



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

CITATION: **Inquest into the death of  
Niceta Maria Madeo**

TITLE OF COURT: Coroner's Court

JURISDICTION: Proserpine

FILE NO(s): COR 1783/06(8)

DELIVERED ON: 26 March 2009

DELIVERED AT: Proserpine

HEARING DATE(s): 24 – 25 March 2009

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuits

REPRESENTATION:

Counsel Assisting: Mr Justin Harper

Senior Constable Topp:  
Constable Kennedy:  
Sergeant Boulton

Mr Glen Cranny (Gilshenan &  
Luton Lawyers)

Queensland Police Service Commissioner: Ms Melanie Dixon (QPS  
Solicitors Office)

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The *Coroners Act 2003* provides in s45 that when an inquest is held into a death in custody, the coroner's written findings must be given to the family of the person who died, each of the persons or organizations granted leave to appear at the inquest and to various 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 Niceta Maria Madeo. 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**

Early in the afternoon of 20 June 2006, three teenagers were "joyriding" in an old Commodore two of them had unlawfully taken from the front yard of its owner in Proserpine. As they were heading north along the Bruce Highway, the car was seen by patrolling police officers who were on the lookout for it. The officers pursued the vehicle. The occupants of the Commodore saw the police car chasing them and the driver sped up in an attempt to get away. The pursuit came to an end when the driver of the Commodore lost control in the central business district of Proserpine. He unsuccessfully attempted to take a sharp left hand corner and crashed into a white Toyota sedan stationary at an intersection. Mrs Niceta Madeo was driving that vehicle. She suffered fatal injuries and died soon after.

These findings:

- confirm the identity of the deceased woman, the time, place and medical cause of her 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 officer in charge of the Whitsunday Police Division, Senior Sergeant O'Connel, heard the pursuit and advice of the fatal crash on the police radio

system in his office in Cannonvale. He immediately drove to the scene and secured it. He arranged for a scenes of crime officer and a traffic accident investigation officer from Mackay to attend.

Officers from the Ethical Standards Command were in Mackay at the time in relation to other matters and were detailed to assume responsibility for the investigation of the police pursuit. Officers from the Juvenile Aid Bureau assumed responsibility for investigating the unlawful use and dangerous driving of the Commodore.

The driver of the police vehicle was breath tested and was found to have a zero reading. The next day the driver of the police vehicle was interviewed and statements were taken from all relevant witnesses. A re-enactment was undertaken and video taped.

Both vehicles were examined by a machinery inspector.

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

I am satisfied this matter has been thoroughly investigated and all appropriate sources of information were accessed and the data analysed. However as will become apparent, I do not agree with some of the conclusions of the investigators.

## **The inquest**

A pre-hearing conference was held in Brisbane on 19 January 2009. Mr Harper was appointed Counsel Assisting. Leave to appear was granted to the Commissioner of the Police Service and the two officers involved in the pursuit. Subsequently, the pursuit controller was also granted leave to be represented during the inquest. A list of witnesses was settled and the issues to be examined during the inquest were agreed upon.

On 23 March 2009 a view of the scene was conducted. The inquest then proceeded at Proserpine from 24 to 26 March. Ten witnesses gave evidence and 99 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 to the pursuit***

Craig Cuthbert was born in Mackay on 27 December 1989, making him sixteen at the time of Mrs Madeo's death.

He had an unenviable criminal history dating back to 2001. Even before this incident, he had been convicted of numerous offences, some quite serious.

By any standard Craig had an unhappy childhood that undoubtedly contributed to the antisocial behaviour that led to Mrs Madeo's death.

He was diagnosed with attention deficit hyperactive disorder when he was five and treated with various drugs including Ritalin until he was 15. His parents separated when he was 10, and he remained living with his mother until he was 14 when he moved to live with his father. This did not work out but while living there he commenced drinking alcohol and smoking marijuana; habits he continued up until these events. After briefly returning to his mother's care, Craig was placed in a number of foster homes, before being placed in unsupervised commercial accommodation. At the time of this incident, he was living with his girlfriend and her carer. He was not working or attending school.

He had for some two months prior to the fatal incident been in a relationship with a local girl, Holly-Rae Watts with whom he was living. She was 14. He was friendly with Michael Vatas-Simpson, who was also sixteen.

In June 2006, Holly-Rae went to stay with her parents at Midge Point, a seaside town between Mackay and Proserpine. On the evening of 19 - 20 June 2006, Craig decided to go and visit her and took a car from its owner's yard in Slade Point. Michael went with him. They ran out of fuel before they reached Midge Point. They abandoned the car.

After walking for a while, they went into a rural property and found a utility in a shed. It had the keys in the ignition. Michael panicked and ran off. Craig pushed it out of the shed and drove off. He found Michael and they continued on towards Proserpine.

They went to the caravan park where Holly-Rae was staying with her parents and Craig spoke with her for a few minutes. This was just before dawn on 20 June.

He and Michael then continued on to Proserpine. They drove the car into a cane paddock to conceal it while they slept.

When they woke, they drove around Proserpine for a while before again parking the vehicle off the road while they slept. This time the car got bogged and after failing to free it the boys abandoned it.

They then walked around Proserpine for a while.

At about 1:30pm, they saw an old Commodore sedan in the front yard of a residence. On inspection they saw the keys in the ignition and Craig suggested they take the car. Michael wasn't keen on doing that as it was apparent there was someone in the house and he thought they would get caught. When interviewed on the day after the death of Mrs Madeo, he said he waited by the fence of a nearby school. When he gave evidence, he said he helped Craig push the car out of the yard.

The second version is more consistent with the evidence of the owner of the car, Matthew Lucas, who heard the car start up and looked out his window. He saw a blond haired youth in the driver's seat and noticed "*he could hardly see over the steering wheel*". He says the car was just reaching the bitumen of the roadway when he saw it and it immediately drove off, so presumably Michael was already on board. He immediately called the Proserpine Police Station and reported the incident. Although he now only remembers seeing one of the youths, he told Senior Constable Ronald Topp there were two males involved but it seems he gave little by way of a description of them. That call was made at around 1.30pm or a little later.

After the crash Senior Constable Topp told investigators he suspected those involved in taking Mr Lucas' car may also have been responsible for two other car thefts that had occurred in the District over the preceding few days and a break and enter and wilful damage at the local school.

Soon after the boys drove off in the Commodore, Craig rang Holly-Rae on his mobile phone and told her they were coming to see her and she should wait out the front of the caravan park.

She did so, and soon after the boys turned up. She got into the car knowing it was stolen. Craig then drove back towards Proserpine. They were intending to visit a friend of Holly-Rae's who lived in Proserpine. They smoked some marijuana as they drove.

After receiving the report that the Commodore had been taken, Senior Constable Topp immediately commenced patrolling in the hope of locating it. He contacted the Mackay radio communication room and requested details of the vehicle be broadcast to all police cars in the region. That call was logged at 1.42pm. He and his partner Constable Daniel Kennedy drove as far south as Bloomsbury, about 15 kilometres south of Proserpine, and after seeing nothing, they returned to town to take up with the car's owner to obtain a formal complaint and more details.

Senior Constable Topp also broadcast details of the car over the citizen band radio with a request that any sightings of the vehicle be reported to police.

This strategy bore fruit. Shortly before 2.00 o'clock, a number of calls were received from members of the public indicating a vehicle matching the description of the distinctive missing Commodore was on the Bruce Highway heading north towards Proserpine. This was confirmed by another call made

at 2.07. The information was relayed to Senior Constable Topp and Constable Dan Kennedy who, in response, headed south, out of town.

The police vehicle was travelling south on the highway about 7kms from Proserpine when they saw the Commodore travelling north. The officers immediately recognised the vehicle and as it passed they executed a u-turn, activated their bar lights and siren and set off in pursuit.

### ***The pursuit commences***

From the recorded radio messages, it can be established that the police officers came across the stolen Commodore shortly before 2.17pm.

Both officers say they did not identify the driver of the stolen vehicle or make any assessment of his age. Constable Kennedy says he was too busy checking the registered number of the car and Senior Constable Topp says that while he did this quickly, his attention was then directed to locating a suitable place to turn around. I have some difficulty accepting this. The identity of the driver would have been crucial to any future prosecution and from my experience, glancing at the driver of a car as it passes is easy to do and takes only a second or two. In any event, the officers say that as result of their failure or inability to do this, they were not aware that the car was being driven by a juvenile.

When the police officers commenced following the stolen Commodore they observed it was behind four other vehicles, the front one of which was either a car towing a caravan or a campervan. The officers estimated the Commodore to be travelling at less than the 100km/hour speed limit.

As the police car caught up to the Commodore, it overtook the car in front of it, crossing double white lines to do so.

Craig repeated that manoeuvre to pass the next car in the string of four, again crossing double white lines and forcing an oncoming vehicle to leave the road. The stolen Commodore then overtook the third vehicle, again over double white lines, but it was forced to slow behind the front vehicle that was towing a caravan because of oncoming traffic. It had to force its way in between the car it had just overtaken and the car towing the caravan, forcing the former to swerve to the left to avoid a collision. Apparently, in so doing that car nearly struck the safety barrier adjacent to a bridge.

The police car overtook the same three vehicles, or they pulled over and let the police car go by, and came up behind the stolen car. The Commodore then overtook the car and caravan on a blind bend. When it was safe to do so, Senior Constable Topp also passed the car and caravan and accelerated to about 140km/hour.

The driver later indicated that he increased his speed and undertook these dangerous manoeuvres because he saw the police car coming after him.

Soon after the chase commenced Constable Kennedy informed the Mackay communications room of what was transpiring as required by police policy. He described what was happening in this way; *"He is now driving quite dangerously and overtaking vehicles"*.

He went on to say; *"Contains three people, one driver two passengers speed 100km/hour just overtaking a caravan on a blind corner"*.

The communications room officer (CRO) pertinently asked what the weather conditions were. In response Constable Kennedy said *"Road conditions are wet. Towards Proserpine, speed now 130"*.

It seems it had been raining intermittently all day, and while there is differing evidence as to whether it was raining at the time of the crash, there is no doubt the highway and the streets of Proserpine were wet.

The pursuit was monitored by the communications room supervisor, Sergeant Gregory Boulton. When he heard these events described over the radio, he instructed the CRO to warn the driver of the police vehicle of the need for caution. In accordance with this direction, the CRO said to the pursuing police officers, *"It might be advisable to pull back"*.

A little later Constable Kennedy reported *"140 pulling away from us"*. In a statement prepared for criminal proceedings brought against those involved in unlawfully using the Commodore, Senior Constable Topp estimated the speed of the vehicle to be 140km to 150km/hr at this point. In evidence he suggested it may have been even faster.

All three occupants of the Commodore agree the passengers were calling on the driver to stop but he refused. Craig explained in evidence he feared he would be sent to a youth detention centre if caught. The passengers gave evidence of the vehicle weaving in and out of traffic and high speed that is consistent with that of the pursuing police officers.

As the Commodore approached Proserpine it came up behind a slower vehicle and a truck. Because two semi-trailers were coming in the opposite direction the Commodore could not overtake the vehicles in front of it. This allowed the police vehicle to catch up to the Commodore. No doubt reacting to the police lights and sirens the vehicles in front of the Commodore pulled off the road allowing the Commodore and the police vehicle to proceed. In his statement Senior Constable Topp says that at this stage the police car was about 100 metres behind the stolen vehicle when it suddenly turned left off the highway into Main Street, Proserpine. Senior Constable Topp estimates that at that stage the Commodore was travelling at about 80km/hour and the police vehicle slowed to about 60kms/hour. The recording of the police radio gives a slightly different impression. As they approached Proserpine Constable Kennedy says; *"120k's just entering Proserpine now"*, and ten seconds later, *"Presently ah 70 to 80 metres in front of us."* He said in evidence this described the speed and relative position of the vehicles when



they were still on the highway, albeit, within the 60 km/hr speed zone of the town.

### ***The pursuit comes to town***

The distance from the commencement of the 60km per hour speed zone on the southern boundary of the town, to the point of the collision with Mrs Madeo's car is about 2.2 kms. For the first 1.2kms, Main Street follows the Bruce Highway. Main Street proper then branches off to the left into the central business district. From this intersection to the point of the crash is a distance of about one kilometre and apart from a curve just after the junction, it is a straight road with minimal obstructions, running east-west. This straight section of Main Street that runs through the central business district from Blair Street to Hinschen Street is 780 metres long. Annexure A is a plan of the route. The day of the crash was a weekday and there were numerous people going about their business who witnessed excerpts of the pursuit. As would be expected, their versions vary significantly.

Pamela Boyland was in her office situated on the part of Main Street that is coterminous with the Bruce Highway. She has a view of the street from her office. The speed limit there is 60kms/hour and she frequently sees cars exceeding it. She saw the Commodore go past. She said she had never seen a vehicle travelling as quickly. She said "*it was that quick it could have been an aeroplane*". She saw the police car come past at least five seconds later. It was travelling much more slowly.

A couple of hundred metres further up the road, Alfred Black was standing in the forecourt of his tyre business. His view to the south was restricted by the building next door but he heard a fast moving vehicle approaching and saw the Commodore as it flashed past. He estimated its speed at 120km/hr. He saw the pursuing police vehicle. He thought it was 300 to 400 metres behind the Commodore. He estimated its speed to be the same as the Commodore.

Senior Constable Topp says that as the Commodore entered Main Street proper, it reduced speed to about 80kms an hour to make the tight left hand bend near the intersection of Blair Street. He says he then reduced speed to about 60km/hr.

Senior Constable Topp says as they rounded that curve, he saw the Commodore strike the rear of a parked vehicle near the intersection of Herbert Street. It slid sideways for some distance but kept moving.

The struck car was parked outside a butcher shop adjacent to the intersection of Main and Herbert Streets. This point only comes into view as one rounds the bend near Blair St, a distance of one hundred and thirty metres.

A number of other people also witnessed this crash. Eden Findlay was sitting at a table on the footpath, very near the round-about. He saw the Commodore crash into the parked car and feared for his safety. He estimated the police car was "*about 100 metres behind the brown Commodore*". Two people inside

shops at the intersection variously estimated the police vehicle to be eight and five seconds behind the Commodore at this point.

This incident was reported to the police communications room in the following terms. *“That vehicle has just slammed into a parked vehicle on the side of the road. Ah he is currently swerving all over the road of the main street of Proserpine.”*

It seems that the collision interfered with the steering of the Commodore as the driver reported having difficulty controlling it from that point. He described the steering as being *“quite stiff”*.

Cars travelling in the same direction were stopped at a pedestrian crossing about a block and a half west of where the Commodore hit the parked car. The Commodore went onto the wrong side of the road to go past them causing people using the pedestrian crossing to jump for safety.

Charles Allan had just crossed over the pedestrian crossing when the Commodore sped past causing him considerable concern. He pulled over when he heard the siren of the police vehicle approaching. He estimates the vehicles were about 800 metres apart but he is obviously mistaken.

A group of people outside the Proserpine Court House, which is on the first corner past the pedestrian crossing, also witnessed part of the pursuit. Douglas Lawrence remembers there was light rain falling when he heard a siren approaching from the eastern end of Main Street. He also heard a loud scraping sound which he traced to a brown Commodore with damage to its front left. As he was watching the Commodore, it swerved onto the wrong side of the road to avoid a car reverse parking. Mr Lawrence identified the driver as a juvenile, as did others in the group. A short time later he saw a police car travelling in the same direction. Two men in his company, the Hurst brothers, give a similar account. They say they thought the police vehicle was about a minute behind the Commodore.

Mr and Mrs Hardke were on the other side of the road. They remember the front left hand side of the Commodore was damaged so that the bull-bar was rubbing on the front left hand tyre causing it to give off the smell of burning rubber. Mr Hardke thought the front left hand tyre was deflated and the rim was running on the road. He estimated the Commodore was between 100 and 200 metres in front of the pursuing police vehicle. They watched the Commodore drive out of sight around the next corner into Hinschen Street.

### ***The fatal crash***

A train line crosses Main Street just past its intersection with Hinschen Street. As the Commodore and the police vehicle proceeded down Main Street, the boom gates came down to allow a train to pass. Unable to proceed further along Main Street, Craig Cuthbert elected to take the left hand turn into Hinschen Street. It seems he was travelling at approximately 80kms/hour at this stage. As a result of the speed, the damage done to the steering

mechanism and front left hand wheel by the earlier crash, and the wet road, he was unable to negotiate the corner. Instead he ploughed into a white Toyota sedan which was waiting at the intersection. It was driven by Mrs Madeo. She was the only occupant.

Constable Topp says the police car was at the Mill Street intersection when this happened. That corner is 230 metres from the intersection of Hinschen Street. One of the officers advised the police radio room, "*Turned left into Hinschen Street and he has lost control of the vehicle*".

After the car crashed, the three teenagers got out of the Commodore. Michael Vatas-Simpson commenced to run but did not get far as police quickly arrived on the scene and apprehended him. Craig Cuthbert was also apprehended. Holly-Rae Watts was clearly shocked and dazed by the incident and sat on the footpath crying.

A number of bystanders ran to Mrs Madeo's assistance, while the police dealt with the teenagers from the Commodore.

As the cars had made their way along Main Street, Sergeant Boulton, the pursuit controller, had telephoned the District Officer, Inspector Batterham. On learning the pursuit had entered the town and the Commodore had crashed into a parked car, he immediately instructed the pursuit be terminated. He can not recall the exact term he used and concedes he may have said the pursuing vehicle should disengage. Seven seconds after the last message advising that the Commodore had lost control, the communications room operator is heard to instruct, "*285, disengage, repeat disengage.*".

That direction came too late. The crash had already occurred at 2.20pm, approximately three and half minutes after the pursuit commenced. During that time the cars involved travelled about 7kms, at an average speed of approximately 120 kms per hr.

The Proserpine Ambulance Station was first called at 2.23pm but this communication misfired and so another request for assistance was made at 2:34. Heather Shields, an advanced care paramedic and an honorary ambulance officer arrived at the scene about two or three minutes later. Another ambulance officer Norman Veal was already in attendance.

He says that when he arrived, Mrs Madeo was conscious, alert and orientated although not speaking. She was capable of nodding appropriately to verbal questions.

Mrs Madeo was stabilised within the vehicle and given high flow oxygen. She had low blood pressure indicating that it was essential for her to be removed from the vehicle as quickly as possible. The ambulance officers considered her condition was rapidly deteriorating. She was transferred to the Proserpine Hospital. The hospital was advised of her imminent arrival and they were met at the front of the accident and emergency department by both nursing and

medical staff. The ambulance officers remained at the hospital to assist. Despite the best efforts of all concerned Mrs Madeo's blood pressure could not be maintained: she was declared dead at 4:40pm. The autopsy revealed injuries that were not survivable.

The investigation described earlier then commenced.

### ***The investigation findings***

#### **Alcohol/Drug Testing**

The breath test carried out on Senior Constable Topp shortly after the crash showed readings of 0.00. Blood and urine samples also proved negative for alcohol or illicit drugs. Craig Cuthbert was tested for alcohol with negative results.

#### **Identification**

Mrs Madeo's body was identified on the day of her death by her son Raymond.

#### **Vehicle inspection**

When the Commodore was inspected after the crash it of course had extensive damage. That included a ball joint dislodged from the lower left control arm. As the collision with the Toyota driven by Mrs Madeo involved the right front corner of the Commodore it is reasonable to assume that the damage to the left steering components occurred when it hit the parked car prior to the collision with the Toyota. This would also explain the difficulty the driver had in controlling it after that crash.

#### **The autopsy**

On 21 June 2006, an autopsy was performed on the body of Mrs Madeo by Dr Fitzpatrick, a local, experienced pathologist. He expressed the view that she died from multiple injuries suffered in a motor vehicle crash. He found that a number of her ribs had been fractured leading to laceration of her lungs with consequential haemorrhaging. Her aorta was partially ruptured. The extensive loss of blood resulting from these injuries would explain her fatally low blood pressure.

### **Findings required by s45**

I am required to find, as far as is possible, who the deceased was, when and where she died, what caused the death and how she came by her 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 Niceta Maria Madeo. She was 82 years of age at the time of her death. Nita, as she was known, was born in Italy on 19 December 1923; the

second of four children. Her family immigrated to Australia in the late 1920's and took up residence in Tully where Mrs Madeo commenced and completed her schooling. After marrying she moved to Proserpine with her husband where she remained until her death. From all accounts she had a full and happy life. Although her husband died some time ago, she is survived by her two sons, her daughter, numerous grandchildren and great grand children.

Nita was widely known and liked in the community. She was heavily involved with the local bowls club; the Catholic parish and, right up until she passed away, contributed extensively via her charity work to St Vincent de Paul. I have read a well crafted victim impact statement produced by Mrs Madeo's family which speaks fondly of her generosity, thoughtfulness and vitality. These qualities were manifest in her daily practice of visiting elderly people in the Proserpine area to check on their welfare and provide them with some much appreciated company.

It is clear that Mrs Madeo was very much loved and is still greatly missed by her extended family and friends.

- Place of death –** Mrs Madeo died in Proserpine, in Queensland
- Date of death –** She died on 20 June 2006
- Cause of death –** She died from internal injuries sustained in a motor vehicle crash following 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 that killed Mrs Madeo was Craig Cuthbert's failure to stop when signalled by Senior Constable Topp to do so and his reckless and highly dangerous driving that followed. He was convicted of a number of criminal offences as a result of this conduct and punished according to law. Nor can it be doubted that had police

not pursued him, the crash would not have occurred. When he was first seen by police he was driving normally. After they began to chase him, he commenced driving dangerously in an effort to avoid being apprehended.

It is beyond the scope of this inquest to look into the factors that lead young men into taking such needless risks. His less than ideal upbringing described earlier may provide some of the answers. Obviously, young men engaging in dangerous criminal behaviour will continue to come to police attention; the challenge for police is to respond to this behaviour in a manner that does not exacerbate the danger.

As the legal representatives of the officers in this matter correctly pointed out, all pursuits involve some risks. That does not mean pursuits should not be undertaken in any circumstances; the public would likely construe that as the police service abrogating its responsibilities. However, it is reasonable to expect police officers to undertake this activity in a way that minimises the risk. The danger must be justified by reference to the reason for it being created. The QPS shares this perspective and has over a number of years striven to achieve the appropriate balance between law enforcement and public safety.

As counsel assisting mentioned at the opening of this inquest, Mrs Madeo's death is one of seven that followed a police pursuit in the period June 2005 to December 2006. Four inquests have already been held and inquests will be held in relation to the two 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. However, it is important to acknowledge that they were not motivated by any improper purposes. On the contrary, it seems their commitment to the enforcement of the law may have led them into error.

### ***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. The policy prescribes that officers are only to participate in pursuits in the circumstances outlined in it.

The policy has layers of controls. It requires the officers contemplating initiating a 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.

An officer 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 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.

The policy 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.

The policy contains the following definitions:

***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.*

***Abandon***

*Means all police drivers engaged in a pursuit, must immediately acknowledge the direction to abandon the pursuit, turn off flashing warning lights and sirens, pull over and stop the police vehicle in the first available safe position and conduct a safety check of the vehicle before resuming normal patrol or other relevant (pre-pursuit) duties.*

***Disengage***

*Means allowing the pursued vehicle to draw away but continuing to follow the pursued vehicle to further reduce risks from a pursuit. The pursuit controller may direct the pursuing unit(s) to allow the pursued vehicle to draw away. Re-engagement may be considered when appropriate, but only with the prior authorisation of the pursuit controller.*

***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.”*

## 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.*

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.

## 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.***”(emphasis added)

## 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.

## Abandoning a pursuit

The policy repeats 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.

## Disengaging

As outlined earlier, the policy includes a definition of “disengage” but provides no other guidance about when or how that should happen. The section dealing with resumption of a pursuit provides that unless the reasons for disengaging have significantly changed, resumption must not occur and must be authorised by the pursuit controller.



### **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 officers in the pursuing vehicle are obliged to comply with any directions given by this over-viewing 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.

The evidence indicates that when the officers executed a “u” turn so that their vehicle was travelling in the same direction as the Commodore, they activated the coloured bar lights and siren and accelerated to close the distance between the two vehicles. As soon as they did this, the Commodore significantly increased its speed and over took the car in front of it in dangerous circumstances. There can be little doubt that the driver of the Commodore was attempting to avoid apprehension; indeed he told the passengers in the car as much.

The pursuit had commenced.

#### **The “known circumstances”**

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

- the Commodore had been reported stolen;
- it failed to stop when the driver must have known police were directing him to do so.

When interviewed and when giving evidence, Senior Constable Topp said he also had regard to suspicions that those responsible for stealing the brown Commodore had also been involved in a number of other offences he nominated. He was proven correct in relation to some of those offences but it is clear that they were not then part of the “*known circumstances*” and should have been disregarded.

The circumstances that militated against a pursuit being commenced were:-

- the young age and inexperience of the driver;
- the number of passengers;
- the wet road; and
- the significant volume of traffic on the highway.

However, as discussed earlier, Senior Constable Topp says he was not aware the car was being driven by an unlicensed, inexperienced juvenile and so that factor should be disregarded when critiquing his performance.

On balance, I do not consider the risks of which he was aware outweighed the law enforcement objectives warranting action. Accordingly I consider it was reasonable and appropriate for Senior Constable Topp to commence the pursuit.

### **Notification of commencement of pursuit**

Senior Constable Topp and his partner, Constable Kennedy, were in radio communion with the Mackay radio room when they came across the stolen Commodore and commenced the pursuit. They promptly broadcast this and continued to give a reasonable description of the events as they unfolded, as required by the policy.

Sergeant Greg Boulton was the radio room supervisor at the material time. He heard the events unfolding and assumed the responsibilities of pursuit controller.

### **The continuing risk assessment**

It soon became apparent the driver of the stolen Commodore had scant regard for the safety of himself, his passengers or other road users. On a wet road he crossed double unbroken lines to overtake a number of vehicles; overtook a car and caravan on a blind corner and drove at a speed estimated by Senior Constable Topp to be 150 km/hr. The danger inherent in this driving was manifested by one of the cars that was overtaken nearly being forced into bridge railings and one of the on coming cars having to pull off the road.

Mr Cranny is correct when he submits that reasonable minds may differ on the magnitude of risk in any given circumstances. But that does not mean an officer complies with the policy simply because he genuinely believes the risk in question is justified. As Mr Cranny acknowledged, the test must be whether that assessment is reasonable in the circumstances.

Having regard to the necessity for the pursuit in this case – the apprehension of persons who were unlawfully using a 21 year old Commodore, I find the assumption of risk created by continuing to pursue a vehicle being driven in the manner described was not reasonable. I do not accept that just because these dangerous manoeuvres did not result in a crash, it was appropriate to continue with the pursuit. There was no basis to think the driver would spontaneously refrain from such actions if the pursuit continued or that the fortuitous avoidance of a crash would persist.

Accordingly, the policy mandated the pursuit should have been abandoned.

While the vehicles were on the highway this did not happen at any stage, either within the terms of the policy, which required the officers to stop their car and switch off the lights and sirens, or in substance. Contrary to Mr Cranny's submission that after being told by the pursuit controller that "*it might be advisable to pull back*" Senior Constable Topp let the stolen car pull away and only caught up to it unintentionally when it slowed, Senior Constable Topp gave evidence that it was his intention to intercept the vehicle as they approached Proserpine. He said that when the Commodore was delayed by a truck at this point, "*I thought we might have a chance to catch him,*" but because the truck pulled over "*he (the Commodore) managed to keep going.*"

Senior Constable Topp says he relinquished this ambition only when the driver of the Commodore diverted into the township. At that juncture, Senior Constable Topp made the morbidly prescient observation that the driver of the Commodore was likely to kill somebody.

It is clear the police car then slowed from the 120 km per/hr it was travelling at on the outskirts of town. However, when the Commodore hit the parked car the police vehicle was no more than 130 metres behind it and when it crashed into Mr Madeo's car at the other end of Main Street, the police car was approximately 230 metres back. It may be the actions of the officers during this part of the pursuit can best be described as disengaging, a concept I shall turn to when considering the actions of the pursuit controller.

The officers did not switch off their car's lights and siren when driving down Main Street as Senior Constable Topp considered it would warn people of the approaching danger. He acknowledged he did not consider the effect this may have on the fleeing Commodore driver. It was suggested the policy is silent on this consideration. I disagree. Implicit in the policy is the understanding that the actions of pursuing officers can negatively impact upon the actions of those they are chasing. Notwithstanding that, in this case, I accept the officers reasoning in leaving their lights and siren on.

### **The pursuit controller's performance**

As mentioned earlier, the pursuit controller, in this case, Sergeant Boulton, was required to make the same risk assessment as the officer driving the pursuit car, relying on the information provided to him over the radio by the

officers in that car. It was his duty to direct the pursuing officers to abandon the pursuit when its risks outweighed its necessity.

As I have already mentioned this did not happen. It follows; Sergeant Boulton failed to appropriately apply the policy. He conceded as much in the witness box.

He considers he directed the pursuing officers to “disengage”; a concept first introduced into QPS policies in January 2006 and since abandoned. He says the suggestion to pull back was meant to be a direction that they allow the pursued vehicle to pull away. The policy would then have required his approval before the pursuit was re-engaged.

Senior Constable Topp says he did not understand the comments to be activating this aspect of the pursuit policy. And indeed, Sergeant Boulton could have detected from the actions described by the pursuing car that it had not disengaged when he was told the police car was travelling at 120 km per hr entering Proserpine and the Commodore was “*seventy to eighty metres in front of us.*”

I find it inexplicable, that even when told the Commodore had struck a parked car and was “*swerving all over the road up the main street of Proserpine*”, Sergeant Boulton did not order the pursuit be abandoned.

### **Conclusions**

I have found the QPS pursuit policy was not adhered to by the senior officer in the pursuing vehicle or by the pursuit controller. I readily acknowledge that in neither case was this the result of a wilful disregard of those policies: rather, serious errors of judgement were involved. I also acknowledge no malicious or improper purpose was involved in these errors. They were made by officers attempting to do their jobs. I accept the submissions it can not be proven that had the officers complied with the policies no harm would have come to anybody; but there is in my mind no doubt that by failing to do so they increased the likelihood of a harmful conclusion to the pursuit.

It is obvious the officers involved have suffered as a result of the outcome, as has the person primarily responsible for Mrs Madeo’s death, Craig Cuthbert. However their distress is small compared to the enduring loss of the Madeo family. I offer them my sincere condolences.

This inquest is closed.

Michael Barnes  
State Coroner  
Proserpine  
26 March 2009

# Annexure A

