



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Craig Robert SHEPHERD**

TITLE OF COURT: Coroner's Court

JURISDICTION: Southport

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FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuits

REPRESENTATION:

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Introduction	1
The investigation	2
The inquest	3
Social history	4
Background to the pursuit	5
They first come to the attention of police	6
M1 to Nerang	8
Nerang to Beechmont Road	9
Beechmont Road	9
The crash	10
The aftermath	11
The investigation findings	11
Radio reception	13
Vehicle inspection	13
The autopsy	14
Findings required by s45	14
Identity of the deceased	14
Place of death	15
Date of death	15
Cause of death	15
Concerns, comments and recommendations	15
QPS pursuit policy	16
Initiating a pursuit	17
Continuing a pursuit – on going risk assessment	17
Alerting police communications	17
Abandoning a pursuit	18
The responsibility of the “pursuit controller”	18
When did the ‘pursuit’ commence?	18
The “known circumstances”	19
The risk assessment (initial and ongoing)	19
Conclusion	21
Disciplinary action	24

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 specified officials with responsibility for the justice system including the Attorney-General and the Minister for Police and Corrective Services. These are my findings in relation to the death of Craig Robert Shepherd. 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

Late on the evening of 16 June 2006 Craig Shepherd was riding his newly purchased motorcycle north on the Pacific Highway at Tugan. Susan Delaney, Mr Shepherd's girlfriend, was riding as a pillion passenger. The bike was one of three travelling in a group.

A police motorcyclist attempted to intercept the three bikes. Mr Shepherd did not stop but rode off at high speed.

Shortly afterwards he was seen by two other police officers who followed him on the Pacific Highway towards Nerang. Mr Shepherd turned off the highway, headed into Nerang and continued west with the police vehicle continuing to pursue at speeds of up to 150km/h. He had run two red lights and overtaken a vehicle over double lines by the time he turned off Nerang-Murwillumbah Road onto the unlit and winding Beechmont Road. The police vehicle continued to pursue him.

Approximately 700m along Beechmont Road Mr Shepherd approached a 90 degree left hand bend at high speed. The motorcycle skidded, failed to take the turn and catapulted the two passengers towards an almost sheer rock wall near the side of the road. Mr Shepherd died almost immediately. Ms Delaney suffered severe and permanent injuries.

The officers in the pursuing vehicle broadcast a message via their radio advising of the crash and seeking assistance. This was the first time police communications knew anything of the pursuit.

These findings:

- confirm the identity of the deceased man, the time, place and medical cause of his death
- seek to explain how the crash occurred; and
- consider whether the pursuing officers 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 death.

In a later bracket of evidence consideration shall be given to whether any changes to current policies or practices would reduce the likelihood of deaths occurring in similar circumstances in the future.

As the death followed a police pursuit and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

The investigation

The investigation was overseen by the QPS Ethical Standards Command and a detailed report for the Coroner was prepared by Inspector Owen Elloy.

The District Duty Officer, Acting Senior Sergeant Greg Brake and the Regional Duty Officer, Inspector Phillip Baker both attended the scene of the crash on the evening.

Interviews were conducted with:

- the pursuing officers;
- other officers who were involved in radio communications or who attended the crash scene on the evening;
- two civilian eye witnesses to a small portion of the pursuit;
- the motorcycle officer who had earlier attempted to intercept Mr Shepherd; and
- one of the other two motorcyclist's who had accompanied Mr Shepherd at Tugan.

Early on 17 June 2006 a video re-enactment of the pursuit was carried out with the driver of the pursuit vehicle.

Arrangements were made on the evening for a specialist accident investigator to attend the scene. A series of observations and measurements were made which allowed Senior Constable Bruvels to compile detailed scale plans of the incident scene. A series of photographs were taken, both by one of the first officers to respond to the scene, and later by a scenes of crime officer.

Roadside breath tests were conducted on both occupants of the pursuing police vehicle who were, appropriately, separated from other officers after a relatively brief period. Blood and urine samples were later taken from both officers by the government medical officer.

Training and personnel records of both officers in the pursuit vehicle were obtained.

Acting Senior Sergeant Greg Brake conducted a series of tests of police radio reception in the area of the crash following suggestions on the evening that

there may have been a problem in this regard. Tests were later carried out by a QPS electronics technical officer on the police radio in the vehicle driven by the pursuing officers.

The motorcycle ridden by Mr Shepherd and the pursuing vehicle, a V8 Holden Commodore Sedan, were inspected by an experienced QPS vehicle inspector.

Further interviews were conducted in September 2007 to enable recently obtained information to be put to the officers in the pursuing vehicle and another officer, the role of whom had taken on more significance as a result of those investigations.

CCTV footage was obtained from a service station at Nerang which showed both vehicles involved in the pursuit.

An autopsy was undertaken on Mr Shepherd's body and his blood and urine analysed for alcohol and drugs.

As can be readily appreciated whenever a death is connected with police action it is essential that 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 that they can be assured that the actions of the officers have been appropriately scrutinised. The police officers involved also have a right to have an independent assessment made of their actions so that there can in future be no suggestion there has been any "cover up".

I am satisfied that this matter has been thoroughly and professionally investigated and all sources of information have been accessed and analysed. I commend those involved in the investigation and in particular Inspector Elloy. It is apparent that without his perspicacity and perseverance many of the facts relevant to an understanding of the circumstances of this incident would not have been discovered.

The inquest

A pre-hearing conference was held in Brisbane on 3 November 2008. Mr Harper was appointed Counsel Assisting. Leave to appear was granted to the Commissioner of the Police Service, the two officers involved in the pursuit, Ms Delaney, the injured pillion passenger, and the compulsory third party insurer of the motorcycle, although the insurer withdrew before the inquest commenced. A list of witnesses was settled and the issues to be examined during the inquest were agreed upon. Mr Shepherd's family were present at the pre-hearing conference and also attended throughout the course of the inquest.

On 8 December 2008 a view of the scene was conducted. The inquest then proceeded at Southport from 8 to 11 December 2008. Ten witnesses gave evidence and 84 exhibits were tendered.

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

Craig Robert Shepherd was born on 20 January 1980 in Lismore, NSW. He was 26 when he died.

He attended Goonellabah Primary School from grades 1-6 and then Kadina High School from grades 7-10. At 16 he moved to Tamworth and took up an apprenticeship as a ceramic tiler. He finished this apprenticeship on the Gold Coast in 2001. He then went on to full time employment with a tiling company.

At the time of his death he had gone into partnership with a friend in their own tiling business.

He had an unenviable traffic history: between August 2000 and February 2006 he was convicted of nine speeding offences, three failing to wear helmet offences and driving under the influence of alcohol. During this period Mr Shepherd's licence was twice suspended. In March 2006 he was caught driving whilst unlicensed and on 18 April 2006 disqualified from holding or obtaining a drivers licence for a period of six months.

Mr Shepherd built his own home at the age of 20 and was co-owner of a race-boat with his father Colin. He was a talented rugby player and water skier.

Mr Shepherd had been involved with the Odin's Warrior outlaw motorcycle gang for at least a year. It is thought he became a fully fledged member in March 2006.¹

He is sadly missed by his younger brother Brian, his parents and his three surviving grandparents.

¹ I reject the suggestion that this group is a harmless collection of motorcycle enthusiasts.

OMCGs originally formed during the late 1940s in the US as loose-knit groups made up of disgruntled veterans from World War II. As time passed, their tough-guy persona was perpetuated and their numbers grew, along with a para-military structure and a pseudo sophistication. Although not all OMGs fit the definition of organised crime, many gangs do.

There are many smaller 'wannabe' gangs in Australia such as the Gypsy Jokers, the Coffin Cheaters, the Finks and Odin's Warriors. The Odin's Warriors have been involved in several violent criminal episodes in Queensland.

The Australian Crime Commission's board approved the establishment of a taskforce after an intelligence operation detected a significant expansion in the activities of outlaw motorcycle gangs in 2005-06. The ACC says outlaw motorcycle clubs are involved in a wide range of criminal activities including murder, drug manufacturing and trafficking, firearms trafficking, extortion, prostitution, robbery, theft, fraud, money laundering and re-birthing of stolen motor vehicles.

It is appropriate that I also acknowledge the considerable suffering of Ms Delaney and her family. Not only did she lose her boyfriend she also suffered severe injuries from which she is never likely to recover.

I offer Mr Shepherd's family my sincere condolences for the loss of their grandson, son and brother.

Background to the pursuit

On Friday 9 June 2006 Mr Shepherd purchased a Triumph Rocket III, 2300cc motorcycle registered number YH-120.

Despite being unlicensed and disqualified from holding a license, he obviously rode the bike from when he acquired it. His friend Greg Moran said a few days after collecting the bike, Mr Shepherd told him he had ridden it at 200km/h.

Mr Shepherd was an experienced motorcycle rider but the fatal crash occurred only one week after he acquired the new bike. It is likely he had not completely adjusted to the very different handling characteristics of the Triumph as compared to the Harley Davidson he had been riding.

At 5.00pm on the evening of 16 June 2006, Mr Shepherd dined with Mr Moran, his wife and Mr Shepherd's girlfriend Susan Delaney at Mr Moran's home at Windaroo.

After dinner Messrs Moran and Shepherd rode to the Moorooka clubhouse of the Odin's Warriors. There they each drank two mid strength beers and learned of a function being held at another clubhouse of the gang at Tweed Heads.

They decided to attend and left Moorooka in company with a like minded motorcyclist, Allan Yates. On the way south, they collected Ms Delaney from Mr Shepherd's residence and continued on to the clubhouse at Tweed Heads, arriving, according to Mr Moran's best estimate, at about 9.00pm.

The group played pool and according to Mr Moran drank three cans of bourbon and cola each before leaving the clubhouse shortly after 11.00pm.²

Mr Shepherd, with Ms Delaney riding pillion, Mr Moran and Mr Yates proceeded north along the Pacific Highway in a group. Mr Moran says he and Mr Shepherd were heading for their respective dwellings.

Sergeant Gregory Newman was at that time based at the Gold Coast Traffic Branch. On the evening of 16 June 2006 he was involved in Traffic Operation Pyramid, planned for 16, 17 and 18 June 2006 and focussing on the detection of traffic offences and in particular drink driving.

² The suggestion that Mr Shepherd only drank two mid strength beers and three cans of bourbon and cola throughout the evening is consistent with the blood alcohol measurement of 0.014% found at autopsy.

At around 11:25pm that evening he was patrolling near Tugan on his police motorcycle.

They first come to the attention of police

Sergeant Newman was stationary in the southbound lane of the Pacific Highway, opposite the Gold Coast airport at Tugan, when he observed the three motorcycles travelling north. From their appearance he concluded they were OMCG members. He decided to intercept them; executed a U turn and activated his coloured flashing lights.

All three motorcycles accelerated in an obvious attempt to evade him. Sergeant Newman increased his speed, and even though he got up to 150km/h, Mr Shepherd's bike continued to draw away. Shortly, Mr Moran slowed. Sergeant Newman continued past him as he suspected he was a decoy; apparently a common practice amongst OMCG riders in situations where police are attempting to intercept a group. Mr Shepherd, being unlicensed, had more to lose from being intercepted than Mr Moran.

Sergeant Newman states he had nearly caught up to the other motorcycle we now know was ridden by Mr Yates when it suddenly braked and veered left onto a grassed nature strip. It travelled across this area, through trees, onto a parallel side road and rode away.

Sergeant Newman sensibly gave up the chase and slowed to intercept Mr Moran.

The officer contacted the police communications centre over his radio and broadcast his position and advised that "*bikies were trying to do a runner*". He confirmed two of them had fled and he had intercepted the third.

Mr Moran was required to supply breath for a roadside test. When it proved negative and computer checks revealed he was not wanted, Mr Moran was allowed to proceed. He continued north to Mr Shepherd's residence at Ormeau expecting to meet him there. He then went home.

The pursuit commences

Senior Constable Stephen Chapman was sworn in as a QPS officer in June 1995 having been a police officer in Victoria for four years. He had been working with the Gold Coast traffic branch, at Coomera, for over five years.

He worked a 2.00 to 10.00pm shift on 16 June 2006. He was then detailed a further six hours of overtime as part of an ongoing *Operation Sphere* targeting 'hoons' around the Gold Coast.

Constable Hilton Buckley was sworn in as a member of the QPS on 13 June 1997. He had been attached to the Gold Coast traffic branch for seven years and was working a 6.00pm to 2.00am shift on 16/17 June 2006.

At around 10:30pm, Senior Constable Chapman made arrangements for Constable Buckley to pick him up at Coomera station. They proceeded to conduct patrols around the northern and central parts of the Gold Coast.

They heard Sergeant Newman's broadcast and although neither officer said they took any action to respond to it, Constable Buckley acknowledged they were on the look out for the fleeing bikes.

Just after 11:30pm Constable Buckley drove onto the northbound on-ramp of the Pacific Highway from the Robina Parkway. The officers deny they were sitting there waiting for Mr Shepherd's bike to come by. They saw what we now know was Mr Shepherd's motorcycle several hundred metres ahead of them. It was apparent to them it was speeding.

Constable Buckley accelerated onto the highway and soon reached 150km/h. Senior Constable Chapman activated the vehicle's emergency lights.

The Pacific Highway at the Robina Parkway exit is a four lane road with a speed limit of 100km/h. The highway is well lit and the officers' evidence is that the traffic was light, although they recall passing several cars. The weather was clear and dry.

Despite the police car accelerating up to 160 km/hr they only slowly closed the gap to the motorcycle as they approached Mudgeeraba.

Constable Michael Molloy was travelling south on the highway in a 'booze bus'. He observed Mr Shepherd's motorcycle about 1.5kms north of Mudgeeraba. When he came upon the police car with its coloured lights illuminated a few seconds later, he assumed they were pursuing the bike and that it was one of those which had fled from Sergeant Newman. Because the police car was approximately 800m behind the motorcycle and he knew from experience that the undulations in the terrain could obscure vehicles ahead, he broadcast confirmation that they were on track.

Police communication tapes reveal that at 11:34pm Constable Molloy transmitted the following on the police radio:

'That unit northbound at Mudgeeraba motorcycle still continuing north.'

Senior Constable Chapman immediately responded over the police radio:

'Yeah thanks mate; it's Chappie and Hilly'

Constable Molloy also telephoned Senior Constable McLoughlin, another traffic branch officer known to have a special interest in outlaw motor cycle gangs. He told him what he'd seen.

Senior Constable McLoughlin was patrolling with Constable Webley. At the time of receiving Constable Molloy's call they were near Helensvale and so

drove to the nearest Pacific Motorway on ramp and headed south with a view to assisting with the intercept.

Constable Webley telephoned Senior Constable Chapman to get more details of the bike and its location. He was told they were heading north on the highway but they were not close enough to give details of club colours and the like. It was agreed officers McLoughlin and Webley would position themselves to assist with the intercept if possible.

Accordingly, those officers headed south “*lingering*” or “*loitering*” at emergency turn around points to check for the fleeing vehicle before driving quickly to the next access point.

The transcript of police radio communications records both cars calling each other but no conversation ensues.

Thirteen kilometres from where the motorbike had first been seen by officers Chapman and Buckley, Mr Shepherd and his pillion passenger took exit 69 off the highway onto the Nerang Connection Road.

As the pursuing police officers approached the exit they could no longer see the motorcycle ahead on the highway and so they also took the Nerang exit.

Their evidence is that they had at no stage got close enough to the bike to observe there was a pillion passenger on the motorcycle, nor to identify the bike’s make, colour or registration number. When questioned after the incident, Constable Buckley said they had been pursuing the vehicle in order to fix a “*follow speed*” to form the basis of a speeding charge.

M1 to Nerang

The pursuit vehicle turned left onto the Nerang Connection Road. This stretch of road is two lanes and continues for 1.62km until it reaches Price Street which is the main road travelling through the central business district of Nerang.

As the vehicles proceeded along this stretch of road it appears the police vehicle closed to within 300m of the motor bike.

As the officers approached the intersection with Price Street, Constable Buckley saw Mr Shepherd turn right against a red light and proceed into the built up area of Nerang.

The officers followed the bike through the red light and activated their siren. Another vehicle sat stationary on the opposite side of the intersection and allowed the police vehicle to proceed.

At about this time a second telephone call was made between the occupants of two cars. It is unclear who initiated the contact. In any event, it is apparent officers McLoughlin and Webley were told the pursuit had left the freeway as

they did likewise, exiting further south with the intention of also heading west to link up with the pursuit on the outskirts of Nerang.

CCTV footage from a petrol station on Price Street, records the motor cycle pass nine seconds before the police car. Constable Buckley recalls their speed being approximately 80km/h in the approach to this point. Senior Constable Chapman estimates it could have been 100km/h-120km/h. This allows me to estimate the distance between the vehicles to be between 200 and 300m.

The traffic lights at the intersection immediately after the service station were showing red; Mr Shepherd nonetheless travelled through them, slowing only slightly. The officers state they slowed appreciably to the point of almost stopping in the lead up to this intersection. This is corroborated by the CCTV footage.

Nerang to Beechmont Road

The pursuit continued west along Beaudesert-Nerang Road which turns into Nerang-Murwillumbah Road. This is a two lane road with additional lanes placed intermittently on either side to allow for safer access to and from adjoining roads. At one point road works had blocked the left of what, at that point, was two west bound lanes. The officers saw the motor bike cross over double lines into the oncoming lane, to overtake a vehicle travelling in the same direction. By the time they came up to the same vehicle, the road had widened again and the car moved over to let them pass.

The vehicles continued west, around 150 to 300 metres apart and travelling at around 150km/hr until they came to Beechmont Road which joins Nerang-Murwillumbah on the right hand side as one travels west. From the point where the vehicles first entered Price Street, they had travelled a further 7.66km.

The officers say as they rounded the bend that allowed them to see that intersection they saw the tail light of the motor cycle disappearing around a right hand bend in Beechmont Road. Based on that and having been to the area I am able to estimate the police car to have been between 150 and 200 metres behind the bike at that stage.

Beechmont Road

Senior Constable Chapman says at this point he contemplated terminating the pursuit. When interviewed he explained:-

'Basically ah we've decided to – that it was a, no – ah basically to terminate it as, as we get into um Beechmont Road because of the totally different road conditions. It's dark up there, it's windy and UI it'll, be, it'll be a lot slipperier so at that stage it's all over'

Both officers suggest that they did not intend to continue the pursuit along Beechmont Road. On three occasions when interviewed and on three

occasions when giving evidence, Senior Constable Chapman explained the decision to abandon the pursuit was based on the assessment they had no chance of catching the bike given its superior acceleration around tight bends. *"We were never going to catch him up there"*. Only in the passage quoted above is there any indication the officers might have considered the safety of what they were doing. Nevertheless they continued as before with the coloured roof top lights and the siren still activated.

The crash

About 700 to 800 metres along Beechmont Road, after negotiating several sharp bends the motorcycle came to a 90 degree left hand turn. At this point the road is carved from the rock leaving a steep drop to the left and a near sheer rock wall to the right.

As the officers rounded the curve prior to the 90 degree bend, they saw sparks. Senior Constable Chapman recalls seeing the headlight of the motorcycle as it rotated in a lateral position against the road.

Senior Constable Chapman estimates they were approximately 200m away when they saw the sparks and the headlight. I accept this as correct. They could not have been any further behind the motorcycle as their view would have been obscured by the previous bend in the road.

They drove to the crash scene. Constable Webley got out of the car and ran to the motorcycle. Senior Constable Chapman used the police radio to send the following transmission:

Chapman: 972 Urgent.

Operator (Knott): 972

Chapman: We've just started chasing a motorcycle up ah Beechmont Road and they have come off request an ambulance thanks.

Operator: I need a better location than that if you've got one thanks

Chapman: Um, two, we've got two on the motorcycle, two on the motorcycle, we're about two kilometres up Beechmont Road.

Operator: Okay we'll call the ambulance on that but if you've got anything further re injuries etc let us know thanks?

Chapman: We require AIS as well thanks.

When he gave evidence, Senior Constable Chapman said it was the trauma of what he had just witnessed that caused him to inaccurately state they had just started chasing the motorcycle rather than an intention to mislead.

The aftermath

Mr Shepherd was lying in a roadside culvert on his back with his legs propped up against a rock wall. Ms Delaney was lying on her back with the motorcycle lying across her torso. The officers assumed both were dead.

Having heard the transmission from Senior Constable Chapman, Senior Constable McLoughlin and Constable Webley made their way to the scene as did another car carrying Constable Jose.

One of those officers, Constable Gabriel Jose took digital photographs of the scene before it was realised that Ms Delaney was still alive once she was seen and heard to be breathing.

The officers did not immediately lift the motorbike from her as they were concerned they may exacerbate her injuries. They sought advice from the ambulance service via police communications but when none was forthcoming they went ahead and freed Ms Delaney and put her into a recovery position. Regretably, it seems this did not occur until at least 12 minutes after the crash.

A critical care ambulance officer in a station wagon attended a short time after the bike had been moved off Ms Delaney. He was followed shortly afterwards by an ambulance. Ms Delaney was placed on a stretcher with the assistance of various police officers and transported to hospital.

Shortly after the initial radio communication from Senior Constable Chapman, the District Duty Officer and the Regional Duty Officer Inspector were advised and they attended the scene.

ESC investigators attended the scene on the night of the crash and took up the process of interviewing relevant parties throughout the course of the following morning. The investigation described earlier then commenced.

Mr Shepherd's body was transported to the Gold Coast morgue and formally identified at 10:55am on the morning of 17 June 2006 by his father Colin Shepherd.

The investigation findings

Alcohol/Drug Testing

The breath tests carried out on both officers in the pursuit vehicle shortly after the crash showed readings of 0.00. Blood and urine samples also proved negative for alcohol or tested drugs. Chlorpheniramine, commonly found in cough syrups or preparations was detected in the blood and urine samples of Senior Constable Chapman in very small amounts.

Speed and Distance Calculations

Inspector Elloy has calculated that the distance between the point where Sergeant Newman attempted to intercept Mr Shepherd and the site of the crash is 39.95km.

Radio communication tapes show the time between Sergeant Newman's initial communication in relation to the '*three bikies*' and the communication from Senior Constable Chapman advising of the crash is a period of 15 minutes (with the potential error margin making it anywhere between 14 and 16 minutes).

This equates to an average speed over that distance of around 160km/h.

The total distance between the Robina Parkway on-ramp and the crash site is 17.55km. The distance from Price Street to the crash site is about 7.6 km.

Accident Investigation Squad Findings

Senior Constable Bruvels, then based at the Gold Coast Accident Investigation Squad conducted a detailed analysis of the crash scene.

He observed a single tyre mark, 41m long, in the west bound lane of Beechmont Road leading up to the crash site. He identified this as a skid mark left by the rear tyre of the Triumph. Although the skid mark was predominantly straight, the last several meters curved to the left and the skid mark became wider in appearance.

The offside (right side) foot peg from the Triumph was located in the westbound lane about 4 metres from the end of the skid mark. The offside mirror was located in the eastbound lane nine metres west of the end of the skid mark. A gouge mark was located on the road about 1 metre south of the end of the skid mark. Further scratches and scarring on the road were observed from the end of the skid mark leading up to the position of rest of the Triumph.

An impact mark on the rock wall was located by Senior Constable Bruvels which in his opinion was a mark left by the helmet of Mr Shepherd. It matched in terms of size with a mark on the helmet. There was blood splatter surrounding the impact mark on the wall.

Using recognised techniques, Senior Constable Bruvels was able to calculate the Triumph would have been travelling between 63 and 97km/h at the commencement of the skid mark. At the inquest he stated that the distance Mr Shepherd and Ms Delaney were flung from the motorcycle leads him to believe the speed would have been at the upper end of this range.

The scenario hypothesised by Senior Constable Bruvels is that as Mr Shepherd braked, the rear tyre has locked up, causing the motorcycle to slowly rotate in an anti-clockwise direction. As it neared the turn the brakes have either been released causing the back wheel to suddenly grip; or the

wheel has reached a point where it is facing almost 90 degrees to the direction of travel; also causing it to grip rather than slide.

This gripping effect has caused the bike to flip from an initial left leaning position, over on to its right hand side propelling both occupants towards the rock wall adjacent to the road. The bike has continued to travel in a westerly direction, scraping against the road and rotating 180 degrees. As it reached the side of the road it has flipped over and landed on Ms Delaney. This is consistent with the observations of Senior Constable Chapman having seen the headlight of the bike along with sparks.

The injuries suffered by Mr Shepherd are consistent with the theory put forward by Senior Constable Bruvels.

The crash was caused by an attempt to take a tight turn at too high a speed and a loss of control resulting from the rear wheel locking under excessive braking.

An analysis of Mr Shepherd's helmet revealed it to have been, presumably, modified so that it consisted merely of a brittle outer skin with a layer of towelling type material adhered to the inside for rider comfort. It was not fitted with the standard specification protective foam layer on the inside. Although a sticker attached to the helmet purported that it complied with Australian Standards, it clearly did not.

Radio reception

On 21 June 2006 Sgt Terrence Burke, an Electronics Technical Officer inspected the radio and associated electronic communications equipment in the vehicle that had been involved in the pursuit on 16 June 2006. He found the two radio cables attached to the antennae of the vehicle were both defective. The radio could therefore not be, in his words, '*relied on to operate correctly at all times*'. His evidence is that radio transmission would largely depend on proximity to repeater stations.

On the evening of the crash, Acting Senior Sergeant Brake, the District Duty Officer, conducted a radio check of the area using his police vehicle. He drove from the crash site to the intersection of Beechmont and Nerang-Murwillumbah Roads calling communications at Broadbeach as he went. He also conducted tests of this nature 500m further along Beechmont Road from the site of the crash. He was advised by the radio operator that their reception was clear. He noted that his reception was clear.

Vehicle inspection

A QPS vehicle inspection officer, Andrew McDonald, carried out an inspection of both the Triumph motorcycle and the Holden Commodore police vehicle on 19 June 2006. Both vehicles were found to be in satisfactory working order with no mechanical defects.

The autopsy

On 20 June 2006 an autopsy was performed on the body of Craig Shepherd by Dr Beng Beng Ong, an experienced forensic pathologist.

His report states:

The main injuries noted on the post-mortem examination was a near complete ring fracture of the foramen magnum (circular fracture of the base of skull). This pattern of fracture is noted in hyperflexion or hyperextension injury (too much bending forward or backward of head). This injury is commonly encountered in motorcycle accidents as a result of impacts of the head against ground/vehicle resulting in the excessive movement.

There was a large laceration on the front of head indicating probable impact site of the head against an object/ground. This would result in hyperextension of head (excessive bending backward) and would have resulted in injuries to the base of skull.

The brain showed diffuse traumatic axonal injuries, usually indicative of severe head trauma. This finding would be in keeping with the laceration to the front of head and resultant near ring fracture of the foramen magnum.

There was evidence of aspiration of blood to the airway and gullet (oesophagus) and had resulted in blood aspiration within the lungs.

Dr Ong concluded:

It is my opinion that the deceased had died of head injuries. The findings were typical of that sustained in a motorcycle accident (e.g. fall or struck another vehicle/object).

An analysis of blood taken at the autopsy examination revealed a therapeutic level of phentermine (a dieting drug) and alcohol at a level of 14mg/100mL (0.014% BAC). Neither substance was likely to have had a role in the death of Mr Shepherd.

Findings required by s45

I am required to find, as far as is possible, who the deceased was, when and where he died, what caused the death and how he came by his death. I have already dealt with this last issue, the manner and circumstances of the death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses I am able to make the following findings in relation to the other aspects of the death.

Identity of the deceased – The deceased person was Craig Robert Shepherd

Place of death –	He died at Beechmont Road, near Advancetown, in Queensland
Date of death –	Mr Shepherd died on 16 June 2006
Cause of death –	He died from head injuries sustained in a motorcycle crash during a police pursuit.

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.

There is no doubt the most direct and primary cause of the crash was Mr Shepherd's failure to stop when he knew police wanted him to and the highly dangerous manner in which he rode his motorcycle while attempting to avoid interception. Obviously, had he stopped when directed to do so by Sergeant Newman or when the other officers chased him through Nerang he would not have died that night. It is beyond the scope of this inquest to look into the factors that lead young men into taking such needless risks. I should however, critique the manner in which the police service responds to them.

As counsel assisting mentioned at the opening of this inquest, Mr Shepherd's death is one of seven that followed a police pursuit in the period June 2005 to December 2006. Three inquests have already been held and inquests will be held in relation to the three remaining deaths in coming months. In relation to each, the conduct of the officers involved will be judged against the QPS policies in force at the relevant time. However, as those policies have changed significantly during that period, I shall refrain from making any recommendations for further change until the evidence from all seven inquests has been considered and the impact of the changes are evaluated.

In these findings I shall summarise the relevant policies in force at the time, and assess whether they were complied with. For the reasons set out below, I have reached the conclusion that some of the officers involved in this incident did not comply with these policies. They should be held accountable for this and I am critical of their conduct in this regard. However, it is important to acknowledge they were not motivated by any improper purposes. On the contrary, it seems their enthusiasm for the enforcement of the traffic laws may have led them into error. Traffic police are frequently exposed to the horrible consequences of dangerous driving and it is understandable they might lose perspective about how to appropriately perform their functions. This inquest shows what can happen when they fail to comply with the policies designed to make policing safer.

QPS pursuit policy

The QPS policy that seeks to regulate situations such as that encountered on the night in question had been in place since 1 January 2006. It amended the earlier policy which had been developed over a number of years.

It differentiates between 'urgent duty driving' and 'pursuits' and provides the following definitions:

Urgent Duty Driving:

Means driving to perform a duty which justifies prompt action and may include driving a Service vehicle in a manner that if not justified would ordinarily constitute an offence.

Pursuit:

Means an attempt by an officer driving a police vehicle to intercept another vehicle where that officer believes on reasonable grounds that the other driver is avoiding interception. An intercept is when an officer is endeavouring to stop another vehicle – a pursuit begins when the officer believes on reasonable grounds that the driver of the other vehicle is intentionally avoiding being intercepted.

QPS policy prescribes specific situations in which an officer may engage in urgent duty driving. These include attending to tasks which are specifically designated as being high priority or where it is necessary to perform a specific function or exercise a power central to their role as a police officer.

The policy goes on to state, as with pursuit policy, the '*known circumstances associated with any urgent duty driving must outweigh the risks*'. As with pursuits, the policy dictates that in coming to a decision to engage in urgent duty driving, officers should recognise that the safety of officers, the public and offenders is paramount. There appears to be recognition in the policy of the potential overlap between urgent duty driving and pursuits. Officers' attention is drawn to some of the specific risk factors relevant to pursuits that are outlined in greater detail later in section 14.23.7.

The policy in relation to pursuits has layers of controls. It requires the officers undertaking the pursuit to apply a set of risk assessment criteria to determine whether a pursuit should be commenced. He or she should then continue to undertake such an assessment of the changing circumstances as the pursuit continues. The passenger in the pursuit car is required to contact the local radio communications room and describe the circumstances so the pursuit can be over viewed by another officer who is kept informed of developments via the police radio. That second officer then has authority to direct the pursuers to terminate the pursuit. Until such contact is made, the senior officer in the car is deemed the pursuit controller. I will deal with these components separately.

Initiating a pursuit

In the part headed “*Justification for initiating or continuing a pursuit*” the policy stipulates that “*(t)he risks involved must be balanced against the necessity for the pursuit. Pursuits may be conducted only when;*

- (i) the known circumstances are sufficient to justify a pursuit;*
- (ii) identifying or apprehending the occupant(s) of the pursued vehicle at a later time is unlikely.*

A definition section provides; “*known circumstances means what is known (not what is suspected or uncertain) in terms of all the circumstances, including the initial offence, that amounts to justifying the risks involved in the urgent duty or pursuit driving*”.

The policy goes on to direct that “*a risk assessment must be conducted in relation to every pursuit*”. It then lists 12 factors which must form part of the assessment.

As can be seen, the policies required 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. In this balancing exercise issues of safety are to be paramount.

Quite specific and useful examples are given of characteristics which will be relevant to assessing the risk of the pursuit resulting in injury or death. No guidance is given to assist officers to calculate the necessity of the pursuit with reference to the diminution of law enforcement.

Continuing a pursuit – on going risk assessment

The standard risk management approach is continued by the direction that “*(t)he reasons for and risks involved must be assessed before initiating the pursuit and be continually reassessed during the pursuit. The mandatory operating principle is ‘the safety of police, the public and the offenders or suspects is paramount.’ The pursuit must be abandoned if the risk outweighs the necessity for and known circumstances of the pursuit.*”

Alerting police communications

The policy imposes an obligation on the pursuing officers to advise the radio operator, as soon as possible, that the pursuit has commenced. It outlines nine categories of information pertaining to the pursuit, of which the radio operator is to be kept informed. These include the identity of the persons and vehicles involved and the location and direction of travel.

The policy dictates that in circumstances where there are two officers in a vehicle, it is the responsibility of the passenger to forward this information. It also places a requirement on the radio operator to advise other units to, where possible, maintain radio silence.

Abandoning a pursuit

The policy provides at section 14.23.7 that:

“A pursuit must be abandoned immediately if it creates an unacceptable risk to the safety of any person.”

Where a decision has been taken to abandon a pursuit the policy sets out a series of steps to be taken. These include a requirement to turn off flashing lights and sirens, to pull the police vehicle over at the first available safe position and to advise the pursuit controller that the pursuit has been abandoned.

The responsibility of the “pursuit controller”

The driver of the pursuit vehicle is not the only officer who had a responsibility to undertake the risk assessment and balancing of likely outcomes I have described. In recognition that officers caught up in a chase can have difficulty making objectively reasonable assessments, the QPS has in its procedures added a second layer of control that gives the primary responsibility for determining whether a pursuit should continue to the duty officer at the closest police communications centre. That officer is designated the “*pursuit controller*”.

The policy provides that immediately an officer initiates a pursuit, the nearest police communications centre is to be advised and the circumstances of the chase must be relayed as they unfold. The communications centre advises the duty officer who then monitors the chase as it is described by the officer in the pursuing vehicle. The officers in the pursuing vehicle are obliged to comply with any directions given by this overseeing officer. The pursuit controller is obliged to undertake the same risk assessment and balancing of risk and utility I have already described and to terminate the pursuit if he/she considers it poses an unacceptable risk to the safety of anyone who might be affected.

Did this pursuit comply with the policy?

When did the ‘pursuit’ commence?

In order to determine whether the officers involved in this incident complied with the relevant policies it is necessary to determine when the pursuit commenced.

As can be seen from the definition quoted earlier a pursuit has two elements: an officer is attempting to intercept a motorist and the officer believes on reasonable grounds that the motorist is attempting to avoid being intercepted. In my view the policy can not be avoided simply by an officer not coming to a conclusion about the second element. It must be read as meaning a pursuit is underway if a reasonable officer would in the circumstances conclude the person he was attempting to intercept was intent on avoiding him.

There is no doubt that from very soon after Senior Constable Chapman and Constable Buckley first saw Mr Shepherd's motorcycle and accelerated after it near Robina, they were attempting to intercept it. The officers and their counsel contend they had no reasonable basis on which to believe he was aware of their endeavours and was attempting to avoid them. They submit on the freeway he was at all times several hundred metres ahead of them and it is conceivable that he did not see their flashing coloured lights in his rear view mirrors. They say his manner of driving did not change in a way that made it apparent that he was aware of the police presence and was taking evasive action.

Against this contention is the fact that Mr Shepherd was riding at 150 to 160 km/hr. It could be argued the only reason he was likely to be doing this was to avoid being intercepted. Support for this approach can be found in the evidence of Constable Molloy who on seeing the two vehicles assumed a pursuit was in progress. Further, Senior Constable Chapman told Inspector Elloy if Mr Shepherd had stopped on the Nerang exit he would have charged him with failing to stop. This would require proof that Mr Shepherd deliberately ignored a direction to stop.

I consider it more likely than not that Mr Shepherd was aware of the police pursuing him soon after they activated their flashing coloured lights. However, I do not consider that no reasonable officer could come to a contrary view.

I accept the situation warranted the officers engaging in urgent duty driving and that the risk posed by that on the freeway did not outweigh the lawful purpose of intercepting the speeding motorcycle.

It is now obvious that Mr Shepherd exited the freeway at Nerang in an effort to "lose" the pursuing police and all parties readily accept that soon after, all of the elements of a pursuit existed.

The "known circumstances"

It is therefore necessary for me to determine whether the circumstances that prevailed as the two cars entered Nerang were such as to satisfy the balancing exercise required by the policy. The known circumstances that might justify a pursuit consisted of:-

- Mr Shepherd driving at an excessively high speed down the highway;
- failing to stop in Price Street when he must have by then known police were directing him to; and
- failing to stop at two red lights in Price Street.

These factors certainly amount to a law enforcement objective warranting action.

The risk assessment (initial and ongoing)

The difficulty is these same factors constituted a risk to the rider of the bike and other road users that needed to be balanced against the benefits of pursuing. I am not at all convinced that officers Chapman and Buckley

undertook such a risk assessment exercise. The tenor of their evidence is they couldn't get close enough to the motor bike to identify it and that they were entitled to continue chasing it until they did or they were directed to stop.

The chances of the latter happening were minimised by their inadequate attempts to discharge their obligation to notify police communications of the pursuit.

In addition to the earlier dangerous manoeuvres, the bike overtaking a vehicle across double white lines would surely raise alarm in a reasonably prudent officer that the risk of injury or death would outweigh the need to apprehend a motorist apparently guilty of traffic offences. Indeed, even Senior Constable Chapman acknowledged that was a "*bit hairy*". It did not cause him to abandon the pursuit however.

When the motorcycle turned up Beechmont Road which the officers knew to be narrow, steep and winding with rock faces and sheer drop offs, I consider no reasonable police officer could consider the risks of the pursuit were justified to prevent the offender escaping.

However, even at that stage Senior Constable Chapman seems to have failed to have regard to the principles underlying the policy, referring instead to the likelihood of the bike being able to outrun their car in the mountainous terrain. Further, the evidence does not support his claim that he abandoned the pursuit: the police car was just as close to the bike when it crashed as when the two vehicles entered Beechmont Road and its lights and siren were still activated. Contrary to his claim there was no where to pull off, as required by the policy, about half way between the intersection and the crash site there is a large driveway which provides ample room for turning with good vision both ways.

Notification of commencement of pursuit

As mentioned earlier, as soon as an officer becomes involved in a pursuit, he or she must if possible notify the nearest police communications centre and provide particulars of the incident. This is done so that a pursuit controller can assess whether the pursuit should continue.

The only radio transmission of this nature made by Senior Constable Chapman was made after the crash. He contends two other transmissions were attempted but not heard by the communications centre and that a third was "*talked over*" by another vehicle. He relies on the evidence of "*black spots*" and a fault in the aerial on his car to explain the failure of the communications centre to hear the two earlier failed attempts.

When initially interviewed Senior Constable Chapman stated he had made attempts to radio police communications to advise them of the pursuit shortly after they had exited the Pacific Motorway. He also maintained that further attempts were made as they travelled through Nerang.

He stated in that interview he was frustrated in his attempts by the amount of traffic on the police communications system that evening.

When interviewed a second time, in September 2006, Senior Constable Chapman was told that the “*talked over*” transmission was made only 19 seconds prior to his radio in of the crash. After a lengthy questioning process made difficult by Senior Constable Chapman’s vagueness and non-responsiveness to specific questions, he eventually acknowledged in this interview that:

- The “*talked over*” transmission did not occur until some time after the Cunungra turn off (placing it within 2-3 kilometres from the crash scene); and
- This was the first time there had been any attempt to advise VKR of the pursuit.

At the end of the interview, and after being reminded of his answers in the first interview by his solicitor, Senior Constable Chapman reverted to the version of events in his first interview; namely that he had attempted to call VKR soon after leaving the highway. He was unable to recall what he said or give any useful detail on this attempted transmission. His evidence during the inquest was equally inconsistent and unpersuasive.

I am sceptical about the claims the officer attempted unsuccessfully to call the pursuit on three occasions. It is relevant that he had no trouble communicating with Constable Molloy when they passed on the freeway and no trouble advising police communications of the crash.

In any case Senior Constable Chapman clearly had a functioning mobile phone over which he was conversing with Senior Constable McLoughlin during the pursuit. He acknowledged he knew the direct number for the communications co-ordinator at Broadbeach; alternatively, he could have advised officer McLoughlin of his difficulties and asked that officer to make contact with communications for him.

Conclusion

The pursuit ended when the motorcycle crashed. That was the most likely outcome after it went onto Beechmont Road. Only after that occurred was the police communications centre advised that a pursuit had taken place.

I am of the view that the QPS policy was breached when the pursuit was not terminated when the motorcycle entered onto Beechmont Road. I am also of the view the policy was breached when the police communications centre was not advised the pursuit was underway.

Mobile telephone calls

In their initial interviews with the investigators, neither Senior Constable Chapman, Constable Buckley, Senior Constable McLoughlin nor Constable

Webley volunteered that during the pursuit of Mr Shepherd they had mobile telephone contact.

As has become apparent the calls were a significant part of the events that unfolded. It could be concluded that Senior Constable Chapman wilfully ignored aspects of the QPS pursuit policy, choosing instead to recruit assistance for his endeavours to intercept Mr Shepherd from fellow traffic branch officers via the mobile telephone.

We now know two calls occurred; one when the pursuit car was on the freeway and the second when it was travelling through Nerang. We also know the calls were made with a view to officers McLoughlin and Webley assisting in the interception of Mr Shepherd if possible. As a result of the first call they entered onto the freeway to the north of the motorcycle and sought to locate it with a view to intercepting it; as a result of the second call they made their way to the west of Nerang.

The failure of each of the officers to mention these conversations was despite a clear direction given to them in those interviews to answer each question truthfully, clearly and promptly. Each was asked at the end of their interview whether they have *'any matters in relation to this investigation you have not brought to my attention during the course of the interview'*.

Officers Chapman and Buckley were interviewed on the morning after the crash, the other two officers were interviewed twelve days later.

In the ESC interview with Constable Buckley on 17 June 2006 the following exchange takes place after Buckley is asked about McLoughlin and Webley:

Weller: And they're traffic branch personnel are they?

Buckley: That's correct, yes.

Weller: Uh huh. Do you know where they were when you were following the um, um motorcycle?

Buckley: No I've got no idea

In the interview between ESC investigators and Senior Constable Chapman on 17 June 2006; only hours after the pursuit, a discussion takes place in relation to the difficulty experienced by Officer Chapman in getting through to the communications co-ordinator on his mobile phone after the crash has occurred. In this context, and in discussing his mobile phone he is asked:

Elloy: What about during the course of the, of the chase?

Chapman: No I didn't use my phone during the course of the chase, no.

At no time in his first interview does Senior Constable McLoughlin mention any telephone calls to or from Senior Constable Chapman.

He is asked whether he has any other information that he is aware of that 'perhaps would assist me with my enquiries?'. He replies:

'No. That's-that's the, the picture of all the information I have a hand on. Nothing else I could use to assist.'

When asked to outline his recollection of events the version given unambiguously indicates that the first he is aware of the pursuit is when he hears a *'scratchy radio communication indicating that there had been some form of incident'*.

At no time in his initial interview is there any reference to his knowledge of the pursuit prior to the crash or to the telephone calls between his vehicle and car 972. Clearly these were relevant. I do not accept they could be thought irrelevant or that they could be forgotten in the twelve days leading up to this interview. When giving evidence at the inquest he tried to suggest he didn't mention the calls because they were actually made by Constable Webley and he assumed that officer would inform Inspector Elloy of them.

In his first interview, Constable Webley is asked by Inspector Elloy *'How did you become aware of their location?'* referring to officers Chapman and Buckley. Constable Webley responds:

'Ah I heard Chappie on the radio um say his location and that um AIS was required...'

Remarkably, some three months later after Senior Constable Chapman seems to have misunderstood a comment from Inspector Elloy to indicate phone records had been accessed, two of the officers recover their memories of the mobile phone calls. Senior Constable Chapman acknowledges that two calls were made.

As a result Senior Constable McLoughlin was re-interviewed. After conceding that he now recalls a telephone call, he is asked whether *'there were two telephone calls or was there one?'*

Senior Constable McLoughlin is unresponsive to that question simply stating that he doesn't recall who in fact initiated the telephone call; that he merely recalls its contents.

At the inquest Senior Constable McLoughlin gave evidence that he now clearly recalled there being two telephone calls made during the course of the pursuit. When asked about his first interview where he indicates the first he is aware of the pursuit is when he hears a *'scratchy radio communication indicating that there had been some form of incident'* Senior Constable McLoughlin stated the incident referred to here was the transmission '972 to

973'. I do not accept this was the case. The '*incident*' referred to is clearly the crash on Beechmont Road. The very next question he is asked by Inspector Elloy requires him to further outline his recollection of '*those communications*'. Senior Constable McLoughlin then goes on to clearly refer to the communications from 972 advising VKR of the crash.

Constable Webley was reinterviewed at his request. In it Constable Webley states '*at no time did I actually hear the words um in reflection from Senior Constable Chapman stating that he was in pursuit of the motor vehicle...*'

In evidence at the inquest Senior Constable Webley admitted that on two occasions he spoke directly with Senior Constable Chapman over the phone in relation to their pursuit of Mr Shepherd. The second of these calls was made as the police car raced through the streets of Nerang, at a stage all agree a pursuit was unambiguously underway. He said in evidence he did not volunteer this information to Inspector Elloy because he did not think it relevant to his investigation. I do not believe this.

It was submitted by Counsel for officers Chapman and Buckley that they had no motive for concealing the mobile phone calls. That is based on two assumptions: namely that we now have an accurate record of what was said during those calls and that the officers were as confident then as they appear to be now that the activity they were all involved in before the motorcycle left the freeway was not a pursuit. I am not comfortable relying on either assumption.

Further, the mobile phone calls amount to a contemporaneous connection between officers McLoughlin and Webley with two officers engaged in a pursuit they must have known had not been called in. They were, in my view, complicit in Senior Constable Chapman's deliberate departure from the pursuit policy and had an interest in concealing that.

Disciplinary action

So far as is relevant to this case, the *Coroners Act 2003* provides in s48(4) that a coroner may give information about a person's conduct to a disciplinary body for the person's profession if the coroner believes the information "*might cause the body to inquire into, or take steps in relation to the conduct*".

Disciplinary action against police officers is taken pursuant to the provisions of the *Police Service Administration Act 1990*. It provides in section 7.4(2) "*An officer is liable to disciplinary action in respect of the officer's conduct, which the prescribed officer considers to be misconduct or a breach of discipline on such grounds as are prescribed by the regulations.*"

The *Police Service (Discipline) Regulations 1990* prescribe such grounds in regulation 9 which, in so far as may be relevant to this matter, lists unfitness, or incompetence in the discharge of the duties of an officer's position; negligence or carelessness or indolence in the discharge of the duties of an

officers' position; the failure to comply with any direction, instruction or order given or issued by the commissioner; or misconduct;

The Act defines misconduct in section 1.4 to mean conduct that—

- is disgraceful, improper or unbecoming an officer; or
- shows unfitness to be or continue as an officer; or
- does not meet the standard of conduct the community reasonably expects of a police officer.

I am of the view the conduct of Senior Constable Chapman in wilfully failing to comply with pursuit policy which he admits was well known to him could persuade a prescribed officer that he was guilty of misconduct.

I am of the view the failure of Senior Constable McLoughlin to intervene and either counsel Senior Constable Chapman to comply with the policy by contacting the police communications centre or discontinue the pursuit could persuade a prescribed officer that he was incompetent, negligent, indolent or careless in the discharge of his duties.

I considered whether the conduct of Constable Buckley and Constable Webley should also be referred in connection with their failings but concluded in view of the seniority of the other two officers and the obvious dominance of them over the more junior officers, to do so would be unfair. I trust, however, that those constables have learnt the folly of allowing wrong headed more senior officers to lead them into error.

I consider there is a significant body of evidence indicating that all four officers wilfully withheld from Inspector Elloy information they knew was relevant to his investigation of Mr Shepherd's death. I consider a prescribed officer could conclude that amounts to misconduct.

Accordingly, I intend referring the conduct of the four officers to the QPS for the consideration of the taking of disciplinary action.

This inquest is closed.

Michael Barnes
State Coroner
Southport
12 December 2008