
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : Philip John Urquhart, Coroner
HEARD : 15 - 19 MARCH 2021
DELIVERED : 12 OCTOBER 2021
FILE NO/S : CORC 1121 of 2018
DECEASED : SIMPSON, TRISJACK PRESTON
FILE NO/S : CORC 1118 of 2018
DECEASED : DRAGE, CHRISTOPHER MERVYN

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Ms S Tyler assisted the Coroner.
Mr A Crocker (National Justice Project) appeared on behalf of the family of the deceased.
Ms A Barter and Ms E Langoulant (Aboriginal Legal Services) appeared on behalf of Child N and Child P
Ms N Eagling and Ms J Berry (State Solicitor's Office) appeared on behalf of the Western Australian Police Force

Case(s) referred to in decision(s):

Nil

*Coroners Act 1996
(Section 26(1))*

RECORD OF INVESTIGATION INTO DEATH

*I, Philip John Urquhart, Coroner, having investigated the deaths of **Trisjack Preston SIMPSON** and **Christopher Mervyn DRAGE** with an inquest held at Perth Coroners Court, Central Law Courts, Court 51, 501 Hay Street, PERTH, on 15 March 2021 - 19 March 2021, find that the identities of the deceased persons were **Trisjack Preston SIMPSON** and **Christopher Mervyn DRAGE** and that their deaths occurred on 10 September 2018 at the Swan River, Maylands, from immersion (drowning) in the following circumstances:*

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SUPPRESSION ORDERS

- 1. There be no reporting or publication of the names, picture or any other identifying features of Tactical Operator 2 and Tactical Operator 65.**
- 2. There be no reporting or publication of the names, pictures, or any other identifying features of the three adolescents who were with Master Drage and Master Simpson on 10 September 2018. Any reporting or publication of these three individuals will refer to them as N, T and P.**

INTRODUCTION

- 1 Master Drage and Master Simpson tragically died on 10 September 2018, while attempting to swim across the Swan River, from the Maylands side to the Rivervale side. Master Drage was 16 years old and Master Simpson was 17 years old. At the time, Master Drage and Master Simpson were being pursued on foot by two uniformed police officers from the Western Australia Police Force (WAPF).
- 2 These deaths were reportable deaths within the meaning of section 3 of the *Coroners Act 1996* (WA) (the Act) as each was a death that “*appears to have been caused, or contributed to, by any action of a member of the Police Force.*” By reason of section 19(1) of the Act, I have jurisdiction to investigate these deaths.
- 3 Pursuant to section 22(1)(b) of the Act, an inquest into each death was mandatory because it appeared the deaths were caused, or contributed to, by the actions of one or more members of the WAPF.

- 4 Section 22(1)(b) of the Act is enlivened when the issue of causation or contribution in relation to the death arises as a question of fact, irrespective of whether there is fault or error on the part of the police officers involved.
- 5 Section 40 of the Act permits the State Coroner to direct that more than one death be investigated at one inquest. Such a direction was made regarding the inquest into the deaths of Master Drage and Master Simpson, as their deaths occurred at the same time and place and arose from the same set of facts.
- 6 On the basis that it would be contrary to the public interest, I made suppression orders with respect to the two tactical operators from the Tactical Response Group (TRG), who gave evidence and the three adolescents who were with Master Drage and Master Simpson on the afternoon of 10 September 2018. The terms of those orders are set out on page 3.
- 7 I held an inquest into the deaths of Master Drage and Master Simpson at Perth on 15-19 March 2021. The following witnesses gave oral evidence:¹
- i. Peta Furness, the witness who had flagged down Constable Cutler and Constable Jeffree;
 - ii. Samuel Cooper, an eyewitness of the incident;
 - iii. Bradley Reeve, an eyewitness who recorded the incident;
 - iv. P, one of the two friends who entered the Swan River with Master Drage and Master Simpson;
 - v. N, the other friend who entered the Swan River with Master Drage and Master Simpson;
 - vi. Constable Ella Cutler, one of the two uniformed police officers involved in the foot pursuit;
 - vii. Constable Lindsay Jeffree, the other uniformed police officer involved in the foot pursuit;
 - viii. Detective Sergeant Roy Begg, investigating officer from the Homicide Squad;

¹ I have used the rank of the police officers as at 10 September 2018, except for Superintendent Vivian and Commander Young, whose cited ranks were at the time of the inquest.

- ix. Tactical Operator 65, one of the two tactical operators who attempted to rescue Master Drage and Master Simpson;
- x. Tactical Operator 2, the other tactical operator who attempted to rescue Master Drage and Master Simpson;
- xi. Inspector Donal Heise, attended the Maylands riverbank of the Swan River with Tactical Operator 65 and Tactical Operator 2;
- xii. Superintendent Kate Vivian, Principal at the WA Police Academy;
- xiii. Commander Susan Young, Commander, Operations Support with WAPF; and
- xiv. Professor Patricia Dudgeon, School of Indigenous Studies at the University of Western Australia.

8 The documentary evidence at the inquest comprised of two volumes of the brief that were tendered as exhibit 1 at the commencement of the inquest and a further 13 exhibits (exhibits 2-4, 6-15) that were tendered during the inquest.² I also received a short statement from N, which was personally addressed to me, dated 11 March 2021.

9 At the conclusion of the inquest, I requested additional information from the WAPF regarding the partnering of probationary constables when they are performing operational duties. By covering letter dated 20 April 2021, Ms Berry, counsel for the WAPF, forwarded a memorandum from Superintendent Vivian. This memorandum attached confidential operational data regarding the matter.

10 On 12 March 2021, counsel for the interested parties, Counsel Assisting and I, with my judicial support officer (JSO), visited the relevant locations regarding the events of 10 September 2018. Those locations included that part of Tranby Road that intersects with Clarkson Road, the section of Clarkson Road between Hall Avenue and Tranby Road, the fenced area adjacent to Clarkson Road where the dragon boats were stored, Clarkson Reserve (including the

² There was no exhibit numbered 5 as that document was only marked for identification.

swamp area that Master Drage, Master Simpson, N and P and then Constable Cutler and Constable Jeffree went through), the Maylands riverbank of the Swan River and the Maylands Tennis Club carpark. The group was escorted by Detective Senior Sergeant Lloyd van der Schoor. My JSO made notes of what was observed and also took two photographs.³

- 11 My primary function has been to investigate the deaths of Master Drage and Master Simpson. It is a fact-finding function. Pursuant to section 25(1)(b) and (c) of the Act, I must find, if possible, how the deaths of Master Drage and Master Simpson occurred and the cause of their deaths. Given the known circumstances in this matter, those findings can be made without difficulty.
- 12 Pursuant to section 25(2) of the Act, I may comment on any matter connected to the deaths of Master Drage and Master Simpson, including public health or safety, or the administration of justice. This is an ancillary function of a coroner.
- 13 Section 25(5) of the Act prohibits me from framing a finding or comment in such a way as to appear to determine any civil liability or suggest a person is guilty of an offence. It is not my role to assess the evidence for civil or criminal liability and I am not bound by the rules of evidence.
- 14 In making my findings, I have applied the standard of proof as set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361-362 (Dixon J), which requires a consideration of the nature and gravity of the conduct when deciding whether a matter has been proved on the balance of probabilities.

³ Exhibit 9, Notes and photographs from the site visit on 12 March 2021

15 I am also mindful not to insert any hindsight bias into my assessment of the actions taken by police in their dealings with Master Drage and Master Simpson.⁴

MASTER DRAGE⁵

16 Master Drage was born on 16 October 2001. He was the third of four children. Master Drage had a love for motorcycles, which he often rode in the bush. He was also a very talented footballer.

17 Unfortunately, Master Drage struggled at primary school with dyslexia and attention-deficit hyperactivity disorder (ADHD). His mother then decided to enrol him at Clontarf Aboriginal College, where Master Drage would be able to pursue his love for football. Unfortunately, shortly after attending the college, Master Drage was bullied by older boys. By the time he was 13 years old, Master Drage had dropped out of school and began associating with other boys who were also not attending school.

18 It was at that age Master Drage came into contact with the criminal justice system, predominantly with offences of dishonesty. His mother recalled an occasion when he was detained overnight at Banksia Hill Detention Centre, after arresting police officers did not release him on bail. Master Drage was very traumatised by that experience, which factored into him not trusting the police.

19 Before this contact, Master Drage's first exposure and interaction with police began at a very early age as they were often called to attend homes where he

⁴ Hindsight bias is the tendency, after the events, to assume the events are more predictable or foreseeable than they really were: Dillon H and Hadley M, *The Australasian Coroner's Manual* (2015) 10.

⁵ Exhibit 12, Statement of Winifred Hayward; Exhibit 1, Volume 2, Tab 3, Willetton Medical Centre Notes; Exhibit 1, Volume 2, Tab 4, Fiona Stanley Hospital Discharge Summary; Exhibit 1, Volume 2, Tab 5, Royal Perth Hospital Discharge Summary; Exhibit 1, Volume 2, Tab 10, Report from Department of Communities dated 12 January 2021; Exhibit 1, Volume 2, Tab 13B; List of Criminal Court Outcomes for Master Drage; Detainee Identification Report for Master Drage

lived to investigate allegations of family violence. Department of Communities also had numerous interactions with his family.

- 20 On 19 October 2017, Master Drage and Master Simpson were riding a motorcycle when they were pursued by police. The motorcycle collided with a caravan. Master Drage received multiple injuries, including a depressed skull fracture, fractured right distal clavicle and a fractured right temporomandibular joint. He also sustained a right extradural haematoma. He was hospitalised for 12 days at Royal Perth Hospital and then for 15 days at Fiona Stanley Hospital for ongoing rehabilitation regarding his acquired brain injury. Upon his discharge on 13 November 2017, Master Drage was taken to Banksia Hill Detention Centre, where he remained until 21 December 2017. Prior to that, he had only been detained overnight at Banksia Hill Detention Centre on four separate occasions.
- 21 It was usual practice for treating medical staff to warn a person who has sustained a traumatic brain injury to take safety precautions, such as not swimming alone or taking illicit substances. These warnings are given because of the adverse impact on recovery and also the risk of the person suffering a seizure.⁶
- 22 The traumatic brain injury from the motorcycle crash affected Master Drage's behaviour. He became more distant with his mother and became increasingly angry. He eventually moved out of the family home to live with his girlfriend, only occasionally returning home to live for a few days at a time.
- 23 Master Drage was loved by his parents, his two older sisters, his younger brother, and his large extended family. He had a great zest for life and a deep love for his family.

⁶ Exhibit 1, Volume 2, Tab 6, Letter by Dr Stephanie Tang, Consultant Rehabilitation Physician, dated 9 July 2020

MASTER SIMPSON⁷

- 24 Master Simpson was born on 6 August 2001 and was two months older than Master Drage. He had four siblings; one older brother, two younger brothers, and a younger sister.
- 25 Like his close friend Master Drage, Master Simpson loved playing sport. He regularly won fairest and best awards at his junior football club and, as a 16-year-old, he played in the adult football league at Geraldton. As Master Drage did, Master Simpson attended Clontarf Aboriginal College, however his attendance was also poor.
- 26 Master Simpson's interactions with the criminal justice system began as a 14-year-old and continued until 2018. His offending predominantly related to dishonesty offences and burglaries. He was detained on 11 occasions at Banksia Hill Detention Centre, with the longest period being from 20 October 2017 to 12 December 2017, following the motorcycle crash (which coincided with Master Drage's detention after his release from hospital).
- 27 Just like Master Drage, Master Simpson held a fear of police from an early age. Throughout his young life, police were repeatedly called to attend the family home following incidents between his parents. Department of Communities also undertook a number of Safety and Wellbeing Assessments of Master Simpson and his siblings.
- 28 Master Simpson was particularly close to his siblings and always tried to make his parents proud. He had a deep bond with his friends, who he regarded as his "brothers". Master Simpson's friends respected him and considered him as a leader.

⁷ Exhibit 13, Statement of Shelley Ninnette and Tristan Simpson; Exhibit 1, Volume 2, Tab 9, Report from Department of Communities dated 12 January 2021; Exhibit 1, Volume 2, Tab 13B, List of Criminal Court Outcomes; Detainee Identification Report for Master Simpson

THE EVENTS OF 10 SEPTEMBER 2018

Master Drage, Master Simpson and their friends

- 29 Master Drage, Master Simpson, N, P and T were all friends with each other. They were of similar ages (between 15 and 17 years old) and had known each other for a number of years.⁸
- 30 On Monday 10 September 2018, they planned to meet up. After meeting up, they caught a train to Maylands.⁹ CCTV footage from the train carriage they were in showed them getting off the train at Maylands Train Station at 1.54 pm.¹⁰
- 31 As the group of five friends walked around Maylands, they smoked some cannabis, using a bong.¹¹

Observations of a Maylands resident

- 32 At about 2.45 pm on 10 September 2018, Ms Peta Furness drove along Hall Avenue, which ends in a t-intersection with Clarkson Road in Maylands. As she approached the t-intersection, Ms Furness observed four teenage boys running towards her. Two of them then jumped over the back fence of the house on the corner of Hall Avenue and Clarkson Road.¹² Ms Furness noted that they, “*looked distressed like someone was chasing them*” and “*appeared drug-affected or hyped-up.*”¹³

⁸ Exhibit 1, Volume 1, Tab 18A, Unsigned Statement of P dated 11 September 2018; Exhibit 1, Volume 1, Tab 13A, Internal Affairs Report dated 14 November 2019

⁹ Exhibit 1, Volume 1, Tab 18A, Unsigned Statement of P dated 11 September 2018

¹⁰ Exhibit 1, Volume 1, Tab 13A, Internal Affairs Report dated 14 November 2019, p.3

¹¹ Exhibit 1, Volume 1, Tab 18A, Unsigned Statement of P dated 11 September 2018; ts 15.3.21 (P), p.66

¹² ts 15.3.21 (Furness), p.16

¹³ Exhibit 1, Volume 1, Tab 14, Statement of Ms Furness dated 11 September 2018, p.1

33 When Ms Furness drove to the t-intersection, she saw a marked police vehicle to her left, approaching the roundabout on Clarkson Road, near the Maylands Tennis Club. She waved that police vehicle down.

Constable Cutler and Constable Jeffree

34 Constable Ella Cutler and Constable Lindsay Jeffree were uniformed police officers attached to Bayswater Police Station. They were in the police vehicle that Ms Furness had waved down. Ms Furness advised the two police officers of what she had just seen.

35 Although Ms Furness had pointed to the corner of Hall Avenue and Clarkson Road, Constable Jeffree mistakenly drove to the next t-intersection of Clarkson Road and Tranby Road.¹⁴

36 As Constable Jeffree turned into Tranby Road, he observed two pedestrians pointing to the side of the house at 69 Tranby Road. Both police officers got out of their car to investigate. They observed that the side gate to the house was open and that there was broken lattice, a broken pot and a single black Nike running shoe on the ground near the gate.¹⁵ The police officers went to the rear yard of the house to search for the suspects that Ms Furness had seen jumping fences in the area. They did not observe anyone. Constable Cutler seized the Nike shoe and placed it into a brown paper bag, for possible future forensic examination.¹⁶

The foot pursuit

37 The two police officers returned to their car and drove back towards Clarkson Road. As Constable Jeffree turned left into Clarkson Road, they saw four males running across the road, towards the Maylands Sport and

¹⁴ ts 15.3.21 (Furness), p.17

¹⁵ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree, pp.3-4

¹⁶ Exhibit 1, Volume 1, Tab 21, Statement of Constable Cutler, p.3

Recreation Club, which was situated between Clarkson Road and the Swan River. Constable Jeffree pulled over onto the verge of Clarkson Road, and he and Constable Cutler ran after the four males. These four males were Master Drage, Master Simpson, N and P (the group). Constable Jeffree thought he had yelled out, “*Police. Stop.*”, or words to that effect, when he got out of the car, however the group kept running.¹⁷

38 At, or around this time, T had left the group and was running in a different direction to avoid the police vehicle. The evidence of P at the inquest was that T had “*split off*” at this stage.¹⁸ That is consistent with the account in P’s unsigned statement:¹⁹

[T] legged it up Tranby Road. He doesn’t really know Maylands that well, so I thought he was running back to the train station.

[T] was definitely running in the opposite direction to the water.²⁰

39 At the inquest, both police officers gave evidence regarding why they chased after the group. Constable Cutler said that based on what Ms Furness had told her and her own observations at 69 Tranby Road:²¹

My suspicions were raised with what I had seen, and at that stage, I believed that they could have been involved in what had happened and I wanted to speak to them about it.

40 Constable Jeffree stated at the inquest:²²

I thought they were linked to potential offences. At a minimum of trespass. At a maximum ... I thought they were probably breaking into houses.

41 The group ran through the car park of the Maylands Sport and Recreation Club and then climbed over a fence of the enclosure area that stored a number

¹⁷ ts 16.3.21 (Jeffree), p.181

¹⁸ ts 15.3.21 (P), p.66

¹⁹ Exhibit 1, Volume 1, Tab 18A, Unsigned Statement of P dated 11 September 2018; Exhibit 1, Volume 1, Tab 13A, Internal Affairs Report dated 14 November 2019, p.29

²⁰ T was located by police on the afternoon of the following day with his carers: Exhibit 1, Volume 1, Tab 13C, IAU Running Sheet, p.5

²¹ ts 16.3.21 (Cutler), p.134

²² ts 16.3.21 (Jeffree), p.180

of dragon boats. After climbing over this fence, the group continued to run towards the river. Master Simpson had told the group that was, “*the only way we’re going to go.*”²³ P gave the following explanation why he agreed to the plan of Master Simpson to run to the river:²⁴

Well, I look up to him, and he knows how to get away from police. So, I was thinking that he knows what he’s doing, I made the move first.

- 42 Just before the riverbank was a section of swamp. The group ran through this area in order to get to the river.
- 43 By the time the two police officers arrived at the swamp area, the group was about 70 metres away.²⁵ The two police officers briefly stopped at this point, before deciding to continue.
- 44 As the two police officers walked through the swamp area, they lost sight of the group as the height of the trees near the edge of the river screened the group from their view.²⁶

Officers from the TRG become involved

- 45 At 3.00 pm on 10 September 2018, Tactical Operator 2 from the TRG finished his duties at the Maylands Police Complex. As he left in his private car, he drove along Clarkson Road towards Tranby Road. He had first observed the group as they ran across Clarkson Road, towards the Swan River. He also saw a marked police vehicle pull over on the verge near the Maylands Sports and Recreation Club carpark. He then observed two uniformed police officers get out of this car and follow the group.²⁷

²³ ts 15.3.21 (P), p.68

²⁴ ts 15.3.21 (P), p.68

²⁵ ts 16.3.21 (Jeffree), p.182

²⁶ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 4 October 2018, p.8

²⁷ Exhibit 1, Volume 1, Tab 23, Statement of Tactical Operator 2 dated 11 November 2018, pp.1-2

- 46 As he continued to drive past Tranby Road and along Clarkson Road, Tactical Operator 2 saw the group climb over a cyclone fence and head towards the swamp area.
- 47 Assuming that the group were running from police because they might be suspects for an offence, Tactical Operator 2 believed he could assist by driving to the Maylands Tennis Club carpark. He did that as he assumed the group would run along the riverbank in that direction and he would be able to assist the two uniformed police officers.²⁸
- 48 Coincidentally, at about 3.15 pm, Tactical Operator 65 from the TRG was driving an unmarked police vehicle along Tranby Road, intending to return to the Maylands Police Complex. With Tactical Operator 65 was Inspector Donal Heise, who was also attached to the TRG.²⁹ These two police officers observed the group running away from two uniformed police officers. They also saw the car being driven by Tactical Operator 2, and noted that it was being driven slowly. Given the car's slow speed, they mistakenly presumed it was associated with the group.³⁰ Tactical Operator 65 therefore followed the car being driven by Tactical Operator 2, and it was only when both cars parked at the Maylands Tennis Club carpark that Tactical Operator 2 was recognised by his two colleagues.
- 49 After waiting for a short time without seeing any members of the group, the three TRG officers walked to the riverbank. They still expected to encounter members of the group running towards them. As Tactical Operator 65 stated:³¹

²⁸ Exhibit 1, Volume 1, Tab 23, Statement of Tactical Operator 2 dated 11 November 2018, p.3

²⁹ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, pp.1-2

³⁰ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, p.3; Exhibit 1, Volume 1, Tab 24, Statement of Inspector Heise dated 10 November 2018, p.4

³¹ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, p.5

Knowing the area well, my thought at this time was that the persons who had jumped the fence may come in our direction. This was because the river was to their front and the Maylands Police Complex was to their right.

The attempt to cross the river

50 Contrary to what the three TRG officers anticipated, as soon as the group reached the riverbank from the swamp area, they began preparing themselves to swim across the river. As stated by N:³²

At the river we took our jumpers, shirts and shoes off. Some of us did this standing and some of us did it in the water. [Master] Simpson was first into the river, I was second, [Master] Drage was third and [P] was fourth.

...

I started to swim. The water was freezing cold. There was a current in the middle of the river and also sort of near to the edge of the river. At half way across the river, I started swimming on my back.

51 When the two uniformed police officers arrived at the riverbank from the swamp area, Constable Jeffree observed the following:³³

When I reached the riverbank a few minutes later, I saw a youth I now know to be [P]. [P] was about 15 metres from the riverbank into the river.

...

I observed three others from the group were swimming together, about half way across the river. I estimate the river was about 120 metres wide at this point.

52 Constable Cutler described what she saw when reaching the riverbank:³⁴

I then saw an Indigenous male standing in the water about 15 metres from me at the edge.

...

I noticed two other males in the water. One was half way across and the other was three quarters of the way across. They were swimming away from me.

53 Neither of the two uniformed police officers immediately entered the water. Their focus remained on getting P to return to the riverbank. Constable Jeffree

³² Exhibit 1, Volume 1, Tab 32, Statement of N dated 27 September 2018, p.2

³³ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 1 November 2018, p.9

³⁴ Exhibit 1, Volume 1, Tab 21, Statement of Constable Cutler dated 1 November 2018, p.6

called out to P to get out of the water, however, he remained waist-deep in the water, replying, “*I didn’t do anything*”.³⁵

- 54 When P remained in the water, Constable Jeffree decided to remove his various pieces of equipment and wade into the river to retrieve him.³⁶

The rescue attempts

- 55 As the three officers from the TRG walked along the riverbank, they came to a dogleg to the right. As they walked around the dogleg, they observed Constable Cutler and Constable Jeffree standing on the riverbank about 30-40 metres away.³⁷ Tactical Operator 65 described what he saw:³⁸

I observed a male person standing chest height in the water in front of the two police officers and three other heads out further across the river.

The person standing in the water was about 15-20 metres from the riverbank that the police were on and was facing them. The second person appeared to be about half way across the river and was swimming towards the other side. The third person was another 25-30 metres further across the river and was also swimming in the same direction. The last person was swimming towards the other riverbank and was about three quarters the way across.

- 56 A short time later, Tactical Operator 65 noted:³⁹

I observed that the other three persons in the water were now struggling to swim, they appeared not to be moving as a result of the current and strong winds. [P] was looking at our bank of the river and was not going anywhere. At that point Inspector Heise said, “You better get in there”.

- 57 Tactical Operator 65 handed his mobile phones and wallet to Inspector Heise and immediately waded into the river to try and rescue the people who were

³⁵ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 1 November 2018, p.10

³⁶ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 1 November 2018, p.10

³⁷ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, p.5

³⁸ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, pp.5-6

³⁹ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, p.6

struggling in the water. He did not think there was time to remove his boots, the overalls he was wearing or his undershirt.⁴⁰

58 Tactical Operator 2 removed his shoes, socks, and some clothing before entering the water. He was therefore behind Tactical Operator 65.⁴¹ After wading out a short distance, both tactical operators had to commence swimming. The water was very cold, and the strong winds were causing the water to be choppy. Shortly after the two tactical operators entered the water, Constable Jeffree waded into the water to retrieve P.

59 Tactical Operator 65 recounted the following to describe his attempts to save Master Drage and Master Simpson:⁴²

I could see the second person was struggling to keep afloat and was in the middle of the river. He appeared to go under the water at least two times whilst I was swimming towards him. I was still some distance away from him and I observed that on the third occasion he submerged under the water he did not resurface. I was still about 40 to 50 metres was from him at this time.

My observations were restricted by the water conditions at the time as it was choppy and [I] could not really mark where he went down.

At the same time, I observed the third person who was another 30 metres or so from the last place that I saw the second person. He was splashing and was also struggling to keep afloat.

I was not close enough to the second person to where he went under the water to be able to try to locate him. I assessed that I was better placed to try to save the third person whose head was still above the water.

I shouted out to him "Lay on your back, float on your back". I did this so that he would be able to conserve his energy. I then swam in his direction. My intent at this time was to try and save him from also drowning.

I did not see him try to float on his back. I was about 25-30 metres from him when I observed him also go under the water.

I did not see him come to the surface again.

⁴⁰ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, p.7

⁴¹ Exhibit 1, Volume 1, Tab 23, Statement of Tactical Operator 2 dated 11 November 2019, p.5

⁴² Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, pp.8-10

I continued to swim to where I believed he went under the water and tried my best to find him using my arms and legs. I could not see under the water as it was too murky.

The current was strong, pulling me down river, with the wind pushing up river. I was unable to get to the bottom of the river, it was too deep for me in the fatigued condition that I was now in.

I am a competent swimmer, however the conditions that I faced that day were very challenging and I believe that I swam beyond my capabilities. I struggled to make it to the other side.

- 60 Similarly, the brave attempts made by Tactical Officer 2 to save either Master Drage or Master Simpson were also in vain.
- 61 Tactical Operator 65 saw N had reached the Rivervale side of the Swan River and was holding onto a tree branch that was hanging over the water. He went to assist N and placed him onto an overhanging tree so that he was out of the water. N advised him that a total of four boys had got into the river, and Tactical Operator 65 shouted across to Inspector Heise, who was still on the Maylands riverbank, that two persons were still missing.⁴³
- 62 At about 3.55 pm, the Rigid-Hull Inflatable Boat (RHIB) that belonged to the TRG was launched from the nearby Maylands boat-ramp and attended the location. It collected N and the two tactical operators. At the direction of Tactical Operator 65 and Tactical Operator 2, the RHIB operators deployed a Lost Divers Shot⁴⁴ at the location where it was believed the tactical operators had made the last observation of the second person they had seen submerge.

Footage of the incident

- 63 On the afternoon of 10 September 2018, Bradley Reeve was in his unit in an apartment building in Rivervale. The apartment building was adjacent to the Swan River and the balcony of Mr Reeve's unit faced onto the river.

⁴³ Exhibit 1, Volume 1, Tab 22, Statement of Tactical Operator 65 dated 21 September 2018, pp.11-12

⁴⁴ A Lost Divers Shot is a device used to mark a location on the riverbed.

- 64 At about 3.20 pm, Mr Reeve was on his unit's balcony when he observed four people in the river, directly in front of the apartment building. For the next 45 minutes he started filming and taking photographs on his mobile telephone of what he observed taking place on the river. The filming that took place from 3.22 pm to 3.29 pm, comprising of five clips, showed the rescue attempts by police.
- 65 The timestamp from the first clip began at 152249⁴⁵ and lasted for six seconds. Constable Cutler and Constable Jeffree can be seen standing at the Maylands riverbank with P standing in waist-deep water in front of them. N can be seen swimming, without apparent difficulty, towards the Rivervale side. Master Drage and Master Simpson were shown further back towards the middle of the river. It is not possible to determine if either of them was struggling at this stage due to the short duration of the footage. Additionally, the riverbank on the Rivervale side and a section of the water abutting it are obscured by tree foliage, further hindering a complete view of the incident.
- 66 The second clip commences with the timestamp 152302.⁴⁶ It runs for one minute, nine seconds. Although the first clip was filmed in the vertical position, Mr Reeve realigned it so that the remaining clips were in the horizontal (or landscape) position.
- 67 This clip showed Constable Cutler and Constable Jeffree still speaking to P with Tactical Operator 65 and Tactical Operator 2, together with Inspector Heise, now in the frame on the riverbank to the constables' left. Eleven seconds into the clip, Tactical Operator 65 entered the water fully clothed. Only two of the three swimmers seen in the first clip are visible. If N had already reached that part of the river obscured by the tree foliage, these

⁴⁵ 3.22 pm and 49 seconds

⁴⁶ 3.23 pm and 2 seconds

two swimmers would be Master Drage and Master Simpson. Compared to their positions in the first clip, they were only slightly closer to the Rivervale side, and the person who was about half way across appeared to be struggling as his head kept disappearing under the water. After 45 seconds into the clip, Tactical Operator 2 entered the water, having paused to remove his shoes and some of his clothes. At 59 seconds, Constable Jeffree walked into the water towards P, after removing his vest and equipment.

68 The third clip commences with the timestamp at 152415⁴⁷ and runs for one minute, 14 seconds. This clip commenced with Constable Jeffree about to approach P. The clip showed Tactical Operator 65 swimming breaststroke towards the Rivervale side. He was still some distance away from the nearest person, who remained in the same position and was clearly struggling. That person became submerged several times and when his head went under the water at 44 seconds, he is not seen again. Just before he submerged for the last time, the person raised his right hand in the air. It is not possible to determine if this person was Master Drage or Master Simpson. By this stage, Tactical Operator 2 had stopped wading and had begun swimming, but he remained behind Tactical Operator 65. This clip only showed one person struggling in the water. It is unclear where the other person who was sighted in the second clip is at this point. By the end of the clip, Constable Jeffree had escorted P back to the riverbank, where he was handcuffed and placed under arrest.

69 The fourth clip is titled “River Incident (1)” and runs for one minute, 46 seconds. It is my understanding this footage commenced at 3.27 pm.⁴⁸ Six seconds into this clip, Constable Jeffree re-entered the water, having left P in the custody of Constable Cutler. At 50 seconds, both tactical operators are in

⁴⁷ 3.24 pm and 15 seconds

⁴⁸ ts 15.3.21 (Counsel Assisting), p.59

the vicinity of the water where the person was seen to submerge for the last time in the third clip. At one minute, 23 seconds into the clip, N (who had reached the safety of the overhanging tree branch and was obscured from view), yelled out “*Love you [P]*”. By the end of this clip, Constable Jeffree had not even swum half way across the river and was now appearing to struggle.

- 70 It is not clear whether the struggling person in clip three was the first or second person that Tactical Officer 65 witnessed submerge and not resurface. Although I have reviewed the relevant clips a number of times, I am unable to determine whether this was the first or second person. Such a determination is made more difficult by the time gaps between each clip, the trees on the Rivervale side of the Swan River concealing a section of the water and the different parts of the river Mr Reeves was zooming in on as he filmed.
- 71 Clip five is titled “River Incident (2)” and commences at 3.29 pm. It lasts for 29 seconds. Police sirens are heard, and other police officers have arrived on the Maylands riverbank. Constable Jeffree had begun swimming back to the Maylands side. The tactical operators cannot be seen in this clip.
- 72 Clips two, three and four clearly show the tremendous bravery of Tactical Operator 65 and Tactical Operator 2 in what can only be described as treacherous conditions. I highly commend them both for their actions. The Bravery Awards they received for placing themselves at great risk as they attempted to save the lives of Master Drage and Master Simpson were fitting commendations.⁴⁹

⁴⁹ Exhibit 1, Volume 2, Tab 8B, Statement of Superintendent Vivian dated 9 March 2021, p.13

*Retrieval of the bodies of Master Drage and Master Simpson*⁵⁰

- 73 At about 4.00 pm, a dive request was received by WAPF Water Police from the State Operations Coordination Centre. Water Police divers were requested to assist in the search of two missing youths, believed to be drowned, in the Swan River at Maylands.
- 74 At 6.30 pm, four Water Police divers attended the scene and were directed to the Lost Divers Shot that had been positioned earlier. A circular search technique was used, which allows for an area to be systematically covered for a radius of about 20 metres.
- 75 At 8.33 pm, one of the divers located a body in four metres of water, which was then recovered. This was the body of Master Drage. Although further diving was conducted until about 2.30 am on 11 September 2018, Master Simpson's body was not located. A police vessel remained at the scene until Water Police divers recommenced their underwater search at about 8:00 am on 11 September 2018.
- 76 At 9.13 am, the body of Master Simpson was located in 3.3 metres of water and was recovered from the river.

The detention and subsequent release of P and N

- 77 Once P was in the custody of police on the Maylands riverbank he was searched. As a result of items found in his possession, he was placed under arrest on suspicion of a burglary and was cautioned.⁵¹ P was then taken back to the police vehicle that had been driven by Constable Jeffree. His handcuffs were removed before he was placed into the vehicle.⁵² P was then driven to

⁵⁰ Exhibit 11, Statement of Sergeant Bell dated 18 March 2021

⁵¹ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 4 October 2018, pp.13-14

⁵² Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 4 October 2018, p.15

the Maylands boat-ramp a short distance away, where all police vehicles involved in the incident were to rendezvous.⁵³

- 78 The RHIB conveyed N back to the Maylands boat-ramp. He had been provided with a thermo blanket to keep him warm after he boarded the RHIB. He was then placed in a police vehicle at the boat-ramp.⁵⁴
- 79 Ambulance officers were called by police to assess N and P. Shortly before 6.00 pm, N was assessed by ambulance officers who observed him to be alert and orientated and in no distress. His vitals were all within normal limits and he denied any injuries or pain. There was no aspiration, with N advising he had kept his head above water.⁵⁵ After he was assessed by ambulance officers, N was arrested on suspicion of burglary by police.⁵⁶
- 80 Although there was apparently no Patient Care Record completed by the ambulance officers for P,⁵⁷ he stated in his unsigned statement that he was checked by ambulance officers.⁵⁸ There is no evidence before me to suggest that P required any medical treatment from the ambulance officers.
- 81 After being assessed by the ambulance officers, N and P were taken in separate police vehicles to the Homicide Squad. Both were then detained in custody at the Homicide Squad as uncharged suspects for suspected burglary offences.
- 82 An application to extend N's detention for an additional six hours as an arrested suspect pursuant to section 140(4)(a) of the *Criminal Investigation*

⁵³ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 4 October 2018, p.16

⁵⁴ Exhibit 1, Volume 1, Tab 32, Statement of N dated 27 September 2018, p.5

⁵⁵ Exhibit 4, Patient Care Record from St. John Ambulance for N, p.2

⁵⁶ Exhibit 1, Volume 1, Tab 32, Statement of N dated 27 September 2018, p.5

⁵⁷ Exhibit 1, Volume 1, Tab 13A, Internal Affairs Report dated 14 November 2019, p.77

⁵⁸ Exhibit 1, Volume 1, Tab 18A, Unsigned Statement of P dated 11 September 2018, p.7

Act 2006 (WA) was approved at 9.00 pm. An identical application to extend P's detention was approved at the same time.⁵⁹

- 83 At 10.41 pm, P was unconditionally released without charge into the care of a relative. At 11.37 pm, N was also unconditionally released without charge into the care of a relative. Both of them were released from custody well within the additional six-hour timeframe.

CAUSE AND MANNER OF DEATH^{60 61 62}

Cause of death: Master Drage

- 84 Forensic pathologists, Doctor Judith McCreath and Doctor Nina Vagaja, conducted a post mortem examination on Master Drage's body on 13 September 2018.
- 85 That examination showed congested lungs, with froth in the airways and some brown material in the windpipe. There was colourless fluid in Master Drage's stomach, which was possibly water. There were no significant injuries and no apparent natural diseases. The microscopic examination of Master Drage's internal organs returned results that were within normal limits and did not contribute to his death. Toxicological analysis of Master Drage's post mortem blood samples detected tetrahydrocannabinol at a level of 8.8 ug/L, which was consistent with recent cannabis use. Alcohol and other common basic drugs were not detected.

⁵⁹ Exhibit 1, Volume 1, Tab 13A, Internal Affairs Report dated 14 November 2019, p.16

⁶⁰ Exhibit 1, Volume 1, Tab 5A and Tab 5B, Post Mortem Supplementary Report and Post Mortem Report of Master Drage, dated 13 September 2018

⁶¹ Exhibit 1, Volume 1, Tab 6A and Tab 6B, Post Mortem Supplementary Report and Post Mortem Report of Master Simpson, dated 15 September 2018

⁶² Exhibit 1, Volume 1, Tab 7A and Tab 7B, Toxicology Report for Master Drage dated 27 September 2018 and Toxicology Report for Master Simpson dated 28 September 2018

86 Based on their post mortem findings, the circumstances surrounding Master Drage's death and the results of ancillary testing, the forensic pathologists were of the view Master Drage had died from immersion (drowning).

87 I accept and adopt the conclusion expressed by the two forensic pathologists that the cause of Master Drage's death was immersion (drowning).

Cause of death: Master Simpson

88 Doctor McCreath and Doctor Vagaja also conducted the post mortem examination of Master Simpson's body. This took place on 15 September 2018.

89 That examination found frothy material in Master Simpson's mouth cavity. There was no evidence of natural disease and there was no evidence of any significant injury to Master Simpson's body. A toxicological analysis detected tetrahydrocannabinol in Master Simpson's post mortem blood samples at a level of 18 ug/L, which was consistent with recent cannabis use. Alcohol and other common basic drugs were not detected.

90 Based on their post mortem findings, the circumstances surrounding Master Simpson's death and the results of ancillary testing, the forensic pathologists were of the view Master Simpson had died from immersion (drowning).

91 I accept and adopt the conclusion expressed by the two forensic pathologists that the cause of Master Simpson's death was immersion (drowning).

Manner of death

92 The deaths of Master Drage and Master Simpson occurred when they went into the Swan River at Maylands with the intention to swim across to the other side. They both did this in an attempt to evade two police officers who

were pursuing them on foot. Given the weather conditions and the width of the river, this was a dangerous and very risky undertaking to attempt.

93 Accordingly, I find that their deaths occurred by way of accident.

ISSUES RAISED BY THE EVIDENCE

*Risk Assessments by police officers*⁶³

94 All police officers are trained to undertake a Dynamic Risk Assessment (DRA) when dealing with any situation. A DRA is defined as:

The continuous process of identifying hazards, assessing risk, taking action to eliminate or reduce risk, and monitoring and reviewing control measures.

95 DRA considerations are to include the potential risk to the individual officer and their partner. It also incorporates consideration for the safety of suspects and other members of the public.

96 As a DRA can be a constant process of assessing and re-assessing hazards and risks as they present and change, a police officer is expected to carry out the following:

- i. Rapidly and constantly assessing the situation;
- ii. Paying full attention to the task and the other persons involved;
- iii. Thinking before acting, rather than acting before thinking; and
- iv. Adopting the mindset that “once done”, the damage “cannot be undone”.

97 The WAPF uses Situational Tactics Option Model (STOM), which is a judgemental decision-making process to guide police officers when responding to operational policing tasks. Maintaining officer safety and continuous assessment and re-assessment is regarded as the primary responsibility of a police officer. STOM is taught and reinforced to police

⁶³ Exhibit 1, Volume 2, Tab 8A, Report of Superintendent Bolzonella dated 7 September 2020

officers when undertaking initial and annual critical skills training at the WA Police Academy. STOM incorporates considerations such as situational awareness, tactical disengagement, presence, proximity, cordon and contain, and tactical communications. These are all regarded as potential tactical operations to be considered in any situation.

98 Although there exists an Emergency Driving Policy and Guidelines for police vehicles pursuing suspects who are driving, no policy or guidelines exist for police officers engaged in foot pursuits. As to this absence, Superintendent Vivian explained:⁶⁴

I think just – every situation can be very dynamic and very unique. I’m not sure we can put a policy into every type of situation. Because every, I think, foot pursuit is also different in different surroundings and different dynamics. However, driving a car is a bit more specific.

Do you find unexpected risks can arise in a foot pursuit that would be more diverse than what might occur in the course of a driving pursuit? Is that right? ---
Yes.

99 Similarly, Superintendent Dario Bolzonella stated:⁶⁵

...it is not possible to train police in every possible apprehension or arrest scenario they are likely to encounter in their career. The concepts of officer and community safety are reinforced throughout recruit training and extend to compulsory in-service critical skills requalification throughout an officer’s career.

100 I accept those explanations as to why there are no policies or guidelines in place for police officers involved in foot pursuits.

101 Constable Cutler, Constable Jeffree, Tactical Operator 65, Tactical Operator 2 and Inspector Heise were all required to undertake a DRA in relation to their interactions with the group.

⁶⁴ ts 18.3.21 (Vivian), p.306

⁶⁵ Exhibit 1, Volume 2, Tab 8A, Report of Superintendent Bolzonella dated 7 September 2020, p. 2

The decision by Constable Cutler and Constable Jeffree to commence the foot pursuit

102 As already outlined above, Constable Cutler and Constable Jeffree suspected that one or more members of the group had been involved in trespassing on property and/or breaking into houses. The law requires that those suspicions must be reasonable in order for the foot pursuit of the group to be justified. Section 4 of the *Criminal Investigations Act 2006* (WA) defines the meaning of “*reasonably suspects*”:

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they subsequently found to be false or non-existent), when judged objectively, are reasonable.

103 In his closing submissions at the inquest, Mr Crocker, counsel for the families stated:⁶⁶

... there is no submission that there should be any criticism of the police decision to suspect that these young men were involved in offending, and therefore there was justification in commencing the pursuit.

104 I agree with that statement by Mr Crocker and I find that Constable Cutler and Constable Jeffree were justified for suspecting the group had been involved in criminal behaviour and were therefore lawfully entitled to commence the foot pursuit of the group.

105 Although Mr Crocker made the above concession, he submitted that the ongoing risk assessment that police officers are trained to undertake meant that a decision should have been made to not resume the pursuit once the constables reached the swamp area.⁶⁷

⁶⁶ ts 19.3.21 (Closing submissions by Mr Crocker), pp.442-443

⁶⁷ ts 19.3.21 (Closing submissions by Mr Crocker), p.443

The decision by Constable Cutler and Constable Jeffree to resume the foot pursuit at the swamp area

106 It is clear from the evidence that the two constables paused when they reached the swamp area. Constable Cutler recounted that:⁶⁸

I continued following them until I reached a swamp. I couldn't run through the swamp as the ground was too uneven and wet to travel across at speed.

By this time, they were 50-75 metres from me.

The four males also stopped running and started walking.

Constable Jeffree and I hesitated about following the males through the swamp as they were too far ahead, and I thought it was unlikely we could catch up to them.

I could hear sirens near-by, I knew that other vehicles were attending, and we could try and cordon and contain them in the area.

I was unaware that there was a river ahead as I was not familiar with the Maylands area.

We decided to continue to follow the males on foot.

107 The account by Constable Jeffree was similar. He stated:⁶⁹

[Constable Cutler] and I got to the edge of the swamp where we stopped and considered our position for a few seconds then decided to go on. I considered stopping the chase at this point because I did not believe we could catch up with the group due to how far ahead of us they were, the speed they were travelling and that I only believed they had trespassed. I decided to continue following them because I suspected they may have committed a burglary.

No one was yelling at that point – not us or them, I wasn't yelling due to how far away they were from us, I didn't think they would hear me; I thought they had evaded us at this point.

...

I checked my phone to get a GPS position of where they might be going, I had never been to this section of Maylands before.

At this time, I did not know there was a river in the vicinity that the group were running.

⁶⁸ Exhibit 1, Volume 1, Tab 21, Statement of Constable Cutler dated 1 November 2018, p.5

⁶⁹ Exhibit 1, Volume 1, Tab 20, Statement of Constable Jeffree dated 4 October 2018, pp.7-8

... I saw on the phone app that the river was there, but I did not think they would attempt to cross it because we were so far behind them. I thought they would change direction and travel left or right when they reached it.

...

I lost sight of the group when they were about 100 metres from me on the other side of the swamp.

I lost sight of the group because there are high trees near the edge of what I now know as the river, and the trees screened the group from view. I didn't yell out at this point because I didn't think they would hear me, and I was concentrating on [not] tripping [on the] uneven ground of the swamp.

108 Although Constable Cutler and Constable Jeffree were not aware of the close proximity of the river when they decided to resume their pursuit by crossing the swamp area, they both gave evidence they would not have changed their decision to continue if they had known the river's exact location.⁷⁰

109 Mr Crocker submitted that when the constables reached the swamp area there was, "*a lost opportunity to cease the pursuit.*"⁷¹ In submitting that the constables should have attempted to set up a cordon instead of resuming the foot pursuit, Mr Crocker stated:⁷²

At that stage the police officers knew a number of things, they could have inferred a number of things, and they ought to have known a number of things.

What they knew is that these were adolescents, they were male, they were Aboriginal, and they were running from the police. What they could infer was that these people would hear the sirens and understand that that meant more police were coming. They could infer it was unlikely that these young Aboriginal boys were going to give themselves up and they could infer that they may have had some Banksia Detention experience. What they ought to have known was the presence of the river and that it reflected a danger, and what they ought to have appreciated was that they were on a peninsula.

110 In answer to a question from me, Mr Crocker said that in addition to setting up a cordon, the constables ought to have told other police who were

⁷⁰ ts 16.3.21 (Cutler), p.137; ts 16.3.21 (Jeffree), p.193

⁷¹ ts 19.3.21 (Closing submissions by Mr Crocker), p.443.

⁷² ts 19.3.21 (Closing submissions by Mr Crocker), pp.443-444

attending to deactivate their sirens.⁷³ Mr Crocker submitted that resuming the foot pursuit after stopping at the edge of the swamp area was not the only feasible option open to the constables as a cordon was also a viable alternative.⁷⁴

111 During his closing submissions, I asked Mr Crocker the following:⁷⁵

Do you accept, at least, that the uniform police officers had no direct information that the boys were going to enter the water? Like, for example, overhearing them say, 'We're going to have to swim across the river', or words to that effect?

I accept that and it would seem that anyone objectively looking at the circumstances that day would never have contemplated anyone entering the river.

112 It is an uncontroverted fact that the weather conditions on this day meant neither the constables nor the three TRG officers contemplated any member of the group entering the river.

113 I accept that part of a police recruit's training involves the recruit being taught that adolescents often lack consequential thinking.⁷⁶ I also accept that given the situation that the group found itself in, there was an increased risk that one or more of the adolescents in the group were more likely to act impulsively, without due regard to the potential dangers of their actions. However, I am of the view it would be unfair to criticise a probationary constable (Constable Cutler) and a very junior constable (Constable Jeffree) for their actions in continuing their foot pursuit through the swamp area when neither of them were aware that the river was so close. In the absence of either constable being aware of the group's intention to swim across the river, and notwithstanding Mr Crocker's persuasive closing submissions on this point, I would be inserting a considerable degree of hindsight bias if I was to find that

⁷³ ts 19.3.21 (Closing submissions by Mr Crocker), p. 444

⁷⁴ ts 19.3.21 (Closing submissions by Mr Crocker), p. 445

⁷⁵ ts 19.3.21 (Closing submissions by Mr Crocker), p. 445

⁷⁶ Exhibit 10D, Reducing Youth Offending, Pre-Reading p.1; ts 18.3.21 (Vivian), p.335

Constable Cutler and Constable Jeffree should have stopped their pursuit when they reached the swamp area.

- 114 I am also of the view that the alternative option of cordoning off the area was not a feasible one. Having personally viewed the area during the site visit on 12 March 2021, I believe that an effective cordon would have required a large number of police officers, given the size of the area involved and the number of places where persons could conceal themselves.
- 115 Accordingly, I find that Constable Cutler and Constable Jeffree acted appropriately when they decided to continue their foot pursuit into the swamp area.

The decision by Constable Cutler and Constable Jeffree to not immediately enter the river to attempt a rescue

- 116 Before the tactical operators had commenced their rescue efforts, neither Constable Cutler nor Constable Jeffree had made any attempt to swim out to where Master Drage and Master Simpson were in the river. As the two constables were the first to attend that part of Maylands riverbank where the group had entered the water, the question arises as to whether one or both of them should have swum out to try and rescue Master Drage and Master Simpson before the tactical operators did. After a careful consideration of all the evidence, including the swimming capabilities of the constables and the treacherous water conditions that existed, I have concluded that the actions of both constables after they had arrived at the riverbank were appropriate.
- 117 These constables were inexperienced police officers. Constable Cutler had graduated from the WA Police Academy in 2018. As at September 2018, she was only half way through her 18-month probationary period as a constable.

Constable Jeffree had completed his probationary period as a constable in April 2018. That was only five months prior to this incident.

- 118 In about 2004, the WAPF removed the necessity for recruits to have a Bronze Medallion swimming qualification to join the WAPF. This requirement was removed to assist the WAPF meeting its broader diversity recruitment objectives. As stated by Superintendent Bolzonella:⁷⁷

... it was determined that the Bronze Medallion qualification was an unnecessary barrier to recruiting people from diverse groups who are not comfortable with swimming.

- 119 Neither Constable Cutler nor Constable Jeffree had a Bronze Medallion swimming qualification. Neither had been trained in the rescue techniques relevant to a person experiencing difficulty in the water. The dangers in carrying out a rescue of a person in these circumstances are well known. Royal Life Saving Australia has emphasised this:⁷⁸

People in difficulty in the water are likely to be in a state of panic, fearing for their lives, and this makes the situation highly dangerous. A panicked, drowning person will reach out and, if given the opportunity, climb all over you in their attempt to stay afloat. Once this happens, it is very difficult to break free, even for strong swimmers or those skilled in aquatic rescue techniques. There is a real risk of both of you drowning.

- 120 Constable Cutler described herself as “*a competent swimmer*” who could swim at the beach for leisure, but that was the extent of her swimming ability.⁷⁹ She felt that she would be able to swim in a pool for a “*couple of hundred metres*”, before getting tired.⁸⁰ She had only ever swum in the Swan River at Point Walter in a specific area that was cordoned off for swimming. She believed that a swim across the Swan River on the day in question would have been “*difficult*” and as to whether she was capable of swimming across

⁷⁷ Exhibit 1, Volume 2, Tab 8A, Report of Superintendent Bolzonella dated 7 September 2020, p.1

⁷⁸ royallifesaving.com.au/stay-safe-actice/in-an-emergency/how-to-carry-out-a-rescue-safely

⁷⁹ ts 16.3.21 (Cutler), p.141

⁸⁰ ts 16.3.21 (Cutler), p.141

the Swan River on the day, Constable Cutler replied, “*I don’t know. I – not in my uniform. So, if I was in bathers, maybe. I don’t know. But in clothes, no.*”⁸¹

121 At the inquest, Constable Cutler was asked:⁸²

Do you have any training in swimming rescue or surf rescue lifesaving or anything of that nature? --- No.

You have no specific skills in terms of a water rescue? --- No, none.

She was later asked the following questions:⁸³

Say that you had got into the water, and attempted a rescue, would you have been able to do that? Did you know what procedures to use to rescue someone who is having difficulty in water? --- No. I haven’t had any experience with that myself.

Have you ever had to do that yourself in a private capacity? --- No.

And have you ever been involved yourself where you’ve been rescued on the water? --- No.

So, did you have any idea about what someone would need to do first to get to someone in the water and then help them to safety? --- No.

122 Constable Jeffree did not regard himself as a strong swimmer. He had only ever swum in the Swan River in a section where the water was not flowing.⁸⁴

He was asked:⁸⁵

Do you have any particular qualifications with respect to surf live saving, for example, or anything of that nature? Would you know what to do if you swam out to try to effect a rescue? --- Only from TV and, like, movies, where, like you see them and they get them to go on their back and do arms like backstroke, but that’s – that’s just what from I’ve seen. It’s not anything I’m trained in.

There was never a swimming component to your training at the WA Police Academy? --- No. We had maybe a couple of fitness sessions on the beach with a small amount of swimming involved, but there was no training for rescuing or anything, no.

⁸¹ ts 16.3.21 (Cutler), p.141

⁸² ts 16.3.21 (Cutler), p.140

⁸³ ts 16.3.21 (Cutler), p.153

⁸⁴ ts 16.3.21. (Jeffree), p.188

⁸⁵ ts 16.3.21. (Jeffree), p.189

123 The evidence of both constables at the inquest was that when they got to the riverbank, their primary attention was directed towards P who was standing waist deep in water a short distance from the riverbank. Constable Cutler stated:⁸⁶

During that time, I had a lot going on, and I was thinking about a lot of different things. And like I explained, one of the things was to get the boy who was standing in the river out of the river. So, at that time, that was my primary concern.

124 Constable Jeffree stated that when he got to the riverbank:⁸⁷

... my main concern was not scaring witness P further into the water because he was standing waist deep and I was very, very concerned that if I approached it the wrong way, he might try to swim out into the river to get away from me.

Did you speak to witness P? --- Yes, I was, like, yelling for him to come in. Like, "Come back. Come back to the shore."

125 In my view, that was an appropriate risk assessment for the two constables to take. The footage of the incident supported the evidence of the constables that P did not immediately return to the riverbank. I also do not accept the submission by Mr Crocker that the risk of P going back into the river, "*was extremely low.*"⁸⁸

126 The efforts by the constables to first coax P back to the riverbank were appropriate. It was also appropriate for the two constables to ensure that P was suitably detained in their custody before any consideration could be given by either of them to a rescue attempt of the others. It would have been an erroneous risk assessment if the decision was made that one or both of the constables should immediately attempt a rescue of the others whilst P was still standing in the river. If both of them entered the river and left their equipment on the riverbank unattended, it posed a risk that the equipment could be acquired by others, including P. If Constable Jeffree had decided to attempt a

⁸⁶ ts 16.3.21 (Cutler), p.152

⁸⁷ ts 16.3.21 (Jeffree), p.187

⁸⁸ ts 19.3.21 (Closing submissions by Mr Crocker), p.448

rescue straightaway, he would have to leave his equipment with Constable Cutler. That equipment included his gun, his taser, his OC spray and his handcuffs. Had he then swum past P, P could have returned to the riverbank and attempted to gain possession of any of these items. I note that Constable Cutler is small in stature and build. Her safety, and the safe custody of Constable Jeffree's equipment, could have been placed at risk if that occurred.

127 Hence it was appropriate for Constable Jeffree to leave his equipment with Constable Cutler and then bring P to the riverbank and have him handcuffed before he re-entered the water to aid the tactical operators. As Constable Jeffree recounted:⁸⁹

I had been trying to encourage him to come back to the shore the entire time, but he hadn't really been engaging with me. So I thought at that point that I had to get him out of the water because I couldn't help the other ones without bringing him in first, because that would be leaving – at that point, I didn't know him – so a potentially dangerous suspect with my probationary constable partner, with my equipment sitting on the ground. I felt that that was too high a risk to leave. So, I wanted him to be secured before I could then swim out and help.

128 When he was asked what the river conditions were like, he said:⁹⁰

It was very, very cold. The water was flowing quite quickly. So, you felt like you were being pulled in one direction. I was still wearing most of the rest of my uniform, so it was dragging me down. I just remember mostly it being so – so cold.

129 After Constable Jeffree thought he heard someone saying, “*go back*” to him, he returned to the riverbank. When he turned around to swim back, he was, “*really struggling to swim.*”⁹¹

130 It could be said that the only failure by Constable Jeffree in his risk assessments that day was his failure to properly assess the potential risk to

⁸⁹ ts 16.3.21 (Jeffree), p.189

⁹⁰ ts 16.3.21 (Jeffree), p.190

⁹¹ ts 16.3.21 (Jeffree), p.190

himself, by swimming out to join the rescue attempts. In answer to questions from Mr Crocker, he gave the following evidence:⁹²

So, if you did not have the problem of needing to secure Witness P, is your evidence that you would have taken off your gear and swum out to them? --- Yes, that's what I would have done.

But you may have struggled in effecting any rescue because you're not a particularly strong swimmer? --- Yes, but I felt that I had to try.

And you don't have any particular training about water rescue? --- No, but, again, I felt like I had to try.

131 When asked what condition he was in when he had reached the riverbank, Constable Jeffree said, "*I was absolutely exhausted. I didn't know if I was going to make it back.*"⁹³ When asked how it was decided that he was the one entering the water, Constable Jeffree replied, "*I was the senior officer. I was taking the lead on it.*"⁹⁴

132 Although it was a decision potentially fraught with danger, I commend Constable Jeffree's attempts to assist the tactical operators. It was a task that he expected might be beyond his own capabilities, yet he nevertheless felt he was obliged to try.

The recovery of Master Drage and Master Simpson from the Swan River

133 Ms Shelley Ninnette, the mother of Master Simpson, attended the Rivervale side of the Swan River with her mother and her sister at about 7.35 pm on 10 September 2018. She described what she saw:⁹⁵

I could see a bright light shining on the water, it appeared to me that divers were searching in the river.

After I was there for a while, I saw the divers and the people on the police boat pull a body out of the water onto the police boat.

⁹² ts 16.3.21 (Jeffree), pp.201-202

⁹³ ts 16.3.21 (Jeffree), p.191

⁹⁴ ts 16.3.21 (Jeffree), p.188

⁹⁵ Exhibit 14, Statement of Shelley Ninnette dated 18 March 2021, p.1

It shocked me that I could see the body and that I could see the body being put on the boat.

I had expected there would be some screening process to prevent people looking on as the body was retrieved.

- 134 I can readily appreciate that this must have been a very distressing image for Ms Ninnette to see, and it initially caused me some concern when I read her statement. However, I was also provided a statement from Sergeant Bradley Bell, who is attached to the WAPF Water Police.⁹⁶ Although he was not involved in the recovery operation on 10 September 2018, Sergeant Bell reviewed the relevant material regarding the search and recovery. Sergeant Bell was able to explain the recovery process of someone found underwater:⁹⁷

When a deceased person is recovered from underwater, consideration is given to protecting their dignity, any evidence, and the protection from the view of the public.

Consideration is usually given to placing the deceased person in a body bag underwater.

In this case, placing the deceased in a body bag would have been difficult due to the poor visibility and the weightless effect water has on neutrally buoyant objects such as a body bag.

A weightless body bag would be difficult to position and control.

Placing the deceased in a body bag would also have required the deceased to have been moved and manipulated over an extended period of time which may increase the likelihood of any evidence with the deceased being dislodged and lost.

When recovering a deceased person onto a vessel, all crew are involved in manoeuvring the vessel or lifting the person from the water. This is an awkward and difficult task due to their weight and height of the gunwales on the vessel.

This can make it difficult to protect them from view of the public.

Based on the available information, I would have decided not to place the deceased in a body bag if I were supervising the diving operation.

⁹⁶ Exhibit 11, Statement of Sergeant Bell 18 March 2021

⁹⁷ Exhibit 11, Statement of Sergeant Bell 18 March 2021, pp.5-6

135 It was very unfortunate that Master Simpson's mother and his aunt witnessed the retrieval of one of the bodies from the river.⁹⁸ Nevertheless, I accept Sergeant Bell's account of the difficulties in protecting the recovery process from the view of the public.

136 There was also a concern raised by the families regarding the movement of other vessels through the area after Master Drage and Master Simpson went missing. Sergeant Bell noted that during the diving operations, a Dive Flag "A" was displayed from a police vessel, requiring other vessels to remain 50 metres clear. An entry in police documents also read that, "*a decision was made to exclude recreational boats from the search area.*"⁹⁹ However, after consultation with the Department of Transport, a decision was made to allow a Captain Cook River Cruise vessel to access the river on the Maylands side at low speed. Sergeant Bell did not believe that this decision:¹⁰⁰

... would have compromised the safety of the divers, the integrity of the search or had any effect on the deceased's body or any nearby evidence.

137 As raised in the inquest, I appreciate the greater difficulties police would encounter in securing a scene on a waterway, as compared to the scene of a crash on the road.

138 I accept the explanations provided by Sergeant Bell and I am satisfied that the actions taken by police during the recovery process were appropriate.

Length of time P and N were detained by police

139 In her closing submissions, Ms Barter, counsel for the P and N, noted:¹⁰¹

... it was approximately three hours at the scene before they were conveyed to the Hatch Building.¹⁰² They weren't offered any hot showers, and they weren't

⁹⁸ Master Simpson's grandmother had left before this happened.

⁹⁹ Exhibit 11, Statement of Sergeant Bell 18 March 2021, p.6

¹⁰⁰ Exhibit 11, Statement of Sergeant Bell 18 March 2021, p.7

¹⁰¹ ts 19.3.21 (Closing submissions by Ms Barter), pp.452-453

¹⁰² Location of the Homicide Squad

released until late into the night, about 10.40 pm for Child P and about 11.37 [pm] for Child N. With the benefit of hindsight, given the tragic circumstances, in my submission, it would have been preferable and more sensitive for the boys to have been provided with access to their families and released into their care earlier that evening.

140 In her closing submissions, Ms Eagling, counsel for the WAPF, conceded:¹⁰³

Ideally the boys, witnesses P and N, would have been taken to a police station within a shorter period of time and not left in the police vans for three hours. That is accepted.

141 That concession was properly made by Ms Eagling. This delay has not been explained, other than the observation of Commander Young, which was that in the context of what was a very dynamic event, she would be uncomfortable criticising that length of time.¹⁰⁴ Although I accept Commander Young's observation that this was a very dynamic event, it was unfortunate that P and N were left at the Maylands boat ramp, in separate police vehicles, for approximately three hours. It seems to me that insufficient regard was given to the highly traumatising event that P and N had just experienced.

142 P was then detained for a further three hours and N was detained for about four more hours at the Homicide Squad. Again, these seem to be very lengthy periods of time. However, I appreciate that there were other lines of enquiries that police had to undertake with respect to P and N, and that extensions were obtained for their continued detention in accordance with the provisions of the *Criminal Investigation Act 2006* (WA). The decision that evening not to charge P and N with any offences from that day was an appropriate one. There were sound public interest factors in doing so, given the tragic deaths of their two close friends.

¹⁰³ ts 19.3.21 (Closing submissions by Ms Eagling), p.458

¹⁰⁴ ts 18.3.21. (Young), p.371

The affect of the cannabis ingested by Master Drage and Master Simpson

143 As noted above, tetrahydrocannabinol was found in the post mortem blood samples taken from Master Drage and Master Simpson. In light of those readings, the State Coroner obtained a report from Professor David Joyce, a physician in clinical pharmacology and toxicology, for an opinion as to the relationship between the recent cannabis use by Master Drage and Master Simpson and their deaths.¹⁰⁵ Professor Joyce reviewed a number of relevant documents for the purpose of preparing his report.

144 Professor Joyce noted the following:¹⁰⁶

- P had recounted in his statement that the group smoked cannabis through a bong after reaching Maylands at about 1.00 pm. P estimated they had about 1 gram each and that it made them relaxed and it did not have any bad effects on them.
- No one witnessed any conduct by Master Drage and Master Simpson that suggested intoxication from the cannabis, such as falling, indecision or failing to keep up with the group. Professor Joyce noted that the group moved with enough speed and coordination to maintain good separation between themselves and the police during the foot pursuit.

145 Professor Joyce noted that tetrahydrocannabinol concentration might be artificially raised by post mortem redistribution. However, he was of the view that:¹⁰⁷

It would not be safe, though, to further conclude that the real tetrahydrocannabinol concentrations at the time of death were markedly lower than the measured concentrations of 8.8 ug/L and 18 ug/L.

146 Professor Joyce made this conclusion based on the timing of the collection of the blood samples.¹⁰⁸

¹⁰⁵ Exhibit 1, Volume 1, Tab 8, Report of Professor Joyce dated 23 June 2020

¹⁰⁶ Exhibit 1, Volume 1, Tab 8, Report of Professor Joyce dated 23 June 2020, pp.2-3

¹⁰⁷ Exhibit 1, Volume 1, Tab 8, Report of Professor Joyce dated 23 June 2020, p.4

147 Professor Joyce further noted that:¹⁰⁹

Notwithstanding the imprecision introduced by post-mortem sampling, the blood concentrations of tetrahydrocannabinol indicates that cannabis intoxication was likely to have still been present in Mr Drage and Mr Simpson at the time they were deciding on flight, running to the river, and attempting to swim across it.

148 Cannabis intoxication can manifest itself via a number of ways; including impaired judgement, impaired capacity for understanding and thinking out situations (impaired cognitive capacity) and loss of natural caution and self-restraint.¹¹⁰ Professor Joyce stated:¹¹¹

The impairments of judgement, self-restraint and cognitive function are most relevant to a cannabis user's decision to participate in an imprudent activity. Impairments to coordination, speed of response and cognitive function degrade performance in any activity that requires coordinated, focussed, and appropriate physical activity in response to a challenge.

...

The blood concentrations inform us that both Mr Drage and Mr Simpson were affected by cannabis at the time, but do not give quantitative guidance on the severity of intoxication. The fact that the fleeing group successfully negotiated obstacles and terrain on their way to the water's edge, doing it quickly enough to maintain separation from the two following police officers, suggests fairly good preservation of speed, coordination, and cognitive capacity to deal with obstructions to their flight.

149 Professor Joyce referred to studies that showed cannabis use does increase the risk of drowning death, due to the effects of cannabis intoxication on decision making and its effects on the physical and mental functions needed to be able to swim safely.¹¹² Although Professor Joyce was satisfied that Master Drage and Master Simpson would have been affected by cannabis at the time they died, he noted that the affect was not severe enough for it to have been apparent to witnesses.

¹⁰⁸ Exhibit 1, Volume 1, Tab 8, Report of Professor David Joyce dated 23 June 2020, p.4

¹⁰⁹ Exhibit 1, Volume 1, Tab 8, Report of Professor David Joyce dated 23 June 2020, p.5

¹¹⁰ Exhibit 1, Volume 1, Tab 8, Report of Professor David Joyce dated 23 June 2020, p.5

¹¹¹ Exhibit 1, Volume 1, Tab 8, Report of Professor David Joyce dated 23 June 2020, p.5

¹¹² Exhibit 1, Volume 1, Tab 8, Report of Professor David Joyce dated 23 June 2020, p.6

150 Professor Joyce's concluding remarks were:¹¹³

It is therefore reasonable to propose that a drowning death was more likely because of the cannabis. However, there is nothing to say that the decision-making of Mr Drage and Mr Simpson would necessarily have been different, or that the outcome of their attempts to swim the river would necessarily have been different, if they had not been affected by cannabis. Cannabis intoxication would therefore be, at most, an indirect contributor to their deaths.

151 I accept that conclusion reached by Professor Joyce. I am satisfied that the most notable contributions to the deaths of Master Drage and Master Simpson were their motivation to avoid apprehension by police and the dangerous conditions of the Swan River at the time. Capable swimmers such as Tactical Operator 65 and Tactical Operator 2 struggled with the conditions.

RECOMMENDATIONS

The absence of requiring swimming qualifications to be a police recruit

152 As already noted above, there was a policy decision by the WAPF to abolish the requirement that to become a police recruit, a person must have a Bronze Medallion swimming qualification.

153 I accept there are sound policy reasons for not reintroducing a Bronze Medallion for individuals applying to join the WAPF. As Superintendent Bolzonella observed:¹¹⁴

Recruiting a diverse mix of individuals that meet that composition of the community of Western Australia remains a priority for the WA Police Force and it is believed that reintroduction of the Bronze Medallion would be contrary to meeting this need.

154 The evidence before me is that a police officer performing general operational duties is not likely to ever be required to undertake a water rescue. That question was asked of a number of police officers who gave evidence at the

¹¹³ Exhibit 1, Volume 1, Tab 8, Report of Professor David Joyce dated 23 June 2020, p.6

¹¹⁴ Exhibit 1, Volume 2, Tab 8, Report of Superintendent Bolzonella dated 7 September 2020, p.1

inquest. Virtually all of them had said they had not undertaken a water rescue, even those that had had many decades of experience in the WAPF. For example, Superintendent Vivian, with 25 years of experience, including two years at Rottnest Island, said she had never been involved in a water rescue.¹¹⁵

155 No counsel in their closing submissions submitted that I make a recommendation for police officers to be either qualified or be trained in the rescue of people in distress in the water. Notwithstanding the tragic consequences of this case, I do not propose making a recommendation to that effect.

Partnering of probationary police officers conducting operational duties

156 I have already noted the inexperience of the two uniformed police officers involved in this matter. Although I have found their actions on the day were appropriate, I have a level of disquiet regarding their inexperience. That unease increased after I asked these questions of Constable Jeffree:¹¹⁶

How comfortable were you in this arrangement, with you only being out for five months – off probation for five months – and being the more senior partner in your team of two? --- There was a lot of responsibility and I was learning to cope with it, but it was a bit sort of nervy, I suppose I would say. Because you have to learn to make the calls, make the decisions. Whereas, prior to that it would be somebody else doing that, your Honour.

Yes. So ideally you would rather not be in that position, with only that many months experience out of probation? --- Ideally, I think it would have been better to have a bit more time, but due to resourcing, that's what we had, your Honour.

Was that common for you in say, in your first year out of probation to be partnered with an officer on probation? --- Yes. Yes, it was your Honour. I – for most of my time at Bayswater, for the two years, most of it was partnered with either probationers or people who had just come off probation.

¹¹⁵ ts 18.3.21 (Vivian), p.300

¹¹⁶ ts 16.3.21 (Jeffree), p.175

157 Detective Sergeant Begg was of the view it would, “*be a reasonable thing to look at*” as to how officers are paired up and whether it is based on their relative experience and inexperience.¹¹⁷ Inspector Heise also agreed that the pairing up of very junior officers was, “*not an ideal situation*”.¹¹⁸

158 The policy regarding the partnering of probationary constables is found in the WAPF Police Manual entry at “HR-13.09 Probationary Constables”. The relevant section states:¹¹⁹

Unless specific operational needs exist, Probationary Constables should not be deployed to work together without adequate supervision being made available to them by a permanently appointed Police Officer.

159 Superintendent Vivian also stated that it was “*not ideal*” for the pairing of such junior officers as existed for Constable Cutler and Constable Jeffree.¹²⁰ Superintendent Vivian added:¹²¹

However, our policy says that a person who is off probation, even if they’re a newly appointed police officer, can supervise a probationary person. That is under review. However, with the current government election of 950 new police officers, come May 2022, we will have 809 probationers serving the state.

...

... the reality is that may not always be the case, to be able to put someone who, say, is a 1st class constable with a probationer. That’s just the reality of – of the rank and the high level that we will have of probationary officers after we have this large recruitment drive.

160 Superintendent Vivian said that it would ordinarily take a police officer five years to reach the rank of a 1st class constable. She agreed that it would be impossible for the introduction of a policy that 1st class constables be teamed up with probationary officers as the numbers would not be feasible.¹²²

¹¹⁷ ts 17.3.21 (Begg), p.218

¹¹⁸ ts 17.3.21 (Heise), p.280

¹¹⁹ Exhibit 10, WAPF Police Manual, HR-13.09 Probationary Constables, p.3

¹²⁰ ts 18.3.21 (Vivian), p.303

¹²¹ ts 18.3.21 (Vivian), pp.303-304

¹²² ts 18.3.21 (Vivian), p.304

- 161 Superintendent Vivian noted that with today’s technology, police officers have access to a lot more information and that there was always 24/7 availability to call a more senior person if advice or access was needed. However, she accepted that an operational police officer will often face having to make risk assessments and decisions very quickly, without the opportunity to radio in or otherwise contact a more senior officer.¹²³
- 162 During the course of her evidence, Superintendent Vivian agreed that she would conduct further enquiries as to whether there could be a policy introduced that would have police officers, with at least one-year experience post-probation, partnered with probationary constables when performing operational duties.
- 163 As noted earlier in my finding, that additional information was provided by covering letting dated 20 April 2021, from counsel for the WAPF. This material included a memorandum dated 2 April 2021 from Superintendent Vivian. Based on a consideration of the statistical information that was also provided, Superintendent Vivian concluded that a requirement that probationary constables be deployed with a constable of at least one-year post-probation operational experience¹²⁴ was not attainable.¹²⁵
- 164 Although I accept the accuracy of this conclusion from Superintendent Vivian, I remain concerned with the pairing of a probationary constable with an inexperienced constable. Although the lack of experience of Constable Cutler and Constable Jeffree had no bearing on the outcome of this matter, I am concerned that there may well have been a third fatality that

¹²³ ts 18.3.21 (Vivian), pp.304-305

¹²⁴ Superintendent Vivian described such a constable with at least one-year experience post-probation as “a fourth-year constable” as recruit training is six months, followed by 18 months on probation, plus one year operationally, equals three full years. A fourth-year constable meets the requirements of a constable who had been off probation for “at least one year.”

¹²⁵ Memorandum from Superintendent Vivian dated 2 April 2021, p.3

afternoon if Constable Jeffree had not swum back to the riverbank when he did. I cannot help thinking Constable Jeffree felt an obligation towards his junior probationary partner to “lead by example” when he began to swim out to assist the tactical operators. With more experience, he may not have felt he was under such an obligation.

- 165 I also accept Superintendent Vivian’s observation that police officers will have varying operational knowledge, skill and experience which is not solely relative to rank or length of service. With that in mind, and with an acknowledgment that the requirement that probationary constables *must* be partnered with a constable who has completed at least one-year after probation is unattainable, I make the following recommendation:

Recommendation No. 1

That the Western Australian Police Force introduces a policy to the effect that, whenever possible, probationary constables performing operational duties should be partnered with a police officer with a post-probationary operational experience of at least one year.

Induction for newly assigned police officers

- 166 Bayswater Police Station was responsible for the Bayswater sub-district of the WAPF Mirrabooka District. Its areas of responsibility included the suburb of Maylands.¹²⁶ Although Constable Cutler had been working at the police station for one to two months, she was not aware of the river’s location in Maylands until she arrived at the riverbank.¹²⁷ Constable Jeffree was not aware of the precise location of the river, only that he, “*knew it was in the area.*”¹²⁸

¹²⁶ Exhibit 10B, Map of WAPF Mirrabooka district

¹²⁷ ts 16.3.21 (Cutler), p.137

¹²⁸ ts 16.3.21 (Jeffree), p.183

167 Superintendent Vivian gave evidence that there is a standard induction package that is provided to police officers appointed to a new police station.¹²⁹ After hearing the evidence from the constables regarding their lack of knowledge of the river's location, Superintendent Vivian spoke to the officer-in-charge (OIC) of the Bayswater Police Station. Superintendent Vivian was advised by the OIC that previously he would only mention the Swan River, "*in a very general context*". However, now, as a result of the inquest, "*he will mention it specifically, ensuring its location and awareness of all his new staff.*"¹³⁰

168 I was concerned with the evidence of the constables regarding their lack of knowledge of such a significant geographical feature as the Swan River, which abutted three of the six suburbs of the sub-district that they operated in. The submission by Mr Crocker that there be an induction for newly assigned police officers that emphasises significant features of their operational areas has merit. Commander Young agreed that there are aspects to such an induction that might be helpful.¹³¹ I am of the view that such an induction is necessary, notwithstanding the availability of electronic devices to assist a police officer to acquire such information.

Recommendation No. 2

All police officers with operational duties in a defined area receive an induction upon being posted to the area for the first time that includes an identification of the boundaries and significant physical, demographic, cultural and socioeconomic features of that area.

¹²⁹ ts 18.3.21 (Vivian), p.311

¹³⁰ ts 18.3.21 (Vivian), pp.311-312

¹³¹ ts 18.3.21 (Young), p.374

The relationship between police and Aboriginal youths

169 The evidence of P and N brought into sharp focus the poor relationship that exists between police and Aboriginal youths who have encountered the criminal justice system. When P was asked at the inquest by his counsel how he would describe his relationship with WA Police, he responded: ¹³²

I can't stand them. I don't like them. ... With my experience with the police, they don't like me. I don't like them. That's just the way it has got to be.

170 N voiced a similar sentiment during his evidence and was more colourful in his language when he described to his counsel why there was no option for the group to stop and speak to the uniformed police officers. ¹³³

171 Superintendent Vivian readily conceded that the animosity that exists is a “*long-term, complex problem*”. ¹³⁴ However, I am satisfied that the WAPF are making efforts to lessen what Mr Crocker described as, “*the great divide between the enforcing police and young Aboriginal men.*” ¹³⁵

172 There has been an emphasis in the recruitment of Aboriginal people to the WAPF. As at the time of the inquest, 8.7% of the police recruits in training are Indigenous. ¹³⁶ There was a current cadet cohort of 25 young Aboriginal people. ¹³⁷

173 With respect to improving the relationship between police and Aboriginal people, the current Commissioner of Police (the Commissioner) has apologised to Aboriginal and Torres Strait Islander peoples for the WAPF's participation in past wrongful actions that had “*caused immeasurable pain and suffering*”. During that apology in July of 2018, the Commissioner stated

¹³² ts 15.3.21 (P), p.78

¹³³ ts 16.3.21 (N), p.115

¹³⁴ ts 18.3.21 (Vivian), p.314

¹³⁵ ts 19.3.21 (Closing submissions by Mr Crocker), p.451

¹³⁶ ts 18.3.21 (Vivian), p.313

¹³⁷ ts 18.3.21 (Vivian), p.313

that he was committed to building strong relationships, based on trust and respect and which are free of racism.¹³⁸ As a part of a Reconciliation Action Plan, the Commissioner has established the WA Police Regional Affairs Division, which takes an agency lead on fostering and nurturing better relations with Aboriginal people.¹³⁹

174 There has also been an emphasis on teaching police officers cultural awareness through training. In 2019, WAPF introduced a mandatory online training program relating to Aboriginal Cultural Awareness. As of February 2021, 93% of police officers in the metropolitan region had completed this training.¹⁴⁰

175 This is a commendable program. However, an online training program is not the same as face-to-face training. Although police recruits receive face-to-face training, it does not presently exist for police officers. It is, however, on the agenda of the WAPF to have that framework.¹⁴¹ As at the time of the inquest, face-to-face training in this area was limited to newly promoted senior sergeants and inspectors.¹⁴² In a 2020 finding, Coroner Jenkin made a recommendation that OICs of regional police stations should undertake face-to-face cultural awareness training.¹⁴³ I am of the view that this face-to-face training should be extended to include newly promoted 1st class constables and senior constables at metropolitan and regional police stations.¹⁴⁴

¹³⁸ Exhibit 1, Volume 2, Tab 14, Statement of Commander Susan Young dated 3 March 2021, p.7

¹³⁹ Exhibit 1, Volume 2, Tab 14, Statement of Commander Susan Young dated 3 March 2021, pp.2-3

¹⁴⁰ Exhibit 1, Volume 2, Tab 14, Statement of Commander Susan Young dated 3 March 2021, p.3

¹⁴¹ ts 18.3.21 (Vivian), p.351

¹⁴² ts 18.3.21 (Vivian), p.351

¹⁴³ Inquest into the death of Jamie Alan Graham [2020] WACOR 40, delivered 25 November 2020, p.55

¹⁴⁴ Commander Young's evidence at the inquest was that it takes a constable five years to be promoted to a 1st class constable and nine years to be made a senior constable (ts 18.3.21, pp. 367-368). This means that any face-to-face training these police officers may have received as police recruits would have taken place years earlier.

Recommendation No. 3

In order to enhance and strengthen relationships between police and Aboriginal people, newly promoted 1st class constables and senior constables at metropolitan and regional police stations should undertake immersive, face-to-face cultural awareness training.

- 176 It was heartening to hear of the success that the allocation of youth policing officers has had. The primary role of these officers is to engage with young people who are prolific offenders. The aim is to try and transition these young people, or engage them with groups that will help reduce their offending.¹⁴⁵ Commander Young reported that this program has diverted about half of these offenders away from the criminal justice system.¹⁴⁶
- 177 Superintendent Vivian gave evidence about the use of induction packages for new police officers at regional police stations. These induction packages emphasised cultural awareness as it related to the different Aboriginal groups within the particular region.¹⁴⁷ At the time of the inquest, the WAPF was focussing on the introduction of these packages to metropolitan police stations, with Midland being the first police district to receive them.¹⁴⁸ There is considerable merit in such induction packages and I encourage the WAPF to extend these packages throughout the rest of the metropolitan police districts.
- 178 In her report for the inquest, Professor Dudgeon fittingly described the drowning event of Master Drage and Master Simpson:¹⁴⁹

This is an ongoing story of young Aboriginal people who are lost, marginalised, and excluded by the systems that are supposed to hold them, including education, employment, and justice.

¹⁴⁵ ts 18.3.21 (Young), p.363

¹⁴⁶ ts 18.3.21 (Young), p.369

¹⁴⁷ ts 18.3.21 (Vivian), p.303

¹⁴⁸ ts 18.3.21 (Young), p.363

¹⁴⁹ Exhibit 15, Report by Profess Pat Dudgeon, p.2

179 Professor Dudgeon also noted that Aboriginal and police relations remain a concern, stating that:¹⁵⁰

These relations are coloured by the historical context of colonisation and discrimination in Australia and the attitudes and stereotypes that police hold towards Aboriginal peoples.

180 I am satisfied of the progress the WAPF has made in recent times to address the problems that Professor Dudgeon has identified. Although there is still a long way to go, I sincerely hope those disenfranchised youths will not see their poor relationship with police being, in the words of P, as, “*that’s just the way it has got to be*”.

CONCLUSION

181 Master Drage and Master Simpson were two teenagers who were much loved sons, brothers, relatives, and friends. When they tragically drowned on 10 September 2018, their deaths had devastating impacts upon their loved ones and families. Master Drage had only 11 months earlier survived a motorcycle crash that left him with multiple serious injuries. His close friend, Master Simpson, had also been involved in that crash.

182 I have found that the deaths of Master Drage and Master Simpson occurred when they, and their two adolescent friends, made the dangerous decision to swim across the Swan River to avoid two police officers who were pursuing them on foot. The decision to do that appears to have been formulated at, or about, the start of the pursuit. The decision was therefore not a completely spontaneous one. However, given that the terrain the group ran across obstructed the view of the river, there would have been no comprehension or appreciation of the treacherous conditions that existed at that part of the Swan

¹⁵⁰ Exhibit 15, Report by Profess Pat Dudgeon, p.2

River until the group reached the riverbank. Regrettably, the initial decision was then implemented with a catastrophic outcome.

183 I also find that Master Drage and Master Simpson may well have had a false sense of security regarding the conditions when they initially entered the water. After noting that there was a bend in this section of the river, Tactical Operator 2 described:¹⁵¹

... with all that water I spoke about that was upstream, [it] would generally go to the outside of a bend in the river. So, wading out to about, you know, 20-30 metres, there was no current whatsoever. But then once you, sort of, hit the deeper water and that, the current was ridiculously strong.¹⁵²

184 The action of Constable Cutler and Constable Jeffree in pursuing the group was a causal contribution to the deaths of Master Drage and Master Simpson. Nevertheless, for the reasons I have outlined above, I make no criticism of their actions from when they commenced the foot pursuit through to their actions at the riverbank. Their actions were appropriate at all times.

185 The actions of Tactical Operator 65 and Tactical Operator 2 were courageous. All too often, inquests can involve a bitter divide between the WAPF and the families of the deceased. It was heartening to see the gratitude and respect that the families of Master Drage and Master Simpson have extended to the two tactical operators who tried so desperately to save their loved ones.

186 Ms Winifred Hayward's last words to her son, Master Drage, were during a disagreement they had several weeks before he died. It was heart-rending to learn that she never had the chance to reconcile with her son and tell him that she loved him.¹⁵³ Similarly, the written submission of Master Simpson's

¹⁵¹ ts 17.3.21 (Tactical Operator 2), pp.258-259

¹⁵² Tactical Operator 2 had earlier described that he had to really concentrate and "*put in some big strokes*" as he had been swimming and "*going nowhere because of the current.*": ts 17.3.21 (Tactical Operator 2), p.258

¹⁵³ Exhibit 12, Statement of Winifred Hayward, p.4

parents describing their inconsolable grief from the loss of their son was saddening to read.¹⁵⁴

187 I have made recommendations in three discrete areas arising from the evidence I have heard and read at this inquest. One recommendation involves the supervision of probationary officers on operational duties, another regards the need for police officers to have an awareness of important landmarks within the areas they operate in and the third addresses the need for the WAPF to develop a more comprehensive understanding of the issues and marginalising factors that face the Aboriginal people and communities they encounter during their work.

188 The following words from N about Master Drage and Master Simpson are undoubtedly felt by their families and friends:¹⁵⁵

We were young.

...

I miss my friends very much.

I wish this never happened.

...

I think about it every night and can't sleep.

I think about them every day.

I wish they were here.

They were good to be around – we were always laughing and smiling.

189 I extend my deepest condolences to the families and friends of Master Drage and Master Simpson.

P J Urquhart
Coroner
12 October 2021

¹⁵⁴ Exhibit 13, Statement of Shelley Ninyette and Tristan Simpson

¹⁵⁵ Letter dated 11 March 2021 from N