



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

Inquest: Inquest into the death of Celal Kizildag

Hearing dates: 13 February 2019

Date of findings: 13 February 2019

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

Findings of: Magistrate Derek Lee, Deputy State Coroner

Catchwords: CORONIAL LAW – manner of death, NSW Police Safe Driving Policy, whether police pursuit occurred

File number: 2016/350477

Representation: Mr M Dalla-Pozza, Counsel Assisting, instructed by Mr J Loosley (Crown Solicitor's Office)

Mr B Haverfield for the NSW Commissioner of Police, instructed by Ms A Wooldridge (NSW Police Office of General Counsel)

Findings: I find that Celal Kizildag died on 22 November 2016 at Westmead Hospital, Westmead NSW 2145. The cause of Celal's death was multiple injuries. The multiple injuries were sustained in a collision on 21 November 2016 involving a motorcycle that Celal was riding and another motor vehicle.

Non-publication orders:

Pursuant to section 74(1)(b) of the *Coroners Act 2009*, the following material is not to be published:

- (a) There shall be no publication of the name, physical likeness or any other information that would tend to reveal the identity of the officer referred to by the pseudonym "Officer 1".
- (b) In Tab 5 of Exhibit 1: Paragraph 16, lines 8 and 9 – All the words from [REDACTED] up to and including [REDACTED]; Paragraph 73, lines 2-5 – All the words from [REDACTED] up to and including the following 3 lines.
- (c) In Tab 9 of Exhibit 1: Page 14, All the words in lines 24 and 25.
- (d) In Tab 11 of Exhibit 1: Page 14, All the words in lines 5 and 6; Page 23, All the words in lines 12, 13, 16 & 17.
- (e) In Tab 12 of Exhibit 1: Paragraph 5, lines 3-4 – The words [REDACTED] up to and including [REDACTED].
- (f) In Tab 14 of Exhibit 1: Paragraph 7, line 4 – The words [REDACTED] up to and including [REDACTED].
- (g) Tab 82 of Exhibit 1.
- (h) In Tab 83 of Exhibit 1: Page ii. [REDACTED], lines 1-5; Page iii, line 1; Page 1, All the words in Paragraphs 1-3 and 1-4; Pages 18-19, All the words in Paragraphs 5-1-2, and 5-1-4 to 5-1-8; Page 19, Paragraph 5-4-2 – The words [REDACTED] up to and including [REDACTED]; Para 5-4-4 - The words [REDACTED] up to and including [REDACTED]; Page 20, All the words in Paragraphs 6-2-4, 6-2-6, and 6-3-1 Paragraph 6-3 - All the words in dot point 3; Page 21, All the words in Paragraph 6-5; Page 22, All the words in Paragraphs 7-1-4 to 7-1-6 and 7-2-2; Page 23, All the words in Paragraph 7-2-4, 7-2-8, 7-2-10 and 7-2-13 Paragraph 7-2-6 – The words [REDACTED] up to and including [REDACTED] and Paragraphs 7-4-1 up to and including 7-4-3; Pages 24-25 [REDACTED]; Paragraph 7-5-1 [REDACTED] subsections (e) & (j) and dot points 4 – 9 and 11 – 15; Page 28, All the words in Paragraphs 7-6-2 to 7-6-3 and 7-6-5 to 7-6-9 inclusive; Page 30, Paragraph 8-2 [REDACTED] – All the words in dot point 3, [REDACTED] all the words in dot point 3 up to and including 1 line below Paragraph 8-5 to 8-5-1 inclusive;

Non-publication orders:

Page 31, All the words in Paragraph 8-6-2; Page 34, All the words in the Definition of [REDACTED]; [REDACTED] all the words from [REDACTED] up to and including the following 9 lines; Pages 39-40, [REDACTED]
- [REDACTED].

- (i) the affidavit of Assistant Commissioner Michael Willing sworn 19 April 2018 and its annexures and confidential exhibits.

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1. Introduction

1.1 On 21 November 2016 Celal Kizildag was involved in a motor vehicle collision from which he suffered fatal injuries. Tragically, Celal was only 22 years old at the time. A short time before the collision there had been a chance encounter between Celal and four police officers who were driving in another vehicle. As a result of the chance encounter the police officers followed the motorcycle that Celal was riding for a brief period and eventually came across the collision scene where Celal's motorcycle had impacted another vehicle.

2. Why was an inquest held?

2.1 Under the *Coroners Act 2009 (the Act)* a Coroner has the responsibility to investigate all reportable deaths. This investigation is conducted primarily so that a Coroner can answer questions that they are required to answer pursuant to the Act, namely: the identity of the person who died, when and where they died, and what was the cause and the manner of that person's death. All reportable deaths must be reported to a Coroner or to a police officer.

2.2 Due to the circumstances surrounding Celal's death, he was regarded as having died in the course of a police operation. This meant that, according to the relevant section of the Act which applied at the time¹, an inquest into Celal's death was mandatory. Inquests are mandatory for these types of deaths to ensure that there is an independent and transparent investigation of the circumstances of the death, and the relevant conduct of any of involved police officers.

3. Celal's life

3.1 Inquests and the coronial process are as much about life as they are about death. A coronial system exists because, as a community, we recognise the fragility of human life and place enormous value on how precious it is. Recognising the impact that a death of a person has, and continues to have, on the family and loved ones of that person can only serve to strengthen the resolve we share as a community to strive to reduce the risk of preventable deaths in the future.

3.2 Understanding the impact that the death of a person has had on their family only comes from knowing something of that person's life and how the loss of that life has affected those who loved that person the most. Therefore it is extremely important to recognise and acknowledge Celal's important life. It is hoped that the brief words below do so in a meaningful and respectful way.

3.3 Celal's parents, Kemal and Emine, arrived in Australia from Turkey in about 1994. Celal's mother was pregnant at the time and Celal was born a few months after their arrival. Celal's sisters, Rukiye and then Burcu, were born a short time later. Initially Celal's family lived in the Liverpool area in Sydney, before later moving to Regents Park when Celal was about eight years old.

3.4 By all accounts, Celal enjoyed a close relationship with his family and in particular with his sister, Rukiye. There is no doubt that Celal is greatly missed and that his passing has devastated his family. To lose a son and a brother at any time is an occasion for much sorrow; but to lose a young man approaching the prime of his life is truly tragic.

¹ *Coroners Act 2009*, section 23(1)(c) (since amended).

4. Background to the events of 21 November 2016

- 4.1 Approximately six months prior to November 2016 Celal's sister, Rukiye Yusuf, observed a number of changes in Celal's behaviour. She noticed that Celal began associating with a different group of friends, that he lost weight, and that he was often seen to be "fidgety".² During this same six month period, Celal acquired a motorcycle, even though he did not hold a motorcycle licence. After acquiring the motorcycle Celal's parents often spoke to him to express their view that the motorcycle was too big and dangerous for him to handle.
- 4.2 About two weeks before November 2016 Rukiye noticed that Celal had also acquired a small safe which he kept in his bedroom. Although Rukiye never saw Celal place anything in the safe, she heard him using it and noticed a strange smell coming from it, leading her to believe that Celal stored illicit drugs inside the safe. At around this time Rukiye also noticed that Celal had more money than usual, which in turn made her believe that Celal was involved in selling illicit drugs.

5. What happened on 21 November 2016?

- 5.1 On Monday 21 November 2016 Senior Constables Craig Norman, Officer 1, Daniel Dring, and Constable Michael John were performing duties with the NSW Police Public Order Riot Squad. In the morning, they left their headquarters in Homebush in order to conduct high visibility patrols in a black Toyota Landcruiser (**the Landcruiser**), [REDACTED] with call sign PORS 60. Senior Constable Norman was the driver of the vehicle with Officer 1 seated in the front passenger seat, Senior Constable Dring seated in the rear driver's side seat, and Constable John seated in the rear passenger's side seat.
- 5.2 After leaving Homebush the Landcruiser conducted patrols in Sydney city, North Sydney and the Inner West before the four police officers drove back to Homebush for a lunch break. Following this, the four officers left in the Landcruiser again to conduct patrols in the south western region of Sydney, with each of the officers occupying the same seating positions as they had before lunch.
- 5.3 At about 1:55pm on Celal rode his Suzuki GSX-R600 motorcycle (**the Suzuki**) to the Speedway service station at 23-27 Amy Street, Regents Park. The service station is located at the end of a series of retail shops and services that line both sides of Amy Street as it leads towards Regent Park station. CCTV footage shows that the Suzuki bore a licence plate PCP44, however the last digit of the licence plate was obscured by a piece of black material (which was later discovered to be tape).
- 5.4 After parking the Suzuki Celal walked across the street where he remained for a short time before later returning to the Suzuki at 2:13pm and filled it with petrol from a bowser. Celal went into the service station shop and spoke briefly to the owner, Mamdouh Hayek, who he knew. Mr Hayek expressed some surprise that Celal was riding a motorcycle and asked him whether it was dangerous to ride. Celal replied by telling Mr Hayek that his (Celal's) parents had told him that it was dangerous and not to ride it, and that he had already fallen off the motorcycle twice. At about 2:22pm, after speaking briefly with a person in a car which was stopped at the service station, Celal got on the Suzuki to exit the service station. He turned right onto Amy Street and rode away from the station.

² Exhibit 1, Tab 8 at [6].

Kingsland Road, Regents Park

- 5.5 A short time later the Landcruiser was travelling along Kingsland Road, Regents Park at a speed of about 45 km/hour heading towards Bankstown. Senior Constable Norman saw the Suzuki slowly pull out from the right hand side of the road and then travel in the same direction as the Landcruiser along Kingsland Road. Senior Constable Norman noted that *“as [the Suzuki] pulled out, it kind of wobbled and looked a bit like not a normal rider. It looked a bit weird”*.³ Officer 1 saw the Suzuki as well and also described it *“wobbly”*⁴, forming the view that the rider (Celal) may not have been a confident rider or that the motorcycle might have been too big for the rider. Shortly after the Suzuki pulled out, Senior Constable Norman saw that it *“then just took off”*⁵ towards the intersection with Kibo Road. As the Landcruiser followed the Suzuki, it also increased its speed.
- 5.6 As both the Landcruiser and the Suzuki travelled along Kingsland Road, Senior Constable Norman estimated that the Suzuki was about 200 to 300 metres ahead. Halfway along Kingsland Road, the Suzuki turned left onto Kibo Road, with the Landcruiser following. As the Suzuki slowed down to turn the corner, Senior Constable Norman saw Celal turn around and look back at the Landcruiser several times and *“then suddenly saw him take off really quickly”*.⁶ At the same time Senior Constable Norman heard the Suzuki revving its engine. Constable John also heard the revving sound and heard Senior Constable Norman remark words to the effect of, *“Look at this”*.⁷ Constable John looked through the front windscreen and saw a motorcycle *“a long way in front of us at the end of the street”*⁸ with no other vehicles in between. Senior Constable Dring also looked through the windscreen and recognised the model of the Suzuki as he had previously owned a similar model.

Kibo Road, Regents Park

- 5.7 After turning onto Kibo Road Senior Constable Norman estimated that the Suzuki was about 400 or 500 metres ahead of the Landcruiser, and passing over a crest at the intersection of Kibo Road and Phillips Avenue. The Landcruiser continued along Kibo Road and when it reached the crest, Senior Constable Norman saw the Suzuki for only two or three seconds before it turned right onto Clucas Road and went out of view. Senior Constable Norman estimated that the Suzuki was travelling over 100km/hour as it approached the intersection with Clucas Road, and (whilst he did not check the speedometer at the time) that the Landcruiser was travelling more than 60km/hour but no more than 100 km/hour.
- 5.8 Senior Constable Norman later explained that whilst travelling along Kibo Road his intention was probably to catch up to the Suzuki but explained that he *“wasn’t quite sure what we were dealing with”* and that *“at no time was there ever a conversation [with the other police officers] of putting lights and sirens on at all”*.⁹

³ Exhibit 1, Tab 9 at Q/A 21.

⁴ Exhibit 1, Tab 11 at Q/A 116.

⁵ Exhibit 1, Tab 9 at Q/A 22.

⁶ Exhibit 1, Tab 9 at Q/A 25.

⁷ Exhibit 1, Tab 12 at [8].

⁸ Exhibit 1, Tab 12 at [9].

⁹ Exhibit 1, Tab 9 at Q/A 148-149.

Clucas Road, Regents Park

5.9 The Landcruiser continued down Kibo Road and also turned right onto Clucas Road. Senior Constable Dring said that he saw the Suzuki ahead of the Landcruiser, travelling at the designated speed limit, and that Celal turned to look backwards several times. After about 100 metres Senior Constable Dring saw the Suzuki accelerate *“harshly and took off”*¹⁰ at an unknown speed. Officer 1 also said that the Suzuki *“absolute [sic] gunned it”* with the motorcycle putting *“a lot of distance between us”*.¹¹ As this occurred Senior Constable Dring heard Senior Constable Norman remark, *“He’s going now”*,¹² and Officer 1 say, *“Did anyone catch the rego”*.¹³ Senior Constable Dring tried to identify the Suzuki’s licence plate but was unable to do so.

5.10 The Suzuki continued to the end of Clucas Road, which intersects with Amy Street. When the Suzuki reached the intersection the Landcruiser was about 300 metres behind it. Senior Constable Dring later explained that the Landcruiser *“continued travelling at the same speed on Clucas Road. [REDACTED] [REDACTED] We did not activate our light or sirens”*.¹⁴

Amy Street, Regents Park

5.11 When the Landcruiser reached the Amy Street intersection, it stopped for couple of seconds whilst waiting for a gap in the traffic travelling in both directions before making a right hand turn. After turning onto Amy Street, there is a slight incline up to a crest at a point between the intersections with Larcombe Street and Yukka Road, some 370 metres away. The Suzuki could not be seen along the section of Amy Street approaching the crest. After turning on to Amy Street, Officer 1 said to Senior Constable Norman *“He’s gone...don’t worry about him”*.¹⁵

5.12 After turning onto Amy Street, Senior Constable Norman noted that *“there were cars and traffic on both sides going up and down the street”*.¹⁶ Both Senior Constables Norman and Dring described the Landcruiser as being *“stuck”* behind traffic on Amy Street.¹⁷

Pedestrian crossing on Amy Street, Regents Park

5.13 At around this time, Nadin El Mched was standing outside her house on 44A Amy Street which is located near the corner of Amy Street and Edwin Street. To the right of this corner, towards Regents Park station, is a marked pedestrian crossing on a raised traffic island. Ms El Mched turned to the right and saw the Suzuki travelling *“really fast”* and *“faster than the speed limit”* down Amy Street towards the pedestrian crossing.¹⁸

5.14 Rachael Nicholls was driving a blue Mitsubishi ASX (**the Mitsubishi**) along Amy Street at about 2:20pm at a speed of about 40 km/hour when she approached the pedestrian crossing. Ms Nicholls saw a pedestrian standing on the left side of the road at the crossing, so she slowed her vehicle and came to a complete stop to allow the pedestrian to cross.

¹⁰ Exhibit 1, Tab 14 at [6].

¹¹ Exhibit 1, Tab 11 at Q/A 23.

¹² Exhibit 1, Tab 14 at [7].

¹³ Exhibit 1, Tab 14 at [7].

¹⁴ Exhibit 1, Tab 14 at [7].

¹⁵ Exhibit 1, Tab 11 at Q/A 193.

¹⁶ Exhibit 1, Tab 9, Q/A 53.

¹⁷ Exhibit 1, Tab 9, Q/A 54; Tab 14 at [9].

¹⁸ Exhibit 1, Tab 67 at [5].

- 5.15 Michael Oldfield was standing at the pedestrian crossing, waiting to cross. He saw the Mitsubishi stop about one to two metres from the crossing. As he walked out onto the crossing, Mr Oldfield heard the sound of a motorcycle revving and described it as “*sounding like it was redlining*”.¹⁹ Mr Oldfield turned to his right and saw the Suzuki travelling on Amy Street. Mr Oldfield saw the Suzuki change gears and its front wheel lift, before the back wheel locked up resulting in the Suzuki “*going a bit sideways*”. It appeared to Mr Oldfield that the motorcycle was going too fast and having difficulty stopping. As Mr Oldfield continued to walk across he heard a loud bang and saw Celal land in the gutter past the crossing with the Suzuki on top of him.
- 5.16 About two seconds after stopping the Mitsubishi Ms Nicholls heard a loud revving sound from behind her vehicle. As she looked in her rear view mirror to identify the source of the sound Ms Nicholls felt what she described as a “*big jolt*”²⁰ as something struck the Mitsubishi. The impact caused the Mitsubishi to move forward even though Ms Nicholls had applied the brake. Ms Nicholls placed her vehicle in park, and as she did so she looked to her left and saw Celal slide past on the ground, followed by his motorcycle, which landed on top of him.
- 5.17 When the Landcruiser passed over the crest on Amy Street Senior Constable Norman saw the Mitsubishi stopped on the road with many people milling around on the left, just past the Mitsubishi. The distance from the crest to the site where the Suzuki collided with the Mitsubishi (**the collision site**) is about 400 metres. The Landcruiser continued travelling down Amy Street towards the collision site, arriving a short time later.
- 5.18 On approach it became apparent to the police officers in the Landcruiser that a collision had occurred. Senior Constable Norman activated the warning lights of the Landcruiser about 100 metres from the collision site. Upon arrival Constable John saw the Mitsubishi stopped at a pedestrian crossing and debris from the collision in the surrounding area, including the Suzuki which was lying in the gutter near the crossing. Constable John also saw that Celal was not wearing a helmet (which appeared to have come off and was lying on the street) and had a wound to his head, with further injury to his legs. Constable John saw Celal attempt to stand up, only to fall down.
- 5.19 Senior Constable Norman and Senior Constable Dring ran over to Celal to help him. They tried to keep Celal still as he complained of pain in his legs and groin. Meanwhile, Officer 1 called for ambulance assistance whilst Constable John diverted traffic away from Amy Street and the collision site.
- 5.20 Celal informed the police officers that he had asthma and could not breathe. Senior Constable Dring saw that Celal was wearing a shoulder bag across his chest. As the bag obstructing the attempts of the police officers to provide first aid to Celal, Senior Constable Dring told Celal he was going to cut the bag strap so that he could remove it. He did so and eventually removed the bag from Celal’s grip. Senior Constable Dring opened the bag and saw a wallet with a driver’s licence, which he removed and gave to Officer 1 so that an identification check could be performed. Senior Constable Dring also saw that there were three or four clear resealable plastic bags containing a brown coloured crystal powder-like substance, with one bag containing green vegetable matter, inside the shoulder bag.

¹⁹ Exhibit 1, Tab 66 at [4].

²⁰ Exhibit 1, Tab 68 at [6].

Senior Constable Dring also noticed that a large number of smaller plastic resealable bags (about 50 to 100) had fallen out of one of Celal's trouser pockets.

Medical treatment at the collision site

- 5.21 A call was made to NSW Ambulance at 2:25pm. Paramedics from a road ambulance arrived on scene at about 2:36pm. Celal was found to be semi-conscious and hypotensive (low blood pressure) with poor saturation of peripheral oxygen. The paramedics also saw that Celal had a notable pneumothorax (collapsed lung) with a penetrating wound to the hip. Urgent assistance, including a medical team, was requested.
- 5.22 A medical retrieval team arrived via air ambulance at the scene a short time later at 2:53pm. A rapid lung ultrasound was performed which confirmed a left pneumothorax. Celal was noted to have a GCS (Glasgow Coma Scale²¹) score of 13 which soon dropped to 3 following examination. Celal was also found to have a haematoma to his forehead, abrasions to his arms and legs, a penetrating wound to his right lower spinal area and bleeding through this wound. It was noted that Celal's oxygen saturations were dropping and so he was ventilated which improved the saturations. A thoracostomy²² was performed and packed red blood cells were commenced.
- 5.23 A short time later no pulse could be found so cardiopulmonary resuscitation (CPR) was commenced with ongoing ventilation. Within four minutes there was a return of spontaneous circulation and Celal was loaded into a road ambulance for urgent transport to hospital. The ambulance arrived at Westmead Hospital at 3:49pm and Celal was taken to the emergency department.

Medical treatment at hospital

- 5.24 Celal was later taken to the operating theatre where a laparotomy²³, and packing of the abdomen²⁴ were performed for pelvic stabilisation. No intra-abdominal injuries were identified. Subsequent scans showed that Celal had suffered fractures of the frontal bone of the skull, cervical and lumbar spine, and right side of the pelvis, with bilateral pneumothorax, and large retroperitoneal haematoma²⁵. Celal was taken to the intensive care unit where he remained intubated and on inotropic support²⁶ overnight.
- 5.25 A second laparotomy took place at around 2:30pm the following day to remove the packing. These were removed without difficulty and it was noted that there was no active bleeding from the pelvis. About 15 or 20 minutes into the procedure, the surgeons were planning to place drains and close, at which point Celal experienced a sudden loss of blood pressure. CPR was immediately commenced, and continued for 22 minutes. Following massive transfusion of blood there was an eventual return of cardiac output. However Celal later went into cardiorespiratory arrest again at 4:18pm and a transoesophageal echocardiography²⁷ showed an enlargement of the right ventricle of the heart with

²¹ A neurological scoring system, with scores ranging from 3 to 15, used to assess the level of consciousness in a person according to their eye, verbal and motor responses.

²² An incision in the chest wall to allow the release of fluid/air from the area around the lungs, commonly used to treat pneumothorax.

²³ A surgical procedure involving a large incision through the abdominal wall in order to gain access to the abdominal cavity.

²⁴ A life-saving technique for temporary control of severe injury and haemorrhage.

²⁵ Accumulation of blood in the space behind the abdominal cavity.

²⁶ Treatment to stabilise circulation and optimise oxygen supply in critically ill patients.

²⁷ A technique which uses soundwaves to produce images of the heart.

a clot in the pulmonary artery²⁸. CPR continued with minimal effect and Celal was later pronounced deceased at 4:30pm.

6. What was the cause of Celal's death?

6.1 Celal was later taken to the Department of Forensic Medicine at Glebe where Dr Lorraine Du Toit-Prinsloo, forensic pathologist, performed a postmortem examination on 24 November 2016. Following external examination Dr Du Toit-Prinsloo noted that Celal had numerous superficial lacerations and abrasions on his head, arms, back and lower legs. Dr Du Toit-Prinsloo also noted that postmortem imaging showed features of subgaleal²⁹ swelling, bilateral pneumothoraces, surgical packing in a laparotomy wound, fractures of the right pelvis and a fracture of the left tibial plateau³⁰. Toxicological analysis revealed the presence of amphetamine and methylamphetamine at low/ton-toxic levels, together with the presence of ketamine and lignocaine, also at non-toxic levels. Ultimately Dr Du Toit-Prinsloo concluded that the causes of Celal's death was multiple injuries.

7. Investigations conducted following the collision

7.1 The collision scene was later examined by Leading Senior Constable Trent Wheeler, an investigator from the NSW Police Metropolitan Crash Investigation Unit. Leading Senior Constable Wheeler concluded that:

- (a) the Mitsubishi was stationary immediately prior to the pedestrian crossing;
- (b) the rear tyre of the Suzuki locked momentarily as it approached the rear of the Mitsubishi causing it to *"move in a lazy S style"*³¹;
- (c) Celal let go the handle bars just prior to impact;
- (d) the offside of the Suzuki impacted with the rear nearside of the Mitsubishi in a *"side swiping style collision"*³² causing Celal to lose control;
- (e) the Suzuki slid along the road surface before the front tyre impacted with a traffic island adjacent to the pedestrian crossing; and
- (f) the Suzuki travelled over the traffic island and came to rest in within the southern kerb and footpath.

7.2 The Suzuki was later examined by an officer from the NSW Police Engineering Unit and it was found to have no mechanical fault or defect which may have contributed to the collision.

²⁸ The artery carrying blood from the right ventricle to the lungs for oxygenation.

²⁹ A space between the skull and the scalp.

³⁰ The upper part of the shinbone that involves the knee joint.

³¹ Exhibit 1, Tab 21, page 11.

³² Exhibit 1, Tab 21, page 11.

8. Did a police pursuit occur on 21 November 2016?

8.1 The NSW Police Force Safe Driving Policy (**the Policy**) governs the conduct, role and responsibilities of police officers involved in the pursuit of a civilian vehicle. Part 7 of Version 8.2 of the Policy³³ (which was in force at the time of Celal's death) defines a pursuit in this way:

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

It is an attempt by a police officer to stop and apprehend the occupant(s) of a moving vehicle, regardless of speed or distance, when the driver of the other vehicle is attempting to avoid apprehension or appears to be ignoring police attempts to stop them.

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.

8.2 Having regard to the definition provided by the Policy, the initial question to be answered is whether any of the police officers in the Landcruiser on 21 November 2016 issued Celal with a direction to stop. If the answer to this question is in the affirmative, then the next question to answer is whether Celal ignored such a direction.

8.3 There is no evidence to suggest that any of the four police officers in the Landcruiser issued Celal with a verbal direction to stop. Therefore, the only means by which such a direction could have been given is if the Landcruiser activated its warning devices (lights and sirens). Each of the four police officers in the Landcruiser were either interviewed or provided statements in which they stated that the Landcruiser's warning devices were not activated until after the collision at the pedestrian crossing on Amy Street.

8.4 Specifically, Constable John said that from the time that he first saw the motorcycle he "*did not hear or see anyone activate the lights and sirens in our vehicle. We did not attempt to stop the motorbike rider at any time. I did not see us get close enough to the motorbike at any time to attempt to stop it*".³⁴ Further, whilst Officer 1 agreed that the police officers "*probably*" would have attempted to pull over the Suzuki they did not do so "*because the distances were so long and the fact that we, we couldn't even see [Celal] for the majority of our driving...we only saw the, the streets he turned into...there was no point in even trying to like even activate [the warning devices] or anything, he wouldn't have seen them...it sort of happened so quick*".³⁵ [REDACTED]

[REDACTED] There is no evidence to suggest that Part 5 of the Policy applied to the events of 21 November 2016.

8.5 The version of events from the police officers in the Landcruiser regarding non-activation of the Landcruiser's warning devices is corroborated by evidence provided by a number of civilian witnesses. Ms Nicholls said that the Landcruiser arrived "*very quickly*" after the impact and that its

³³ Exhibit 1, Tab 83, page 22.

³⁴ Exhibit 1, Tab 12 at [12].

³⁵ Exhibit 1, Tab 11 at Q/A 167-172.

³⁶ Exhibit 1, Tab 83, page 23.

lights were on.³⁷ However, Ms Nicholls said that she did not hear any sirens from police vehicles before the impact. Mr Oldfield said that the Landcruiser arrived on scene “*about a minute after the collision*” and that he did not hear any siren before the impact occurred.³⁸ Further, Mr Oldfield said that he was “*pretty sure*” that the Landcruiser did not have its warning lights activated and that they were only activated after it arrived on scene. Ms Mched also said that she did not see any flashing lights or hear any sirens on the Landcruiser when it arrived. Finally, Stephen Dixon was outside his home at 79 Amy Street on 21 November 2016 when he saw the Suzuki “*flying*” and “*going very quick*”.³⁹ Mr Dixon subsequently saw the Landcruiser driving past “*a lot long [sic] maybe a few minutes after*” but did not associate it with the Suzuki because of the gap in time between the two vehicles.⁴⁰ Each of these accounts is consistent with Senior Constable Norman’s recollection that the warning lights were only activated shortly before (around 100 metres) the Landcruiser arrived at the collision site.

- 8.6 CCTV footage taken from a retail shop at 44 Amy Street and from an Auburn Council camera shows events consistent with the description given by the civilian witnesses. The footage shows the wheels of the Suzuki locking up, smoke emanating from the rear wheel, indicative of harsh braking or gears changing, Celal releasing his hold on the handlebars and then the Suzuki impacting with the Mitsubishi. The footage also shows the Landcruiser stopping at the scene about 20 seconds later following the collision and then activating its warning lights.

8.7 **Conclusion:** The accounts provided by the four police officers in the Landcruiser, the civilian witnesses at the collision scene, and the independent CCTV footage all establish that the Landcruiser’s warning devices were not activated at any time prior to the collision. The evidence establishes that the warning lights (but not the siren) of the Landcruiser were only activated shortly before it stopped at the collision site. Therefore, there is no evidence that the warning devices of the Landcruiser were used to issue Celal with a direction to stop. There is also no evidence to suggest that Celal was issued, by any other method, with a direction to stop. This means that a pursuit, as defined by the Policy, did not take place on 21 November 2016.

9. Did the conduct of any police officer contribute to Celal’s death?

- 9.1 Although the evidence establishes that the Policy did not apply to the actions of the police officers on 21 November 2016 it is still necessary to independently examine their conduct distinct from the application of any aspect of the Policy. In this regard the primary question to be answered is whether the actions of any police officer contributed to the manner in which Celal rode the Suzuki in the manner that he did, ultimately resulting in the fatal collision on Amy Street.
- 9.2 Clause 8-6-1 of the Policy is relevant to this question. It provides that it permissible for a police vehicle to “*reduce the distance to an offending vehicle without informing VKG of a response code or activating warning devices. However police must take reasonable care and it must be reasonable that warning devices are not used*”.⁴¹ Although there is no offence to suggest that the police officers in the Landcruiser considered that Celal may have committed any offence, and therefore regarded as

³⁷ Exhibit 1, Tab 68 at [10].

³⁸ Exhibit 1, Tab 66 at [9].

³⁹ Exhibit 1, Tab 65 at [5].

⁴⁰ Exhibit 1, Tab 65 at [7].

⁴¹ Exhibit 1, Tab 83, page 31.

an “*offending vehicle*”, it is evident that their interest in ascertaining more information about the Suzuki was heightened given Celal’s manner of riding.

- 9.3 There is no doubt that at various times as the Suzuki and Landcruiser travelled along Kingsland Road, Kibo Road, Clucas Road and Amy Street both vehicles travelled in excess of the speed limit. In an attempt to provide an independent measurement of the speed that both vehicles travelled, CCTV footage from cameras installed at certain points along the path of vehicles was examined. Calculations were then performed measuring the time taken for both vehicles to travel between certain points shown in the footage. These calculations, performed by the Forensic Imaging Section of the NSW Police Forensic Crime Scene Facility, indicated the following.⁴²
- (a) when depicted in the CCTV footage outside 45 Kibo Road, the Suzuki was travelling with an average speed of not less than 99 km/hour and the Landcruiser was travelling with an average speed of not less than 85 km/hour;
 - (b) when depicted outside 26 Clucas Road, the motorcycle was travelling with an average speed of not less than 111 km/hour and the Landcruiser was travelling with an average speed of not less than 84 km/hour; and
 - (c) when depicted outside 140 Amy Street (when both vehicles were in the initial stages of acceleration at a point approximately 500 metres from the collision site), the motorcycle was travelling with an average speed of not less than 59 km/hour and the Landcruiser was travelling with an average speed of not less than 41 km/hour.
- 9.4 The above evidence demonstrates that the Landcruiser was travelling in excess of the designated speed limit on Kibo Road and Clucas Road, but not on Amy Street. This appears to be consistent with the evidence of the four police officers that the Suzuki remained in sight of the Landcruiser whilst travelling along Kibo Road and Clucas Road, but that it was not sighted after the Landcruiser turned onto Amy Street until the latter reached the collision site.
- 9.5 On 2 December 2016 and 9 May 2017 the officer-in-charge of the investigation, Detective Sergeant Sedgwick, conducted a physical reconstruction of the path taken by the Landcruiser on 21 November 2016. The reconstruction involved driving at the speeds that it was estimated that the Landcruiser had travelled (around 85-90km/hour) on that day, and in similar traffic and weather conditions. Detective Sergeant Sedgwick noted that Kibo and Clucas Roads were relatively wide with minimal traffic and, accordingly, the speed of the Landcruiser would not have posed a risk to members of the community. Detective Sergeant further noted that travelling at a similar speed on Amy Street would have posed a risk as it was narrower in width with high traffic flow.
- 9.6 It is evident that, by travelling in excess of the speed limit, the Landcruiser was endeavouring to maintain sight of, and contact with, the Suzuki. Although not explicitly stated by any of the four police officers, it appears from the evidence that one reason for doing so was to close the distance between the Landcruiser and the Suzuki in order ascertain the licence plate of the Suzuki. However, this is not to suggest that the conduct of any of the police officers, or the manner of driving of the Landcruiser affected Celal’s control of the Suzuki in any direct way. Rather, the speed that the Suzuki

⁴² Exhibit 1, Tab 24.

was travelling and the manner in which it was being ridden by Celal appears to have been directly affected by other factors concerning his past history.

- 9.7 Firstly, there is considerable evidence establishing that Celal was involved in the supply of illicit drugs in the period preceding his death. The contents of the shoulder bag that Celal was wearing were later inspected at Auburn police station and logged as exhibits. Amongst other items, it was noted that the bag contained a set of scales, \$500 cash, paraphernalia for the use of illicit drugs, and plastic bags containing different coloured rock material and green vegetable matter. The various rock material was subsequently analysed and found to contain 3,4-methylenedioxymethylamphetamine, methylamphetamine, and a methylenedioxy-substituted substance.
- 9.8 Further, after being notified of the collision, Celal's family members later attended the scene. Whilst there, Celal's sister, Ceylan Kanat, was approached by two young males not previously known to her, who told her that Celal's house had been broken into. Ceylan later returned to the family home at Regents Park and saw evidence of a break in. She noticed that a safe that had previously been in Celal's room had been removed, and that a window to Celal's car had been broken.
- 9.9 Investigating police later went to Celal's home on 24 November 2016. With the assistance of an interpreter, Celal's mother told the police that she had recently found what she believed were illicit drugs in Celal's room. Celal's sister, Burcu, also told police that she was aware that Celal had been involved in the sale of illicit drugs. Burcu provided police with a Samsung mobile phone which was previously used by Celal. When the phone was subsequently analysed police discovered a number of text messages indicating that Celal had previously been involved in supplying illicit drugs.
- 9.10 Secondly, at the time of the collision, Celal did not hold, and had never previously held, a motorcycle licence.
- 9.11 Thirdly, the toxicology results from the autopsy revealed the presence of narcotics in Celal's system indicative of illicit drug use proximate to the events of 21 November 2016. It may be inferred from this that the effects of drug use most likely contributed to Celal's decision-making process, his subsequent actions after he sighted the Landcruiser on Kingsland Road, and his ability to safely control the Suzuki in circumstances where it was travelling in excess of the speed limit.
- 9.12 Finally, the CCTV footage from the Speedway service station and subsequent examination of the Suzuki reveals that Celal had made attempts to conceal the full licence plate number of the Suzuki.

9.13 **Conclusion:** The evidence establishes that even before sighting the Landcruiser on Kingsland Road, Celal had taken steps to avoid coming under the attention of law enforcement authorities by obscuring part of the licence plate number of the Suzuki. Celal's motivation for taking such steps appears to be related to one of the following factors, or a combination of one or more of them: (a) his suspected previous involvement in the sale of illicit drugs; (b) the contents of the shoulder bag which he was wearing which pertained to illicit drug use and supply; and (c) his status as a person without a valid licence to ride a motorcycle.

9.14 The above factors, coupled with the likely effects of the narcotics that were later found in Celal's system, contributed to his decision to accelerate away at speed from the Landcruiser. It is most likely that Celal did so because of a belief that the police officers in the Landcruiser were seeking to stop him because of one or more of the above factors, or that if they did stop Celal they would discover one or more of the above factors. Regardless of either outcome, Celal's actions in riding away from the Landcruiser and then travelling in excess of the speed limit were consistent with an intention to avoid being stopped and its possible consequences.

9.15 Although the Landcruiser also travelled in excess of the speed limit during certain periods there is no evidence to suggest that it did so in a way which placed members of the public at risk of harm. There is no evidence of the Landcruiser being driven in a dangerous manner; indeed, the Landcruiser appropriately stopped at the intersection of Clucas Road and Amy Street to allow traffic to safely pass before continuing on. Further, the evidence establishes that the Landcruiser was not within Celal's rear view at any time whilst the Suzuki travelled along Amy Street. Indeed, the evidence establishes that the Landcruiser was travelling with the flow of traffic on Amy Street and it can be therefore be inferred it was travelling at the designated speed limit. On this basis, the evidence establishes that the Landcruiser was driven with reasonable care on 21 November 2016. Further, the evidence also establishes that it was reasonable for the Landcruiser's warning devices to not have been activated: (a) given the distance between it and the Suzuki, which only increased after the Suzuki was first sighted; and (b) having regard to the logical view expressed by Officer 1 that there would be no utility in doing so as they Suzuki was too far ahead to even be aware of them.

9.16 It therefore appears that: (a) the excessive speed that the Suzuki was travelling; (b) Celal's inability to manoeuvre the Suzuki in order to avoid an impact with Mitsubishi stopped at the pedestrian crossing; and (c) his inexperience in handling a motorcycle of the size and power of the Suzuki in circumstances where he had previously fallen off it, were the direct contributing factors to the collision.

10. Findings pursuant to section 81 of the *Coroners Act 2009*

10.1 Before turning to the findings that I am required to make, I would like to acknowledge the efforts of Mr Michael Dalla-Pozza, Counsel Assisting, and his instructing solicitors, Mr James Loosley and Ms Jessica Murty of the Crown Solicitor's Office. Their assistance during both the preparation for inquest, and during the inquest itself, has been enormous. I also thank Detective Sergeant Nicholas Sedgwick for his efforts during investigation into Celal's death and for compiling the comprehensive initial brief of evidence.

10.2 The findings I make under section 81(1) of the Act are:

Identity

The person who died was Celal Kizildag.

Date of death

Celal died on 22 November 2016.

Place of death

Celal died at Westmead Hospital, Westmead NSW 2145.

Cause of death

The cause of Celal's death was multiple injuries.

Manner of death

The multiple injuries were sustained in a collision on 21 November 2016 involving a motorcycle that Celal was riding and another motor vehicle.

11. Epilogue

11.1 Although it appears that Celal was undergoing certain personal challenges in the period leading up to, and on, 21 November 2016, these matters do not in any way minimise the significance of his life, the distressing circumstances of his death, and the painful separation and grief experience by his family.

11.2 On behalf of the NSW State Coroner's Court and the counsel assisting team, I offer my deepest heartfelt sympathies, and most respectful condolences to Celal's parents and siblings, and the other members of his family, for their most tragic loss.

11.3 I close this inquest.

Magistrate Derek Lee
Deputy State Coroner
13 February 2019
NSW State Coroner's Court, Glebe