



## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 24<sup>th</sup> days of September 2009 and the 27<sup>th</sup> day October 2009, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of John Eric Mitchell and Graham Bryant.*

*The said Court finds that John Eric Mitchell aged 69 years, late of East Front Road, Mannum, South Australia died at Burdett Road, Pompoota, South Australia on the 26<sup>th</sup> day of April 2000 as a result of aortic laceration.*

*The said Court finds that Graham Bryant aged 51 years, late of 57 King George Street, Mannum, South Australia died at Burdett Road, Pompoota South Australia on the 23<sup>rd</sup> day of June 2007 as a result of closed head injury.*

*The said Court finds that the circumstances of their deaths were as follows:*

### **1. Introduction and background**

- 1.1. Inquests into the deaths of John Eric Mitchell and Graham Bryant were heard concurrently. Both men died from serious injuries sustained in separate and unrelated motor vehicle collisions that occurred several years apart. There was nevertheless a remarkable degree of commonality between the circumstances of both motor vehicle collisions. Both men died in collisions at the same location in almost identical circumstances and at the hands of the same motorist. They both died when that same motorist failed to give way to each of them at the same intersection, namely that of Burdett Road, Thiele Road and Jovial Downs Road at Pompoota. The vehicle with

which their respective vehicles collided was in both cases driven by Mrs Michelle Leanne Thiele, 38, of Thiele Road, Pompoota in South Australia. On both occasions the weather was sunny and dry. Both collisions are explicable on no basis other than by reference to a conspicuous lack of care on Mrs Thiele's part and a failure by her to obey the rules of the road. There is no evidence that the driving behaviour of either Mr Mitchell or Mr Bryant in any way contributed to their respective deaths.

- 1.2. Mr Mitchell was 69 years of age at the time of his death. He resided at Mannum which is situated on the Murray River north of Murray Bridge. The motor vehicle collision in which Mr Mitchell lost his life occurred on Wednesday 26 April 2000. He was the driver and sole occupant of a Toyota station wagon (SA) UOE-097. He died at the scene from injuries sustained in the impact. A post-mortem examination was conducted in respect of Mr Mitchell's body by Professor Roger Byard, a forensic pathologist. The cause of death as stated in Professor Byard's post-mortem report<sup>1</sup> is aortic laceration. The former State Coroner, Mr Wayne Chivell, originally made a finding without Inquest as to the cause of Mr Mitchell's death. The finding that Mr Chivell made was one of aortic laceration. I need say no more than that the evidence in this Inquest confirmed that cause of death. I find the cause of Mr Mitchell's death to have been aortic laceration.
- 1.3. Mr Bryant was 51 years of age at the time of his death. He also lived at Mannum. The motor vehicle collision that claimed Mr Bryant's life occurred on Saturday 23 June 2007. Mr Bryant had been riding a Yamaha XJ650 motorcycle at the time of the fatal collision. He was the sole rider of the motorcycle. Mr Bryant also died of his injuries at the scene. A post-mortem examination of Mr Bryant's body was conducted by Dr John Gilbert, a forensic pathologist. The cause of death as stated in Dr Gilbert's post-mortem report<sup>2</sup> is closed head injury. In his report Dr Gilbert describes a number of haemorrhages within the brain as well as a left frontal lobe contusion and a small tear of the posterior corpus callosum. I find the cause of Mr Bryant's death to have been closed head injury.
- 1.4. Neither drugs nor alcohol were in any way involved in the collisions in which Mr Mitchell and Mr Bryant lost their lives.

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<sup>1</sup> Exhibit C3a

<sup>2</sup> Exhibit C11a

- 1.5. In these findings I shall refer to the collision in April 2000 involving Mr Mitchell as the Mitchell collision. Similarly, I shall refer to the collision in June 2007 involving Mr Bryant as the Bryant collision.
- 1.6. As alluded to earlier, the driver of the vehicle with which the vehicles of Mr Mitchell and Mr Bryant respectively collided was in each instance Mrs Thiele. Mrs Thiele is a 38-year-old married woman who at all material times lived on a farming property on Thiele Road at Pompoota via Mannum. Mrs Thiele was the sole occupant of the vehicle that was involved in the Mitchell collision. At the time of the Bryant collision she had two children whose ages were then 3 years and 7 months respectively. Both children were present in the vehicle that Mrs Thiele was driving at the time of the Bryant collision.
- 1.7. Following the Mitchell collision, Mrs Thiele was prosecuted for an offence of failing to give way and was fined a total of \$426 with no licence disqualification. In respect of the Bryant collision, Mrs Thiele was prosecuted in respect of two counts of aggravated driving without due care, the respective circumstances of aggravation being the death of Mr Bryant and the injuries sustained by one of her children. She was convicted and sentenced to 8 months imprisonment with 7 months of that period to be suspended and 1 month to be served immediately. In addition, Mrs Thiele was disqualified from holding or obtaining a drivers licence for a period of 18 months. On appeal to the Supreme Court, the order that would have seen Mrs Thiele serve 1 month of her 8-month sentence was quashed with the result that the entire sentence of 8 months was suspended. A 2-year bond to be of good behaviour accompanies the suspended sentence. I do not understand Mrs Thiele to have actually served any period of incarceration as a result of the Bryant collision. The licence disqualification of 18 months was not altered on appeal. Mrs Thiele is still subject to that period of disqualification. To my knowledge there is no legal impediment to Mrs Thiele continuing to drive a motor vehicle once the period of disqualification has concluded.
- 1.8. Mrs Thiele was seriously injured in the Mitchell collision. She claims to have no recollection of the incident. Mrs Thiele was not seriously injured in the Bryant collision notwithstanding the fact that the impact caused her vehicle to roll onto its side. However, one of her children was ejected from the vehicle and sustained an injury.

- 1.9. Mrs Thiele made only the briefest of statements to the police in respect of each collision. She no doubt gave these statements in order to comply with her legal obligation to identify the driver of her vehicle in each instance. Mrs Thiele gave a statement of one page dated 13 June 2000<sup>3</sup> to a Mr Geoffrey Wark over the telephone. In that statement she admits that she was the driver of the Holden HQ utility registration number (SA) WFE-573 that was involved in the Mitchell collision but asserts that she has no recollection of the circumstances of the accident itself, nor of the events leading up to the accident. Mrs Thiele made a statement of one page in respect of the Bryant collision. It is in affidavit form and is dated 21 August 2007<sup>4</sup>. In that statement Mrs Thiele states that at the time of the Bryant collision she was the driver of a Holden Rodeo dual cab utility registration number (SA) VXM-533. The statement provides no further information in respect of that incident. Aside from Mrs Thiele there are no other eyewitnesses to either collision.
- 1.10. When Mrs Thiele was prosecuted in respect of these incidents she pleaded guilty. In neither instance did she give any evidence in a public forum as to the circumstances of the collision. It appears that it was only in the context of this Inquest that Mrs Thiele was asked for the first time to account publicly for her actions in relation to these incidents.

## **2. The intersection**

- 2.1. The intersection is situated in rural South Australia on Burdett Road, sometimes known locally as the Mannum Road. This road runs in a generally north-south direction between its junction with the Karoonda Road to the south and the town of Mannum to the north.
- 2.2. Burdett Road has a bitumen surface. At a district known as Pompoota, Burdett Road intersects with Thiele Road on its western side and Jovial Downs Road on its eastern side. One can cross the intersection from Thiele Road to Jovial Downs Road with little or no deviation. Thiele Road is also a bitumen-surfaced road. Jovial Downs Road is a dirt road. The speed limit along Burdett Road at this location is 110 kilometres per hour. The speed limit along Thiele Road is the State default speed limit of 100 kilometres per hour, but of course there is a need for motorists entering the intersection from Thiele Road to give way to traffic from both directions along Burdett Road and to reduce one's speed in order to be in a position to do so.

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<sup>3</sup> Exhibit C26

- 2.3. Burdett Road is clearly the major road and for that reason alone traffic travelling along it would command right of way. The right of way that traffic along Burdett Road enjoys has at all material times been reinforced by GIVE WAY signs controlling traffic entering the intersection from both Thiele Road and Jovial Downs Road. We are only concerned with the obligation upon traffic entering the intersection from Thiele Road to give way to traffic along Burdett Road from both directions. A broken white line consisting of large white squares delineates the position on Thiele Road where vehicles would be expected to stand at the intersection when giving way to traffic on Burdett Road. Although there is no STOP sign against traffic entering the intersection from Thiele Road, there would nevertheless be an obligation for such a vehicle to stop if it was necessary to do so in order to give way to traffic along Burdett Road from either direction or in order to determine whether there was a need to give way to traffic on Burdett Road from either direction. The fact that there was no STOP sign situated at the intersection would not relieve a motorist entering the intersection at Thiele Road from exercising the appropriate measure of care that is required to both establish the need to give way to traffic along Burdett Road and to give way to that traffic.
- 2.4. The give way signage at the intersection is plain for all to see. Moreover, at various times there have been signs along Thiele Road that warn of the approaching intersection and of the fact that there will be a give way sign at that intersection. I do not need to dwell on the precise nature of the signage that may have existed at the time of each collision as Mrs Thiele, being familiar with the area, knew perfectly well what her obligations were in respect of giving way to traffic on Burdett Road. That said, one of the issues that I examined in the Inquest was whether instead of a GIVE WAY sign at the intersection there ought to be a STOP sign that would oblige traffic to come to a dead stop before proceeding into or across the intersection. For reasons that I will identify in due course I have come to the conclusion that there should be a STOP sign governing traffic entering or crossing the intersection from both Thiele Road and Jovial Downs Road.
- 2.5. The following observations are taken from the evidence. I also conducted a view in respect of the intersection. My own observations accord with the evidence. As to distances that are quoted, there were a number of sources of evidence that did not always coincide. SAPOL measurements and estimates as to distance differed slightly

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<sup>4</sup> Exhibit C26a

from the distances quoted in a Government report about this intersection that was tendered to the Inquest as an exhibit to the affidavit of Mr Stephen Clark who is the Manager, Traffic Regulation and Standards Unit, Department for Transport, Energy and Infrastructure (DTEI)<sup>5</sup>. Annexure 'SBC11' to that affidavit is a Road Safety Audit conducted in respect of the intersection by the Traffic Standards Section, Transport Services Division of DTEI in September of 2009. Except where otherwise stated, the distances quoted below are from that document.

- 2.6. I add here that the features of the intersection and its surrounds, including lines of sight, are not materially different as between the years 2000, 2007 and 2009.
- 2.7. Visibility at the intersection is reasonably open. The terrain is generally flat with one material exception that I will elaborate upon in a moment. Thiele Road runs in an east-west direction. One is thus approaching the intersection with Burdett Road at right angles. At a location on Thiele Road approximately 400 metres west of the intersection (an estimate made during the course of the Inquest), a motorist gains an unobstructed view along Burdett Road to the north to a point approximately 840 metres from the intersection. The location approximately 400 metres west of the intersection is adjacent to the property on Thiele Road occupied by Ms Jennifer Stratford and Mr Peter Sellick. As one approaches the intersection along Thiele Road from this position, the motorist's view along Burdett Road north of the intersection remains clear. At the intersection itself, a motorist about to enter into the intersection from Thiele Road again has an unobstructed view along the length of Burdett Road to the north for that distance of approximately 840 metres. There is a slight rise in the road at that distant location which then obscures traffic on Burdett Road to the north of that location.
- 2.8. The motorist's view to the right, that is to say to the south, as one approaches the intersection along Thiele Road is not as clear. At a distance of approximately 270 metres from the intersection there is a left-hand bend in Burdett Road for traffic travelling north and, as well, there is a rise and a stand of trees at that location. This means that a motorist approaching the intersection along Thiele Road only has a view represented by that approximate 270 metres distance along Burdett Road from the intersection. That view remains constant as one approaches the intersection. However, at the south-west corner of the intersection there is a large native pine on the right-hand side of Thiele Road that significantly obscures one's view to the right.

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<sup>5</sup> Exhibit C27

There are also some shrubs. This complicates one's visibility in respect of traffic coming from a southerly direction along Burdett Road. The tree is of such a magnitude and is situated in such a position that by the time one has gone past it there might well be traffic on Burdett Road that has come around the bend to the south that one might need to give way to. This traffic could well be travelling at 110 kilometres per hour or more. A car travelling at 110 kph will cover that distance of 270 metres in 8.8 seconds.

- 2.9. The two collisions were investigated by experienced Major Crash Investigation Unit police officers, namely Senior Constable Gregory Rowland and Brevet Sergeant Di-Ann Salotti. Both officers expressed a view about the visibility of traffic along Burdett Road as one approaches the intersection along Thiele Road. I need say very little about their observations of the view to the north along Burdett Road except to say that they both expressed the opinion that the view was unobstructed as one approaches the intersection along Thiele Road. That clearly is the case and I so find. As far as the view to the right is concerned, Mr Rowland made the following observation:

- 'Q. It is your evidence that extra care would need to be taken at the intersection given the view to the right-hand side from Thiele Road.
- A. Most definitely with the view to the right, it could be quite dangerous if you weren't able to pick up very quickly a vehicle that's travelling especially at 110 km/h, it could become - even if you actually were at that intersection on the approach and there was a vehicle coming, you would have to pay particular attention to make sure that there was nothing coming, given the speed limit at 110, how quickly vehicles approach.'<sup>6</sup>

Ms Salotti said:

- 'A. The view to the right is initially obstructed by the tree and then once you get closer to the actual give way line itself its a clear view, but only to the distance of the bend. As opposed to the left which is a - its unobstructed. There are no trees. There's absolutely nothing obscuring your view. The road is straight and in fact slightly, slightly upwards. So it's a much clearer view. You could easily see that from some distance away from the intersection. Whereas the view to the right necessitates you slowing down because you need to slow down to be able to properly assess what's coming from that side.
- Q. So extra care would need to be taken to the right as opposed to the left.
- A. Absolutely.'<sup>7</sup>

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<sup>6</sup> Transcript, page 37

<sup>7</sup> Transcript, page 57

My own observations of the view to the right, having observed that view both on foot and in a moving vehicle driven by me, accord with the observations and opinions expressed by both Mr Rowland and Ms Salotti.

- 2.10. All of this means that the decision as to whether or not to proceed across the intersection without coming to a dead stop cannot confidently and safely be made until the motorist has passed the tree. By then the motorist is almost at the mouth of the intersection. One has to judge the distance of any traffic approaching the intersection from the right, as well as its speed, before a proper determination can be made as to whether it is safe to proceed into the intersection across the path of that traffic. In my view, at this intersection this is not an easy judgment to make in a moving vehicle.
- 2.11. The measure of care that is required to negotiate the intersection is significantly enhanced by the relatively limited visibility that a motorist has of traffic along Burdett Road approaching the intersection from the south. Although both Messrs Mitchell and Bryant approached the intersection from the north in respect of which the view is clear, the degree of vigilance that is required generally for a motorist entering the intersection from Thiele Road to safely negotiate the intersection is not an irrelevant consideration. A motorist has to be very careful at this intersection.
- 2.12. Along the eastern verge of Burdett Road, and beginning at its junction with Jovial Downs Road, is a line of large pine trees that extends for approximately 114 metres along Burdett Road to the north of the intersection. This figure was measured by Ms Salotti using a police laser<sup>8</sup>. It is said that in the morning the trees cast shadows across the bituminised carriageways of Burdett Road. There is also a possible issue as to a vehicle being camouflaged against the darkness of the trees themselves, whatever the position the shadows might be in.

### **3. The circumstances of the Mitchell collision**

- 3.1. There were no eyewitnesses to this collision other than the drivers of the participating vehicles, one of whom is deceased and the other, Mrs Thiele, has no recollection of the events. Nevertheless, a number of inferences as to the manner in which this collision occurred are available from the circumstances, in particular from the

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<sup>8</sup> Exhibit C22e

positions of the vehicles following the collision and from the damage to those vehicles.

- 3.2. The day was fine and the weather conditions were sunny and dry at the time of the collision. It is believed that the collision occurred at approximately 8:20am on 26 April 2000. The deceased, Mr Mitchell, was driving a bright yellow Toyota station wagon. Mrs Thiele was behind the wheel of a blue coloured Holden utility.
- 3.3. Mr Mitchell was a resident of Mannum and so at that time of the day it is conceivable that he was travelling along Burdett Road in a southerly direction from Mannum. Mrs Thiele lived on a property on Thiele Road and would frequently travel from that property along Thiele Road to a paddock that belonged to their farming enterprise that was situated on the other side of Burdett Road. She habitually crossed Burdett Road at the Thiele Road/Burdett Road/Jovial Downs Road intersection to go to and from that paddock.
- 3.4. Police attended the collision scene later that morning. The vehicles were still in the positions in which they had been located following the accident. There were gouge marks on the bitumen surface of the carriageway of Burdett Road that were indicative of the approximate point of impact. A number of observations were made and Mr Rowland of the Major Crash Investigation Unit took measurements. Mr Rowland, who is now a police officer in the Northern Territory, gave oral evidence in the Inquest. Mr Rowland also prepared a plan of the salient features of the scene. A police accident reconstructionist, Mr Graham England, also examined the circumstances surrounding the collision and was able to express opinions as to the likely directions of travel of the two vehicles prior to impact and of their likely impact speeds.
- 3.5. The approximate point of impact as represented by gouge marks on the bitumen surface of Burdett Road was located 32.8 metres south-east of the point from where the northern fence alignment of Thiele Road intersected with the western fence alignment of Burdett Road. Mr Rowland was unable to locate any tyre marks that were consistent with having been caused by either vehicle prior to impact. The only tyre and scrape marks located at the scene were post impact marks. Both vehicles were located east of the point of impact. The Mr Mitchell's Toyota station wagon was 18 metres and the Holden utility was 17 metres away from that point. The

damage to the yellow Toyota station wagon driven by Mr Mitchell was in the main at the front of the vehicle whereas the damage to the utility driven by Mrs Thiele was to the left-hand side of that vehicle. In Mr England's opinion the damage to these vehicles indicates that the front of the Toyota station wagon struck the left side of the Holden utility at close to right angles. Mr England concluded that from the positions where the vehicles came to rest, the pre-impact direction of travel of one vehicle must have been to the south and the pre-impact direction of travel of the other vehicle must have been towards the east. Due to the alignment of the vehicles at impact the only possible direction of travel of the Toyota station wagon was to the south and the only possible direction of travel of the Holden utility was to the east. Mr England considered it likely that the point of impact was towards the eastern side of the Burdett Road carriageway near where the post-impact tyre marks commenced on the bitumen surface. He considered it a possibility that both vehicles had swerved to their left just prior to impact. In any case, given Mr England's opinions as to the directions of travel of the two vehicles, which I accept in their entirety, it is clear and I find that Mr Mitchell had been driving his Toyota station wagon south along Burdett Road and Mrs Thiele was driving east across the intersection. From the point where the tyre marks commenced it is my conclusion, that was shared by Mr England, that the point of impact was more towards the eastern side of Burdett Road, that is to say within the carriageway for vehicles travelling south along that road. This was the carriageway occupied by Mr Mitchell's vehicle, which means that he was on the correct side of the road at the point of impact. The point of impact is also highly consistent in my view with Mrs Thiele's vehicle having been driven across the western half of the Burdett Road carriageway and then into the eastern half of the carriageway where it was at the time of that impact. Given the damage to the two vehicles, the only conclusion available in my view is that the front of Mr Mitchell's Toyota station wagon impacted with the left-hand side of Mrs Thiele's utility at approximately right angles. The further conclusion I reach is that Mrs Thiele had driven her vehicle across the path of Mr Mitchell's vehicle. That being the case, it is clear that Mrs Thiele failed to give way to Mr Mitchell contrary to her obligation to do so. If, as Mr England postulates, there is the possibility that both vehicles swerved to the left just prior to impact, it seems reasonably clear that the swerving was at a minimum level. Given the complete and unobstructed view that Mr Mitchell would have had of her vehicle approaching the intersection, it is likely that he saw Mrs Thiele's vehicle prior to impact.

- 3.6. Mr England endeavoured to calculate the approximate speeds of the two vehicles at impact. In doing so he used the plan prepared by Mr Rowland, utilised possible approach and departure angles to and from the likely point of impact and also used measurements that he obtained from the plan. As I understand it he also utilised the tyre marks that were created post impact together with the weights of both vehicles. The conclusion that Mr England reached, which I accept, was that the likely impact speed of the Toyota station wagon driven by Mr Mitchell was between 78 and 110 kilometres per hour and the likely impact speed of Mrs Thiele's Holden utility was between 11 and 28 kilometres per hour. It will be observed from these figures that Mr Mitchell was probably travelling at or within the 110 kilometres per hour speed limit and possibly at a velocity significantly short of that limit. However, for the purpose of these findings I am prepared to act on the basis that Mr Mitchell was travelling at the speed limit of 110 kilometres per hour. As far as Mrs Thiele's speed is concerned, it is not known whether she stopped at the intersection before proceeding across it or whether she had slowed to a speed below 11 kilometres per hour prior to accelerating across the intersection. In any event it is clear that she was not travelling at a speed that was in excess of any limit.
- 3.7. There is no evidence that Mr Mitchell was exceeding the speed limit. Notwithstanding the view that was available to him, and even having regard to the need for him to drive alertly and defensively, he was not in any way obliged to slow down or give way to Mrs Thiele's vehicle. Mr Mitchell was entitled to hold the expectation that Mrs Thiele would see his vehicle and give way to it. It seems plain that he was given very little warning of Mrs Thiele's intention to cross the intersection notwithstanding his presence. He had little or no chance of avoiding the impact. Examined in that light, the lack of any evidence of braking such as skid marks that could be attributed to Mr Mitchell's vehicle comes as no surprise. Ms Salotti endeavoured to research Mr Mitchell's driving record but was unable to locate any such record, including any record for expiated offences<sup>9</sup>.
- 3.8. The issue as far as Mrs Thiele's driving is concerned is the quality of her lookout when proceeding towards and across the intersection and also possibly of her judgment of the speed and distance of Mr Mitchell's vehicle if she saw it at all. Whether Mrs Thiele saw Mr Mitchell's vehicle at any time prior to impact is a matter

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<sup>9</sup> Transcript, page 76

of conjecture. It is unlikely that she did see it. One would have thought that if she had seen the approach of his vehicle she would have given way if for no other reason than for her own self preservation. If she did see his vehicle it may well be that she saw it at a time after she had committed herself to crossing the intersection and at a point when it was too late to avoid an impact.

- 3.9. What is clear of course is that Mrs Thiele failed to give way to Mr Mitchell's vehicle when she was obliged by law to do so and her plea of guilty in respect of that incident reflects that. It is also clear that from Mrs Thiele's familiarity with this intersection she was perfectly aware of her obligation to give way to Mr Mitchell. There was thus no question of Mrs Thiele either being taken by surprise by the existence of the intersection or not having any knowledge of her obligation to give way to traffic along Burdett Road from either direction.
- 3.10. When Mrs Thiele gave evidence before me she confirmed that she had no memory of this incident. Her first recollection post the incident was waking up in the Royal Adelaide Hospital. She did say in her evidence, however, that her normal routine at that time was to feed their sheep on a daily basis, check that they were not in any trouble lambing, and to travel to the paddocks on the eastern side of Burdett Road for that purpose. Mrs Thiele said that in the year 2000 there were occasions when she would cross the intersection several times per day<sup>10</sup>. She said she was reasonably familiar with the intersection at that time. Mrs Thiele accepts that she must have been driving across the intersection at the time of the collision and that Mr Mitchell came from a northerly direction<sup>11</sup>. Mrs Thiele also accepted that the only logical conclusion was that she had failed to give way and that she had not seen Mr Mitchell's vehicle. She said as follows:

I'm confused, basically I've tried to think how it happened. I'm not sure, maybe - maybe I stalled the vehicle in the intersection crossing over and may be that's why I was there. I don't know why I would've gone across there. At that time of the day the sun would've been on the windscreen - so may be that was it. I've tried all sorts of reasons to work out how on earth I would've been - how on earth I couldn't have seen a yellow vehicle on a sunny day, but I can't work it out.<sup>12</sup>

To my mind the possibility of Mrs Thiele's vehicle stalling on the intersection is intrinsically fanciful. Even if her vehicle had stalled, a conclusion that she had in any

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<sup>10</sup> Transcript, page 167

<sup>11</sup> Transcript, page 168

<sup>12</sup> Transcript, page 169 (last answer)

event entered the intersection in circumstances that did not allow a sufficient opportunity for Mr Mitchell to avoid her is compelling. All I need say about this is that I accept Mr England's evidence that Mrs Thiele was travelling at a speed of no less than 11 kilometres per hour at the time of impact. Mrs Thiele told me that following this collision she developed the habit of stopping at the intersection. She said that she developed this habit in part in an attempt to work out how that accident could have happened. However, she said that she changed that habit of stopping because of concern that a milk tanker that used the road from time to time might be immediately behind her. In due course her practice of stopping changed to one where she did not necessarily stop<sup>13</sup>. However, in cross-examination Mrs Thiele agreed with Ms Kereru, counsel assisting, that the abandonment of the habit of stopping was the result of complacency on her part<sup>14</sup>. In any case I infer from her evidence that prior to the accident in 2000 she did not have any particular habit of stopping at the intersection.

#### **4. The circumstances of the Bryant collision**

- 4.1. SAPOL Communications' records reveal that the initiating 000 call was received at 10:53:58am from Ms Jennifer Stratford. Mannum Police were notified at 10:56am. Ms Jennifer Stratford who was one of the occupants of premises on Thiele Road approximately 400 metres from the intersection heard the impact from her premises. It was Ms Stratford who had phoned 000 from the scene. Ms Stratford drove to the scene of the collision as quickly as she could. She made her 000 call after examining Mr Bryant and then placing Mrs Thiele and her children in her car. The evidence indicates that the collision probably occurred at around, or shortly before, 10:50am.
- 4.2. The weather was sunny and dry as it had been at the time of the Mitchell collision in the year 2000.
- 4.3. It is clear that Mr Bryant was travelling in a southerly direction along Burdett Road at the time of the collision. He was riding his Yamaha motorcycle at the time. He had taken delivery of the motorcycle only two days prior to the incident. Mr Bryant and his wife Cathryn Louise Bryant, who provided a number of statements to the

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<sup>13</sup> Transcript, page 177

<sup>14</sup> Transcript, page 192

Inquest<sup>15</sup>, were intending to travel to a friend's home in Murray Bridge. Mr Bryant decided to ride the motorcycle and Mrs Bryant took their car. At the ferry that crosses the river at Mannum, Mrs Bryant remembered that Mr Bryant had left some of his medication on a bench at their home and so she decided to retrieve it. She indicated to Mr Bryant that she would return to their home, obtain the medication, and catch up with him. When Mrs Bryant returned to the ferry terminal, Mr Bryant was already disembarking on the other side of the river. She then saw him ride off towards Murray Bridge. Mrs Bryant was next to see her husband after he had been involved in the collision. She encountered the scene some minutes after the collision had taken place. Mr Bryant died at the scene.

- 4.4. There is no direct evidence that would establish the speed at which Mr Bryant's motorcycle was being ridden at the time of the impact. As far as any estimate is concerned, I was told during the Inquest by one of the investigating officers, Ms Di-Ann Salotti, that a reconstruction of the speeds of both vehicles prior to the collision was not feasible. There were no pre-impact tyre marks available. Moreover, Senior Sergeant Graham England, the reconstructionist, had suggested to investigating police that given the nature of the vehicles involved in the incident, an accurate speed reconstruction could not be provided. All that said, there is no evidence that Mr Bryant was riding the motorcycle at an unusually high speed or one that was significantly in excess of the speed limit of 110 kilometres per hour. If he had been riding at 110 kilometres per hour, he was legally entitled to do so.
- 4.5. The issue of Mr Bryant's speed is naturally relevant in a number of respects. Firstly, it is relevant in respect of the time over which Mr Bryant's motorcycle may have covered the distance between the rise in Burdett Road, approximately 840 metres to the north of the intersection, and that intersection. Secondly, the speed of his motorcycle is in my opinion also relevant to its visibility and to the opportunity for Mrs Thiele to have seen it at a point that would have allowed her sufficient time to give way to it. The speed of Mr Bryant's vehicle would also be relevant insofar as an excessively high speed would have a tendency to affect an observer's judgment as to how distant it might be and how quickly it might converge on the intersection. However, this latter consideration is perhaps of limited relevance given that Mrs Thiele said in her own evidence that she did not at any stage see the approach of the

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<sup>15</sup> Exhibits C9, C9a and C9b

motorcycle at any time prior to impact. For instance, it is not as if Mrs Thiele claims that she was deceived by the speed of the vehicle and proceeded across the intersection having misjudged how quickly the vehicle would converge on her. I return later to the question of Mrs Thiele's opportunity to see Mr Bryant's motorcycle and her opportunity to give way to it.

- 4.6. Mr Bryant's driving history was researched by Ms Salotti. There were three expiated motoring offences revealed by her search. It is recorded that in 2001 in New South Wales Mr Bryant was fined for exceed speed in a built up area. Neither the speed nor the type of vehicle involved is revealed. It is recorded that in 2005 in South Australia Mr Bryant was fined for exceed speed in a 60kph zone. The speed involved was 76kph and the vehicle involved was a car. It is recorded that in 2006 in South Australia Mr Bryant was fined for disobeying a red light having been detected by a camera. The vehicle involved was a car<sup>16</sup>. None of this to my mind demonstrates any particular propensity on Mr Bryant's part to speed on a motorcycle in open country or an egregious or sustained disregard for the rules of the road.
- 4.7. Mrs Bryant explains in one of her statements<sup>17</sup> that Mr Bryant was a very experienced motorcyclist who rode if not every day, then every other day. She states that he had attended and completed the New South Wales Stay Upright course on two separate occasions and that he was a very capable and confident rider who had taught both her and their children to ride. She states that from time to time her husband had also been entrusted with the responsibility of teaching other youths to ride. He was a member of a number of different motorcycle clubs throughout Australia and had held committee positions within a number of motorcycling organisations. Mr Bryant and his wife attended motorcycle rallies several times a year and Mrs Bryant suggests that the majority of their vacationing was conducted on motorcycles. Motorcycles were Mr Bryant's passion, not only in the riding but also in the building. Mrs Bryant's statement very much suggests that Mr Bryant was a mature and careful motorcyclist. She states that when she and Mr Bryant travelled in separate vehicles, Mr Bryant always travelled in front on the motorcycle and that she followed with the car, generally about a kilometre apart. Their usual practice was to travel at slightly below the speed limit. If her husband got ahead of her he would slow a little until they could see each other again. Of course, Mrs Bryant cannot directly comment upon Mr

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<sup>16</sup> Transcript, pages 72-74

Bryant's riding behaviour on occasions when she was not present, but Mrs Bryant's statements suggest overall that Mr Bryant was particularly safety conscious. Having regard to the arrangement between Mrs Bryant and her husband that Mrs Bryant would at some point in the journey catch up to him, it seems unlikely that Mr Bryant would have been travelling at a speed that was in any way excessive, or at a speed that would have rendered it impossible for Mrs Bryant to catch up with him.

- 4.8. Mrs Bryant also states in her most recent statement that she had never known her husband to ride a motorcycle without the headlight operating. I return to this aspect of Mr Bryant's riding behaviour later in these findings.
- 4.9. To summarise, although there is no direct evidence of Mr Bryant's speed at the time of the impact, nor any evidence provided by any scientific reconstruction, the evidence of Mrs Bryant would suggest that her husband was a safe rider who rode at moderate speeds and, in particular, on the day in question was probably riding at a moderate speed if for no other reason than to allow her to catch up to him. I find that Mr Bryant was travelling at a moderate speed. For the purpose of these findings, I will act on the basis that Mr Bryant was at all material times riding his motorcycle at the limit of 110 kilometres per hour.
- 4.10. Mr Bryant, as with Mr Mitchell, would have had no difficulty seeing Mrs Thiele's vehicle as it approached the intersection along Thiele Road. Mr Bryant was entitled to assume that Mrs Thiele would see him. Accordingly, even allowing for the need to ride defensively, there was in my view no specific need for Mr Bryant to alter his riding behaviour having regard to the presence of Mrs Thiele's motor vehicle. He was entitled to proceed through the intersection in the expectation that Mrs Thiele would give way to him and if necessary stop for that purpose. In the event, the absence of any skid marks might suggest that Mr Bryant was given very little warning of the fact that Mrs Thiele intended to proceed through the intersection without giving way to him.
- 4.11. As seen earlier in my discussion of the circumstances of the Mitchell collision, Mrs Thiele had at one point in time after that collision formed a habit of stopping at the intersection regardless of the presence of traffic. However, by 2007 that habit had fallen by the wayside. In the event, it appears Mrs Thiele's practice was such that

provided she was satisfied there were no vehicles either from the north or the south along Burdett Road that she had to give way to, she would proceed across the intersection without stopping.

- 4.12. Mrs Thiele was able to provide the Court with her account of what took place in respect of this collision.
- 4.13. Mrs Thiele told me that on the morning in question she and her children set off in the 4WD utility. The two children were seated in the back seat. Mrs Thiele proceeded along Thiele Road in an easterly direction towards the intersection intending to go across it to another part of their property. There is a slight crest on Thiele Road in the vicinity of the premises then occupied by Ms Stratford and her partner, Mr Peter Sellick, which is approximately 400 metres from the intersection. Once the crest is negotiated there is the unobstructed view along Burdett Road to the north for several hundred metres as I described earlier. Mrs Thiele told me that when she crested the rise she was travelling between 55 and just less than 60 kilometres per hour and she then proceeded to slow down. At one point she gave a toot of the horn to acknowledge Mr Sellick who was visible on his property at that time. Mrs Thiele said that she looked to the left and could not see anyone and continued to slow down as she approached the intersection. She looked again to the left, looked to the right, could see no vehicles, and so proceeded into the intersection. Once in the intersection she heard a thud on the side of her utility. The impact caused the utility to roll onto its side. When she got out of the vehicle she saw Mr Bryant and his motorcycle both on the ground.
- 4.14. Mrs Thiele claims not to have seen the motorcyclist approaching the intersection from the north, that is from her left. When asked by her own counsel, Ms Cliff, as to the speed at which she was travelling as she approached the intersection, Mrs Thiele said that she did not know exactly what speed she had been doing but said that she had definitely slowed down because she had used her brakes and, as well, had dropped the vehicle down into third gear prior to proceeding into the intersection. When asked about her lookout as she was approaching the intersection, Mrs Thiele said that she looked to the left and had seen what she thought was an open road although there were tree shadows across the road at that time. She said that she did not see a vehicle and thought that it was safe to proceed across the intersection. As far as her view to the right was concerned, she acknowledged the presence of the sweeping bend along

Burdett Road to the south. She said that she had looked in that direction and could not see any vehicles coming from that direction. She said that she did not stop her vehicle at any time. She acknowledged that her own vehicle would probably have been right across into the middle of the lane for vehicles travelling south at the time of the impact, that is to say in the lane in which Mr Bryant was riding his motorcycle.

- 4.15. When asked by Ms Cliff as to whether she was able to give any explanation as to how it was that she had not seen Mr Bryant, Mrs Thiele said:

'I looked in that direction I can only assume that the shadows throwing across the road merged with what he was wearing and that's why I didn't see him.'<sup>18</sup>

It is true that Mr Bryant was wearing dark coloured clothing and the motorcycle was, for the most part, black. The shadows to which Mrs Thiele is referring in that answer are shadows that during the early morning are cast by the trees that align the eastern verge of Burdett Road to the north of the intersection. Mrs Thiele agreed that other than the trees and the shadows that she referred to, there was nothing else that had obstructed her view when she looked to her left<sup>19</sup>. I add here that the trees themselves could not possibly have obstructed her view. I will in a moment come to the question of whether the shadows could have had an impact on Mr Bryant's ability to be seen.

- 4.16. In cross-examination by counsel assisting, Ms Kereru, Mrs Thiele described her general driving behaviour in respect of the intersection as it existed in 2007. She said this:

A. Well always approach that intersection I slow down towards the intersection, look up on the ridge and as I get closer to that intersection I look again to the left and I looked to the right. On the right-hand side you've got a sweeping bend so I definitely concentrate on there because there's quite often cars come around there. But yes, I always look to the left twice before I look to the right just as I approach the intersection check that it's clear and then proceed across the intersection if it's clear.

Q. At what point in terms of your metres away from the intersection do you start looking to your left and right.

A. As soon as I crest the top of the ridge I look to the left, that's the first one. As I approach down there's a bush on the side of the road where the Give Way Ahead sign is now. I always look to the left again about there as well just after the bush and as I approach the intersection just before the native pine tree on the right-hand

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<sup>18</sup> Transcript, page 158

<sup>19</sup> Transcript, page 160

side I always look to the left and then look to the right as I come up to the intersection.’<sup>20</sup>

The native pine tree that Mrs Thiele is referring to is the tree that exists on the right-hand side of Thiele Road as one approaches the intersection along that road. As seen earlier, this tree has a tendency to obscure a motorist’s view.

4.17. In cross-examination Mrs Thiele confirmed that she had engaged third gear before she proceeded into the intersection and added that she thought her speed was about 20 or 30 kilometres per hour. She said that that was the way that she would normally cross Burdett Road if there were ‘no vehicles around’<sup>21</sup>. When asked by me as to the speed at which Mrs Thiele could drive the vehicle comfortably in third gear before having to change down to second, she said that it depended. She said that if one was about to accelerate then one could travel at 20, 30 or 40 kilometres per hour, although she was not sure. Mrs Thiele told me that she was driving the vehicle in rear-wheel drive and in high ratio at the time of this collision. She did say that she would normally go through the intersection in second or third gear depending upon the road conditions, but did not habitually drop the transmission down to second before proceeding across the intersection. In any case, as is clear from her evidence and the circumstances of this accident, at no stage did she stop. From the fact that she had only dropped the transmission down to third it is also safe to conclude that Mrs Thiele proceeded across the intersection at a speed of no less than 20 kilometres per hour and very possibly at a speed greater than that. The fact that she would proceed across the intersection in third gear seems at odds with a determination on her part to be careful and would to my mind indicate that Mrs Thiele gave herself only a limited opportunity to establish for certain whether or not there were any vehicles along Burdett Road from either direction to which she would have to give way.

4.18. The damage to Mrs Thiele’s vehicle was sustained for the most part on the left-hand side. The left A and B pillars were forced inwards. The left front mudguard was forced down at the front. The left front and rear doors were forced in at the left B pillar. The left door seal and left floor pan, between the left A and B pillars, were buckled and forced in. The utility section was twisted and forced up at the left side<sup>22</sup>. The vehicle had rolled onto its right-hand side and came to rest in that position. To

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<sup>20</sup> Transcript, pages 170-171

<sup>21</sup> Transcript, page 172

<sup>22</sup> Statement of Christopher Andrew Graham, Vehicle Examiner, Exhibit C20, page 13

my mind it is obvious that the motorcycle collided with the left-hand side of Mrs Thiele's vehicle. Brevet Sergeant Salotti's statement<sup>23</sup> and her plan suggests that the approximate point of impact between the Yamaha motorcycle and the Holden Rodeo utility was situated in the eastern half of the Burdett Road carriageway, in other words, in Mr Bryant's half of the road. A number of gouge marks located on the eastern side of that lane substantiated that point as being the most likely point where the collision occurred. That point is quite close to a central point within the intersection. It also is clear in my opinion that what has taken place here is that Mrs Thiele has driven her vehicle across the path of Mr Bryant's motorcycle in almost identical fashion to the manner in which she had driven her vehicle across the path of Mr Mitchell's vehicle in 2000.

- 4.19. It is clear that Mrs Thiele failed to give way to the motorcycle ridden by Mr Bryant and I so find. I accept Mrs Thiele's evidence that she did not see the motorcycle prior to the collision.

**5. Mrs Thiele's failure to see Mr Mitchell and Mr Bryant - The trees on the eastern side of Burdett Road**

- 5.1. As seen earlier, there is a line of trees that align the eastern verge of Burdett Road for a distance of approximately 114 metres north of the intersection.
- 5.2. There is no suggestion that this line of trees is directly responsible for obscuring vision of traffic travelling towards the intersection in a southerly direction along Burdett Road. However, it is suggested that the trees might impact on visibility in more subtle respects. Firstly, the trees do cast a shadow over the road during the early part of the morning, although as the morning progresses the shadows retreat to a point where they do not encroach upon the bitumen surface at all. Secondly, it is said that a moving vehicle might be camouflaged against the dark background of the trees. I have already alluded to the fact that in her evidence Mrs Thiele said in respect of the Bryant collision that she could only assume that the shadows that were thrown across the road had merged with what Mr Bryant had been wearing. By extension Mrs Thiele would also include in this observation the darkness of the motorcycle itself. This explanation was proffered by way of mitigation when Mrs Thiele was prosecuted in the Magistrates Court in respect of the Bryant collision. The submission is

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<sup>23</sup> Exhibit C22b

summarised in the judgment of Justice Gray on appeal from the Magistrates Court in **Thiele v Police** [2009] SASC 159 at paragraph 22. His Honour stated:

'The defendant did not see the motorcyclist at all. An explanation was proffered. The motorcyclist was dressed in black and was riding a black motorcycle. Counsel for the defendant submitted that as a consequence, the motorcycle and its rider were camouflaged and obscured against the backdrop of the pine-trees and their shadow to the north-east of the intersection.'

It seems clear from the judgment as a whole that His Honour dealt with Mrs Thiele's appeal on the basis that there was *'the real possibility, if not likelihood that when the defendant looked to her left, she had missed seeing the motorcyclist because motorcycle and rider were obscured or camouflaged for the reasons earlier discussed'* namely the colour of the rider's outfit, the colour of the motorcycle and the background of the dark trees and shadow thrown by those trees<sup>24</sup>. This proposition seems to have been accepted by counsel acting on behalf of the police in Mrs Thiele's appeal to the Supreme Court. Notwithstanding its unquestioned acceptance in that jurisdiction, in my view the proposition that the trees had a significant impact on Mr Bryant's ability to be seen and that this in some measure mitigated Mrs Thiele's driving behaviour has its difficulties and is in reality very much open to question.

- 5.3. It is appropriate firstly to say something about the possible effect of the trees in the context of the Mitchell collision. Their role in this collision can be dismissed. The Mitchell collision occurred at approximately 8:20am on a day in April. For the purposes of these findings I am prepared to act on the assumption that at that time of the morning there had been shadows thrown across at least the eastern carriageway of Burdett Road which of course was the side of the road upon which Mr Mitchell had been travelling. Mr Mitchell had been driving a medium sized bright yellow station wagon. According to Mr England, the accident reconstructionist, the vehicle was travelling no faster than the limit of 110 kilometres per hour. I accept that evidence. In those circumstances it is difficult to see how Mr Mitchell's light coloured vehicle could have been obscured by or camouflaged against the line of trees, even allowing for the fact that the vehicle was within the area of shadow cast by the trees at some point in time. As seen earlier, Mrs Thiele herself struggled, appropriately in my view, to explain how this collision occurred and, in particular, how she failed to see a yellow vehicle on a sunny day. If Mr Mitchell's vehicle had been travelling at 110 kilometres per hour it would have travelled the distance of approximately 840 metres

from the rise to the north of the intersection along Burdett Road to the intersection itself in approximately 27 seconds. Owing to Mrs Thiele's lack of memory of this incident it is not known how long it took her vehicle to be driven to the intersection from the position on Thiele Road where for the first time traffic travelling from the north along Burdett Road towards the intersection would have first come into view. However, there would have been a substantial period of time available for Mrs Thiele to have seen Mr Mitchell's yellow vehicle as it travelled along Burdett Road towards the intersection if she had chosen to look to the left as she herself approached the intersection. It will be remembered that the line of trees is only 114 metres long. A vehicle travelling at 110 kilometres per hour takes only 3.7 seconds to travel 114 metres. There is a further clump of trees to the north of this line but they are separated from the main clump by some distance. In any event they are a relatively truncated clump. I do not believe that the trees on the eastern side of Burdett Road had anything to do with Mrs Thiele's failure to see Mr Mitchell's quite visible bright yellow medium sized station wagon being driven at a moderate speed. If she had chosen to look, she would have easily seen it as she approached the intersection from that distance of 400 metres. Mrs Thiele faintly suggested in her evidence that the sun may have been in her eyes. But this would not explain why she did not see Mr Mitchell's car well before she and it reached the intersection and would also not explain why she would have chosen to proceed across an intersection when her vision was adversely affected by glare.

- 5.4. I turn to the Bryant collision and the effect of the trees. Photographs of the trees and of any shadows that they cast were taken by Brevet Sergeant Simon Keir of the Major Crash Investigation Unit at approximately 10:55am on 25 June 2008 at a time when the weather was fine, dry, clear and cold and there was bright sunshine<sup>25</sup>. These photographs were intended to reconstruct, as far as was possible, the extent to which shadows may have been thrown by the trees across the carriageway of Burdett Road a year earlier on 23 June 2007 at the approximate time of the collision. The photographs were taken, as I understand it, in connection with Mrs Thiele's appeal to the Supreme Court. The evidence demonstrated that there was no material difference between sunrise on 23 June 2007 and 25 June 2008<sup>26</sup> and so I infer that conditions when the subsequent photographs were taken were not materially different from those that had applied at the time of the Bryant collision. The photographs show that the

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<sup>24</sup> Paragraph 43 of His Honour's judgment

<sup>25</sup> Exhibit C18a

<sup>26</sup> 1 Minute

shadows thrown across the eastern carriageway in which Mr Bryant's motorcycle was travelling are minimal, except within the confines of the intersection itself. However, we are only concerned with what Mrs Thiele saw or failed to see before Mr Bryant actually reached the intersection. Far from demonstrating that Mr Bryant's motorcycle would have been obscured by shadow, there is very little evidence of shadow. What is shown is minimal and patchy and could not possibly have hidden from view even a dark coloured motorcycle being ridden at a speed that was not in excess of the limit. Two of Brevet Sergeant Keir's photographs are depicted below.



It is worthwhile observing that when Mrs Thiele was shown one of the photographs that were taken by Brevet Sergeant Keir<sup>27</sup> she was surprised to learn that it had been taken at the same time as the Bryant collision and at the same time of the year. She agreed that the photograph demonstrated that the trees did not in fact cast a great shadow over the road<sup>28</sup>.

- 5.5. I have taken into account the opinions of Ms Stratford and Mr Sellick in relation to the effect of the trees on the eastern side of Burdett Road. Ms Stratford told me that the stand of trees does cast a shadow over the road in the morning when the sun is coming up<sup>29</sup>. Ms Stratford could not relate any personal experience as to the effect that the shadows cast by the trees have on visibility. Her impressions were gained anecdotally and indeed possibly after these events had taken place. Her partner, Mr Sellick, had told her that in his view given the number of near misses over the years, the trees should come down.
- 5.6. Mr Peter Sellick, who is Ms Stratford's partner, gave evidence in the Inquest. When asked to describe the line of sight to the left as one approaches the intersection along Thiele Road, Mr Sellick said that in the winter time the sun was always very low and that it was difficult to obtain 'good vision'<sup>30</sup> because of what he described as some 'huge' pine trees on the eastern side of Burdett Road which break up the sun and throw a huge shadow across the road. He described them as very tall, very dark and dense such that they throw a 'really dark shadow across the road' probably until the late morning. Mr Sellick was of the view that the trees should be removed. He said that he had held that view for many years. Although he too provided me with anecdotal material to suggest that there had been incidents at the intersection, he conceded that to his knowledge there had only been the two accidents both of which had involved Mrs Thiele. In fact, that is the case<sup>31</sup>. To his knowledge nobody had complained to any of the traffic authorities about the trees, although he himself had spoken in passing to a local councillor about it. Mr Sellick also spoke to a police officer in 2007 about the effect of the trees. Senior Constable First Class Colin

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<sup>27</sup> Exhibit C18b, photograph 2 reproduced herein

<sup>28</sup> Transcript, page 181

<sup>29</sup> Transcript, page 116

<sup>30</sup> Transcript, page 131

<sup>31</sup> Transcript, page 72

Griffiths provided a statement to the Inquest<sup>32</sup> in which he confirmed that on 21 July 2007, approximately a month after the Bryant collision, Mr Sellick made mention to him of pine trees casting a shadow over Mannum Road that was caused by the morning sun. Mr Griffiths' statement reveals that Mr Sellick did not specifically suggest that it was a possible cause of the Bryant collision, but I am prepared to infer that that is what he was implying. All that needs to be said in any event is that, as seen, at the time of the Bryant collision the shadows had made a minimal intrusion upon the eastern carriageway of Burdett Road.

- 5.7. I add here that during the Inquest it was established that no complaint about the trees being a traffic hazard had ever been made to any relevant local government authority or to the police at any time before the Bryant collision.
- 5.8. I note that Mr Sellick was of the firm belief that there ought to be a stop sign at the intersection. In this context he mentioned the limited view to the right. He agreed with counsel that one needed to take into account the possibility that a vehicle might come around that bend at a high speed 'way over 100 ks'<sup>33</sup>.
- 5.9. I refer again to the fact that a vehicle being ridden at 110 kilometres per hour along Burdett Road as it approached the intersection from the north would have been visible for about 27 seconds from Thiele Road. Mrs Thiele told me that having crested the rise near the Stratford premises she slowed down from a speed of what would have been less than 60 kilometres per hour. For the purposes of this calculation I will assume that she continued at a speed of 60 kilometres per hour as she approached the intersection. If so, she would have covered the 400 metres to the intersection, during which time she could see along Burdett Road to the north, in approximately 24 seconds. For the entirety of that 24 second period, Mr Bryant's motorcycle would have been in full view along Burdett Road from any position that Mrs Thiele's vehicle occupied on Thiele Road. If Mrs Thiele, as she says, was slowing her vehicle from a speed of approximately 60 kilometres per hour, that length of time would have been longer. On that basis alone it is difficult to see why Mrs Thiele at no stage saw Mr Bryant's motorcycle as it approached the intersection. It is highly unlikely in my view that she looked to her left at any time as she was approaching the intersection. If she had looked to her left along Burdett Road and endeavoured to determine whether

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<sup>32</sup> Exhibit C25

<sup>33</sup> Transcript, page 135

there was any traffic along it, there was no reason why she should not have seen Mr Bryant's motorcycle. It would not have been positioned against a background of trees for the whole of the period that the motorcycle was within her possible view. Out of the 24 seconds or so that was available for Mrs Thiele to have seen Mr Bryant's motorbike, only 3.7 seconds of it is attributable to the time that the motorcycle was situated against the background of the trees. Mrs Thiele should have seen Mr Bryant's motorcycle, and to have identified it as a vehicle that she might have to give way to, well before she or it reached the intersection. In her evidence, Mrs Thiele agreed that in the light of the fact that both banks of trees do not line the entire eastern side of the road, she would have had an unobstructed view of a vehicle that was approaching the intersection from the north and that vehicles would not be obstructed by the trees<sup>34</sup>. Mrs Thiele was asked this:

'Q. If you didn't see the bike because it was, as it were, silhouetted against the trees or in the shade that the trees were throwing over the road. Can you tell us why you wouldn't have seen it earlier as you were approaching the intersection, at a stage when it was not backgrounded against trees.

A. I don't know.'<sup>35</sup>

5.10. As to the question of the camouflaging of Mr Bryant's dark clothing and motorcycle against the trees, in my view a person with ordinary powers of observation, good eyesight, with a proper lookout and endeavouring to identify whether there was any traffic present, should have seen Mr Bryant's motorcycle notwithstanding the trees. Roadside trees and vegetation are but one feature of the landscape that a motorist should instinctively take into account when ascertaining the presence of traffic. It is difficult to see how a failure to identify the presence of traffic can in any way be mitigated by the background against which the traffic might be seen when there is a clear duty upon a motorist to keep a proper lookout for the presence of traffic and to adjust one's driving behaviour according to the conditions. Even if one were to accept that Mr Bryant's dark motorcycle would have been less visible against a background of dark trees than say that of a yellow canola crop, it was nevertheless visible.

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<sup>34</sup> Transcript, pages 181 and 186

<sup>35</sup> Transcript, page 188

- 5.11. In short, I do not see how the presence of the trees, either by way of shadow or camouflaging, could in any way explain away or mitigate Mrs Thiele's failure to keep a proper lookout.
- 5.12. Finally, apropos of Mr Bryant's visibility on the morning in question, in her statement dated 3 September 2009<sup>36</sup> Mrs Bryant stated that she had never known her husband to ride a motorcycle without the headlight illuminated. She said that he could not stress enough the importance of riding with the headlight on, and no matter how short the trip he always insisted that his family members ride with their headlights operating so that they would be more visible to other motorists. Mrs Bryant specifically states that she has a clear recollection that on the morning of her husband's death she had seen him riding with the headlight of his motorcycle illuminated. She said that she had been waiting for him in the main street of Mannum and was watching for his expected approach through the rear vision mirror of her car. She had specifically been watching out for a headlight and that when she saw the headlight approaching she knew it was her husband. Ms Stratford on the other hand, in the context of describing Mr Bryant's possible visibility against the shadow caused by the pine trees, said that the headlight of the motorcycle had not been on. She said she knew that because when she saw the motorcycle on the ground the headlight was not burning. She believed that the motor of the bike was still running. The fact of the matter is that when the motorcycle was examined by police, the headlight assembly had been forced in and virtually destroyed. The impact had smashed the protective glass lens and both headlight globe filaments were broken<sup>37</sup>. Ms Stratford's observation that there was no headlight illuminated is explicable on that basis. Interestingly the police vehicle examiner, Mr Graham, noticed that the headlight switch was in the off position at the time of his examination. There is no evidence as to whether or not any person deliberately switched the headlight switch to the off position. The engine stop or 'kill' switch was also in the off position and this would be consistent with a person having switched it off following the collision, especially if the motor was still running. The indicator switch was in the right turn position and this was incongruous having regard to Mr Bryant's intended journey. There may well have been human intervention after the event as far as the position of switches is concerned. To my mind little can be concluded from the position of the switches as seen in the course of

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<sup>36</sup> Exhibit C9c

<sup>37</sup> Statement of Christopher Andrew Graham, Police Vehicle Examiner, Exhibit C20a, page 9

Mr Graham's examination and I have no reason to doubt the statement of Mrs Bryant that on the day in question Mr Bryant, in accordance with his habit, rode the motorcycle with the headlight illuminated. I find that the motorcycle's headlight was illuminated at the time of the collision.

**6. Mrs Thiele's driving record**

- 6.1. Aside from the two collisions that are the subject of this Inquest and which gave rise to the convictions and penalties I have described, it was revealed in evidence that Mrs Thiele had been involved in two other driving incidents. In 1992 in Western Australia<sup>38</sup> Mrs Thiele was involved in a collision. This involved an infringement of the Western Australian road traffic legislation, namely careless driving which may have been expiated. There was no other detail available in respect of that incident. However, Mrs Thiele herself told me that it had involved her running into the rear of the vehicle in front of her. She had driven too close to that vehicle. She was fined in respect of that incident.
- 6.2. According to records produced by Ms Salotti, a driving incident involving Mrs Thiele occurred at about 8:15am on 3 July 1998 on the Karoonda Road near Murray Bridge<sup>39</sup>. Mrs Thiele was driving a Holden Torana west along Karoonda Road. She crossed onto the incorrect side of the road in an attempt to overtake a slower moving vehicle. An oncoming vehicle was seen which resulted in Mrs Thiele braking and endeavouring to pull in behind the vehicle she was attempting to overtake. It is recorded that the brakes locked, Mrs Thiele lost control of the vehicle and it left the road. It travelled down and embankment and rolled. The speed limit on that stretch of road was 110 kilometres per hour. According to the record, Mrs Thiele received a caution for driving without due care and attention. Mrs Thiele was the only occupant of her vehicle and no other vehicle was impacted. Mrs Thiele herself told me that it had been a bright and sunny morning at the time of the incident. She had put her indicator on to signify that she was passing the vehicle ahead of her. She then saw a car in the distance that was cresting a hill and which was coming towards her. She decided to pull back and not pass the vehicle. She was not familiar with the vehicle as it was her husband's. It had recently had its brakes serviced. She had pressed the brakes too sharply and she lost control of the vehicle. She said that the particular

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<sup>38</sup> Exhibit C22t

<sup>39</sup> Exhibit C22s

stretch of road was 'really lumpy'<sup>40</sup>. The vehicle slid off the road to the right, hit some dirt and rolled once. Mrs Thiele believes that she had been travelling at about 90 to 100 kilometres per hour. Mrs Thiele told me that she reported the matter to the police, but had not been cautioned and indeed believed that she heard nothing more about the matter.

- 6.3. The matter in 1992 in Western Australia was relatively benign, but by any measure the 1998 incident on the Karoonda Road was a serious matter. It involved the loss of control of a motor vehicle of a kind that in other circumstances could have had potentially fatal consequences.
- 6.4. I was informed in evidence that after the Bryant collision, Mrs Thiele was directed by the Registrar of Motor Vehicles to undergo a medical examination. As part of this, Mrs Thiele's visual acuity was tested professionally and she was cleared for driving a motor vehicle. As I understand it, the examination was conducted in order to determine whether there was any basis for Mrs Thiele's driver's licence to be suspended or cancelled on medical grounds. Mrs Thiele does not wear spectacles.

## 7. **Conclusions**

- 7.1. The following findings and conclusions of fact have been made on the balance of probabilities. In the particular circumstances of this case, appreciating as I do that my findings might be said to reflect on the competence of Mrs Thiele as a licensed driver of a motor vehicle or that they might visit unforeseen consequences upon her, I have directed myself that I should not make these findings lightly or on unconvincing evidence. To my mind the evidence in support of these findings is compelling.
- 7.2. Mr Mitchell died of injuries sustained in a motor vehicle collision on 26 April 2000. The collision took place at the intersection of Thiele Road, Burdett Road and Jovial Downs Road at Pompoota. Mr Mitchell was the driver of one vehicle involved in the collision and Mrs Michelle Leanne Thiele was the driver of the other vehicle. The cause of the collision was Mrs Thiele's failure to give way to the vehicle driven by Mr Mitchell and this failure had been caused by a grossly defective lookout on her part. Mr Mitchell was driving his vehicle at a moderate speed. His vehicle was at all material times perfectly visible to Mrs Thiele. Although at the time of the day at

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<sup>40</sup> Transcript, page 164

which this collision occurred shadows may have been thrown across Burdett Road by trees on the eastern side of that road, I find that given the colour and size of Mr Mitchell's vehicle it is highly unlikely that Mrs Thiele's failure to see the vehicle was as a result of any shadow or camouflaging of Mr Mitchell's vehicle against the background of those trees. In any event the visibility of Mr Mitchell's vehicle to a motorist approaching the intersection along Thiele Road was very clear. Mrs Thiele has no recollection of this incident. I find that as she approached the intersection from a distance of approximately 400 metres along Thiele Road, she physically could have and ought to have seen Mr Mitchell's vehicle as it made its way along Burdett Road towards the intersection from the north. If Mrs Thiele had taken the trouble to look along Burdett Road to the north as she approached the intersection from that approximate distance of 400 metres, she ought to have seen Mr Mitchell's vehicle and have made the necessary preparations and formed the necessary judgments in order to give way to that vehicle. I can only conclude that Mrs Thiele simply did not look to her left to ascertain whether there was any traffic approaching the intersection from the north to which she may have to give way. Similarly, it is more probable than not in my opinion that when Mrs Thiele entered the intersection and attempted to cross it she simply did not look to her left.

- 7.3. Mr Bryant died of injuries sustained in a motor vehicle collision on 23 June 2007. The collision also took place at the intersection of Thiele Road, Burdett Road and Jovial Downs Road at Pompoota. Mr Bryant was the rider of the motorcycle involved in the collision and Mrs Thiele was the driver of the other vehicle. The cause of the collision was her failure to give way to the motorcycle ridden by Mr Bryant and this failure had been caused by a grossly defective lookout on her part. Mr Bryant was riding his motorcycle at a moderate speed. His vehicle was at all material times perfectly visible to Mrs Thiele. As far as the trees on the eastern side of Burdett Road are concerned, at that time of the day they would have cast only very limited shadow across the eastern carriageway of Burdett Road such that in my view the shadow had nothing to do with Mrs Thiele's failure to see Mr Bryant's motorcycle. The possible camouflaging of the motorcycle against the trees, however, is another matter to be considered. I am prepared to accept that Mr Bryant's motorcycle may have been less visible against a dark background than a light background. However, notwithstanding the presence of the trees and any possible camouflaging of Mr Bryant's motorcycle

against them, with an ordinary measure of vigilance Mrs Thiele should have seen Mr Bryant's motorcycle. And it is not as if Mrs Thiele had no means of establishing the presence on Mr Bryant's motorcycle on Burdett Road only for the first time when it had reached the intersection. If Mrs Thiele had earlier seen Mr Bryant's motorcycle approaching the intersection from the north, his presence at and proximity to the intersection when Mrs Thiele herself reached it would have come as no surprise. Indeed, by then she should have been specifically watching out for it. Having regard to the fact that Mr Bryant did have his headlight on, Mrs Thiele's failure to see Mr Bryant's motorcycle is all the more perplexing. Like with Mr Mitchell's collision, I conclude that Mrs Thiele simply did not look to her left in a northerly direction either at any time as she approached the intersection or when she was about to enter it. If she looked at all, her lookout must have been of a very cursory nature. Perhaps if she had stopped in accordance with the habit she had developed after the Mitchell collision, or had slowed to a speed below that which 3<sup>rd</sup> gear required, Mrs Thiele may have given herself a better chance of seeing Mr Bryant. But as I say, the likelihood to my mind is that Mrs Thiele simply didn't look.

- 7.4. While in my view there are certain intrinsic dangers associated with this intersection, particularly that caused by the restricted vision to the right, there is little that could be said by way of mitigation in relation to driving behaviour that has caused, on two separate occasions, vehicles coming from the left to collide with Mrs Thiele's vehicle in almost identical circumstances. To any reasonable motorist there would have been an obvious need for enhanced vigilance in respect of traffic coming from both the right and the left before proceeding across the intersection without stopping.
- 7.5. Having regard to Mrs Thiele's driving behaviour in both of these incidents, and bearing in mind her previous driving history, ignoring as I do the relatively unimportant collision that occurred in 1992 in Western Australia, I am driven to conclude that Mrs Thiele is a motorist of quite limited aptitude, competence and temperament. But whatever the position may be as to Mrs Thiele's competence, she now has a driving record that by any standard is manifestly unacceptable. Mrs Thiele told me in evidence that in spite of her record she believed that she was a competent driver. She was uncertain as to whether she will resume driving after her licence disqualification concludes. Certainly, there is no restriction on her doing so. It will

be observed that section 81AB of the Motor Vehicles Act 1959 (the Act) only imposes probationary conditions following a period of disqualification in limited circumstances that do not apparently apply to Mr Thiele. It is a matter for the authorities and the legislature as to whether that is a desirable state of affairs. It is also a matter for the Registrar of Motor Vehicles as to whether the powers contained in section 82 of the Act that permit suspension of a person's licence in order to prevent accident or injury or a repetition of an offence involving the use of a motor vehicle need be invoked in this case. All this Court can do is remind the Registrar of the existence of those powers. Approved insurers also have certain measures available to them under section 132 of the Act and the Court reminds them of those.

## **8. Recommendations**

- 8.1. Pursuant to section 25(2) of the Coroner's Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 8.2. During the course of the Inquest I indicated publicly that I was minded to recommend that a STOP sign be placed at the intersection of Burdett Road, Thiele Road and Jovial Downs Road that would compel traffic from either Thiele Road or Jovial Downs Road from entering or crossing the intersection without having stopped first. This intimation prompted the Minister for Transport, Infrastructure and Energy to furnish me with the affidavit of Mr Stephen Clark to whom I have already referred. Mr Clark also gave some very helpful evidence before me. Mr Clark and those within his Department do not agree that a STOP sign is called for at this intersection and I respect their views. Without going into unnecessary detail, the relevant standards as they operate at this time dictate that at an intersection involving a speed zone of 110 kilometres per hour, the placement of a STOP sign is only considered appropriate where visibility is restricted to 115 metres in one direction. It is pointed out that visibility along Burdett Road to the north is 840 metres and visibility to the south is 270 metres. It is of note, however, that at one point in time the standard for the erection of a stop sign was enlivened not only by visibility parameters, but also by a

consideration involving what was referred to as a 'safe approach speed'<sup>41</sup>. It is said in the previous standard that:

'The STOP sign replaces the GIVE WAY sign when the safe approach speed is less than 15 km/h bearing in mind visibility restrictions, accident history, etc.'

I took this to mean that if in order to determine whether there is a need to give way to traffic one would need to slow to a speed below 15 km/h, there ought to be a STOP sign at the intersection as opposed to a GIVE WAY sign. It was said in evidence that the implementation of this standard from a practical viewpoint was problematic because it is difficult to assign a numerical figure to a safe approach speed. But it seems to me that the notion of a safe approach speed is just as relevant a consideration, if not more so, than a reference to the distance at which visibility of traffic is established. When it is borne in mind that a vehicle travelling at 110 kilometres per hour can cover 115 metres in 3.7 seconds, 200 metres in 6.5 seconds and 270 metres in 8.8 seconds, there is little margin for error at an intersection where visibility is restricted to those kinds of distances unless a vehicle comes to a dead stop. It seems to me that if, for whatever reason, a safe approach speed falls below 15 kilometres per hour, or put in another way to a speed that is very low, there is a good case for saying that a vehicle may as well be compelled to stop in any event. That in my view is the case at Thiele Road. At the intersection of Thiele Road and Burdett Road, there is the added complication that is provided by a tree that restricts visibility to the right. I have earlier expressed the view that it is very difficult for a motorist to make any proper judgment as to whether one should cross the intersection until one is past the tree.

- 8.3. I also refer to the evidence that was given by experienced traffic investigators, Mr Rowland and Ms Salotti, to the effect that in their view a very high level of care is required at this intersection particularly having regard to the limited view to the right. I accept their evidence and their assessment of the situation. I am not persuaded that my initial view that this intersection requires a STOP sign for Thiele Road was incorrect.

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<sup>41</sup> Exhibit C27b, page 38

- 8.4. If Mrs Thiele had been compelled to stop, and had stopped, it is possible that neither of these accidents would have occurred. It seems to me that this provides another reason that there should be a STOP sign at that intersection.
- 8.5 I recommend that a STOP sign be placed at the intersection of Burdett Road, Thiele Road and Jovial Downs Road that would compel vehicles entering it or crossing it from Thiele Road and Jovial Downs Road to stop before so entering or crossing. I direct this recommendation to the attention of the Minister for Transport, Infrastructure and Energy and the Minister for Road Safety.

*Key Words: Motor Vehicle Accident; Inattention*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 27<sup>th</sup> day of October, 2009.*

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*Deputy State Coroner*