



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 40/15

*I, Barry Paul King, Coroner, having investigated the death of **Johnathon James Ryder** with an inquest held on **20 October 2015** at the **Northam Courthouse** and on **26 October 2015** and **2 November 2015** at the **Perth Coroner's Court**, find that the identity of the deceased person was **Johnathon James Ryder** and that death occurred on **2 November 2012** on **Stirling Street in Northam** from **head injury** in the following circumstances:*

Counsel Appearing:

Ms K E Ellson assisting the Coroner
Ms R R Joseph (Allens) appearing on behalf of the deceased's family
Mr M A Holgate (WA Police Service) appearing on behalf of the Commissioner of Police, Sergeant C G Wride, Constable S R Gamble and Constable D A Stewart

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INTRODUCTION

1. Johnathon James Ryder (**the deceased**) died on Stirling Street in Northam from injuries he sustained when a car in which he was a passenger crashed into a power pole while being pursued by police officers in an unmarked police car.
2. Under s 3 of the *Coroners Act 1996* (**the Act**) the term ‘reportable death’ is defined to include a Western Australian death that appears to have been unexpected, unnatural or violent or have resulted, directly or indirectly, from injury. The deceased’s death was therefore a ‘reportable death’ under the Act.
3. Under s 19 of the Act, a coroner has jurisdiction to investigate a death if it appears that the death is or may be a reportable death.
4. Section 22(1)(b) of the Act requires a coroner who has jurisdiction to investigate a death to hold an inquest if the death appears to be a Western Australian death and it appears that the death was caused, or contributed to, by any action of a member of the Police Force.
5. As it appeared likely that the crash would not have occurred had the pursuit by police not taken place, it was at least arguable that the police officers involved in the pursuit contributed to the death. An inquest into the death of the deceased was mandatory under the Act.
6. I held an inquest into the deceased’s death on 20 October 2015, 26 October 2015 and 2 November 2015.
7. One of the primary purposes of the inquest was to conduct an independent review of the actions of the relevant police officers.

8. The documentary evidence adduced at the inquest comprised reports and statements compiled by officers of the Internal Affairs Unit and the Major Crash Investigation Section of the Western Australia Police.¹
9. Detective-Sergeant David Haas provided oral evidence relating to a detailed report he had prepared while he was attached to the Internal Affairs Unit.²
10. Eye-witnesses provided oral evidence and marked maps of the road layout where the pursuit took place to indicate their recollection of the places at which events occurred.³
11. Due to the effects of the passage of time on witnesses' memories, there were often inconsistencies between witnesses' oral testimony and the contents of their statements provided closer to the date of death. Where such inconsistencies existed, I relied on the earlier statements.
12. Following the taking of evidence, on 2 November 2015 counsel provided oral submissions, for which I am grateful.

THE DECEASED

8. The deceased was born in Subiaco on 22 May 1992, making him 20 years old at the time of his death. He was the eldest of five children.⁴
9. According to information held by Western Australian Police (**WAPOL**), the deceased graduated from Year 10 at Northam Senior High School in 2007 at the age

¹ Exhibit 1, Volumes 1 - 3; Exhibit 2

² ts 2-3 26/10/15; Exhibit 1, Volume 1, Tab 11

³ Exhibits 3 - 9

⁴ Exhibit 1, Volume 1, Tab 11

of 15 and then worked for a while as a ceramic moulder.⁵

10. The deceased was very family-oriented and spent much of his time at the family home in York. When the deceased's father died in about 2007 the deceased became somewhat of a father figure to his siblings, who all looked up to him. He was especially close to his mother and would stay in close contact with her if he was away from home. He often travelled to places such as Port Hedland and Bunbury in order to visit with family. He was a free spirit who spread good cheer.⁶
11. At the same time, it appears that the deceased was on a course of potential self-destruction. At the time of his death he was on concurrent 12-month intensive supervision orders for a series of aggravated burglary and stealing charges.⁷ He had spent a total of about eight weeks on remand at Hakea Prison before being sentenced on 22 October 2012. On 28 October 2012 he posted a message on Facebook indicating that he was getting back on drugs since 'ya only live once' and have to 'make da most of it'.⁸

THE AFTERNOON OF 2 NOVEMBER 2012

12. For some time leading up to 2 November 2012, the deceased was staying with his cousin Jody Ryder at her house on the corner of Hutt Street and Queen Street in north-western Northam. Also staying there were Jody Ryder's brother, Allan Ryder, and Allan Ryder's partner, Wilma Williams.⁹
13. Allan Ryder did not hold a driver's licence, but he owned a white SS Holden VT Commodore (**the**

⁵ Exhibit 1, Volume 1, Tab 11.6

⁶ Exhibit 1, Volume 2, Tab 2

⁷ Exhibit 1, Volume 1, Tab 11.6

⁸ Exhibit 1, Volume 1, Tab 11.6

⁹ Exhibit 1, Volume 2, Tab 6

Commodore) which he and Ms Williams drove.¹⁰ The Commodore had a V8 engine which made a distinctively loud noise.¹¹

14. While the details are not clear, it appears that the deceased spent much of the afternoon of 2 November 2012 in the company of Allan Ryder. They and Ms Williams drove to various places in Northam in the Commodore. They consumed alcohol during the course of the day.¹²
15. Late that afternoon the deceased was at Jody Ryder's house. Also there were Ms Ryder, Allan Ryder, Ms Williams, neighbour Schaefen Wood, and two of Allan Ryder's nephews. They were drinking alcohol at the back of the house.¹³
16. At some stage late in the afternoon, the deceased, Mr Wood and Allan Ryder's two nephews travelled in the Commodore to a house on Newcastle Road in order to drop the nephews off at a party. The deceased was sitting in the front passenger seat. Mr Wood was in the back seat.¹⁴
17. During that day, police officers at the Northam Police Station had received complaints about a car with a loud engine being driven recklessly around Newcastle Road and Forrest Street in north-western Northam.¹⁵
18. At about 6.30 pm two police constables, Dana Stewart and Christine Stephen, were patrolling Irishtown to the north of Northam in a marked police car, YN202.¹⁶
19. Constable Stewart was a relatively junior constable and Constable Stephen was a probationary constable who had just graduated from the police academy.

¹⁰ Exhibit 1, Volume 2, Tab 6

¹¹ Exhibit 1, Volume 2, Tab 6

¹² Exhibit 1, Volume 2, Tab 6

¹³ Exhibit 1, Volume 2, Tab 6

¹⁴ Exhibit 1, Volume 2, Tab 5

¹⁵ Exhibit 1, Volume 3, Tab 73, pp.9-10

¹⁶ Exhibit 1, Volume 3, Tab 73, p.9

They were directed by radio to patrol the Newcastle Road/Forrest Street area to attempt to locate the car the subject of the complaints. They drove to that area but did not see the car, so they returned to the police station.¹⁷

20. At the police station Constables Stewart and Stephen spoke to their supervisor, who provided a registration number of the subject car. The WAPOL computer system indicated that it was the Commodore and that the registered owner was Allan Ryder.¹⁸
21. Constable Stewart used the police computer system to ascertain that Allan Ryder's registered residential address was on Duke Street in Northam.¹⁹ She and Constable Stephen went in YN202 to that address but they did not see the Commodore there. Constable Stewart was driving.
22. Constables Stewart and Stephen went back to the Newcastle Road/Forrest Road area where they had patrolled before. They thought that they could hear the sound of a car's engine revving in the distance, so they parked on the corner of Perina Way and Suburban Road and opened their windows to listen.²⁰
23. In the meantime, two other police officers, Sergeant Christopher Wride and Constable Simon Gamble were at the Northam Police Station when another person called to complain of a vehicle being driven recklessly. The officers suspected the driver to be Allan Ryder, who did not have a driver's licence and who had alerts on the WAPOL computer system for assaulting police.²¹
24. Because of the alerts, Sergeant Wride was concerned about the safety of the two constables in YN202, as well as being concerned about stopping the driver of

¹⁷ Exhibit 1, Volume 3, Tab 73, pp.9-10

¹⁸ Exhibit 1, Volume 3, Tab 73, p.10

¹⁹ Exhibit 1, Volume 1, Tab 11 p.14

²⁰ Exhibit 1, Volume 3, Tab 73 p.10

²¹ ts 22-23 26/10/15 per Wride, C G

the Commodore from creating a danger to the public. He and Constable Gamble left the station in a new, unmarked police car, YN203, in order to assist the two constables. They drove to the Newcastle Road/Forrest Street area and parked on Hutt Street, facing Newcastle Road. Sergeant Wride was driving.²²

EVENTS LEADING UP TO DEATH

25. Meanwhile, Allan Ryder, the deceased and Mr Wood were on their way back to Jody Ryder's house without Allan Ryder's nephews.
26. As Sergeant Wride and Constable Gamble sat waiting in YN203, they could hear a car engine revving. They then saw the Commodore turn left from Newcastle Road onto Hutt Street and go past them. They did not see the registration number but recognised the car as being of the same type of vehicle as the car the subject of complaints, so Constable Gamble activated the YN203's internal flashing red and blue bar lights.²³
27. When Allan Ryder saw YN203 and the flashing bar lights, he panicked and accelerated away, turning right from Hutt Street into Queen Street past Jody Ryder's house.²⁴
28. Sergeant Wride executed a three-point turn and followed the Commodore. Constable Gamble activated YN203's siren. He did not place a portable roof mounted blue light on the roof of YN203 as required by the WA Police Emergency Driving Policy and Guidelines (**the Policy**).²⁵
29. At the end of Queen Street, Allan Ryder turned right on Stirling Street and then turned left onto Inkpen

²² ts 23 26/10/15 per Wride, C G

²³ Exhibit 1, Volume 3, Tab 11.10; Exhibit 1, Volume 3, Tab 72, p.37

²⁴ ts 49, 26/10/15 per Ryder, A A

²⁵ Exhibit 1, Volume 3, Tab 72, p.73

Street. He continued until Park Lane, then turned left and drove to the end of the street where it formed a T-intersection with Hutt Street. He turned left again and travelled southwest on Hutt Street. He then turned left onto Stirling Street, which initially goes up a short hill and then has a downwards gradient.²⁶ These streets were all within a built-up residential suburb with a posted speed limit of 50 kph.

30. Until the last turn into Stirling Street, Allan Ryder appeared to be in control of the Commodore.²⁷ He was travelling at speeds of over 100 kilometres an hour on the straight roads and slowed down at right angle corners to negotiate them without losing control.
31. In YN203, Sergeant Wride was keeping the Commodore in sight. Constable Gamble was in radio contact with the Police Operations Centre (**the POC**), where a commissioned officer or acting commissioned officer designated to be the Police Operations Centre Communications Controller (**the POCCC**) would eventually determine whether the pursuit could continue.²⁸
32. In YN202, Constables Stewart and Stephen had heard the sound of the Commodore's engine during the pursuit and could hear Constable Gamble's radio conversation with the POC. They drove onto Hutt Street and headed northeast towards the intersection with Stirling Street. They stopped at the stop sign at Stirling Street and saw the Commodore coming towards them on Hutt Street. The Commodore turned left at high speed into Stirling Street in front of them.²⁹

²⁶ Exhibit 2, Tab 4, p.39

²⁷ ts 46-47 26/10/15 per Gamble, S R; Exhibit 1, Tab 4, p.39

²⁸ Exhibit 1, Volume 1, Tab 22

²⁹ Exhibit 2, Tab 4, p.12

33. Sergeant Wride and Constable Gamble in YN203 were a few seconds behind the Commodore. Sergeant Wride had been driving at speeds up to 110 kph on Hutt Street without being able to gain on the Commodore.³⁰
34. As the Commodore entered Stirling Street, Allan Ryder caused it to accelerate sharply over the hill and then down towards the intersection with Forrest Road where there was a give way sign. Instead of stopping or slowing at the give way sign, Allan Ryder continued straight through the intersection at a high speed.³¹
35. The officers in YN203 turned onto Stirling Street, but by the time they had done so, the Commodore was out of sight over the hill. They continued at speeds of around 100 kph until they got closer to the intersection with Forrest Street, where they saw a blue flash and a lot of dust in the air, indicating that the Commodore had crashed into a power pole. They slowed considerably at the give way sign and then moved forward on Stirling Street until they could see the wreckage of the Commodore on the front of a property.³²
36. Constables Stewart and Stephen followed YN203 down Stirling Street at speeds up to about 90 kph. Constable Stewart was qualified to engage in Priority 2 emergency driving, which meant that, under the Policy she should not have exceeded the 50 kph speed limit by more than 20 kph. She and Constable Stephen stopped near the Forrest street intersection when they could not see any further because of dust in the air from the crash.³³
37. Sergeant David Magorian of the Major Crash Investigation Section provided a report that assists in

³⁰ Exhibit 1, Tab 4B

³¹ Exhibit 1, Volume 2, Tab 4, p.12

³² Exhibit 1, Volume 2, Tab 4, p.12

³³ Exhibit 1, Volume 3, Tab 73, p.11

establishing the circumstances of the crash, as follows.³⁴

38. As Stirling Street crossed Forrest Street, it levelled from a downward gradient to be in alignment with Forrest Street, and then re-commenced a downwards gradient.
39. When the Commodore entered the intersection at speeds between 134 and 169 kilometres an hour, it bottomed out, with the front underside of the car contacting the road surface. The Commodore then launched and became airborne. When it returned to the ground, the underside of the car again contacted the road surface. After travelling about 50 metres the Commodore started to rotate clockwise and then struck trees and a power pole before coming to rest on a small brick fence outside a house on the western side of the road.
40. The deceased sustained fatal head injuries in the crash and died at the scene. Allan Ryder and Mr Wood walked away from the Commodore without serious injuries.³⁵ Allan Ryder had a blood alcohol level of 0.247%.

CAUSE OF DEATH

41. Forensic pathologist Dr J White conducted a post mortem examination of the deceased on 6 November 2012 and found evident head injury with fracturing of the skull and heavy and congested lungs with aspiration. There was fine focal bruising to the back and front of the heart and the front of the liver. There were bony injuries to the left wrist, hand and right elbow. There was no evident natural disease.
42. Toxicological analysis showed a blood alcohol level of 0.216%. Common or other drugs were not detected.

³⁴ Exhibit 1, Volume 1, Tab 11.27

³⁵ Exhibit 1, Volume 1, Tab 11, p.4

43. Macroscopic neuropathology confirmed a traumatic brain injury.
44. Dr White formed the opinion, which I adopt as my finding, that the cause of death was head injury.³⁶

HOW DEATH OCCURRED

45. In the District Court at Perth on 4 April 2014 Allan Ryder pleaded guilty to a charge of dangerous driving occasioning the death of the deceased in circumstances of aggravation in that Allan Ryder was intoxicated, driving at high speeds and trying to escape from police at the time of the offence. He was convicted and sentenced by Fenbury DCJ to 11 years imprisonment and made eligible for parole.³⁷
46. Under s 53(2) of the Act, findings I make in this inquest must not be inconsistent with the result in the District Court proceedings.
47. I find that death occurred by way of unlawful homicide.

DID YN203 HIT THE COMMODORE AND CAUSE THE CRASH?

48. This question arose following allegations having been made that the crash occurred because YN203 had nudged the Commodore just before the crash, causing Allan Ryder to lose control.³⁸
49. I am satisfied for the following reasons that no such contact took place.
50. First, the evidence of independent eye witnesses established that there was a sizable gap between the

³⁶ Exhibit 1, Volume 1, Tab 11.26

³⁷ Exhibit 1, Volume 1, Tab 11.34

³⁸ Exhibit 1, Volume 1, Tab 11; Exhibit 2 Letter to Minister

Commodore and YN203 when the Commodore approached the intersection with Forrest Street. For example, a resident of Stirling Street, John Scriven, testified that he saw through his front window the two cars travelling between Kennedy Street and Forrest Street with seconds between them.³⁹ His evidence is consistent with that of other witnesses, including that of Mr Wood.⁴⁰

51. Second, vehicle investigator Paul Kaye and another vehicle investigator examined YN203 on 6 November 2012 and found no panel damage to that car.⁴¹
52. Third, there is no record of Allan Ryder having made an allegation that a police car had made contact with the Commodore just before the crash.
53. Finally, Allan Ryder pleaded guilty to dangerous driving causing the death of the deceased and, during the plea in mitigation of sentence, his counsel raised no issue of any such contact. In oral evidence, Allan Ryder said that he was not saying that the crash was the police officers' fault; otherwise, he said, he would have pleaded not guilty. He said that he took responsibility for what had happened.⁴²

THE EMERGENCY DRIVING POLICY

54. Emergency driving by police officers, including pursuit driving, is in my view rightly considered by WAPOL to be a critical subject.⁴³
55. It is an area of police operations that by its nature is fraught with difficulty for police since it is dangerous to police officers engaged in the pursuits, to the person or persons in the vehicles pursued, and to

³⁹ ts 66-67, 20/10/15 per Scriven, J A; Exhibit 9

⁴⁰ ts 13, 20/10/15 per Wood, S J

⁴¹ Exhibit 1, Volume 1, Tab 28

⁴² ts 63-64, 26/10/15

⁴³ Exhibit 1, Volume 1, Tab 11.37, p.1

other people who are unintentionally exposed to the risks.

56. It is also an activity in which police face public criticism if they engage in pursuits and if they do not.

57. The current procedures in the Policy provided to officers to govern emergency driving are based on the following precepts:⁴⁴

- a. emergency driving means driving in circumstances where an exemption to the normal statutory traffic requirements is considered necessary to attend any incident or to enforce any law;
- b. there are four categories of emergency driving:
 - i. Vehicle Intercepts;
 - ii. Priority 2 Driving;
 - iii. Priority 1 Driving (non pursuit); and
 - iv. Pursuit Emergency Driving;
- c. only drivers qualified for the relevant category may undertake emergency driving;
- d. only designated classes of vehicles may be used for the relevant category of emergency driving;
- e. drivers qualified for Priority 2 driving may not drive at a speed greater than 20 kph over the posted speed limit;
- f. emergency driving shall only be undertaken where
 - i. there is an imminent danger or threat to life;

⁴⁴ Exhibit 1, Volume 1, Tab 11.37

- ii. there is a statutory requirement to respond and circumstances require an expedient response;
 - iii. police officers are granted approval to engage in a pursuit of another vehicle; and
 - iv. the POC approves that it be undertaken;
 - g. police officers involved in emergency driving, including the driver, passenger, supervisor or POCCC, undertake a risk assessment before, during and after the emergency driving incident; and
 - h. where the risk assessment indicates that the risk of the incident cannot be effectively managed, the incident is to be terminated.
58. The crux of the risk assessment process is said to be ‘to determine an appropriate course of action that balances the necessity to immediately apprehend offenders against the degree of risk posed by not undertaking the ‘Emergency Driving’.⁴⁵ That process may make sense in relation to emergency driving for the purpose of, for example, arriving at an incident as soon as possible in order to preserve life, but it appears nonsensical in relation to a pursuit.
59. The Policy lists 16 factors that police officers are required to include in making a risk assessment. Those factors most relevantly include:⁴⁶
- a. the imminent danger or threat to the safety of any person;
 - b. the seriousness of the offence for which the occupants of the vehicle are sought;

⁴⁵ Exhibit 1, Volume 1, Tab 11.37, p.6

⁴⁶ Exhibit 1, Volume 1, Tab 11.37, pp.6-7

- c. the manner in which the vehicle is being driven;
- d. the ability to identify the driver of the vehicle;
- e. the locality and risks to other vehicular and pedestrian traffic;
- f. the level of risk the vehicle would pose if not stopped; and
- g. the availability of resources to implement an early and effective alternative strategy.

PURSUIT EMERGENCY DRIVING POLICY

60. Pursuit emergency driving is identified as the category of emergency driving where the driver of the vehicle being intercepted does not stop when called upon to do so. The Policy notes that such driving significantly increases the danger to all persons and that, if not conducted with due consideration to the risks, the likelihood of an incident resulting in tragic consequences is increased. In the Policy in bold font is the statement: **All instances of 'Pursuit Emergency Driving' places an onerous duty on police that weighs heavily in favour for prudence, restraint and the absolute commitment to the protection of life.**⁴⁷
61. The Policy provides specific conditions and restrictions on officers who commence a pursuit, including immediate communication with the POC and permission by the POCCC to continue with a pursuit. Instructions by the POCCC will typically take a few minutes.
62. In passing, I note that the pursuit that ended the deceased's life came to its tragic end about

⁴⁷ Exhibit 1, Volume 1, Tab 11.37, p.17

80 seconds after it began, before the POCCC had time to be properly apprised of the relevant circumstances in order to make an informed decision.⁴⁸

63. Conditions under the Policy for pursuit driving also include: a maximum speed of 140 kph unless otherwise approved by the POCCC, a minimum of two members in the pursuit vehicle in the absence of hands-free radio and the operation of warning devices unless the POCCC otherwise authorises.⁴⁹
64. The risk assessment process provided in the Policy for pursuit driving is all but identical with that applying to emergency driving in general; it has one more risk factor to consider.
65. The risk assessment process also includes the same balancing process which I identified above as nonsensical in this context. The process is said to be a balance of the necessity to immediately apprehend offenders against the degree of risk posed by not undertaking the emergency driving. To my mind the description of that process would make more sense in the context of pursuit driving if the word 'not' were omitted.
66. In any event, it was clear from Sergeant Wride's evidence that he understood, self-evidently correctly in my view, that the process involved a balancing of the risk of undertaking a pursuit against the risk of not undertaking it.
67. The Policy appears to be an attempt to meet the community's often conflicting expectations that police officers pursue perceived offenders, and that pursuits do not end in tragedy. The Policy does so primarily by limiting involvement in pursuit driving to suitably qualified drivers and by ensuring that those drivers

⁴⁸ Exhibit 1, Volume 1, Tab 11.21.003

⁴⁹ Exhibit 1, Volume 1, Tab 11.37, pp.17, 22

are supervised as soon as possible by detached, objective superior officers.

68. Until a POCCC becomes involved in an incident, the policy places an enormous decision-making burden on those drivers 'to ensure that their decisions and actions do not subject any party to a greater degree of danger than is acceptable in the circumstances'⁵⁰ by balancing the risks of continuing against the risks of terminating, and by carrying out such risk assessments while engaged in high-speed chases.
69. According to Mr Holgate, the Policy is soon to be replaced with a new emergency driving policy once the latter has been ratified by the WAPOL 'corporate board', but the new policy will consolidate the Policy and will not make any major philosophical changes.⁵¹

COMMENT ON THE ACTIONS OF THE POLICE OFFICERS

70. The actions of Sergeant Wride and Constable Gamble and of Constables Stewart and Stephen must be considered in the context of the Policy.
71. I am satisfied that Sergeant Wride was a qualified pursuit driver, that YN203 was a Class 1 vehicle as required and that there were two officers in the car. Constable Gamble initiated communication immediately with the POC and activated the interior bar lights and sirens. The external blue light was not activated, but that does not appear to have had a significant negative effect on the safety of the pursuit. YN203 did not exceed 140 kph at any time.
72. I am satisfied that Sergeant Wride and Constable Gamble both carried out ongoing risk assessments, which included taking into account that there were almost no pedestrians in sight and no traffic on the

⁵⁰ Exhibit 1, Volume 1, Tab 11.37, p.16

⁵¹ ts 32-33, 2/11/15

streets. They considered that the Commodore was travelling quickly but not exceptionally fast and that the driver was in control of his vehicle.⁵²

73. Sergeant Wride said that most of the time his maximum speed was 80 kph. He thought that the only time that he exceeded that speed would have been on the straight stretch on Hutt Street between Park Lane and Stirling Street before the last turn onto Stirling Street. He said that it was not uncommon for police vehicles to go through city streets in the Perth metro area at 100 kph where considered safe.⁵³ His view was that it would not have made any difference in this case if he had been going slower.⁵⁴
74. Sergeant Wride considered at the time that it was warranted to continue to pursue the Commodore in order to stop the reported reckless driving, which did not appear to be likely to stop. His expectation in pursuing the Commodore was that it would pull over or stop at a house. However, he said that if he could no longer see the Commodore after having gone over the hill on Stirling Street, he would have terminated the pursuit.⁵⁵
75. As to alternatives to the pursuit such as waiting at Allan Ryder's residence, Sergeant Wride said that Northam Police Station did not have sufficient resources to do so, and that the Commodore was active at the time. I note that, in any event, the address for Allan Ryder that Constable Stewart had obtained from the WAPOL computer system was incorrect, presumably because it was out of date. She and Constable Stephen had already checked that address without success.⁵⁶

⁵² ts 26-27, 26/10/15 per Wride, C G; Exhibit 1, Tab 4 p.45

⁵³ ts 34-35, 26/10/15 per Wride, C G

⁵⁴ ts 25, 26/10/15 per Wride, C G

⁵⁵ ts 27, 26/10/15 per Wride, C G

⁵⁶ Exhibit 1, Volume 1, Tab 73, p.10

76. As the pursuit progressed, Constable Gamble was maintaining radio contact with the POC as well as keeping a lookout for traffic and pedestrians.⁵⁷ He was not afraid for his safety and felt that Sergeant Wride's driving was calm and controlled.⁵⁸
77. Sergeant Wride impressed me as an honest, forthright witness. I note, too, that he had only ever been involved in two potential pursuits previously, but had terminated both of them because the vehicles he had been pursuing had been driving too dangerously.⁵⁹
78. As to the actions of Constables Stewart and Stephen, it seems clear on the evidence that they exceeded the posted speed limit by greater than 20 kph and that they failed to activate warning devices despite becoming part of the pursuit as back-up for YN203. There is no evidence to indicate that their actions had any bearing on the crash. However, that they breached the Policy by exceeding the speed requirement is consistent with common experience in that it is possible to disregard one's training and better judgement while affected by adrenaline.
79. Detective-Sergeant Hass was the investigator in the WAPOL Internal Investigations Unit who conducted an investigation into the involvement of the police officers in the deceased's death. He concluded that Sergeant Wride and Constable Gamble breached the Policy by not operating the portable blue light on the roof of YN203 and by not logging on to the WAPOL computer assisted dispatch system before leaving the police station.⁶⁰
80. Detective Sergeant Haas found that Constables Stewart and Stephen breached the Policy by not activating the warning devices in YN202 and by not

⁵⁷ Exhibit 1, Volume 3, Tab 72, p.29

⁵⁸ Exhibit 1, Volume 3, Tab 72, p.56

⁵⁹ Exhibit 1, Volume 2, Tab 4, p.6

⁶⁰ Exhibit 1, Volume 1, Tab 11

obtaining authorisation from the POC before engaging in emergency driving. YN202 had an automated vehicle locator (AVL) which recorded the speed of 91 kph on Stirling Street but, as there was no independent corroboration of the AVL, Detective Sergeant Haas did not find that they had exceeded the 20 kph cap over the posted speed limit.⁶¹

81. In his report Detective Sergeant Haas concluded that the officers acted lawfully and that Sergeant Wride and Constable Gamble were reasonable. He found that there was no evidence to indicate that Sergeant Wride was not taking reasonable care or that his driving was dangerous or reckless.⁶²
82. In oral evidence Detective Sergeant Haas said that in his view the officers in YN203 did not breach the Policy in such a way as to cause or contribute to the crash.⁶³
83. I indicated to Detective Sergeant Haas that, from a public safety perspective, I had concerns about the wisdom of a high-speed police pursuit in a built-up residential area with a posted speed limit of 50 kph. Detective Sergeant Haas said that, in his 26 years of experience, pursuits in such circumstances occur quite frequently and are not unusual or unreasonable.⁶⁴
84. My initial concerns in relation to the actions of the police officers were allayed to a large degree by the evidence of Sergeant Wride, Constable Gamble and Detective Sergeant Haas. The evidence supports Detective Sergeant's conclusion that the officers complied with the Policy and that their breaches of the Policy did not cause or contribute to the crash. However, I remain concerned that the Policy allows

⁶¹ Exhibit 1, Volume 1, Tab 11

⁶² Exhibit 1, Volume 1, Tab 11

⁶³ ts 6, 26/10/15 per Haas, D G

⁶⁴ ts 16, 26/10/15 per Haas, D G

for pursuits in residential areas, at least until the POCCC becomes available.

SUBMISSIONS

85. Counsel for the deceased's mother and grandfather, Ms Joseph, indicated that the family was not interested in finding someone to blame for the deceased's death. They accepted that Allan Ryder's conduct caused the death and they submitted that the evidence supported the proposition that the police officers involved complied with the Policy.⁶⁵
86. The deceased's family suggested three amendments to the Policy that, had they been in place, may not have saved the deceased's life, but which may save the lives of others caught up in a police pursuit:
 - a. the Policy should reflect that the balance to be made by police officers in the risk assessment process in relation to pursuits is one of the risks of not pursuing a suspect against the risk of pursuing. In this case, Ms Joseph submitted, the risk of pursuing Allan Ryder may have outweighed the risk of not pursuing him;
 - b. the Policy should provide that, where the risks of continuing a pursuit cannot be effectively managed, there should be a mandatory immediate termination of the pursuit; and
 - c. consideration should be given to varied speed limits of pursuit vehicles, so that in residential areas there should be a lower maximum speed.⁶⁶
87. As to the first suggested amendment, I agree that that Policy should properly reflect the risk assessment to be made. As noted above, in my view, the definition of 'Risk Assessment' in the Policy is

⁶⁵ ts 25, 2/11/15

⁶⁶ ts 25-28, 2/11/15

illogical in relation to pursuit driving. It should be changed. However, I have no doubt that the police officers pursuing the Commodore were making an ongoing assessment of the properly relevant risks.

88. I also agree with the submission that in this case, with the luxury of hindsight, the risk of continuing with the pursuit may have outweighed the risk of not continuing it, particularly because the area in which it took place was a built-up residential area and the risks of not continuing the pursuit were not known to be significant. However, that the risk of continuing the pursuit was significant did not become apparent until it was, effectively, too late.

89. Deputy State Coroner Vicker has addressed similar policy issues in a number of inquest findings. Most relevantly, in the finding in relation to the death of 11 year old Matthew Tjoe delivered on 24 October 2011,⁶⁷ her Honour used the concept of a balance between the known risk factors and the unknown risk factors of continuing with a police pursuit. Her Honour noted that the type of environment into which the target vehicle was proceeding (an area with high density use) did not warrant any continuation of a chase. Her Honour recommended that

‘the risk to the general community of excessive speeds of targeted vehicles, in precincts or areas exhibiting high density use should generally not warrant the commencement of a chase or intercept without a greater known risk, prior to authorisation’.

90. In response to Deputy State Coroner Vicker’s recommendation, the Court received a letter from the Minister for Police, who advised that following the death of Matthew Tjoe the Policy was implemented to replace the previous Urgent Driving policy.

⁶⁷ Ref No: 21/11

The Minister noted that the Policy provides at TR-7.4.3 that:

Wherever the risk assessment indicates that the risk of the 'Emergency Driving' incident cannot be effectively managed, the incident is to be terminated forthwith by the person making the assessment. (my emphasis)

91. The Policy still provides that same direction at TR-7.4.3 under the heading 'The Risk Assessment Process and Its Importance in Decision Making' but, as Ms Joseph pointed out in relation to the family's second proposed amendment, at TR-7.4.4.3 under the heading 'Pursuit Risk Assessments And Decision Making' the relevant direction replaces the words 'the incident is to be terminated forthwith by the person making the assessment' with: 'consideration must be given to the option of terminating the pursuit'. (my emphasis)
92. The reasoning for the difference between the directions in TR-7.4.3 and in TR-7.4.4.3 is not explained in the Policy. There is potential for confusion given that Pursuit Emergency Driving is a category of Emergency Driving to which TR-7.4.3 applies. I also note that the direction in TR-7.4.4.9.1 under the heading 'Conditions Giving Rise to Termination' appears consistent with TR-7.4.3 in that it includes the directions that a 'pursuit shall be terminated immediately when: (a) it exposes the public, police or offender(s) to unacceptable risk; or (b) the identified risks outweigh the need to achieve the objective of the pursuit'.
93. It could be strongly argued that maintaining an option to terminate a pursuit despite an inability to manage risk cannot be justified where the risk of not pursuing is not clear. The situation may be different depending on the known risk of not pursuing.

94. In my view, if WAPOL's proposed new emergency driving policy does not clarify the direction in TR-7.4.4.4.3, it should.
95. The deceased's family's third suggested amendment to the Policy would place on a pursuing officer a speed restriction that would be based on the posted speed limit in the area of the pursuit rather than being a maximum of 140 kph irrespective of the posted speed limit. I assume that the submission would accept that a maximum speed could be increased by the POCCC in appropriate circumstances.
96. If posted speed limits are lower on residential streets than they are on arterial roads for reasons which include public safety, it does seem logical for the Policy to reflect those differences by relating the maximum allowable speeds for officers engaged in emergency driving, including emergency pursuit driving, to the posted speed limits in the absence of an authorisation by a POCCC. Such an approach is already applied for priority 2 driving by limiting speeds to no more than 20 kph over the posted speed limit.⁶⁸
97. In the present case, Detective Sergeant Haas said that, when he drove around the same streets to do a reconstruction of the pursuit, there were kids in the street, there were people walking and there were some vehicles.⁶⁹ I find it difficult to see how risks of driving at 140 kph in such a built-up residential area with a posted speed limit of 50 kph can be effectively managed.
98. Support for this proposed amendment can be found in the *Road Traffic Act 1974 (the RTA)*. Under s60(1b) of the RTA, a person who drives a motor vehicle at a speed of 45 kph over the posted speed limit commits the offence of reckless driving and, if

⁶⁸ Exhibit 1, Volume 1, Tab 11.37

⁶⁹ ts 11 per Haas, D G

convicted, is liable to a fine, imprisonment and mandatory disqualification of driver's licence. Under s49AB of the RTA, driving a vehicle at more than 45 kph over the speed limit is a circumstance of aggregation in relation to other offences, including dangerous driving causing death. Under s79A of the RTA, if a police officer reasonably believes that a driver has committed an impounding offence, which includes reckless driving, the police officer must, unless impracticable, impound the vehicle within 28 days after the date of the offence. These provisions are consistent with the view that driving vehicles at speeds greatly in excess of posted speed limits is inherently dangerous.

99. Mr Holgate addressed the family's third suggested amendment by submitting that the approach taken by police officers on the road is a dynamic process involving a consideration of the time, place and circumstances, and that the process does not lend itself to a judicial or quasi-judicial legalistic approach. He said that the approach used by police officers affords the maximum flexibility to deal with whatever situation confronts them and that they could find it difficult to respond adequately to some situations if there were a highly prescriptive policy. He said that there could be a particular speed cap in a residential area for the safety of residents, but at different times of day and in different circumstances, different considerations might apply.⁷⁰

100. However, Mr Holgate did agree that from a public safety perspective there is a difference between a pursuit in a residential area and a pursuit on a main arterial road. He pointed out that police officers authorised for pursuit driving are highly trained and tend to be mature, so their first priority is their own personal safety and the safety of the police officers they are working with, so, as I understand his submission, they are likely to be safety conscious.

⁷⁰ ts 29

101. While I accept Mr Holgate's submission, it seems to me that a mature and highly trained police officer who bears 'an onerous duty to exercise prudence, restraint and the absolute commitment to the protection of life' would not be expected to exceed a posted speed limit in a residential area by 90 kph. If that is so, it is difficult to justify the current policy of a general 140 kph cap applying to 50 kph zones.
102. However, despite there being provisions of the Policy which in my view require amendment, there is no basis to conclude that the actions of the police officers under the Policy caused or contributed directly to the deceased's death. I therefore make no formal recommendation in relation to the Policy.

CONCLUSION

103. The deceased was a passenger in his older cousin's V8 Commodore when his cousin, who was driving while intoxicated with alcohol, failed to stop when called upon to do so by police officers in a police car. A pursuit lasting 80 seconds ended when the Commodore crashed into a suburban light pole, causing the deceased's senseless and tragic death.
104. In trying to carry out their duty to enforce the law and to protect the community, police officers must make quick decisions based on a balancing of the danger of not stopping a motorist who is a potential danger to the community, and the danger of exacerbating the situation by starting a pursuit.
105. I am satisfied that the police officers involved in the pursuit acted reasonably and in accordance with their training and WAPOL procedures governing emergency pursuit driving and that their actions did not cause or contribute to the deceased's death.

106. In my view, the existing procedures require amendment or replacement to remove inconsistencies. I urge WAPOL to reconsider the appropriateness of the 140 kph cap so far as it applies to built-up areas where high speed pursuits would pose a greater risk to the community than elsewhere.

107. I suggest that WAPOL take these suggestions into account in the course of finalising its proposed new emergency driving policy.

B P King
Coroner
14 January 2016