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**FINDINGS and COMMENTS of Coroner Robert Webster following the holding of an inquest under the *Coroners Act 1995* into the death of:**

**Aiden Sean McHugh**

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## **Record of Investigation into Death (With Inquest)**

*Coroners Act 1995*

*Coroners Rules 2006*

Rule 11

I, Robert Webster, Coroner, having investigated the death of Aiden Sean McHugh, with an inquest held at Devonport in Tasmania, make the following findings.

### **Hearing Dates**

9, 10, and 23 June 2022

### **Representation**

Counsel Assisting the Coroner: Ms Rebecca Lancaster

Counsel for Mr David Ward: Mr Paul Sullivan

Counsel for Mrs Tho Ward<sup>1</sup>: Mr Paul Sullivan

### **Notice of This Hearing**

Notice of the dates for this inquest was given to Mr McHugh's mother, Ms Belinda McHugh, and to Mr and Mrs Ward by letter of 22 April 2022. That letter also gave notice of a case management conference (CMC) which was scheduled to be held on 10 May 2022. The CMC proceeded on 10 May 2022 and Ms McHugh and Mr and Mrs Ward appeared at that time. I confirmed the dates for the hearing and Counsel Assisting summarised the proceedings and set out what the issues to be determined were. I then asked whether those appearing had anything to say at that point in time. Neither Ms McHugh or Mr and Mrs Ward indicated they wished to say anything. Ms McHugh however indicated she would be a participant at the inquest. On 30 May 2022 Mr Sullivan advised my office that he had been retained by Mr and Mrs Ward and he would appear at the inquest. At the inquest Mr Sullivan appeared for Mr and Mrs Ward while Ms McHugh and a number of other family members attended each day of the inquest.

### **Preliminary matters**

#### *Introduction*

1. Aiden Sean McHugh (Mr McHugh) died on 10 January 2018, aged 21, on Port Sorell Road near Wesley Vale in Tasmania.

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<sup>1</sup> At the time of Mr McHugh's death Mrs Ward was not married to Mr Ward and was known by her maiden name of Nguyen. In this decision Ms Nguyen is referred to as Mrs Ward.

2. Mr McHugh's death is subject to the *Coroners Act 1995* (the "Act") because it is a reportable death; that is a death which occurred in Tasmania being a death "*that appears to have been unexpected, unnatural or violent or to have resulted directly or indirectly from an accident or injury*"<sup>2</sup>. A coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death.<sup>3</sup> Although an inquest in this case was not mandatory<sup>4</sup> an inquest into this death may be held if the coroner considers it desirable to do so.<sup>5</sup>
3. On the basis of the evidence tendered at the inquest I make the following formal findings pursuant to section (s) 28(1) of the Act:
  - (a) The identity of the deceased is Aiden Sean McHugh;
  - (b) Mr McHugh died in the circumstances set out further in this finding;
  - (c) The cause of Mr McHugh's death was multiple injuries when he was struck by a motor vehicle which included severe brain injuries that likely were the immediate cause of death; and
  - (d) Mr McHugh died on 10 January 2018, on Port Sorell Road near Wesley Vale in Tasmania.

#### *Coroner's jurisdiction and functions*

4. In Tasmania, the coroner's functions are set out in s28(1) of the *Coroners Act 1995* ("the Act"). By this section, the coroner is required to find the identity of the deceased, how death occurred, the cause of death and when and where death occurred. By s28(2), a coroner may make comment on any matter connected with the death; and by s28(3), a coroner must, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate.
5. Coroners complete their written findings pursuant to s28(1) into a reportable death after receiving documentary evidence in the investigation. In a small proportion of reportable deaths, the coroner will hold a public inquest, which almost always involves the calling of oral testimony to further assist the coroner in his or her investigation function and subsequently, in the making of findings. Many of the public inquests held by coroners in Tasmania are made mandatory by the Act.<sup>6</sup> The remaining inquests are held because the coroner considers that a

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<sup>2</sup> See s3 of the Act and the definition of *reportable death* at paragraph (a)(ii) and (iv).

<sup>3</sup> See s21(1) of the Act.

<sup>4</sup> Because it did not fall within s24(1) of the Act.

<sup>5</sup> See s24(2) of the Act.

<sup>6</sup> S24(1) of the Act.

public inquest is desirable in the particular circumstances of the investigation.<sup>7</sup> I considered it desirable to hold an inquest in this instance because of the issues to be ventilated in the investigation (as listed below) and further there is a real question as to the identity of the driver of the motor vehicle who struck and killed Mr McHugh.

6. When investigating any death, a coroner performs a role very different to other judicial officers. The coroner's role is inquisitorial; whereas in criminal or civil proceedings the proceedings are adversarial; that is one party against another. In these proceedings I am required to thoroughly investigate the death and answer the questions (if possible) that s28 of the Act asks. Those questions in s28(1) include who the deceased was, how he died (that is the circumstances surrounding Mr McHugh's death), what was the cause of his death and where and when it occurred. This process requires the making of various findings, but without apportioning legal or moral blame for the death. A coroner is required to make findings of fact from which others may draw conclusions.
7. A coroner does not have the power to charge anyone with a crime or an offence. In this case I have no power to charge anyone with any breach of any traffic law arising out of the death the subject of the investigation. I note charges were previously considered by police but never laid so to be clear there will not be any charges laid against anyone arising out of the inquest process. Nor is it my role to review what the Director of Public Prosecutions did or did not do. A coroner also does not have power to determine issues associated with an inheritance or other matters arising from the administration of deceased estates.
8. As noted, one matter that the Act requires is that a finding be made about how death occurred. It is well settled that this phrase involves the application of the ordinary concepts of legal causation. Any coronial inquiry necessarily involves a consideration of the particular circumstances surrounding the particular death so as to discharge the obligation imposed by s28(1)(b) upon the coroner.
9. A coroner may comment on any matter connected with the death into which he or she is enquiring. The power to make comment *"arises as a consequence of the [coroner's] obligation to make findings ... It is not free ranging. It must be comment "on any matter connected with*

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<sup>7</sup> S24(2).

*the death” ... It arises as a consequence of the exercise of the coroner’s prime function, that is, to make “findings”.*<sup>8</sup>

10. The standard of proof applicable to a coronial investigation is the civil standard. This means that where findings of fact are made a coroner needs to be satisfied on the balance of probabilities as to the existence of those facts. However, if an investigation reaches a stage where findings may reflect adversely upon an individual, the law is that the standard applicable is that set out in the well-known High Court case of *Briginshaw v Briginshaw*, that is, that the task of deciding whether a serious allegation is proved must be approached with great caution.<sup>9</sup>

*Issues at inquest*

11. Given s28 of the Act, the scope of this inquest was as follows:
- a) The observations made by persons travelling on the Bass Highway and Port Sorell Road between 3:30am and 6:30am on 10 January 2018, including sightings of the deceased, Mr David Ward, Mrs Tho Ward and any vehicles.
  - b) The circumstances and accounts of Mrs Tho Ward’s arrival and departure from her place of employment on the morning of 10 January 2018.
  - c) An examination of the subsequent reports made to police in regards to the cause of the accident, the veracity of those accounts and the movements of Mr David Ward and Mrs Tho Ward after the motor accident on 10 January 2018.
  - d) A determination of the circumstances leading up to the accident, its cause and its affect on Mr McHugh<sup>10</sup>.
  - e) The identity of the driver of the vehicle involved in the motor accident involving Mr McHugh on 10 January 2018.

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<sup>8</sup> See *Harmsworth v The State Coroner* [1989] VR 989 at 996.

<sup>9</sup> (1938) 60 CLR 336 per Latham CJ at 347 and Dixon J at 362 and 368-9.

<sup>10</sup> S28(1)b).

### Evidence in the investigation

12. The documentary evidence at the inquest comprised exhibits C1 to C45A. The exhibit list is annexed to this finding.

13. At the inquest, the following witnesses provided oral testimony:

- Mrs Tho Ward;
- Mr David Ward;
- Mr Hung Tan Le (Allen);
- Mr Kraig Anthony Dann;
- Ms Kylie Lamb;
- Mr David Ronald Chaplin;
- Mr Kent Miles Dutton;
- Mr Dean Wallace;
- Mr Brayden Aitken;
- Ms Stephanie Maree Rose Powell;
- Ms Jade Michelle Locking;
- Mr Matthew Horsten; and
- Constable Sven Mason.

### Background

14. Mr McHugh was born on 17 August 1996 to Belinda McHugh and Damien Nielson in Geelong Victoria. His father had nothing to do with his upbringing which was left entirely to the efforts of his mother.

15. Mr Nielson says when he was in goal in 2013 at Port Phillip prison in Victoria he commenced contact with his son who reached out to him through Mr Nielson's mother. Ms McHugh says their first contact was a little later than that but absolutely nothing turns on this discrepancy. Both Mr McHugh's parents say their son developed a drug habit which included the use of methamphetamine whereas Mr Nielson says it also included the use of cannabis and other illicit and prescription drugs. This habit commenced when he *"got with the wrong crowd and started using drugs on [an] increasing basis"*.<sup>11</sup> When Mr Nielson was released from goal in April 2017 he moved to East Devonport with his fiancée.

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<sup>11</sup> Exhibit C11-affidavit of Mr Nielson.

16. Ms McHugh says she had been assisting her son to break his drug habit however he had a couple of relapses. He was living with her at the time. She says in a period of approximately 3-4 months he was severely assaulted on three occasions and on one of those occasions he was abducted and tortured and left in the bush. She believes the assailant was a drug dealer.<sup>12</sup>
17. As a result Ms McHugh says her son was keen to move to Tasmania in order to get away from the people he associated with in Victoria. Mr Nielson says he was happy to assist his son however there were some terms and conditions which were agreed with respect to him residing with his father which included being clean, being honest and either finding work or studying. He agreed to those conditions and accordingly he travelled to Devonport on the *Spirit of Tasmania* on 22 December 2017.
18. Mr Nielson says on Mr McHugh's arrival in Tasmania he decided to do a pre-apprenticeship course in the electrical trade at TAFE and Mr Nielson planned to call in a favour with some friends of his who were electricians. He was aware Mr McHugh was using cannabis regularly but not excessively and that his son was not using any other substances. A level of trust had developed between them.
19. On Monday, 8 January 2018 Mr McHugh advised his father he was going to buy some alcohol which Mr Nielson questioned given it was a Monday. Mr McHugh explained he had met a girl on the internet and was going to have a drink with her. He left. Subsequently Mr Nielson received some text messages from his son over the next two days. The first two messages were received between 10:00am and 2:00pm on Tuesday, 9 January 2018 and the third message was received just after 2am on 10 January 2018 whereby Mr McHugh advised his father he was "... walking home from Latrobe, just letting you know." This was Mr Nielson's last contact with his son. It is not known who Mr McHugh was visiting and/or why he was at Latrobe.
20. In the early hours of Wednesday, 10 January 2018 while Mr McHugh was walking from Latrobe to his father's home at East Devonport in a general northerly direction along Port Sorell Road he was struck by a black 2011 Isuzu D – Max four-wheel-drive dual cab utility registration number E82VS (the utility). As a result of the collision Mr McHugh was found on the western side of Port Sorell Road between the Frankford Road roundabout and the Brooke Street/Pardoe Road roundabout. Brooke Street leads to East Devonport, Pardoe Road leads to

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<sup>12</sup> Exhibit C12-affidavit of Ms McHugh.



the Devonport airport after which it becomes Mill Road before it loops around to Wesley Vale. At this same roundabout Port Sorell Road veers to the east where it leads to Wesley Vale and then further east to Port Sorell. The speed limit at the scene of the collision is 100 km/h. When Mr McHugh was located<sup>13</sup> it was determined he had passed away from the injuries sustained in the collision.

### The Accident Scene

21. Located next to Mr McHugh was his wallet which contained identification documents. Police officers from Devonport CIB and Forensic services attended the scene a short time later. Mr McHugh was observed to be wearing black casual shoes, blue jeans, a black hoody, a black baseball cap and sunglasses. The sunglasses were located 7.75 m south of the body and the cap was 1.9 m south. Measurements taken from his feet determined he was 1.4 m from the edge of the road, 2.05 m from the painted edge line and 2.6 m from the closest guide post. A piece of bitumen was found to be torn out of the road and this was 14.85 m from where Mr McHugh was located.<sup>14</sup>
  
22. The Port Sorell Road was found by Constable Mason to be constructed of bitumen aggregate which he says was in good condition although he says it was a little uneven in the northbound lane. There were painted edge lines and double continuous white centre lines. He says Mr McHugh was found on a slight left curve in the road with a positive cross fall (falling left) and the road had a slight downhill gradient. It was comprised of a single carriageway for north/south bound traffic with the northbound lane 3 m wide and the southbound lane 2.9 m wide. There were sealed shoulders of .5 m on the eastern side and .7 m on the western side of the road. The total travelled portion of the road was 6.25 m and the total sealed width was 7.8 m. On the western side of the road was a verge of approximately 1 – 1.2 m which was comprised of compacted rock and short grass which appeared to have been recently mowed. Guideposts lined the road and they were generally 350 to 450 mm from the road edge.<sup>15</sup>

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<sup>13</sup> Mr McHugh was found by Mr Paul Clark and Mr Ross Beveridge at approximately 6:00am on 10 January 2018 while they were on their way to work at a mine at Hampshire. Mr Clark, who was driving, saw Mr McHugh and stopped his vehicle. He checked on Mr McHugh and then asked his passenger Mr Beveridge to call 000. They waited at the scene until police arrived-see exhibit C10-affidavit of Mr Clark.

<sup>14</sup> Exhibit C35-affidavit of Constable Mason.

<sup>15</sup> Exhibit C35-affidavit of Constable Mason.

23. Constable Mason says the road through the accident scene is open with a good clear unobstructed view for drivers travelling in both directions. There were no streetlights and hydro poles and fences were well back from the road's edge.<sup>16</sup>
24. Leading up to the location where Mr McHugh was found Constable Mason found no evidence of any tyre marks being made by a vehicle. There is no evidence of any skidding or travel marks on the gravel verge or any skidding on the bitumen. This applied to the roadway both prior to and after the point of impact and he says no debris was left by a vehicle at the scene.<sup>17</sup>
25. Constable Mason surveyed the scene and environs and then produced a survey diagram<sup>18</sup>. He satisfied himself the survey accurately depicted the accident scene. While conducting that survey he was notified of an area a short distance north and downhill from where Mr McHugh and been found. This area was on the eastern side of the road<sup>19</sup>, it was constructed of gravel and in it were tyre tracks made by a turning vehicle. Constable Mason says information had been obtained during the investigation that Mr and Mrs Ward had returned to the accident scene to search for what they had collided with without any success. That area was included in the survey.<sup>20</sup>
26. Senior Constable Wylie from Forensic Services examined the accident scene which he noted was approximately 600 m south of the roundabout on Port Sorell Road; the roundabout intersecting with Pardoe Road and Brooke Street.<sup>21</sup> As part of the examination he took a series of photographs.<sup>22</sup>
- 1. The observations made by persons travelling on the Bass Highway and Port Sorell Road between 3:30am and 6:30am on 10 January 2018, including sightings of the deceased, Mr David Ward, Mrs Tho Ward and any vehicles.**
27. At 3:40am Damon Addison who was driving west on the Bass Highway towards Devonport in the course of his employment saw a male person walking on the median strip of the Bass

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<sup>16</sup> Exhibit C35-affidavit of Constable Mason.

<sup>17</sup> Exhibit C35-affidavit of Constable Mason.

<sup>18</sup> Exhibit C43.

<sup>19</sup> That is the opposite side to where Mr McHugh was found.

<sup>20</sup> Exhibit C35-affidavit of Constable Mason.

<sup>21</sup> See Exhibit C36-affidavit of Senior Constable Wylie.

<sup>22</sup> Exhibit C39.

- Highway, near the Port Sorell bypass. He was on the northern side of the wire fence which separates the east and west bound lanes of the Bass Highway and could have been crossing the highway which I infer was the east bound lane. He recalled the male may have been wearing dark clothing. He appeared to be walking normally. His vision of the male person was not obstructed and the road was dry and the weather was fine and clear.<sup>23</sup>
28. At about the same time, Stuart London was driving east on the Bass Highway on his way to work. He had just travelled under the Port Sorell Road overpass when he saw a male person walking on the solid edge line towards him. This person was wearing dark coloured clothing. Mr London thought he had a cap on and he may have been wearing earphones. Mr London observed the male to be walking normally – he was not staggering and did not appear to be drunk. He describes the weather as fine and clear.<sup>24</sup>
29. Philip Wright was driving a Kenworth tip truck which was towing a quad dog trailer in the course of his employment. He travelled on Frankford Road and then onto Port Sorell Road where he turned left and took the off ramp onto the Bass Highway to travel east. Prior to merging onto the Bass Highway he saw a male person wearing dark clothing and walking on the left hand side of the road. He was about three quarters of a metre to a metre from the edge line and well away from the road and lane that Mr Wright was driving in. Mr Wright held no concerns upon seeing the male because he was not in his way and he did not have to swerve around him to avoid him. The male person was wearing a black cap and had a mobile phone in his hand as it was lit up at the time. He also appeared to have ear plugs in. He was wearing a hoody jumper, was walking normally not staggering and he did not appear to be carrying any alcohol. At the time Mr Wright saw the man he estimates it was between 3-55-4-00am. The man was alone and the weather was fine and clear.<sup>25</sup>
30. Given the description of Mr McHugh's clothing in paragraph 21, his advice to his father that he was walking home to East Devonport from Latrobe and where he was found I find the male person observed by Mr Addison, Mr London and Mr Wright was Mr McHugh.
31. At about 5:05am, David Chaplin was travelling on Port Sorell Road towards Devonport east of the round-about which intersects with Brooke Street and Pardoe Road. He had his headlights on; albeit he could see a short distance without them. He turned left at the roundabout and travelled up the hill on Port Sorell Road. Over the crest of the hill, the road straightens and levels

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<sup>23</sup> Exhibit C14-affidavit of Mr Addison.

<sup>24</sup> Exhibit C15-affidavit of Mr London.

<sup>25</sup> Exhibit C16-affidavit of Mr Wright.

out and about 200 metres from the brow of the hill he observed a black Isuzu 4wd utility with a canopy on the back parked in a small gravel area. The utility was on his left<sup>26</sup> and was facing the Frankford Road roundabout which is further south on Port Sorell Road. He saw a male person on the right hand side of the road on the grass about three metres from the road edge. The person was about 100 metres in front of the black Isuzu. He was walking in the direction of the Frankford Road roundabout and he was wearing a grey coloured hoody with the hood pulled up over his head. The road was dry and the weather was fine and clear with good visibility.<sup>27</sup>

32. In his evidence Mr Chaplin said he was familiar with the area as he travelled that road often. He confirmed he saw a Black Isuzu utility parked in a small gravel area which he described as a “pull off area”, which was opposite to a “turn”<sup>28</sup> into a farmer’s paddock. There is a larger gravel parking area off to the left hand side of the road prior to where Mr Chaplin saw the Isuzu parked. The male person was walking on the right hand side of the road about 100 metres in front of the parked utility, towards the roundabout closest to Devonport, with his back to Mr Chaplin. Mr Chaplin was able to see a short distance in front of him and his headlights were on but he says he would have been able to see the male without the assistance of headlights.<sup>29</sup>
33. Kylie Lamb says she was driving her vehicle on Port Sorell Road from the roundabout at Brooke Street towards the roundabout at Frankford Road. The time was 5:13am. As she travelled up the hill from the Brooke Street roundabout she saw a small car on the left hand side of the road as she travelled up the hill. She thought it was a Toyota Seca or similar and possibly burgundy in colour. About 100-200 metres past the car she saw a male wearing jeans and a dark top, possibly a hoody, walking towards the parked vehicle. The male was walking normally and did not appear to be looking for anything. He did not have a torch and was not using his phone as a light source.<sup>30</sup>
34. In her evidence Ms Lamb said she saw the male person walking back towards the vehicle on the left hand side of the road. She could see him clearly with both the benefit of her headlights and the sunrise.<sup>31</sup> Under cross examination Ms Lamb confirmed the vehicle was parked in a gravel

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<sup>26</sup> On the left hand side of the road as you travel south.

<sup>27</sup> Exhibit C17-affidavit of Mr Chaplin.

<sup>28</sup> Or lane way into the paddock; see Transcript (T) page 139 [lines 15-16].

<sup>29</sup> T136 [38] to T138 [7].

<sup>30</sup> Exhibit C18-affidavit of Ms Lamb.

<sup>31</sup> T131 [36] to T132 [6].

pull off area and if it was not burgundy in colour it was dark. She did not see an Isuzu motor vehicle.<sup>32</sup>

35. Kent Dutton says he was driving from his home at Shearwater to his workplace at Devonport on Wednesday 10 January 2018. He normally leaves home at 5:00am to start work at 6:00am on Wednesdays. At about 5:10 -5:15am he was driving south along Port Sorell Road in between the Brooke Street and Frankford Road roundabouts up the hill with his head lights on. The weather was fine, visibility was *"brilliant"* and the sun was in the process of rising. He says around 200 metres over the crest of the hill, on a flat straight he saw a dark coloured four wheel drive twin cab utility parked on the side of the road. It did not have any lights on. He did not see anyone with the vehicle.<sup>33</sup>
36. In his evidence Mr Dutton said although he had his headlights on he did not need them to see the road.<sup>34</sup> He confirmed the vehicle he saw was parked on the left-hand side of the road facing south. He said it seemed strange to him as he has seen a lot of cars parked on that stretch of road, which he travels along every day, and they will park in a couple of gravel laybys but this vehicle was not parked in either of the two laybys. It was parked quite close to the white edge line. He said he slowed down just in case somebody got out of the car.<sup>35</sup> He did not see anyone in the car.<sup>36</sup>
37. Christopher Hennessy resides at Leith<sup>37</sup> and owns businesses in Port Sorell and Devonport. He drove via the Bass Highway and then onto Port Sorell Road. He drove through the roundabout at the junction with Frankford Road and was heading towards the second roundabout at Brooke Street when he, at 5:14am, saw a male person walking on the right hand side of the road in a northerly direction. The male was wearing dark coloured clothing. About 150 metres away he saw a dark 4wd wagon. He made the assumption the male had run out of petrol. He did not appear to be looking for anything but rather appeared to be walking back towards his car. He says the road was dry, the weather was fine and clear and the sun was starting to light up the sky but he still needed his headlights on. He saw nobody else.<sup>38</sup>

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<sup>32</sup> T133 [8]-[23].

<sup>33</sup> Exhibit C19-affidavit of Mr Dutton.

<sup>34</sup> T142 [25]-[26].

<sup>35</sup> T143 [1]-[10],

<sup>36</sup> T143 [34]-[35].

<sup>37</sup> Leith is approximately 16.5 km from the accident scene.

<sup>38</sup> Exhibit C20-affidavit of Mr Hennessy.

38. Bradley Chilcott left his home at Shearwater at 5:00am on the 10<sup>th</sup> of January 2018 to travel to work in Smithton. He drove through the roundabout on Port Sorell Road at the junction with Brooke Street and travelled up the hill. As he was driving up the hill he saw, at about 5:15am, a black utility with a canopy parked on the left hand side of the road facing the Bass Highway; that is it was facing south. It was parked in a gravel area, about 200-300 metres from the roundabout at Brooke Street. Mr Chilcott then saw a male person on the left hand side of the road, about 200 metres towards the Frankford Road roundabout walking back towards the vehicle. He too assumed the male had run out of petrol. He saw nobody else. He described the weather as fine and clear and the road was dry. The sun was just rising and he still required his headlights to be on.<sup>39</sup>
39. Mr Kraig Dann was the rear left seat passenger in a vehicle travelling from Turners Beach towards Port Sorell. He had been picked up at Turners Beach at around 4:54am. As the vehicle travelled through the Frankford roundabout on Port Sorell Road towards the Brooke Street roundabout, at about 5:15am, he saw a male person walking south towards the Frankford road roundabout. The male was walking in a culvert about 10-15 metres north of one of the large road signs on the side of the road. He would have been 2-3 metres from the edge of the road. Mr Dann described the male as 5.5 to 6 feet tall, wearing a dark hoody which could have been pulled over his head and with his hands in his pockets. It was still quite dark but it was clear and the road was dry. The sun had not risen but the sky was starting to light up on the horizon.<sup>40</sup>
40. When he gave evidence Mr Dann said the light was good enough for him to see the male person clearly on the side of the road. The headlights of the vehicle in which he was travelling were on and this assisted with his view of the male person.<sup>41</sup> He was not cross-examined and therefore his observations were unchallenged.
41. As at 10 January 2018 Dean Wallace was employed as a farm supervisor by Costa<sup>42</sup>, which was also, at that time, Mrs Ward's employer. He knew Mrs Ward and worked with her. On that day, he was travelling from Wesley Vale to Burnie. At about 5:20am he drove through the Brooke Street roundabout and south on Port Sorell Road. He travelled up the hill and was a fair way along the straight when he saw a black Isuzu 4 WD utility parked on the left hand side of the road. He saw two people on the left side of the road who appeared to be looking for something.

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<sup>39</sup> Exhibit C21-affidavit of Mr Chilcott.

<sup>40</sup> Exhibit C22-affidavit of Mr Dann.

<sup>41</sup> T127.

<sup>42</sup> Costa is a grower, packer and marketer of fresh fruit and vegetables.

He recognised one of them as Mrs Ward. He had not seen her driving the black Isuzu on the road *“but she always drives it at work to various sites and carting stuff about”*. He said he was employed at Costa for four years and she would have been there for about three years and she drove constantly in that time. Mr Wallace observed that the two people were wearing *“fluoro”* vests. They were walking about 20-50 metres in front of their car, in short grass about 2-3 metres from the road and were walking backwards and forwards, as if something had fallen from their car<sup>43</sup>.

42. In his evidence Mr Wallace said he worked on the maintenance side of the business whereas Mrs Ward worked on the harvest side. He confirmed when he saw her driving it was only in the black car which was the same one he observed on the side of the road on 10 January 2018. During harvest time, which was from November to May, he would see her drive the black utility nearly every day. When he saw the two people on the left-hand side of Port Sorell Road he immediately recognised that one of them was Mrs Ward. She was walking away from him which was therefore in a southerly direction. He observed that both Mrs Ward and the second person on the roadside were wearing fluorescent vests and that attire was common place at Costa at the time. He recalled he had seen Mrs Ward wearing fluorescent vests around the work site. He said at that time most of Costa’s employees *“would dress at home, work gear, fluoro gear [and] come to work”*. The headlights of his vehicle were on and it was just on sunrise.<sup>44</sup>
43. He was challenged in cross-examination about seeing Mrs Ward drive the black utility most days and conceded he did not see her drive the black utility most days but he saw it parked at various places on the two farm sites at Mill Road and Wright’s Lane and he had seen her drive it. He properly conceded that his memory was better when he made the statement than when he was giving evidence some years later. He was challenged about most employees not wearing high visual clothing to work in the morning at the time of this accident however he was adamant that the majority did. He said because Mrs Ward was a supervisor she would wear high visual clothing in the field so the pickers could identify her as the supervisor. He was adamant he saw Mrs Ward on the side of the road on the morning of 10 January 2018. He identified the second person as a male who was taller than Mrs Ward. He strongly rejected the proposition that he saw a vehicle he believed belonged to her and then he believed he saw her when she was never out of the vehicle.

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<sup>43</sup> Exhibit C 23 – affidavit of Mr Wallace.

<sup>44</sup> See T146 [37] – T149 [5].

44. In re-examination Mr Wallace said the farm is big and that chariots, where pickers would gather with their harvest, were allocated all around the farm and some would be at least a 5 minute drive away. Therefore the supervisors on the chariots would have to drive around to pick up the gear that they needed and take that equipment to the chariots where they were working. The supervisor's car would move multiple times a day. He said a person that did not work at Costa would never drive a supervisor out to the work site and leave the vehicle at the chariot without the supervisor driving.

45. Given Mr Ward's evidence, which is dealt with in detail below, that he stopped on the left hand side of Port Sorell Road for traffic heading towards the Bass Highway on three occasions after the accident I find he is the male person seen by Mr Chaplin, Ms Lamb, Mr Hennessy, Mr Chilcott, Mr Dann and Mr Wallace. Each of these witnesses saw Mr Ward between 5:05am and 5:20am which is well after this accident occurred given both Mr and Mrs Ward say they left home at 4:15am to 4:20am and the collision occurred on the way to Mrs Ward's workplace.<sup>45</sup> I also find Ms Lamb was mistaken about the make of the vehicle she saw. Each of the other witnesses, apart from Mr Dann who saw Mr Ward but not a vehicle<sup>46</sup> saw a black Isuzu or a dark or black utility which I find was the utility involved in the collision with Mr McHugh. I also find Mr Wallace saw Mrs Ward because he did not resile from that evidence despite robust questioning from Mr Sullivan, he had known her for about three years prior to the collision and he recognised her immediately.

**2. The circumstances and accounts of Mrs Ward's arrival and departure from her place of employment on the morning of 10 January 2018.**

46. The circumstances in which Mrs Ward arrived at, and departed from, her workplace was disputed at the inquest. More particularly, whether Mrs Ward arrived at work after being driven to work by her husband or whether she drove to work herself on 10 January 2018 was a central (and disputed) issue at the inquest. The accounts provided by both Mr and Mrs Ward were inconsistent with each other in parts and largely inconsistent with other witnesses.

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<sup>45</sup> T10 [39]-[43].

<sup>46</sup> I infer this was because he was a left rear passenger in a vehicle which was travelling north and he saw Mr Ward on the western side of the road but not his vehicle which was on the other side of the road.



47. Mrs Ward was interviewed<sup>47</sup> by police officers on the 10 January 2018 after voluntarily attending the Devonport Police Station with Mr Ward. She drove the couple's second vehicle, a yellow Hyundai, to the police station whereas Mr Ward drove the utility<sup>48</sup>.
48. Mrs Ward told police in the interview she had left her home in Devonport at 4:20am, which is the time she usually leaves for work. She initially told police "*got in the car started driving*" but then corrected herself by saying "*David was driving me to work*".
49. Putting aside the evidence as to what occurred on the way to work, as this will be referred to in detail below, Mrs Ward told police that after the accident Mr Ward looked for what he might have hit, dropped her off at work, at which time she believes she told him to drive back to the place where the collision occurred and check again for what he may have hit. She told police that he "*didn't see anything*". She called him back to come and get her because she felt too scared to be at work. He returned and collected Mrs Ward. She explained that she had not been at work long, probably five minutes, before she called him to come and get her. Together they drove back to the location of the collision where Mr Ward searched again. On the two occasions she says she was with Mr Ward when he searched she says she remained in the car.
50. Mrs Ward maintained her account that she was dropped off at work by her husband when she gave evidence on oath at the inquest. She said after the accident and Mr Ward stopping the car and searching, he then drove on to her place of work and dropped her at the office at Mill Road. She felt relieved that they had not located anything by the side of the road but nonetheless she went inside and spoke to her manager, Mr Allen Le, and told him she wasn't feeling the best, was unfocused for work and therefore asked to have the day off.<sup>49</sup>
51. After hearing Mrs Ward's evidence when she gave evidence in the witness box and after considering that evidence and the transcript I formed the view her account was generally unconvincing for the most part and it was marred with an inability to recall or answer questions.<sup>50</sup>
52. Mrs Ward explained that she was worried, given her unfocused state, that she may make a mistake at work. Mrs Ward's reasoning as to why she was not sufficiently focused to be able to

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<sup>47</sup> The interview is exhibit C40.

<sup>48</sup> See the CCTV footage taken outside the Devonport Police Station-exhibit C43.

<sup>49</sup> T18 [7]-[31].

<sup>50</sup> See T 11,12 and 13 for example with respect to her inability to recall or answer questions. There are many other examples.

perform her work and concerned that she might make a mistake made, in my view, little sense in the context of her evidence as to what had just occurred. She explained that her lack of focus was the result of what had just *"happened"* and she agreed when questioned that she thought they had just hit an animal on the way to work and this caused her to be distressed enough to not be able to focus on work for the day. When pressed as to it not making sense that she had to have the day off work in such circumstances she replied *"I can't answer that"*.<sup>51</sup> As she conceded in her interview and in her evidence she had hit a wallaby when driving a car before this collision<sup>52</sup> but on this occasion the sound was different. Despite this her view was they had hit an animal which was bigger and was likely to be a sheep<sup>53</sup>. In those circumstances it makes little sense to then allege she was too unfocused to perform her work and require the day off especially when on her version of events she was not driving.

53. After being dropped off, attending the office and speaking with Mr Le, she called Mr Ward to collect her. She did not see him leave but she said she saw him come back.<sup>54</sup> On her evidence, he did not get out of the car.<sup>55</sup> Later, when questioned she said she did not see Mr Ward return for her because she would have still been inside.<sup>56</sup>
54. With respect to her arrival and departure from work generally, Mrs Ward disputed the proposition of other witness who had provided statutory declarations and/or gave sworn evidence at the inquest that she drove to and from work every day<sup>57</sup>; that she would always arrive at work in the utility by herself<sup>58</sup>; and that she always drove that vehicle to and from work.<sup>59</sup>
55. Mrs Ward conceded that she drove the utility to work *"quite often"*<sup>60</sup> and *"almost every day"*<sup>61</sup> and that she also drove it around the workplace as her job entailed going from one paddock of the farm to the next.<sup>62</sup> Mrs Ward denied she needed a vehicle to perform her supervisory role<sup>63</sup>

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<sup>51</sup> T18 [40]-T19 [13].

<sup>52</sup> T15.

<sup>53</sup> T15 [21]-[28].

<sup>54</sup> T20 [21]-[22].

<sup>55</sup> T45 [39]-[40].

<sup>56</sup> T46 [30]-[33].

<sup>57</sup> Refer to the statutory declarations of Brayden Aitken (exhibit C25) and Matthew Horsten (exhibit C26).

<sup>58</sup> Refer to the statutory declaration of Jade Locking (exhibit C24).

<sup>59</sup> Refer to the statutory declaration of Matthew Horsten (exhibit C26).

<sup>60</sup> T21 [37].

<sup>61</sup> T22 [29].

<sup>62</sup> T21 [13]-[14].

<sup>63</sup> T21 [19]-[20].

however Mr Aitken said it was recommended a supervisor have their own vehicle for use at work<sup>64</sup> and Mr Horsten said that supervisors would use their own vehicles<sup>65</sup> although a supervisor could perform their duties without their own vehicle.<sup>66</sup> The evidence was clear in that the employer did not provide its harvest supervisors with a vehicle.<sup>67</sup>

56. Mr Ward was also interviewed by police officers on the morning of the accident. With respect to the arrival and departure of his wife at the workplace, he too provided evidence that he drove his wife to work that morning. However his account was inconsistent with his wife's account with respect to dropping her off. Mr Ward told police that upon arrival at Costa, he got out of the car and in fact spoke with Allen Le and explained that Mrs Ward was rattled by whatever they had struck. He told Mr Le he thought it was a sheep. As a result, Mr Le told Mr Ward that Mrs Ward should have the day off. They drove away from the work place, intending to stop at the site of the accident again, which they did.<sup>68</sup> He did not corroborate the evidence provided by his wife that he left her at the work place, only to receive a call to return and collect her.
57. Mr Ward was provided with his interview before the inquest as well as that of Mrs Ward. Both interviews were played in court and each of them heard the interview of the other. Mr Ward provided evidence at the inquest that after arriving at Costa he parked the car and Mrs Ward went inside, asked for the day off and then came back outside and they left.<sup>69</sup> He could no longer recall speaking with Mr Le. He did not recall telling him they might have hit a sheep.<sup>70</sup>
58. Mr Ward explained this inconsistency by suggesting that to him, upon watching the interview, it seemed that he was not "100 percent sure..." (with the answers given in the interview).<sup>71</sup> This explanation is not consistent with the interview that was conducted and viewed during the inquest, where Mr Ward's answers appeared to me to be clear, considered and forthright.
59. Mr Ward acknowledged that his version of events was inconsistent with his wife's version and he appeared in his evidence to then not be sure that he dropped Mrs Ward off that day and left.

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<sup>64</sup> T166 [19]-[20].

<sup>65</sup> T211 [31]-[34].

<sup>66</sup> T166 [19]-[20], T183 [36]-[37].

<sup>67</sup> T166 [38]-[40], T211 [31]-[34] and T193 [1]-[4].

<sup>68</sup> See exhibit C40.

<sup>69</sup> T68 [35]-[40].

<sup>70</sup> T69 [2]-[4]. See also T70 [1]-[16].

<sup>71</sup> T69 [13]-[27].

He explained that there had been many times when he had dropped her off at work and she had called him back and he had picked her up.<sup>72</sup>

60. Mr Ward, upon further questioning, did not deny that he had a conversation with Mr Le but could now no longer recall it.<sup>73</sup> Despite making assertions to police in his interview just hours after the accident, he claimed in hindsight that he was shocked during his interview after finding out it was not an animal that he had in fact hit with his vehicle.<sup>74</sup> He again asserted that looking at his interview he did not seem *"100 percent sure by the looks of things as I seemed then."*<sup>75</sup> I do not accept Mr Ward's assessment of his interview because it is inconsistent with the version of events given by Mrs Ward. Moreover, Mr Ward appeared to be reconstructing or recreating his evidence, years later, to explain the inaccuracies in his version of events as compared to that of Mrs Ward. I do not accept Mr Ward was suffering from shock in the interview to the extent that it rendered him unable to provide an accurate version of events as to what had occurred only hours earlier because that evidence is inconsistent with the confident and calm demeanour Mr Ward exhibited during his police interview.

61. In summary, with respect to the evidence of Mr and Mrs Ward relevant to her arrival at, and departure from, the workplace the inconsistencies between them cast doubt on the reliability and credibility of both Mr and Mrs Ward generally. Their interviews were conducted only hours after the incident. The events were fresh in their minds. There is no logical reason for one or either of them to be unable to recall whether Mr Ward remained at the workplace or left before being called back by Mrs Ward. The inference that can be drawn from such an inconsistency is that one or both of them have told a lie about that fact and such a lie is borne from a consciousness of guilt.

62. Mr Allen Le provided two statutory declarations that were directly relevant to the issue surrounding Mrs Ward's arrival and departure from work on the morning of 10 January 2018. These statements were also entirely inconsistent with each other.

63. In his first statutory declaration<sup>76</sup>, Mr Le says he commenced work on 10 January 2018 at the Wesley Vale site of Costa at 4:20am. Mr and Mrs Ward arrived at about 4:35am. Mrs Ward

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<sup>72</sup> T70 [29]-[37].

<sup>73</sup> T69 [37]-T70 [9].

<sup>74</sup> T71 [26]-[33].

<sup>75</sup> T71 [30]-[31].

<sup>76</sup> Exhibit C13.

appeared to be frazzled, said she felt sick and asked for the day off, without further explanation. He sent her home.

64. In his second statutory declaration<sup>77</sup> he says on the morning of 10 January 2018 he *only* saw Mrs Ward at the office. He recalled Mrs Ward asking for the day off which he gave her. He did not see Mr Ward. He was not aware how she left the office area and whether or not she had to call Mr Ward to come and get her or if she drove home herself. He was not aware of how she arrived at work.
65. Mr Le gave evidence at the inquest. His evidence did not assist me in resolving this very significant inconsistency. Indeed, the evidence of Mr Le was so vague, evasive, and inconsistent that the only reliable conclusion I came to was that Mr Le was entirely untruthful in his evidence.
66. Mr Le, in his evidence, said Mr and Mrs Ward arrived together at Costa on the morning of 10 January 2018 and that he recalled she asked for the day off. He denied having any conversation with Mr Ward and had no recall of being told anything about them hitting a sheep with their vehicle.<sup>78</sup>
67. With respect to his second statutory declaration, Mr Le denied seeing or speaking to Mr Ward on the day.<sup>79</sup> He confirmed Mrs Ward asked for the day off however he could not recall that now nor could he recall whether she drove herself home or how she arrived at work.<sup>80</sup> When put to him Mr Le appeared to agree that what he told police at the time of providing the second statement was true and accurate. He told police what he could remember.<sup>81</sup>
68. Mr Le indicated in his evidence that at the time of making his second statutory declaration he had not had an opportunity to refer to his first statutory declaration.<sup>82</sup>
69. Aside from Mr and Mrs Ward and Mr Le, there were a number of witnesses who saw or who were aware of the circumstances of Mrs Ward's arrival and departure from Costa on the morning of 10 January 2018 as well as how Mrs Ward generally arrived at, and departed from, work.

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<sup>77</sup> Exhibit C13A.

<sup>78</sup> T98 [24]-[41].

<sup>79</sup> T101 [39]-T102 [4].

<sup>80</sup> T102 [20]-[35].

<sup>81</sup> T103-T104 [1]-[3].

<sup>82</sup> T108 [5]-[7].

70. Ms Stephanie Powell provided evidence that touched upon Mrs Ward's arrival at, and departure from, the work place although she did not see her on the morning of 10 January 2010. Her evidence in her statutory declaration<sup>83</sup> was Mrs Ward was not at work when she arrived which was unusual. She rang Mrs Ward, who told her that she was still at the office. Mrs Ward told her how to set up for the day but then told her she had to get off the phone, as there was a 'no phone' rule at the workplace. She did not see Mrs Ward that day which was unusual.
71. Ms Powell became aware over the following week about rumours that Mrs Ward had crashed her vehicle and that someone else in the vehicle had died.
72. About a week after the accident she received a phone call from Mr Ward. He wanted to know what was being said about himself, Mrs Ward and the crash. He told her that he had been driving on the morning of the accident and that he was taking Mrs Ward to work.
73. With respect to Mrs Ward's attendance at work generally, Ms Powell's evidence was that Mrs Ward "*always*" arrived at work well before her. She identified the vehicle she drove as a black four-wheel drive utility, which she "*presumed*" was her car. She drove the black vehicle around the work place, running paperwork and equipment about. She had never seen Mr Ward at the Costa work place. She says there is a policy that employees are not allowed to have visitors on the farm.<sup>84</sup>
74. Ms Jade Locking was also employed at Costa and worked with Mrs Ward from October 2017 until April 2018. It was common knowledge at Costa amongst the pickers and supervisors that Mrs Ward only held a learner's licence and she regularly drove herself to and from work. In her statutory declaration, Ms Locking told police that "*she (Mrs Ward) would always turn up to work in a black Isuzu double cab by herself...she would drive from site to site and would often give pickers lifts*".<sup>85</sup>
75. On 10 January 2018, Ms Locking arrived at work at 5:30am and saw the black Isuzu already parked at the office at the old paper mill site, albeit she did not see who, if anyone, was in the car. The headlights were still on. Ms Locking went into the office and asked the manager, Mr

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<sup>83</sup> Exhibit C27.

<sup>84</sup> Exhibit C27.

<sup>85</sup> Exhibit C24.

Le, where Mrs Ward was. He told her she had already gone home. She did not see either Mr or Mrs Ward.<sup>86</sup>

76. Matthew Horsten was employed at Costa but he did not work with Mrs Ward. Like Mrs Ward, Mr Horsten was a supervisor. He was rostered to work on 10 January 2018, and he commenced work sometime between 5:00 and 5:30am. He did not see Mrs Ward arrive at work that morning however he was told by his supervisor that Mrs Ward was involved in an accident and that he saw her arrive at the office that morning in the black Isuzu Ute. The side mirror was hanging off and there were dents along the side of the vehicle.<sup>87</sup>

77. With respect to driving to and from work generally, Mr Horsten's evidence was that prior to the accident "[Mrs Ward] *always drove to and from work in the black Isuzu by herself and always drove around the various sites carting gear about which was required at various locations*". He never saw her being dropped off at the workplace by anyone else.

**3. An examination of the subsequent reports made to police in regards to the cause of the accident, the veracity of those accounts and the movements of Mr David Ward and Mrs Tho Ward after the motor accident on 10 January 2018.**

77. In both their police records of interview and their evidence, Mr and Mrs Ward maintained that they believed they had hit an animal, most likely a sheep. They maintained they did not know they had hit a person until they were told a body had been found and that is why the road was closed.<sup>88</sup>

78. In her interview with police<sup>89</sup>, Mrs Ward explained that after leaving home they got onto the highway, which I infer was the Bass Highway and then drove in the direction of Wesley Vale; thereby leaving the Bass Highway via the exit onto Port Sorell Road. They came to the first roundabout, at the intersection of Port Sorell Road and Piping Lane and Frankford Road and went through it. When they went over the hill they hit something. Mrs Ward then said David hit something. They pulled over and then drove back onto Port Sorell Road where they drove to the second roundabout, at the intersection of Port Sorell Road, Brooke Street and Pardoe Road. At the roundabout they turned back onto Port Sorell Road so they were travelling south back towards where they had hit something. They parked the car and Mrs Ward stayed in the car while Mr Ward

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<sup>86</sup> Exhibit C24.

<sup>87</sup> Exhibit C26.

<sup>88</sup> T80 [19]-[25], T 27 [35]-T28 [34].

<sup>89</sup> Exhibit C40.

got out and was walking on the other side of the road.<sup>90</sup> Mr Ward called out but couldn't see anything or find anything. So she told him to take her to work.

79. Mr Ward dropped her off at work. Mrs Ward told him to go back and check again and she said in the interview he did but he didn't see anything. She then called him to come back and get her and on their way home he looked again. He walked up and down the road and was yelling out "hello" but he didn't see anything. She remained in the car but could hear him calling out. They then went home.
80. When asked about what she thought they had hit, Mrs Ward explained that she has hit a wallaby before and it did not sound like that. She had not hit anything like that before. She described in her interview going into "*panic mode*" and in her evidence she said she "*freaked out*"<sup>91</sup>. Whatever they hit caused her concern because of the loud sound it made. She thought it might have been a sheep they hit.<sup>92</sup>
81. Mrs Ward reasoned in her interview that she and Mr Ward attended the police station because pickers had told her they could not get through to work because the road was blocked.<sup>93</sup> This caused her to believe that something serious had happened, although what exactly that was she did not know, she just knew that it was something bad. In her evidence she also said Mr Le had called and said a body had been found. She conceded she did not tell police this in her interview.<sup>94</sup>
82. Mrs Ward told police that she saw damage to the vehicle after the collision that was not present before. The left side mirror (passenger side door) was hanging off, although it was still attached.
83. I have concluded the veracity of Mrs Ward's version of events which she gave to police about the cause of the collision must be considered with caution. The suggestion that hitting something she believed to be an animal caused such upset and shock so as to prevent her from working or even getting out of the car with Mr Ward to search when on her version of events she was not driving is a very extreme response. Such a response would however be understandable though if the true position was Mrs Ward knew she had hit a person and that she was driving. Indeed, in her

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<sup>90</sup> That is the western side of Port Sorell Road.

<sup>91</sup> T15 [13].

<sup>92</sup> See T15 and T16.

<sup>93</sup> See also T28 [13]-[16].

<sup>94</sup> T28 [43]-T29 [23].



evidence Mrs Ward described her feeling at the time as “*numb*” and she was not thinking after they stopped by the side of the road to search.<sup>95</sup> In addition she could not recall Mr Ward calling out “*Hello, is there anyone there?*” as she asserted in her initial interview with police<sup>96</sup>, before saying in evidence that was what Mr Ward told me he was calling out as she was in the car.<sup>97</sup> One wonders why Mr Ward was calling out and asking if “*anyone*” was there if they believed they had only hit an animal. This casts further doubt on the veracity of their version of events.

84. On Mrs Ward’s account, at no stage during the journey to work and back, after the collision, did she consider they had hit anything other than an animal. It is difficult to reconcile her reaction and response to this, especially given her desire to search not once but at least twice. In Mrs Ward’s interview she also asked Mr Ward to check again on the way home, after he had dropped her off at work, which would be the third time a search was conducted for the animal they assert Mr Ward struck with their vehicle.

85. Mr Ward told police that he searched in the ditch walking up and down to “*see if it was an animal or what it could be*”. He initially contemplated he had hit a person because he first told police he searched to see if he could find anybody and he says “*[a]s well I was praying that if anyone is there let the Lord help me find them because I want to make sure because I wanted to make sure if there was anything that I find it but I couldn’t find anything; nothing.*” He stopped and looked twice but could not find anything. However in his evidence Mr Ward thought after the accident he had hit an animal which he thought was a sheep.<sup>98</sup>

86. After the collision, Mr Ward told police he got out of the car and called out. He was walking up and down, yelling and looking. All he heard was sheep. He explained that whatever it was, they hit it quite hard because the left hand mirror was smashed up against the car. Such was the impact that his wife was “*shaken up from whatever we hit*”.

87. After collecting Mrs Ward from work he returned to the scene and searched once again. He got out and walked up and down. He explained that there was a bit of sunlight at this stage and he saw sheep in the paddock. This led him to think that perhaps the object he struck was a sheep.

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<sup>95</sup> T17 [15]-[16].

<sup>96</sup> T16 [18]-[26]. Mr Ward gave the same version of events in his police interview although in his evidence, at T66 [14] he says he thinks he only called out “*hello*”.

<sup>97</sup> T17 [6]-[11].

<sup>98</sup> T65 [23]-[24] and T69 [41]-[42].

88. The account provided by Mr Ward that he believed he had hit a sheep is not credible. He called out "hello", for reasons that he was unable to reasonably explain at the inquest, save and except that in his experience sheep respond by making a sound to a human call.<sup>99</sup> In the context of the circumstances of the collision (i.e. the speed at which he says he was travelling and the sound of the impact<sup>100</sup>) the suggestion that any sheep or animal that was struck would still be alive is in my view fanciful. Moreover, the suggestion that it could not be located upon not one but two searches<sup>101</sup> is questionable.
89. The report to police and evidence of both Mr and Mrs Ward that they did not know what they had hit at the time of the collision or immediately after should be carefully scrutinized for a number of reasons.
90. First, Mr McHugh was an adult male who would have been walking upright at the point of impact given the evidence of Mr Addison, Mr London and Mr Wright. These gentlemen were able to see him much earlier in the morning when the conditions were darker and visibility was perhaps poorer. They were able to adequately identify him as a male and provide descriptions of what he was wearing and the manner of his gait.
91. Second, Mr McHugh's height<sup>102</sup> and the point of impact on the vehicle (measurable by the damage to the mirror<sup>103</sup>) should have provided some indication that it was not an animal that was struck. What sheep or native wildlife would have been 1.22-1.39 metres' tall? Constable Mason's photographs of fully grown sheep standing next to a police Ford Ranger which had a right side mirror, at its base which was 1.26m off the ground quite clearly establishes a sheep would not have been tall enough to impact with the left hand side mirror of the utility.<sup>104</sup> This should also be assessed in conjunction with other circumstances of the collision including the significant sound of the collision which was described by Mr and Mrs Ward.
92. Third, the accounts that they (or at least Mr Ward) searched twice by walking up and down the side of the road yet failed to find anything is difficult to reconcile with where Mr Ward says he was searching, where witnesses saw him searching and ultimately where Mr McHugh was located.

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<sup>99</sup> T66 [16]-[30].

<sup>100</sup> Mr Ward says in his interview with police, at Exhibit C40, he was driving at just under 100kmph, they hit the object quite hard and the collision was quite a scary sound.

<sup>101</sup> Or 3 searches if Mrs Ward is to be believed.

<sup>102</sup> Dr Ritchey says in his affidavit, Exhibit C5, Mr McHugh was 166cm or 5 feet 5 inches tall.

<sup>103</sup> By comparison the driver's side mirror was measured by Constable Mason to be between 1.22 metres at the bottom to 1.39 metres to the top of the mirror from the ground; see exhibit C35.

<sup>104</sup> See exhibit C35A.

93. Fourth, as noted above there are inconsistencies in the accounts of Mr and Mrs Ward as to their movements after the accident. They have maintained they were together after the accident but the details of their respective versions are not consistent with one another.
94. Fifth evidence about their respective movements after the accident can be inferred from phone records. Telephone checks were conducted on both Mr and Mrs Ward's mobile phones. They show that at 4:38am Mrs Ward called her husband's phone and the call lasted for 104 seconds. The call used the Spreyton mobile phone tower then the call bounced off the Round Hill tower mid call. This is indicative of Mrs Ward moving at the time of the call<sup>105</sup>. The records show that the call was answered and that Mr Ward was in Devonport at the start and end of the call. Mrs Ward was likely to have been in Wesley Vale, according to the phone records.
95. A further call was made at 4:46am from Mrs Ward's phone. The call lasted 49 seconds and bounced off the Wesley Vale tower. It was received by Mr Ward's phone from the Miandetta tower and concluded on the Wesley Vale tower.
96. A third call was made at 4:49am and it was from Mr Ward's phone. This call lasted 26 seconds. It came off the Wesley Vale Tower but changed to the Devonport North West tower. Mrs Ward's phone was using the Devonport Central tower at the start and finish of the call.
97. The phone records provide evidence that Mr and Mrs Ward were *not* together at the time of the accident. They also suggest that initially Mrs Ward was travelling towards Wesley Vale and Mr Ward was stationary, in Devonport, where they reside.
98. After the first call, the inference that can be drawn is Mr Ward has then travelled towards Mrs Ward's location, which is supported by the fact that during the second and third calls his phone is using the Wesley Vale tower.
99. There is no logical explanation for how these calls could have been made and recorded on the Telstra network if Mr and Mrs Ward were together at the time; or indeed why they would need to call one another at all if they were together. On Mrs Ward's version there should only be one call from her to Mr Ward to come and pick her up from work. On Mr Ward's version there was no calls between them. When questioned about these records, both Mr and Mrs Ward could not

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<sup>105</sup> See Mr Betts' affidavit at paragraph 9; see Exhibit C42.

provide a reasonable explanation for the proposition that the phone records placed them in different locations. They could also not explain why, if they were together at the time, they called each other three times.<sup>106</sup> Mr Ward said he understood it would be difficult for the Court to accept they were together if they were calling one another.<sup>107</sup> Mr Ward conceded it did not make sense they would be phoning each other if they were together<sup>108</sup> but despite this concession he maintained they were together.<sup>109</sup>

100. In an effort to support her position that they were together at the time of the calls Mrs Ward said she sometimes would “prank call” Mr Ward’s phone “to see if he brought his phone in the car”.<sup>110</sup> This explanation does not account for the location of Mrs Ward’s phone, as recorded on the network, when the calls were made and the locations of Mr Ward’s phone when the calls were received. It also does not explain the duration of the calls nor the fact that she supposedly prank called him twice in 8 minutes when if they had been together she would have known his phone was in the car after the first call. It also does not explain Mr Ward’s call to Mrs Ward. I do not accept this explanation. It is so unbelievable that the only reasonable inference that can be drawn is that Mrs Ward was being untruthful.

101. There was no further explanation sought from or provided by Mrs Ward when she was questioned by her own counsel at the inquest. She was simply asked whether she knew where the phone towers at, or where, Round Hill, Miandetta, Wesley Vale or the Devonport Silos were. She did not know where the phone towers were at any of these locations.<sup>111</sup> Her knowledge or lack thereof in regards to the location of the towers does not assist me in resolving the inconsistency of the calls being made while Mr and Mrs Ward maintained they were in each other’s presence. Mr Ward was not questioned on this topic at all by his counsel.

102. Given this analysis I simply do not accept Mr and Mrs Ward were together up to the time of the accident.

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<sup>106</sup> Mrs Ward’s evidence at T33 to T41 where she does not remember the phone calls but does not deny they took place. Mr Ward’s evidence is at T81 to T83 where he says in summary he does not recall the conversations on the phone but maintains they were together. Mr Ward understood, at T82 it would be difficult for the Court to accept they were together if they were calling one another.

<sup>107</sup> T82 [39]-[41]. At T83 [8] Mr Ward conceded it did not make sense they would be phoning each other if they were together.

<sup>108</sup> T83 [5]- [8].

<sup>109</sup> T83 [19]-[20].

<sup>110</sup> T35 [23]-[24].

<sup>111</sup> T48 [24]-[39].

**4. A determination of the circumstances leading up to the accident, its cause and its affect on Mr McHugh.**

103. Immediately prior to the accident, Mr McHugh was walking from Latrobe to his father's home at East Devonport, where Mr McHugh was staying. He had sent a message to his father at 2:00am on 10 January 2018 telling him that he was walking home.<sup>112</sup>

104. The observations of Mr McHugh by passing motorists which describe Mr McHugh's movements prior to the accident have been set out in paragraphs 27-30.

105. Mr McHugh's body was located lying slightly on his left side on the western side of Port Sorell Road. His head was pointed towards the west with his feet pointing towards the east. He was located in a shallow but wide culvert next to the road. He was approximately 600 m south of the roundabout at the intersection of Pardoe Road and Brooke Street.<sup>113</sup> In his affidavit<sup>114</sup> the forensic pathologist, Dr Ritchey, noted from the police photographs damage to the bull bar and the left side passenger mirror of the black Isuzu. This appeared to Dr Ritchey to reflect the probable points of impact. Dr Ritchey says Mr McHugh suffered blunt force trauma to the head, thorax, chest, abdomen, arms and legs.

106. Dr Ritchey reported that injuries to the left hip and thigh appeared to reflect the major point of impact. A gaping laceration of the lateral left hip, surrounded by small superficial partial thickness lacerations of the skin reflected the most significant initial impact injury. There were severe bruises to the left side of the scalp and there were severe brain injuries that were likely the immediate cause of death.

107. Dr Richey's opinion as to the cause of death was multiple injuries sustained when Mr McHugh was struck by the vehicle. Further, he was struck on the left side of his body whilst upright or walking, which caused his body to be thrown to the ground where he sustained a fatal injury to the head. Dr Ritchey's opinions were not challenged and I accept them unreservedly.

**5. The identity of the driver of the vehicle involved in the motor accident involving Mr McHugh on 10 January 2018.**

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<sup>112</sup> See paragraph 19.

<sup>113</sup> Exhibit C36-affidavit of Senior Constable Wylie.

<sup>114</sup> Exhibit C5.

108. Throughout the course of the police investigation into the accident and the inquest Mr and Mrs Ward maintained that it was Mr Ward driving the vehicle at the time of the collision.
109. There are a number of factors however which cast considerable doubt on their version that Mr Ward was driving the vehicle at the relevant time.
110. The evidence provided by Mr Ward at the inquest with regards to his searching at the side of the road requires examination. What follows suggests to me Mr Ward was not searching in the correct area. Mrs Ward agreed in her police interview that on both occasions they stopped their vehicle, when she was present, it stopped close to where they thought the collision occurred.<sup>115</sup>
111. In his interview with police he said they drove through the first round about and came up a hill and then the collision occurred. He drove to the second round about, turned around and drove back towards the first roundabout. Mr Ward could not say in his evidence how far back towards the first roundabout he drove because it was dark.<sup>116</sup> He could not give an estimate of how long he searched for or how much distance he covered, despite being pressed.<sup>117</sup>
112. With regards to the first time he stopped to search, Mr Ward said in his police interview "*the sun started to come up a little bit*" and he was able to see about 300 sheep in a paddock near where he stopped to search. However as mentioned he still claimed it to be too dark to remember with any certainty where he parked. He could not say how far he may have walked when searching or how much distance he may have covered.
113. In relation to the second time he stopped to look he said in his police interview there was a bit of light and that is when he noticed the sheep. However in his evidence he denied the light was getting a little better and he said it was still dark<sup>118</sup> before he conceded it was a bit lighter after it was put to him that's what he said in his interview.<sup>119</sup> He then reverted to his original position in his evidence that it was "*still very dark. I think sunrise that day was at 6 something...*" Clearly this is a reconstruction as a simple search revealed sunrise; that is direct light from the sun, on that day at East Devonport was at 5:53am. However prior to sunrise there is dawn which commences

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<sup>115</sup> Her evidence at the inquest was at odds with this. When questioned about where the vehicle stopped on both occasions she said she could not remember: T11-13 and T23.

<sup>116</sup> T63 [5]-[17].

<sup>117</sup> See T64.

<sup>118</sup> T72 [10]-[12].

<sup>119</sup> T72 [17]-[18].

with the first sight of light in the morning and which continues until the sun rises or breaks the horizon. This light is indirect sunlight which is scattered in the atmosphere. He could not recall if he was searching in the same place as the first time or not but he assumed it was near where the collision had occurred. Again he claimed it was too dark to remember with any certainty where he parked<sup>120</sup> and he could not say how long he looked for or how far he may have walked when searching.<sup>121</sup>

114. Despite this evidence, Mr Ward said he wanted to have a “*really good look*” in his efforts to find whatever they had hit<sup>122</sup>. Mr Ward was shown a photograph<sup>123</sup> to assist him to identify where he may have searched<sup>124</sup>. After being shown that photograph Mr Ward believed he had searched in the area onwards from the first roundabout and just at the top of the hill before proceeding downhill towards the second roundabout because that’s where he believed the accident had occurred<sup>125</sup>.

115. Despite searching in the area twice by walking up and down the road, Mr Ward maintained that he did not come across Mr McHugh’s body. Had Mr Ward in fact been searching in the location showed to him in the photograph, which is the same location he described in his police interview and evidence, he arguably would have found Mr McHugh. I do not accept Mr Ward’s evidence it was not light enough for Mr Ward to see Mr McHugh’s body at the time he was searching for it because the evidence from a number of other witnesses discussed above establishes they were able to see Mr McHugh and they saw him prior to when Mr Ward was searching.

116. Lending support to the proposition that Mr Ward was searching in the wrong area is the evidence of a number of the witnesses already referred to who identified a male person who I have found was Mr Ward by the side of the road that morning. Mr Dann’s evidence was that Mr Ward was searching in an area close to the Brooke Street or second roundabout on Port Sorell Road. Photographs of the area where Mr Dann saw Mr Ward searching were tendered at the inquest along with his statement.<sup>126</sup> They do not depict the same area Mr Ward says he was

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<sup>120</sup> T73 [13]-[14].

<sup>121</sup> T73.

<sup>122</sup> T74 [33]-[34].

<sup>123</sup> Photograph 10 of exhibit C39.

<sup>124</sup> Exhibit C39, photograph 10

<sup>125</sup> T77 [36]-T78 [7].

<sup>126</sup> Exhibit C22.

searching. They also do not depict the location where Mr McHugh's body was located which on balance is much closer to the place of impact than where Mr Dann saw Mr Ward searching.

117. Mr Chaplin's evidence was that he identified Mr Ward was searching in an area closer to the Frankford Road roundabout; that is the first roundabout on Port Sorell Road that a driver encounters when exiting the Bass highway. Photographs of this area were tendered along with Mr Chaplin's statement.<sup>127</sup> They do not depict the same area Mr Ward says he was searching. They also do not depict the area where Mr McHugh's body was located. In addition Mr Chilcott<sup>128</sup> and Mr Hennessy<sup>129</sup> saw Mr Ward searching on the eastern side of Port Sorell Road while Mr Wallace<sup>130</sup> saw both Mr and Mrs Ward searching on that side of the road. One explanation for Mr Ward not looking in the correct area and not finding Mr McHugh was that he was not present when the collision occurred and therefore had to rely on Mrs Ward's advice as to the area on the roadway where it occurred. She was unable to provide accurate advice because as she said in her police interview she "*was in panic mode.*"

118. The evidence from Mrs Ward's fellow employees at Costa strongly suggests she drove the black Isuzu almost every day, if not every day, to and from work. In addition the evidence established that it would be difficult for a supervisor such as Mrs Ward to perform her duties without a vehicle and she did drive the black Isuzu around the workplace. Ms Locking's evidence was that it was not until *after* the accident that Mrs Ward was dropped off at the workplace every day. She was dropped off by Mr Ward.<sup>131</sup>

119. Mr Ward had reportedly not been seen at the work site by any witnesses save and except Mr Le. Evidence at the inquest established that Mr Le and Mrs Ward had known each other for a long time, they went to school together in Queensland, were friends<sup>132</sup> and Mr Le was living with Mr and Mrs Ward at the time of the accident.<sup>133</sup>

120. Mrs Ward did not hold a full driver's licence at the time of this accident and she, up until 9 June 2022, had never held a full licence. She had a learner licence but had lost that licence some time prior to this accident because she had been apprehended for driving while unaccompanied

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<sup>127</sup> Exhibit C17.

<sup>128</sup> Paragraph 38.

<sup>129</sup> Paragraph 37.

<sup>130</sup> Paragraph 41.

<sup>131</sup> T195 [25]-[31].

<sup>132</sup> T54 [4]-[25].

<sup>133</sup> T98 [4]-[7].



by a full licence holder.<sup>134</sup> On her own admissions, she regularly drove alone despite the fact that she was prohibited by law to do so.<sup>135</sup> In addition she drove the couple's other vehicle, a yellow Hyundai, to the interview with police later that morning.<sup>136</sup> Therefore, the motivation existed for both Mr and Mrs Ward to lie about the true identity of the driver of the utility on 10 January 2018.

121. The phone records referred to in detail above refute the suggestion that Mr and Mrs Ward were together in the utility on the way to her work place as they suggested in their evidence. The phone records suggest Mrs Ward left her home on her own and phoned Mr Ward part way through the journey, travelling towards Wesley Vale. This evidence further suggests Mrs Ward called Mr Ward after the accident no doubt in distress as she claimed in order to seek his assistance.

122. The inconsistencies in their initial report to police about the arrival and departure from work is significant. It must have been fresh in the minds of both Mr and Mrs Ward precisely what had happened when Mrs Ward arrived at work. For this detail to be recounted differently so shortly after the events casts significant doubt on their assertions generally as to the journey to work that morning.

123. Furthermore, there are inconsistencies as to the alleged conversation between Mr Ward and Mr Le at Costa immediately after the collision. Mr Ward told police<sup>137</sup> such a conversation took place and although when giving evidence he could not recall the conversation he did not deny it had occurred.<sup>138</sup> That was not corroborated by either Mr Le<sup>139</sup> or Mrs Ward<sup>140</sup>. In fact, Mrs Ward's evidence was in direct opposition to this assertion. Her account both to police and at the inquest was that Mr Ward did not get out of the vehicle at Costa and therefore did not go to the office to speak with Mr Le. He dropped her off and then picked her up.<sup>141</sup>

124. Evidence at the inquest from Ms Locking and Mr Aitken was consistent with respect to a meeting that was held at Costa at the end of the day on 10 January 2018. That evidence was Mr Le gathered supervisors together for a meeting at which he told them that someone had been run

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<sup>134</sup> T55 and T57. Also see exhibit C35 where Constable Mason says he checked her licence status and found her to have been an unlicensed driver since 7 September 2016 when a disqualification period had ended after she was found guilty of being an unaccompanied learner. She was the holder of an expired L2 licence.

<sup>135</sup> See for example T21.

<sup>136</sup> Mr Ward drove the Isuzu to the police station. This is captured on CCTV footage at exhibit C41.

<sup>137</sup> See Mr Ward's record of interview at C40.

<sup>138</sup> T70 [11]-[22].

<sup>139</sup> He does not say in his statements he spoke to Mr Ward. Also see T98 [35].

<sup>140</sup> She does not say in her statement to police that Mr Ward spoke to Mr Le at this time.

<sup>141</sup> T19-T20.

over and killed and it was Mrs Ward who had done it<sup>142</sup>. He further told them she would be off work for a while. There was no mention of Mr Ward at that meeting.<sup>143</sup> This is also consistent with the evidence of Mr Aitken, who stated that Mrs Ward did not return to work for a month after the incident and when she did return, she was always dropped off and picked up by Mr Ward.<sup>144</sup> Mr Aitken's recall of the meeting was that they were told about the accident and it was suggested "you know who drives a black Isuzu ute, it was Taro (Mrs Ward)".<sup>145</sup>

125. The utility was fitted with a "dash cam". This was provided to police after the accident by Mr and Mrs Ward. Constable David Fitzgerald was one of the police officers who interviewed Mr Ward. At the conclusion of that interview, he took Mr Ward home. Mr Ward provided the dash cam to Constable Fitzgerald, and told him that it had not been in the vehicle at the time and that he had "deleted" it the night before.<sup>146</sup> The camera had clearly been removed from the vehicle, as the vehicle was seized as part of the investigation and prior to the interviews<sup>147</sup>.

126. In her evidence, Mrs Ward said they had got the footage out of the vehicle and looked at it and it cut out.<sup>148</sup> She appeared to suggest that the footage may have wiped when they took it out which can occur if the USB for the device is not ejected properly.<sup>149</sup> Her evidence about the dash cam footage is inconsistent with Mr Ward, who said that it had been wiped the night before and was not even in the vehicle at the time of the accident.

127. Mr and Mrs Ward's evidence was unsatisfactory and unreliable. As highlighted above there were a number of internal inconsistencies with respect to their own evidence and also with the evidence of each other. Further when giving evidence at this inquest they both claimed they could not recall some very important details with respect to the accident and its aftermath which they were able to provide to police in their respective interviews. I do not accept they could not recall these details as they claimed given the seriousness of this matter. These details are not something one would forget or be unable to recall given Mr McHugh's death. Moreover, their evidence was largely contradicted by other witnesses, who had nothing to gain by giving evidence in these

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<sup>142</sup> See exhibits C24 and C25. When Mr Le was questioned by Counsel Assisting he could not remember saying this although like other things he said at the meeting he did not deny saying it. However by the time he was questioned by Mr Sullivan his memory had returned and he had a recollection of not saying it.

<sup>143</sup> T168 [40]-[41] and T195 [1]-[2].

<sup>144</sup> See exhibit C25 and T169 [1]-[4].

<sup>145</sup> See exhibit C25.

<sup>146</sup> Exhibit C33.

<sup>147</sup> It is not depicted in photograph 77 of C39.

<sup>148</sup> T58 [7]-[9].

<sup>149</sup> T58 [13]-[16].

proceedings, or by objective records. The evidence, when considered in its entirety, very strongly suggests Mrs Ward was in fact the driver of the utility which collided with Mr McHugh on the morning of 10 January 2018 and the evidence she was unlicensed provides a plausible explanation as to why Mr Ward claimed responsibility for driving the vehicle at the time of the accident. I am therefore satisfied to the *Briginshaw* standard Mrs Ward was the driver of the vehicle involved in the motor accident involving Mr McHugh on 10 January 2018.

### Conclusions

128. My formal findings are set out in paragraph 3. In the early hours of 10 January 2018 Mr McHugh was walking from Latrobe to his father's home in East Devonport. He turned off the Bass Highway onto Port Sorell Road at approximately 4:00am and continued walking in a general northerly direction. Mrs Ward woke, got ready for work and made a cup of coffee before driving from her home in Devonport onto the Bass Highway and then onto Port Sorell Road. She was driving the utility. She intended to drive to the old Wesley Vale Pulp Mill site where the main office of her employer was located.<sup>150</sup> While on Port Sorell Road Mrs Ward was driving at a little less than 100km/ph. By this time Mr McHugh had walked through the first roundabout on Port Sorell Road and had just walked over a hill on the western side of the road and was headed towards the second roundabout. As Mrs Ward drove over the same hill the left front corner of the Isuzu collided with Mr McHugh and as a result he was fatally injured.

### Comments and Recommendations

128. The circumstances of Mr McHugh's death are not such as to require me to make any comments or recommendations pursuant to Section 28 of the *Coroners Act* 1995.

129. I acknowledge and thank First Class Constable, now Senior Constable Sven Mason for his thorough investigation.

130. I convey my sincere condolences to the family and loved ones of Mr McHugh.

Dated: 28 February 2024 at Hobart in the State of Tasmania.

  
Magistrate Robert Webster  
Coroner

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<sup>150</sup> See Mrs Ward's police interview; exhibit C40.