mr Nixon. At this stage Mr Nixon had placed his motorcycle in very close proximity to the other vehicle such that he was likely travelling within that vehicle's lane or straddling the lane line marking. Mr Nixon then struck out at the side mirror of the other vehicle with sufficient force to break the glass. Mr Hickey then moved his vehicle some short distance to the right and then corrected back to the left. Mr Hickey's action in moving his vehicle combined with Mr Nixon's action in riding alongside Mr Hickey's vehicle, resulted in a slight side swipe collision. Mr Nixon was at this time in a very vulnerable position with reduced control as he had only one hand on the handlebars. It was in that context that Mr Nixon then lost control of his motorcycle and fell to the roadway. His momentum then took him into a traffic pole, which caused the injuries which resulted in his death.

**Place of death** – Cleveland / Redland Bay Road, Thornlands

**Date of death**– 25 April 2012

**Cause of death** – 1(a) Multiple injuries

1(b) Motorcycle collision (rider)

## **Comments and recommendations**

I am of the view there is insufficient evidence to refer this matter to the Director of Public Prosecutions.

I close the inquest.

John Lock  
Deputy State Coroner  
Brisbane  
21 March 2014