



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 20/19

*I, Sarah Helen Linton, Coroner, having investigated the death of **Rhett Samuel McALPINE** with an inquest held at the **Perth Coroner's Court, Court 85, CLC Building, 501 Hay Street, Perth on 16 May 2019** find that the identity of the deceased person was **Rhett Samuel McALPINE** and that death occurred on **14 September 2016** on **Gingin Brook Road, Neergabby** as a result of **multiple injuries** in the following circumstances:*

Counsel Appearing:

Ms F Allen assisting the Coroner.

Ms R Panetta (State Solicitor's Office) appearing on behalf of the Commissioner of Police.

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SUPPRESSION ORDER

On the basis it would be contrary to the public interest, I make an order that there be no reporting or publication of the details of any of the versions of the WA Police Emergency Driving Policy and Guidelines, including, but not limited to, any cap on the speed at which police officers are authorised to drive.

INTRODUCTION

1. On 13 September 2016 Rhett McAlpine spent the morning working and then went fishing with his brother Hayden in the afternoon. Mr McAlpine had a few alcoholic drinks during the afternoon.
2. That evening, Mr McAlpine and his brother went to the Gingin Hotel and shared a meal. Mr McAlpine was drinking alcohol during the evening and by the time they left the hotel at about 9.00 pm, it is fair to say that Mr McAlpine was quite intoxicated. Despite being aware he was intoxicated, Mr McAlpine decided to drive home. He told his brother during the night that he wouldn't stop if he saw the police, which Hayden understood was because he knew he would lose his licence for drink driving if breathalysed.
3. Mr McAlpine did indeed come across the police that night and, true to his word, when he saw the emergency lights flashing on the police car he did not stop. Instead, he made the fateful decision to accelerate away in an attempt to evade the police. The police officers in the marked police vehicle followed Mr McAlpine's vehicle for a time and sped up so that they could see the driver and hopefully identify him or her. They then pulled back and reduced their speed, turned off their emergency lights and siren and let the Holden Commodore pull away from them. Their plan was to go the address registered for the vehicle and catch up with the driver there.
4. Mr McAlpine did not reduce his speed and, while driving ahead of the police car on Gingin Brook Road, he drifted off the road on a sweeping left hand bend, overcorrected and lost control of the car. The car slid across the road and crashed into a wooden power pole on the side of the road. The car struck the pole with sufficient force to snap it in two, bringing down the power poles. The police officers came across the crash scene shortly afterwards. They found Mr McAlpine had died at the scene and his brother Hayden, who was in the passenger seat, was alive but possibly injured. His injuries were thankfully minor and he made a full recovery.
5. Due to the police officers trying to intercept the car immediately prior to the crash, the death resulted in a public inquest in order to investigate whether the death was caused or contributed to by any action of a member of the police force, pursuant to (s22(1)b) the *Coroners Act 1996* (WA). I held an inquest at the Perth Coroner's Court on 16 May 2019.
6. The circumstances of the death were relatively clear and there was no dispute that Mr McAlpine died from multiple injuries he sustained when he lost control of the car he was driving and crashed into the pole.
7. The inquest focussed primarily on the conduct of the police prior to the crash, and whether the police officers had complied with WA Police Emergency Driving Policy and Guidelines.
8. At the conclusion of the inquest hearing, I observed that there was nothing in the evidence before me to suggest that the police officers involved caused or contributed to the death. Mr McAlpine had made a choice on the night to

drive while intoxicated, and had decided in advance that he would not stop if he saw police because he knew what the consequences would be in terms of losing his licence. Sadly, he did not think about the consequences of trying to escape from the police, which led him to lose his life.

EVENTS LEADING UP TO THE POLICE INVOLVEMENT

9. Mr McAlpine and his younger brother Hayden lived together in Seabird and were both employed part-time as farm hands at a property in Neergabby. On Tuesday, 13 September 2016 they both got up at 4.00 am to go to work. Hayden's driver's licence was suspended, so Mr McAlpine drove them to work in Hayden's green Holden Commodore ute. They commenced work at about 5.00 am and finished at 2.00 pm.¹
10. After they left work, Mr McAlpine drove Hayden's ute again. They drove to Guilderton to get some petrol and then agreed to go fishing as the weather and conditions were good. They went home and each of them had an alcoholic drink, before they left to go fishing at about 3.30 pm. Mr McAlpine drove his own car, towing a dinghy, to the Seabird boat jetty where they met up with a friend. The three men launched the dinghy and spent the afternoon fishing out on the water. They all drank some alcohol while out fishing. When the conditions became rough they decided to head home.² They returned to the boat ramp, put the dinghy on the trailer and Mr McAlpine drove them home.
11. After returning home, Mr McAlpine and his brother unpacked and cleaned the dinghy and then showered and got ready to go out to dinner. Mr McAlpine drove them in Hayden's ute. They went first to the Seabird Tavern, but the kitchen had closed early. They returned home briefly to feed their dogs. While at home Mr McAlpine drank a Bourbon and Cola and Hayden drank some beer. They then left home again and Mr McAlpine drove Hayden's ute to the Gingin Tavern. It took approximately 45 minutes to drive to Gingin. While driving there, Hayden recalled that Mr McAlpine said to him, "If I see the cops I'm not stopping."³ Hayden thought his brother said this because he was over the legal limit to drive.⁴ Mr McAlpine had previously lost his licence for driving offences several years before, including exceeding the legal blood alcohol limit.⁵
12. When they arrived at the Gingin Tavern Hayden ordered a counter meal and Mr McAlpine immediately starting drink pre-mixed Jack Daniels (whiskey) and Coke. Mr McAlpine ate some of Hayden's chips but didn't order his own meal. They then both began to drink beer, although Hayden is not sure how many Mr McAlpine drank. They eventually left the Gingin Tavern at about 9.00 pm. Once again, Mr McAlpine was driving, despite having been drinking alcohol throughout the night and not eating a full meal.⁶

¹ Exhibit 1, Tab 8.

² Exhibit 1, Tab 8.

³ Exhibit 1, Tab 8 [35].

⁴ Exhibit 1, Tab 8 [35] – [46].

⁵ Exhibit 1, Tab 19A.

⁶ Exhibit 1, Tab 8.

13. As they were driving they were listening to music and talking. Mr McAlpine was also smoking cigarettes while he drove. They were both wearing seatbelts. They travelled down Dewar Road onto the Brand Highway and then turned right onto Gingin Brook Road. It was dark and the weather was cold but dry. Prior to seeing any police, Hayden recalled that Mr McAlpine once again said, “I’m not going to stop if I see the cops, I [sic] not losing my licence!”⁷

ATTEMPT TO INTERCEPT

14. Acting Sergeant John Warburton and First Class Constable Nicholas Grayer, both based at the Gingin Police Station, were on duty in a marked police Holden Commodore sedan that night. They had been conducting patrols on the Brand Highway⁸ before they returned to the station for a meal and then headed out onto the road again. They agreed they would head towards the Gingin Tavern, as Tuesday nights often attracted a crowd. This was the hotel where Mr McAlpine and his brother had been. On their way in towards Gingin, approximately 5 kilometres out of town on Dewar Road, the police passed the green Holden ute being driven by Mr McAlpine.⁹
15. The mobile radar in the police car indicated the ute was travelling at 115 km/hr in a 110 km/hr speed zone. The speed itself was not of significant concern and would not, on its own, have prompted the police to turn around.¹⁰ However, a vehicle registration check with their onboard computer system identified that the owner of the ute, Hayden McAlpine, was under court suspension for a drink driving offence. The police officers decided to pull over the ute to check if Hayden was the driver.¹¹
16. By the time the police had done their computer check and executed a u-turn, they estimated that the ute was about a kilometre ahead of them. Acting Sergeant Warburton accelerated heavily to maintain sight of the vehicle and try to catch up to them. They travelled back along Dewar Road, then turned left onto the Brand Highway, before following the vehicle onto Gingin Brook Road. They could see Mr McAlpine’s vehicle lights ahead in the distance. There was no other traffic on the road at this stage.¹²
17. As they approached behind the ute, the police officers turned on their emergency lights and followed behind the ute for several hundred metres. This appeared to have no effect in prompting the driver to slow his speed and pull over.¹³ Acting Sergeant Warburton, who was driving, also did not think the ute increased speed at that stage, but seemed to keep a steady pace. In this case, given the driver did not automatically increase speed, Acting Sergeant Warburton thought it was possible the driver had not seen him, as in his experience, sometimes drivers can be “in their own little world,”¹⁴

⁷ Exhibit 1, Tab 8.

⁸ T 5.

⁹ Exhibit 1, Tab 7, Tab 9, Tab 10, Tab 13 and Tab 14.

¹⁰ T 6.

¹¹ T 6 – 7; Exhibit 1, Tab 7, Tab 9, Tab 10, Tab 13 and Tab 14.

¹² T 9; Exhibit 1, Tab 7, Tab 9, Tab 10, Tab 13 and Tab 14.

¹³ T 10; Exhibit 1, Tab 7, Tab 9, Tab 10.

¹⁴ T 10.

listening to music or paying attention to other matters, and do not see or hear the police car behind them. Therefore, he did not assume the driver was deliberately trying to evade the police at that time.¹⁵

18. The evidence of the police officers was that, after the driver did not appear to react to their flashing lights, they put on the siren as well. The driver of the police car, Acting Sergeant Warburton, believed that Mr McAlpine then accelerated away, whereas First Class Constable Grayer felt that the driver did not really react at all, but certainly didn't slow his speed. Both police officers were still unsure whether the driver of the ute actually realised they were behind him. Acting Sergeant Warburton attempted to pull alongside them to try to confirm that the driver had seen them and to see if he could get a good description of the driver, but couldn't get close enough before they approached a left hand bend.¹⁶ He dropped back behind as they travelled through the bend, then accelerated up next to the ute again.
19. Hayden later told police that he recalled seeing the police car's blue and red flashing lights behind their car as they drove along the Gingin Brook Road. The next thing he knew, Mr McAlpine put his foot flat out on the accelerator pedal. He said to Hayden, "I got this."¹⁷ Hayden said he responded by saying, "let me out!"¹⁸ a few times but his brother didn't reply or appear to take any notice. Hayden recalled seeing that the speedometer on the car was between 140 and 160 km/hr as Mr McAlpine focussed on the road and "tried to drive like a racer"¹⁹ as he moved into the middle of the road.
20. According to the Automatic Vehicle Locator (AVL) data, as he dropped back on the first bend, Acting Sergeant Warburton slowed his vehicle down from 188 km/hr to 164 km/hr.²⁰ Once he had negotiated the bend, Acting Sergeant Warburton accelerated again and came alongside the ute. He told First Class Constable Grayer to shine his torch on the driver and passenger, in order to alert them to the presence of the police and to enable the police officers to get a description of the driver and passenger.²¹
21. With the driver illuminated by the torch, the two police officers could clearly see the driver but only First Class Constable Grayer could see the passenger. First Class Constable Grayer remarked that the passenger appeared to be drinking a beer and neither occupant in the car appeared to react to the police car beside them. Acting Sergeant Warburton described the driver, Mr McAlpine, as looking straight ahead in a rigid manner, "like he didn't want to look over."²² It was clear he was not going to stop the vehicle. Acting Sergeant Warburton said to First Class Constable Grayer, "He's not stopping,"²³ and told First Class Constable Grayer that he should call it in.

¹⁵ T 10.

¹⁶ T 11; Exhibit 1, Tab 7, Tab 9, Tab 10.

¹⁷ Exhibit 1, Tab 8 [55].

¹⁸ Exhibit 1, Tab 8 [56].

¹⁹ Exhibit 1, Tab 8 [61].

²⁰ Exhibit 1, Tab 17.

²¹ T 12.

²² T 12 Exhibit 1, Tab 7, Tab 9, Tab 14, p.14.

²³ Exhibit 1, Tab 10, p. 30.

They had an address in Seabird associated with the ute, so they intended to attend the address and identify the driver.²⁴

22. The police car was being driven by Acting Sergeant Warburton at a speed well in excess of 110 km/hr at this stage. The AVL data on their police car recorded speeds of 148 km/hr, 156 km/hr and 159 km/hr before the vehicle reached a top speed of 190 km/hr, at the time they caught up to the vehicle of interest.²⁵ Acting Sergeant Warburton and First Class Constable Grayer both later expressed surprise to hear that their vehicle reached those top speeds as they said it didn't feel to them at the time that they were travelling at such excessive speed or that it was unsafe. However, Acting Sergeant Warburton acknowledged that he was doing at least 140 km/hr and he wasn't looking at the speedometer as he was focussed on his driving, doing constant risk assessments and keeping an eye on the vehicle they were following.²⁶
23. First Class Constable Grayer called over the radio, "Urgent," and advised VKI of the situation and that they had a vehicle failing to stop, the registration of the vehicle and why they had been trying to intercept it. He called over the radio shortly after that the police vehicle was backing off, which was recorded at 10.26 pm. The reduction in speed at that time is supported generally by the AVL data.²⁷ Acting Sergeant Warburton decelerated, initially to a speed of around 130 km/hr, and also turned off the lights and siren. He continued to drive west in the same direction as the ute, which had maintained its speed and was pulling further away from them. The police officers observed its tail lights several kilometres in the distance along Gingin Brook Road before it disappeared from view.²⁸
24. A recording of First Class Constable Grayer's radio call confirms that they advised they had a green utility that had failed to stop and the vehicle had taken off and was heading west. He estimated the vehicle was two to three kilometres ahead of them at that time. First Class Constable Grayer was asked by the radio operator whether they were no longer in pursuit and he confirmed that they had downgraded, which matches the AVL data showing that the police vehicle decelerates from that point on.²⁹
25. The police officers were planning at that stage to continue on to Seabird to the house related to Hayden's ute registration and go and knock on their door. They continued along Gingin Brook Road as that was the most direct route towards Seabird. They lost sight of the taillights of the ute and assumed it had gone over a hill.³⁰
26. Approximately 2 minutes and 45 seconds after they downgraded, they came across the green ute, which had crashed.

²⁴ T 12; Exhibit 1, Tab 7, Tab 9, Tab 10, Tab 13 and Tab 14.

²⁵ Exhibit 1, Tab 7 and Tab 17.

²⁶ T 12; Exhibit 1, Tab 10, p. 39, 46 and Tab 14, pp. 21-22, 24.

²⁷ Exhibit 1, Tab 7, Tab 9, Tab 10, Tab 13, Tab 14 and Tab 18.

²⁸ Exhibit 1, Tab 7, Tab 9, Tab 10, Tab 13 and Tab 14.

²⁹ Exhibit 1, Tab 7, Tab 9.

³⁰ T 13 - 14; Exhibit 1, Tab 9.

THE CRASH

27. Hayden told police that when Mr McAlpine accelerated away from police, he started to panic a bit because of the speed that they were travelling. He then recalled that the car drifted onto the gravel shoulder and the next thing he knew the car started to slide. Hayden said he braced himself as he knew they were going to crash and then it appeared that the next thing they came to a stop.³¹
28. The police vehicle had passed through a sweeping left hand bend, which requires a reduction in speed as it passes through a township, then the speed limit increases back to 110 km/hr. As the police vehicle straightened up out of the bend, Acting Sergeant Warburton said he saw a light on the side of the road and realised it was a taillight. He executed another u-turn and stopped on the side of the road with his high beam lights illuminating the vehicle. Acting Sergeant realised immediately it was the same Holden ute they had been attempting to pull over earlier. He could also see the ute had struck an electrical pole.³²
29. The ute showed severe impact damage to the driver's side and when they approached, it was apparent the driver, Mr McAlpine, had already died. They recognised him as the driver they had sighted earlier.³³ The police officers could hear yelling and found the passenger, Hayden, was calling for help and appeared desperate to try to get out of the car. When the ute had crashed into a power pole, the pole had come down and there were live wires, which created a real safety issue.³⁴
30. In his statement, Hayden indicated that, in what felt like a few moments after the crash, he recalled the police were next to the car. The police officers spoke to him and told him they would get the jaws of life to get him out of the car. He decided not to wait and climbed out of the window. He later tried to return to the car, but one of the police officers stopped him.³⁵
31. The two police officers recalled that they alerted VKI and requested an ambulance and fire crews then tried to calm Hayden and get him to keep still until they identified the dangers presented by the live wires, but Hayden insisted on climbing out of the car. There was a strong smell of petrol and the engine of the car was still running, so it was felt reasonable to try to extricate him. The passenger door was wedged shut and Acting Sergeant Warburton told him he should stay still, but Hayden was adamant he wanted to get out and managed to extricate himself from his seatbelt and climb out the window. Acting Sergeant Warburton helped him as he climbed out, in order to keep him away from the power lines, but as he came through he fell to the floor. Acting Sergeant Warburton then helped him to his feet and escorted him away from the ute and asked him to sit down. Hayden appeared intoxicated and smelt strongly of alcohol. Acting Sergeant

³¹ Exhibit 1, Tab 8 [62] – [66].

³² T 15; Exhibit 1, Tab 7, p. 9.

³³ T 15.

³⁴ Exhibit 1, Tab 7, p. 9.

³⁵ Exhibit 1, Tab 8 [67] – [71].

Warburton had also observed numerous beer cans in the passenger floor of the ute.³⁶

32. While sitting on the side of the road Hayden tried to get up to go and see his brother. Given the circumstances, the police officers stopped him from doing so by standing between him and the car and encouraging him to sit back down before restraining him. Saint John Ambulance officers arrived soon after and began to treat Hayden.³⁷ He was airlifted to hospital by helicopter for medical treatment.³⁸ Although it was initially suspected he had internal injuries, ultimately his injuries were found to be not serious and he made a full recovery.³⁹

CAUSE OF DEATH

33. On 16 September 2016 a Forensic Pathologist, Dr Kueppers, performed a post-mortem examination on the body of Mr McAlpine. The examination showed multiple injuries, including severe head and chest trauma. Other than some early coronary artery atherosclerosis, there was no evidence of natural disease.⁴⁰
34. A toxicology report detected very high alcohol levels in Mr McAlpine's urine and blood (0.325% and 0.232% respectively). Testing was negative for common drugs. There was some carbon monoxide saturated noted, but well below accepted fatal levels.⁴¹
35. At the conclusion of the examination Dr Kueppers formed the opinion that the cause of death was multiple injuries.
36. I accept and adopt the opinion of Dr Kueppers as to the cause of death.

POLICE INVESTIGATION

37. Detective Sergeant Jim Giorgi from the Major Crash Investigation Section was the investigating officer for this matter. Officers from the Internal Affairs Unit were also involved, given the death occurred immediately after contact with police.

Cause of the Crash

38. A media broadcast was disseminated, but no witnesses to the crash came forward.⁴² It is probably not surprising, given it was later in the night on a rural road.

³⁶ T 16; Exhibit 1, Tab 7, p. 9 and Tab 14, pp.17 - 18.

³⁷ Exhibit 1, Tab 7, p. 9.

³⁸ Exhibit 1, Tab 8 [67] – [71].

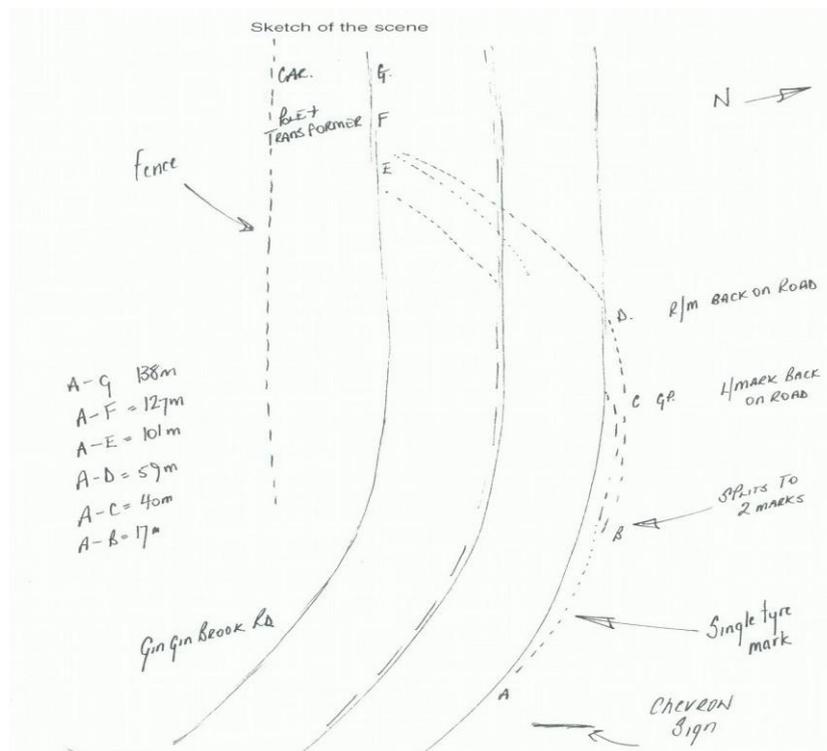
³⁹ Exhibit 1, Tab 7, p. 9.

⁴⁰ Exhibit 1, Tab 4.

⁴¹ Exhibit 1, Tab 4 and Tab 5.

⁴² Exhibit 1, Tab 6, p. 7.

39. Hayden was the only witness to the crash, and he provided a full and frank account of their movements that day, leading into the evening, and what he could recall of the events leading up to the crash.
40. Police officers obtained CCTV footage from the Gingin Hotel, which showed Mr McAlpine drinking inside the hotel that night, which is consistent with the evidence of his brother Hayden, and his blood alcohol level at the time of the crash.⁴³
41. Sergeant David Magorian, a very experienced Crash Reconstruction Officer with the Major Crash Unit, produced an Initial Collision Assessment Report after examining the scene.⁴⁴ The physical evidence reviewed included the tyre marks made by the Holden Commodore ute, which showed how the car left the road on the northern unsealed edge, then led back into the carriageway and then left the road again onto the southern side, where it led directly to the damaged power pole and transformer. The total distance from the commencement of the tyre marks to the final position of the vehicle was 138 metres. The tyre marks showed that when the ute left the road Mr McAlpine put in significant steering input to turn the car left, which resulted in the ute entering a state of yaw. It slid sideways, driver side first, onto the other side of the road where it struck the power pole before coming to rest. Sergeant Magorian concluded the tyre marks were not suitable for calculating the Holden's speed at the time the driver lost control.⁴⁵
42. A sketch of the scene shows in very simple terms, as described by Senior Constable Magorian, that the ute veered off the road onto the right hand side on the bend, and then was steered back onto the road and moved onto the incorrect side of the road then onto the verge and into the power pole.



⁴³ Exhibit 1, Tab 6, p. 7.

⁴⁴ Exhibit 1, Tab 25.

⁴⁵ Exhibit 1, Tab 6, p. 6.

43. A vehicle examination report was prepared in relation to the damaged Holden ute, which found defects with the tyres and brake fluid. A tyre had an unserviceable tread depth. This would have had an impact only on a wet road, and the weather was dry on the particular evening in question, so it did not have relevance to the crash. The brake fluid was found to have a lower boiling point than required, which may have affected the braking system of the ute under extreme braking conditions, where the brakes are operated for a period of time under excessive load, but it was felt this also did not have a major effect on the outcome in this case.⁴⁶
44. An investigation team from Main Roads Western Australia examined the scene and information about the crash and prepared a Crash Location Report. No road environment conditions were found to have directly related to the crash causation. Some recommendations were made to improve the safety of the area generally, in terms of adding further guide posts and removing power poles from the clear zone and improving the edge wear and drop-off.⁴⁷
45. The Major Crash investigation ultimately concluded the crash occurred as a result of a combination of Mr McAlpine driving whilst under the influence of alcohol and speed.⁴⁸

Internal Affairs Investigation

46. After Major Crash investigators and Internal Affairs Unit (IAU) officers arrived at the crash scene, the two police officers accompanied Detective Sergeant Downey from the IAU back to the Gingin Police Station, where they underwent a critical incident breath and urine test. Both officers tested negative to both.⁴⁹
47. Detectives from the IAU met on 31 October 2016 to conduct an early assessment meeting to review the critical incident involving the death of Mr McAlpine. Consideration was given at the meeting to the speeds reached by the police in attempting to intercept Mr McAlpine's ute. They noted the police vehicle was recorded by the AVL data to have reached a top speed of 190 km/hr, as well as being recorded at speeds well above 110 km/hr at other times, until they caught up to the vehicle driven by Mr McAlpine near Sandringham Road.⁵⁰
48. Acting Sergeant Warburton was asked whether he was conscious of his speed and looking at his speedometer when driving. As noted above, he indicated he was not really looking at the speed, but had the feeling he was generally doing around 140 km/hr. He told investigators he was not calling out the speed as he did not consider they were in a pursuit at that point.⁵¹

⁴⁶ Exhibit 1, Tab 24.

⁴⁷ Exhibit 1, Tab 26.

⁴⁸ Exhibit 1, Tab 6, p. 9.

⁴⁹ Exhibit 1, Tab 12 and Tab 15.

⁵⁰ Exhibit 1, Tab 7.

⁵¹ Exhibit 1, Tab 10.

49. At the inquest, Acting Sergeant Warburton admitted he probably didn't look at the speedometer even once during the relevant time and it did feel like he was going "quite quick," so he was not in a position to dispute the general accuracy of the AVL speed recordings although they did not match his recollection. He suggested that the design of the late model car he was driving may have given him the impression they were going slower than was in fact the case.⁵²
50. First Class Constable Grayer also did not see the speedometer, but he agreed with Acting Sergeant Warburton that it did not feel like their vehicle ever reached the top speeds recorded by the AVL. First Class Constable Grayer gave evidence that he has "been in cars and modifying cars and racing cars on tracks" and based on that experience he would never have said they were going "anywhere near those speeds."⁵³ He also agreed that he never felt unsafe in the vehicle and had no concern about the speeds they were travelling.⁵⁴
51. It is generally accepted by the WA Police that the AVL data requires corroboration, as it is known to not always be 100% reliable.⁵⁵ However, Acting Sergeant Warburton was a Priority 2 driver, which meant the maximum speed he was allowed to reach was below the speeds recorded by the police vehicle that day and the maximum speed he believed he had reached. The maximum intercept speed was also exceeded, based on the AVL data.
52. Acting Sergeant Warburton gave evidence at the inquest that he accepted he had breached the policy, but did not feel personally that he had put himself or his partner in danger. He noted he has been driving as a trained police officer for more than 17 years, many of those in the country, and has a good driving record. He was conducting risk assessments and at no stage did he feel that they were unsafe. Acting Sergeant Warburton also confirmed that he did not consider at the time that he was in active pursuit of a driver deliberately trying to evade him, and once they had identified the driver they definitely concluded any attempt to intercept them.⁵⁶
53. Acting Sergeant Warburton was asked how he decided whether to try to intercept the vehicle. He explained that in his experience, in most cases it is usually sufficient to turn on the emergency lights and sirens. Most motorists will then pull over. As noted earlier, in some cases this does not occur as the motorist is not paying proper attention, particularly if they are also travelling at speed and/or listening to music, or in some cases under the influence. Acting Sergeant Warburton also indicated that, as a country police officer, he has found that international tourists often fail to immediately respond appropriately to police or emergency services approaching them with lights and sirens activated.⁵⁷ First Class Constable Grayer gave similar evidence that, particularly in the Gingin area, there are a lot of foreign residents

⁵² T 20.

⁵³ T 24.

⁵⁴ T 24.

⁵⁵ T 35.

⁵⁶ T 21 – 22.

⁵⁷ T 17.

working on farms who travel on the Brand Highway and are unfamiliar with what is required of them when police are trying to pull them over.⁵⁸

54. In this case, Acting Sergeant Warburton acknowledged that he found it hard to believe Mr McAlpine had failed to see him, but he was certain he must have been aware of the police officers' presence after they pulled up alongside him. At that stage, it was apparent that the target vehicle had failed to stop. They had been able to identify the driver and had a likely address to locate him, so Acting Sergeant Warburton decelerated and let the ute pull away.⁵⁹ First Class Constable Grayer agreed this was the sequence of events.⁶⁰
55. The IAU review concluded that Acting Sergeant Warburton did not have due regard to the relevant driving policy and regulations but there was no other criticism of his or First Class Constable Grayer's behaviour. The IAU investigation determined that Acting Sergeant Warburton should be given a letter of corrective advice to acknowledge the fact that he had breached the relevant policy.⁶¹
56. The formal letter of advice was signed by Detective Superintendent Brandham of the Internal Affairs Unit, and given to Acting Sergeant Warburton on 9 November 2016. The letter advised that the IAU had completed an investigation into his involvement in the fatal traffic crash and had found that there was insufficient evidence to sustain any breach of Police Force Regulations, but that the AVL data indicated that his vehicle had travelled significantly in excess of the priority speed cap for his EDD qualification, as well as the priority speed cap generally.⁶²
57. Acting Sergeant Warburton was reminded in the letter that he has a responsibility to ensure his own safety, the safety of his partner, and the safety of community members and other road users during emergency driving incidents and he must be mindful of his obligations to abide by the WA Police Code of Conduct and the requirements of the Emergency Driving Policy and Guidelines, which is underpinned by principles of risk management and community and officer safety. I was provided with a copy of the policy, as it applied at the time and in December 2016 and currently in April 2019.⁶³

Emergency Driving Policy and Guidelines

58. The Acting Commander for State Traffic Operations and State Traffic Command gave evidence at the inquest. Acting Commander Wood had reviewed the circumstances of this particular matter and was in court to hear the evidence of Acting Sergeant Warburton and First Class Constable Grayer. Acting Commander Wood was also able to speak to details of the Emergency Driving Policy and Guidelines.

⁵⁸ T 24 – 25.

⁵⁹ T 18.

⁶⁰ T 28.

⁶¹ Exhibit 1, Tab 7.

⁶² Exhibit 1, Tab 11.

⁶³ Exhibit 1, Tab 28.

59. Acting Commander Wood accepted the comments of Acting Sergeant Warburton and First Class Constable Grayer that there are difficulties with remaining within the speed caps, particularly for country police where the maximum speed limit is often 110 km/hr. Acting Commander Wood noted that with the ability of new vehicles to accelerate faster, and the need to intercept a vehicle as quickly as possible, it has led to more investigations of police officers exceeding the speed cap in these types of cases, and he accepted it is an issue that requires continuing review.⁶⁴ Nevertheless, he emphasised that the caps on speed are generally there for police officers' safety, and the safety of the community. Acting Commander Wood indicated that the WA Police Emergency Driving Policy and Guidelines is very firm and provides clear guidelines for police officers to work within when making risk assessments.⁶⁵
60. Acting Commander Wood explained the main purpose of the WA Police Emergency Driving Policy and Guidelines is to enable all WA police officers to drive in a safe manner when performing police work, including engaging and stopping vehicles and to respond to emergency calls. It provides a policy framework which is intended to keep them, and the travelling public, safe. It is underpinned by principles of risk management.⁶⁶
61. All police recruits are trained in accordance with the policy and all qualified police officers are required to undertake refresher training online every two years.⁶⁷
62. The Emergency Driving policy that was in place at the time of Mr McAlpine's death in September 2016 has since been updated, first of all in December 2016 and then more recently in April 2019. Acting Commander Wood explained that one of the key changes in the policy and guidelines has been defining and dividing the emergency driving into two areas: one being response driving (which is driving involving officers responding to an incident) and the other is intercept driving (which encompasses vehicle intercept and pursuit driving), as was involved in this case.
63. As noted in the evidence of Acting Sergeant Warburton, in the past there has been some confusion as to whether police officers were involved in a pursuit or an attempted intercept. The new version of the policy seeks to clarify any confusion and it is now referred to as 'evade police incident driving'.⁶⁸ Even with the new framework, Acting Commander Wood acknowledged there remains a level of subjectivity around whether a person is attempting to evade police, which determines when the matter has escalated from an intercept to an evade police incident. However, it is clear that if a person has failed to respond to attempts to pull them over it will eventually become an evade police incident.⁶⁹

⁶⁴ T 35.

⁶⁵ T 37 – 40.

⁶⁶ T 29 – 30.

⁶⁷ T 30.

⁶⁸ T 30 - 32.

⁶⁹ T 33.

64. In terms of the substance of the policy, I was advised there is no substantial change. However, while in the past there were 18 key factors required for police officers to undertake in making a risk assessment, the policy has now put those factors into a framework of four separate aspects, known as the POET principles (P for police officer, O for options, E for environment and T for target vehicle).⁷⁰
65. Only certain police officers, with appropriate priority qualifications, are permitted to engage in evade police intercept driving, although there can be rare and exceptional circumstances where public safety might override the general rule.⁷¹
66. However, as was described in the evidence of the two police officers involved in trying to pull over Mr McAlpine, and accepted by Acting Commander Wood, it remains acceptable for an officer to attempt to intercept and pull over a vehicle, which may require them to exceed the speed limit briefly to reach the vehicle and get the driver's attention. They must, however, remain within the relevant speed caps and restrictions and conditions related to evade police driving are to be applied as soon as the target vehicle fails to stop.⁷²

COMMENTS ON THE ACTIONS OF POLICE

67. Although Acting Sergeant Warburton was found by an internal investigation to have breached the Emergency Driving Policy and Guidelines, I am satisfied that the breach does not automatically lead to a conclusion that the police conduct caused or contributed to Mr McAlpine's death.
68. Mr McAlpine had told his brother twice that evening that he would not stop for police if challenged, as he knew being caught driving while intoxicated would result in a licence suspension.⁷³ It is clear he was highly motivated to evade police and was willing to involve himself in risk taking behaviour, regardless of the police presence.
69. Although his contact with police prompted him to increase his speed to get away from them, prior to the crash the police officers had conducted an appropriate risk assessment and decided to abort further attempt to intercept the ute. This was despite the fact Mr McAlpine was clearly breaching the law. It is an example of the balancing exercise police must undertake to weigh up the risks and benefits of trying to stop a target vehicle.
70. Acting Sergeant Warburton reduced their vehicle's speed and had allowed a sufficiently lengthy distance between the two vehicles to be created to have permitted Mr McAlpine to slow his speed, if he had wished to do so. It is not clear exactly what speed he was travelling at immediately prior to the crash, but it was noted in the Major Crash investigation that Hayden estimated

⁷⁰ T 32.

⁷¹ T 33 - 34.

⁷² T 34; Exhibit 2.

⁷³ Exhibit 1, Tab 7.

they had reached speeds of between 140 and 160 km/hr. The police vehicle had slowed to speeds of 110 km/hr and below, in the minutes prior to the crash,⁷⁴ but Mr McAlpine's vehicle continued to pull away from them, suggesting he was still travelling well above 110 km/hr.

71. The evidence also indicates Mr McAlpine was very intoxicated, with a blood alcohol level of 0.232%, which would have affected his ability to make good decisions and to control the vehicle. As he entered a sweeping left hand bend he drifted onto the incorrect side of the road and when he tried to steer out of it, he lost control of the vehicle.⁷⁵ I accept the evidence supports the conclusion that the police were a considerable distance behind him at this time and they did not reach them until the crash had occurred and the vehicle had come to rest. The police officers were driving in the same direction in the hope of catching up with him at his home, but came across the crash scene instead.
72. I am satisfied, based upon all the evidence before me, the police did not cause or contribute to Mr McAlpine's death.

CONCLUSION

73. This type of case emphasises the tension between law enforcement and appropriate risk assessment for police officers when undertaking emergency driving as part of their duties. The evidence before me indicates that the WA Police are constantly revising their policies and providing ongoing training to ensure all police officers are aware of the need to make risk assessments and prioritise safety when undertaking their duties.
74. In this case, although the police officers initially attempted to engage with Mr McAlpine, when it became apparent he was not going to stop for them, they appropriately disengaged and allowed him to drive away, with the intention of speaking to him later at his home. Sadly, due to his own reckless driving behaviour, Mr McAlpine never made it home.
75. I find that his death arose by way of misadventure.

S H Linton
Coroner
31 July 2019

⁷⁴ Exhibit 1, Tab 17, AVL data.

⁷⁵ Exhibit 1, Tab 6, p. 8.