



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2019 1005

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:	CORONER DARREN J BRACKEN
Deceased:	Scott James Adams
Date of birth:	24 October 2000
Date of death:	23 February 2019
Cause of death:	Injuries sustained in a motor vehicle collision (motorcyclist)
Place of death:	Henty Highway, Portland, Victoria 3305

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HIS HONOUR:

BACKGROUND

1. On 23 February 2019, Scott James Adams was only 18 years old when he died from injuries sustained after the motorised bicycle he was riding was hit by a truck on the Henty Highway near the intersection of Wyatt Street, Portland Victoria. Immediately prior to his death, Mr Adams lived at 42 Rossdell Court, Portland with his parents, Mr Ken and Ms Leonie Adams.
2. Mr Ken Adams provided a statement to the coroner's investigator (CI) in which he described his son as having numerous friends and said that he was "*happy living life*".¹ He had recently bought a Ford utility that he was restoring and was about to start an apprenticeship in automotive engineering. Mr Ken Adams said that his son had ridden motorbikes and push bikes since he was about six years old:

*"[H]e had driven trucks, motor bikes, cars, paddock bombs. Anything with a motor he would have a go at. He was well aware of the road rules as he had his learner permit and had lodged 110 driving hours in his book. I believe he was a safe driver and well aware of the road where he was hit."*²

3. Mr Adams had no relevant medical history.

THE PURPOSE OF A CORONIAL INVESTIGATION

4. Mr Adams' death constituted a '*reportable death*' pursuant to section 4 of the *Coroners Act* (2008) (Vic) ("the Act"), as his death occurred in Victoria was unexpected and resulted, directly or indirectly, from an accident or injury.³
5. The Act requires a coroner to investigate reportable deaths such as Mr Adams' and, if possible, to find:
 - (a) the identity of the deceased
 - (b) the cause of death and
 - (c) the circumstances in which death occurred.⁴

¹ Statement of Ken Adams dated 25 February 2019, Coronial Brief.

² Ibid.

³ Section 4 *Coroners Act 2008*.

6. For coronial purposes, ‘*circumstances in which death occurred*’⁵ refers to the context and background the death including the surrounding circumstances. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, required findings in relation to circumstances are limited to those circumstances which are sufficiently proximate to be considered relevant to the death.
7. The coroner’s role is to establish facts, rather than to attribute or apportion blame for the death.⁶ It is not the coroner’s role to determine criminal or civil liability,⁷ nor to determine disciplinary matters.
8. One of the broader purposes of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by making recommendations.
9. Coroners are also empowered to:
 - (a) report to the Attorney-General on a death;⁸
 - (b) comment on any matter connected with the death investigated, including matters of public health or safety and the administration of justice;⁹ and
 - (c) make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.¹⁰
10. Coronial findings must be underpinned by proof of relevant facts on the balance of probabilities.¹¹ The strength of evidence necessary to so prove facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.¹²

⁴ See Preamble and s 67, *Coroners Act* (2008).

⁵ Section 67(1)(c).

⁶ *Keown v Khan* (1999) 1 VR 69.

⁷ Section 69 (1).

⁸ Section 72(1).

⁹ Section 67(3).

¹⁰ Section 72(2).

¹¹ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

¹² *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J but I note that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in a federal court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brenna, Deane and Gaudron JJ.

11. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demand a weight of evidence commensurate with the gravity of the facts sought to be proved.¹³ Facts should not be considered to have been proved on the balance of probabilities by inexact proofs, indefinite testimony, or indirect inferences,¹⁴ rather such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.¹⁵

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Identity of the Deceased - Section 67(1)(a) of the Act

12. On 23 February 2019, Ken Adams identified the deceased as his son, Scott James Adams born on 24 October 2000.
13. Mr Adams' identity is not in dispute and requires no further investigation.

Cause of death - Section 67(1)(b) of the Act

14. On 25 February 2019, Dr Matthew Lynch, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine (VIFM), conducted an external examination upon Mr Adams' body. Dr Lynch also reviewed the Police Report of Death (Form 83) and provided a written report, dated 25 February 2019, in which he opined that the cause of Mr Adam's death was '*Injuries sustained in motor vehicle collision (motorcyclist)*'. I accept Dr Lynch's opinion.
15. Dr Lynch commented that the external examination showed multiple injuries. Dr Lynch further commented that the post-mortem computed tomography scan revealed fractures of mandible with cerebral oedema, bilateral fractures of femur, tibia and fibula, fractures of pelvis, ribs and left clavicle, with bilateral haemopneumothoraces.
16. Toxicological analysis of post-mortem samples showed the presence of delta-9-tetrahydrocannabinol¹⁶ (cannabis) (~35 ng/mL) Ethanol (alcohol) was not detected.

¹³ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336, referring to *Barten v Williams* (1978) 20 ACTR 10; *Cuming Smith & Co Ltd v Western Farmers Co-operative Ltd* [1979] VR 129; *Mahon v Air New Zealand Ltd* [1984] AC 808 and *Annetts v McCann* (1990) 170 CLR 596.

¹⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.

¹⁵ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.; *Cuming Smith & CO Ltd v Western Farmers Co-operative Ltd* [1979] VR 129, at p. 147; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

¹⁶ Tetrahydrocannabinol is the active form of cannabis. The strength usually varies from 2-4% but can exceed 10%.

Circumstances in which the death occurred - Section 67(1)(c) of the Act

17. On 23 February 2019 at about 1:30pm. Mr Adams visited his friend, Chris Heffernan at Mr Heffernan's home in nearby Rossdell Court, Portland. Earlier that day, Mr Heffernan had purchased a 'homemade' motorised bicycle (**the motorised bicycle**) from Joshua Greeves in Portland.
18. Mr Heffernan provided a statement to the CI in which he explained that he had found the motorised bicycle through an advertisement on a Facebook site titled "*Things for Sale in Portland*". Mr Heffernan saw the advertisement on 22 February 2018 and on 23 February 2018, he inspected and bought the motorised bicycle for \$150.00.
19. Mr Heffernan took the motorised bicycle home. In his statement to the CI he said that:

"Once home, I tested the motor and it seemed to run alright. David [Mr Heffernan's brother] had a quick ride and it seemed to go pretty well, although we didn't know how to use the motor properly with the choke and stuff, so it did cough and splutter a bit. The brakes and everything seemed to work as they should".

20. On 23 February 2019 Mr Adams took the motorised bicycle for a test ride and convinced Mr Heffernan to sell it to him for \$150. Mr Heffernan elaborated:

"[Mr Adams] did remark to me that the bike 'fucking flies' and that he was happy he bought it. I told him to be careful on the road as he told me that he had taken a corner earlier too fast and the rear wheel slid out on him".¹⁷

21. At approximately 4.00pm that day, Mr Adams left Mr Heffernan's home and rode the motorised bicycle to the home of his friend Cameron Geller, at 10 Smith Street, Portland and showed his recent purchase to Mr Geller. In a statement to the CI, Mr Geller explained that he had previously owned a 'motorised pushbike' and understood how they operated. Mr Geller elaborated:

"I had a turn on it and it went really well...[His] bike was safe and it performed well whilst I rode it. I used the brakes at the end of the road and they worked fine. [Mr Adams] told me that he had [sic]the bike up to 60 kph. The bike had a speedo attached to it".¹⁸

¹⁷ Statement of Chris Heffernan dated 25 February 2019, Coronial Brief.

¹⁸ Statement of Cameron Geller dated 24 February 2019, Coronial Brief.

22. Mr Adams, Mr Geller and Mr Geller’s girlfriend smoked some cannabis together. A short time later, Mr Adams left Mr Geller’s home riding the motorised bicycle. Mr Geller said:

*“When he left my place [Mr Adams] was in a good mood and we had plans on having a drink together that night.”*¹⁹

23. At approximately 5.15pm. Ms Natasha Ryks saw Mr Adams riding the motorised bicycle at the front of her house along Wyatt Street; heading towards the Henty Highway. Ms Ryks told police that the motorised bicycle was “*moving fast*”. Ms Ryk said she saw Mr Williams

“...fly through the intersection of Wyatt Street and the Henty Highway. It didn’t look like he was going to stop at all.”

24. Ms Ryks saw Mr Adams ride the motorised bicycle through the intersection with Henty Highway where he was hit by a truck travelling north on the Henty Highway.²⁰
25. The truck driver immediately called emergency services. Shortly after, Ambulance Victoria, State Emergency Service (SES) and Victoria Police units arrived. Ambulance paramedics confirmed Mr Adams was deceased at the scene.

COMMENTS PURSUANT TO 67(3) OF THE ACT

26. There is no evidence of extraneous elements such as road surface, bad weather or poor visibility having contributed to the collision.
27. Leading Senior Constable (LSC) Bradford who attended the scene noted that:

*“The overall condition of the prime mover and both trailers were, in my opinion, all in a roadworthy state and would not have contributed to the cause of the collision”*²¹

28. Police found the motorised bicycle on the eastern side of the B-trailer; it was extensively damaged.
29. At the Henty Highway - Wyatt Street intersection the Henty Highway is a bitumen road with a posted speed limit of 80 km/h. It has two lanes for traffic travelling each of north and south each direction of travel is separated by a single broken white line. At the intersection Wyatt Street is a bitumen road with a posted speed limit of 60 km/h. It has one lane for traffic for

¹⁹ Ibid.

²⁰ Statement of Natasha Ryks dated 25 February 2019, Coronial Brief.

²¹ Statement of LSC Bradford Brabham undated; Coronial Brief.

each of east and west travelling traffic. Those travelling east in Wyatt Street, as Mr Adams was immediately before the collision, face a 'stop sign' at the Henty Highway intersection.²² At the time of the collision weather was said to be fine and the road was dry.²³

Mr Adams Driving Immediately Before the Collision

30. An examination of the truck's dash cam video footage revealed that Mr Adams did not stop at the intersection of Wyatt Street and the Henty Highway before attempting to cross the highway. Immediately before the collision the truck was travelling at 78km/h.²⁴
31. In his statement to the CI, truck driver, Dinesh Jayasundara explained that he had the impression that, immediately prior to the collision, Mr Adams was looking left down Henty Highway in the opposite direction from which the truck was approaching the intersection.
32. Ms Hannah Troop and her friend, Sharni Cunningham were travelling along along the Henty Highway in a car being driven by Ms Troop when they each saw the motorised bicycle being ridden at a fast speed travel along Wyatt Street toward the intersection of Henty Highway. Ms Troop stated that "*It didn't look like the bike tried to slow down to avoid the truck*". Ms Cunningham confirmed that the motorised bicycle was travelling "*fairly fast*" and that

"The person on the bike did not look like he was slowing down or stopping prior to the intersection"

33. Having considered the evidence in the coronial brief I am satisfied, and find, that Mr Adams rode the motorised bicycle along Wyatt Street and across the intersection with Henty Highway without stopping at a Stop sign when he was struck by the truck; he may not have seen the truck before it struck him.
34. I am satisfied and find that there was nothing Mr Jayasundara could have done to avoid the collision.

The Motorised Bicycle

35. The investigation revealed that the motorised bicycle as constructed was originally owned by James Williams. In a statement to the CI, Mr Williams stated that, in or about April 2018, he purchased a used Rocky Montana MTB 2000 26-inch mountain bicycle from a friend. Mr

²² Ibid.

²³ Statement of Natasha Ryks dated 25 February 2019; Coronial Brief.

²⁴ Statement of LSC Bradford Brabham undated; Coronial Brief.

Williams described the bicycle as being in good working order, only requiring minor adjustments to the brakes.

36. About a week later, Mr Williams purchased, a motor and conversion kit for \$157.00 on eBay:

“...80cc silver coloured bike kit which includes a motor, kill switch and throttle. The kit also came with a chain, sprocket for the back, an exhaust and a clutch along with instructions on how to fit the kit and motor to the bike”.
37. In a supplementary statement, Mr Williams elaborated that he purchased the motor from TDRMoto Pty Ltd, a company located in Hoppers Crossing. Although Mr Williams was unable to locate the instruction manual which accompanied the kit, a similar engine kit is available for purchase on the company’s website. Information accompanying the kit instructs that *“Professional Installation Recommended”*.
38. Mr Quo Qin Wang, director of TDRMoto Pty Ltd provided a statement to the CI regarding the sale of motorised bicycle engine kits. Mr Wang stated that he stocks the Power King Motorised Bicycle Engine Kit, sourced from China and sells approximately 50 of the kits per month. Most of his sales are online through eBay. The kits contain a 2-stroke engine, brackets, chain, tank, bearings, magneto with kill switch, muffler, chain guard, twist throttle and cable, installation booklet and all other parts to mount the engine to a pushbike. He explained further that the manufacturer claims the engine to be a 2 stroke, single cylinder, air cooled 80cc engine. Fuel ratio in 25:1; the motor is pedal started and the fuel tank capacity is 2 litres. The rated power rotary speed is 2.5kw/5000rpm; the claimed maximum power output is 3.5kw/6000rpm and claimed maximum speed is 55 kph.
39. Mr Wang further states that the eBay listing for the engine clearly stipulates that the kit is for off road or private property use only.
40. Mr Williams and his father attached the motor to his mountain bicycle which thereafter he drove *“pretty much every day”* even riding some 20kms to Bridgewater and back *“a couple of times”*.
41. According to what Mr Williams referred to as the *“speedometer”* possibly an odometer, he rode the motorised bicycle more than 1000 kms during the time he owned it. Mr Williams also referred to the *“speedometer”* having *“packed up”* at some time prior to when he sold it to Mr Adams.

Mr Williams and his father attended to routine maintenance and Mr Williams reported that:

“I never had any major problems with the bike or motor the whole time I owned it”.

42. On 14 February 2018, Mr Greeves, a friend of Mr Williams, advertised the motorised bicycle for sale for him.
43. VicRoads defines a power assisted bicycle if it meets the following specifications:
 - (a) it is fitted with one or more auxiliary motors that has or have a combined maximum uncontrolled continuous rated power output of 200 watts or less; or
 - (b) is a Pedelec²⁵ fitted with an auxiliary motor producing not more than 250 watts.
44. A motorised bicycle is not classified as a bicycle if:
 - i. The motor is not an auxiliary source of power (a person must still be able to propel the bicycle via pedals without the motor operating).
 - ii. The motor’s power output exceeds 200 watts (whether or not the motor is operating)
45. On 17 July 2019, Senior Constable (SC) Brett Gardner, a qualified senior motor vehicle mechanic working with Victoria Police Collision Reconstruction and Mechanical Investigation Unit (CRMIU), completed a mechanical examination of the motorised bicycle and in his statement dated 14 August 2019 asserted that the engine fitted to the mechanical bicycle had an approximate cubic capacity of 67.6cc’s and had no restrictor plates ²⁶or identifying marks. He stated that:

“Due to the extent of damage to the vehicle it could not be tested. Without being able to positively identify the manufacturer of the engine, and based only on my research, it is more than likely the engine fitted to the vehicle would exceed 200 watts. As such the vehicle would be classified as a motorcycle”.
46. Accordingly, the motorised bicycle should have been (but was not) registered as a motorcycle and only operated by a licenced rider.
47. It appears that neither Mr Adams nor Mr Williams were aware that the motorised bicycle was subject to the same regulations as are motor bikes.

²⁵ A vehicle meeting European Committee for Standardisation EN 1519:2009 +A1:2011 Cycles – Electrically power assisted cycles EPAC Bicycles.

²⁶ Restrictor plates is a device installed at the intake of an engine to limit its power.

48. SC Gardner noted that the motorised bicycle was originally fitted with lever controlled front and rear brakes. When he examined it SC Gardner noted that only the front brake remained. The rear brake lever had been utilised to operate the clutch/drive mechanism of the engine and there were no rear brakes fitted.

“Although the brake controlling mechanism still fitted to the vehicle appeared to have been functioning prior to the collision, if the vehicle’s braking system was required to stop the vehicle, in an emergency situation, it would still slow and stop the vehicle, however, it is most likely the distance it would travel would be further than if the brakes were in their original configuration and operating at their optimum efficiency”.

49. Mr Wang of TDRMoto Pty Ltd provided me with a copy of the Installation Instructions for the PowerKing Engine which, on its face, does not instruct the installer to remove the rear brakes. As I have concluded that Mr Adams apparently did not attempt to stop when he reached the Henty Highway intersection and apparently did not see the truck until it was too late, the state of the motorised bicycle’s brakes may not have had anything to do with the collision. Despite that being the case there seems to be little if any relevant regulation of the equipment and process by which a bicycle can be motorised. This is a public safety issue and as such I propose to refer this Finding to:

- (a) VicRoads,
- (b) Transport Accident Commission,
- (c) Vehicle Safety Standards Bureau,
- (d) Victoria Police,
- (e) Bicycle Industries Australia

So that they can individually and collectively consider the circumstances the regulation of the motorisation of bicycles to facilitate their safe operation and enhance public safety.

The effect of cannabis

50. I note that toxicological analysis of Mr Adam’s blood revealed the presence of cannabis at a concentration of ~35 ng/mL. Persons under the influence of cannabis can experience impaired cognition, poor vigilance, impaired reaction times and coordination.

51. Dr Dimitri Gerostamoulos, Head of Forensic Science and Chief Toxicologist at VIFM advised me that epidemiological studies have shown that recent use of cannabis increases crash risk when driving motor vehicles.²⁷ This has been published in the references cited below (amongst others) and refers to all drivers with measurable THC concentrations. This risk starts to become apparent at around 5ng/mL, however, a substantial elevated risk occurs at higher concentrations, possibly at ~10ng/mL or higher a level well less than Mr Adam's samples. Whilst one must exercise caution when considering post mortem toxicology there is at least a real chance that Mr Adam's consumption of cannabis shortly before the collision was a cause of him not riding the motorised bicycle as carefully as he should have and so of his collision with the truck.
52. Police did not identify any suspicious circumstances surrounding Mr Adams' death in the course of the investigation. At the time of the incident the road and environment did not contribute to the collision.
53. I am satisfied, having considered all of the available evidence that no further investigation into Mr Adams' death is required.

RECOMMENDATIONS

Pursuant to section 72(2) of the Act, I make the following recommendations:

1. VicRoads, The Transport Accident Commission The Vehicle Safety Standards Bureau, Victoria Police, Bicycle Industries Australia, consider the circumstances in which Scott Adams died as set out in this Finding and individually and together assess the adequacy of the current regulation of the motorisation of bicycles and their use including the ready availability of conversion kits taking into account the actual power provided by such kits vis-à-vis any purported power they provide with a view to improving public safety and the safety of people riding such bicycles.

²⁷ Drummer OH, Gerostamoulos J, Batziris H, Chu M, Caplehorn J, Roberston MD et al. The involvement of drugs in drivers of motor vehicles killed in Australian road traffic crashes. *Accid Anal Prev.* 2004;36:239-48
Laumon B, Gadegbeku B, Martin JL, Biecheler MB, Group SAM. Cannabis intoxication and fatal road crashes in France; population based case-control study. *BMJ* 2005;331 (7529):1371
Grotenhermen F, Leson G, Berghaus G, Drummer OH, Kruger HP, Long M et al, Developing limits for driving under cannabis. *Addiction.* 2007;1029 (12): 1910-7; and
Drummer OH, Gerostamoulos D, Du Rago M, Woodford NW, Morris C, Frederiksen T et al. Odds of culpability associated with use of impairing drugs in injured drivers in Victoria, Australia. *Accident Analysis & Prevention.*2020;135:105389.

54. Pursuant to section 73(1) of the *Coroners Act 2008* (Vic). I order that this Finding be published on the internet.

FINDINGS AND CONCLUSION

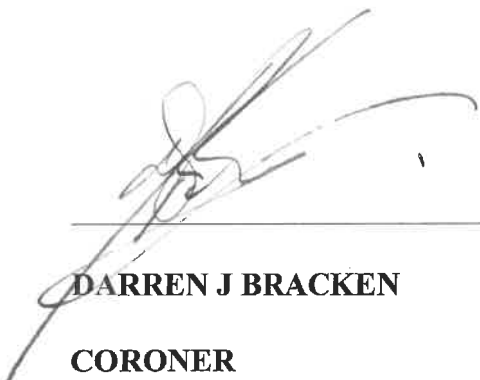
55. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the *Coroners Act 2008*:

- (a) The identity of the deceased was Scott James Adams, born 24 October 2000;
- (b) Mr Adams' death occurred;
 - i. on 23 February 2019 at Henty Highway, Portland, Victoria 3305;
 - ii. from injuries sustained in motor vehicle collision (motorcyclist); and
 - iii. in the circumstances described in paragraphs 17-25 above.

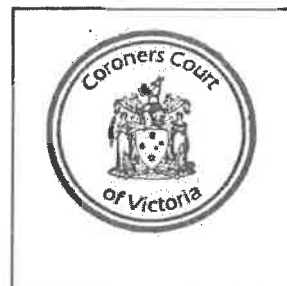
56. I direct that a copy of this finding be provided to the following:

- (a) Mr Ken and Mrs Leonie Adams, senior next of kin;
- (b) Ms Robyn Seymour, COR, VicRoads;
- (c) Mr Joe Calafiore, CEO, Transport Accident Commission;
- (d) Mr Michael McCormack, Minister for Department of Infrastructure, Regional Development and Communications (Cth) (Vehicle Safety Standards Bureau);
- (e) Mr Dave Mohr, Chairperson, Bicycle Industries Australia;
- (f) Chief Commissioner Shane Patton, Victoria Police; and
- (g) Leading Senior Constable Bradford Braham, Coroner's Investigator, Victoria Police.

Signature:



DARREN J BRACKEN
CORONER



Date: 1 March 2021