



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: Inquest into the death of Andrew Penetito IOANE

TITLE OF COURT: Coroner's Court

JURISDICTION: Brisbane

FILE NO(s): COR 3068/04(8)

DELIVERED ON: 30 June 2006

DELIVERED AT: Brisbane

HEARING DATE(s): 28-29 June 2006

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: Coroners inquest, death in custody, police pursuit, recommendations regarding police training

REPRESENTATION:

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Family of Deceased:	Mr Daniel O’Gorman
Constable Anthony Fernandez,	
Senior Sergeant Bruce Rodger,	
Senior Sergeant Craig Hanlon,	
Constable Wayne Satour	
Senior Sergeant Stephen Williams &	
Senior Constable Shaun Chapman:	Mr Paul Smith
Queensland Police Service Commissioner:	Mr Colin Strofield

Findings of the Inquest into the death of Andrew Penetito Ioane

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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 specified officials with responsibility for the justice system including the Attorney-General and the Minister for Police and Corrective Services. These are my finding in relation to the death of Andrew Penetito loane. They will be distributed in accordance with the requirements of the Act.

Introduction

On 15 December 2004, Andrew loane, who was then 17, in company with two 15 year old friends, took a car from a suburban street on what is euphemistically referred to as a "joy ride" around the inner southern suburbs of Brisbane. The vehicle was stopped at traffic lights when it came to the attention of the officers in a passing police car. After it moved off, the officers signalled for Mr loane to stop by illuminating the car's blue and red flashing lights. He did not stop. The police followed the car, sometimes at high speed, for approximately 19 kms through suburban streets until the inevitable happened and the vehicle crashed, killing Mr loane.

These findings seek to explain how that happened and consider whether any changes to police policies or practices could reduce the likelihood of deaths occurring in similar circumstances in the future.

The Coroner's jurisdiction

Before turning to the evidence, I will say something about the nature of the coronial jurisdiction.

The basis of the jurisdiction

Because Andrew loane died while attempting to avoid being taken into police custody his death was a "*death in custody*"¹ within the terms of the Act and so it was reported to the State Coroner for investigation and inquest.²

The scope of the Coroner's inquiry and findings

A coroner has jurisdiction to inquire into the cause and the circumstances of a reportable death. If possible he/she is required to find:-

- whether a death in fact happened;
- the identity of the deceased;
- when, where and how the death occurred; and
- what caused the person to die.

There has been considerable litigation concerning the extent of a coroner's jurisdiction to inquire into the circumstances of a death. The authorities clearly establish that the scope of an inquest goes beyond merely establishing the

¹ See s10

² s8(3) defines "*reportable death*" to include deaths in custody and s7(2) requires that such deaths be reported to the state coroner or deputy state coroner. Section 27 requires an inquest be held in relation to all deaths in custody

medical cause of death but as there is no contention around that issue in this case I need not seek to examine those authorities here with a view to settling that question. I will say something about the general nature of inquests however.

An inquest is not a trial between opposing parties but an inquiry into the death. In a leading English case it was described in this way:-

*It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends... The function of an inquest is to seek out and record as many of the facts concerning the death as the public interest requires.*³

The focus is on discovering what happened, not on ascribing guilt, attributing blame or apportioning liability. The purpose is to inform the family and the public of how the death occurred with a view to reducing the likelihood of similar deaths. As a result, the Act authorises a coroner to make preventive recommendations concerning public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in future.⁴ However, a coroner must not include in the findings or any comments or recommendations statements that a person is or maybe guilty of an offence or is or may be civilly liable for something.⁵

The admissibility of evidence and the standard of proof

Proceedings in a coroner's court are not bound by the rules of evidence because s37 of the Act provides that the court "*may inform itself in any way it considers appropriate.*" That doesn't mean that any and every piece of information however unreliable will be admitted into evidence and acted upon. However, it does give a coroner greater scope to receive information that may not be admissible in other proceedings and to have regard to its provenance when determining what weight should be given to the information.

This flexibility has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt: an inquiry rather than a trial.⁶

A coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the *Briginshaw* sliding scale is applicable.⁷ This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard.⁸

³ *R v South London Coroner; ex parte Thompson* (1982) 126 S.J. 625

⁴ s46

⁵ s45(5) and 46(3)

⁶ *R v South London Coroner; ex parte Thompson* per Lord Lane CJ, (1982) 126 S.J. 625

⁷ *Anderson v Blashki* [1993] 2 VR 89 at 96 per Gobbo J

⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 per Sir Owen Dixon J

It is also clear that a coroner is obliged to comply with the rules of natural justice and to act judicially.⁹ This means that no findings adverse to the interest of any party may be made without that party first being given a right to be heard in opposition to that finding. As *Annetts v McCann*¹⁰ makes clear that includes being given an opportunity to make submissions against findings that might be damaging to the reputation of any individual or organisation.

The investigation

I will now say something about the investigation of Andrew loane's death.

As soon as it was realised that he was dead the Ethical Standards Command was advised. Investigators from that command attended at the scene as did specialist traffic accident investigation officers.

The scene was photographed and a scale plan generated.

The vehicle in which the dead man was travelling and the police vehicle were examined. Breath and blood from both officers was analysed for alcohol or drugs. Statements were obtained from the two passengers in the vehicle being driven by Andrew, a civilian witness who saw the car just before it crashed and all police who had been involved in the pursuit.

Fingerprints were taken from Mr loane's body to confirm his identity.

An expert crash analyst attended the scene and reviewed the investigation material in an attempt to calculate the speed and direction of travel of the vehicle immediately prior to the fatal crash.

Some stages of the pursuit were captured on a security video camera and this was secured.

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 has 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 that there has been any "cover up."

I am satisfied that this matter has been thoroughly and professionally investigated in that all sources of information have been accessed, although I do not necessarily agree with some of the conclusions the investigator reached.

⁹ *Harmsworth v State Coroner* [1989] VR 989 at 994 and see a useful discussion of the issue in Freckelton I., "Inquest Law" in *The inquest handbook*, Selby H., Federation Press, 1998 at 13

¹⁰ (1990) 65 ALJR 167 at 168

The Inquest

A pre-hearing conference was held in Brisbane on 24 May 2006. Mr Eberhard was appointed Counsel Assisting. Leave to appear was granted to the driver of the pursuit vehicle and the other officers involved in the pursuit. The Commissioner of the Police Service was also granted leave to appear. Mr loane's family was not initially legally represented as, disappointingly, the Legal Aid Office refused to fund it. Since the directions hearing, Mr O'Gorman of Counsel has agreed to represent them on a *pro bona* basis. His public spirit is to be commended.

A list of witnesses was settled and the issues to be examined during the inquest was agreed upon.

A view of the scene was conducted by the Court and the parties independently of each other.

The inquest then proceeded on 28 and 29 June 2006. Ten witnesses gave evidence and 69 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.

Background

Andrew loane was born in Auckland to Samoan parents on 12 May 1987. He came to Australia with his parents and five siblings in 1994. Andrew went to Centenary State High School until grade 10. After he left school, Andrew worked as a trolley pusher and a farm labourer until he was diagnosed with cancer in 2003. Until his illness he played cricket and rugby league and was active within the Brisbane Samoan community. Andrew was only once in trouble with the police for minor offences a few weeks before he died. There is no evidence that he was an habitual criminal or that he regularly engaged in anti-social behaviour. He came from a good family and until he became ill he was a responsible worker. He was 17 and a half years old when he died. I offer his family have my sincere condolences.

The events before the police pursuit

On the evening of 14/15 December 2004, Andrew met up with two friends, Lance Moe, and Crossfield Ahmat. They were both 15 years old. The boys decided to steal a car and drive it to Southbank and to Woodridge to visit other friends.

They found a white 1989 Camry sedan parked on the street in Corinda, got into it, found a spare key in the centre console and drove off. It was a clear, dry night.

They come to the attention of police

At about 3.40am, Andrew was driving the Camry when he and his friends came to the attention of police when he stalled the vehicle at traffic lights at the intersection of Fairfield and Sherwood Roads, Moorooka. The police were travelling outbound on Fairfield Road and the boys were heading north, or inbound.

The driver of the police vehicle, Constable Fernandez, says the stalling of the vehicle made him think the driver might be drunk and so he decide to perform a road side breath test on him.

The officers therefore went past the Camry and did a u-turn so that they were then heading in the same direction as the Camry and came up behind it. By this stage, Mr loane had managed to negotiate the intersection and the car was heading along Fairfield Road towards the city. The police car quickly caught up and Constable Fernandez activated the red and blue flashing bar light on top of the vehicle.

The pursuit

The constables both say that initially the driver of the Camry did not appear to be seeking to avoid apprehension, but nor did he stop. The vehicle simply proceeded north along Fairfield Road at between 50 and 60km/hr.

After a short distance the Camry indicated an intention to overtake a truck. The police car's siren was then activated and, in accordance with QPS policy governing pursuits, Constable Satour made radio contact with the Police Communications Centre to inform them that a pursuit was underway. At that time, which the communications centre operator called as 3.42am, Constable Satour reported that the Camry was travelling at 90km/hr.

Both officers say that soon after they commenced the pursuit they could see that there were three people in the vehicle but they could not identify them.

As they continued up Fairfield Road, Constable Fernandez says the police car continued to follow the Camry at a distance of between 10 to 20 meters at speeds varying from 50 to 90 km/hr.

About 5.2 kilometres north of where the officers first sighted the Camry, Fairfield Road comes to a right angle intersection with Annerley Road. The intersection is controlled by traffic lights. Constable Fernandez says the Camry went through a red traffic light at this intersection and turned left still heading towards the city. The police communication centre tape records this happening at 3.45am.

The District Duty Officer Senior Sergeant Williams was patrolling in the vicinity and heard the pursuit called over the radio. He positioned his car so that he was parked in Annerley Road when Mr loane and the pursuing officers came that way and he joined in the pursuit.

The vehicles continued inbound on Annerley Road driving past the Dutton Park Police Station. Just before coming to the intersection of Annerley Road and Stanley Street, Andrew executed a U-turn and the Camry, with the Constables Fernandez and Satour following, retraced their route along Annerley Road, travelling at 80km/hr, back past the intersection with Fairfield Road to the next corner where they turned left down Cornwall Street.

When the cars passed driver to driver immediately after the Camry did a U turn, Constable Fernandez was able to observe the occupants. He says he formed the opinion that the driver of the vehicle was in his "mid twenties" and he relayed this over the radio.

The Camry went east down Cornwall Street, through a red light at its intersection with Ipswich Road. It may have briefly stopped here but it is apparent that the police car did not. Ipswich Road to the right is completely obscured from traffic travelling in this direction by a commercial building on the corner.

The chase then continued down under the freeway towards Logan Road. The pursuing officers advised the communications centre that they and the Camry were travelling at 110 km/hr.

The pursuit continued across Logan Road, through a red light, along Upper Cornwall Street where the Camry overtook another car before turning left into Chatsworth Road after again going through a red light at another blind corner. The chase continued across the intersection of Chatsworth Road and Cavendish Road where the Camry went through another red light. Visibility to the left at this intersection is obscured by a church.

At the intersection of Chatsworth Road and Boundary Road the same thing happened and the chase proceeded down Winstanley Street. The speed here was reported as 100km/hr and the time 3.52am. This is a winding and undulating road with negative cambers of some curves and some poorly maintained sections. They went straight across Creek Road and circled around behind the Carindale Shopping Centre at speeds of 75 km/hr to 53 before emerging back on to Creek Road.

Creek Road is a dual lane carriage way divided by a concrete median strip. When the Camry turned right, for reasons unknown, it travelled on the outward or southbound lanes in a northerly direction for some 250 to 300 meters to the intersection of Creek Road and Old Cleveland Road. This intersection is obscured by a crest in the road. At this time, which was called by PCC as 3.54am, the Camry was reported to be travelling at 88 km/hr.

After that intersection the Camry returned to the correct side of Creek Road and continued north. Constable Fernandez says that at this stage the Camry increased its speed so that the police car was travelling at 130km/hr. He says that the police vehicle was 70 to 100 meters behind the Camry as they passed the intersection of Creek Road and Stanley Road and the Camry then began pulling away. Constable Satour estimates the Camry to be travelling at

approximately 150km/hr. One of the passengers says it was going even faster.

Shane Cromb was just starting work at the Carina bus depot which is situated on Creek Road near its intersection with Stanley Road. He saw the Camry go past at a speed he estimated to be from 110 to 130 kms/hr but he also says it was going 50 or 60 km/hr faster than the police car. He says the police car was 10 to 12 car lengths behind it.

The fatal crash

Constable Fernandez says he saw the Camry commence a sweeping left hand turn and fishtail and leave the road onto the median strip where it smashed into some small trees before rolling over and coming to rest on its roof against a light pole.

The crash occurred at 3.55am. The chase lasted for a little over 13 minutes and had covered 19.26 kms.

The Duty District Officer joined in the pursuit in Annerley Road and was still following the primary pursuit car and the Camry when it reached the Carindale Shopping Centre. Three other crews also joined in for various parts of the chase. The numerous police cars involved in the chase were soon on the scene of the crash and an ambulance was called. One of the passengers could not be freed until the cutting equipment was brought to the scene. The two passengers were taken to hospital. Mr loane was pronounced dead at the scene.

The investigation commences

Senior police were immediately advised of the death.

The investigation referred to earlier in these reasons then proceeded.

The crash analyst Sergeant Ruller says an examination of the marks on the road and the median strip enabled him to reconstruct the trajectory of the vehicle in the moments before it crashed. He says the yaw marks on the bitumen at the apex of a left hand curve some 190 metres before the car's final resting place indicate that the rear of the vehicle swung out to the right and the driver over corrected, resulting in the vehicle sliding sideways down the road leading with its left hand side. It left the road and clipped a small tree on the median strip with the left hand front mud guard. This caused the car to spin in a clockwise direction so that it was momentarily sliding with the driver's side leading. In this position it slammed into another a tree and rolled over, coming to rest on its roof with tree braches on the vehicle.

Sgt Ruller calculated the speed at the commencement of the skid to be 130km/hr.

Usefully, the radio communication between the pursuing car and the police radio communication centre was, in accordance with standard practice, tape recorded and admitted into evidence.

An examination of both vehicles found no mechanical faults that may have contributed to the crash. Sgt Ruller says that the three bald tyres on the Camry would only have hindered its handling had the road been wet.

The officers were found to have no alcohol or other drugs in their blood.

The autopsy examination

On 16 December 2004, at the John Tong Centre, an autopsy was conducted on Andrew's body by Dr Nathan Milne a forensic pathologist. In response to the family's concerns based on cultural beliefs, an internal examination was not conducted but the body was examined and x-rays undertaken. This process found numerous head and chest injuries and fractures consistent with motor vehicle accident trauma.

An analysis of his blood found no alcohol or other drugs.

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 Andrew Penetito loane
- Place of death** – He died at Creek Road, Carina in Queensland
- Date of death** – Mr loane died on 15 December 2004
- Cause of death** – He died from head and chest injuries sustained in a car accident following a police pursuit.

Concerns, comments and recommendations

Section 46, in so far as is it relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety or ways to prevent deaths from happening in similar circumstances in the future. I consider the facts of this case call for comment in relation to the QPS policy governing urgent duty and pursuit driving and the compliance with that policy by the officers involved in the chase.

QPS pursuit policy

That policy has been developed over a number of years and appears quite sophisticated. It has two 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 and continued, and their actions are to be over

viewed by a senior officer who is kept informed of developments via the police radio system and who has authority to direct the pursuers to terminate the pursuit. I will deal with the two components separately.

The obligations of the pursuing officers.

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; (1) the known circumstances are sufficient to justify a pursuit.*"

The policy goes on to direct that "*a risk assessment must be conducted in relation to every pursuit. The following factors must form part of the assessment* (I quote only those factors that appear directly relevant to this case):

- (i) *the safety of all persons, i.e. police officers, members of the public and offenders is paramount;*
- (ii) *the known circumstances that initiated the pursuit;*
- (iii) *the possible consequences;*
- (vi) *the manner in which the pursued vehicle has been driven including the speed of both vehicles;*
- (vii) *whether the driver and occupants(s) of the pursued vehicle have been identified or are likely to be able to be identified;*
- (viii) *the known or suspected age of the driver and occupants of the pursued vehicle;*
- (ix) *any other relevant circumstances such as road, weather, visibility and other traffic conditions.*

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. ...A pursuit must be abandoned immediately it creates an unacceptable risk to the safety of any person.*"

I read these passages as requiring 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. So, if the pursuing officers know a crazed gunman is driving to a school to shoot the occupants they can more readily justify a high speed pursuit than when they are attempting to intercept a motorist who is known to them and who has driven off from a petrol station without paying for fuel. The risks which must be considered worth chancing having regard to the diminution of law enforcement if the suspect is not apprehended immediately, are calculated by reference to all of the circumstances prevailing as the pursuit continues.

In this case the officers who initiated the pursuit say that because when they first saw Mr loane he stalled the vehicle at the traffic lights, they suspected he

might have been under the influence of liquor. I certainly don't mean to diminish the seriousness of drink driving, but when one calibrates the seriousness of offences police officers are required to respond to, drink driving is certainly at the low end. Further, as the chase continued it was apparent that the driver of the Camry was not so affected by alcohol or drugs as to make him incapable of driving safely. In those circumstances I consider "the "known circumstances" gave no reason for thinking any significant public detriment would result from the chase being discontinued.

Turning to the other aspects that the officers were obliged to consider, I note that the Camry went through six red lights while crossing major arterial roads. In some cases the intersections were surrounded by buildings and other obstructions so that those on the through roads had very limited visibility of any traffic that might be on the cross roads. An example is the intersection of Cornwall Street and Ipswich Road where a commercial building on the south western corner prevents the driver of a vehicle coming down the hill towards Ipswich Road from seeing whether there is any traffic travelling inbound on that road until the driver is past the property line. A driver then has no more than 3 metres to travel before his vehicle is in on the inner inbound lane. The visibility at the intersection of Upper Cornwall Street and Chatsworth Road is also very limited as is that at the junction of Chatsworth Road and Cavendish Road. The speed at these crossings varied. It seems the Camry may have stopped at the Cornwall Street and Ipswich Road intersection but it then proceeded down Cornwall Street under the freeway at a speed called at 110km/hr and, according to all witnesses, slowed only a little if at all before going through a red light at Logan Road. Nor did the Camry slow appreciably at any of the other intersections.

When interviewed, Constable Fernandez said that when the police car travelled through the red lights, he would slow down as they approached the intersection and wait for Constable Satour to advise him that it was "*all clear*". He said that under these circumstances he travelled through the intersections at a speed of between 80 and 90km/hr. Constable Satour agreed with this except he said that they slowed to between 60 to 70 km/hr before continuing. There were some unconvincing attempts to back away from these admissions during the inquest. I consider the evidence the officers gave on the morning of the death to be more reliable.

The pursued car was at times going even faster. The passenger who gave evidence said that they did not slow down at all when going through the intersections. Having recently driven the route on a number of occasions, I have no hesitation in finding that this was very dangerous.

While the incident occurred at what is probably the least busy time of day, in a modern metropolis like Brisbane there is a probability of traffic being on the major roads at any time. For example, Mr Cromb had moments before driven to work across the same road on which the chase came to its violent end and he made reference to the milk vendors and paper delivery vehicles that he knew were frequently in the vicinity at that time of day. Constable Satour, who

continues to work at the Annerley Station, agreed that there is a probability of traffic on Ipswich Road at any time of the day or night.

Further it was dark and the latter parts of the pursuit travelled over roads that the officers were not familiar with.

All of the pursuit, except the initial stages, occurred in highly built up areas and along roads which had many side streets. Some of it was on winding, undulating roads with crests and blind curves.

It was simply good luck that one of the cars didn't collide with a motorist or pedestrian at any of the numerous intersections I have referred to. When the Camry and the police car went down the wrong side of Creek Road, over a crest and across the intersection with the even busier Old Cleveland Road, the risk of a collision was substantial.

When the Camry flew along Creek Road at around 150km/hr the danger would be obvious to any reasonable person. Constable Fernandez says that at that stage he contemplated discontinuing the pursuit as the Camry was still pulling away from their vehicle but he continued to chase it. He says that at no stage did the Pursuit Controller tell him to discontinue the pursuit.

The policy provides that *(a) pursuit must be abandoned immediately it creates an unacceptable risk to the safety of any person.*"

In the circumstances I would have expected that any reasonable police officer conducting the risk assessment that the policy demands would have concluded that the risk of injury to those in the vehicle being pursued or others who might have been on the road, was significant. On the other hand, the diminution to law enforcement flowing from the pursuit being abandoned would be minimal. I consider that a reasonable officer would have concluded that the pursuit should have been abandoned when it became apparent that the driver of the Camry was prepared to run red lights, at blind intersections, at speed. At least when the Camry went through the intersection of Cornwall Street and Logan Road at or about 100 km/hr, the officers following should have realised that their conduct was creating an unacceptable risk to themselves, those in the Camry and anyone else who may have been on the road. I say "their conduct" because, while it was the driver of the Camry who led the chase, there can be very little doubt that had the police terminated the pursuit Andrew would have moderated his driving and/or abandoned the car.

Both constables were very junior. They knew a number of senior officers were aware of what was transpiring as a result of the chase being broadcast over the radio and it seems clear that they were in part at least motivated to continue because those far more experienced officers failed to exercise their authority to terminate the pursuit. I shall now look at the performance of those supervisors.

The responsibility of the “pursuit controller”

The driver of the pursuit vehicle was not the only officer who had a responsibility to undertake the risk assessment and balancing of likely outcomes that I have described. In recognition that junior 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 continuing a pursuit to the duty officer at the PCC who is termed the “pursuit controller.”

The policy provides that immediately an officer initiates a pursuit, the accompanying officer is to advise the police communications centre of this and communicate over the police radio the circumstances of the chase 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 senior officer. The pursuit controller is obliged to undertake the same risk assessment and balancing of risk and utility I have already described and terminate the pursuit if he/she considers it poses an unacceptable risk to the safety of anyone who might be affected.

As already described, Constable Satour, the senior officer in the pursuing police car contacted the Police Communications Centre and continued to describe what was happening throughout. The pursuit controller, Senior Sergeant Rodger, did not ask for further details and at no time urged caution or directed the pursuit be terminated.

Senior Sergeant Rodger says the factors that militated against terminating the pursuit were the demeanour of Constable Satour, as disclosed by his calm manner on the radio, the age of the pursued driver which he had been erroneously informed was “mid twenties”, and the weather and traffic conditions – he had been told there was minimal traffic and he knew the weather was fine and clear, although it was dark.

In my view, Senior Sergeant Rodger’s approach to his responsibilities was seriously flawed. First, he says that when assessing the law enforcement imperative he formed a suspicion that the vehicle may have been stolen because it was registered to an address in Mackay and the driver had stalled the vehicle. He elevates these objectively innocuous factors to a “known circumstance” within the terms of the policy that would justify a riskier chase than the initial drink driving suspicion. He then engaged in circular reasoning whereby he used the failure of the vehicle to stop as evidence of some more serious reason for flight which could justify continuing the pursuit. He seems to think that it’s logical to say that although you can’t chase without good reason, a failure to stop when chased provides such a reason. Taken to its logical conclusion, that reasoning would mean the further and faster a vehicle went, the greater the justification for chasing it and so no pursuit would ever need to be terminated.

I also consider Senior Sergeant Rodger made a serious error of judgement when he was considering the risks involved in allowing the chase to continue

to its bloody end. He says that when he heard Constable Satour call the speed of 130km/hr he thought that was a reference to the speed of the other car and that he determined that if that speed continued he would terminate the chase. The speed did continue and in fact significantly increased for another 45 seconds and he did nothing.

Further, it seems that his poor performance on the night in question was not an aberration: when asked whether he would now still allow a chase to continue when a car went through a red light in an inner city, built up area, at 100 km/hr he said he would. He does not consider that poses too great a risk to public safety.

Notwithstanding that the policy made him primarily responsible for controlling the pursuit, Senior Sergeant Rodger also sought to justify not terminating the pursuit on the basis that there were other senior officers listening to the broadcast and they did not step in and do so.

The role of other over viewing officers

Another officer with some supervisory responsibility was the Regional Duty Officer, Acting Inspector Hanlon who monitored the pursuit over the police radio as it unfolded. He says he did not intervene to call off the pursuit because he decided it did not pose an unacceptable risk. He gave similar justifications to those offered by Senior Sergeant Rodger. Similarly, the District Duty Officer, Senior Sergeant Williams participated in much of the pursuit, although he drove more safely and so frequently fell far behind. He did however monitor the chase over the radio and did not seek to have it brought to an end. When interviewed he expressed some uncertainty about his authority to do so, despite being the direct supervisor of the officers in the primary pursuit vehicle.

And of course there is the principle investigator from the Ethical Standards Command, Inspector Schulz who also came to the view that the policy had been complied with: that the potential benefits of the pursuit justified the risks it entailed. With all due respect to those officers, I consider they have taken too narrow a view of the responsibility of the police service to contribute to a safer community.

Obviously Andrew loane should have stopped when the police signalled him to. In failing to do so he was, like so many teenagers are so often, foolhardy and his driving on the night in question was very dangerous and irresponsible. That in no way, in my view, excuses the actions of the police officers involved who have a positive duty to consider the safety of all members of the public and are expected to act in a professional and considered manner. We are entitled to expect police officers will mollify or ameliorate the danger caused by wild boys, not exacerbate it as seems to have happened here.

Flaws in the policy and the outcomes

I readily accept that none of the officers involved in this sad case exhibited a wilful disregard of their common law and statutory duties; rather they manifested an all too common approach to a universal problem whereby one

policing objective - law enforcement - was given undue precedence over another – public safety. In my view the policy police in Queensland operate under compounds this tendency. Officers are asked to weigh intangibles against imponderables; when that proves impossible, an antiquated attitude that unless the law is enforced whenever a breach is suspected anarchy will eventuate, takes over and mandates action in the form of a pursuit; all too often disaster results.

The fear that unless all those who don't stop are chased to a standstill, soon no one will stop, is said to be "common sense." Just as not so long ago common sense said the world must be flat because if it were round, all those on the bottom would fall off.¹¹ We now allow science inform us about matters of physics but some still want to rely on "common sense" when dealing with far more complex matters such as human behaviour.

In fact, the evidence indicates that in those jurisdictions where a more restrictive pursuit policy has relieved operational officers of the burden of balancing incorporeal considerations, there has been no increase in the proportion of motorists who fail to stop, no attributable increase in crime and no decrease in the crime clear up rate. The research undertaken by the Crime and Misconduct Commission¹² and the evidence given to this inquest by Assistant Commissioner Tillyard indicates that from Florida to Tasmania and in the numerous other places that have responded to the harm caused by police pursuits, all the available data indicates improved safety and no negative outcomes.

And, just like those places before they adopted these changes, the harm caused by pursuits in Queensland is alarming. In the period 2000 to 2005, 458 people were injured as a result of police pursuits. In the period 2003 to the present, eight people have died. I readily acknowledge the effort that the Police Service has devoted to limiting pursuits has resulted in nearly 60% of the pursuits initiated last year being abandoned but there is still a one in four chance of a pursuit resulting in death or injury.¹³

The CMC research referred to earlier is consistent with the Queensland experience in that none of those killed was suspected of having committed serious offences.¹⁴ Contrary to expectations perhaps, most of those who run from police are young people who have committed traffic offences or are unlawfully using the vehicle.

¹¹ I acknowledge the use of this analogy by Dr Weatherburn in *Delivering Crime Prevention*, Ockham's Razor, Radio National ABS, 14 May 2006

¹² See Hoffmann G, *Police Pursuits*, Crime and Misconduct Commission, 2003, p4

¹³ Exhibit 2.8 shows that in 2005, 562 pursuits were initiated and 229 not abandoned. During the same period, 57 people were injured and 1 was killed

¹⁴ CMC, *op cit*, p4 quotes U.S. National Institute of Justice report which found that most people fled because they were scared of the consequences of having committed a minor offence.

Car theft

I realise suggesting that unlawful use of a motor vehicle is not a serious offence may be contentious. I am well aware of the “second most valuable asset” perspective. Undoubtedly, car theft is a major problem. Over 14,000 cars were “stolen” in Queensland last year, but as the law now recognises, that term encompasses a very wide range of criminality.¹⁵ At the most serious end, organised criminals with international links steal expensive cars, sometimes to order, for “re-birthing” and the parts trade. This crime requires and receives the same intelligence led and covert responses as other organised crime threats. At the other end of the scale there are joyriding teenagers. They are a social problem that require a graduated response. Undoubtedly the priority in these cases is to get the car back to its owner and the children back on the right track. As this inquest so graphically demonstrates, an over reaction that results in a child’s death, a wrecked car and a protracted risk to all road users over a wide swath of the southern suburbs, serves no good public purpose.

Queensland police trial a more restrictive pursuit policy.

I was therefore relieved to hear that the Queensland Police Service is soon to commence a trial of a more restrictive police pursuit policy. I accept without reservation the sincerity of the Commissioner Atkinson’s stated intention to manage the introduction of a more evidenced based approach to motorists who don’t comply with a police direction to stop by way of a trial that allows an assessment of how these policies will play out in Queensland. I am somewhat concerned by the complexity of the new policy that requires officers to sort possible pursuit situations into one of four categories before deciding the appropriate response. Other jurisdictions saw the benefit of simplicity; for example Tasmania prohibited pursuits for all but those offences contained in schedule B of their Criminal Code and Denver restricted pursuits to “violent felons.” I was however, heartened to hear the Commissioner say that he envisaged further evolution of the policy as the outcome of the trial became known. I respectfully refer him to the evidence given to this inquest by the Tasmanian Assistant Commission Mr Tillyard who said extensive training and coupled with a rigorous review system that incorporated disciplinary action was needed to re-shape the culture of the Tasmanian Police Service.

Training for the rest

As the restrictions contained in the trial policy relate to only traffic and simple offences, leaving a broad area of policing still subject to a discretionary pursuit policy, I consider further attention needs to be urgently given to the training of officers in the exercise of that discretion. All of the officers who gave evidence in this inquest said they have received no training in this complex issue since they were sworn in. As detailed above, the exercise of these discretions involve complex and dynamic judgements in which officers in key positions have demonstrated serious deficiencies. I am aware that all operational police

¹⁵ Depending on the circumstances, “car theft” can be dealt with under the Criminal Code as stealing -s 398, or unlawful use - s 408A or as Use of Vehicles under s 25 of the Summary Offences Act 2005

are given training in use of force every six months. It seems incongruous that the training doesn't include guidance on the most frequently used form of deadly force, namely police pursuits.

Recommendation - Training for police pursuits

I recommend that there be included in the Police Operational Skills Training a compulsory module on police pursuits and that duty officers who act as pursuit controllers be given priority to receive this training.

This inquest is closed.

Michael Barnes
State Coroner
Brisbane
30 June 2006