

CITATION: *Inquest into the death of Nigel Roy Harris* [2023] NTLC 13

TITLE OF COURT: Coroner's Court

JURISDICTION: Alice Springs

FILE NO(s): A0027/2021

DELIVERED ON: 5 June 2023

DELIVERED AT: Darwin Local Court

HEARING DATE(s): 23 to 26 August 2022
9 and 10 May 2023

FINDING OF: Judge Elisabeth Armitage

CATCHWORDS: **Recognised high risk to spectators in
Finke Desert Race by Motorsport
Australia and those running the race,
failure to mitigate the risk**

REPRESENTATION:

Counsel:

Assisting:	Jodi Truman
Motorsport Australia	Bruce Hodgkinson SC & Kirsten Edwards
Finke Desert Race Inc.	Martin Shume
Eugene Arocca	Tim Game SC

Judgment category classification: B
Judgement ID number: [2023] NTLC 13
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IN THE CORONER'S COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A0027/2021

In the matter of an Inquest into the death of
NIGEL ROY HARRIS
ON: 14 JUNE 2021
AT: FINKE DESERT RACE, ALICE
SPRINGS

FINDINGS

Judge Elisabeth Armitage

1. Mr Harris was born on 29 May 1961 to Cynthia Jean and Roy Henry Harris in Westbury Tasmania. At 15 years of age he joined the Australian Navy. On 25 April 1987 he married Sheryl Bernice Lynne and they had two children, Melina and Mark. In 1999, after 22 years in the Navy, he became a Customs Officer. He continued in roles with Border Force until he retired after 20 years of service. He was a keen traveller and loved photography. It was his passion for travel and photography that led to him to attend the Finke Desert Race.
2. The Finke Desert Race (“the race”) has been running since 1976. The race began as a ‘there and back’ challenge amongst a group of local Alice Springs motorbike riders. Its popularity grew and in 1988 cars and off-road buggies were introduced. The race largely runs along sections of what was the Old Ghan Railway service track between Alice Springs and the remote Community of Apatula, also known as Finke. The track winds through typical outback terrain of red dirt, sand, spinifex, mulga and desert oaks.
3. On 14 June 2021 Mr Nigel Roy Harris was taking photographs on the sidelines of the race. He was struck by a vehicle competing in the race, Trophy Truck #499, at a location known as the ‘35km (or 34km) sand dune’ (the “35 km sand dune”). He died at the scene. He was sixty years of age.

Another spectator, Mr Robert Mudd, was also struck and suffered serious injuries. The following photographs¹ show the path of Trophy Truck #499 as it suffers suspension failure and heads toward Mr Harris.



¹ Taken by Donald McCaulay,



4. Mrs Harris and family members, Julia and Peter Hegarty, attended the inquest. The Office of the Coroner extends its sincere condolences to Mr Harris's family and friends.

The inquest

5. Mr Harris's death was reportable to me because it was a death that occurred in the Northern Territory which was unexpected and appeared to have been caused by an accident. The decision as to whether to hold an inquest into this death was discretionary. This spectator death occurred during a race which is recognised as the "richest off-road race" in Australia and is reputed to be "one of the most difficult and most remote races" in the world. It is held annually on the Queen's (now King's) Birthday long weekend in June and is attended by thousands of competitors and spectators. Some of the spectators were very close to the track in an area where it should have been obvious to most that there was a high risk. Those risks were clearly not appropriately mitigated. In light of those circumstances, I determined that a public inquest was warranted.
6. At the conclusion of the police investigation there was no real dispute as to the identity of Mr Harris, the cause of his death, and when, where and how his death occurred. Accordingly, the focus for the inquest was on whether any recommendations should be made in relation to public health or safety so as to reduce the risk of similar deaths in the future, and whether a referral to the Commissioner of Police and Director of Public Prosecutions that an offence had been committed should be made.
7. A "Joint Institutional Response from Motorsport Australia ("MSA") Finke Desert Race Incorporated ("FDRI") ("Joint Response") dated 4 August 2022 was provided. The Joint Response addressed the circumstances of the collision and steps taken since Mr Harris's death to improve spectator safety. It did not disclose what MSA and FDRI knew about the level of risk to spectators before the 2021 race. It did not disclose that there were

continuing concerns as to the adequacy of provisions for spectator safety which were raised both before and after the 2022 race.

8. It became apparent that there was likely more to the story than was contained in the Joint Response and the documents provided by MSA and FDRI to the investigating police. Accordingly, during the course of the inquest I issued notices to produce additional documents on both MSA and FDRI.
9. In excess of 1800 additional documents were provided by MSA and FDRI to the inquest. The documents were not in any chronological or sensible order. Counsel Assisting undertook the onerous task of sifting through the material to identify relevant documents which were added to the brief of evidence. As it was possible that we had missed relevant documents, MSA and FDRI were invited to identify any additional documents of relevance to the issues under investigation, or any that might clarify the documents selected for inclusion in the brief. No further documents from those produced were identified.
10. The following key FDRI members/volunteers were called to give evidence: Mr Antony Yoffa, Mr Joshua Clarke, Mr Glen Auricht, Mr Craig Meekings and Mr Allan Paige. The following key MSA/CAMS employees/volunteers were called to give evidence: Mr Eugene Arocca, Mr Michael Smith, Mr David Stuart and Mr Alan Evans. Each of those witnesses² exercised their right under section 38 of the *Coroners Act*, to object to giving evidence on the grounds their evidence may incriminate them in offences under the *Work Health and Safety (National Uniform Legislation) Act 2011*. That Act articulates duties owed to workers and others to keep them safe. It creates offences for failing to comply with those duties which carry penalties of significant fines or even imprisonment. In each case I was asked to provide a certificate which, if given, would prevent any evidence given being used

² Mr Smith, Mr Stuart and Mr Evans gave some evidence before taking the objection

against the witness in any future criminal or civil proceedings. I may give a certificate when it appears to me “expedient for the purposes of justice that the person be compelled to answer the question.”³ Given the extensive documents ultimately obtained, many of which were contemporaneous records, I determined that it would not be expedient for the purposes of justice to grant certificates and declined to do so with one exception. Mr Barry Neuendorff, was granted a certificate and continued and gave evidence.

Preparation for the race

11. The race starts and finishes at the grounds of FDRI located at Lot 6333 South Stuart Highway, approximately 15 km south of Alice Springs. There have been some changes to the route over the years but the race roughly follows the Old South Road from the Start/Finish line near Alice Springs to the Aputula Aboriginal Community also commonly known as Finke by race goers (“Finke”), a distance of around 226 km. The track runs through a mix of Crown land, Aboriginal Land Trust land, road reserve, and private property and it crosses a number of government roads.
12. In preparation for the race, the track is graded. But, as the vehicles race over the track, potholes and undulations are created. These variations, often referred to as ‘whoops’, are considered part of Off Road racing and are generally not ‘repaired’ during the race.
13. In 2021 competitors raced from Alice Springs to Finke on Sunday 13 June and from Finke to Alice Springs on Monday 14 June 2021. The collision and death occurred during the return leg of the race.
14. Each year FDRI is the responsible body for arranging and organising the race. An FDRI race committee is elected at its Annual General Meeting. For many years, and again in 2021 Mr Antony Yoffa was President. In 2021

³ S38(1)(b) *Coroners Act 1993*

the other members of the organising committee were: Ms Kelsey Branford, Vice President; Ms Leanne Southam, Treasurer; Mr Glen Auricht, Committee member responsible for track maintenance and signage; Ms Tammy Hargrave (aka Fitzgerald) Committee member who assists with marshalling, scrutineering and scoring; and Mr Josh Clarke, Mr Daniel Sawyer and Ms Sally Preece, Committee members.

**The car competition is sanctioned by Motorsport Australia (MSA)
(previously known as the Confederation of Australian Motor Sport (CAMS))**

15. In order to stage the race FDRI seeks approval from two national governing bodies, Motorcycling Australia and MSA. MSA is the nationally recognised governing and sanctioning body for motorsport events throughout Australia. The car competition forms part of the ‘Goodrich MSA Off Road Championship’ which includes several races held at locations around Australia.
16. When an event is sanctioned, MSA appoints officials to carry out functions at the event. In 2021 the MSA appointed officials were as follows: Mr Alan Evans, Chief Steward; Mr Phillip Gray and Mrs Judy Gray, Stewards; Mr Daniel Rogers, Technical Delegate; Ms Marilyn Emmins and Mr Barry Neuendorff, Clerk of the Course (initially filled by Ms Emmins, but replaced with Mr Neuendorff on 4 June 2021 when her arrival to the Northern Territory was delayed); Mr Fred Severin, Chief Scrutineer; and Mr Ryan Branford, Course Checker.
17. In accordance with the MSA sanctioning regime, on 26 February 2021, Ms Emmins, as then Clerk of the Course, wrote a letter to MSA requesting a permit to run the race. Included with the letter was an ‘Off Road Permit Application’ and the ‘2021 Supplementary Regulations’. On 4 March 2021, the permit was approved by Mr Arocca, the Chief Executive Officer of MSA.

Additional approvals

18. In the months leading up to the race, the FDRI race committee sought approval and provided notifications to a number of external agencies including the NT Police, St Johns Ambulance Australia and the Department of Infrastructure, Planning and Logistics (“DIPL”).
19. On 9 June 2021, Minister Eva Lawler (then Minister for DIPL) signed a legal instrument⁴ giving approval under section 43A (1) of the *Traffic Act (1987)* declaring the race and closing all public streets and places in the ‘area’ between the start/finish line and Finke community from 6.00am to 6.00pm on 13 and 14 June 2021 for the purposes of the ‘event’ as defined under section 43A(15) which includes a race. It was FDRI (as organisers) who were responsible for controlling traffic movement during the event.
20. The area specified in Schedule 1 to the instrument was a 100m corridor, being 50m either side of the actual track. The instrument granted exemptions to competitors thereby permitting them to drive their unregistered race vehicles at high speed in the specified areas.
21. Assistance from NT Police was requested. That was approved by Commander Craig Laidler on 9 June 2021. The focus for police was on providing a presence to deter anti-social behaviour and to respond if criminal offences were detected or if there was a crash fatality. Superintendent Jody Nobbs reported that:

“... risk mitigation and general response remained the responsibility of Event Organisers working in concert with the Motorsports

⁴ Folio 57

Australia ... as the peak body for motor sport regulation in Australia.”⁵

The race days

22. In 2021, there were 925 competitors racing 340 four wheeled vehicles and 538 motorcycles across numerous categories.⁶ It is thought that approximately 14,000 spectators camped along the race track.⁷
23. The key personnel managing the event were: Mr Yoffa, Race Director; Mr Neuendorff , Clerk of Course; Mr Severin, Chief Scrutineer; Mr Evans, Chief Steward; Mr Clarke, Spectator safety; Mr Phillip Gray, Steward; Mr Ryan Branford, Course checker; and Mr Rowan Edwards, Site Manager. The position of Chief Spectator Marshal was left unfilled.

Saturday 12 June 2021

24. On Saturday the competitors participated in a prologue, a timed lap around an 8.3 km circuit near the start/finish line to determine starting positions for the race. I infer from images found on Mr Harris’s camera, that he attended the prologue in the afternoon.

Sunday 13 June 2021

25. Prior to the commencement of the race, two ‘zero sweep cars’ (referred to as ‘zero north’ and ‘zero south’) each drove half the track checking for safety issues or obstacles. If a safety issue was identified, race control was informed and the issue was rectified. The sweep was done in the dark and early hours of the morning, taking approximately six hours to complete. When the zero sweep cars informed race control that the track was clear the race could commence. On this occasion, no issues were identified. There

⁵ Folio 9

⁶ Joint Response, p.2, para 3.2(a)

⁷ FDRC00930, 2019 Risk Audit

was a second sweep of the track between the 4WD vehicles and the motorcycle competitions.

26. On Sunday the competitors raced south, from Alice Springs to Finke. The start was staggered and competitors left at timed intervals. The 4WD categories left first, followed by the motorcycles.
27. Mr Harris went to the start/finish line before heading out to the 40 km marker. At the 40 km marker, he took photographs and struck up a conversation with Mr Donald McCaulay, another spectator and keen photographer.
28. One of the Stewards had been tasked to speak to competitors when they arrived at Finke about spectator safety. Competitors indicated that *“in some areas spectators were crossing the track, standing close on outside of corners, and on top of windrows.”*⁸ The same day those concerns were reported to Mr Evans, the Chief Steward, who had the power to *“postpone, cancel or abandon a competition ... for safety reasons”*.⁹ There is no evidence of anything being done to rectify those issues.

Monday 14 June 2021

29. The collision occurred on Monday during the return leg of the race from Finke to the Alice Springs start/finish line.
30. Before the days racing commenced, the sweep was undertaken by zero north and zero south and no issues were noted. No comments were made about any of the whoops or signage. The course was deemed safe and racing commenced. Again there was to be a further sweep of the course between the 4WD vehicles and the motorcycles.

⁸ Attachment B Report to Chief Steward – Philip Gray – Steward Finke Desert Race 13 June 2021

⁹ Rule 71 of the MSA National Competition Rules

The 35 km sand dune

31. The 35 km sand dune is approximately 35 kms from the Alice Springs start/finish line of the race. At that point the track is around 5 metres wide with grass edges defining the track boundaries.
32. On the approach to the 35 km dune from the Southern (Finke) side there is a gradual slope to the top which is a few metres in height. On the Northern (Alice Springs) side the track drops sharply down before curving away to the right. Just North of the apex and before the right-hand bend there are two 'whoops' identified by white arrows in the photograph below.



33. An FDRI race committee member was responsible for signposting the track for competitors. Where there is a hazard, for example, a dune, 'whoops' and bend, the MSA Off Road Standing Regulations require the track to be signposted on each side with 'pre danger' and 'danger' signs. This signage alerts competitors to the impending traffic hazard so that speeds can be adjusted in order to traverse the hazard safely.

34. Committee members, and a group of volunteers, were also responsible for placing fencing and bunting along the track which denoted restricted areas at key spectator sites and dangerous areas along the track.¹⁰ There was no guide or template directing which areas should be marked as dangerous. The members and volunteers relied on their combined experience.
35. Over the years a number of star pickets had been placed next to the track at the 35 km dune and bunting was attached to those pickets, and then extended beyond the pickets to the bottom of the dune. In all about 20 metres of bunting ran from the top of the dune to the bottom of the dune on the North-Western side of the track. The bunting was about 5 metres back from the edge of the track. The area between the bunting and the track was considered dangerous and the bunting was intended to warn spectators that they should not be in that area.

A popular spot

36. Mr Harris was part of a large group of spectators at the 35 km sand dune. Mr Harris was standing on the North-Western side of the dune, beyond the end of the bunting (not in front of it), and close to the edge of the track. The following photograph shows the respective positions of the bunting (yellow arrow), Mr Harris (red arrow) and the crest of the 35 km sand dune (white arrow).

¹⁰ Folio 67, Hall & Wilcox letter dated 17 December 2021



37. The 35 km sand dune is well-known as one of the most popular spots for spectators. Statements were taken from numerous spectators who commented on the reason for its popularity and on the numbers gathered there.
38. One spectator said the spot was a “*popular place for day trippers to watch the race...due to the danger, or excitement, of the track at that point. A lot of race vehicles come over the rise at speed, some leave the ground and they sometimes come off the track.*”¹¹ Another said that it is “*a very good*

¹¹ Folio 12, statement of Rebecca Ellis, para 3

viewing spot so it attracts a lot of people.”¹² One spectator said that he had attended the race almost every year for the last 22 years and that he “mostly stayed near the sand hill as it’s usually the best view of the action. The approach to the sand hill gets cut away over the days of riding, this creates a sharp front edge of the jump, they call it the ‘whoop’, this is a place where motor bikes usually hit and the riders are flung off. This is why it’s a popular spot to watch from.”¹³

39. As to the size of the crowd, various spectators said: there may have been “at least 50 cars”¹⁴ at the location; people were “all lined up along that fence”¹⁵ near the tree; “probably 20 or 30”¹⁶ people in the area where the crash happened; a number of people in the location that were “sitting way too close to allow the competitors any margin of error at all”¹⁷; “there was about 100 spectators in the area of the jump, there were a lot of cars parked there”¹⁸; “at an estimate I’d say there’d probably be 200 people that were in that, say 200m area”¹⁹; and “there w[ere] ... people all around, I mean, they were moving around... there was probably 200-300 people here.”²⁰
40. Concerning numbers at the specific location where the Trophy Truck left the track, spectators variously said: there “would’ve been half a dozen”²¹ people in the location; in a 30m radius of the collision there were “around 35-40”²² spectators; and there were “(b)etween 15 and 30”²³ people who ran to get away. The following photos provide evidence of the number of persons close to Mr Harris at the location (right hand side near the tree).

¹² Folio 30, statement of Jeremy Taylor, p.4

¹³ Folio 13, statement of Danny Fisher, para 4

¹⁴ Folio 15, statement of Ammon Krieg, p.11

¹⁵ Folio 11, statement of Geoffrey Common, p.7

¹⁶ Folio 16, statement of Katie Krieg, p.26

¹⁷ Folio 17, statement of Brett Lewis, p.3

¹⁸ Folio 29, statement of Michael Stafford, para 16

¹⁹ Folio 30, statement of Jeremy Taylor, p.5

²⁰ Folio 21, statement of Craig Meekings, p.4

²¹ Folio 28, statement of Liam Silk, p.4

²² Folio 31, statement of Jack Wagner, p.19

²³ Folio 33, statement of Isabelle Vanzetta, p.6



41. Mr Mudd, who was also struck by the Trophy Truck, told police that “*there were a lot of spectators that day*” and noted “*in the greater area anywhere up to fifty.*”²⁴
42. At the 35 km sand dune there were no officials monitoring spectator safety. Save for the limited bunting, there was no instructions at the site advising spectators on safe distances and practices.

The Trophy Truck and its driver

43. The vehicle involved in the collision was a 2WD Extreme Class 4 Trophy Truck. MSA defines this class of vehicle as being a “highly modified 2WD

²⁴ Folio 23, statement of Robert Mudd, para 6 and 7

with engine not exceeding 6000 CC or 7200 CC for diesel engines”. There is no requirement for Trophy Trucks (or any competition vehicles) to be registered.

44. The Trophy Truck was driven by Mr Patrick Byrne and he was accompanied by a licenced navigator. Mr Byrne and his Trophy Truck were identified as competitor #499. Mr Byrne was considered to be an experienced driver having held a Motor Sport Australia Off Road Competitor licence since 2007. He had driven this Trophy Truck in seven previous events.
45. Trophy Trucks of the kind driven by Mr Byrne can be purchased as completed vehicles, or in kit form, or can be built and assembled from drawings. Mr Byrne built his vehicle in 2014 in accordance with the Motorsport Australia Manual – Off-Road Specific Requirement for Off-Road Vehicles – Article 8 (“the Rules”).
46. When the build was complete, the Trophy Truck was checked for compliance by MSA and no structural or mechanical issues were identified. MSA require triennial inspections of all race vehicles and the last triennial inspection of the Trophy Truck was on 15 March 2020 conducted by MSA scrutineer, Mr Severin. The Trophy Truck had a further three scrutiny inspections after that date. No issues of concern were identified at any of the inspections.
47. On Friday 11 June 2021 competition vehicles were subject to scrutineering at the start-finish line. Scrutineering is a process designed to ensure all vehicles (and associated equipment) are of satisfactory standard prior to the race. For this race, competitors ‘self-scrutineered’ and submitted a ‘Self-scrutiny statement of vehicle compliance’. Mr Byrne attended scrutineering and provided all the relevant race documentation concerning the Trophy Truck, his navigator, and himself as driver. The Trophy Truck passed a further very basic check and assessment of safety features.

The crash

48. At 9.36am, the Trophy Truck approached the 35 km sand dune. One ‘pre-danger’ and two ‘danger’ signs at the approach of the sand dune warned of the hazard. The driver determined his speed of approach. Both the driver and the navigator recalled slowing down as they approached the sand dune in response to the signage and number of spectators.
49. Spectators also formed impressions concerning the speed of the Trophy Truck. Although one spectator thought “*the guy carried too much speed...over that dune*”²⁵, the majority did not form that impression. For example, one spectator said that “*he wasn’t going excessively fast, he didn’t appear to be going much faster than any of the other cars*”²⁶; and another said “*compared to some of the other drivers I would’ve said he was on the cautious side, not the other side... There were drivers going over there a hell of a lot faster than that.*”²⁷ According to one spectator the Trophy Truck came over the crest of the hill “*exactly the same*” as everyone else but “*unfortunately he’s had mechanical failure in the rear end of his car, which has shot him off the track to the outside of the corner.*”²⁸ One spectator estimated the speed at “*40, maybe 50km an hour, it’s not crazy speed because all the drivers know that that’s ... a crazy dune to hit.*”²⁹
50. After cresting the 35 km sand dune, the Trophy Truck hit the two ‘whoops’ and its left hand lower rear axle trailing arm fractured. When that occurred Mr Byrne had no control over the direction of travel. The navigator of the Trophy Truck provided a statement to police but was too traumatised to give oral evidence. She said the crowd was “*three and four deep ... it was a large number of people*”³⁰ and “*about 10-20 odd people*”³¹ moved to get out of the

²⁵ ?? Mr Walker

²⁶ Folio 11

²⁷ ?? Mr Krieg

²⁸ Folio 22, statement of Jason Moore, p.7

²⁹ Folio 30, statement of Jeremy Taylor, p.8

³⁰ Folio 8, Statement of Tamara Amber, p.17

³¹ Folio 32, statement of Tamara Warfe, p.9

way of their way. Being left without steering, there was nothing Mr Byrne could do to avoid striking Mr Harris or any other spectator who happened to be in his path.

51. When the Trophy Truck was airborne, out of control, and heading towards the spectators, Mr Harris continued taking photographs. It seems he was oblivious to the impending danger. Mr McCaulay, who was standing close by said:

“... I was still taking photos, as was Nigel, and then suddenly it was obvious that it was really bad, and I jumped, or moved to the left, and he instinctively went to the right. ... And I immediately saw him get hit by the front of the truck...”³²

52. Mr Harris was struck by the front driver side wheel and arch of the Trophy Truck. He was propelled forward and the Trophy Truck ran over the top of him. The Trophy Truck continued for another 15 metres and struck Mr Mudd who was also propelled forward. When the Trophy Truck came to a stop Mr Harris was found underneath it.
53. The collision was a tragedy for Mr Harris, Mr Mudd, and their families, but as one spectator commented, *“it’s really lucky that nobody else”* was killed, *“it could have been worse.”³³*

Cause of Death

54. Spectators in the area went immediately to the aid of Mr Harris and Mr Mudd. One spectator was a former paramedic and she provided first aid to both men. Sadly, there was nothing she could do for Mr Harris who was deceased.

³² Folio 19, statement of Donald MacAulay, p.5

³³ Folio 22, statement of Jason Moore p.28

55. Numerous calls were made by spectators to 000 and the control room was notified. Emergency services were quickly in attendance with St John Ambulance arriving at 10.00am, followed by Southern Traffic Operations members and additional police. Mr Byrne was breath tested and returned a negative (nil alcohol) result.
56. On 16 June 2021 a forensic pathologist conducted an autopsy and provided a Post-Mortem Examination Report.³⁴ The cause of Mr Harris’s death was determined to be multiple blunt force injuries. Injuries were seen both externally and internally and included the tearing of the pericardial sac, laceration of the heart and other significant internal injuries. Given his extensive and catastrophic injuries it is reasonable to conclude that Mr Harris died on impact.

Investigations after the collision

57. Following the collision, the Trophy Truck was inspected by Mr Stuart, MSA Division Manager Safety and Race Operations, and Detective Sergeant Mick Schumacher, Major Crash Unit Alice Springs.³⁵ They found that the Trophy Truck had been “designed and built in accordance with the Rules” and “demonstrated a high level of build quality, maintenance and preparation.”
58. The inspection revealed that following the collision the Trophy Truck was damaged:

“It could be clearly observed that the rear axle alignment was skewed such that both rear wheels were “steering” to the right side of the vehicle. Further inspection identified the left hand lower rear axle trailing arm had fractured through 90% of its surface area just rearward of the lower damper assembly mounting point.

³⁴ Folio 4 – Autopsy Report

³⁵ Folio 65 - MSA Vehicle Inspection Report dated 20 October 2021

The result of this fracture had the effect of shortening the distance from the left-hand side of the chassis to the rear axle thus allowing the rear axle to turn both rear wheels to the right.

...

Apart from the obvious failure of the left rear lower trailing arm the vehicle presented in a good condition.”³⁶

59. Mr Stuart also provided an ‘Incident Investigation Report’ which contained a ‘Root Cause Analysis’.³⁷ In that report he noted and concluded as follows:

“Video and still photography of the incident show #499 approaching the dune in a similar manner as the preceding competitors. From the top of the dune #499 hits the first of the holes bottoming the suspension of the vehicle then rebounding out of the first hole and into the second, making heavy contact with the crest between the two holes. The effect of this action is to throw the vehicle sideways. It is at this point that #499 veers hard left and off the track heading towards a group of spectators standing at or very close to the edge of the track.

...

Due to the very nature of the terrain and the distance covered during the event, a competition vehicle can and does experience extreme stress on components.

...

A post event inspection of the vehicle revealed the left rear lower trailing arm that attaches the rear axle assembly to the chassis of the

³⁶ Ibid, p.6

³⁷ Folio 56, MSA Incident Investigation Report dated 2 November 2021

vehicle had failed in such a manner that the arm was cracked through the region of the rear damper mount. ...

The resulting effect of this failure was a significant change to the rear axle geometry ...(which) resulted in the rear wheels (the driving wheels) turning the vehicle to the left. Once this occurred, the actions the driver made to counteract the path of the vehicle would do little to prevent the vehicle veering to the left.

...

It is inevitable that mechanical failures occur in motorsport and competitors mitigate against the prospect of mechanical failures through regular inspection and servicing of their vehicles. There is nothing to suggest that this was not the case with vehicle #499. The failure of the part is not common or predictable, nor could it have been observed or detected through the inspection or servicing schedule of the vehicle.”

History of spectator safety concerns

The Bennett Report, September 2018

60. At the entrance to the start/finish line there is a sign posted warning. It is not known which, if any, spectators read this sign though those attending the start/finish line would have passed it on their way in and out.



“Motor racing is DANGEROUS and spectators attending this track and event do so entirely at their own risk.

It is a condition of admission that all persons having a connection with the promotion, and/or organisation, and/or conduct of the meeting, including the owners of the land and the riders and owners of vehicles and passengers in the vehicles, are absolved from all liability arising out of the accidents causing damage or personal injury to spectators or ticket holders, except where due care and skill has not been exercised.”

61. The danger this race posed for spectators was well known to the organisers.
62. Prior to the 2018 race, FDRl sought assistance from CAMS (later MSA) to develop improved “safety and procedures” for the event. Mr Smith, Director of Motorsport and Commercial Operations CAMS, directed the Motorsport Safety Advisor, Mr Troy Bennett, to attend the 2018 Finke Desert Race and make recommendations for improving safety.

63. In September 2018 Mr Bennett provided a detailed report (the “Bennett Report”).³⁸ He acknowledged the responsibility of race organisers for spectator and competitor safety and articulated his concerns about the lack of measures in place. Concerning spectator safety (which overlaps with competitor safety) he said:

63.1 The number of spectators in the first 40 km was far more than expected.

63.2 There were no measures in place to prevent, or even limit, access to the competition track.

63.3 There is no fencing or other barriers to separate competitors from the general public.

63.4 There are no officials allocated to be spectator marshals at any location.

63.5 The entire course lacks supervision in terms of spectator control.

63.6 That appreciating the size of the course, he did not believe that “we can continue to allow nothing to be done”.

63.7 That legal consequences for inaction could well be “crippling”.

63.8 Greater oversight of spectators is a clear demonstration of an acknowledgement of the events duty of care.

64. In light of the organisers acknowledged duty of care for spectator safety Mr Bennett recommended:

64.1 The formation of a specific spectator safety team tasked with ensuring spectators are effectively managed. This would be a team of dedicated

³⁸ MSA 001.001.5032 dated “September 2018”

officials overseen by a spectator manager who are tasked with monitoring and controlling spectators along the entire course.

- 64.2 That pairs of roving officials be given lengths of the track to cover and patrol during the event, who would identify hotspots that require closer scrutiny.
- 64.3 There be the establishment of a formal exclusion zone along the entire course to keep spectators from the edge of the track by setting a minimum distance from the edge of the track on both sides.
- 64.4 The exclusion zone be well publicised prior to the event, confirmed by the course checker, set up crews, and monitored by the Spectator Safety Team.
65. The Bennett Report was sent by email to Mr Yoffa on 4 October 2018.³⁹ In the email and concerning his report, Mr Bennett said, “I’ve specifically focussed on the **issues we’ve previously identified** and discussed” (emphasis added). Mr Yoffa acknowledged receipt of the report and said that it would be provided to the race committee (of which he was a member). However, on the documents provided by FDRI to the inquest, there was no evidence that the report was brought to the attention of the other members of the race committee at that time.⁴⁰
66. Although Mr Bennett hoped some of his recommendations would be implemented for the 2019 race, there was no evidence any of his recommendations had been implemented for either of the 2019 or the 2021 race. (There was no race in 2020 due to Covid-19).

³⁹ FDRC01022 & FDRC01023

⁴⁰ Additional Documents 28, FDRI Meeting Minutes: 20 November 2018, 19 March 2019, 2 April 2019

The Risk Reliance Reports

67. On 24 April 2019 in an email concerning procedures (or lack thereof) for risk management at the race, Mr Yoffa said:

*“We don’t have much of this at all. The procedures we have are pretty average.”*⁴¹

68. On the same day, the Vice President of the race committee emailed Mr Wayne Middleton of Risk Reliance requesting assistance with a risk assessment of the 2019 race. She said:

*“...we are severely lacking in the appropriate processes and documentation from a legal and basic level. Our committee would be interested in discussing with you, your thoughts on being engaged to assist us for the Tatts Finke Desert race. Our 2019 event is just 43 days away, a rush I know.”*⁴²

69. A copy of the Bennett Report was sent to Mr Middleton on 1 May 2019.⁴³

70. Risk Reliance prepared the “2019 Finke Desert Race Risk Assessment Report” and it was provided to FDRI on 20 May 2019. According to that assessment, the risk of death posed by the race to a “competitor or spectator; multiple deaths” was “Extreme”, being 20 out of 25. It was said that the consequences of such an incident would be “Severe” meaning “international media attention, potential jail terms, project cancellation and financial loss in excess of half a million dollars”. The risk of death to a spectator was deemed “Likely” and the report recommended that “immediate action” be taken.

⁴¹ FDRC00579

⁴² FDRC00579

⁴³ FDRC00996 & FDRC00997

71. On the documents provided it is not clear what, if any, action FDRI took to address the identified risks before the race ran in June 2019.
72. The race committee also commissioned a “Risk Audit” of the 2019 race from Risk Reliance which was provided on 26 July 2019.⁴⁴ Concerning “crowd management”, the Risk Audit identified that spectators were situated on the outside of corners and had access to the start/finish line when high speed vehicles were approaching. While acknowledging the challenge posed by the length of the track, it was suggested that high risk corners could be managed with bunting and signage and recommended that the organisers “Install signage and barricade tape in accordance with FIA Rally Guidelines 2019 – Section 4.”
73. Section 4 of the FIA Rallying Guidelines 2019 addresses spectator safety for rallying events. However, it seems probable that all of the safety issues identified in rallying equally apply to the Finke race. The Rallying Guidelines stipulate that spectator areas should be marked with green tape, closed on both sides to control spectators and controlled by marshals. Red tape is used to define prohibited areas where spectators may be expected to congregate. Red tape is for any zone considered dangerous - outside of corners, landing after jumps, etc. At no location should red tape and green tape be used in the same area. The prohibited area ‘No-Go’ signs should be used to designate all other areas, or sections prohibited to the public. The ‘No-Go’ areas should be marshalled.
74. There was nothing identified in the material provided by FDRI to the inquest which explained any decision making concerning that recommendation. On the evidence available it is apparent that the recommendation was not implemented for the 2021 or 2022 races.

⁴⁴ FDRC00930 Version 2 of the 2019 Tatts Finke Desert Race Risk Audit

Further spectator safety issues raised following the 2019 race

75. Mr Neil Crompton was part of a media contingent covering the 2019 race. Shortly after the race, on 20 June 2019, he forwarded a short video he had taken of part of the race to Mr Smith, then Director of Motor Sport and Commercial Operations CAMS, which depicted spectators standing dangerously close to the track. Explaining his concern Mr Crompton wrote, *“It’s the group of 10 or so folks to the extreme left and right...for a second I thought there was going to be big trouble...Fortunately there wasn’t...”* In a later email in the same chain he said, *“...Pace at Finke finish line is also mega risky...”*⁴⁵
76. According to the emails, Mr Smith forwarded a copy of the video to the CAMS “safety team” which included Mr Stuart, the then Manager Safety and Race Operations. A meeting *“on reviewing spectator standards!”*⁴⁶ was called to *“..discuss a strategy for managing spectators at key points.”*⁴⁷
77. Also in June 2019, and perhaps in preparation for that meeting, the Bennett Report was recirculated and discussed in CAMS. In response to questions raised by Mr Smith, Mr Bennett explained his understanding of what had happened with his report. By group email he said:

“1. The report had been submitted to both you and Eugene for comments/approval and then forwarded to MA (at Eugene’s request) and to Antony Yoffa to present to FC.

2. Antony simply sent me a reply acknowledging receipt and that he was going to take it to committee. Having heard nothing, I followed up with an email in January, to which I have received no reply. I can only assume that having requested assistance from you and then you sending me up to review and report back, that the committee then decided that what I’d suggested was not what they wanted to do and the recommendations that I made were not accepted or enacted.

⁴⁵ MSA 001.001.0208

⁴⁶ Ibid

⁴⁷ MSA 001.001.5031

3. To be honest, given the original scope was to go up and write recommendations to assist the organisers (as distinct to report for our benefit) I haven't followed it up as they clearly didn't agree with what I wrote, or probably more likely, what I suggested was going to be too much work for their liking. You may recall the conversation we had a couple of months ago when I was seeking your input regarding going up again this year, and we both determined that there was little benefit in me attending if there was no appetite for change from the organisers; I'd simply be seeing what I saw already last year. If CAMS position has changed in terms of actively requesting/demanding some level of compliance with increasing levels of safety as per the report I'm happy to reengage with Anthony to work towards a viable solution.

4. I have had discussions regarding this year's event with Alan Evans. Chief Steward, who relayed his concerns and promised to copy me in on his report.”⁴⁸

78. However, in all the documents provided by MSA to the inquest I was unable to discover any records of any meeting having taken place to discuss improvements to spectator safety, nor was there evidence of any decisions to mitigate spectator risk.

79. Following the 2019 race the Chief Steward, Mr Evans, prepared a report curiously headed **Highly Confidential Document** on one copy and **Privileged** on another copy, which was provided to a number of persons within CAMS including (at least) Mr Arocca, Mr Smith, Mr Stuart and Mr Bennett.⁴⁹ Mr Evans made a number of observations and recommendations concerning risk to spectators including:

79.1 That the event was largely under the control of Mr Yoffa, who did not appear to be CAMS licenced, and who should not be appointed again as Race Director until CAMS are “satisfied that he meets the standard CAMS would require of such a person in such a high risk event.”

⁴⁸ Ibid

⁴⁹ MSA 001.001.0541 & MSA 001.001.0542

- 79.2 That the CAMS Clerk of Course did not seem to have a direct control over the conduct of the event. CAMS should ensure that the Clerk of Course is more actively involved in controlling the car part of the event.
- 79.3 A recommendation that there be two Assistant Clerks of Course, positions that did not exist for the 2019 race.
- 79.4 That there was no Critical Incident Plan.
- 79.5 Raising issues with safety in various parts of the event including spectator safety which he said was “*a major concern*”. As an example he reported the dangerous situation of a family which had camped in a fork of the track about 37 km from Alice Springs, a location which he considered, “*fully met the criteria for a No Go area on the material handed out to by the Finke Committee to spectators. The fork was almost immediately after a left turn and over whoopsi’s. All three stewards considered it a high risk area.*” The campers refused to move and the matter was reported to the Fink organisers who said they had “*no power over spectators on the track*” and the “*Finke Committee explained to me that they can only control the area around the start of the track at Alice and the finish area at Finke and the rest is up to the NT police.*”
- 79.6 He reported another spectator in a high risk area who did move when asked.
- 79.7 Alarming, he reported an incident where a buggy left the track, ran over 2 trikes, became airborne and landed in the fork of a tree. Spectators said that a little earlier there had been “*2 young people on their trikes in what became the path of the out of control buggy*”. The 2 trikes were reportedly flattened. The crew of the buggy were spoken to and expressed concern as to the closeness of spectators to the track

along its length. The buggy crew were grateful and relieved that the young people were not sitting on their trikes. They considered the “consequences would have been severe...if the young people had been on their trikes...would still be in the creek crying.” Mr Evans said, “I don’t want to think about the consequences.”

79.8 He reported that “quite a number of competitors expressed concern at the positioning of spectators on the track and how on a number of occasions they had backed off because of that concern and were anxious to see something done to having spectators in safer positions”.

80. Although that highly critical report was disseminated to senior members of CAMS, once again there was no evidence of anything being done to address the identified risks to spectators.

81. In June 2019 CAMS email chains also disclose that concerns were being raised about risks to a spectator in a different race. According to the emails, a young 15 year old was operating as “media” and was positioning himself in restricted areas and dangerous locations in a Victorian rally race. Mr Bennett notes, “In case of serious injury (or worse) occurring, our insurers (and the respective authorities) would be asking why we allowed a 15 year old boy, who is ostensibly a spectator, to be standing in such locations.” In a later email in the chain Mr Bennett commented, “Finke was one of those [off road events] where I’m amazed spectator incidents don’t happen more often.” Mr Smith responded that he would “like to get together and discuss a strategy for managing spectators at key points at Finke!”⁵⁰

82. On 21 June 2019 the CAMS Division Manager-Sporting circulated an email headed “Risk”. He attached a link to media articles about an off road desert race in the USA in which 8 persons were killed and the promoter sued. He

⁵⁰ MSA 001.002.3282

said, “no doubt we would be caught up in the carnage if something were to go wrong. Let’s make sure we are doing every little thing right here.”⁵¹

83. However, it seems that no action was taken to address any of the identified risks to spectators.

Spectator safety still under discussion in 2020

84. On 6 April 2020 Mr Bennett emailed Mr Smith and Mr Stuart under the heading “*Finke Safety review*”. Referring to the 2018 Report, Mr Bennett said,

*“We had a brief meeting about this late last year and for many reasons it hasn't progressed. I wrote the review on spectator safety back in 2018, which was forwarded to Antony Yoffa who acknowledged receipt and that was it! My review document pretty much spelt out what I consider the risks to be and potential methods to address these. Is that the direction you'd like us to head? Were you looking for something different? What I'd like now is some indication from you as to the desired outcome from our perspective”.*⁵²

85. Mr Smith responded to that email suggesting a Zoom meeting and commented, “*I guess it is one thing to have written the report, but it's another to ensure that steps have been taken*”.⁵³ There was no evidence that the meeting took place.
86. In terms of the documents before me, another six weeks passed before there was any further communication. On 13 May 2020 Mr Bennett emailed Mr Yoffa, copying in Mr Smith and Mr Stuart. He referred to the Bennett Report and enquired:

⁵¹ MSA 001.001.5031

⁵² MSA 001.001.9865

⁵³ MSA 001.001.9865

*“I was just wondering if anything has been implemented since, and further to that, if you're requiring any assistance from us to help with that process? We're happy to look at any way we can help you with resources or even key personnel to improve the event safety for spectators, competitors and officials, and with just over a year now until the next running, we felt it's a good time to get the ball rolling”.*⁵⁴

87. There was no evidence of any response to that email or any further action being taken.

Spectator safety still under discussion before the race in 2021

88. According to the documents produced to the inquest, spectator safety was not discussed again until 21 May 2021. On that occasion Mr Evans was reporting to Mr Arocca about another event, but he took the opportunity to reiterate his concerns relating to *“spectator intrusion onto the track at Finke which is very difficult to police.”* A few weeks later, on the first day of the 2021 race Mr Arocca forwarded it to Mr Smith.⁵⁵
89. Just 3 days later, Mr Harris was killed.

What were the rules and regulations that governed the race in 2021?

90. As mentioned earlier, the car competition was sanctioned by MSA. MSA sanctioned the race under the rules and regulations prescribed in its annually published Manual which included the ‘2021 Off Road Standing Regulations’ (“ORSR”).⁵⁶ Each year MSA also published ‘National Competition Rules’ which applied to sanctioned races. In 2021 the National Competition Rules defined ‘Off Road Events’ as, *“A Competition complying with the Off Road Standing Regulations conducted on Course over a variety of terrains.”*

⁵⁴ MSA 001.001.5487

⁵⁵ MSA 001.001.9655

⁵⁶ Folio 53

91. In addition to the standing MSA rules and regulations, any organisation seeking to run a MSA sanctioned event is required to provide draft ‘Supplementary Regulations’ which must be approved by MSA. The ‘2021 Tatts Finke Desert Race Supplementary Regulations 11-14 June 2021 Motorsport Australia permit #821/0416/01’⁵⁷ stipulated that the event would be held under the ORSR.

92. The ORSR provides:

“13.3 Spectators

(a) When spectator attendance can be expected it is the organisers’ responsibility to provide safe viewing facilities. All events must comply with the Motorsport Australia Off Road Spectator Safety Procedures.

(b) For certain events, Motorsport Australia may require the appointment to the organising committee of a person with responsibility for spectator control.

(c) Every spectator point must be manned by clearly identified spectator marshals who must work under the direction of a senior marshal. Areas in which spectators are prohibited must be clearly identified.”

93. In addition, the ORSR required sanctioned events to comply with the ‘2021 MSA Off Road Public Safety and Control Procedures’ (the “Public Safety and Control Procedures”)⁵⁸ which set out the public safety requirements for Off Road events. The preamble of which states, “*If the sport of Off Road is to continue to have the public attend events...then the sport has a*

⁵⁷ Folio 63E

⁵⁸ Folio 12 Joint Institutional Response [5.4]

responsibility to ensure steps are taken to provide for the safety of the public as much as possible.”

94. In an email dated 24 June 2019,⁵⁹ Mr Jack Bryant, Motorsport Development Executive CAMS, briefly explained the history of the Public Safety and Control Procedures to the recipients of his email, which included Mr Smith and Mr Stuart. He said:

“Prior to Finke 2018 there were no publically available guidelines for spectator control/safety for event organisers within the off road discipline.

This concern was raised and discussed post Finke 2018 which led to the publishing of the document ‘Public Safety and Control Procedures for Off Road’. This can be viewed on the CAMS site via ‘Events; Permits; Off Road – click here.

Essentially the document covers key information, templates for event organisers, diagrams of no standing areas and public view points.

The Document was presented to the Commission to which it was ratified and published in September of 2018.

Section ‘7 Spectator Control Marshals’ briefly covers how spectator points should be managed. However, Finke’s sheer distance poses additional challenges.”

95. The Public Safety and Control Procedures contain requirements intended to mitigate risks to spectator safety at large gathering sites. They stipulate that Off Road races must provide ‘Public View Points’. The stated aim of ‘Public View Points’ is to encourage spectators to use these areas where their safety can be controlled and monitored. Concerning the selection of ‘Public View Points’ the Public Safety and Control Procedures state that “it is essential

⁵⁹ MAU 001.001.5031

that the Clerk of the Course exercises care in selecting” ‘Public View Points’. As a general guide, when selecting ‘Public View Points’, the Clerk of the Course is to consider, inter alia: the safety of the public and Officials/Marshalls as paramount; the expected numbers of public at particular point; and provide enough ‘Public Viewing Points’, or design the course in such a way, so as to ensure that the public are able to see action on a relatively constant basis from official points. The Clerk of the Course is also responsible for confirming Spectator Marshals are in place at Public Viewing Points and are briefed on their responsibilities before commencing any event.

96. The Public Safety and Control Procedures set out ‘Compulsory Minimum Requirements’ for ‘Public View Points’:

COMPULSORY MINIMUM REQUIREMENTS

- (a) Each event designated an Off Road event where crews are permitted to drive outside the provisions of normal civil traffic regulations shall provide at least one Public View Point from which the public can see Off Road vehicles in competition, which must conform to the minimum requirements set out in this document.

While one Public View Point is the recommended minimum required, organisers should consider the expected numbers and movements of the public, and in conjunction with the event itinerary and formulate a plan which adequately caters for safe spectating at the event.

- (b) Each designated Public View Point must be set up and equipped with a minimum of facilities as outlined in this document.
- (c) Public instructions must be issued and must conform to a minimum standard format, and include the standard disclaimer available from Motorsport Australia, together with standard advice on public safety. This advice should also be provided to residential properties through which the track runs.
- (d) Organisers must take reasonable steps to ensure that the public use the designated viewing points.

Appropriate steps to achieve this may include only publicising the official Public View Points and also providing those Public View Points with facilities that make them more attractive to the public than other locations.

The purpose of this is to ensure as far as possible that the public do not put themselves in an uncontrolled and non-risk managed location and to eliminate the likelihood of accidents to the public occurring where organised help is not readily available.

While the above steps are designed to limit incidents, it is recognised that under some circumstances the public may be present in locations outside the control of the organisers, such as on private property adjacent to the track. If the Checker (for AORC Events only) or other officials identify safety issues with the location of the public, the Clerk of the Course shall consider the appropriate course of action.

- (e) Each event must designate a person who will be responsible to the Clerk of the Course for the public control procedures as outlined in this paper.

97. During the investigation MSA was asked to produce a copy of the MSA “Organiser Requirements” for the 2021 race. In its response it clearly stated that “*(o)rganisers are required to ensure they comply to the Off Road Public Safety and Control Procedures*” and provided a link to the document.⁶⁰
98. It was therefore highly surprising when, in its Joint Response, MSA and FDRI claimed that the Public Safety and Control Procedures did not apply to the Finke race in 2021.⁶¹ As the contemporaneous documentary evidence is patently inconsistent with that claim, I consider it to be disingenuous and false. I am satisfied that Public Safety and Control Procedures did apply to the 2021 race.
99. The 2021 Supplementary Regulations included a position for a “Spectator Safety Officer.” However, this position was unfilled and noted as “TBA”. Further, the Supplementary Regulations did not make any provision for the appointment of spectator safety marshals. MSA proceeded to sanction the race without the spectator safety roles being filled or created, which was seemingly against the advice it had received as to the importance of the positions for spectator safety. When Mr Neuendorff, Clerk of Course, attended the race on Thursday 10 June 2021 he was informed by Mr Yoffa that “... *he doesn't have a Spectator Marshal to organise spectators.*”⁶²
100. It seems that in spite of evidence to the contrary Mr Yoffa was content to rely on spectators doing the right thing. Mr Yoffa said that “*(t)he spectators are very good, and quite often, radio in if issues with other spectators arise.*”⁶³ However, the records obtained in relation to spectators’ reports did not support that claim.⁶⁴ In 2019, there was only one recorded report by a spectator concerning another spectator.

⁶⁰ Clause 11, page 8

⁶¹ Joint Response, para 5.6

⁶² Folio 65, Clerk of Course Report

⁶³ Folio 65, Clerk of Course Report

⁶⁴ Additional document 18, bundle of documents provided under Hall & Wilcox letter dated 15.08.22

Safety measures in place for the 2021 race

101. The Introduction to the FIA Rally Safety Guidelines 2019 states:

“Unfortunately, too many spectators do not understand the potential dangers and do not comprehend the speed of the cars. Consequently they place themselves in dangerous locations, placing far too much trust in the skill of the drivers and the reliability of the cars, and often displaying a lack of basic understanding or knowledge of the safety rules.

It is the responsibility of everyone to ensure that all spectators are in an acceptable position and are aware of the dangers of a car becoming out of control. Safety must be at the heart of every rally event.”

102. In light of the mounting evidence that spectators were continuing to put themselves in dangerous locations and what was widely understood about spectator behaviour in motorsports it was not reasonable for race organisers to simply rely on spectators to self-police in regards to safety.

103. In spite of this body of knowledge, the safety planning for the 2021 race again relied heavily on safety messages being received, understood and accurately applied by spectators. The two and a half page “2021 Spectator Management Plan”⁶⁵ relied largely on a ‘Safety and Environment Campaign’ which included the following messages and actions:

- Stay back from the track
- Don’t stand on the outside of corners
- You can’t steer when you are flying
- Look out for your mates

⁶⁵ Folio 63C

- Speed of 200kmh or 55 metres per second
- You wouldn't camp on the edge of a highway; don't camp on the edge of a race track.
- **Track marking:** Marking and monitoring of 'hot spots'.
- **Race weekend:** Issuing of Z-cards, police presence, zero cars, road closures, reporting channels, checkpoints and air support.

104. The Finke Desert Race website included a tab for spectators which contained a section on safety as follows:

“Safety first.

You will need to be extremely aware of safety, both for yourselves and our competitors. If you are camping with young children, please watch them at all times and stand well back from the track during racing. Don't wander on the track, it may look clear, but you can't be sure of what is coming at you at race speeds. Standing on the outside of corners can be dangerous, so avoid this at all times - car and bikes are travelling at very high speeds in dusty conditions! Our competitors are focused on their race and are not looking for you, your kids or your dog - leave your dog at home! It is their track from 6am – 6pm, give them the respect they deserve! Avoid driving up and down the access road (next to the racetrack) during racing, as the dust and traffic can be very distracting and dangerous for our competitors.”

105. Safety warnings were also placed at other locations including in the Finke Desert Race Official Program and Z-cards, on signs at the entrance to the start/finish line, at key spectator sites and on the public television screen at the start/finish line.

106. Unsafe areas were identified in the Finke Desert Race official program and in the Z-cards by reference to the “unsafe areas” diagram:⁶⁶



107. Mr Harris attended the prologue and possessed a copy of the official program and so it was likely he had some exposure to the safety messaging. However, Mr Mudd, was not aware of the safety messaging. Although Mr

⁶⁶ But see Folio 52- the Finke “Unsafe Areas” diagram does not match the diagram prescribed in the Safety and Control Procedures

Mudd had collected a “*pocket information guide*” (likely the Z-card) at some stage during the race he “*only saw it after the crash*”:

“It was after I got home from the hospital, after the nine and a half weeks, I looked at the booklet. ... It had general safety advice in there and there is an area marked in there that just has ‘unsafe area for spectators. Racing vehicles can overshoot. For your safety we insist that you don’t stand in the marked areas’. Looking back on it I’d have to say that we were standing in this area. There weren’t any signs there and no way to know the area was restricted. If someone didn’t have the booklet or didn’t look in it like we hadn’t then there was no way to know that the area had been classified as dangerous.”⁶⁷

108. In any event, there were obvious limitations with the messaging. It is unclear whether the unsafe areas in the diagram, were the yellow areas or just those parts hatched with red. There was no guidance as to what might be considered a safe distance from the track.
109. In addition, it was likely not easy for spectators to correctly identify features of the track, or to correlate those features with the unsafe areas diagram. There was no track signage identifying the features, and they were not marked on the track map. Just how difficult it was to accurately identify a track feature was exemplified at the 35 km sand dune, which was variously described in evidence as a jump, a chicane and a corner (but not as a tight corner), and a right hand bend.
110. The picture below was taken by a drone. The 35 km sand dune is in the middle of the white circle. The bunting travelled on the Western side of the track from the top of the sand dune and stopped at approximately the top of white circle. Mr Harris was standing at the fork just beyond the tree,

⁶⁷ Folio 23, statement of Robert Mudd, para 12

seemingly at the start of a chicane shape (but upside down when compared to the chicane on the unsafe areas diagram). Attempting to apply the unsafe areas diagram to Mr Harris's specific location is difficult.



111. Experienced spectators, race novices, children and the elderly, were largely left to their own devices when it came to interpreting the features of the track and matching them to the unsafe areas diagram, and then assessing how far back was safe. At its highest, the unsafe areas diagram only provided a very rough and unsophisticated guide as to where it might be safe or unsafe to stand.

112. Given the likely challenges spectators experienced in self-assessing the features of the track and the safety of locations, it was therefore reasonable for them to rely on the specific demarcation in place. And as discussed earlier, at the 35 km sand dune the bunting which was set up to mark dangerous locations, stopped short of where Mr Harris, and other spectators, took up position.
113. Some spectators recognised that the location where Mr Harris and others had gathered was dangerous. One spectator said, “... *it’s not a nice thing to say but ... I thought, [Mr Harris] was in a bad spot. And, you know, looking back on it ... we were probably a bit too close as well, the way the buggies were skipping out when they hit these ... bumps.*”⁶⁸ Mr McCaulay who was also taking pictures close by said that he and Mr Harris had discussed that “*usually the most dangerous spot is where you get the best photos.*”⁶⁹ When another spectator spoke to Mr Harris and told him that he was too close to the track and it wasn’t safe, Mr Harris replied with words to the effect of, “*You’ve got to stand in the dangerous spots to get the good photos*”.⁷⁰ But another spectator who was nearby said of Mr Harris,

“... *he was just so excited, he just, he never had a clue, this is his first Finke, he’s got Finke Fever he said, and he never – like me, not a clue. Not a clue on how perilous it just, you know.*”⁷¹

114. Another experienced spectator had attended at the race “*most years*” since 1991 and was there with his 9-year-old son and his wife. He described trying a number of locations and eventually settled on a spot where “*there was a large tree which made us feel a bit safer.*”⁷² He drew a map of his

⁶⁸ Folio 11, statement of Geoffrey Common, p.3

⁶⁹ Folio 19, statement of Donald MacAulay, p.9

⁷⁰ Folio 22, statement of Jason Moore, p.4

⁷¹ Folio 35, statement of Christine Zander, p.22

⁷² Folio 24, statement of Peter Oatley, para 7

family's location only two metres from the Trophy Truck's uncontrolled direction of travel and said:

*"I reacted immediately as it was coming for us, I turned to reach towards my son who was on the left of me, but before I could move or do anything the vehicle was already going past us. It was within two metres from us. It just missed us".*⁷³

115. It is impossible to know precisely what Mr Harris thought about the location he was standing in but it is fair to say that there were other spectators nearby in similarly dangerous locations. One spectator who was also dangerously close-by said, *"I do know that we were not in a very good spot"*⁷⁴ and *"in hindsight, just stupid."*⁷⁵



⁷³ Folio 24, statement of Peter Oatley, para 8

⁷⁴ Folio 35, statement of Christine Zander, p.21

⁷⁵ Folio 35, statement of Christine Zander, p.22



116. It was pure chance that when the Trophy Truck broke, it speared off directly at Mr Harris. It could easily have jumped further to the right or left and headed towards a different spectator. That Mr Harris was perhaps one or two metres closer to the track than some other spectators only minimally increased his risk, if at all, in the circumstances of the collision. Mr Mudd was about another 15 metres further back, and he was unable to avoid being hit.



117. While the dangers of the location may have been obvious to some spectators, it appears they were not so obvious to others. Indeed, in choosing the location each of the spectators may have been influenced by the fact that a crowd had gathered there, which may have presented as (falsely) reassuring.
118. That there were other spectators gathered at the location influenced Mr Mudd. He said he moved to the location:

“... because there were other people already over there. The immediate area we were in, there might have been around ten people and in the greater area anywhere up to fifty. There was nothing separating us from the track, just space. We were maybe six to ten metres back from the edge of the track. We were on the outside of a bend. The cars crest at a hill then when they came to the bottom it veered off to the right then swung back around to the left for their direction of travel. We had been there for about twenty minutes, the car that collided with us came through at 9.36am. It would have been the eleventh car that came through there while we were over that side. There was nothing about the way the other cars came through there that caused me any concern with where we were standing. No one came over and spoke to us about being there. I didn't see any 'Race Officials' or anyone connected with the race at all that day”.⁷⁶

119. Mr Mudd was in the same location on the Sunday. He said:

“We were in the same area. The cars were driving in the opposite direction on the track. We arrived at roughly 7.00 in the morning, parked in the same location as we did the next day. We probably left that day around 12.30pm. We were standing in the same place as where the collision happened the following day. We were there on

⁷⁶ Folio 23, statement of Robert Mudd, para 7

*and off for around five hours and there was a group of other people there also. No race officials or anyone else addressed me about being there”.*⁷⁷

120. Although Mr Mudd did not see any officials at the sand dune, there were in fact two FDRI volunteers in official volunteer uniforms sitting in a “sweep vehicle” at the top of the 35 km sand dune approximately “30m, 40m away”⁷⁸ from the collision. Their role was to check the track from the 30 km mark to the finish line for safety issues after the last 4WD had gone through and before the motorcycle competition started. They were not Safety Marshals and had received no Safety Marshal training or any training on how to deal with spectators.⁷⁹ However, they said that earlier that morning they did speak to some spectators that were too close to the track.
121. After the collision, one of the volunteers said that Mr Harris “*had encroached on what would be a safe point*” but that:

“ I ... personally hadn't noticed anybody encroach on, closer than what would be deemed safe at the point that that accident happened.”

“ ... if I had have seen them, that they were that close, I would've been yelling out to them to, to move back, you know ... especially for the ... buggies further down because they don't handle the big bumps so well”.

“But you ... see it all the time, it's very hard to control people moving around in a site unless there's a physical barrier up, though. They walk in front of cars across the track, I've seen it a million times, you know ...”

⁷⁷ Folio 23, statement of Robert Mudd, para 10

⁷⁸ Folio 21, statement of Craig Meekings, p.5

⁷⁹ Folio 32, statement of Victoria Warfe, p.18

*“... most people will use common sense and they don’t stand that, most people, there’s always, you’re always going to get the ones that ... want to get that one close up shot ...”*⁸⁰

122. One spectator gave similar evidence. She recalled “*on one occasion*” the volunteers moving “*people away from the flags*” but “*(o)f course when the officials left the crowd just pushed back to the flag line. Other than that I didn’t see any officials.*”⁸¹
123. In the Joint Response it was suggested that the sweep volunteers were not only responsible for removing obstructions on the track but that they also were expected to look out for any “safety hazards” to spectators.⁸² However, I consider this exaggerates their role. In the 2021 Guide for Roles to volunteers, there is no suggestion that sweep volunteers have any role with respect to spectators.⁸³ The “Sweep/Recovery Team Operations Manual”⁸⁴ sets out the functions of the sweeps primary role which was to ensure the track was clear of obstructions. In this context the single reference to ensuring “*spectators are clear of the track*”⁸⁵ seemingly contemplates the possibility that spectators may pose an obstruction on the track but does not extend the responsibility of the sweep volunteers to spectator safety on the sidelines.
124. The photos tendered in evidence demonstrate that no spectators had positioned themselves in front of the bunting. And when the volunteers were present and taking action the spectators spoken to complied with their directions (while the volunteers were present). It seems that most spectators are prepared to follow clear and unambiguous directions concerning their safety. There is no evidence to suggest Mr Harris or Mr Mudd were spoken

⁸⁰ Folio 21, statement of Craig Meekings, p.16

⁸¹ Folio 12, statement of Rebecca Ellis, para 9

⁸² Joint Response, para 8.3

⁸³ FDRI 499 of 521

⁸⁴ Folio 60, Sweep/Recovery Team Operations Manual

⁸⁵ Folio 60, Sweep/Recovery Team Operations Manual, p.7

to by the volunteers or that they would have not followed similar directions if they had been spoken to.

After the race

125. Mr Evans produced a number of reports about the 2021 race all curiously headed ‘**Privileged**’. Concerning the prologue he found the paperwork to be “*entirely unsatisfactory*”; the pit layout “*totally unsatisfactory*”; scrutineering “*an absolute shambles*”, specifically noting several near misses and unsupervised children as risky factors; and communications on day one, an “*unmitigated disaster.*” Further, although he thought that spectator control had improved since 2019 a Steward had reported to Mr Evans that “*it could do with further improvement. Competitors did advise that spectators were an issue on the track doing a car version of the Running of the Bulls.*”⁸⁶

126. In his Final Stewards Report for the 2021 race Mr Evans reported:

*“The Chief Steward was meeting arriving vehicles and questioning competitors...particularly as to the behaviour of spectators. Competitors reported that **there were numerous instances of spectators being in extremely high risk positions.**”⁸⁷ (emphasis added)*

127. On 19 June 2021 Mr Evans emailed a “Proposal for improving safety at Finke Desert Race”⁸⁸ to Mr Arocca, which Mr Arocca then forwarded to Mr Smith and Mr Stuart. Mr Evans reiterated his opinion that:

“The control of the track and spectators is as noted in previous reports to then CAMS has serious deficiencies as to who has responsibility for that which increases risk for all concerned and

⁸⁶ MAS 001.001.7004

⁸⁷ Attachment C Stewards Final report Finke Desert Race 2021

⁸⁸ MSA 001.001.4970

*needs to be enhanced and authority established to control spectators entering the track and its environs...*⁸⁹

128. Mr Evans made many recommendations for improvements relevantly including the following:
- 128.1 Legislation to declare the track and environs a controlled site for 14 days prior to Friday commencement and for 5 days post.
 - 128.2 The environs be declared the area 100m either side of the track to enable greater controls of spectators.
 - 128.3 That as part of the legislation, designated spectator areas be determined, marked and secured prior to the event and be promulgated well prior to the event.
 - 128.4 Authority be given to police and designated officials to control competitor and spectator activity including the ability to move on persons in unsafe areas.
 - 128.5 The resource necessary to maintain constant surveillance of the Finke track be provided, namely, two helicopters and long range drones with high resolution video cameras with video relayed back to Race Control.
 - 128.6 Approximately 40 boundary riders equipped with 2 way radios who can be rapidly deployed to sites where spectators are in risky positions, with authority to move spectators on and cameras to capture the faces of spectators who do not comply.
129. In addition to those recommendations Mr Evans repeated his concerns about the Clerk of Course⁹⁰ and the desirability of Rallysafe being introduced. Indeed he complained that, *“the whole thing just shows how amateurish the*

⁸⁹ Additional document 15, Alan Evans “Recommendations”, p.2, para 3

⁹⁰ See also MSA 001.001.0614

*whole administration of Finke has been and is.”*⁹¹ What became of any of his recommendations was not disclosed in the documents provided to the inquest, and the Clerk of the Course was reappointed in 2022.

What has changed?

130. Shortly after the 2021 race, a tripartite Governance Committee was established constituted by members of MSA, FDRI and Motorcycle Australia. The Governance Committee was responsible for updating and improving the Spectator Management Plan for 2022.⁹²
131. Internally, MSA had a Risk and Safety Committee which was also liaising with FDRI over the preparation of the 2022 Spectator Management Plan. To assist with the preparation, the Risk and Safety Committee provided FDRI with a copy of 2019 Rally Australia Spectator Management Plan and encouraged them to use as much as they liked when developing their own plan for the Finke race.⁹³
132. In May 2022 Mr Smith prepared an Information Paper for the Risk and Safety Committee which set out key inclusions for the 2022 Spectator Management Plan, including Designated Spectator Zones set up and managed by Spectator Marshals.⁹⁴ This was also referenced by Mr Arocca in his Information Paper to the MSA Board.⁹⁵
133. The proposed 2022 Spectator Management Plan was provided by FDRI to the MSA Risk and Safety Committee. There were some significant changes to the plan since 2021, for example, roving safety marshals, improved signage, and a recommendation to spectators that they stand 20 metres from the track and camp 30 metres from the track.

⁹¹ Documents discovered by Barry Neuendorff, pg.537-541

⁹² Joint Institutional Response [9.12]

⁹³ MSA 001.002.0698

⁹⁴ MSA 001.001.3421

⁹⁵ MSA 001.001.7177

134. In spite of these changes, on 15 May 2022 Mr Garry Connelly, a member of the MSA Risk and Safety Committee, was so concerned about the adequacy of the 2022 Spectator Management Plan that he emailed Mr Arocca. He said the 2022 Spectator Management Plan:

“...was not a safety plan of substance. It does not stack up. Maybe parts of it are missing from what was sent to us. For example, I would expect to see a list of resources (spectator Marshals) and where they are to be allocated, and a senior one appointed for each spectator area (and there are a lot of areas), plus a comms plan specifically for them. I would also expect to see a detailed diagram of each of those points that have been identified by the photos in the document sent to us showing the no go areas, the designated spectator areas where any barriers or mesh fencing is to be erected, a transportation schedule and set up schedule for that fencing. A signage schedule and a plan for who is going to provide the signs and erect them and where they will be placed etc. This current plan simply does not cut it.”⁹⁶

135. The MSA Risk and Safety Committee met three days later, on 18 May 2022. Mr Connolly was present (as a member) and given an opportunity to address the committee on his concerns. However, the minutes do not record the details of what was raised and discussed, nor how any issues were to be addressed.⁹⁷

136. Mr Adrian Stafford, MSA Sporting Director – Rally Australia, seemingly independently of Mr Connolly, also raised concerns as to the adequacy of the 2022 Spectator Management Plan. Mr Stafford considered the work load allocated to the role of “Spectator Marshal Team Leader” was “*an impossible mission*”. And, similarly to Mr Connolly, noted the lack of

⁹⁶ MSA 001.001.9961

⁹⁷ MSA 001.001.5879

designated spectator zones. Mr Stafford considered that the plan lacked focus when it came to encouraging spectators to go to a specific locations and noted how important that was. He said, “*even 2 or 3 new locations with more modest infrastructure will be a good start to a longer term solution*”.⁹⁸ He said,

“..these organisers are quick to claim major event status, including seemingly to just inviting fans to use this easily accessible track to get up close to the action. It is now incumbent on them to have the resources to support this in a modern context. A 200 km “special Stage” with full easy access is not sustainable over time – they need to start the process of education and planning to focus on a few major points over the coming years. Then with cooperation from government authorities – close off “at the perimeter” the easy access along the route. Not easy but as a package I think it is necessary. In reality not a lot different to the changes made in Rally over many years.

...

Using historical knowledge the organisers need to grade the known major spectator locations and then allocate a specific number of marshals – to a ratio of fans and distance spread...

Marshals need detailed training on how to deal with fans...they need to move away from dangerous areas or two things will happen – the police will be called AND the competition may be stopped.”⁹⁹

137. On 27 May 2022, just 13 days before the race was to take place, Mr Smith wrote to Mr Yoffa requesting a map of the designated spectator zones and the numbers of volunteers recruited as spectator marshals. Mr Yoffa

⁹⁸ MSA 001.001.8824

⁹⁹ MSA 001.001.8824

responded that they had recruited 8-10 marshals and hoped to recruit more, but as to designated spectator areas:

“... as with previous years we aren’t having designated spectator zones this year other than the start line in Alice Springs”.

...

*“I should add that it is impracticable to have designated spectator zones along the track”.*¹⁰⁰

138. MSA permitted the race to proceed. In spite of its shared responsibility for the Spectator Management Plan, the Governance Committee appears to have held little sway in ensuring all reasonable and available steps were implemented to improve spectator safety.
139. Questions had already been raised as to the capacity of FDRI to continue to organise the race, an opinion shared by Mr Tony Hynes, who reviewed the 2022 race for Motorcycling Australia. Mr Hynes said: the Steward and Clerk of Course were *“ineffectual”* and *“not up to standard”*; the rider briefings were *“the worst .. I have seen”*; *“sign on is a mess”*; the *“prologue start was chaotic”*; scrutineering was *“poorly controlled”*; *“it was common to see competitors riding their bikes in the main spectator area”*; and the final corner *“presents a spectator safety issue”*. His overall view was that the race:

“Has long outgrown the capabilities of the club alone.

Has very high inherent risks to our riders.

...

¹⁰⁰ MSA 001.001.5862

*Has reached the zenith of its potential under its current management”.*¹⁰¹

140. In spite of the changes made to the Spectator Management Plan, it was Mr Hynes opinion that the race “*presents insurmountable spectator control risks.*”

141. I was not made aware during the inquest of the safety measures put in place for the 2023 race. However I have noticed media reports that MSA would issue a permit with the requirement for significant safety measures.

Conclusion

142. The Joint Response claimed that “ahead of the 2021 Race” the FDRI Committee had “developed a range of measures and procedures to protect spectators”. Accepting that there were some measures and procedures in place, they were entirely inadequate to address the known significant risks to spectators posed by the race. MSA and FDRI, who were responsible for organising and authorising the Finke Desert Race 2021, failed to satisfactorily manage the identified risks to the safety of spectators from at least September 2018. Practical and available solutions to mitigate the risk were identified and yet no action was taken by either MSA or FDRI to implement those recommendations before Mr Harris was tragically killed.

143. In his closing submissions, Mr Hodgkinson on behalf of MSA, made these concessions:

“The tragic death of Mr Harris illustrates the proposed measures were not sufficient. It’s accepted that more action should have been taken by MSA to address concerns which have been raised about

¹⁰¹ MSA 001.001.6173

spectator safety from 2018. Improvements should have been made before the race in 2021.”¹⁰²

144. I find that the bunting at the 35 km dune was not in accordance with the FIA Rally Safety Guidelines as recommended by Reliance Risk, and was in any event manifestly inadequate to reflect the dangers of the complicated set of features at that location. Indeed its placement may have positively misled Mr Harris and other spectators to assume the location they chose (where there was no bunting) was not an “unsafe area”.
145. According to the ORSR and also on the recommendations in the Bennett Report, at popular locations such as the 35 km sand dune there should have been safety marshals, but there were none. Tellingly, the position of Chief Spectator Marshal was unfilled. Given its popularity, I consider the 35 km sand dune should have been a designated Public Viewing Point with all the attendant safety features required of that designation. But even without such a designation, given the crowds that historically gathered there and the risks of the site, adequate and appropriate spectator safety precautions ought to have been taken to mitigate the risk.
146. Concerning any future safety planning, the belief that spectators understand the risks and can self-police is not justifiable. Education may assist but not all spectators will, hear, see, understand and apply education programs. The responsibility for spectator safety cannot be abdicated to the spectators themselves.
147. Whilst there have been changes to the Spectator Safety Plan since 2021, there are a myriad of recommendations made by Mr Bennett in 2018, Mr Evans in 2019 and 2021, Reliance Risk in 2019, Mr Connolly in 2022 and Mr Stafford in 2022, that as at the date of the inquest had not been

¹⁰² T 367

implemented. There was no cogent evidence before me as to why many of those recommendations had not been adopted and applied.

148. In addition, accepting that race vehicles can travel at speeds of 180km/hr, which equates to “50m per second”¹⁰³, there was no cogent evidence presented in the inquest as to whether key new measures, the recommended 20 and 30 metre buffer zones, were adequate, sufficient, or appropriate to mitigate the risk to spectators.

Recommendations

149. I make the following recommendations:

149.1 The relevant government department responsible for making recommendations to the Minister prior to the granting of the legal instrument giving approval for the race ensure that adequate spectator safety measures have been implemented prior to the granting of any approvals; and

149.2 The relevant government department responsible for making recommendations to the Minister prior to the granting of the legal instrument giving approval for the race receive from the race organisers a comprehensive spectator management plan that sufficiently, adequately and appropriately mitigates the risks to spectators posed by the race.

Formal Findings

150. On the basis of the tendered material received I am able to make the following formal findings:

- i. The identity of the deceased person was Nigel Roy Harris born 29 May 1961 at Westbury, in Tasmania, Australia.

¹⁰³ Race Ambassador message on FDR website

- ii. The time and place of death was approximately 9.35am on 14 June 2021 at the 35 km sand dune on the Finke track, Alice Springs in the Northern Territory of Australia.
- iii. The cause of death was multiple blunt force injuries.

Dated this 5th day of June 2023.

ELISABETH ARMITAGE
TERRITORY CORONER