



# **CORONERS COURT OF QUEENSLAND**

## **FINDINGS OF INQUEST**

**CITATION:** **Inquest into the death of Anna Damjanovic**

**TITLE OF COURT:** Coroners Court

**JURISDICTION:** Brisbane

**FILE NO(s):** COR 2017/2093

**DELIVERED ON:** 25 February 2021

**DELIVERED AT:** Brisbane

**HEARING DATE(s):** 4 March 2020 and 27 January 2021.

**FINDINGS OF:** Ms Christine Clements, Brisbane Coroner

**CATCHWORDS:** CORONERS: Pedestrian hit by car, difficult intersection, s 46 comments from inquest, accident, weather conditions.

### **REPRESENTATION:**

Counsel Assisting: Ms Sarah Lane

Mr and Mrs Paul and Birgit Damjanovic: Mr H.A. Mellick (Mellick Smith & Associates)

Ms Vanessa Clark: Mr Cameron Browne (Potts Lawyers)

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## Introduction

1. These findings examine the circumstances of the death of Anna Damjanovic, who died at the Royal Brisbane and Women's Hospital (RBWH) on 20 May 2017, after having been struck by a motor vehicle on 19 May 2017. Her death was reported to the Coroners Court of Queensland and investigated by the Queensland Police Service (QPS) Forensic Crash Unit (FCU).
2. These findings:
  - confirm the identity of the deceased person, how she died, and the time, place and medical cause of her death;
  - consider the circumstances of the accident, including the road and weather conditions, lighting, pedestrian access to the road, speed limit and the history of traffic incidents in that location; and
  - consider whether there are any recommendations which may prevent deaths from happening in similar circumstances in the future.

## The inquest

3. In cases such as this, an inquest may be held into the circumstances of the death if the Coroner is satisfied it is in the public interest to hold the inquest.<sup>1</sup> An inquest is intended to provide the public and, most importantly, the family of the deceased with transparency regarding the circumstances of the death, and to answer any questions which may have been raised following the death.
4. The hearing of evidence in relation to Ms Damjanovic's death took place in Brisbane on 4 March 2020 and 27 January 2021. All of the statements, records of interview, photographs and materials gathered during the investigation were tendered at the inquest.
5. Counsel Assisting, Ms Lane, proposed that all evidence be tendered, and that oral evidence be heard from the following witnesses:
  - Senior Constable Kade Pepper;
  - Vanessa Clark;
  - Rekha Kalaiya;
  - Jessica Wood;
  - Elinor Irvine; and
  - Senior Constable Julia Kenny.

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<sup>1</sup> s28(1) of the *Coroners Act 2003*.

## ***Application for further evidence***

6. At the close of the evidence, an issue was raised by Mr Mellick for the family in respect of the ABS braking system. The ABS braking system had been tested by Simon Major of the QPS Vehicle Inspection Unit, and all parts of the system had been found to be working satisfactorily. Mr Mellick made application for expert evidence to be sought regarding ABS brakes. After hearing submissions from Mr Browne and Counsel Assisting, and seeking further information from Mr Major and from Senior Constable Pepper, I dismissed the application on the basis that, in the context of the evidence already before the Court, I would not be assisted by the evidence of an expert regarding ABS brakes.<sup>2</sup>
7. I consider that the evidence tendered in addition to oral evidence was sufficient for me to make the necessary findings under s45 of the *Coroners Act 2003*. I received helpful submissions from those given leave to appear at the inquest, which have assisted in the preparation of these findings.

## **The evidence**

### ***Personal circumstances***

8. Anna Damjanovic was born in Cairns on 14 January 1998 to Paul and Birgit Damjanovic. Anna was the second of three sisters. After high school, Anna moved to Brisbane for university, and was undertaking a double degree in business and visual and interactive design. Anna was living with her older sister, Laura, at 47 Rennie St, Indooroopilly while she attended university.
9. Anna's family have told the court that she was very artistic, a gifted dancer and pianist, fluent in German and learning Italian. She loved history and the arts and travelling in Europe with her family. Anna's unexpected and sudden death at the age of 19 has devastated her very close and loving family.

### ***Circumstances of the death***

10. It is not clear what Anna's movements on the evening of Friday 19 May 2017 had been, but at 7:38pm a CCTV camera at the intersection of Swann Road and Moggill Road in Taringa captured footage of a person thought to be Anna walking from Moggill Road into Swann Road. This is the route Anna would have taken if she was walking home from the bus stop on Moggill Road or from the grocery store near the bus stop.
11. At approximately 7:40pm, Vanessa Clark was driving her black Volkswagen beetle along Swann Road, heading towards the intersection with Moggill Road. Just before that intersection Swann

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<sup>2</sup> Preliminary decision, 19 November 2020.

Road dips down and turns right, and then passes over the Ipswich railway line by way of a bridge. The speed limit for the road was 60km per hour at the time. The road is sealed with bitumen with one lane in each direction.

12. Ms Clark gave evidence during the inquest under a blanket direction by the Court pursuant to section 39 of the *Coroners Act 2003*. Ms Clark, who was also 19 years of age at the time of the accident, told the court that she was driving along Swann Road towards the intersection with Moggill Road. As she came around the corner before the rail bridge, she was driving at the speed limit. She checked the roads to the left and right for cars as she headed towards the two intersections with York Street on the left and Cunningham Street on the right. She noticed a person, who we now know was Anna, crossing Swann Road at the end of the bridge near the intersection with Cunningham Street. Anna was crossing in front of Ms Clark from right to left. Ms Clark gave evidence that Anna appeared to be moving quite slowly, appeared to be looking down, and did not appear to be aware that her car was approaching.
13. Ms Clark said that she braked as soon as she thought that Anna would not be able to cross the road in time. She thought that she was approximately 16m away at that time. She said that the front of her car hit the pillar of the bridge on the left-hand side, the car rotated and the back hit something, and she was scared she would go over the bridge. Ms Clark said that she did not see the car hit Anna.
14. Rekha Kalaiya alighted from the train at Taringa Station and walked uphill along Cunningham Street to the intersection with Swann Road. Cunningham Street meets Swann Road just before the rail bridge. It was dark and raining slightly. At the corner of Swann Road, she was looking to see if she could cross Swann Road when she saw Ms Clark's car coming from her left. Ms Kalaiya saw the car slip or swerve to the left just as it passed Cunningham Street, and entered the bridge. She heard a really loud bang and saw the car hit the left side barrier of the bridge.
15. Jessica Wood and Elinor Irvine were sitting on the patio of their townhouse on the corner of York Street and Swann Road. They heard wheels skidding, brakes squealing, and then a crunch and a loud pop of metal on metal. Ms Wood and Ms Irvine ran out through their gate and saw Ms Clark's car crashed against the left-hand side of the bridge, and facing towards them, which was the opposite direction that Ms Clark had been travelling. Ms Wood and Ms Irvine saw that the car had its lights on, and smoke was coming from the inside of the car.
16. Ms Wood ran towards the car and saw Ms Clark trying to get out of the car as fast as she could. She heard Ms Clark scream and say, "I hit someone". Ms Wood went to assist Ms Clark, who was shaking, hyperventilating and crying. Ms Wood looked under and around the car but could not see anyone else in the vicinity.

17. Ms Irvine called Triple 0 on her mobile as she was approaching the scene of the accident. This call was made at 7:44pm. While she was talking to the operator Ms Irvine could hear Ms Clark screaming, and saying “there was someone on the road”, “why didn’t they stop?”, “why didn’t they see me?”.
18. Ms Wood and Ms Irvine could not see any person on the road. But when they looked over the railing of the bridge, they saw a person lying to the left of the train tracks.
19. Police and ambulance arrived within minutes of Ms Irvine’s call to Emergency Services, and one of the first police officers to arrive was Senior Constable Julia Kenny. Senior Constable Kenny activated her body worn camera on arrival, and subsequently spoke to Ms Clark, who was still shaking and distressed. Senior Constable Kenny gave evidence that Ms Clark told her that she was driving at the speed limit when she came around the corner before the rail bridge. She said that at that point, she saw a person crossing the road ahead of her from right to left and noticed that the person seemed to be walking very slowly. She braked to avoid hitting the person, who did not appear to have noticed her car. Her car then slid on the road, spun around and hit the left-hand side of the bridge. Ms Clark said that she did not know what happened to the person crossing the road.
20. Ambulance officers attended to Ms Clark, and Senior Constable Kenny did a breath test for Ms Clark’s blood alcohol level, which gave a result of zero. Senior Constable Kenny then accompanied Ms Clark in an ambulance to the Royal Brisbane and Women’s Hospital, where Ms Clark gave a sample of blood for testing.
21. While this was happening, ambulance officers and police were attending to Anna. She had fallen 15 metres from the bridge, and officers found her unconscious and not breathing. They were able to resuscitate Anna and she was taken to the RBWH by ambulance. On examination, Anna was found to have suffered fractures to her skull, right leg, and left shoulder blade. Her neck was broken and she had a spinal cord injury. She had suffered extensive bruising and internal injuries. Despite treatment, her condition deteriorated, and she died the following evening, at 7:02pm on 20 May 2017.

## **Autopsy results**

22. Forensic pathologist Dr Rohan Samarasinghe conducted an autopsy, consisting of an external examination as well as a CT scan and X-rays of the body, on 23 May 2017.
23. The examination found that there were a number of soft tissue injuries, skull fractures and cervical spinal injuries which were likely to have occurred from the fall, and fractures of the right leg bones which were

consistent with impact with a vehicle. Dr Samarasinghe concluded that the cause of death was head and neck (spinal) injuries.

24. The toxicology results were negative for alcohol and illicit drugs.

## **The investigation**

25. Senior Constable Kade Pepper of the QPS Forensic Crash Unit was in charge of the investigation of the accident. I heard comprehensive evidence from Senior Constable Pepper.

26. The evidence obtained by the FCU and given at inquest by Senior Constable Pepper is that Ms Clark's car was travelling between 30 and 40kph when it hit the bridge. The speed limit in that area was 60km/hr. The car was in good working condition, and the only fault found with the car, the low tread on the rear tyres, would not have made any difference to the rate at which Ms Clark's car braked. Ms Clark was breath tested at the scene and returned a reading of zero.

27. I accept the evidence of Senior Constable Pepper that the forensic evidence obtained during the investigation was consistent with Ms Clark's version of events. The investigation by the FCU found that Ms Clark was not driving inappropriately, and that her car was in a satisfactory condition at the time of the accident.

28. I am satisfied that the investigation was thoroughly and professionally conducted and that all relevant material was accessed.

## **Conclusions**

### ***Road and weather conditions***

29. The accident occurred just before 7:40pm on the evening of 19 May 2017. Ms Kalaiya gave evidence that she saw the crash occur as she was walking from Cunningham Street near the intersection with Swann Road. She said that it was dark and raining slightly. Ms Irvine's evidence was that, at the time of the accident, it had been raining long enough that the road surface was wet.

30. Ms Wood told the court that her balcony overlooks the intersection and that, when it rained, she had often seen cars skidding or aquaplaning as they head into that intersection from Swann Road.

### ***Lighting***

31. The video drive-throughs conducted by Senior Constable Pepper show that the approach to the intersection was, from the driver's point of view, quite dark. There are two streetlights near the intersection – one a few metres down from the corner of York Street, and one above the left-hand side of the street where Swann Road meets the bridge. The

witnesses have said that there was enough light provided by these streetlights for them to be able to see the road and the bridge when they approached the intersection. Nonetheless, all the witnesses said that visibility on the night was made more difficult because of the rainy conditions.

### ***Pedestrian access***

32. The intersection has no marked pedestrian crossings or pedestrian signals. Pedestrians have direct access to the road from the footpath at any point in the intersection. As is the case in most suburban intersections, pedestrians must use their own judgement if trying to cross any of the intersecting streets in this vicinity.

### ***History of traffic incidents***

33. Evidence obtained from the Department of Transport and Main Roads shows there have been only two reported traffic incidents at the corner of Swann Road and Cunningham Road, other than the incident the subject of this inquest. One of these occurred in April 2014, before the incident involving Anna, and the second occurred shortly afterwards, in June 2017. Each of these other incidents were collisions between cars, and both occurred in fine weather. The 2014 incident occurred after dark, and one person was injured. The 2017 incident occurred in daylight, and no injuries were reported. Clearly, these incidents do not bear any similarities to the accident which was examined at this inquest.

34. However, evidence given by the two witnesses who lived near the scene, Ms Wood and Ms Irvine, was that the intersection in question was a bad one, and that they often heard car tyres screeching or witnessed incidents at the intersection. They said that there was a dip in the road before the intersection, and that water would pool in the dip after rain. There was evidence about a particular spot, in the left-hand lane immediately to the left of the centre line and just prior to York Street. Photos show a rectangular metal plate in a depression. Ms Clark gave evidence that she slowed as she approached the intersection as she was aware that parked cars in the two side streets could limit visibility of seeing other cars approaching the intersection.

### ***The accident***

35. The evidence before this court shows that Ms Damjanovic's death occurred as a result of a tragic accident. Neither Ms Damjanovic nor the driver of the car was at fault for the accident. Rather, a combination of those factors discussed above led to circumstances in which Ms Damjanovic was crossing the road in the path of a car, and the driver attempted to avoid her but was unable to do so.



36. Ms Damjanovic's family and friends loved her deeply and her absence will always be felt in their lives. Ms Clark will also be affected by this accident for the rest of her life. I acknowledge Ms Clark's message of condolence to Ms Damjanovic's family, which was read on her behalf by her legal representative, and in which she recognised their "profound and terrible loss".

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

37. I am required to find, as far as is possible, the medical cause of death, who the deceased person was and when, where and how she came by her death. As a result of considering all the material contained in the exhibits, I am able to make the following findings:

**Identity of the deceased** – The deceased person was Anna Julia Damjanovic.

**How she died** - Ms Damjanovic was crossing Swann Road in Taringa at around 7:40pm on 19 May 2017. It was dark and raining lightly. Ms Damjanovic was crossing the road just before the intersection with Cunningham Street, at the end of the railway bridge, where there were no traffic lights or pedestrian crossings. Vanessa Clark was driving along Swann Road toward the railway bridge. Ms Clark was travelling within the speed limit and was not under the influence of drugs or alcohol. Ms Clark saw Ms Damjanovic crossing the road and braked in an attempt to avoid hitting her. The wet conditions may have caused the car to slide and spin rather than to stop sooner. At some stage during the car's spin, it is likely that Ms Damjanovic was hit by Ms Clark's car and propelled over the chain-link fence on the outside of the bridge. She fell 15 metres to the railway below, and sustained injuries which were not survivable.

**Place of death** – She died at the Royal Brisbane and Women's Hospital, in Herston in the State of Queensland.

**Date of death** – She died on 20 May 2017.

**Cause of death** – Ms Damjanovic died from head and neck injuries.

## ***Comments and recommendations***

38. Section s 46 of the *Coroners Act 2003* provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.
39. I accept the submission by Counsel Assisting that there is nothing in the evidence which shows that there was any particular deficiency in the design or infrastructure of the intersection at which the accident happened which caused Anna's death, but that the intersection appears to be known to locals as one at which vehicles often have difficulties.
40. Accordingly, I recommend that the Brisbane City Council and Queensland Rail review the area of Swann Road at the bridge and at the intersections of York and Cunningham Street in order to determine whether any improvements to the safety of the intersection could be made, including the height of the chain-link fencing, the lighting, and the safety of the road surface in wet conditions.
41. I note that at the time of the accident the speed limit on Swann Road was 60kph. It has since been lowered to 50kph.
42. I close the inquest into this death, and I extend my condolences to Ms Damjanovic's family.

Christine Clements  
Brisbane Coroner  
Brisbane  
25 February 2021