



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

CITATION: **Inquest into the death of Adrian Elliott Jones**

TITLE OF COURT: Coroner's Court

JURISDICTION: Maroochydore

DELIVERED ON: 24<sup>th</sup> August 2011

DELIVERED AT: Maroochydore

HEARING DATES: 2<sup>nd</sup> July 2010, 6<sup>th</sup> August 2010, 8<sup>th</sup> November 2010 to 12<sup>th</sup> November 2010, 9<sup>th</sup> March 2011, 31<sup>st</sup> March 2011

PLACE OF HEARING: Maroochydore

FINDINGS OF: Coroner Bernadette Callaghan

CATCHWORDS: Motor bike accident, debris on road after drilling, adequacy of police investigation

### REPRESENTATION:

Counsel Assisting the Coroner: Toby Nielsen

### Counsel Representing:

Family of the deceased being represented by Butler McDermott Lawyers and Counsel Stephen Courtney.

The Commissioner for Police – represented by Christina Heffner.

Michael Miley Junior and Garry Church – represented by Paul Byrne of Byrne Legal Group.

Drillsure Pty Ltd – represented by King Tobin Lawyers – Counsel Mark McAuley.

Golder Associates Pty Ltd – represented by Dent Consulting and Legal – Counsel AFA Lindeman.

- [1] I deliver my findings pursuant to Section 45 of the *Coroners Act* 2003. The deceased person is Adrian Elliott Jones (“the deceased”) and he died as a result of a motorcycle accident on 8 April 2006.
- [2] The inquest was held in accordance with Orders made in the District Court on 30 September 2009 in the matter of *Gentner v Barnes* (2009) QDC 307. The Order of the Court was “*An inquest be held into the death of Adrian Elliott Jones which occurred on the 8<sup>th</sup> of April 2006*”.
- [3] His Honour Judge Robertson in making those Orders noted in his reasons for judgment:-
- (a) It was in issue whether there was some debris on the roadway from prior drilling on the roadside which may have contributed to the deceased losing control of his motorcycle;
  - (b) The Court noted that there had been a complaint made about the police investigation because one of the drivers involved was a relation of a serving police officer.
- [4] His Honour noted that issue had been dropped in the course of that case and His Honour noted:-

*“This approach is sound and appropriate in light of the known facts and avoids a distraction ...”*

The inquest was held over 6 days being 8<sup>th</sup> to 11 November 2010 and 9<sup>th</sup> and 31<sup>st</sup> March 2011. Following the 6 days of hearing I received written submissions from Mr Nielsen, counsel assisting, Mr Courtney, counsel for the family, Mr Lindeman, Counsel for Golder Associates Pty Ltd, Mr McAuley, counsel for Drillsure Pty Ltd, Mr Byrne Solicitor for M. Miley Jnr and G. Church and Ms Heffner on behalf of Queensland Police Service. I also received replies to those submissions from Mr. Lindeman, Mr. Courtney and Mr. McAuley. I have considered all of these submissions.

Prior to my writing this decision I also received submissions from Mr Gentner, step-father of the deceased and Gladys Marie Elliott, grandmother of the deceased. There were objections to me considering these submissions in particular to the submission forwarded by Mr. Gentner. Other parties had not been given a copy of the submissions. In fairness if I was going to give those submissions consideration then the other parties would have to be given an opportunity to make further submissions in answer to those submissions. The family were ably represented by experienced counsel and solicitor. I had before me submission from Mr Courtney that addressed all of the matters that had been raised during the inquest. Because of this I have decided not to read either of the submissions forwarded by Mr. Gentner and Ms Elliott.

### **The Coroners Act 2003**

- [5] The Inquest was held pursuant to the *Coroners Act* 2003 (“the Act”). The relevant sections as far as this Inquest is concerned are as follows:-

## Section 45 Coroners Findings

...

- (2) A coroner who is investigating a death or suspected death must, if possible, find—
  - (a) who the deceased person is; and
  - (b) how the person died; and
  - (c) when the person died; and
  - (d) where the person died, and in particular whether the person died in Queensland; and
  - (e) what caused the person to die.

...

- (4) The coroner must give a written copy of the findings to—
  - (a) a family member of the deceased person who has indicated that he or she will accept the document for the deceased person's family; and
  - (b) if an inquest was held—any person who, as a person with a sufficient interest in the inquest, appeared at the inquest; and
  - (c) if the deceased person was a child—the children's commissioner; and
  - (d) if the coroner is not the State Coroner—the State Coroner.
- (5) The coroner must not include in the findings any statement that a person is, or may be—
  - (a) guilty of an offence; or
  - (b) civilly liable for something.

## Section 46 Coroner's comments

- (1) A coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to—
  - (a) public health or safety; or
  - (b) the administration of justice; or
  - (c) ways to prevent deaths from happening in similar circumstances in the future.”

[6] The Coroner may report offences or misconduct in the following way:-

### Section 48

#### Reporting offences or misconduct

- (1) A reference in this section to information does not include information obtained under section 39(2).

- (2) If, from information obtained while investigating a death, a coroner reasonably suspects a person has committed an offence, the coroner must give the information to—
  - (a) for an indictable offence—the director of public prosecutions; or
  - (b) for any other offence—the chief executive of the department in which the legislation creating the offence is administered.
- (3) A coroner may give information about official misconduct or police misconduct under the *Crime and Misconduct Act 2001* to the Crime and Misconduct Commission.”

### **Standard of Proof**

- [7] The standard of proof for Inquests is the civil standard of proof with due regard to the factors mentioned in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362. Dixon J stated: “*The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*” In essence the more serious the consequences of a finding of fact the more probative the evidence required.

### **The Deceased**

- [8] The deceased was Adrian Elliott Jones who was born on 11 January 1998 and was 18 years of age when he died. His mother and next of kin was Christine Helen Elliott. His step-father was Neale Gentner.
- [9] The deceased was the holder of an open driver’s license which entitled him to drive motor vehicles including motorcycles in Queensland. He secured his open motorcycle license entitling him to operate motorcycles having an engine capacity of over 250 ccs on 7 April 2006. Prior to that he was restricted to driving motorcycles with 250 cc’s or less. (Exhibit 1 page 11).

### **The Accident**

- [10] The evidence suggests that on 8 April 2006 at 8 am the deceased was riding a 1982 silver Honda CX500 motorcycle registration number YU-157 on the Yandina Bli Bli Road, Maroochy River in a northerly direction heading towards Yandina.
- [11] Michael James Miley born on 27 January 1946 was driving a 2005 white Toyota Land Cruiser station wagon registration number KIL-01 in the opposite direction on the same road at the same time. The deceased lost control of his vehicle and the two vehicles collided near to the intersection of the Yandina Bli Bli Road and Burtons Road. The motorcycle became caught underneath the

Land Cruiser and came to a stop just north of Burtons Road. The deceased ended up laying on the roadway some metres north of the vehicles.

### **Requirements pursuant to the *Coroners Act***

- [12] A death occurred and Life Extinct Notification was given by M Donovan on 8 April 2006 at the Nambour Hospital Operating Theatre. (Exhibit 1 page 14).
- [13] The deceased person is identified in the Life Extinct Notification as Adrian Jones. Constable Nathaniel Cole verified that this person was identified by Christine Helen Elliott as being her son Adrian Elliott Jones. (Exhibit 1 page 35).
- [14] Injuries sustained in the motorcycle accident on 8 April 2006 was how the deceased died.
- [15] The Life Extinct Notification confirms that the deceased died at the Nambour General Hospital at Hospital Road, Nambour in the State of Queensland.
- [16] An autopsy was conducted by Dr Olumbe, Senior Medical Officer at the John Tonge Centre. He identified the cause of death as “*Multiple injuries, due to, or as a consequence of, motorcycle accident (rider)*”. (Exhibit 1 pages 25 to 31 – Summary at 31). Specifically the injuries were notified to be significant and were external and internal. The external injuries were in the lower abdomen and pelvic region and the internal injuries included severe contusion to the abdominal and pelvic organs with haematoma that was associated with tear of abdominal veins and arteries causing blood loss.

### **The Parties at the Coronal Inquest**

- [17] The following parties attended the Inquest –
  - (a) Family of the deceased being represented by Butler McDermott Lawyers – Counsel S. Courtney
  - (b) The Commissioner for Police – represented by C. Heffner.
  - (c) Michael Miley Junior and Garry Church – represented by P. Byrne of Byrne Legal Group.
  - (d) Drillsure Pty Ltd – represented by King Tobin Lawyers – Counsel M McAuley.
  - (e) Golder Associates Pty Ltd – represented by Dent Consulting and Legal – Counsel AFA Lindeman.

### **Summary of Evidence**

#### Michael Miley Senior

- [18] Mr Miley Senior was driving his four wheel drive vehicle southbound on the Yandina Bli Bli Road on the morning of 8 April 2006. His evidence was that the speed limit on that particular section was 80 kilometres per hour and that he was travelling between 70 and 80 kilometres per hour. Mr Courtney in his submissions raised the point that Mr Miley was subject to an advisory speed

sign of 50 kph – there was no evidence of this. Mr Miley describes the accident as follows:-

*“As I was approaching the – a rise in the road, there was a motorcycle heading towards me and the bike was swaying or going from side to side approaching me. I instinctively, I suppose, I pulled to the left and at that stage the motorcycle has gone down on the ground and come across and I’ve gone – or he’s gone under me, I’ve gone over him and that was a big thump and that was it.”* (T 2-27 line 30).

- [19] His daughter-in-law Kathryn Miley, a registered nurse, was in the vehicle with him and attended the deceased. Mr Miley Senior heard the deceased state “*I lost control*”. (T 2-29 line 1).
- [20] I found Mr Miley Senior to be forthright in his answers. I found him to be a credible witness.

#### Kathryn Elizabeth Miley

- [21] Ms Miley was a back seat passenger in the four wheel drive driven by her father-in-law. She was sitting in the back seat on the passenger side. She states that when they came around the bend there was a bike coming towards them on their side of the road. (T 2-42 line 55). She was asked whether she thought Mr Miley Senior could have done anything to avoid the collision and she responded no. (T 2-43 line 19). She phoned 000. Her evidence was that she had a conversation with the deceased and that he had said that he had lost control and that he had shit himself. (Transcript 2-45 line 42). Ms Miley was cross-examined extensively on this issue but she was convincing in her evidence that in fact the deceased had spoken to her.
- [22] During the evidence of Senior Constable Church it became evident that Senior Constable Church had not taken the statement of Ms Miley’s. This had in fact been taken by her husband Michael Miley Junior and was taken sometime after an email that was sent on or about 1 November 2006. The statement was not signed at Coolum but was most likely signed at Doomadgee where she was residing at the time. Ms Miley was not questioned on this as the evidence never came to the attention of the Inquest until after Ms Miley had been discharged as a witness.
- [23] Ms Miley had confirmed that she had read her statement and that everything in the statement was true and correct except that she had relocated since the date of the statement. The statement states that it was signed at Coolum Beach on the 5<sup>th</sup> day of May 2006 – this was obviously not correct. This issue did raise a question mark about her credibility however after seeing her give evidence in chief and being cross-examined on the issues that are of concern to the Inquest I find her to be a truthful witness with regard to her recollection of the circumstances of the accident. Her version is corroborated by Mr Miley Senior. There is some discrepancy between what she says the deceased stated and the evidence of Caleb Fitzpatrick. It should be noted that when Mr Fitzpatrick came upon the accident scene Ms Miley was already on the phone – this would have been the phone call to 000 and would have been after the

comments made to Ms Miley by the deceased. On this issue I prefer the evidence of Ms Miley.

#### Caleb Fitzpatrick

- [24] Mr Fitzpatrick was travelling in a motor vehicle which approached the scene soon after the accident occurred. He saw the deceased lying on the roadway and he saw Ms Miley on the phone.
- [25] Mr Fitzpatrick gave evidence that he noticed some gravel on the side of the road but was not sure where it was or how much was there.
- [26] About a week after the accident Mr Fitzpatrick attended at the scene again and had a discussion with Tabitha and Adam Jakeman. They talked about gravel being on the roadway and the drilling rig being there the day prior to the accident.
- [27] Mr Fitzpatrick whilst aware of gravel being on the roadway was unsure where it was or the quantity and his evidence had been clearly affected by what the Jakemans had been saying to him with regards to the drilling rigs. (T 2-11 and 2-12).
- [28] I have difficulties accepting Mr. Fitzpatrick's evidence with regards to gravel being on the roadway. I find that his evidence was contaminated by his conversation with the Jakemans. He was unable to say where the gravel was and how much there was. His evidence is not supportive of the proposal that gravel on the roadway was from the drilling rig the day prior to the accident.

#### Adam Jakeman

- [29] Mr Jakeman and his wife Tabitha reside at Lot 17 Burtons Road, Maroochy River and their property is near to where the accident occurred.
- [30] Both the Jakemans were interviewed by a private investigator employed by the family of the deceased, Mr Munt. Mr Munt taped a conversation with both the Jakemans without advising them that he was doing so. Arising out of this taped conversation Mr Munt apparently drew up a statement for both Adam Jakeman and Tabitha Jakeman to sign.
- [31] It became an issue in the Inquest as to how to deal with the tape of the conversation and the statements drawn up by Mr Munt as both the Jakemans later resiled from those statements. The Coroner's Court is not bound by the Rules of Evidence and so in fairness to all the parties I resolved to play the taped interview between Mr Munt and the Jakemans at the Inquest in the presence of both the Jakemans with them giving evidence separately after they had heard the tape.
- [32] In evidence Mr Jakeman verified that he was the person speaking in the tape and that he did say the things that were overheard on the tape (Transcript 3-22). It is clear from the tape that Mr Jakeman made quite strong statements about

drilling work leaving debris on the roadway which might have contributed to the accident. The statements drawn up by Mr Munt are part of Exhibit 1 at pages 100 and 103. Mr Jakeman was not happy with the statement drawn up by Mr Munt. He believed that it was different from what he had said. He stated *“I wasn’t particularly happy with some of the wording. I thought it was a little bit different to what I’d said and I’d asked to change it and he agreed. And then I amended it and then there was a particular point I recall I wasn’t happy with still even though I heard loud and clear what I’d said on the tape. But you know, after all the excitement and everything had died down a little bit, I didn’t really feel it was a true portrayal of the truth and that’s why in the end, I retracted it, because I felt like it was, it really wasn’t what had happened, or it possibly wasn’t what had happened. It only possibly had happened, you know what I mean?”* (T 3-23 line 19 – 30). Mr Jakeman could not recall whether he had contact the police or the police had contacted him but in evidence he stated *“...I was starting to get – feel like I was getting a bit pushed to you know, provide what was wanted rather than what I really remember”* (T 3.24 line 15 – 18). This evidence indicated to me that I could take little notice of Mr Jakeman’s statement taken by Mr. Munt.

- [33] Mr Jakeman’s evidence was that where he was living on Burtons Road was slightly elevated from the accident scene. He could not see the accident scene clearly. His evidence was that there was a lot of gravel at the intersection of the Yandina Bli Bli Road and Burtons Road which gets washed down the hill by rainfall and goes straight across the road. He said the source of gravel was partially from his gravel driveway and partially from other gravel which collects at the intersection. He stated that the gravel sometimes goes right across the road. (T 3-27-28). In his evidence Mr Jakeman states that there was no debris on the roadway from the drilling and that the roadway was left cleaner than it usually was. (T 3-33).
- [34] Mr Jakeman’s evidence to the Inquest was completely different from that which he had given to Mr Munt which was recorded without his knowledge. In evidence Mr Jakeman stated that he was being a bit naïve when speaking to Munt and said *“I realise I probably caused a lot of trouble and anguish and I apologise for that”*. (T 3-71).
- [35] The tape recording is clearly a correct recording of what was said on the day with Mr Munt however given Mr Jakeman’s evidence at the Inquest I am unable to rely on what was stated to Mr Munt by Mr Jakeman as being the situation as to debris on the road on the day of the accident. There was evidence that Mr Jakeman spoke with Church about the debris on the road on 1<sup>st</sup> May 2006 however Mr Jakeman had no recollection as to what was discussed. Church did recall that one or both of the Jakemans suggested the dirt on the road had been the cause of the accident.
- [36] Mr Jakeman impressed me as a truthful person when giving evidence at the Inquest and I accept his explanation as to why his evidence at the Inquest was somewhat different from what he had said to Mr Munt. Clearly the death of a young person was distressful to those people who reside near to where the accident occurred. There were discussions amongst a number of people residing near to where the accident occurred and Mr Fitzpatrick. Those people

were seeking an answer as to what had caused this accident that cost the life of such a young person. It appears to me that one or other of the persons living near the accident site has focused on the drilling rig and that then has become the focus of attention of a number of people. They have in effect contaminated one another's evidence that was given to Mr Munt.

- [37] I exclude entirely the evidence of Mr Jakeman with regards to what he had said to Mr Munt from my considerations as to what has caused this accident.

#### Tabitha Jakeman

- [38] Ms Jakeman was also recorded in conversation with Mr Munt. Ms Jakeman makes the comment in evidence to the Inquest "*It's not very clear in my head and I think that some of it I was told and I didn't actually see for myself*".(T3-72 line 50) Ms Jakeman's recollection of what she saw on the road is non-existent. It seems she has no independent recollection of what was on the road following the drilling of a bore hole on the day prior to the accident.

- [39] Her evidence is unreliable and I will not be considering it.

#### Scott Richie

- [40] Scott Richie and his wife Suzanne formerly resided at 1 Kirra Road, Maroochy River on the date of the accident. Kirra Road is some 150 metres south of the accident scene. His property is elevated above the accident scene and from his front yard he states he can view where the accident occurred. He stated that he saw some dirt on the road associated with a drill hole, but that dirt he saw on the road was a fair way from the accident scene. (T 3-113, line 20).

- [41] He gave evidence that at about 9:30 on the night prior to the date of the accident another motorcyclist had lost control whilst riding in the same direction as the deceased. (T 3-100).

#### Suzanne Richie

- [42] Ms Richie's evidence was that when drill work had been undertaken in the days prior to accident she had noticed that the road was a bit dirty. It seems that both she and her husband when referring to debris on the road they were referring to bore hole 4 not bore hole 5 which was the one closest to where the accident occurred. Mr Courtney raises the issue that dirt left on the road at bore hole 4 as opposed to bore hole 5 proves the drillers are unreliable when they say they always leave areas of drilling clean and it proves on this particular day they were being careless. I disagree with this submission – there were differences in the drilling between borehole 4 and borehole 5.. The inquest concentrated on what occurred on the day at bore hole 5. Later in this decision I refer to Mr Steensen's evidence with regards to bore hole 5. It should be noted that Ms Ritchie refers to dirt on the road not gravel or clumps of dirt.

#### Dr Olumbe

- [43] Dr Olumbe from the John Tonge was the doctor who performed the autopsy on the deceased. His report is contained in Exhibit 1 pages 25 onwards.

### Scott Bradford

- [44] Scott Bradford was the Ambulance Officer who attended the scene of the accident. He did not hear the deceased speaking. His evidence was that a glasgow coma score is relevant in terms of a person's brain functioning consciousness. The score ranges between 3 and 15 with 15 being completely conscious and 3 being unconscious. He stated that when he first attended the scene the deceased rated a score of 13 which meant that he was responsive. He then deteriorated to 3 on the way to hospital. This evidence supports the view that the deceased could have been communicating immediately following the accident.

### Garry Ryan

- [45] Garry Ryan is a Vehicle Inspection Officer with Queensland Police Service. He examined both the motorcycle and the motor vehicle post accident. His evidence was that the vehicles were mechanically sound prior to the accident and that it was nothing mechanical which contributed to the cause of the accident.

### Nathaniel Cole and Adrian Smith

- [46] These two police officers were the first on the scene following the accident. They parked their vehicle on the southern side of the accident scene; observed that the deceased was being attended by Queensland Ambulance Services Officer; made some observations about the accident scene and then took up post directing traffic.
- [47] Cole was clear that he took up station to the south directing traffic and that he drove to that point. He did not notice any debris on the road. Smith it seems walked to the north and took up traffic control there. Neither Cole nor Smith saw any debris on the roadway or other obstructions which they thought might have led to the accident. Both Smith and Cole attended the hospital and secured the necessary paper work once they discovered that the deceased had passed away.

### Peter Jeffrey Hooper

- [48] Peter Hooper is an employee of Golder Associates. He attended the drilling works on 7 April 2006 with Michael Dobe from Drillsure Pty Ltd and Drillsure's employee Anthony Steensen. Hooper's report is contained in Exhibit 1 from page 320 onwards. Hooper's evidence was that because of the type of rock in that location they lost a great deal of water down the hole. Because one needs water to force the debris out of the hole nothing came out and they had to stop drilling. They abandoned the hole. His evidence was that they sealed the hole and swept the road. He could not recall whether it was he who swept the road or the driller. Exhibit 3 is a digital photograph of the drilling rig. Hooper's evidence was that he had taken that photograph at the conclusion of the drilling and could identify from the photograph the white plaster of paris cap on the top of the drill hole just to the left of the steel bucket. Close scrutiny of the photograph does indicate that this is in fact the case.

There is no debris on the road near the drill hole. Mr Courtney states that the fact that the person standing next to the drilling machine in Exhibit 3 cannot be identified raises doubt as to when the photograph was taken. This would require there to be a grand conspiracy involving a large number of people including Drillsure and the Men at Work whose truck can be identified in the background going back to the location setting up the drilling rig to take the photo – I cannot accept that. The photo is clear – I can see the plaster cap near the bin and I can see the road is clear of debris.

[49] I found Hooper to be a credible witness.

#### Michael John Dobe

[50] Michael John Dobe, Director of Drillsure Pty Ltd, the company responsible for the drilling of the bore holes. He gave evidence that the company had been contracted by Golder Associates to do the drilling work on the Yandina Bli Bli Road on 7 April 2006. His evidence was that for bore hole number 5, that is the one nearest to the intersection of Burtons Road, they were required to use an excessive amount of water. His evidence was that the hole was porous and as a result they did not achieve the depth of drilling that they intended to and they ceased drilling at 1.2 metres. His evidence was that they cleaned up after the drilling with a broom not using water to clean up. He states that the only material that would have gone onto the road from the drilling process was clear water used to blow the core barrel. (T 1-75, line 48). He stated that he and his offsider, Anthony Steensen, did the cleaning up with his offsider doing the bulk of it. Mr Dobe's evidence was that he took the photographs (Exhibit 2) and they would have been taken once they had cleaned the site. Mr Dobe's evidence was that the photographs were taken late on the day they had actually finished the work.

[51] Later in the proceedings Mr Courtney, pointed out that in one of the photographs there is a shadow which appears to be the silhouette of the person taking the photograph. Those drill holes are on the right hand side of the road and therefore the photographer would have been standing facing in a roughly southerly direction. As the sun sets in the west one would therefore not expect to see a shadow of the photographer in the photograph. None of this was specifically put to Mr Dobe but this does question exactly when the photograph was taken. Because of this I will not be relying on Exhibit 2.

[52] In general I found Mr Dobe's evidence to be credible and I accept his evidence that the roadway had been cleaned up at the conclusion of the drilling. His evidence was consistent with the evidence of Hooper and Steensen.

#### Anthony Steensen

[53] Steensen was an employee of Drillsure. He recalled the work at the Burtons Road intersection of the Yandina Bli Bli Road. He recalled cleaning up the site and that he was the one doing the sweeping. He recalls cleaning the site completely including cleaning up the area on the other side of the road from where they were drilling the hole. I found Mr Steensen to be a credible witness. I accept his evidence that the roadway had been cleaned after the drilling.

### Men at Work witnesses

- [54] Messrs De Oliver, De Graf and Bythe were employed as traffic controllers for the drilling on the day prior to the accident. Their evidence added nothing as they could not recall working at the location on the Yandina Bli Bli Road on the day prior to the accident.

### Senior Constable Garry Church

- [55] Church was the accident investigator primarily responsible for reporting on the nature and circumstances of the accident. His report is contained in Exhibit 1 from page 4. That report was reviewed by Senior Sergeant Simon Lamerton which is at page 53 of Exhibit 1 and Church responded to that report on his own report at page 60. In evidence Church stood by all of his reports and said that they were true and correct. (T 5-59 at line 1). Church's evidence was that he was an experienced accident investigator, first commencing with the Australian Military Police in 1977 then with New South Wales Police from 1981 and lately with the Queensland Police Service in 1996. In all of these roles he underwent training. He admitted that there was further advanced training that he could do with the QPS but he had not done this. He estimates that he had investigated some 500 motor vehicle accidents. (T 5-73 to 5-75).
- [56] Church's report points out that the deceased was riding a 500 cc motorcycle for which he was only licensed on 7 April 2006. Prior to 7 April 2006 the deceased was licensed for a 250 cc motorcycle. (Exhibit 1 at pages 10 and 11). The deceased had a traffic history of having been caught speeding on 2 March 2006 where he was doing at least 13 kilometres but not more than 20 kilometres per hour in excess of the speed limit. (Exhibit 1 page 51).
- [57] Church concluded that the accident occurred as a result of the deceased operating the motorcycle at excessive speed and losing control thereby bringing his motorcycle into the path of the Land Cruiser driven by Mr Miley Senior.
- [58] Church concluded that whilst he could not say that the deceased was travelling in excess of the speed limit of 80 kilometres per hour for that road he was certainly travelling in excess of the advisory speed of 50 kilometres per hour. (T 5-68 and 69). Church never resiled from this opinion.
- [59] Church took a number of photographs on the day of the accident and these are before the Inquest in Exhibit 17. Church's evidence was that he did not see any debris or other obstruction on the road that could have caused the accident.
- [60] Church was questioned about a missing photograph and in particular whether he showed Mr Gentner a photograph which had shown a police vehicle parked in the vicinity of bore hole 5. Church identified photograph 8 of Exhibit 17 as being this photograph taken at the scene of the accident and showing a scenes of crime unmarked police vehicle in the vicinity of bore hole 5. Church could not say whether or not that vehicle was there when he conducted his visual inspection of the roadway. (T 5-67-68).

- [61] Church's evidence was that he had walked from the scene of the accident down the roadway in the direction from which the deceased had travelled and he saw nothing on the roadway that could have caused or contributed to the circumstances of the accident.
- [62] Church did not see any marks on the road indicative of the deceased braking before falling onto the roadway causing the gouge marks. (T 5-59).
- [63] Mr Courtney for the family criticised the way in which Mr Church approached the investigation. Mr Courtney submitted that Church's investigation lacked objectivity in that from a very early point he concluded that the accident was the result of excessive speed and shut his mind to alternative explanations. (Courtney's submission page 8 paragraph 27).
- [64] There can without a doubt be some criticisms of the way Mr Church carried out the investigation. He was criticised for not doorknocking the houses near to the accident to see if anybody saw anything. A Mr Patrick Staunton (too ill to give evidence at the Inquest and has since died) apparently approached Mr Church at the scene and told him that a motor cyclist had lost control in the area the night before. Mr Church referred that on to another police officer. Mr Church did attend the scene with Mr Gentner some time after the accident when they were approached by one or both of the Jakemans. Mr Church accepted that he had been told that there had been workmen drilling holes on the edge of the road on the previous day. Mr Church never followed up with this until a considerable period of time later.
- [65] There was further criticism of Church for the lack of photographs taken at or near the bore hole number 5.
- [66] The other area of concern was Church's organising the taking of the statement of Ms Kathryn Miley by her husband and having it done in such a way that would indicate that it was in fact Church who took the statement.
- [67] Without a doubt Church can be criticised for some aspect of the investigation. Firstly he should have followed up with enquiries with regards to the drilling of bore holes when he became aware of it. I do not criticise Church for failing to do a door knock of all of the houses in the region of the accident – I cannot see how this would have achieved any valid information relevant to establishing the cause of the accident. There were obviously a number of people standing around on the day of the accident that might have been able to contribute something and Church should have had at least one of his offsiders take their names and contact details to enable him to make follow up enquiries at a later time.
- [68] Church should also be criticised for the way in which Ms Miley's statement was taken. I do not see this as a deliberate act to deceive the Inquest but rather an act to cut corners when faced with a witness to this accident living in a remote community some distance from the Sunshine Coast.
- [69] Courtney submits that I should give no weight to anything Church said in evidence. I reject this submission. Whilst Church's investigation could be

criticised in some aspects and in particular for the way in which Ms Miley's statement was obtained I am of the view that his evidence was reliable particularly that concerning his evidence that he walked the roadway and saw nothing on the roadway that caused him to believe that there was anything that caused this accident other than speed and inexperience. The conclusions reached by him were open to him.

#### Brendan Smith

[70] Brendan Smith is a Detective Inspector who gave a report to the State Coroner on 3 December 2008. His report is at pages 80 and 81 of Exhibit 1. In all of the circumstances Smith excluded debris from the drilling as being causative of the accident. He based this opinion on statements obtained from the drillers and how they explained they had drilled and then cleaned the road surface and also from statements from the 2 neighbours which indicated that they had seen drillers operating on that day and later they saw the road was wet and it appeared to them that an effort had been made to clean the road surface (T 2-82 at line 50). Smith concluded that the accident occurred as result of the deceased losing control of his motorcycle. With regards to speed Smith's opinion was that the deceased was probably travelling "a little too quick for that corner" but did not express a view as to the likely speed or whether it was in excess of the speed limit. Smith also referred to the lack of experience of the deceased in riding 500 cc motorcycles.

[71] Smith's view was that Church should have taken more photographs.

#### Simon Lamerton

[72] Initially Lamerton agreed with the conclusions of Church, that is that the deceased lost control of his motorbike and speed not appropriate for the bend was the most likely explanation. In oral evidence Lamerton resiled from this view stating that he was not happy to say that the deceased's speed was inappropriate for the bend because there were a lot a factors in terms of why a motorbike might fall over. Lamerton referred to pebbles on the road that might have had an effect. Lamerton drew the Inquest's attention to photographs 9 and 10 of Exhibit 17 which are photographs of where Burtons Road connects with the Yandina Bli Bli Road. There was earlier evidence that this gravel had been tracked out of Burtons Road by vehicles driving onto the Yandina Bli Bli Road. (Evidence from A. Jakeman)

[73] Lamerton gave evidence that if a motorcyclist was in the course of a bend and leaning the bike over then riding over a stone on the road would present a loss of friction which might contribute to an accident. (T 5-108 at 35). Lamerton's evidence was that the deceased may have lost control of the motorcycle perhaps five metres further back from the gauge mark on the roadway which would have been in the vicinity of the mid-point of the turning circle on the road although he could not say that with any certainty. (T 5-113).

### **Findings as to the cause of the accident**

#### Driving of Michael Miley

- [74] Michael Miley and Kathryn Miley both gave consistent evidence that the deceased appeared to lose control as he rounded the corner and travelled onto their side of the road before laying down his bike. They both stated that the deceased admitted losing control of his motorcycle. The photographs establish that Mr Miley did not stray onto the wrong side of the road and had in fact gone off to the left hand side of the road in an endeavour to avoid the accident. Mr Miley took appropriate evasive action.
- [75] There is no evidence that Mr Miley Senior is in any way responsible for this accident and I so find.

### **The Drilling Work**

- [76] Both Golder Associates and Drillsure owed a duty of care to road users to conduct their work in as safe a manner as the exercise of reasonable care could make it.
- [77] Michael Dobe, Peter Hooper and Anthony Steensen all gave evidence that at the conclusion of the drilling on the day prior to the accident a clean up had occurred. I found all of these three witnesses to be credible witnesses and I accept that a clean up did occur at the conclusion of drilling on 7 April 2006.
- [78] Any evidence before this Inquest that debris had been on the road as a result of the drilling was as a result of comments made by the Jakemans to other people in the area namely Caleb Fitzpatrick and to the private investigator employed by the family of the deceased. I am of the opinion that the Jakemans's conversation contaminated the evidence of Caleb Fitzpatrick. Mr Jakeman completely resiled from his comments with regard to debris on the road in the witness box and apologised for making those statements. I found at the time of her giving evidence Ms Jakeman's evidence to be unreliable. It is unfortunate (perhaps an understatement) that the Jakemans involved themselves in the investigation of this death because that has clearly caused distress to a number of people.
- [79] There is no evidence that could be relied upon to establish that there was any debris left on the road as a result of the drilling that may have caused this accident. In fact I accept that the roadway in the vicinity of the intersection with Burtons Road was left cleaner after the drilling than it was before in light of Mr Steensen's evidence of sweeping the gravel off the road which had been tracked across the intersection from Burtons Road.

### **The Roadway**

- [80] It is recommended by Golder Associates that I consider recommending a review of the adequacy of the road in that area. The road has in fact been widened since this accident occurred. In light of this and the fact that there has been no evidence as to the current state of the road it would be inappropriate for me to make any comment with regard to the roadway.

### **Conduct of Church and Miley Junior**

- [81] Mr Courtney submits that senior Constable Miley and Senior Constable Church be referred to the Crimes and Misconduct Commission regarding the way in which the statement of Kathryn Miley came about. (S48 *Coroners Act*)
- [82] As previously stated her statement was wrong for the reasons set out previously with regards to the making of the statement and it had the effect of misleading the Inquest at first instance. Church's evidence was that he prepared a draft statement and emailed it to Michael Miley Junior who then had Ms Miley sign it. Church indicated that it was not practical for him to attend Ms Miley to take the statement and he trusted Michael Miley Junior to act appropriately. Ms Miley and Michael Miley Junior were not cross-examined about the errors in the statement as these were not made known to the Inquest prior to them being discharged as witnesses. The only evidence before the Inquest on this was from Church.
- [83] There is nothing from what Church said in his evidence that indicates that the drafting of the statement had been done in a deliberate way so as to mislead the Inquest. As I have previously stated it seems to me that having Michael Miley Junior organise for his wife to sign the statement at Doomadgee was as a result of the Mileys residing in a remote location. It should be emphasised that there is nothing in the statement that could be said to be false or misleading itself.
- [84] It was not appropriate for Church to prepare the statement, email it in an incomplete form to another police officer who happened to be the husband of the witness and ask that officer, who had an interest in the outcome of the investigation, (his father was the driver of the other vehicle involved) to settle it. Michael Miley Junior should have refused to settle the statement. Church should have requested Kathryn Miley to write out her own statement in her own words and have her have that statement witnessed.
- [85] I do not accept that the behaviour of Michael Miley Junior and Church were deliberately and intentionally misleading. Because of this I do not intend to forward any information on this to the Crime and Misconduct Commission pursuant to S48(3).
- [86] A copy of this decision will be forwarded to the Queensland Police Service for them to take up this matter with Church and Michael Miley Junior.

### **Conclusion**

- [87] Given all of the evidence I am of the view that the accident was caused by the deceased losing control of his motorcycle such as he travelled into the path of the vehicle driven by Michael Miley Senior.
- [88] There is no evidence that the deceased was travelling in excess of the 80 kilometres per hour speed limit. In fact there is no evidence of what speed the deceased was travelling at. The Yandina Bli Bli Road is a narrow country road with a shoulder that is unsealed. Debris from Burtons Road is tracked onto the Yandina Bli Bli Road. The deceased at the time of the accident was approaching the intersection of Burtons Road with the Yandina Bli Bli Road around a bend.

- [89] The deceased, an inexperienced rider of motorcycles of the size that he was riding on this day, lost control of his motorcycle and travelled over into the path of Michael Miley Senior.
- [90] I make no recommendations with regards to the roadway and to the traffic authorities, nor to the Queensland Police Service or the Commissioner of Police.
- [91] There has been a number of allegations concerning missing photographs including original Scenes of Crime photographs and a missing CD concerning images of roadside drilling. These were referred to by Detective Inspector Brendan Smith in his report to the coroner on 3<sup>rd</sup> December 2008.
- [92] Church was questioned about the photographs taken by Scenes of Crime and himself. His evidence was that all available photographs taken were in evidence before the Inquest. The inquest had before it 15 photographs taken by Scenes of Crime and 12 taken by Church. Church confirmed that he downloaded these photographs onto a disk. Also tended to the Inquest was a computer screen printout (Exhibit 19) which indicated that all had been disclosed to the Inquest.
- [93] There were a number of CDs containing photographs that were before the District Court that were not exhibited at the Inquest.
- [94] I am confident that the Queensland Police Service has provided all relevant photographs in their possession and I am happy that I have before me all relevant photographs from Drillsure and Golders. In making my findings I have considered all evidence that is properly before me.

Bernadette Callaghan  
Coroner  
24 August 2011