



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 34/17

*I, Sarah Helen Linton, Coroner, having investigated the death of **Isiah Duane KEARING** with an inquest held at the **Perth Coroner's Court, Court 51, CLC Building, 501 Hay Street, Perth** on **28 - 29 August 2017 and 7 December 2017** find that the identity of the deceased person was **Isiah Duane KEARING** and that death occurred on **29 December 2013** at **Jarrah Grove, Gosnells** as a result of **ligature compression to the neck (hanging)** in the following circumstances:*

Counsel Appearing:

Mr T Bishop assisting the Coroner.
Mr G Huggins (WA Police) appearing on behalf of the Commissioner of Police.
Mr P Gazia with Mr A Truscott (ALS) appearing on behalf of the family of Isiah Kearing.

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INTRODUCTION

1. Isiah Duane Keating was only 20 years old when he hanged himself on 29 December 2013. Although he had been experiencing some personal issues and mild depressive symptoms in the months prior to his death, Isiah had not given his family or friends any reason to think that he might be feeling suicidal. His death that night was sudden and wholly unexpected.
2. In the hours prior to his death Isiah had been involved in an incident that had resulted in him being briefly arrested by police before he was released without charge. Isiah had spoken afterwards to family members and friends about the incident and had appeared upset.
3. Given the proximity in time between Isiah's death and his involvement with police, as well as some allegations of police misconduct in relation to the arrest, it was determined that an inquest should be held to explore the circumstances of the death further. The order for an inquest to be held was made on the basis an inquest was desirable, pursuant to s 22(2) of the *Coroners Act 1996* (WA), rather than on the basis it was mandatory pursuant to ss 22(1)(b) and (e) of the Act.
4. I held an inquest at the Perth Coroner's Court on 28 and 29 August 2017. The documentary evidence included a report of an investigation into the death prepared by an officer from the WA Police Coronial Investigation Unit, as well as a report of the investigation conducted by the WA Police Internal Affairs Unit.¹ The author of the Internal Affairs Unit report was also called to give oral evidence at the inquest.
5. In addition, oral evidence was heard from the forensic pathologist who performed the post mortem examination on Isiah and police officers and civilian witnesses who had contact with Isiah in the hours prior to his death.
6. Counsel assisting set out the main issues for the inquest in his opening address as being:
 - whether a WA police officer had applied excessive or unreasonable force through the use of handcuffs on Isiah, whilst he was under arrest on the evening prior to his death;
 - whether a WA police officer had humiliated Isiah while he was under arrest by unreasonably patting him on the head; and
 - if one or both of these matters are found to have occurred, whether they played any role in Isiah taking his life on 29 December 2013.²
7. Following the inquest further avenues of inquiry were pursued, based upon additional evidence provided by Isiah's family, and the court then reconvened on 7 December 2017 to hear submissions from counsel as to what factual conclusions might be open to me on the available evidence. Additional information was then provided on behalf of the WA Police on

¹ Exhibit 1.

² T 2.

29 March 2018 in relation to three issues identified as relevant to possible recommendations arising from the evidence.³

8. Finally, it became apparent at the time that this finding was being completed that one area of inquiry had not been finalised, relating to another police officer potentially being involved in adverse conduct against Isiah at the car. This was only raised by a witness during the inquest hearing and was not immediately identified as requiring further investigation. The information was obtained in June 2018, as well as some additional information about from the WA Police about an internal audit of their cultural awareness training.⁴

ISIAH

9. Isiah was born on 22 September 1993. Isiah's parents separated during his childhood and he spent time living with both his mother and his father at different times, as well as living with his long-term girlfriend and her family for a period. At the time of his death Isiah was living with his father.⁵
10. Isiah's father, Mr Shannon Kearing, described Isiah as a good son who had worked hard at school and achieved excellent results. He had completed studies at Curtin University and a Certificate II in Conservation and Land Management. Isiah had worked for Horizon Power in Bentley and then spent time as an artist and dance teacher. He was starting his own Aboriginal dancing business and was planning to start teaching Aboriginal boys through the Australian Football League in 2014. Sadly he died before this could commence.⁶
11. Isiah also had a passion for playing basketball and volunteered as a youth worker.⁷
12. Isiah's health was generally good, although he had been diagnosed with Autoimmune Hypothyroidism in 2002, for which he was prescribed medication. He was reportedly not always vigilant about attending medical appointments, or taking his medication, which is not unusual for a young man. There is no suggestion his health condition played any role in his death.⁸
13. Mr Kearing described Isiah as a very caring, compassionate and intelligent young man who was always ready to help others with their problems, but was also strong and opinionated about things he believed in. Put simply, Mr Kearing said Isiah "loved life."⁹ Mr Kearing was justifiably very proud of Isiah.¹⁰

³ Letter to Counsel Assisting from Mr Ben Humphris, WA Police, dated 29 March 2018.

⁴ Exhibit 6; WA Police Cultural Security Audit.

⁵ Exhibit 1, Tab 27.

⁶ Exhibit 1, Tab 27.

⁷ Exhibit 1, Tab 30, pp. 64 – 65.

⁸ Exhibit 1, Tab 8, p. 5.

⁹ T 190.

¹⁰ T 190.

14. Isiah's maternal great grandfather,¹¹ Mr Edward (Ted) Wilkes, also gave oral evidence at the inquest. Mr Wilkes is an Associate Professor who works with the National Drug Research Institute in Perth and sits on the Australian Advisory Council on Drugs.¹² He has worked with senior police for many years in trying to help with the issue of how Aboriginal people access alcohol and drugs and how they interact with police, with an understanding that both sides have a long way to go.¹³ Mr Wilkes wished to explain some of Isiah's cultural and historical background, to put the events prior to his death in a context. Mr Wilkes was a compelling witness, with a clear understanding of the many issues that face Aboriginal people today living in western society, as well as a deep love and understanding of his grandson Isiah.
15. Mr Wilkes described Isiah growing up in a close-knit, extended Aboriginal family. Isiah's family represented a connection between two tribes of the Noongar people, the Bindjareb tribe from the south and the Whadjuk tribe from Perth and the Swan River. Mr Wilkes took pains with all his grandchildren to help them understand not only their own Noongar culture, but also western culture and western ways, including an understanding of the law, so that they could be good Australian citizens and "make sure that our community is the best that it can be."¹⁴
16. Mr Wilkes helped with the inquiries of the Royal Commission into Aboriginal Deaths in Custody and he had talked to Isiah about how to respond to police as an Aboriginal Australian.¹⁵ Mr Wilkes said he had always encouraged his children and grandchildren to understand that it is better to avoid conflict with arresting officers or traumatic situations and he believed Isiah would have been overtly aware of this from his upbringing.
17. Mr Wilkes described Isiah as having "grown into a young man, who had become very, very proud of his culture,"¹⁶ and who held himself with dignity. He was also a very loved and respected member of his extended family. He was held in high esteem by his peers and younger cousins and was considered to be an 'elder' within the group of nearly 40 grandchildren. As described above, Isiah was involved prior to his death in setting up his own cultural pathway for the future.
18. Mr Wilkes described Isiah as someone who "had everything going for him"¹⁷ and all of his family were very surprised that he took his life. He was said to be a leader who was doing his best "to assist other young men to get through the maze of what is puberty, what is your upbringing."¹⁸ He wanted to make his family proud of him. Mr Wilkes expressed the opinion that whatever trauma happened in Isiah's life to diminish his capacity to manage "must

¹¹ Isiah was the second oldest grandson of Mr Wilkes' oldest daughter, Sonia.

¹² T 87.

¹³ T 87.

¹⁴ T 85.

¹⁵ T 87.

¹⁶ T 85.

¹⁷ T 87.

¹⁸ T 87.

have been a powerful force,” knowing him as he did, as such behaviour was “totally out of character” for Isiah.¹⁹

19. Isiah had been in a relationship with his girlfriend Ms Sheliah Radovanovic since 2007, when they were both 14 years old. They had lived together off and on over the years and were in a long-term supportive relationship. Ms Radovanovic reportedly had some mental health issues that affected her mood and Ms Radovanovic acknowledged that she and Isiah fought from time to time, but she also said they were always there for each other. They both wanted to be successful and an inspiration for Aboriginal youth.²⁰ Ms Radovanovic described Isiah as her “soul mate.”²¹
20. Ms Radovanovic spoke to a police officer in May 2014 about Isiah and described him as being a deep person who had high expectations of himself, always wanting to make everyone proud. He was someone whom others sought out for help and advice. Ms Radovanovic indicated Isiah had been depressed for about three months prior to his death and had informally seen a counsellor from Relationships Australia (where his father worked and Isiah sometimes assisted). Isiah reportedly had a plan for a follow up appointment in 2014.²²
21. Mr Wilkes was asked whether he had any knowledge about Isiah being troubled in the months prior to his death. Mr Wilkes noted Isiah had the support of his father and other elders in the family at all times, but he also understood that Isiah had been accessing a specialist service for some help with trauma arising from personal issues. Mr Wilkes expressed the view that if Isiah was experiencing some depression due to relationship issues with his girlfriend and others, and then drinking alcohol, that would have added to him feeling quite anxious that night.²³
22. Mr Kearing also agreed that Isiah had been a bit depressed in the months prior to his death, some of which related to his girlfriend.²⁴ Mr Kearing had encouraged Isiah to speak to one of his friends with mental health expertise, Mr John van der Giezen. Mr van der Giezen is a Senior Social Worker with the Specialist Aboriginal Mental Health Service.²⁵
23. Mr van der Giezen provided a report to the court²⁶ and confirmed that he had been asked by Mr Kearing to talk to Isiah as he understood Isiah was having some difficulties following a relationship breakdown. They met approximately 5 to 6 months prior to Isiah’s death in a park and had a casual discussion, rather than a formal meeting. Isiah was very open about the fact that he was feeling hurt by the relationship breakdown but had supportive family and friends.

¹⁹ T 87.

²⁰ Exhibit 1, Tab 23B and Tab 38, p. 56 and Tab 30, p 39.

²¹ Exhibit 1, Tab 23B.

²² Exhibit 1, Tab 23A.

²³ T 89.

²⁴ T 184 – 185.

²⁵ Exhibit 4.

²⁶ Dated 31 August 2017.

24. At the time of their meeting Isiah was future focussed, outlining plans to study business management at TAFE so he could expand his cultural consultancy business.²⁷ Mr van der Giezen did not have any concerns about Isiah's mental state during their meeting but gave Isiah his contact details and invited him to contact him if he ever needed to talk to someone.²⁸
25. It seems that Isiah resumed his relationship with Ms Radovanovic after this time.
26. Although he had been experiencing various personal issues, Mr Kearing described Isiah as having been "upbeat"²⁹ in the week prior to his death.

THE ARREST ON 28 DECEMBER 2013

27. On the evening of Saturday, 28 December 2013 Isiah went to a 21st Birthday Party at the Kelmscott Community Hall in Kelmscott with a group of his cousins, while his girlfriend saw her own friends. Isiah and his girlfriend planned to meet up the following day.³⁰ Isiah's father had dropped off some clothes to him earlier in the afternoon and Isiah had appeared to be in good spirits at that time.³¹
28. Isiah's cousin, James Kearing (Jnr), who I will call James for the sake of clarity throughout the finding, was one of the people in Isiah's social group that evening. Although technically cousins, James and Isiah referred to each other as brothers.³²
29. Isiah and his cousins arrived at the party sometime around 9.00 pm to 10.00 pm. There is little detail about what occurred during the party, although the evidence suggests the deceased drank a reasonable amount of alcohol, which was by all accounts unusual for him.³³ James had also been drinking and he described himself as "pretty drunk"³⁴ by the end of the night; he thought he was more drunk than Isiah.
30. Around midnight, when the party ended, James' younger brother Jeremy got involved in a fight. Another man then became involved and allegedly head butted Jeremy. This prompted James to become involved in the fight. He recalls that during the ensuing scuffle Isiah grabbed him and told him to walk away. James and Isiah then walked away from the fighting and joined two other men.³⁵
31. Local police had been dispatched to the Kelmscott Hall in relation to the disturbance. On arrival the police officers were confronted with a group of youths at various locations outside the hall. It was estimated there were

²⁷ Exhibit 4.

²⁸ Exhibit 4.

²⁹ T 185.

³⁰ Exhibit 1, Tab 23B.

³¹ Exhibit 1, Tab 9, p. 1.

³² Exhibit 1, Tab 38.

³³ T 65; Exhibit 1, Tab 28.

³⁴ T 67.

³⁵ Exhibit 1, Tab 28 and Tab 38 [7] – [8].

more than 50 people in the area at this time. About half of the group were described as cooperative and compliant with police requests to disperse and move along. However, the other half were clearly intoxicated and being violent towards one another, including some of the people in Isiah's group.³⁶

32. Isiah and James were said by police to be in an excited state and they were believed to have been inciting others to be belligerent and non-compliant with police.

Account of Isiah and James

33. One of Isiah and James' cousins, Matthew Wilkes, was arrested as well as James' younger brother Jeremy.³⁷ James recalls that after Matthew was arrested a police officer approached James and Isiah. Isiah asked the police officer why they had arrested Matthew. James asserts that Isiah did not swear at the police officer or touch the police officer, but simply asked, "Why are you locking up my little cousin for?" According to James' account, the police officer appeared angry and humiliated at being questioned and responded by arresting Isiah and putting handcuffs on Isiah's wrists.³⁸ James described the police officer as an English male of solid/stocky build and approximately 6' 2" tall. He was said to have very short, almost shaved, blonde hair.³⁹ James was asked in court if he recognised the person in the court room but he said he was unable to, given the length of time that had elapsed.⁴⁰
34. James' evidence was that the police put 'zip tie/cable tie' or 'elastic cuffs' on Isiah first, which were later changed to metal handcuffs although he didn't actually see this take place.⁴¹
35. After Isiah was arrested James states that he challenged the same officer and asked, "What are you locking up my little brothers for?" James initially denied that he swore at the police at all,⁴² although he later conceded he may have sworn at police in the heat of the moment.⁴³ However, he maintained that he did not swear at the English police officer at any stage, despite having said that he did in his statement.⁴⁴
36. According to James the English police officer then walked up and charged James. James and the English police officer began swearing at each other and the English police officer attempted to restrain James. In response, James put his hands behind his back and put his arms through a cyclone mesh fence so he couldn't be restrained. It seems a female police officer then went behind him and put elastic handcuffs on James' wrists. He maintained they were 'elastic band cuffs,' or zip ties,⁴⁵ which were later cut off and

³⁶ Exhibit 1, Tab 33, p. 15.

³⁷ T 41; Exhibit 1, Tab 17 and Tab 18.

³⁸ T 41 - 42; Exhibit 1, Tab 28 and Tab 38.

³⁹ Exhibit 1, Tab 25 and Tab 38.

⁴⁰ T 43, 48.

⁴¹ T 41 - 42, 45.

⁴² T 43.

⁴³ T 72.

⁴⁴ T 82; Exhibit 1, Tab 38 [14].

⁴⁵ Exhibit 1, Tab 28, pp. 16 - 17 and Tab 38.

changed to metal handcuffs.⁴⁶ James initially told investigating police they were black zip ties but at the inquest he said they were white.⁴⁷

37. During his interview with police James indicated the same English officer arrested him as had arrested Isiah.⁴⁸ However, at the inquest James seemed to suggest he was arrested by the female police officer, then he was escorted to the van by the female police officer and a different male police officer.⁴⁹
38. James was escorted to the police van where Isiah was already being held. James said he could see “all the other people from the party laughing at us.”⁵⁰ James could see Isiah was handcuffed with his hands behind his back at this stage. James was put in the back of the police van with Isiah. Only the two of them were put in the back of the van.⁵¹ James said Isiah was laughing as he thought the situation was ridiculous but was also embarrassed at being arrested in front of the other partygoers.⁵²
39. James asserts he was never told that he was under arrest before being put in the police van, but when he asked the police officers what they were being charged with, they replied, “Disorderly conduct.”⁵³ He did hear Isiah being told that he was under arrest for disorderly conduct.⁵⁴

Account of the police officers

40. The primary group of officers involved in the arrest of Isiah and James were identified as:
 - Probationary Constable Rebecca Gibbons (PC Gibbons)⁵⁵;
 - Constable Todd Roberts;⁵⁶
 - Police Recruit Burke (Recruit Burke)⁵⁷;
 - Constable Douglas Walker;⁵⁸ and
 - Constable Troy Adams.⁵⁹
41. PC Gibbons, the only female amongst the group provided a report to her superior on what occurred that evening and was also interviewed by Internal Affairs Unit investigators,⁶⁰ but did not give oral evidence at the inquest. She had only recently left the academy weeks before.
42. The male police officers all provided reports and were interviewed in a similar fashion, but they were also all called as witnesses at the inquest in order to

⁴⁶ Exhibit 1, Tab 28 and Tab 38 [15].

⁴⁷ T 42, 48, 73; Exhibit 1, Tab 28, pp. 16 – 17.

⁴⁸ Exhibit 1, Tab 28, pp. 14 – 15, 18.

⁴⁹ T 72 – 73.

⁵⁰ Exhibit 1, Tab 28, p. 3.

⁵¹ Exhibit 1, Tab 38.

⁵² T 44, 46.

⁵³ Exhibit 1, Tab 38.

⁵⁴ T 78.

⁵⁵ Now Constable Gibbons.

⁵⁶ Now First Class Constable Roberts.

⁵⁷ Now Constable Burke.

⁵⁸ Now First Class Constable Walker.

⁵⁹ Now First Class Constable Adams.

⁶⁰ Exhibit 1, Tab 12, Report dated 1 January 2014; Exhibit 1, Tab 31.

establish if any of them were the male police officer alleged to have behaved inappropriately towards Isiah and James on the journey to the police station. There was never any allegation during the investigation that it was the female officer, which is why PC Gibbons was not called.

43. The initial reports provided by the police officers were given only days after Isiah's death, and the interviews were conducted in February 2014.
44. Most of the male police officers were already Constables at the time, except for Recruit Burke, who was still at the Academy. Recruit Burke was only with PC Gibbons and Constable Roberts for that one night and it was only his second night on patrol. He was simply there to observe, as part of his training as a police recruit, and it was accepted that he didn't generally take an active role in events on the night.⁶¹
45. Constable Walker and Constable Adams were on duty and conducting patrols when they responded to an urgent call for back up at a disturbance at Kelmscott Hall. They arrived at the scene at 12.16 am along with a number of other police vehicles. On arrival they saw numerous small groups of youths in and around the hall, who were being dispersed by police officers already at the scene. Constable Walker and Constable Adams began to assist in breaking apart arguments and dispersing the groups. According to Constable Adams the majority of people complied with instructions other than a small group of belligerent males.⁶²
46. PC Gibbons, Constable Roberts and Recruit Burke were on duty in a marked police security vehicle AJ270 that night when they received a radio request for urgent backup near the Kelmscott Hall. They went to assist, with activated lights and sirens going, and arrived only a few minutes after receiving the call. Other police cars were already there and they saw some police officers dealing with members of the public near the Kelmscott Hall entrance and on the adjacent oval.⁶³
47. PC Gibbons, Constable Roberts and Recruit Burke went onto the oval briefly and then returned to the carpark, where they joined Constable Walker. Constable Walker and Constable Adams were not near each other at this stage. Constable Walker was dealing with a group of five young males, trying to get them to leave the area. Isiah and James were part of this group.⁶⁴ It appeared to Constable Roberts and Constable Walker that the larger group were trying to intervene in the arrest of another male, which matches with James' account about their cousin Matthew Wilkes being arrested.⁶⁵
48. PC Gibbons noted the group were reluctant to leave and were being very loud and swearing. She described them as "causing a nuisance."⁶⁶ She believed aggression was targeted at police and she noted some of them were using cameras and filming and asking for names and numbers.⁶⁷ Constable

⁶¹ T 120 - 121; Exhibit 1, Tab 31, p. 5 and Tab 35, pp. 6 - 7.

⁶² Exhibit 1, Tab 15 and Tab 16.

⁶³ Exhibit 1, Tab 12.

⁶⁴ Exhibit 1, Tab 12.

⁶⁵ Exhibit 1, Tab 14.

⁶⁶ Exhibit 1, Tab 31, p. 6.

⁶⁷ Exhibit 1, Tab 31, p. 6.

Walker also saw people taking photos, but he did not think James and Isiah were doing so.⁶⁸

49. Constable Walker, Constable Adams, Constable Roberts, PC Gibbons and Recruit Burke tried to move the group along and advised them a number of times that if they did not cease their behaviour and swearing then they would be arrested for disorderly behaviour. They continued their behaviour and PC Gibbons formed the impression they were trying to antagonise police.⁶⁹ She particularly noticed two of the boys, who she later identified as Isiah and James, being really loud. It appeared to PC Gibbons that Isiah's behaviour kept altering between being compliant and defiant.⁷⁰
50. Constable Walker stated he was trying to reason with James and convince him to leave the area when he was approached by Isiah. Like James, Isiah was yelling abuse and obscenities at police. Constable Walker recalled Isiah yelling, "My father is a lawyer, I'll see you in court you fucking cunts!"⁷¹ Constable Walker warned him that if he continued swearing he would be arrested for disorderly behaviour. Isiah responded by with more verbal abuse directed at Constable Walker,⁷² so Constable Walker separated Isiah from the group of youths and informed him that he was under arrest for disorderly behaviour.⁷³
51. Constable Walker explained that he made the decision at this time to arrest Isiah as his behaviour represented a continuation of the offence of disorderly behaviour.⁷⁴ He accepted that Isiah had not been physically violent at this stage but described him as "acting aggressively."⁷⁵
52. Constable Walker accepted in questioning that issuing a move on notice potentially could have been an option in the circumstances, but he chose to arrest Isiah for disorderly conduct.⁷⁶ He was asked if, looking back, he might have made a different choice, but Constable Walker maintained that the decision to arrest Isiah, in the context of a group situation that was becoming volatile, was the right decision.⁷⁷
53. PC Gibbons said she saw Constable Walker arrest Isiah for disorderly behaviour after seeing Isiah approach the officer in a defiant manner.⁷⁸
54. Constable Roberts, who said he was standing a short distance back from the group so that he could observe what was happening without being actively involved, also saw Isiah being arrested by Constable Walker but did not hear their exchange.⁷⁹

⁶⁸ Exhibit 1, Tab 33, p. 13.

⁶⁹ Exhibit 1, Tab 12.

⁷⁰ Exhibit 1, Tab 31, p. 6.

⁷¹ Exhibit 1, Tab 16, p. 2.

⁷² T 93.

⁷³ Exhibit 1, Tab 16.

⁷⁴ T 93.

⁷⁵ T 112.

⁷⁶ T 117.

⁷⁷ T 130.

⁷⁸ Exhibit 1, Tab 31, p. 6.

⁷⁹ T 152 – 153.

55. After arresting him, Constable Walker then handcuffed Isiah with standard issue rigid handcuffs.⁸⁰ Constable Walker indicated he chose to handcuff Isiah for his safety and Isiah's safety. Isiah put up a small amount of physical resistance to being handcuffed but there was not a significant struggle between them.⁸¹ Constable Walker described it as a "passive tussle"⁸². He handcuffed Isiah in a rear-stack position, with his hands parallel to one another behind his back.⁸³ The handcuffs were not locked into position at this stage.⁸⁴
56. Isiah was then taken by Constable Walker to the police vehicle allocated to Constable Roberts, PC Gibbons and Recruit Burke, as Constable Walker's vehicle was some distance away. Constable Walker said he did the 'pinch test' to the handcuffs to make sure they weren't too tight.⁸⁵ The handcuffs were then locked into position by another, more senior female officer who was present, Senior Constable Jones, as she had a larger key than the standard issue key, which is much easier to use.⁸⁶
57. Constable Walker saw Senior Constable Jones lock Isiah's handcuffs into position and he spoke to her and confirmed that she had locked them.⁸⁷ Once they were locked, the evidence is that they cannot be tightened further unless a key is used first to unlock them.⁸⁸ Senior Constable Jones was not spoken to about this incident until June 2018 so she had no memory of the details of events. Senior Constable Jones did confirm that she had a large handcuff key and it was likely she had helped to handcuff people, but indicated that she would have done a pinch test, so it is not likely that the cuffs would have been overly tightened.⁸⁹
58. Isiah was placed inside the secure rear pod compartment of the vehicle and then Constable Walker informed Isiah again of the reason for his arrest and provided his rights as per s 137 of the *Criminal Investigation Act*. He also told Isiah that he would be taken to Armadale Police Station.⁹⁰ Constable Walker's evidence was that Isiah wasn't happy at this stage, and was complaining about being arrested, but he was not physically resistant and cooperated with getting into the van.⁹¹
59. Constable Walker denied patting Isiah on the head at any stage during this process.⁹² He also said that he did not see anyone else pat Isiah on the head.⁹³ Constable Walker did agree that he touched Isiah near his head when he removed Isiah's hat before putting him in the van, but he said he did not pat him on the head at that stage.⁹⁴

⁸⁰ T 94 - 95.

⁸¹ Exhibit 1, Tab 12.

⁸² T 93.

⁸³ T 95; Exhibit 1, Tab 33, p. 17.

⁸⁴ T 95.

⁸⁵ T 97; Exhibit 1, Tab 33, pp. 18 – 19.

⁸⁶ T 97; Exhibit 6.

⁸⁷ T 97.

⁸⁸ T 98.

⁸⁹ Exhibit 6.

⁹⁰ T 101; Exhibit 1, Tab 16.

⁹¹ T 98, 100.

⁹² T 121; Exhibit 1, Tab 33, p. 24.

⁹³ T 121.

⁹⁴ T 122.

60. Constable Walker also said the door was closed once Isiah was inside the pod, so he wasn't in view of the public unless someone came up and looked inside the pod.⁹⁵
61. After Isiah's arrest the rest of the group initially started to leave, but then they returned to the carpark. PC Gibbons, Constable Roberts and Recruit Burke approached them and spoke to them. They told the group again to stop being disorderly and to leave the area.⁹⁶ The remaining group of four continued to swear loudly and PC Gibbons told them that they could not swear in public. She recalled that James was being particularly loud and disorderly and at one stage he responded, "I've got a fucking mouth on me I can say whatever I want."⁹⁷ He continued to use offensive language and was told to stop or he would be arrested for disorderly behaviour. Constable Walker came over and joined them around this time.⁹⁸
62. Constable Roberts recalled that James was shouting about his 'younger brother' having been locked up and he approached James and told him to move away from the area. When he and the rest of the group continued to shout and swear Constable Roberts took hold of James' arm and told him that he was under arrest for disorderly behaviour. He arrested James as he considered him to be the person being the most disorderly and he seemed to be leading the rest of the group in their bad behaviour.⁹⁹
63. Constable Roberts attempted to handcuff James, using normal rigid handcuffs, but he resisted to the extent that Constable Roberts required other officers to assist him.
64. Constable Walker recalls seeing James physically resisting police throughout the arresting process and it required the assistance of two or three police officers to control him and safely secure him.¹⁰⁰
65. In the end, PC Gibbons removed James' hands from a fence and Constable Roberts handcuffed him. Constable Roberts said he handcuffed James with his standard issue rigid handcuffs in the 'rear stack' position.¹⁰¹ All of the police officers emphatically denied that anyone used cable ties or something other than handcuffs on the night.¹⁰²
66. James was escorted by Constable Roberts and PC Gibbons to the police vehicle and searched. They established that James and Isiah were related so it was felt suitable that they be put into the same vehicle. However, Constable Roberts decided to leave the handcuffs on James "due to his demeanour and the fact that he would be travelling with another detainee."¹⁰³

⁹⁵ T 100; Exhibit 1, Tab 33, pp. 27 - 28.

⁹⁶ Exhibit 1, Tab 12.

⁹⁷ Exhibit 1, Tab 12, p. 2 and Tab 31, p. 7.

⁹⁸ T 100.

⁹⁹ Exhibit 1, Tab 32, pp. 8, 20.

¹⁰⁰ Exhibit 1, Tab 14 and Tab 16.

¹⁰¹ T 154; Exhibit 1, Tab 32, p. 22.

¹⁰² T 101, 136, 154.

¹⁰³ Exhibit 1, Tab 12 and Tab 14, p. 3.

67. Constable Walker, on the other hand, gave evidence that he was not aware that James and Isiah knew each other, so he left Isiah's handcuffs on as he didn't want to leave two strangers sitting next to each other unrestrained. He also said they wanted to get the van away from the area quickly, as some of the group were still present and appeared unhappy about the arrests of James and Isiah.¹⁰⁴
68. At this time Constable Roberts indicated that he checked the tension of the handcuffs on James and then double locked them "to stop them from tightening."¹⁰⁵ He then searched him and removed his shoes, hat and mobile telephone before placing him in the vehicle.¹⁰⁶
69. PC Gibbons, Constable Roberts and Recruit Burke then got into their vehicle and left the scene. Recruit Burke's evidence was that this was the first time he had any involvement with Isiah or James, as he had not been involved in either of their arrests.¹⁰⁷
70. As they left, PC Gibbons notified VKI over the radio that they were heading to Armadale Police Station with two males on board, and the time recorded was 12.25 am.¹⁰⁸ Constable Roberts also turned on the monitor for the camera in the secure pod so that they could watch both young men during the trip.¹⁰⁹ According to the police witnesses neither young man complained of the handcuffs being too tight before they left.
71. Constable Walker and Constable Adams walked briskly back to their car, which was some distance away across the oval, and they then also drove to Armadale Police Station.¹¹⁰ It had been prearranged between Constable Walker and Constable Roberts that they would meet out the front of the police station and reassess the situation.¹¹¹

THE JOURNEY TO THE POLICE STATION

Account of Isiah and James

72. James recalls that two male police officers were in the police van when it left Kelmscott. He believes the English police officer was sitting on the passenger side of the vehicle and the driver was another male police officer, who was Australian and appeared younger than the other officer. He described this officer as white, slightly taller than the English officer, with black hair and of skinny build.¹¹² James was asked whether the female police officer was also in the van, but his evidence was that there were only two male police officers.¹¹³

¹⁰⁴ T 104.

¹⁰⁵ Exhibit 1, Tab 14, p. 3.

¹⁰⁶ Exhibit 1, Tab 14, p. 3 and Tab 32, p. 23.

¹⁰⁷ T 138 – 139.

¹⁰⁸ Exhibit 1, Tab 12.

¹⁰⁹ Exhibit 1, Tab 14.

¹¹⁰ Exhibit 1, Tab 15.

¹¹¹ Exhibit 1, Tab 33, pp. 33 – 34.

¹¹² Exhibit 1, Tab 38.

¹¹³ T 74.

- 73.** The description James gave at the inquest of the ‘English officer’ was a male, over six foot of stocky build, with blondish hair on the side of his head but a bald patch on top and with a ‘pommy’ (English) accent.¹¹⁴
- 74.** It is worth noting at this stage that Constable Walker largely matches the physical description of the ‘English officer’ or ‘pommy officer’ (he is approximately 6ft tall and 85 kgs and a shaved head)¹¹⁵ but he has an unmistakable Australian accent and he was not an occupant of the vehicle identified as AJ270.
- 75.** The description of the driver of AJ270, as given by James is consistent with the description of Constable Roberts, who was agreed to be the driver of that vehicle. Constable Roberts is approximately 6 ft tall, has a full head of brown hair and was apparently relatively lean at the time. Constable Roberts also has a distinctive Scottish accent, which is not mentioned by James, who described the driver as being Australian. Other than his accent, which could perhaps be mistaken as English, the rest of Constable Roberts’ appearance, and his location in the car does not match the description of the ‘English officer’ described by James.
- 76.** Recruit Burke, who was the other male in AJ270, was seated in the rear passenger seat not the front passenger seat. Recruit Burke has an Irish accent, but he is significantly shorter in stature than the other two male police officers, and had short, greying hair. By his height alone he noticeably did not match the description of the ‘English officer.’ He is also extremely unlikely to have behaved in the manner described by James, given he was still a recruit, out on only his second night of patrol with officers he did not previously know, and effectively supposed to be observing only.
- 77.** PC Gibbons, the female officer, was seated in the front passenger seat of AJ270, contrary to James’ recollection that there was no female officer in the van, and as to who was sitting in the front passenger seat.
- 78.** James’ evidence was that he and Isiah were initially “laughing and giggling”¹¹⁶ together in the van while sitting next to each other but then they became uncomfortable as the metal handcuffs felt too tight and were cutting into their wrists.¹¹⁷ James recalls that while the police van drove towards Armadale Police Station he and Isiah complained to the police that their handcuffs were too tight and asked the police officers if they could loosen them. In particular, Isiah was yelling out to them to ask the handcuffs be loosened. James believed this occurred approximately 5 minutes after they had started driving.¹¹⁸

¹¹⁴ T 53.

¹¹⁵ T 122.

¹¹⁶ T 49.

¹¹⁷ T 50 – 51.

¹¹⁸ T 52; Exhibit 1, Tab 28 and Tab 38.

- 79.** James believes the police officers thought that he and Isiah were laughing at them. James' evidence was that the van then pulled up. It was pitch black and he couldn't say where they were at the time but he estimated they had travelled about half the distance to the police station.¹¹⁹
- 80.** James recalls that after the vehicle stopped the same English police officer got out of the van from the passenger side. At the inquest he confirmed it was the same officer who had arrested Isiah, who the evidence establishes was Constable Walker (who has an Australian accent and was not in that vehicle at the time).¹²⁰
- 81.** According to James' recollection the English officer opened the van door on Isiah's side, which was the passenger side of the vehicle. The English officer then said, "What are you laughing at me?" to which Isiah responded, "Can you please loosen the handcuffs?" The English officer responded by pushing Isiah forward and tightening his handcuffs. He then went to the other side of the van and did the same thing to James, so that the handcuffs were cutting into both their wrists.¹²¹
- 82.** The description James gave was that the officer did not use a key to unlock the handcuffs, but simply pushed with his hand to tighten each set.
- 83.** James also recalled that after the English officer tightened Isiah's handcuffs he then patted Isiah on the head. Isiah did not react but had a sour/angry look on his face.
- 84.** James did not say anything because he was frightened. He recalls that Isiah looked angry but he also did not say anything. James said both he and Isiah were humiliated and angry at that stage.¹²²
- 85.** Although time is notoriously difficult to estimate, I take note that James estimated that they stopped after perhaps 5 or 10 minutes of driving,¹²³ then the process of the police officer tightening both sets of handcuffs took approximately 5 minutes.¹²⁴ James did concede that he had been drinking alcohol that night, which would have affected his memory and ability to estimate time, so he accepted he might not have been very accurate in his estimation.¹²⁵ He eventually accepted it may have been only a short time that they stopped for, being less than 5 or 10 minutes.¹²⁶
- 86.** I will come later to the AVL data, but I note at this stage that this independent evidence shows that the entire journey took a little less than six minutes.

¹¹⁹ Exhibit 1, Tab 28 and Tab 38.

¹²⁰ T 76.

¹²¹ T 76; Exhibit 1, Tab 28 and Tab 38.

¹²² Exhibit 1, Tab 28.

¹²³ T 52.

¹²⁴ T 56 - 57.

¹²⁵ T 57.

¹²⁶ T 80.

Account of the police officers

87. The evidence of the police was that Constable Roberts was driving, PC Gibbons (the female officer) was in the front passenger seat and Recruit Burke was seated in the rear seat on the passenger side.¹²⁷
88. All of the police officers denied that the vehicle driven by Constable Roberts and containing Isiah and James stopped at any time during the journey, other than perhaps for a traffic light. It follows that they also denied any police officer got out of the vehicle and tightened the handcuffs and patted Isiah on the head.¹²⁸
89. As well as stating that it did not occur, most of the officers also offered reasons why such an event couldn't have occurred.
90. PC Gibbons was told of the allegation that the vehicle stopped and a male went out and tightened both handcuffs as a punishment. She said that it wouldn't have happened "not only for the fact that that's horrible and mean, but the fact is one person just doesn't go out to the back. You would have two people for safety reasons."¹²⁹
91. Recruit Burke, who was out on only his second patrol, mistakenly believed the camera in the police van was capable of recording and storing data, so that all the events that took place during the police journey would have been recorded. He said the vehicle did not stop, and he believed this could be verified by camera footage. Although there was no such video recording, the fact that Recruit Burke believed there was is relevant to my assessment of his account of events and his overall credibility.¹³⁰
92. Constable Roberts gave evidence that there are three latches on the doors to the pod, which would make it difficult to open the door quickly. He also observed that it is not straightforward accessing a person sitting in the pod to manipulate their cuffs and involves some cooperation on their part.¹³¹
93. Constable Walker and Constable Adams believed that if the other police van had stopped at any stage they would have come up behind them or at least seen them, which they did not. The drive itself was described as a "very short drive"¹³² and Constable Adams, who was driving the second police van, believed they were only a few hundred metres behind them.¹³³
94. According to the police officers travelling in AJ270, James and Isiah were seen to sit on opposite sides of the vehicle throughout the journey.¹³⁴ PC Gibbons reported that she monitored the two males on the video screen as they drove to Armadale Police Station and she had no concerns during the

¹²⁷ T 139.

¹²⁸ T 139; 158; Exhibit 1, Tab 31, pp. 20 – 21 and Tab 32, pp. 28 – 29 and Tab 33, p. 36 and Tab 34, p.14.

¹²⁹ Exhibit 1, Tab 31, p. 21.

¹³⁰ T 140; Exhibit 1, Tab 35, pp. 20 – 21.

¹³¹ T 171.

¹³² Exhibit 1, Tab 33, p. 36.

¹³³ Exhibit 1, Tab 34, p. 20.

¹³⁴ Exhibit 1, Tab 14.

journey.¹³⁵ PC Gibbons described the two young men as very calm and noted they were chatting to each other.¹³⁶ She did not recall any complaint being made about the handcuffs being too tight but I note the monitor only shows vision, and does not have sound capacity.¹³⁷

95. Recruit Burke, who was seated in closest proximity to James and Isiah during the journey, as he was in the back seat next to the pod, recalled seeing them on the camera screen and hearing what sounded like laughing and joking, although he couldn't hear what they actually said. He had no concerns for their welfare during the journey.¹³⁸
96. Constable Roberts was asked whether he would have heard if the young men in the pod were yelling during the journey and he didn't think he would have been able to hear such noise from the pod, but he could see they weren't kicking and were sitting pretty still. It appeared from the camera footage that they were talking to each other, but he surmised that from their head movements and not from being able to hear any conversation.¹³⁹

AVL Data for the police vehicles

97. Police vehicles are fitted with a GPS device that generates AVL data that is transmitted to a secure server database. The AVL data received includes the Vehicle ID, Latitude, Longitude, Speed, Direction Heading and GPS Time.¹⁴⁰
98. The AVL data was obtained by the Internal Affairs Unit for the vehicle AJ270 that transported James and Isiah to Armadale Police Station on 29 December 2013. It shows the vehicle stationary at River Road at the Kelmscott Hall from approximately 12.09 am until 12.26 am, when it began moving again as they headed to Armadale Police Station. The timing of its departure is corroborated by the radio call made by PC Gibbons as they left.¹⁴¹
99. The next time the AVL data shows the vehicle as stationary is at 12.31 am and 58 seconds, when the vehicle is parked outside Armadale Police Station on Prospect Road.
100. The AVL data therefore indicates the journey took just under 6 minutes from the Kelmscott Community Hall to the Armadale Police Station. It also indicates that the vehicle did not stop on the journey between the two locations.¹⁴²
101. Although there are three slightly longer gaps in the data during the relevant time period,¹⁴³ which might suggest the vehicle could have stopped in that time, there was evidence that even if the vehicle had stopped for a brief a

¹³⁵ Exhibit 1, Tab 12.

¹³⁶ Exhibit 1, Tab 31, p. 8.

¹³⁷ Exhibit 1, Tab 31, p. 21.

¹³⁸ T 140 – 141.

¹³⁹ Exhibit 1, Tab 32, p. 28.

¹⁴⁰ Exhibit 3.

¹⁴¹ T 21 – 23, 25; Exhibit 1, Tab 22.

¹⁴² T 23; Exhibit 1, Tab 22.

¹⁴³ 12:26:30 – 12:27:20 – 50 seconds; 12:27:20 – 12:27:50 – 30 seconds; 12:30:07 – 12:30:49 – 42 seconds.

period of time as 20 seconds, the AVL data would show that the vehicle was stationary for that period.¹⁴⁴ I also note that where there are such gaps, the data shows the vehicle had moved to a new location on each occasion, showing the vehicle was moving during that time period.¹⁴⁵

102. The AVL data for the other police vehicle that was following behind (with Constable Walker and Constable Adams on board) was also obtained. The AVL data showed that this vehicle left the Kelmscott Hall at 12.27 am and 15 seconds (so approximately 15 seconds after AJ270) and arrived at Prospect Rd, at the front of the police station, at 12.32 am and 24 seconds, so less than 30 seconds after the other vehicle. The AVL data showed that this vehicle also did not stop on its journey from the hall to the police station, supporting the argument that it would have come across the other police vehicle if it had stopped, given they were very close behind.¹⁴⁶
103. The AVL data shows both vehicles took largely the same route down Albany Highway between the two locations, and there was evidence that travelling down Albany Highway was the most direct route.¹⁴⁷
104. The reliability of AVL data generally was questioned during the inquest. Therefore, at my request, a report from Mr John Oldland, a Communications Data Analyst for the WA Police who is an expert on AVL, was provided after the inquest to assist in determining how much I could rely upon the data provided. Mr Oldland indicated that the AVL data on speed and location is considered to be generally accurate and reliable although the data may have occasional errors which are considered normal and acceptable (for example, a variation in speed of +/- 2.5 km/hr). Mr Oldland also confirmed the AVL time records are comparable between vehicles.¹⁴⁸
105. There was nothing in the data available in this case to raise any suggestion that the AVL data was inherently unreliable.

RELEASE FROM CUSTODY

Account of Isiah and his associates

106. After arriving at the station James recalled the same English officer who had tightened the handcuffs let Isiah out first. The police officers asked for his name and address and then looked him up on the police computer to see if he had any outstanding warrants. James heard the English officer say to Isiah, "You are all clear mate."¹⁴⁹
107. A different police officer then let James out of the van and asked him for his name and address, then looked his details up on the computer. Like Isiah, James was also told he was 'all clear and right to go.' Isiah had waited for

¹⁴⁴ T 24.

¹⁴⁵ Exhibit 1, Tab 22.

¹⁴⁶ T 26; Exhibit 1, Tab 22.

¹⁴⁷ Exhibit 1, Tab 22; T 102.

¹⁴⁸ Exhibit 3.

¹⁴⁹ Exhibit 1, Tab 38.

James, so they walked away from the police station together. Neither of them was charged with any offence before being released.¹⁵⁰

108. James recalled there was one female police officer and three male police officers there at the time they pulled up outside the station, which matches the police account.¹⁵¹
109. James agreed that he and Isiah apologised to the police officers for being abusive and shook their hands before they walked away. James was asked about this at the inquest, given he said neither he nor Isiah had sworn while at the party.¹⁵² James said at the inquest that he didn't know why they apologised, but agreed they did.¹⁵³ James also said that they were apologising for swearing while in the police van, although there was no evidence they were swearing in the van, even from James' account.¹⁵⁴
110. James indicated his main complaint was not with being arrested or the manner of his release, but the way he was handcuffed, and the handcuffs then tightened and Isiah patted on the head, on the night.¹⁵⁵
111. James also gave evidence that Isiah was "sweet, calm, cool, collected"¹⁵⁶ before they left the police. It was only after they had left that he "just let it all out"¹⁵⁷ and expressed his real anger at how he had been treated by the police. James, on the other hand, said he didn't feel particularly angry at the time and just wanted to get home.¹⁵⁸

Account of the police officers

112. Both Isiah and James had been arrested for disorderly conduct under s 74A of the *Criminal Code*. It was alleged that both men were using offensive and insulting language in a public place. Pursuant to s 128(3) of the *Criminal Investigation Act 2006 (WA)* a police officer may arrest someone for such an offence if the officer reasonably suspects the person will continue or repeat the offence.
113. PC Gibbons reported they arrived at the front of Armadale Police Station at about 12.30 am. They did not pull in to the station carpark but rather pulled up in one of the parking bays at the front. This had been pre-arranged with Constable Walker, who was following in the other car with Constable Adams.¹⁵⁹ Constable Adams recalled Constable Walker had told him on the way that he intended to unarrest Isiah, which is why he had arranged to meet out the front of the station.¹⁶⁰ Constable Walker said he just intended to reassess the situation.

¹⁵⁰ Exhibit 1, Tab 28 and Tab 38.

¹⁵¹ Exhibit 1, Tab 28, pp. 32 – 33, 38 - 40.

¹⁵² T 69.

¹⁵³ T 79.

¹⁵⁴ T 69.

¹⁵⁵ T 58; Exhibit 1, Tab 28, p. 43 - 45.

¹⁵⁶ T 58.

¹⁵⁷ T 58.

¹⁵⁸ T 59.

¹⁵⁹ Exhibit 1, Tab 38 and Tab 33, pp. 33 - 34.

¹⁶⁰ Exhibit 1, Tab 34, pp. 11 - 12.

- 114.** Constable Roberts' evidence was that he thought they might have been intending to discuss whether to issue a summons rather than proceed by way of arrest.¹⁶¹
- 115.** Constable Walker and Constable Adams arrived almost immediately after AJ270. Constable Walker said he saw the other police officers getting out of their vehicle as they pulled up, so he inferred they had only just arrived.¹⁶² Constable Walker got out at the front of the station and approached the other police officers while Constable Adams left and parked his car at the rear of the police station.¹⁶³
- 116.** Constable Walker spoke to the other police officers about what to do next. They agreed that they were busy and there was little public interest in continuing with a charge if both men were remorseful.¹⁶⁴
- 117.** Constable Walker first removed Isiah from the rear of the police vehicle and someone removed his handcuffs. Constable Walker wasn't certain if he had removed the handcuffs or if someone else had done it at his request. He said in his interview that he did not recall looking for any injuries on Isiah at that time but he did not hear Isiah complain of any injuries.¹⁶⁵ However, in his evidence at the inquest Constable Walker believed that if there had been obvious injuries present he would have observed them as he looks for injuries as a matter of practice as he has to submit a use of force report if someone is injured by handcuffs.¹⁶⁶
- 118.** Constable Walker accepted that sometimes the handcuffs can leave a mark but an injury would normally only arise if a person is actively trying to break the handcuffs.¹⁶⁷ Constable Walker also gave evidence that Isiah's handcuffs were definitely locked, and had to be unlocked with a key, although he then conceded he did not have a specific recollection.¹⁶⁸
- 119.** According to Constable Walker Isiah appeared calm and apologetic when he got out of the van. Constable Walker asked him for his name, date of birth and address. Isiah cooperated fully with providing his details and apologised for his actions, saying that how he acted at the hall was not his normal personality.¹⁶⁹ He also indicated that he was currently studying at university and was the first person in his family to do so. Constable Walker described Isiah at that time as "a nice chap"¹⁷⁰ and it was clear to him that Isiah's behaviour at the hall had been out of character.
- 120.** Constable Walker's evidence at the inquest was that he thought at the time, "I will cut this young man a break and I will release him to freedom."¹⁷¹

¹⁶¹ T 157.

¹⁶² T 103; Exhibit 1, Tab 33, p. 37 and Tab 34, p.20.

¹⁶³ Exhibit 1, Tab 15.

¹⁶⁴ T 103.

¹⁶⁵ Exhibit 1, Tab 33, pp. 38 – 40.

¹⁶⁶ T 105.

¹⁶⁷ T 105.

¹⁶⁸ T 106.

¹⁶⁹ T 127.

¹⁷⁰ Exhibit 1, Tab 33, p. 40.

¹⁷¹ T 130.

- 121.** Constable Walker told Isiah that they would check his details and if there was nothing outstanding he would be released without charge. PC Gibbons then noted his personal details and conducted a police check on the police computer system. She advised Constable Walker that there was nothing outstanding on the system in relation to Isiah.¹⁷²
- 122.** Constable Walker spoke to Isiah and explained he had been arrested for his disorderly behaviour at the hall but he intended to use his discretionary powers to release him with a caution only. Constable Walker released him without charge and Isiah shook all of the officers' hands and thanked the police then walked to one side and waited while Constable Roberts dealt with James.¹⁷³
- 123.** Recruit Burke gave the clearest evidence that Isiah was unhappy when he got out of the van at Armadale Police Station. He said it was apparent that Isiah "was still aggrieved" about being arrested and was more upset than angry. Recruit Burke heard Isiah say, "I shouldn't have been arrested. I wasn't doing anything wrong."¹⁷⁴ He also referred to the fact he was "only trying to move everybody on."¹⁷⁵ This is consistent with what Isiah told his girlfriend and father afterwards.
- 124.** Recruit Burke also remembered hearing Isiah say that he was the youngest Aboriginal to attend Curtin University.¹⁷⁶ He didn't hear Isiah apologise to anyone but he described Isiah as calm and "a nice kind of gentleman."¹⁷⁷
- 125.** James was taken out of the van next by Constable Roberts. PC Gibbons and Constable Walker described James as less apologetic than Isiah, and still unhappy about the situation, but he had calmed down considerably and was considered suitable for release.¹⁷⁸ During this time Isiah was also noted to be encouraging James to keep calm, speaking to him in an Aboriginal language.¹⁷⁹
- 126.** Constable Roberts, who released James' handcuffs, said he did not witness any injury to James' wrists and said James did not make any complaint of an injury. He had done the pinch test when he first put them on and believed he had locked them, although he did not check whether they had tightened or not in the journey. However, Constable Roberts said he was in the habit of looking at the wrists when he released the handcuffs to look for obvious injuries and he saw nothing visible.¹⁸⁰

¹⁷² Exhibit 1, Tab 12 and Tab 14.

¹⁷³ Exhibit 1, Tab 16.

¹⁷⁴ T 142; Exhibit 1, Tab 35, p. 35.

¹⁷⁵ Exhibit 1, Tab 35, p. 10.

¹⁷⁶ Exhibit 1, Tab 35, p. 10.

¹⁷⁷ T 142; Exhibit 1, Tab 35, p. 34.

¹⁷⁸ Exhibit 1, Tab 31, p. 8 and Tab 33, p. 45.

¹⁷⁹ Exhibit 1, Tab 33, p. 47 and Tab 35, p. 10.

¹⁸⁰ Exhibit 1, Tab 32, p. 38.

- 127.** Constable Roberts accepted it was possible that James may have had a small indent from the cuffs, but he said that this mark usually fades straightaway and is not considered an injury.¹⁸¹
- 128.** James and Isiah were released at about 12.35 am¹⁸² and had been in police custody for no longer than 10 minutes.¹⁸³
- 129.** The police evidence was that Isiah said he was going to go to the phone box at the shops and call his Dad to pick them up, or catch a train, and they left in good spirits.¹⁸⁴ According to the police both men apologised again and thanked the police before leaving. Isiah did not appear intoxicated as he left and was able to walk away unaided.¹⁸⁵ There were no welfare concerns for either Isiah or James at the time they were allowed to leave.¹⁸⁶

ISIAH'S LAST KNOWN WHEREABOUTS

- 130.** After they left Armadale police station James and Isiah walked to the Armadale train station. James recalls that Isiah was “very, very angry and intimidated” by the English officer and kept saying “Fuck that cop, I hate that cop.”¹⁸⁷ He also said, “They treated us like dogs.”¹⁸⁸
- 131.** After walking for approximately 10 minutes they reached the train station. Isiah then said that he would ring his father to pick them up. Isiah called his father, Mr Kearing, at 12.45 am from a public telephone. Mr Kearing agreed to come and collect them from the train station.¹⁸⁹
- 132.** While waiting for his father to arrive, Isiah called his girlfriend. James overheard Isiah and Ms Radovanovic “arguing and yelling at each other”¹⁹⁰ and “swearing each other up and down.”¹⁹¹ He said Isiah was “going off”¹⁹² and he recalled hearing Isiah say, “What are you doing out?”¹⁹³ James didn’t want to eavesdrop so he walked about 10 metres away to give Isiah some privacy.¹⁹⁴
- 133.** Ms Radovanovic was interviewed by police about this call. She recalled receiving a call from him at a time she estimated was about 12.30 am. Ms Radovanovic said Isiah was upset because he had been arrested because his cousins had been fighting and he didn’t feel the arrest was justified.¹⁹⁵

¹⁸¹ T 161.

¹⁸² Based on IMS information showing PC Gibbons accessing Isiah’s information at 12.34 am on TADIS, Exhibit 1, Tab 9, p. 5.

¹⁸³ Exhibit 1, Tab 9, p. 5 and Tab 33, p.49.

¹⁸⁴ Exhibit 1, Tab 12 and Tab 16.

¹⁸⁵ Exhibit 1, Tab 16 and Tab 35, p. 10.

¹⁸⁶ Exhibit 1, Tab 32, p. 9 and Tab 33, p. 48.

¹⁸⁷ Exhibit 1, Tab 38 [26].

¹⁸⁸ Exhibit 1, Tab 38 [26].

¹⁸⁹ Exhibit 1, Tab 27 [25].

¹⁹⁰ Exhibit 1, Tab 38 [28].

¹⁹¹ Exhibit 1, Tab 38 [28].

¹⁹² Exhibit 1, Tab 28, p. 50

¹⁹³ Exhibit 1, Tab 28, p. 59.

¹⁹⁴ T 61; Exhibit 1, Tab 28, p 4.

¹⁹⁵ Exhibit 1, Tab 23A.

- 134.** Isiah reportedly told his girlfriend that he believed the police had been picking on his cousin and Isiah had stood up for him and the police had judged him from there as being “a typical Aboriginal boy” and had stereotyped him.¹⁹⁶ He believed he was treated badly by police and thought they were very unprofessional as they had treated him “like [he] was nothing.”¹⁹⁷ Ms Radovanovic found it difficult to remember details of the alleged conduct but recalled that he said they treated him horribly.¹⁹⁸ Ms Radovanovic mentioned that Isiah told her there were two police officers and he had memorised their police badge numbers.¹⁹⁹ I will come back to this point later.
- 135.** Ms Radovanovic said Isiah was “inconsolable and so mad; he sounded traumatized and stressed out.”²⁰⁰ Isiah also mentioned that a girl he knew walked past him in the lockup (which I infer was when he was in the back of the police vehicle, as he did not get taken to the lockup) and she laughed and he “got made fun of.”²⁰¹ This made him very upset and he wanted to confront the girl about it.²⁰²
- 136.** Ms Radovanovic said Isiah was upset about what happened to him and was ‘going crazy’, which was not like him. He did not, however, give her any reason to think he was suicidal.²⁰³
- 137.** James’ evidence was that Isiah appeared more angry after he finished the call to his girlfriend than before he spoke to her. James had overheard much of the conversation and believed it was more to do with Ms Radovanovic being out, and their relationship, than what had occurred with the police. In particular, Isiah was upset that his girlfriend had taken a picture with someone else and put it up on Facebook, which had made him jealous.²⁰⁴
- 138.** James and Isiah waited about 10 to 15 minutes before Mr Kearing arrived to pick them up. Mr Kearing described Isiah as very angry and upset about being arrested by police and noted he was holding back tears.²⁰⁵ He was “upset about what happened in the lead-up”²⁰⁶ and believed he had been targeted by police for no reason. Isiah also told his father he felt humiliated when he was arrested in front of the partygoers.²⁰⁷
- 139.** Mr Kearing said at the inquest Isiah was “angry with this male and female cop.”²⁰⁸ In his interview with police in 2014 Mr Kearing said Isiah kept talking about the English officer, but in his evidence at the inquest Mr Kearing said Isiah spoke mainly about the female and male police

¹⁹⁶ Exhibit 1, Tab 23B [6].

¹⁹⁷ Exhibit 1, Tab 23B [7].

¹⁹⁸ Exhibit 1, Tab 23B [6].

¹⁹⁹ Exhibit 1, Tab 23B [7].

²⁰⁰ Exhibit 1, Tab 23B [5].

²⁰¹ Exhibit 1 Tab 23B [6].

²⁰² Exhibit 1 Tab 23B [6].

²⁰³ Exhibit 1, Tab 23A.

²⁰⁴ T 62 – 63.

²⁰⁵ Exhibit 1, Tab 25 [26].

²⁰⁶ T 176.

²⁰⁷ T 180; Exhibit 1, Tab 27 [44].

²⁰⁸ T 177.

officers, saying that the female had been “pretty cheeky to him when he was first arrested”²⁰⁹ and either she or a male officer patted him on the head.²¹⁰

140. This was the first time during the police investigation that any allegations had been levelled at a female police officer. Mr Kearing said in his evidence that he was “baffled that she’s not even here.”²¹¹ However, none of the witnesses, including Mr Kearing, raised any allegation that a female police officer had behaved inappropriately when statements were taken and interviews conducted.
141. It was difficult to tell from Mr Kearing’s evidence who Isiah might have been referring to, but it was possible it was PC Gibbons or alternatively, from his description he could perhaps have been speaking of the female police officer who assisted in locking the handcuffs, rather than PC Gibbons. However, neither version would fit with James’ description of what occurred.
142. Mr Kearing said later in his oral evidence at the inquest that the female police officer “did her best to do the most humiliating thing”²¹² although he did not explain further what that was.
143. I raised the issue of the new allegations against a female police officer with Mr Gazia, who appeared on behalf of the family, at the conclusion of Mr Kearing’s evidence. I asked whether it was thought necessary to call PC Gibbons to give evidence, but this was not urged on behalf of the family.²¹³ The other female officer mentioned in evidence, Senior Constable Jones, was spoken to by Counsel Assisting after the inquest and she was unable to provide any additional information in that regard.²¹⁴
144. Mr Kearing said that Isiah was upset by the whole process: from getting picked out; to getting arrested; then sitting handcuffed in the van and being laughed at, then the handcuffs hurting him and being patted on the head.²¹⁵
145. James also remembered Isiah talking about his girlfriend and the photos in the car.²¹⁶
146. Isiah reportedly also told Mr Kearing and James the number of the van he was put in and the police number of one of the police officers who had arrested him, and he wrote those numbers down once they returned home. I will come back to this issue later.
147. When they got home Isiah showed Mr Kearing his wrists where the handcuffs had been, and Mr Kearing described seeing “red raw marks”²¹⁷

²⁰⁹ T 179.

²¹⁰ T 179.

²¹¹ T 180.

²¹² T 198.

²¹³ T 208.

²¹⁴ Exhibit 6.

²¹⁵ T 180 – 181.

²¹⁶ T 63.

²¹⁷ T 183; Exhibit 1, Tab 27 [45].

but no blood.²¹⁸ Unfortunately, no one thought to take a photograph of them at the time, so it is difficult to know exactly what he saw.²¹⁹

148. James' evidence was that he did not have any injuries to his wrists from the handcuffs and he did not see any injuries on Isiah, although he did describe a red line, like an "indent"²²⁰ around both their wrists that went away after a couple of hours.²²¹
149. In relation to the arrest, Mr Kearing asked Isiah, "Why you?" Isiah had explained that he had been trying to make sure he and his friends stuck together as a group, as they had been told to do.²²²
150. Mr Kearing got a bit angry and told Isiah he needed to be careful and try not to get arrested because he was important to their community and their cultural future. Isiah was upset as he couldn't see why his father couldn't see his side.²²³ Mr Kearing said he was angry at the time, but that anger was directed at the police and their treatment of Isiah not at Isiah himself, which he tried to explain to Isiah. However, Mr Kearing accepted Isiah may have felt like Mr Kearing was angry with him, even though he was not. Mr Kearing's main concern was just for Isiah to understand that he was a young leader and needed to be careful not to jeopardise his future by getting into trouble.²²⁴
151. Mr Kearing told Isiah and James that they would go and speak to the ALS and go to the police station on Monday to seek justice over what had occurred.²²⁵
152. At the end of their conversation Mr Kearing said that he and Isiah hugged and Mr Kearing told Isiah that he loved him and Isiah responded that he loved him in return and thanked his father for being there for him.²²⁶
153. James borrowed some clothes off Isiah and had a shower then Isiah chopped up some cannabis and they both smoked a cone of cannabis each.²²⁷
154. Isiah borrowed Mr Kearing's phone and James' phone and took them outside. Isiah then rang his girlfriend.²²⁸
155. Ms Radovanovic did not refer in her statement (signed in August 2017) to another telephone call, but she did have an interview with a female police officer on 21 May 2014, during which Ms Radovanovic referred to about five conversations with Isiah that night and she noted his mood as being up and down. She specifically referred to the last couple of calls she received from

²¹⁸ T 182.

²¹⁹ Exhibit 1, Tab 30, p. 37.

²²⁰ T 60.

²²¹ T 60.

²²² Exhibit 1, Tab 27 [47] – [49].

²²³ Exhibit 1, Tab 30, p. 36.

²²⁴ T 202.

²²⁵ Exhibit 1, Tab 27 [56] – [62] and Tab 30, pp. 8 - 9.

²²⁶ Exhibit 1, Tab 27 [65].

²²⁷ Exhibit 1, Tab 27, p. 4.

²²⁸ Exhibit 1, Tab 27 [66] – [68] and Tab 28.

Isiah, during which he was upset about being arrested.²²⁹ This supports the evidence of Mr Kearing and James that Isiah had another conversation with Ms Radovanovic once he was back at the house.

156. Mr Kearing spoke to Ms Radovanovic after Isiah's death and she told him that during the phone call Isiah was calm and he told her he loved her.²³⁰
157. However, when Mr Kearing had gone into the lounge room to retrieve his phone from Isiah, not long after Isiah spoke to Ms Radovanovic, he saw that Isiah was crying and upset. Mr Kearing said he had never seen Isiah like that before. Mr Kearing gathered that something must have happened while Isiah was on the phone to his girlfriend.²³¹
158. Mr Kearing said in his evidence at the inquest that he thought Isiah was upset about everything at this stage, and believed it was "a build-up of all these things," including the incident with police and issues with his girlfriend.²³² However, he didn't know why Isiah was actually crying at that stage.
159. James commented that he felt for Isiah it was the "whole night, you know, the police officers, the girlfriend ... he was just pissed right off."²³³
160. Isiah was lying on the couch and Mr Kearing asked him if he was okay and told Isiah he was there for him any time. Isiah effectively told his father to leave him alone. Mr Kearing estimated it was around 2.00 am by this stage and he was tired, so he went to bed.²³⁴
161. James last spoke to Isiah just before going to sleep, when they both said they loved each other. James then fell asleep, assuming Isiah would come in and join him later.²³⁵
162. The following morning both James and Mr Kearing noted that Isiah's bed did not look like Isiah had slept in it.²³⁶
163. In the morning James found a Facebook message on his phone that Isiah had posted to his girlfriend on James' account. The message showed Isiah was asking his girlfriend why she was on Facebook. James thought the message was sent between 2.00 and 3.00 am, although he had deleted it so he wasn't certain about the timing.²³⁷

²²⁹ Exhibit 1, Tab 23A.

²³⁰ Exhibit 1, Tab 27 [78].

²³¹ T 201.

²³² T 200.

²³³ T 63.

²³⁴ Exhibit 1, Tab 27 [67] – [73] and Tab 30, p.11.

²³⁵ Exhibit 1, Tab 28, p. 4.

²³⁶ Exhibit 1, Tab 9, p. 5 and Tab 28.

²³⁷ Exhibit 1, Tab 28, p. 60.

DISCOVERY OF ISIAH'S BODY

- 164.** At approximately 3.00 am on 29 December 2013 a man was walking along Jarrah Grove in Gosnells. He was on his way to a friend's house. As he neared the intersection with Rainbird Way he found Isiah hanging from a tree on the street verge. It appeared to the man that Isiah had died. The man rang his friend to tell him what had happened and then rang emergency services to ask for assistance. He was given some advice over the telephone by a paramedic to try to cut Isiah down and commence CPR while waiting for the ambulance to arrive. The man did as requested, with the help of his friend, who had come to assist him.²³⁸
- 165.** The first St John Ambulance staff arrived at the scene at 3.41 am and they took over resuscitation efforts. Isiah was already on the ground at this stage and ambulance officers performed advanced CPR for approximately half an hour without receiving any response. A decision was then made to cease resuscitation efforts and Isiah's death was confirmed.²³⁹
- 166.** Two police officers attended the scene at 4.16 am. They assessed the scene and arranged for photographs to be taken of Isiah and the area around him and seized some exhibits. It appeared to the police officers that Isiah had climbed the tree and wrapped an electrical cord twice around a tree branch. He then tied the electrical cord around his neck and hanged himself. There were no signs of trauma and no disturbance to the scene suggesting another person had been involved. The police officers formed the conclusion the death was non-suspicious and the investigation was allocated to the Coronial Investigation Unit.²⁴⁰

CAUSE OF DEATH

- 167.** A forensic pathologist, Dr Daniel Moss, made a post mortem examination of Isiah's body on 31 December 2013. There was no evidence of significant natural disease and the primary finding of note was a ligature mark to the neck, which was consistent with the account of Isiah being found hanging.²⁴¹
- 168.** At the time he conducted the post mortem examination Dr Moss had not been informed of any allegations that Isiah had been handcuffed too tightly the day prior to his death. However, Dr Moss explained that in any non-natural death he conducts a thorough examination of the external surfaces of the body looking for evidence of injury, in particular around the hands and wrists, to look for anything suggesting an altercation or restraint. Therefore, Isiah's wrists were automatically examined for injury that might occur from 'over tightened handcuffs' as part of the examination.²⁴²

²³⁸ Exhibit 1, Tab 8, pp. 2 – 3.

²³⁹ Exhibit 1, Tab 6 and 21.

²⁴⁰ Exhibit 1, Tab 9, pp. 5 – 6 and Tab 11.

²⁴¹ Exhibit 1, Tab 4 and Tab 5.

²⁴² T 8.

- 169.** Dr Moss did not find any evidence of blunt force type injury, such as bruises, abrasions or lacerations during his examination of Isiah's wrists. However, Dr Moss did give evidence that there can be bruising (rather than abrasions or lacerations) that is not visible on the surface and would only be visible if he did a far more detailed examination of the subcutaneous tissues. This was not done in this case as it is outside the scope of a normal examination in a routine coronial case (as compared to a suspected homicide)²⁴³. Therefore, Dr Moss acknowledged it was possible that there may have been subcutaneous bruising from handcuffs being applied, although he indicated he did not think it was likely as he would have expected in such a case to see something on the skin surface.²⁴⁴
- 170.** Dr Moss also conceded that it was possible that Isiah may have had indentation on his skin if a restraint was tight, but not so tight as to cause an abrasion or bruising. Such a mark would have disappeared by the time of the post mortem examination and would not be associated with an injury on the skin surface or bruising.²⁴⁵
- 171.** Isiah's father had distinguished the marks he saw on Isiah's wrists from such an indentation from compression, and described the marks he saw as "red raw."²⁴⁶ As Dr Moss pointed out, it is difficult to know what Mr Kearing meant by "red raw" in that context, but his evidence was if there had been any physical break to the skin or frank bruising he would have expected to see it during the post mortem examination.²⁴⁷
- 172.** Dr Moss was shown some photographs taken by forensic officers at the scene of Isiah's death. Dr Moss expressed some reservation about the usefulness of the photographs, as they were not taken at the time of his examination and the resolution was not high, but he indicated that as best he could see from those photographs, there was nothing obvious that would represent an injury to either wrist. Nevertheless, Dr Moss stated he could not exclude a subtle injury being present based solely on those photographs.²⁴⁸
- 173.** Dr Moss was asked by counsel on behalf of the family whether he saw any injuries that would suggest that Isiah had been tasered by police or any possible bite marks. Dr Moss indicated he did not see any puncture marks on Isiah's body, other than marks that are entirely in keeping with resuscitation efforts, and he did not see anything that he would think was a bite mark.²⁴⁹
- 174.** As part of the post mortem examination Dr Moss arranged for toxicology analysis to be performed. It revealed a relatively high blood alcohol level of 0.136% and a higher level of 0.184% in the urine. Tetrahydrocannabinol was also present.²⁵⁰ Dr Moss is not an expert in toxicology/pharmacology, but he

²⁴³ T 8 - 9.

²⁴⁴ T 9.

²⁴⁵ T 9. - 10.

²⁴⁶ T 10 - 11;

²⁴⁷ T 11.

²⁴⁸ T 12.

²⁴⁹ T 14 - 15.

²⁵⁰ Exhibit 1, Tab 4 and Tab 5.

was able to say that he would expect that most people with a blood alcohol of that level would be at least somewhat intoxicated (noting it is well above the legal driving limit). However, what effect it would have on an individual would vary depending on their tolerance to alcohol and other factors such as gender, body weight and when they had their last drink.²⁵¹

- 175.** The information provided in the brief of evidence indicated that Isiah was not a regular drinker and was only known to drink alcohol a couple of times a month. On the night that he died his girlfriend was aware he had been drinking, which was not the norm, and she described his mood as ‘up and down.’²⁵²
- 176.** It is well known that alcohol is a depressant. How that combines with the effects of THC is not as well known, but there is evidence to suggest that the combination of the two drugs can cause panic, anxiety and paranoia.²⁵³ Isiah was said to be a heavy cannabis user,²⁵⁴ and he certainly had THC in his blood at the time of his death, which probably related to the cone of cannabis he was seen by James to smoke after arriving home.²⁵⁵
- 177.** Dr Moss formed the opinion that the cause of death was ligature compression of the neck (hanging).²⁵⁶ No evidence was raised at the inquest that would put that conclusion in doubt. I accept and adopt the conclusion of Dr Moss as to the cause of death.

MANNER OF DEATH

- 178.** Mr Wilkes accepted in his evidence that if Isiah took his life, there were many factors and circumstances that contributed to his decision, including probably the fact he had been drinking and his ongoing relationship issues. However, Mr Wilkes also believes the conduct of the police officers must be put in question.²⁵⁷
- 179.** I asked Mr Wilkes whether he thought Isiah’s state of mind may have been affected by feeling shamed in front of his family and peers. Mr Wilkes did not think Isiah would have been ashamed of his own conduct, but he agreed that Isiah would have felt deeply shamed by being treated that way in front of his friends and peers. Mr Wilkes said Isiah would have wanted the police to “respect him as a normal, young man who was a bit upset” so “to be accosted on the night in the way that he was ... would have been unsettling for him.”²⁵⁸ Mr Wilkes also believed that Isiah had had other encounters with police officers previous to this night, possibly with the same officers, so if he felt he was being mistreated it may have caused him to feel picked on.²⁵⁹

²⁵¹ T 15.

²⁵² Exhibit 1, Tab 8, pp. 4 – 5.

²⁵³ T 15 – 16; <https://adf.org.au/drug-facts/alcohol>.

²⁵⁴ Exhibit 1, Tab 28, p. 57.

²⁵⁵ Exhibit 1, Tab 9, p. 1.

²⁵⁶ T 7.

²⁵⁷ T 89.

²⁵⁸ T 90.

²⁵⁹ T 90.

- 180.** Drawing from his lengthy experience working with drug and alcohol organisations, Mr Wilkes spoke of the young men at the party doing much the same as anyone else at a party; using alcohol and drugs to recreate and enjoy themselves. However Mr Wilkes also spoke of Aboriginal people sometimes feeling confused about who they are as Aboriginal people and they may at times use alcohol and drugs “to medicate and try to escape from the pressures of what [he] calls the inadequacies of two cultures coming together.”²⁶⁰
- 181.** I also asked Isiah’s father, Mr Kearing, whether Isiah had had any traumatic life experience with suicide in the past. Mr Kearing spoke of what he described as the “epidemic”²⁶¹ of suicide in the Aboriginal community, as well as in the wider community amongst young men. Mr Kearing couldn’t single out any particular event that might have influenced Isiah, but he was aware that school friends of Isiah had died in the past and he spoke of the knowledge amongst Aboriginal people that people in their culture tragically die young far too often. Mr Kearing had spoken with Isiah about such things, and Isiah had accompanied him sometimes to his work at Relationships Australia and spoken with other young people there about grief and loss.²⁶²
- 182.** Mr Kearing acknowledged that at the time of his death Isiah had a lot of pressure on his shoulders, particularly in relation to issues with his girlfriend.²⁶³ However, Isiah was committed to Ms Radovanovic and Mr Kearing noted Isiah “chose his woman over everybody.”²⁶⁴ Mr Kearing said, “I think he got to the point where he got sick and tired of arguing with the missus,” although everything else in his life was going well.²⁶⁵
- 183.** Ms Radovanovic referred in her statement (given around the time of the inquest) to a lot of people having tried to blame her, and her arguments with Isiah, for his death. Ms Radovanovic accepted she and Isiah may have had an argument over social media that night but maintained it was resolved early in the night and Isiah’s anger later in the evening was solely due to his treatment by police. Ms Radovanovic also said she loved Isiah with all her heart and had received no indication at any stage that he was going to end his life that night.²⁶⁶ She was, and continues to be, deeply traumatised by his death.
- 184.** The evidence set out above indicates that there was certainly emotional upheaval in Isiah’s life and he was clearly distressed the last time he was seen, approximately one hour before he was found deceased. Some of that distress seems to have related to the events earlier in the night with police, but there is also evidence to support the conclusion some of it related to relationship issues. Isiah had also been drinking, and had smoked cannabis, which is likely to have impaired his judgment and perhaps his perspective on the magnitude of the events that night.

²⁶⁰ T 87.

²⁶¹ T 191.

²⁶² T 192.

²⁶³ Exhibit 1, Tab 30, pp. 44 - 48.

²⁶⁴ Exhibit 1, Tab 30, p. 47.

²⁶⁵ Exhibit 1, Tab 30, p. 66.

²⁶⁶ Exhibit 1, Tab 23B [9].

- 185.** As is sadly often the case, none of these factors individually were likely to have caused someone to decide to take their life. But for some reason the combination of factors on the night led Isiah to make the fateful decision to hang himself.
- 186.** There is no evidence to suggest that any other person was involved in Isiah's death, in the sense of being involved at the time he placed a ligature around his neck. He did not leave a suicide note or send any messages to family about having an intention to take his life, but that is not uncommon in cases such as these where someone makes an impulsive decision while affected by substances. That is what the evidence suggests happened in this case.
- 187.** It is tragic that a young man like Isiah, with so much to live for, might make a decision to take his life on the spur of the moment, without an opportunity to rethink his decision in the sober light of day. However, death by hanging can be very quick and once he started the process there was very little opportunity for him to change his mind or to be discovered and saved.
- 188.** I find that the manner of death was by way of suicide.

INTERNAL INVESTIGATION INTO POLICE CONDUCT

- 189.** Detective Sergeant Brad Robinson was working with the WA Police Internal Affairs Unit in 2014. Detective Sergeant Robinson became involved in the internal investigation following Isiah's death. There were, in effect, four concerns raised by Isiah's family that he investigated:
- whether the arrest of Isiah was unlawful;
 - an allegation that during the journey from Kelmscott to Armadale Police Station the police vehicle stopped and a police officer entered the rear pod of the vehicle and tightened both Isiah and James's restraints;
 - that a police officer patted Isiah on the head like a pet, causing him humiliation; and
 - why the personal details of Isiah and James were not obtained until just prior to their release.
- 190.** Detective Sergeant Robinson gave evidence that the police internal investigation found that the arrest of Isiah was lawful pursuant to s 74 of the *Criminal Code* and s 128 of the *Criminal Investigation Act* and within the bounds of police policy.²⁶⁷
- 191.** The second and third allegations that were investigated by the Internal Affairs Unit relate to whether the police stopped their vehicle between Kelmscott and the Armadale Police Station, and conduct that was alleged to have occurred at that time. The police investigation found the allegation was not sustained based on the evidence obtained during their investigation. This allegation has also been the subject of direct evidence in this inquest,

²⁶⁷ T 17.

so I must reach my own conclusion based upon all of the evidence available to me.²⁶⁸

- 192.** As to the decision to not obtain Isiah and James' details until they were back at Armadale Police Station, prior to their release, the police internal investigation found that this did occur, but there was nothing improper in that conduct. The investigation found it was not practical to delay their departure from Kelmscott Hall when faced with a potentially hostile crowd and it reduced the time the two men had to be in the pod of the vehicle.²⁶⁹
- 193.** At the conclusion of the Internal Affairs Unit investigation it was found by the investigators that none of the allegations of improper conduct had been sustained and there was no evidence of police involvement in Isiah's death.²⁷⁰ However, it was acknowledged by Detective Superintendent Allan Adams from the Internal Affairs Unit that the earlier arrest of Isiah by police "may have contributed to his decision to commit suicide."²⁷¹

COMMENTS ON POLICE CONDUCT

- 194.** Isiah's family raised concerns about the police conduct prior to Isiah's death, and the possibility that their conduct played a role in Isiah's decision to take his life.
- 195.** During the inquest, James said his main concern was about the decision by police to handcuff them and charge them with disorderly conduct at the hall, given other people had provoked the violence. He also had a complaint about the tightening of the handcuffs.²⁷²
- 196.** Mr Wilkes spoke of his great sadness as an Aboriginal leader that he has had to try make some sense of what has occurred and "come out with an outcome that will allow [him] and [his] family to move forward."²⁷³ Mr Wilkes referred to his own suffering at the hands of inadequate policing in the past. He accepted that blame is not cast upon all police officers, and it falls to the behaviour of each individual, but he noted that many Aboriginal people have been traumatised by the indifference and racism that occurs in Australia.²⁷⁴ Mr Wilkes expressed his hope that out of the inquest they would gain some understanding of what occurred and the WA Police will also reflect upon their role in events and, if inadequacies are identified, address them for the benefit of others in the future.²⁷⁵
- 197.** Mr Kearing had wanted to take Isiah and James to the police to report the incident, prior to Isiah's death, so they could get 'justice' for what had occurred. It goes without saying that he wanted that even more for Isiah after his death.

²⁶⁸ T 18; Exhibit 1, Tab 9, p. 8.

²⁶⁹ T 17.

²⁷⁰ Exhibit 1, Tab 9, p. 10 and Tab 10.

²⁷¹ Exhibit 1, Tab 10, p. 2.

²⁷² T 60.

²⁷³ T 87 – 88.

²⁷⁴ T 88.

²⁷⁵ T 88.

198. Pursuant to s 25(2) of the *Coroners Act* I may comment on any matter connected with the death, including matters connected with the administration of justice. However, in order to make any comments on the police conduct in this case, I need to make some factual findings as to what occurred.

Use of restraints and handcuffs

199. There is a police protocol that allows police officers to use handcuffs or other restraints as a tactical option to reduce a threat and/or gain control of a subject. Police officers in WA are only allowed to carry and use handcuffs or restraints that are issued and supplied by WAPOL. The protocol makes it clear that any use of force must be reasonably necessary in the circumstances. Where the use of handcuffs or other restraints on a subject causes bodily injury requiring medical care it must be reported via a 'use of force' report.²⁷⁶

200. Standard police issue cuffs are rigid, such as the Saf-Loks. Only special units in the WA Police are allowed to use elastic type handcuffs. Officers are not permitted to carry anything else to use to restrain someone.²⁷⁷ None of the officers involved were in a special unit that might use an alternative type of restraint.

201. The consistent evidence of the police officers involved on the night was that they had never seen any member of WA Police use a cable tie or zip tie in place of handcuffs, and it certainly did not occur that night.²⁷⁸

202. James was the only witness to give evidence that some form of cable tie or zip tie was used on the night, and his description of what was used changed over time. Although I believed he was a genuine witness, trying to give an accurate account, I believe his evidence was affected by his level of intoxication, the fact that he had been in an agitated state and his understandable distress following the death of Isiah. Weighed against the evidence of the police officers, I am unable to be satisfied to the requisite standard that non-standard issue restraints were used prior to the metal handcuffs being placed on Isiah and James.

203. The next issue is whether the handcuffs were excessively tight, which links in with the issue of whether the vehicle AJ270 stopped and a police officer got out so I will address that first.

Did the police vehicle stop?

204. James' evidence was that the vehicle stopped after approximately 5 minutes of driving, which he estimated was halfway along the journey, and it was pitch black when the van stopped. He estimated the events that then occurred with the tightening of the cuffs and the patting of the head took a reasonable period of time, although perhaps significantly less than his

²⁷⁶ Exhibit 1, Tab 37.

²⁷⁷ T 21.

²⁷⁸ For example, T 136 and T 143.

original estimate of 5 to 10 minutes. James nominated a particular officer as the primary person involved, who I have called the “English officer,” but none of the officers involved properly matched his description.

- 205.** James’ account of his arrest and Isiah’s arrest was also similarly confused in terms of which police officer performed particular actions.
- 206.** I have already noted some reasons why James’ account might be unreliable, despite the fact that he appeared to be genuine and truthful when giving his evidence of what he remembered.
- 207.** In his interview with police, not long after Isiah’s death, it was apparent that Mr Kearing, Isiah’s father, was aware of allegations that Isiah had been patted on the head and felt humiliated but he wasn’t clear where it was supposed to have occurred.²⁷⁹ When Mr Kearing gave evidence at the inquest he referred to the vehicle stopping, but this was after he was aware of James’ account, and this may have been incorporated into his memory of what he was told (given he obviously was not a firsthand witness to events). Mr Kearing also referred to Isiah being humiliated at the hall when first arrested.
- 208.** The evidence of the police number and car registration written down by Isiah did not advance the matter any further. Mr Kearing mentioned the piece of paper in early 2014 when interviewed by Internal Affairs Unit investigators. He was asked to provide the investigators with a copy, and seemed to believe he did so,²⁸⁰ but it transpired that this had not in fact occurred. Counsel appearing on behalf of the family were asked at the conclusion of the inquest whether it could be provided. There was a short delay, but eventually it was provided to the Court on 6 September 2017. The note was then given to Internal Affairs Unit investigators.²⁸¹
- 209.** The internal investigators made enquiries and established that the police ‘PD’ number written by Isiah belongs to a police detective who at the time was attached to the South East Metro District, and did police the Armadale area, but he was not on duty on 28 or 28 December 2013 and he did not attend the Kelmscott Community Hall on the night in question. The detective had finished a shift on 27 December 2013 and did not return to work until 30 December 2013. There are no records to suggest the Detective had any dealings with Isiah at any time.²⁸²
- 210.** The car registration number written down by Isiah belonged to a private vehicle, not a police vehicle. The vehicle belonged to a police officer and was generally parked outside the Armadale Police Station but it was not used to transport people for police business. The officer who owned the vehicle was on duty on 28 December 2013 but he did not attend the Kelmscott Community Hall and was at the Armadale Police Station at the relevant

²⁷⁹ Exhibit 1, Tab 30.

²⁸⁰ T 181.

²⁸¹ Exhibit 5.

²⁸² Exhibit 5.

time.²⁸³ Isiah could have seen the car outside the station and perhaps confused it with a vehicle involved in the events.

211. It was agreed by Mr Gazia, appearing on behalf of the family, that this new information did not really advance the evidence any further.²⁸⁴ However, Mr Gazia made the submission that it perhaps shows the level of Isiah's distress.²⁸⁵

212. I have already referred to the police officers' denial that the vehicle stopped. I found each of the police officers to be credible witnesses and the AVL data supports their assertion that the vehicle didn't stop. I have also noted, in particular, that Recruit Burke had no association with the other officers and a mistaken belief at the time he was interviewed that his account could be independently tested by camera footage from the vehicle.

213. In the end, I am satisfied that the police vehicle AJ270 did not stop on its journey from Kelmscott Community Hall to Armadale Police Station.

Tight Handcuffs and Patting of Isiah on the Head

214. The question then arises as to the marks seen by Mr Kearing on Isiah's wrists and the allegation that Isiah was patted on the head.

215. I am satisfied that Mr Kearing saw red marks on Isiah's wrists and that these marks were caused by the metal handcuffs. The police officers accepted that the handcuffs can be uncomfortable, particularly when cuffed from behind, and that they can leave an indentation and redness even when the handcuffs were locked and not deliberately tightened. The indentation marks are effectively what James described, and it is consistent with no mark or obvious bruising being seen at the post mortem.

216. I accept that the tightness of the handcuffs, and just the fact of being handcuffed, was distressing for Isiah. Being handcuffed in front of other partygoers would also have been humiliating for him, particularly given he believed he had unfairly been targeted by police and Isiah's sense that the conduct of the police shamed him in front of his peers.

217. The patting of Isiah's head is less easy to resolve. The way Isiah described it to his father makes me strongly believe something like it occurred, but it is very difficult to establish which police officer did it, and why. There are some possibilities open on the evidence, but they are really just speculative so I won't take them any further. I accept that Isiah felt that it had been done to him deliberately, and it humiliated him. I am not really able to take it much further, on the evidence I have before me.

²⁸³ T 214 – 215; Exhibit 5.

²⁸⁴ T 215 - 216.

²⁸⁵ T 216.

General Comments on the arrest and decision to handcuff

- 218.** Isiah had never been arrested before.²⁸⁶ He had been brought up to be respectful of authority but also to stand up for what he believed was right. He was proud of his cultural and family background, as well as what his many achievements in his own right. He had a role as a young leader in his community and had the respect of his family and peers. It is apparent from the evidence of witnesses on the night that Isiah had been struck by the unfairness of his arrest and had felt that he had been targeted and pre-judged by the police officers involved.
- 219.** After speaking to Isiah outside the station all of the police officers appeared impressed by him. He was polite, well-spoken and well mannered.
- 220.** It was accepted in submissions on behalf of the WA Police that there may have been a misunderstanding as to the actual level of involvement of Isiah and James in the skirmishes outside the hall, but it was also emphasised that the situation faced by the police was volatile and had the real capacity to become out of control. Therefore, the police officers needed to defuse the situation.²⁸⁷
- 221.** Different judgments as to whether another police officer would have arrested them. Constable Adams seemed to think the conduct was of the lower level type, described the boys as just being “rude and obnoxious” but not showing any “real aggression towards police.”²⁸⁸ Recruit Burke also indicated that he wouldn’t have arrested James, based on the behaviour he saw, as it was really just bad language and shouting.²⁸⁹ He didn’t see Isiah being arrested, so he couldn’t comment on his arrest.²⁹⁰
- 222.** It was submitted by Mr Huggins on behalf of WA Police that it should not be seen as extraordinary that James and Isiah were released without going through the formal charging process, but rather viewed as an appropriate decision to effectively lessen the harm to James and Isiah on the night.²⁹¹ It does, however, lend weight to the conclusion that the behaviour of Isiah and James had been of the lesser kind at the hall.
- 223.** There was evidence before me that one week prior Isiah had been at another party where there was an incident involving Isiah and a policeman, also described by Mr Kearing as bald and from the United Kingdom. Isiah’s father was apparently involved in assaulting a police officer, but no charges were laid. The only police officer who recalled being at that incident was Constable Adams, who was not alleged to have had any particular dealings with Isiah on the night before he died. The only real connection between that incident and the one the following week was that Mr Kearing believed Isiah felt that

²⁸⁶ Exhibit 1, Tab 27 [42].

²⁸⁷ T 226.

²⁸⁸ Exhibit 1, Tab 34, pp. 26 – 27.

²⁸⁹ Exhibit 1, Tab 35, p. 25.

²⁹⁰ Exhibit 1, Tab 35, p. 25.

²⁹¹ T 226.

he was being targeted by police, particularly with the events happening two weeks in a row, which Mr Kearing believed affected Isiah detrimentally.²⁹²

- 224.** It was conceded by Mr Huggins that there is no doubt from the evidence that Isiah was humiliated by being arrested in front of other partygoers. By all accounts he was an upstanding and highly thought of member of his community and he had never been arrested before. Mr Huggins suggested his distress from the humiliation of being arrested was compounded by his argument with his girlfriend, in the context of an ongoing troubled relationship, and his intoxication.
- 225.** In conclusion, I accept that the police officers involved felt that they were confronted with a dynamic situation and made a decision in those circumstances to defuse the situation by arresting the two people who they thought were the main instigators, although they may have been mistaken as to how involved James and Isiah had been in the fighting on the night. In the context of everything else going on in Isiah's life, what he felt was the unjustness of his arrest, and the powerlessness of that situation, was the final straw that led him to make a fateful decision to take his own life.
- 226.** Mr Wilkes reflected that there is a lot of work still to be done building relationships between Aboriginal people and the police and other government instrumentalities given the historical background of police involvement in the forcible removal of Aboriginal children from their families in the past. That historical background has resulted in a lack of trust in the police, which remains to this day.²⁹³ While police officers must deal with the situations as they present themselves, it is very important that police officers working today are aware of these issues and the need for great sensitivity when dealing with Aboriginal people, particularly young offenders.

SUBMISSIONS ON RECOMMENDATIONS

Independent Review

- 227.** Despite having just completed a full coronial investigation into the circumstances of Isiah's death, including the earlier police involvement, Mr Gazia submitted that I should recommend an independent review into Isiah's death. He did not identify a particular body that would be the appropriate one to conduct such an investigation.
- 228.** In my view, such an investigation is unlikely to unearth any further relevant evidence than has already been obtained in this extensive investigation. Accordingly, I do not make such a recommendation.

Cultural Awareness Training

- 229.** Further cultural awareness training for police officers is a recurring theme in many inquests where there has been negative interactions between police or

²⁹² T 188 - 189.

²⁹³ T 222.

government agencies and an Aboriginal deceased. It is an important issue, which could have the potential to play a death prevention role if such interactions can be improved through better understanding and communication by police officers.

- 230.** The WA Police advised that a lesson on cultural diversity is presented to all police recruits, transitional and auxiliary officers as part of their initial training with WA Police. The aim is to improve officer responses to policing demands in a diverse community. The overall lesson duration is approximately 10.5 hours spanning two days and, relevantly to this inquest, includes a specific session on Australian Aboriginals and a visit to an Aboriginal college. There are currently no refresher courses offered within WA Police relating to cultural awareness.
- 231.** In late 2017 WA Police engaged the University of Notre Dame to undertake an independent audit of their cultural training and policy material. The audit report was completed in March 2018 and it is anticipated the findings and recommendations will inform improvements to existing training and policy particularly focussed on Aboriginal culture.²⁹⁴ It is an extensive document and I do not propose to go into it in any detail, but I note that it shows a positive commitment by the WA Police to improve their cultural awareness training for new and existing officers.
- 232.** As I noted above, there is a lot of work still to be done building relationships between Aboriginal people and the police and this requires police officers to have a good understanding of the historical reasons for this relationship of distrust and fear. I encourage the WA Police to build upon the work they are currently doing in the area of cultural training, and ensure that it is offered on an ongoing basis to serving police officers, not simply to recruits.²⁹⁵

Body Worn Video

- 233.** Body worn video is camera-based technology worn by frontline police officers. It has been trialled internationally but trials within Australia and New Zealand are relatively new. Other jurisdictions have shown that the use of such video has the potential to reduce police complaints, use of force and assaults against police and provide efficiencies and benefits for evidence capture and disclosure, which can affect prosecution outcomes.
- 234.** Between June and December 2016 WA Police partnered with AXON (Taser) to test the use of Body Worn Video. The trial was intended to see if the results identified in other policing jurisdictions could be replicated in WA. The trial took place in Bunbury and Perth and involved seven individual business units and over 500 officers.
- 235.** The trial found that the community were largely supportive of the use of body worn video and there were some increases in efficiency, but no significant results regarding impact on police complaints or assaults

²⁹⁴ Information on WA Police Force Cultural Awareness Training, provided by Training Education Design and Development Division, 29 March 2018.

²⁹⁵ T 222.

(although it was thought this may have been due to relatively few incidents during the trial period). Many police officers were positive about the technology, although some legitimate concerns were also raised, such as the psychological burden of being ‘on camera’ at all times.

- 236.** In December 2017 recommendations were made to the WA Police Corporate Board regarding the findings and next steps for the use of body worn video in WA. Whilst the purchase of hardware is simple, there are significant cost implications to storage, use and maintenance of data, which needs to be properly understood both for the initial outlay and ongoing provision. For budget reasons WA Police are not able to support the use of body worn video as a ‘stand alone’ technology in the short term. However, it is being considered as part of the wider ‘Mobility’ project review, which seeks to develop operating procedures and technology that enables officers to more effectively conduct their role independent of a police station.²⁹⁶
- 237.** It is certainly the way the future is heading, and from a coronial point of view footage from police body worn video is likely to be a very useful tool. I note that a recent incident involving a police shooting prompted the Police Minister, the Honourable Michelle Roberts, to acknowledge that every such incident adds weight to the case for on-duty officers to wear body cameras.²⁹⁷ However, I accept that it needs to be considered carefully and funded and implemented in a way that will permit it to continue long term.

Recording of Pod camera footage

- 238.** At the time of the incident between police and James and Isiah, the police vehicle in which they were transported had video recording capacity but the system was used as a “live view” system only. This meant the police officers could see Isiah and James during the journey but the footage was not recorded.
- 239.** I am advised that all current WA Police vehicles fitted with detainee modules have air conditioning and a live video feed to facilitate observation, but the footage is still not recorded.²⁹⁸
- 240.** It was suggested that the development of security protocols, policies and procedures relating to video recording in detainee modules may be included in the Digital Policing Program and the implementation of body worn video still under consideration.²⁹⁹ It seem inevitable that eventually things will move towards more and more incidents being recorded as a matter of course, although as always, issues of cost and storage of footage arise. I do not, at this stage, propose to make any recommendation in this regard, although I encourage the WA Police to explore this option in the course of implementing such technology.

²⁹⁶ Information on Body Worn Video use by WA Police provided by Inspector Darren Henstock,

²⁹⁷ <https://www.perthnow.com.au/news/wa/police-shooting-of-knife-wielding-man-prompts-calls-for-body-cams-ng-b88850043z>.

²⁹⁸ Following recommendations from a previous coronial inquest into the death of Mr Ian Ward.

²⁹⁹ Information on video recording in detainee modules provided by Assistant Director Nigel D’Cruz, Fleet and Equipment services Branch, WA Police, 29 March 2018.

CONCLUSION

- 241.** Isiah's death is a great loss to both his family and the wider community. It is apparent from the evidence that he was a proud young Aboriginal man with great promise, who was likely to develop into a strong cultural leader and make a significant contribution to the arts.
- 242.** Although I have not found in this case that the conduct of the police officers directly contributed to Isiah's death, it is clear that he felt humiliation and despair at his treatment at the hands of police that night and what he saw as an injustice. In combination with other issues he had in his life, it led him to decide that life was not worth living.
- 243.** Sadly, sudden, impulsive acts of suicide by young Aboriginal men are seen more and more often by this Court. Every case is different but they often seem to have at their heart a loss of hope in what the future will bring. In Isiah's case, the evidence suggested his future was bright and he had much to look forward to, so his decision to take his life is difficult to understand. However, this underscores the complexity of the problem, which Isiah's father described as an "epidemic."³⁰⁰
- 244.** Many people and bodies have investigated, and are continuing to explore, why we are losing our young men to suicide, particularly young Aboriginal men. I do not profess to have the answers to this complex problem.
- 245.** However, I do reflect in this case on the submission made by Mr Wilkes that there is a lot of work still to be done building relationships between Aboriginal people and the police and other government instrumentalities given the historical background of police involvement in the forcible removal of Aboriginal children from their families in the past. That historical background has resulted in a lack of trust in the police, which remains to this day.³⁰¹ It is to be hoped that the moves by the WA Police to expand and improve their cultural awareness training can assist in improving these relationships.

S H Linton
Coroner
22 June 2018

³⁰⁰ T 191.

³⁰¹ T 222.