# CORONERS COURT OF
# NEW SOUTH WALES

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| **Inquest:** | **Inquest into the death of**<br>**Peter Gordon WILSON** |
| **Hearing dates:** | 9 – 11 December 2008; 22-24 June 2009 |
| **Date of findings:** | 25 August 2009 |
| **Place of findings:** | Gosford |
| **File No.** | 1757/06 |
| **Findings of:** | Deputy State Coroner H.C.B. Dillon |
| **Findings:** | I find that Peter Gordon Wilson died on 11 November 2006 at Gosford District Hospital of the effects of multiple injuries inflicted when he was hit by a motor vehicle on the F3 freeway near Somersby. |

**Recommendations:**

***To the Commissioner of Police***

1. That the Commissioner have the current SOPs subjected to a full risk assessment by an independent expert or organisation.

2. That when the Police Force conducts its review of the current SOPs, it consider relevant and comparable international practice and gauge them in the light of *best* international practice.

3. That consideration be given to modifying the SOPs so as to prevent police from working on roadways unless protected by police vehicles or other stationary protective barriers placed in suitable positions by police. For the purposes of this recommendation, a civilian vehicle temporarily

stopped by police in a traffic lane is not considered a "stationary protective barrier" placed in a suitable position.

4. That consideration be given to the amendment of SOPs to make clear that as much warning as possible is to be provided by stopping police to targeted vehicles by using the warning lights on their police vehicles once a speeding vehicle is detected.

5. That the SOPs be amended to incorporate an *express* operating assumption that every time an officer attempts to stop an oncoming vehicle, he or she is exposed to a person who may deliberately, negligently or accidentally drive at them.

6. That all safety procedures referred to in the SOPs, including site assessment, escape routes, directions concerning walking on roadways, use of signals and so on, be based on the premise in Recommendation 5 and the exposure of officers to such drivers be reduced to the minimum necessary to conduct operations in accordance with that premise.

7. That consideration be given to eliminating traffic law enforcement operations by police on foot at multi-lane sites where the speed limit is 80 kph or greater and their replacement with other alternatives such as mobile speed cameras and vehicle-based lidars or other instruments.

8. That consideration be given to including within the Highway Patrol Education Program at Goulburn Police College, training dealing with the role of "human factors" in road accidents and in "danger experience" dealing with the police officer's perception of particular dangers which arise in stationary speed enforcement operations.

9. That consideration be given to expanding the Highway Patrol annual radar assessment to include education of a practical nature reinforcing the importance of "human factors" in road accidents and traffic law enforcement operations to counter any tendency to over-confidence in "danger perception".

10. That consideration be given to the creation within the Traffic Services Branch of a database recording information about sites used for stationary traffic

law enforcement operations, including details such as incidents, accidents and “near-misses” at such sites.

11. That, if established, the database be used to review and increase the safety of police methodology, for improvement of training of Highway Patrol officers and for the dissemination of relevant information to Highway Patrols in NSW.

***To The Minister for Roads***

12. That the Roads and Traffic Authority consider locating fixed speed cameras on freeways and motorways and other high-speed roads in areas (such as the “flight-deck” at Somersby) identified by the Police Force as being used regularly by motorists travelling at dangerous speeds whether or not they are also identified as accident “black spots”.

13. That the RTA place on its website detailed information, especially for inexperience drivers, about the potential hazards of approaching police traffic operations sites and the motorists’ responsibilities when doing so.

## REASONS FOR DECISION

1. Senior Constable Peter Gordon Wilson (known to his friends and loved ones as "Gordie") was a Highway Patrol officer conducting traffic operations, namely speed law enforcement using lidar, on the F3 freeway near Somersby on 11 November 2006 when he was struck by an out-of-control car travelling at high speed and so badly injured that he died of the effects of those injuries in Gosford Hospital later the same day.

2. The death on duty of a police officer inevitably raises profound and difficult questions about the nature of society and about the role of police within that society. That a man in the prime of his life, highly trained in a skilful profession, admired by his colleagues for his professionalism, should die suddenly and tragically due to errors made by human beings, leaving behind him a young woman and children and a circle of friends and colleagues who mourn him, indeed raises questions about the human condition itself.

3. As well as the philosophical questions I have touched on, the death of Senior Constable Wilson raises legal issues for determination by a coroner under the *Coroners Act 1980*. But this is no ordinary legal case in which rights and wrongs, duties and obligations are argued over and decided. It involves a tragic death which ought not to have happened. The facts in this case are plain. That being the case, the principal purpose for conducting this inquest has been to examine how Senior Constable Wilson found himself being run down by an out-of control motor vehicle travelling at high speed with a view to preventing a similar event recurring.

4. An inquest is a search for truth. It is intended to be an independent, objective, fair examination of the available evidence relating to the circumstances of a person's unexpected or unnatural death. It follows that a proper inquest is neither a witch-hunt nor a whitewash. Although it would be presumptuous of a coroner to believe that he or she can 'bring closure' to grieving families, a coroner's promise to seek ways of preventing further similar deaths can sometimes provide comfort to the surviving family members and, indeed, members of the wider 'police family' as Senior Constable Wilson's partner, Ms Kylie McFarland described it.

5. A properly conducted inquest ought also recognise the living human being whose death is the subject of the inquiry. Despite his death, it is the living Gordie Wilson who is commemorated. I am grateful to Ms McFarland for the help she gave me in understanding Senior Constable Wilson as she knew him and remembers him. Before I go on to deal

with the evidence about the incident and with the legal issues it is important to say a few words about Senior Constable Wilson the living person.

## "Gordie" Wilson

6. Kylie McFarland quietly shed a tear in giving evidence about "Gordie" Wilson. He was a Scot who had served in the RAF in Germany, the Falklands and the Gulf war zone but who had found what must have seemed to him to be peace and happiness on the far side of the world. He emigrated to Australia in 1995 with his then wife, Wendy and their three children. He joined the NSW Police in 1997 and the Highway Patrol in 2002.

7. He was also very involved in Scottish music. In the UK, he was a member of the RAF Pipe Band and when he came to the Central Coast he joined the Gosford City Pipe Band. At the time of his death he was sharing his life with Ms McFarland, a schoolteacher with a love of Scottish music and dancing whom he had met through the band.

8. Ms McFarland described him as 'funny, charismatic, very Scottish'. He was a proud family man who loved his children and kept in touch with his Scottish family.

9. She said that he had been proud to be a Highway Patrol officer. On occasion he would talk to her about some of the 'idiots' (as he described them) he had seen on the roads that day. She said that he had wanted people to get home safely to their families.

10. Other Highway Patrol officers spoke of him highly as a man and as a police officer. He was a dedicated police officer who won a posthumous Police Medal for his work on the Mooney Mooney Bridge disaster in 2004 in which a semi-trailer caused a 35-vehicle accident. He was a grave loss, not only to his family and loved ones but to the community he diligently served.

## The investigation of the incident

11. Where a coroner conducts an inquest pursuant to s.13 of the Act into an unnatural death, he or she must, if possible, make findings concerning the identity of the deceased person, the date and place of his or her death and, crucially, the cause and the manner of his or death. The findings must be recorded: s 22. A coroner also has a discretion, in an appropriate case, to make such recommendations that appear necessary or desirable relating to the death in question: s 22A.

12. If a person dies in the course of police operations, an inquest must be conducted by a senior coroner, that is, the State Coroner or one of the Deputy State Coroners: s 13A. Such inquests, of course, are very serious and the presiding Coroner is assisted in the investigation by a Critical Incident Team, a team of police officers from a Local Area Command different from that to which the involved officer or officers was attached. In this case, I have been very ably assisted by officers from the Tuggerah Lakes LAC, led by Det Chief Inspector Julie Hill. The thoroughness and professionalism of their investigation has been exemplary. I would also like publicly to acknowledge the work and the assistance given by other officers, especially Det Senior Constable Simon Wood and Senior Sgt Rob Lawson.

13. The Critical Incident Team did an extremely thorough and professional job in gathering and analysing the relevant evidence. The brief ultimately consisted of six lever-arch folders of statements, records, policy documents and other materials. Although I will refer only to a fraction of that material here, it was examined with care and take into consideration. I was also provided with a copy of an eight volume brief compiled by the Workcover Authority. Inevitably there was considerable overlap but it was useful to have, in particular, the report of Inspector Petar Ankucic of Workcover summarising his conclusions and views as well as those of Chief Inspector Hill and Senior Sgt Lawson of the Critical Incident Team.

## Issues to be explored

14. In her opening address, Counsel Assisting suggested that the inquest ought consider the following issues:

15. First, the coroner's statutory obligations to make various findings. I have touched on these above.

16. Second, in seeking to understand the manner of Sen Constable Wilson's death, she suggested that it would be necessary to consider the safety of officers undertaking stationary speed law enforcement duties. This in turn, she suggested, raised questions concerning the identification and evaluation of the risks involved in this inherently dangerous activity, the capacity of police to control and minimise those risks, and the techniques used by the Police Force at the time of Sen Constable Wilson's accident and afterwards to minimise the risks.

17. Third, she suggested that one of the functions of this inquest is to consider whether the Police Force has addressed the questions of risk satisfactorily and whether there are any recommendations that the coroner ought make. I will return to these questions after outlining in more detail the events of 11 November 2006.

## The events on the F3 at Somersby on 11 November 2006

18. In the late afternoon of 11 November 2006, Senior Constables Wilson and Scott Beverley were assigned to conduct stationary lidar operations on the F3 freeway at Somersby. They were to check northbound traffic. The method of the operation involved both officers being on foot and using the lidar instrument alternately.

19. They set up their police vehicle at a position about 90 metres south of a u-turn bay known as 'X32' which was close to the northern end of the 1.1km straight almost flat stretch of road known to some police as 'the flight deck'. The F3 at that position is a divided road with three lanes on each side of a wide vegetated centre island with a speed limit of 110 kph. The chosen position was on the centre island or median strip to right of oncoming traffic.

20. As the name implies, this is well-known by the Highway Patrol to be an area in which some motorists like to travel at very high speeds. One officer who gave evidence stated that he had once detected a motorist travelling at 187 kph. Speeds in excess of 130 kph are common there. Officers also gave evidence that a disproportionate number of P-plate drivers attain high speeds on this length of road.

21. The median strip was chosen because vehicles travelling in lane 3, the outside lane, tended to travel at higher speeds than vehicles in lanes 1 and 2 (the far left and middle lanes respectively), overtaking them.

22. Before Senior Constable Wilson's accident it was generally considered by the Brisbane Water Highway Patrol that to operate from the island made it easier and safer to pull up those vehicles travelling at excessive speed in lane 3. They also considered that it was less likely to lead to confusion to vehicles in other lanes if they could signal directly to vehicles in lane 3 from almost straight ahead rather than if they had attempted from beside the far left hand side of the road to signal to and stop vehicles on the far right hand side of the road in lane 3.

23. They did not turn on the flashing lights or the message bar of the police car although the Standard Operating Procedures then in force required this to be done. (I will return to this question below.)

24. The two officers were operational by about 5.45 pm. Before commencing operations, however, it was standard procedure for them to conduct what is known by the Highway Patrol as a 'site assessment'. This is a checklist which, it seems, becomes second-nature to experienced Highway Patrol officers. Senior Constable Beverley told the court that he had conducted the assessment mentally on arrival at the site and had filled out the required form after the incident. Whether

Senior Constable Wilson also conducted an assessment is unknown but seems likely. The site assessment process required the police officers to establish an escape route for themselves in the event of a vehicle losing control during a stop or of a motorist ignoring the direction to stop. That is another matter to which I shall return below.

25. Although the assessment process was apparently undertaken, this position was so well-known and so much used by Brisbane Water Highway Patrol officers that a track had been worn on the grass on the median strip by police cars parking in the same spot repeatedly. Because the process and the site were very familiar to the officers, it is likely that the assessment involved no fresh thinking about the inherent risks. I will return to the question of the effectiveness of the assessment process below.

26. The traffic infringement books used by Senior Constables Wilson and Beverley show that between 5.45 and 6.35 that afternoon they issued nine tickets to speeding motorists.

27. Just before 6.42 pm, Senior Constable Wilson was sitting on a bucket placed at the front nearside corner of the police car using the lidar instrument. Senior Constable Beverley was completing writing up a ticket he had issued a short time before. Approaching him at that time from the southern end of the 'flight deck' were several cars, two or possibly three of which shortly afterwards became involved in the accident which caused his death.

28. The first car, a green Mitsubishi Pajero 4WD driven by Ms Hannah Babcock, a 19 year old P-plate driver, was travelling in lane 3. Travelling behind her was a black Toyota Hilux twin cab utility vehicle driven by Mr Daniel Moir, an experienced driver aged 29 years. In lane 2 was a red Ford Falcon driven by Brendan McGrath.

29. Senior Constable Wilson checked the speed of one of the oncoming vehicles, locked the speed and distance of the vehicle on the instrument's display panel, placed it on the bonnet of the police car, picked up a blue 'STOP POLICE' sign and walked part of the way into lane 3 to signal the car to stop. Which vehicle he had intended to stop is not certain as the lidar instrument does not record a photograph or other identifying details of the offending vehicle.

30. At what precise distance Ms Babcock saw Senior Constable Wilson is not known. In her statement to police after the incident she estimated that she had seen him at about 30m distance. While I accept that this was an honest estimation, it is an implausibly short distance. If her speed had been about 120 kph, her vehicle would have been travelling at approximately 32 metres per second. At 130 kph she would have been travelling at approximately 36 m/s. Reaction times for drivers are commonly estimated as being roughly 1.5 to 2.5 seconds depending on

the stimulus prompting the reaction. Inexperienced drivers tend to react less quickly than more experienced drivers. It is therefore reasonable to assume that Ms Babcock saw Senior Constable Wilson at a range of at least 50 metres and more probably between 75 and 100 metres.

31. She assumed, possibly correctly, that the police officer wanted to pull her over for speeding. If hers was the offending vehicle, she had been detected travelling at 133 kph and most likely would have been aware that she was exceeding the speed limit as she would have been overtaking the stream of traffic in lanes 1 and 2.

32. Her reaction was to brake heavily. She did this to comply with the direction she perceived that the officer had given her. Her response may also have been subconsciously prompted by a desire to reduce her speed so as to mitigate the penalty she thought she was about to receive. In any event, she rapidly reduced her speed.

33. Mr Moir, travelling behind her at what may also have been an excessive speed but certainly at a distance which was too short to enable him to brake safely and avoid a rear-end collision with Ms Babcock, was forced by the suddenness of Ms Babcock's manoeuvre also to brake heavily and to swerve towards lane 2 in an attempt to avoid hitting her vehicle. Unfortunately, he was unable to do so.

34. The front offside corner of his truck struck the rear nearside corner of Ms Babcock's 4WD causing Ms Babcock to lose control. Her vehicle veered right and skidded, eventually turning $180^{o}$ and ending up in lane 2 facing south. As Senior Constable Wilson ran off the roadway to escape her out-of-control vehicle it struck him and threw him several metres into the vegetation in the central island.

35. Mr McGrath, thinking he had been signalled by Senior Constable Wilson, crossed from lane 2 to lane 3 before pulling up in the median island. Whether his manoeuvre also contributed to the confusion and chaos leading to the collision is difficult to say but it is possible.

36. A frantic search in the bushes by Senior Constable Beverley found Senior Constable Wilson terribly injured but alive. Ambulance and police were called urgently. He was conveyed to Gosford District Hospital in critical condition but, so badly had he been injured, his life could not be saved. If there is any comfort to be drawn from this very sad part of the story, it is that he died knowing that Ms McFarland was with him.

## What factors resulted in this accident?

37. The British psychologist and safety researcher, Professor James Reason, explains that in developing approaches to risk management there are two

fundamental approaches: the 'systems approach' and the 'persons approach'.[1] The 'persons approach' focuses on human fallibility and seeks to address that by training, education, litigation, discipline and publicity and so on. The issuing of traffic infringement notices to drivers is a classic example of this approach.

38. The 'systems approach' concentrates on developing systemic defences to human error. In analysing risk management in systems, Professor Reason developed what he called the 'Swiss cheese model of system accidents':

> Defences, barriers, and safeguards occupy a key position in the system approach. High technology systems have many defensive layers: some are engineered (alarms, physical barriers, automatic shutdowns, etc), others rely on people (surgeons, anaesthetists, pilots, control room operators, etc), and yet others depend on procedures and administrative controls. Their function is to protect potential victims and assets from local hazards. Mostly they do this very effectively, but there are always weaknesses.
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> 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.

39. This theory helps us understand the accident that resulted in Senior Constable Wilson's death – a large number of hazardous factors aligned at a certain time to 'permit a trajectory of accident opportunity' to develop into a full-blown catastrophe. What were those factors? In no particular order I will outline those that I consider contributed to this accident and discuss them.

### *(i) Exposure of police on foot*

40. At the time of the accident the Highway Patrol operated stationary lidar operations on foot close to or even on the carriageway of the F3 freeway. The risk inherent in standing close to traffic travelling at high speeds is self-evident.

41. Cars weigh about 2000 kg. A large police officer weighs about 100 kg. The fastest man on earth travelling at top speed can only run at about 10 metres per second. A car travelling at 130 kph is travelling at about 36 metres per second. The car will outrun the human being by several

[1] "Human error: models and management" (2000) *British Medical Journal* 320:768-770 ( 18 March)

orders of magnitude. A contest between the two is vastly unequal. If they get too close there can only be one result.

42. To protect police conducting lidar operations on foot, the 2004 Standard Operating Procedures[2] in force at the time required that Police conduct site assessments of any proposed lidar operations site, that an "exclusion zone" be established for each site, that police use illuminated stopping devices (orange cones attached to torches or other such tools), that clear signals be given to vehicles, that police be placed in well-lit, suitably protected positions, that police vehicles be placed in visible positions and that the roof bar or warning lights or both be illuminated, that care is taken not to select a vehicle being too closely followed by another and that a site supervisor control the site.

43. An "exclusion zone" was described by Det Chief Inspector Hill in her statement as a "recommended minimum distance for slowing down vehicles prior to stopping them".[3] The intention of establishing such exclusion zones is to allow sufficient distance for a vehicle being stopped to decelerate at a speed which does not create an additional hazard to the motorist, other traffic or the stopping police. The length of the exclusion zone depends not on the speed limit in the area but the speed of the oncoming vehicle. The SOPs warned police, "For safety reasons, exercise CAUTION if a vehicle falls within the Exclusion Zone prior to signalling it to stop." An exclusion zone of 198 metres was set in the SOPs for vehicles travelling at 140 kph. (The lidar instrument used by Sen Constable Wilson and his partner Sen Constable Beverley had an exclusion zone entered of 239m entered into its program. It seems that this was their rule of thumb in that location.)

44. The 2004 SOPs, while alluding to protection and the need for a "corridor of safety" provided little detail. In relation to "site management" and the question of protection, the SOPs stated that "any substantial facility will assist in protecting police". It then gave as examples of such facilities "vehicles, motor cycles, Armco railings, roadside furniture".

45. Although these SOPs recognised the needs for clear signals, for sufficient time and distance to be allowed for motorists being stopped and for protection of stopping police, they address only indirectly the problems of inattention or inexperience or outright malevolence on the part of motorists being stopped, as well as problems of visibility of police from quite lengthy distances. I will take up this problem under the next point

[2] Standard Operating Procedures for Stationary Speed Enforcement (Lidar) Operations, August 2004.
[3] Statement 24 April 2007 [152].

### *(ii) The road and freeway driving*

46. A number of characteristics of the road on which the police were operating made it an inherently very hazardous environment. By definition it was a high-speed road; the Somersby 'flight deck' was a long straight stretch lending itself to very high-speed driving by motorists; the opportunity for driving at significantly excessive speeds was consistently taken by motorists using the F3 in this location; it was a multi-lane road creating significantly more complex conditions for traffic control than on, say, a single lane one-way road in the suburbs; there were no safety barriers, except their own car, behind which the foot police could operate.

47. Freeways by definition are designed to enable vehicles to travel at high speeds for long distances. Moreover, they are designed to be "forgiving roads", that is, roads which to a large extent protect drivers against their own mistakes. There is virtually no chance of a head-on collision, the stream of traffic moves at similar speeds by and large, there are well-understood conventions that the far right-hand is to be used for overtaking, the roads curve gradually and is cambered correctly, median strips and breakdown lanes and even brake failure ramps are engineered into the design and guardrails are frequently employed.

48. Traffic studies have demonstrated that, paradoxically, building "safe" roads will lead to high speeds. Tom Vanderbilt, in his book *Traffic: Why we drive the way we do (and what it tells about us)* quotes a psychologist employed by the US Federal Highway Administration: "If you build a road that's wide, has a lot of sight distance, has a large median, large shoulders, *and the driver feels safe*, they're going to go fast" (emphasis added).[4]

49. While high speeds are obviously more dangerous inherently than low speeds, they are not necessarily unreasonably dangerous. The real problem with high speed driving comes when insufficient margin for error is left by drivers. This is more likely to come about due to inattention than to deliberately reckless or dangerous driving. If a driver feels safe travelling at high speed (perhaps well above the speed limit), it is also commonsense that he or she will not be as alert and attentive as a driver who has a sense of anxiety about the risks of the road ahead.

50. In such a situation a driver may become inattentive to his or her speed or, due to complacency, leave insufficient margin for error on his or her own part or the part of other motorists. One witness who gave evidence spoke of having been "in the zone" at the time he was detected travelling at 138 kph on "the flight deck" a short time before Sen Constable Wilson's accident.

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[4] Allen Lane, London 2008 p.181.

51. Senior Sgt Robert Lawson, a member of the Critical Incident Team and a Highway Patrol officer of vast experience since becoming a specialist in the field in 1988, outlined in his statement to the court and his oral evidence some of the special factors that come into play when motorists are travelling on freeways. He stated, "High Speed Highways such as the Pacific Highway (north coast of New South Wales) and very long travel times at those high speeds introduce factors such as complacency, boredom and an inability to judge stopping distances."[5]

52. In short, police conducting lidar operations may well have a clear understanding of what they are doing and be highly alert to the risks of their environment but be dealing with people who have "tuned out" until they are taken by surprise.

53. From a systemic point of view, hindsight suggests that the Police Force was insufficiently alert to the risks posed to police of operating on foot on freeways. The 2004 SOPs allowed for stationary lidar operations to be conducted by Highway Patrol officers on foot provided that certain conditions were met. The current SOPs now prohibit police to operate on foot to conduct stationary lidar duties on the F3 and similar high-speed roads.

### *(iii) Excessive speed*

54. Possibly due to their complacency about their own safety, the drivers involved in the accident were almost certainly travelling at excessive speed in the circumstances as they approached Sen Constable Wilson's position on 11 November 2006. Those circumstances included their own experience, their reaction times, their attentiveness, the weather and road conditions, the time of day, the types of vehicles they were driving, the braking distances of their cars, the distances they were keeping from each other, and the fact that foot police were operating in the area signalling them (or one of them) to stop.

55. Stopping distances are somewhat variable but tables published in *Britt's Traffic Law (NSW)* taken from NSW and Victoria Police sources suggest that the average stopping distance for an alert driver operating a car in good condition on a dry, sealed road travelling at 130 kph is about 100 metres.[6] This distance includes distance covered during reaction time.

56. To stop safely and not to create a hazard to others, a driver travelling at 133 kph had to see and react to a police signal to stop at least 100m from that officer. That in turn raises a further problem. The exclusion zone,

[5] Statement dated 3 November 2008.
[6] 9th edition, Law Book Co, Sydney, 2002 Tables 4 and 5 pp 1186-1187.

to provide a sufficient margin for safety, had to be very long. This created a high potential for signalling difficulties.

***(iv) Signal interpretation and stopping distances***

57. A signal given to a motorist who is among other vehicles 100 or more metres away from the signalling officer is very likely to be ambiguous and difficult to interpret due to the distance itself: the length of a football field or more. At that distance a pointed arm or, even worse, a blue Stop Police sign, might appear to be directed at a number of vehicles.

58. When signalled, a motorist must first interpret the signal. If the signal is ambiguous in the mind of a driver, this is likely to cause confusion and to add considerably to reaction time and therefore stopping time.

59. Signals may be ambiguous for a number of reasons. For example, they may be difficult to see. They may be given in a manner which is either unusual or unfamiliar to motorists in general or individual motorists. An individual may be inexperienced in perceiving the intentions of the signaller. The signal may not sufficiently clearly addressed to the motorist or to another motorist to allow all who see it to recognise the intended recipient of the message.

60. (Middle-aged and elderly drivers are old enough to have seen police on point duty controlling traffic on a regular basis during peak hours. They became familiar with such police operations. It is now rare to see police on foot controlling traffic except at accident sites or when traffic lights fail and younger motorists accordingly have usually had far less experience in interpreting police hand signals than older people.)

61. In this case, the evidence from a number of the road users on the F3 at the time suggests that some, at least, were confused by the signal given to them by Sen Constable Wilson. This is not to criticise him, as such, but it highlights the difficulty of conveying appropriate messages to individual motorists who may be more or less attentive or more or less capable of correctly interpreting the signals.

62. Hannah Babcock told investigators that she had been unsure to whom Sen Constable Wilson's signal was directed although she thought he was pointing at her. Sally McIlvenie travelling in lane 2 at 110 kph told the investigators that she had not been sure whether the police officer wanted her stop as she approached him. Brendan McGrath also had the same experience of thinking that the police officer may have been signalling to him. His passenger, Rhiannon Condliffe thought not but appears to have been uncertain. Det Inspector Hill, in her comprehensive statement describing the investigation, considered that there had apparently been some uncertainty by motorists and that the

"clarity or otherwise of the signal was affected by interpretation by a number of individuals".[7]

63. Mr McGrath drove into lane 3 from lane 2 before stopping because he was confused about whether he was required to stop. Whether this was in itself another hazardous manoeuvre is difficult to say but changing lanes in such circumstances surely carried with it certain risks. This was a consequence of the problem of signal interpretation.

### *(v) Motorists' surprise and lack of early warning of Police presence*

64. Despite the fact that this area is probably well-known by frequent users of the F3 as a speed trap, the drivers involved in the accident (and indeed some others that day) were apparently unaware of this and did not expect to see the Highway Patrol near the X32 bay.

65. Vanderbilt observes that traffic studies show 'inattentional blindness' to be the cause of many accidents known as 'looked but did not see' accidents.[8] (In the UK these are known as 'SMIDSYs' or 'Sorry-Mate-I-Didn't-See-You' incidents.) This appears to be the explanation for many accidents between cars and bikes. An American psychologist, Steven Most, cited by Vanderbilt, commented on this phenomenon:

> The common intuition is that we first see things in the world and then interpret the scene in front of us… It is possible that the idea you have in mind actually precedes the perception and affects what you see. Our expectations and knowledge of what's in a scene affects what we see in a scene.[9]

66. It is self-evident that the motorists streaming along the 'flight-deck' well above the speed limit at more than 130 kph did not expect to see police there. They were, therefore, not on the lookout for signs of police presence. Had they been they would almost certainly have been travelling less quickly.

67. Moreover, the police presence was not obvious until the motorists were quite close to the site of the police operations. They had not been prompted into a state of alertness and modified their driving accordingly. If, because of their low expectations, they were inattentive to the possibility of a police presence this would very probably have reduced the reaction time available to the motorists once they saw the police officer.

68. Evidence was given by Sen Constable Beverley that the police car's warning lights were not illuminated. He told investigators frankly that

[7] Statement 24 April 2007 [154].
[8] Traffic (2008) p.83.
[9] Traffic (2008) pp.83-84.

the lights had not been illuminated because the back of the police car was concealed by bushes in the median strip. He also stated, "Let's be honest, to be effective you need to be where people don't expect you to be, for example at that location we get some big speeds up to 150 km/h plus and yet there is a speed camera not more than a kilometre north of that location."

69. This was illuminating evidence, highly illustrative of the tension for Highway Patrol officers between being "effective" and being safe. Effectiveness in this case probably contributed to reducing the time available for motorists to see, identify, interpret and react to the presence of police. This, of course, probably increased the numbers of available "targets" for the police but reduced their own margin of safety.

70. It is apparent that there is a cultural tension within the Highway Patrol between the organisational imperative to catch and deter dangerous motorists and the need to preserve the safety of its own officers. For example, one officer gave a statement to the Critical Incident Team that the 2007 SOPs adversely affected the Highway Patrol's 'core business' (namely, catching offending motorists).

71. This is not to say or imply that the Traffic Services Branch managers are cavalier in taking risks with the lives of their staff. Nor is it to suggest that Highway Patrol officers are 'cowboys'. There is a recognition within the service that Highway Patrol work is inherently dangerous at any location because of the unpredictability of the behaviour of some motorists, of machinery and motor vehicles and because of other factors such as hazardous objects falling onto roadways. In my opinion, however, there may be an overemphasis on, as one officer put it, 'catching and killing their own' targets to the detriment of the safety of police and road safety strategy in general.

72. In this case, the location used regularly by the Brisbane Water Highway Patrol was, due to the overgrowth of vegetation on the central island, concealed from motorists until they were at a short distance from the lidar site. Evidence was given by some officers that without the ability to conceal themselves they would have significantly reduced prospects of detecting and apprehending the most dangerous of the speeding motorists. Yet concealment increased the risks to the officers working at this site.

### *(vi) Median strip operations*

73. The police were operating from the central island rather than from the left hand side of the road. One of the major reasons for operating from the median island was the view taken by those who assessed the site that it was safer to operate there than on the left hand side of the road.

74. In our system of traffic management, motorists are trained when stopping generally to pull over to the left. With experience this becomes an almost automatic and subconscious process. We also have become used to police operations, such as Random Breath Test stops and suburban speed traps with lidar or stationary radar operators, to be conducted from the left of the carriageway.

75. Paradoxically, while it was a concern for safety that largely provided the rationale for the island operations, this procedure, in my view, almost certainly added to the element of surprise experienced by Ms Babcock and other motorists and therefore to the risks of such operations.

### *(vii) Training and experience of police in relation to "human factors"*

76. One of the curious pieces of evidence given in this regard was in relation to site assessment of the site on the F3 at which Sen Constables Wilson and Beverley were operating. According to the local procedures, they were to conduct a site assessment every time they went to the site. Yet this was one of five sites which were regularly used by the Local Area Command year in and year out.

77. Presumably the assessment done was in regard to variables such as lighting conditions, weather and traffic density rather than to the things that stayed the same, such as the length of the road and the speed limit. As far as this process went, it was probably reasonable. The problem was a more general one of recognising that the risks at the site came not from the site itself but from the unpredictability of traffic behaviour, the lack of any real ability on the part of the police to control that behaviour except by revealing their presence in a timely way, and the extreme vulnerability of a pedestrian to an out-of-control vehicle.

78. This apparent obliviousness of the true nature of the risks to foot police on the freeway is difficult to understand. In May 2000 Sgt Mark Johnson was run down by a motorist while conducting speed detection operations on Budgewoi Rd, Noraville. In that case, the motorist, a disqualified driver under the influence of alcohol, driving an unregistered vehicle, appeared to increase speed and swerve toward the officer. Sgt Johnson was hit and badly injured. The incident resulted in a Workcover prosecution under the Occupational Health and Safety Act 1983 of the Police Force for failing to maintain a safe system of work.

79. The unusual combination of circumstances may have led the Police Force to discount it as a rare event which it undoubtedly was. Whether or not that is so, other incidents might have been expected to cause a radical rethink within the Police Force of its speed law enforcement policies and procedures before Sen Constable Wilson was killed. A profound reconsideration of the policies ought to have taken place, in my

opinion, because not only were operations by foot police on the F3 dangerous to the police conducting them but also to motorists whom the police were seeking to manage.

80. Although in his statement to the investigators he had described this site as "extremely safe", Senior Constable Beverley, by a terrible coincidence, had been hit by a vehicle in 2003 while conducting lidar operations very close to the site where Sen Constable Wilson's accident took place and nearly killed. The main result of the Beverley incident is that exclusion zones were enlarged but operations continued.

81. Sgt Darren Ellis, another very experienced Highway Patrol officer, told the investigators about a number of alarming incidents he had witnessed during police speed detection operations. He stated among other things[10]:

> It is very evident from the very frequent use of the site, that a point 250-300 metres prior to the police vehicle the speed of the vast majority of vehicles drop as they identified the Police "speed trap". This is the case for all lanes and not just lane 3.
>
> This distance I have noticed and accepted allows motorists to safely brake prior to the Police vehicle if the need arises provided they are focussed on the surrounding traffic environment. From my experiences I have discovered that [for] those motorists who are not focussed, no amount of safe working distance will prevent them from becoming involved in a traffic incident…
>
> Having worked the F3 freeway for the last 5 years, I am constantly amazed at the driving practices I witness on that road both on and off duty…
>
> I have also formed the opinion from my extensive Highway Patrol experience that you can never predict the actions or abilities of another driver.
>
> Using the F3 Somersby as an example, I have witnessed a motorist come to a total stop in lane two for no other reason than the fact they see a Policeman on the side of the road. I have witnessed persons on seeing Police believing they are travelling too fast, harshly braking causing them to lose control of their vehicle, crash or veer dangerously across lanes.
>
> I have witnessed people although not detected/ directed by Police attempt to evade Police by changing lanes without looking. I have witnessed motorists become [mesmerised] by the Police and make lane changes without checking other lanes prior to proceeding into them.
>
> I have seen people failing to look far enough ahead to read the traffic situation and collide with the rear of a slowing vehicle. I have seen vehicles watching Police activities and not the road and collide with other vehicles.

82. To be fair, he also stated that while performing lidar duties on the F3 he had never had a near-miss with a vehicle and had never seen a vehicle so

[10] Statement dated 13 January 2007.

confused it caused a traffic incident. (This evidence, however, appears inconsistent with the evidence stated above.) He was another officer who, despite the incidents he outlined above, thought that lidar operations on the F3 were fundamentally safe.

83. The Critical Incident Team were able, with considerable difficulty, to identify several incidents of the nature described by Sgt Ellis which occurred while police were conducting traffic operations on foot.

84. On 16 May 2000, a Senior Constable Bruinenberg had his foot run over by a motorist while conducting random breath tests on the Pacific Highway in Gordon. More pertinently, on 18 May 2000, the incident in which Sgt Johnson was critically injured took place.

85. As already mentioned above, on 30 August 2003, Sen Constable Beverley was injured on the F3 conducting lidar operations. Many of the features of the Wilson incident were also present in that case: a car in lane 3 was pulled over by police; a car behind that vehicle braked heavily and swerved into the breakdown lane hitting Sen Constable Beverley.

86. An incident somewhat similar to that suffered by Sgt Johnson took place in Coffs Harbour on 1 October 2005. While conducting lidar operations on foot in a 60 kph zone, a Senior Constable Cooper was run down, possibly deliberately, by a motor cyclist. He suffered a badly broken leg in the accident.

87. On 3 November 2006, Mr James Potter was travelling north on the F3. He described a near miss with a P-plate driver who swerved into his lane (lane 2) from lane 3 when a police emerged from the centre island holding a blue "STOP POLICE" sign. This resulted in another P-plate driver ahead of that vehicle to brake heavily forcing the second P-plater to take evasive action nearly hitting Mr Potter. Mr Potter also braked heavily on seeing the police officer. It seems that the officer with the sign was Sen Constable Wilson. Mr Potter was so concerned about the dangerousness of the incident that he later complained to Wyong police.

88. On 30 November 2006, another officer, was almost hit by a motor cyclist on the Pacific Highway near Banora Point while conducting Automatic Number Plate Recognition System operations. That incident led to a pursuit during which the motor cyclist crashed and suffered fatal injuries.

89. The evidence from numbers of motorists that the police operation was, from their point of view, unsafe cannot be overlooked or discounted. Although she later qualified her oral evidence somewhat, the opinion offered in her statement to the Critical Incident Team by Sgt Suzanne Rode-Sanders, an off-duty police officer, that the operation was unsafe was a powerful one. She was a passenger in a motor vehicle being

driven by her daughter. After her daughter had been pulled over by an officer who walked into lane 3 to signal the car travelling at 134 kph, her spontaneous reaction was, "That's the most dangerous thing I've ever seen."

90. She told the investigators that she that she thought that the manner in which her daughter had been pulled over was dangerous. She made the very telling point that she had identified the presence of police well before her daughter had and had been able to warn her to slow down. Even so, her daughter had had to brake heavily to stop as directed. She said, "Also my greatest concern was that although I don't believe the officers were doing anything wrong as such, I was very concerned that they relied greatly on the driving ability and reaction time of the general public which obviously varies greatly."

91. The above evidence, combined with that of Sgt Ellis and other Highway Patrol officers who spoke candidly during the inquest about the dangerous unpredictability of motorists, suggests that, while the Police Force acknowledged before Sen Constable Wilson's death that the Highway Patrol work is inherently hazardous, it tended to regard such incidents as aberrations and occupational hazards which constituted an acceptable risk for an organisation (the Highway Patrol) dedicated to improving road safety for the benefit of the wider community.

92. If that is so, the death of Sen Constable Wilson, and indeed the injuries to other officers, must call that view into question. The ultimate reason for the Highway Patrol's existence is not to raise revenue but to increase road safety. It is surely a paradox that police operations designed to improve road safety can, in some cases, result in *increased* danger to motorists and police on the roads.

93. I acknowledge that the Traffic Branch and the Police Force as an organisation is alive to the challenge that this paradox presents. There are no easy answers and there is no single solution to the problem of dangerous driving and speeding on our roads. If there were, I am confident that the Police Force and traffic authorities would have discovered and implemented it long ago. I also acknowledge that these comments are made with the glorious clarity hindsight provides. The halt in such operations on high-speed roads demonstrates that the Highway Patrol has learned at least one lesson from the death of Sen Constable Wilson and that it is attempting to find ways of fulfilling its duties in a manner less dangerous to its own officers.

94. Senior Sgt Lawson, who has undertaken specific training in respective of "human factors" in motor accidents, outlined a large number of them in his statement:

> It is my experience from "working Highway Patrol duties" that different locations bring with them specific and unique difficulties and challenges

> with respect to the focus of traffic enforcement (ie speed detection, alcohol impairment, fatigue, heavy vehicle offences, pedestrian offences, etc), the nature and topography (high speed road, low speed heavy density environments, poor quality surfaces, concrete surfaces, tunnel environments) and demographics (Anglo-Saxon, Asian, Middle Eastern) and to a lesser extent socio-economic environments.
>
> The driving abilities of the general motoring public differ from driver to driver including individuals' motivation not to obey the law, reaction times, danger/risk perception, familiarity with the locality, perceived, known or threat of enforcement and the individual's perceived or known personal outcomes of being detected by police.
>
> Similarly, the abilities of different police officers in any locality is founded on their experience and exposures during their careers.

95. Senior Sgt Lawson's qualifications include not only his in-house police training and experience but also tertiary study at the University of New England in Road Safety. That training included study of "human and vehicle factors in road crashes and causation factors in road crashes." It would be facilely incorrect to suppose, however, that his primary qualification to offer these opinions is academic. It is his enormous experience that primarily gives his views their weight and cogency.

96. Despite the depth of experience of the two officers, and the routine nature of the operation in which they were engaged, their training in site assessment and in a *full* understanding or weighting of the risks involved in traffic management at this particular location, may have been deficient. If they had a deficient understanding of the risks involved in lidar operations on the F3, they were not alone.

97. Sgt Chad George, a very experienced Highway Patrol officer and a Team Leader at the Brisbane Water LAC, was asked by the investigators for his assessment, from a safety perspective, of the site. After describing the features of the site, he told them that in his view the site was "the safest spot to perform Lidar on the freeway within our command to my knowledge". That, of course, was a relative judgment, comparing this site with others on the freeway, but it seemed to imply that Sgt George considered that it was a safe place at which to conduct these operations.

98. His reasoning, however, seems to have been based largely on the topography and physical conditions of the site – the sighting distance of about a kilometre of straight road, the lack of obstructions, the good road surface, plenty of room for stopping vehicles, an escape route for police and a clear view to the rear for vehicles leaving the stopping zone. He did not mention or appear to advert to driver behaviour, except when mentioning an escape route for police, when offering his opinion about the safety issues.

99. It may be that 'human factors' of whatever sort are accepted somewhat fatalistically as an occupational hazard by the Highway Patrol because the obvious difficulty for any officer standing by the side of the road is to assess those factors personal to the oncoming motorist. In most cases, he or she simply would not be in a position to tell whether the targeted motorists have homicidal grudges against police, are "in the zone", are being distracted by children in the backseat or countless other factors which may significantly elevate the risk to police officers.

100. One witness, Sgt Darren Ellis, said that for this reason he had a rule of thumb that he treated the oncoming motorist to be stopped as operating at about 75 per cent of the worst case: in short, he treats them with considerable caution and provides for a large margin of error.

101. It makes sense that police should treat oncoming vehicles as potentially driven by a person with poor driving ability rather than the reverse. A margin for error is thus theoretically factored in. Yet it may well be that precisely because these drivers are inferior or sub-standard that they breach the law and come to the notice of police and thereby create greater risks to the stopping police than other drivers would in the same circumstances.

102. The real dangers to police operating on foot are likely to be from (a) people who drive at police to prevent detection or apprehension or (b) who drive through police stops for the same reason or because of gross inattention or (c) who lose control of their vehicles in attempting to stop. It would make better sense if the SOPs reflected these scenarios as operating assumptions than leaving officers, through their own experience, to develop rules of thumb. In my view, the SOPs ought be formulated on the assumption that the motorist being stopped will not do so and may either try to harm the officer or lose control of his or her vehicle. Safety procedures in the SOPs and training in relation to them ought, in my view, be developed on that assumption.

103. A number of officers gave oral evidence during the course of the inquest on the topic of training and information-sharing. After Highway Patrol officers finish their specialist training the evidence given at the inquest suggested that there is relatively little formal training provided at later stages in their careers, although there appears to be a constant stream of information being provided via email and other sources.

104. I accept that for the type of work Highway Patrol officers do the most valuable training is that on-the-job supervised skills work they already do. Some lecture- type training is also essential in relation, for example, to traffic legislation as it changes or as Police policy is amended. I also accept that some skills, once learned, become habits.

105. Nevertheless, because of what seem to me to be deficiencies in the capacity of the Traffic Services Branch adequately to assess the risks

being run on a daily basis by its officers, a reassessment of training might well be beneficial to all members of the Highway Patrol.

### *(viii) Over-confidence*

106. Linked to the issue of training in 'human factors' and the question of the tension between risk and over-caution, is the question whether an element of over-confidence in their own ability, skill, experience and training to analyse and manage the risks at this site had infected the Brisbane Water Highway Patrol as a unit prior to 11 November 2006.

107. Despite the fact that Senior Constable Beverley had been badly injured in an accident very similar to that suffered by Senior Constable Wilson, despite the fact that Senior Constable Beverley had observed a traffic accident involving civilian vehicles caused by drivers apparently confused by police signals and operations at that site, despite complaints being made by furious motorists about the perceived hazards that police speed detection operations had caused in that area on previous occasions without damage being done, the Brisbane Water Highway Patrol maintained stationary lidar operations on the site until Senior Constable Wilson was killed. The site assessments conducted by the Brisbane Water Highway Patrol all passed the site as suitable for stationary lidar operations.

108. In my opinion, the opinions expressed by a number of very experienced officers of the Brisbane Water Highway Patrol that this site was acceptably safe suggests to me that not only did they give insufficient weight to the question of "human factors" but also overestimated their own ability to anticipate and avoid the sorts of hazards that nearly killed Sen Constable Beverley and fatally injured Sen Constable Wilson. That degree of self-confidence, as we now know, was unwarranted.

109. There may be other factors but these seem to me to stand out.

## The complexities of traffic law enforcement

110. The Police Force in general and the Highway Patrol in particular are not blind to the complexities and dilemmas that traffic law enforcement presents. They are many and varied.

111. Speed cameras and other forms of automatic technology cannot solve all the problems. Some motorists will break speed laws regardless of the presence of a camera: they may be driving stolen vehicles or simply have an "outlaw" attitude to traffic laws. Cameras are unsuitable for use in some locations.

112. Significantly, motorists may not be aware of the presence of a camera and break the law unwittingly or before they can slow down sufficiently to avoid triggering the device. The lengthy delay in the processing of traffic infringement notices means that the behaviour of the motorist is unlikely to be modified by receiving a ticket in the mail. Highway Patrol officers, however, contend that their experience shows that motorists issued by a ticket are likely, at least for the remainder of their journey, to adjust their driving behaviour by slowing down and becoming more observant of traffic rules.

113. Traffic studies and the experience of the Highway Patrol also shows that motorists will slow down when in range of fixed speed cameras but speed up again when out of range: this is known as the "halo" effect. Thus cameras have limited range of influence over driving conduct. (This effect also operates around police cars on the road and on known stationary speed traps.) The real question is how to extend the halo effect where that would be prevent accidents and dangerous driving.

114. Despite the limitations of fixed speed cameras, there have been proven benefits from them in modifying the behaviour of ordinary motorists in accident 'black spots'. On high-speed roads, where the main traffic law enforcement problem is to reduce speeds, there is a strong argument for increasing the number of cameras, especially in areas known for dangerously high speeds.

115. In a recent article in the *Sydney Morning Herald*, Professor Raphael Grzbieta of the Injury Risk Management Research Centre at the University of NSW argued for the introduction of between 50 and 100 mobile, covert speed cameras:

> Why do we need covert cameras? Research has shown that the unpredictability of enforcement cameras ensures a consistent deterrent effect… [The NSW road-safety strategy] has probably gone as far as it can without a major program on speeding. There is now a simple choice between more mobile safety speed cameras or more deaths and road carnage.[11]

116. If Professor Grzbieta correctly assesses the effectiveness of mobile cameras in moderating traffic speeds, the argument for installation of more cameras on the F3 and other freeways and motorways seems compelling. The argument becomes even more forceful when the risks involved in speed law enforcement by police are considered, especially the risks to police on foot.

117. (I understand from the same *Sydney Morning Herald* story that the NSW Government is considering the introduction of mobile speed cameras. For this reason I propose no recommendations concerning them.)

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[11] "Solving road-toll problem a snap: covert speed cameras" *Sydney Morning Herald* 25 July 2009

118. In the course of this inquest, it has been argued by the Police Force and by officers of the Highway Patrol that the effect of a police officer stopping a motorist when an offence is fresh in his or her mind is likely to have a greater impact on modifying the motorist's behaviour than receiving a ticket in the mail weeks after the event.

119. I agree in part with this proposition. Certainly it seems commonsense that a traffic stop by police is likely to have a short-term effect on a motorist's driving behaviour. On the other hand, while a fine for a camera-detected offence is an irritant for most motorists and probably does little more than make them more careful to look out for cameras, the loss of points and the possibility of the loss of licence is the real deterrent. It is unlikely that many drivers would roar up the "flight deck" at high speed if they knew that they would be photographed, fined and lose points for doing so. This modification of driving behaviour in known "black spots" is one of the major rationales for speed cameras.

120. As has been noted, however, cameras are unlikely to modify the behaviour of "rogue" motorists. Only the threat or reality of a police presence, or their own sense of self-preservation, is likely to contain them.

121. One way the halo effect could be extended on the F3 or other high-speed roads with few exits would be for motorists to be notified by signs (such as the large electronic RTA signs installed at strategic locations along the length of the freeway) that mobile camera speed traps were in operation at different locations on the freeway.

122. This is not a fool-proof scheme. The Police Force would have to commit the Highway Patrol resources to this task. That may not be the optimum use of those assets The RTA signs would have to be truthful or the effect would be of 'crying "Wolf"'. If the signs were truthful, an unlit sign would suggest to motorists that the coast was clear.

123. The alternative to lidar operations on foot is for police to operate their instruments from stationary vehicles which can then chase offending vehicles – "check-and- chase" or "chip-and-chase" operations. While such operations are self-evidently safer for police, they have disadvantages. High speed pursuits are inherently dangerous. Moreover, pursuits are time-consuming and take the police away from the area they are seeking to control. If one of the objects of having police conducting lidar operations is to catch as many speeding motorists as possible with a view to modifying their driving conduct, the "chip-and-chase" method is far less efficient than having police conduct the operations on foot.

124. This is not to argue for the elimination of the Highway Patrol from freeways. They remain a valuable and, indeed, indispensable part of any road safety strategy for high speed roads due to their mobility.

Nevertheless, a road safety or law enforcement strategy which has the unintended consequence of placing police officers and members of the general public at risk cannot be accepted. I note that the Police Force no longer uses foot police on freeways for traffic law enforcement duties.

125. In my view, there is a strong argument for greater reliance on fixed and mobile cameras to modify traffic speeds on freeways and high speed roads. This is especially so along stretches identified by the Police Force as magnets for motorists travelling at very high speeds, such as the Somersby "flight deck". The Highway Patrol, using lidar and "chip-and-chase" could also provide a significant presence on such stretches of road Whether the presence of the Highway Patrol is concealed or broadcast to the world is a matter of fine judgment beyond my expertise. It is a matter which ought be considered by road safety experts.

126. Traffic law enforcement in other areas, such as school zones, appear to me to be more complex. This inquest has been focussed on primarily on the dangers to police and motorists on freeways. That operations on roads where speed limits are considerably lower can also be very dangerous to foot police is demonstrated by the incidents referred to above at Gordon, Noraville, Coffs Harbour and Banora Point. No doubt there have been many other near-misses which the records did not allow the Critical Incident Team to identify. That the Police Force has no centralised record-keeping system for identifying such incidents is a concern that, in my opinion, needs to be addressed.

## The current Standard Operating Procedures

127. The March 2007 SOPs, which were introduced after extensive review of the incidents involving Sgt Johnson and Sen Constable Wilson, appear to me to contain a significant number of problematic features. I will not attempt a full analysis but offer a number of examples:

128. First, the SOPs contemplate foot police conducting speed law enforcement operations and other traffic operations on roads with speed limits in excess of 80 kph. This seems to me to be potentially very dangerous.

129. Second, on roads where the speed limit is 80 kph or less, they appear to contemplate police officers walking onto multi-lane roads stopping traffic as they go as shields until they reach the lane of the targeted vehicle. The potential for misunderstanding, rear-end collisions and vehicles being cannoned into foot police in the fashion that Ms Babcock was shunted towards Sen Constable Wilson strikes me as obvious.

130. Third, the SOPs also direct that "when selecting vehicles from lanes of traffic, police will use caution particularly when that vehicle is being

followed or is in close proximity to other vehicles". This direction does not appear to me to give due weight to the potential for rear-end and other types of collisions between a vehicle being stopped and another in close proximity.

131. Fourth, the dangers of stopping civilian vehicles on roadways for use as shields do not seem to me to have been properly weighed. Traffic approaching the stopped vehicle(s) is unlikely to be expecting vehicles to be stationary in the middle of the road and may, due to "human factors", have insufficient time to halt or manoeuvre around the stopped vehicle safely. Again, this procedure seems to be unsafe.

132. Fifth, police are directed that when walking onto multi-lane roads to stop target vehicles they must use "clear and precise directions/signals". I infer from the SOPs that the general practice is no longer to use the blue 'Stop Police' sign that Sen Constable Wilson used when working on the F3 but the SOPs do not make this explicit. As a number of Highway Patrol officers remarked in their evidence, the sign can confuse motorists because motorists they may not understand to whom it is directed. Nevertheless, the SOPs do not make it clear that the sign ought not be used on multi-lane roads.

133. Other questions could be asked about the SOPs. In my view, a thorough reconsideration of them is needed. I will expand on this view below.

## What changes ought be made ?

134. During the inquest, a number of draft proposals by Counsel Assisting for recommendations were discussed and considered. Valuable input was received from the legal representatives of some of the interested parties. Further submissions were later received from the Commissioner of Police.

135. I have considered the responses to the draft proposals, most of which the Commissioner did not support, and the recommendations made by Inspector Ankucic of the Workcover Authority. I have also had the benefit of further submissions from Workcover and from Mr Madden, representing Sen Constable Wilson's family.

136. While I accept that proposing limitations on the way that police traffic law enforcements be conducted may, in some respects, result in the restriction of the capacity of the Highway Patrol (and General Duties police assisting them) to carry out operations, it seems to me that the response I have received to the draft recommendations implies that the Commissioner (or those advising him) does not fully comprehend the gravity and unpredictability of the 'human factors' risks to which Highway Patrol officers are subject on a daily basis. It is for a good

reason that Sen Constable Beverley has decided not to conduct lidar operations on foot but has adopted the "chip-and-chase" method instead. He has learned a terrible lesson in the hardest way. I am doubtful, however, that the Police Force as an organisation has learned all that it should have from his experience and those of Senior Constable Wilson, Sgt Johnson and other police officers.

137. Until the Police Force fully grasps and weighs the risks its officers are exposed to, it is not in a position to weigh the real and potential costs and benefits of its methodologies. Highway Patrol officers are entitled to a full understanding of the risks they face when performing their duties. In my view, there is a real need for the SOPs to be subjected to a full risk assessment by an independent expert or organisation. That will be one of my recommendations.

138. (The Monash University Accident Research Centre or the Injury Risk Management Research Centre at the University of NSW may be suitable bodies to conduct such an assessment but, if the recommendation is accepted, it would be for the Commissioner to determine.)

139. In addition to anything that such a risk assessment may lead to, the SOPs, in my view, need urgent revision to incorporate an *express* operating assumption that every time an officer attempts to stop an oncoming vehicle, he or she is exposed to a person who may deliberately, negligently or accidentally drive at them. All safety procedures, including site assessment, escape routes, directions concerning walking on roadways, use of signals and so on, ought be based on that premise and the exposure of officers to such drivers be reduced to the minimum necessary to conduct operations. I will make a recommendation to that effect.

140. In his report, Inspector Ankucic noted that "anecdotal evidence suggests that only a handful of international law enforcement agencies in developed countries perform speed enforcement in this manner" and that most international law enforcement agencies in developed countries used the "check-and-chase" method instead of using foot police in lidar operations.

141. Unfortunately, this was not amplified by him and the sources of his information were not identified. I did not request the Critical Incident Team to explore this issue. In hindsight, it would have been useful to do so. In my view, when the Police Force reviews its Standard Operating Procedures in the light of Sen Constable Wilson's fatal accident and my findings, it ought take into account international best practice. I will make a formal recommendation to that effect.

142. A proposed recommendation that the Police Force consider prohibiting police on traffic operations from entering a roadway except where protected by a parked police car was opposed by the Commissioner on

the grounds that it would inhibit school zone operations and Random Breath Test operations.

143. I recognise that any recommendation I make will properly be subjected to scrutiny by professionals in their field. The first argument I make in counter-point is that I do not seek to interfere with police operations but ask that Commissioner *consider* prohibiting police from walking onto roadways unless protected by police vehicles. There may be good reasons, as the Commissioner's submissions suggest, why, in certain circumstances, police officers ought be allowed to walk onto roadways to conduct traffic operations. I do not propose a blanket rule but a full assessment of the risks and benefits of modifying the current SOPs.

144. The second proposal floated was that the Commissioner consider amending the SOPs to make clear that speed law enforcement operations not be conducted covertly but that as much warning as possible be given to oncoming traffic.

145. The Commissioner accepted this with a suggested modification as follows:

> That consideration be given to the amendment of the standard operating procedures to make clear that as much warning as possible be provided by the stopping Police to vehicles by utilising the warning lights on the Police vehicle once the speeding vehicle is detected.

146. The rationale for this suggestion was that it would enable police to conduct "discrete" operations "while ensuring that vehicle stopping activities give appropriate warning to road users."

147. I am content with the general tenor of the Commissioner's counter-proposal. I have no issue with covert speed detection operations per se. One of the primary concerns that Sen Constable Wilson's death has raised is that the stopping procedures must give the driver targeted and other motorists sufficient warning and margin for error to enable the stop to be made safely. How that is done is not for me to prescribe but for the professionals to establish after consider the relevant risks.

148. The third proposed recommendation floated during submissions was that consideration be given to prohibiting stationary speed law enforcement operations (meaning operations conducted on foot) at multi-lane sites with speed limits of over 80 kph but that consideration be given to replacing them with alternatives such as the "check-and-chase" technique and the greater utilisation of speed cameras.

149. The Commissioner opposed this suggestion on the basis that it would reduce the ability of police to enforce the law and because cameras and "check-and-chase" methodologies had limitations.

150. As I have noted above, I accept that cameras and "check-and-chase" have their limitations. Until, however, the Police Force has conducted (or had conducted on its behalf) a thorough risk assessment of its stationary lidar operations it is not in a position to properly assess the costs and benefits of its current methodologies or a different combination of speed cameras and mobile Highway Patrol operations. In any event, my recommendation is that the Commissioner consider these matters before rejecting the idea.

151. Another proposal was that the Police Force conduct ad hoc audits and inspections to ensure compliance with SOPs. I am informed that this is being done. There is no need for further recommendation in that regard.

152. The fifth proposal was that officers of the Highway Patrol undertake annual training dealing with the role of human factors in road accidents and in "danger experience" to heighten an officer's perception of particular dangers that may arise during stationary speed law enforcement operations.

153. This suggestion was developed because of a view that I had formed that police may, once experienced in the conduct of traffic operations, become blasé about the dangers. The Commissioner has, with some modification, indicated his support for this recommendation.

154. The sixth proposal was that the Traffic Services Branch of the Police Force create a central database recording such information as sites to be used for stationary speed law enforcement operations incidents including "near-misses" occurring at those sites. It was suggested that the information be reviewed regularly and any relevant findings conveyed to the relevant Highway Patrols in the regions or Local Area Commands.

155. The reasons for this proposal were, first, that, during its investigations, the Critical Incident Team had had great difficulty finding evidence of other dangerous traffic incidents involving the Highway Patrol. This suggested that senior police management would also have a great deal of difficulty in finding such material if they needed it.

156. The usefulness of such material being collected and centralised is that lessons learned (or not learned) at local level could be disseminated across NSW. Senior management may be in a position to view trends or detect issues that are not necessarily immediately discernible at local level or whose wider significance is not perceived at local level. Senior management, having greater access to sources of information such as road safety research, ought also be in a better position than Local Area Commanders or LAC Highway Patrol supervisors to assess and, if necessary, amend operational policy.

157. For example, if traffic police in a particular area confronted some sort of issue only rarely, it may appear to them to have relatively little

significance. But if that issue was arising across NSW, senior management would be in a much better position than a Local Area Commander to assess the true significance of that issue.

158. It is a puzzle to me how the Police Force could accurately assess not only the types of risks its Highway Patrol officers actually face while conducting their operations but the true extent of them unless it gathered the data. Unless it gathers the data the measurement of risk will remain largely speculative and based on unreliable anecdotal evidence. The experience of the Critical Incident Team of the difficulties of finding records of incidents in which police officers were placed at hazard during traffic operations suggests that the senior management of the Police Force would also have a similar difficulty. If so, it may be out of touch with the risks run on a day-to-day basis by Highway Patrol officers.

159. It is true, as the Commissioner submits, that LACs are responsible for managing their risk and are in the best position to act on any dangers. Whether they are in the best position to *assess* the risks, as the Commissioner also asserts is, however, a highly contestable proposition. In my view, there is a strong argument for both a central and a local intelligence capability to be implemented. I am, of course, not blind to the facts that implementing such a system may be costly and time-consuming. Whether the proposal is practicable is difficult for me to assess. But an out-of-hand dismissal of a recommendation that may save the lives of police officers and others on our roads is unsatisfactory.

160. The final proposal was that consideration be given by the Roads and Traffic Authority to developing an information brochure highlighting drivers' responsibilities when approach police traffic law enforcement operations. This suggestion arose from some American material supplied to me by the Critical Incident Team.[12]

161. Senior Sgt Lawson put forward the suggestion that motorists needed to be more alert and responsive to police signals. That a significant number of motorists gave evidence to the inquest that they had been confused about what to do when they saw police operating on the F3 indicated to him that they lacked sufficient understanding of their own responsibilities. While I do not believe it was a major factor in Sen Constable Wilson's accident, there is probably some force in the argument. How the problem is best addressed is another question. Commonsense suggests that the best way of learning how to approach a traffic stop is to (a) learn the relevant road rules and (b) gain some experience during driving training. Perhaps, as in the two American

[12] Ex 13: "When Stopped by a Police Officer": an internet article on the website of the Marion Police Dept www.marionpolice.org/when_stopped.htm; "What to do when stopped by a Police Officer" – an internet article on the Charlestown Police Dept site www.charlestownpolice.org .

examples, the better way may be to invite the RTA to post some advice on its website, especially in the section for learner drivers.

## Findings

162. I find that Peter Gordon Wilson died on 11 November 2006 at Gosford District Hospital of the effects of multiple injuries inflicted when he was hit by a motor vehicle on the F3 freeway near Somersby.

## Recommendations

***To the Commissioner of Police***

1. That the Commissioner have the current SOPs subjected to a full risk assessment by an independent expert or organisation.

2. That when the Police Force conducts its review of the current SOPs, it consider relevant and comparable international practice and gauge them in the light of *best* international practice.

3. That consideration be given to modifying the SOPs so as to prevent police from working on roadways unless protected by police vehicles or other stationary protective barriers placed in suitable positions by police. For the purposes of this recommendation, a civilian vehicle temporarily stopped by police in a traffic lane is not considered a "stationary protective barrier" placed in a suitable position.

4. That consideration be given to the amendment of SOPs to make clear that as much warning as possible is to be provided by stopping police to targeted vehicles by using the warning lights on their police vehicles once a speeding vehicle is detected.

5. That the SOPs be amended to incorporate an *express* operating assumption that every time an officer attempts to stop an oncoming vehicle, he or she is exposed to a person who may deliberately, negligently or accidentally drive at them.

6. That all safety procedures referred to in the SOPs, including site assessment, escape routes, directions concerning walking on roadways, use of signals and so on, be based on the premise in Recommendation 5 and the exposure of officers to such drivers be reduced to the minimum necessary to conduct operations in accordance with that premise.

7. That consideration be given to eliminating traffic law enforcement operations by police on foot at multi-lane sites where the speed limit is 80 kph or greater and their replacement with other alternatives such as mobile speed cameras and vehicle-based lidars or other instruments.

8. That consideration be given to including within the Highway Patrol Education Program at Goulburn Police College, training dealing with the role of "human factors" in road accidents and in "danger experience" dealing with the police officer's perception of particular dangers which arise in stationary speed enforcement operations.

9. That consideration be given to expanding the Highway Patrol annual radar assessment to include education of a practical nature reinforcing the importance of "human factors" in road accidents and traffic law enforcement operations to counter any tendency to over-confidence in "danger perception".

10. That consideration be given to the creation within the Traffic Services Branch of a database recording information about sites used for stationary traffic law enforcement operations, including details such as incidents, accidents and "near-misses" at such sites.

11. That, if established, the database be used to review and increase the safety of police methodology, for improvement of training of Highway Patrol officers and for the dissemination of relevant information to Highway Patrols in NSW.

***The Minister for Roads***

12. That the Roads and Traffic Authority consider locating fixed speed cameras on freeways and motorways and other high-speed roads in areas (such as the "flight-deck" at Somersby) identified by the Police Force as being used regularly by motorists travelling at dangerous speeds whether or not they are also identified as accident "black spots".

13. That the RTA place on its website detailed information, especially for inexperience drivers, about the potential hazards of approaching police traffic operations sites and the motorists' responsibilities when doing so.

Magistrate Hugh Dillon
Deputy State Coroner