



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

Inquest: Inquest into the death of Corey Kramer

Hearing dates: 18 December 2017-19 December 2017

Date of findings: 9 April 2018

Place of findings: NSW State Coroner's Court, Glebe

Findings of: Magistrate Harriet Grahame, Deputy State Coroner

Catchwords: CORONIAL LAW – Death in Police Operation, Safe Driving Policy, unregistered mini-motorcycle

File numbers: 2016/302875

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Introduction

1. On 10 October 2016 Corey Kramer died after the small motorcycle he was riding collided with a utility vehicle in Kurrajong Avenue, Mount Druitt, NSW. Corey's 12 year old pillion passenger, [REDACTED], was seriously injured. Corey was only 14 years of age. At the time of the collision, the two boys were being followed by a fully marked police sedan, Mount Druitt 35. That vehicle was driven by Leading Senior Constable (LSC) Irayne Omoregbee, with Constable Christopher Azzopardi in the front passenger seat.
2. Corey was born on 16 September 2002. Corey and his four brothers lived with their mother, Ms Mary-Jane Hodder at Mount Druitt. Corey loved motorcycles of any sort. He would often swap small bikes, referred to as "monkey" bikes or "thumpsters" with other young people in the local area or over the internet. He had a talent for fixing motorcycles and a passion for riding them. His mother would often caution him about riding, especially without a helmet. He was an affectionate and happy boy, with a close relationship to his mother and siblings.
3. Ms Hodder acknowledged that Corey had been cautioned by police on two previous occasions for riding a motorbike unlicensed, uninsured and unregistered on the road. Corey apparently believed that if he were to be caught again, he would have to go to court.¹ He was anxious to avoid that possibility.
4. Corey's death is a terrible tragedy. He is missed by his mother and siblings every day.

The role of the Coroner

5. The role of the Coroner is to make findings as to the identity of the nominated person and in relation to the place and date of death.² The Coroner is also to address issues concerning the manner and cause of the person's death. A Coroner may also make recommendations in relation to matters that have the capacity to improve public health and safety in the future.³
6. In this case there is no dispute in relation to the identity of Corey, or to the date, place or medical cause of his death. For this reason the inquest focused on the manner and circumstances of Corey's death and on questions about whether his death could have been prevented.
7. At the time Corey died he was being followed by a NSW Police Force vehicle. His death clearly occurred "in the course" of police operations and arguably "as a result of" police operations. In these circumstances, pursuant to the relevant legislation, the conduct of an inquest, by a senior coroner, was mandatory.⁴ The purpose of these provisions is to ensure that a death of this nature is thoroughly and carefully reviewed. The public must have confidence that all deaths which occur during police operations are scrutinised carefully and independently and that any opportunities for improving police practice are quickly identified.

¹ Police records indicate that Corey had been observed on a number of occasions riding trail bikes in dangerous circumstances. He had received two cautions and various warnings. See COPS Events at Exhibit 1, Tabs 66-68.

² Section 81 *Coroners Act 2009* (NSW).

³ Section 82 *Coroners Act 2009* (NSW).

⁴ See sections 23 (1)(c) and s 27 of the *Coroners Act 2009* (NSW) (as in force prior to 1 July 2017).

8. I am satisfied that, after Corey's death, a proper investigation of the events surrounding the collision took place pursuant to the relevant NSW Police Force critical incident guidelines and that the necessary information was gathered by non-involved officers so that these matters can now be properly and fully reviewed in an impartial manner.
9. Three issues were raised for particular consideration during the inquest. The first concerned Corey's manner of driving, the second concerned the application of the NSW Police Force's "Safe Driving Policy" and the third involved consideration of whether there is a systemic issue in relation to the use of trail bikes and mini-motorbikes in the Mount Druitt area, and if so what, if anything, can be done to reduce the danger involved.

The evidence

10. The Court heard oral evidence over two days and received extensive documentary material in three volumes. The material included witness statements, medical records, photographs, CCTV and various policy documents. At the conclusion of the evidence, detailed written submissions were prepared by the parties.
11. The Court was helped by a careful review of the evidence provided by those assisting the court. The parties acknowledged its accuracy and I intend to rely heavily on that document in my chronology of the events which occurred on the day of Corey's death.⁵

Background

12. The collision which caused Corey's death was not an isolated incident. The Court was informed that there is ongoing and widespread dangerous use of trail bikes and mini-motorbikes in the Mount Druitt area and that the NSW Police Force continue to face difficulties in providing an adequate response. Sergeant Julie Underwood, the Traffic Sergeant stationed at Mount Druitt Police Station, told the Court that trail bikes were a "huge problem".⁶ She told the Court that it was common to see "juveniles riding, they are not protected, they are in unroadworthy....states, they're driven on roads. We have that many complaints in relation to trail bikes, we've had serious injuries, we've had deceased...They have no respect for police, they know that we can't pursue them..."⁷
13. Sergeant Underwood explained that it was so commonplace, that it was difficult to give accurate numbers about how often police had to deal with dangerous trail bike situations. However she estimated that in the two months prior to the inquest there would have been over 100 telephone complaints⁸ and further complaints would have been received in person or by email.
14. The Court heard that there is nowhere within the Mount Druitt Local Area Command (LAC) where people can ride trail bikes legally, with the exception of private property with the permission of the owner.⁹ Thus, even if a young person is eventually able to gain a licence and has a roadworthy bike, there is nowhere in the local area to enjoy it. Unfortunately, it is

⁵ I thank counsel assisting, Mr Paul Coady and solicitor Kate McCrossin for their work in summarising the material.

⁶ See her statement at Exhibit 1, Tab 69.

⁷ Transcript 10/12/17, Page 62 line 29 onwards.

⁸ Transcript 10/12/17, Page 69 line 27 onwards.

⁹ Statement of Sergeant Julie Underwood. Exhibit 1, Tab 69, paragraph 6.

well beyond the scope of the evidence raised in this inquest, but one wonders what Local Government Authorities can do to assist in enriching the leisure life of young people in the local area as a strategy to reduce dangerous riding.

The events of 10 October 2016

15. At about 9.00 am on Monday, 10 October 2016, Corey's mother, Ms Hodder, left to go to work. She thought that it was likely that Corey would ride his motorbike in Whalan reserve, an open space in Mount Druitt. A short time later, Ms Anne Maaka observed Corey with a pillion passenger on the back of a bright red motorcycle, riding along a street in North St Marys.
16. At about 9.30 am, Mr Don Lawliss also observed Corey riding a small red trail bike towards North Debrincate Avenue, North St Marys. Corey was doubling another small boy. Mr Lawliss knew Corey and had seen him ride small trail bikes on many prior occasions. He saw the two boys riding in traffic and riding faster than the other cars, with Corey overtaking traffic. At one point he also saw a car pull over to let Corey go by.
17. Another witness, Mr Matthew Bateman, observed a small red motorcycle with Corey and [REDACTED] on board travelling east along Kurrajong Avenue, Mount Druitt, towards Belmore Avenue. CCTV footage indicates that this would have been about 10.59 am. Mr Bateman estimated that Corey and [REDACTED] were driving at a speed of around 50 km/h. They were not wearing helmets.
18. At about 11.00 am, LSC Omoregbee and Constable Azzopardi were travelling in a fully marked police sedan, Mount Druitt 35, on Luxford Road, Mount Druitt. LSC Omoregbee was the driver of Mount Druitt 35 and Constable Azzopardi was the passenger/observer.
19. LSC Omoregbee originally joined the NSW Police Force in 2002. He left the NSW Police Force in 2007 and had rejoined in 2012. LSC Omoregbee was attached to Mount Druitt LAC from March 2012 until the date of the incident.¹⁰ LSC Omoregbee undertook a Silver Response Course, which he completed on 25 September 2012.¹¹ LSC Omoregbee obtained silver classification on 26 September 2012.¹²
20. That classification under the Safe Driving Policy determines the level to which a driver may respond to particular incidents.¹³ The Safe Driving Policy states that silver classified drivers may engage in a "pursuit".¹⁴ However, LSC Omoregbee's civilian licence had been suspended for a period of three weeks from 25 July 2016 until 14 August 2016. It appears from police records that LSC Omoregbee's driving certification and response classification were not properly reinstated following the period of suspension.¹⁵

¹⁰ SAP Records, Tab 18, page 2.

¹¹ SAP Records, Tab 18, page 2.

¹² Officer Police Driving Record, Tab 19, page 1.

¹³ Safe Driving Policy, Tab 77, page 7, pa 2-2.

¹⁴ Safe Driving Policy, Tab 77, page 23, pa 7-3.

¹⁵ Statement of Sergeant Julie Underwood, 2 November 2016, Tab 69, pa. 22; see also the evidence of Sergeant Julie Underwood at T65-T68.

21. According to police records, Constable Azzopardi was confirmed as a Constable on 1 May 2016.¹⁶ He held a bronze driving certification.¹⁷ Bronze classified drivers are not, in any circumstances, to engage in a pursuit as a driver.¹⁸
22. Both LSC Omoregbee and Constable Azzopardi observed Corey riding a small red trail bike in a westerly direction on Luxford Road, Mount Druitt, with [REDACTED] riding as the passenger. Both police officers observed that the boys were not wearing helmets and were riding in traffic.
23. In his directed interview¹⁹ with Detective Sergeant Evans on 11 October 2016, LSC Omoregbee stated that the boys looked at him and kept on going.²⁰ LSC Omoregbee also stated that when he initially sighted the boys he activated the yelp/wail button.²¹ He was unable to recall whether he activated his light bar.²² LSC Omoregbee further stated that he wanted to stop the boys for a number of reasons. He noted that they looked extremely young, they had no helmets on, they were riding in lanes of traffic which is illegal but also dangerous and “he wanted to know why they were doing it”.²³
24. LSC Omoregbee then drove east along Luxford Road, to the roundabout intersection of Luxford Road and Belmore Avenue, and performed a u-turn. He then travelled west along Luxford Road. In his directed interview, LSC Omoregbee stated that following his sighting of Corey traveling onto the incorrect side of Luxford Road he activated the light bars and pressed the wail/yelp button.²⁴ It appears that the two boys saw the police car and continued to ride along Luxford Road.
25. LSC Omoregbee performed a u-turn at the corner of Luxford Road and Saidor Road. In his directed interview, LSC Omoregbee stated that he activated his light bar when he was completing the u-turn.²⁵ He also stated that he activated the wail/yelp button.²⁶ LSC Omoregbee stated that, at this point in time, he intended to get out of the car and talk to the boys.²⁷ LSC Omoregbee stated that the boys stopped and looked at him and then kept on going – that is, the boys turned around and rode down Luxford Road in an easterly direction. In his directed interview, LSC Omoregbee also stated that “it looked like they were panicked”.²⁸

¹⁶ SAP Records, Tab 27, Page 1. It is noted, however, that in Constable Azzopardi’s directed interview with Detective Sergeant Bayliss on 11 October 2016, he stated that he believed he was confirmed between June and July 2016 (at page 9).

¹⁷ Constable Azzopardi directed interview, Tab 25, page 9; see also SAP records, Tab 27 page 1.

¹⁸ Safe Driving Policy, Tab 77, page 23, pa 7–3.

¹⁹ Whilst LSC Omoregbee initially objected to his directed interview being admitted into evidence at any coronial inquest, this objection was not maintained and his directed interview was tendered as part of the brief of evidence at the inquest.

²⁰ LSC Omoregbee directed interview, Tab 16, page 23, A 167, A 169.

²¹ LSC Omoregbee directed interview, Tab 16, page 24, A 176, A 177, A 280.

²² LSC Omoregbee directed interview, Tab 16, page 24, A 180.

²³ LSC Omoregbee directed interview, Tab 16, page 16, A 103.

²⁴ LSC Omoregbee directed interview, Tab 16, page 16, A 103.

²⁵ LSC Omoregbee directed interview, Tab 16, page 16, A 186.

²⁶ LSC Omoregbee directed interview, Tab 16, page 17, A 109.

²⁷ LSC Omoregbee directed interview, Tab 16, page 17, A 109.

²⁸ LSC Omoregbee directed interview, Tab 16, page 25.

26. In contrast to LSC Omoregbee, Constable Azzopardi recalled, in his directed interview²⁹ with Detective Sergeant Bayliss on 11 October 2016, that the first time LSC Omoregbee activated the lights and sirens was between Saidor Road and Sunda Avenue³⁰. Constable Azzopardi noted that he understood that LSC Omoregbee activated the lights and sirens "hoping to pull them over... or just stop them or freak them out or so just get off the bike essentially".³¹
27. At some point on Luxford Road, the police officers observed Corey and [REDACTED] travel diagonally across the lanes of traffic to the opposite footpath. LSC Omoregbee and Constable Azzopardi both observed the boys nearly collide with a black Holden Captiva which was forced to suddenly brake. In his directed interview, LSC Omoregbee stated that the rider's control of the motorbike "was very shaky but it almost looked like they were going to come off at some point. I know they clipped a garbage can here, right on the corner of Luxford and Belmore, which is at the time, the exact same time when they nearly, oh sorry, where the gentleman in the black captiva nearly ran into them".³² When asked by Detective Sergeant Evans in his directed interview as to what his thought process was, or reason for trying to apprehend the boys, at that point in time, LSC Omoregbee stated "I thought they would seriously injure themselves or, or another road user, or potentially kill themselves or somebody else".³³
28. Corey turned right from Luxford Road into Belmore Avenue. LSC Omoregbee stated in his directed interview that he did not activate the lights and/or sirens as he travelled southbound on Belmore Avenue.³⁴ However, in his evidence at the inquest, LSC Omoregbee stated that he activated the wail/yelp button once whilst travelling down Belmore Avenue.³⁵ LSC Omoregbee stated in his directed interview that he was at a distance of 50 metres or so behind the boys and that there was traffic in front of the police car, perhaps three or four cars³⁶. The boys continued on Belmore Avenue and at some point mounted the curb to travel southbound on the western grassy footpath. When asked by Detective Sergeant Evans as to his reasoning for travelling south on Belmore Avenue, LSC Omoregbee stated "to make sure no further incidents happened...see where they went...if the bike broke down or, or they fell off...perhaps I could have an opportunity to apprehend them and take the appropriate action".³⁷
29. In contrast to LSC Omoregbee, Constable Azzopardi recalled in his directed interview that LSC Omoregbee activated his lights and sirens on Belmore Avenue.³⁸ Constable Azzopardi further stated in his directed interview that whilst he was not aware of LSC Omoregbee's reasons for activating the lights and sirens, "I believe it was an attempt to basically make people aware that they've got two guys on a trail bike".³⁹ However, it is noted that Constable Azzopardi denied, in his evidence at the inquest, that the lights and sirens were activated on

²⁹ Whilst Constable Azzopardi initially objected to his directed interview being admitted into evidence at any coronial inquest, this objection was not maintained and his directed interview was tendered as part of the brief of evidence at the inquest.

³⁰ Constable Azzopardi directed interview, Tab 25, page 37, A 287.

³¹ Constable Azzopardi directed interview, Tab 25, page 23, A 151, A 152.

³² LSC Omoregbee directed interview, Tab 16, page 27, A 212.

³³ LSC Omoregbee directed interview, Tab 16, page 27, A 213.

³⁴ LSC Omoregbee directed interview, Tab 16, page 30, A 235.

³⁵ T48 [40].

³⁶ LSC Omoregbee directed interview, Tab 16, page 30, A 235.

³⁷ LSC Omoregbee directed interview, Tab 16, page 31, A 236, A 238, A 239.

³⁸ Constable Azzopardi directed interview, Tab 25, page 25, A 82, A 112, A 176.

³⁹ Constable Azzopardi directed interview, Tab 25, page 25, A170.

Belmore Avenue – instead, he recalled that the yelp/wail button was activated for two yelps.⁴⁰ Overall, it is difficult for the Court to be clear about exactly when lights and sirens were activated, given the variously conflicting accounts.

30. The police saw the two boys turn right into Kurrajong Avenue, and the police followed, travelling behind a truck driven by a witness, Mr Sidney White. In his directed interview, Constable Azzopardi recalled that the boys narrowly missed a pedestrian on Belmore Avenue in the vicinity of a parked white ute.⁴¹

31. Mr Kurt Machut was working at 47 Kurrajong Avenue on the morning of 10 October 2016. Mr Machut is a mechanic. Mr Machut gave evidence at the inquest that he personally rides a motorbike and is quite familiar with motorbikes.⁴² Mr Machut stated at the inquest that he was at the front of his business premises when he heard a short burst of what he believed to be a fire brigade siren.⁴³ He next heard a motorbike, which he described in his statement as being,

"absolutely 'cained', it was revving so high, I mean they were really squeezing the juice out of it. The bike came from the northbound footpath of Belmore Avenue, it turned right into Kurrajong Avenue still on the footpath which meant that the bike was heading west along Kurrajong Avenue, Mount Druitt."⁴⁴

32. Mr Machut described the bike as a "red pocket rocket". He remembered that the driver was looking where he was going and the passenger was looking behind at the police car. He watched the police car give way to a B Double Truck at the roundabout. He was still watching the truck when he heard a huge bang.⁴⁵

33. Two witnesses, Mr David Bartley and Mr John Bartley, also provided statements regarding what they saw on Belmore Avenue. David Bartley owns a business on Kurrajong Avenue with an entrance onto Belmore Avenue. Around 11.00 am on 10 October 2016, David Bartley and his brother John Bartley were at work. David Bartley stated,

"it was a distinct sound, I knew it was a motorcycle. I look towards the entrance door [on to Belmore Avenue] and saw a small motorcycle flash past. I saw that it was red and had two kids on it. It was just a blur, it happened so quick. I did see that it passed between the workshop entrance door and the flag I put out on Belmore Avenue. They were doing a fair rate of knots, but I couldn't say what speed they were doing. It happened so quick I couldn't describe the motorcycle any further or the two kids that were on it."⁴⁶

34. Slightly later, David Bartley saw the police car turn right at the roundabout. He said that it had flashing blue and red lights and that its siren was activated. Within a couple of seconds of the

⁴⁰ T18[15],[20].

⁴¹ Cnst. Azzopardi directed interview, Tab 25, page 29, A206.

⁴² T29[25]-[30].

⁴³ T24[5], [45].

⁴⁴ Statement of Kurt Machut, 10 October 2016, Tab 54, pa. 4 and 5.

⁴⁵ Statement of Kurt Machut, 10 October 2016, Tab 54, pa. 4 and 5.

⁴⁶ Statement of David Bartley, Tab 52, pa.5.

police car turning on the roundabout, he heard the siren stop.⁴⁷ His brother, John Bartley, provided similar observations.⁴⁸

35. It should be noted that LSC Omoregbee denied the use of lights and sirens whilst Mount Druitt 35 was travelling south on Belmore Avenue. In this he may be mistaken, given the independent evidence.
36. The police car turned right into Kurrajong Avenue behind the truck. LSC Omoregbee stated in his directed interview and in oral evidence that he did not apply the light bar or the wail/yelp button to overtake Mr White's truck. Both police officers then saw the two boys accelerate along Kurrajong Avenue until they collided with the utility driven by Mr Giuseppe Perricone.⁴⁹ LSC Omoregbee estimated the boys' speed just prior to the collision must have been in excess of the speed limit, which was 50 km/h.⁵⁰ In his directed interview, LSC Omoregbee stated that prior to this incident he had not previously seen either of the boys and that he did not have any means to identify them.⁵¹
37. Mr Perricone gave oral evidence at the inquest. He explained that he was coming out of his driveway at the time of the collision. There is some loss of vision on the left hand side, due to a retaining wall, but he was used to that situation and was moving slowly.⁵² Suddenly and without warning he felt a "crack" to the side of his vehicle. He had not seen or heard the motorbike or the police car. At first he thought that he may have hit something and cracked a light, but he could not see anything in his rear vision mirror. It was not until he exited his vehicle that he saw the mini-motorbike and the boys on the ground.⁵³ Mr Perricone immediately got out his mobile phone and contacted Triple 000.
38. Almost immediately, he also saw the police. Both police officers provided first-aid and also requested assistance.
39. The boys were transported to Westmead Children's Hospital for further treatment. [REDACTED] [REDACTED] suffered a broken leg and other injuries. Corey died from his injuries at 12.46 pm on 10 October 2016.
40. A limited autopsy was conducted on Corey by Dr Bernard l'Ons at the Department of Forensic Medicine at Glebe on 12 October 2016. The cause of death was recorded as multiple blunt force injuries. Corey had multiple lacerations and abrasions. CT scanning showed a large amount of blood in his chest cavity, suggesting the possible tearing of a major vessel. There was also a peritoneal and retroperitoneal haemorrhage, especially surrounding the liver, spleen and pelvis.

The motorbike

41. Senior Constable Peter Kleinig, a police officer with experience as a motor mechanic, stated that the "micro-motorcycle" ridden by Corey was unregistered and did not display any form of

⁴⁷ Statement of David Bartley, Tab 52, pa.5.

⁴⁸ Statement of John Bartley, Tab 53, [6-9]

⁴⁹ LSC Omoregbee directed interview, Tab 16, pages 16-19.

⁵⁰ LSC Omoregbee directed interview Tab 16, A 155.

⁵¹ LSC Omoregbee directed interview Tab 16, page 38, A 155.

⁵² See evidence of Guiseppe Perricone, 18/12/17, page 40, line 30 onwards.

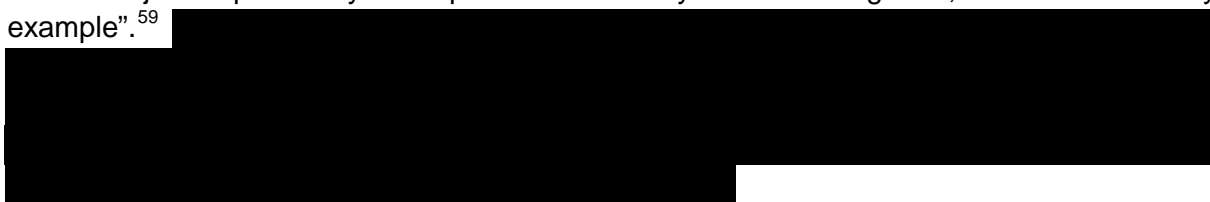
⁵³ Guiseppe Perricone, 18/12/17, page 41, line 45.

identification. On inspection, the motorcycle had the rear brake caliper assembly removed. In Senior Constable Kleinig's view this may have compromised the braking ability of the motorcycle and may have been a contributing factor in the collision occurring.⁵⁴

42. Leading Senior Constable Matt Wright, a member of the NSW Police Force Crash Investigation Unit inspected the mini-motorcycle. His view was that the mini-motorcycle, commonly referred to as a "Thumpstar" or "Monkey Bike" could not be registered for road use and is designed to be ridden off-road on private property.⁵⁵ Leading Senior Constable Wright requested a speed analysis of the mini-motorcycle to be conducted by the Forensic Imaging Unit. Leading Senior Constable Wright was advised that the mini-motorcycle was travelling at an average speed of not less than 54.6 km/h whilst riding on that section of the footpath immediately prior to the location of the collision on Kurrajong Avenue.⁵⁶
43. There is no doubt that riding the mini-motorbike, with compromised brakes, at that speed was inherently dangerous. It was dangerous to the boys, the police and anyone who may have crossed their path.

The Safe Driving Policy

44. In recent times the complex issues surrounding police pursuits have been widely debated in public and have been the subject of significant research and investigation throughout many parts of the world. A number of the issues as they relate to NSW have previously been examined by this Court.⁵⁷ The issues clearly have a wide public interest. The question of whether and in what circumstances police should pursue a vehicle is a complex one and one that is currently approached differently in various jurisdictions. There are no obvious or easy answers and reasonable people may differ on the correct approach to take. Ultimately, it involves a careful balance between interests that at times conflict. Providing police with sound and accessible guidance on the operation of their discretion to pursue becomes a difficult but necessary task, particularly when decisions to pursue are so often made quickly and in stressful circumstances. Over the years many in the community have been rightly concerned at the number of deaths arising from police pursuits.
45. The Safe Driving Policy⁵⁸ is a NSW Police Force internal policy document which guides police driving practice and strategies, including the conduct of police pursuits. The previous Commissioner Scipione APM, notes in the foreword of the policy that the NSW Police Force has a major responsibility to improve road safety and in doing that, "we must lead by example".⁵⁹



⁵⁴ Statement of Senior Constable Peter Kleinig, 14 October 2016, pa. 6 and 13.

⁵⁵ Statement of Leading Senior Constable Matt Wright, 31 October 2016, pa. 19 and 20.

⁵⁶ Ibid, pa 41; see also the expert report of Senior Constable Derek Fenton, 27 October 2016, Tab 43.

⁵⁷ See for example Deputy State Coroner Dillon's findings in the Inquest into the death of Hamish Raj (7 April 2014) and more recently *Mauceri v Deputy State Coroner MacMahon* [2017] NSWSC 545 among many others.

⁵⁸ Safe Driving Policy, Exhibit 1, Volume 2, Tab 77.

⁵⁹ Safe Driving Policy, page iv.

46. Traffic and Highway Control Command is responsible for the Safe Driving Policy, which is updated from time to time. The version in place at the time of Corey's death is version 8.2, which was published in July 2016 and is due for review in July 2018.
47. Part Seven of the policy deals specifically with pursuits, providing a definition and guidelines to support officers in making their decisions to initiate and/or continue pursuits. It is clear that a pursuit commences at the time a decision is made to pursue a vehicle that has ignored a direction to stop, regardless of speed.⁶⁰ It continues if the police vehicle follows the offending vehicle in an attempt to remain in contact, whether or not warning lights or sirens are activated.⁶¹

[REDACTED]

48.

[REDACTED]

Was there compliance with the Safe Driving Policy?

Breach of the Safe Driving Policy

49. Unfortunately, each of the involved officers in this matter showed a flawed understanding of the relevant NSW Police Force policy governing the situation they found themselves in. Specifically, during their respective directed interviews, both police officers displayed a significant misunderstanding of the application of the Safe Driving Policy as it relates to pursuits.⁶²
50. LSC Omoregbee, in his directed interview, stated that "my understanding of a pursuit is you're attempting to pull over a vehicle that's failed to stop and whether that be for a traffic offence or for a random breath test".⁶³ When asked if following a vehicle would constitute a pursuit, he answered,

"Q95

A. Um, I don't believe following a vehicle constitutes a pursuit unless you're driving at speed with your lights and sirens on. No.

Later he explained his reason for travelling south on Belmore Avenue,

"Q236

⁶⁰ Safe Driving Policy, Exhibit 1, Volume 2, Tab 77 (7.1).

⁶¹ Safe Driving Policy, Exhibit 1, Volume 2, Tab 77 (7.1.2).

⁶² It should be remembered that Constable Azzopardi was only confirmed as a police officer approximately five months before this incident. It is also to be noted that many of the decisions made on 10 October 2016, including the activation of the light bar and siren, were made by LSC Omoregbee.

⁶³ LSC Omoregbee directed interview, Tab 16, page 14, A91.

A. Well to make sure that no further incidents happened. I mean I could have just ignored it...but ah, I chose to follow it because I believe something may have happened...as I said, I wasn't prepared to engage in a pursuit based on the danger that they present to themselves and the other road users, so I just decided to follow them at normal speed and see where they went. If I got an, if the bike broke down or, they fell off...perhaps I could have an opportunity to apprehend them and take the appropriate action."⁶⁴

51. LSC Omoregbee demonstrated his lack of understanding of the policy throughout his directed interview. He appeared to draw a distinction between “following” a vehicle and being in pursuit, which he thought involved high speed. It was disturbing that he also suggested that part of his reasoning in not informing VKG was that they would not have allowed a pursuit in any event. At question 329, LSC Omoregbee stated,

"I just want to clarify that I wasn't chasing the trailbike with the pillion passenger. I wasn't in pursuit of it, I didn't call a pursuit, um, as I said we have lots of instances around here with trailbikes and they're just far too dangerous to pursue. I merely followed that rider and his passenger because of their actions and I don't believe that pursuing them would have been a safe and reasonable thing to do, given what they had already done in the first instance when I saw them. It's unfortunate that's what happened and I don't believe that my actions were responsible for the young boy dying and the other one being seriously injured."⁶⁵

52. During his evidence at the inquest, LSC Omoregbee accepted that in hindsight his actions “technically” constituted a pursuit.⁶⁶ However, in my view, a critical and troubling tension remains in his evidence. He explained that with hindsight he should have called a pursuit. Nevertheless, he appeared somewhat puzzled when he explained that there would not be much point in notifying a pursuit



53. LSC Omoregbee's lack of understanding of the policy and his lack of appreciation of the importance of oversight in pursuits is disturbing, given that he had apparently been trained in the policy and had previously been accredited to the silver level.
54. Constable Azzopardi provided evidence at the inquest that he had been taught about the Safe Driving Policy during his initial training at the Police Academy. He also stated that, prior to the incident, he had undertaken several drives with a Field Training Officer – Driver

⁶⁴ LSC Omoregbee directed interview, page 31, A236 to 239.

⁶⁵ Directed interview, LSC Omoregbee, page 47, A 347.

⁶⁶ T51[10], [25]; see also 57[25].

Development⁶⁷ and he may have also undertaken an online course regarding the Safe Driving Policy⁶⁸.

55. In his directed interview, Constable Azzopardi stated that the two police officers were continuing to follow the boys in order to observe them.⁶⁹ Constable Azzopardi's opinion was that by following the boys the police officers were ensuring the community's welfare and safety by alerting members of the public to the boys' presence.⁷⁰ In his evidence at the inquest, Constable Azzopardi stated,

“the way they were riding a bike and the way that there was other people out on the road we had essentially a duty of care to make sure that basically their safety was fine as long as other people who were on the footpath and on the road and as well as I know we glanced over it but the manner of the bike itself, it was just dangerous to be on.”⁷¹

56. Constable Azzopardi's understanding of a "pursuit" under the Safe Driving Policy was "essentially when you jump on radio, call pursuit with lights and sirens when someone fails to stop".⁷² Further, his understanding was that after the two boys failed to stop once the police had used lights and sirens, they had instantly terminated any pursuit and just "followed" to observe the boys behavior. Accordingly in his view, the police officers were no longer in pursuit.⁷³
57. It appears that during the course of the incident, Constable Azzopardi turned his mind to whether they should report the developing incident to VKG – but not for the purpose of reporting that Mount Druitt 35 was in pursuit.⁷⁴ In his evidence at the inquest, Constable Azzopardi clarified that when he asked LSC Omoregbee whether they should "call it", this question was "more a reference to should we advise radio that we are following these boys who are now riding on the footpath on a bike...if it's a trail bike we do have a habit of saying we do – we spot a bunch of trail bikes riding in this direction, they're doing this and that, we're not in pursuit".⁷⁵
58. During his evidence at the inquest, Constable Azzopardi accepted that in hindsight Mount Druitt 35 was in pursuit of Corey and [REDACTED] under the Safe Driving Policy.⁷⁶
59. As part of the critical incident investigation, LSC Omoregbee's course of driving was reviewed by Detective Chief Inspector Almer. Detective Chief Inspector Almer was of the view that there was a "technical breach" of the Safe Driving Policy.⁷⁷

⁶⁷ T24 [5]-25[15].

⁶⁸ T30 [5]-[10].

⁶⁹ Constable Azzopardi directed interview, Tab 25, page 26 A 189.

⁷⁰ Constable Azzopardi directed interview, Tab 25, page 41, A 322.

⁷¹ T20 [20].

⁷² Constable Azzopardi directed interview, Tab 25, page 34, A 264.

⁷³ Constable Azzopardi, directed interview, Tab 25, page 36, A 276 and A 299.

⁷⁴ Constable Azzopardi, directed interview, tab 25, page 24, A 160.

⁷⁵ T23 [10].

⁷⁶ T23 [40]; see also T31[30].

⁷⁷ Statement of Detective Chief Inspector Almer Statement, 9 January 2017.

60. Also tendered as part of the brief was a report provided by the Traffic Policy Section, Traffic and Highway Patrol Command of the NSW Police Force⁷⁸. The report writer reaches the following conclusions:
- LSC Omoregbee was permitted, within the scope of the Safe Driving Policy, to attempt a traffic stop of the motorbike;
 - LSC Omoregbee and Constable Azzopardi were in pursuit of the motorbike at the time of the collision, and both police officers failed to comply with the requirements of the Safe Driving Policy in respect to the pursuit; and
 - non-compliance appears to arise from a failure by LSC [Omoregbee]⁷⁹ to properly identify that a pursuit as defined under the policy had commenced.
61. This is a more satisfactory response than merely recording that a “technical breach” occurred. It is clear that LSC Omoregbee was permitted, within the scope of the policy, to call a pursuit. However, if he did, it needed to be properly overseen. What he was not permitted to do, in the circumstances of what had already transpired, was “just follow” the boys, particularly when part of his reasoning was that he was unlikely to get permission to pursue.
62. It was submitted by counsel for the involved officers that they were in an unenviable position and that their actions on the day were both reasonable and appropriate.⁸⁰ Their concern for public safety meant that they needed to try and stop the motor bike, they could not “disengage” and just let the boys ride off. Counsel for the involved officers stressed that if they had called a pursuit, it would have been terminated. In those circumstances, the officers “really had no choice”.
63. I accept that the officers were in a difficult situation and that they were both genuinely concerned with public safety. I accept that the decision to pursue was made in an attempt to prevent harm. However, the officers acted in contravention of the current Safe Driving Policy. An essential part of that policy mandates oversight of all police pursuits. Calling a pursuit cannot be avoided because advice to terminate is likely to be forthcoming. I do not accept that it is useful to describe what happened as a “technical breach”. If the Safe Driving Policy is somehow unworkable, review of that policy rather than acceptance of ongoing breaches is called for.
64. Advice to terminate is often based on the recognition that the vehicle being pursued may take even more dangerous action when followed by police and thus further escalate the level of risk that already existed. In this case, it is clear that the motor bike was being driven dangerously before police saw it, but it appears that Corey’s recklessness increased once he realised that he was being followed by Mount Druitt 35.

LSC Omoregbee’s licence and driver certification

65. The other identified contravention of the Safe Driving Policy related to driver certification. As stated earlier, LSC Omoregbee had previously been certified as a silver driver pursuant to

⁷⁸ Traffic Policy Section Report, 1 December 2017, Tab 83.

⁷⁹ By letter dated 14 December 2017, the Crown Solicitor was advised that the reference should properly read Leading Senior Constable Omoregbee.

⁸⁰ See Submissions made on behalf of LSC Omoregbee and Constable Azzopardi, attached to court file.

the Safe Driving Policy. However there is clear evidence that, at the time of Corey's death, LSC Omoregbee did not hold the correct certification to engage in a police pursuit.

66. LSC Omorgebee had his civilian licence suspended for three months for an offence of speeding (30km and over) in January 2016. He lodged an appeal to dispute the length of the automatic suspension in the Local Court and later completed a Traffic Offenders Program. LSC Omoregbee was then suspended for a period of around three weeks.⁸¹ That suspension dated from 25 July 2016.
67. It appears that on that day LSC Omoregbee informed his local Traffic Sergeant, Sergeant Underwood, that his civilian licence had been suspended for three weeks. He was told that his police certification would reflect his civilian suspension dates.⁸² Sergeant Underwood told the court that she informed LSC Omoregbee that his certification would be "automatically reinstated" at the end of his civilian suspension.⁸³ This was clearly incorrect.
68. Part 4 of the Safe Driving Policy contains provisions in relation to the removal and reinstatement of certification. There is a clear process that must be followed which involves the satisfactory completion of a program of driver development.
69. At the time LSC Omoregbee followed Corey, he had not undertaken the five assessment drives with a Field Training Officer – Driver Development as required by the Safe Driving Policy.⁸⁴ Further, he had not undertaken the Silver Response Classification Test in the Computerised Assessment System. Sergeant Underwood, explained to the Court that these failings were partly her fault and based on her misunderstanding of the policy. When asked if he had completed these requirements she stated, "well I didn't ask him to do it, so I'm assuming no".⁸⁵
70. In summary, there were a number of breaches and misunderstandings of the relevant police policy. They included,
 - LSC Omoregbee was not correctly certified to engage in a pursuit.
 - LSC Omorgebee did not clearly understand that he was engaging in a pursuit, pursuant to the Safe Driving Policy.
 - [REDACTED]
 - Constable Azzopardi did not clearly understand the meaning of pursuit, pursuant to the Safe Driving Policy
 - Sergeant Underwood, the relevant Traffic Sergeant, did not understand the process of reclassification under the Safe Driving Policy.

What other strategies are available to police?

71. The Court accepts that police are faced with a very difficult situation when they see young people riding small bikes, such as Corey's. In Corey's case, the independent evidence is such that it is very clear that he was riding dangerously and very fast even prior to the time police commenced their pursuit. He was a danger to other road users and to himself. In my

⁸¹ LSC Omoregbee 19/12/17, page 40. Line 25 onwards.

⁸² Statement of Sergeant Julie Underwood, Exhibit 1, Tab 69, paragraph 22.

⁸³ Statement of Sergeant Julie Underwood, Exhibit 1, Tab 69, paragraph 22.

⁸⁴ T65 [40]-[50].

⁸⁵ T67 [5].

view, it is likely that his manner of driving became even more risky once he saw that police were behind him. He certainly made some extremely dangerous manoeuvres in an attempt to escape apprehension.

72. The issue of what police can do to increase public safety in these difficult circumstances was canvassed in evidence. Ideally, the number of dangerous pursuits must be reduced. Confiscation of bikes was raised as a possible strategy, but the available mechanisms were described as unwieldy, time consuming and not well targeted for dealing with the kind of situation under review.
73. Sergeant Underwood was of the view that, in practice, the process in place under the *Road Transport Act 2013* (“*RT Act*”) is unworkable. There was general consensus that the powers currently in place for use by police under the *RT Act* to confiscate unregistered trail bikes are unnecessarily complex and in need of review.
74. Pursuant to s. 79(1) of the *RT Act*, a police officer may seize any unregistered “registrable vehicle” (other than a registrable vehicle exempted from registration under the *RT Act*) that is being used on a road. A vehicle is unregistered if it is not registered on the NSW registrable vehicles register.
75. Whilst, as a practical matter, the motorcycle ridden by Corey was not eligible for registration within NSW⁸⁶, it was submitted that the motorcycle would still have been considered to fall within the definition of a “registrable vehicle” under the *RT Act* for the purposes of s. 79(1)⁸⁷.
76. Section 4(1) of the *RT Act* defines a registrable vehicle as meaning, inter alia, any “motor vehicle”.⁸⁸ A “motor vehicle” is defined in s. 4(1) as meaning “a vehicle that is built to be propelled by a motor that forms part of the vehicle”. A “vehicle” is defined, inter alia, in s. 4(1) as meaning “any description of [a] vehicle on wheels”⁸⁹. Consequently, the Crown Solicitor submitted that the mini-motorcycle ridden by Corey would arguably have fallen within the definition of a “registrable vehicle” for the purposes of s. 79(1).
77. Furthermore, with reference to s. 79(1), in the circumstances of this matter, the motorcycle ridden by Corey would not have been exempt from registration under the *RT Act*. Part 2 of Schedule 1 to the *Road Transport (Vehicle Registration) Regulation 2017* (“*RT Regulation*”) lists the registrable vehicles that are exempt from registration under the *RT Act*. For example, cl. 6 of Part 2 to Schedule 1 provides that the registration provisions do not apply to any registrable vehicle being driven across any road when travelling to or from land that is being

⁸⁶ Statement of Leading Senior Constable Matt Wright, 31 October 2016, pa. 19.

⁸⁷ See the decision of Hodgson JA in *Applin v The Nominal Defendant* [2004] NSWCA 217 at [4] and [6]. Other decisions which have considered the definition of “registrable vehicle” include *Matheson v Director of Public Prosecutions (NSW)* [2008] NSWSC 550 and *Director of Public Prosecutions v Sadler* [2013] NSWSC 718.

⁸⁸ Section 4(1) provides that a “registrable vehicle means:

- (a) any motor vehicle, or
- (b) any trailer, or
- (c) any other vehicle prescribed by the statutory rules for the purposes of this definition”.

⁸⁹ Section 4(1) provides that “vehicle means:

- (a) any description of vehicle on wheels (including a light rail vehicle) but not including any other vehicle used on a railway or tramway, or
- (b) any description of tracked vehicle (such as a bulldozer), or any description of vehicle that moves on revolving runners inside endless tracks, that is not used exclusively on a railway or tramway, or
- (c) any other description of vehicle prescribed by the statutory rules”.

used mainly for primary production. As none of the categories of exemption specified by the *RT Regulation*, in the circumstances, applied to the motorcycle ridden by Corey, the motorcycle would not have been exempt from registration.

78. However, it was submitted that the primary difficulty for police under s. 79 of the *RT Act* in successfully obtaining an order for forfeiture of a motorcycle in the circumstances of a young person such as Corey arise from s. 79(3). This section provides that “no order of forfeiture may be made if the owner of the vehicle satisfies the Local Court that there has been no intent to evade registration of the vehicle”. As Corey was under 16 years of age, unless he had satisfied the Authority that it was appropriate that he be eligible to be the registered operator of a registrable vehicle, he would have been unable to apply for registration of his motorcycle.⁹⁰ Furthermore, even if Corey had been eligible to be the registered operator of the motorcycle, it is unlikely that the motorcycle would have been eligible for registration by virtue of non-compliance with applicable vehicle standards.⁹¹
79. In view of the above, the Crown Solicitor submitted that, as a hypothetical example, if police had seized Corey’s motorcycle and sought a declaration in the Local Court that the motorcycle be forfeited to the Crown under s. 79 of the *RT Act*, this application would not have been successful. This is because it is unlikely that the Local Court would have been satisfied that there was an intent to evade registration in circumstances where Corey was, because of his age, unlikely to have been eligible to register his mini-motorcycle and, furthermore, the motorcycle was not eligible for registration.
80. This is the kind of issue that police told the court they face in trying to get dangerous vehicles such as Corey’s off the road. In her evidence at the inquest, Sergeant Underwood outlined the issues which have previously arisen for police in seeking to confiscate trail bikes under s. 79(1) of the *RT Act*,

“Firstly, you have to ensure that, well they have to be of an age to be able to prove that they were trying to avoid registration. The vehicle, the trail bike also has to be a trail bike where that if you were to spend an amount on it, it could become registrable. So you’re little Pee Wees and Thumpstars, they would never get registered. We then have to, we then have to take it to put it through court to get it forfeited. They then have an option of appealing which is what happened in my case, then it becomes a brief of evidence and you have to go to court. And then we, we won the matter in relation to because there was the issue of trying to prove whether it could have been a registrable vehicle. And then the court upheld that it would be forfeited and then within a week he had it back because he went through the RMS, paid I think \$40.00 or \$80.00 for the registration evasion and got the bike back.

...for a start general duties police as such don’t have the time and that’s exactly why I did it so I could see how, I kept on hearing it was a drawn out process. It’s a very drawn out process for something that you don’t get any result from.

⁹⁰ *Road Transport (Vehicle Registration) Regulation 2017* cl. 5, cl. 7.

⁹¹ *Road Transport (Vehicle Registration) Regulation 2017* cl. 6.

...the problem is too when they're, the younger kids that are on it, well they're not to know about registration so we could never get up in court in relation to that because we could never prove that they were avoiding registration when they are not of an age that they can pay registration."⁹²

81. The Court's attention was also drawn to s. 239(1)(a) of the *RT Act* which, in summary, provides a police officer with the power to "seize and take charge" of a motor vehicle if the officer reasonably believes that a circumstance set out in s. 238 of the *RT Act* exists. Relevantly, s. 238 includes the use of the vehicle to commit a "sanctionable offence". A sanctionable offence is defined by s. 237(1) of the *RT Act* as:
- a high range speed offence (driving more than 45km/h over the speed limit): *RT Act* s. 237(1);
 - the "street racing" offence provided for by s. 115 of the *RT Act*;
 - the "burnout" offence provided for by s. 116 of the *RT Act*;
 - engaging in a police pursuit contrary to s. 51B of the *Crimes Act 1900 (NSW)*; and
 - any other offence prescribed by statutory rules.
82. On the face of it, this section does not cover the situation before the Court. Counsel for the NSW Commissioner of Police submitted that it would be useful to include in the rules a reference to "riding an unregistered motor bike". The implications of such a change would need further thought but in general the issue deserves appropriate consideration.

The need for recommendations

83. Section 82 of the *Coroners Act (2009) NSW* confers on a Coroner the power to make recommendations that he or she may consider necessary or desirable in relation to any matter connected with the death with which the inquest is concerned. It is essential that the Coroner keeps in mind the limited nature of the evidence that is presented and focuses on the specific lessons that may be learnt from the particular death.
84. Two issues emerged for possible recommendations. Firstly in relation to training and education with respect to the Safe Driving Policy and secondly in relation to the currently unwieldy process involved in confiscation of dangerous and unregistered motor bikes.
85. Counsel for the NSW Commissioner of Police accepted that there had been a breach of the Safe Driving Policy and that the officers demonstrated a flawed understanding of it. However, counsel did not support a recommendation aimed at increasing training for police in relation to the Safe Driving Policy. It was submitted that education already occurs at initial training at the Goulburn Police Academy, when officers are accredited for silver certification and through other training modules which also occur from time to time throughout the year. It was submitted that it formed part of the Mandatory Education Program that was delivered in 2016/17 across the State.
86. I do not share the Commissioner's confidence that the message is getting across. LSC Omoregbee, Constable Azzopardi, and Sergeant Underwood each failed to grasp aspects of the policy. In my view, further work needs to be done to make sure the policy is well

⁹² T64[5]-[30].

understood and followed. Auditing of this work should also take place to ensure that further training is successful.

87. The issue of whether confiscation rules and regulations should be broadened so that dangerous bikes can be taken out of the equation is also one that deserves further attention and consideration by the relevant stakeholders. There was general agreement that the current process, as it relates to riders such as Corey, is confusing and unwieldy. Whether stronger confiscation rules will assist in promoting public safety is something which should be considered carefully. Corey's bike was inherently dangerous to himself and others, the way he drove it only increased the risk. It may be that we need to work harder towards permanently removing these kinds of bikes from our roads. I intend to urge the Minister of Roads, Maritime and Freight to review current confiscation powers in an attempt to see if they can be streamlined and improved. I note the Commissioner of Police has endorsed this approach.

Findings

88. The findings I make under s. 81(1) of the *Coroners Act (2009) NSW* are:

Identity

The person who died was Corey Kramer.

Date of death

He died on 10 October 2016.

Place of death

He died at the Westmead Children's Hospital of injuries sustained at Kurrajong Avenue, Mount Druitt, NSW.

Cause of death

He died from multiple blunt force injuries after his mini-motorcycle collided with another vehicle.

Manner of death

Corey died of injuries he received in a collision between his mini-motorcycle and another vehicle. At the time of his death, Corey was being followed by members of the NSW Police Force. Their conduct was not compliant with the NSW Police Force's Safe Driving Policy.

Recommendations

89. For reasons previously stated, I make the following recommendations pursuant to s. 82 of the *Coroners Act (2009) NSW*:

To the Commissioner of Police

That the NSW Commissioner of Police implement further training and educational initiatives aimed at developing a better understanding of the requirements of the Safe Driving Policy regarding pursuits amongst the employees of the NSW Police Force to whom the Safe Driving Policy applies and, furthermore, undertakes a full audit regarding the effectiveness of these training and educational initiatives.

To the NSW Minister for Roads, Maritime and Freight

That the NSW Minister for Roads, Maritime and Freight consider consulting all relevant stakeholders with a view to establishing a working party to review of the current confiscation powers available to police under the *Road Transport Act 2013* (NSW) in relation to trail bikes and mini-motorcycles.

Conclusion

90. I acknowledge the assistance of Detective Chief Inspector Almer in providing a comprehensive brief and thank him for his research into confiscation arrangements in other jurisdictions.
91. Finally, I offer my sincere condolences to Ms Hodder and her family and to all Corey's friends in the Mount Druitt area. Corey's death is a terrible tragedy. He was full of life and exuberance and his death is a huge loss to all those who loved him.
92. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner
9 April 2018
NSW State Coroner's Court, Glebe