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Table of Contents

Introduction	1
The genesis and purpose of this report	1
Competing policy objectives	2
Law enforcement	2
Safety of the public	4
Balancing diverse variables	4
Why focus on the police?	5
The commitment of the QPS	6
History of the QPS pursuit policy	7
Correct balance - QPS	8
Framework of current policy	9
Risk to person vs risk to property	9
Recommendation 1 – Refocus on safety	10
Is a pursuit permitted?	11
Can I?	11
Comment	11
Instinct alone	11
Recommendation 2 – No pursuits without evidence	11
What suspected offences should justify a pursuit?	12
Pursuing drunk drivers	12
Recommendation 3 – Don’t pursue drunk or drug affected drivers	13
Pursuing stolen cars	13
Recommendation 4 – Pursuing stolen cars	15
Is it safe to pursue?	16
Should I?	16
Pursuit categories	16
Comment	17
Recommendation 5 – Abolish category 3	19
Recommendation 6 – Reasonable belief is sufficient	19
The risk assessment	19
Comment	20
Better guidance in the risk assessment	20
Recommendation 7 – Weighted considerations	21
Effect on the pursued driver’s conduct	21
Recommendation 8 – Consider impact of pursuing	21
Good practice guidelines	21
Recommendation 9 – Development of best practice guidelines	24
When does a pursuit commence?	25
Recommendation 10 – Commencement – reverse the presumption	27
Pursuit controller	28
Recommendation 11 – Pursuit controller training	29
Evade police	30
Recommendation 12 – Evade police review	31
Technological solutions	32
Recommendation 13 – Engineered safety	32
Condolences and acknowledgments	33

Introduction

*Perhaps the only thing more dangerous than a drunk driver on the road is a drunk driver being chased by the police!*¹

The genesis and purpose of this report

Between June 2005 and July 2008, in Queensland, ten people died in or following a police pursuit. Inquests have been held into each of those deaths. The findings are published on the web site of the Office of the State Coroner.²

The *Coroners Act 2003* (the Act) authorises a coroner conducting an inquest to comment on anything connected to the 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.³ To maximise the evidence base, I postponed making any such comments in these cases until all ten inquests had been heard. At that stage a further hearing was convened and the Commissioner of the Queensland Police Service (the QPS), Mr Robert Atkinson APM, and the leader of the project team which has been reviewing the Service's pursuit driving policy, Inspector Tony Fleming, gave evidence about the development of the policy and the basis on which the Service has concluded the competing policy considerations have been balanced appropriately. The QPS also tendered extensive documentation to support the oral evidence of the Commissioner and the written submissions of their counsel. Submissions were also received from the mother of one of those killed in a pursuit, Caitlin Hanrick and the Queensland Police Union of Employees (QPUE).

This report seeks to synthesize the insights gleaned from investigating the ten deaths, having regard to the helpful submissions made by the parties. The resulting appreciation of the competing policy goals has informed recommendations designed to reduce the risk of further deaths without significantly compromising reasonable law enforcement.

¹ Alpert, GP & Madden, T 1994, "Police pursuits: an empirical analysis of critical decisions, *American Journal of Police*, vol.13, no. 4, 23 at 43, quoted in CMC research report, *Police pursuits*, 2003, p3

² Peter and Nicole ASH - <http://www.courts.qld.gov.au/ASHPEandAshNF20091103.pdf>
Matthew CULLEN - http://www.courts.qld.gov.au/Cullen_MR20091105.pdf
Joseph DUNCAN - <http://www.courts.qld.gov.au/DuncanJD20081024.pdf>
Caitlin HANRICK - <http://www.courts.qld.gov.au/HanrickC20090717.pdf>
Samantha MASLEN-<http://www.courts.qld.gov.au/OSC-Inquest-MaslenSA20080818.pdf>
Niceta MADEO <http://www.courts.qld.gov.au/MadeoNM20090326.pdf>
Paul MOORE - <http://www.courts.qld.gov.au/MoorePJ20090422.pdf>
Craig SHEPHERD - http://www.courts.qld.gov.au/Shepherd_final.pdf
Kristina TYNAN - <http://www.courts.qld.gov.au/TynanKA20081127.pdf>

³ Section 46(1)

Competing policy objectives

I readily acknowledge the complexity of resolving the tension between the competing principles when the content and implementation of a police pursuit policy is considered.

In 2003, the Crime & Misconduct Commission completed an extensive research review of the issues. The following passage from their report neatly summarises the problem:-

A review of police pursuit research reveals that law enforcement decision makers throughout the world are struggling to find the right balance between the need for police to be effective in apprehending offenders and the need for them to consistently act in a manner that minimises any risk to public safety. For this reason, police pursuits constitute a particularly difficult area of policy. On the one hand, police are expected to use whatever police powers are reasonable and necessary to enforce the law, including engaging in pursuits to apprehend drivers who flee or fail to stop when directed to do so by a police officer. On the other hand, pursuits can create situations that are far more dangerous to the public than the original offence.⁴

The QPS also clearly recognises the difficulties involved. It submitted:-

The policy is cognisant of community expectations that police operations should not unjustifiably endanger members of the community, police or offenders while also recognising the simultaneous expectation that police will apprehend offenders, uphold the law and employ strategies aimed at crime prevention. Finding this balance in a policy that restricts police activity is a complex challenge. The policy needs to balance the role of protecting the community through apprehending offenders as safely as possible against letting them escape. Changes to the level of enforcement, be it an increase, reduction or shift in focus, can have direct consequences for the community.⁵

Before considering if it is possible to meaningfully “balance” these very different objectives, some observations about them is appropriate.

Law enforcement

The QPS has a statutory duty to prevent crime, detect offenders and bring them to justice.⁶ The community expects police officers to proactively exercise their extensive powers of interception to investigate the risks of crime and to utilise their powers of arrest to detain those reasonably suspected of committing crime. The Government, the Opposition and the news media publicly pressure the QPS to do more to respond to public concerns about crime.

⁴ CMC *op cit* p3

⁵ Statement of Inspector Fleming annexure “A” p11

⁶ The Police Service Administration Act 1990 s2.3

“Common sense”, intuition or a police officer’s hunch may lead to an expectation that those who fail to stop when directed to do so by police have committed serious criminal offences and that failing to apprehend them may result in seriously negative consequences for law enforcement. The evidence does not support the first proposition; the second is based largely on speculation that those who fail to stop will also engage in other dangerous or criminal activity. I shall deal with this in more detail when I examine the provisions of the current policy.

Suffice to observe at this point, the pursuits connected with the ten deaths investigated by these inquests were not precipitated by the driver of the pursued vehicle driving dangerously or otherwise placing members of the community in jeopardy of physical harm. Further, in none of the cases was it subsequently established that the driver had been involved in offences of violence.

In four cases, when the pursuit was commenced the vehicle was suspected of being unlawfully used. In each of those cases this proved to be true. In two of those cases the occupants of the vehicle were later found to have also been involved in break and enter offences. In the six remaining cases, the pursuit was commenced because the driver of the pursued car was either speeding, or had failed to stop when a police officer had wished to administer a road side breath test. Subsequent investigation did not indicate the fleeing driver had been seeking to avoid apprehension for more serious crimes.

The reasons for commencing a pursuit in these ten cases are largely reflective of the precipitating factors for which all recorded pursuits were commenced over the nine year period 2000 – 2008. According to the QPS slightly more than a quarter of the 5202 pursuits undertaken during that period were of suspected stolen vehicles; and almost one half were initiated in response to speeding, failure to stop, or suspicious behaviour. In less than 10% of the cases was the pursued vehicle being driven dangerously before the pursuit and only 3.6% were precipitated by the “*commission of (a) crime*”⁷ (presumably other than the unlawful use and traffic offences included in the other categories).

Nevertheless, the QPS considers pursuits generate a deterrent effect that is “*effective in discouraging most members of the community from attempting to avoid detection and apprehension by police.*”⁸ This conclusion conflicts with the evidence cited in a 2003 CMC report which found that police departments in the United States that had adopted a “no chase” or very restrictive pursuit policy did not experience any increase in the number of motorists failing to comply with a direction to stop or any increase in reported crime that could be traced to the policy.⁹

⁷ Statement of Inspector Fleming annexure “A”, table 9, p117

⁸ QPS report p 139

⁹ CMC , Police Pursuits, 2003, p 4

Safety of the public

Pursuits are inherently dangerous, posing a risk to the safety of the pursuing officers, the occupants of the car being pursued and persons on or near the road over which the pursuit proceeds. In the ten years 2000 – 2009, 22 people died and 689 people were injured during or following a police pursuit in Queensland.

The ten deaths on which this report is based further evidence that danger and its frequent visitation on someone other than the person primarily responsible for creating it. In seven of the cases someone other than the driver was killed: four members of the public in no way involved with the participants of the pursuit; and three passengers in the pursued vehicles, who on each occasion are reported to have asked the driver to stop.

The QPS accepts pursuits are dangerous and that the Service has a duty to protect the public and to carry out its other functions in a manner least likely to jeopardise public safety. However, some officers seem reluctant to accept that the actions of officers involved in pursuits cause or contribute to the deaths that too frequently follow.

In eight of the ten cases investigated, the pursued vehicle was being driven in a normal, safe manner when an attempt was made to intercept it. In each case the driver then sped off and the police followed. A death or deaths occurred as a result of the manner in which the pursued vehicle was driven.

In the law the so called “chain of causation”¹⁰ is delineated by looking at the factors that lead to the outcome in question and excluding a contributory factor when it is too remote from that event to be regarded as causative. There is no definitive point at which such a decision is objectively reached; the High Court has suggested a “common sense” test.¹¹ In another context the Act stipulates an act or omission contributes to a death if it would not have occurred at about the same time absent the act or omission.¹² In my view, applying either test, the causal link between the actions of the officers and the actions of the pursued driver is too obvious to dispute and too proximate to ignore.

Balancing diverse variables

The current policy seeks to balance the risks created by engaging in a pursuit against the risks involved in allowing the suspected offender to escape immediate apprehension. In hindsight, during an inquest, the balance will almost always be shown to have been unduly weighted in favour of law enforcement because necessarily, the pursuit has culminated in a death. Of course, the vast majority of attempted interceptions and pursuits conclude

¹⁰ Critics of legal method have argued that this term and approach wrongly suggests a direct, linear, cause and effect relationship between events which actually happen simultaneously or as a result of different influences. However, I consider in the police pursuits such a relationship does exist between the intercept, flight, and chase.

¹¹ *March v E & MH Strammaro Pty Ltd* (1991) 171 CLR 506

¹² s10AA(3)

safely and with law enforcement enhanced. I will later in this report cite the statistics that show how rare fatalities are.

In an inquest the question is: Should the officers involved have foreseen the danger? The coroner reviews the reasonableness of the officers' actions and considers whether they complied with the QPS policy. In this report the policy is being reviewed and more seminal or pivotal questions come into focus, such as: Is it even theoretically possible for an officer to balance the heterogeneous imponderables of risks to road safety and detriment to law enforcement? If it is, how can an officer make meaningful assessments of relevant considerations such as, the skill or capacity of the unknown driver; the roadworthiness of the car; and the criminal offences the unknown occupants may have or may be about to commit? It is against this theoretical and practical background the policy of the QPS will now be critiqued.

Why focus on the police?

It is reasonable to ask, why focus on the police when the actions of the fleeing drivers are the primary cause of the fatalities? But as with most things, most motor vehicle crash deaths occur as a result of a combination of circumstances. While it can not be proved all fleeing drivers will necessarily resume safe driving if police discontinue pursuing, in nine of the ten deaths inquested, the fleeing driver could see and/or hear the police vehicle when the fatal crash occurred. The pursuits were precipitated by the attempted interception and all but one concluded with a fatal crash.¹³

Of the nine drivers involved in these cases, only one was over 30. The other eight ranged in ages from 16 to 26. All but one were male, and five were affected by alcohol and/or drugs. All but two were driving with other young friends. The only female driver was 19, drunk, affected by drugs and in company with four younger relatives. Two were riding motorcycles. Such individuals are known to be highly impulsive and prone to risk taking. While pursuits would not be an issue if all motorists stopped when directed to do so, that is unlikely to ever eventuate, having regard to the cohort involved. That does not mean no attempt should be made to punish and discourage drivers who fail to stop - I will say more about the "evade police" offence later – but the other major contributor to these deaths, the pursuing police officers, are far more likely to be responsive to reforms.

Youths have been fleeing from police since police forces were invented. It seems unlikely anything will change that. However, I am confident that with good policies and strong leadership, police officers can be induced to give greater emphasis to safety.

An officer can reasonably engage in a pursuit if the need justifies the risk it creates. In three of the cases that this report is based on, the officer who was attempting to intercept another vehicle, discontinued or was preparing to

¹³ In the other case the pursuit was terminated very soon after it commenced but the fleeing driver continued to drive dangerously for about another two kilometres before crashing and killing a passenger – see the finding in relation to the death of Kristina Tynan.

discontinue that attempt soon after it became apparent the driver was not going to stop, yet the deaths still occurred. In those cases, quite clearly, the officers involved were not blameworthy, even though their actions contributed to the deaths. In the other cases, views might differ depending upon the degree of risk one considers to be acceptable.

In any event, sweeping statements like; *“The officers were just doing their jobs”*, when based on limited knowledge of the facts, overlook that the most important job a police officer has is keeping the community safe. High speed pursuits will rarely contribute to that. All must be carefully and dispassionately scrutinised, especially when the result is injury or death

The commitment of the QPS

Because a coroner’s investigation seeks to identify the factors that contributed to a death with a view to making recommendations designed to reduce the likelihood of more deaths occurring in similar circumstances, it is inevitable the investigation will focus on policy weaknesses and/or practice failings.

I acknowledge the officers involved in the deaths I have investigated all demonstrated a commitment to doing their job as they best understood it. All were motivated by a desire to enforce the law for the benefit of the community. All were concerned about the impact of traffic breaches and other crime on the community. None were pursuing a personal or improper agenda. It is a sad irony that deaths and injuries can occur when well intentioned constables become so fixated with pursuing petty criminals they forego their first duty to preserve community safety.

It is also appropriate to acknowledge the impact of the fatalities on the officers involved in the pursuits. While their emotional suffering was obviously far less than that of the families of the deceased persons, it was nonetheless significant; in some cases severe.

In my view Commissioner Atkinson deserves commendation for his tenacity in grappling with competing demands placed on the QPS by this issue. His resolve is demonstrated by the prominence and persistence of his support for the Safe Driving Project since 2005. The Commissioner and the principle project officer, Inspector Tony Fleming, both gave evidence and demonstrated their deep understanding of the complexities this area of policing presents. The documentary material they provided to the court has been of great assistance. It is comprehensive and insightful. I have no doubt that the QPS is committed to discharging its enforcement obligations as safely as possible and recognises the role managing pursuits plays in that. The QPS is leading the nation in this regard. I am persuaded the Service will continue to reflect on how it can maximise safety and I trust this report will be received as a constructive contribution to that continuous improvement.

History of the QPS pursuit policy

The QPS has had a pursuit policy, in various forms, for decades. Although as the Commissioner made clear when he gave evidence, in times past it was much more cavalier than the current version:-

Essentially, police would pursue for any reason, (for example) an unregistered motor vehicle, and they would continue that pursuit unrelentingly. As well, regrettably, at that time the culture of the organisation was such that that was (considered) an entirely appropriate and proper thing to do in terms of the apprehension of offenders. So much so, that if here in Brisbane the person at the police communications centre who was in charge of the pursuit called the pursuit off over the radio system, there would be cat calls and abuse directed at that person who had terminated the pursuit.¹⁴

The oldest policy documented in the material provided by the QPS was entitled *High Speed Pursuits Under Radio Supervision*. It appears to have been introduced in 1989. It provided the basic structure which in general terms continues in the current policy, namely, it defines when a pursuit commences and then requires a risk assessment based on balancing the risk to road safety of pursuing against the risk to law enforcement of not apprehending the occupants of the pursued car immediately. In the original policy, the risk assessment required was described in the following terms:-

When deciding to pursue a vehicle, the senior police officer in the pursuing vehicle involved must carefully consider all the circumstances, including the seriousness of the offence, all the possible consequences and, most importantly, the safety of all persons involved. The officer is expected to use sound professional judgement when deciding if the benefits in apprehending an offender outweigh the threat to public safety. All high speed pursuits have the potential for threatening public safety.

That policy then contained operational procedures which put restrictions on specific practices in conducting pursuits but did not prohibit pursuits by reference to the offences occupants of the fleeing vehicle may have committed or any other criteria.

The circular was amended numerous times but its principal policy underpinnings remained consistent.

The most substantial amendments were affected by the introduction of the Safe Driving Policy which is now in place. This policy involved a major overhaul of the previous arrangements and included a decision making framework that was compatible with an operational officer's sequence of

¹⁴ T/s 1-4

responses to various incidents. For the first time, the new policy included non pursuit matters and a detailed risk assessment process for other matters.

The new policy was subject to trial in the Redcliffe and Toowoomba police districts from 1 October 2006. These districts were chosen because of the variety of demographic and geographic features found in them and the support of senior command within the relevant regions. The trial was accompanied by intensive training for all officers within the districts concerned. The outcome of the trial was scientifically evaluated. A research review, focused on a literature search and policy analysis, was accompanied by an evaluation of the application of the new policy in the trial districts. The evaluation report made numerous recommendations to address perceived shortcomings.

From 1 January 2008 the new policy was implemented state wide.

Four of the deaths investigated in this suite of inquests occurred after the new policy was introduced.

Correct balance - QPS

As is obvious from the evidence of the Commissioner cited at the commencement of this section, Mr Atkinson acknowledges that in the past inadequate consideration was given to the risks to safety posed by pursuits. The QPS submission indicates it believes it now has the right balance between law enforcement and community safety. However both Commissioner Atkinson and Inspector Fleming were happy to discuss potential improvements to the policy, and indicated the policy was open to ongoing review to monitor its effectiveness and the effectiveness of the training of officers. The QPS submission stated the Service remains committed to changes that would result in better outcomes.

Framework of current policy

The current policy sets out the underpinning principles in relation to pursuits. It emphasises that pursuit driving is inherently dangerous, that safety is paramount and that the risks of pursuing will not usually be justified. It continues the notion of balancing the risk of pursuing against the benefit of apprehension – the benefit must “*outweigh the risk.*” Any doubt should be resolved in favour of not pursuing.

For the first time the current policy stresses that a pursuit is not the only means of apprehending a suspected offender who fails to stop when directed to do so :-

The Service will continue to apprehend offenders who fail to be intercepted but pursuits will not be the principal means of effecting apprehension.

Before commencing a pursuit, officers are required to consider whether the law enforcement imperative is one which may justify a pursuit, and if so, whether the risks of pursuing in the prevailing circumstances reasonably justifies the proposed action.

Inspector Fleming described a two step process an officer should engage in before pursuing:-

- (i) Can I? – Is the suspected offence one for which pursuits can be undertaken?
- (ii) Should I? - Are the circumstances such that the risk of a pursuit can be justified?

The other crucial aspect is the role of the pursuit controller – an officer who monitors events over the police radio and has responsibility for terminating the chase if it becomes too dangerous.

Risk to person vs risk to property

Before examining the elements of the policy, I raise for consideration whether it is theoretically coherent and/or whether it, in aspects, internally inconsistent.

If safety is truly supreme and if all pursuits involve a risk to safety, they should only be undertaken where the suspected offender’s behaviour poses a greater risk to safety: only offences of violence would justify a pursuit. The policy however, indicates an officer is to balance “*the benefits to the community of apprehending the offender.*” That would suggest if a motorist fails to stop but is on reasonable grounds suspected of committing or planning non violent crimes of sufficient magnitude, the benefit of preventing those crimes might, in the minds of some, justify putting lives at risk. If that is not what is intended, the policy should stipulate the risk of the pursuit is to be balanced against the

risk of the suspected offenders endangering themselves or others if they are not apprehended.

In addition to the philosophical objections that might be raised against the approach in the policy, there is also the practical difficulty of applying it. How does an officer balance observable, physical risks against invisible, intangible harm: the perils of dangerous driving as against the harm to the community that may result from non violent property crime?

Recommendation 1 – Refocus on safety

The current pursuit policy stipulates safety is paramount but then directs officers to balance the safety risks of pursuing against the benefits to the community of apprehending the suspect, whether or not those benefits involve prevention of personal injury. I recommend the policy be recast to ensure it is only the danger to the safety of others posed by not immediately apprehending the suspect that is factored into the risk assessment process.

Is a pursuit permitted?

Before an officer considers whether the risk involved in a pursuit might be justified, he or she must first determine whether the reason for the proposed pursuit could be sufficient to authorise a pursuit.

Can I?

The policy prohibits an officer who has unsuccessfully attempted to intercept a motorist from pursuing the car if the reason for seeking to intercept was for any “non-pursuit matters”. They are:-

- (i) Licence, vehicle or street checks;
- (ii) Random breath tests;
- (iii) Where the driver or occupants of a vehicle are suspected of offences based on the officer’s instinct alone and without supporting evidence;
- (iv) All simple offences (including traffic offences), except for:-
 - (a) An offence against s.25: “Use of a vehicle” of the *Summary Offences Act, 2005*; or
 - (b) Where the driver of the vehicle is reasonably suspected of driving under the influence of liquor or drug to such a degree the suspected impairment has or will create circumstances that pose an imminent, significant risk to public safety (e.g. the suspect’s ability to control the vehicle is such that if not intercepted or pursued, the danger posed to the public is as great or greater than that of engaging in a pursuit).

All other offences may be sufficient to justify a pursuit. That enlivens the risk assessment process.

Comment

It is of concern that in 2008, 87 pursuits (24% of all pursuits) were commenced for “non pursuit matters”. Five resulted in a personal injury. The Service has recognised this failing and has committed to continuing to address it through training and, where necessary, disciplinary action.

Instinct alone

It seems incongruous to include among a list of offences which can not justify a pursuit, a further prohibition framed with reference to the evidentiary basis needed to justify a pursuit. Banning pursuits based on an officer’s instinct alone is recognition that motorists may flee for fear of being apprehended for very minor matters or even when they have committed no offences other than failing to stop. It is a matter of principle that should cover all situations. Accordingly it should be included in the pursuit policy principles section of the policy rather than the non pursuit matters definition.

Recommendation 2 – No pursuits without evidence

The prohibition on commencing a pursuit when there is no evidence that a motorist who has failed to stop has committed another offence and the suspicion that the motorist may have committed other offences is based only

on that failure and/or the intercepting officer's instincts should be moved from "Non pursuit matters" to "Pursuit policy principles."

What suspected offences should justify a pursuit?

The policy prohibits pursuits being commenced for enforcement of traffic offences and most other simple offences.¹⁵ This recognises that the law enforcement imperative of these types of offences does not justify the significant risk involved in a pursuit. In view of the large number of traffic offences committed, were they to be included as allowable matters for pursuits, the potential for risk to public safety would be drastically increased. It is a sensible reform to exclude those offences, and there would seem to be no basis to rescind this aspect of the policy.

The two areas of contention are:-

- allowing the pursuit of drunk or drug affected drivers; and
- allowing the pursuit of motor vehicles suspected of being unlawfully used – stolen.

Pursuing drunk drivers

The quotation at the top of page one of this report makes the point that a drunk driver is dangerous and pursuing him/her is only likely to increase the danger. Consistent with the philosophy that pursuit is only justified if a failure to apprehend would be likely to be more dangerous than pursuing, the policy generally prohibits the pursuit of drunk drivers.

However, it allows it if the driver is so affected that a failure to apprehend him/her is likely to be more dangerous than chasing. It calls upon the officer to assess the danger posed by the other driver's drug induced impairment and balance it against the danger likely to be encountered when chasing him/her. From a theoretical perspective, it seems inconsistent to authorise action most likely to make the other driver more dangerous in circumstances where he or she is assessed as already too dangerous to be allowed to continue to drive. It would be more consistent to authorise the pursuit of only slightly drunk drivers. I also query whether it is practically feasible. How can an officer assess the degree of impairment of a driver who has failed to stop? How can an officer then factor in how much more dangerous the driver is likely to become and calculate whether chasing him/her will make things safer?

With all due respect to those who drafted the policy I don't accept that it has any practical application and suspect it has been included to enable the Service to appear to take a "firm hand" with drunk drivers. There can be no doubt drunk drivers are responsible for a significant proportion of the terrible road toll. However in my view chasing them when they have failed to stop is only likely to increase the risk of their adding to that toll.

¹⁵ An offence against s25 of the Summary Offences Act - Use of vehicle - is excluded from the non pursuit category and included in categories 2 and 3, which otherwise only include indictable offences. The reason for this is unclear as the offending behaviour is identical to the offence created by s408A of the Criminal Code - Unlawful use of a motor vehicle. The decision as to which charge is laid is made after apprehension. Including the summary offence in the policy would seem to add nothing but a potential for confusion.

Recommendation 3 – Don't pursue drunk or drug affected drivers

In view of the practical difficulties involved in assessing the level of impairment of a drug or alcohol affected driver, and the likelihood that chasing them will significantly increase the likelihood of such drivers crashing, I recommend that all of these offences be included in the non pursuit category.

Pursuing stolen cars

Suspicion that the vehicle was being unlawfully used (UUMV) is by far the most common reason for pursuits being commenced. In the period 2000 – 2007 it accounted for 26% of all pursuits and in the first year of the more restrictive pursuit policy UUMV was cited as the precipitating reason for 30% of all pursuits commenced. Four of the ten deaths investigated at the inquests prompting this report involved suspected stolen vehicles.

Clearly then, removing UUMV from the categories of offences that could justify a pursuit would significantly reduce the number of pursuits.

The Hanrick family submitted that although people understandably value their cars, as UUMV is only a property offence, attempting to apprehend offenders does not justify the risk to the offenders and other road users that pursuits entail. This is consistent with my earlier recommendation that the policy be recast to focus on the risk of physical harm if the offender is not apprehended.

There is no doubt that UUMV is a prevalent crime. Nearly 10,000 offences were reported to police in 2007- 08. Only 2821, or 28%, were "cleared".¹⁶ It could therefore be argued that not pursuing the 108 stolen cars that were pursued in 2008 would have minimal impact on law enforcement, representing as they do only a little over 1% of the vehicles unlawfully used. When it is remembered that one quarter of pursuits end in a crash, the percentage of people who get their car back undamaged as a result of a pursuit falls still further.

The QPS submission points to the significant impact theft may have on the vehicle's owner, for example by depriving the owner of mobility and his or her ability to use the vehicle in trade or business.

Further, the QPS is firmly of the view that UUMV should not just be seen as property crime because of the conduct of the small cohort who repeatedly commits this type of offence. The QPS, relying on a NSW study, has concluded that stolen vehicles are frequently driven more dangerously than vehicles being lawfully used, and that apprehending offenders is likely to reduce the danger posed by these unlawful users. The empirical evidence cited is weak as it does not compare the driving behaviour of others with similar demographics as the repeat unlawful users. However I accept the QPS has made a considered assessment of this factor.

Commissioner Atkinson referred to both aspects when he gave evidence.

¹⁶ QPS report p149

When we introduced what's called the Operational Performance Review Process in Queensland in 2001, we wanted to focus on what we thought we should be doing for the community, and in terms of their property we thought the most important things there for them were their homes and their businesses, so burglaries and break and enters, and their second most valuable asset for most people, which is their motor vehicle. But there was a secondary reason to that as well, and that was linked into this, and I say that with absolute sincerity. It was, because the less stolen vehicles that are on the roads the safer it is for the Queensland community.¹⁷

The Commissioner in his evidence and the QPS written submission articulated the view that there is a small group of youths who habitually steal cars, who are likely to vary their behaviour in response to changes to police policy. The QPS believes these habitual offenders monitor police practice more closely than other offenders and are likely to be emboldened by a more restrictive police pursuit policy and their number might grow. I have trouble understanding how that could be when in my experience most young car thieves seem to keep driving till they crash or have an opportunity to abandon the car and flee on foot. It is difficult to appreciate how not chasing them could make them more dangerous. Conversely, I recognise coroners only see the chases that result in death and I note the QPS statistics that show in only 57% of pursuits that are abandoned is the driver subsequently apprehended. The Commissioner expressed grave fears of a significant negative impact on public safety if youths in stolen cars believed they would not be pursued.

The Commissioner was understandably conscious of the need to maintain public confidence in the ability of the QPS to enforce the law and the confidence of his officers that they were doing the “right thing.” He and Inspector Fleming clearly articulated the need for the policy reform to be part of a process of cultural change within the police service. Surveys which the QPS has done indicate some officers have some difficulty with the notion of not pursuing. Inspector Fleming expressed the view that officers’ support for the policy would be significantly diminished if unlawful use of a motor vehicle was made a non-pursuit offence. He and the Commissioner are better placed than I to judge these variables. Because the Commissioner has demonstrated such commitment to reform in this area of policy it would be presumptuous to disregard his views.

Therefore, unless and until the uncertainty about the likely impact of further restricting the pursuit policy by making UUMV a non pursuit matter is resolved, and while the Commissioner remains of the view to do so would lead to a loss of public confidence and support of the “rank and file”, I will refrain from recommending any change. However I encourage the QPS to continue to review this aspect of the policy. In the meantime I am hopeful that safety can be enhanced by the implementation of other recommendations in

¹⁷ T/s 1-27

this report, and by the more strict application of the risk assessment aspects of the policy.

Recommendation 4 – Pursuing stolen cars

Despite the minimal evidence that pursuing stolen cars has an impact on the prevalence or clear up of that offence, in view of the conviction of the Commissioner of the QPS that those responsible pose a safety risk more significant than the property crime aspects of the offence, I will refrain from recommending the unlawful use of a motor vehicle become a non pursuit matter. However, I encourage the QPS to continue to review and consider the justification for the current policy.

Is it safe to pursue?

As mentioned earlier, the policy stipulates that safety is the paramount consideration. Therefore, after satisfying him or herself that a pursuit is not prohibited because the suspected offences are too minor, an officer must undertake a risk assessment to determine whether a pursuit should be undertaken.

Should I?

When considering whether to pursue, an officer is directed to categorise the proposed pursuit to assist calculate how important immediately apprehending the suspect might be. The officer will use that conclusion to determine whether the risk of the pursuit can be justified.

Pursuit categories

If an officer has sufficient basis to conclude that a motorist who has failed to stop when directed to do so may have committed an offence that is not a “non pursuit matter” he or she may commence and continue a pursuit only if the circumstances make the inevitable risk of doing so justifiable.

The categorisation part of the process requires consideration of the seriousness of the offence(s) the suspect driver may have committed or may be about to commit and the strength of the evidence linking the driver to such an offence(s). The officer contemplating pursuing is required to classify the proposed pursuit into one of the three categories summarised below:-

- Pursuit category 1—There are reasonable grounds to believe the driver or occupant of the vehicle will create an imminent threat to life; he/she has or may commit a homicide or attempt to murder.
- Pursuit category 2—It is known the driver or occupant has committed an indictable offence, a summary offence involving the unlawful use of the vehicle or dangerous driving prior to the attempted interception.
- Pursuit category 3—There is a reasonable suspicion the driver or occupant of the vehicle has committed an indictable offence or a summary offence involving the unlawful use of the vehicle.

Having categorised the circumstances, an officer is supposed to have a “*lower tolerance of risk the higher the pursuit category number*” when assessing whether the risk of commencing or continuing a pursuit can be justified. “*For example, a pursuit category 3 incident has a lower risk tolerance than a category 1 incident.*”

Comment

Category 1 refers to the most serious crimes of personal violence; categories 2 and 3 are defined to include the same offences – all other indictable offences and the summary offence equivalent of unlawful use of a motor vehicle (UUMV). All three categories differ with respect to the level of certainty that the pursued has or will commit the relevant offences. For category 1 “reasonable grounds to believe” will suffice; to constitute a category 2 matter the fleeing felon must be “known” to have committed an offence while a category 3 pursuit may be undertaken in relation to the same offences but the officers need only “reasonably suspect” them to have been committed.

I consider category 1 is appropriately framed but I have a number of reservations about categories 2 and 3.

The difference between knowledge, belief and suspicion has occupied the attention of many courts over many years. Among the authorities there are trite statements describing a hierarchy of mutually exclusive degrees of certainty. For example:

*The gradation in mental assent is “suspicion” which falls short of belief, “belief” which approaches conviction and “knowledge” which excludes doubt.*¹⁸

However, the High Court has recently examined the issue and found it far from clear and settled. After reviewing numerous authorities their honours observed that far from there being a consensus that “suspicion” is the least certain state of mind that is necessarily encompassed within “belief” which in turn is included within “knowledge”, in fact there are inconsistent lines of authority. Some of the cases envisage a cascading, encompassing definition of the three mental states; others see them as exclusive, even of the state of certainty lower on the hierarchy.¹⁹ For example, in *Holmes v Thorpe*, the case from which the quotation above was taken, a charge of possessing property suspected of being stolen was held to have been correctly dismissed because the arresting officer acknowledged he believed the property to be stolen, rather than just suspecting that to be the case.

The High Court concluded (after six pages of densely analytical discussion);

*“And as a belief is a strongly held conviction, the absence of doubt makes the state of mind far removed from suspicion. Thus, a belief constitutes neither of the two alternate states of mind (knowledge or reasonable suspicion.)”*²⁰

I have perhaps laboured this point to demonstrate the complexity of the distinctions so glibly sprinkled in the policy. I am firmly of the view it is unreasonable to expect an officer trying to determine how he or she should

¹⁸ *Holmes v Thorpe* [1925] SASR 286 at 291 per Angas Parsons J

¹⁹ *Ruddock v Taylor* [2005] HCA 48

²⁰ *ibid* 92

respond to a motorist who has sped off from an attempted interception to analyse his or her degree of conviction concerning the guilt of the motorist.

Further, even if an officer is able to confidently conclude that he/she knows the other motorist has committed an indictable offence, how would that officer assess how much greater risk he/she should tolerate before abandoning the pursuit as compared to when the officer only suspects the guilt of the fleeing motorist?

My final concern relates to the permitting of category 3 pursuits based on reasonable suspicion. As I have already indicated, there is a deal of uncertainty as to how the various mental states are defined and interact. It is clear however, that suspicion is the lowest level of certainty. The High Court in *Ruddock v Taylor* cites an Oxford dictionary definition of “to have a faint notion or inkling.”²¹ The court also approved of its earlier decision of *George v Rockett* in which it was observed;

*Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking...*²²

Suspicion has less conviction than belief and to be reasonable it does not have to be well founded.²³

In my view it is logically inconsistent to allow such a low threshold for the undertaking of an activity that is acknowledged to be inherently dangerous when safety is said to be paramount. This is compounded by the prohibition on relying on instinct when considering whether to chase. Excluding reliance on instinct, while permitting acting on suspicion seems an overly fine distinction.

Reasonable belief on the other hand, is more certain. The usual test is: would a reasonable person have come to the same conclusion in the circumstances? There must be a factual foundation on which a reasonable belief is based but it is not to be equated with knowledge or proof beyond reasonable doubt.²⁴

In my view reasonable belief would be a better degree of certainty to demarcate when any category of pursuit could be undertaken. It would reduce the number of pursuits being undertaken when there was scant evidence and a suspicion only that the fleeing motorist had committed an indictable offence but it would allow officers to pursue where the evidence was less than proof beyond reasonable doubt.

²¹ *op cit* at 72

²² (1990) 170 CLR 104 at 115

²³ *Manly v Tucs* (1985) 40 SARS 1 at 9

²⁴ *Jackson v Mijovich* NSW Sup Ct 30020/90, *George v Rockett* supra, *R v De Bot* (1986) 54 CR (3d) 120

I am unable to understand the benefit of including the summary version of UUMV in both category 2 and 3 or the reference to dangerous driving in category 2.

In my view the policy could be significantly simplified by the abolition of the category 3, the change of the standard of certainty to reasonable belief in category 2 and the limiting of pursuits to indictable offences.

Recommendation 5 – Abolish category 3

The current policy requires an officer who has unsuccessfully attempted an interception and who is contemplating commencing a pursuit to weigh the evidence indicating a fleeing motorist may have committed an offence with sufficient precision to determine whether it is “known” he/she has committed an offence rather than just “reasonably suspected” that he/she might have. That is unreasonable and impracticable. I recommend the distinction be abolished by the deleting of category 3 from the policy.

Recommendation 6 – Reasonable belief is sufficient

In the current policy each of the three pursuit categories refers to different offences and different levels of certainty that they may have been committed by a suspect who has failed to stop. In my view it is unreasonable and impracticable to require officers to make such fine judgments in the volatile and dynamic circumstances of an unsuccessful attempted interception. I also consider a mere suspicion is too low a threshold to justify an inherently dangerous activity such as a pursuit but that requiring an officer to know an offence has been committed is too restrictive. Accordingly I recommend category 2 be amended to require that an officer have a “reasonable belief” that a relevant offence may have been committed.

The risk assessment

If an officer concludes a pursuit may be permissible because the circumstances are encompassed by one of the pursuit categories 1,2 or 3, the officer must then consider whether in the circumstances the risks of pursuing can be justified.

Ten risk factors an officer must have regard to prior to commencing and when deciding to continue a pursuit are listed in the policy. They range from the specific – “*whether the police vehicle is marked and has flashing warning lights and siren fitted*”, and “*the known or suspected age of the driver*” to the general – “*the manner in which the pursued vehicle is being driven*” and “*any other relevant circumstances, such as road weather and other traffic conditions.*” It also includes imponderables such as “*whether the suspect person needs to be apprehended without delay.*”

The list concludes with the direction that “*if the pursuit exposes the police, the public or the occupants of the pursued vehicle to unjustifiable risk, it must be abandoned.*” No guidance is given as to how this balancing should be achieved. Presumably it should be informed by the pursuit policy principles

referred to earlier which stipulate that the benefit to the community of apprehending the suspect that must be weighed against and justify the risk.

Comment

It can be argued that conceptually there is an inherent inconsistency in conducting a risk assessment which seeks to balance law enforcement imperatives against safety considerations in a policy that stipulates safety is to be paramount, unless the law enforcement objectives that can be considered are also confined to safety issues. The policy as currently framed does not do this, although it makes very clear that the risks of pursuing will rarely outweigh the benefits.

Notwithstanding this, the statistics contained in the QPS report graphically demonstrate officers are adopting a more cautious approach. For example, despite the number of officers increasing substantially between 2000 and 2008 the number of pursuits in the same period declined from 558 p.a. to 357. Further, in the same period the percentage of pursuits abandoned increased from 33% to 69%. The Service and its members are to be congratulated for this reform.

Even so, in the ten years 2000 – 2009, 22 people were killed and 689 people were injured in or immediately after pursuits. Continued vigilance, reflection and improvement are therefore essential. In that spirit I make the following comments and recommendations.

Better guidance in the risk assessment

The risk assessment process outlined in the policy gives no ranking or weighting to the various considerations, other than that safety is to be paramount. There is no explanation as to what some of the balancing factors mean, or how they might be weighed against other factors. For example, matters such as “*the possible consequences*” (e.g. the death of, or serious injury to, any person and/or damage to property) and “*the manner in which the pursuit vehicle is being driven, including the speed of both vehicles*” seemingly are as significant as “*the existing visibility and lighting*”.

The experience in these inquests was that officers sometimes feel they can justify a pursuit based upon basic statements about things like road conditions, visibility and lighting, but ignore some of the factors obviously more significant to the risk assessment. For example, in the inquest into the death of Mrs Madeo, the officers seemed to rely on the good lighting and familiar road to justify the pursuit while discounting the heavy traffic, and the pursued vehicle weaving in and out of highway traffic forcing on-coming cars off the road. In the Hanrick inquest the officers referred to these same aspects and the relatively low speeds involved but apparently paid no regard to the other driver navigating a roundabout anti clockwise and crossing onto the wrong side of the road in the face of oncoming traffic.

Recommendation 7 – Weighted considerations

The policy stipulates that safety is paramount and then lists 11 other matters that should also be taken into account when determining whether to commence and/or continue a pursuit, only some of which relate to safety, with no guidance as to how they should be factored into decision making. I recommend this aspect of the policy be reviewed to ensure the intent that safety is the overriding consideration is made clearer. For example, officers should be encouraged to disregard those factors which do not add to the risk.

Effect on the pursued driver's conduct

The policy makes no mention of the likely effect of the pursuit on the conduct of the other driver, in particular his or her manner of driving. In eight of the ten inquests which preceded this report, the other car was being driven in an unremarkable manner when police attempted to intercept it. In all cases the dangerousness of the driving of that vehicle quickly escalated once the pursuit commenced and remained so until the chase ended in a fatal crash.

The female officer who attempted to intercept the driver of the car that killed Mr and Mrs Ash said through bitter tears that she had attempted to turn off the police car's flashing lights and siren when the other car dangerously overtook a bus and sped off, to make him realise he didn't need to speed to get away. *"I didn't want to scare the driver. ... I wanted him to know that he didn't have to go that fast and that we weren't going to intercept him,"* she said.

Surprisingly several of the officers who gave evidence in other inquests did not accept this proposition. I'm not suggesting the officers are responsible for the manner of driving of the other vehicle, but the causal connection between the actions of the pursuer and the pursued seem obvious. Ms Maslin was killed when the 17 year old driver responded to police turning and chasing him by increasing his speed from less than 100km per hour to 130 km per hour as the police car came up behind, to within 30 metres. It was still going that fast when another officer waiting for it, whipped a tyre deflation device across the road and the car flipped.

Recommendation 8 – Consider impact of pursuing

I recommend the policy be amended to explicitly acknowledge the likelihood that pursuing a motorist who has failed to stop is likely to result in the other car driving more dangerously and require an officer considering whether to commence or continue a pursuit to factor this into the risk assessment and the manner in which the police car is driven.

Good practice guidelines

The CMC's 2003 report; *Police Pursuits*, recommended:-

The QPS consider incorporating into its own policy a number of good practice examples from other Australian States. These are:-

- *Maximum allowable speed of 140 kilometres per hour (WA);*

- *Requirement to have two officers in the pursuing car unless there is a hands-free radio (WA);*
- *Automatic termination of a pursuit if the target vehicle travels on the incorrect side of the road, or extinguishes its lights at night, or the target vehicle “approaches a stop sign or lights at a speed or manner which suggests that the intersection will be negotiated dangerously” (WA);*
- *Requirement for school zones speed restrictions to be adhered to (Tas);*
- *Automatic termination if there is loss of radio communication;*
- *Automatic termination if the pursuit vehicle enters an area that is a known radio “black spot”;*
- *Officers are required to familiarise themselves with these “black spot” areas (NSW);*
- *Statement that a pursuit is deemed to continue if officers follow or attempt to maintain contact with the target vehicle (NSW).²⁵*

The QPS considered but did not accept the recommendation. As has been already detailed, the Service’s policy is framed around general principles which officers are required to consider when undertaking a risk assessment. It does not provide any particular “good practice” guidelines, although it does give examples of how the policy might be interpreted.

I accept the validity of the approach the QPS has taken but I consider there is room within it for “trigger” or proscribed events that could contribute to safety without being unduly prescriptive. Each is worthy of some discussion.

- The QPS suggested a maximum speed of 140km per hour might encourage offenders to immediately increase their speed to 140, knowing it would cause the chase to be abandoned. I would be surprised if any of the drivers involved in these 10 inquests were cognisant of any aspects of any QPS policy. However, I accept the Commissioner’s evidence that there is a small section of the community who do seek out and disseminate such information who might become more dangerous as a result. Further, I accept some police officers might regard a stipulated maximum as tacit approval to pursue up to that speed even if the circumstances made a much lower speed dangerous. Accordingly, I agree no specific limit should be included in the policy.
- A prerequisite to have two officers in the pursuing police car unless there is a hands-free radio makes sense in view of the requirement that a pursuing officer immediately communicate the commencement of a pursuit over the radio and continually update the pursuit controller in the radio room with developments. The evidence indicating the danger caused by mobile phone use when driving is equally apposite to this

²⁵ CMC, *Police Pursuits*, 2003, p22

situation. It would seem axiomatic that a single officer engaged in a high speed pursuit could not safely manage a hand held radio.

- The suggestion for automatic termination of a pursuit if the target vehicle behaves in certain specified ways does restrict the discretion of the pursuing officers and could cause the termination of pursuits in circumstances that were not particularly dangerous. However, in most instances, crossing to the wrong side of the road or running red lights at speed is dangerous. Further, it demonstrates that the pursued driver is prepared to take significant risks. In a number of the inquests that preceded this report, the fleeing driver undertook objectively dangerous things such as those referred to in this good practice recommendation, but because a crash did not eventuate on that occasion, the pursuing officers seemed to think it could be ignored, rather than seeing it as an indicator of what was to come. This *post facto* justification could be overcome by a list of terminating events.
- The proposal to require school zone speed restrictions to be complied with during school hours is compelling, in my view. Never again should we risk a school student being run down at school in an attempt to catch juvenile joy riders.
- I would also agree that other than in the case of category 1 pursuits, automatic termination should occur if there is loss of radio communication or if there is a radio black spot. A fundamental part of this policy is the oversight by a pursuit controller, who is not in the chasing car and who is as a result less likely to get “caught up” in the event or be affected by an “adrenalin rush.” The removal of that officer from the process, through a loss of radio communication, removes a vital safeguard. As detailed earlier, the percentage of pursuits abandoned has more than doubled in the period 2000 to 2008. It is significant that in 2008, over 60% of the decisions to abandon a pursuit were made by the pursuit controller or another senior officer monitoring events over the radio.
- I expect the recommendation that if officers continue to follow the chased vehicle after purportedly terminating a pursuit, the pursuit is deemed to continue, flows from the recognition that so long as the driver of the pursued vehicle can hear and see the police car, particularly with its lights and sirens activated, he or she is likely to continue to drive dangerously. It is intended to cause officers to effectively disengage.

It is instructive that had these guidelines been in place and complied with a number of the pursuits would have been terminated or the policy breached before the fatal crashes. For example:-

- 140 km/hr speed limit – Shepherd, Moore, Tynan and Madeo
- Requirement for two officers in the pursuing vehicle – Maslen, Moore, Cullen and Duncan;

- Automatic termination when vehicle travels on incorrect side of road - Duncan, Hanrick and Madeo;
- School zone restrictions -Hanrick;
- Loss of radio communication – Shepherd;
- Continue to follow after abandonment – Moore, Ash, Shepherd and Cullen.

The QPS have taken steps to ensure its officers are aware of the sensible and safe implementation of the pursuit policy. Extensive training has been provided across the State, and an interactive DVD has been provided to all new recruits. It is intended that this DVD be distributed more broadly across the QPS. A legitimate question arises as to whether these guidelines should be included in the policy or incorporated in the training material. I accept that the Service is best placed to make this decision.

Recommendation 9 – Development of best practice guidelines.

For the reasons set out above, I recommend the QPS develop best practice guidelines that:

- *prohibit officers pursuing, other than in category 1 pursuits, unless radio contact can be maintained and the police car contains two officers or a hands free radio;*
- *require a pursuit to be terminated if nominated dangerous manoeuvres such as running red lights at speed etc occur;*
- *insist on compliance with school speed zones and other particularly sensitive road management requirements; and*
- *deem a pursuit to continue until the police car ceases to follow or otherwise maintain contact with the other vehicle.*

I leave it for the Service to determine whether these guidelines should form part of the policy or training materials.

When does a pursuit commence?

Of course, any policy input to an officer's management of a pursuit will only be effective if he or she acknowledges that the incident has gone further than an attempted interception and has become a pursuit within the terms of the policy. The definition of when a pursuit commences is therefore crucial.

Police are routinely involved in attempting to intercept vehicles. The QPS report tendered in these proceedings indicates there are approximately 3.2 to 3.6 million "intercepts" made by police each year. Only 357 pursuits were initiated in 2008 and 1152 evade police offences reported. Obviously the vast majority of motorists stop when directed to do so.²⁶

However, it is difficult in some circumstances for an officer to determine whether a pursuit has commenced. Some period of time must be allowed for a driver to respond to a police direction. Equally though, in any attempted intercept, there comes a point where it becomes clear that the person does not intend to stop. Identifying this time is a difficult task, but it is an important and central part of compliance with the policy.

In a number of the matters that preceded this report, the officers involved claimed they were not bound by the policy because no pursuit had commenced. In at least four of the cases, the reason for the attempted interception would now be classified as a "non pursuit matter", yet in each a limited pursuit was undertaken. This vagary has the potential to undermine the efficacy of the policy.

The QPS survey and focus groups identified the issue of attempt to intercept versus pursuit as one of the key issues for officers. The QPS submission stated as follows:-

Officers were asked when, in their opinion, does an attempt to intercept transition into a pursuit. Most acknowledged that although the trial policy is clear in terms of definition, this issue requires the exercise of judgement by police officers which at times can be difficult. Officers acknowledge that they understood this aspect of the policy, but some had experienced problems in applying it in particular situations. By way of example, some officers stated establishing the point of acknowledgement that the driver of a vehicle was attempting to evade police was not always easy. Whereas a significant change in speed, change in the manner of driving or a hostile action aimed at the officers were obvious indicators, some officers stated that in some instances such indicators were not readily apparent. Officers put forward a variety of reasons for this including inattention, in-vehicle distractions (e.g.

²⁶ It seems likely evade police is significantly under reported as if officers are unable to identify the vehicle and there is no chance of a prosecution some officers conclude there is little point in reporting the offence. However the conclusion still holds in my view.

music) and at times deliberate avoidance of any acknowledgement by the driver of the vehicle.

The policy provides the following definition of when an intercept becomes a pursuit:-

A pursuit commences when:

- (i) An officer driving a police vehicle gives a direction to the driver of another vehicle to stop;*
- (ii) The vehicle fails to stop as soon as reasonably practicable and the officer believes, on reasonable grounds, that the driver of the vehicle is attempting to evade police; and*
- (iii) The officer continues to attempt to intercept the vehicle.*

There is a significant element of subjectivity in this definition which consequently hinders clarity. It creates an unusual situation whereby the officer must form a belief that the person is attempting to evade him before the officer's actions can constitute a pursuit.

The original police pursuit policy, introduced in about 1989, included the following definition:-

Justification for Pursuit – A police pursuit begins when an attempt is made to apprehend the driver of a motor vehicle and the driver resists apprehension by maintaining or increasing his/her speed or by ignoring the police officer's attempt to stop him/her.

Inspector Fleming was asked what difficulty would be created by a policy which simply provides a pursuit commences when a vehicle fails to stop as soon as reasonably practicable after the officer driving the police vehicle gives a direction to that effect.

He cited examples of drivers not knowing they were being directed to stop. Apparently, anecdotal evidence, given by officers in the focus groups, indicated that drivers on the highway, late at night with the air-conditioning on, the windows wound up, and the stereo playing sometimes do not know that police were attempting to intercept them. One might think they must be very myopic not to notice the flashing coloured lights.

The only apparent disadvantage of deeming a pursuit to commence in such a situation is if the unsuccessful interception was attempted in connection with a "non pursuit matter", no pursuit could commence and police could not then immediately apprehend a possible offender. However, as such an outcome would only eventuate when the interception was being attempted for minor matters, and as the officer would almost always be able to obtain details of the vehicle making future interception likely, little diminution of law enforcement

would seem to result, particularly when the infrequency of such a combination of circumstances is considered.

When the suspected offence is one that permits a pursuit, the advantages of a more definitive approach ensures the policy is enlivened at the earliest possible stage, bringing into effect the various safety mechanisms incorporated within it such as the risk assessment process, and the involvement of the pursuit controller.

However, in view of the concerns expressed by the Service to such an approach I am persuaded a less strict definition should first be trialled. One option is to reverse the presumption or onus of proof. For example the definition could be:

A pursuit commences when:-

- (i) An officer driving a police vehicle gives a direction to the driver of another vehicle to stop;*
- (ii) The vehicle fails to stop as soon as reasonably practicable;*
- (iii) The officer continues to attempt to intercept the vehicle, unless the officer, on reasonable grounds, believes that the person driving the vehicle is not aware of the officer's presence or of the direction to the driver to stop.*

Recommendation 10 – Commencement – reverse the presumption

Having regard to the vagaries of the current definition of when a pursuit commences that have the potential to undermine the efficacy of the policy's intent to ensure pursuits are not undertaken in connection with minor matters, I recommend the relevant definition be amended to deem a pursuit to commence whenever a driver fails to comply with an officer's direction to stop, unless the officer has reasonable grounds for believing the driver is unaware of the direction having been given.

I also recommend that if this definition is adopted, a corresponding amendment be made to the evade police offence if necessary.

Pursuit controller

Young and inexperienced general duties officers are more likely to become involved in attempted interceptions than more senior officers simply because there are more of the former and they conduct more patrols. In recognition of this and the potential for those involved in pursuits to lose objectivity as to the risks entailed; to get “caught up in the chase”; or to be affected by “an adrenalin rush”, the QPS has wisely developed a policy designed to ensure the judgment of a more detached and dispassionate officer is brought to bear on the decision making process. It does this by incorporating a central role for the pursuit controller.

Immediately an officer commences a pursuit he or she is obliged to advise the local communications centre of the fact and provide details of the reason for and the prevailing circumstances of the pursuit. Control of the pursuit then passes to the duty officer in the police communication centre in Brisbane or to the officer in charge or shift supervisor of the relevant local communications centre or station.

The pursuit controller has the responsibility for determining whether a pursuit should continue, having regard to the same factors pursuing officers are obliged to consider when deciding whether to commence or continue a pursuit. The pursuit controller is also responsible for assigning other police resources to assist resolve the incident.

It seems clear pursuit controllers are with increasing frequency and effect discharging their responsibilities. In the period 2000 – 2004, the majority of pursuits that were abandoned were terminated as a result of a decision by the pursuing officers. Since then pursuit controllers have become the dominant decisions makers. In 2008, 130 of the 245 pursuits abandoned were terminated on the order of a pursuit controller.

Although this is an encouraging trend, it is of concern that in none of the pursuits which led to the inquests that prompted this report did the pursuit controller terminate the pursuit, notwithstanding the significant dangers involved in some of those.

In regional and remote centres, a difficulty may arise when the pursuit controller is either inexperienced, or more junior than the officer who is driving the police vehicle engaged in the pursuit. This has the potential to result in an understandable reluctance on the part of the pursuit controller to give directions to his senior and/or more experienced colleague in relation to the pursuit. This will not always be avoidable. Contact will be made with the local radio room and unless the station sergeant or shift supervisor is at hand the radio operator will need to assume the role. Coping appropriately with such a situation is one of the cultural issues which the QPS might address through its training program.

It seems this may have been a significant issue in the 10 deaths that prompted this report. Notwithstanding the fact that most patrols are conducted by junior officers, the majority of the officers involved in these deaths had on average more than 10 years service.²⁷ Aviation safety experts have recognised that junior co-pilots have difficulty insisting that more senior deviant captains comply with regulations those senior officers have grown to disregard. In that industry they refer to coping with the authority gradient. The QPS might profitably investigate whether a similar phenomenon hinders more junior pursuit controllers from exercising their responsibilities effectively.

It seems there is no dedicated or specific training for pursuit controllers. This would appear to be a deficiency that should be addressed. I understand it has been acknowledged by the pursuit project team as a priority.

Recommendation 11 – Pursuit controller training

In view of the important role of the pursuit controller and the difficulties that can arise when the officer discharging the role is junior to the officers in the primary pursuit car, I recommend the QPS develop a training package specially for pursuit controllers.

I also recommend the project team consider whether training should be targeted at officers with in excess of 10 years service.

²⁷ The senior officer in the primary pursuit vehicle had the following length of service:- Ash - 5 years, Cullen– 11 years; Hanrick - 18 years; Duncan – 8 years; Madeo – 23 years; Maslen – 4 years; Moore – the officer who initiated the pursuit had 9 years service and the officer who took over had 25 years; Shepherd – 11 years; Tynan – 11 years.

Evade police

In 2006 a provision was added to the Police Powers and Responsibilities Act that made it an offence for a motorist not to stop as soon reasonably practicable after being given a direction by a police officer to do so *“if a reasonable person would stop the motor vehicle in the circumstances.”*

The so called evade police offence is intended to deter people from fleeing. It has been preferred 2639 times since its introduction.

It is well recognised that two factors in a criminal justice system which contribute to deterrence is the likelihood of being apprehended and the likelihood of a condign punishment.

The QPS actively encourages officers who do not pursue because the unsuccessful interception was for a non pursuit matter, or who abandon a pursuit because of unjustifiable risk to vigorously investigate with a view to preferring an “evade police” and any other offences which were evident at the time of the failed interception. Accurate statistics are not available in relation to the number of failed interceptions. However, 57% of abandoned pursuits are successfully followed up.

I therefore accept that the QPS is effectively pursuing the first attribute of effective deterrence: the likelihood of apprehension.

The QPS and the QPUE are concerned that the penalties being imposed by the courts are not addressing the other element: the likelihood of a significant penalty. They point out the average fine for the offence in 2008 was \$232. The submissions also question the appropriateness of the provisions enabling the impounding of vehicles involved in evade police offences. It seems they are more cumbersome and less timely than similar provisions associated with the “hooning” offences.

Of course every case must be judged on its unique circumstances and police have the right to appeal if they consider a sentence does not adequately reflect the seriousness of the offence. Nevertheless, when one considers the great danger created by motorists who fail to obey police directions to stop; the significant procedural changes police have undertaken to reduce the number of pursuits, and the public interest in there being an effective alternative to pursuits, it is easy to understand their frustration.

A motorist who fails to stop but is later apprehended should not benefit from his or her initial failure: there should be no encouragement to undertake a “cost benefit analysis” of not stopping. Drink driving laws provide that if a motorist refuses to supply a specimen of breath for analysis when directed to do so he or she is presumed to have a “major” blood alcohol level, that is over 0.15%, and is sentenced accordingly.

I understand the Crime and Misconduct Commission is soon to review the operation of this offence. I will therefore refrain from making other than a general recommendation.

Recommendation 12 – Evade police review

I recommend that as part of its review of the “evade police” offence, the CMC consider recommending mandatory licence disqualification upon conviction and more flexible vehicle impounding arrangements to bolster the deterrence effect of the offence.

Technological solutions

The QPUE has identified several measures which it submitted might assist overcoming the difficulties presented by motorists who fail to stop when directed to do so.

The fitting of in-car cameras to all police vehicles appears eminently sensible. It would enable officers to easily capture and preserve evidence; protect them from false allegations and assist with accountability.

GPS tracking devices would assist pursuit controllers to accurately locate where the incident was occurring and allow the speed of the police vehicle involved to be independently monitored. It would contribute to officer safety and accountability.

It was also submitted a police helicopter would assist. I am less inclined to consider this would make any significant contribution to pursuit management or avoidance. Pursuits occur all over the state with no notice. Most are very short. It seems unlikely that a helicopter could have been utilized in any of the pursuits which I have investigated.

The QPS is obviously conscious of the potential for technological innovation to contribute to the resolving of pursuit issues. The Commissioner spoke of the foreshadowed introduction of remote disabling devices which would enable a vehicle to be rendered inoperable from a distance.

The South Australian State Government recently announced a trial of vehicle locators that are attached via a high powered projectile to a fleeing vehicle that then allows its position to be tracked via GPS technology.

It is easy to point to apparent problems with these various devices; it is more useful to continue to explore all options. Numerous other policing challenges have been ameliorated by advances in technology. I am confident the same will apply to pursuits.

Recommendation 13 –Engineered safety

I encourage the QPS to continue to explore developments in technology that will reduce the need for and the risk of police pursuits.

Condolences and acknowledgments

There is a risk that while undertaking this detailed analysis of the consequences for policing and the criminal justice system that changes to police pursuit policy might produce, the terrible human loss and suffering that has prompted this work will be forgotten. I therefore wish to reiterate my sincere condolences to the family and friends of Peter and Nicole Ash, Matthew Cullen, Joseph Duncan, Caitlin Hanrick, Niceta Madeo, Samantha Maslen, Paul Moore, Craig Shepherd, and Kristina Tynan.

I know Commissioner Atkinson shares my anguish over these preventable deaths and it was evident that many of the officers who were involved in the pursuit inquests were traumatised by the incidents. I trust it is some consolation to the families of those who died that the Office of the State Coroner and the Queensland Police Service are committed to continuing reforms that will reduce the likelihood of further deaths occurring in similar circumstances.

Many people have contributed to the significant body of work that culminated in this report. I wish to particularly acknowledge the assistance I have received from Justin Harper and Peter Johns who acted as counsel assisting in seven and two inquests respectively; Daniel Grice, the case coordinator who expertly managed the logistics of the inquests; Detective Inspector Brendan Smith who liaised with the QPS and who expeditiously undertook emergent inquiries; and the lawyers who constructively represented the Commissioner of the QPS, the officers involved in the pursuits and the families of those who died.