



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Phyllis Anne Crooks**

TITLE OF COURT: Coroner's Court

JURISDICTION: Cairns

FILE NO(s): COR 2009/3106

DELIVERED ON: 22 June 2011

DELIVERED AT: Cairns

HEARING DATE(s): 19 May; 20-22 June 2011

FINDINGS OF: Mr Michael Barnes, State Coroner

CATCHWORDS: CORONERS: Police pursuit

REPRESENTATION:

Counsel Assisting:	Mr Peter Johns
Senior Constable Gregory Rose and Sergeant Robert Archibald:	Mr Glen Cranny
QPS Commissioner:	Mr Michael Nicholson

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The *Coroners Act 2003* (“the Act”) provides in s47 that when an inquest is held into a death that happened in the course of or as a result of police operations, the coroner’s written findings must be given to the family of the person who died, each of the persons or organizations granted leave to appear at the inquest and to various officials with responsibility for the justice system including the Attorney-General and the Minister for Police, Corrective Services and Emergency Services. These are my findings in relation to the death of Phyllis Anne Crooks. 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 on the morning of Saturday 12 December 2009, 50 year old Phyllis Crooks was driving to her regular early morning shift at the Coles Supermarket Bakery in Cairns. She had no time to react when a car on the wrong side of the divided Bruce Highway at Woree sped towards her. It struck her vehicle head on and Mrs Crooks suffered severe injuries which led to her death about 24 hours later. In the minutes before the collision two police officers in separate vehicles attempted to intercept the vehicle that struck Mrs Crooks. At the time of the collision one of those officers was still in the process of attempting to intercept the vehicle.

These findings:-

- establish the circumstances in which the fatal injuries were sustained;
- confirm the identity of the deceased person, the time, place and medical cause of her death; and
- consider whether the police officers involved acted in accordance with the Queensland Police Service (QPS) policies and procedures then in force.

As this is an inquest and not a criminal or civil trial, these findings will not seek to lay blame or suggest anyone has been guilty of a criminal offence or is civilly liable for the deaths. As the deaths followed immediately a series of events involving police and the incident was investigated by other police officers, the findings also critique the quality of that investigation.

Jurisdiction

I am satisfied that the death of Mrs Crooks occurred in the course of a “police operation”. That category of reportable death was introduced into s.8 of the Act on 2 November 2009. Such categorisation has the effect of making an inquest mandatory unless I, as the investigating coroner, am satisfied the circumstances do not require one to be held. In this case I was not satisfied such circumstances existed and an inquest took place pursuant to s.27 of the Act.

The investigation

The coronial investigation was conducted by the QPS Ethical Standards Command (ESC) and a detailed report was prepared by Detective Acting Inspector Robert Crowe.

The initial stages of the investigation were conducted by officers from Cairns Criminal Investigation Bureau. Among other inquiries they conducted interviews with the two police officers who had made attempts to intercept one of the vehicles involved in the collision.

Senior Constable Scott Ezard, a forensic crash investigator attached to the Cairns District attended the scene of the collision on 12 and 13 December 2009 and conducted a detailed examination. He directed a series of photographs be taken and took measurements that later formed the basis for his preparation of a scaled forensic map of the scene. As part of his subsequent investigation, Senior Constable Ezard conducted skid testing at the scene of the collision in order to obtain a precise reading for the coefficient of friction of the bitumen surface concerned. This allowed a more accurate analysis of the speed of the vehicles involved. He had both vehicles mechanically inspected and as part of that process had mechanics remove the airbag modules from the vehicles.¹ The content of one of the modules was able to be downloaded and then interpreted by an analyst at Monash University in Melbourne. The investigation and the methods used by Senior Constable Ezard were later reviewed by Sergeant David Stocker, a senior collision analyst at the Forensic Crash Unit in Brisbane.

Acting Inspector Crowe and Inspector Brian Swan of the ESC arrived in Cairns early on 13 December 2009. That morning they attended the scene of the collision and conducted further directed interviews with the two police officers most involved in the incident. These interviews were video taped while they took place at the relevant points along the Bruce Highway at Woree.

Detective Acting Inspector Crowe subsequently either conducted or oversaw a large number of interviews with other police and civilian witnesses. He also collated all relevant information from the Queensland Ambulance Service (QAS) and Cairns Base Hospital.

Blood samples of both drivers involved in the collision were analysed. Urine samples were taken, pursuant to a direction, from the two police officers referred to earlier. Communication tapes recording police radio transmissions were seized as were job log records and notebook entries from officers involved.

¹ The airbag modules include memory chips that record the status of various systems in the vehicle at the time the airbag is activated. I will address the outcome of this inspection later in these findings.

A public appeal for information regarding the collision led to a number of further civilian witnesses coming forward, but failed to identify the driver of one particular vehicle of interest.²

Because perceptions are so important in matters such as these, it would have been preferable had the ESC immediately assumed responsibility for the investigation. It was clear from the outset this was a police related incident in which Mrs Crooks had received life threatening injuries. That did not happen because the policy only mandates the ESC assume immediate responsibility for the investigation if a death has resulted. If serious injury but not death occurs, the ESC can elect to assume responsibility.

In this case the ESC was advised of the incident a little more than an hour after it occurred but chose not to take control of the investigation. Accordingly, the local Regional Crime Coordinator quite properly caused the officers involved in the incident to be interviewed by local detectives. When it became apparent later in the day that Mrs Crooks was unlikely to survive, the initial decision was reversed and officers from the ESC flew to Cairns and assumed responsibility for the on-going investigation. No evidence was lost as a result of the way the matter was handled.

There is evidence the two officers most closely involved in the incident briefly discussed their recollection of events before they were interviewed. QPS policy rightly places the responsibility to avoid such conduct on the officers themselves but there is also a role for those investigating an incident to ensure separation. There is no evidence in this case that the integrity of the investigation was compromised or that there were attempts at collusion.

In any event I am satisfied all relevant sources of information have been accessed and the results effectively collated. I commend those responsible for their efforts.

Adjunct investigation

In early and mid 2010 the Crime and Misconduct Commission (CMC) received information from a number of sources alleging one of the officers involved in the lead up to the collision had performed a blocking manoeuvre in the course of attempting to intercept the vehicle later involved in the collision. The significance of this was that such manoeuvre would be in breach of the QPS pursuit policy. The information supplied to the CMC also alleged a junior officer had been told to “shut up” about his knowledge of the allegation.

The complaint was referred to the ESC and Acting Inspector Crowe assigned to investigate the matter. He conducted a series of further interviews in August 2010 as part of his investigation. The outcome of that investigation is set out later in these findings.

² This is the vehicle referred to later in these findings which was stopped at the lights in Anderson Rd waiting to turn right onto the Bruce Highway and positioned immediately in front of the vehicle driven by Derks as he was approached by Senior Constable Rose.

The inquest

A pre-inquest conference was held in Brisbane on 19 May 2011. Mr Johns was appointed counsel assisting and leave to appear was granted to the Commissioner of the Queensland Police Service, and the officers involved in the incident. An inquest was held in Cairns on 20 June 2011. Evidence was heard over two days; a view was conducted of the incident site and the path the vehicles travelled; 154 exhibits were tendered and seven witnesses gave evidence.

The evidence

I turn now to the evidence. Of course I can not even summarise all of the information contained in the exhibits and transcript but I consider it appropriate to record in these reasons the evidence I believe is necessary to understand the findings I have made.

Social history

Phyllis Anne Crooks, known as Pat to her friends and family, was born on 20 September 1959 meaning she was 50 years of age when she died. Pat was married to Dennis Crooks on 22 February 1997 although they had been together for 10 years prior.

In the early hours of Saturday 12 December Pat kissed her husband good-bye and set off for her 6:00am to 3:00pm shift at the Coles bakery in central Cairns where she had been working for around six months.

Victim impact statements prepared by Dennis Crooks and other members of Pat's family were tendered at this inquest. They eloquently describe the regard in which she was held by friends and family as a "*beautiful, caring, loving*" person. It is clear she was greatly loved and is very much missed by Dennis, her daughter Stacey, her very close niece Lisa, her grandchildren, extended family and many friends. I offer them my sincere condolences.

The offender

At the time of the incident, Robert Alan Derks was 21 yrs old. He had lived in north Queensland for several years after moving there from his home state of Tasmania. His criminal history in Tasmania and Queensland prior to this incident included many convictions for, predominantly, property and driving offences and offences of dishonesty.

As a result of his actions on 11 and 12 December 2009 Mr Derks was charged with, and pleaded guilty to, seven offences. Most relevant to this inquest were two offences, namely dangerous operation of a motor vehicle, relating to the period from his being spotted by police stationed on the Bruce Highway at Woree until his collision with Mrs Crooks, and the manslaughter of Mrs Crooks.

On 27 April 2011 Mr Derks was sentenced by His Honour Justice Jones in the Supreme Court at Cairns to a period of 13 years imprisonment for the offence of manslaughter. He was sentenced to two years imprisonment to be served

concurrently for the dangerous operation of a motor vehicle at Woree.

Background

Most of Mr Derks' actions on the evening before the fatal crash have to be deduced from the evidence of others as he claims to have a very limited memory of the events.

At 10:00pm on the evening of 11 December 2009 Mr Derks left the house where he had been residing at Edmonton, south of Cairns, in acrimonious circumstances. After making his way to nearby Bentley Park Mr Derks stole a Toyota Hilux and drove it to Innisfail where he was next sighted performing 'burnouts' for a period of around five minutes near a nightclub. Mr Derks then stole a motorcycle which he had to abandon soon after when confronted by the owner. Possibly in his haste to escape, he irretrievably bogged the Hilux in a ditch. Abandoning that vehicle he then stole a Mazda from a nearby wrecking yard although travelled only three kilometres before also crashing that car. He then stole a silver Commodore sedan from the yard of its owner in Innisfail. He drove that vehicle back to the southern suburbs of Cairns.

Although Mr Derks has never given an account of his actions on 11 and 12 December 2009, he acknowledged in material tendered at his sentencing that he was heavily affected by alcohol during the commission of these offences and the long stints of driving in between. He said at the inquest he drank approximately a bottle and a half of bourbon over the course of the evening. Empty alcohol bottles were found in some of the abandoned vehicles with the owners telling police they had not been present prior to the theft. Mr Derks himself states he was so affected by alcohol he was 'blacked out' for much of the period and has only intermittent patches of memory in the hours leading up to his admission to hospital on the morning of 12 December 2009. There is, though, no doubt that at 5:18am on that morning, after returning to Cairns he was driving at a speed well over the 60km/h limit in a southerly direction on the Bruce Highway service road at Woree.

A few hours prior to this a large number of police from various stations had set up a stationary random breath testing (RBT) site with a view to testing south bound traffic on the Bruce Highway. The site was located 500m north of the Anderson Rd intersection on the eastern side of the highway. On the opposite side of the Bruce Highway was a McDonalds eatery and a disused drive-in theatre which were accessed by a service road running down the western side of the highway.

Acting Senior Sergeant Robert Archibald was the acting officer in charge of the Cairns District Traffic Branch. He had commenced his shift at 1:00am and began working at the RBT site a short time later. Senior Constable Gregory Rose arrived at the RBT site at 3:00am which coincided with the commencement of his shift.

The silver Commodore being driven by Robert Derks along the service road attracted the attention of Sergeant Archibald and a number of the other police working at the RBT site due to its excessive speed. The officers who saw the

vehicle estimated it was travelling somewhere between 80 and 120km/h in a 60km/h zone as it approached their position. It was sufficiently fast that one officer initially thought it would be unable to negotiate the roundabout. The speed of the vehicle caused Sergeant Archibald to yell out to Senior Constable Rose even before the vehicle reached the roundabout. He chose to alert Senior Constable Rose because he had his motorcycle positioned to the south of the RBT site, ready to pursue vehicles that did not stop.

Senior Constable Rose observed the silver Commodore later than some other officers but still before it reached the roundabout. He estimated it to be travelling at around 80 or 90 km/h when he first saw it.³ He says it slowed considerably as it approached the roundabout. So slow in fact he considered the driver was ‘taunting’ police and wanting to “*entice*” them into following him.⁴ All other officers shared the view Mr Derks was at least trying to draw attention to himself, by not only slowing down so much, but also by sounding his horn several times and then accelerating hard as he exited the roundabout.

The attempted intercept

As Senior Constable Rose mounted his marked police BMW motorcycle he saw the silver Commodore turn right at the roundabout onto Charlotte Close and then take the next left into Loretta Avenue. Although buildings obscured some of his view he says the noise made by the Commodore as it accelerated led him to believe the driver was again speeding as he travelled south along Loretta Avenue.

Senior Constable Rose set off in a southerly direction along the Bruce Highway in the hope, as much as expectation, he might spot the silver Commodore as he approached the intersection with Anderson Rd. Loretta Avenue, which travels parallel to the Bruce Highway, comes to an end once it reaches Anderson Rd. Senior Constable Rose knew the driver of the silver Commodore would then be able to turn left and head towards the Bruce Highway or turn right and head west towards a residential area and away from police.

Sergeant Archibald also left the RBT site within seconds of Senior Constable Rose. He was driving an unmarked Toyota Kluger 4WD. Both police officers engaged their flashing emergency lights (located on a sun visor in the case of the unmarked Kluger) when leaving the RBT site though neither engaged their siren. This state of affairs remained for the entirety of events through to the collision.

Senior Constable Rose approached the four way intersection of the Bruce Highway and Anderson Rd and pulled into the added right hand turn lane at the traffic lights. To his right he saw two stationary vehicles, one behind the other, in the right hand turning lane of Anderson Rd (ostensibly waiting to turn right into the south bound lanes of the Bruce Highway). The second of these

³ Exhibit B2.2 at 1

⁴ Exhibit B2 at 32

vehicles was the silver Commodore sedan which he correctly assumed to be the vehicle he had been sent to intercept.

Those two vehicles were at a red light and although he considered waiting for the silver Commodore to enter the Bruce Highway before attempting an interception, he feared the driver might try to turn around or alight from the vehicle now the police motorcycle was in plain view. Therefore, Senior Constable Rose turned to his right into Anderson Rd and performed a u-turn, pulling up approximately 10 to 15 metres to the rear of the Commodore. Sergeant Archibald had by this stage arrived at the Anderson Rd intersection. He remained in the south bound lanes of the Bruce Highway at the lights and was in a good position to observe the silver Commodore and the movements of Senior Constable Rose.

As Senior Constable Rose began to lean to his left to get off his motorcycle he saw the white reverse lights on the silver Commodore illuminate and then noticed the driver was reversing towards him. He was sufficiently concerned for his safety that he un-holstered his Glock firearm and says he had it three quarters out by the time the vehicle came to a stop – around 3 to 5 metres from him. In the brief moment the silver Commodore was stopped Senior Constable Rose yelled at the driver, directing him to stop the vehicle. He did this loud enough that Sergeant Archibald was able to hear him from his position. The observations of the two officers and an analysis of tyre marks left at the scene establish that Mr Derks manoeuvred the silver Commodore sharply to the right and travelled over a small median strip separating the east and west bound lanes of Anderson Rd. He then mounted a triangular traffic island which is placed to form a left hand turning lane from the northbound lanes of the Bruce Highway for those intending to travel west along Anderson Rd. To the understandable surprise of both officers the silver Commodore continued in a southerly direction beyond the intersection and into northbound lanes of the clearly divided Bruce Highway.

Sergeant Archibald told investigators he had been contemplating the way in which he might intercept the Commodore as it entered the intersection and, he presumed, began travelling south in the southbound lanes. He acknowledged he drove forward for perhaps 1.5 car lengths onto the intersection to make sure the driver of the Commodore saw him. He denied any deliberate attempt to corral, block or force the silver Commodore onto the wrong side of the Bruce Highway.

Sergeant Archibald says he immediately 'floored' his vehicle once he saw the silver Commodore accelerate away on the wrong side of the road. He told investigators and the inquest the acceleration of the other vehicle was as great as any vehicle he had seen in his career. He said at the inquest he hoped he might be able to get close enough to the Commodore to record its registration number.

As a result of the manner in which the other vehicle was being driven Sergeant Archibald quickly decided pursuing it could not be justified. He pulled over to the left side of the southbound lanes of the Bruce Highway and

came to a stop; exactly as required by the policy on termination of either a pursuit or an attempted intercept. He said he had only travelled 40-50 metres south of the intersection, but if he is correct that he stopped next to a speed sign just south of the intersection, it seems likely he in fact travelled about 100 metres before pulling over.

When the silver Commodore drove off, Senior Constable Rose returned to his motorcycle, mounted the bike, re-attached his communications microphone and moved out into the intersection. He looked to his right to see the silver Commodore driving southbound along the northbound lanes of the highway. In his initial interview Senior Constable Rose said he estimated the silver Commodore to be travelling at “140, 150, 160 that sort of speed” at this time.

Senior Constable Rose was fearful for the danger the actions of this driver were posing to the public. He says he “reached the decision in my mind that it was a, justified for a pursuit”.⁵ Senior Constable Rose contacted Cairns communications, telling them:

“Ah, ah get, get a marked car down here, he’s on the incorrect side of the road.”⁶

He said he made this communication by the time he had “gone into the intersection”.⁷ Sergeant Gregory Batt, who had left the RBT site in a red, marked high performance police car with the intention of patrolling the back streets around Loretta Avenue, heard this message. He proceeded immediately onto the Bruce Highway and travelled south towards where he understood Senior Constable Rose to be.

Pat Crooks had set off from her house further to the south intending to travel to her place of work, the Coles supermarket bakery, in central Cairns. At around 5:20am she was travelling north on the Bruce Highway in her blue Holden Commodore. She had just passed the intersection of the highway with Forest Gardens Boulevard and was approaching a right hand bend one must negotiate before reaching the next intersection to the north, that with Anderson Rd. This part of the Bruce Highway consists of three lanes in each direction divided by a median strip of concrete, wire fencing and waist to chest high shrubbery. The speed limit was 80km/h. The conditions on that morning were dry and by 5:20am the sun had risen sufficiently so there was good visibility without the need for headlights.

She may or may not have noticed Andrew Gordon who was also heading towards Cairns to commence work and who must only have been 100 metres or so in front of Mrs Crooks. Negotiating the right hand bend as he headed towards the Anderson Rd intersection, Mr Gordon’s attention was drawn to the high beam lights of a vehicle. Moments later he realised the lights were on a vehicle driving on the wrong side of the road and coming towards him. He estimates he was about 200 metres from the Anderson Rd intersection at this

⁵ Exhibit B2 at 16

⁶ Exhibit B1.5

⁷ Exhibit B2 at 59

point and about 100-150 metres from the other vehicle. Mr Gordon estimates the other vehicle was doing 80 - 90km/h as it went past him although “*he was still accelerating hard as he went past*”.⁸ Mr Gordon veered his vehicle to the left in order to avoid a collision.

Mr Gordon then noticed a police motorcycle:

“....I observed the police motorcycle travelling south bound on the correct side of the road on the inside lane, I could hear that the bike was starting to wind up. I could see that he had his warning red and blue lights on, the lights were flashing, however, I don’t recall hearing if his sirens were on, but I do recall that my windows were up.

I would estimate that the motorcycle was about 100 metres behind the car, and behind the police motorcycle there was a marked highway car, this police car was white with the full markings down it’s side, it would have been anywhere between 50 and 100 metres behind the police motorcycle, I think the police car was at the intersection of Anderson Rd, and the motorbike would have been 50-100 metres past that intersection. The police car was moving too, however, he was accelerating at a lot slower rate than the motorcycle”

Senior Constable Rose rode into the southbound lanes of the Highway and accelerated quickly so that he reached a speed of between 100 and 120km/h. He noticed the Kluger of Sergeant Archibald pulled over to the left hand side of the road and presumed he had done so because he was driving an unmarked vehicle. Seven seconds after the first radio transmission Senior Constable Rose, who was assigned the communications call-sign “907”, broadcast the following:

“907 Cairns is in pursuit”.

After being asked by communications where he was and in what direction he was travelling, Senior Constable Rose began a further broadcast, 16 seconds after his initial contact, stating:

“Down the Bruce Highway towards Forest Gardens and the he’s lost it ah he’s lost it on the incorrect side of the road. Get an ambulance and firies here.”

Constable Trevor Keenan had finished his shift with the Cairns Tactical Crime Squad at 5:00am. He was still in his uniform driving his private vehicle home southbound on the Bruce Highway. He had gone through the RBT site and as he travelled through the Anderson Rd intersection he saw the motorcycle of Senior Constable Rose, with lights flashing, enter the intersection from the right hand lane. It proceeded parallel to him before pulling away. Constable Keenan estimates he was travelling at the speed limit of 80km/h and the motorcycle only slowly accelerated away from him.

⁸ Exhibit B39

The crash and aftermath

The silver Commodore being driven by Mr Derks struck the blue Commodore of Mrs Crooks in an almost direct head on impact. The excess speed of the silver Commodore over the other vehicle caused Mrs Crooks' vehicle to be forced backwards 32 metres from the point of impact. Both vehicles sustained extensive damage, with the silver Commodore ending up against the median strip and the blue Commodore being shunted back and coming to rest in the middle of the far right of the three northbound lanes.

Senior Constable Rose and Sergeant Archibald did not see the actual collision but both deduced there had been a crash as a result of seeing smoke and steam rising and hearing a loud bang.

Senior Constable Rose was the first to arrive on the scene. He pulled up in the south bound lanes of the Bruce Highway, clambered over the guard rail on the median strip and checked on the occupants of both vehicles. He could see both were injured but it was clear Mrs Crooks had suffered the most serious injuries. Senior Constable Rose returned to his motorcycle to brief Cairns communications on the seriousness of the situation and the urgency of his need for an ambulance. He later appropriately noted the District Duty Officer would be required to attend.

Constable Keenan arrived moments after Senior Constable Rose and quickly assessed the conditions of the two drivers in the same way. He focussed his attention on Mrs Crooks and over the following minutes did all he could to help her. It was clear she was very badly injured but she was conscious and in a great deal of pain. The most immediate task was for Constable Keenan, using a great deal of force, to move the steering wheel away from Mrs Crooks' chest which had been obstructing her breathing. He then held Mrs Crooks, supporting her head and speaking to her until the arrival of paramedics. At one point he was required to alert other police to the possibility of a fire having developed in the engine bay as smoke levels increased. He did this covertly so as not to alarm Mrs Crooks about the possible danger and fortunately no flames developed prior to the arrival of the Queensland Fire and Rescue Service (QFRS). I have been asked by the family of Mrs Crooks to particularly note their appreciation for the actions of Constable Keenan in providing her with what comfort could be given in her last moments of consciousness. I can well understand why they have asked me to do this and I commend Constable Keenan for his conduct.

It was necessary for the QFRS to cut both drivers from their vehicles so they could be transported by ambulance to Cairns Base Hospital. QAS records show they received a call from police at 5:20am and the first paramedics arrived at the scene at 5:26am.

On arrival at Cairns Base Hospital doctors considered the most urgent injury of many suffered by Mrs Crooks was a suspected intra-abdominal haemorrhage. She underwent a laparotomy during which her spleen and parts of her small bowel and colon were removed. She was transferred to the intensive care unit and after ongoing treatment overnight it became apparent

she had an irreversible brain injury and she would not recover. After consultation with her family life support measures were ceased early on the morning of 13 December 2009.

Dr Conrad Macrokanis issued a life extinct form at 6:25am on 13 December 2009.

The autopsy

A post-mortem examination was conducted on the body of Mrs Crooks at the Cairns Base Hospital mortuary on the morning of 14 December 2009 by an experienced forensic pathologist, Dr Paull Botterill.

In his detailed autopsy report which was tendered at the inquest, Dr Botterill stated:

“In plain terms, post mortem examination showed surface grazes, lacerations and bruises, swelling and mobility in keeping with fractures of the left leg and both ankles, multiple broken ribs, bleeding into the chest cavity spaces, bruising of the lung surfaces, a collection of blood over the left surface of the brain, swelling of the brain and evidence of surgical removal of spleen and part of the small bowel and colon.”

Dr Botterill, having considered the facts as set out by police on the Form 1 issued an autopsy certificate listing the direct and antecedent cause of death as:

- (a) Multiple injuries; due to or as a consequence of
- (b) Motor vehicle collision.

The investigation findings

The forensic crash investigation conducted by Senior Constable Ezard established that the point of collision was 582 metres south of the Bruce Highway/Anderson Rd intersection.

Applying well accepted methods of calculation based on the tyre marking left at the collision scene and the distance Mrs Crooks' vehicle was shunted backwards after impact, Senior Constable Ezard calculated the vehicle of Mr Derks was travelling at 153km/h if one assumes Mrs Crooks' vehicle was travelling at 20km/h when struck. The actual speed of the silver Commodore can also be inferred from two other pieces of evidence:

- i) the speedometer needle was found to be stuck on a reading of 160km/h when mechanically inspected; and
- ii) analysis of the airbag memory device in the silver Commodore by an appropriate expert showed that 1 second before the deployment of the airbag that vehicle was travelling at 100 miles per hour (161km/h)

A blood specimen taken from Mr Derks at 6:45am on 12 December 2009 contained a blood alcohol concentration (BAC) of 0.194%. Expert evidence tendered at the inquest indicated Mr Derks' BAC at the time of the collision

was likely to have been 0.219%.

Toxicological analysis of a blood sample taken from the body of Mrs Crooks and of urine samples taken from Sergeant Archibald and Senior Constable Rose were negative for any drugs or alcohol.

No CCTV footage of the pursuit or the events leading to it was able to be obtained.

Adjunct investigation

After conducting his investigation into the further allegations raised with the CMC, Acting Inspector Crowe determined no further action was required, although the CMC file apparently remains open until the conclusion of these proceedings. It is clear the complainants to the CMC were passing on hearsay information and were unable to substantiate their concerns with any evidence.

The source of the information regarding Sergeant Archibald and the suggestion another officer was silenced in relation to the information could be traced back to statements made by a constable who had performed traffic control duty near the accident site some time after it occurred. That officer gave evidence at the inquest and stated he had been told the information regarding Sergeant Archibald by another officer whose identity he claims he is now unable to remember. It is clear from his evidence and for other reasons I need not expand upon, that the allegation he was told to "shut up" stem from a misunderstanding and any comments made in this regard were not at all sinister.

The allegation Sergeant Archibald attempted to block the path of the Commodore at the Anderson Rd intersection is also without substance.

Findings required by s45

I am required to find, as far as is possible, who the deceased person was, how she died, when and where she died and what caused her death. As a result of considering all of the material contained in the exhibits and the evidence given by the witnesses, the material parts of which I have summarised above, I am able to make the following findings.

Identity of the deceased - The deceased person was Phyllis Anne Crooks

How she died - She died as a result of injuries sustained while driving a vehicle which was involved in a two vehicle head-on collision. The collision was caused by the criminally dangerous driving of the other driver who was being pursued by a police officer at the time of the collision.

Place of death - She died at Cairns Base Hospital in

Queensland.

Date of death - Mrs Crooks died on 13 December 2009.

Cause of death - Mrs Crooks died from multiple severe injuries resulting from a motor vehicle collision.

Concerns, comments and recommendations

Section 46, in so far as it is relevant to this matter, provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

The direct and proximate cause of the terribly sad death of Phyllis Crooks was the criminally dangerous drunken driving of Robert Derks. It is clear the attempted interception of his car by Senior Constable Rose precipitated his driving down the highway in the crazily dangerous manner but that does not necessarily suggest Senior Constable Rose did anything wrong or was in any way responsible for the death of Mrs Crooks. What needs to be considered is whether the actions of the officers involved in the incident were lawful and reasonable. The best way to do that in my view is to assess whether the officers complied with the relevant QPS policies.

QPS pursuit policy

On 1 January 2008, after an extensive trial period, the QPS implemented a new pursuit policy state wide. The policy has subsequently been refined and is again undergoing an extensive review to consider recommendations made in previous inquests. I acknowledge the reforms to date and the current process of review, evidence an ongoing commitment by the QPS to grapple with the very complex challenges thrown up by this aspect of policing.

I shall now summarise those parts of the policy in force in December 2009 and relevant to this case.

When can a pursuit be commenced and continued?

The principles underpinning the policy are outlined in the Operational Procedures Manual (OPM). Those of particular relevance to this case are:

- (i) *Pursuit driving is inherently dangerous. In most cases the risk of the pursuit will outweigh the benefits.*
- (ii) *Pursuits should only be commenced or continued where the benefit to the community of apprehending the offender outweighs the risks.*
- (iii) *If in doubt about commencing or continuing a pursuit, don't.*

The policy assures officers that suspects who fail to stop when directed will still be the subject of law enforcement action, but less dangerous means

than high speed pursuits will be utilised. It says:-

The revised pursuit policy seeks to shift the manner of apprehension of people who fail to be intercepted from pursuits into other strategies. The Service will continue to apprehend offenders who fail to be intercepted but pursuits will not be the principal means of effecting apprehension.

The policy requires the pursuing officers to balance the utility of a pursuit against the risks it generates. The utility is gauged by considering the consequences of failing to intercept the pursued – the seriousness of the offences the person fleeing may have committed and the strength of the evidence indicating they have committed those offences. In this balancing exercise, issues of safety are to weigh more heavily than has been the case under earlier policies.

According to the policy, “pursuit” means the continued attempt to intercept a vehicle that has failed to comply with a direction to stop where it is believed on reasonable grounds the driver of the other vehicle is attempting to evade police.

“Intercept” means the period from deciding to direct the driver of a vehicle to stop until either the driver stops or fails to stop. It includes the period when the police vehicle closes on the subject vehicle in order to give the driver a direction to stop.

The policy specifically excludes some matters from being sufficient on their own to justify the commencement of a pursuit. These are termed “*non-pursuit matters*” and they include licence and vehicle checks, random breath tests and traffic offences.

If the circumstances do justify a pursuit, the policy sets out to aid the process of risk analysis by dividing these situations into three categories:

- 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 or has issued threats to kill any person.
- 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.

The category of the pursuit becomes relevant to the process of risk analysis because the policy makes it clear to officers, the less serious the category, the less tolerance there is for risk and, therefore, the more likely it will be the

risks of a pursuit will outweigh any potential benefits. The policy also sets out several factors that must form part of the ongoing process of risk assessment to be considered by an officer.

When an intercept becomes a pursuit

When an officer is attempting to intercept a vehicle, if the vehicle fails to stop as soon as reasonably practicable, and the officer reasonably believes the driver of the vehicle is attempting to evade police, a pursuit is said to commence if the officer continues to attempt the intercept.

The reference to “reasonably believes” means the question is not determined by the subjective views of the pursuing officer, rather, as with most aspects of law enforcement, officers must align their conduct with what a reasonable officer would do or believe in the circumstances.

If a pursuit is not justified, an attempted intercept must be abandoned. Similarly, if a pursuit that had initially been justified becomes one where either the officer, the occupants of the pursued vehicle or members of the public are exposed to unjustifiable risk, then it must be abandoned. In such cases the officer must turn off the flashing lights and siren, pull over and stop the police vehicle at the first available safe position.

Was there a pursuit in this case?

Senior Constable Rose drove past Mr Derks as he sat in the Commodore, stationary behind another vehicle at the intersection of Anderson Rd and the Bruce Highway. The blue flashing light on the officer’s marked police motorcycle was illuminated and he positioned it 10 to 15 metres behind the Commodore. As the officer alighted from the motorcycle Mr Derks commenced reversing and then stopped. The officer moved towards the car and yelled for the driver to stop. He didn’t; he accelerated away.

I have no doubt Mr Derks was aware Senior Constable Rose wanted him to stop and wished to speak with him and he drove off to avoid that happening. Senior Constable Rose acknowledged he also came to this conclusion.

The officer re-mounted his motorcycle and set off after the Commodore, albeit on the correct side of the road. It was suggested in submissions these actions might not have constituted a pursuit because the officer was not actively attempting to intercept the car; he was only “monitoring” it. I don’t accept that interpretation and neither did the officer in question: he recognised he was in a pursuit and promptly discharged his obligation to advise police communications of this. I find the pursuit commenced when the officer went through the intersection and turned onto the Bruce Highway. I also find that at that time he had seen Mr Derks driving very fast on the wrong side of the divided highway.

That raises the questions of whether a pursuit was permitted, if it was, whether it was justified, and if so, whether it was conducted appropriately.

Was a pursuit permitted?

To be permitted the pursuit would have to fit within one of the three categories outlined above. The definition of pursuit category 2 includes in paragraph (i) an indictable offence. We now know Mr Derks had committed many indictable offences earlier that night and was at the material time unlawfully using the Commodore, but none of that was known to the officers when they were attempting to intercept him. The dangerous driving the officers witnessed when Mr Derks drove off was also an indictable offence but as that offence is specifically mentioned in pursuit category 2 paragraph (iii), I conclude the limitation on reliance on that offence as a justification for a pursuit set out in paragraph (iii) applies, namely, the dangerous operation of the vehicle must be the reason for the initial attempted unsuccessful interception, not a consequence of it, as happened here.

There is no suggestion pursuit category 3 is relevant and so we are left with pursuit category 1 which is the justification Senior Constable Rose has relied upon from the outset, at least by inference, if not explicitly.

In particular it is submitted the officer could have reasonably believed the driver of the Commodore *“(i) will create an imminent threat to life.”* I accept that. Unfortunately, the issue is complicated by a sentence in the definition section which reads, *“It includes a situation where the behaviour of the fleeing vehicle is such that there is an imminent threat to life and the risk of not pursuing apparently exceeds abandoning the pursuit.”*

The counsel participating in this inquest bravely sought to breathe meaning into this sentence but I have concluded those attempts were futile. I suspect from reading the example which follows the drafter meant to suggest in some cases the risks of not pursuing could outweigh the risks of a pursuit, thus justifying one. However, in view of the uncertainty, an officer in Senior Constable Rose’s situation could not be expected to untangle the twisted syntax a phalanx of lawyers only made more muddled. I conclude the circumstances could constitute a pursuit category 1.

Was a pursuit justified?

Once an officer is satisfied a matter falls into one of the pursuit categories, he/she is required to consider whether in the circumstances a pursuit is permitted. That requires a risk assessment referencing various safety factors. It is mandated that if the pursuit exposes anybody to an unjustifiable risk it must be abandoned. It also provides that when a pursuit category 1 is involved a higher level of risk can be tolerated.

Senior Constable Rose says he undertook the necessary risk assessment in this case. He noted there was minimal traffic on a well maintained and wide road and he was riding a marked and well illuminated motorcycle in clear and dry conditions. It was also particularly pertinent that in all probability the fleeing motorist could not see his pursuers. The officer drove in a very controlled and responsible manner, he quickly reported to police communications what was transpiring and he sought assistance. The pursuit

proceeded over a very short distance and was of short duration.

I have sympathy for the claim by officers Rose and Archibald that they believed in the circumstances they had to do something to attempt to avert the disaster they all too readily foresaw. It might be asserted the only thing they should have done was to call for assistance of officers ahead of Mr Derks because pursuing him would only add to the risk. That is usually the case. In such circumstances, the benefits of apprehending the offender must always be subservient to the immediate safety of all involved. The distinctive feature of this case was that the limited law enforcement activity undertaken did not exacerbate the danger.

In the circumstances, I conclude Senior Constable Rose complied with the QPS pursuit policy.

It seems Sergeant Archibald initially concluded a pursuit could not be justified within the terms of the policy as he understood it. Despite valiant attempts from his lawyer, I was not persuaded he was only speaking of *his* participation in a pursuit being contrary to the policy when he explained why he pulled over very soon after commencing to chase. That was a sensible decision; he would have added nothing to the attempt to apprehend Mr Derks. He acted in accordance with the exhortation of the policy: if in doubt, don't.

The policy also prohibits officers from attempting to block or box-in other vehicles as a mechanism for apprehending a driver. I find that Sergeant Archibald did not engage in any such manoeuvre.

The policy has been significantly revised and re-written since this incident. I assume the anomalies referred to earlier have been addressed. I will therefore refrain from making any further comment or recommendations.

I close the inquest.

Michael Barnes
State Coroner
Cairns
22 June 2011