LOCAL COURT of NEW SOUTH WALES

Coronial Jurisdiction

Inquest: **Inquest into the death of Graham JOHNSON**

Hearing dates: 20-21 March 2012 Tenterfield

Date of findings: 15 June 2012

Place of findings: Glebe

Findings of: Deputy State Coroner H.C.B. Dillon

Findings: I find that Graham Johnson died on 18 January 2009 on the New England Highway, Bolivia Hill approximately 16 kilometres north of Deepwater, New South Wales as a result of blunt force head injuries inflicted while a passenger in a motor vehicle driven by Benjamen Pappin which crashed while being pursued by the NSW Police Highway Patrol.

NOTE: These findings are subject to the following non-publication order pursuant to s 74 of the *Coroners Act 2009:*

There be no publication as to the content of the NSW Police Force Safe Driving Policy or any evidence in the proceedings relating to that policy.

Recommendations: *To the Commissioner of Police I make the following recommendations*:

(i) That the NSW Police Force Traffic Services Branch develop a set of criteria for identifying *permanent* "traffic red zones" or "traffic danger zones" (commonly called "traffic black spots") on National Highways, National Routes and State Routes in NSW Police Northern, Western

and Southern regions outside of major built-up areas. (***Note***: In this recommendation "permanent 'traffic red zone'" refers to a section of highway on which there is significantly increased risk in conducting a high-speed pursuit due to permanent topographical features or road characteristics even in good weather with good road surface and light to moderate traffic compared with relatively safe or unchallenging sections.)

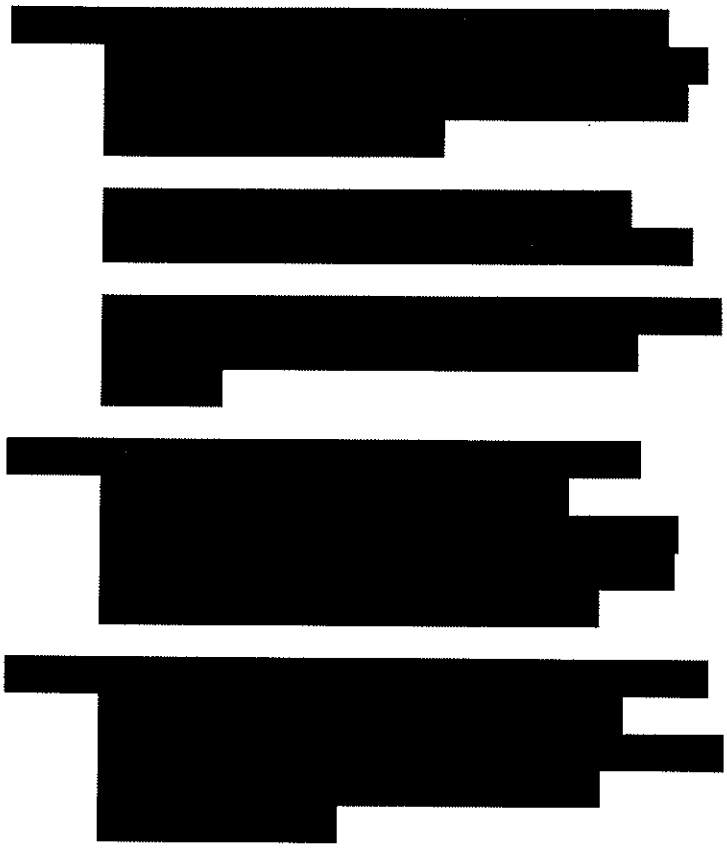
(ii) That the Commander of the Traffic Services Branch require each Highway Patrol in the Northern, Western and Southern Regions to collate and provide to him, or his delegate, information identifying permanent "traffic red zones" in its patrol area and that the Traffic Services Branch then collate and disseminate that material in suitable form to VKG and regional Duty Officers and supervisors.

(iii) That the NSW Police Safe Driving Policy be amended to require all persons conducting monitoring or supervision pursuits who have power to terminate them explicitly take into account traffic "red zones" being approached in the course of the pursuit.

(iv) That the Safe Driving Policy's be amended to establish a default position that *high-speed* pursuits will not be conducted through "traffic red zones"unless there are strong countervailing reasons for continuing the pursuit.

(v) That supervisors and monitors of police pursuits be given suitable training or induction in the location and characteristics of "traffic red zones" before being required to take responsibility for supervising pursuits in areas with which they are unfamiliar.

(vi) That VKG and/or Duty Officers supervising pursuits notify police vehicles engaged in pursuits that they are approaching "traffic red zones" when the target vehicle reaches a certain distance from the "red zone". The appropriate distance should be determined by the regional Highway Patrol commander, the State Pursuit Management Committee or by some other suitable means. [***Note***: the appropriate distance may vary from location to location.]



File number: 1384/10

Representation:

Mr M. Cahill (Counsel Assisting) instructed by Ms L. Molloy (Crown Solicitor's Office)

Mr B. Haverfield (counsel) instructed by Mr S. Robinson representing the Commissioner of Police.

Mr B. Longueville (counsel) instructed by Mr Fitzpatrick (Walter Madden Jenkins) representing Senior Constable Thomas Van Akker, Senior Constable Karen Peasley, Senior Constable Michael Opryszko, Senior Constable ImantsRamma, Senior Constable Shaun Bird and Sergeant Carter Knyvett

REASONS FOR DECISION

Introduction

1. At about 12.40am on 18 January, 2009 Benjamen John Pappin lost control of the unregistered green 1992 Suzuki Swift, Queensland registration no. 866BOZ, that he was driving in a northerly direction on the New England Highway approximately 16 km north of Deepwater and about 1.25 km south of Pyes Creek Road in the State of New South Wales. Seated in the left back seat was Graham Johnson, a young man of 21. He was killed in the crash due to blunt force head injuries. Miraculously, however, the three other occupants of the car, including Mr Pappin, survived.

2. The crash occurred during a high-speed pursuit by two police vehicles, the primary car being a fully marked Highway Patrol Commodore. As Mr Johnson's death occurred during a police operation, s 27(1)(b) of the *Coroners Act 2009* requires that an inquest be held.

Graham Johnson

3. Before I consider the issues that the case raises, it is important to focus on the victim of this accident, Graham Johnson. At the heart of almost any inquest, no matter how technical the evidence may be, there is a human tragedy. Graham's parents, Ronald and Barbara Johnson, and his sisters Renee and Leanne, all spoke about him at the inquest. Ronald also read a statement from Graham's twin brother, David.

4. It was evident from the fact that his parents and siblings and other members of his extended family travelled from Queensland to attend the inquest that Graham was much-loved by those who knew him during his short life. Their statements revealed him to have been a "gentle giant", a generous, lively young man with a playful and kind nature who enjoyed his family and especially the younger members of it and who, because of his generosity, was sometimes taken advantage of. One of the tragic elements of his death is that Graham was not the sort of young man who got into trouble with police. On the evening of 18 January 2009, however, he had the misfortune to be in a car with Benjamen Pappin who had a very troubled history and a tendency to dangerous driving. He is much missed by his family whose grief was very obvious during the inquest.

The pursuit

5. Most of the facts in the case are not contentious. On 15 January, 2009 a member of the Queensland Police conducted a "street check" of the occupants of the Suzuki Swift in which Graham Johnson died. An intelligence report was made but no further action was taken. Senior Constable Jensen noted that a group of "four people appeared to be camping by the river in a tent and a vehicle" and that "no offence was detected". The fact that the car was unregistered was not apparently noticed at that time but that is probably because the car was not being driven. In retrospect, it appears that an opportunity to put the car off the road may have been lost at that stage but I make no criticism of the police officer.

6. It appears that on the evening of Saturday 17 January or very early on Sunday 18 January 2009 the group of four young people commenced what may be described as a "road trip" south into New South Wales with Benjamen Pappin driving.

7. At about 12.30am on 18 January, 2009 Senior Constables Van Akker and Peasley were performing general duties at the Deepwater Races, patrolling the town and conducting mobile random breath testing. S/Con Van Akker was the driver and S/Con Peasley was the observer in a marked Police Mitsubishi Pajero 4WD station wagon known by the call sign "Emmaville 33".

8. While stationary outside the Deepwater Inn facing north, the officers saw a semi-trailer travelling south on the New England Highway with a green 1992 Suzuki Swift tailgating it. This was the initial sighting by NSW Police of Mr Pappin's vehicle. S/Con Van Akker pulled out, activated the red and blue police lights and proceeded to follow the Suzuki.

9. The Suzuki then made a sharp left hand turn into Alice Street without indicating. Emmaville 33 followed in pursuit of the small vehicle. At this point S/Con Peasley is recorded as transmitting the following message to VKG:

> *"Yeah, we're just, ah, trying to do a vehicle stop on Alice Street at Emmaville. Is New England 208 around? We're heading east."*

10. The Suzuki then took another sharp turn into Station Street, and the police vehicle maintained its pursuit.

11. In her Record of Interview, at question 86, S/Con Peasley observed:

"... I didn't call a pursuit straight away mainly my error, because I've, it was my fourth GD shift and after out for 9 years and I wasn't sure what I was supposed to say, so yeah, that's why I hadn't called pursuit straight away...."

12. At the same time, unbeknownst to S/Con Peasley, New England 208, a fully marked Category 1 Highway Patrol vehicle, driven by S/Con Michael Opryszko with S/ Con ImantsRamma as observer, was completing a traffic stop in Deepwater. They heard the radio call from Emmaville 33 and, a short time later, took up the role of primary pursuit vehicle on Station Street in Deepwater. Emmaville 33 continued in the pursuit as the "secondary pursuit vehicle". The Suzuki turned north onto the New England Highway and accelerated away from the police vehicles.

13. The Highway Patrol car was fitted with an in-car video system which automatically starts to record once the warning lights in the car are illuminated. The video shows that:

- the weather was clear;
- the road surface on the New England Highway was bitumen;
- the road was unlit;
- traffic was light;
- the speed of the offending vehicle varied between about 80 to 90 km per hour and a maximum speed of about 140km per hour;
- the Suzuki generally remained on the correct side of the roadway; but that
- the whole vehicle swerved onto the incorrect side of the road on one occasion and encroached partially onto the wrong side a number of times and that, where the roadway consisted of two northbound lanes, it swerved back and forth across the two lanes in an apparent attempt to stop the pursuing Police vehicle from passing.[1]

14. The video footage shows that the pursuit lasted for about seven minutes and that the distance covered from Deepwater to the crash site was about 16.4 kilometres. For most of the distance, the road was not inherently dangerous or demanding. The pursuit, however, culminated on Bolivia Hill, a much more challenging stretch of road. In his second record

[1] For safety reasons, police practice is not to overtake in such situations but Mr Pappin obviously did not know this.

of interview S/Con Ramma, a Highway Patrol officer with 25 years of local experience, stated:

> *"The section of road that you must treat with respect. I've been to numerous accidents on that, that stretch of roadway including two fatals that I can recall. Probably in the last, the last most recent one would have been two semi-trailers at the bottom probably about 3 years ago".*[2]

15. S/Con Ramma agreed with the investigator, Det S/Con Curry, that he regarded the area as a "black spot", that is, a stretch of road recognised for its prevalence of serious motor vehicle accidents.

16. The accident investigator, Sgt Priest, who conducted the detailed assessment of the crash site and the cause of the crash, reported that approaching the collision site from the south there is a 199.31 metre, 150 degree, right hand bend in the highway. The bend is cut into the side of a steep hill and the roadway has an average gradient of 4.2 degrees, with high ground to the east and a steep embankment to the west. The right-hand bend is the subject of an 85km per hour speed advisory sign, with the sign located a short distance to the south of the collision site.

17. The need to treat the descent on Bolivia Hill with respect is not only demonstrated by the consequences of Mr Pappin failing to do so but by the fact that Highway Patrol vehicle slowed down rather than attempt to keep up with the Suzuki once the vehicles crested the hill. The Highway Patrol officers exercised caution and common sense. Mr Pappin, regrettably for his passengers, did not.

18. Having examined the scene of the crash, Sgt Priest deduced that the Suzuki had "yawed", that is, rotated around its centre of mass. The vehicle, travelling too fast for its intended turn of radius, started to side-slip, then spun in a clockwise direction. It is apparent that, after it commenced to spin out of control, the Suzuki left the roadway to the east, where it collided with a rocky embankment, before ricocheting then rolling as it travelled back across the roadway until it collided with the Armco railing located on the western side of the roadway. The vehicle then came to rest on its roof. It sustained extensive collision damage to the front, rear and left side with the side pillars of the car crushed so that the roof was collapsed almost to the body of the car. In fact, due to the catastrophic front-end

[2] Q 111 on page 223 of the brief.

damage sustained to the vehicle, the engine was torn away from its mounts and was subsequently located some 35 metres away down an embankment on the western side of the roadway in bushland.

19. All four tyres on the Suzuki Swift had minimal tread insufficient to meet legal requirements [that is, 1.5mm] but otherwise there was no significant mechanical defect found in the car. The primary cause of the crash was excessive speed for the conditions.

20. Unfortunately, neither the VKG (police radio) supervisor, who was based in Tamworth, nor Sergeant Pringle [call sign "Armidale 14"], who was the senior officer at Armidale that night and who was monitoring the pursuit by radio, had intimate local knowledge of Bolivia Hill. This meant that the officers charged with supervision of the pursuit were hampered in their ability to make assessments regarding the termination of the pursuit in light of the fact that the pursuit was approaching an area considered locally to be a traffic "black spot".

The issues

21. Under the Coroners Act a coroner must try to identify the person whose death is the subject of the inquest; the date and place of the death; and the direct physical cause of the death and the circumstances or manner of the death. In this case, the only significant issues concern the circumstances of Graham Johnson's death. Because his death occurred during a police operation, it is necessary to consider how that operation was conducted.

22. The issues that arise are as follows:

- What police vehicles and crews were engaged in the incident?
- What parts did they play?
- Did they comply with relevant elements of the Safe Driving Policy?
- Was the pursuit properly reported and controlled as it progressed?
- What consideration, if any, was given to termination of the pursuit before the fatal crash?
- In particular, were there any features of the driving on the part of the pursued vehicle that ought to have given rise to a concern that the pursuit was unsafe?
- Were there any characteristics of the road or topography that ought to have given rise to a concern that the pursuit was unsafe?

- What, if any, lessons have been learned from this incident?
- Have any changes in NSW Police practice or policy been instituted as a result of this incident?
- Ought any recommendations be made to the Commissioner of Police as a result of this incident?

23. Each of these issues raises subsidiary questions that I will deal with under each topic. In particular they raise questions concerning the NSW Police Force's Safe Driving Policy and its application in this case.

What police vehicles and crews were engaged in the incident? What parts did they play?

24. I have noted above that there were two police vehicles, New England 208, and Emmaville 33, involved in the pursuit. After Emmaville 33 started the pursuit in Deepwater, it quickly handed over the primary pursuit role to New England 208 and followed as a secondary pursuit vehicle. A third vehicle, Tenterfield 34, which was coming south on the New England Highway, at one point illuminated its warning lights as the Suzuki approached it. The Suzuki and the two police vehicles from Deepwater passed in the other direction. Tenterfield 34 followed. It is unclear whether it was involved in the pursuit. If so, its part was minor at best.

[redacted]

Did the police crews comply with the Safe Driving Policy?

26. S/Con Peasley admitted in her record of interview that, as the escort (non-driver) in her vehicle, she ought to have explicitly called in the pursuit as soon as it started. Nevertheless, she had only returned to General Duties four shifts before and had had little or no recent experience in dealing with the Safe Driving Policy. Although she did not strictly comply with the Safe Driving Policy by explicitly calling the pursuit, she did notify

VKG that Emmaville 33 was following a car that had failed to stop. This implied that her crew was pursuing and was probably sufficient to put VKG on notice of the pursuit.

[redacted]

[redacted]More problematic is the question whether Emmaville 33 should have remained part of the pursuit. The reason given by S/Con Van Akker was that the Suzuki contained four people and he had thought it advisable to provide back-up to New England 208[redacted]

[redacted]

30. It was also problematic that Emmaville 33 remained a pursuit vehicle but did not notify VKG or Sgt Pringle (Armidale 14) who were monitoring the chase that they were acting as secondary pursuit vehicle. S/Con Peasley gave evidence that she had not wanted to cut across radio communications between New England 208 and VKG. This, however, left VKG and Sgt Pringle in the dark as to what Emmaville 33 was doing. At one point, Sgt Pringle explicitly had to enquire over the air to identify the pursuit vehicles. Even after Sgt Pringle sought clarification of the vehicles involved in the pursuit, however, S/Con Peasley did not advise VKG of Emmaville 33's continued role in the pursuit.

31. It was important for the safety of the officers involved, as well as members of the public, that the supervisors know how many vehicle were involved in the pursuit, their types and the identities of their drivers. While it is plausible that S/Con Peasley had not wanted to interfere with radio traffic between the primary vehicle and VKG, it is equally possible that, given her unfamiliarity with the Safe Driving Policy, she simply did not know what was required of her during the pursuit. (During her evidence she displayed far greater familiarity with the Safe Driving Policy than on the evening in question.)

Was the pursuit properly reported and controlled as it progressed?

32. This question raises two issues: (a) reporting from the cars in the field and (b) controlling of the chase from Armidale or VKG.

33. One of the reasons police pursuits are monitored and controlled by senior officers at remote locations is that officers engaged in a pursuit must concentrate very hard on driving at high speed for the circumstances – a complex activity with small margins for error – and may develop, as Sgt Pringle termed it, "tunnel vision". In the heat of the chase, desiring to bring their quarries to heel, officers engaged in a pursuit may lose objectivity and misjudge the degree of potential danger they, or members of the public, may be running into as the pursuit continues. Senior officers controlling the pursuit from remote locations are not personally involved in the same way and can bring a wider and more objective perspective to the various factors that must be taken into account as the chase develops.

34. A problem will almost inevitably arise when the remote controllers do not have sufficient local knowledge of the course of the pursuit to make fine judgments about whether or not the dangers of the pursuit have exceeded acceptable levels taking all the relevant factors into account. In such a case, the remote controllers then become reliant on the judgment and local knowledge of the officers directly involved in the pursuit.

35. If human error was a function of character, it would be relatively easy to eliminate: the "bad" operators could be identified and excluded from practising in areas which might lead to harm to others. The flaw in such an approach is obvious. The truth is that all competent professionals, let alone amateurs, make mistakes. Counter-measures under this approach include discipline, training and litigation. An approach which gives primacy to blaming someone for an error rather than on identifying systems failures is one that leads to a reluctance to take responsibility and, in particular, to report mishaps and mistakes. By

over-emphasising personal responsibility and culpability, we may be distracted from rectifying systemic faults.

36. Professor James Reason famously invented the "Swiss cheese" model of dissecting systems failures. He analysed the problem this way:

> Defences, barriers, and safeguards occupy a key position in the system approach... Their function is to protect potential victims and assets from local hazards. Mostly they do this very effectively but there are always weaknesses.
>
> In an ideal world each defensive layer would be intact. In reality, however, they are more like slices of Swiss cheese, having many holes – though unlike in the cheese, these holes are continually opening, shutting, and shifting their location. The presence of holes in any one "slice" does not normally cause a bad outcome. Usually, this can happen only when the holes in many layers momentarily line up to permit a trajectory of accident opportunity – bringing hazards into damaging contact with victims.
>
> The holes in the defences are for two reasons: active failures and latent conditions.
>
> *Active failures* are the unsafe acts committed by people who are in direct contact with the [victim] or system. They take a variety of forms: slips, lapses, fumbles, mistakes and procedural violations. Active failures have a direct and usually short-lived impact on the integrity of the defences... Followers of the person approach often look no further for the causes of an adverse event once they have identified these proximal unsafe acts. But... virtually all such acts have a causal history that extends back in time and up through the levels of the system.
>
> *Latent conditions* are the inevitable "resident pathogens" within the system. They arise from decisions by designers, builders, procedure writers and top level management... Latent conditions have two kinds of adverse effect: they can translate into error-provoking conditions within the local workplace (for example, time pressure, understaffing, inadequate equipment, fatigue and inexperience) and they can create long-lasting holes or weaknesses in the defences... Latent conditions – as the term suggest – may lie dormant within the system for many years before they combine with active failures and local triggers to create an accident opportunity. Unlike active failures, whose specific forms are often hard to foresee, latent conditions can be identified and remedied before an adverse event occurs. Understanding this leads to proactive rather than reactive risk management.
>
> We cannot change the human condition, but we can change the conditions under which humans work. To use another analogy: active failures are like mosquitoes. They can be swatted one by one, but they still keep coming. The best remedies are to create more effective defences and to drain the swamps in which they breed. The swamps, in this case, are the ever-present latent conditions.[3]

[3] "Human error: models and management" (2000) 320 *British Medical Journal* 768-770.

The Swiss Cheese Model of Systems Failure

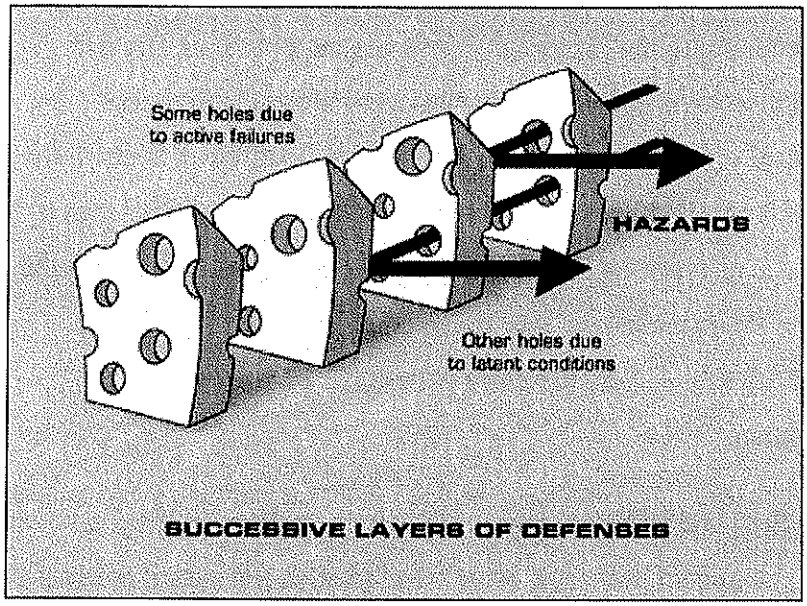


Fig 1. The defence layers work: holes do not line up

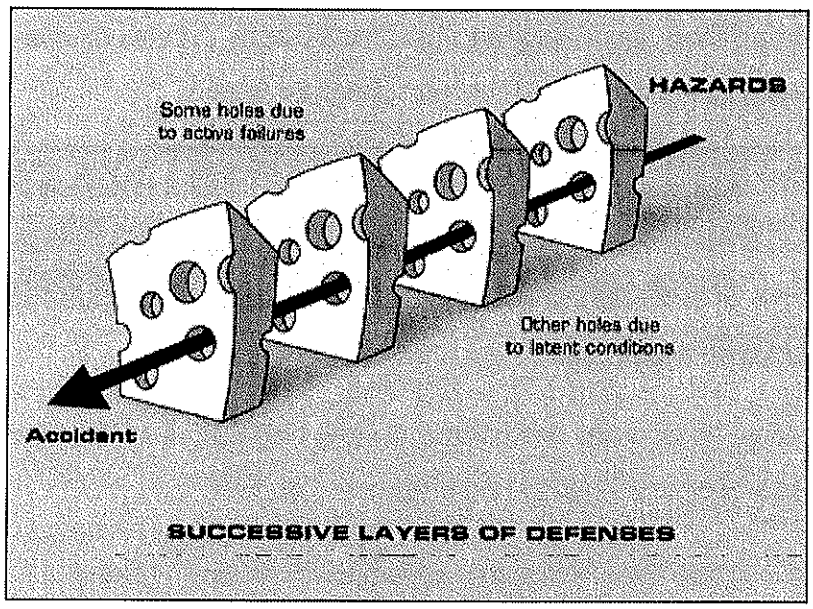


Fig 2. The holes line up: trajectory of accident opportunity[4]

37. The holes in the cheese slices represent individual weaknesses in individual parts of the system, and are continually varying in size and position in all slices. The system as a whole produces failures when all of the holes in each of the slices momentarily align, permitting (in Reason's words) "a trajectory of accident opportunity", so that a hazard passes through all of the holes in all of the defences, leading to a failure.

[4] http://patientsafetyed.duhs.duke.edu/module_e/swiss_cheese.html

38. The Safe Driving Policy is, overall, an excellent policy designed to promote both good policing and public safety. Yet, as Graham Johnson's death illustrates, the policy is not foolproof. One of the "latent conditions" in this case was that neither Sgt Pringle in Armidale nor VKG had local knowledge of the true characteristics of Bolivia Hill. By default, therefore, real control of the pursuit remained in the hands of the officers in the primary pursuit vehicle, both of whom were very familiar with the road. This is not a criticism of the officers in the primary car – they did not know who was monitoring the chase. Nevertheless, two of the principal defence mechanisms (or slices of "Swiss cheese") -- Armidale 14 and VKG -- were therefore penetrated because of this unidentified flaw in the system.

39. Sgt Pringle gave evidence that, had he been aware of the characteristics of the road over Bolivia Hill at the time of the pursuit, he would have terminated it either as it reached the crest of the hill or earlier.

40. In retrospect, it can be seen that, given an absence of detailed local knowledge at the supervisory level, the reporting from the primary car was insufficiently detailed to enable either Sgt Pringle or VKG to monitor and control the pursuit appropriately.

41. [redacted].

42. The "Pursuit Review" prepared by Sergeant McFarlane, now Acting Commander of the Traffic Services Branch, included the following in the summary section:

> Police were entitled to initiate the pursuit and it appears to have been conducted professionally and within the Safe Driving Policy parameters. However, as the situation became prolonged serious consideration should have been given to terminating the pursuit. [redacted]. Any number of police not directly involved in a pursuit can direct that it be terminate. The attached report indicates pursuing police were aware the final descent area of "Bolivia Hill" is a black spot and slowed accordingly. It may have been appropriate to terminate the pursuit prior to this point and turn off the warning devices.

43. The video footage from the in-car video system was played in court and commented upon by a number of police witnesses, including Inspector Ridley, Sgt Pringle and the two primary car officers. Both Inspector Ridley, the investigating officer, and Sgt Pringle

noted some instances of driving that they considered ought to have been notified to VKG but were not [redacted]. At the hearing, when watching the in-car video recorded by New England 208 during the pursuit, Inspector Ridley gave evidence to that effect about both those incidents.

[redacted]Sgt Pringle's evidence was that he did not recall any driving incidents being reported to him and that he had not reviewed the footage after the event. [redacted]

45. Both officers also thought that VKG ought to have been notified that the pursuit was approaching Bolivia Hill and that the descent on the northern side was windy and dangerous.

What consideration was given to termination of the pursuit before the fatal crash?

46. Neither S/Con Ramma nor S/Con Opryszko considered terminating the pursuit. They gave evidence that they had conducted pursuits over this stretch of road on previous occasions without incident. Nonetheless, both acknowledged that it had been necessary to slow down once they had crested the brow of the hill. S/Con Ramma told the investigating police that he had assumed that the driver of the Suzuki would exercise "common sense" and also slow down on the descent. Mr Pappin's performance to that point, however, provided a very weak foundation for that assumption.

47. With hindsight, it can be seen that termination ought to have been considered. If the officers were uncertain about this, they ought ideally to have consulted Sgt Pringle or VKG. I do not criticise the police officers because this may be an example of the "tunnel vision" against which supervision is meant to be a safe-guard. But there was a systems failure.

48. Sgt Pringle paid close attention to the radio description of the pursuit as it approached Bolivia Hill because he had a general idea that it was a locality with a history of road

accidents. Although he had authority to terminate the pursuit, his lack of local knowledge (he had never driven over Bolivia Hill at that time) and the relative paucity of information he was given about the handling of the Suzuki left him significantly disadvantaged as a controller. VKG was in similar position. I make no criticism of either. Again, the system had failed.

Were there any features of the driving on the part of the pursued vehicle or characteristics of the road or topography that that ought to have given rise to a concern that the pursuit was unsafe?

49. I have discussed the topography and characteristics of the New England Highway above. The topography of Bolivia Hill and the need to "respect" the road over it gave rise to a concern on the part of the officers in New England 208 that a high-speed pursuit over the hill was unsafe. They slowed down and backed off.

50. Aspects of Mr Pappin's driving have been described above. A few further comments ought be made. Not only did the length of the chase suggest a determination on his part to get away from police but the swerving back and forth on the uphill section of two northbound lanes and his acceleration downhill at a speed of about 140 kph emphasised this fact. Mr Pappin's manner of driving demonstrated an absence of common sense and respect for the characteristics of the road and a dangerously high, but misplaced, sense of self-confidence in his driving ability.

51. Second, the police officers involved in the pursuit observed four people in the car. It is a matter of common knowledge that some young drivers behave more immaturely and irresponsibly when driving their friends than when alone. Police are well of this. For this reason, among others, drivers on "Red Ps" are not permitted to drive more than one person after 11pm.

52. The Roads and Maritime Services website states that "NSW crash statistics show that young people are over-represented as drivers and motorcycle riders in fatal crashes. *Young drivers are more likely to be involved in fatal crashes at night and when they are carrying passengers.*"[5]It also states, "[Young drivers] driving at night (after 10pm) and carrying passengers also increases the crash risk significantly."[6] It would have been reasonable for the police to infer from the fact that there were four people in the car that the driver was

[5] http://www.rta.nsw.gov.au/roadsafety/statistics/crashesinvolvingyoungdrivers.html
[6] http://www.rta.nsw.gov.au/roadsafety/youngdrivers/index.html

more likely to engage in high-risk driving than if he was driving alone and that he would, therefore, imperil his passengers' safety more than if he was driving alone. I propose to make a recommendation that the number of passengers in a vehicle be made an explicit factor (among others) to be taken into account when pursuing police or the radio supervisors are assessing whether or not a pursuit ought be continued.

What, if any, lessons have been learned from this incident?

53. This incident has taught a number of lessons. First, there are ambiguities in the Safe Driving Policy that ought be addressed.

54. Second, the assumption made in the policy that senior officers monitoring or controlling pursuits from remote locations have the requisite local knowledge of conditions in which pursuits are taking place is misconceived.

55. Third, high-speed pursuits into and through traffic "black spots"[7] are more dangerous than elsewhere especially for the occupants of the target vehicles because the drivers are usually less skilful than trained police drivers authorised to conduct pursuits; those offending drivers are less likely to drive to the conditions and exercise common sense than the pursuing police because they are seeking to escape from the police; and the inherent dangers of the location that make it a traffic "black spot" considerably reduce margins for error.

56. Fourth, there appear to be differences of opinion within the Police Force about what constitutes "erratic" driving. The officers in New England 208 were less concerned about Mr Pappin's manner of driving than Sgt Pringle and Inspector Ridley were retrospectively and were less inclined to regard it as "erratic" than they were. This may reflect the fact that their long experience in the Highway Patrol has exposed them to much worse driving than Mr Pappin displayed before the crash. It may also indicate that their real intuitive benchmark was actual danger to members of the public. Because the traffic was light, there was relatively little danger before the pursuit reached Bolivia Hill despite some aspects of Mr Pappin's driving.

[7] I use the term "traffic black spots" because it is in common usage both in the community and the Police Force as a shorthand descriptor of locations where there is a higher than normal prevalence of dangerous traffic incidents than on other parts of the road system.

Have any changes in NSW Police practice or policy been instituted as a result of this incident?

57. At this stage no changes to NSW Police policy or practice have been made as a result of this incident. Counsel for the Commissioner, however, indicated that close consideration would be given to any recommendations made during this inquest. A number of draft recommendations were suggested during the inquest in Tenterfield. The Commissioner's response to them is contained in a report dated 9 April 2012 prepared by the Commander of the Traffic Policy Section.

Ought any recommendations be made?

58. For reasons outlined above, this incident, in my view, requires some amendments to the Safe Driving Policy. During the hearing in Tenterfield, I proposed a number of potential recommendations. The Commissioner of Police has responded to them by way of written submissions from the Traffic Branch. I have given them careful consideration.

59. The first six proposed recommendations suggested amendments to the Safe Driving Policy to take into account explicitly the dangers of known traffic "black spots" (that is, locations where the higher than normal prevalence of dangerous traffic incidents is recognised).

60. The Assistant Commissioner in charge of the Traffic Services Branch and Highway Patrol, Mr Hartley, the commander of the Traffic Policy Section and the State Pursuit Management Committee considered the suggestions. They raised a number of issues concerning the proposed recommendations and made a number of counter-proposals.

61. The first difficulty raised is a matter of definition. At present, the Safe Driving Policy uses the term "radio black spots" to describe locations where radio communication with VKG is impossible. The Police Force argues that the simultaneous usage of "black spots" in reference to "*traffic* black spots" could lead to confusion and increase the difficulty of controlling and managing pursuits by radio.

62. There is substance in that objection. The problem is solved, however, by the use of a different term. For example, what I have referred to above as "traffic black spots" might be called "traffic red zones" or "traffic danger zones" or some other distinctive term.

[redacted]

[redacted]

64. That is a good idea but is not a foolproof answer to the issues that Graham Johnson's death raises.

65. The problems with this approach are twofold: first, it is reliant on the judgment of pursuing police to provide the advice; and, second, it impliedly relies on the supervisors having sufficient local knowledge to be aware of the potential danger if they have not been given the relevant advice. But, as we have seen, both those problems arose in this particular case. The subjective judgment of the pursuing police was that there were no particularly adverse conditions that they needed to report. VKG and Sgt Pringle did not have the local knowledge to challenge that judgment.

66. A second objection to the proposed recommendations concerning "traffic black spots" is that there are 185,000 kilometres of road network in NSW and that it would be logistically impracticable to conduct the exercise of identifying all potential "black spots" (or "traffic red zones") and marking up maps used by the Highway Patrol, VKG and supervisors accordingly. Again, this is a reasonable objection. A more limited approach, however, seems feasible.

67. Based primarily on crash statistics but also other criteria, such as suitability for roadside camera operations, the NSW Centre for Road Safety, in consultation with the Police Force and the NRMA, has identified approximately 140 "traffic black spots" (my term, not theirs) throughout NSW as locations where mobile speed cameras are deployed.[8] Most, if not all of them, are located on main roads both in the country and the metropolitan area. (I note that at present the crash statistics relied on go up to 2008 only and therefore, do not include the location of Graham Johnson's fatal incident.) This may be a start towards identification of "red zones".

68. A distinction should probably be made between pursuits confined within major built-up areas, such as Sydney, Newcastle, Wollongong, Wagga Wagga and Albury, and pursuits on major country arterial roads. Pursuits within major built-up areas are likely to be comparatively more hazardous than on country highways because of the heavier concentrations of traffic, pedestrians, pushbikes, intersections, traffic signals, school

[8] See http://www.rta.nsw.gov.au/roadsafety/speedandspeedcameras/mobilespeedcameras/index.html viewed 13/04/12.

zones, and multi-lane roads. Paradoxically, the obviousness of these hazards may lead to a relatively heightened sense of caution on the parts of pursuing police and their supervisors. On the other hand, the type of pursuit with which occurred in this case may subconsciously engender a degree of relative complacency on the parts of pursuing police. I therefore propose to confine my recommendations to pursuits conducted on country highways only.

69. Given the experience and professionalism of the NSW Police Traffic Services Branch and the Highway Patrol, it seems to me that it would not be beyond the capacity of the NSW Police Force, perhaps in conjunction with the NSW Centre for Road Safety, to identify stretches of country highways where it would be hazardous to conduct pursuits even in good weather with good road conditions and moderate traffic. Steep, winding descents are one obvious source of significantly increased danger for the pursued and the pursuers as this case demonstrates. Narrow winding stretches of road, such as are common on the Pacific Highway and Princes Highway, also present major challenges for high-speed driving.

70. There are three Police Force country regions: Northern, Southern and Western. In each there are 11 or 12 Local Area Commands. Highway Patrol units are distributed among the Local Area Commands. The number of major highways in country NSW is relatively limited. There are about 30 highways which are designated as National Highways, National Routes and State Routes.[9] If members of the Highway Patrol who regularly patrol sections of highway accumulate local knowledge of traffic "black spots", as they demonstrably do, it is unclear why this knowledge could not be collated in documentary form for the use of local supervisors and VKG operators, new members of a local Highway Patrol unit and Highway Patrol units crossing boundaries during a pursuit. In other words, local knowledge could be disseminated to the region. The knowledge already resides in the Highway Patrol units. The real question is one of collation and dissemination.

71. It is not my purpose, or suggestion, that the Police Force identify every potential hazard on a highway. My suggestion is limited to identifying those areas that Highway Patrol officers themselves already regard as locations which they must treat "with respect" due to the inherent dangers of conducting high-speed pursuits through them. I doubt that in any patrol area on major highways there would be a large numbers of such locations. In this

[9] http://www.ozroads.com.au/NSW/Highways/highways.htm viewed 13/04/12.

case, the chase lasted about 16 minutes before one was reached. On the western slopes and plains they are likely to be few and far between although far more common on the coast and through mountain regions.

72. The recommendation is further limited to the identification of locations that are inherently hazardous due to their *permanent* features, such as the topography, rather than because of temporary conditions such as roadworks or weather conditions. (I presume that the Highway Patrol and other police would keep up to date with such developments.)

73. Against this background, and taking into account the submissions of the NSW Police Force, I have decided to make seven recommendations concerning the issue of "traffic zones" and the Safe Driving Policy. In addition to the matters outlined above, the recommendations touch on communication between cars and supervisors, training and a suggestion that the Safe Driving Policy be amended to establish a default position that pursuits will not be conducted through "traffic red zones" unless there is at least a strong countervailing reason to continue.

74. A further proposed recommendation was that the Safe Driving Policy be amended to include a specific reference to the number of occupants in the pursued vehicle as one factor to be taken into account in the decision whether or not to terminate the pursuit. I appreciate that it is not always possible to determine how many people are in a car. I also appreciate that it is already a requirement that police pursuing vehicles alert VKG to the number of occupants, if that is possible, so that appropriate support can be provided to the pursuit vehicle. It is not my intention that pursuits necessarily be terminated in situations when the targeted car contains an arbitrary number of people. Rather, the intention is explicitly to emphasise the added risk of loss of life, or serious harm, as the number of occupants increases. This recommendation has been accepted by the NSW Police Force.

[redacted]

76. One reading of the policy is that a Category 4 vehicle ought to terminate its part in the pursuit once a Category 1, 2 or 3 vehicle takes over the pursuit.

77. Another interpretation is that if the Category 4 vehicle has commenced a pursuit in a remote location and the pursuit is then taken up (as in this case) by a higher category vehicle, the Category 4 vehicle may continue its pursuit but as a secondary vehicle.

78. In this case, the police officers involved both in the pursuit and in supervising appear either to have adopted the second interpretation or not to have considered the question at all.

79. The proposed recommendation perhaps did not make sufficiently clear the issue that was of concern. As a consequence, the response from the Police Force related to the definition of Category 4 vehicle. The recommendation has been redrafted.

Conclusions

81. There are about 1600 police pursuits in NSW per annum although this varies from year to year.[10] According to figures published recently in the *Sydney Morning Herald*, since 2004 police pursuits in NSW have resulted in 15 deaths and 388 injuries.[11] Of the fifteen killed, seven were offending drivers, six were passengers and two were bystanders. Of the injured, 71 were bystanders. (The article did not identify the numbers of police officers injured during pursuits but none have been killed in that period.) The number of pursuits has fallen from 2145 in 2004-05 to 1652 in 2010-11.

82. Although most pursuits end without anyone being injured, all high-speed pursuits are inherently risky and it is entirely unpredictable which ones will end fatally or in serious injury. The risks of police pursuits are greater for the pursued than for the police pursuing them. This is probably because the police are generally more skilful and experienced but

[10] "Fall in police chases attributed to tighter pursuits policy" *Sydney Morning Herald* 5 January 2010.
[11] "Police car chases have led to 'terrible toll' of 15 deaths" *Sydney Morning Herald* 6 April 2012.

also because the police control the pursuit more than the driver of the vehicle being pursued. All pursuits involve a fine judgment for the officers involved and those controlling or monitoring the pursuit. They must balance the potential risks with the need to enforce the law. That balance may alter during the course of the pursuit as conditions change. Accident research has shown that for every fatal or serious accident, there are many more near misses and minor incidents.[12] The fact that most pursuits do not result in serious harm is not a cause for complacency because in many instances serious accidents have probably been avoided by luck rather than good management.

83. With the benefit of hindsight it can be seen that it would have been appropriate and preferable for this pursuit to have been terminated before it reached Bolivia Hill.

84. It is possible that if the pursuit had been terminated earlier Mr Pappin may not have driven so dangerously down Bolivia Hill. Nevertheless, given his previous history of dangerous driving and the manner he drove under police observation on the night of 18 January, this accident may well have happened anyway once the pursuit began. In my view, the police officers in New England 208 did not cause this fatal accident.

85. The real cause of the accident was that Mr Pappin not only refused to stop but accelerated to a very high speed, probably exceeding 140 kph, on the northern descent of Bolivia Hill. The car's tyres lacked tread and he lacked sufficient skill and experience to handle the car safely on that challenging stretch of road. He also lacked the judgment and "common sense" to slow down and drive to the conditions rather than attempting to seize the opportunity to widen the gap between his vehicle and the following police car.

86. Graham Johnson was an innocent victim caught in this web of circumstances. Mr Pappin is serving a prison sentence as a result of Graham's death but that can be no comfort to his grieving family. I hope that the recommendations that I make below will improve the safety of police pursuits in future and reduce the chances of other families suffering the devastating loss that the Johnson family has borne.

87. I offer the grieving family, especially Graham Johnson's parents and his twin brother David, my sincere condolences and respects.

---

[12] See, for example, the "Heinrich accident triangle" which posited that for every serious workplace accident there were 30 accidents of similar nature that caused minor injury and 300 near misses. The safety expert Herbert Heinrich argued that addressing the root causes of commonplace accidents that caused little or no harm would reduce the prevalence of the serious accidents.

Findings: s 81 Coroners Act 2009

88. I find that Graham Johnson died on 18 January 2009 on the New England Highway, Bolivia Hill approximately 16 kilometres north of Deepwater, New South Wales as a result of blunt force head injuries inflicted while a passenger in a motor vehicle driven by Benjamin Pappin which crashed while being pursued by the NSW Police Highway Patrol.

Recommendations: s 82 Coroners Act 2009

89. I make the following recommendations to the Commissioner of Police:

(i) That the NSW Police Traffic Services Branch develop a set of criteria in relation to the identification of locations outside major built-up areas on National Highways, National Routes and State Routes in NSW Police Northern, Southern and Western Regions which, due to known permanent road conditions that may be adverse to the continuation of a high-speed pursuit or known prevalence of serious traffic incidents, require monitoring and supervision pursuant to the "Pursuit Response – Roles and Responsibilities of Part 6(5)(a) and (b) of the Safe Driving Policy. Such locations to be distinguished in the Safe Driving Policy from radio "black spots" by an appropriate identifier such as "traffic red zones" or "traffic danger zones". (***Note***: In this recommendation "permanent 'traffic red zone'" is intended to connote to a section of highway on which there is significantly increased risk in conducting a high-speed pursuit due to permanent topographical features or road characteristics even in good weather with good road surface and light to moderate traffic compared with relatively safe or unchallenging sections.)

(ii) That the Commander of the Traffic Services Branch require each Highway Patrol in the Northern, Western and Southern Regions to collate and provide to him, or his delegate, information identifying permanent "traffic red zones" in its patrol area and that the Traffic Services Branch then collate and disseminate that material in suitable form to VKG and regional Duty Officers and supervisors.

(iii) That the NSW Police Safe Driving Policy be amended to require all persons conducting monitoring or supervision of pursuits to take into account traffic "red zones" being approached in the course of the pursuit in determining whether to permit a pursuit to continue or be terminated.

(iv) That the Safe Driving Policy be amended to establish a default position that *high-speed* pursuits will not be conducted through "traffic red zones" unless there are strong countervailing reasons for continuing the pursuit.

(v) That supervisors and monitors of police pursuits be given suitable training or induction in the location and characteristics of "traffic red zones" before being required to take responsibility for supervising pursuits in relevant areas.

(vi) That VKG and/or officers monitoring and/or supervising pursuits notify police vehicles involved in a pursuit that the target vehicle is approaching an identified "traffic red zone" when the target vehicle reaches a nominated distance from an identified "traffic danger zone". The appropriate distance should be determined by the regional Highway Patrol commander, the State Pursuit Management Committee or by some other suitable means. [***Note***: the appropriate distance may vary from location to location.]

[redacted]

[redacted]

[redacted]

Magistrate Hugh Dillon
Deputy State Coroner