



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Tyrone Marley Gilks
Hearing dates:	5,6 May and 9 July 2015
Date of findings:	10 July 2015
Place of findings:	Newcastle Local Court sitting as NSW State Coroner Court
Findings of:	Magistrate Michael Barnes, State Coroner
Catchwords:	CORONIAL LAW – Cause and manner of death; motorcycle long distance jumping; risk management; responsibilities of land-holder, local authority; NSW Sport and Recreation
File number:	2013/87599
Representation:	Sgt Harding assisting the State Coroner, Magistrate M. A. Barnes. Mr Ben Bickford, Barrister, I/B Mr Dane Twohill appearing on behalf of Ms Samantha Gilks Mr Paul Marr, Barrister, I/B Mr Michael Burke appearing on behalf of Mr Kevin Gilks

Findings:	Identity of deceased The deceased person was Tyrone Marley Gilks Date of death Mr Gilks died on the 21 March 2013 Place of death He died at John Hunter Hospital, Newcastle. Manner of death Tyrone was fatally injured while attempting a long distance jump on a motorcycle. The bike had insufficient speed to bridge the gap between the take off ramp and the safe landing area of the landing ramp causing it to collide with the leading edge of the landing ramp resulting the rider slamming into the top of the motor bike and suffering the fatal injuries. Cause of death The cause of Mr Gilks' death was chest injuries caused by blunt force trauma suffered in a high speed motorcycle crash.
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The Coroner Act 2009 in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Tyrone Marley Gilks.

Introduction

Tyrone Gilks, 19, was a professional freestyle motocross rider. On the 21 March 2013, he was at the Maitland Showground preparing to attempt to set a world record long distance motorcycle jump two days later.

As part of those preparations, he and members of his family and friends had constructed a concrete run up track, a steel and timber take-off ramp and a large earthen landing ramp. In practice runs made on the day in question, Mr Gilks was riding the motorcycle at approximately 75 mph (120 kmh) and making jumps of between 80 and 90 metres.

At about 10.41am Tyrone attempted a jump longer than his previous attempts that day and using a higher gear on the motorbike. The motorcycle travelled through the air towards the top of the landing ramp but did not fly far enough to land on the downward slope. Instead, it impacted heavily with the top front corner of the landing ramp causing the front suspension of the motorcycle to snap. This caused the rider's chest to impact heavily onto the top of the motorcycle before he was ejected and thrown about 20 metres further down the landing ramp. Tyrone was conveyed to the John Hunter Hospital in a critical condition. Later that day, he passed away without regaining consciousness.

The Inquest

The Inquest was held to make findings regarding the date, place, manner and cause of Tyrone's death. Specifically, it sought to address the following issues:

1. Did the manner in which the infrastructure of the jump was designed and constructed contribute to the crash?
2. Was any body or agency responsible for authorising and monitoring the activity?
3. If not, what safety and/or regulatory requirements were in place in regards to the fatal event?
4. Was any lack of regulation a contributory factor in the manner of death?
5. Should there be any change to the way in which such activities are regulated?

The evidence

Social history

Tyrone Gilks was born on 11 December 1993, the third of three children. From an early age he was involved in riding motor cycles. Indeed, he commenced competing when he was only 5 years old.

He commenced participating in freestyle motor cross (FMX) when he was 10. That sport is a variation of motocross in which riders attempt to impress judges with jumps and stunts. Part of the sport involves riders attempting to clear long distances in the air.

Mr Kevin Gilks, Tyrone's father was also active in competitive motorcycle riding and helped his son pursue a career in FMX. Tyrone was very successful and held many distance jumping records as he progressed in the sport, although until he was 18 those records could not be officially recognised.

There is no doubt that Tyrone was part of a close and loving family who deeply grieve his death. I offer them my sincere condolences for their loss.

Background

In 2012, Mr Gilks senior and his son hatched a plan for Tyrone to attempt to break a world record for long distance jumping at the 2013 Maitland Bike and Hot Rod Show. The relevant record was for 250cc two-stroke machines. At the time it was 310 feet (94.5 metres) and was held by Ryan Capes of the USA.

The Maitland Bike and Hot Rod Show is organised by the Maitland Chapter of the Gladiators Motorcycle Club and had been held around the same time of the year for the previous 19 years. In 2013 it was to occur on Saturday 23 March.

In September 2012, during discussions between Trevor Hardes, the Association president at the time, and Aub Smith who was responsible for the organising of the bike show and Mr Gilks, it was conveyed that the bike show organisers wished to allow a distance jump record attempt to be made as part of the show. This proposal was put to the showground management committee. It was agreed that the jump could proceed provided it had appropriate insurance cover which, from the association's perspective, meant public liability cover.

The Gladiators Motorcycle Club arranged public liability insurance for the bike show but from the document tendered in these proceedings, it appears that policy did not cover *Service Providers* who were obliged to arrange their own insurance. *Service Providers* as defined in the policy document would seem to include those undertaken the record jump attempt. It does not appear that any steps were taken by the showground association or the Gladiators Motorcycle Club to ensure those undertaking the jump secured the necessary insurance cover.

In any event, Gladiators Motorcycle personnel and Mr Gilks were advised that the event could proceed in the area indicated by them as suitable, namely the trotting track and parking area further north.

An application to hold the bike and hot rod show was subsequently submitted to the Hunter River Agricultural and Horticultural Association. It did not mention the world record motorcycle jump attempt. It was approved.

The bike

In February 2013 Mr Gilks senior delivered to Jim Sherritt, a local motor bike mechanic and engineer experienced in tuning and modifying racing motorbikes, a new Yamaha YZ250cc motorcycle. He had previously explained to Mr Sherritt the proposed record jump attempt and they discussed changes that would be needed to ensure the bike had the necessary performance capacity. This work was carried out by Mr Sherritt over the next week.

After completing the modifications, Mr Sherritt tested the bike and was satisfied that it had the capacity to exceed the maximum speed needed jump the target distance.

Mr Sherritt was of the opinion the machine was suitable for what was planned and that the bike was in good working order. He saw the bike again on the day of the crash and concluded it was running well.

The venue

The Maitland showground occupies some 16 allotments of land comprising 25 acres on the southern outskirts of the town. It has operating on the site since 1874. Since that time various building works and other developments have been undertaken. Currently there are numerous buildings for exhibiting stock and produce, stabling stock, storing machinery, grandstands for viewing events and a number of oval tracks used for greyhound racing, harness racing and other sporting events. Sealed roads connect the various developments on site. It is surrounded by a chain wire fence. It is owned by and under the control of the Hunter River Agricultural and Horticultural Association.

A prominent feature of the site is two oval race tracks. Both have a general north-south alignment. The smaller of the two is approximately 200 metres long and 50 metres wide and is situated on the eastern side of the site. It is referred to as the warm up or trotting track track.

The jump set-up

The jump was to take place using a take-off ramp and a landing ramp. They are described below.

At around the time the motor bike was being prepared for use in the record attempt, Mr Gilks arranged to have an earthen landing ramp formed in the centre of the warm up track. During the week commencing 11 March 2013, this ramp was built by a local earth moving contractor to dimensions were supplied by Mr Gilks who said he knows how these ramps should be constructed from experience. The dimensions and the design of the ramp were apparently recorded in book that went missing after the fatality and the following details were derived from measurement taken after the crash.

The ramp had a steep face leading to its apex approximately 7 metres above ground level. There was then a flat horizontal top approximately 4 metres long, referred to as the safety deck - the rider is not supposed to land on it but it will save him from crashing into the face of the ramp if he doesn't jump far enough. After the safety deck the ramp sloped gradually back down to ground level over 70 metres. The point where it begins to slope downwards is referred to as the knuckle and the distance between that point and the top of the take-off ramp is referred to as the gap distance. The "sweet spot" where the rider should try and land is in the upper half of that downward slope.



A take-off ramp that Mr Gilks had designed and had built some seven years before the fatality was erected in the arena on the area surrounded by the trotting track. Tyrone had used it on numerous previous occasions. It was about 3.6 metres high, 1.2 wide and 13.65 metres long and it launched the motorbike into the air at about a 28 degree trajectory. It was designed by consulting engineers. The picture below shows Tyrone riding over the ramp.



As a result of analysing data from jumps Tyrone had done on an 85cc and 125 cc motorbikes in past years, he and Mr Gilks believed that were able to accurately conclude that if the bike he was riding for this record attempt went up the take-off ramp at 84mph75mph it would have sufficient velocity to break the targeted world record distance.

The site they had chosen for the record attempt did not have sufficient clear ground to allow a straight approach to the ramp that was long enough to attain the necessary speed.

To enable the motor bike to reach sufficient speed it was decided Tyrone would ride along the sealed road running along the southern boundary of the site before turning left and running in a northerly direction toward the take-off ramp situated inside but at the southern end of the warm up track. Some soil was piled on the outer margin of the corner to act as a berm to allow the rider to maintain more speed while cornering. A drainage pipe traversed the road shortly before it met the southern end of the warm up track. Although buried, it caused a significant ridge across the road surface.

On Monday the 18 March 2013, he commenced to conduct practice runs and jumps at the arena. During these runs it was determined that the grass surface inside the trotting track on the lead up to the take-off ramp was not providing sufficient traction and this would hinder the attainment of the necessary speed. It was decided that it would be necessary to pour a concrete strip to overcome this. On Tuesday the 19 March 2013, this was done. It ran from where the path of the approach left the sealed road to the base of the take off ramp. It was 1.2 metres wide and 130 metres long. This concrete surface was quite rough, it had undulations, and it was not screeded and had a poor alignment. It is pictured below.



After Tyrone was satisfied with the way he was accomplishing a jump, the take-off ramp would be moved 10 to 30 feet further way from the landing ramp, thereby increasing the jump distance but also shortening the run-up.

On Wednesday the 20 March 2013, Tyrone and Kevin Gilks conducted a number of speed runs. This involved the bike being ridden along the bitumen road at the perimeter of the showground and the veering onto the concrete track leading to the take-off ramp. Instead of going over the ramp, Tyrone would go beside it enabling the speed at which he reached the ramp to be measured on a hand-held radar. These speeds were recorded. On a number of runs it was indicated the bike had reached a speed of 84mph (135.2 km/hr) – that is slightly above what was needed to break the record when being ridden in 5th gear. Tyrone told his father that the throttle had not been fully open. They therefore concluded the bike was capable of jumping the desired distance with its then current tuning and gearing configuration. However, no jumps were attempted on that day because of a dangerous wind.

Mr Gilks senior had made a pink mark with line-marking paint adjacent to the concrete run-in strip about 60 metres before the take-off ramp. He said that Tyrone and Chris Martin knew that it was at about this point that the bike's speed would be measured by the radar device. If it was not high enough for the jump distance about to be attempted, Mr Martin would signal that to Tyrone – “wave him off”. The mark was set back from the take-off ramp so that Tyrone would have time to alter his course and travel beside the take-off ramp rather than over it.

The fatal incident

During the morning of the 21 March 2013, numerous persons known to the Gilks family assembled at the arena at the Maitland Showground. Some of these people were tasked with the setup and organisation of the jump and will be referred to as the ‘team’. It is believed that Tyrone and the team were highly focused on setting the world record long distance motorcycle jump that day if possible.

The weather was clear and hot and the arena and surrounds were dry. There was a light westerly blowing.

The ramp gap was to be measured by John Sinclair who is a surveyor. It was the distance between the front edge of the take-off ramp and knuckle of the landing ramp. Mr Gilks would watch where the back wheel of the bike landed, add the distance from knuckle to that point to calculate the jump distance. The speed was checked by Chris Martin using a hand-held radar device. He would communicate it by radio to Mr Gilks who would tell Tyrone and Mr Gilks would tell Mr Martin the length of the jump by reference to the landing point. Mr Martin and Tyrone would also discuss the speeds and they were recorded in a book by Samantha Gilks, Tyrone's sister, who was standing near Mr Martin off to one side of the take-off ramp. Each run was being coordinated by Kevin Gilks who was communicating with the team via a two way radio. He was positioned next to the landing ramp.

The statements of key witnesses were taken some six months after the incident. Accordingly, as would be expected, there are some inconsistencies in their versions. The written records made by Samantha Gilks could not be located, although she is seen on film of the incident carrying the book when she walks away from the scene after the ambulance arrives. The surveyor, Mr Sinclair made some contemporaneous notes, as did the mechanic, Mr Sherritt. Further, as mentioned earlier, a TV news crew were present and they filmed much of what occurred as did another private documentary maker. The following account is an attempt to synthesise a version from those sources and while not all of the inconsistencies can be reconciled, nothing really turns on any of the uncertainties.

It is notable that whenever Tyrone road at speed over the ridge in the sealed road caused by the submerged drainage pipe just before the temporary concrete strip the bike became airborne momentarily. It is also of concern that at one stage as Tryon comes around the 90 degree corner and onto the straight section that leads to the take-off ramp, a dog is seen to wander across his path. It seems to be with a man who walks in the vicinity of the run up for some minutes. He does not appear to be involved in the jump.

Initially the take-off ramp is set in a position that gives a ramp gap of 200 feet. After a number of speed runs Tyrone jumped that gap comfortably, landing about 75 feet down the landing ramp which is the desired area in which to touch down. He did four or five jumps like that and then the take-off ramp was moved back a further 30 feet.

With this ramp gap Tyrone achieves a jump of 270 feet.

At about 10:30am the ramp gap distance was increased to 260 feet. Tyrone completed the jump while riding in 4th gear. He landed 263 feet from the take-off ramp meaning that he only just managed to reach the safe part of the landing ramp landing on the knuckle. Without the benefit of the down-hill slope to absorb the force of the landing, Tyrone felt the impact more severely and can be seen on the TV footage to be in some pain. Mr Sherritt recalls saying to him words to the effect, *"That must have hurt"* and Tyrone agreed.

However, this did not concern the team as Tyrone indicated he had not been using full throttle. When he did so, he jumped 270 feet. However, as that was achieved at full throttle, Tyrone and Mr Gilks realised the bike would need to be in a higher gear if a greater distance was to be achieved.

Accordingly, Tyrone then did a number of speed runs in 5th gear to see if he could increase the take-off speed to the desired 78 or 79 mph. In one such run through, Mr Martin can be seen to be shaking his head. He then tells Tyrone that he was only reaching 75mph which was not fast enough. Tyrone's sister Samantha shows him the speeds she as recorded in an effort to persuade him that he needs to go faster.

It is apparent that Tyrone does not share their concern. Mr Martin can be heard on the recorded vision telling Mr Gilks that Tyrone was not travelling fast enough and seeking advice as to how he should respond to Tyrone's apparent insistence that he was travelling fast enough to jump the gap. Mr Gilks senior tells Mr Martin; *"Then wave him off."*

About 10:40am Tyrone travelled along the in-run and traversed the take-off ramp. Samantha Gilks and Mr Sherritt both say they could tell immediately that he was not going fast enough to safely cover the distance to the landing ramp. Sadly, they were proven correct.

The TV recorded vision shows that initially the motorcycle was travelling through the air the front wheel slightly lower than the rest of the bike to enable it to align with the downwards slope of the landing ramp. However, as it nears the landing ramp, the front wheel can be seen to rise. It is speculated that Tyrone had realised he was on a collision course with the front of the landing ramp and has applied acceleration to the motorcycle, causing the rear wheel to spin faster. This has caused the motorcycle to pitch rearwards.

The motorcycle impacted heavily the upper most surface of the landing ramp, the apex where it meets the almost vertical front face – the front wheel seems to hit above the apex and the back wheel below

it. The engine cradle collided with the apex of the front face and the southern end of the safety deck. The impact point can be seen in the photograph below.

Mr Sherritt told investigators that when the crash occurred he was standing near the landing ramp. He said that just before the crash he heard Mr Gilks ask Mr Martin over the two way radio what speed Tyrone was doing as he approached the take-off ramp. He didn't hear Mr Martin's answer but he heard Mr Gilks saying over the radio: *"Pull him out1 Pull him out!"* Mr Sherritt interpreted that to mean that those at the take-off ramp should try and stop Tyrone from jumping. He says that after he heard that he saw Mr Martin who was standing near the ramp, make a hand signal to Tyrone which Mr Sherritt interpreted as an indication that Tyrone should discontinue the jump. Mr Gilks and Mr Martin both deny this occurred. However, Detective Deleforce, who assisted with the investigation, said in his statement that on the day of the collision, he was told by Chris Martin that he was waving Tyrone off. I conclude that Mr Martin realised Tyrone was not going fast enough to safely attempt the jump; he told his father this and Mr Gilks senior told Mr Martin to abort the attempt. I accept that Mr Martin attempted to do this and Tyrone either failed to see the signal or chose to ignore it, believing he had sufficient speed to make the jump. It is readily understandable that in the stressful moments that followed the memories of both men might not now be entirely reliable.

The impact has caused the motorcycle to pitch forward and compress the front forks to the point of failure, causing them both to snap off midway along the length of the forks. Tyrone continued forward and his chest impacted heavily with the top of the handlebars. The motorcycle and Tyrone tumbled forward and came to rest next to each other about 18 metres north along the downward sloping section of the landing ramp.

Post-crash events

Many of those present ran to Tyrone. His father was first there with Samantha and Mr Martin close behind. They saw that Tyrone was unconscious. They carefully removed his helmet. They saw he was unconscious. After initially coughing a little, his breathing diminished and his face began turning blue. CPR was commenced and an ambulance was summonsed.

Ambulance officers arrived on scene and conveyed Tyrone to the John Hunter Hospital where he underwent surgery in an attempt to repair amongst other injuries, a torn brachiocephalic artery, which is a major artery that supplies blood from the heart to the head.

Despite significant medical intervention, it was determined that Tyrone had no brain activity and a decision was made by medical staff and the family to turn off the life support system. Tyrone was pronounced life extinct at 18:30 on the 21 March 2013.

Autopsy results

On 22 March an autopsy was conducted on Tyrone's body by a forensic pathologist. It found he had suffered a torn right brachiocephalic artery; a myocardial contusion and a right upper lobe lung contusion. The pathologist offered the opinion that *"the severity of the injuries was such that survival was extremely unlikely even with immediate medical intervention."* The injuries were consistent with his being involved in a high speed motorcycle collision. The report listed *"chest injuries"* as a result of *"blunt force trauma"* suffered in a *"high speed motorcycle crash"* as the cause of death. Analysis of Tyrone's blood returned a negative reading for drugs and alcohol.

Investigation

NSWPF Crash investigators attended the collision scene and conducted an examination and commenced taking statements from all relevant witnesses. The Officer in Charge of the investigation (OiC), Senior Constable Martin Rehwinkel is well qualified in crash investigation and has extensive experience in relevant aspects of engineering and motorcycle sports. His report is of a high standard. I commend him for his efforts.

The OiC arrived at the crash scene about 3 hours after the incident. WorkCover was contacted, however declined to investigate as Tyrone was not being paid for the event.

The OiC's inspection of the site led him to observe and conclude that:

- The freshly poured un-screeded concrete strip leading to the take-off ramp had poor alignment, was uneven and had several depressions in the surface;
- Tyre marks to the east of the centre line on the take off ramp indicated the take off ramp was poorly aligned with the landing ramp;
- There was a relatively short out run at the end of the landing ramp; and
- Numerous metal frame structures scattered within the motorcycle jumping and riding area that were covered with black plastic could have presented as a significant hazard.

The book in which the speed checks and jump distances were recorded could not be located by the investigators. Samantha Gilks, who had it last, said she placed it on the ground immediately after the crash and hasn't seen it since. Similarly, the radar gun was not able to be located.

A subsequent plan of the scene was developed allowing for calculations to be conducted.

Using vault formulas it was established that the motorcycle ridden by Tyrone was travelling at a speed of 111km/h at the time of the collision.

Utilising the same formula it was established that the speed required to have completed the jump safely was 114.5km/h.

The motorcycle was conveyed to the Newcastle Police holding yard where a mechanical examination was later conducted. This examination revealed that no mechanical defects were identified that may have contributed to the collision.

The motorcycle was found to be in fifth gear.

A dynamometer test was conducted of the motorcycle indicating that the motorcycle was capable of achieving a top speed of 155km/h with the engine in a considerable over revving condition.

The motorcycle was found to be producing peak power in fourth gear at a speed of 111km/h.

The motorcycle was found to be producing peak power in fifth gear at a speed of 127km/h.

The motorcycle was found to be producing 45hp which is 90% of peak power in fifth gear at a speed of 111km/h. In this condition the engine is considered to be slightly under revving.

Inquiries establish Tyrone was wearing an approved off road style motorcycle helmet and boots. He was not wearing any chest protection. Inquiries with chest plate manufacturers indicated that chest plates are designed for and tested for impacts from stones and debris only. One manufacturer suggested a chest plate may have offered Tyrone some protection, while another was of the opposite view.

Staff at the Trauma Unit at the John Hunter Hospital indicated the injury received by Tyrone was not that caused by an intrusion into the body. The injury is a typical internal injury caused by the rapid deceleration and it is believed that a chest plate would not have offered any protection from this injury.

From this investigation it is apparent that the direct cause of this collision is that the motorcycle ridden by Tyrone had insufficient speed at the point where it left the take off ramp. The investigator and this inquest have attempted to understand why this occurred. Calculations undertaken by the officer in charge indicate that a speed loss of 3km/h was sufficient to result in the bike not reaching the required distance on the landing ramp for a safe landing.

A number of theories were considered.

Insufficient speed theories

There are four credible theories that could account for this lack of speed:-

a) Under revving causing a speed loss

It is possible that the motorcycle was travelling at the correct speed along the run up but due to being in fifth gear the motorcycle was under revving at the point when it commenced to travel up the take-off ramp. This under revving situation has caused the motorcycle engine to not provide peak power and as such has caused a 'bogging' down and subsequent speed loss as the motorcycle traversed the ramp.

b) Waved off by radar operator

As Tyrone approached the take-off ramp, his speed was checked by the radar operator who formed the opinion that he was not travelling fast enough and consequently "waved him off" – that is signalled to Tyrone that he should not jump. In response, Tyrone may have momentarily slowed before electing to continue with the attempt.

c) Fear of over jumping

It is possible that as Tyrone approached the take off-ramp, his speed has been checked by the radar operator and was insufficient to make the jump. Because the motorcycle was in a higher gear and knowing that the motorcycle will go faster in that gear, Tyrone may have backed off the speed due to a fear of jumping too far and landing past the desired point on the landing ramp.

d) Insufficient run up

It is possible that the in run was simply insufficient in length and the quality of the surface was too poor for the motorcycle to obtain the required speed. Kevin Gilks indicated that during a speed run on the previous day the motorcycle had achieved a speed of 84mph. However the ramp gap was then shorter. On the day of the fatality, the ramp gap was longer meaning the available in-run was shorter.

Identified set-up deficiencies:

The OiC also expressed concern about aspects of the way in which the event was planned and executed. While I do not necessarily adopt all of his criticisms they bear consideration from a safety perspective.

1. The area where this event was taking place appeared to be poorly set up in that:-
 - a. The in-run had a sharp bend causing a loss of speed.
 - b. The in-run had a hump over a culvert that caused the motorcycle to become airborne, thus the driving wheel was no longer in contact with the surface in order to continue accelerating. This could have resulted in a loss of speed.
 - c. The latter portion of the in-run was constructed of a poorly aligned, thin, rough and inconsistent un-screeded concrete strip which was clearly an afterthought and was prepared with poor execution.
 - d. The out run leading away from the landing ramp was not very long.
 - e. There were several metal structures in the landing ramp area that were a potential danger to the rider.
2. Considering the potential danger, there was no ambulance on site. It has not been determined if any person was appointed as a 'first aider' or if a first aid kit was readily available.
3. Tyrone was not wearing any form of body protection. While it is not believed that chest protection would have assisted in this case, it is believed that chest and back protection devices are available and should be considered for this type of event.
4. The organisers did not present any documented plan for the running of this event. This includes:-
 - a. No plan of the spectator area.
 - b. No plan of the motorcycle riding area.
 - c. No plan of the motorcycle crew area.
5. Whilst Tyrone and his 'team' had considerable experience in the field of motocross, FMX and long distance motorcycle jumping, there appeared to be a lack of documented engineering calculations for this feat. The team had employed a method of conducting speed runs then jumps, followed by incremental changes to the jump distance and a repeat of the above. While this method has some merit and should achieve a satisfactory result, the team did not appear to have any mathematical theories to support what they were doing. While simple calculations employed in this investigation can determine speeds and distances, there are many complex physics that can come into play with this type of display. Issues such as; aerodynamics of the motorcycle; speed, power and gearing of the motorcycle; wind speed and wind direction at ground level and at the jumping height; and Incorporation of safety factors. When traversing relatively small jumps such as in a motocross race, the consequences of failure are not severe, however when conducting an attempt such as this, it may be prudent to employ a qualified engineer to perform such calculations.
6. There appeared to be no documented risk assessment in relation to the organisation of the event. While this event had a tragic ending in the lead up to the Maitland Bike and Hot Rod Show, there was potential for this to have had an even more serious outcome should there have been a mishap when the area was crowded with spectators on show day.
7. The Maitland Showground association displayed a poor approval process in that there was none of the above mentioned plans or risk assessment documents demanded from the organisers of the Maitland Bike and Hot Rod Show. An event application form provides for an approval process, which seemingly does not exist and in this case although the event was apparently approved, the form was not signed. It appears that a verbal approval was the only method. Similarly there was no documentation on the event application from the organisers detailing that a world record motorcycle jump attempt was to be undertaken.

8. There appears to be a lack of an approval process by any official body in relation to this form of event. Due to this type of event not being classified as a 'motorsport' there is no requirement for overseeing by the local council / traffic committee, the NSW Police, the Department of Sport and Recreation or Motorcycling NSW. In comparison, were this to be a motorcycle race where the speed of the motorcycles would be considerably less, the event would have been required to be sanctioned by Motorcycling NSW and would have then been required to pass through approvals of the local council, the NSW Police and the Department of Sport and Recreation where thorough track inspections and risk assessments would have been required.

Conclusions

Tyrone Gilks was a member of a loving and supportive family. He died pursuing his passion for freestyle motocross. He was assisted in that sport by members of his family, some of whom were present and witnessed the fatal incident. That must have been truly devastating. I offer his family my sincere condolences for their sad loss.

The activity in which Tyrone was engaged when he was fatally injured was intrinsically dangerous: it could not be rendered completely safe. However, steps could have been taken which could have made it less risky. I don't suggest that the elimination of any or all of the weaknesses these findings may highlight or the implementation of the recommendations I propose making would necessarily have saved Tyrone had they been in place at the relevant time. Regard to these matters may, however, reduce the likelihood of similar tragedies occurring in future. And that is why it is necessary to point out the apparent deficiencies in some aspects of the way Tyrone and his family organised his record breaking attempt, even though that may, regrettably, compound the family's grief.

I accept that Tyrone and Mr Gilks had extensive experience in motorcycle long distance jumping. However that does not in my view obviate the need for a systematic and scientific analysis of the risks involved in each new event. No reputable commercial undertaking would engage in such a high risk activity without a formal, documented risk assessment and risk management plan. None seems to have been undertaken in this case. Had that occurred it is likely that simple matters such as ensuring the public and their pets could not wander unsupervised about the site while Tyrone was jumping would have been attended to. Similarly, the need to improve traction on the in-run should have been anticipated and a more level and well aligned concrete strip could have then been constructed. I am also concerned that there was not a more consistent and enforceable approach taken to speed checks and a mechanism for aborting jumps if the required minimum was not met. Mr Martin's claim that Tyrone would not listen to him and the fact that Tyrone attempted the fatal jump despite being "waved away" indicates unaccepted laxity, in my view. It is apparent that the direct cause of the fatal crash was that the motorcycle had insufficient speed at the point where it left the take off ramp. The person monitoring the speed recognised that and attempted to warn Tyrone to no avail.

I don't suggest that Tyrone or his family were cavalier concerning safety but I am inclined to the view over confidence crept in and there was too much reliance on a trial and error approach in a context where error could and sadly did prove fatal.

Findings required by s81 (1)

Considering all the documentary evidence and the oral evidence heard at inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

The identity of the deceased

The deceased person was Tyrone Marley Gilks.

Date of death

Mr Gilks died on the 21 March 2013.

Place of death

He died at John Hunter Hospital, Newcastle, New South Wales.

Cause of death

The cause of Mr Gilks' death was chest injuries caused by blunt force trauma suffered in a high speed motorcycle crash.

Manner of death

Tyrone was fatally injured while attempting a long distance jump on a motorcycle. The bike had insufficient speed to bridge the gap between the take off ramp and the safe landing area of the landing ramp causing it to collide with the leading edge of the landing ramp resulting the rider slamming into the top of the motor bike and suffering the fatal injuries.

Recommendations

The Coroners Act in s82 authorises coroners presiding over inquests to make recommendations concerning matters connected with the death that are designed to contribute to public health and safety and or to prevent deaths occurring in similar circumstances in future.

As I have already said, the activity Tyrone was engaged in when he died is inherently dangerous and cannot be rendered completely safe. However, for the reasons I have detailed earlier, I consider the way the activity was undertaken on this occasion did not mitigate risks that could have been addressed – that is while undertaking such jumps could never be done completely safely, it could have been made less dangerous than was the case in this instance.

Kevin and Tyrone Gilks were very experienced in all aspects of motocross. They knew the danger of what they were doing; the risks they were taking; that death was a possibility – they knew it had happened to others participating in the same sport. They made a voluntary informed decision to expose themselves to those risks of harm. It can be implied that their friends and associates who were nearby and who were also at risk of harm, albeit to a lesser degree than Tyrone, also voluntarily assumed that risk. In those circumstances it can be argued it is not appropriate for the state to attempt to save such people from themselves by prohibiting the activity or otherwise regulating it.¹

However, it was not only the rider and those directly involved in Tyrone's attempt to break the long distance jumping record who were put at risk. In the recorded vision of the incident there can be seen a man walking with his dog and at times cars can be seen in the background. It is apparent that there were others in the vicinity who were not connected with the event and who could not be said to have consented to be exposed to the risk it created. On the day the event was due to be officially undertaken it was expected that up to 3000 people might be present. In my view when such activities are undertaken on public land or land the public has as of right access to, public authorities do have a responsibility to oversight the safety of them.

¹ Although I note base jumping is prohibited by law and it might be thought there is a close equivalence.

That happens in most instances. Strangely, for the reasons detailed below there seems to be lacuna in relation to motorcycle jumping and the owner of the land and each of the three agencies that might be thought to have a regulatory role – the local authority; the Department of Sport and Recreation and the Motorcycling NSW – all deny having any part to play. I shall deal with each of them in turn.

The landowner

As detailed earlier, the land on which the fatality occurred has been owned by the Hunter River Agricultural and Horticultural Association (the show association) or its predecessor for over a century. When Mr Gilks and a member of the Bike and Hot Rod Show organising committee approached the then president of the show association in late 2012 and asked if the world record attempt jump could be undertaken during the bike show, the president indicated he would take the proposal to the management committee.

The committee was made aware in general terms of the proposal: where on the showgrounds it would be held; that significant earth works would be undertaken and that the facility would be needed in the weeks before the bike show for set up and practice sessions. The committee members recognised they had no expertise that would enable them to specify how the record attempt should be safely undertaken. They believed that by insisting that the event was covered by insurance the financial interests of the association would be protected by it being indemnified from any public liabilities claims and, equally importantly, safety concerns would be addressed as the committee presumed an insurer would insist appropriate precautions were put in place.

This was conveyed to the organisers of the bike show who, as was their usual practice, obtained public liability insurance. However, the summary of the insurance coverage that was tendered in the inquest showed it related only to events on 23 March and excluded “service providers” from coverage. That term was defined in a way that indicated the activities of the Gilks family was unlikely to be included in the indemnity.

This meant that if someone other than those who organised the activity were injured by it the show association could well have been held liable. Worse, it meant that the risk assessment and mitigation that an insurance company would have insisted on was not undertaken.

Recommendation 1 – Adequate public liability coverage

The Hunter River Agricultural and Horticultural Association management committee appropriately made the obtaining of public liability insurance coverage a condition of their consent for the record jump attempt to proceed on their land. However, their processes did not involve any cross checking to ensure that this had been secured. Accordingly, I recommend the association review those processes to address this shortcoming.

The local authority

The Maitland Showground is within the Maitland Council Local Area and as such the use of it and development on it would in the usual course be subject to regulation by the Maitland City Council via the *Maitland Local Environmental Plan 2011*. However, the council advised the court that the use of the land as a showground predates all planning legislation and all activities that might be within the normal range of activities expected to be conducted in a showground are treated as a continuing use that does not require any development consent or use permit. This seems a reasonable approach: showground activities change with fashion - boxing tents have been replaced by fashion shows, knock’em downs by laser pistols etc – and it would be challenging for local authorities to regulate such diverse activities. In any event, those which obviously pose a danger such as mechanical rides and the like, are subject to inspection and licensing by machinery inspectors. I

conclude that incidents such as that which led to Tyrone's death are unlikely to be able to be more safely regulated by the council if they are undertaken on the Maitland Showground.

If they were planned for private land, presumably the need to apply for development approval would come into play. I am unable to speculate on how that would be dealt with by the council.

Sporting organisation

There are obvious advantages of sporting activities to be regulated or controlled by a relevant sporting organisation: such bodies have access to the necessary expertise; are in a position to communicate effectively with participants; and will presumably stay abreast of developments in the sport.

Motorcycling NSW (MNSW) is the recognised governing body of motorcycle sport in this state. Their charter is to pursue rider, official and public safety at motorcycle sporting events. They undertake track inspections and risk assessments and develop training packages for motorcycle clubs.

Having heard from the General Manager at the inquest, I am persuaded they could source the expertise necessary to address safety concerns raised by events such as that in which Tyrone died.

When the organisation becomes involved in sanctioning an event or activity they do so by issuing a permit which requires compliance with rules promulgated by it and the obtaining of appropriate insurance. MNSW only becomes involved and issues a permit if those undertaking the activity voluntarily seek its input or are required by law to do so.

The General Manager explained that most participants in extreme sports such as long distance jumping do not voluntarily seek a permit because of the costs and restrictions on the activity that are likely to arise. For the reasons detailed below, currently, there is no legal obligation on those participating in such activity to obtain a MNSW permit. There was therefore no opportunity for the organisation to contribute to safety in the event that led to Tyrone's death.

Government regulation

The division of Sport and Recreation within the Office of Sport administers the *Motor Vehicle Sports (Public Safety) Act 1985* and the regulations made under it. The Act provides for licenses to be issued to applicants who control land used for motor vehicle racing and the holding of such races.

Licenses are issued subject to conditions designed to ensure reasonable safety precautions are implemented. Matters such as insurance; notice of events to police and ambulance; and maintenance of safety fences are described in the regulations as "Prescribed licence conditions". Other conditions can also be imposed. When doing so the Minister is able to have regard to advice from advisory committees established under the Act. Motorcycling NSW is a prescribed member of the advisory committee.

Motor vehicle racing is defined to be a sport consisting of competition in which speed is the determining factor or a sport prescribed to be a race for the purposes of the Act. The Act also covers "motor vehicle sport" but the definition of that activity also includes competition between drivers or riders. Long distance jumping is neither. Accordingly, the event in which Tyrone lost his life was not covered by the Act.

It is currently the opinion of the Office of Sport and Recreation, that to further extend this regulatory regime to cover environments used by individuals aiming to perform a stunt in order to break a world record is a significant shift from the intent of the Act. I accept that. The Second Reading speech of the then responsible Minister makes clear he did not want the Act to unduly restrict non-commercial activities. I remain concerned however, that an activity that involves such potential danger to members

of the public can occur without any external safety regulation. The Office of Sport and Recreation advises that the Act will be reviewed this year.

Recommendation 2 – The regulation of certain long distance motorcycle jumps

Having regard to the potential for danger to the public when long distance motor cycle jumps are attempted on public land or land readily accessible by the public, it is appropriate that those undertaking the activity be required to conform to safety standards applied to similar motor vehicle sports such as motocross racing. Accordingly, I recommend that when the Motor Vehicle Sports (Public Safety) Act 1985 is reviewed, consideration be given to making such events subject to the licence requirements of the Act.

I close this inquest.

M A Barnes
NSW State Coroner
Newcastle