



## STATE CORONER'S COURT OF NEW SOUTH WALES

<b>Inquest:</b>	<b>Inquest into the death of HAMISH RAJ</b>
<b>Hearing dates:</b>	<b>8 to 11 April 2013; 19 and 20 August 2013</b>
<b>Date of findings:</b>	<b>7 April 2014</b>
<b>Place of findings:</b>	<b>State Coroner's Court, Glebe</b>
<b>Findings of:</b>	<b>Deputy State Coroner H.C.B. Dillon</b>
<b>Catchwords:</b>	<b>CORONIAL LAW – Death in the course of police operation -- Cause and manner of death – New South Wales Police Safe Driving Policy – Whether policy followed – Whether policy promotes public safety – Recommendations that policy and practice be reviewed</b>
<b>File number:</b>	<b>2011/00389491</b>

<b>Representation:</b>	<p>Mr P. Aitken (Counsel Assisting) instructed by Ms L. Turner, Crown Solicitor's Office</p> <p>Mr P. Bodor QC with Mr R. Hood instructed by Mr S. Robinson (for Commissioner of Police), Office of the General Counsel, NSW Police Force</p>
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### **Findings: s 81 Coroners Act 2009**

I find that Hamish Raj died on 10 December 2011 at St George Hospital, Kogarah as a result of multiple injuries he received in a head-on collision between his motorcycle and a car on Rocky Point Rd, Kogarah during a high-speed police pursuit.

### **Recommendations: s 82 Coroners Act 2009**

#### ***To the Minister for Police***

1. I recommend that the NSW Police Force Safe Driving Policy (SDP) in respect of police pursuits be reviewed by a panel of independent experts appointed by the Minister in the light of Australian and international experience and research with a view to establishing best practice for the NSW Police Force (NSWPF).
2. I recommend that such a review address the following issues (at least):
  - What are the bases *in practice* on which pursuits are currently commenced or not commenced? Are they appropriate?
  - How should the factors relating to the commencement of pursuits be ranked or weighted?
  - In what way(s) can the decision-making process for officers on the streets be simplified?
  - Are pursuits *in practice* a traffic law enforcement tactic of "last resort"? If not, why not?
  - If so, what alternatives are routinely employed before pursuits are commenced? What practical alternatives are there to pursuits?
  - What are the costs and benefits of a policy mandating that a pursuit only be commenced or maintained when there is immediate danger to the safety of others if the suspect is not apprehended at the time?
  - What are the costs and benefits of the SDP specifying a list of offences which, absent other factors, would not justify the commencement of a high-speed pursuit?

- What are the costs and benefits of pursuing vehicles driven by persons reasonably suspected of being under the influence of drugs or alcohol?
- What are the costs and benefits of pursuing suspected stolen vehicles?
- What are the costs and benefits of pursuing stolen vehicles believed to be carrying persons suspected of more serious crimes than stealing a motor vehicle or taking and driving a motor vehicle?
- What are the costs and benefits of introducing specific (possibly temporary) categories of situation in which pursuits ought be terminated or temporarily suspended (eg, if the suspect exceeds a particular speed; approaches an operational school zone; or approaches a known traffic “black spot” that would significantly increase the risk of a high-speed pursuit)?
- Because motorcyclists are more vulnerable to death or injury in pursuits than persons in other types of vehicles, should they be treated as a special case (ie, high-risk) under the SDP?
- In the SDP is risk to suspected offenders taken into account as a factor in the decisions whether to commence, continue or terminate a pursuit? If so, how is that manifested? If not, why is it not and ought it be?
- If it is taken into account in the SDP, is it also taken into account *in practice* by the NSWPF? If not, why not? If so, how does this manifest itself in the conduct of pursuits?
- When is a police vehicle “part of a convoy” in a pursuit? Is it part of a convoy if it is following two pursuing vehicles at above the speed limit in “urgent duty” mode? Are the SDP guidelines sufficiently clear on this point?
- How should the SDP be reviewed periodically? Internally only? Externally only? A combination of both methods?
- Are there are technological improvements to NSWPF vehicles that could enhance the safety of high-speed pursuits or be used to reduce the number of pursuits? Would introduction of such technologies be feasible, practicable and cost-effective?
- To what extent is s 39 of the *Law Enforcement (Powers and Responsibilities) Act 2002* used as an alternative to pursuits for traffic offences? Ought it be used more often by the NSWPF as an alternative to pursuits?
- Are the penalties for s 39 offences sufficiently severe? Are prosecutors informing sentencing courts that s 39 is a measure intended to reduce the number of police pursuits?
- What categories of statistics are kept by the NSWPF concerning pursuits? What additional statistics ought be recorded to enable an appropriate understanding of NSWPF pursuit practice, the behaviour of pursued drivers and accurate cost-benefit analysis of pursuit policy?

- How does the NSWPF's practice compare with that of other Australian and comparable international police forces?
  - Ought a more restrictive SDP be introduced in NSW?
3. Whether or not such a review is undertaken, I recommend that the current SDP be amended to eliminate the ambiguities identified in these findings and to clarify the SDP generally.
  4. I recommend that, pending any review, the SDP make specific reference to the risk to the suspected offender (and any passengers in the suspect vehicle) as a major factor in the decision whether to commence, maintain or terminate a pursuit.
  5. I recommend that, pending any review, the vulnerability of motorcyclists also be considered a major factor in the pursuit decision-making process.
  6. I recommend that, pending any review, the SDP make specific reference to the high rate of casualties resulting from high-speed pursuits and that police training also emphasise this.
  7. I recommend that, pending any review, the wording of the principle in the SDP that police officers should engage in pursuits "when the gravity and seriousness of the circumstances *require* such action" to be amended to read "when the gravity and seriousness of the circumstances *indicate* such action".
  8. I recommend that, pending any review, Guideline 1 in the SDP be amended by the replacement of the phrase "the *need* to immediately apprehend the offender" with the phrase "the *desirability* of immediately apprehending the offender".
  9. I recommend that, pending any review, that the NSWPF collect data identifying the specific type of offence or suspected offence that gave rise to the decision to commence a pursuit.
  10. I recommend that the NSWPF publish in its annual reports a full account of the number of pursuits commenced and terminated, the results of those pursuits, the reasons the pursuits were commenced and the number and types of casualties occasioned during the pursuits.
  11. I recommend that, pending any review, urgent consideration be given to restricting *high-speed* pursuits to cases in which a serious offence (other than fail to stop as directed) is reasonably suspected of having been committed by the pursued driver or a person in the pursued vehicle AND (b) that person is unidentified OR there is no immediate prospect of locating him or her unless apprehended urgently. (For the purpose of this recommendation, consideration ought be given to defining "high-speed pursuit" as a pursuit in which a speed of 45kph or more over the prevailing speed limit is reached during the course of the pursuit by either the pursued vehicle or the police pursuit vehicle(s).)
  13. In the alternative to the previous recommendation, I recommend that, pending any review, urgent consideration be given to prohibiting *high-speed* pursuits for traffic offences that do not under NSW law make the offending driver liable to having his or her licence suspended or to disqualification from holding a licence.

- 12. I recommend that, pending any review, urgent consideration be given to placing a time-limit of two minutes on *high-speed* pursuits unless there are compelling reasons to extend the pursuit for a further period.
- 13. In any event, I recommend that, pending any review, urgent consideration be given to placing a time-limit of two minutes on *high-speed* pursuits in urban areas and five minutes in rural and regional areas outside towns unless there are compelling reasons to extend the pursuit for a further period.

***To the Minister for Transport***

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

**NON-PUBLICATION ORDER:** Paragraphs 46, 47, 48, 103, 104, 105, 110, 112 and portions of paragraphs 99, 107 (see redacted version of this decision on Coroners Court website) and Recommendations 14-17 are covered by a NPO for a period of 12 months from the date of this decision or further order by the State Coroner or a Deputy State Coroner whichever is the sooner.

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## REASONS FOR DECISION

### 1. Introduction

1. Hamish Raj died on 10 December 2011 at the St George Hospital as a result of multiple injuries he received in a head-on collision between his motorcycle and a car on Rocky Point Rd, Kogarah. Shortly before the collision, he was travelling at high speed, probably about 150 kph. This accident happened while he was being pursued by a number of police vehicles along the Princes Highway.
2. Mr Raj was a 21 year-old TAFE student, much loved and much missed by his family and friends. His death has devastated his mother and has surely left many of those who knew him sore with grief. That a young man of such promise should die so prematurely and in such a way is tragic beyond words.
3. Because he died during the course of a police operation, the *Coroners Act 2009* requires that an inquest be held by a senior coroner: s 23. This inquest is not a quasi-criminal trial of Hamish Raj or the police officers involved in the pursuit. Rather it is an independent judicial inquiry investigating the circumstances of Mr Raj's death, the manner in which the fatal police operation was conducted and the NSW Police Force (NSWPF) policy that applied to the pursuit.
4. In a society in which the rule of law prevails, a police force is not a law unto itself. It is accountable to the society it serves to protect. It has been observed that:
 

The purposes of a s.23 Inquest are to fully examine the circumstances of any death in which Police ..... have been involved, in order that the public, the relatives and the relevant agency can become aware of the circumstances. In the majority of cases there will be no grounds for criticism, but in all cases the conduct of involved officers and/or the relevant department will be thoroughly reviewed, including the quality of the post-death investigation. If appropriate and warranted in a particular case, the State or Deputy State Coroner will make recommendations pursuant to s.82. (*Waller's Coronial Law & Practice in New South Wales* 4th Edition (2010) at para [23.7] page 106)
5. The question of whether, or in what circumstances, police forces should undertake high-speed pursuits of motor vehicles is a complex one to which there are no easy or definitive answers. Ultimately governments and police forces must strike a reasonable balance between the competing interests of public safety and law enforcement. Identification of the factors to be taken into account in conducting that balancing exercise is no simple task, let alone weighing them. Reasonable people may take different views of those questions.
6. For the past 25 years or so, the issue of high-speed pursuits has been studied and argued in many jurisdictions in Australia and internationally. This, however, is the first time that a coroner has undertaken a comprehensive investigation of the issue in New South Wales.
7. The problem is controversial and no light matter – these 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, therefore, is an issue of wide public interest, not merely a matter of internal police policy.



8. While much of the hearing time during this inquest was spent on the question of the efficacy of the NSWPF Safe Driving Policy (SDP) and whether it ought be reassessed or modified, it must be emphasised that inquests are not merely detached technical or academic exercises. They have at the heart of them a sad human story. Before proceeding to deal with the technical issues, I should start by describing Hamish Raj as his mother and friends knew him.

## **2. Hamish Raj**

9. Ms Kanta, his mother, described him eloquently in the following words:

Hamish was born on 09<sup>th</sup> of January 1990 at the National Women's Hospital in Auckland, New Zealand. Hamish came from a very loving and caring family and brought lots of love, joy and laughter to not only me but also our family and friends. He was a very active child from a young age and loved tennis, rugby, swimming, computer games as well as spending time with friends and family. Hamish was good at school with his studies also from a very young age; he had an infectious spirit, was playful and was full of life. His teachers were fond of him for his nature and the fact that he was always respectful. He grew up to be a very loyal and kind hearted man.

As Hamish grew older he understood and appreciated life and had respect for his elders whether it was family or friends. Throughout his life he did make mistakes however he learnt from them and grew up to be a nice young man. Hamish was very engaging in conversation at home and was able to participate in topics including from politics, share trading or anything in general.

In the year before his death Hamish looked forward to graduating from TAFE. Hamish had an active social life with lots of friends who regularly spent time fishing, camping and riding his 'bike. I had a very good relationship with my son. He was very proud of me being his mum.

Hamish has always been my pride and joy and losing him at 21 years of age was not something that I could ever have imagined.

10. Although he died riding a motorcycle, Hamish Raj was not a criminal, an outlaw gang member or a "hoon". He might have expected to live another 60 or 70 years, and to have made a substantial contribution to his family and the Australian community over that time. His death has devastated his mother but it is also a significant loss for our society, as is the premature death of any young member of it.

## **3. The coroner's statutory role**

11. The *Coroners Act 2009* (the Act) requires me to identify the person whose death is the subject of the inquest, the date and place of death and the cause of death. None of these matters are controversial. I am also required to determine if possible what the Act describes as "the manner of death", i.e. the circumstances in which the death took place.
12. A coroner may also make recommendations relating to the death if it appears necessary or desirable to do so. I propose to make a number of recommendations.

#### **4. The issues**

13. This inquest has considered the following issues:
- (i) Was the pursuit of Hamish Raj on 10 December 2011 conducted in accordance with the NSW Police Force Safe Driving Policy?
  - (ii) In what circumstances, is a police pursuit justified?
    - a. In particular, should a pursuit only be commenced where the immediate danger of the safety to others warrants engaging in a pursuit;
    - b. Should there be a list of offences which may have been committed by a motorist, but which do not justify the commencement of a pursuit. For example, license or vehicle checks, random breath tests, all simple offences, including traffic offences?
    - c. Should there be a restriction or prohibition on pursuing those who appear to be under the influence of drugs and alcohol?
    - d. Should there be a prohibition on pursuing vehicles believed to be stolen?
  - (iii) Is the NSW Police Force Safe Driving Policy sufficiently clear on the circumstances in which a pursuit should and should not be commenced?
  - (iv) Are there circumstances in which a pursuit should be automatically terminated, for example, exceeding a maximum speed, the target vehicle crosses to the wrong side of the road, the target vehicle travelling through a school zone, the target vehicle enters a "black spot" (see also recommendations of DSC Dillon *Inquest into the death of Graham Johnson*, given on 15 September 2012).
  - (v) Are there technological improvements to NSW Police Force vehicles which could enhance the safety of pursuits, such as hand held radios, in car cameras and GPS tracking devices?
  - (vi) Is s 39 of the *Law Enforcement (Powers and Responsibilities) Act 2002* used by police as an alternative to pursuing an evading vehicle?
  - (vii) Does the NSW Police Force collect statistics on the conduct of pursuits; if so are the statistics collected adequate to effectively review the way in which pursuits are conducted?
14. Before considering these issues, we need to understand the facts that give rise to these questions.

#### **5. What happened?**

15. Hamish Raj had held a NSW P2 Provisional motorcycle rider licence since 2009.<sup>1</sup> This required him not to exceed 100km/h,<sup>2</sup> not ride under the influence of any

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<sup>1</sup> Brief of evidence, V1, Tab 7, p. 22, para.14 (Exhibit 2).

<sup>2</sup> See r 24-1(3) and (4) of the *Road Rules 2008*.

alcohol<sup>3</sup> and restricted him from riding a motorcycle with an engine capacity greater than 660mL or a power to weight ratio greater than 150kW per tonne.<sup>4</sup> The motorcycle on which he died, which he had borrowed from a friend, exceeded those engine-size limits.

16. Mr Raj spent the evening of 9 December 2011 with friends. The group intended to meet for brunch the following day. Mr Anthony Kwok and Mr Raj were the only members of the group holding valid drivers' licences. It was decided that Mr Kwok would drive Mr Andrew Yip's car, and that Mr Raj (who did not have a motorcycle, but did have a helmet) would ride Mr Kwok's motorcycle.
17. That motorcycle was a 2009 Yamaha YZF-R1 with NSW registration SXC-R1.<sup>5</sup> The motorcycle had an engine capacity (displacement) of 998 cc and was described by Detective Inspector Cramsie as a "high performance, extremely powerful sports motor cycle".<sup>6</sup>
18. Mr Raj rode the motorcycle from Mr Kwok's residence at Kingsford at about 2.00am on 10 December 2011. He was wearing his helmet but did not display a green 'P' plate.
19. At about 2.20am, Leading Senior Constable Gregory Dillow, driving marked police car "Botany Bay 14 (BB14), saw Mr Raj travelling at an estimated 100kph in a 60kph zone, westbound on Gardeners Road. He followed Mr Raj with the intention of conducting a roadside breath test and speaking to Mr Raj about his speed.<sup>7</sup>
20. A toxicology report produced after Mr Raj's death showed that he had had a blood alcohol reading of 0.040g/100mL at the time of his death. Delta-9-tetrahydrocannabinol at less than 0.005mg/L and Delta-9-THC Acid at 0.022mg/L, which are products of cannabis, were also detected.<sup>8</sup>
21. Dr William Allender, a forensic medical scientist, was of the opinion that at the time of the pursuit Mr Raj "was under the influence of cannabis and exacerbated by alcohol, to the extent that his driving ability would have been impaired."<sup>9</sup> While the presence of drugs and alcohol in his system is likely to have affected Mr Raj's driving ability, there is no evidence that his manner of riding demonstrated signs of significant intoxication.
22. After initially activating lights and sirens, LSC Dillow deactivated them when Mr Raj appeared to be slowing down and eventually stopped at a red light at the Botany Road intersection. LSC Dillow took the opportunity to read the registration plate on the motorcycle and conveyed this to Duty Operations Inspector Paul Smith via police radio (VKG) for a registration check.<sup>10</sup>

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<sup>3</sup> See Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

<sup>4</sup> See cl. 28A(2), *Road Transport (Driver Licensing Regulation) 2008*.

<sup>5</sup> Brief of evidence, V1, Tab 7, p. 30, para.37 (Exhibit 2).

<sup>6</sup> Brief of evidence, V1, Tab 7, p. 32, para.42 (Exhibit 2).

<sup>7</sup> T37 [47].

<sup>8</sup> Brief of evidence, V1, Tab 5 (Exhibit 2).

<sup>9</sup> Brief of evidence, V3, Tab 119, p. 340 (Exhibit 2).

<sup>10</sup> T38 [40] to T39[2].

23. While waiting for a response from VKG, the lights at Botany Road turned green and both proceeded along Gardeners Road to Ricketty Street at the speed limit. At this point, LSC Dillow reactivated his lights and siren to notify Mr Raj to stop. Instead, Mr Raj accelerated away from LSC Dillow. LSC Dillow advised VKG that he was in pursuit.<sup>11</sup>
24. At that stage, LSC Dillow had had ten years' experience in the NSWPF. He was trained and qualified to engage in a pursuit. He was also driving a fully-marked police sedan<sup>12</sup>. LSC Dillow gave evidence that at the time he called the pursuit he was still intending to breath-test Mr Raj.<sup>13</sup>
25. The pursuit continued westbound on Canal Road and then southbound on to the Princes Highway with the police car travelling at about 80 kph and Mr Raj pulling away from it. LSC Dillow felt uncomfortable driving faster in circumstances in which he was using a hand-held radio to call the pursuit<sup>14</sup>. About one minute afterwards, he informed VKG "I've lost sight of that vehicle now... quicker than me".<sup>15</sup> By this statement, LSC Dillow intended to convey that he had terminated the pursuit.<sup>16</sup> The message, however, was not understood that way by VKG and the pursuit was not terminated by the supervisors.
26. At that time VKG had not responded with the results of the registration check. In any event, the registration identified by LSC Dillow (SXC-P1) was incorrect, his ability to read the plate having probably been hampered by the lighting conditions and the coloured number plate on the motorcycle. (During the evidence of Senior Sergeant Ron Dorrough, he explained that the NSWPF had raised this problem with the Roads and Maritime Service to no avail). LSC Dillow nevertheless continued to follow Mr Raj at a distance and with lights and sirens activated, apparently in order to render assistance to other officers who, soon afterwards, commenced or continued the pursuit.<sup>17</sup>
27. While LSC Dillow was pursuing Mr Raj, another unrelated police operation was being conducted in the vicinity.<sup>18</sup> Due to those unusual circumstances, a number of police vehicles were nearby and heard the pursuit being called over VKG. Senior Constable Michael Seckold and Constable Matthew Perry were two such officers. They were travelling as driver and passenger respectively in unmarked police vehicle "Botany Bay 140" (BB140)<sup>19</sup>.
28. SC Seckold was certified and trained to engage in a pursuit. At around the intersection of Princes Highway and Railway Road, Sydenham the officers saw Mr Raj riding at speed southbound on Princes Highway. SC Seckold performed a U-turn and commenced or continued the pursuit of Mr Raj.

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<sup>11</sup> T40 [12]-[30]

<sup>12</sup> Assessed under the Safe Driving Policy as a "Category 1" vehicle, the most suitable type for use in pursuits.

<sup>13</sup> T42 [21]-[24]

<sup>14</sup> T45 [13] - [18]

<sup>15</sup> Brief of evidence, V2, Tab 21, p. 823 (Exhibit 2) or VKG transcript, p. 13. It is noted that the phrase is attributed to "V.3" which, in the legend, is identified as "BOTANY 1-4-0". However, it was put to LSC Dillow, and accepted, that was in fact his statement to VKG (see T44, [25] - [29])

<sup>16</sup> T45 [27] - [29]

<sup>17</sup> T45 [31] - T46 [29].

<sup>18</sup> Brief of evidence, V3, T76 (Exhibit 2).

<sup>19</sup> Unmarked sedans are classed by the SDP as "Category 2" vehicles.

29. SC Seckold did not know why LSC Dillow had commenced the pursuit,<sup>20</sup> but he thought that he should commence or continue the pursuit because Mr Raj's identity had not been established and that it probably would not ever be established if the pursuit did not continue.<sup>21</sup> He also relied on the fact that the pursuit had been called and was being monitored by a Duty Operations Inspector who was allowing it to continue.<sup>22</sup>
30. Con. Perry thought they were in pursuit because Mr Raj had failed to stop, and as BB140 was very close to the pursuit location, they were in an ideal position to take part.<sup>23</sup> He also considered that by the time BB140 engaged in the pursuit, Mr Raj was in breach of "Skye's Law"<sup>24</sup> (Section 51B of the *Crimes Act 1900* makes it an offence to seek to drive at a dangerous speed or in a dangerous manner to evade police.)
31. Constables Andrew Booth and Bradley Smith had also heard the pursuit being called over VKG. They were the driver and passenger, respectively, in unmarked police vehicle "Botany Bay 141" (BB141). Con. Booth was also certified and trained to engage in pursuits. Con. Booth drove from Marrickville to Gannon Street Tempe to be in the vicinity of the pursuit if required to assist.<sup>25</sup>
32. Con. Booth saw Mr Raj "speed past" the intersection of Princes Highway and Gannon Street.<sup>26</sup> Knowing that LSC Dillow had lost sight of the motorcycle and that there was no pursuit being called, Con. Booth took it upon himself to commence pursuit.<sup>27</sup> He made that decision because the motorcycle had been involved in a pursuit and had not been apprehended, and because no one else was pursuing at the time.<sup>28</sup> Con. Smith gave evidence that the reason for the pursuit did not cross his mind, nor did he subsequently consider the reasons for the pursuit.<sup>29</sup>
33. BB141 (driven by Con. Booth with Con. Smith) joined the pursuit very soon after BB 140 (driven by SC Seckold with Con. Perry). Con. Booth turned right into the far right lane, then middle lane, of the Princes Highway to avoid any vehicle that might have been approaching from behind at speed.<sup>30</sup> Con. Smith estimated that not even a second after BB141 joined the pursuit, he heard Con. Perry calling the pursuit. His evidence was that he did not have an opportunity to inform DOI Smith that BB141 was also in pursuit.<sup>31</sup>
34. From that point until the conclusion of the pursuit (approximately four minutes after its commencement by LSC Dillow<sup>32</sup>), Mr Raj was pursued at speed by police vehicles BB140 with BB141 following, and BB14 some distance behind, travelling southbound on Princes Highway to Rocky Point Road. The speed limit throughout

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<sup>20</sup> T68 [29] - [35]

<sup>21</sup> T84 [42] - [47]

<sup>22</sup> T86 [13] - [18]

<sup>23</sup> T105 [20] - [23]

<sup>24</sup> T106 [14] - [28]

<sup>25</sup> T119 [16] - [18]

<sup>26</sup> T119 [27] - [29]

<sup>27</sup> T119 [33] - [49]

<sup>28</sup> T121 [3] - [5]

<sup>29</sup> T136 [15] - [20]

<sup>30</sup> Brief of evidence V1, Tab 14, para. 12 (Exhibit 2) or statement of Andrew Booth, para. 12 (Exhibit 9)

<sup>31</sup> T135 [8] - [12] and [36] - [39]

<sup>32</sup> This figure is calculated with reference to the time stamps recorded on the VKG transcript (at Brief of evidence, V2, Tab 21, p. 822-825 (Exhibit 2) or VKG transcript, pp. 12-15)

was 60km/h.<sup>33</sup> The weather was fine. At that time and place, the Princes Highway was a well lit, three-lane carriageway with minimal pedestrian or vehicular traffic about.

35. The police witnesses gave consistent evidence as to Mr Raj's manner of driving. It appeared to them that he was in control of the motorcycle and that, despite the fact that he was travelling at average speeds estimated by Senior Constable Derick Fenton to be between 64km and 152.5km/h<sup>34</sup>, he was displaying some caution by slowing down at intersections, apparently checking for oncoming hazards at those intersections.
36. Mr Raj ran one red light at the intersection of Princes Highway and Rockdale Plaza Drive where, in an apparent effort to evade police, he indicated a left turn but then drove straight through, after slowing considerably and looking both ways before proceeding.<sup>35</sup>
37. South of Rockdale, near the St George Hospital and the James Cook High School, the three-lane carriageway splits into a dual lane Princes Highway southbound and a single lane Rocky Point Road southbound, separated by a tapered concrete median strip. Rocky Point Road southbound continues as a single lane for about 80 metres, before it eventually changes into a two-lane carriageway southbound and the same northbound.<sup>36</sup> A fixed speed camera stands about 400 metres north of the intersection of the Princes Highway and Rocky Point Road, outside the high school.
38. Shortly before the fatal accident a slow-moving Ford Falcon utility was travelling south on Rocky Point Road not far from the intersection with the Princes Highway. A Citroen C3 hatchback and a Toyota Corolla hatchback were travelling north approaching the intersection.
39. By that stage, Mr Raj was travelling at an average speed of at least 130kph<sup>37</sup> and at times reaching approximately 150-160 kph.<sup>38</sup>
40. He turned south into Rocky Point Road. Almost immediately he came upon the Ford Falcon utility which he attempted to overtake. In doing so, he clipped the raised median strip and lost control of the motorcycle which ran into the oncoming Citroen. He hit the windscreen then a telegraph pole on the side of the road, suffering fatal injuries.
41. Despite the best efforts of paramedics and medical officers and the comfort extended by police at the scene, Mr Raj died from those injuries soon afterwards at St. George Hospital.

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<sup>33</sup> Brief of evidence V3, T120, pp. 751-758

<sup>34</sup> Brief of evidence, V3, T120, pp. 796-777

<sup>35</sup> Statement of Michael Seckold, para.16 (Exhibit 4); statement of Matthew Perry, para.12 (Exhibit 8); statement of Andrew Booth, para. 17 (Exhibit 9); T138 [30] – [33]

<sup>36</sup> Brief of evidence, V3, Tab 120, paras. 5.2 and 5.3 (Exhibit 2)

<sup>37</sup> As estimated by Senior Constable Fenton (see Brief of evidence, V3, Tab 120, para. 24.3 (Exhibit 2)

<sup>38</sup> See statement of Paul Hayes (Brief of evidence, V3, T123A, para. 12)

## 6. The NSW Police Safe Driving Policy

42. The Safe Driving Policy is the NSWPF's internal policy document governing police driving practice including the conduct of high-speed pursuits. It has been developed over years and is under continuous internal and occasional external review.

43. The internal review is conducted by the SPMC, a committee composed mainly of Police Force representatives from the Traffic Services Branch, Police Driver Training, Communications Branch (VKG), the Police Association, Police Fleet Management, the Professional Standards Command, "the Field" and "other [unidentified]interested stakeholders".

44. In his foreword to the latest edition of the SDP, the Commissioner of Police, Mr Andrew Scipione, states:

The NSW Police Force has a major responsibility to improve road safety throughout the State... We are working hard to reduce road trauma and its devastating costs... The police motor vehicle, if used irresponsibly and inappropriately, **can result in it being the most deadly weapon in the police arsenal...** Please be assured that any decision to terminate a pursuit, for your safety or others, will not result in criticism. (Emphasis added.)

45. Part 6 of the SDP deals with "urgent duty" and "pursuits". A key principle – perhaps *the guiding principle* of the whole policy concerning pursuits – is that: "You must consider a pursuit as a last resort. It will *only* be engaged in when the gravity and seriousness of the circumstances require such action and there is no other immediate means of responding." (Emphasis added.)<sup>39</sup>

46. Of relevance to this case, the SDP also sets out a number of specific guidelines for police including the following:

1. [REDACTED]

47. [REDACTED]

48. [REDACTED]

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<sup>39</sup> SDP Version 7.2, (2009) p25 (Exhibit 2).

████████████████████<sup>40</sup>

49. In preparation for this inquest, the NSWPF was requested to provide a report addressing various issues. The NSWPF was asked:
- (i) To describe the bases on which pursuits are currently commenced or not commenced;
  - (ii) Whether “risk to the community and police” includes risk to the suspected offender;
  - (iii) To describe the bases on which pursuits are maintained or terminated;
  - (iv) To clarify the prohibition on police vehicles becoming “part of a convoy” in a pursuit;
  - (v) Whether the SDP is subject to ongoing internal review;
  - (vi) To consider the pros and cons of a policy mandating that a pursuit only be commenced or maintained when there is immediate danger to the safety of others if the suspect is not apprehended at the time;
  - (vii) To consider the pros and cons of the SDP specifying a list of offences which, absent other factors, would not justify the commencement of a high-speed pursuit;
  - (viii) To consider the pros and cons of pursuing vehicles driven by persons reasonably suspected of being under the influence of drugs or alcohol;
  - (ix) To consider the pros and cons of pursuing suspected stolen vehicles;
  - (x) To consider the competing public interests in pursuing stolen vehicles believed to be containing persons suspected of more serious crimes than stealing or taking and driving a motor vehicle;
  - (xi) To consider the pros and cons of introducing specific (possibly temporary) categories of situation in which pursuits ought be terminated or temporarily suspended (eg, if the suspect exceeds a particular speed; approaches an operational school zone; or approaches a known traffic “black spot”<sup>41</sup> that would significantly increase the risk of a high-speed pursuit);
  - (xii) Whether motorcyclists are more vulnerable to death or injury in pursuits than persons in other types of vehicles;
  - (xiii) Whether there are technological improvements to NSWPF vehicles that could enhance the safety of high-speed pursuits or be used to reduce the number of pursuits;

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<sup>40</sup> Best, D. (2002): *Fatal Pursuit. Investigation of Road Traffic Incidents (RTIs) Involving Police Vehicles, 1998–2001: Identifying Common Factors and the Lessons to be Learned*. Police Complaints Authority: London.

<sup>41</sup> This means a place or area known to be the site of a disproportionate number of road accidents. The NSWPF uses the term “black spot” to denote areas in which police vehicles are unable to receive or transmit radio signals successfully.



- (xiv) To comment on the usefulness of s 39 of the *Law Enforcement (Powers and Responsibilities) Act 2002* as a possible alternative to pursuits for traffic offences. (Section 39 makes it an offence for a person, without reasonable excuse, to disobey a police direction to stop);
  - (xv) To outline the categories of statistics kept by the NSWPF concerning pursuits;
  - (xvi) To comment on whether the various factors to be taken into account when deciding whether or not to commence or maintain a pursuit ought be ranked or weighed; and
  - (xvii) To comment on the reports and research done in other jurisdictions that have adopted more restrictive approaches to pursuits than the NSWPF.
50. The NSWPF report was prepared by Senior Sergeant Ron Dorrough, Commander of the Traffic Policy Unit in the Traffic & Highway Patrol Command.<sup>42</sup>
51. In essence, the NSWPF report defended the current policy and argued against any amendment of it. Although the NSWPF made the qualified concession that a policy “*where police are unable to enforce the law unless the offender has committed a serious or violent crime will undeniably reduce the number of pursuits*”, it argued vigorously against such a policy.
52. Because of the large number of issues raised and the similarity of the responses to most of them, I propose to deal now only with certain specific matters.

***Will the police be “unable to enforce the law” if pursuits are restricted?***

53. First, the premise or assumption – “police would be unable to enforce the law” – with which the NSWPF prefaced its concession is fundamentally flawed. It is implicitly contradicted by the SDP principle that high-speed pursuit is “a last resort” and by the other statutory avenues and technological means police have enabling them to enforce the law.
54. It has not been the experience of other police forces in Australia and internationally that they have been “unable to enforce the law” when high-speed pursuits have been restricted. Law enforcement has probably become less direct and more difficult but it has not been disabled.

***Applying the SDP in practice***

55. Second, in relation to the bases on which pursuits are commenced, maintained and terminated, the report outlined the criteria set out in the SDP. The major points of relevance are outlined above at [45]-[47].

***Risk to the offender a factor?***

56. Third, the NSWPF conceded that “risk to the community” includes risk to suspected offenders.<sup>43</sup>

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<sup>42</sup> NSW Police Force report prepared by Senior Sergeant Ron Dorrough (the NSWPF report) (Exhibit 19).

<sup>43</sup> NSWPF report, p. 2 (Exhibit 19).

57. That risk to the suspected offender falls within the compass of “risk to the community” is not made explicit in the policy itself. Indeed, a close reading of the SDP suggests that if risk to the offending driver (and any passengers who may be in the vehicle being pursued) is taken into account at all in the decision to commence or continue the pursuit, it is either as an afterthought or is very low in the order of priorities. In the SDP, the “community” appears to be construed as “third parties who may be unfortunate enough to stray into the path of the high-speed pursuit.” That impression is fortified by other responses in the NSWPF report.
58. In Mr Raj’s case – and this has been my experience as a coroner in other fatal pursuit cases – none of the involved police officers appeared to have given any serious consideration to the risk to their target. Yet the pursued offender (and others who may be in the target vehicle) are almost *always* the persons most at risk in a high-speed pursuit.
59. In my view, risk to the pursued driver and any passengers in the pursued vehicle ought be high on the order of priorities, especially as the initiating events are, in themselves, more frequently than not relatively minor that cause no immediate danger to other members of the community.
60. I emphasise this point not to criticise the involved officers – they did not formulate the policy, its interpretation or the related training programs. The SDP itself implies that risk to the pursued person is a minor consideration. In my view, the policy should be amended expressly to take it into account as a *major* consideration.

***Additional specific restrictions or guidelines?***

61. Fourth, in relation to the pros and cons of various categories of possible restrictions on pursuits, the NSWPF was dismissive and maintained its defence of the full amplitude of police discretion.<sup>44</sup> The NSWPF ought not dismiss these considerations so readily on the thin evidentiary base laid in its report.

***Motorcyclists’ a special case?***

62. Fifth, motorcyclists are obviously significantly more vulnerable to death and injury in a high-speed collision than occupants of modern motor cars and other larger vehicles.
63. So, during his oral evidence, it was surprising to see how apparently reluctant S/Sgt Dorrrough was to agree with this proposition. The impression he left on me at the time was that his reluctance proceeded from anxiety that even a concession of this self-evident proposition would undermine the foundations of the SDP by inserting the thin end of the wedge.

***Technological aids?***

64. Sixth, the NSWPF report was more helpful in dealing with this issue. In some jurisdictions, especially in the United States, police forces have deployed various types of devices, such as missiles attaching tracking devices or engine immobilisers,

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<sup>44</sup> NSWPF report, pp. 5, 6, 9, 10, 12 and 13 (Exhibit 19).

to mitigate the risks (especially to police) of high-speed pursuits.<sup>45</sup>

65. In the United States, numerous technologies to prevent or reduce collisions between police cars and innocent civilian vehicles have been introduced or are in the process of being tested. They include systems that allow emergency vehicles to control traffic lights they are approaching at speed; traffic light systems that recognise vehicles approaching red lights at high speed, causing the phasing to change to red for cross traffic; remote signals that cause vehicles to slow down and stop; GPS tracking devices delivered by darts; thermal imaging and other devices.
66. The impetus for the introduction of such technologies comes largely from political pressure being exerted by victims of police pursuits and support victims have received from the courts. The United States Supreme Court has held that police officers and police forces may be sued for damages resulting from a high-speed pursuit.<sup>46</sup> This too has led to a fundamental policy shift in the United States.
67. I accept S/Sgt Dorrough's evidence that the NSWPF regularly evaluates technological developments that may assist its law enforcement activities, including traffic law enforcement. Various enhancements, such as In-Car Video recording and number plate recognition have been and are being introduced into police vehicles.
68. I also accept that technology has its limits. Ultimately, it can only be an aid to the apprehension of offenders, not a substitute for policing of dangerous driving. Nevertheless, it appeared to me that the NSWPF has little enthusiasm for the suggestion that additional technology might be employed to reduce the number and length of high-speed pursuits. If that assessment is correct, and it reflects a general attitude at senior management level of the NSWPF, I believe this approach is ill-advised.

***Section 39 LEPR Act an alternative to pursuit?***

69. Seventh, s 39 of the *Law Enforcement (Powers and Responsibilities) Act 2002* is clearly not a complete substitute for immediate apprehension of offenders. Persons in stolen vehicles are not easily identified. Persons required by law to identify the driver or occupants of motor vehicles that have been used to evade police may be untruthful or simply not know who was in the car. The NSWPF's argument that there are significant difficulties in enforcing s 39 as it is framed currently is valid.
70. All other things being equal, I accept that interception and immediate apprehension of offenders is the most efficient and generally preferable method of law enforcement. As the SDP itself states, however, high-speed pursuit to apprehend suspects is not and should not be regarded as the default position but – to reiterate – as a “last resort”.

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<sup>45</sup> NSWPF report, pp. 13 – 15 (Exhibit 19).

<sup>46</sup> *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). Although there is little NSW authority on this subject, the Court of Appeal in *State of NSW (NSW Police) v Nominal Defendant* [2009] NSWCA 225 at [46] specifically observed that the “reasonableness of the performance of a police officer's duties does not escape judicial scrutiny”. In judging the reasonable of the performance of the duty, the Court held that the subject conduct must be examined “in context”. It noted: “So far as a decision to engage in a pursuit is concerned, the context will also include the instructions, directions and guiding precepts contained in the Police Service's Pursuit Guidelines.”

71. In this case, a registration number was obtained. The owner knew who was riding the bike. There is no evidence now and there was no evidence on the evening of the pursuit suggesting that the owner would not comply with s 39 and identify the rider. (It was, of course, not known at the time that LSC Dillow had misread the plate.)

***Quantifying the pursuit issue: statistical records***

72. Eighth, as outlined in its report, the NSWPF requires police to submit reports in respect of every pursuit conducted. The database is large and reasonably comprehensive. It is apparent, however, that certain types of information that are or may be relevant to precision in policy formulation are not collected. For example, distinctions are not made between very serious and relatively minor traffic offences. For a proper understanding of the costs and benefits of this form of law enforcement, better data are needed.

***Practice in other jurisdictions***

73. Finally, while it did not expressly criticise the more restrictive policies of other Australian and overseas police forces, or explain in terms why it considered them to be misconceived, the NSWPF report observed that “recent news articles have raised serious concern that [the much more restrictive Queensland policy] is allowing dangerous drivers to create havoc on the road”.<sup>47</sup> It also noted that the Queensland Police Union and a Queensland Member of Parliament had called for the “no-pursuit” policy to be “scrapped”. They claimed that “the system has become dysfunctional.”<sup>48</sup>
74. The comments cited by the NSWPF misrepresent the Queensland policy which is not a “no-pursuit” policy at all. They fail to do justice to the complexity of the issues, to the seriousness, integrity and painstaking effort of the Queensland Police officers who developed their restrictive policy, or to the evolutionary nature of the Queensland Police Service’s approach to the issue. Most of all they fail to do justice to the objective evidence from Queensland and elsewhere and are simply political propaganda. I can place no weight on them.

**7. What is the rationale for police pursuits? Law enforcement or public safety?**

75. The NSWPF’s “mission”, as defined by the *Police Act 1990*, is to “work with the community to reduce violence, crime and fear”: s 6(1). Its function is to provide “police services” which include “(a) services by way of prevention and detection of crime, and (b) the protection of persons from injury or death, and property from damage, whether arising from criminal acts or in any other way”: s 6(2) and (3).
76. These functions, as fatal police pursuits throw into high relief, do not always sit easily together.
77. The fundamental rationale for police pursuits world-wide is law enforcement. But

<sup>47</sup> NSWPF report, p. 26 (Exhibit 19).

<sup>48</sup> *Courier-Mail* 16 November 2013; *Queensland Police News* 31 March 2011.

the rationale for enforcement of traffic law is public safety. The apprehension of persons who have jeopardised or are jeopardising the welfare of other members of the community, and the deterrence of others who would do so but for the risk of being caught by police, is a means to that end, not an end in itself.

78. By definition, a police pursuit that results in a fatal motor vehicle accident is a failure: it has not only failed to prevent dangerous driving or deter the commission of a serious offence, it has resulted in the very thing it is intended to avert – death and injury on the roads. A large number of pursuits also fail to apprehend offenders.
79. The question must be asked therefore when such a dangerous means of law enforcement should be undertaken?
80. This is an issue on which reasonable, intelligent and well-motivated minds might differ. But if the solution to a problem is worse or potentially worse than the problem itself, the solution has become part of the problem.<sup>49</sup>

## **8. Are there flaws in the Safe Driving Policy and NSWPF practice?**

81. Unfortunately, the answer to the question is an unequivocal Yes. The policy document itself is in certain respects ambiguous and appears self-contradictory. Certainly the key principle – that pursuit is a last resort and must only be undertaken when required by the gravity of the circumstances – appears to be interpreted with considerable elasticity and apparently ignored altogether on some occasions.

### ***NSWPF philosophy and “collateral damage”***

82. There is, however, a more fundamental problem. In my opinion, the philosophy of traffic law enforcement as conveyed in the NSWPF report is flawed in that, paradoxically, it overemphasises law enforcement to the detriment of public safety. This philosophy is given concrete form in a flawed pursuit policy and NSWPF implementation of that policy.
83. There is no other NSW government policy of which I am aware that is implemented and defended in the certain knowledge that it will result in the deaths of and injuries to NSW motorists and pedestrians. It is not overstating the case to describe the current practice of conducting high-speed pursuits as a form of “Russian roulette”. It is impossible to predict when someone will be killed or injured but at some stage that is the inevitable result of this policy. When viewed from that perspective, it is difficult to justify the policy in its current form.
84. 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 it is also disastrous. And, as I have previously observed, the tragic consequences are inflicted not only on the offender but on his or her family and friends and the wider community.

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<sup>49</sup> During the Vietnam War, the US Army famously destroyed the town of Ben Tre to save it. “It became necessary to destroy the town to save it”, a United States major said today. He was talking about the decision by allied commanders to bomb and shell the town regardless of civilian casualties, to rout the Vietcong.” Peter Arnett “Major Describes Move”. *New York Times*. 8 February 1968.

85. Although the SDP does not refer to “collateral damage” that is what casualties occasioned in the course of high-speed pursuits are. The “collateral damage” is particularly calamitous when it is suffered by innocent persons who simply happen to be in the wrong place at the wrong time.
86. “Collateral damage” is a concept first developed in the context of military operations. Under international law, collateral damage to civilians is only justifiable on the basis of military necessity and proportionality. The harmful (or potentially harmful) military action must be *necessary* (not merely desirable) to achieve a legitimate military objective and, secondly, the harm caused to civilians or civilian property must be *proportionate* to the concrete and direct military advantage anticipated.<sup>50</sup>
87. As the NSWPF report has noted, the Queensland Police Service leadership is under heavy political pressure from politicians, from the tabloid press, from the Queensland Police Union and from members, perhaps even a significant number, of the Queensland Police Service to lift the current restrictions on their pursuit policy.
88. Nevertheless, with admirable integrity and moral courage, Commissioner Ian Stewart’s response to the criticisms is that “the tragedies that happened in the past as a result of police pursuits have not been evidenced since we’ve had the restrictive policy in place.” Commissioner Stewart and those managing the Queensland policy are applying principles analogous to those relating to military “collateral damage” for the same reason: to minimise casualties.
89. The critics of the Queensland policy scrupulously avoid engaging with the issue of casualties. Their primary concern is that the law is being flouted by certain persons and the police force is not being treated with sufficient respect. This, it is claimed, is causing “havoc” on the streets. This is both hyperbolic and untrue. But the question of casualties is at the heart of the problem that police pursuits raise. We need to examine the shape of the casualty problem first. It cannot be avoided by reframing the issue in terms of “respect for the law and police”.

### ***Casualties in police pursuits***

90. In June 2013, the Australian Institute for Criminology released an important study of fatalities occurring in police pursuits in Australia for the period 2000-2011.<sup>51</sup> It noted that in several Australian states and territories, police pursuit policy and practice had been reviewed and, in some cases, significantly reformed.<sup>52</sup> In New Zealand, police pursuit policy has been reviewed several times internally<sup>53</sup> and by the Independent Police Conduct Authority<sup>54</sup>. The question has also been studied in the United States<sup>55</sup> and the United Kingdom<sup>56</sup> and, no doubt, in many other

<sup>50</sup> See *Rome Statute of the International Criminal Court* 1998 Arts 8(2)(b)(i) and (iv).

<sup>51</sup> Lyneham, M & Hewitt-Rau, A “Motor vehicle pursuit-related fatalities in Australia, 2000-11” *Trends & Issues in Crime and Criminal Justice* No 452 June 2013, Canberra.

<sup>52</sup> Australian Capital Territory (2007); Queensland (2009); South Australia (2011); Victoria (2011).

<sup>53</sup> In 2003, 2007, 2008 and 2010.

<sup>54</sup> In 2009.

<sup>55</sup> For example, Alpert, GP, Kenney, D, Dunham, R, Smith, W & Cosgrove, M 1996, *Police pursuit and the use of force*, A final report to the National Institute of Justice, US Department of Justice, Washington, DC.

jurisdictions.

91. According to the AIC report, between 1 January 2000 and 31 December 2011, 218 people were killed in police pursuits in Australia. Of these, only 62 per cent were alleged offenders. Fifty per cent of the fatal casualties were offending drivers (110 people) and a further 12 per cent (26 people) were passengers who were also suspects. Thirty eight per cent (82 people) were innocent victims. This figure includes innocent passengers in the pursued vehicles (37 people), pedestrians and other road users (45 people) and police officers (6 people).
92. More than one-third of those killed in fatal police pursuits were innocent victims who happened to be in the wrong place at the wrong time. A United States study for the period 1994-2002 also found that a high proportion of persons killed in police pursuits were innocent people who happened to be in the wrong place at the wrong time. It found that there had been 3146 fatalities during police pursuits of which 1088 (32 per cent) had not been passengers in or drivers of the pursued vehicles.<sup>57</sup> That study did not distinguish between innocent passengers in pursued vehicles and co-offending passengers. Presumably the proportion of innocent victims would increase if that distinction was made.
93. Those killed in fatal pursuits were mostly young, 68 per cent being under 30 years old. Males were vastly over-represented both as offending drivers (95 per cent) and as innocent victims (68 per cent).
94. Before its restrictive policy was introduced, 29 per cent of high-speed pursuits conducted by the Queensland Police Service resulted in collisions. Eleven per cent of pursuits resulted in death or injuries.<sup>58</sup>
95. In its report, the NSWPF provided NSW statistics for the period 1 January 2011 to 1 January 2013.<sup>59</sup> NSW Police commenced 3606 pursuits in that time, 99 of which (2.7 per cent) ended in death or serious injury. About 40 per cent were terminated either by the supervisor (22 per cent) or driver (19 per cent). Twenty-one per cent of the pursuits (768) involved motorcycles as the suspect vehicle: three of these ended in a death or serious injury.
96. Figures provided by the Minister for Police to the NSW Parliament in respect of police pursuits in 2013 show that (as at 26 November 2013) there had been 1443 pursuits in which four people had died. Three were the drivers of pursued vehicles and one was a passenger in a pursued vehicle. There were 34 other non-fatal casualties – 5 police officers; 7 innocent bystanders; 2 passengers in pursued vehicles and 20 offending drivers. Serious casualties therefore occurred in about 2.6 per cent of pursuits. Traffic violations accounted for 861 pursuits; stolen vehicles 218; fail to stop at RBTs 228; and 167 undifferentiated “criminal” matters accounted for the remainder.

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<sup>56</sup> For example, Independent Police Complaints Commission (IPCC) "Police Road Traffic Incidents: A Study of Cases Involving Serious and Fatal Injuries; Docking, Bucke, Grace and Dady; London, 2007.

<sup>57</sup> Rivara, FP and Mack, CD "Motor vehicle crash deaths related to police pursuits in the United States" (2004) *10 Injury Prevention* 93-95.

<sup>58</sup> Hoffman, G & Mazerolle "Police pursuits in Queensland: research, review and reform" *Policing: An International Journal of Police Strategies & Management* (2005) Vol 28, Issue 3; 530-545.

<sup>59</sup> NSWPF report, p. 18 (Exhibit 19).

97. If the general public and the legislators were aware that a particular law enforcement policy being applied by Australian police forces was not only resulting in a number of avoidable deaths and serious injuries but also that one third of the victims were completely innocent bystanders, I believe it would cause great concern and an immediate demand for change.
98. Of course, the AIC report and these other statistics cannot quantify the grief and pain that resulted from each of these deaths and the serious injuries inflicted on other persons who survived serious crashes. Nor do they quantify the social costs such as medical and rehabilitation expenses of victims, insurance claims, funeral and probate issues, lost of income and productivity, uncompensated property damage and the long-term derangement of the lives of whole families.

### ***Ambiguities in the Safe Driving Policy***

99. The SDP is ambiguous in a number of respects and does not accurately describe the actual practice of police engaging in pursuits. In my view, when taken together with the direction that a pursuit is a “last resort”, Guidelines 1 ( [REDACTED] ) and 5 ( [REDACTED] ) are ambiguous and do not provide sufficient guidance to police officers as to how to make the relevant decisions.
100. Impressive as this set of principles appears to be superficially, they must be interrogated more rigorously. In weighing the risk to others before engaging in a pursuit, what factors are taken into account? How are the risks assessed and weighted? And is the “risk to others” inclusive of “risk to the offender” and his/her passengers? If not, why not? If it is, what weight is given to it?
101. The direction that a “pursuit is a last resort” implies that the likely or potential benefit to the community (including the suspected offender and passengers) will ultimately outweigh the real risk that people may be killed or injured in the pursuit. If that is what this means, how is that assessed? What evidence is there that the NSWPF has struck the correct balance? Is the direction that a pursuit be undertaken “only as a last resort” [to what?] honoured more in the breach than the observance?
102. Again, a general statement that pursuits will only be undertaken “when the gravity and seriousness of the circumstances require such action” raises more questions than it answers: when are the circumstances so grave and so serious that a pursuit is actually *required*? If a pursuit can be commenced at the discretion of a police officer, in what sense is it mandatory (“required”)?

[REDACTED]

[REDACTED]

[REDACTED]

104. [REDACTED]



- [REDACTED]
105. [REDACTED]
106. Some pursuits, this being one of them, begin or are taken up because the pursuing police assume or suspect that the “suspect” is fleeing because they have done something wrong. They assume that flight betokens guilt. In this case, after LSC Dillow dropped out of the pursuit, the officers who took up the chase did so only because they knew that someone was being chased but had no idea why. The SDP is not clear on whether all pursuing police must be satisfied that the suspect driver has committed an offence or whether it is sufficient for the officer(s) who initiate the pursuit to be so satisfied.
107. The police officer then needs to balance the desirability of immediately apprehending the offender against the degree of risk to the community and police as a result of the pursuit [REDACTED]
108. This weighing exercise will obviously take into account the risk factors inherent in the pursuit as it presents itself and unfolds. This appears to involve considerations of whether there is some other means of identifying that person and apprehending them subsequently, without the need for a pursuit.
109. However, it seems logical to infer from the phrase “the need to immediately apprehend the offender” the possibility that it is not simply an inability to identify the offender which requires them to be apprehended but also that there may be some other public interest in immediate apprehension. This was confirmed in the evidence of S/Sgt Dorough.
110. [REDACTED]
111. Establishing the identity of “the offender” from behind during a high-speed pursuit is virtually impossible in most cases. Presumably establishing the identity of “the offender” means, in practice, identifying the registration number of the vehicle and the fact that it has not been reported stolen. If so, this should be made clear in the SDP.

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<sup>60</sup> Section 39 of the *Law Enforcement (Powers and Responsibilities) Act 2002* provides:

**39 Failure to comply with directions**

(cf *Police Powers (Vehicles) Act 1998*, s 10)

A person must not, without reasonable excuse:

- (a) fail or refuse to stop a vehicle the person is driving when directed to do so by a police officer under this Division, or
- (b) fail or refuse to comply with any other direction given by a police officer under this Division.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(v) [REDACTED]

113. In most cases, this decision-making process must be conducted very quickly by the officer(s) on the spot and with only the ambiguous guidance of the SDP in respect of a number of key elements.
114. Among the problems of the SDP is the use of the words “need” and “require” in this context. “Need” and “require” connote mandatory action whereas the decision to pursue or to maintain a pursuit is discretionary. In my view, while the whole policy relating to pursuits ought be reviewed, one immediate amendment that should be made would to replace the word “need” with “desirability” and the word “require such action” with “indicate such action”.
115. If the risk to pursuing police officers was as great as it is for the pursued driver (and his/her passengers) or to innocent bystanders, the “need” to apprehend the offender and the “requirement” for a pursuit would, in all likelihood, be interpreted very differently and much more cautiously by police. Far fewer pursuits would be undertaken in respect of “relatively minor” traffic offences, pursuits would be terminated more quickly and fewer fatal casualties would occur.
116. If one-third (let alone a majority) of the casualties in police pursuit cases were police officers, I question whether the NSWPF would operate its pursuit policy in the same fashion as it does now. Frankly, I doubt it.
117. In my view, because of the great potential dangers to the general public, to pursued drivers and to police officers, the principle that pursuits are “a last resort” ought be applied far more rigorously than it is at present.
118. Consideration ought be given by government to imposing a guideline that high-speed police pursuits be undertaken only when (i) a serious offence is reasonably suspected of having been committed by the pursued driver or a person in the pursued vehicle AND (b) that person is unidentified OR there is no immediate prospect of locating him or her unless apprehended urgently.
119. What constitutes a serious offence is, no doubt, a matter for debate. I do not propose here to prescribe a list.

### ***What triggers pursuits?***

120. According to the AIC report, across Australia the most prevalent category of offence committed before the pursuit commenced was a traffic matter such as speeding, dangerous driving, registration and roadworthiness. They constituted 38 per cent of the cases in which an offence could be identified.
121. The next most prevalent were stolen vehicle offences (31 per cent) and drink-driving offences (19 per cent). In total, 88 per cent of fatal pursuits commenced because of some form of improper or unsafe operation of a motor vehicle.<sup>61</sup>
122. The NSW figures for 2011-13 supplied by the NSWPF show that 15 per cent of pursuits (539) involved stolen vehicles. The vast majority of pursuits (76 per cent) were commenced for traffic offences.
123. Most pursuits follow the observation by police of an offence or suspected on the roads, some form of traffic offence. On the evidence available to this inquest, the broad category of "traffic offence" is unable to be broken down. Some traffic offences are very serious because they cause immediate and grave danger to other members of the community; others are relatively minor.
124. The data in evidence at this inquest does not enable me to determine what proportion of pursuits are commenced in an attempt to apprehend drivers suspected of committing very serious, moderately serious or relatively minor traffic offences.
125. The NSW Coroners Court Annual Reports on deaths in police operations provide examples of police pursuits ending fatally that commenced as a result of observations of traffic offences, some of them relatively minor such as an illegal right turn or a motorcycle overtaking on the wrong side.
126. In 2003, **Robert Miskovic** was detected driving at 96 kph in a 70 zone. (He was subsequently found to have a blood alcohol reading of 0.185.) A high-speed pursuit resulted in his death and the serious injury of another motorist with whose vehicle he collided on the Anzac Bridge.
127. In 2004, **Peter James** was seen by police to be travelling towards them at 98 kph in a 60 zone. He and a child in the back seat were killed in the subsequent pursuit. **Trong Pham** was backing out of his driveway when he was hit by a car being pursued by police and died of the injuries he received. In the same year, a teenage boy (**JD**) who had stolen a car was killed in the course of a very short pursuit. His passenger was injured. **Maxwell Phillips** was a motorcyclist who died during a high-speed pursuit (speeds reaching up to 180 kph) by a police van (which was not authorised to pursue). Police had directed him to stop for a breath test and he took off.
128. In 2005, **Matthew Payne** died in Northmead after police sought to stop him for making an illegal right-hand turn. During the pursuit he attempted to ram the police vehicle then ran onto the wrong side of the road into another car. He died when his car burst into flames.

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<sup>61</sup> Australian Institute of Criminology *ibid.* p5.

129. In 2006, **Bradden McIntyre** died in Port Macquarie when he was pursued on suspicion that he was driving under the influence. He lost control of his vehicle and hit a power pole. **Brenton Hasler** was a motorcyclist who lost control of his bike during a high-speed pursuit. He had disobeyed a direction to stop after being seen to be overtaking other vehicles incorrectly in heavy traffic in Tweed Heads. **Michael Kerney** was a motorcyclist who was seen to be speeding in Dubbo. He accelerated very quickly as soon as a police car turned to chase him and lost control on the next corner.
130. In 2007, **Hung Quach** died when he lost control of his vehicle after being pursued in Cabramatta by a police vehicle. The pursuit had started because the target vehicle was associated with a disqualified driver (Mr Quach). **James Baker** was pursued because police noticed his vehicle take a corner at excessive speed near Helensburgh. He accelerated and soon afterwards lost control of his car, dying as a result. **James Malone** died in Albury in the early hours of the morning in the course of a pursuit. Police were suspicious that the vehicle may be stolen and sought to stop it. **Ben Robbins** was doing about 100kph in an 80 zone in Bargo. Like James Malone he accelerated and died when he lost control of his vehicle after a police car turned to follow him. **David McCormack** was an off-duty police officer killed in a head-on collision when a car being pursued by police crossed onto the wrong side of the road. That pursuit had started when the offender was seen to be speeding on the Pacific Highway between Grafton and Woolgoolga.
131. In 2008, **Christine Patterson** and her teenage daughter **Tina** were killed when a stolen car which had been pursued by police ran into their vehicle head-on in Windsor. The pursuit had been terminated but the driver of the stolen car continued as if he was still being pursued until the collision.
132. In 2009, **Craig Wade** was pursued when his manner of driving attracted police attention. He was chased for 4 kilometres near Wilberforce before he lost control of his car and ran into a tree, dying as a result. **Lucas O'Connor** was an 18 year-old passenger in a stolen vehicle that crashed during a high-speed pursuit in Nowra. **Skye Sassine**, whose name is given to "Skye's Law", was a toddler who was killed when a stolen car pursued by police ran into her parents' car in Ingleburn. The driver had committed serious offences including armed robberies and was pursued for about 15 minutes before the crash. **Graham Johnson** was a teenage passenger in a car driven by another Queensland young man into NSW. The driver attracted police attention by apparently tail-gating another vehicle. Four people were in the car. The pursuit on the New England Highway near Tenterfield lasted about 10 minutes.
133. In 2010, **Lance Johnson**, another teenage driver, was pursued near Coonamble at high-speed until he lost control of his vehicle. He died and his passenger suffered serious injuries. The chase had started because police noticed that his car did not have a windscreen and sought to stop him to deal with that.
134. These cases raise the question whether "the gravity and seriousness of the circumstances" *required* such action when the original offences were apparently less dangerous than the pursuits themselves.

### *Pursuing drink-drivers*

135. In the vast majority of cases in which data were available, the AIC found across Australia that drugs or alcohol or both were significant contributory factors in a fatal outcome of a pursuit. The AIC concluded that “almost nine in every ten (88%) alleged offenders operating the vehicle pursued and who died as a result, had consumed alcohol, drugs or both prior to the incident.”<sup>62</sup>
136. In another study by the AIC it was found that 74 per cent of person detained in custody as a result of high-speed pursuits had been under the influence of drugs or alcohol or both at the time.<sup>63</sup> It is probably reasonable to infer that a large proportion of persons operating vehicles that get away as a result of a high-speed pursuit being terminated are also under the influence of drugs and alcohol.
137. Given these data, it is perhaps unsurprising that a majority of high-speed pursuits (56 per cent) were found by the AIC to take place at night between the hours of 8pm and 4am. Recreational drugs (including alcohol) are probably consumed more frequently at night and traffic densities are lower at night, creating more opportunities for attempts to flee police.<sup>64</sup>
138. The fact that a large number of pursuits involve persons who are affected by drugs or alcohol demonstrates one of the complexities of formulating appropriate pursuit policies. On the one hand, such drivers clearly pose an increased risk to themselves and other members of the community. Ideally, they ought be stopped and taken off the roads. On the other hand, *because* they are affected by drugs or alcohol, such drivers have impaired judgment and driving skills, are likely to be fearful of police, are more likely to be impulsive, are more likely to take risks they would not otherwise and, ultimately, to lose control of their vehicles during a pursuit, than a sober driver.
139. This raises the question whether intoxicated or suspected intoxicated drivers should be pursued and, if so, in what circumstances.
140. Drink-driving is unquestionably a serious offence. The road toll has probably been reduced more by the introduction of RBT testing (and the associated public education campaigns) than by any other single measure. It is therefore argued by the NSWPF that a law enforcement strategy that permitted drivers to flee police conducting RBTs would undermine the effectiveness of RBT operations and thereby increase risk on the roads to an unacceptable degree.
141. The argument that restrictions on police pursuits of drink drivers would lead to an increase in deaths and injuries due to drink driving is, however, highly contestable. The Queensland experience does not bear out S/Sgt Dorrough’s prognostications that restrictions on police pursuits in respect of RBT stops will lead to widespread flouting of the law, increased casualties or loss of confidence in the police or law enforcement.

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<sup>62</sup>Ibid p. 6. International studies have found

<sup>63</sup> Ibid p. 6; see Adams k, Smith L & Hind N “Drug driving among police detainees in Australia” *Trends & Issues in Crime and Criminal Justice* no 357 Canberra: Australian Institute of Criminology.

<sup>64</sup> Ibid p. 7

142. In 2008, following a two-year trial, the Queensland Police Service introduced a state-wide restrictive policy that prohibited pursuits in respect of evasion of Random Breath Tests; evasion of traffic stops; evasion of intercepts for driving under the influence of drugs or alcohol when a pursuit may increase the danger to the community posed by the driver; evasion of police by persons suspected of unlawfully taking and using motor vehicles (s 25 *Summary Offences Act 2005* [Qld]).
143. If, as argued by S/Sgt Dorrrough, a restrictive pursuit policy would lead to more road casualties, that trend should show up statistically over time as more people become aware of the restrictions. Yet it has not.
144. In 2007, 360 people died on Queensland roads, a rate of 8.61 per 100,000 head of population. In 2008, 327 people were killed on Queensland roads at a rate of 7.64 fatalities per 100,000 head of population.<sup>65</sup> In 2009, the number of fatal casualties was 331 but the rate per head of population dropped to 7.51 per 100,000, the lowest since 1952.<sup>66</sup> By 2012, the number of fatalities had fallen to 280 and the casualty rate to 6.13 per 100,000 people. In 2013, it decreased again to 271 fatalities at a rate of 5.82 per 100,000 head of population.<sup>67</sup>
145. While it is possible that the road toll may have decreased even further had a less restrictive or specific safe driving policy, like that of the NSWPF, operated in Queensland, there is no evidentiary basis for such a proposition.
146. Equally, while it cannot be contended that the Queensland policy has caused the downward trend in road fatalities, the Queensland Police Service does not claim that it does. Rather the QPS and the road safety authorities in Queensland have adopted a multi-faceted approach (as, it is acknowledged, have their NSW counterparts) only eliminating the one tactic of high-speed pursuits for some categories of driving offences or suspected offences. What is not in dispute is that no one has been killed in a police pursuit in Queensland since the introduction of the restrictive policy.<sup>68</sup>
147. High-speed pursuit of drivers affected by drugs or alcohol is highly problematic. As two American researchers put it, "Perhaps the only thing more dangerous than a drunk driver on the road is a drunk driver being pursued by the police!"<sup>69</sup>

### ***Speeding, unauthorised drivers and "minor offences"***

148. The NSWPF report argued that speeding is not a "minor offence" as it is implicated in about 40 per cent of road deaths in NSW.<sup>70</sup> More generally, it questioned the concept or definition of "minor offence".
149. More specifically, the report observed that unauthorised drivers are over-

<sup>65</sup> Queensland Transport, *2008 Queensland Road Toll in Review* Brisbane, 2009.

<sup>66</sup> Queensland Transport, *2009 Queensland Road Toll in Review* Brisbane, 2010.

<sup>67</sup> Queensland Transport and Main Roads *Queensland Road Crash Weekly Report No 831*, Brisbane 2014 p 4.

<sup>68</sup> Murray, D "Police Commissioner Ian Stewart says ban on high-speed police pursuits saves lives" *Courier-Mail* 28 December 2013 <http://www.couriermail.com.au/news/queensland/police-commissioner-ian-stewart-says-ban-on-highspeed-police-pursuits-saves-lives/story-fnihsrf2-1226790926248>

<sup>69</sup> Alpert, GP & Madden, T "Police pursuits: an empirical analysis of critical decisions" *American Journal of Police* (1994) Vol 13, No 4, 23 at 43.

<sup>70</sup> NSWPF report, pp. 7 – 8 (Exhibit 19).

represented in fatal accidents.<sup>71</sup> It also noted that a 2010 study by the Monash University Accident Research Centre had found that there is a positive relationship between anti-social or criminal behaviour and risky driving (including crashes).<sup>72</sup>

150. I agree that unauthorised drivers ought be apprehended and put off the roads. They are more dangerous than other drivers. The question is how this is to be done.
151. A person who is a risk-taker at the best of times, and who generally or frequently behaves in a self-centred, anti-social fashion, may act in an even more risky and anti-social fashion if pursued by police at higher speed than he (or she) would normally drive. Apprehension of such persons by means of high-speed pursuits increases the risk that unauthorised drivers will be involved in fatal crashes and that innocent third parties will be killed or injured. It follows that alternative means of apprehension of these offenders ought be preferred.
152. In Mr Raj's case, for example, had the police been able to identify the registration number of the motorcycle correctly, a demand could have been made upon the owner to identify the rider who could then have been prosecuted for traffic offences and under "Skye's Law" (s 51B *Crimes Act 1900*) for his offence of failing to stop once the pursuit began. The bike was not stolen. There is no reason to believe that Mr Kwok would have shielded Mr Raj.

### ***Stolen vehicles***

153. As we have noted, about 15 per cent of pursuits in NSW involve stolen vehicles<sup>73</sup>. S/Sgt Dorrough gave evidence that persons driving stolen vehicles usually come under notice for a traffic offence and that many have committed other criminal offences.
154. Anecdotal evidence suggests that people who steal motor vehicles (other than for profit) are often young male unauthorised drivers who tend to be risk-takers and to be significantly over-represented in traffic crash statistics.
155. All other things being equal, they should be apprehended. The difficulty, of course, is that all other things are not necessarily equal. As discussed above, apprehension of such persons by means of high-speed pursuits increases the risk that they will be involved in fatal crashes and that innocent third parties will be killed or injured.

### ***Other possible restrictions on high-speed pursuits***

156. The NSWPF also opposed other restrictions such as suspending pursuits on approaching school zones or known "traffic black spots" and placing upper limits on pursuit speeds (or times allowed for pursuits). It appears to have paid little regard to the experience in other states and internationally. If there are good reasons for continuing pursuits through operating school zones or "traffic black spots" it was not produced in the report.

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<sup>71</sup> NSWPF report, p. 9 (Exhibit 19).

<sup>72</sup> Brace, C; Scully, M; Clark, B and Oxley, J "The relationship between crime and road safety" Report No 284, Melbourne, 2010 at p36.

<sup>73</sup> This includes "Take and drive" offences in which offenders do not intend to permanently deprive the owners of the vehicles: s 154A *Crimes Act 1900*

### ***The problems of police discretion***

157. The NSWPF resisted any suggestion that police discretion to commence or maintain a pursuit be curtailed. As I noted at [53], the report is premised on the false assumption that a more restrictive policy would result in the NSWPF being “unable to enforce the law”.
158. It seems telling that the NSWPF’s first response to the question was to lay such emphasis on enforceability of the law rather than on harm minimisation or risk assessment and management, and to represent a more restrictive policy as preventing police from enforcing the law.
159. After acknowledging that “a balance is necessary”, S/Sgt Dorrrough’s evidence was not helpful in assessing what factors should be placed in the balance to determine whether the ultimate object – public safety on the roads – is enhanced or jeopardised by pursuits. The NSWPF position is that pursuits can be safely managed through application of the SDP (in its current form).
160. In the context of an argument that (a) “a balance is necessary” and (b) that any more restrictive pursuit policy will “prevent police from enforcing the law”, it is difficult to understand how the NSWPF interprets the concept of “last resort”. Yet the principle that pursuit is a last resort is meant to guide officers under pressure and with only a very short time in which make the decision. In my view, because of its inherent ambiguities it is more likely to confuse. Or would, if attention was actually paid to it.
161. The NSWPF went on to dismiss any suggestion that the discretion to commence or maintain a pursuit should be confined to cases in which public safety is in “immediate danger”. Among other things, its report stated:
- Arbitrary prevention of the activity [police pursuits] by placing unsustainable provisions in favour of offenders to the detriment of the ability of police to be able to enforce the law is not in the community interest....
- It would serve to undermine road safety and public perceptions of public safety and enforcement....
- Not to pursue unless there is immediate danger unless someone is apprehended is impractical. Such instruction or direction does not offer any explanation as to how police will be aware that a driver has committed offences where a determination to engage in a pursuit can be made if necessary. It should be noted that violation of road laws may pose an immediate danger to the safety of others should the driver not be apprehended.
- If unable to pursue unless there is an immediate danger if not apprehended eventually the number of drivers who engage in a pursuit or flee from police when directed to stop has the potential to increase significantly.
- Community expectations are police to enforce the law and be able to stop all traffic offenders, not just those who may be assessed as an immediate danger to the safety of others unless immediately apprehended....
- This proposal may undermine the community’s reasonable expectations that the law is enforced and applied equitably to the entire population.<sup>74</sup>
162. These arguments – which when broken down place emphasis almost entirely on law

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<sup>74</sup> NSWPF report, pp. 5 – 6 (Exhibit 19).



enforcement rather than risk or harm minimisation – do not, in fact, hold water for a number of reasons.

163. First, by placing the emphasis on law enforcement and allowing police officers to make the pursuit decision based primarily on that criterion, they give little weight to the inherent dangers and risks of police pursuits.
164. Second, they do not address the problem of weighing the risk factors and conducting a cost-benefit analysis in a short space of time under pressure.
165. Third, they are not based on any evidence produced from NSWPF sources or other research. They are mainly assertions rather than proven facts. Indeed, some of the research evidence tends to contradict some of these claims. For example, an American study suggests that there is little or no increase in the number of suspects who flee police when restrictive pursuit policies are introduced.<sup>75</sup>
166. In fairness, there is some evidence of an increase in the number of attempts at evading police in Queensland since a restrictive pursuit policy was introduced.<sup>76</sup>
167. Fourth, the NSWPF's arguments imply that placing any further restrictions on the current policy would significantly undermine the ability of the Police Force to enforce road laws, and hence decrease safety on the roads, because the potential for pursuit would no longer act as a deterrent. Although common sense might suggest this, there is little evidence one way or the other that pursuits act as a deterrent.
168. In fact, the overwhelming majority of drivers directed to stop by police do so.<sup>77</sup> It is reasonable to infer that most drivers who do so are respectful of police authority and conscious of the dangers to themselves and others if they flee from police in their cars. Even if they have broken traffic laws, they will generally stop. If this interpretation of their behaviour is correct, directions to stop are, to a large extent, self-enforced. While fear of pursuit may have some deterrent effect, common sense suggests that self-preservation and respect for authority probably has the greater effect.
169. Traffic law enforcement and road safety measures, such as Random Breath Tests, red light and speed cameras, traffic-quietening measures, motorist education, reduction of drink-drive limits for inexperienced drivers, stringent court and administrative penalties and police presence are far more likely to have contributed to the massive improvement in road safety that has been achieved over the past 30 years than pursuit of suspected offenders. And, of course, the road toll has also been significantly reduced by improvements to roads and motor vehicles themselves. It may also have been reduced to a small degree by the ageing of the

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<sup>75</sup> Alpert, G "Police pursuits: policies and training" National Institute of Justice Research in Brief, May 1997, Department of Justice: Washington DC p4; see also Crime and Misconduct Commission "Police Pursuits", Brisbane (2003) p4-5.

<sup>76</sup> <http://au.news.yahoo.com/qld/a/12696200/no-pursuit-policy-lets-crims-go/>

<sup>77</sup> Collins, L *Police Pursuits Literature Review: Submission to the Joint Review on Police Pursuits in the ACT* Canberra (2007) p5 [Appendix C Cameron, A Independent Review of the 'AFP Urgent Duty Driving and Police Pursuit Guideline Review 2007' Canberra (2007).]

population.<sup>78</sup> The argument that restricting police pursuits will lead to anarchy and mayhem on the roads is simply fanciful.

170. Some evidence suggests that a number of drivers who flee police and thus trigger pursuits are recidivists for whom pursuits are not a deterrent all.<sup>79</sup> Some may even be “thrill-seekers” who, when the opportunity presents itself, may spontaneously throw out a deliberate challenge to police.<sup>80</sup>
171. The young men who flee police and are involved in fatal collisions are, very frequently, affected by alcohol or drugs or both. The AIC report found that between 2000 and 2011, 80 per cent of the persons killed in a fatal pursuit had consumed drugs or alcohol or both. Of offending drivers who were killed, 88 per cent were affected by drugs or alcohol or both.<sup>81</sup> Young men are more prone than others to engage in risk-taking behaviour and those disinhibited by drugs or alcohol are more likely than their sober peers to do so. Pursuit may hold little terror for these people and may in fact be exactly what they are looking for.
172. On the other hand, some American research (with which my own anecdotal experience as a magistrate in the NSW Local Court is consistent) shows that another category of relevant offender is the individual with no significant criminal or traffic record who seeks to evade police because he knows that, if caught, he will face the humiliation of being arrested, charged and losing his licence on a serious drink-driving charge.<sup>82</sup> The independent review of the Australian Federal Police guidelines for pursuits concluded that “evade police” legislation does not deter “if only because the decision to flee is instinctive”.<sup>83</sup> Such offenders make these instinctive if misguided decisions.
173. Whether there is a more general, but unquantifiable, deterrent effect as asserted by the NSWPF is therefore somewhat dubious.

### ***Community expectations***

174. The NSWPF report laid great emphasis on the need to maintain public confidence in “equitable” law enforcement, the need to apprehend offenders and the need to prevent emboldening offenders, causing levels of crime (or perceived levels of crime) to increase in the community.
175. The claims made in terms of community expectations about law enforcement are tendentious. I do not doubt that the community has a *general* expectation that the

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<sup>78</sup> In 1982, men aged 20-24 made up 4.41% of the NSW population. In 2011, that cohort had reduced to 3.52% of the NSW population: Australian Bureau of Statistics “Population by Age & Sex – Regions of Australia 3235.0 (1982 Table 11; 2011 Table 1).

<sup>79</sup> Office of the NZ Commissioner of Police “Pursuits: the case for change” Report to the Commissioner of Police, Wellington (2003) p10; see also Crime and Misconduct Commission (Qld) *An Alternative to Pursuit: A review of the evade police provisions* Brisbane (2011) p16-17.

<sup>80</sup> <http://www.couriermail.com.au/news/queensland/trivial-pursuit-young-crim-taunts-police-over-no-chase-policy/story-e6freoof-1226517748010>

<sup>81</sup> “Motor vehicle pursuit-related fatalities in Australia 2000-11” *Trends & Issues in Crime and Criminal Justice* No 452, Canberra (2013) pp5-6.

<sup>82</sup> Dunham, R et al “High-speed pursuit – the offenders’ perspective” *Criminal Justice and Behaviour* (1998) Vol 25, No 1: 30-45 at iv. [These offenders are almost invariably male, hence the singular pronoun.]

<sup>83</sup> Cameron, A. *Independent Review of ‘AFP Urgent Duty Driving and Police Pursuit Guideline Review 2007’* Canberra (2007) pp2-3.

police will enforce the law and do so “equitably”. The question with which we are engaged, however, is at what cost? This is not addressed by the NSWPF.

176. American studies show that the public is cautious about endorsing police pursuits. One study concluded:

Eight previous studies on the attitudes held by the public and police officers concerning pursuit driving indicate that pursuit driving is a controversial tactic that is viewed differently by various groups or samples. Previous research showed that officers resented having their discretion reduced or controlled; policies were not understood; training was not received or remembered; and officers were drawn to the “heat of the chase.” The little that has been learned about public attitudes toward pursuit driving indicates that citizens view pursuit cautiously and offer only limited support. The current study examined attitudes toward police pursuit held by citizens in Aiken County, South Carolina; Omaha, Nebraska; and Baltimore, Maryland.

The survey instrument presented pursuit scenarios by creating categories that corresponded to the existing empirical information regarding influences on officers' decision to engage in a pursuit. Subjects were asked to assume that the police had initiated a traffic or felony stop and that the suspect refused to pull over and actively attempted to flee and avoid apprehension. Subjects were asked to respond about whether or not a police pursuit should be initiated under the various scenarios.

Among all the jurisdictions surveyed, respondents tended to base the pursuit decision on the seriousness of the offense at issue. **Support for pursuits was strong and criticism was minimal, if it existed at all, when a police officer was shot or a felony committed. Support was minimal, especially under high-risk conditions, when a traffic violation was involved. Support for pursuit also decreased when information about the dangers of pursuit was presented. The findings thus suggest that an informed public is less likely to accept the necessity of police pursuit for less serious offenses.**<sup>84</sup> (Emphasis added).

177. In Australia, anecdotal evidence suggests that fatal police pursuits result in considerable disquiet in the community.<sup>85</sup> This was acknowledged by the Victoria Police in a review of pursuits in that State.<sup>86</sup> If the general public were aware that about one-third of the fatal casualties of police pursuits were innocent victims, rather than, for example, “hoons”, the degree of disquiet would be likely to rise considerably. An *informed* public would probably expect that the social costs of law enforcement would be at least proportionate to the harm or potential harm prevented or sought to be prevented by police.

### ***NSWPF practice compared with other states***

178. Although the AIC report noted that it was difficult to compare jurisdictions because

<sup>84</sup> MacDonald, J & Alpert, G “Public Attitudes Toward Police Pursuit Driving: What Do Studies on Attitudes Toward Police Pursuit Reveal?” in Wilson R. Palacios, Paul F. Cromwell, et al eds *Crime & Justice in America: Present Realities and Future Prospects*, 2nd ed. Prentice Hall, Upper Saddle River, New Jersey (2002) pp 170-182.

<sup>85</sup> See, for example, Anna Patty “Police car chases have led to a ‘terrible toll’ of 15 deaths” *Sydney Morning Herald* 6 April 2012; Debra Jopson “Police drivers sneer at the rules” SMH 5 October 2005; “Police get green light on high-speed, high-risk chases” *Herald-Sun* 12 May 2012; “All pumped up” SMH 13 November 2004; “Police pursuit protocols to be scrutinised” ABC News 4 January 2013; “Deadly trend casts cloud over police pursuits” 17 May 2012; James Walker “Coroner warns cops on pursuits” *The Australian* 1 April 2012; “Calls for review of WA pursuit policy” *The Australian* 13 April 2012; “Shattered husband’s tribute to death-chase mum Sharon D’Ercole” *The Australian* 25 April 2012; Larry Copeland “Deaths lead police to question high-speed chase policies” USA Today 23 April 2010.

<sup>86</sup> Victoria Police Inspectorate Review 20/2011 “Evaluation of Pursuits: Final Report”, Melbourne (2011) p4.

of differences in the ways statistics are collected, relying on data supplied by individual Australian police forces, it disclosed that police pursuits are conducted in NSW far more commonly than in other states<sup>87</sup> but also that the fatal casualty rate in NSW in recent years has been about half the national average.<sup>88</sup>

179. The differences are not explained by population nor by numbers of registered vehicles. A comparison of basic population data of the three largest states makes this clear. In 2011, the population number of Victoria was about 76.9 per cent of the NSW population number. The population of Queensland was about 62.2 per cent of that of NSW.<sup>89</sup> In the same year, Victoria had about 88 per cent of the number of vehicles registered in NSW and Queensland about 68 per cent of the NSW number.<sup>90</sup> This suggests that NSW police policy and practice differs considerably from those of Victoria and Queensland.
180. Although this court does not have the research resources to draw definitive conclusions from these data, they appear to show that the NSWPF is more prone to commence pursuits than either the Victoria or Queensland Police forces but also that the NSWPF may, paradoxically, also be more inclined to terminate pursuits at an earlier stage than the Victoria or Queensland Police forces are once those forces commence a pursuit.
181. The major distinction, however, is that the NSWPF is now an outlier among Australian police forces in its resistance to more restrictive and safer pursuit policies and its defensiveness of its own policy. In NSW, there appears to be little introspection about the problems of casualties in high-speed pursuits or even of “collateral damage” occasioned in the course of high-speed pursuits. Almost all other Australian police forces have been far more open to reconsidering their pursuit policies than the NSWPF.

## **9. What can we learn from this incident?**

### ***(i) Hamish Raj's death was probably avoidable***

182. In my opinion, at least some of the casualties suffered during police pursuits in NSW have been avoidable. Hamish Raj is probably one of them.
183. The pursuit fits what might be regarded as the classic pattern of fatal pursuits described by the academic studies. Mr Raj was certainly not a “hoon” but he was a young male, probably affected by drugs and alcohol, who failed to stop for police late at night and who then refused to stop despite the fact that the pursuit continued for several kilometres and some minutes.

<sup>87</sup> In 2011, 1781 pursuits were conducted in NSW whereas in Victoria there were only 721, in Queensland 286, in WA 535, SA 616, the NT 161, the ACT 73 and Tasmania 2.

<sup>88</sup> The national fatal casualty rate between 2004 and 2011 was generally between 2.1 and 2.8 deaths per 1000 pursuits. (It rose to above 4 in 2006 and 2009.) In NSW, the average fatal casualty rate between 2004 and 2011 varied between 1.8 and peaked at 3.3 but from 2008 to 2011 it only exceeded 2 in 2009.

<sup>89</sup> Australian Bureau of Statistics 3101.0 Australian Demographic Statistics, Dec 2011 <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/81C5AE743DDCF8F0CA257A850013DF4C?opendocument>

<sup>90</sup> Australian Bureau of Statistics 9309.0 - Motor Vehicle Census, Australia, 31 Jan 2011 <http://www.abs.gov.au/ausstats/abs@.nsf/ProductsbyReleaseDate/DB874793F9B4083FCA257A61001705EB?OpenDocument>

184. In my findings in the inquest into the death of Graham Johnson<sup>91</sup>, a passenger in a car pursued by police for several kilometres in the country, I remarked:

Although most pursuits end without anyone being injured, all high-speed pursuits are inherently risky and it is entirely unpredictable which ones will end fatally or in serious injury. ***The risks of police pursuits are greater for the pursued than for the police pursuing them. This is probably because the police are generally more skilful and experienced but also because the police control the pursuit more than the driver of the vehicle being pursued unless, of course, that driver stops.*** All pursuits involve a fine judgment for the officers participating directly and those controlling or monitoring the pursuit. They must balance the potential risks with the need to enforce the law. That balance may alter during the course of the pursuit as conditions change. Accident research has shown that for every fatal or serious accident, there are many more near misses and minor incidents.<sup>92</sup> The fact that most pursuits do not result in serious harm is not a cause for complacency because in many instances serious accidents have probably been avoided by luck rather than good management. (Emphasis added.)

185. If the mindset of the pursuing police is that of hunters “catching and killing their own”<sup>93</sup>, the corollary is that in high-speed pursuits the pursued drivers are “hunted prey”. While most drivers intercepted by police will react rationally and surrender, the small minority who are pursued are apparently more afraid of the certain consequences of being caught than of the uncertain risks of flight. If some pursuing police officers are affected by “red mist”<sup>94</sup>, the speed, danger and anxiety of the pursuit and risk of arrest must similarly diminish the suspect’s capacity to make a rational decision once the pursuit has begun in earnest.
186. It is therefore simplistic to argue that, because the pursued driver could simply stop, there is no causal link between the pursuit and a crash. This is to conflate cause with responsibility.
187. It is true that Hamish Raj could have stopped as directed by police before the accident but he did not. His fatal injuries were caused because he lost control of his motorcycle which happened because he was travelling at an excessive speed. He fled because he did not want to be caught but he accelerated to a very high speed (up to 50 or 60 kph higher than when he was first detected) because he was being pursued. But for the pursuit he would not have been travelling at that speed. This is not to transfer responsibility or blame to the police officers involved in pursuits but to recognise their linkage in the causal chain.
188. He was particularly vulnerable as he was on a high-powered motorcycle. This meant that he could reach very high speeds but, in a collision, had virtually no physical protection in a crash.
189. As the pursuit continued, it must have become increasingly obvious that unless he

<sup>91</sup> State Coroners Court 15 June 2012 at [82].

<sup>92</sup> See, for example, the “Heinrich accident triangle” which posited that for every serious workplace accident there were 30 accidents of similar nature that caused minor injury and 300 near misses. The safety expert Herbert Heinrich argued that addressing the root causes of commonplace accidents that caused little or no harm would reduce the prevalence of the serious accidents.

<sup>93</sup> See footnote 90.

<sup>94</sup> “Red mist’ is a term used to describe a complex emotional situation affecting the state of mind of drivers who can become so focused on an objective or outside influence, their ability to accurately assess driving risk is severely reduced. The consequence ... is a significant increase in the risk of a collision.” Association of Chief Police Officers of England, Wales & Northern Ireland *The Management of Police Pursuits Guidance* London, 2009 [5.7]-[5.8].

was cut off by police ahead of him, or he crashed, he was determined to get away and was unlikely to stop voluntarily.

190. Nevertheless, if this incident had occurred on the streets of Brisbane rather than Sydney, it is unlikely that there would have been a pursuit or, if there had been, it would have been terminated as soon as it became clear that Hamish did not intend to stop. If there had been no pursuit after the attempt to intercept had failed it is possible that he may have had a fatal accident but it is more probable that he would have slowed down and got home safely.

**(ii) *The human and social costs of pursuits are too high***

191. Although the number of fatalities arising from pursuits is relatively low compared with the number of pursuits begun, the price paid in human pain and loss when they do end in fatalities and serious injuries is very high. In any given case, a fatality is an extremely disproportionate outcome compared with virtually any law enforcement objective that could be achieved by the apprehension of the fleeing driver.
192. It is impossible to place an accurate value on a human life. Nevertheless, for policy reasons, estimates of the economic value of a “statistical life” (a young adult with a life expectancy of at least 40 years) in Australia have been developed. The value of an Australian “statistical life” is the estimate of the value our society places on reducing the average number of deaths by one.<sup>95</sup> In 2008, one economist estimated the value of a life saved in Australia was \$3.5 million.<sup>96</sup> The premature loss of a young life is an enormous economic cost to our society as a whole.
193. But of course the principal enduring cost is the inestimable pain and sadness of those who mourn (and perhaps also the effects on police officers involved).<sup>97</sup>

**(iii) *“War is too important to be left to the generals”<sup>98</sup>***

194. The NSWPF itself determines its own pursuit policy and conducts pursuits according to it. The Police Force has made the determination of where the balance between competing public interests lies. Indeed, the NSWPF appears to have delegated pursuit policy development to the SPMC committee. With the greatest of respect to the committee, it appears to consist largely of police officers from a traffic and Highway Patrol background or orientation. Important as such operational experience is, it does not necessarily equip those officers to consider the complexities of the public policy issues police pursuits raise.
195. In my findings at the 2009 inquest into the death of Senior Constable Geordie

<sup>95</sup> See Department of Finance & Deregulation (Cth) *Best Practice Guidance Note: Value of Statistical Life* RSCH.040.001.0188 Canberra, November 2008

<sup>96</sup> Abelson, P “Establishing a monetary value for lives saved: issues and controversies”. Department of Finance & Deregulation (Cth) Working Papers in Cost-benefit analysis Canberra, 2008 p.21

<sup>97</sup> In *The State of NSW (NSW Police) v Nominal Defendant*, [2009] NSWCA 225 the victim was a NSW police officer badly injured both physically and psychologically as a result of a terrifying police pursuit in which he crashed. He left the NSWPF as a result.

<sup>98</sup> Georges Clemenceau, the Prime of France during the First World War, stated “War is too important to be left to the generals”. He meant that broad strategic questions concerning the national interest ought not be decided by those in charge of military operations.

Wilson<sup>99</sup>, a Highway Patrol officer killed on duty, I observed:

It is apparent that there is a cultural tension within the Highway Patrol between the organisational imperative to catch and deter dangerous motorists and the need to preserve the safety of its own officers. For example, one officer gave a statement to the Critical Incident Team that the 2007 SOPs adversely affected the Highway Patrol's 'core business' (namely, catching offending motorists).

This is not to say or imply that the Traffic Services Branch managers are cavalier in taking risks with the lives of their staff. Nor is it to suggest that Highway Patrol officers are 'cowboys'. There is a recognition within the service that Highway Patrol work is inherently dangerous at any location because of the unpredictability of the behaviour of some motorists, of machinery and motor vehicles and because of other factors such as hazardous objects falling onto roadways. ***In my opinion, however, there may be an overemphasis on, as one officer put it, 'catching and killing their own' targets to the detriment of the safety of police and road safety strategy in general.*** (Emphasis added.)

196. In one sense, Senior Constable Wilson was killed because, on a day-to-day basis, law enforcement had become an end in itself for the Highway Patrol. The Highway Patrol's outlook colours the way the NSWPF as a whole approaches the issue of high-speed pursuits.
197. In my opinion, while the Police Force must have operational control of traffic pursuits, so high are the potential costs associated with high-speed police pursuits, and so complex are the policy questions involved, that the key policy issues ought be decided at high governmental or parliamentary level, not at operational level.

***(iv) Incomplete data and evidence***

198. Current NSWPF policy and practice appears to be based on incomplete data and anecdotal evidence rather than on rigorous, independent analysis. Some of the arguments made for the current policy were not supported by evidence. Some of them were simply specious.
199. The Queensland and international experiences show that the best way of developing policy is to apply rigorous research methods followed by equally rigorous empirical testing. Even if the NSWPF is correct in its approach, which I doubt, it is unable to back up its claims with objective research produced from independent sources.

***(v) The SDP needs a root-and-branch review***

200. High-speed pursuits are a dangerous form of law enforcement. NSW police officers are not permitted to fire warning shots with their pistols. In fact, the use of pistols is discouraged and regarded as a true last resort. Other non-lethal technologies (batons, capicum sprays, Tasers) and techniques are employed in most situations.
201. Yet high-speed pursuits, which can be just as lethal and indiscriminate in effect as gunfire, are uncritically and tenaciously defended by the NSWPF. Gunfire is in practice a last resort but mere lip service appears to be given to the policy of employing high-speed pursuits as a "last resort", despite statements to that effect in the SDP.

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<sup>99</sup> State Coroners Court 25 August 2009 at [70]-[71].

202. Mahatma Gandhi was once asked what he thought of Western Civilisation: he said that he thought it was a good idea. The same comment might be made about the SDP and the use of high-speed pursuits as a law enforcement technique of last resort. If the policy means what it says, the NSWPF should put it into practice immediately.
203. Restrictive pursuit policies are aimed at harm-minimisation. They are calculated to create a margin for error for those who have made stupid decisions which jeopardise themselves and others.
204. US Supreme Court Justice Holmes once remarked (in a different context), in appropriate cases it may be "a less evil that some criminals should escape than that the Government should play an ignoble part"<sup>100</sup>. In the Australian High Court, Chief Justice Barwick once remarked (referring to illegally obtained evidence), "Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price."<sup>101</sup>
205. In the same vein, it is an unfortunate paradox that police operations intended to improve road safety can, in some cases, result in *increased* danger and death on the roads. Laws can be enforced at too high a price and the lesser evil in some cases is that offenders should be allowed to escape.
206. The NSWPF has a responsibility to exercise its dangerous powers in such a way as to "serve and protect" the community. To meet that responsibility, in my opinion, the SDP needs radical reassessment by objective, disinterested experts who will place the public interest above any vested interests. For reasons already stated, I believe that such a review ought not be conducted internally.

**(vi) *The issue is systemic not personal***

207. None of the police involved in the pursuit of Hamish Raj did anything other than what he perceived his duty to be on that night. There was no misconduct or intentional failure by individuals to apply the SDP. Without time for contemplation, in a situation unfolding quickly, they did what they believed they should do. I make no criticism of any individual officer who participated directly or indirectly in the pursuit.
208. The issue is the policy itself.

**10. Conclusion**

209. Ms Kanta has lost her only son. There is no measure of her grief and there is no remedy for it, even time. In the midst of the policy discussion and argument, this was the real story.
210. The issues Hamish Raj's death raises are multi-faceted and complex. They are not amendable to simple resolution because there are a number of competing public interests that must be weighed. In my opinion, the NSWPF Traffic Services Branch, because it is an operational organisation, is too close to the problems to be able to

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<sup>100</sup> *Olmstead v. United States* [1928] USSC 133; (1927) 277 US 438, at p 470 (72 Law Ed 944 at p 953

<sup>101</sup> *R v Ireland* (1970) 126 CLR at p 335.



analyse them objectively or develop policy that takes appropriate account of all the relevant interests. Given the human and social costs of police pursuits, a new approach must be considered.

211. I hope that the terrible loss Ms Kanta has suffered will galvanize serious reconsideration of the pursuit policy by government and by the NSWPF, and that her son's death will result in a reduction in casualties in high-speed police pursuits in NSW.

### **11. Findings: s 81 Coroners Act 2009**

212. I find that Hamish Raj died on 10 December 2011 at St George Hospital, Kogarah as a result of multiple injuries he received in a head-on collision between his motorcycle and a car on Rocky Point Rd, Kogarah during a high-speed police pursuit.

### **12. Recommendations: s 82 Coroners Act 2009**

#### ***To the Minister for Police***

1. I recommend that the NSWPF Safe Driving Policy (SDP) in respect of police pursuits be reviewed by a panel of independent experts appointed by the Minister in the light of Australian and international experience and research with a view to establishing best practice for the New South Wales Police Force.
2. I recommend that such a review address the following issues (at least):
  - What are the bases *in practice* on which pursuits are currently commenced or not commenced? Are they appropriate?
  - How should the factors relating to the commencement of pursuits be ranked or weighted?
  - In what way(s) can the decision-making process for officers on the streets be simplified?
  - Are pursuits *in practice* a traffic law enforcement tactic of "last resort"? If not, why not?
  - If so, what alternatives are routinely employed before pursuits are commenced? What practical alternatives are there to pursuits?
  - What are the costs and benefits of a policy mandating that a pursuit only be commenced or maintained when there is immediate danger to the safety of others if the suspect is not apprehended at the time?
  - What are the costs and benefits of the SDP specifying a list of offences which, absent other factors, would not justify the commencement of a high-speed pursuit?
  - What are the costs and benefits of pursuing vehicles driven by persons reasonably suspected of being under the influence of drugs or alcohol?

- What are the costs and benefits of pursuing suspected stolen vehicles?
- What are the costs and benefits of pursuing stolen vehicles believed to be carrying persons suspected of more serious crimes than stealing a motor vehicle or taking and driving a motor vehicle?
- What are the costs and benefits of introducing specific (possibly temporary) categories of situation in which pursuits ought be terminated or temporarily suspended (eg, if the suspect exceeds a particular speed; approaches an operational school zone; or approaches a known traffic “black spot” that would significantly increase the risk of a high-speed pursuit)?
- Because motorcyclists are more vulnerable to death or injury in pursuits than persons in other types of vehicles, should they be treated as a special case (ie, high-risk) under the SDP?
- In the NSWPF Safe Driving Police is risk to suspected offenders taken into account as a factor in the decisions whether to commence, continue or terminate a pursuit? If so, how is that manifested? If not, why is it not and ought it be?
- If it is taken into account in the SDP, is it also taken into account *in practice* by the NSWPF? If not, why not? If so, how does this manifest itself in the conduct of pursuits?
- When is a police vehicle “part of a convoy” in a pursuit? Is it part of a convoy if it is following two pursuing vehicles at above the speed limit in “urgent duty” mode? Are the SDP guidelines sufficiently clear on this point?
- How should the SDP be reviewed periodically? Internally only? Externally only? A combination of both methods?
- Are there are technological improvements to NSWPF vehicles that could enhance the safety of high-speed pursuits or be used to reduce the number of pursuits? Would introduction of such technologies be feasible, practicable and cost-effective?
- To what extent is s.39 of the *Law Enforcement (Powers and Responsibilities) Act* used as an alternative to pursuits for traffic offences? Ought it be used more often by the NSWPF as an alternative to pursuits?
- Are the penalties for s 39 offences sufficiently severe? Are prosecutors informing sentencing courts that s 39 is a measure intended to reduce the number of police pursuits?
- What categories of statistics kept by the NSWPF concerning pursuits? What additional statistics ought be recorded to enable an appropriate understanding of NSWPF pursuit practice, the behaviour of pursued drivers and accurate cost-benefit analysis of pursuit policy?
- How does the NSWPF's practice compare with that of other Australian and comparable international police forces?

- Ought a more restrictive SDP be introduced in NSW?
3. Whether or not such a review is undertaken, I recommend that the current SDP be amended to eliminate the ambiguities identified in these findings and to clarify the SDP generally.
  4. I recommend that, pending any review, the SDP make specific reference to the risk to the suspected offender (and any passengers in the suspect vehicle) as a major factor in the decision whether to commence, maintain or terminate a pursuit.
  5. I recommend that, pending any review, the vulnerability of motorcyclists also be considered a major factor in the pursuit decision-making process.
  6. I recommend that, pending any review, the SDP make specific reference to the high rate of casualties resulting from high-speed pursuits and that police training also emphasise this.
  7. I recommend that, pending any review, the wording of the principle in the SDP that police officers should engage in pursuits “when the gravity and seriousness of the circumstances *require* such action” to be amended to read “when the gravity and seriousness of the circumstances *indicate* such action”
  8. I recommend that, pending any review, Guideline 1 in the SDP be amended by the replacement of the phrase “the *need* to immediately apprehend the offender” with the phrase “the *desirability* of immediately apprehending the offender”.
  9. I recommend that, pending any review, that the NSWPF collect data identifying the specific type of offence or suspected offence that gave rise to the decision to commence a pursuit.
  10. I recommend that the NSWPF publish in its annual reports a full account of the number of pursuits commenced and terminated, the results of those pursuits, the reasons the pursuits were commenced and the number and types of casualties occasioned during the pursuits.
  11. I recommend that, pending any review, urgent consideration be given to restricting *high-speed* pursuits to cases in which a serious offence (other than fail to stop as directed) is reasonably suspected of having been committed by the pursued driver or a person in the pursued vehicle AND (b) that person is unidentified OR there is no immediate prospect of locating him or her unless apprehended urgently. (For the purpose of this recommendation, consideration ought be given to defining “high-speed pursuit” as a pursuit in which a speed of 45kph or more over the prevailing speed limit is reached during the course of the pursuit by either the pursued vehicle or the police pursuit vehicle(s).)
  13. In the alternative to the previous recommendation, I recommend that, pending any review, urgent consideration be given to prohibiting *high-speed* pursuits for traffic offences that do not under NSW law make the offending driver liable to having his or her licence suspended or to disqualification from holding a licence.
  12. I recommend that, pending any review, urgent consideration be given to placing a time-limit of two minutes on *high-speed* pursuits unless there are compelling

reasons to extend the pursuit for a further period.

13. In any event, I recommend that, pending any review, urgent consideration be given to placing a time-limit of two minutes on *high-speed* pursuits in urban areas and five minutes in rural and regional areas outside towns unless there are compelling reasons to extend the pursuit for a further period.

***To the Minister for Transport***

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

Magistrate Hugh Dillon  
Deputy State Coroner for NSW