



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

**CITATION:** Inquest into the death of Grace Thompson

**TITLE OF COURT:** Coroners Court

**JURISDICTION:** Stanthorpe

**FILE NO(s):** 2010/2183

**DELIVERED ON:** 16 December 2011

**DELIVERED AT:** Stanthorpe

**HEARING DATE(s):** 13 September 2011, 12 to 15 December 2011

**FINDINGS OF:** John Lock, Brisbane Coroner

**CATCHWORDS:** Coroners: inquest, motor vehicle crash, alcohol breath testing at scene

**REPRESENTATION:**

Counsel Assisting: Ms Melinda Zerner of Counsel, Office of the State Coroner

## Introduction

1. Mrs Grace Thompson died from injuries sustained in a two motor vehicle head-on collision on the New England Highway, Dalveen on 29 June 2010. Her husband was driving their motor vehicle in a southerly direction but it collided with another vehicle travelling in the north bound lane.
2. There was some uncertainty concerning the circumstances leading up to Mrs Thompson's death. On the version of Mr Thompson the other vehicle had swerved onto his side of the road, but when he took evasive action by moving onto the other side the other vehicle followed him back and the crash occurred. The other driver Ms Tanya Smith says she does not remember anything about her driving. Accordingly a decision was made to hold an inquest in an endeavour to resolve those uncertainties.
3. The issues identified at the pre-inquest conference held on 13 September 2011 and to be explored at inquest were:
  - a) how the collision occurred which will involve exploring the conduct of each of the drivers and establishing whether Ms Smith was affected by alcohol during the crash; and
  - b) the adequacy of the Queensland Police Service (QPS) and Queensland Ambulance Service ('QAS') policies and procedures currently in place concerning taking blood samples for alcohol and drug analysis when a driver is trapped in a vehicle for a lengthy period.

## The scope of the Coroner's inquiry and findings

4. A coroner has jurisdiction to inquire into the cause and the 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.
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."*<sup>1</sup>
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 future.<sup>2</sup> However, a coroner must not include

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

<sup>2</sup> s46

in the findings or any comments, recommendations, or statements that a person is or maybe guilty of an offence or is or maybe civilly liable for something.<sup>3</sup>

## 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.*"<sup>4</sup> 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.<sup>5</sup>
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.<sup>6</sup> 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.<sup>7</sup>
11. It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.<sup>8</sup> 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*<sup>9</sup> 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. Mr Thompson was represented by lawyers at the pre-inquest hearing but was not represented at the inquest. Ms Tanya Smith was not represented at the inquest. On 8 September 2011 Ms Smith was sent a registered letter advising of the scheduling of the pre-inquest hearing.<sup>10</sup> The letter said as follows:

*The inquest will examine your conduct as driver of one of the vehicles involved in the collision, including the extent to which you were affected by alcohol at the time. Consequently you will be required to give evidence at the inquest. Depending on the*

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<sup>3</sup> s45(5) and 46(3)

<sup>4</sup> s37(1)

<sup>5</sup> s39

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

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

<sup>8</sup> *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

<sup>9</sup> (1990) 65 ALJR 167 at 168

<sup>10</sup> Exhibit A5

*evidence heard during the inquest, the issue of whether the Coroner should refer you or the other driver to the Director of Public Prosecutions for prosecution of a criminal offence in relation to the collision may become a matter for submissions.*

*For these reasons, I strongly recommend you seek legal advice about whether you should be legally represented at the inquest. Ms Shari Khan of Shine Lawyers Toowoomba has today confirmed they do not hold instructions to represent you in this matter.*

13. The Coroners Act provides that 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.<sup>11</sup>
14. During her evidence Ms Smith was provided with a warning concerning the giving of incriminating evidence and was explained the substance of s.39 of the Act. She did not claim privilege or refuse to give evidence.
15. At the conclusion of the evidence Ms Smith was advised that submissions may be made against her interest and a referral to the DPP may be made. She was invited to be present during submissions by Counsel Assisting and to address the Court in response. She did attend and made a brief submission that she did not drive dangerously.

## **Social History**

16. Mrs Thompson was aged 75. She and her husband Mr Bruce Thompson were local Stanthorpe residents. They were well known and respected in the local community. Both had retired from their farming property and were living in their family home in Stanthorpe. Mr and Mrs Thompson had been married for 54 years prior to Mrs Thompson's death.
17. A local newspaper article about Mrs Thompson, which was provided by her family, noted she was a wonderful community member, a strong Christian woman, devoted to her husband and who put herself ahead of others. She was a regular volunteer at Lifeline and was strongly involved with the local agricultural show society. It was noted in the article that Mrs Thompson, who was unaware of the extent of her own injuries, rushed to the aid of her husband and was concerned about the occupants in the other motor vehicle immediately after the crash. QAS officers who were first at the scene confirmed this story. Mrs Thompson directed a truck driver who had pulled up to a fire extinguisher in the back of their vehicle to use on the fire to the other vehicle.
18. Members of Mrs Thompson's family were present for the inquest. It is clear Mrs Thompson has been and continues to be greatly missed by the community, her friends and particularly her husband and family.
19. Ms Smith knew Mr and Mrs Thompson as they were the first people Ms Smith's parents met when they moved a couple of hundred metres up the road from the

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<sup>11</sup> S 48(2)

Thompson's when she was about nine or 10. Ms Smith says her parents knew them more than her and that she does not know if they would remember her as a child.

## The Crash

20. On the day of the crash Mr and Mrs Thompson had been to Toowoomba for a medical appointment for Mrs Thompson. Following some shopping and lunch with their daughter in Warwick they commenced their return journey to Stanthorpe.<sup>12</sup>
21. Mrs Thompson was the front seat passenger in a 2003 model Toyota Rav 4 QLD registration 258IGF ('the Rav 4'), driven by her 79 year old husband, Mr Bruce Thompson. They were heading south, on their way home from Warwick to Stanthorpe.
22. The other vehicle was a 1992 model Mitsubishi Magna station wagon QLD registration 560MBN ('the Magna'), driven by Ms Tanya Smith, a 37 year old woman. She was heading north after leaving Stanthorpe to an unknown destination.
23. There were two passengers in Ms Smith's Magna, Mr Kodey Fox, aged 17 years and Mr Danny Qualischefski, aged 19 years. Mr Qualischefski was the front seat passenger and Mr Fox was seated in the middle rear seat of the Magna.
24. The vehicles collided head-on in the northbound lane of the highway sometime between 3:15-3:30pm on 29 June 2010 ('the crash').
25. There were no independent witnesses to the collision, but other motorists were present soon after the collision occurred.
26. Police and emergency services were called to attend the crash. Mr and Mrs Thompson were transported by ambulance to Stanthorpe Hospital, as was Mr Qualischefski. Mr Fox was transported by ambulance to Warwick Hospital with serious injuries. Ms Smith was trapped in the Magna for two hours before being extricated by the Queensland Fire and Rescue Service (QFRS) and airlifted from the scene to Brisbane for treatment.
27. Mrs Thompson's condition was considered to be initially stable with few obvious external injuries but due to internal injuries she deteriorated soon after arriving at the Stanthorpe Hospital. It was determined she needed to be urgently airlifted to Brisbane for further treatment. The helicopter carrying Ms Smith therefore returned back to Stanthorpe.
28. Mrs Thompson arrested in Stanthorpe shortly after she was loaded onto the Care Flight helicopter. She was unloaded and treated until her condition stabilised. She was then reloaded and the helicopter left Stanthorpe Hospital at around 10:20pm with Mrs Thompson and Ms Smith on board.
29. Mrs Thompson's condition was unstable during the flight to Brisbane. She experienced another cardio-respiratory arrest. Unfortunately, despite resuscitation efforts, Mrs Thompson could not be revived. She was declared deceased at around 9:30pm on arrival at the EMQ Hangar at Archerfield.

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<sup>12</sup> Exhibit B3, p2

## Police Investigation

30. QPS units from Warwick and Stanthorpe attended the crash scene. Senior Constables John Thompson and Phillip De Percy were the first police who attended and their main response was to commence directing vehicles given QAS and QFRS were in attendance performing their duties. Those officers did not provide written statements but were called to give evidence. Senior Constable De Percy spoke briefly to the drivers and passengers.
31. Senior Constable Hauff then arrived and he was then the senior officer at the crash scene. He says on his arrival to the scene he observed the vehicles and identified Mr Thompson as the driver of the Rav 4. He activated his voice recorder and approached Mr Thompson to take a specimen of breath and to obtain his version of what occurred.<sup>13</sup> The roadside breath test showed no indication of alcohol in Mr Thompson's breath.<sup>14</sup> Senior Constable Hauff says he attempted to obtain a breath test from Ms Smith. This is discussed elsewhere in the decision.
32. Senior Constable Hauff undertook an inspection of the Magna with Acting Sergeant O'Dea (the investigating officer) and located a number of opened and unopened cans of Jim Beam Bourbon and Cola on the floor of the vehicle.<sup>15</sup>
33. Constable Mackie attended the scene with Senior Constable Hauff.<sup>16</sup> She reports that she observed the crash scene and that she had a conversation with Mr Thompson and then Mrs Thompson (neither of which were recorded). She spoke with two witnesses at the scene Mr Alqarni and Mr Qlqantani and recorded her conversation.<sup>17</sup> Mr Alqarni and Mr Qlqantani do not provide any details concerning any observations at the scene.
34. Sergeant O'Dea arrived at the scene about an hour after the crash. He is a qualified Forensic Crash Investigator with the Traffic Branch at Stanthorpe and conducted the investigation with the assistance of a number of other police. The investigation involved viewing and recording the crash scene and taking measurements of the roadway and the location of the two vehicles and taking witness statements. He provided a report to the Coroner.
35. The crash occurred between 3.15pm and 3.30pm on Tuesday 29 June 2010, on the New England Highway, Dalveen approximately 25 kilometres north of Stanthorpe and approximately 400 metres south of the intersection of Brown's Road in the north bound lane of the highway.<sup>18</sup>
36. The New England Highway is a sealed bitumen road, running north-south, with a single lane in each direction. The section of the highway where the crash occurred is straight and flat with a speed limit of 100km/hr.<sup>19</sup> The Rav 4 being driven south bound by Mr Thompson would have been unsighted by oncoming traffic for a short period as there was an incline approximately 200m before the crash site.<sup>20</sup>

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<sup>13</sup> Exhibit C1, p2

<sup>14</sup> Exhibit C1, p2

<sup>15</sup> Exhibit C2

<sup>16</sup> Exhibit C2

<sup>17</sup> Exhibit C2, p3

<sup>18</sup> Exhibit C5, p1

<sup>19</sup> Exhibit B3, p1

<sup>20</sup> Exhibit B3, p1

37. On his arrival Sergeant O'Dea says *"I noted the red Mitsubishi wagon facing almost directly down the road in a northerly direction. I noted the blue Rav 4 was facing south on the wrong side of the road but at an angle to the other vehicle. I noted the back end of the Rav 4 was partially in the southbound lane. A detailed examination of the road surface was conducted which was unable to locate any skid marks, gouges or forensic indicators to assist with determining the cause of the crash."*<sup>21</sup> Sergeant O'Dea stated that it was very unusual to not find any forensic indicators at the scene particularly gouge marks. The lack of skid marks is consistent with both drivers saying they did not apply any brakes and the fact there are no swerve marks indicates any swerve undertaken was not a sharp one and may have been more controlled. The lack of forensic evidence was consistent with both versions.
38. A preliminary inspection of the vehicles indicated they appeared to be in roadworthy condition.<sup>22</sup> Both vehicles were subsequently inspected by the QPS Vehicle Inspection Unit and found to be in a satisfactory mechanical condition. No defects were found which could have contributed to the incident.<sup>23</sup>
39. Sergeant O'Dea observed a number of Jim Beam cans strewn throughout the Magna and on counting the cans identified 20 unopened cans and two opened cans.<sup>24</sup> As it was a 24 can carton, two cans were unaccounted for. He says it is possible witnesses at the scene who doused the fire that had started in the engine bay of the Magna used the two unaccounted cans.<sup>25</sup> In his statement Mr Meharg refers to using soft drink, but in evidence both he and Shane Ward confirmed they got the soft drink from their own vehicle to douse the fire.<sup>26</sup> Mr Qualischefski and Mr Fox say they were the only ones drinking the cans of Jim Beam.<sup>27</sup>
40. Investigating police formally interviewed Mr Thompson and Ms Smith and obtained Mr Thompson's medical records. Sergeant O'Dea has provided video footage with commentary of the road coming from either direction. The footage demonstrates the rise Mr Thompson would have come over before sighting Ms Thompson.<sup>28</sup>
41. Investigating police took statements from a range of witnesses including employees of establishments where Ms Smith was seen purchasing and consuming alcohol on the day of the collision; the Thompsons' daughter who Mr and Mrs Thompson met for lunch in Warwick; the two passengers of the Magna; the motorists who attended the scene shortly after the collision and emergency services personnel who attended the scene.<sup>29</sup>
42. As there were no independent witnesses to the crash, the only versions available are those supplied by the occupants of both vehicles.<sup>30</sup> Sergeant O'Dea

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<sup>21</sup> Exhibit B3, p2

<sup>22</sup> Exhibit B3, p2

<sup>23</sup> Exhibit C4

<sup>24</sup> Exhibit B2, p2

<sup>25</sup> Exhibit B3, p2

<sup>26</sup> Exhibit C7, p2

<sup>27</sup> Exhibit B3, p2

<sup>28</sup> Exhibit J1

<sup>29</sup> Exhibit B3

<sup>30</sup> Exhibit B3, p6

concluded as a result of no independent witnesses it has been difficult to ascertain who was at fault. Further, he reports there is no forensic evidence available to support either version.<sup>31</sup> However, he does say the account provided by Mr Thompson is consistent and credible.<sup>32</sup>

43. Sergeant O'Dea is of the opinion that on the current evidence then available to him, a criminal prosecution against either driver would be unsuccessful.

### **Events concerning Ms Smith prior to the Crash**

44. Mr Jamey Swader an eighteen year old male says Ms Smith had agreed to lend him \$2000.00 to buy the Magna. He says at about 10am on the day of the crash he and Ms Smith went to the seller (M & D Autos) in Stanthorpe and purchased the Magna.<sup>33</sup> Ms Smith says she came into some money through Centrelink and agreed to lend Mr Swader the money for the Magna on the condition she could periodically use it and that he paid the money back.<sup>34</sup> Ms Smith says Mr Swader was her neighbour for years and she went to school with his mother so she did not see the loan as high risk.<sup>35</sup>
45. In evidence Ms Smith says she had taken out over \$4000 or \$5000 from Centrelink although it appears this may have been an overpayment and she is paying this back.
46. Mr Swader said in evidence he thought the arrangement was strange but otherwise was not able to give much helpful evidence. He said they did not agree on any terms as to a repayment. He said Ms Smith had the money in cash in an envelope. He had been looking for a car but he had no money.
47. Ms Smith had been staying the night on the floor of the house of his ex-girlfriend Ms Shaw the night before and he and Ms Smith left together the next morning to look at the car. He does not recall if Ms Smith had drunk alcohol or used any drugs the night before. Ms Smith had been talking about hiring a vehicle that morning and it seems this arrangement was a substitute for a hire vehicle.
48. Mr Gilbert of M & D Autos says he recalls Mr Swader and Ms Smith enquiring about the Magna but also says Mr Fox was there.<sup>36</sup> He says he doesn't recall the conversation about selling the car but remembers he dropped the price a little.<sup>37</sup> He says sometime after lunch they came back and Tonk (Ms Smith) had the cash even though Mr Swader was buying the car.<sup>38</sup> Mr Gilbert reports once he received the cash he handed over the keys and the roadworthy certificate and they left. He does not recall who was driving.<sup>39</sup>
49. Mr Qualischefski told QPS that at about 10am on the day of the crash Tonk (Ms Smith) came to his girlfriend's place to tell him she had got a new car and asked if he wanted to go celebrate with her.<sup>40</sup> He says, Ms Smith said she would shout a

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<sup>31</sup> Exhibit B3, p7

<sup>32</sup> Exhibit B3, p7

<sup>33</sup> Exhibit C12, p1

<sup>34</sup> Exhibit C19, 3

<sup>35</sup> Exhibit C19, p6

<sup>36</sup> Exhibit C29, p1

<sup>37</sup> Exhibit C29, 1

<sup>38</sup> Exhibit C29, 2

<sup>39</sup> Exhibit C29, p2

<sup>40</sup> Exhibit C17, p1



few drinks.<sup>41</sup> Mr Qualischefski says he and Ms Smith went to O'Mara's pub and had a few drinks as they had to wait until midday for the car to be ready.<sup>42</sup> Mr Qualischefski recalls Foxy (Mr Kodey Fox) turned up at the pub at about midday and that he snuck him a few beers (Mr Fox was 17).

50. Mr Swader says as the car was unregistered but had a road worthy he decided to get the car registered at the Courthouse. He says he found Ms Smith at O'Mara's pub and told her he would go to the Courthouse at about 1.30pm.<sup>43</sup> Ms Smith reports she gave Mr Swader the money for the registration when he came to O'Mara's pub.<sup>44</sup>
51. Mr Swader says Ms Smith went to the Courthouse and then she and Mr Swader left to get some screws from the hardware shop to fasten the registration plates to the car.<sup>45</sup> As they did not have a screw driver they returned to O'Mara's pub and used a knife to fasten the plates to the car. Mr Swader says after the plates were on Ms Smith asked to borrow the car and that he could hardly say no.<sup>46</sup> Mr Swader states "*I could not smell alcohol on Tanya's breath and she did not seem pissed*".<sup>47</sup> Ms Smith has confirmed in her Record of Interview she went to the Courthouse and then to the hardware shop to get screws for the number plates.<sup>48</sup>
52. Ms Sharon Goyen, a bar attendant at O'Mara's Hotel has confirmed Ms Smith attended the bar somewhere between 10.30 and 11am in the company of Mr Fox and Mr Qualischefski as well as some other regulars.<sup>49</sup> Ms Goyen says she only knows Ms Smith as 'Tonk'.<sup>50</sup> She was not a frequent patron but she had been there before and was known around town. Ms Goyen has reported whilst Ms Smith came and went from the bar, she estimates she saw Ms Smith have at least six Bloody Mary schooners (one nip of vodka per drink).<sup>51</sup> This was up until 2.30pm when Ms Goyen says Ms Smith left the pub with Mr Fox and Mr Qualischefski.<sup>52</sup> Ms Goyen says that whilst Ms Smith would have been over the limit she did not appear to be intoxicated.<sup>53</sup> Ms Goyen has confirmed she was the only bar attendant on that day and that she personally made Ms Smith's Bloody Marys.<sup>54</sup>
53. In her evidence Ms Goyen said she was confident Ms Smith had between six and seven Bloody Marys in a four-hour period. She recalled there would have been four bottles of tomato juice in the bar fridge and she had to go and get some more bottles later that day for Ms Smith's drinks. She did not consider Ms Smith was intoxicated in that she was not slurring or stumbling around, as she had seen from her in the past. She recalls the other two with her would have had a few more drinks than Ms Smith. She recalls Mr Qualischefski was drinking VB schooners and Mr Fox was drinking Jamiesons on ice.

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<sup>41</sup> Exhibit C19, p1

<sup>42</sup> Exhibit C17, p1

<sup>43</sup> Exhibit C12, p2

<sup>44</sup> Exhibit C19, p6

<sup>45</sup> Exhibit C12, p2

<sup>46</sup> Exhibit C12, p2

<sup>47</sup> Exhibit C12, p2

<sup>48</sup> Exhibit C19, p8

<sup>49</sup> Exhibit C9

<sup>50</sup> Exhibit C9

<sup>51</sup> Exhibit C9

<sup>52</sup> Exhibit C9

<sup>53</sup> Exhibit C9

<sup>54</sup> Exhibit C9

54. Mr Qualischefski estimates he had about four cans of bourbon and about two schooners of VB. He says he was “*pretty hammered*” by the time he left.<sup>55</sup> Further, Mr Qualischefski estimates Ms Smith had about three Bloody Marys whilst they were at the pub and states “*She wanted to be sober because she had to drive*”.<sup>56</sup> He reports that Mr Fox, Ms Smith and he left the pub at about 1pm.<sup>57</sup> Ms Smith has been unable to confirm how much Mr Qualischefski had to drink, or whether Mr Fox was drinking.<sup>58</sup> Mr Qualischefski told Snr Constable De Percy at the scene that they had been drinking but did not otherwise qualify this.
55. Ms Smith estimates in her Record of Interview (ROI) she had one or two Bloody Marys but got them in the big glasses (schooner) so the vodka was really diluted. In her record of interview with QPS, she states “*Because I knew I was going to be driving so, and I already had a couple of charges for that, that I had yet to face so I didn't want to push my luck*”.<sup>59</sup>
56. In evidence Ms Smith says she may have had a few drinks the night before but it was one or two as it was a quiet night. She agreed it could have been up to four or five drinks of spirits. There is no evidence to the contrary before the Court. She stated there was no way she would have had up to or over six Bloody Marys at O'Mara's although in general her evidence was that she could not remember the day much at all. She justified her evidence on this point on the basis she was going to drive and she had other charges for drink driving pending and wanted to be careful.
57. Ms Nicole Leahy is a bar attendant at the Stanthorpe Hotel (Top Pub). She has reported that sometime around 3pm on 29 June 2010 whilst she was working in the bottle shop she recalls Tonka (Ms Smith) buying a cube of 24 Jim Beam cans and a packet of cigarettes.<sup>60</sup> Ms Leahy says she did not see anyone else get in the car or note that Ms Smith was drunk or that she had been drinking. She says Ms Smith “*drove off like a lunatic like she always does. By this I mean, she accelerated quickly as if she was trying to do a burnout*”.<sup>61</sup>
58. Mr Qualischefski's recollection is that he and Mr Fox got a carton of Jim Beam from O'Mara's Bottle-O and put them on the backseat of the Magna.<sup>62</sup> Ms Smith says that she stopped at the Top Pub bottle shop and bought Mr Qualischefski and Mr Fox a case of Jim Beam.<sup>63</sup>
59. Ms Diann Marshall an employee of the Caltex Service Station on the New England Highway at Applethorpe says she recalls the Magna pull into the driveway shortly before 2.15pm (she was due to finish her shift at this time).<sup>64</sup> She observed a female driver, a male in his late teens in the front passenger seat and another male in his early 20s in the back seat.<sup>65</sup> She says she saw the male who had been sitting in front pumping petrol into the car with a can of Jim Beam

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<sup>55</sup> Exhibit C17, p1

<sup>56</sup> Exhibit C17, p1

<sup>57</sup> Exhibit C18, p2

<sup>58</sup> Exhibit C19, p8

<sup>59</sup> Exhibit C19, p7

<sup>60</sup> Exhibit C11, p1

<sup>61</sup> Exhibit C11, p2

<sup>62</sup> Exhibit C17, p2

<sup>63</sup> Exhibit C19, p9

<sup>64</sup> Exhibit C28, p1

<sup>65</sup> Exhibit C28, p1

on top of the roof.<sup>66</sup> She says the other young man came into the shop and in her opinion he was visibly intoxicated.<sup>67</sup>

60. Ms Marshall says she remembers the driver driving off in a hurry and she said to one of the other employees *"At that speed, the way she left the service station, she won't get too far"*.<sup>68</sup>
61. From the closed circuit television video footage of the service station it is difficult to establish whether Ms Smith, Mr Qualischefski, and Mr Fox are portraying any signs of intoxication. The Jim Beam can is visible on the roof of the car but it is not possible to establish the speed at which the car leaves the service station.<sup>69</sup>
62. Ms Smith says she does not recall where she was heading after leaving Stanthorpe but says one of her children said she was going to Warwick for shopping.<sup>70</sup> There was some evidence they may have been going to the Coast. Ms Smith recalls the beach being mentioned but was not sure it was a definite plan. In response to why Mr Qualifischefski and Mr Fox were with her in the car, she states, *"I always hung around with them. Danny, he is like my best friend."*<sup>71</sup>

### **Evidence at the scene of Ms Smith's alcohol consumption and efforts to obtain an Alcohol and Blood Sample from Ms Smith**

63. Mr Daniel Wood an auxiliary fire-fighter has reported the smell of alcohol on Ms Smith's breath. He states *"I also noticed the casualty was wearing an oxygen mask which she pulled away from her face while I was explaining to her what we were doing. She breathed out heavily and I could smell an extremely strong smell of alcohol on her breath"*.<sup>72</sup> Further he says, *"While I was explaining what was going on, it seemed like she was trying to respond to what I was saying but it was not anything that I could really make out. She was mumbling quietly."*<sup>73</sup> He said in evidence that he was directly in front of her face and 20 cms away when he smelt the alcohol.
64. Mr Paul Blaxland a witness who arrived on the scene shortly after the crash says he tried to talk to the young female driver (Ms Smith) to see if she was okay. She asked him what had happened and he responded by saying *"you hit a car head on"*. She asked *"get me out of here"* a couple of times.<sup>74</sup> Mr Blaxland says that when she turned to him he got a strong smell of alcohol on Ms Smith's breath.<sup>75</sup>
65. QAS Intensive Care Paramedic, Cameron Lutz says he was working as the flight paramedic out of Archerfield. On his arrival to the scene he was directed to treat Ms Smith. He says he recalls what he believes to have been the smell of liquor on Ms Smith's breath.<sup>76</sup> When he smelt the alcohol he was treating her and his face was only a few inches from her face.

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<sup>66</sup> Exhibit C28, p1

<sup>67</sup> Exhibit C28, p2

<sup>68</sup> Exhibit C28, p2

<sup>69</sup> Exhibit J2

<sup>70</sup> Exhibit C19, p10

<sup>71</sup> Exhibit C19, p10

<sup>72</sup> Exhibit C8, p2

<sup>73</sup> Exhibit C8, p3

<sup>74</sup> Exhibit C9, p2

<sup>75</sup> Exhibit C9, p2 and transcript

<sup>76</sup> Exhibit C31, p2

66. QAS Patient Transport Officer (PTO) Julie Clark noted in her statement a strong smell of alcohol as she approached the vehicle. In her evidence and consistent with her contemporaneous notes made the next day<sup>77</sup> she said she noticed a strong smell of liquor on her breath and she was close to her when examining her and the smell was unmistakable.
67. Senior Constable Hauff says he attempted to obtain a breath test from Ms Smith. He says in giving the direction to Ms Smith, he thought her response was something like “fuck off”. He did not have the opportunity to follow through in obtaining the sample.<sup>78</sup>
68. QAS PTO Julie Clark says she and her partner, Alan Fisher were the first QAS personnel on the scene. Ms Clark was of the opinion QPS could have taken a sample as Ms Smith did not have any difficulties breathing or other injuries other than her leg being entrapped.<sup>79</sup> QAS Intensive Care Paramedic, Cameron Lutz says he is of the opinion Ms Smith’s condition did not allow for the collection of a blood/breath sample. He says this was based upon the possibility she had suffered a serious injury as a result of the motor vehicle impact.<sup>80</sup> I accept that it was a reasonable decision to not require Ms Smith to undertake a blood sample at the scene.
69. A blood sample was taken from Ms Smith at the Royal Brisbane Emergency Department at 11.58pm on 29 June 2010. The results are recorded as Diazepam 0.05 mg/kg; Nordiazepam 0.17 mg/kg; Morphine 0.03mg/kg; and Total Morphine 0.18mg/kg.<sup>81</sup>
70. Ms Smith advised an ICU Registrar on 30 June 2010 that she had a history of alcohol abuse and that she was seeing some local services in Stanthorpe. She advised the Doctor she had a light beer prior to driving the car.<sup>82</sup> Further she admitted to a history of IV drug abuse and says she last used one month prior to the crash and that her use was usually associated with binge drinking.<sup>83</sup>
71. The QPS investigating officer sought an opinion from a Forensic Medical Officer concerning the toxicology results. In doing so he advised when Ms Smith was extricated from her vehicle an official requirement was made however a sample was not obtained prior to her being flown by helicopter to the Royal Brisbane and Women’s Hospital due to the seriousness of her injuries.<sup>84</sup>
72. The Forensic Medical Officer advised the finding of morphine can be adequately explained with what Ms Smith was administered in treating her for her injuries after the crash. Further, he advised the diazepam and nordiazepam were likely to have been consumed a good deal prior to the crash but the quantity is insufficient on its own to assert a person would be unfit to drive.<sup>85</sup>

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<sup>77</sup> Exhibit C21.1

<sup>78</sup> Exhibit C2

<sup>79</sup> Exhibit C21, p2

<sup>80</sup> Exhibit C31, p2

<sup>81</sup> Exhibit B7

<sup>82</sup> Exhibit B11, p115

<sup>83</sup> Exhibit B11, p115

<sup>84</sup> Exhibit B7.1

<sup>85</sup> Exhibit B7.2

## First Aid and Medical Treatment

73. QAS paramedics attended the crash scene and transported Mr Thompson, Mrs Thompson and Mr Qualischefski to the Stanthorpe Hospital.<sup>86</sup> Mr Fox was transported to the Warwick Hospital.
74. Mr Thompson complained of pain in the right rib area, right hip, and right ankle. His Glasgow Coma Scale (neurological assessment) remained at 15 at all times (highest score possible).<sup>87</sup>
75. Mr Qualischefski complained of pain in his right hand and the right side of his chest.<sup>88</sup> His GCS remained at 15 at all times.<sup>89</sup>
76. QAS paramedics at the scene assessed Mr Fox. The reporting paramedic states "...strong smell of alcohol noted on pt's breath. pt is alert with obtunded behaviour and somewhat confused. pt. states he had "a lot to drink" pt. also states he has been smoking cannabis. Pt. does not remember the RTC and does not know how he ended up on the side of the road...".<sup>90</sup> Mr Fox had suspected abdominal bleeding with a GCS of 14. He was transferred from the scene to the Warwick Hospital and then on to the Princess Alexandra Hospital by helicopter.<sup>91</sup>
77. Mrs Thompson was extricated from the Rav 4 by bystanders and had no loss of consciousness. She was assessed to have a GCS of 15. Further, the initial assessment identified she had a fracture to the sternum, multiple soft tissue injuries and bruising/haematoma to the left clavicle, sternum and right breast area.<sup>92</sup>
78. Mrs Thompson was assessed to have "*query uncontrolled bleeding from her abdomen/pelvis from thoracic blunt trauma*".<sup>93</sup> A videoconference from the Stanthorpe Emergency Department and the QAS was held. It was agreed to transfer Mrs Thompson to Brisbane on the same helicopter as Ms Smith (it was redirected in mid air back to the Stanthorpe Hospital before going to Brisbane).<sup>94</sup>
79. QAS paramedics attended on Ms Smith who was trapped by her lower limbs in the Magna. Whilst she complained of chest and abdominal pain she was reasonably stable.<sup>95</sup> At times during neurological assessments, Ms Smith was noted to be confused.<sup>96</sup> On the arrival of the helicopter the medical officer and flight paramedic took over her care.<sup>97</sup>
80. At approximately 6pm, Brisbane QAS paramedics transported Ms Smith from the Emergency Management Queensland ('EMQ') base at Archerfield to the Royal Brisbane Hospital.<sup>98</sup> They were advised she had been administered pain relief

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<sup>86</sup> Exhibit B6.2, p 4; Exhibit B6.3, p6; Exhibit B6.4, p1

<sup>87</sup> Exhibit B6.2, p1

<sup>88</sup> Exhibit B6.3, p1

<sup>89</sup> Exhibit B6.3, p3

<sup>90</sup> Exhibit B6.4,p2 and Exhibit C25

<sup>91</sup> Exhibit B6.4,p4

<sup>92</sup> Exhibit B6.1; and Exhibit C25

<sup>93</sup> Exhibit B6.1

<sup>94</sup> Exhibit B6.1; and Exhibit B10

<sup>95</sup> Exhibit B6, p3

<sup>96</sup> Exhibit B6, p4

<sup>97</sup> Exhibit B6, p3

<sup>98</sup> Exhibit B6, p6

and her Glasgow Coma Scale remained 15 (highest rating) throughout the flight.<sup>99</sup> Under the heading 'Pre-Exist' it states: "*asthma; Alcohol Abuse Last Used Days ago*".<sup>100</sup>

81. Ms Smith was treated at the Royal Brisbane and Women's Hospital for spinal fractures to C6, L5, multiple rib fractures, fracture to her left medial clavicle; a fracture to her left pubic symphysis, and a fractured left ankle. Further, she had a laceration to her lower jaw, laceration to her tongue, laceration to her left knee and a peri orbital haematoma.<sup>101</sup> She discharged herself from hospital on 16 July 2010 against medical advice.<sup>102</sup>

### **Ms Smith's previous driving history**

82. Ms Smith had no drink driving offences in the previous five years prior to 2010. She was then charged with four offences within a six to eight month period, three of which were before the crash, and one after.<sup>103</sup>
83. A summary of the drink driving offences are:
- a. On 30 April 2010 at 11.30pm, charged and subsequently convicted of drink driving with a reading of 0.110;
  - b. On 12 June 2010 at 3pm, charged and subsequently convicted of drink driving with a reading of 0.126;
  - c. On 26 June 2010 just prior to midnight, charged and subsequently convicted of drink driving with a reading of 0.137; and
  - d. On 8 December 2010 at 1.15pm, charged and subsequently convicted of drink driving with a reading of .065.<sup>104</sup>
84. On 16 December 2010, Ms Smith pleaded guilty to the charges. She was disqualified from holding or obtaining a driver's licence for a period of five years. At the hearing, Ms Smith admitted she has an alcohol addiction and that she had been receiving counselling from Drug Arm, Stanthorpe.<sup>105</sup> At the inquest she admitted she had broken up from her partner at that time and was hitting the alcohol pretty hard.
85. In addition to the drink driving offences, Ms Smith has numerous other traffic offences including unlicensed driving.<sup>106</sup>

### **Mr Thompson's Driving History and Health History**

86. Prior to the crash Mr Thompson had been driving for approximately 60 years. He has never lost his licence and estimates he has had somewhere between 5 and 7

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<sup>99</sup> Exhibit B6, p7

<sup>100</sup> Exhibit B6, p7

<sup>101</sup> Exhibit B11, p111

<sup>102</sup> Exhibit B11, p61

<sup>103</sup> Exhibit C20, p1-6

<sup>104</sup> Exhibit C20, p4 and 5

<sup>105</sup> Exhibit C20, p1-2

<sup>106</sup> Exhibit D2

infringement notices for speeding over the 60 years.<sup>107</sup> He recalled an accident that happened 30 years previously after his car skidded on oil on the road just after another accident. His traffic records show five offences from 22 December 1989 to 4 June 2008. Three are for speeding, one is for failing to give way and the other is for parking in the opposite direction of traffic.<sup>108</sup>

87. Mr Thompson has a history of having cardiac bypass surgery eight or nine years ago and takes three medications daily for his heart which he has been on since the surgery. He denies any side effects from the medications.<sup>109</sup> There had not been any recent changes to his medication. Mr Thompson reports that he has never drunk alcohol or smoked.<sup>110</sup>

## Versions of Events

### Mr Thompson

88. Senior Constable De Percy was the first police officer to arrive at the scene. He spoke to Danny Qualishefski about what had happened but other than being told they had been drinking and he did not want to die got no other details.
89. Senior Constable De Percy asked Mr Thompson what had happened and was told that he had tried to avoid coming at him on his side of the road by going onto the other side but it came back and hit him head on. When telling him this Mr Thompson sounded forthright and he accepted he was saying exactly what had happened. None of the others were asked what had happened due to their injuries.
90. Senior Constable Hauff spoke with Mr Thompson at the scene prior to Mr Thompson being transported by QAS to the Stanthorpe hospital. This conversation was recorded. Mr Thompson says the other car was coming right over into his lane and he swerved but the driver of the other car swung straight into him. When asked questions concerning how far the other car came over into his lane, Mr Thompson stated *“right over...if I'd kept coming straight it would have been straight bang straight on...and I thought I'd swing that way cause he was over that far...and I thought I'd miss him but he just went straight into me”*.<sup>111</sup>
91. Senior Constable Hauff's partner, Constable Mackie also had a conversation with Mr Thompson. She says he told her *“We were driving in our lane when the other car came over onto our side of the road. To avoid the other car I swerved into the other lane but at the same time the other car swerved back into their lane too and they hit us”*.<sup>112</sup>
92. Mr Thompson says in his statement of 23 August 2011 to the QPS, *“Just after Brown Road, near where the first kangaroo statues are, I came over a rise and saw a car coming towards us. I saw it swerve over onto the incorrect side of the road, straight at us. It kept coming towards us, so in a split second I made the decision to swerve away from the other car. I swerved to the right, hoping that the other car would continue going straight ahead and pass by us. After I swerved away, the driver of the other car swerved back in front of me. I had nowhere to go*

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<sup>107</sup> Exhibit C32, p11

<sup>108</sup> Exhibit D1

<sup>109</sup> Exhibit C32, p13

<sup>110</sup> Exhibit C16, p3

<sup>111</sup> Exhibit C1.2 & C34

<sup>112</sup> Exhibit C2, p2

*and not time to react. I did not have time to jump on the brakes or anything. We collided head on”.*<sup>113</sup>

93. In the transcript of the electronic recorded formal interview with QPS on 17 September 2010, Mr Thompson describes the crash. He says as he came over the rise the Magna was travelling fast in its lane but then he saw it swerve approximately  $\frac{3}{4}$  to 1 metre into his lane. Mr Thompson thought if he darted to the other side of the road he would avoid Ms Smith however he says *“well she just came straight in on us. By what I could see. Yeah came straight in on us”.*<sup>114</sup> He says this all occurred within seconds.<sup>115</sup> In response to a question as to whether he braked when he first saw the Magna come on to his side of the road he states: *“Well look it happened that quick. You couldn’t do nothing. You couldn’t do nothing, no...I just swerved yeah, hoping that she would’ve went past”.*<sup>116</sup> In response to a question whether he considered swerving to the left he said *“Well I didn’t because I thought if she come at me that way, she would’ve rolled our car. And I thought if I come this way, well she’ll go straight past”.*<sup>117</sup>
94. Mr Thompson denies there were any obstacles on the road or that the sun was an issue.<sup>118</sup> He used to drive trucks before he retired and considers himself to be an excellent driver and usually travels just below the speed limit.<sup>119</sup> In this case he estimates he was travelling at about 95 km/hr.<sup>120</sup> He says he regularly drives in Stanthorpe and on longer trips. However, Mr Thompson advised he used to share the driving with Mrs Thompson on longer trips.<sup>121</sup>
95. In his evidence Mr Thompson stated that as he was driving he was chatting to his wife about the garden and other things. He was not distracted by anything in the car or on the road. He was not feeling drowsy. As he came over the hill he saw the other vehicle in its lane and then it pulled over into his lane. It was not a jerky movement and seemed to be that she meant to do it. She was in the middle of the lane with a metre on either side of the white centre line and the kerb line. He made a spur of the moment decision to pull over into the right lane on the basis if the car stayed there she would miss them. He thought about going left but there was long grass and he was not sure what was there. He was not able to put on the brakes as it was that sudden and there was a bang. He did not see the other vehicle move back into her lane. Mr Thompson is still distressed about the events of that day and clearly misses his wife.
96. Mr Shane Ward and his employee Mr Michael Meharg were travelling towards Warwick when they saw a plume of smoke approximately one kilometre away towards Warwick. They came around a corner and noted the crash. They were the first to arrive to the scene.<sup>122</sup> Mr Ward says he rang triple 0 and then they tried to help as best they could.<sup>123</sup> Both of them stayed at the scene for some hours. They attended to a number of the occupants of the vehicles but other than hearing what Mr Thompson said they did not hear any versions from the other

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<sup>113</sup> Exhibit C16, p2

<sup>114</sup> Exhibit C32, p18

<sup>115</sup> Exhibit C32, p18

<sup>116</sup> Exhibit C32, p20

<sup>117</sup> Exhibit C32, p20

<sup>118</sup> Exhibit C15, p2

<sup>119</sup> Exhibit C15, p1 and 2

<sup>120</sup> Exhibit C32, p14

<sup>121</sup> Exhibit C16, p2

<sup>122</sup> Exhibit C4, p1

<sup>123</sup> Exhibit C6, p1



occupants. They disconnected the batteries to each vehicle because of the risk of fire and put out the fire in the Magna with water and soft drink from their own vehicle and started directing traffic.

97. Mr Ward said the elderly male driver (Mr Thompson) kept saying "*the mongrels, the mongrels, they caused this*". He reports when he later spoke with Mr Thompson he said words to the effect: "*I will tell you what happened, they come on to my side of the road, I've corrected to try and miss them and she's corrected, came back on to the right side of the road and boom we hit*" or words to that effect.<sup>124</sup>
98. Mr Meharg says when he approached the elderly male driver (Mr Thompson) and managed to open his car door, Mr Thompson said "*Those mongrels, those mongrels*".<sup>125</sup> Mr Meharg says he overheard Mr Thompson talking with Mr Ward and heard Mr Thompson say words to the effect "*she was on the wrong side of the road, we have gone to the other side, she corrected and we hit head on*".<sup>126</sup> Mr Meharg spoke to Daniel Qualischefski and realised he knew his father from many years previously and got a telephone number and called him to tell him what was happening. He asked Danny what had happened but he said he could not remember. He spoke to him 2 to 3 weeks later and asked again but he would not tell him.
99. The third witness to the scene was Ms Kathleen Newell.<sup>127</sup> She says she went over to the Rav 4 and saw the male driver and asked if he was alright, she recalls he said something like, "*I tried to get away from them. They kept coming at me. I don't know what they were trying to do*".<sup>128</sup> Ms Newell assisted Mrs Thompson out of the Rav 4 to her own car to wait until the ambulance arrived. She says she comforted Mrs Thompson but thought she was in shock because she wasn't saying much.<sup>129</sup> Mrs Newell also went over to the vehicle that Ms Smith was trapped in. She saw alcohol everywhere in the car but did not get close enough to smell anything. Ms Smith was screaming out to get her out of the car.
100. Mr Paul Blaxland, a further witness to the scene says he spoke with the old man (Mr Thompson) who said words to the effect "*She drove onto my side of the road and then came straight at me as if she was going to ram me. I went to the other side of the road. She would have missed me if she stayed there but she didn't. She pulled back over again*".<sup>130</sup> He got the impression Mr Thompson was saying this in a matter of fact manner and not trying to justify the fact his vehicle was on the wrong side of the road.
101. QAS paramedic John Hickson who was caring for Mr and Mrs Thompson whilst they were being transferred to Stanthorpe Hospital says in response to asking Mr Thompson how the crash occurred, Mr Thompson said "*I saw the car move onto my side of the road and I moved over to avoid hitting the car then she (the driver of the other vehicle – Ms Smith) looked up and moved back [to her side of the road] and then we hit head on*".<sup>131</sup>

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<sup>124</sup> Exhibit C6, p 2

<sup>125</sup> Exhibit C7, p2

<sup>126</sup> Exhibit C7, p3

<sup>127</sup> Exhibit C13, p1

<sup>128</sup> Exhibit C13, p2

<sup>129</sup> Exhibit C13, p2

<sup>130</sup> Exhibit C9, p2

<sup>131</sup> Exhibit C35

## Mrs Thompson

102. Mrs McPaul, another witness to the scene says when they arrived, she and her husband Ossie recognised the Rav 4 as being the Thompson's car. She says she knew Bruce and Grace Thompson as they were in the same social club in Stanthorpe.<sup>132</sup> Mrs McPaul reports she saw Mrs Newell assisting Mrs Thompson out of the passenger side of the car. Mrs McPaul says whilst Mrs Newell went to bring her car closer for Mrs Thompson to sit in, Mrs Thompson said "*Marie, they were coming straight at us*".<sup>133</sup> Mrs McPaul says as the ambulance and police had been called and other people were there they departed the scene.<sup>134</sup> Mrs McPaul did not give a statement until 6 February 2011 after she had been asked to do so by Mrs Thompson's family. She had told some of them on the day of the crash that she had spoken to Mrs Thompson at the scene. She was clear about the words used by Mrs Thompson and she took it to mean the other vehicle was on the wrong side of the road.

## Ms Smith

103. Ms Smith participated in a formal record of interview with QPS on 18 February 2011.<sup>135</sup> She says she has very limited memory of the crash or after the crash. She however does remember looking down at her speedo and then seeing a flash of blue.<sup>136</sup> Ms Smith reports she made sure she was "*doing 100 all the way*".<sup>137</sup> Further, she says she was not driving erratic and that she was sober.<sup>138</sup> In relation to her speeding she said she was doing 100 kmh as she always checks her speedo, as it is "something you do."
104. In response to her memory of the crash she says she was on her side of the road when she checked the speedo but does not recall the impact.<sup>139</sup> In response to a question from the QPS investigating officer '*Do you recall any vehicles behind you or passed going the opposite direction*', Ms Smith states "*No, no I remember seeing the car that hit me, like coming towards me, like up ahead. Like you know how you can see in the distance, you might see up ahead. I remember seeing the car coming towards me and I'm guessing that was it. It was just all so quick*".<sup>140</sup> Ms Smith denies there were any animals on the road, denies taking any illicit drugs, and says the sun wasn't bad.<sup>141</sup>
105. QAS Intensive Care Paramedic Lutz says during his care for Ms Smith at Stanthorpe (this was whilst the flight doctor attended to Mrs Thompson in the Stanthorpe Hospital) Ms Smith became lucid with a GCS of 15 and oriented to person, time and place.<sup>142</sup> He says Ms Smith told him she had been drinking with friends that afternoon and she had elected to drive. He says Ms Smith stated to him she "*shouldn't have driven*".<sup>143</sup> Further, he recalls she stated that the car was new to her and she was driving fast. Mr Lutz says Ms Smith described to him how she liked to impress her friends and take a lead role. He recalls Ms Smith's

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<sup>132</sup> Exhibit C14, p1

<sup>133</sup> Exhibit c15, p2

<sup>134</sup> Exhibit C14, p3

<sup>135</sup> Exhibit C19

<sup>136</sup> Exhibit C19, p4

<sup>137</sup> Exhibit C19, p11

<sup>138</sup> Exhibit C19, p11

<sup>139</sup> Exhibit C19, p11

<sup>140</sup> Exhibit C19, p11

<sup>141</sup> Exhibit C19, p13 and 14

<sup>142</sup> Exhibit C31, p2

<sup>143</sup> Exhibit C31, p3

recollection of the actual crash was poor in that she wasn't sure what had happened.<sup>144</sup>

106. Ms Smith agrees there is no reason why emergency services personnel would lie although she does not recall that conversation. In relation to the suggestion she would impress her friends she said that was correct but if she did burnouts in her car it would be in a paddock. She agreed she had a heavy foot and took off quickly. She denied she was speeding over 100kmh, was showing off and was not concentrating.
107. Ms Smith said she had no memory of swerving despite it being put to her that this is what Mr Qualifsheski told the QAS officer Clark. She also denied she did so to miss anything on the road.
108. I accept Ms Smith did suffer from serious injuries but there is no evidence this included any head injuries. She states she has little recollection of the events and that may or may not be true. What she does say at the scene is that she had been drinking, which was true and that she liked to impress her friends, which she admitted in evidence, was true. There is no reason to suggest her other statements made at the time that she should not have been driving and she was going fast should otherwise not be accepted as reliable.

#### **Mr Fox**

109. Mr Fox says he has little memory of the lead up to the crash and does not remember anything about the day of the crash.<sup>145</sup> He has stated Mr Qualischefski is a friend of his and whilst he had known of Ms Smith he had only got to know her through Mr Qualischefski in the months leading up to the crash.<sup>146</sup> He says whilst he was in hospital he received a call from Ms Smith asking how he was and that at some stage in the conversation she stated "*Well I know I am immortal now*".<sup>147</sup> Mr Fox has advised Ms Smith did not apologise or indicate who was at fault in the crash.<sup>148</sup>
110. Mr Fox says once he got home from the Princess Alexandra Hospital he received a call from Mr Qualischefski who kept saying '*I'm sorry*' and that it was his fault Mr Fox was in the car. Mr Fox says in response to the call from Mr Qualischefski he said he had to go and hung up. As at 10 February 2011, he says he has not accepted any other calls or spoken to Mr Qualischefski.<sup>149</sup>
111. In his evidence Mr Fox was unable to add to what he had said previously although he did now have some recollection of the motor vehicle being purchased and being at the Police station. It is accepted he suffered serious injuries at the time and it may well be his memory lapse is genuine.
112. QAS Advanced Care Paramedic ('ACP') Michael Arazie who was treating Mr Fox said Mr Fox had said he had had a lot to drink and had been smoking cannabis prior to the crash.<sup>150</sup> ACP Arazie says Mr Fox had a strong smell of alcohol on his

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<sup>144</sup> Exhibit C31, p3

<sup>145</sup> Exhibit C18, p1

<sup>146</sup> Exhibit C18, p1

<sup>147</sup> Exhibit C18, p2

<sup>148</sup> Exhibit C18, p2

<sup>149</sup> Exhibit C18, p2

<sup>150</sup> Exhibit C25

breath.<sup>151</sup> Mr Fox does not recall saying this. He agreed that he had smoked cannabis in the past with Danny Qualishefki but only when they were younger.

113. Further, ACP Arazie said he asked Mr Fox about the crash, Mr Fox said he did not remember anything about the crash, or how he ended up along side of the road in a ditch which is where he was initially found.<sup>152</sup> In his evidence he says he recalls a blue flash and being in grass and having his clothes cut off him. He says Ms Smith does accelerate fast when starting but does not recall any history of doing burnouts.

#### **Mr Qualishefski**

114. Mr Qualishefski reports that most of the time Ms Smith was driving he was turned around talking with Mr Fox who was in the back of the car. Up until approximately five minutes before the crash he was not wearing a seatbelt but finally put it on after insistence by Mr Fox.<sup>153</sup> Mr Qualishefski says he did not see the Rav 4 until it was right in front of them and heading towards them.<sup>154</sup> Whilst he says he was “as pissed as” he does not recall Ms Smith driving erratically or swerving over the road. Further, he says he does not know if she was speeding because he wasn’t paying attention.<sup>155</sup>
115. Mr Qualishefski was not particularly helpful in the course of giving evidence although he remembered parts of the morning and drinking at O’Mara’s. He would have been “pissy” but agreed if he had six or so alcohol drinks this would not be too many for him. He said it would not be unusual for him to not wear a seat belt. He would have been drinking a Jim Beam can. He agreed that in his statement he said he put the seat belt on about 5 minutes from the accident and this would make it less likely he was only facing back towards Mr Fox. He recalls putting his seat belt on and then saw the head lights from the other vehicle not far and the crash. He could not recall but Ms Smith could have been showing off and swerving. He agrees that whatever was put in his statement would be more reliable than his current recollections. His evidence at the inquest was redolent with answers such as it is “possible”, “could have or could be”, or “maybe”.
116. QAS PTO Julie Clark says she and her partner transported Mr Qualishefski to the Stanthorpe Hospital. Although her statement was not prepared until September 2011 she made notes of the events the next day.<sup>156</sup> She was with Mr Qualishefski for over an hour monitoring him in the back of the ambulance vehicle. His voice was slurred but could be easily understood. He was at times agitated. His condition did not change during the period he was with her. He did not have any serious injuries in her opinion.
117. In her statement QAS PTO Clark said he disclosed to her that he had a few drinks before going driving in the car. Ms Clark states “*The only thing Mr Qualishefski stated to me in relation to the incident was that he looked up and saw the Thompson’s car in front of them. He recalled Ms Smith swerving back to the left side of the road*”.<sup>157</sup>

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<sup>151</sup> Exhibit C25

<sup>152</sup> Exhibit C25, p1

<sup>153</sup> Exhibit C17, p2

<sup>154</sup> Exhibit C17, p2

<sup>155</sup> Exhibit C17, p2

<sup>156</sup> Exhibit C21.1

<sup>157</sup> Exhibit C21, p3

118. In evidence Ms Clark explained that when she prepared her statement she went from memory. Then about a month before the inquest she found her contemporary notes on her computer. She is confident the notes would be more accurate. She states that Danny told her he had been drinking and he only put his seat belt on around 100 metres prior to the impact. He stated that Tanya had swerved onto the incorrect side of the road prior to the impact to avoid something. Ms Clark asked him if he meant a kangaroo or rabbit or was it a rock. He stated he did not know why she had swerved onto the wrong side of the road.
119. It is apparent from the evidence of Mr Qualischefski that his injuries were not serious and there is no reason to suggest any injuries at the time would make unreliable anything he had to say at the scene. His unreliability at the inquest had a distinct impression of using the crash as a convenience to explain his memory loss. He was in my view being deliberately evasive.

## Autopsy findings

120. An external and partial internal autopsy performed by Dr Beng Ong, an experienced forensic pathologist, on 1 July 2010 confirmed the cause of Mrs Thompson's death as haemorrhage resulting from chest and abdominal injuries sustained in a motor vehicle collision.<sup>158</sup> Dr Ong considered Mrs Thompson's injuries were consistent with the circumstances of the collision.
121. He noted Mrs Thompson had hypovolaemia due to blood loss. He considered the blood loss was probably due to the combination of multiple fractures of the chest cage, superficial lacerations of the liver and lacerations of the spleen. Dr Ong comments the bleeding could be slow and this might explain why Mrs Thompson's condition was initially stable. Dr Ong advises the bleeding would have continued resulting in hypovolaemic shock, which despite resuscitation, was irreversible.<sup>159</sup>
122. The cause of death is stated as:
- 1(a) *Haemorrhage, due to, or as a consequence of*
  - 1(b) *Chest and abdominal injuries, due to, or as a consequence of*
  - 1(c) *Motor vehicle collision.*<sup>160</sup>

## Conclusions about the Issues

### **How the collision occurred which will involve exploring the conduct of each of the drivers and establishing whether Ms Smith was affected by alcohol during the crash:**

123. The evidence has demonstrated more probably than not that Tanya Smith was driving her vehicle whilst her blood alcohol level was over the legal limit of 0.05%. It is not possible to be otherwise more specific as to the level. All witnesses, including Ms Smith agree she had been drinking alcohol that day. The evidence of the bar attendant would point to six or seven Bloody Marys over a four hour period and there are a number of emergency services personnel and a bystander

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<sup>158</sup> Exhibit A4

<sup>159</sup> Exhibit A4.1, p6

<sup>160</sup> Exhibit A4.1, p6

who smelt a strong smell of alcohol on her breath as distinct from any smell of alcohol from split cans of bourbon in the vehicle.

124. I am also satisfied to a high standard of proof that Ms Smith drove her vehicle onto the wrong side of the road as it was approaching the vehicle driven by Mr Thompson. There is no evidence to suggest this was as a result of swerving to avoid something on the road. Mr Thompson then took evasive action and swerved into the northbound lane but Ms Smith corrected her driving and swerved back into what was her correct lane. The collision was inevitable.
125. In making this finding I accept the evidence of Mr Thompson in its entirety. Although it was consistent with the version given to numerous witnesses at the scene and later to QPS who corroborated his version of events, I formed the very clear impression he was simply telling the truth without consideration of the evidence of prior consistent statements. His version is consistent with the one version of Mrs Thompson.
126. Ms Smith's evidence, as was that of Mr Fox and Mr Qualischefski, is unreliable given their apparent memory losses whether genuine or by convenience. Hence there is no compelling or opposing evidence that contradicts the evidence of Mr Thompson.
127. What we do have is the evidence of two witnesses at the scene who attest as to what they were told by two of the three people who were in a position to know what happened. Ms Smith told a QAS officer she had been drinking and should not have been driving. She said she was driving fast. Mr Qualischefski told a QAS officer Ms Smith had swerved onto the incorrect side of the road. These versions are consistent with Ms Smith swerving onto the wrong side of the road for some unknown reason, that she had been drinking before the accident and she was driving fast.

**The adequacy of the QPS and Queensland Ambulance Service ('QAS') policies and procedures currently in place concerning taking blood samples for alcohol and drug analysis when a driver is trapped in a vehicle for a lengthy period.**

128. I have sought information from both the QPS and QAS concerning their policies on drug and alcohol testing in the context of a trapped driver.
129. A report was prepared by Senior Sergeant Peter Carmichael, Breath Analysis State Support. Senior Sergeant Carmichael has advised as a result of amendments to sections 79 and 80 of the *Transport Operations (Road use Management) Act 1995* (TORUM) parts of Chapter 7 of the QPS Traffic Manual dealing with breath and blood specimens have been cancelled and are replaced with the Commissioner's Circular 11/2011. The contents of the circular are to be incorporated into the next version of the QPS Traffic Manual.
130. The new provisions include:
  - a. The introduction of a new middle alcohol limit offence for drink driving offenders with a blood/breath alcohol concentration of 0.100 or above but less than 0.150;
  - b. The provision for offenders charged with the middle alcohol limit offence to have their driver licence immediately

suspended, or if they are unlicensed, immediately disqualified from obtaining a driver licence;

- c. An increase in the maximum time allowed to obtain a breath and/or blood specimen for analysis from two to three hours; and
  - d. Allowing the detaining/arresting officer to conduct their own breath analysis.
131. According to s80 of TORUM there is no time restriction in which to make a requirement for a breath or blood specimen when a person is under arrest, however the result is conclusive evidence only if the specimen was provided within three hours (two at the time of the crash).
132. Senior Sergeant Carmichael concluded given the restrictions placed on police by the legislation and the particular circumstances surrounding the event which gives rise to a requirement for a specimen of breath or blood, it is likely there will be occasions when it is not possible to obtain a lawful breath/blood specimen.<sup>161</sup>
133. The Medical Director of QAS has confirmed the QAS does not have any policy and procedure concerning taking breath and/or blood samples. He has advised “QAS field blood collection is not a viable proposition and mandatory blood collection should occur following assessment in the emergency department. Patients not transported by the QAS are suitable for QPS breath testing”.<sup>162</sup>

## Recommendations

134. 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.
135. Based on the evidence outlined, particularly considering changes to the drink driving laws, it is not considered there are any matters on which I could usefully comment upon or make recommendations.
136. I accept it has been difficult for Mr Thompson’s family to accept that the process for taking blood samples at the scene could not be simplified. The process at present is involved with a number of steps necessary to preserve the chain of evidence. This takes time away from those caring for patients and it is impracticable and in my view inappropriate to expect emergency personnel to undertake this task. In this case I accept the evidence of senior Police and Emergency Services personnel that even if a kit was available it was not possible or suitable in this case.

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<sup>161</sup> Exhibit G1, p3

<sup>162</sup> Exhibit H1, p2

137. Sergeant O'Dea and others had made arrangements for a blood sample to be taken once Ms Smith reached hospital, but in somewhat difficult circumstances this became impossible until over 8 hours later when any alcohol would have been metabolised.

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

138. Section 48(2) of the Act gives a coroner discretion to give information to the Director of Public Prosecutions if the coroner reasonably suspects a person has committed an indictable offence.
139. A relevant criminal offence in the circumstances of Mrs Thompson's death to be considered is s328A of the *Criminal Code Act 1899* 'Dangerous operation of a vehicle'.
140. Section 328(4) of the *Criminal Code Act 1899* states:

*A person who operates, or in any way interferes with the operation of, a vehicle dangerously in any place and causes the death of or grievous bodily harm to another person commits a crime and is liable on conviction on indictment –*

- (a) *to imprisonment for 10 years, if neither paragraph (b) nor (c) applies; or*
- (b) *to imprisonment for 14 years if, at the time of committing the offence, the offender is –*
  - (i) *adversely affected by an intoxicating substance; or*
  - (ii) *excessively speeding; or*
  - (iii) *taking part in an unlawful race or unknown speed trial; or*
- (c) *to imprisonment for 14 years, if the offender knows, or ought reasonably know the other person has been killed or injured, and the offender leaves the scene of the incident, other than to obtain medical or other help for the other person before a police officer arrives.*

141. The term 'operates, or in any way interferes with the operation of, a vehicle dangerously' means operate, or in any way interfere with the operation of, a vehicle at a speed or in a way that is dangerous to the public, having regard to all the circumstances, including:

- (a) the nature, condition and use of the place; and
- (b) the nature and condition of the vehicle; and
- (c) the number of persons, vehicles or other objects that are, or might reasonably be expected to be, in the place; and
- (d) the concentration of alcohol in the operator's blood or breath; and
- (e) the presence of any other substance in the operator's body.

142. The elements of the offence are, the accused:

- (1) operated, or in any way interfered with the operation of, a vehicle;
- (2) dangerously;
- (3) in any place; and
- (4) caused the death of or grievous bodily harm to another person.



143. The circumstances of aggravation are:
- (1) whilst adversely affected by intoxicating substance; or
  - (2) whilst excessively speeding; or
  - (3) whilst taking part in an unlawful race or unlawful speed trial; or
  - (4) knowing, or ought reasonably to have known, the other person had been killed or injured, left the scene of the incident other than to obtain medical or other help for the other person before a police officer arrives.
144. An offence of dangerous driving does not require proof of criminal negligence.<sup>163</sup> The proper test to be applied in the case of dangerous driving is an objective test.<sup>164</sup> That is, the accused person's mind is not relevant. It is whether in all the circumstances the driving was in fact dangerous.<sup>165</sup> Further, there must be some fault on the part of the driver which caused that danger to the public.<sup>166</sup>
145. Fault is described as involving "*a failure, a falling below the care or skill of a confident, experienced driver in relation to the manner of the driving and the relevant circumstances of the case*".<sup>167</sup>
146. The threshold provided for in s48 (2) of the Act is reasonably low. From the information obtained whilst investigating Mrs Thompson's death, I need only to reasonably suspect a person has committed an indictable offence.
147. I have already made conclusions about the evidence, and accepting that the evidence led in this inquest would not be admissible in its entirety in any criminal proceedings, I am satisfied there is sufficient evidence for me to reasonably suspect the indictable offence of dangerous operation of a motor vehicle causing death, has been committed by Tanya Smith. I will therefore as soon as possible refer this decision, the transcript of proceedings and the Inquest Exhibits to the Director of Public Prosecutions for his consideration.

## Findings required by s45

<b>The Identity of the deceased</b>	Grace Thompson;
<b>The date of death -</b>	29 June 2010;
<b>The place of death -</b>	Emergency Management Queensland Hanger, Wirraway Avenue ARCHERFIELD QLD 4108 AUSTRALIA;
<b>Cause of death -</b>	1(a) Haemorrhage, due to, or as a consequence of
	1(b) Chest and abdominal injuries, due to, or as a consequence of

<sup>163</sup> *R v Wilson* [1965] QWN 42

<sup>164</sup> *R v McBride* [1962] 2 QB 167

<sup>165</sup> *R v Ball and Loughlin* (1966) 50 CR App R 266

<sup>166</sup> *R v Webb* [1986] 2 Qd R 446

<sup>167</sup> *R v Webb* [1986] 2 Qd R at 450

1(c) Motor vehicle collision

**How the death Occurred -**

Grace Thompson died from injuries sustained in a two motor vehicle crash on the New England Highway, Dalveen. The crash occurred when a Mitsubishi Magna being driven by Ms Tanya Smith swerved onto the wrong side of the road and directly in the path of a Rav 4 vehicle driven by Mr Bruce Thompson. Mr Thompson then swerved away from the oncoming vehicle but Ms Smith then corrected and swerved back onto the correct side of the road. A head on collision then occurred;

I express my condolences to Mr Thompson and other family members and friends of Mrs Grace Thompson. I close the inquest.

John Lock  
Brisbane Coroner  
Stanthorpe  
16 December 2011