



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Terry Ah-See
Hearing dates:	15 -17 April 2019
Date of findings:	21 May 2019
Place of findings:	NSW Coroners Court - Lidcombe
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – death as result of single car crash – in course of police pursuit – whether the deceased was the driver – whether the NSW Police Force’s Safe Driving Policy was complied with.
File number:	2017/96394
Representation:	Counsel Assisting the Inquest: J Downing of Counsel i/b Crown Solicitors Office The NSW Commissioner of Police: R Hood of Counsel i/b Office of the General Counsel The Ah-See family was unrepresented.

<p>Findings:</p>	<p>Identity The person who died is Terry Ah-See.</p> <p>Date of death: Terry Ah-See died on 29 March 2017.</p> <p>Place of death: Terry Ah-See died on Lloyd’s Road, South Bathurst NSW</p> <p>Cause of death: The cause of Terry Ah-See’s death is multiple injuries sustained in a car crash.</p> <p>Manner of death: Terry Ah-See died in a single car accident when he lost control of the car he was driving, while he was being pursued by police.</p>
<p>Recommendations:</p>	<p><u>To the NSW Commissioner of Police:</u></p> <p>That consideration be given to reviewing the current version of the NSW Police Force Safe Driving Policy to ensure that it provides:</p> <ol style="list-style-type: none"> 1. an unequivocal definition of the term ‘termination’ as it relates to pursuits 2. a clear indication of whether, and in what circumstances, a loss of vision of the vehicle under pursuit amounts to a termination of a pursuit 3. consistency in language and instructions when police officers communicate, or are directed, that a pursuit is terminated.

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Non-Publication Orders pursuant to section 74 of the Coroners Act 2009

Non-publication and related orders in relation to the brief of evidence.

1. In relation to the documents listed in Schedule A:

1.1 There shall be no publication of the information as described in Schedule B.

1.2 The documents may be disclosed beyond the State Coroner's Court, those assisting the Coroner and the legal representatives of the interested parties to the inquest, provided that the documents have been redacted as described in Schedule B.

2. Subject to Order 1, the documents listed in Schedule A are not to be supplied or copied to any person seeking access to the Coroner's file.

3. In relation to the confidential affidavit of Assistant Commissioner Michael John Corboy, and Confidential Exhibits MJC-1, MJC-2 and MJC-3:

3.1 There be no disclosure of those documents beyond the Deputy State Coroner and those assisting the Deputy State Coroner.

3.2 The confidential affidavit of Assistant Commissioner Corboy, and Confidential Exhibits MJC-1, MJC-2 and MJC-3 be returned to the Crown Solicitor at the conclusion of the hearing of this application, subject to the undertaking of the Crown Solicitor to make them available as required by the Court.

4. In the event that the oral evidence contains content identified in Schedule B there be no publication of that evidence.

5. There shall be no publication of the contents of Exhibit 2 in this inquest.

6. There shall be no publication of the contents of the folder of photographs which is Exhibit 4 in this inquest.

SCHEDULE A DOCUMENT

1. Statement of Detective Sergeant Steve Howard dated 18 February 2016 (Tab 8 of the brief of evidence) and Annexures I and J

2. NSWPF Safe Driving Policy Version 8.2 - July 2016 (Tab 38B of the brief of evidence)

3. NSWPF Safe Driving Policy Version 8.3 - December 2017 (Tab 38C of the brief of evidence)

SCHEDULE B DOCUMENT

1. Statement of Detective Sergeant Steve Howard dated 18 February 2016 (Tab 8) and Annexures I and J

Page 60 paragraph 293, line 1, word 11 to end of sentence

Page 61 paragraph 297, line 4, word 1 until the end of the paragraph
Page 62 paragraph 300, line 2, word 1 until the end of the paragraph
Pages 62 and 63 paragraph 303, line two, second sentence until the end of the paragraph

Page 63 paragraph 304, line 5, words 5 – 8 inclusive

Page 63 paragraph 305, line 2, word 14 until and including word 1 on line 3

Page 65 paragraph 315, last line, word 2 to end of sentence

Annexure I

“Pursuit details” section Line 4, word 1 until and including the three check boxes

“Primary vehicle” section References to vehicle categories
“Secondary vehicle” section References to vehicle categories

Annexure J

“Pursuit details” section Line 4, word 1 until and including the three check boxes

“Primary vehicle” section References to vehicle categories
“Secondary vehicle” section References to vehicle categories
“Summary” section In answer, line 1, words 3 to 6 inclusive

2. NSWPF Safe Driving Policy Version 8.2 (Tab 38B)

Page ii “Vehicle categories”, lines 1 – 5
Page iii line 1

Pages 18-19 Paragraphs 5-1-4 to 5-1-8

Page 19 In paragraph 5-4-2 – line 2 from the word “the” up to and including the word “riding”

Page 19 Paragraph 5-4-4

Page 20 Paragraphs 6-2-4 and 6-2-6

Page 20 In paragraph 6-3, all the words in dot point 3

Page 22 In paragraph 7-1-4 – line 3, from the second word “A” until the end of line 4

Page 22 Paragraphs 7-1-5 and 7-1-6
Page 22 Paragraph 7-2-2
Page 23 Paragraphs 7-2-4, 7-2-8, 7-2-10 and 7-2-13
Page 23 Paragraphs 7-4-1 and 7-4-2
Page 24-25 In paragraph 7-5-1 “Drivers and Escorts”, subsections (e) & (j) and dot points 4 –11 inclusive and dot point 15.
Page 28 Paragraphs 7-6-2, 7-6-3, 7-6-5, 7-6-6, 7-6-7, 7-6-8 and 7-6-9
Page 30 Paragraph 8-2 “Code Blue” – all the words in dot point 3
Page 30 Paragraph 8-2 “Code Red” – all words in dot points three and four Page 30 Paragraph 8-5-1
Page 31 Paragraph 8-6-2
Page 34 Definition of “re-initiation”, second and third paragraphs of definition Page 34 Definition of “terminate”, all the words from “A pursuit is not” to the end of the page
Page 37 Eleventh line under “C”
Pages 39 – 40 Re Duty Officer / Supervisor Pursuit Debrief Form:

- All references to Category 1, 2, 3 or 4 vehicles;
- “Police Vehicle and Occupant Details” - all material contained in the shaded box on the right hand side of the document, except Paragraphs 1 and 5;
- “Supervisor Details” – Paragraph 2 of the material contained in the shaded box on the right hand side of the document;
- “Road Spikes” - Paragraph 1 of the material contained in the shaded box on the right hand side of the document.

3. NSWPF Safe Driving Policy Version 8.3 (Tab 38C)

Page ii “Vehicle categories”, lines 1 – 5 Page iii Line 1
Pages 18-19 Paragraphs 5-1-4 to 5-1-8 up to and including the end of the first full paragraph after the last dot point
Page 19 In paragraph 5-4-2 – line 2 from the word “the” up to and including the word “riding”
Page 19 Paragraph 5-4-4
Page 21 Paragraphs 6-2-4 and 6-2-6
Page 21 In paragraph 6-3, all the words in dot point 3
Page 23 In paragraph 7-1-4 – line 3, from the second word “A” until the end of line 4
Page 23 Paragraphs 7-1-5 and 7-1-6
Page 23 Paragraph 7-2-2
Page 24 Paragraphs 7-2-4, 7-2-8, 7-2-10 and 7-2-13
Page 24 Paragraphs 7-4-1 and 7-4-2
Page 25-26 In paragraph 7-5-1 “Drivers and Escorts”, subsections (e) & (j) and dot points 4 –11 inclusive and dot point 15
Page 29 Paragraphs 7-6-2, 7-6-3, 7-6-5, 7-6-6, 7-6-7, 7-6-8 and 7-6-9
Page 31 Paragraph 8-2 “Code Blue” – all the words in dot point 3
Page 31 Paragraph 8-2 “Code Red” – all words in dot points three and four Page 31 Paragraph 8-5-1
Page 32 Paragraph 8-6-2
Page 35 Definition of “re-initiation”, second and third paragraphs of definition Page 35 Definition of “terminate”, all the words from “A pursuit is not” to the end of the page
Page 38 Eleventh line under “C”
Pages 40 – 41 Re Duty Officer / Supervisor Pursuit Debrief Form:

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 - “Supervisor Details” – Paragraph 2 of the material contained in the shaded box on the right hand side of the document;
 - “Road Spikes” - Paragraph 1 of the material contained in the shaded box on the right hand side of the document.
- (ID 45598397)

Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to the date and place of the death, and its cause and manner.

In addition, pursuant to section 82 of the Act the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.

These are the findings of an inquest into the death of Terry Ah-See.

Introduction

1. Terry Carl Ah-See aged 35 years died in Bathurst on 29 March 2017. At about 1pm he was travelling in a car which had been reported stolen earlier that day. The car was sighted by a police officer who commenced a police pursuit when his direction to pull over was not complied with. The pursuit was joined moments later by an unmarked police car.
2. The pursuit lasted little more than a minute. It culminated in a horrific single car crash when the car in which Mr Ah-See was travelling and which was being driven at high speed left the road, became airborne, landed heavily and rolled a number of times.
3. Mr Ah-See and the other man in the car Frederick Doolan were violently ejected in the course of the crash. Emergency services were immediately called, but Mr Ah-See had suffered severe injuries and he died shortly afterwards in Bathurst Base Hospital. Mr Doolan received minor injuries.
4. The autopsy report of pathologist Dr Allan Cala found that Mr Ah-See had died of multiple injuries. He had suffered fractures to his skull, ribs and hip, and a subarachnoid haemorrhage to his brain.
5. Toxicological analysis of Mr Ah-See's post mortem blood samples detected cannabis, fentanyl, methylamphetamine, midazolam and oxycodone. Expert toxicologist Dr Judith Perl assessed the concentration of methylamphetamine to be '*very significant*'. In her opinion it would have been expected to impair the ability of Mr Ah-See to control a car.

The inquest

6. This is a mandatory inquest pursuant to sections 23(1)(c) and 27(1)(b) of the *Coroners Act 2009 (NSW)* [the Act] as in force in March 2017. At that time an inquest was mandated when a person died '*as the result of, or in the course of, police operations*'. A police pursuit falls within the scope of '*police operations*' pursuant to section 23(1)(c). Inquests are mandatory for these types of deaths to ensure there is an independent and transparent investigation of the circumstances of the death, and the conduct of any involved police officers.

7. The issues examined at the inquest were:

- was Mr Ah-See the driver of the car when it crashed
- were the involved police officers aware that the likely driver was drug-affected?
- was some other step appropriate than conducting a police pursuit?
- in conducting the pursuit did either Senior Constable Elliot or Leading Senior Constable Cooper breach any of the requirements of the NSW Police Force Safe Driving Policy at it existed at that time?

Mr Ah-See's life

8. Mr Ah-See is an Indigenous man who was born on 25 August 1981 and grew up in Wellington NSW. His de facto partner is Catherine Pitt and they had two children together, Levi and Sharon. Terry also had older children from earlier relationships.
9. For many years Mr Ah-See struggled with problems of drug addiction which continued up to the day of his death. Catherine described last seeing him two days before the crash and noticing that he was drug-affected and looking like he had not slept for many days.
10. Each day of the inquest Mr Ah-See's mother Sharon and his partner Catherine attended, together with other family members. At the close of the evidence, on behalf of the family Mrs Ah-See spoke movingly about her memories of her son. He was proud of his partner and children, and deeply attached to his brother Dwayne and to his mother. Sharon spoke of herself and her son as being '*one of the same spirit*'. It was clear that despite the struggles Terry had in his life he was much loved by his family, and they grieve his loss deeply.

The events leading up to the crash

11. The car in which Mr Ah-See was travelling was a blue Hyundai SUV. It was unregistered. At the time of Mr Ah-See's death it was owned by Ms Jenna Symons, but this change of ownership had not been recorded. On police records the car was recorded as belonging to a previous owner who was a suspended driver.
12. At 10am on 29 March Ms Symons contacted police to report that her Hyundai had been stolen. Police attended her home at about 11.55am. Ms Symons told police that at 2.30am that morning Mr Ah-See and another man had come to her home. Both appeared to her to be drug-affected and she told them to leave. The next morning she noticed that her car and its keys were missing.
13. Two men later confirmed to police that they had been in the Hyundai with Mr Ah-See on the morning of 29 March. They are Spencer Morgan and his cousin Frederick Doolan. Mr Doolan recalls that at around midday Mr Morgan was driving the car, with Mr Ah-See in the front passenger seat and himself in the

back seat. Mr Doolan told police that Spencer Morgan and Mr Ah-See '*both looked high, off their rocket*'.

SC Elliot's interactions with the Hyundai

14. Just before 1pm, Senior Constable Wade Elliot was patrolling streets in South Bathurst in a fully marked Highway Patrol police car, which was designated 'Western 240'. The Hyundai drove past him in the opposite direction. SC Elliot's automatic numberplate recognition system informed him that the Hyundai was unregistered and that its owner on the record was a suspended driver.
15. Senior Constable Elliot decided to try to intercept the Hyundai. He was aware that a colleague, Leading Senior Constable Daniel Cooper, was patrolling nearby in an unmarked police car designated 'Western 243'. As SC Elliot followed the Hyundai he spoke to LSC Cooper on what is known as a radio back channel to tell him of his intention. SC Elliot then turned on the lights and siren of his car, thus automatically activating his in-car video system. From this point onwards, video footage from SC Elliot's in-car system is available and was shown at the inquest.
16. SC Elliot said that his purpose in activating his lights and siren was to notify the Hyundai's driver to stop the car. He followed the Hyundai into Currawong Street where it pulled into a driveway. SC Elliot pulled up behind and began to get out of his car. However the Hyundai suddenly reversed, turned, and drove off in the opposite direction of Currawong Street.
17. SC Elliot followed, broadcasting to the police VKG radio: '*Western 240 urgent in pursuit*'. At the inquest he said it was at this point that he regarded himself as engaged in a police pursuit of the Hyundai. By activating lights and siren and pulling up behind the Hyundai he had signaled the driver to stop, which the driver had ignored by taking off. SC Elliot considered these constituted proper grounds to commence a pursuit within the terms of Part 7.1 of the NSW Police Force's Safe Driving Policy [the SDP], further described below.
18. SC Elliot followed the Hyundai as it drove through various suburban streets of the area and eventually turned into Alfred Street. There the Hyundai pulled over onto the nature strip. Mr Morgan, who had been the driver, opened the driver's door and ran towards the rear of a nearby property.
19. SC Elliot got out of his car and started to chase Mr Morgan on foot, yelling out to him to stop. Suddenly behind him he heard the Hyundai's engine revving. He turned to see the Hyundai driving away down Alfred Street. He could not see who was driving but as will be explained below, the evidence indicates that when Mr Morgan got out of the Hyundai Mr Ah-See replaced him in the driver's seat.
20. As SC Elliot returned to his police car he saw the Hyundai turn left out of Alfred Street and into Lloyd's Road. At the same time he noticed LSC Cooper's unmarked car driving down Lloyd's Road in the opposite direction to the Hyundai. Once back in his car SC Elliot heard LSC Cooper broadcast on VKG the words: '*Western 243 urgent*'. This he interpreted as LSC Cooper notifying

that he had made contact with the Hyundai and had engaged in the police pursuit.

21. At the inquest SC Elliot said that at this point he considered he was no longer personally engaged in the pursuit because he could no longer see where the Hyundai was. However in his view the pursuit as an enterprise was continuing. This was because no one had broadcast a termination of it, and he was aware that LSC Cooper was now actively pursuing the Hyundai. He said that had he not heard LSC Cooper's broadcast, he might have considered telling VKG that he was terminating the pursuit. Further, although he regarded his own role in the pursuit as suspended, his intention was to keep searching for the Hyundai. He said that if he saw it again he would have considered broadcasting to VKG that he was re-engaging.
22. SC Elliot told the court that at the time, he did not have time to consider the question whether the pursuit by LSC Cooper was a separate pursuit or simply a continuation of the one he himself had initiated.
23. In fact SC Elliot did not see the Hyundai again until after the crash. Moments after hearing LSC Cooper broadcast '*Western 243 Urgent*', he heard LSC Cooper telling the VKG operator his location, then the words: '*He's come a gutsa*'. This was only 62 seconds after SC Elliot had first notified VKG of his pursuit.
24. SC Elliot immediately made his way to the crash scene.

LSC Cooper's interactions with the Hyundai

25. When LSC Cooper first saw the Hyundai it was exiting Alfred Street into Lloyd's Road. LSC Cooper could see SC Elliot's police car stationary on Alfred Street with its driver's door open and its lights still activated. He assumed correctly that SC Elliot was out of his car.
26. LSC Cooper immediately turned his car and followed the Hyundai down Lloyd's Road. He activated his own lights and siren, and told the VKG operator: '*Western 243 Urgent*'. By this he intended to signify that he was engaged in pursuit.
27. LSC Cooper told the court that he believed he was continuing an existing pursuit. He had not heard any VKG notification that the pursuit had terminated. Nor was he aware that the Hyundai had stopped in Alfred Street prior to his own sighting of it. Since SC Elliot's car was stationary, and to his knowledge no other police cars were involved in the pursuit, he considered that he had taken over from SC Elliot in the role of primary pursuit car.
28. LSC Cooper's pursuit of the Hyundai lasted less than twenty seconds. As the Hyundai drove down Lloyd's Road its speed increased dramatically. This can be inferred from a viewing of LSC Cooper's own in-car video footage. This shows his police car's speed accelerating to almost 130 kph. The screen meanwhile shows the Hyundai ahead, pulling away.

29. At this time the screen also shows a white van ahead of the Hyundai, driving in the same direction. After the crash its driver Mr Hayden James confirmed that he had seen the Hyundai coming up behind him, and a police car further behind with lights and siren on. The Hyundai crossed to the wrong side of the road and overtook the van.
30. Just as this happened LSC Cooper's in-car video screen shows that LSC Cooper reduced his own speed fairly rapidly. LSC Cooper told the inquest he did this for two reasons. [REDACTED]
[REDACTED]
[REDACTED] He said he had formed the intention to communicate a termination of the pursuit.
31. The tragic events of the crash intervened. Just after overtaking the van and crossing the railway tracks the Hyundai shot up in the air, becoming airborne. On landing it left the road and hit a ditch, then flipped a number of times. Mr Ah-See and Mr Doolan were ejected from the car and onto the grass verge.
32. The police officers were immediately on the scene, followed by emergency services. Witnesses described Mr Ah-See as unconscious and bleeding heavily. Mr Doolan was sitting on the grass verge, injured but conscious. He indicated to LSC Cooper that it was Mr Ah-See who had been driving the Hyundai.
33. Mr Ah-See and Mr Doolan were taken to Bathurst Base Hospital. Despite the efforts of Emergency staff Mr Ah-See died at 2.53pm.
34. Later that evening in hospital Mr Doolan spoke to police about the crash. He said that in Alfred Street Mr Ah-See had moved from the front passenger seat to the driver seat and had driven off. In the back seat Mr Doolan had tried to get out but the child lock on his door was on. He estimated the car was being driven at least 150 kph. He said to Mr Ah-See '*slow down, there's an intersection*' and '*pull over, pull over*', but he didn't respond.

I turn now to consider the issues examined at the inquest.

Was Terry Ah-See the driver of the car at the time of the crash?

35. The evidence is sufficient to establish that Terry Ah-See was driving the car at the time of the crash. This is based on what Mr Doolan told police on the night of the incident, summarised above. His account that the driver was Terry Ah-See receives some support from what Mr Morgan told police, namely that when he got out of the car in Alfred Street Mr Ah-See was in the front passenger seat and Mr Doolan in the back seat.

Were the police officers aware that the car was being driven by a drug-affected person?

36. The evidence shows that no police radio broadcast was generated when the Hyundai was reported stolen. Further, no information was broadcast that the

person suspected of taking it was drug-affected. The court heard that in ordinary circumstances, these events of themselves would not warrant a VKG broadcast.

37. The two involved officers were unaware of the above information when they commenced their pursuit of the Hyundai.

Should the involved police officers have considered or taken other action in preference to a police pursuit?

38. Addressing this issue requires considering whether the involved officers complied with NSW Police Force's Safe Driving Policy [the SDP]. The applicable version of the SDP at the time of Mr Ah-See's death had come into force in July 2016. It has since received minor revisions, none of which are relevant to the specific issues of this inquest.

39. Part 7 of the 2016 SDP specifically governed pursuits. It defined a pursuit as follows:

7.1: PURSUIT: A pursuit regardless of speed commences at the time you decide to pursue a vehicle that has ignored a direction to stop.

40. The decision to initiate and/or continue a pursuit '*requires weighing the need to immediately apprehend the offender, against the degree of risk to the community and police as a result of the pursuit*': Part 7.2.1.

41. According to Part 7.1.2, a pursuit '*is deemed to continue if you FOLLOW the offending vehicle or continue to attempt to remain in contact with the offending vehicle, whether or not your police vehicle is displaying warning lights or sounding a siren*'.

43. The SDP made clear that a pursuit may be conducted by a primary response vehicle and a secondary response vehicle. [REDACTED]

[REDACTED] At 7.5.2 the SDP also noted that a secondary response vehicle could take over the role of the primary response one.

44. Part 7.6 set out the circumstances in which a pursuit must be terminated. [REDACTED]

[REDACTED] The SDP did not provide a definition of a termination, instead setting out the following in quote marks at 7.1.3:

7.1.3: TERMINATION: 'All vehicles cease to pursue, stop following and return to the legal speed limit. Turn off all warning devices as soon as possible and when safe.'

45. It did however define re-initiation of a pursuit:

7.1.4: RE-INITIATION: Re-initiation is where a pursuit of a motor vehicle that has been terminated by any police officer, including the driver involved in the pursuit, is then engaged in a second or subsequent pursuit. [REDACTED]

46. At the close of evidence it was submitted by Counsel Assisting that in the circumstances the two police officers faced, there was unlikely to have been a practicable alternative to conducting a police pursuit. SC Elliot had a proper basis to intercept the Hyundai. He had been informed that it was unregistered and that its last registered owner was suspended from driving. He activated his lights and siren and pulled up behind the Hyundai in Currawong Street. On the evidence, SC Elliot was entitled to conclude that when the driver took off he was disobeying a direction to stop. I accept the submissions of Counsel Assisting on this point.

47. I accept the evidence of SC Elliot that he undertook a proper assessment of [REDACTED], relevant to whether the degree of risk to the community outweighed the need to immediately apprehend the Hyundai. His decision to proceed was a proper one given that the prevailing circumstances presented a relatively low risk of danger to police and public.

48. On the evidence I also accept the submission that at the time the pursuit commenced, and indeed up until a few moments before the crash, [REDACTED]

49. At the inquest SC Cooper was questioned as to whether he ought to have called a termination of the pursuit. He replied that he had seriously considered doing this [REDACTED]. He had no time to do so however, as the crash happened within seconds.

50. [REDACTED] Given the speed with which events then unfolded, there could not be any reasonable criticism of his failure to call a termination of the pursuit.

Did the involved police officers otherwise comply with the SDP?

51. Both police officers met SDP requirements that they be suitably classified as drivers permitted to engage in a pursuit, and that they be driving vehicles that were permitted to be used for activities such as pursuits.

52. A focus of interest in the inquest was whether the incident should properly be regarded as two pursuits, or as a single pursuit conducted in two phases. In other words, were SC Elliot and LSC Cooper engaged in a single police pursuit in the course of which LSC Cooper took over the role of primary response

vehicle? Or should the events properly be understood as a re-initiation by LSC Cooper of a pursuit which SC Elliot had terminated?

The issue is of significance because the SDP then and now requires that

54. As noted above, re-initiation is defined at 7.1.4 as *'where a pursuit ... that has been terminated by any police officer ... is then engaged in a second or subsequent pursuit'*.

55. There is no dispute that . At the inquest the court heard evidence and submissions on this point.

56. Determining the issue was complicated by the manner in which the incident was followed up within NSW Police. After the crash the Duty Operations Officer, Inspector Ward, completed two separate 'Police Pursuit' forms for the incident, each with its own Pursuit Number. In the first form he described the actions of SC Elliot in commencing the pursuit, chasing Mr Morgan on foot, and observing the Hyundai driving off. In the second Pursuit Form he provided the following description: *'Pursuit re-engaged Pursuit initiated which crashed as(sic) short time later...'*

57. It appears the Duty Operations Officer believed that SC Elliot had terminated the pursuit itself, and that LSC Cooper had re-initiated it when he commenced to follow the Hyundai.

58. This is contrary to the way in which the two involved officers understood the situation. I have noted at paragraph 27 above LSC Cooper's evidence that he considered he was continuing the pursuit initiated by SC Elliot. For his part SC Elliot believed that the pursuit as an enterprise was ongoing, even though his individual role in it was suspended because he had lost sight of the Hyundai. His belief that the pursuit itself was ongoing was based on two factors: first, he was aware that LSC Cooper was now in active pursuit of the Hyundai, and secondly he himself intended to go in search of it.

59. I should note that nowhere in the SDP is it provided that losing sight of a vehicle that has been under pursuit mandates termination of it. On the contrary, according to Part 7.1.2:

A pursuit is deemed to continue if you FOLLOW the offending vehicle or continue to attempt to remain in contact with the offending vehicle, whether or not your police vehicle is displaying warning lights or sounding a siren.

60. Inferentially where a police vehicle loses sight of an offending vehicle but attempts to remain in contact with it, the pursuit is not to be regarded as terminated, provided none of the other factors mandating termination are present. This does not seem to have been the understanding of the Duty Operations Officer, who as noted considered the pursuit to have been terminated by SC Elliot.
61. At the close of evidence Counsel Assisting and Counsel for the NSW Commissioner of Police both submitted, on the basis of the evidence and policy documents, that this was in reality a single pursuit which was conducted in two phases. As a consequence there had been no breach of [REDACTED].
62. I accept the SDP evidences an intention that a pursuit be regarded as continuing notwithstanding that a responding officer has lost sight of the vehicle being pursued, provided the officer is attempting to remain in contact with it. The evidence establishes that this was what SC Eliot was doing. Inferentially these circumstances would not amount to a termination of the pursuit, and there was no breach by LSC Cooper of the requirements of [REDACTED].
63. Supporting this interpretation, there had been no broadcast termination of the pursuit. Nor had there been any change in prevailing circumstances such as might lead to a conclusion that the danger to the public outweighed the need for immediate apprehension of the Hyundai. Also relevant is the extremely short space of time within which the entire incident took place. For a pursuit which lasted a total of 62 seconds, without any significant change in circumstances, there would be an artificiality in insisting on an interpretation of commencement, termination and re-initiation.
64. I conclude that the conduct of this pursuit did not involve any breach of the provisions of the SDP. Nor on the evidence is there is any basis for criticism of the conduct of the two involved police officers for initiating the pursuit, or for the manner of their own driving while engaged in the pursuit.

Are any recommendations necessary and desirable?

65. Notwithstanding the above conclusion, the question remains whether the circumstances give rise to any need for improvement in the way the SDP is drafted or implemented.
66. I have noted that the facts demonstrated a lack of consensus as to whether SC Eliot's actions ought to be understood as a termination of the pursuit. This may be attributed to the fact that the SDP does not provide a definition of termination. Part 7.6, headed 'Termination of Pursuit', does not contain a definition, instead listing the factors that mandate a termination. Nor is the wording provided at Part 7.1.3 a definition but rather a form of words, perhaps intended to be used by a VKG dispatcher, instructing all vehicles to stop following and return to the legal speed limit. This interpretation of the purpose of Part 7.1.3 is supported by its use of quote marks.
67. The facts established in the 2018 NSW inquest into the death of Senior Constable Geoffrey Richardson also exemplify the lack of clarity as to what

constitutes termination of a pursuit. Factually that matter too involved a pursuit being conducted by more than one police vehicle. One police officer broadcast that his car was disengaging [REDACTED] while the second police vehicle, having lost sight of the car under pursuit, continued to follow its dust trails. Its driver told the inquest he considered that he was still in pursuit, an understanding which accords with the terms of Part 7.1.2 (see paragraph 41 above). Despite this the evidence of the VKG dispatcher was that she believed the pursuit *as a whole* had been terminated when the first police vehicle indicated its own disengagement from it. With reference to the second police vehicle the dispatcher gave further evidence that when an officer indicated he or she had lost sight of a vehicle this was generally understood to mean that the pursuit had been terminated. This evidence was corroborated by the VKG Shift Coordinator on duty that night [refer par 62 of the *Findings into the death of Geoffrey Richardson*, delivered 6 July 2018].

68. The above evidence prompted Deputy State Coroner Lee to make a number of recommendations. One of these was that the NSW Commissioner of Police consider ensuring that the SDP provide an unequivocal definition of the term '*termination*' as it related to pursuits. His Honour recommended further that the SDP provide a clear indication of whether and in what circumstances losing sight of a pursued vehicle amounted to termination of a pursuit; and that it develop consistent language and instructions to be used in relation to when a pursuit is terminated (noting the evidence of the dispatcher and VKG Shift Coordinator that notification of a loss of sight of the vehicle is often taken to mean notification of termination of the pursuit).
69. In the present inquest it was submitted on behalf of the NSW Commissioner that there was no requirement to define what a termination was. The officers involved had a practical understanding of what they were doing, and did not misunderstand their roles. To make recommendations similar to those in the Richardson case would risk making the SDP overly prescriptive, potentially causing further ambiguity and confusion in implementation. It was further submitted that it was most unusual for a pursuit to be interrupted as this one had been.
70. It is acknowledged that an overly prescriptive SDP would not be beneficial to police or to the community, and that in the present inquest the lack of clarity about what constitutes termination did not give rise to any breaches of the SDP. Nevertheless in my view it would be of benefit for this issue to be addressed. The ambiguity identified was found to be of direct relevance to the manner of Sergeant Richardson's death. In the present inquest it was reflected in the conflict between the understanding held of the events by the Duty Operations Manager, and that which is reflected in these findings. Further, SC Elliot's actions in discontinuing his personal involvement in the pursuit but intending to resume a role do not appear to be contemplated within the terms of the SDP, however reasonable they were in the circumstances.
71. As to the submission that it is unusual for a pursuit to be interrupted in this manner, the circumstances in the Richardson matter might suggest otherwise.

72. Having carefully considered the position put on behalf of the Commissioner, I have nevertheless decided that it is necessary and desirable to make certain recommendations regarding the drafting of the SDP. Those representing the Commissioner advised that the SDP is currently under review, although no information was available as to its terms or when it would be complete. There is thus an opportunity for the review team to consider the recommendations I make.

A note about the manner of death

73. In the submission of Counsel Assisting, the court would appropriately find on the evidence that Mr Ah-See died in a single car accident when he lost control of the car he was driving, while he was being pursued by police.

74. Those representing the Commissioner of Police took issue with this description of the manner of death, arguing it implied that Mr Ah-See drove in such a dangerous manner because he was being pursued by police. The evidence, it was argued, did not permit a finding as to what had motivated Mr Ah-See to accelerate so dangerously and lose control of the car in the moments before the crash.

75. I agree the evidence does not enable the court to find that Mr Ah-See drove in the manner he did because he was being pursued by police. We will never know what was in his mind in the moments before his death. Nor did Mr Doolan refer to words or conduct on the part of Mr Ah-See in those last moments from which it might be inferred that his manner of driving was linked to the fact of the pursuit.

76. However the formulation proposed by Counsel Assisting is in my view the appropriate one. It accurately describes the circumstances of Mr Ah-See's death. To state that Mr Ah-See lost control of the car while he was being pursued by police does not impute a causal connection between the two circumstances.

Conclusion

77. On behalf of the Coroner's Court and the assisting team I offer my deepest sympathy to the Ah-See family for their loss, and thank Sharon Ah-See for sharing her loving memories of her son.

78. I express my appreciation to Counsel Assisting Mr Jason Downing, and Ms Jennifer Hoy of the Crown Solicitor's Office for their excellent assistance throughout the inquest. I also thank Counsel for the NSW Commissioner of Police for his assistance throughout the inquest. My thanks also to the Officer in Charge Detective Sergeant Steve Howard for compiling a comprehensive and transparent brief of evidence.

Findings required by s81(1)

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I make the following findings.

Identity

The person who died is Terry Ah-See.

Date of death

Terry Ah-See died on 29 March 2017.

Place of death:

Terry Ah-See died on Lloyd's Road, South Bathurst NSW.

Cause of death

The cause of Terry Ah-See's death is multiple injuries sustained in a car crash.

Manner of death

Terry Ah-See died in a single car accident when he lost control of the car he was driving, while he was being pursued by police.

Recommendations

I repeat with minor modifications the relevant recommendations made by Deputy State Coroner Lee in the Richardson inquest, as follows:

To the NSW Commissioner of Police:

That consideration be given to reviewing the current version of the NSW Police Force Safe Driving Policy to ensure that it provides:

1. an unequivocal definition of the term '*termination*' as it relates to pursuits
2. a clear indication of whether, and in what circumstances, a loss of vision of the vehicle under pursuit amounts to a termination of a pursuit
3. consistency in language and instructions when police officers communicate, or are directed, that a pursuit is terminated.

I close this inquest.

Magistrate E Ryan

Deputy State Coroner
Lidcombe

Date 21 May 2019