

CITATION: *Inquest into the death of Xavier Nicholas Lengyel*
[2019] NTLC 005

TITLE OF COURT: Coroners Court

JURISDICTION: Darwin

FILE NO(s): D0040/2018

DELIVERED ON: 12 April 2019

DELIVERED AT: Darwin

HEARING DATE(s): 19 & 20 March 2019

FINDING OF: Judge Greg Cavanagh

CATCHWORDS: **Traffic collision between unregistered motorcycle and vehicle, substandard police investigation, referral back to Police and DPP**

REPRESENTATION:

Counsel Assisting: Kelvin Currie
Counsel for Police: Helena Blundell
Counsel for Maxine Holden: Josh Nottle
Counsel for Family: Peter Bellach

Judgment category classification: B
Judgement ID number: [2019] NTLC 005
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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0040/2018

In the matter of an Inquest into the death of
XAVIER NICHOLAS LENGYEL
ON 14 MARCH 2018
AT LEONINO ROAD, DARWIN RIVER

FINDINGS

Judge Greg Cavanagh

Introduction

1. Xavier (the deceased) was 16 years old. He was born on 3 April 2001 in Darwin to Cheynay and Asher Lengyel. He had a twin brother and a sister.
2. He was a student in year 11 at Taminmin College. He had completed a Certificate I in engineering and had commenced a Certificate II course in carpentry. He had been driving with a licence (on his "P"s) for six months.
3. He was an active member of Top End Motocross Club, Motor Sports NT Club, the Darwin Pistol Club and the Army Cadets.
4. He lived with his family on an eight hectare (20 acre) property in the rural area of Darwin River. The property frontage is to Leonino Road, a road that runs from the Stuart Highway through to Darwin River Road. Most of the road is relatively straight. It is sealed and in early 2018 the speed limit was 100 kilometres per hour. Below is a photograph showing the driveway to the property and the view down Leonino Road to the west.



Image 1 - Leonino Road from the driveway of the family of the deceased, looking west

5. Xavier competed in motocross on a Kawasaki KX250F. It was a dedicated motocross bike and not able to be registered. It had no lights or blinkers. Most afternoons after school he rode the bike. He rode around the family property and to a quarry about ten minutes away. He was known to like watching the sunset from the quarry.
6. After school on the afternoon of Wednesday, 14 March 2018, Xavier rode around the property for a period of time. He then left the property and likely rode to the quarry.
7. After sunset, Xavier was returning home. He was wearing a helmet, boots and gloves, a long shirt and shorts.
8. At the front of the family property was the crest of a hill. After proceeding over the crest the road declines to another crest before declining further as seen in the photograph below.



Image 2 - looking west down Leonino Road in the late afternoon

9. Xavier was about 200 metres from the driveway of his residence. He was riding in a easterly direction up the hill. There were double white lines down the middle of the roadway.
10. Travelling in the opposite direction were two vehicles. A white Commodore utility and behind it, a green Subaru Forester driven by a mother with two of her daughters as passengers. The driver of the Commodore utility said he was travelling at 70 – 80 kilometres per hour.
11. The driver of the green Subaru pulled out over the double unbroken white lines to overtake the Commodore utility. The Subaru and the motorcycle ridden by Xavier collided. The point of impact was on the front passenger side of the Subaru. Xavier hit the windscreen and the roof of the Subaru before being thrown over the vehicle, coming to rest on the grass verge on the same side of the road upon which he was travelling. It is likely he died instantly in the impact with the vehicle.

12. The driver of the white Commodore utility continued down Leonino Road until he was able to find a place to turn around and then drove back to the scene of the collision. He said he rang the Police immediately. His phone records indicate that the call was made at 7.20pm (and 11 seconds). Police communications record receiving that call at 7.20pm (and 46 seconds).
13. He can be heard during the call exiting his vehicle at about 7.24pm. That accords with his memory that it took him a few minutes to find a place to turn around and return to the scene.
14. It is difficult to convey the lighting at the time. Photographs are not often very helpful in providing a true representation of lighting as seen by the human eye. Evidence as to the extent of cloud cover taken from Police Body Worn Video 10 kilometres away suggests light cloud cover.
15. Geoscience Australia note that sunset on that day at Darwin River was at 7.02pm (GPS 12°48', 130°59'). "Night" commenced at 8.12pm. Between sunset and night time there are three periods of twilight, each approximating to 6 degrees depression of the sun over the horizon. The first twilight is termed "Civil Twilight". It commences as the sun dips over the horizon and finishes when the sun is 6 degrees below the horizon. Civil Twilight finished at 7.23pm.
16. The term Civil Twilight is usually defined to include words along the following lines: "during which on clear days there is enough light for ordinary outdoor occupations". The end of Civil Twilight is defined by Geoscience Australia as:

"the instant in the evening, when the centre of the Sun is at a depression angle of six degrees (6°) below an ideal horizon. At this time in the absence of moonlight, artificial lighting or adverse atmospheric conditions, the illumination is such that large objects may be seen but no detail is discernible. The brightest stars and planets can be seen and for navigation purposes at sea, the sea horizon is clearly defined."

17. Xavier was deceased and obviously so. The force of the impact had stripped his clothes from him. The description from the Forensic Pathologist, Dr Marianne Tiemensma was in the following terms:
 - Multiple blunt force injuries, including large lacerations to the right hip, right thigh and left groin area.
 - Multiple limb fractures (both forearms and both femurs).
18. The Subaru stopped 118 metres past the point of impact in the right-hand lane. That is, the same lane that it was in while passing the Commodore utility. The motorbike was thrown backwards and across to the other side of the road 36 metres from the point of impact.
19. A photograph taken the next morning of the scene shows the motorbike and the green Subaru further down the road where it stopped. The point of impact was adjacent to the driveway on the right hand side of the photograph:



Image 3 - scene of collision

Police Investigation

20. Police first responders arrived at the scene at 7.50pm. Major Crash Unit investigators arrived at 9.30pm. They received a briefing from the Police that arrived as first responders at the scene. That briefing included information that the collision occurred at 7.30pm, that the utility had pulled out of a driveway and turned right onto the roadway, that the driver of the Subaru had attempted to overtake over double white lines and that the driver saw the motorcycle on the rear wheel and swerved right. The Major Crash investigators remained until 11.10pm. They returned early the next morning.
21. Major Crash investigators told media:
 - The death was “tragic, unavoidable and unnecessary”;
 - The collision happened at about 7.30pm;
 - It was dark;
 - There were no streetlights;
 - The motorcycle didn’t have any headlights;
 - The motorbike wasn’t registered.
22. The Major Crash Investigators did not return that evening or at an evening shortly thereafter to check the lighting at the time of the collision. It was not until the following year in the lead up to the Inquest that evidence was gained as to lighting. That of course was not ideal in part because weather conditions and cloud cover may have been different.
23. The day following the collision the driver of the Commodore utility went to the police station and provided a statement. He said he had travelled from Palmerston and travelled the full length of Hopewell Road before turning right onto Leonino Road. He said he was travelling at approximately 70 kilometres per hour. He went on to say:

“I’m quite sure I actually saw the person behind me indicate to overtake ... I do remember in my peripheral vision and in the rear view mirrors seeing an illumination [of the blinkers], it was dark enough for that to take place”

“It was so quick I just have a vision of something flash by me ... I would say it was not lit, but it was dark enough that I wasn’t able to identify fully the object that passed me by on the right hand side of the oncoming lane ... If I didn’t hear the engine when it went past me I probably would have drawn an initial conclusion it was a bird.”

24. A statement was also taken from a person living in the area who had arrived at the scene after the arrival of Police on 15 March 2018. He told Police that he had seen a dirt bike the previous evening at about 7.00pm doing a wheel stand at about 80 kilometres an hour down Leonino Road, passing McCaw Road and heading west.

25. Two of the first responding Police provided short statements on 19 March 2018 and another police officer provided one on 21 March 2018.

26. Two further statements were taken on 21 March 2018. The first was from the 15 year old who was a back seat passenger in the Subaru at the time. She said in part:

“This white Ford ute pulled out in front of us but I don’t know where he came from though. As we were travelling my mum looked to make sure there was nothing coming. She overtook and then she just seen this white stripe going to like her face and then the motorbike hit us front on.”

27. She said the collision was at 7.30pm and that her older sister, sitting in the front passenger seat, was reading to her mother a text message at the time of the crash. When asked to describe the weather she said it was “dark”. She went on to say: “we don’t know from where [the utility pulled out] cause it was too dark to see the signs”.

28. When asked at what point her mother crashed into the motorcycle, she said: “When the motor cycle was doing a mono in the air”. When asked whether

she had seen Xavier riding his motorcycle on Leonino Road before, she said:
“He was on the road, but on the dirt, doing wheelies.”

29. Later that day a statement was taken from another daughter of the driver of the Subaru who had arrived soon after the collision and assisted with managing traffic at the scene. She said when she got there “it was dusk”. She said her mother told her the “ute” pulled out in front of her and “she went around it and all she seen was something coming towards her on its back wheel and then bang”.
30. No further statements were taken for a month. On 20 April 2018 two statements were taken. The first was from the 19 year old daughter that had been sitting in the front passenger seat of the Subaru at the time of the collision. She said:

“There was a white ute that pulled out in front of my mum. Now to this day I couldn’t tell you where this car pulled out in front of us. I’m pretty sure it was off Duddell Road, or it was actually at Xavier’s house ... then all we knew was mum went to overtake cause this car pulled out in front and thinking there was no cars coming the other way cause there was no lights, she went to go around thinking it was safe to do so and then all of a sudden there was a dirt bike on the road that was on one wheel and all I seen was a blue stripe and then next minute it was bang ...

We all seen this vehicle come flying out of the corner, or out of the driveway ... and then mum went around and all of a sudden we’ve seen this thing up on one wheel, my mum had to look again and before we knew it was too late for us to even try to avoid the motorbike, like we swerved and tried our hardest but it all happened all too quick.”

31. She said it was “just on dark” when they left to head home (about 15 minutes before the collision). She said “it was pretty dark”. She said her mother was doing about 100 kilometres an hour. She said she knew that because her mother told her. She estimated the speed of the white utility at 60 kilometres per hour. She said her mother had hair dye in her hair that needed to be washed out so she washed it out in a house close by to the

scene of the collision. She said her mother couldn't bear to go up to the see what had happened to the person on the bike so she, the daughter, had gone up to see what had happened. She said the man from the white utility wouldn't let her near the body.

32. The second statement taken that day, was from the person who lived in the property closest to where the Subaru had come to a stop. That person told the Police that she heard something that sounded like a backfire and then minutes later female voices sounding distressed. She rang her adult son who lived in a house further back on the property and asked that he check what was happening. Her son came back to get a covering for Xavier's body and his mother went with him to the scene and shortly thereafter accompanied the driver of the Subaru back to wash out hair dye in the shower. She said she thought she rang her son at about 7.20pm

33. Three days later, on 23 April 2018 (that is, 5 weeks after the collision) the Police interviewed the driver of the Subaru. She said:

“It was pretty dark, about 7.30, and along that road, a white ute pulled out in front of me. I still don't know which driveway he came out of, or where he came from because it was so dark, and then there was a hill and he was swerving all over the road, so I checked to make sure that there was nothing coming in the other direction and I indicated to go around, and as I indicated to go around, all I seen in the air was a wheel and a yellow stripe on a sleeved shirt. So I tried to move over as far as I could. He hit the passenger lights and he went over the top ... there were no lights on the bike. It was dark. You couldn't even see. And he was doing a wheelie ...all that I've seen was a wheel above my windscreen.”

34. Later, during the course of the interview the driver said:

“He just pulled out in front of me ... he was sitting on about 60 ... I slowed down and then indicated to go around him.”

35. When asked if she braked, she said: “Yeah otherwise I would have hit him up the bum”. When asked how long he was swerving all over the road, she said: “A few minutes and I went around him.”

36. Examination of the motorcycle confirmed to investigators that it had not been doing a wheel stand at the time of impact. There was extensive damage to the front wheel and forks. The Subaru also had an impression in the front bonnet from the motorcycle front fork and damage to the bumper bar considered by investigators to be caused by the motorcycle front wheel.



Image 1 - Yellow arrow indicates impression in bonnet from motorcycle front fork. Blue arrow indicates damage caused by motorcycle front wheel

Image 4 - Image and explanation from Police Crash Report.

37. On 26 June 2018 the investigation brief was provided to my office. The investigating officer concluded that the Commodore utility pulled out of Duddell Road (that extends from Hopewell Road) onto Leonino Road. That is undoubtedly because that is what the driver of the white utility told the police communications operator when he rang moments after the collision;

that is what he repeated in his interview the following day; and at least one of the occupants of the Subaru thought that may have been the case.

38. Where the Commodore utility pulled out is important to what transpired thereafter. If it pulled out of a driveway close to point of impact there might be some suggestion that the driver of the Subaru was taken by surprise and was in the course of a defensive manoeuvre at the time of the collision.
39. The intersection where it was concluded the Commodore utility turned onto Leonino Road is approximately 1400 metres before the collision site. The double white lines do not commence until about 400 metres before the collision site. The mere fact of the distance indicates that the passing manoeuvre was unlikely to be because the Commodore utility pulled out in front of the Subaru unexpectedly.
40. However the investigator, for reasons that were not apparent, calculated the distance from the intersection of Duddell and Leonino Roads to the collision as 650 metres. That miscalculation prevented an appropriate recognition that it was likely that the Subaru simply caught up to the Commodore utility after following it for a kilometre prior to the overtaking manoeuvre.
41. The investigator also concluded that the collision happened at 7.30pm. In his opinion it was night time and it was “not reasonable to expect a vehicle to be driving along the road without headlights”. He concluded that as the overtaking movement was likely to have commenced at the top of the crest and from there headlights of oncoming vehicles would have been easily visible that the actions of the driver were a breach only of the road rules (crossing double white lines) and were not negligent or reckless.
42. That view omitted to take into account that, as readily seen from the photographs, there is a second crest that obscures visibility from the top of the hill.

43. The same evidence supplied to my office, with those same mistakes and omission was provided by the investigating officer to the Director of Public Prosecutions when seeking an opinion on potential charges. On that evidence it was agreed that the breach of the road rules was the only viable charge.
44. On the basis of the information provided the Deputy Coroner deemed an Inquest to be unnecessary and provided the reasons for that opinion to the Lengyel family on 7 August 2018.
45. However, on 14 August 2018 the family explained the mistakes and omission. That led to my Office seeking the opinion of an expert in crash investigation. Mr David Tulloch agreed to undertake a desktop review of the police investigation on 25 September 2018. He provided his report on 9 October 2018. The report indicated that among other things the variances in some of the evidence needed to be resolved. He suggested that a way to achieve resolution was for Police to use appropriate interviewing techniques with the witnesses to clarify time, distance and location evidence.
46. On 10 October 2018 his report was provided to Police. At that same time I determined to investigate the matter further by way of Inquest. Formal notification of the Inquest was provided on 8 November 2018.

Reinvestigation

47. The Police undertook to reinvestigate the collision and allocated that to their Southern Major Crash Unit in Alice Springs, specifically to Detective Sergeant Michael Schumacher. In my dealings with Detective Schumacher over the years I have always found him to be conscientious and hard working. He put a great deal of effort into the reinvestigation and I thank him for that.
48. Detective Schumacher obtained all of the body worn video from police officers at the scene, obtained a further nine statements and reinterviewed

the driver of the Commodore utility. He also offered to the driver and occupants of the Subaru the opportunity of attending the scene with Police to identify the location, distance and timing of the various aspects of their evidence. The front seat passenger in the Subaru took up that opportunity. The evidence provided confirmed that the Commodore utility entered Leonino Road from Duddell Road and at the time of its entry, the Subaru was about 200 metres further back along Leonino Road.

49. One of the statements obtained was from the young man whose mother had heard the noise and asked him to go and see what happened. In his statement he said:

“It was late in the afternoon, just coming on dusk when my mum called me on my mobile phone and told me that she had just heard a loud bang and then heard a loud scream ... I can't be certain of the time but I remember that it was still light enough for me to clearly see outside my house when I was on the phone to her.”

Once I got to my driveway I could clearly see the accident scene ... I recall it was just on dusk but there was still enough light for me to see where everybody was standing and I could clearly see where the [Subaru] was parked and I also saw where the motorbike was lying on the road ... I also remember seeing a sticker on the motorbike which was black with white writing, “Xavier”. There was still enough light around at the time for me to clearly see the detail of the sticker and be able to read the writing.”

50. During the course of the Inquest the young man said that the level of light was similar to the following photograph.



Image 5 – looking up road from about where the Subaru stopped after the collision to the top of the hill

51. Detective Schumacher concluded that there were errors made in the first investigation. He stated:

“The first of these errors relates to the distance from the crash scene to the Duddell Rd intersection.

The second relates to an error with regards to the time of the crash. In both the Coronial Covering Report and Opinion file memorandum the crash was estimated to have occurred about or around 7.30pm. This is an important issue as sunset on the night of the crash was 7.01pm [for Darwin] with ‘last light’ recorded at 7.22pm [for Darwin]. The term ‘last light’ is a colloquial term which is inaccurate as there is still light in the environment after this time. Geoscience Australia use the more accurate term of ‘Civil Twilight’.”

Inquest

52. A number of witnesses were called to give evidence during the course of the Inquest. They included the driver and front seat passenger in the Subaru.

53. The driver provided evidence to the following effect:

- It was really dark, you couldn't see anything;
- That she was over the crest of the hill and the white utility pulled out slowly about 3 metres in front of her vehicle;
- She couldn't recall saying to the first responding police officer "There was a ute in front of us. He pulled out of the intersection up there";
- That she was going 80 to 90 kilometres an hour at the time;
- The white utility was all over the road for a few seconds;
- She did not brake;
- The white ute was going a little bit slower;
- She put the blinker on, checked over her shoulder, checked the road ahead and then pulled out to overtake;
- She saw the bike with its wheel up;
- "There would have been enough room if he was on two wheels because when I seen him with the wheel I tried to move over a little bit, but he was on one wheel";
- First saw the bike when the wheel was going over the top of the windscreen;
- Only driven that road a few times before;
- Was adamant the white ute didn't come out of Duddell Road, "Because if he come out of Duddell I would have had all that other time to go around him and he didn't come from Duddell";
- However, when asked about her prior knowledge of the double white lines, she objected on the ground that answering might incriminate her in an offence. Her lawyer advised that the offence of concern was section 174F *Criminal Code Act*.

54. The front seat passenger provided evidence to the following effect:

- The white utility pulled out of Duddell Road or a driveway close to Duddell Road;
- The Subaru was a couple of hundred metres behind the white ute when it pulled out;
- The vehicle she was in was doing about 90 kilometres an hour and it closed on the white utility which was doing about 60 kilometres an hour;
- Her mother decided to overtake the white utility;
- “She went to go around because the ute was going so slow”;
- Her mother started passing before the double white lines;
- She saw the motorbike about five metres ahead on one wheel before it hit the vehicle;
- Saw a green flash and then a bang;
- Recalled her mother saying ‘Shit, hold on girls, a motorbike’ and then it hit;
- By the time the first person attended the scene (the son of the neighbour) it was “really dark”.

55. The driver of the white Commodore utility gave evidence to the following effect:

- He drove down Hopewell Road and onto Duddell Road and turned right onto Leonino Road;
- The “relatively late in the afternoon ... light was dim, dusk perhaps even lending on dark”;
- Was driving at 70 – 80 kilometres an hour;
- First noticed the car behind when it turned on its blinker to go around him because the blinker “illuminated the interior of his vehicle”;
- It was over the crest at the top of the hill;

- Looked in the rear vision mirror, looked back and it was like a camera flash as the bike went passed;
- First saw the bike when it was two or three bike lengths in front of the vehicle;
- He heard the bang like a thunderclap and immediately called “000”.

56. If the crash investigators are correct in their opinion that the front wheel of the motorcycle was on the ground at the point of impact, it is difficult to accept the estimates of the very short distances and time involved between seeing the motorcycle and impact and the version that Xavier was riding on the back wheel. There are three reasonably available scenarios:

1. Xavier was riding on the rear wheel when he was first sighted but by the time of impact he had lowered the front wheel to the road surface. Lowering the front wheel would have been physically impossible in the split second that the witnesses suggest transpired between them seeing the motorcycle and the impact.

That indicates that if they did see Xavier riding on only the rear wheel then they must have first sighted him further down the road. That version is supported by the evidence that there was sufficient time for the driver to attempt to steer her vehicle to the right so that the rider could pass between the vehicles. It is also supported by the evidence of the front seat passenger that the driver had sufficient time to sight the motorcycle and say “Shit, hold on girls, a motorbike”.

2. That the witnesses were mistaken about what they saw and Xavier was not riding on the rear wheel only. That possibility is supported by the driver’s insistence that the wheel was above her windscreen when she first saw it; or
3. That Xavier riding on the rear wheel became part of the story after the event. The suggestion by the back seat passenger in her statement that they had previously seen Xavier riding on the dirt in that manner may add some support for that scenario

57. It is not necessary to decide which of those scenarios is the more likely, although the first scenario has some attraction. But it does illustrate that some of the issues as to time and distance remain. Those may well have been

resolved at an early stage if the first investigation had utilised the interview techniques in which police crash investigators are trained to clarify time, distance and location with all of the witnesses in the vehicles.

Institutional Response

58. On 14 March 2019 Assistant Commissioner Beer provided a statement. She holds the position as Assistant Commissioner for policing services across the Northern Territory excepting for Darwin and for road policing across the entire Northern Territory.

59. Assistant Commissioner Beer indicated that she conducted a thorough review of all of the information obtained in the first investigation and the reinvestigation. She identified a number of areas of concern:

- The investigation of the collision scene and the subsequent investigation of the circumstances leading to the death of the deceased was not consistent with best practice investigation techniques;
- A number of interview techniques employed to search for the truth of the matter under investigation were substandard;
- The lack of effective oversight and governance over the investigation;
- The current legislative regime pertaining to death and serious injuries resulting from road trauma, which is both inconsistent and inadequate when compared to all other State and Territories of Australia; and
- Potential investigation bias.

60. She went on to elaborate on those areas of concern and indicate what Police had done to ensure that such issues did not arise again:

- A new Road Policing Command was set up on 1 January 2019. That Command includes a superintendent whose primary role is to concentrate on road safety and major crash investigations.

- A Major Crash Unit review is being undertaken and is due to be completed mid-April 2019 with implementation proposed for 1 June 2019.
 - An independent review is to be undertaken by the Officer in charge of the Victoria Major Collision Investigation Unit.
 - A review is being undertaken of all General Orders relating to Major Crash Investigations.
 - The NT Police are a part of the ANZPAA and the Working Group for Crash Investigators which are developing benchmarks and guidelines. They will be adopted.
 - In January 2019 a Joint Management Committee approach was implemented so as to require all fatal collisions to be subject to the oversight of the Assistant Commissioner and Commander. That will ensure that all fatal investigations are dealt with in the first instance as major investigations.
 - There are weekly briefings to discuss the status of all ongoing and new investigations.
61. At Annexure 8 to Assistant Commissioner Beer's statement was a matrix of the legislation throughout Australia demonstrating the offences available in relation to driving causing death. It was the view of Assistant Commissioner Beer that the offences in the Northern Territory were unduly restricted given the developments throughout the rest of Australia.
62. Counsel for the family submitted that the current offences in the *Criminal Code Act* if correctly applied were applicable. In his submission, Police had misinterpreted the sections. I did not however take him to be suggesting that providing a more explicit offence for careless driving causing death would not be a welcome addition to the *Criminal Code Act*. The best that can be said is that Police as well as lawyers seem to struggle with the application of circumstances such as these to the *Criminal Code Act*.
63. The confusion leads to mention of manslaughter when for most jurisdictions driving causing death has been part of the regime of culpable driving for

some decades. The family have also become frustrated from a perception that there is a gap in the legislation that prevents the preferring of an appropriate charge.

64. Comfort was taken that there was such a gap from comments of Justice Riley:

“No separate, more serious offence linking the offence of crossing over the dividing lines contrary to rule 132(2) of the Australian Road Rules to the collision was identified or available.”¹

65. There are clearly a number of opinions on the issue and the Northern Territory has not followed the same course as other states by enacting offences for driving causing death that cover the spectrum in an explicit manner.

Comment

66. The initial investigation by the Major Crash Unit was substandard. It appears that the investigators made up their minds on the basis of evidence from those in the Subaru. They did not seek to verify the information obtained and did not follow up on evidence that was in conflict with it.
67. The lack of an impartial and fair investigation left the family of Xavier feeling aggrieved and frustrated. That appears to have exacerbated the ill feelings that one might anticipate arising from such circumstances and impacted relationships in the Darwin River area, such that there were a number of court appearances relating to conflict between the families.
68. However, having recognised the problems Senior Police have reacted most commendably. The changes made are thorough and far reaching and the compassion demonstrated by Assistant Commissioner Beer was palpable.

¹ Holden v Nicholas (2018) NTSC 76 at paragraph 26

69. The institutional response was by far the best response received for many years. I commend Assistant Commissioner Beer and the NT Police on ensuring that the vulnerabilities in their systems are remedied and that there will be continuing improvement into the future.
70. I will return this investigation to the Commissioner of Police and the Director of Public Prosecutions to consider the further evidence that has been obtained and without the mistakes that were part of the brief of evidence on the first occasion.

Formal Findings

71. Pursuant to section 34 of the *Coroner's Act*, I find as follows:
- (i) The identity of the deceased is Xavier Nicholas Lengyel, born on 3 April 2001 in Darwin, Northern Territory.
 - (ii) The time of death was 7.20pm on 14 March 2018. The place of death was Leonino Road, Darwin River in the Northern Territory.
 - (iii) The cause of death was multiple blunt force injuries due to a traffic collision where he was a motorcyclist.
 - (iv) The particulars required to register the death:
 - 1. The deceased was Xavier Nicholas Lengyel.
 - 2. The deceased was of Caucasian decent.
 - 3. The deceased was a student.
 - 4. The death was reported to the Coroner by Police.
 - 5. The cause of death was confirmed by Forensic Pathologist, Doctor Marianne Tiemensma.
 - 6. The deceased's mother is Cheynay Cian Lengyel and his father, Asher John Lengyel.

Recommendation

72. I **recommend** that the government give consideration to making the Criminal Code more explicit in relation to the spectrum of offences relating to driving and death.

Referral

73. I believe that offences may have been committed in connection with the death of Xavier Nicholas Lengyel and in accordance with section 35(3) *Coroners Act* I report my belief to the Commissioner of Police and the Director of Public Prosecutions.

Dated this 12th day of April 2019.

GREG CAVANAGH
TERRITORY CORONER