



CORONER'S COURT

Inquest:	Inquest into the death of William James Robson-Pearce
Hearing dates:	24-26 June 2014
Date of findings:	14 April 2015
Place of Inquest:	Muswellbrook Court House Muswellbrook NSW 2333
Place of Findings	Coroners Court Glebe NSW 2037
Findings of:	Paul MacMahon Deputy State Coroner
Catchwords:	CORONIAL LAW – Mandatory Inquest, Death in Police Operation, Police Pursuit, Discretion to commence Pursuit, Pursuit of Speeding Motorcyclist, Compliance with Safe Driving Policy, Recommendations.
File number:	2013/52657
Representation:	Mr P Aitken – Counsel Assisting, Mr R Hood – Commissioner of Police, Mr D Stanton – Lauren Robson-Pearce and Glenn Pearce.

Non-publication order made pursuant to Section 74(1) (b) Coroners Act 2009:

The publication of the following evidence is prohibited:

- In Exhibit 2 Tab 47 – the NSWPF Safe Driving Policy pages 24-32,
- In Exhibit 2 Tab 15 – the Statement of Senior Sergeant Anthony Grace paragraph 19, and
- Exhibit 3.

Findings made in accordance with Section 81(1) Coroners Act 2009:

William James Robson-Pearce (born 30 April 1996) died on 18 February 2013 in the vicinity of 186 Queen Street, Muswellbrook in the State of New South Wales. The cause of his death was a severe closed head injury that he sustained when the motorcycle he was riding at speed collided with a post and rail fence during the course of a police pursuit causing him to be thrown from the motorcycle and impact with the ground.

Recommendations made in accordance with Section 82 (1) Coroners Act 2009:

To: The Commissioner of Police:

- That the circumstances of the death of William James Robson Pearce which highlight the dangers inherent in a police pursuit of a motorcyclist exceeding the designated speed limit be considered as part of the continuing review of the NSWPF Safe Driving Policy,
- That procedures be developed so as to ensure police officers responding to a death that arises as a result of or in the course of a police operation recognise and meet, in an adequate and timely manner, the legitimate needs of families experiencing grief as a result thereof.

Paul MacMahon

Deputy State Coroner

14 April 2015

Reasons for Finding:

William James Robson Pearce was born on 30 April 1996. As requested by his family I will call him 'Will' in these Reasons. Will was 16 years old at the time of his death on 18 February 2013.

Will had grown up on a remote property. He was home-schooled until the end of year 6. He won a scholarship to a high school at Tamworth but ended up moving to Scone Grammar, where he finished years seven and eight, and then transferred to St Joseph's Aberdeen.

By all accounts Will was popular at school, both amongst his peers and with his teachers, and he represented St Joseph's in both League and Rugby. He also played for the Singleton under 16's in Rugby and represented his school at various agricultural shows.

Will learned to drive a car from the age of 12 and was competent in many tasks around the property. He also learned to ride motorbikes at a young age. At the end of year 10, he decided he wanted to do an apprenticeship as a plant mechanic in the mining industry and was accepted at the Mount Arthur Coal Mine. He commenced his apprenticeship in January 2013.

Will had both a motorcycle and motorcar learner's license. He had received his rider's learners' license on 30 January 2013. He then commenced riding a motorcycle on public roads.

The motorcycle that he was riding at the time of his death had been given to him by his father, Andrew Dryer, who had reacquainted himself with William in the previous 12 months. The motorcycle was a 2010 model 650 cc Kawasaki. This motorcycle was approved for riding by a learner.

Will had recently begun a friendship with a girl of about his age. He also enjoyed exercising at the gym with his friend Jayson Hovi after he attended his TAFE classes. It was his friend Jayson Hovi who was the pillion passenger on the motorcycle when Will was detected speeding by police on 18 February 2013.

Following him being detected speeding police sought to stop Will and as a result a short pursuit occurred. During that pursuit Will lost control of the motorcycle he was riding and it crashed into fencing outside a house at 186 Queen St Muswellbrook. Will was thrown from his motorcycle and sustained severe head injuries. This led to his death.

In accordance with the requirements of the Coroners Act 2009 (the Act) Will's death was reported to the Office of the State Coroner on 19 February 2013.

Jurisdiction of the Coroner:

It is important at this stage to set out the role and function of the coroner in respect of the death of Will. That role and function is established by the Act. All legislative references in these reasons will, unless otherwise mentioned, be to the Act.

Section 6 defines a “*reportable death*” as including one where a person died a “*violent or unnatural death*” or under “*suspicious or unusual circumstances*”.

Section 35 requires that all *reportable deaths* be reported to a coroner.

Section 18 gives a coroner jurisdiction to hold an inquest where the death, or suspected death, of an individual occurred within New South Wales or where the person who has died, or is suspected to have died, was ordinarily a resident of New South Wales.

Section 27(1) (b) provides that if it appears to a coroner that a person died, or might have died, in circumstances to which Section 23 applies then an inquest is mandatory.

Section 23 gives exclusive jurisdiction in respect of the investigation of certain deaths to Senior Coroners.

Section 22 (1) defines a Senior Coroner as being the State Coroner or a Deputy State Coroner.

The exclusive jurisdiction given to senior coroners includes the investigation of deaths that occur *as a result of or in the course of a police operation* (Section 23 (c)).

The primary function of the coroner when an inquest is conducted is to be found in Section 81(1). That section requires that at the conclusion of the inquest the coroner

is to establish, should sufficient evidence be available, the fact that a person has died, and the identity of that person, the date and place of their death and the cause and manner thereof.

In addition to the matters to be determined in accordance with Section 81(1), in a case such as this where a death occurs *as a result of or in the course of a police operation*, it is important that the contribution of police action, if any, to the circumstances of the death be the subject of a full and public inquiry.

The Parliament requires that inquests in such circumstances be conducted so as to provide a positive incentive to police to ensure that their actions are appropriate in all situations and to satisfy the community that those deaths that occur when police are involved are properly investigated. It is also in the interest of the police that such deaths be properly investigated so as to ensure that the officers involved, and the police in general, are not the subject of unsubstantiated or malicious allegations.

The circumstances that led to Will's death are such that his death was one that occurred *as a result of or in the course of a police operation* and, as a result, the conduct of an inquest into his death is mandatory and must be undertaken by either the State Coroner or a Deputy State Coroner.

Section 82 provides that a coroner conducting an inquest may also make such recommendations, as he or she considers necessary or desirable, in relation to any matter connected with the death with which the inquest is concerned. The making of recommendations are discretionary and relate usually, but not necessarily only, to

matters of public health, public safety or the conduct of services provided by public instrumentalities. In this way coronial proceedings can be forward looking, aiming to prevent future deaths of a nature similar to that with which the inquest is concerned.

Section 74 (1)(b) authorises a coroner, during the course of an inquest, if he or she is of the opinion that it is in the public interest to do so, to prohibit the publication of any evidence given in the proceeding.

Identity, date and place of death:

Will's identity and the date and place of his death were not matters of contention at inquest. Will was declared deceased by ambulance officers who attended 186 Queen Street, Muswellbrook on 18 February 2013. Will's body was subsequently taken to the Department of Forensic Medicine at Newcastle where his body was identified by his mother, Lauren Rebecca Robson-Pearce, to Senior Constable Natalie Shannon on 20 February 2013. I am satisfied the evidence establishes that William James Robson-Pearce (born 30 April 1996) died in the vicinity of 186 Queen Street Muswellbrook in the State of New South Wales on 18 February 2013.

Cause of Death:

There was also no contention at the inquest as to the cause of Will's death. Professor Tim Lyons performed an autopsy on Will's body on 20 February 2013. Professor Lyons found that Will suffered a severe closed head injury, consisting of a circumferential basal skull fracture, diffuse intra-cerebral injury and subdural and

subarachnoid haemorrhages, together with a fracture of the outer aspect of the right clavicle, bilateral pulmonary contusions and a small left sided haemothorax.

Having undertaken the autopsy examination Professor Lyons formed the opinion that:

The pattern of injuries sustained (by Will) was consistent with a rapid deceleration injury from a high velocity.

And that:

The nature of these injuries were that they would have been rapidly and inevitably fatal.

Professor Lyons recommended that the cause of Will's death be recorded as being *Severe Closed Head Injury*. I accept Professor Lyons' recommendation and propose to find that the cause of Will's death was due to a *Severe Closed Head Injury*.

Manner of Death:

The broad circumstances of Will's death were also not in contention. It was not in dispute that a little after 8pm on 18 February 2013 Will was riding his motorcycle in Queen Street Muswellbrook with a pillion passenger. They passed a police car that was conducting stationary radar in the street. The radar recorded that the motorcycle was exceeding the speed limit for the street. The police car activated its lights and sirens undertook a U-turn and then attempted to catch up to the motorcycle. The motorcycle stopped and the pillion passenger alighted after which the motorcycle sped off again. Will, however, then lost control of the motorcycle and it collided with a post and rail fence. Will was thrown from the motorcycle and sustained the injuries

that caused his death. He died at the scene. Will's death was therefore a result of injuries he received when he was thrown from the motorcycle he was riding at speed whilst he was being pursued by a police vehicle.

Issues for Inquest:

The Section 81(1) issues being substantially non-controversial, the matters that were to be examined during the investigation of Will's death, and at inquest, related to the actions of the police on 18 February 2013.

Counsel Assisting enunciated the issues to be examined at inquest as follows:

The principal issue in this inquest is the manner of William's death, that is, whether the pursuit was appropriately conducted and whether anything could have been done differently to avoid a pursuit and the dangers that accompanied it.

Examination of the pursuit and the surrounding evidence has thrown up two aspects of the pursuit process that have required careful consideration. They are:

- (i) Whether the police in the pursuing vehicle had sufficient information to be able to identify William, to try to tackle his speeding without resorting to a pursuit; and*
- (ii) Whether, absent such information, it was still necessary in the balance to start and then continue a pursuit: that is, did the need to pursue outweigh the actual and potential risks associated with it?*

Counsel appearing for Will's family submitted that the issues to be considered should be enunciated differently. He put them in the following terms:

- (a) Whether a pursuit in the circumstances should have occurred at all and whether the manner of conducting the pursuit (if it should have occurred) was appropriate in the circumstances;*

- (b) The insensitive way in which the family were informed of the death of William and were treated thereafter; and*
- (c) Whether it is appropriate for police to investigate Police in these circumstances?*

It can be seen that the first of the issues raised by Will's family is substantially the same as that identified by Counsel Assisting and will be the matters that I will address in these reasons. The second is not really a coronial issue as such however it is something that is connected with the death that this inquest is considering so I will deal with it in terms of whether or not it raises matters that should be the subject of recommendations.

The final issue raised by William's family is one of great significance and clearly could be a matter the subject of Section 82 recommendations. The issue was not, however, one that was the subject of any real consideration at the inquest and evidence as to alternative methods of investigating deaths that occur when police are involved was not called. As such I do not consider that I am in a position to make a considered response to the issue. It would not, therefore, be appropriate for me to deal with the issue in this matter and I do not propose to do so.

As to the first of the issues it was suggested by the family that the tragic outcome of the pursuit far outweighed the offence that prompted it. It was submitted that, in the circumstances, it was difficult to justify a pursuit in this case when the offence committed was one of speeding. Put simply the family considered that the police involved should not have initiated the pursuit that preceded the collision that resulted in Will's death in the first place.

In the circumstances it is necessary to consider in some detail the events on and leading up to the evening of 18 February 2013.

There are some facts, about which I am satisfied, that are relevant to the matters for consideration that were not matters of contention. In summary those matters are:

- At about 8.14pm on 18 February 2013 Hunter Valley 204 (HV204), a fully marked Police Highway Patrol Vehicle (HPV), was stationary in Queen Street, Muswellbrook near the intersection of Mattaro Avenue,
- Queen Street, Muswellbrook has a designated speed limit of 50kph,
- The HPV was occupied at the time by Sergeant Ray Holmes and Constable Glen Donnelly,
- The HPV was equipped with a functioning in car video (ICV) capacity,
- An ICV is activated automatically when the lights and sirens on a police vehicle are activated. The ICV then back captures the previous 30 seconds and continues recording until the lights and sirens are deactivated and the operator presses the stop button to cease recording,
- The ICV recorded the events on 18 February 2013 that ended with the death of Will,
- At 20:14:18 (time shown on ICV) a motorcycle, travelling south at a speed of 121kph, was captured on the police Radar in the HPV,
- At 20:14:26 the warning lights on the HPV were activated and a U turn was conducted after which the HPV followed in the direction that the motorcycle had travelled,
- At about 20:14:46 the motorcycle is seen on the ICV footage to slow and pull over and a pillion passenger is seen to get off the motorcycle,

- The motorcycle is then seen to accelerate,
- After accelerating the wheel of the motorcycle came into contact with a concrete traffic calming device in the center of the carriageway after which,
- The rider lost control of the motorcycle and the motorcycle was involved in a collision,
- The period of time from the activation of the warning lights on the HPV and the collision was 44 seconds,
- The distance from where the HPV was parked to the site of the collision was about 900 meters,
- The maximum speed reached by the HPV in that time was recorded as being 135kph.

The actions of police in circumstances such as occurred on 18 February 2013 are governed by the NSW Police Safe Driving Policy (the SDP). Part 6 of the SDP deals with what are known as 'urgent duty' and 'pursuits'.

The SDP defines both Urgent Duty and a Pursuit.

Urgent Duty is defined by the SDP as being:

Duty which has become pressing or demanding prompt action.

A pursuit is defined by the SDP in the following terms:

A pursuit commences at the time you decide to pursue a vehicle that has ignored a direction to stop.

An attempt by a police officer in a motor vehicle to stop and apprehend the occupant(s) of a moving vehicle 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 waring lights or sounding a siren.

The SDP guidelines for Urgent Duty acknowledge that in such circumstances a police officer could be required to travel in excess of the prevailing speed limit. It requires that, where this occurs, all emergency warning devices are to be activated giving the best practical warning to the public of the approaching police vehicle.

There are similar guidelines for the conduct of pursuits including, of relevance, the SDP states that:

- *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,*
- *You are under no legal obligation to initiate a pursuit and in **many** circumstances the safety of the community and the police will dictate that **no** pursuit be initiated. Similarly when a pursuit is considered to be too dangerous it must be terminated, and*
- *When engaging in a pursuit, you should ensure that there is reasonable cause to believe that the person being pursued has committed, or has attempted to commit, an offence; and the offender is attempting to evade apprehension.*

It is not in dispute that when the SDP refers to 'the community' or 'the public' those terms include the subject of a pursuit.

Where a pursuit is commenced the SDP requires that the involved officer(s) activate all emergency warning devices and inform the Duty Operations Inspector (DOI) and the VKG Supervisor that the pursuit has commenced and then, when requested, provide certain specified information to those officers. This allows senior officers to have overall supervision of a pursuit.

The SDP provides that an officer engaged in a pursuit will terminate that pursuit if instructed to do so by the DOI, the VKG Supervisor or any other specified senior officer. The officer engaged in the pursuit is also required to constantly reassess the

circumstances in which a pursuit is being conducted and terminate the pursuit if various specified circumstances arise. In particular an officer engaged in a pursuit is required to terminate that pursuit where:

The danger to the pursuing police or to the public outweighs the need for the immediate apprehension of the offender/s.

The division in the SDP between urgent duties and a pursuit is, to some extent, an artificial one. It has greater relevance to the ordinary conduct of police in circumstances where the death of a person is not involved. For the conduct by a coroner of an inquest into a death where the requirements of Section 23(c) are met it is the totality of the action of the police that is of importance. In applying the SDP to various factual circumstances it might be a matter of debate as to when the action of the police officers involved was Urgent Duty and when it was a Pursuit. For a coroner to perform his or her function, however, it is the totality of the police action involved that is to be examined during the coronial investigation and at the subsequent inquest.

The Evidence:

The two officers that were in HV204 on 18 February 2013 were Sergeant Raymond Holmes and Constable Glen Donnelly. Sergeant Holmes was unable to give evidence at inquest however he participated in a directed interview at Muswellbrook Police Station on 19 February 2013 and the transcript of that interview formed part of the brief of evidence tendered at inquest.

Sergeant Holmes was excused from giving evidence at the inquest because, following the incident that is the subject of this inquiry, he had been retired from the NSWPF suffering from Post-traumatic Stress Disorder and Major Depression. It was the opinion of his treating psychiatrist that the events of 18 February 2013 had substantially contributed to his illness. It was also his treating psychiatrist's opinion that giving evidence at the inquest would: *be to the certain detriment of his mental health.*

In his interview Sergeant Holmes stated that he had received complaints from the public and another highway patrol officer about motorists speeding in Queen Street Muswellbrook and that, as a result, he had been to the street from time to time. He said that on 18 February 2013 he went there twice in HV204 and was the driver each time.

On the first time he went to Queen Street on 18 February 2013 he had sat there for about 10 – 15 minutes and then left. He said that he had returned again at about 8.05pm and once again parked turning off the motor of the HPV.

Whilst waiting he said he heard the sound of a motor cycle and saw a headlight approaching. He checked the speed of the motorcycle on the radar and it was recorded at 121kph. He turned on the police lights and started the car.

Sergeant Holmes said that after the motorcycle has passed he performed a U turn in his vehicle and then followed it. As he accelerated to catch up to the motorcycle he saw it veer off to the left and then saw that the motorcycle had stopped and the pillion passenger jumped off. He said that he looked to see where the passenger had gone however he could not see them.

Sergeant Holmes was asked if he was able to get the registration number of the motorcycle. He said that he was not able to do so. He was asked what his intention in pursuing the motorcycle was and he said that it was:

Just to try and get him to stop or to get a registration number so that I could follow it up later on.

Sergeant Holmes stated that when the motorcycle sped off he notified VKG that he was in pursuit and waited for VKG to acknowledge his advice. He said that normally this would have been done by the observer however as Constable Donnelly was a trainee he decided to do it himself.

Sergeant Holmes outlined his thinking at the time saying:

(A 127)... when he accelerated up at high speed. That was, I think that was at the stage when I started to call the pursuit but then I seen he was going way

too fast and I , I braked and as I braked he's, I pretty much in my own mind gunna terminate the pursuit anyway...

(A 128) ...but in. as I've done that he's gone over another traffic narrowing ...

(A 129) ...device I suppose you'd call it...

(A 130) ...he's lost control of his motor bike and he's mounted the kerb and all I saw was dust.

And again later in his interview he returned to his thinking when he said:

(A 235) But I will, will say that on the video you can see where I've started to brake away before the accident's occurred...

(A 236) ...because in my own mind I've made up my mind to terminate. I haven't said it on the radio but I, but I wasn't gunna go any further with it...

(A 237) ...because it was just too dangerous...

Sergeant Holmes also said that he did not know the identity of the rider or the pillion passenger and that, as far as he was aware, he had not seen the motorcycle before.

Constable Glen Donnelly also gave a directed interview on 19 February 2013. He said that he was the observer in HV204 on 18 February 2013 with Sergeant Holmes as the driver. He described the motorcycle going past the HPV at speed in Queen Street that evening and how Sergeant Holmes instituted a pursuit. He said that he was unable to make out the registration number on the motorcycle as it went past.

Constable Donnelly described the pursuit as follows:

We observed as we done the U turn we observed the motor bike to take off at speed with the passenger in the back. We attempted to catch up but the concrete speed humps we had to slow down due to the low suspension of the vehicle, as we cleared the concrete speed humps we round the corner of Queen Street and observed the motor bike to veer off to the left side of the roadway north bound, Ray said the passenger jumped off, I've looked to the left to see where the passenger had run off to, I stated to Ray I can't see him, at this time the rider of the motorbike has veered back onto the road in a north bound direction on Queen Street at high speed. At that time Ray has informed the radio that we were in pursuit, there was a lot of radio chatter at the time, I observed the rider of the motorbike veer to the left hand side there was a left hand road near a no through road sign, and I seen the bike dart and then come back onto Queen Street, we still proceeded to follow the motor bike rider as we come around a little sharp bend the motor bike rider (sic) I observed him to go over another concrete bump I observed him to go straight ahead clipping the kerb and straight into the fence post.

Constable Donnelly said that immediately after the collision he left the HPV and went to try and provide assistance to the rider of the motorcycle.

Constable Donnelly also gave evidence at inquest. He said that he was first told about the issue of speeding motorcycles in Queen Street by Sergeant Holmes about 8pm on 18 February 2013 as the HPV entered the street and that was why they were going to do stationary radar in the street.

Counsel Assisting asked him questions about what, if any, risk assessments were undertaken to prepare for the possibility that a person would not stop when directed to do so and he said that there was none. He said that he had been at Muswellbrook for 4 months and did not know the area very well and was not aware of the condition of Queen Street after the location where they had parked. He said that there was no discussion between himself and Sergeant Holmes on the subject.

Constable Donnelly stated that he was not able to see the number plate on the motorcycle at any time and that he did not see a learner's plate on the motorcycle either. He denied that he was the driver of HV204 at any time on 18 February 2013. He also stated that he was unable to remember being in Queen Street prior to about 8pm that day although he did not deny that he was in the area during the day.

Constable Donnelly asserted that after the pillion passenger got off the motorcycle he looked to see where he/she had gone and was not able to see where he/she went. In cross-examination it was put to him by counsel appearing for the family that in fact Mr Hovi (the pillion passenger) was:

'Standing on the curb out the front of his house at that point with his arms up (like this) raised to stop. You say, do you, you didn't see any of that.'

To which he responded 'No'.

He subsequently said:

I was looking where the passenger had gone and I could not see him.

Will's mother, Lauren Robson Pearce, also gave evidence at the inquest. Ms Robson Pearce outlined Will's background, how he had obtained an apprenticeship as a plant mechanic at the Mount Arthur Coal Mine at the beginning of 2013, his

employment goals, his attendance at TAFE and the normal timetable he would follow each day. She also described how she had become aware that Will had been involved in a collision. She recounted the understandable distress she experienced and how that distress was made worse by not being able to view Will's body at the site of the incident and the effect of then not being able to see him until two days later. Those events were understandably traumatic for her.

It was also Ms Robson Pearce's evidence that Will had considerable experience in riding motorcycles however he had only had his learner rider's licence for 18 days at the time of the collision. She said that in that period he had mentioned to her that he thought he had been followed by a red police highway patrol vehicle. Following Will's death Ms Robson Pearce had also been given some information that involved a red police vehicle on 18 February 2013. She said that Jayson Hovi had informed her that such a vehicle was outside the Hovi residence that evening and that he and Will had shouted abuse at the police in the vehicle.

Ms Robson Pearce had also examined the Brief of Evidence prior to the inquest. She had identified the home Senior Constable Joel Wehlow had occupied in February 2013. She said that she had subsequently been to the home with the permission of the subsequent occupiers. It was her evidence that one could not see Queen Street from the kitchen window, the rear patio and the backyard of that property.

Jayson Dean Hovi (Hovi) gave a statement to police on 20 February 2013 and also gave evidence at the inquest. He was the pillion passenger on Will's motorcycle on the evening of 18 February 2013. In his statement of 20 February 2013 he outlined the events of the evening as he remembered them at the time.

Hovi said that he had been to the same school and had known Will since he was in year 9. They had become good friends. He said that on 18 February 2013 he had gone to the gym. He had got his brother to drop him there. He had arranged to meet Will at the gym and expected that Will would take him home. Will had done that before.

He said that Will arrived at the Gym at about 5pm after he had been at TAFE. He said that Will had brought a spare helmet for him so that he could be taken home. Will had left some personal equipment and clothing at Hovi's home to be collected before he went home.

Hovi stated that they stayed at the gym for a while then Will took him to Hovi's sister's home where they stayed for about 10 minutes. They then left to take Hovi home. He said that while they were at his sister's home Will received a phone call from his mother.

Hovi said that as they were proceeding on Queen Street he observed a car facing in the opposite direction with its lights on. He thought that they were on high beam. Hovi thought that at the time they would have been exceeding the speed limit. He said that he then realised that the car was a marked police car. They passed the police car and got to a point where Will told him to get off the motorbike. Hovi said that the conversation at the time went as follows:

Will: Just jump off, jump off.

Hovi: Just stop, just stop. I'll pay for everything.

Will: Just jump off.

Hovi said that the motorcycle slowed down, but did not stop, and he got off. He said that as he did so he lost his balance and he:

'Rolled along the ground for a short distance and Will kept going.'

Hovi said that at the time the police car slowed down but after doing so it,

'Took off after Will.'

Hovi concluded his statement to the police on 20 February 2013 by saying:

I believe the reason why Will didn't stop when signalled by the Police was he was frightened about losing his licence and in turn losing his job because he had no licence. He in fact had told me previously that he couldn't lose his licence because he would lose his job. I don't know why he went the way he did as you can't really get anywhere except into the paddocks. He would have just been scared.

When he gave evidence at the inquest Hovi's evidence was more expansive. He confirmed that he and Will were best friends and that from time to time since Will had been riding his motorcycle Will had given him a lift home from the gym on the motorcycle. He said that, as far as he was aware, Will always displayed the Learner's plate on the motorcycle.

In his evidence Hovi said that Will had come to his home on 18 February 2013 after TAFE arriving shortly after 4.30pm. He said that Will had stayed at his home for about 45minutes after which Will rode to the gym and he got a lift to the gym with his brother.

Hovi said that while Will was getting ready for the gym he looked out the window and saw a red police car outside and one of the officers inside the car was pointing in the direction of Will's motorcycle. Hovi said that he walked out onto the front balcony and told the police officers to '*Fuck off*'. He said that he spoke loudly and was sure that the police officers '*would have heard him*'. He said that after he shouted at the police they '*just took off*'.

He said that one of the officers he saw had a shaven head, or was bald, although he was wearing his hat and the other was '*short, sort of fat*'.

Hovi said that, at the time he made these comments to the police officers, Will was making a protein shake for himself so wasn't present however he subsequently told Will of the incident and that *the police were looking at his bike*.

Hovi said that after this he got his brother to take him to the gym and Will rode the motorcycle there. He said that he had got the helmet that he wore later that night from his brother's vehicle.

When asked about his statement he said that he had read what was in it before he signed it and that he understood that in making the statement *he was to try as best as he possibly could to record what he remembered of the events of the night*. He also acknowledged that his mother was present while he made his statement and initialled it after he had signed it.

When the apparent contradiction between when he said in his statement that he had arranged to meet Will at the gym and his evidence that Will had come to his home that afternoon was put to him he said that they had agreed at his home that they would meet at the gym as they were getting there by different means.

When it was pointed out to him that the statement said '*Will got there about 5pm after finishing TAFE...*' he suggested that was an error made by the police officer who was taking the statement and that he had '*not really*' read his statement very carefully before he signed it.

Hovi agreed that nowhere in his statement did he mention that he had seen the police car outside his home on 18 February 2013 or about him abusing the police officers who were in the car. He said that he told the police officer taking the statement about each and asked that it be included however he said he was told that it was not necessary for it to be included in the statement.

He agreed that he also did not mention the video footage that he had taken on his phone in his statement and explained his not doing so as follows:

I don't know. I sort of forgot about my phone for the last – like the next couple of days, so many people messaging on Facebook, saying sorry and I didn't really want to look at it, eh to be honest.

Hovi's attention was drawn to Mrs Robson-Pearce's statement where she said that Hovi had told her that on the day of the incident:

The police had gone past (his home) very slowly and that as they went past Will was there and Will's bike was parked at the front and that Will and Jason yelled abuse towards the police and the car just kept driving along.

Hovi was asked if he had told this to Mrs Robson-Pearce. He replied;

Yes, something along those lines, I wouldn't be able to remember the exact wording but.

In evidence Hovi was adamant that at the time the police car stopped, that he yelled abuse at the police, that he did so loud enough for the police officers in the car to

hear him and that when he did the police car 'sped off', 'took off', 'pretty quickly'. He was unable to explain why he told Will's mother that Will had been involved in the abuse of the police officers when, at the time, Will had not been present.

Whilst Hovi was giving evidence the video he had taken on his phone that evening had been played. On the audio recording certain words are able to be heard. In that respect the following questions and answers occurred:

Q. You can hear some voices in the background, is that Will saying or you saying something about –

A. Let go.

Q. – go, go, or let go is it?

A. Let go.

Q. Is it you?

A. No.

Q. That's Will, sorry I beg your pardon, no no I'm just trying to understand what you said. And that's when he was asking you to get off the bike?

A. Yeah.

Later in his evidence Hovi was asked further questions on this subject. He said:

Q. When in the exercise did he stop?

A. When he was about to stop at my house.

Q. Well did you say something to him at that point?

A. I think so year.

Q. Yes, how about, "Go, go, go"?

A. That wasn't after the speed hump.

Q. Sorry?

A. That wasn't after the speed hump

Q. After you tumble off.?

A. No.

Q. Did you say, 'Go, go, go'?

A. Not after I fell off, no.

Q. Did you say at any point during the time that the police were after him, "Go, go, go"?

A. No, I think I might have.

Q. Yes?

A. I don't know, I'm not sure if it was me or him.

Q. Well, rather than "Go, go, go," it would be "Stop, stop, stop", wouldn't it?

A. Yeah, so I mustn't have said it then.

After hearing the video Hovi agreed in evidence that the audio recording did not record the words:

'I'll pay for everything'

Hovi asserted that the police officers who he had seen that night had been the same police officers who he had seen at his home earlier that day. He said that he knew who Sergeant Holmes was from previous dealings however did not think the person who was recorded by the ICV as having walked across the front of the police vehicle after the collision was Sergeant Holmes. He agreed that the officer who did so was not bald and had a lot of hair.

Hovi was asked about the apparent contradiction between his statement where he said that Will had brought a helmet for him and his evidence that he had got the helmet from his brother's vehicle. He asserted that the statement was wrong and that:

'The police officer (who had taken his statement) had typed it in of his own volition'.

Hovi was also questioned as to his evidence about what he did after he had got off Will's motorcycle. He was certain that after he did so he stood up and was waving his arms about trying to attract the attention of the officers in the police car. He denied that he had run off or tried to hide.

Kate Marie Cronin also gave evidence. She was a person with whom Will had recently developed a friendship. She saw him on 18 February 2013. She gave evidence that she had an exchange SMS messages with Will between 5.30pm and 6.00pm that day which included the following:

(K = Kate Cronin) (W = Will):

(W) I just at Jason's. What about you babe?

(K) Just at mine ha ha.

(W) Ah, see the cops are after me,

(K) No I didn't see them ha ha.

(W) They're waiting out the front of Jason's for me.

(K) Why William

(W) Because I have a new pipe and it's heaps loud and I go to fast.

Christine Hovi also gave evidence. She is the mother of Jayson Hovi. She conducts a child care business at her home in Queen Street Muswellbrook. She was present on 20 February 2013 when Hovi gave his statement to the police. She said that she remembers seeing, and speaking with, Will at her home on 18 February 2013 shortly before 5.30pm when she had to leave. She said that she was aware that Will and Hovi were going to go to the gym and that Hovi's brother was to take him there. She also recalled that after she left her home at about 5.30pm that day she saw a red HPV in Queen Street.

It was Mrs Hovi's evidence that when Hovi was giving his statement she found the police officer taking it to be compassionate. She said that Hovi was asked to read his statement before he signed it and he appeared to do so. She said she remembered Hovi mentioning that there was a police car in Queen Street earlier in the day however the police officer did not think it needed to be included in the statement. She did not remember Hovi telling the police officer taking his statement that he had yelled at or abused the police who he had seen outside his home that day.

Sergeant Scott Andrew Metcalf gave evidence. He was a member of the critical incident team that was assembled to investigate the circumstances of Will's death. He was stationed at Raymond Terrace. Among other things he took statements from Sergeant Holmes, Constable Donnelly and Jayson Hovi.

Sergeant Metcalf outlined the general procedure that he adopted in taking a statement. He recalled that when Hovi made his statement his mother was present. He considered that Hovi was a critical witness as he was an eye witness. He had some difficulty remembering the full extent of the information he received from Hovi however he asserted that had he been told the police car had stopped outside the Hovi home and taken an interest in Will's motorcycle earlier in the day he would have considered it relevant to his investigation and would have included it in the statement. The same would have been the case had he had been told that Hovi and Will had abused the police officers who were in the police vehicle at the time.

Senior Constable Joel Wehlow made a statement on 27 February 2013 and gave evidence at inquest. In his statement he said that he lived near Queen Street

Muswellbrook and after he had returned from leave about two weeks previously had noticed a motorcycle travelling on Queen Street above the speed limit at a speed that he estimated to be between 110 and 120 kmh. He said he had spoken to Sergeant Holmes about the issue.

He said that on 15 February 2013 he had seen a motorcycle travelling at speed on Queen Street and was able to see that it was being ridden by a young male wearing a navy blue and yellow 'mining' uniform.

On 18 February 2013 at about 8.05pm he said he heard a motorcycle going past at speed and he thought that it was the same motorcycle as he had previously heard. He later became aware of the incident and had attended Queen Street and spoken to Sergeant Holmes and asked after his wellbeing.

In his evidence at Inquest Senior Constable Wehlow stated that he had become aware of a motorcycle speeding in Queen Street following his return from leave in February 2013. He said that at the time he lived at 6 Shiraz Street which was off Queen Street. He said that he could see Queen Street from his kitchen window, his patio and his backyard. He described what he could see as being '*... more than a glimpse, if there's a word for that, but less than a clear view.*' He said that he was a member of the highway patrol and was experienced in estimating the speed of vehicles. In estimating such speed he took into account '*a combination of the noise of the engine revving heavily and also the speed at which I could see the vehicle travelling down.*'

It was put to Senior Constable Wehlow that from his position at 6 Shiraz Street it was '*virtually impossible to see a bike travelling along Queen Street*'. He rejected the suggestion. When it was put to him he would not be able to see Queen Street from the kitchen window, the patio and 'most of' the backyard of the property, he denied the suggestion. He also rejected the suggestion that at 8.10pm on 18 February 2013 he would not have been able to make an observation that a bike, travelling at 110-120 km/h on Queen Street, had green markings on the fuel tank.

Sergeant Peter Gerard Stace was a motor vehicle crash investigator who attended the scene of the collision and prepared a report. Sergeant Stace also gave evidence at the inquest. Having undertaken his examination and considered other information available Sergeant Stace formed the opinion that there was no contribution to the collision from mechanical faults to the motorcycle, alcohol, drugs, road and traffic or weather conditions. Sergeant Stace concluded that speed and inexperience were the major contributing factors to the collision.

Sergeant Stace also was of the opinion that there was nothing in his examination of the motorcycle to suggest that its exhaust system had been modified. In addition it was Sergeant Stace's evidence that a learner's plate was not attached to the motorcycle when he examined it and that in his extensive examination of the scene of the collision no learners' plate, or fragments thereof, was located.

Sergeant Kris Cooper prepared a report concerning the circumstances leading to Will's death. He also gave evidence at the inquest. Sergeant Cooper is attached to the Traffic Policy Section of the Highway Patrol Command of the NSW Police. The issue for his attention was the compliance by Sergeant Holmes with the NSWPF SDP during the events that led up to the collision that resulted in Will's death. In forming his opinion he had access to the ICV and the interview conducted with Sergeant Holmes as well as other information contained in the brief of evidence.

Sergeant Cooper, having conducted his review, reached the following conclusions, among others:

- *That the duration of the incident from the first observation by police of the motorcycle until the collision was 55 seconds,*
- *That where a motorcycle is detected travelling more than 70km/h above the speed limit in a 50km/h designated area an officer would be justified in commencing proceedings for travelling at a speed dangerous to the public contrary to section 117 of the Road Transport Act and exceeding the speed limit by more than 45km/h contrary to Rule 20 of the Road Rules 2008,*
- *That the period of the pursuit (from the time Sergeant Holmes advised VKG that the pursuit had commenced until the time of the collision) was 24 seconds, and*
- *Sergeant Holmes during the incident, and in particular during the pursuit, complied with the requirements of the NSWPF's SDP.*

Sergeant Cooper was questioned closely by Counsel appearing for Will's parents as to the basis on which he reached the conclusions he expressed. Sergeant Cooper responded carefully and in detail. Sergeant Cooper was an impressive witness.

It is not in doubt that on 18 February 2013 Will was the rider of the motorcycle and that Jayson Hovi was a pillion passenger at the time the motorcycle was recorded by radar to be travelling at 121kmh. Will had a learner's licence at the time.

Had he stopped at the time it is likely that he would have been charged with;

- *Speeding – 45kph and over (r 20 NSW Road Rules) – Maximum penalty 23 penalty units (\$2530) and 6 months disqualification (r 10-2), and*
- *Learner Ride with other person (s17(1)(a) Road Transport (Driver Licensing) Regulation 2008) – Maximum penalty 20 Penalty Units (\$2200),*

In addition if it were found that Will was not displaying his Learner's plate he might have been charged with:

- *Learner Rider not display 'L' Plates (s17(1)(b) Road Transport (Driver Licensing) Regulation 2008) – Maximum penalty 20 Penalty Units (\$2000)*

Because of the speed that Will was travelling at (121kmh in a 50kmh area) with a pillion passenger and holding only a learner's licence it might have been thought, as suggested by Sergeant Cooper, that because of the seriousness of the matter consideration be given to charging Will with the offence of Dangerous Driving (s117 (2) Road Transport Act 2013) for which the maximum penalty is 20 penalty units or imprisonment for 9 months.

Either way, had Will stopped for the police, he was facing very serious charges. Whatever the financial penalty imposed he would have been disqualified from driving a vehicle for a significant period. Will clearly understood that in these circumstances this would have inevitably resulted in the loss of his employment. His understanding of the consequences was, as Hovi suggested, the reason for his failure to stop.

As part of the investigation of the circumstances leading to Will's death an audit was conducted of the COPS/RMS enquiries undertaken by Sergeant Holmes and Constable Donnelly on 18 February 2013 and whether or not any enquiries had been

made in respect of the vehicle QTR08 (the motorcycle driven by Will). That audit showed that the motorcycle was not the subject of any inquiry from police on 18 February 2013 or during the period that it was being ridden by Will.

In addition to the evidence received at inquest, very moving family statements were also provided by Lauren Robson-Pearce, Will's mother, and Deborah Holt, Will's step grandmother. Their statements gave a human dimension to Will's character and personality as well as the loss that was experienced as a result of his death. These statements reinforced the tragic nature of his death to both his family and the community in general.

Consideration and Conclusions:

There can be no escaping the fact that Will's death was the result of him engaging in an inherently dangerous activity. Riding a motorcycle at 121km/h on a road where the designated speed limit was 50km/h, particularly with a pillion passenger, showed a total disregard for his own, and his passenger's, safety. Had circumstances been different and Jayson Hovi had fallen from the motorcycle at such speed he would have undoubtedly suffered serious injury or death. Will would no doubt have been charged with a very serious criminal offence and would have faced the prospect of a jail sentence as a result.

There can also be no doubt that it is the function of NSW Police officers, as best as they can, to prevent persons engaging in dangerous driving on NSW roads and, where possible, apprehend and charge such persons with the applicable offences.

Police officers must, of course, undertake their functions in a manner that is in compliance with the law and the applicable NSWPF policies and procedures. Police Commissioner Scipione reinforced this in his foreword to the NSWPF SDP where he said in part:

The New South Wales Police Force has a major responsibility to improve road safety throughout the State. Whilst enforcing the road laws obviously plays a big part in this effort, it's not the entire answer. We must also lead by example.

We are working hard to reduce road trauma and its devastating costs, both in human and financial terms. Our commitment to safe driving practices, as set down in the Safe Driving Policy, is part of these efforts. We have an obligation to our fellow police officers and ourselves to ensure that we think and act with safety.

The SDP provides police officers with considerable discretion as to how they undertake their law enforcement functions. That discretion is particularly relevant in this case in the decisions taken to initially follow and then commence a pursuit of the person riding the motorcycle in Queen Street on the evening of 18 February 2013. The SDP specifically provides that the decision of an officer to terminate and by implication not to commence, a pursuit will not result in criticism of the officer.

Counsel for Will's family has argued that in this case, having regard to the circumstances and the physical environment, the officers should not have responded to the speeding motorcycle at all. They have argued:

4. The fundamental premise in support of the pursuit is that a crime has been committed. This is seen as justification by the Police for all that followed. Clearly such an approach to policing cannot be an appropriate one given the obvious dire consequences as this case demonstrates of such pursuits.

5. In the Inquest into the death of Hamish Raj, Deputy State Coroner H C B Dillon said as follows:

“The problem is controversial and no light matter – there are literally questions of life and death. Members of the general public are placed at risk during high speed pursuits (as well as the pursued and their Police pursuers). This is therefore an issue of wide public interest, not merely a matter of internal Police policy.”

6. In the Inquest into the death of Hamish Raj, Deputy State Coroner H C B Dillon said as follows:

“Even when the injury or death is suffered by an offender, it is an extra-judicial punishment so severely disproportionate to almost any offence that he or she may have committed that is also disastrous. And, as I have previously observed, the tragic consequences are inflicted not only on the offender but also on his or her family, friends and the wider community”.

8. The circumstances of this case demonstrate yet again the dangers of Police pursuits identified by Deputy State Coroner H C B Dillon in the decision into the Inquest into the death of Hamish Raj. Furthermore, the evidence reveals that the discretionary decision to pursue is one that is readily made by Police without due regard to the risks involved.

In the light of the submission of the family it is necessary to approach the analysis of the circumstances that resulted in Will's death in two stages. Firstly whether or not the officers involved, in their actions on the evening of 18 February 2013, met the specific requirements of the SDP and secondly to consider the exercise of their discretion generally.

Using the terminology of the SDP the actions of the officers, primarily Sergeant Holmes, on the evening of 18 February 2013 are divided into two parts firstly that which is called 'urgent duty' and then that which meets the definition of a 'pursuit'.

Urgent duty is action defined as being 'Duty which has become pressing or demanding prompt action.' In this case it is argued that, a rider of a motorcycle having been detected as travelling at 121km/h in a 50km/h zone, it was appropriate for the officers to give the rider a direction to stop so that the offender might be spoken to. This was the basis on which Sergeant Holmes said he undertook the U-turn in his vehicle and then sought to catch up to the motorcycle. The use of the police vehicle's lights and siren was the indication to the rider that the police wanted him to stop.

The SDP authorised Sergeant Holmes to undertake urgent duty in such circumstances where:

The gravity and seriousness of the circumstances require such action and there are no other immediate means of responding.

Sergeant Holmes stated that he did not know who was riding the motorcycle and that he had not been able to identify the registration number of the motorcycle and as such, if he was going to respond to the breach of the law at all, it was necessary for him to direct the rider to stop.

It is argued on behalf of the family that this was not the case and that Sergeant Holmes was aware of the motorcycle and its rider and, as such, could have dealt with the matter in another way and without the necessity of a pursuit.

The argument of the family is based on a number of factual issues that were examined during the course of the inquest. Firstly it was suggested that the officers could have obtained the registration number of the motorcycle as it passed their stationary position, secondly it was suggested by Will to various people prior to his death that police had been taking an interest in him since he had obtained his licence and that a red highway patrol vehicle had, on occasions, followed him when he was riding the motorcycle. Finally it was suggested that the action of Sergeant Holmes and Constable Donnelly earlier on 18 February 2013, when it was suggested they had taken a particular interest in the motorcycle when it was parked outside the Hovi residence in Queen Street and Hovi abused the officers for doing so, showed that they knew the bike and, as such, would have known how to contact the rider.

Both Sergeant Holmes and Constable Donnelly denied that they were able to identify the registration number as the motorcycle passed their vehicle. A motorcycle does not have a registration number plate on the front so it could not have been obtained as it approached the officers and the ICV does not support the proposition that they could have done so after it passed. I do not accept this proposition.

As to the suggestion that police had shown a prior interest in the motorcycle when ridden by Will there is nothing to suggest that, if that was the case, such interest was shown by Sergeant Holmes or Constable Donnelly and the fact that there had been no inquiries recorded in respect of the motorcycle's registration during the period raises considerable doubt as to whether or not it had occurred at all. Perhaps, as a new rider, Will was more sensitive when riding in the presence of police and simply imagined that they were following him.

The more substantial reason for suggesting that Sergeant Holmes could have acted differently is the actions of the police earlier on 18 February 2013 and their suggested interest in the motorcycle when it was parked outside the Hovi residence.

There is little doubt, and I am satisfied it was the case, that Sergeant Holmes and Constable Donnelly were in Queen Street earlier on 18 February 2013. Although Constable Donnelly could not remember being there Sergeant Holmes in his interview stated that they were. The question is whether or not whilst there, as Hovi

suggests, they took a particular interest in Will's motorcycle and that would have allowed them to identify it when it passed them later that day. Determining this requires an examination of Hovi's evidence.

Hovi said in his evidence that he observed a HPV outside his home and an officer seated therein pointing at the motorcycle. He then said that he went out to the front of the house and shouted at the officers to *'fuck off'* and the police car then sped off. It is suggested that the officers in the car were Sergeant Holmes and Constable Donnelly and that knowing where they had seen the motorcycle parked earlier in the day meant that rather than following it later that day they could have gone to the house where they had seen it parked and then identified and spoken to the rider at another time.

Accepting this proposition requires an acceptance of Hovi's evidence on the subject. I am not satisfied that such evidence is reliable. In his evidence Hovi said that he shouted the abuse to the police in the vehicle he saw outside his home and that he did so in such a manner as to be heard by the police concerned. Sergeant Holmes in his interview did not mention such an incident and Constable Donnelly did not recall such an event happening.

Sergeant Holmes did not give evidence and could not be examined on the point however Constable Donnelly did so and did not remember even being in the street at the time. Had an officer been abused in such a manner one would think that it would be remembered and, I would expect, responded to by the police – not, as Hovi suggests, run away from.

In addition Hovi in his evidence says that at the time of him abusing the officers he was alone whereas he told Will's mother that Will was present and, in fact, participated in the abuse of the police officers.

I am satisfied that Hovi's evidence is not reliable on this matter. I am satisfied that the police vehicle occupied by Sergeant Holmes and Constable Donnelly was in Queen Street and was probably seen by Hovi when it passed his home. I do not accept that Hovi abused the police officers as he suggests he did. Nor do I accept

that the officers paid particular attention to the motorcycle as it was parked at the location. Had they done so I would have expected them to have made an inquiry about it on the police computer system. The evidence shows that, although they made inquiries about numerous other vehicles that day, they did not do so.

I am satisfied that on the evidence available, if Sergeant Holmes were to respond to the speeding motorcycle on the evening of 18 February 2013, it was necessary for him to engage in urgent duty in order to catch up to the motorcycle and direct the rider to stop. I am also satisfied that, having regard to the serious nature of the breach of the law, it was reasonable for him to decide to do so.

Having substantially caught up to the motorcycle, Sergeant Holmes stated that he believed the cyclist had pulled over to the side of the road and was going to stop. I am satisfied that, at this stage, Will was aware that the police were following him and wanted him to stop. Hovi's evidence supports this conclusion. It was after Hovi dismounted from the motorcycle that Will then accelerated away. Will had thus ignored a direction of a police officer to stop and the prerequisites for a pursuit were fulfilled. Sergeant Holmes then had the discretion to commence a pursuit of the rider or take no further action. In this case he decided to do so.

Counsel for the family has argued that Sergeant Holmes should not have done so as Hovi was standing on the side of the road waving his hands and the police should have stopped and asked Hovi who the rider was. Implicit with this suggestion was that Hovi would have co-operated with the police and informed them that Will was the rider. That is, of course, open to some doubt and police did not have the power to direct that he give them that information.

Leaving that aside however, for this to be the case it would have been necessary for Hovi to have been where he said he was and I do not accept that was the case.

Hovi said that after he dismounted from the motorcycle he stood and tried to wave down the police vehicle. Both Sergeant Holmes and Constable Donnelly said that they did not see where the pillion passenger went after he dismounted. I have

already found that Hovi's evidence was unreliable in another respect. On this point I do not accept his evidence over that of the two police officers.

The video recording of parts of the event made by Hovi on his mobile phone shows that either himself or Will, at about the time he dismounted, saying the words "go, go, go". It was not possible to determine who in fact said those words. Hovi said that he did not do so. Either way I think that it would be more likely in the circumstances for Hovi, as did Will, to try and evade the police and therefore most unlikely that he would try and flag them down. I am satisfied that obtaining the riders identity in this manner was not an option available to the police.

Having made the decision to commence the pursuit the SDP required Sergeant Holmes to report his decision to VKG (police radio) and then, that report having been acknowledged, provide additional specified information. I am satisfied that the evidence establishes Sergeant Holmes did report the commencement of the pursuit but, before he had been cleared to provide the additional information required, the collision occurred thus ending the pursuit.

The SDP recognises that a pursuit is a dynamic event and that the circumstances in which it is conducted can change rapidly. Officers involved in a pursuit are required to constantly evaluate whether or not the pursuit should be terminated because of changed circumstances. In his interview Sergeant Holmes asserts that he did this and was intending to do so because he was aware that the road surface of Queen Street, in the direction that the vehicles were travelling, would make it unsafe to continue. He said that he did not have time to terminate the pursuit before the collision occurred.

Counsel for the family has challenged this evidence. It is asserted that, in effect, this claim by Sergeant Holmes is self-serving with a view to protecting his position. It is suggested that the fact that the police vehicle is shown to slow can be accounted for by the presence of traffic calming devices and not such an intention.

The fact that Sergeant Holmes was not able to give evidence at the inquest meant that this issue could not be canvassed with him. On balance, however, the evidence

shows that Sergeant Holmes was an experienced highway patrol officer whose actions to that point on the evening were in compliance with the SDP and as such it could be expected that he would have undertaken the consideration he said he did. There is nothing to suggest otherwise. I accept his evidence on this point.

I am therefore satisfied that in the events that resulted in the circumstances of Will's death Sergeant Holmes' decisions in commencing and conducting a pursuit were in compliance with the SDP. There is also no evidence before me to suggest that the actions of Sergeant Holmes or Constable Donnelly directly caused the collision that resulted in Will's death.

One issue that occupied some time at the inquest was the involvement of Senior Constable Joel Wehlow. Senior Constable Wehlow, a member of the highway patrol, complained to Sergeant Holmes about a motorcyclist travelling at speed on Queen Street. Sergeant Holmes said that the complaint made by Senior Constable Wehlow and others was the reason why he was undertaking his duties in Queen Street on 18 February 2013.

Counsel for Will's family disputed whether Senior Constable Wehlow could observe vehicles in Queen Street from his home. For me to undertake my function as coroner it is not necessary for me to determine this matter. There appears to have been no dispute that Senior Constable Wehlow made the complaint and this was part of the reason for Sergeant Holmes action. I accept that this was the case. It is not necessary for me to look further into this matter as the outcome of such an investigation would not go to any point of issue in this inquiry.

I now turn to the second issue raised by Will's family – that being the exercise of the discretion to commence a pursuit in cases where the offence apparently committed is a traffic offence even if, as in this case, a serious one.

There is no doubt that the ultimate outcome of this incident was a tragedy. The life of a person who was well liked and had great potential to give to society was lost at a young age. That is a tragedy for his family in particular but also society as a whole.

It is well recognised that riders of motorcycles involved in high speed pursuits suffer a greater vulnerability to death and serious injury than do drivers of motor vehicles involved in pursuits. These issues were analysed in detail by Deputy State Coroner Dillon in his findings following the Inquest into the death of Hamish Raj. I also had something to say on the topic in my findings following the Inquest into the death of Jason Thomson.

The exercise of the discretion by a police officer to institute a pursuit in circumstances where a motorcycle is involved is a complex one. It is in the public interest to ensure that motorcyclists comply with the road rules, particularly with regard to speed, however the prospect of the motorcyclist seeking to avoid police and thereby putting themselves and other members of the public at risk of serious injury or death, as this case shows, is a real one and it is also in the public interest to minimise the possibility of such injury or death.

In his findings in the Inquest into the death of Hamish Raj Deputy State Coroner Dillon made various recommendations to Government relevant to this issue. In my findings in the Inquest into the death of Jason Thomson, on matters relevant to that case, I concurred with His Honour's recommendations. I understand that those recommendations are currently the subject of consideration by Government. The circumstances that resulted in this tragedy serve to emphasise the need for such review as, particularly where motorcycles are involved, a person's life can be in jeopardy. As the review of the SDP is, I understand, still a matter of consideration by Government I propose to recommend that the circumstances of this case be considered as part of that review.

Post Incident Procedures:

Following Ms Robson Pearce being informed that Will had been involved in a motor vehicle collision she naturally went to the scene. On her way the car that she was in was stopped by police officers in Burgundy Street Muswellbrook. Ms Robson Pearce was informed that the site of the collision had been declared a '*crime scene*' and she was prevented by police from accessing the site. Ms Robson Pearce has complained

about the attitude of the officers involved describing them as being unprofessional and downright rude.

Will's body was transferred to the Department of Forensic Medicine at Newcastle and Ms Robson Pearce was expecting to be able to view his body the next day. This was unable to be accommodated. It was only on 20 February 2013 that Ms Robson Pearce was able to do so. These circumstances, particularly the two day wait to view Will's body, aggravated the grief that she was experiencing.

The issue of the attitude of the police officers who prevented Ms Robson Pearce attending the site of the collision was not one investigated at inquest. I therefore do not make any findings on that issue. The fact that the site was a '*crime scene*' of course resulted in the implementation of restrictions necessary to ensure that evidence was not accidentally interfered with or contaminated. This is understandable however it is also important that the grief being experienced by loved ones in such situations be recognised and to the greatest extent accommodated.

It is therefore unfortunate that Ms Robson Pearce was then required to wait two more days before she was able to view her son's body. Ensuring that this occurred as expeditiously as possible should, in my view, have been a priority.

The circumstances of this case therefore raise the important issue of how police, responding to incidents of this kind, respond to the legitimate needs of family members who are experiencing grief and at the same time ensure that such incidents are fully and effectively investigated. I propose to make a recommendation to the Commissioner of Police that consideration be given to the development of procedures that can ensure this occurs in future.

Paul MacMahon
Deputy State Coroner
14 April 2015

