



OFFICE OF THE STATE CORONER

FINDING OF INQUEST

CITATION: **Inquest into the death of
Gordon John BELLAMY**

TITLE OF COURT: Coroner's Court

JURISDICTION: Emerald

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FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuits

REPRESENTATION:

Counsel Assisting: Mr Peter Johns

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Constable Julie Gardiner: Mr Calvin Gnech (QPU Solicitors)

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The *Coroners Act 2003* provides in s45 that when an inquest is held into a death in custody, the coroner's written findings must be given to the family of the person who died, each of the persons or organizations granted leave to appear at the inquest and to various officials with responsibility for the justice system including the Attorney-General and the Minister for Police, Corrective Services and Emergency Services. These are my findings in relation to the death of Gordon John Bellamy. They will be distributed in accordance with the requirements of the Act and posted on the website of the Office of the State Coroner.

Introduction

In the early hours of 20 December 2008, a day before his 35th birthday, Gordon Bellamy was killed when his motorcycle struck a roadside tree at high speed in his home town of Emerald. Seconds before the motorcycle had struck and injured a pedestrian and less than two minutes earlier Mr Bellamy's erratic driving had attracted the attention of police. They attempted to intercept him and, when he failed to adhere to their directions, the officers followed for a short distance as he rode off at high speed.

These findings:-

- establish the circumstances in which the fatal injuries were sustained;
- confirm the identity of the deceased person, the time, place and medical cause of his death; and
- consider whether the police officers involved acted in accordance with the Queensland Police Service (QPS) policies and procedures then in force.

As this is an inquest and not a criminal or civil trial, these findings will not seek to lay blame or suggest anyone has been guilty of a criminal offence or is civilly liable for the deaths. As the death occurred very shortly after events involving police and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

The investigation

The coronial investigation was conducted by officers from the QPS Ethical Standards Command (ESC) and a detailed report was prepared by Detective Inspector Rohweder.

Inspector Rohweder was notified within two hours of the incident and immediately flew to Emerald. Prior to his arrival local police had secured the incident scene and the relevant areas photographed and examined by a QPS scenes of crime officer. An officer from the Brisbane based Forensic Crash Unit accompanied the ESC officers to Emerald and examined the scene and compiled a report addressing the mechanics of the events as they unfolded.

Statements were taken from a number of civilian and all relevant police witnesses to the events. A record of interview was conducted with the injured pedestrian.

Both officers involved in the attempted interception were breath tested and supplied urine samples for further testing. Those officers were interviewed approximately 12 hours after the incident by Inspector Rohweder and the driver of the police vehicle participated in an on site walk-through re-enactment of the incident.

Unfortunately, neither the officers involved in the incident, nor their superiors, had regard to the QPS policy which requires that members directly involved in a fatal police related incident should be isolated from each other until they have provided a version of events to investigators.

In this case the two officers who had attempted to intercept Mr Bellamy collaborated in the preparation of a hand written account soon after the incident. I am satisfied they did not do this with the intention of colluding to concoct or conceal evidence. Indeed, it is possible to argue the recent, combined recollection of witnesses may result in a more accurate account being recorded. However, in police related incidents that are investigated by other police officers the maintenance of public confidence in the integrity of the process is imperative, as the QPS policy recognises. Notwithstanding the lapse in this case, I am satisfied the officers have striven to give a truthful and accurate account of what transpired.

A mechanical inspection was carried out on the police vehicle with a view to detecting any sign of it having had contact with another vehicle at the relevant time. An inspection of Mr Bellamy's motorcycle did not reveal any mechanical fault to which the accident could be attributed, though was of limited assistance given the extensive damage sustained in the collision.

A forensic analysis of Mr Bellamy's residence took place to assist with both the investigation into his motives and movements on the evening and with the identification of his body. Fingerprint analysis was later able to identify the deceased as Gordon John Bellamy.

An external autopsy examination of Mr Bellamy's body was conducted on 22 December 2008 and samples of blood and urine taken for toxicology testing.

As can be readily appreciated whenever a death is connected with police action it is essential the matter be thoroughly investigated to allay any suspicions that inappropriate action by the officers may have contributed to the death. It is also desirable that the general public be fully apprised of the circumstances of the death so they can be assured the actions of the officers has been appropriately scrutinised. The police officers involved also have a right to have an independent assessment made of their actions so there can in future be no suggestion there has been any "cover up".

I am satisfied all relevant sources of information have been accessed and that Inspector Rohweder has conducted a thorough investigation. While I do not necessarily agree with all of his conclusions, I am satisfied all evidence necessary for my findings was made available. I have already referred to the blemish concerning the failure of the officers to give an independent account before discussing the matter. It is fortunate the evidence from eye-witnesses allows me to confidently say that in this case there has been no “cover up”.

I have considered whether a s46 comment is warranted in relation to this aspect of the investigation but have concluded those responsible for managing such matters within QPS will determine whether any further action to reinforce the need for compliance with the policy is necessary.

The evidence

I turn now to the evidence. Of course I can not even summarise all of the information contained in the exhibits and transcript but I consider it appropriate to record in these reasons the evidence I believe is necessary to understand the findings I have made.

Social history

Gordon Bellamy is survived by his parents, his wife and two children. At the time of his death Mr Bellamy had worked his way into a supervisory role with his employer, Kestral Coal and was residing in Emerald having separated from his wife who retained custody of their children.

It is apparent the separation caused him considerable distress and evidence suggested a link between this, a marked increase in Mr Bellamy’s alcohol use and apparent episodes of severe depression in the year prior to his death.

Friends encouraged Mr Bellamy to seek help to address his depression. He was clearly well liked and regarded by many in the local community as evidenced by the concerns of many about his ongoing welfare. Sadly one of those who did most to guide Mr Bellamy in the right direction was one of the police officers first called to the scene of his death.

Mr Bellamy had a great interest in motorcycles and was involved with the Emerald Motorcycle Club. A 12 month disqualification from riding imposed as a result of a drink driving conviction in August 2008 clearly did not sit well with this passion.

Mr Bellamy’s sudden and untimely death has had a devastatingly sad impact on his parents, his wife and children. He is clearly very much missed by them and by his wide circle of friends. I offer them all my sincere condolences.

Background

The last Friday night before Christmas in 2008 was, as one would expect, a very busy social occasion in Emerald. It was two days before Gordon Bellamy’s 35th birthday and by the early hours of the following morning he had clearly had a lot to drink.

CCTV footage from a local service station shows him riding his motorcycle into a Caltex service station on the Capricorn Highway in Emerald at 2:40am on the morning of 20 December 2008. The footage shows him to be clearly affected by alcohol and unsteady on his feet.

At the same time Constables Daniel Laas and Julie Gardiner were conducting patrols of Emerald. Constable Laas was driving their vehicle, a marked automatic Toyota Hi-Lux adapted to include a prisoner pod at the rear. As they patrolled in a westerly direction along Egerton Street, both officers noticed a motorcycle, now known to be that ridden by Mr Bellamy, turn right at a roundabout from Borilla Street into Egerton Street heading westbound. The officers say as Mr Bellamy exited the roundabout he accelerated hard into Egerton St causing the rear wheel to 'fishtail' over a distance of about 20 metres.

Neither officer recognised Mr Bellamy, but understandably, they decided to intercept him for a licence inspection and road side breath test, as they were quite entitled to do.

The officers observed Mr Bellamy to travel through the intersection of Egerton and Anakie Streets without seeming to pay regard to the possibility of oncoming traffic in what is the central business district of Emerald.

A short distance later Mr Bellamy was seen to stop his bike in a centre street car park area of Egerton St outside Hooper's store. The officers observed Mr Bellamy apparently speaking to a male person standing in this parking area.

The officers had continued to drive along Egerton Street and gave varying estimations of how far they were behind the motor bike when it stopped. It seems likely they were in the vicinity of the Anakie and Egerton Street intersection.

The attempted intercept

The police Hi-Lux pulled in behind Mr Bellamy. Its driver, Constable Laas, thinks they stopped about 5 metres behind the motor cycle, while his partner and the person Mr Bellamy was talking to, Paul Kelly, put it as close as 1.5 metres. At about this time Constable Gardiner switched on the flashing blue and red lights and sounded a short burst of the siren. The three witnesses gave differing accounts of where the police car was when this happened. Mr Kelly thinks it was near the Anakie/Egerton Street intersection; Constable Gardiner believes it occurred as the police vehicle was between 15 and 20 metres from the motor bike; and Constable Laas thinks the lights and sirens weren't used until the police car stopped behind the motor bike.

I don't believe anything turns on these variations as it is clear when the police car stopped behind the bike, its flashing lights were illuminated in circumstances that would have made it apparent to Mr Bellamy the police wanted him to stop. Even Mr Kelly whose recall was, it seems, negatively impacted by intoxication, agrees this was obvious.

The officers were able to confirm their earlier belief that the number plate on the motorcycle bore the unusual registration "998"; seemingly a personalised plate. Both officers had removed their seatbelts and Constable Laas was in the process of alighting when Constable Gardiner warned that Mr Bellamy was "*going to go*" or words to that effect. She says Mr Bellamy had not turned around to look at the police vehicle and was showing no signs of getting off the motorcycle; nor of even relaxing from a riding position by releasing the handlebars and sitting back. Her prediction proved correct and Mr Bellamy accelerated along Egerton Street towards the next intersection.

Mr Kelly gave evidence he was "dumbfounded" that Mr Bellamy had driven off when the police were right behind him. It was Mr Kelly's opinion Mr Bellamy had taken off in response to the police having pulled in directly behind.

Constable Laas returned to his seat and, after some difficulty finding the correct position on the automatic transmission, proceeded to drive in the same direction as Mr Bellamy. The flashing emergency lights of the police vehicle remained on.

The western end of Egerton Street links with a curved stretch of Hospital Road while Ruby Street joins on the northern side forming an unusual intersection. Hospital Road is a main road forming a link, through the centre of Emerald, between the Canarvon and Gregory Highways. It consists of two lanes in each direction and from a point several hundred metres north of the Egerton Street intersection, is divided by a cement median strip.

The intersection with Egerton Street is now controlled by traffic lights but that was not the case in December 2008. Mr Bellamy was observed to travel through the intersection and into the right of the two northbound lanes. The police vehicle followed with the officers slowing to negotiate the intersection with Hospital Road. The curves in Hospital Road at this point meant that over the first 20-30 seconds of following him they were only able to observe the tail light on Mr Bellamy's motorcycle intermittently. It was apparent though that he was travelling at a much faster speed than the police vehicle. Constable Gardiner estimates he was going at about 80km per hr.

The poor acceleration of the Toyota Hi-Lux combined with the need to slow for the Hospital Road intersection meant that at no time while following Mr Bellamy did the police car exceed the speed limit and the distance between it and the motorcycle quickly increased.

On reaching the intersection with Hospital Road, about 80 metres from Hooper's store, the officers say Mr Bellamy had cleared out to a distance of 200m in front of them.

After negotiating the curved section, Hospital Road continues with a generally north-south alignment. Constable Laas drove about 100 metres along Hospital Road before again seeing the red tail light of the motor cycle between 300 and 500 metres ahead. In their interviews and at the inquest, both officers

nominated a Retravisation store as the point on Hospital Road where, what they considered to be an attempted intercept, was terminated. The rapid expansion of distance between the vehicles is consistent with the evidence from Sergeant Lamerton that the motorcycle being ridden by Mr Bellamy was capable of an extremely high level of acceleration; commensurate with that of a Formula 1 car.

Constable Laas says he terminated the attempted intercept at this time due to safety concerns. He was aware that closing time had just gone at several pubs in town and was cognisant of the likelihood there would be alcohol affected people further along Hospital Road. This concern would no doubt have been enforced even before reaching Retravisation as they passed a bakery popular with those on their way home from a night in town. He also said in evidence he realised they had no chance of catching the much faster motorbike.

The officers say there was no discussion between them as to whether they should terminate the attempted intercept. Constable Laas says it was Constable Gardiner who took the step of turning off the emergency lights; she nominates him as having done it while she was attempting to contact police communications in Rockhampton in an effort to locate the registered address for the motorcycle. In any event I am satisfied that from this point, 300 metres from where they commenced pursuing near Hooper's store, no further attempts were made to close the distance on Mr Bellamy.

Constable Laas then drove the police vehicle at or below the speed limit in a northerly direction along Hospital Road while his partner continued trying to contact the radio communications centre. He explained he was hoping to get an address for the motorcycle which they could then attend.

The collision and aftermath

At around 2:40am four friends, Shae Boag, Elijah Hoff, Luke Single, Kyle Dejun, were walking in a northerly direction along the eastern footpath of Hospital Road. All but Ms Boag had been drinking alcohol and, when they saw a police vehicle driving north along Hospital Road past their position, they began skylarking by pretending to hide.

That police vehicle was the only other vehicle on patrol in Emerald on the evening and contained Constables Michael Banasiak and Mandy Watane. They saw the group and thinking the behaviour warranted a closer look, they performed a u-turn, driving past the group in a southerly direction. It was soon apparent to the officers there was nothing to be concerned about and they proceeded further south before turning left into Esmond Street. Neither officer recalls seeing Mr Bellamy riding his motorcycle that night and it is entirely possible they had turned into Esmond Street before he arrived at that point on Hospital Road.

Initially, there was some confusion as a result of Ms Boag, Mr Hoff and Mr Single indicating the police vehicle they saw was a Hi-Lux 'paddy-wagon' rather than the sedan of Constables Banasiak and Watane. However during

the inquest it became clear that Constable Gardiner and her partner in the Hi Lux wagon had also been in Hospital Road during the period the group had been dawdling along and may well have been seen by Ms Boag's party.

At around the same time as police attention was first drawn to Mr Bellamy, Troy McAndrew and Shane McDonald jumped aboard a "maxi-taxi" when it stopped at a service station. It had been hired by a friend and they knew the taxi was going in their general direction and so all agreed they could come along. Messrs McAndrew and McDonald had been out drinking and were, on Mr McDonald's evidence, affected by alcohol but not slurring their words or stumbling drunk.

The driver of that taxi, Lex Collins gave evidence that as the taxi travelled north along Hospital Road one of the passengers in the back said; "*Left here mate*", as they approached Egan Street which runs left off Hospital Road. He also saw one of the passengers stand up in the back of the cab and thought he may have heard the latch on the rear sliding door being disengaged. He was intending to turn right at the same intersection into Harris Street and was concerned the passenger might try and alight as he did so. Accordingly, he stopped his van in the right hand turning lane that leads into Harris Street.

Mr Collins was only aware of one passenger alighting, although we now know both Mr McAndrew and Mr McDonald got out at this point. The driver was concerned they would be stepping onto the northbound lanes of Hospital Road and therefore consciously scanned his rear view mirrors for signs of on-coming traffic. He saw none.

He recalls the passenger who got out of the back of the van approached the passenger side front door and had a brief conversation with the front seat passenger before the cab continued around the corner. We know from Mr McDonald's evidence that this was Mr McAndrew. Mr Collins agreed that he did not appear overly intoxicated.

It seems one of the other 3 taxis in Emerald that night also arrived at the intersection from Harris Street at around this time. One of the youths with Ms Boag and her friends who had been walking along the eastern side of Hospital Road was keen to catch a cab and on seeing this taxi he, Mr Hoff, ran ahead with a view to hailing it.

All four people in the group recall hearing the engine of Mr Bellamy's motorbike approaching from their rear and left at about this time. The evidence of Ms Boag is that when she initially saw the motorcycle it was travelling only a little faster than 'normal speed' but that it accelerated heavily; reaching, as she put it, a '*stupid*' speed in a very short time. All four of the eye witnesses considered the vehicle to be travelling well over the speed limit as it approached the intersection with Harris St. Mr Dejun was drawn to commenting on the speed to the others while Mr Single estimated it to have accelerated up to 100km/h from an initial speed of around 60km/h.

Ms Boag had not seen Mr McAndrew and Mr McDonald exit the cab that was on the other side of Hospital Road, however, as she followed the path of the motorcycle she observed it collide with Mr McAndrew as he crossed the outbound lanes.

Mr Dejun also witnessed the collision. He said his group were some 30-40 metres south of the intersection when the motorcycle passed them and he was sure that as it did the driver looked at his group. Very soon after this the bike hit the pedestrian. He says just before the collision it seemed the pedestrian saw the motor bike and was preparing to jump back but did not have time.

Mr McDonald gave evidence he does not specifically recall looking for oncoming traffic as he exited the taxi. He was focussed, it seems, on getting home which required him to head across the outbound lanes of Hospital Road in a westerly direction. As he was about the middle of the two lanes he looked back and to his right and saw Mr McAndrew talking to the front seat passenger of the cab.

He does not recall hearing the motorcycle approach him but just before he cleared the second or western lane something caused him to look to his left, in a southerly direction. He clearly remembers seeing a bright flash of light as the motorcycle passed just behind him. He turned around and saw Mr McAndrew lying on the road and after some initial confusion realised he had been struck by the motor cycle. He was lying near to the line dividing the two lanes.

There is no evidence Mr Bellamy took evasive action and no skid marks or other evidence of braking were later found.

Mr McAndrew's last minute evasive action perhaps saved his life though he was struck a glancing blow to the right side of his upper body. He retained consciousness but suffered a broken collar bone, broken arm, punctured lung and massive ligament damage to his upper right arm and shoulder leaving him with a permanent disability.

Ms Boag and Mr Dejun both say they observed Mr Bellamy to look back at the scene of the collision as he rode on. Mr Dejun's evidence was that the speed of the motorcycle slowed after the impact but the rider retained control. Ms Boag recalls the motorcycle veering to the left after impact and the rider having to lean in order to regain balance. No witnesses followed Mr Bellamy's progress, their attention understandably being drawn to Mr McAndrew.

Mr Collins, the driver of the cab from which Mr McAndrew had alighted, had progressed about 15 metres along Harris Street when he heard a thud which he thought was a collision between two cars. His passengers remained oblivious to the noise but on performing a u-turn he observed Mr McAndrew on the road. He approached Mr McAndrew and assisted with traffic duty. In his statement Mr Collins estimated about a minute had passed between him hearing the thud and the arrival of the first police car. Ms Boag recalls the

police vehicle arriving after 20-30 seconds. Both agree that only when it arrived its coloured flashing lights were illuminated.

Mr Dejun, Mr Hoff and Ms Boag ran to see if they could assist the pedestrian they had seen struck. As he was doing so Mr Dejun heard another noise and saw a cloud of dust in the vicinity of where he thought the motor cycle had stopped, further north along Hospital Road. After seeing that other people were attending to Mr McAndrew and that an ambulance had been called he and Mr Hoff went to investigate what had happened to the motorcycle rider.

He found the bike smashed against a tree and the obviously dead rider some meters away. Constable Laas soon also came to the scene and Mr Dejun alerted him to Mr Bellamy's body.

Measurements and inspections undertaken by Sergeant Lamerton, the forensic crash investigator, established that 84 metres after the point where Mr McAndrew fell to the ground after being hit, the motorbike veered off the road to the left and after travelling a further 48 metres across an open grassed area collided with a large tree.

Constable Laas was quick to notify Rockhampton Communications and the District Duty Officer as to what had occurred. The officers appropriately nominated the necessity for senior police to be notified and for traffic accident investigators to be called to the scene.

Ambulance officers soon arrived and provided assistance to Mr McAndrew. They confirmed nothing could be done for Mr Bellamy.

Investigation findings

Breath tests conducted on Constables Laas and Gardiner were consistent with later urine sample results to the effect that neither was affected by alcohol or drugs at the relevant time.

No physical evidence was available to Sergeant Lamerton to enable him to calculate an accurate speed of Mr Bellamy's motorcycle at any point during its travel along Hospital Road. Based on what he saw at the crash site, he was however, able to apply his extensive experience in such matters to conservatively estimate the likely speed at impact with the tree as being at least 100km/h. His examination of the tyre marks leading from Hospital Road to the tree allowed him to conclude the motorcycle was not under heavy braking during this period. This would be consistent with several theories including that Mr Bellamy remained unbalanced to the extent he could not effectively apply the brakes; or his reaction time, affected by alcohol, hindered his ability to apply the brakes in a timely manner.

There was, likewise, no forensic evidence pinpointing the spot where Mr McAndrew had been standing at the time he was struck. I am satisfied, as a result of the eyewitness accounts that Mr McAndrew was very near to the centre of the two lane northbound carriageway when this occurred.

The distance travelled by Mr Bellamy after striking Mr McAndrew was 132 metres. At 100km/h Mr Bellamy would have had 4.7 seconds to react before striking the tree. I am satisfied that, given his alcohol affected state; the likelihood he was off balance after striking Mr McAndrew at such high speed, and the reaction times even a sober person requires to adjust to such changes, Mr Bellamy would have had very little, if any, control over his course of travel for that distance.

The autopsy

An external autopsy examination was carried out on the body of Mr Bellamy by an experienced pathologist Dr Nigel Buxton on 22 December 2008.

Blood and urine samples taken during the autopsy examination were analysed and showed at the time of his death Mr Bellamy had a blood alcohol content of 457mg/100mL and a urine alcohol content of 263mg/100mL. There are various explanations that might address the large difference between these figures although for the purpose of this inquest it is sufficient to conclude Mr Bellamy was undoubtedly and significantly influenced by the effects of alcohol.

Dr Buxton concluded the injuries suffered were consistent with a high speed motor cycle collision with a rigid object. An autopsy certificate was issued recording the cause of death as follows:

- 1(a) Multiple injuries *due to, or as a consequence of*
- 1(b) Motorcycle trauma

Conclusions as to the cause of the crash

There was some initial speculation that Mr Bellamy may have deliberately driven into the tree with the intention of killing himself. This was based on his history of depression, comments he had made about considering ending his life in this way and the absence of signs of braking at the crash site. However I am of the view it is more likely he lost control of the vehicle after striking the pedestrian, Mr McAndrew. I accept the evidence of Sergeant Lamerton that it is likely this collision would have significantly destabilised the bike and made it difficult for the rider to control it. When the great speed at which Mr Bellamy was riding is considered with his state of gross intoxication, it is reasonable to conclude, in my view, that the fatal crash was unintended and accidental.

It is not my role to apportion liability for the crash but when determining “how” the death occurred I am required to consider the contributory factors and causes.

In this case the dominant causes in my view were the excessive speed at which Mr Bellamy was driving and his extreme intoxication. However, the actions of the pedestrians also played a role. A motorist would not expect pedestrians to alight from a vehicle that was in a right turn lane and cross the two through lanes without checking for on-coming traffic. In this case the pedestrians had an unobstructed view for approximately 500 metres and had they been keeping a proper lookout they could have seen the motor bike approaching. Conversely, it may be that Mr McAndrew did look, saw no motor

vehicles in the near vicinity and reasonably concluded the distant motorcycle posed no threat to him. Certainly there is evidence from some of the eye witnesses that when they first heard Mr Bellamy's motorbike it was not travelling particularly quickly until it rapidly accelerated a few hundred metres from where it collided with Mr McAndrew.

I will say more later about the action of the police officers and their compliance with the QPS pursuit policy. It is sufficient at this stage to observe there is no evidence any improper action on their part contributed to the crash.

Findings required by s45

I am required to find, as far as is possible, who the deceased person was, how he died, when and where he died and what caused his death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, the material parts of which I have summarised above, I am able to make the following findings.

Identity of the deceased - The deceased person was Gordon John Bellamy.

How he died - Mr Bellamy died when he lost control of the motorcycle he was riding at excessive speed while grossly intoxicated after it struck a pedestrian and collided with a tree. A short police pursuit preceded the crash.

Place of death - He died at Emerald in Queensland.

Date of death - Mr Bellamy died on 20 December 2008.

Cause of death - Mr Bellamy died as a result of multiple injuries suffered in a motorcycle crash.

Concerns, comments and recommendations

Section 46, in so far as it is relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

As I have already indicated the causes of the sad death of Mr Bellamy were his manner of driving and the actions of a pedestrian he hit. I am unaware of anything I could suggest that might reduce the likelihood of young men engaging in such high risk behaviour – it is a problem that has confronted society for centuries and has been amplified more recently by the ready availability of powerful motor vehicles, drugs and alcohol.

More amenable to change are the policies and practices of the Queensland Police Service. Accordingly I shall summarise the relevant policies and consider whether they were adhered to by the officers involved in this case.

This inquest is another in a long series of similar matters I have previously reported on. I readily accept and acknowledge the QPS is devoting careful consideration to managing this most difficult policy challenge.

QPS pursuit policy

On 1 January 2008 and after an 18 month trial period, the QPS implemented an appreciably updated and revised pursuit policy state wide.

I am satisfied the officers involved in the case had received timely training in the policy and had a sufficient working knowledge of it.

I shall now summarise those parts of the policy relevant to this case.

When can a pursuit be commenced and continued?

The principles underpinning the policy are outlined in the Operational Procedures Manual (OPM). Those of particular relevance to this case are:

- (i) *Pursuit driving is inherently dangerous. In most cases the risk of the pursuit will outweigh the benefits.*
- (ii) *Pursuits should only be commenced or continued where the benefit to the community of apprehending the offender outweighs the risks.*
- (iii) *If in doubt about commencing or continuing a pursuit, don't.*

The policy assures officers that suspects who fail to stop when directed will still be the subject of law enforcement action, but less dangerous means than high speed pursuits will be utilised. It says:-

The revised pursuit policy seeks to shift the manner of apprehension of people who fail to be intercepted from pursuits into other strategies. The Service will continue to apprehend offenders who fail to be intercepted but pursuits will not be the principal means of effecting apprehension.

The policy requires the pursuing officers to balance the utility of a pursuit against the risks it generates. The utility is gauged by considering the consequences of failing to intercept the pursued – the seriousness of the offences the person fleeing may have committed and the strength of the evidence indicating they have committed those offences. In this balancing exercise, issues of safety are to weigh more heavily than has been the case under earlier policies.

According to the policy, “pursuit” means the continued attempt to intercept a vehicle that has failed to comply with a direction to stop where it is believed on reasonable grounds the driver of the other vehicle is attempting to evade police.

“Intercept” means the period from deciding to direct the driver of a vehicle to stop until either the driver stops or fails to stop. It includes the period when the

police vehicle closes on the subject vehicle in order to give the driver a direction to stop.

The policy specifically excludes some matters from being sufficient on their own to justify the commencement of a pursuit. These are termed “*non-pursuit matters*” and they include license and vehicle checks, random breath tests and traffic offences.

When an intercept becomes a pursuit

When an officer is attempting to intercept a vehicle, if the vehicle fails to stop as soon as reasonably practicable; and the officer reasonably believes the driver of the vehicle is attempting to evade police a pursuit is commenced if the officer continues to attempt the intercept.

The reference to “reasonably believes” means the question is not determined by the subjective views of the pursuing officer, rather, as with most aspects of law enforcement, officers must align their conduct with what a reasonable officer would do or believe in the circumstances.

If a pursuit is not justified, or authorised an attempted intercept must be abandoned. In such cases the officer must turn off the flashing lights and siren, pull over and stop the police vehicle at the first available safe position.

Did this incident comply with the policy?

The attempt to intercept Mr Bellamy was entirely appropriate: police may stop any motorist at any time and require a road side breath test. The magnitude of the road toll has been held sufficient to authorise such intrusive powers.

However, there was no justification to commence a pursuit of Mr Bellamy: the attempted interception was clearly for a “non-pursuit matter”. There was, therefore, an obligation to abandon the attempted interception once the motorcycle failed to stop as soon as reasonably practicable and the officers believed on reasonable grounds that the driver was attempting to evade police.

The attempted interception was affected when the police car was brought to a halt behind the then stationary motorcycle in Egerton Street, the coloured flashing lights were illuminated and the siren briefly sounded. I have no doubt Mr Bellamy was made aware by these actions that police wanted him to remain stationary so they could speak to him. They were very close to him and even if his helmet and the noise of his motor drowned out the sound of the siren, the flashing blue and red lights would have reflected off the shop fronts on both sides of the street making it impossible for them not to be observed.

The most obvious and likely explanation for Mr Bellamy riding off after speaking to Mr Kelly for only a few seconds is that he was aware the officers wanted to speak to him and knowing he was disqualified from driving and intoxicated, Mr Bellamy decided to “make a run for it”.

The issue is when it could be said that a reasonable officer would have believed Mr Bellamy was attempting to evade police. This is necessarily an objective test although in this case the subjective evidence in relation to Constable Laas' belief at the time of the incident settles the matter. On several occasions during his record of interview Constable Laas made it clear when the motorcycle drove off from outside Hooper's store he believed the driver was aware of their presence and was trying to evade them. This belief accords with the view of an independent observer, Mr Kelly. At the inquest he volunteered before being questioned on the point that from his point of view there could have been no doubt the motorcyclist was aware of the police vehicle behind him and had driven off in response.

Constable Laas gave evidence that the purpose of following the motorcycle from Hooper's store was to continue the attempt to intercept the vehicle. That ignores the fact that once an intercept has been unsuccessfully attempted and the driver knowingly fails to comply, a continued attempt is a pursuit.

In this case that pursuit was not authorised by the policy because of the lack of evidence Mr Bellamy had committed more than traffic offences.

The policy of not pursuing in 'non-pursuit' matters needs to be strictly applied because the risk/benefit balance is so heavily skewed against pursuing in these matters. The high incidence of injury and death arising from pursuits (in many cases to members of the public not involved) justifies that strict application.

It is impossible to say whether Mr Bellamy knew he was being pursued during this period and whether it motivated him to ride faster. The evidence he was not speeding excessively when first seen by Ms Boag and her friends and only then rapidly accelerated suggests something else may have caused him to drive in the highly dangerous manner that resulted in his death and Mr McAndrew's injury.

I accept that once the officers set off after Mr Bellamy they applied a rational process of risk analysis and very quickly came to a conclusion the risk of continuing along Hospital Road with a view to intercepting Mr Bellamy could not be justified. They were clearly mindful of the pursuit policy even if it was not correctly applied. Any departure from the policy only continued while they travelled about 300 metres and for less than a minute.

I accept also the submission made on the officers' behalf that the unusual situation which prevailed in this case, whereby the target of the attempted interception was initially stationary and manifested his intention not to comply by moving off, may have made the strict application of the policy more difficult. It is also relevant they were junior officers who had not before needed to apply the policy. I have no doubt their involvement in the coronial process will have instilled a further appreciation of the rationale for the QPS pursuit policy. I see no need to refer their actions for the consideration of disciplinary action.

Nor do I believe any specific preventative recommendations would assist. I am aware the Safe Driving Project Team is continuing to evaluate the current policy in conjunction with recommendations I have made previously. I am confident they will review this matter to determine whether it can assist with that review.

I close the inquest.

Michael Barnes
State Coroner
Emerald
25 August 2010