



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Marty Tanui FRANCIS**

TITLE OF COURT: Coroner's Court

JURISDICTION: Dalby

FILE NO(s): COR 5991/08(1)

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FINDINGS OF: Mr Michael Barnes, State Coroner

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REPRESENTATION:

Counsel Assisting:	Mr Peter Johns
Senior Constable Scott Matthews:	Mr Glen Cranny (Gilshenan & Luton Legal Group)
QPS Commissioner:	Mr Greg Obst (QPS Solicitors Office)

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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 Marty Tanui Francis. 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 4 October 2008, Marty Francis, then 19 years of age, and affected by alcohol, decided to go for a drive around the streets of Dalby in his V8 Commodore. On the eastern outskirts of the town Mr Francis passed a marked police vehicle and, no doubt aware that his blood alcohol content was above the legal limit, attempted to evade interception. Minutes later and after reaching high speed Mr Francis lost control of his vehicle which left the road and flipped. Mr Francis, who was not wearing a seat belt, was ejected from the vehicle. He died instantly.

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 deaths followed immediately a series of 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 the QPS Ethical Standards Command (ESC) and a detailed report was prepared by Detective Acting Inspector Katherine Innes, then of the Internal Investigations Branch.

After arriving in Dalby at approximately 6:00am on the morning of the crash, Acting Inspector Innes and her partner Acting Inspector Karen Ballantyne travelled to the scene. They had already made arrangements for the local accident investigator to be replaced by an independent officer from Brisbane.

After satisfying themselves of the proper management of the scene the ESC officers located Senior Constable Matthews. He was directed to supply a urine sample for drug and alcohol testing and then directed to answer questions in a recorded interview. The investigators and Senior Constable Matthews later attended the scene of the pursuit and conducted a video taped walk and drive through interview relating to the events earlier that morning. Senior Constable Mathews cooperated.

Acting Inspector Innes oversaw arrangements for the body of Mr Francis to be transferred to Toowoomba and liaised with pathology staff in relation to the autopsy examination.

Interviews were conducted with all other police officers on duty in the Dalby district at the time of the accident. The printout of Sergeant Cramp's breathalyser (showing the test conducted on Senior Constable Matthews) was seized. Arrangements were made for eyewitnesses to Mr Francis' movements during the evening to be spoken to and statements produced. The ESC investigators personally conducted a door knock of all residences along Blaxland Street corresponding to the route of travel taken by Mr Francis and Senior Constable Matthews. Statements were produced by those residents who had heard or seen the relevant events.

Acting Inspector Innes made arrangements for the mechanical inspection of the vehicle of Mr Francis and the police vehicle involved in the pursuit. She arranged for the production of an audio tape and transcript of the communications recordings from Dalby on the evening. Acting Inspector Innes seized training records pertaining to the QPS pursuit policy and to Senior Constable Matthews in particular. QPS policy documents pertaining to the regulation of pursuits were obtained as were records from QAS setting out their involvement after the accident.

Acting Inspector Innes later conducted detailed interviews with family members of Mr Francis.

I am satisfied this matter has been thoroughly and professionally investigated and all sources of relevant information have been accessed and analysed. I commend A/Inspector Innes for her efforts.

The evidence

I turn now to the evidence. Of course I can not 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

Marty Tanui Francis was born on 9 December 1988, the second of two sons to

Peter Francis and Desleigh Faulks. He grew up in Dalby attending the local primary and state high schools and completed year 12 in 2006. In mid 2008 he took up a job as an apprentice boilermaker. At the time of his death he was residing at Wood Street Dalby with his parents.

The evidence before me reveals that Marty was well known in the community and widely liked. He was a member of the Dalby Rugby Union Club under 20 team coached by his father. In addition to rugby he obtained great enjoyment from driving his silver SS Commodore sedan. The vehicle had been purchased with a \$20,000 unsecured loan obtained from a major bank after his parents had refused to loan him money. They were insistent that he would not be lent money for a V8 car before turning 21 but were unable to stop his purchase once he accessed the necessary funds.

Mr Francis' purchase came prior to current laws which prohibit drivers on a provisional licence from driving such a vehicle. In an attempt to mitigate the potential dangers this more powerful vehicle posed, Mr Francis' parents arranged for him to undertake a defensive driving course. This he successfully completed but the skills he learnt were sadly unable to assist him in the face of excessive alcohol and speed in the early hours of 4 October 2008.

I offer my condolences to the parents, brother and close friends of Marty Francis. It is clear he is very much missed.

Background

On the evening of 3 October 2008 Marty Francis attended an end of season function night at the Dalby Rugby Union Club with his parents, brother and many friends. It is clear by late in the evening, as a result of the alcohol he had drunk, he was unsteady on his feet and slurring his words. Finding himself in town with a friend, Mark Potter, he made a series of telephone calls to his ex-girlfriend (with whom he was still close) seeking a lift home.

That person was Kimberley Selman. She had spent the night socialising with friends without consuming any alcohol. Approaching midnight she was driving with some other female friends when they saw Marty in Drayton Street. Concerned that he was on his own, Ms Selman gave him a lift for a short distance so he could meet up with Mr Potter. Ms Selman recalled that Marty was noticeably drunk, such that while she could just make out what he was saying her friends could not. She noted him to be unsteady on his feet and was in something of a playful, silly mood.

A short time later, Ms Selman again observed Marty walking by himself on Drayton Street. She picked him up and recalls he suggested they return to his house so he could take his car for a drive. Ms Selman and the others in the car all made it very clear this should not happen. Ms Selman warned that 'the police are everywhere'. By way of compromise, she offered to go for a drive in Marty's

car but with her behind the wheel. She says Marty asked to be dropped at his home in Wood Street. Although she had reservations as to whether he would stay there Ms Selman agreed to his request. Her doubts were heightened when Marty appeared to run playfully into the house, clearly not tired. Ms Selman believes this was shortly before 1:00am on 4 October 2008. Telephone records show Marty called her at 12:56am for a period of approximately one minute although she is unable to recall the content of that conversation or where she was at the time.

Ms Selman dropped some of her friends home before returning to the residence of Mr Francis to see if he had stayed inside. On her return she noticed Mr Francis' car was no longer parked in Wood Street where it had been minutes before. Her calls and text messages to the mobile phone of Mr Francis went unanswered.

Senior Constable Scott Matthews had worked at Dalby between 1992 and 2006 before taking a two year transfer to the tactical crime squad in Toowoomba. In September 2008 he returned to Dalby to again undertake general duties policing.

On 3 October he was working a 10:00pm to 6:00am shift. He was partnered with Constable Melanie Hanrahan and was the driver of a marked Ford Falcon police vehicle assigned to them.

Leading up to midnight, Senior Constable Matthews was involved in the arrest of a person for a public nuisance offence. That person was transported back to the police station where he was lodged at the watchhouse under the care of the shift supervisor, Senior Constable Peter Horn. Constable Hanrahan was also at the station and had been for some time, dealing, along with Senior Constable Horn, with a person arrested earlier in the evening for a serious driving offence.

As Constable Hanrahan was occupied and there were still a number of people on the streets in central Dalby, Senior Constable Matthews went back out to conduct patrols alone. He told the court this was not unusual.

Shortly after 1:00am Senior Constable Matthews was patrolling eastbound along Blaxland Road when he observed a vehicle we now know was being driven by Mr Francis approaching him in the opposite direction.

The attempted intercept

Blaxland Road, for most of its length, is a straight, undivided and unmarked road leading east from Dalby through semi-rural properties. On meeting the rail line approximately 4km east of Dalby the road veers slightly to the south. The kerbs are mostly characterised by loose gravel and grass with a run off area extending 15-20 metres on either side of the road described by the QPS accident investigator as 'table drains'. At the point where it intersects Owen Street East, towards the western end of the road, the speed limit is 60km/h. This increases to

80km/h and then 100km/h as one travels over a length of approximately 2.5km in an outbound (easterly) direction.

There is no suggestion that Mr Francis was driving inappropriately when Senior Constable Matthews first observed him approximately 100 metres east of the intersection with Owen Street. In accordance with his usual practice, Senior Constable Matthews decided to stop the car in order to conduct a random breath test on the driver.

Accordingly, as the Commodore approached, he slowed the police car to walking pace and as the other car passed he executed a u-turn. He observed the silver Commodore speed up before taking a left hand turn into Owen Street East travelling "*a little too quickly*."

A set of stables on the south-eastern corner of this intersection impeded the view of the officer as to what happened next. In notes recorded shortly after the incident, in his QPS notebook, Senior Constable Matthews says that on turning into Owen Street East he was confronted by a cloud of dust and dirt and observed the vehicle of Mr Francis to be on a grass area adjacent to the west of the road and facing back towards him. Senior Constable Matthews claims that led him to believe that Mr Francis had lost control of his vehicle and it had spun around, rotating through 180 degrees.

Senior Constable Matthews drove his vehicle to a point where it too was on the grass to the west of Owen Street East and was nose-to-nose with Mr Francis' vehicle, but perhaps a little off-set, closer to the road. He was preparing to alight when the Commodore drove around the police car, to its right so that the drivers' doors of both vehicles passed. He saw it drive off over the grassed area, between a light post and a give way sign and back onto Blaxland Road. Senior Constable Matthews performed a u-turn and followed the Commodore.

In the course of these events Senior Constable Matthews had observed the driver and only occupant of the Commodore to be a male person in his early 20's. He had then seen and remembered the three numbers of the registration but not the letters. He understandably concluded that the driver of the Commodore was aware of his presence and knew the officer wanted to speak to him and had driven off to avoid that.

Senior Constable Matthews estimates that when the police vehicle pulled back onto Blaxland Road he was approximately 50 metres behind the Commodore but it continued to pull away. He soon activated the coloured flashing bar lights on his vehicle. In his interview on the day of the accident he told investigators that he had '*an inkling then that he, ah he wasn't goin to stop...*'.

Edna Neucom was residing alone at a residence on the north-west corner of the Blaxland Road – Owen Street East intersection. After being woken due to lights

shining into her bedroom she noticed, some minutes later, the flashing blue and red lights of a police vehicle. Looking out onto Blaxland Road she observed a police vehicle just to the east of the intersection and travelling in that direction along Blaxland Road. Consistent with the account of Senior Constable Matthews she observed the emergency lights of the police vehicle but did not hear any sirens. She did not observe any other vehicles at this time. The value of this evidence is difficult to gauge, however, because she may well have seen one of the numerous police vehicles which went the same way after the crash.

Senior Constable Matthews said when interviewed and when giving evidence at the inquest that he had accelerated steadily so that he reached about 80km/h in the 60km/h zone and a maximum of 110km/h at some point in the 80km/h zone that commences 1200 metres east of the Owen Street intersection. He also says that shortly before this point he turned on the siren of the police vehicle.

Despite this acceleration Senior Constable Matthews says the Commodore extended its lead at a rapid pace from the initial part of the pursuit. He denies ever closing in on the Commodore as the two vehicles travelled along Blaxland Road.

William O'Neill was a resident of 101 Blaxland Rd which is about 500 metres east of the Owen Street intersection. He says he was watching television in the front room of his house when his attention was drawn to the roar of an accelerating engine coming from a point on Blaxland Road to the west of his house. Moments later he heard a police siren. He told the inquest he then walked into his front yard and observed the two vehicles approximately 100 yards to the west travelling in an easterly direction along Blaxland Road. Under cross examination he was able to accurately identify the make of Mr Francis' vehicle. He says when he initially saw the vehicles they were 10-20 metres apart with the police vehicle closing in on the Commodore such that they were very close together shortly after passing his property. He says the vehicles were travelling at between 120-140km/h when they passed his property and continued to accelerate to a speed over 140km/h. Although he was initially sure the siren of the police vehicle was on as it travelled past his property he departed from this under cross examination. In any event, consistent with the evidence of Senior Constable Matthews he acknowledged there was a period of time where he could see the police vehicle's flashing emergency lights while that vehicle was still moving but could no longer hear the siren. Mr O'Neill continued to the front boundary of his property and followed the vehicles as they travelled along Blaxland Rd and until he heard loud sounds consistent with a vehicle crashing.

Mr O'Neill's evidence was difficult to assess as it became apparent during the course of the inquest that he had some motive for giving evidence that is unfavourable to police in general and Senior Constable Matthews in particular – a matter he was less than forthright about when questioned. His assessment of the periods of time taken for certain events to occur were clearly erroneous and at

the inquest he placed the two vehicles closer than any distance mentioned in his initial version to investigators. In circumstances where Mr Francis would clearly have had a significant head start on the police vehicle entering Blaxland Road, and where on any version it was accelerating rapidly and ultimately approaching a very high speed, I am inclined to accept the evidence of Senior Constable Matthews over that of Mr O'Neill in relation to the distance between the two vehicles as they passed Mr O'Neill's residence.

At a point in the 80km/h zone and just over 2.5 km from the intersection of Blaxland Road and Owen Street East, Senior Constable Matthews took the view it was unsafe to continue the pursuit. In his interview with investigators he stated the Commodore was continuing to pull away from him even as he travelled at 110km/h. He says that by this time he was around a kilometre behind the Commodore and he did not consider it safe to travel at over 100km/h. On taking this decision he turned off the lights and sirens and made a call on the police radio to Dalby station to advise them he was pulling out of the chase and to relay details of the vehicle and the preceding incident. He did not receive any response from the station. Sergeant Paul Cramp from the Dalby traffic branch was also on duty that evening and did hear the radio transmission from Senior Constable Matthews. He responded when it became apparent no one was monitoring the radio at Dalby station.

During the course of this radio transmission Senior Constable Matthews continued to travel at 110km/h notwithstanding his decision to terminate the pursuit.

The crash and aftermath

Towards the end of his radio communication with Sergeant Cramp, Senior Constable Matthews is heard on the recording of the broadcast to say "*hang on looks like he's crashed by the look of it, way down there.*" He says after losing sight of the vehicle's brake lights he saw a light go into the air and assumed the worst. Turning the police vehicle's emergency lights back on he proceeded to a point where Blaxland Road takes a turn to the right. There he saw the Commodore off to the left hand side of the road and facing perpendicular to it. It was obvious from the damaged state it was in and the debris on the road that the Commodore had crashed.

Even before exiting his vehicle Senior Constable Matthews called for an ambulance. On inspecting the Commodore it was immediately apparent the driver must have been seriously injured although he could not be found in the vehicle. Senior Constable Matthews located Mr Francis about 10 metres west of the car on the grass verge. Sadly, it was immediately apparent to him that he was deceased. The communications tape records Senior Constable Matthews making a more urgent call for QAS and police assistance.

QAS records show a call was received at 1:10am and an ambulance on scene at

1:18am. QAS officers tested Mr Francis for any vital signs and undertook an ECG but no electrical heart activity was identified and no further treatment could usefully be applied. Mr Francis was declared deceased at the scene.

After his arrival at the scene Sergeant Cramp commenced an examination in his role as a trained accident investigator until replaced by Senior Constable Eggins on the orders of ESC investigators. At the scene he conducted a breath test on Senior Constable Matthews which returned a reading of 0.00%.

The management of the scene was taken over remotely by ESC officers after they were notified of the incident. The principal investigator Acting Inspector Innes told the inquest the only aspect of the scene management that was less than ideal involved the movement of the police vehicle from where it had pulled up on Blaxland Road. The position had though been clearly marked on the road such that the investigation was not compromised.

The body of Mr Francis was later transported on the direction of ESC investigators to the Toowoomba morgue.

The autopsy

An autopsy examination was conducted on the morning of 6 October 2008 by Dr Terry at the Toowoomba Mortuary.

The examination revealed severe cerebral trauma in addition to numerous other injuries including fractures to five left ribs and a lacerated liver. There were no markings on the body consistent with the wearing of a seatbelt.

Blood and urine samples taken at autopsy were analysed and revealed the presence of alcohol in concentration of 229mg/100mL and 305mg/100mL respectively.

Dr Terry issued an autopsy certificate listing the cause of death as “*massive soft tissue and bony trauma*”.

The investigation findings

Analysis of a urine sample taken from Senior Constable Matthews confirmed the result of the earlier breathalyser test to the effect he was not affected by alcohol at the time of the pursuit. The analysis revealed no evidence of drug use or other abnormalities.

A mechanical inspection of the police vehicle did not reveal any defects of significance to its use on the evening of the accident. An examination of the Commodore of Mr Francis found some minor pre-existing defects with the steering and suspension. In the opinion of the QPS inspection officer these were not such as to have contributed to the cause of the accident.

Examinations of training records showed at the time of the pursuit Senior Constable Matthews was one of only two officers in the Dalby Police District who had not undertaken training in the new pursuit policy. He completed the requisite course on 11 November 2008.

The forensic analysis of the accident scene conducted by Senior Constable Eggins, an experienced traffic investigator did not allow him to make an accurate determination of the speed of the Commodore due to the complex nature of the vehicle's path of travel once it left the road. He was able to determine the Commodore failed to take a right hand veer in Blaxland Road and as it travelled off the left hand side of the bitumen began to turn in a clockwise direction. Tyre marks show this continued for 44 metres after leaving the road before the vehicle became airborne for 3.5 metres and then resumed sliding for a further 31 metres and colliding with a traffic sign. At the end of the tyre marks Senior Constable Eggins is able to say the Commodore had turned 90 degrees in a clockwise direction. At this time the vehicle rolled, becoming airborne and coming to rest 50 metres after the last of the tyre marks. In the course of rolling Mr Francis was ejected from the vehicle, landing approximately 10 metres from the final resting place of the vehicle. An examination of the driver's seat belt was consistent with it not having been worn at the time of the accident.

Senior Constable Eggins was able to apply his experience as an investigator to the distance travelled by the Commodore and the extent to which it was damaged in concluding it was travelling above 100km/h when leaving the road. The accident was caused by a failure to adjust the steering of the vehicle in a timely manner at such a speed in order to take the right hand bend in the road.

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 Marty Tanui Francis

How he died - He died as a result of injuries sustained when he was ejected from his vehicle after he lost control of it and it flipped over while he was attempting to evade a police officer who had tried to intercept the vehicle. Mr Francis was heavily intoxicated at the time.

Place of death - He died at Dalby in Queensland.

Date of death - Mr Francis died on 4 October 2008.

Cause of death - Mr Francis died from massive soft tissue and bony trauma.

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.

The circumstances of this case raise three issues which warrant comment from that perspective:-

- The officer's adherence to the QPS pursuit policy;
- The training of officers in that policy; and
- The radio communication in the Dalby District.

QPS pursuit policy

Marty Francis sadly died when the fearless bravado of youth, emboldened by alcohol and facilitated by a high powered car combined with inexperience to result in another unnecessary death.

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 cars 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.

On 1 October 2006 the QPS initiated the trial of a new pursuit policy in the Redcliffe and Toowoomba Police Districts. On 1 January 2008 that policy was implemented state-wide. These reforms evidence the ongoing commitment of the QPS to the pursuit of excellence in this very challenging area of public policy.

As part of the trial, training in the new policy was to be provided to all operational members in the relevant districts.

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.

Specifically a non-pursuit matter is deemed to include circumstances “*where the driver or occupants of a vehicle are suspected of offences based on the officer's instinct alone and without supporting evidence*”.

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, 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.

Pursuits

The policy creates three categories of circumstances which may justify a pursuit. The categories vary in terms of the seriousness of the suspect’s conduct and the degree of certainty that the suspect has committed or is about to commit offences. So far as the differences are relevant to this case they may be summarised as follows.

Pursuit category 3, the only one possibly relevant to this case, relates to circumstances where the driver or occupants of a vehicle are “*reasonably suspected*” of having committed an indictable offence.

As the seriousness of the possible offending and the reliability of the information indicating the offences have been committed by someone in the car increases, the taking of greater risks can be justified. Conversely, as the pursuit category moves from 1 to 3 there is a lower tolerance of risk permitted by the policy.

Whatever the category, safety remains the paramount consideration and a risk/benefit assessment must always be undertaken. The policy sets out a number of factors which should be considered when undertaking that assessment. Of relevance to this case are the following:-

- (a) *the safety of all persons (i.e. police officers, members of the public and suspect persons) is paramount;*
- (b) *the possible consequences (e.g. the death of, or serious injury to, any person and/or damage to property);*
- (d) *whether the police vehicle is marked and has flashing warning lights and siren fitted;*
- (e) *the manner in which the pursued vehicle is being driven, including the speed of both vehicles;*
- (g) *whether the driver and occupant(s) of the pursued vehicle have been identified or are likely to be able to be identified and whether the suspect*

person needs to be apprehended without delay;

(h) the known or suspected age of the driver and occupants of the pursued vehicle. The risk factor may increase with inexperienced or young drivers;

(i) whether the driver of the police vehicle has knowledge of the geographical area including the road system. If the driver of the police vehicle is unfamiliar with the area in which the pursuit is taking place, the risks involved in the pursuit may increase;

(j) the existing visibility and lighting; and

(l) any other relevant circumstances, such as road, weather, and other traffic conditions;

The risk must be continually re-assessed during the pursuit and if anyone is exposed to “*unjustifiable risk*”, it must be immediately abandoned. The same test that is applied when considering whether a pursuit should be commenced is apposite.

The implementation of the trial policy also coincided with the introduction of an evade police offence and a requirement for the rigorous investigation of offences either giving rise to the pursuit or arising from the pursuit itself.

As can be seen, 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.

Immediately an officer initiates a pursuit, he/she must ensure the local police communications centre is advised and the pursuer must provide details of the incident including the identity of the unit involved; the reasons for the pursuit; the pursuit category; the location, direction and speed of the vehicles involved; and “*any other relevant details*”. The information must be updated as the pursuit proceeds.

Abandoning a pursuit

The policy imposes a requirement on an officer involved in a pursuit that has been terminated or abandoned to carry out a series of actions similar to those required on the abandonment of an attempted intercept. In particular it requires the officer to turn off the flashing lights and siren, pull over and stop the police vehicle at the first available safe position.

Did this pursuit comply with the policy?

I am satisfied that Senior Constable Matthews did engage in a pursuit when he followed the vehicle driven by Mr Francis onto Blaxland Road and accelerated after him. Mr Francis must have realised the driver of the police vehicle that followed him into Owen Street and stopped 1 to 2 metres in front of him wanted to speak with him. That was an attempted interception. When Mr Francis drove off he was manifesting an intention not to stop and the only reasonable inference was that he was attempting to evade police. The continued attempt to intercept thereafter became a pursuit.

As I understand his evidence, Senior Constable Matthews accepts this analysis and says he considers he was entitled to engage in a Category 3 pursuit because he reasonably suspected Mr Francis had committed the indictable offence of Dangerous Operation of a Motor Vehicle when while turning left from Blaxland Road into Owen Street East, he lost control of the Commodore and it spun across the road.

Senior Constable Matthews acknowledges he did not see the actual driving on which a subsequent charge of dangerous operation could have been based. He did though see Mr Francis approach the corner at a higher than normal speed and when he made the same turn a short time later the officer was confronted by a cloud of dust and observed the Commodore on the grass verge facing in the direction it had come from. It is on this information he says he formed a suspicion Mr Francis had driven dangerously.

I suspect this explanation is an *ex post facto* justification. I believe it is far more likely that when Mr Francis took off, Senior Constable Matthews instinctively followed on the basis the driver of the Commodore was trying to evade him. Even if the officer's actions can be squeezed within the strict limits of the policy, it does not mean he took the best option.

Senior Constable Matthews had seen the driver at close range, albeit for only a few seconds. He knew the make, colour and partial registration of the car. It is likely the vehicle and its owner could have later been identified and it is likely the officer could have nominated that owner as the driver on the night in question.

In recognition of the inherent dangers of all pursuits, the new policy is aimed at eliminating needless pursuits so as to limit unnecessary death and injury. That intent was circumvented in this case. Every assault is an indictable offence but if police officers were to initiate pursuits whenever they see some pushing and shoving, the thrust of the policy will be thwarted.

I conclude the pursuit was arguably permitted by the policy but would have been best avoided.

I turn now to the manner in which the pursuit was undertaken.

The road was relatively straight but was poorly lit, in only medium condition, somewhat uneven with loose gravel shoulders. It was a typical secondary country road.

Senior Constable Matthews was familiar with the area, there was little or no other traffic about and the Commodore, although having been driven carelessly and at high speed, was not engaging in extreme manoeuvres. He knew the car was not being driven by a minor; there were no passengers and the car appeared roadworthy.

In his interview with Acting Inspector Innes, Senior Constable Matthews stated that as he gradually increased his speed after returning to Blaxland Road and the other vehicle began to pull away from him he “*sort of had an inkling*” that Mr Francis was not going to stop. When he reached a point around 2.5km from the commencement of the pursuit and the distance between the two cars continued to increase despite the police vehicle travelling at about 110km/h Senior Constable Matthews decided the risk to safety dictated the pursuit be abandoned. It could be argued this should have been apparent to him before he had travelled to this point. The low level of the misconduct justifying a pursuit in this case meant it was incumbent on the officer to abandon the pursuit once a very low risk threshold had been breached.

However, officers can not be expected to act as automatons and instantly process all of the information we have considered in the calm environment of these proceedings. While it may have been preferable for the pursuit to be abandoned a half a minute or a minute sooner, there was no flagrant breach of the policy and I don’t consider the delay in the police coloured lights being extinguished contributed to the crash.

I have also considered the actions of Senior Constable Matthews once he had decided to abandon the pursuit. It appears that Senior Constable Matthews continued driving at 110km/h during the course of his radio communication with Sergeant Cramp. Although this was of short duration it would have been the most obvious point for him to have slowed if he had formed an intention to comply with the policy requirement to pull over to the side of the road. I accept it was entirely appropriate for him to drive quickly to the scene of the accident once he had seen it occur. I will not pursue this aspect of the matter any further.

Training of officers in pursuit policy

As indicated earlier, during the course of this investigation it became apparent that Senior Constable Matthews had not received training in the new pursuit policy even though he was working in Toowoomba when the new policy was trialled there. This is a significant oversight and it raises an inference that had he been trained he may have been more sensitive to the philosophy underpinning

the policy and reacted to the events on the morning of 4 October 2008 differently.

The failure of Senior Constable Matthews to have undertaken the training was brought to the attention of the Southern Region Assistant Commissioner and a full audit was conducted to identify any other officers who had not been trained. I am advised this has now been addressed.

I have no evidence this was more than an isolated problem and I therefore have no basis on which to make further comment.

Radio communication at Dalby Police Station

Dalby was and continues to be a 24 hour police station. On the night in question the division was serviced by a shift supervisor, a general duties crew of two officers and a traffic branch officer.

In addition to detailing calls for service, the shift supervisor was responsible for radio communication, the management of watchhouse prisoners and responding to people attending at the front counter.

As at October 2008, when in the watchhouse or at the front counter the shift supervisor was unable to hear any communications from the radio room or his office which were the only places that had fully functioning radios. A local policy provided for the responsibility to answer the station telephones and monitor radio broadcasts in the division to be assigned to the Toowoomba communications room if all officers left the Dalby station but it had no application when the officers were merely in a part of the station without radio communication.

Dalby officers sought to address this problem by carrying hand held radios when in the watchhouse but it is apparent this was intermittently ineffective.

The issue arises for consideration in this inquest because it is apparent Senior Constable Matthews tried unsuccessfully on at least three occasions to make radio contact with the station during the pursuit as he is required by the policy to do. The pursuit policy requires this contact so an officer not involved in the action can perhaps take a more dispassionate view about the need for the chase to continue. It is also vitally important officers are able to call for assistance, particularly when they are undertaking a single officer patrol.

When interviewed Sergeant Cramp noted that communications at Dalby station had been problematic since he arrived in the district in 1988. It is disappointing the problem was allowed to persist for another 20 years. However the inquest heard the addition of communications equipment to the watchhouse at Dalby has now addressed this problem. I am satisfied no further action is required to address this issue and no further comment from me would assist.

I close the inquest.

Michael Barnes
State Coroner
Dalby
17 November 2010