



CORONER'S COURT

Inquest:	James CIAPPARA
Hearing dates:	28 November and 9-10 December 2014
Date of findings:	16 January 2015
Place of findings:	Coroner's Court, Glebe NSW 2037
Findings of:	Paul MacMahon Deputy State Coroner
Catchwords:	CORONIAL LAW – Death in police operation, reason for mandatory inquest, NSW Police Force - Safe Driver Policy, dangerous products, recommendation for change of Australian Consumer Law to ban dangerous product
File number:	2013/304282
Representation:	Dr P Dwyer – Counsel Assisting Mr R Wilson – Jo-Anne Mauceri (Mother of the Deceased), Mr M Spartalis – NSW Police Force, Mr J Klarica – Constable M Davila, Mr S Wilkinson – Constable J Strzelecki

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

Other than as outlined in the Reasons for these Findings the publication of Exhibit 1, (the NSW Police Force – Safe Driver Policy), is prohibited.

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

James Ciappara (born 3 December 1998) died on 9 October 2013 at Liverpool Hospital, Liverpool in the State of New South Wales. The cause of his death was massive blood loss and pulmonary haemorrhage due to severe trauma following a motor vehicle collision on 8 October 2013. The motor vehicle collision occurred whilst James was attempting to avoid police but not during the course of a police pursuit.

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

To: The Minister of the Commonwealth of Australia responsible for the administration of Part 3-3 of Schedule 2 to the Competition and Consumer Act 2010.

That having regard to the inherent dangers associated with the use of petrol powered motorised bicycles consideration be given to the banning, under Australian Consumer Protection Law, such equipment and products designed to enable the conversion of pedal powered bicycles into petrol powered motorised bicycles.

Paul MacMahon
Deputy State Coroner
16 January 2015

Reasons for Findings:

Introduction:

James Ciaparra (who I will refer to as James in these Findings) was born on 3 December 1998. At the time of his death he was 14 years old. James was the son of Joanne Mauceri and Jeffrey Ciappara. In 2013 he resided with his mother at Green Valley in south western Sydney and was enrolled at the James Busby High School. He owned a black and purple coloured BMX pushbike

In 2013 Hayden Davis was a 15 year old young man who lived in the same area as James. As a 12 year old Davis was taught how to assemble what is known as a 'Gasman'. A Gasman is an adult mountain bike with a motor attached to it. The motorised bike engine kit can be purchased on eBay or from motorbike shops. These can be purchased for less than \$200. The kits include a 66CC engine. Davis owned a Gasman.

In about August 2013 James met Davis and they began to 'hang out' together. From time to time they would go riding together. James would ride his BMX and Davis his Gasman. James said to Davis that he would like to have a Gasman.

On 7 October 2013 James and Davis agreed to swap their bikes. Davis had been trying sell his Gasman but had not been offered an acceptable price. James wanted to own a Gasman, but did not have any money. The swap satisfied their respective needs.

Davis showed James how to start the Gasman. James understood the instructions and started the Gasman in front of Davis. James then took the Gasman for a ride before returning to Davis's house to collect some oil and a bike chain about 9pm. James then rode the Gasman away.

About 9.15pm on 8 October 2013 a police patrol car, Green Valley 37 (GV37), was travelling in Cartwright Avenue, Miller. Cartwright Avenue was the street in which James home was situated. The officers in GV37 observed a motorised bike without lights and other safety devices swerving harshly before turning into Miller Road.

GV37 followed the bike into Miller Road. Warning devices were activated in an attempt to get the rider to stop. They were subsequently deactivated. The rider continued along Miller Road and then turned right into Southdown Street. The police vehicle followed. The rider then rode into Banks Road where the bike collided with a vehicle travelling south in Banks Road. The rider was thrown from the bike and subsequently run over by a vehicle travelling north in Banks Road. The rider was James.

The police who had been following attended the collision and rendered assistance. An ambulance was called. James was taken to Liverpool Hospital where he underwent emergency surgery. Unfortunately, shortly after midnight on 9 October 2013, James died whilst undergoing surgery.

James's death was reported to the Office of the NSW State Coroner on 9 October 2013.

Jurisdiction of Coroner:

The relevant coronial legislation is the Coroners Act 2009. All legislative references will be to that legislation unless otherwise indicated.

Section 6 defines a "*reportable death*" as including one where a person died a "*violent or unnatural death.*"

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 the person who has died or is suspected to have died was ordinarily a resident of New South Wales.

Section 23 (c) provides that a senior coroner has exclusive jurisdiction to conduct an inquest where the person has died '*as a result of or in the course of a police operation.*'

Section 22 defines a senior coroner as being the State Coroner or a Deputy State Coroner.

Section 27(b) provides that where a death occurs in circumstances to which Section 23 applies an inquest is mandatory.

Section 74(1) (b) provides a coroner with the discretion to prohibit the publication of any evidence given in the proceedings if he or she is of the opinion that it is in the public interest to do so. Section 74(3) provides that it is an offence to breach such an order.

The primary function of a coroner at an inquest is set out 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, the identity of the deceased, the date and place of their death and the cause and manner thereof.

Section 82 (1) of the Act 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.

Section 81(1) issues:

Identity, Date and Place of Death:

The fact that James was the rider involved in the collision on Banks Road on the evening of 8 October 2013 and who subsequently died at Liverpool Hospital, Liverpool was not a matter of contention. James's body was identified by his father Jeffrey Ciappara at Liverpool Hospital on 9 October 2013 and Dr Matthew Stononski, a medical practitioner employed at Liverpool Hospital, declared him deceased at 1am on 9 October 2013. I am satisfied that James Ciappara, who was born on 3 December 1998, died on 9 October 2013 at Liverpool Hospital, Liverpool in the State of New South Wales.

Cause of Death:

Following James's death being reported to the Office of the NSW State Coroner the medical and other records available were reviewed by Dr Istvan Szentmariay, a Staff Specialist Forensic Pathologist employed at the Department of Forensic Medicine at Glebe. Dr Szentmariay formed the opinion that the direct cause of James's death was *'massive blood loss and pulmonary haemorrhage due to severe trauma'* following a motor vehicle collision.

On 15 October 2013, having received Dr Szentmariay's advice, I accepted that conclusion and issued a coroners certificate of death to that effect. The evidence at inquest has not given rise to any reason to change that decision.

Issues for Inquest:

The evidence at Inquest focused on the manner of, or the circumstances that led to, James' death, the involvement of police in those circumstances and whether it was necessary or desirable to make any recommendations in accordance with Section 82 in relation to any matter connected with James' death.

Police Involvement:

Where a death occurs and there is a police involvement in the circumstances of that death it is important that such involvement be independently and publically examined following such death so as to ensure that the actions of police officers in the course of their duties are fully accountable to the public. This is why the NSW Parliament has enacted in the Coroners Act 2009 a requirement that all deaths arising out of or in the course of a police operation are to be the subject of a mandatory inquest. The rationale for this being that, as described by former State Coroner Waller, it provides a positive incentive to (police to act appropriately) and satisfies the community that deaths in such (circumstances) are properly investigated. It also has the effect of protecting the police involved in such circumstances from false or malicious allegations.

Critical Incident Guidelines:

Detective Inspector Darren Newman was the officer in charge (OIC) of the investigation of the circumstances of James' death. The circumstances of the death had been declared by police as a critical incident and the relevant NSW Police Force

(NSWPF) protocols relating to the investigation of critical incidents were followed. Mr Newman was an officer from a police command other than that in which the officers involved were members. The involvement of Mr Newman as OIC was to ensure that the death was independently investigated. Compliance with the Critical Incident guidelines was not an issue at the Inquest.

The Evidence:

A two volume brief of statements of evidence that had been assembled during the course of Mr Newman's investigation was tendered as an exhibit in the proceedings. In addition oral evidence was taken from 8 witnesses.

Jamine Thorne met James in June 2013 initially through school and then the Miller PCYC. They became good friends. At about 9pm on 8 October 2013 Thorne was walking in Cartwright Avenue, Miller. He heard a 'Gasman' travelling behind him. He turned around and noticed that James was riding the Gasman. He could tell it was James because he wasn't wearing a helmet. James stopped the Gasman and they spoke for a time. Thorne said that James was normal, didn't appear to be angry about anything. James told Thorne that he was 'cruising around.' After speaking James drove off in the direction of the Miller shops. Thorne described the speed at which he drove off as being '*pretty fast*'.

Constable Jacob Strzelecki said that he was the driver of GV37 on 8 October 2013. He had commenced his shift at 2pm that day. He said that before 2013 he had become aware of motorised bikes and their dangers. He was also aware that, depending on the capacity of the engine, they might be unlawful to ride on the road. He had had no previous dealing with James. He said that about 9.15pm a motorised bike crossed harshly from the left to right side of the road in front of his vehicle onto Miller Road. The bike was not exceeding the speed limit but because of the manner of the riding he decided to try and stop and speak to the rider.

Strzelecki said that as he turned into Miller Road he put his police lights on for 2-3 seconds and then he followed that with both his lights and siren. He said that the rider looked back at the police car and then 'took off.' Strzelecki said that he realised the rider was not going to stop so he turned off the lights and sirens but continued to follow the bike. He decided not to commence a pursuit because he considered it too dangerous to do so.

The rider continued along Miller Road and then turned into Southdown Street. Strzelecki said that he followed the rider into Southdown Street so that he could see where the rider was going in order to advise other police in the area to look out for him. At the time the rider was pulling away from the police car.

As Strzelecki was driving up Southdown Street he observed the bike enter Banks Road and the subsequent collision. At the time of the collision his vehicle was about 50 metres away from the bike. He drove to the intersection, stopped his vehicle and then rushed to the rider to render aid. Ambulance officers were also called to assist. He estimated that there was a period of between 10 to 15 seconds when he turned off the lights and sirens on his vehicle and the collision occurring.

Constable Miguel Davila gave evidence that on 8 October 2013 he was working in police vehicle GV37 with Constable Strzelecki. He had had previous dealings with James but did not know that James was involved in the events of the evening until after they had occurred. He was also aware of motorised bikes and understood that they might be illegal depending on the size of the motor. He thought that they were dangerous.

He said that he saw the motorised bike in front of them in Cartwright Avenue. As they approached Miller Road the bike veered in front of their vehicle. He observed that the rider was not wearing a helmet, and there were no light reflectors on the bike. The police vehicle followed the bike. Davila said he thought that the police vehicle was doing about the speed limit (50km/ph) and that the bike was going a little bit faster.

He said that the police vehicle turned into Miller Road and caught up to the bike near the intersection of Ryeland Street with Miller Road. The police vehicle was in the left lane of the road and the bike was in the right lane of the road. He said that Strzelecki turned the lights on for 2-3 seconds and then the 'yelp' siren for 3 or 4 seconds. Both lights and sirens were then turned off. He saw the rider turn around look at them and then travel down Miller Road at speed.

Davila said that the police vehicle then slowed down to between 20 and 30 km/ph and the bike moved away from their vehicle. They followed the bike into Southdown Street. As the bike entered the intersection with Banks Road he saw it come into collision with another vehicle. He did not know exactly but thought that it was about a

minute between the lights and siren being turned off and the collision. He did not think that the police vehicle was in pursuit of the bike at any time.

Thi Hong Lieu Nguyen gave evidence. Ms Nguyen said that on 8 October 2013 she was driving in Banks Road on her way home. She had her children in her vehicle and they were asleep. She said that when her vehicle was between 2 and 5 metres from the intersection with Southdown Road she saw a bike on her left. She said '*it looked like it was going to go straight through (the intersection)*'. She said that she put the brakes on but was unable to avoid a collision. She said that she saw the lights of a vehicle travelling towards her in Banks Road but did not see any other vehicle in Southdown Street prior to the bike entering her lane. She did not see any red and blue flashing lights or hear a siren at that time.

After Ms Nguyen had stopped she was looking for her shoes so that she could get out of her vehicle she said that she then saw a police vehicle driving towards her at low speed in Southdown Street.

Mohamad Al-Achrafe gave evidence. He said that he was driving a vehicle in Banks Road on 8 October 2013 a little after 9pm. His brother and a friend were also in the car. He was slowing down to turn right into Southdown Street. He said that between 30 and 50 metres from the intersection he put his indicator on and about 25 metres from the intersection he saw a police car with its blue and red flashing lights on. He did not see a bike. He felt that he had driven over something so he stopped to see what it was. He realised that it was a young person. He was in shock when he discovered what had happened. He then saw a police officer and accused the officer of chasing the bike. The officer denied that was the case. He then went over to the lady in the other vehicle involved to see if she was okay.

On the evening of the collision Al-Achrafe spoke to Leading Senior Constable Wade Goddard. Goddard asked him what had happened. Al-Achrafe said to him:

I was driving down Banks Road from Hoxton Park Road towards Miller. I started to slow down because I was about to turn into Southdown Street. When I was about twenty metres from the intersection of Southdown I saw a black bike with a motor on it come out of the street really fast. He hit the front of the Silver Honda van which was going in the opposite way to me. I hit my brakes, but the impact threw the rider of the bike to my side of the road and I ran over him. I felt more than two bumps and it felt like he went under my right hand side wheels. I stopped the car straight away and saw a police car stopped next to me. He came out of Southdown Street. I think the cops were

chasing him with no lights and sirens. Just headlights. I waited until the police were ready to talk to me.

Kaled Hamzi Al-Achrafe is the younger brother of Mohamad Al-Achrafe. He was a passenger in the vehicle being driven by his brother in Banks Road on the evening of 8 October 2013. He was in the front passenger seat. He gave evidence at the inquest. He said that he did not see the bike involved in the collision until he got out of the vehicle he had been travelling in.

Kaled Al-Achrafe said that observed that his brother was in shock following the collision. He also said that after they stopped he saw a police car coming towards them in Southdown Street. It was about 15 or 20 metres away. He said he could see that it was a police car because of the police markings on it. He said that as the police vehicle approached its high beam lights were on but the red and blue lights were not on.

Following the collision police undertook a canvas of the area to identify any witnesses who might be able to provide evidence as to the events that occurred prior to the collision. The statements of those witnesses were contained in the brief of evidence tendered at the Inquest. Police also conducted a drive through of the route taken which was video recorded and that recording was also played at the Inquest.

Superintendent James Johnston was in 2013 the Commander of the Green Valley Local Area Command of the NSWPF. He gave evidence. He said that he had been aware of the problem of motorised bikes since about 2012. There had been complaints from numerous members of the community in various forums about the safety of the vehicles, the noise that they made and the manner in which they were driven. Such vehicles were not illegal if their engines produced power under 200 watts. He had personally pulled over riders of such bikes on three occasions.

Mr Johnson was concerned about the safety of motorised bikes and their stability. He had spoken to officers within his command about the dangers of the equipment and had advised that when officers observe them being used on the roads they should not engage in the pursuit of them. He had expressed his opinion at change of shift parades within the command and by email to officers within the command on a number of occasions.

He said that on 1 October 2014 the law had changed so that all petrol driven push bikes are now illegal on roads and road related areas. He considered that this change was a positive one and had observed that the problem of motorised bikes in his area had decreased but was still a problem overall. He said that he would like to see the law changes so that:

All motorised bikes manufactured to Australian standard and anything else be barred by the Trade Practices Act with appropriate penalties.

Following the collision the bike that James had been riding at the time of the accident was examined by Constable Stuart Davenport from the NSWPF Engineering Investigation Section. Mr Davenport examined the mechanical and other aspects of the bike to determine if any design or mechanical issues might have contributed to the cause of the collision. Mr Davenport concluded:

As a result of my examination and based wholly or substantially on specialised knowledge I am of the opinion that there was no mechanical failure with the bike that may have caused the collision. Issues that may have contributed and cannot be discounted in my opinion are the removal of the rear brake, therefore increasing the stopping distance in the event of an emergency stop. Plus absence of any form of lighting or reflectors.

Grant Johnston, a consulting engineer, was also asked to examine the bike that James had been riding and prepare a report outlining the performance characteristics of an exemplar motorised bicycle. His report was part of the brief of evidence. It is not necessary to deal with the difficulties relating to the task that he was given however I note that he formed the opinion that the bike was one that would produce more than 200watts and was therefore prohibited at the time from driving on roads or road related areas.

Mr Johnston also concluded that the achievable acceleration rates were what he described as moderate. He also concluded that the achievable breaking rate with only the single front wheel cable operated disc brake was about 60% less than the typical value achieved with two-cable operated disc brakes.

Senior Constable An Nguyen is a member of the Cabramatta Local Area Command and a member of the Cabramatta Pro-Active Bicycle police Unit. He has undertaken the Certificate 3 in Bicycle patrol Operator.

On 4 November 2014 Mr Nguyen attended the Hart Driver Training Centre at St Ives in order to undertake a number of tests on a motorised bicycle. His statement dated 20 November 2014 outlines the nature and design of that testing. Mr Nguyen was to test the bicycle designed by Mr Johnston that was, as best as could be achieved, a comparable design, quality and performance to that James rode on the night of the collision.

Mr Nguyen stated that whilst riding the motorised bike:

My full concentration was on the road in front and maintaining a safe ride while travelling at top speed on the motorised bicycle. This would prove extremely difficult and physically and mentally exhausting, as the concentration and control needed to handle the motorised bicycle is far greater than a normal bicycle or normal motorbike. The motorised bicycle would vibrate and move around a lot, and the vibration in the motorised bicycle would only worsen the faster the motorised bicycle travelled.

The specific conclusions Mr Nguyen reached following his testing were as follows:

- *The engine and petrol tank off balance the bike, making it harder to balance the bike when stationary and at speed,*
- *Both the engine and the petrol tank feel like they are a foreign object on the bike, not a part of the bike like a standard motorcycle engine does,*
- *When the bike is moving, the frame and components can be felt vibrating and can be heard rattling, you can feel the vibrations through the handle bars,*
- *The higher the speed the greater the vibration and movement of the components attached to the bike,*
- *With the higher speed and in general it requires more control and concentration to keep the bike steady,*
- *At either high or low speed turning was difficult due to the weight of the engine and petrol tank,*
- *At slow speed on a normal bike you can make a sharp turn safely by counter balancing with your body weight however on this bike with the weight of the engine and petrol tank it was very difficult, and*
- *The effect of this is crucial because if you are trying to make a sharp turn at high speed the mid and rear of the bike will slide out because of the weight and normally if a rider feels the bike sliding out he would counter act that by straightening up.*

Mr Nguyen summed up his testing conclusions in the following way:

The riding of the motorised bicycle is very physically and mentally demanding, more so than riding a normal motorbike which is purposely designed to travel on Australian roads at high speeds. The motorised bicycle is not designed to

be ridden at high speed, therefore when riding the motorised bicycle it feels like it is actually going to fall apart at any time while you are riding. The motorised bicycle feels extremely unsafe; control of the motorised bicycle could be lost at any time.

Consideration and Conclusions:

James' death is undoubtedly a tragedy for both his family and the community in general. His death was completely avoidable. It came about as a consequence of youthful bravado mixed with access to an inherently dangerous piece of machinery.

The events on the evening of 8 October 2013 were not greatly in contention. There is no doubt that James was riding the Gasman bicycle that he had exchanged for his BMX bicycle. At about 9.15pm, when he was in Cartwright Avenue, he rode in a manner that brought him to the attention of the police officers in GV37. He was not wearing a helmet nor did the bike have any lighting or reflectors on it. I accept that in the circumstances it was reasonable and appropriate for officer Strzelecki to try and stop James in order to talk to him about his riding and the bike.

I accept that GV37 followed James into Miller Road and whilst following him officer Strzelecki used the police red and blue warning lights and then the police siren in order to indicate to James that he should stop. I also accept the evidence of officers Strzelecki and Davila that at about that time James looked around at the police car and then rode off at speed. I am satisfied that James was aware of the presence of the police, that he understood that they wanted him to stop for them and that he then decided to try and avoid doing so.

I accept that the police warning lights and siren was used for a short time and only in Miller Road. I am satisfied that it was not used in Southdown Street prior to the collision. I do not accept the evidence of Mohamad Al-Achrafe on this matter. Mr Al-Achrafe said that the effect of the collision was very stressful for him and he was in shock. His brother confirmed this during his evidence. I am satisfied that he was doing his best to recall what occurred but that his memory is incorrect. I accept the evidence of officers Strzelecki and Davila as well as that of Mrs Nguyen and Kaled Hamzi Al-Achrafe on this issue.

I accept the evidence of officers Strzelecki and Davila that after the police warning lights and sirens were discontinued the police car slowed down but still followed James, but at an ever increasing distance, from Miller Road into Southdown Street. I am satisfied that James rode out of Southdown Street across Banks Road into the path of the vehicle driven by Mrs Nguyen resulting in the collision of the two vehicles and James being thrown from the bike into the path of the vehicle driven by Mr Al-Achrafe. There is nothing in the evidence available to me to suggest that Mrs Nguyen or Mr Al-Achrafe were in any way to blame for the collision or the injuries that James suffered. The evidence makes it apparent that there was nothing either of them could have done to avoid the collision.

I accept the evidence of Mrs Nguyen that James rode the bike directly in front of her vehicle. The intersection of Southdown Street and Banks Road is a 'T' intersection however on the opposite side of Banks Road is a park and it would seem that it is probable that it was James' intention to enter the park. If James had seen Mrs Nguyen's vehicle, and it is likely he didn't, the braking system on the bike he was riding would have made it difficult for him to stop the bike. There was, however, no evidence available that would allow me to make a finding that he had tried to do so.

James' death was completely avoidable but unfortunately a product of his own actions. I have no doubt that James was seeking to avoid contact with the police who had directed him to stop so that they could speak to him. As I have already said I am satisfied that it was reasonable for officer Strzelecki to try and get James to stop. I accept the evidence of officer Strzelecki that, when he concluded that James was going to ignore the direction to stop, he decided that he would not pursue him because it was too dangerous to do so. I also accept that officer Strzelecki then slowed his vehicle but followed James in order to see where he was intending to go. I am satisfied that this was a reasonable course of action for him to take in the circumstances.

Compliance with NSWPF Safe Driver Policy (SDP):

During the inquest counsel for James' mother submitted that officers Strzelecki and Davila failed to comply with the SDP in their interaction with James on the evening of 8 October 2013 and that I should recommend that they be disciplined for that failure.

It was submitted that the events as occurred amounted to a pursuit under the SDP and that the officers failed to comply with their obligations when engaged in a pursuit.

The SDP is the policy of the NSWPF which, among other things, governs the use by police officers of police vehicles. Of relevance to this consideration the policy provides a series of obligations that a police officer who engages in a pursuit must comply with. Those obligations are, in general, established to ensure that officers engaged in pursuits are accountable and that more senior officers are aware of what is occurring and are able to intervene if it is thought appropriate to do so. It is not necessary for my purposes for me to outline in detail the various obligations that an officer is required to comply with in the event that he or she engages in a pursuit.

It was submitted that the events on the evening of 8 October 2013 amounted to a pursuit as defined by the SDP and that officers Strzelecki and Davila failed to comply with their obligations under the policy.

The SDP defines a 'pursuit' in the following terms:

PURSUIT: 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 warning lights or sounding a siren.

It was accepted by counsel for James' mother that it was reasonable for officer Strzelecki to direct James to stop. It was also accepted that the use of the warning lights and siren constituted a direction to stop and that on the evidence available James was aware of the direction to stop and ignored that direction. The point of the submission was that to follow James after he ignored the direction was to continue a pursuit and as such the obligations that arise in a pursuit come into force and that the officers failed to comply with those obligations.

I do not accept this submission. A pursuit can continue only after it has commenced. It can only commence if the officer decides to commence a pursuit after a vehicle

has ignored a direction to stop. In this case I accept the evidence of officer Strzelecki that, after he concluded that James was ignoring the direction to stop, he specifically decided not to engage in a pursuit. The pursuit having not commenced it could not be continued by the officers following him as they did. I do not consider that the evidence displays any failure on the part of either officer to comply with the SDP on the night of 8 October 2013.

Compliance with NSWPF Critical Incident Guidelines:

The NSWPF Critical Incident guidelines require that officers involved in a critical incident undergo alcohol and drug testing following such an incident. Constables Strzelecki and Davila underwent the required testing following the incident on 8 October 2013. No issue arose following Constable Davila's testing however the testing of Constable Strzelecki showed that at the time of the testing there was found in his blood Morphine at a concentration of 580ug/L and Codeine at a concentration of 1560ug/L. Constable Strzelecki explained this finding by stating that he had taken some medication for pain relief some time before the events.

Dr John Lewis, a consultant toxicologist was asked to review the findings and provide advice as to whether or not such findings might have affected the driving ability of Constable Strzelecki on 8 October 2013. It was Dr Lewis's opinion that the morphine level found was a 'trace amount' and could not be correlated to the use of either morphine or heroin but could have come from the consumption of a variety of foods that contain poppy seeds. The amount was such that it would not have had any pharmacological effect. He said that there was no evidence to suggest that Constable Strzelecki had consumed any illegal substance. As far as the concentration of codeine was concerned Dr Lewis was of the opinion that the concentrations were small, were consistent with their use as analgesia and would not have affected the officers' ability to drive his vehicle safely. I accept the evidence of Dr Lewis and am satisfied that there is no evidence to suggest Constable Strzelecki's actions were affected by any drug on the night of 8 October 2013.

Section 82 Recommendations:

As mentioned above Superintendent Johnson gave evidence that whilst he was pleased that since 1 October 2014 all petrol-powered bicycles had been banned on NSW roads and road related areas (Road Transport Legislation Amendment (Power Assisted Pedal Cycles) Regulation 2014) he was concerned that such bikes could still be used in areas not defined as a road or road related area. His concern arose because of the inherent dangers associated with the riding of such bikes and he considered that they would be even more dangerous on private lands where the terrain would not necessarily be as good as on a road or road related area. He was of the opinion that such vehicles should be banned altogether. Counsel Assisting and counsel for James' mother joined in Superintendent Johnson's suggestion that a recommendation be made in accordance with Section 82 to this effect.

The evidence available to me at Inquest made it abundantly clear that such vehicles are dangerous. I would think that Superintendent Johnston's assessment that if they are dangerous on roads and road related areas then motorised bicycles would be even more dangerous on private property is correct. As I have mentioned above such vehicles are cheap to obtain and can be assembled with relative ease. They can thus come into the possession of young people who do not necessarily have the maturity and experience to ride them safely – if that is possible. I am satisfied that it would be in the public interest for consideration to be given to implementing a ban on the sale of such vehicles and the conversion kits necessary to convert ordinary bicycles to motorised bicycles. I propose to make a recommendation to this effect in accordance with Section 82.

Paul MacMahon

Deputy State Coroner

16 January 2015

