



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2011 1895

**FINDINGS INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of:** **AARON JESSE FRYER**

**Delivered On:** **30 June 2016**

**Delivered At:** Coroners Court of Victoria  
65 Kavanagh Street, Southbank

**Hearing Dates:** **9 and 10 March 2016**

**Findings of:** **CORONER ROSEMARY CARLIN**

**Representation:** **Mr John Desmond on behalf of Mr Omar Tiba<sup>1</sup>**

**Counsel Assisting the Coroner** **Ms Sarah Gebert, Coroners Court In-House Solicitors Service**

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<sup>1</sup> Mr Desmond appeared only during the evidence of Mr Omar Tiba and for oral submissions at the conclusion of the evidence.

I, ROSEMARY CARLIN, Coroner having investigated the death of AARON JESSE FRYER

AND having held an inquest in relation to the death on 9 and 10 March 2016

at the Coroners Court at MELBOURNE

find that the identity of the deceased was AARON JESSE FRYER

born on 20 March 1986

and the death occurred on 26 May 2011

at 182 Widford Street, Broadmeadows

**from:**

1 (a) Multiple Injuries sustained in a motor vehicle incident (driver)

**in the following circumstances:**

1. Aaron Jesse Fryer (referred to in my finding as 'Aaron'), aged 25 years, resided at  
with his family at the time of his death. He was the son of  
Ms Julie Fryer and had a younger brother, Robert.
2. Aaron had some criminal history and was on a Community Based Order at the time of his  
death.<sup>2</sup> He held a Victorian learners permit.
3. At approximately 11.25pm, 26 May 2011 Aaron was driving an unregistered 1996 maroon  
Holden Commodore sedan (registration UJT873<sup>3</sup>) with passenger, Omar Tiba when he was  
involved in a single vehicle collision whilst travelling south along Widford Street,  
Broadmeadows.
4. There were a number of people in the immediate vicinity of the accident enabling the quick  
dispatch of Ambulance Victoria. Despite rendering assistance to Aaron, who was trapped in  
his vehicle, he was pronounced deceased at the scene. His passenger, Mr Tiba, was taken to  
the Royal Melbourne Hospital with serious injuries.

**Purposes of the Coronial Investigation**

5. The primary purpose of a coronial investigation of a reportable death<sup>4</sup> is to ascertain, if  
possible, the identity of the deceased person, the cause of death (interpreted as the medical  
cause of death) and the circumstances in which the death occurred.<sup>5</sup> An investigation is  
conducted pursuant to the *Coroners Act 2008* (the Act). The practice is to refer to the  
medical cause of death incorporating, where appropriate, the mode or mechanism of death,

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<sup>2</sup> The CBO included 150 hours, drug and alcohol assessment and treatment, psychological and psychiatrist assessment and treatment

<sup>3</sup> The number plates were stolen and belonged to Dimitrios Kypirtidis, who was not known to the Deceased.

<sup>4</sup> Section 4 of the Act requires certain deaths to be reported to the coroner for investigation.

<sup>5</sup> Section 67 of the Act.

and to limit the investigation to circumstances sufficiently proximate and causally relevant to the death.<sup>6</sup>

### **Standard of proof**

6. Coronial findings must be made on the basis of proof of relevant facts on the balance of probabilities and subject to the principles enunciated in *Briginshaw v Briginshaw*<sup>7</sup>.

### **THE EVIDENCE**

7. Senior Constable (SC) Cameron Manniche was the Coroner's Investigator (CI) and prepared a Coronial Brief of evidence to assist my investigation.
8. This finding is based on the entirety of the investigation material comprising the Coronial Brief of evidence, the statements and testimony of those witnesses who gave evidence at the inquest (listed below), any documents tendered at the inquest and oral submissions of Counsel at the conclusion of the inquest.
9. All this material, together with the inquest transcript, will remain on the coronial file as the product of my investigation into Aaron's death. I do not purport to summarise all the material/evidence in this finding and will refer to it only in such detail as is warranted by its forensic significance or is otherwise appropriate.

### **THE INQUEST**

10. Prior to the commencement of the inquest, it was apparent that most of the facts about Aaron's death were known and not in dispute. This included his identity, the medical cause of his death and most of the circumstances surrounding his death.
11. The inquest was therefore confined to what occurred immediately prior to the accident. In particular, Mr Tiba, the passenger in Aaron's vehicle, had refused to make a statement for the purpose of the coronial investigation despite a number of requests, and this remained an area for exploration. In addition, I sought clarification of Aaron's injuries from the forensic pathologist.

### **The Witnesses called to give evidence**

12. The following witnesses were summonsed to give evidence at the inquest:
  - Omar Tiba

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<sup>6</sup> Coroners are also empowered to report to the Attorney-General on a death they have investigated; the power to comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice; and the power to make recommendations to any Minister, public statutory or entity on any matter *connected with the death*, including recommendations relating to public health and safety or the administration of justice. Sections 72(1), 72(2) and 67(3) of the Act regarding reports, recommendations and comments respectively.

<sup>7</sup> *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336 especially at 362 – 363. "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences...."

- Abdul Elabed
  - Jay Tennant
  - Dr Heinrich Bouwer
  - SC Cameron Manniche
13. Both Mr Elabed and Mr Tennant failed to attend the inquest, despite proof of service of their witness summonses.
14. Mr Tennant was 16 years of age at the time of Aaron's death and was in contact with the CI during the inquest regarding his attendance. Ultimately, I accepted his reasons for not attending and excused him from giving evidence.
15. Mr Elabed had already provided two statements regarding the circumstances leading to Aaron's death which were unconvincing. On this basis I determined that his testimony was unlikely to assist my investigation and did not pursue his attendance.

#### **MEDICAL EXAMINATIONS**

16. A post mortem examination was conducted by Dr Heinrich Bouwer, forensic pathologist of the Victorian Institute of Forensic Medicine (VIFM). He determined the cause of death to be '*Multiple Injuries sustained in a motor vehicle incident (driver)*'. I accept that determination.
17. Dr Bouwer's report dated 18 October 2011, noted that multiple injuries were found including multiple superficial abrasions and lacerations to the head and neck, a right temple subgaleal haematoma, fractures to the skull hinge and multiple facial bone, cortical contusions, partial avulsion of the corpus callosum and laceration of the apex of the right lung.
18. To clarify whether there was any evidence of injury other than that sustained in the accident, Dr Bouwer provided an additional report, dated 2 November 2015, in which he said '*If a person is being hit by either a hand or object, it may or may not leave evidence of such (eg. scalp bruising, etc.). Given the nature and extent of the head injury I am unable to distinguish between injuries sustained as a result of the collision from those, if any, that may have been sustained immediately prior to the incident.*'
19. At inquest, Dr Bouwer said that he was unable to exclude the possibility that Aaron was assaulted but also said that the accident itself could explain all of Aaron's injuries to his head. He said that he didn't observe any bruising to the back of Aaron's head but '*that*

*doesn't exclude that he may have been hit prior to the incident.*<sup>8</sup> Similarly, Dr Bouwer said there was no evidence that Aaron was wearing a seat belt but *'that does not preclude the fact that he may have worn a seat belt'*<sup>9</sup>.

20. A toxicological analysis of Aaron's blood collected at the post mortem detected Methamphetamine at 0.5mg/L and amphetamine at 0.1mg/L.

21. Dr Morris O'dell, Senior Forensic Physician also from VIFM, reported that:

*'These levels suggest very strongly that Mr Fryer was impaired by the effects of amphetamines. The exact nature of impairment is hard to know but at such a high Methylamphetamine level it is very likely that there would be highly stimulatory effects...'*<sup>10</sup>.

## **CIRCUMSTANCES**

### Proximate events

22. At 10.40pm on 26 May 2011, a vehicle being driven on the Western Ring Road, Keilor Park was intercepted by police, after the driver was detected travelling at a speed of 149kph in an 80kph zone. The intercepting officers were SC Denis Busic and the CI.

23. The driver of the vehicle was identified as Omar Tiba, who was suspended from driving. There were two other male passengers in this vehicle. One was identified as Abdul Elabed (also known as 'Black Abs' or 'Abs') and the other could not be identified by police.

24. Mr Tiba's vehicle was impounded and Mr Elabed called Aaron to come and collect him.

25. Aaron's passenger on that evening was Jay Tennant who said he heard the telephone call and that the call took place when he and Aaron were in Blair Street, Broadmeadows. As noted above, Mr Tennant was 16 years of age at the time. Mr Tennant said that Aaron appeared to ignore a first call from Mr Elabed but answered the second. According to Mr Tennant, Mr Elabed told Aaron that he was alone at the time.

26. Mr Tiba told SC Busic and the CI that the person who was going to pick him up didn't want to be seen by police. SC Busic said to Mr Tiba that if the driver pulled up behind the police car *'I won't look at him even though he's probably unregistered or suspended. I just want you off this Freeway'*.<sup>11</sup>

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<sup>8</sup> Transcript page 37.29.

<sup>9</sup> Transcript page 35.5.

<sup>10</sup> Page 202 of the CB.

<sup>11</sup> Page 218 of the CB.

27. According to SC Busic and the CI, at approximately 11.15pm, Mr Tiba, Mr Elabed and the unknown male all got in the back seat of a red or burgundy Holden. It is now known that Aaron was the driver of that car and Mr Tennant his front seat passenger.
28. The evidence indicates that Mr Tiba positioned himself in the rear left passenger seat, the unknown male sat in the rear middle seat and Mr Elabed sat in the rear right passenger seat.
29. At approximately 11.20pm, Aaron and his four passengers were travelling south along Widford Street, Broadmeadows. At Mr Tiba's request Aaron stopped the car to the left of the road just north of the pedestrian crossing outside the Olsen Street Shopping Centre (described by Mr Tennant as the '*pedestrian crossing in the car park bay*'<sup>12</sup>).
30. According to Mr Tennant, Mr Tiba wanted Mr Tennant to get out so that Aaron could drive Mr Tiba around. Mr Tennant described an altercation in the vehicle in which Mr Tiba '*jumped out through the back seat*'<sup>13</sup> and punched both Aaron and himself. Mr Tennant said that he got out of the car and Mr Tiba kept asking Mr Elabed to get the car keys. The two other back seat passengers also got out of the car and chased him around the car.
31. According to Mr Tennant, he stopped in front of the vehicle and saw Mr Tiba '*punching Aaron in the face. He wasn't going easy on Aaron and Aaron was curled up at the steering wheel trying to protect himself.*'<sup>14</sup>
32. A witness, Paul Baade said he saw four males in a vehicle at the location and '*The males were all having a heated verbal argument. They were yelling and screaming in a foreign language sounding like Lebanese or something like that.*'<sup>15</sup>
33. In a later statement Mr Baade said: '*I noticed the passenger in the front get out of the car yelling and screaming. They looked to be all males, young, guessing about 18 years onwards. The driver remained in the car I didn't see him get out. I was about 5-6 car lengths away from the males, I saw the two passenger side doors of the car still open and the car was facing south. ...I stayed in the Milk bar for about 2-3 minutes..... As I was leaving the Milk Bar I heard a loud bang.*'<sup>16</sup>
34. Mr Baade made no observations of any physical contact between the males.
35. Mr Tennant said that Aaron drove off '*spinning the wheels*' south on Widford Street. He said he could see Mr Tiba punching Aaron as the car drove off. He claimed he could see Mr Tiba punching Aaron until they got over the *railway* crossing, about 6m away, and then he

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<sup>12</sup> Page 32 of the CB

<sup>13</sup> Page 32 of the CB

<sup>14</sup> Page 32 of the CB

<sup>15</sup> Page 43 of the CB

<sup>16</sup> Pages 50-51 of the CB

fled from the scene (in fact there was only the pedestrian crossing). He said Mr Elabed and the unknown male chased him, and then ran off in the direction that Aaron drove.

36. A witness to the collision, Mr Ayad Wissam, who was driving approximately 150 metres behind Aaron's vehicle observed the following:

*'He was going straight then all of a sudden he tried to turn left into Freda Street. I then saw the vehicle slide sideways into the electrical pole.'*<sup>17</sup>

37. It appears that Aaron lost control of the vehicle causing it to mount the kerb and collide with the power pole on the driver side.

38. Initially Aaron was alive and a number of by-standers tried to assist him. Ambulance Victoria arrived at approximately 11.30pm but efforts to assist Aaron were hampered by his position in the vehicle and difficulty in gaining access to the front passenger seat. The Metropolitan Fire Brigade attended and cut the car open to enable access to Aaron, whereupon it was determined that he was deceased.

39. Mr Tiba was pulled from the back of the vehicle by two or three people (described to be of Arabic appearance) and then attended to by paramedics. One witness, Mr Wissam, said: *'I then saw smoke from the vehicle I pulled over approximately 20 metres pas [sic] the accident scene. I ran over to assist. I saw 2 males run over and pull out 1 male from the backseat. I am 100% certain it was from the back seat. They were calling his name. They were calling 'Omar'.'*<sup>18</sup>

40. An ambulance paramedic reported that he *'attended to an approximately 21 year old male lying supine on the nature strip. Bystanders at the scene reported that they found the male, conscious, in the backseat of the crashed vehicle and that they had removed him from the vehicle and onto the nature strip....On examination of this patient, I found the patient to be conscious but confused, citing no recollection of recent events.'*<sup>19</sup>

41. At approximately 11.24pm, police communications dispatched a job to the accident. At approximately 11.30pm, the police, including the CI, arrived at the scene. They noted that conditions were wet and the street lights were operating.

42. Aaron's mother, Julie Fryer, learned about the accident when she got a call from Aaron's mobile telephone. The caller identified himself as *Black Abz* (Mr Elabad's nickname) and

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<sup>17</sup> Page 53 of the CB

<sup>18</sup> Page 53 of the CB

<sup>19</sup> Page 98-99 of the CB

told her that Aaron had been involved in an accident and someone should come and collect his telephone.

43. Witness, Abdul Zaatiti, was at the accident scene and claimed that someone gave him a black Nokia telephone saying it belonged to his friend. Initially Mr Zaatiti thought it was Mr Tiba's telephone, but then realised '*it was the other guys*'. Mr Zaatiti said he called the number noted for parents, spoke to a female and told her that the owner of the telephone had been in an accident. He then gave the telephone to ambulance personnel or police.

#### Further investigations

44. A mechanical investigator, LSC David Ackland, inspected Aaron's vehicle and said there was no mechanical fault which may have caused or contributed to the accident. However: '*[p]rior to impact this vehicle would have been classed as being in an unroadworthy and unsafe condition due to all tyres having insufficient tread depth. As the road was wet at the time the lack of tread depth may have contributed to the vehicle losing control as the purpose of the tread is to disperse water from between the road surface and the tyre.*'<sup>20</sup>
45. There was no CCTV footage available from the Olsen Street Shopping Centre and the CCTV footage from the Caltex service station was of no value to the investigation.
46. Collision reconstructionist, Detective Sergeant Darren Williams, of the Major Collision Investigation Unit, determined that the speed of Aaron's vehicle at the beginning of the yaw was 70kph. The applicable speed limit in Widford Street was 60 kmh.
47. According to Detective Williams the distance between the Olsen Place Shopping Centre on Widford Street and the scene of the accident is approximately 83 metres. '*A traffic signal controlled pedestrian crossing is constructed approximately 83 metres north of Freda Street, to assist pedestrians crossing Widford Street.*'<sup>21</sup>
48. The CI made the following observations about the visibility from the pedestrian crossing at the Olsen Place Shopping Centre to the site of the accident, looking south down Widford Street,;
- 'Depending on the speed, if he was like taking off or if it was travelling at 60 kilometres an hour or 70 kilometres; if it was 70 kilometres I don't think you'd be able to see anything inside the car because of the reflection of the street lighting off the windows and being dark*

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<sup>20</sup> Page 169 of the CB

<sup>21</sup> Page 3 of the Statement of Darren Keith Williams



*inside. But as far as when he's taking off, yes, you'd be able to see it, especially if you're standing beside the car, you'd be able to see him.*<sup>22</sup>

49. The CI determined that Aaron was not wearing a seatbelt at the time of the collision and said that,:

*'His seat belt was still on the - beside the (indistinct) wasn't clipped in, wasn't broken at all, and when I checked it in the car it was actually in working order and, yeah, for him to be ending up on the front passenger floor of the car, there's no way known he could have had his seat belt on.'*<sup>23</sup>

50. Police located a bag in Aaron's vehicle with a black box containing 41 capsules that tested positive for amphetamine. There were also small plastic bags containing white crystalline substance also testing positive for amphetamine. The CI said that he was unable to conclude the bag belonged to Aaron, however there was no evidence of anyone trying to recover the bag from the scene following the accident.

51. Aaron's girlfriend told the police that she had driven Aaron and his best friend *'earlier that day to sell one gram of Ice in ten lots for a total of \$1000. Fryer then used this money to buy a further 2.5grams of ice.'*<sup>24</sup>

52. Aaron's mother reported that Aaron had *'recently had problems with Koda Hamish and Omar Tiba and that he had recently been kidnapped by them a couple of months ago.'*<sup>25</sup> She was told two versions of the accident, both second hand. In one version she was told that Mr Tiba was holding Aaron (in a bear hug) at the time of the accident and, in the other, Mr Tiba was arguing with Aaron at the time of the accident. Ms Fryer also said that Aaron was pedantic about wearing a seatbelt.

53. Aaron's best friend said that both Mr Tiba and 'Abs' (Mr Alabed) had been at Aaron's house at about 8.30pm that same night: *'At this time they were at Fryer's address when Omar Tiba and Ab's attended. Ab's then spoke to Fryer and Tiba stayed in the vehicle which was a small white vehicle.'*<sup>26</sup>

#### Homicide Squad Review

54. At the request of the Court the coronial brief was reviewed by the Homicide Squad who advised that there was insufficient evidence to warrant any criminal charges in relation to Aaron's death.

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<sup>22</sup> Transcript page 19.26

<sup>23</sup> Transcript page 21.27.

<sup>24</sup> Page 206 of CB

<sup>25</sup> Page 28 of CB.

<sup>26</sup> Page 209 of the CB.

### Abdul Elabed

55. Mr Elabed made two statements in which he claimed that after Aaron had picked them up following the police intercept in Keilor, he was dropped off at his home in Coolaroo. Mr Elabed said he could not shed any light on the identity of the third (unidentified) male in the car with him and Mr Tiba apart from saying he was Mr Tiba's friend.
56. The person with whom Mr Elabed lived, Sonia Riddle, made a statement in which she said that Mr Elabed got home at 9.30pm on the night of Aaron's death. She also said that Mr Elabed got a death threat the following day from a friend of Aaron's.
57. On Mr Elabed's own version, Ms Riddle's claim that he was home at 9.30 pm cannot be correct, since he admits that he was with Mr Tiba when he was intercepted at 10.40pm.
58. Further, it would have been impossible, given the time Aaron collected them (11.15pm) and the accident (11.24pm), for Mr Elabed to have been dropped at his home as he claimed. I note that it took 18 minutes for the CI to travel between these points. He said at the inquest, *'I still believe even if I did with lights and sirens on I couldn't do it in nine minutes.'*<sup>27</sup>
59. I therefore accept Mr Tennant's assertion that Mr Elabed was in Aaron's vehicle when it stopped at the Olsen Place Shopping Centre at approximately 11.20pm.

### Omar Tiba

60. Mr Tiba suffered serious injuries in the collision, including a fractured skull.
61. Mr Tiba's father, Abdul Tiba, said in a statement made on 23 April 2014, that his son *'is still suffering from the collision in his health'* and cannot work. He said that his son takes drugs for pain and depression.
62. Abul Tiba also said: *'I remember from the accident Omar said they had stopped on a highway and someone called the boy who died to come and pick them up from the highway. When they were picked up they went and dropped off the 2 other boys in the car. After that Omar wanted to go to Glenroy to visit some friends and it was just Omar and the driver in the car when the accident happened. I don't know the address in Glenroy or the names of the 2 other boys.'*<sup>28</sup>
63. Leading Senior Constable Daniel Sycz, spoke to Mr Tiba at the Royal Melbourne Hospital on 30 May 2011. Mr Tiba told him that he remembered being pulled over earlier in the evening, but could not remember the collision and only remembered waking up in hospital.

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<sup>27</sup> Transcript page 21.19

<sup>28</sup> Page 139-140 of the CB

He said he did not know the name of the unknown male who was one of 'Abs' friends. At that stage he refused to make a statement, but said he would do so later. At my request, on 10 June 2015 the police again approached Mr Tiba whilst he was on remand at the Metropolitan Remand Centre, but he declined to make a statement.

64. Mr Tiba gave evidence at the inquest. He denied that he knew Aaron and said that he couldn't recall anything about the accident. As to the allegation of assault, he claimed it was not in his character to act in that way.

#### Unidentified male

65. The identity of the third male with Mr Tiba and Mr Elabed when Aaron collected them remains unknown. Police have positively excluded Jay Tennant, Mark Henderson, Peter Sherry, Koda Hamish and Ali Tiba as that person.

#### Conclusions as to circumstances

66. Mr Tennant's account of Omar Tiba assaulting Aaron in the vehicle is untested. It is effectively denied by Omar Tiba, who claims not to remember but asserts he is '*not that type of person*'<sup>29</sup>, and there are no other witnesses. Further, according the CI, Mr Tennant would have had little opportunity to see inside the car after it drove away.
67. After considering all the evidence, I am satisfied as to the following:
- At approximately 11.15pm on Thursday, 26 May 2011 Aaron Fryer was driving his vehicle along Widford Street Broadmeadows with passengers Jay Tenant, Omar Tiba, Abdul Elabed and an unidentified male when he stopped just north of the pedestrian crossing at the Olsen Place Shipping Centre.
  - At that point there was an altercation between the occupants of the vehicle.
  - Jay Tenant, Abdul Elabed and the unknown male exited the vehicle whilst Aaron drove south along Widford Street with Omar Tiba still in the back seat.
  - Unusually for him, Aaron was not wearing his seatbelt.
  - Aaron lost control of the vehicle at the intersection of Freda and Widford Street, Broadmeadows. He may have been trying to navigate a left hand turn into Freda Street.

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<sup>29</sup> Transcript page 52.7

- The vehicle was in an unroadworthy condition and the state of the tyres may have contributed to Aaron's loss of control of the vehicle. This is consistent with a witness account of the car sliding sideways.
- Aaron was drug affected at the time of the accident and this may also have contributed to his loss of control of the vehicle.
- I cannot determine the nature and extent of the altercation at the Olsen Place Shopping Centre save that it prompted Aaron to drive off abruptly without his seatbelt and with Omar Tiba in the back seat.
- I cannot determine whether interference from Omar Tiba contributed to Aaron's loss of control of the vehicle.

## Findings

68. Having investigated the death of Aaron Fryer and having held an Inquest in relation to his death on 9 and 10 March 2016 at Melbourne, I make the following findings, pursuant to section 67(1) of the *Coroners Act 2008*:
- a) the deceased was Aaron Jesse Fryer, born on 20 March 1986;
  - b) he died on 26 May 2011 from multiple injuries sustained in a motor vehicle incident (driver) at 182 Widford Street, Broadmeadows, in the circumstances outlined above.

## Family Impact Statement

69. Ms Fryer said of her son,
- 'He was funny, caring, protective and nurturing. He had the biggest, most warm smile that lift the room up when he entered. You couldn't help but love Aaron. He was a good role model to his younger brother and cousins. His thing was just because I do it, it doesn't mean that you can. He was a good mate and son. He believed in mateship which in a sense probably got him killed. He would have done anything for anyone. He had a good heart and a pure soul. His death will never bring peace to his family. It's something I know we will never get over.'*<sup>30</sup>
70. I convey my sincerest condolences to Aaron's family and friends.
71. Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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<sup>30</sup> Transcript page 61.13

72. I direct that a copy of this finding be provided to the following:

- a. Ms Julie Fryer, mother of the deceased and Senior Next of Kin
- b. Senior Constable Cameron Manniche, Coroner's Investigator

Signature:



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**ROSEMARY CARLIN**

**CORONER**

Date: 30 June 2016