

SOUTH



AUSTRALIA

## FINDING OF INQUEST

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> days of August 2003 and the 7<sup>th</sup> day of November 2003, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Brenton Maurice Goldsmith.*

*I, the said Coroner, find that, Brenton Maurice Goldsmith aged 19 years, late of 9 Gaden Street, Mount Gambier, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 2<sup>nd</sup> day of May 2001 as a result of a head injury.*

### 1. **Introduction**

- 1.1. Brenton Maurice Goldsmith was born on 7 December 1981. He died on 2 May 2001 as a result of injuries he received when the motorcycle he was riding collided with the kerb on the southern side of Port Road, Allenby Gardens and he was thrown onto the footpath and sustained severe head injuries.
- 1.2. At the time of his death, Mr Goldsmith was being pursued by police officers in several vehicles because he had committed several offences.
- 1.3. The incident has been the subject of an extensive investigation by a team led by Inspector Jim carter of the Major Crash Investigation Section of South Australia Police (SAPOL), at the direction of the Commissioner of Police. This process is known as a 'Commissioner's Enquiry'.

- 1.4. Mr Goldsmith had not been apprehended, and no form of physical restraint had yet been placed upon him, and so it could not be said that he had been ‘detained in custody pursuant to an Act or Law of the State’ within the meaning of Sections 12(1)(da) and 14(1)(b) of the Coroners Act 1975 which would render an inquest into his death mandatory.
- 1.5. A protocol for investigation into deaths in custody developed pursuant to the recommendations of the Royal Commission into Aboriginal Deaths in Custody includes situations such as the death of Mr Goldsmith in the sense that his death occurred while police were attempting to detain him.
- 1.6. The Coroners Bill 2003, which was assented to on the 31 July 2003 as Act No. 33 of 2003, but which is yet to be proclaimed, includes in the definition of ‘death in custody’ the ‘death of a person who was evading apprehension by a person authorised to do so under any Act or Law of the State’, in this case, a police officer.
- 1.7. In those circumstances, and having regard to the issues which have arisen in this case, I have deemed an inquest into Mr Goldsmith’s death ‘necessary’ and ‘desirable’ within the meaning of Section 14(1)(a) of the Coroners Act.

## **2. Events leading to the fatal incident**

- 2.1. At about 8:00pm on Wednesday 2 May 2001, Mr Michael Potiuch parked his Yamaha 250cc motorcycle, registration number TGV-288 in the Adelaide University car park near Kintore Avenue, Adelaide (see Exhibit C7a, p1). Mr Potiuch later reported the motorcycle stolen when he returned to the car park and found it had been taken.
- 2.2. The motorcycle was next seen by Mr Jonathon Todd at about 8:15pm that evening being ridden in a westerly direction along the path between Government House and the Torrens Parade Ground towards King William Road. The headlight was on, the rider was not wearing a helmet. Mr Todd said:

‘As the motorcycle reached the King William Road footpath, I heard the engine rev loudly and saw it accelerate rapidly. The motorcycle travelled in a westerly direction from the eastern footpath and travelled straight across the left-hand southbound lane of King William Road. I had to brake harshly to avoid colliding with the motorcycle. It appeared to me that the rider made no attempt to avoid me and I thought that he had actually tried to hit me.’ (Exhibit C8a, p2)

Mr Todd had been riding a bicycle at the time.

- 2.3. At about this time, Senior Constable Andrew Edwards was driving a Holden Rodeo utility 'cage car' north along King William Road when he saw the motorcyclist. His version of these events is a little different from that of Mr Todd, in that he said that the motorcycle was being ridden north along the eastern footpath of King William Road at 40-50kms per hour, it then went north-west, diagonally through the intersection of Victoria Drive and King William Road against the red traffic light, then accelerated north on King William Road, and then turned left into Victor Richardson Road. Edwards said that he saw the rider look over his left shoulder at him in the marked police vehicle (T21). He decided to follow the motorcycle having regard to its manner of driving. He followed it across the lawned area of Pennington Gardens at about 50kms per hour, onto Pennington Terrace and headed west at about 80kms per hour, then left to travel south on Montefiore Road at about 80 kms per hour, accelerating through the intersection of War Memorial Drive and Montefiore Road and south over the Morphett Street bridge at about 120 kms per hour. At this point, Edwards said that he was about 200 metres behind the motorcycle, travelling at 100-110 kms per hour (T44).
- 2.4. Ms Jackie Mibus was a passenger in a car on King William Street and she saw a motorcycle travelling north in the southbound carriageway of King William Street, and saw it weave through stationary traffic which had stopped at the traffic lights outside the Festival Theatre. This location is further north than the point at which Mr Todd thought he saw the motorcycle cross to the northbound carriageway, and tends to support Edwards' version of these events.
- 2.5. Ms Mibus also supports Edwards' evidence that he was following the motorcycle, rather than chasing it at speed, through the parklands. She said:
- 'The police vehicle didn't appear to be chasing him, just following. They didn't appear to be travelling very fast.'
- (Exhibit C9a, p3)
- 2.6. When Edwards advised the Police Communications Centre (COMCEN) that the motorcycle was travelling at 120 kms per hour across the Morphett Street Bridge, he received an instruction from Senior Sergeant Darryl Anderson, the Shift Manager for the Adelaide Local Service Area, to terminate the pursuit. Edwards said that he complied with this instruction by slowing down and turning off his dome lights, but

he continued to follow the motorcycle and saw it turn left into Hindley Street to travel east.

- 2.7. Edwards said that he was following the motorcycle at a distance of about 200 metres when he saw the motorcycle mount the southern footpath of Hindley Street and then travel east on the southern footpath at about 60 kms per hour. He said:

'I saw the motorcycle still travelling east on the southern footpath at about 60 km/hr and I saw a Police Officer in uniform standing on the southern footpath and facing west, indicating to the rider of the motorcycle to stop, by placing his right hand forward of his body to a stop position. I saw the motorcycle approach the officer and swerve to the left, colliding with the officer and then continue to travel east. I immediately notified Police Communications that a Police Officer had been hit by the motorcycle and accelerated east after the motorcycle, reactivating my dome lights.' (Exhibit C56, p3)

- 2.8. At this time, the transcript of radio transmissions records that Edwards said:

'He's tried to knock a member down, I'm re-pursuing him, re-pursuing him, he's tried to take a member out, approaching King William Street.' (Exhibit C52b, p2)

- 2.9. The police officer with whom the motorcyclist collided was Constable Aaron Galwey, who had stepped onto the footpath in an attempt to get the motorcyclist to stop, or at least to drive back onto the roadway. He put his right arm out in the traditional signal to stop, with his palm forward. He said that the motorcyclist looked straight at him, and then changed direction and rode straight at him on the footpath. Constable Galwey said he panicked and jumped to his right, and he felt his left forearm being struck as the motorcycle went past. Constable Galwey did not fall to the ground, and immediately starting running after the motorcycle (T596). He later discovered that he had suffered some musculo-ligamentous damage to his left shoulder as a result of the collision.

- 2.10. This incident was also witnessed by a number of civilians. Anthony Tudorovic estimated the speed of the motorcycle on the footpath at 40kms per hour (Exhibit C10a, p2). Lisa Harvey saw the motorcycle swerve, but she thought the rider was trying to dodge the police officer, and that he missed him by less than a metre (Exhibit C11a, p2). Arthur Gilbert thought the motorcycle swerved towards the police officer, who may have fallen (Exhibit C13a, p2). Dimitrios Koutroubis thought the police officer tried to grab the rider of the motorcycle (Exhibit C16a, p2). Shaun Reid saw the motorcycle go straight at the police officer, and the police officer try to grab the motorcyclist as he went past (Exhibit C17a, p3). All of these witnesses

described the manner in which the motorcycle was ridden on the footpath as 'dangerous' or 'very dangerous'.

- 2.11. Edwards followed the motorcycle as it turned left into King William Street, travel north and then turn left again into North Terrace to travel west. He said he pursued the motorcycle at speeds of up to 90-100 kms per hour down North Terrace, and that as he was following the motorcycle, he saw the rider waving his left fist in the air (T27).
- 2.12. Leonard Spencer, a civilian, saw the motorcycle turn left into King William Street and accelerate so hard that the front wheel was 'a good foot off the ground' (Exhibit C18, p2). He saw the motorcycle swerve to avoid a taxi which was pulling out from a hotel opposite Parliament House, and then swerve to miss Mr Spencer's vehicle which was facing East. He said he saw the rider's eyes were 'very wide open, as if in fear'. He thought that the motorcycle missed his car by less than a metre as it headed west down North Terrace, still accelerating (Exhibit C18a, p2)
- 2.13. Shaun Hughes was driving his car west along North Terrace and saw the motorcycle followed by a number of police vehicles in his rear view mirror. He slowed to stop at a red light at the Morphett Street junction. He saw the motorcycle go through the junction without slowing down. He said the first of two police patrol cars was 4 to 5 car lengths behind the motorcycle as it went through the red light. After the traffic light turned green and he moved off, Mr Hughes saw another sedan and a cage vehicle (presumably Edwards' vehicle) then pass him with their lights flashing. He said that the sedans also had their sirens on, but the cage vehicle did not (Exhibit C19a, p3).
- 2.14. As Edwards proceeded along North Terrace, his police cage vehicle was overtaken by a marked police Commodore sedan being driven by Constable Stokes with Constable Lind as passenger. They became the lead vehicle in the pursuit.
- 2.15. Soon after this occurred, Inspector Ashley Lange, the State Duty Officer, and Senior Sergeant Anderson both issued a further instruction to terminate the pursuit. They did so on the basis of information received via the radio transmissions, recorded in Exhibit C52b as follows:

'AD1: King William Street now North Terrace. Left onto North Terrace.  
COMCEN: The speed please?

AD1: About 90 kmh – still, now heading West, North Terrace, approaching Victoria Avenue, 100 kilometres an hour.

COMCEN: Roger, west, North Terrace, approaching Victoria.

AD1: .....now approaching Morphett Street, coming up to a red light, he's crashing the red light.

COMCEN: He's crashed through a Red light.

MITRE 20: .....

AD1: Roger, there's a patrol behind me if they can take over, patrol behind me, he's approaching West Terrace.

COMCEN: From the Bridge and from the Mitre, terminate please.

AD1: Following at distance, approaching Barracks now, if there's any Starry's here, just to reiterate, he's tried to kill a member.

COMCEN: Yes, Roger, I have got that on the job. Adelaide One. I have been told by the Bridge to terminate though. He is approaching Barracks.

AD1: Going through Barracks intersection now, I am not chasing.

COMCEN: Not chasing – but through Barracks intersection.' (Exhibit C52b)

- 2.16. Despite the direction to terminate, the police cars continued to travel at high speeds. For example, Antonio Taddeo was driving west on Port Road past the Thebarton Police Barracks when he was passed by a number of police vehicles, who were not leading the pursuit, and he estimated their speed at 90 to 100kms per hour (Exhibit C20a, p3).
- 2.17. Edwards continued to follow the motorcycle and by this time he had regained the position of lead vehicle in the pursuit, passing Constable Stokes and Constable Lind at the intersection of North Terrace and West Terrace as they had been delayed by traffic. He said that because the pursuit had been terminated, he turned his dome light off again and reduced his speed to 60 kms per hour (T24). He continued to follow the motorcycle down Port Road to the intersection of Port Road, George Street and East Terrace at Thebarton where the motorcycle entered the car park at the rear of the Squatters Arms Hotel.
- 2.18. Kerrie Tassone was driving north on East Terrace, Thebarton. She stopped at the intersection of Port Road, George Street and East Terrace, and the traffic light applicable to her changed to green so she accelerated from about 50kms per hour to 60kms per hour. When she was only about 15 metres south of the intersection, she saw a motorcycle cross with her lane travelling west, at about 80 to 90kms per hour. She slammed on her brakes to avoid colliding with the motorcycle.

- 2.19. Edwards did not follow the motorcycle into the Squatters Arms Hotel car park but rather drove into George Street, when the motorcycle suddenly appeared again from the rear of the hotel and then travelled about 50 metres in front of his vehicle west along George Street. Edwards said that he had decided to 'let him go' by this stage until the motorcycle suddenly reappeared. As he followed the motorcycle down George Street, he saw the rider waving his left fist in the air and kicking out his left leg (T33).
- 2.20. At the intersection of George Street and South Road, Edwards said that the motorcycle accelerated again to about 80 kms per hour, disobeyed the red light and turned right and travelled north along South Road on the eastern (incorrect) side of the road. He said that it then mounted the footpath and rode along the footpath at approximately 60 kms per hour.
- 2.21. Joshua Tai saw the motorcycle being ridden on the east footpath of South Road. He thought it was travelling at 30kms per hour rather than 60 (T??) Mark Jarman, who was in another car, thought that the motorcycle was travelling at about 50kms per hour on the footpath (Exhibit C23a, p2). Chris Zacharia estimated its speed at 60kms per hour (Exhibit C24a, p2), and Norbert Raetzsch thought that it varied between 40 and 70kms per hour (Exhibit C25a, p3).
- 2.22. Edwards said that as the motorcycle was ridden along the footpath at between 30 and 60kms per hour, it crossed nine streets and through one set of traffic lights and one set of pedestrian lights. It disobeyed the red traffic lights at the intersection of South Road, Grange Road and Manton Street, Hindmarsh, weaving slowly through traffic which was stationary at the lights. It then travelled north on the footpath for a short distance before moving across the raised median strip onto the correct side of South Road and continued to travel north at about 60 kms per hour. It then turned left onto Port Road and travelled north-west at about 70 kms per hour. Edwards followed the vehicle, travelling at about 100 kms per hour at about 200 metres behind the motorcycle. He explained that at this stage he was merely trying to keep the motorcycle in sight (Exhibit C56, p5) rather than catch up with it.
- 2.23. Another police marked commodore sedan passed Edwards along Port Road about 500 metres east from East Avenue at Beverley. This commodore contained three police officers, members of the Special Tasks and Rescue (STAR) Group. The driver was

Senior Constable Preston, and Senior Constables Wood and Zaloumis were passengers.

- 2.24. Christos Nestor was a console operator employed at the Mobil Service Station at Port Road, Welland. He saw the motorcycle pass his location in the middle lane, and he estimated its speed at not less than 110kms per hour. Soon afterwards, a police car went past at what he estimated was not less than 120kms per hour. From the evidence this was probably the officers from the STAR group.
- 2.25. By the time the motorcycle was in Port Road it was being pursued by at least five marked police vehicles. The STAR Group officers, having passed Edwards in the caged vehicle, took the lead. Estimates of the speed of the motorcycle and of the police vehicles varied considerably. Traffic in all four lanes of Port Road for northwest-bound traffic were stopped at a red light at the Port Road/East Avenue intersection. The speed of the motorcycle slowed as it approached the intersection, in the lane closest to the median strip and then swerved across all four lanes towards the left hand side of the road, striking the southern kerb and throwing the rider onto the footpath. The motorcycle then collided with a street sign and came to rest. The rider was propelled forward across the footpath and his head then contacted a raised (damaged) section of the gutter on the eastern side of East Avenue, flipping him into the air. He came to rest on the eastern carriageway of East Avenue.
- 2.26. Preston drove the police vehicle onto the footpath and parked it near where the motorcycle had come to rest. Wood and Zaloumis ran to Mr Goldsmith, as did other officers, to render first aid. An ambulance was called immediately as he was still breathing and a pulse could be detected. He was bleeding profusely from wounds to his face and head.
- 2.27. Hospital treatment
- Mr Goldsmith was conveyed by ambulance to the Royal Adelaide Hospital, arriving at 8:51pm. Emergency treatment had been administered in the ambulance including cardiopulmonary resuscitation and ventilation. Unfortunately, by the time he was examined by Dr Mark Wadsworth, the Trauma Registrar in the Emergency Department, Mr Goldsmith had no spontaneous cardiac output and he did not respond to intravenous fluid including adrenaline. Resuscitation was seized at 9:01pm, and Dr

Wadsworth certified life extinct at that time. (See the Royal Adelaide Hospital case notes Exhibit 55).

### **3. Cause of Death**

3.1. A post mortem examination of the body of the deceased was performed by Professor R W Byard, Forensic Pathologist on 4 May 2001 at the Forensic Science Centre. Professor Byard found a depressed stellate (star-shaped) fracture of the skull with diffuse subarachnoid haemorrhage, together with a degloving injury to the scalp and minor abrasions to the limbs.

3.2. A toxicological analysis of Mr Goldsmith's blood was performed and disclosed that the blood contained 0.195% alcohol. No amphetamines, benzodiazepines, cannabinoids, methadone, opiates or tricyclic antidepressants were detected in the blood (see Exhibit C6a).

3.3. Professor Byard commented:

'Death was due to a stellate fracture of the skull with marked underlying subarachnoid haemorrhage. No other significant injuries were found. There were no underlying organic diseases which could have caused or contributed to death.

The head injury present is of a type that is usually prevented by the wearing of a safety helmet. An additional factor in this case was the presence of a blood alcohol of 0.195% which would have significantly impaired attention, judgment and reaction time. The injuries present were consistent with the details of the accident as provided.' (Exhibit C5a,p1)

3.4. Dr Ernest Flock, a legally qualified medical practitioner and police medical officer, expressed the following opinion in relation to Mr Goldsmith's blood alcohol level:

'At this level, the majority of persons would appear drunk in that they would exhibit uninhibited behaviour, emotional instability, impaired concentration associated with drowsiness, slurred speech and impaired sensory and neuro-motor coordination. Consequently the ability to effectively control a motor vehicle would be impaired especially under 'emergency' or dense traffic conditions.' (Exhibit C30a, p1)

3.5. Professor Jason White, from the Drug and Alcohol Services Council, described the effect of a blood alcohol concentration of about 0.20% as:

'Sedated rather than active, may be sleepy. Impairment now includes slurred speech, clumsiness, reduced responsiveness, and marked intellectual impairment.'

(Exhibit C29a, p5)

#### **4. Mechanical Inspection**

- 4.1. On Tuesday 8 May 2001, Mr Eliot McDonald, a qualified motor mechanic employed by the Major Crash Investigation Unit examined the Yamaha XT250 motorcycle, registration number TDV 228. Despite the damage, Mr McDonald was able to carry out a short road test and determined that the motorcycle braked and performed well. He determined that the motorcycle was in reasonable condition and could find nothing mechanically wrong that would have contributed towards or caused a loss of control or collision (Exhibit C38b).

#### **5. Background**

- 5.1. Since the inquest hearing was completed, I received an affidavit of Mrs Wendy Goldsmith, the mother of the deceased. As the affidavit deals solely with background material, I am happy to receive the information in that form (see Section 22, Coroner's Act, 1975).
- 5.2. Mrs Goldsmith states that Brenton was born on 7 December 1981. He had four siblings, three younger than him. About nine years ago Mrs Goldsmith separated from her husband and took the children to live in Mt Gambier.
- 5.3. Brenton left school at 15. About a year later he was involved in an incident where he was stabbed and seriously injured. After he recovered, he came to Adelaide and lived with his father. In November 2000 his sister died by her own hand, and this greatly distressed him.
- 5.4. The 'Fatal Crash – Profile' document (Exhibit C48a) discloses that Brenton had an extensive criminal history commencing in Mt Gambier in 1996. His offending included illegal use of motor vehicles, damaging property, larceny, breaking and entering and driving whilst disqualified.
- 5.5. Brenton had been staying with Ella Rigney, a cousin of his mother, immediately before 2 May 2001. Ms Rigney said that he had a 'gypsy' lifestyle. Brenton was due to attend court on 2 May 2001, so Ms Rigney woke him early. He rang her at about 4pm that afternoon, telling her that the court case had been adjourned, and that he was drinking whiskey in Victoria Square.

- 5.6. Mrs Rigney attended at Victoria Square at between 5pm and 6pm. She said that they left the square at about 7:30pm, and walked down towards Parliament House. She last saw Brenton, in the company of two unknown male Aboriginal men, crossing North Terrace opposite the Railway Station. He called out 'see ya tomorrow' (Exhibit C1a, p3).
- 5.7. Mr Ibbotson, counsel for Mrs Goldsmith, submitted that Brenton acted the way he did on 2 May 2001 as a result of a combination of factors, including:
- Possible residual trauma from the stabbing;
  - The death of his sister;
  - Alcohol;
  - Unresolved court commitments which might have led him to conclude that imprisonment was inevitable if he was apprehended this time;
  - His unusual behaviour in waving his fist and kicking out his leg.
- 5.8. I am unable to gauge the significance of the last point. As for the others, I can accept the suggestion that these were all possible factors, although there is no way to be sure. Additional to those factors is the fact that Brenton had a propensity to try and evade apprehension – he had done so on a number of previous occasions (Exhibit C48a).

## **6. Issues arising at the inquest**

- 6.1. Mr Ibbotson made a number of criticisms of the police officers involved on the night of Brenton's death. To understand these criticism, it is necessary that I set out the provisions of the SAPOL General Orders applicable to 'Urgent Duty Driving'. This is defined in General Order 210/01 in the General Duties Manual as follows:

'When you use the exemption provided in Rule 305 of the Australian Road Rules in responding to taskings or driving in a manner which, when compared to normal risks, substantially increases the risk of injury to police, the public or suspects, or of damage to property, the driving will be considered urgent duty driving.

In all urgent duty driving situations SAPOL's operational safety philosophy and principles must be applied. Safety must be the primary concern ahead of capture.

Urgent duty driving is an area of great potential risk for loss of life, injury or damage to property. In all urgent duty driving situation:

- The urgent duty driving should not be disproportionate to the circumstances.

- Risk must be continually assessed in terms of the potential danger to all and the risk of damage to property.
- Police have a duty of care not to endanger other road users and must exercise effective command and control.
- Occupational health, safety and welfare requirements must be met.
- The driver of the vehicle must be responsible for their actions.
- The senior member may be held accountable for the actions of the driver.
- You should consider helicopter assistance as the preferred option.'

(Exhibit C73)

6.2. The General Order sets out what should be done when a direction is given to terminate urgent duty driving as follows:

'Terminate – immediately slowing the police vehicle and complying with the area speed limit and the other traffic requirements, turning off all emergency warning equipment, and resuming patrol'.

(Exhibit C73)

6.3. The policy governing urgent duty driving is stated as follows:

'Policy

Urgent duty driving may only be undertaken:

- in response to an emergency involving obvious danger to human life; or
- when the seriousness of the crime warrants it.

In all cases the known reasons for the urgent duty driving must justify the risk involved.'

(Exhibit C73)

6.4. The 'Considerations for Institution/Continuation' are stated to be as follows:

Before commencing and while engaged in urgent duty driving the senior member and the driver must consider:

- the seriousness of the emergency or crime;
- the degree of risk to the lives or property of police, the public or the suspect/s;
- whether the driver holds the appropriate driving permit;
- whether immediate apprehension is necessary (if in pursuit);
- the availability of other police assistance;
- the capability and type of police vehicle or forthcoming assistance;
- the practicability of using other stopping devices such as road spikes;
- environmental and climatic conditions;
- police driver competence and local knowledge.

If the urgent duty driving involves a pursuit it must be terminated when:

- the necessity to immediately apprehend is outweighed by obvious dangers to police, the public or the suspects if the pursuit is continued; or
- the apprehension can be safely effected later (eg, the identity of the owner/occupants of the vehicle is known)
- instructed by supervisor, State Duty Officer of Communications Senior Sergeant.

If the urgent duty driving involves an emergency response it must be terminated when the necessity to attend urgently is outweighed by obvious dangers to police or the public.'

(Exhibit C73)

- 6.5. The Orders regarding additional vehicles joining a situation of urgent duty driving are as follows:

'If the urgent duty driving involves the pursuit of a vehicle there is to be only one primary vehicle and one backup vehicle.

No other police vehicle shall become involved in the pursuit unless directed by the member responsible for controlling and coordinating the situation.

If the urgent duty driving involves an emergency response there is to be only one first attendance vehicle unless directed by the member responsible for controlling and coordinating the situation.'

(Exhibit C73)

- 6.6. The Orders regarding 'Unmarked Police Vehicles' taking part in urgent duty driving include the following:

'A police vehicle which:

- is not fitted with emergency equipment and markings;
- is a prisoner escort vehicle; or
- is a station wagon or utility;

and is engaged in urgent duty driving involving a pursuit, must be replaced, as soon as possible, by a police vehicle (other than a motorcycle) fitted with emergency equipment and markings.

Unmarked police vehicles should not be engaged in any urgent duty driving situations unless exceptional circumstances exist.

(Exhibit C73)

- 6.7. Mr Ibbotson submitted that Mr Goldsmith's behaviour should have left Senior Constable Edwards in no doubt that he was acting irrationally, riding dangerously and at excessive speeds, and would continue to try and avoid apprehension. In those

circumstances, the facts that the motorcycle was stolen, and the traffic offences he had already committed, did not justify a high-speed pursuit.

- 6.8. I do not accept that submission as it applies to Edwards' initial decision to pursue. The motorcycle was being ridden erratically and recklessly, the rider had no helmet, and there were grounds to suspect that the motorcycle was stolen. I am sure that, on most occasions, after a short pursuit the offender decides to pull over and submit to apprehension. Edwards had no reason to think that Mr Goldsmith would not have done that, perhaps by the time he got to Hindley Street.
- 6.9. To that extent, up until the time that Senior Sergeant Anderson terminated the pursuit after the motorcycle was ridden at up to 120kms per hour on Morphett Street, I see nothing unreasonable in Edwards' actions. It is from that point onwards that problems developed.
- 6.10. In the definition of 'terminate' quoted above, the pursuing officer is instructed to resume compliance with the road rules, turn off all emergency warning equipment and resume patrol. Edwards did some of these things. However, the videotape shows that Edwards' dome lights were still operating in Hindley Street, as he passed a car in that narrow, busy street in pursuit of the motorcycle. Senior Constable Burke gave evidence that Edwards' dome light was on (T83, T90). The dome light on Burke's car, parked in Hindley Street ahead of the motorcycle, was also still on. What is clear to me, although Senior Constable Edwards has a different interpretation, is that he did not 'resume patrol'. He continued to follow the motorcycle.
- 6.11. It seems fairly obvious that the actions of all the police officers that night were dictated or at least coloured by Edwards' interpretation of the incident on the footpath involving Galwey. His comments on the radio that the deceased had 'knocked a member down', 'tried to take a member out', 'tried to run over a member', and 'tried to kill a member' were highly emotive. A number of the witnesses, including civilian witnesses, confirmed Edwards' evidence that the deceased rode straight at Galwey, as I have already mentioned, although others interpreted the events differently. I accept that Edwards genuinely formed the belief that Mr Goldsmith's actions were deliberate.
- 6.12. In my opinion, this incident was the basis for Edwards' decision to resume pursuit of the motorcycle. I do not accept Mr Ibbotson's submission that he did not have a bona

vide belief that the incident justified the pursuit. Whether the incident, when viewed objectively, justified the pursuit is another matter.

- 6.13. When Edwards resumed his pursuit on North Terrace, the deceased continued to ride the motorcycle in a recklessly dangerous manner, narrowly avoiding traffic, disobeying red lights and grossly exceeding the speed limit, in the process showing signs of belligerence or euphoria by waving his fist and legs in the air.
- 6.14. Not only did Edwards continue to pursue the motorcycle, two other vehicles (Adelaide 10 Lind/Stokes - and Adelaide 12, Murray/O'Connor) had joined the pursuit. This is also a contravention of General Order 210 in that there had been no direction by the member ostensibly responsible for controlling the situation that an additional vehicle to the primary and backup vehicle join the pursuit, unless it was their intention that Edwards should desist, since he was solo in a utility.
- 6.15. The pursuit was terminated a second time while the vehicles were still on North Terrace, the direction having been given by both Senior Sergeant Anderson and Inspector Lange, who were at different locations, Anderson at Norwood and Lange at the ComCen in Carrington Street, City. Edwards obeyed the direction, reduced to 60kms per hour and deactivated the dome light. However, he continued to follow the motorcycle again, rather than resuming patrol. Adelaide 10 and Adelaide 12 had been delayed by traffic, so Edwards resumed the pursuit as the primary vehicle down Port Road, George Street and South Road, and into Port Road again.
- 6.16. Edwards followed the motorcycle at speeds up to 80kms per hour on George Street, which in my opinion was a continuation of urgent duty driving, considering that he was solo, and driving a Holden Rodeo Utility at the time. This was not 'resuming patrol' within the mean of the General Order. Indeed, Edwards admitted that he had reactivated his dome lights by the time they reached the South Road/Grange Road intersection. The civilian witness, Mr Tai, confirmed this (T500-501). Two other police vehicles were still pursuing the motorcycle, with their lights flashing, when they turned into Port Road.
- 6.17. Quite clearly, by the time all the police vehicles were on Port Road, a high speed pursuit had resumed. Edwards admitted that he was driving at 100kms per hour (T59), and he was overtaken by the STAR Group car (Alpha 232 - Preston, Wood, Zaloumis). Mr Ibbotson submitted that all vehicles were travelling at much faster

speeds that than (up to 150 to 170kms per hour) although I do not think it is possible to be as precise as that with estimates of time and distance being so subjective. I think it was probably more than 100kms per hour, though, and probably closer to Mr Nestor's estimate of not less than 120kms per hour. I think that Zaloumis' estimate of 80 to 90kms per hour is considerably under-stated.

- 6.18. Further, there is also no evidence that the STAR Group vehicle Alpha 232 was directed to join the pursuit by the officer controlling the situation, Inspector Lange. The other four police vehicles who were also following had not been directed to do so either. As I understand it, the requirement for such a direction in the General Orders was considered necessary in order to avoid a 'Blues Brothers' scenario, with multiple police vehicles crashing into each other during the pursuit.
- 6.19. Mr Ibbotson submitted that the final manoeuvre adopted by the deceased, in which he swerved the motorcycle across Port Road at relatively high speed, hit the kerb and was thrown onto the footpath, thereby suffering fatal injuries, was contributed to by the police actions in following him at such high speeds.
- 6.20. Mr Grant, counsel for the Commissioner of Police, submitted that the deceased was baiting the police, and that it was not the police actions which induced his behaviour, rather it was the other way around. Certainly the behaviour of the deceased in waving his arm and legs, riding on the footpath, and riding in a conspicuously reckless fashion on major roads rather than trying to actually escape, lends considerable force to that submission. Mr Grant pointed out that, for example, rather than riding along the footpath on South Road, Mr Goldsmith could have turned into any one of several side streets in an attempt to get away, yet he continued on in full view of the police.
- 6.21. Mr Grant also pointed out, again with considerable justification, that the deceased was already riding recklessly on King William Road before he became aware of the presence of the police and attempted to evade Edwards through the parklands.
- 6.22. Mr Grant submitted that more proximate causes for Mr Goldsmith's death were:
- His reckless riding;
  - His alcohol consumption;
  - His failure to wear a safety helmet.

I agree with that submission.

- 6.23. However, the fact remains that part of the circumstances in which this death occurred was that Brenton was being pursued at high speed by five police vehicles down Port Road after the pursuit had been terminated on two separate occasions by supervising police officers.
- 6.24. Role of supervising officers  
Both Senior Sergeant Anderson and Inspector Lange terminated the pursuit even after it was alleged that the deceased tried to run down Galwey in Hindley Street. They both, quite properly in my opinion, decided that the risk to all concerned outweighed the need to apprehend the deceased for the serious offence he had allegedly committed.
- 6.25. However, both supervisors acquiesced in the actions of Edwards and the other officers in continuing to follow the deceased, and resuming the high-speed pursuit on two further occasions, in George Street and on Port Road.
- 6.26. Anderson's justification for doing so was that he expected the following to be done at low speed, that he hoped the deceased would drop the motorcycle and flee on foot, and that he was concerned that a serious accident may have occurred on the South Road footpath (T394-396).
- 6.27. Inspector Lange's explanation was similar - he expected the following to proceed with safety, and hoped that the deceased would discontinue and abandon the motorcycle (T443-444).
- 6.28. I agree with the conclusions of Inspector Carter following the Commissioner's Enquiry. Although it must be acknowledged that these issues are matters for individual judgment, he concluded:

'Management of the Incident

The justification for the original police tasking and recommencement of the urgent duty driving in Hindley Street was justified. Mr Goldsmith had committed a number of offences and his manner of driving had escalated to a point that it was both serious and dangerous. The decisions made and action up to and including North Terrace aspect of the incident were appropriate and in compliance with General Orders.

However, from the time that Inspector Ashley Lange and Senior Sergeant Daryl Anderson directed the urgent duty driving to be terminated on North Terrace, neither

took a positive role to ensure that the pursuit was totally terminated in accordance with the General Order. Despite both Managers monitoring the radio transmissions and being well aware that a number of patrols were still following the motorcycle at 'a distance', they did not exercise effective command and control of the incident and direct the patrols to resume normal patrol duties within the Adelaide LSA.

Clearly, command of the incident did not shift from the Adelaide LSA to Port Adelaide Local Service Area, and the Adelaide patrols were permitted to 'follow' the motorcycle into the Port Adelaide LSA and be permitted to continue to follow, despite having been directed to 'terminate', until the motorcyclist crashed. There is no evidence of the required hand over of the incident to Port Adelaide LSA.

In this respect, it is apparent that both Inspector Lange and Senior Sergeant Anderson did not fully apply the Operational Safety Philosophy and Principles in a proper manner during the latter part of the incident.

In this respect, I recommend that consideration be given to address an apparent misunderstanding or misinterpretation of the definition of 'terminate' within the meaning of urgent duty driving. The meaning of 'terminate' must be more explicit and clearly must include that pursuing patrols shall not 'follow at a distance'. This direction must be reinforced by all Supervisors, Shift Managers and State Duty Officer.'

(Exhibit C73, pp35-36)

- 6.29. Mr Grant argued that these were matters for the judgment of individual officers, and that both Anderson and Lange were more experienced in this aspect of policing than Inspector Carter was, and that their views should carry more weight. I find this submission surprising in view of the fact that the Commissioner of Police instructed Inspector Carter to carry out the investigation.
- 6.30. Further, in my view the submission that I should prefer the views of Anderson and Lange to Carter overlooks the objective fact that several clear breaches of the Commissioner's General Orders took place during the pursuits. For example, Edwards was in a utility-type vehicle which should have been replaced as soon as possible by one of the several sedans in the vicinity. This did not occur throughout the incident. Although Preston had no direction to join the pursuit, another breach, he did so with the best of intentions because he recognised that Edwards' car was unsuitable. The supervisors should have addressed this issue long before the vehicles reached Port Road.

## 7. **Recommendations**

- 7.1. It was put to me that the General Orders are ambiguous in that the phrase 'resume patrol' in the Order regarding termination of urgent duty driving could include continuing to follow the offender. I cannot see that a reasonable interpretation of that phrase could include such actions, especially in the context of the General Order when read as a whole.
- 7.2. However, it would appear that operational practice has allowed that interpretation to creep in, so that it is now accepted by operational police officers.
- 7.3. Inspector Carter informed me that the General Orders are being reviewed as part of a uniform draft policy being developed by the Australasian Traffic Policing Forum. Inspector Carter showed me the draft policy which makes it very clear what an order to terminate requires our officer to do. It states:

- '18.3 When the direction to terminate a pursuit has been transmitted, the driver of the primary and secondary vehicles shall immediately terminate the pursuit by -
- 18.3.1 acknowledging the termination directive;
  - 18.3.2 immediately reducing speed to the area speed limit;
  - 18.3.3 turning off all emergency warning equipment;
  - 18.3.4 as soon as possible stop the police vehicle and report termination by either the driver or observer giving their location and advising the pursuit controller that they are stationary;
  - 18.3.5 seeking further direction from the pursuit controller.
- 18.4 When the direction to terminate a pursuit has been transmitted, all backup vehicles shall -
- 18.4.1 acknowledge the termination;
  - 18.4.2 seek further direction from the pursuit controller.'

The policy also makes clear when the pursuit can be reinitiated:

- '19.1 After a pursuit has been terminated it cannot be re-initiated without the approval of the pursuit controller or a supervisor. Approval will only be considered if pertinent information is received which indicates that the circumstances of the pursuit have changed significantly. Any new pursuit is subject to this Policy.'

- 7.4. Although this is still in draft form, I agree with Inspector Carter that if this policy, or something like it, becomes part of the General Orders, there will be no further room for confusion.

- 7.5. A further issue which arose during the hearing concerned the question of whether Anderson or Lange or a combination of the two were the ultimate controllers of the incident. Without going into detail, the uncertainty arises from certain command structures within SAPOL. It is sufficient to say that it is most unsatisfactory that there should be uncertainty during a critical incident such as urgent duty driving. One officer should not be in a position where he is waiting for the action of another officer before acting himself, which is the position in which Anderson found himself.
- 7.6. I am gratified by Mr Grant's submission that the Commissioner of Police is well aware of both of these issues and that they will be addressed.
- 7.7. Accordingly, and pursuant to Section 25(2) of the Coroner's Act 1975, I recommend that:
1. The Commissioner of Police should review the General Orders applicable to urgent duty driving with a view to removing any perceived ambiguity in the obligations upon police officers who have been instructed to terminate an urgent duty driving situation;
  2. The Commissioner of Police should review operational arrangements within SAPOL so that during a critical incident such as urgent duty driving, there is no uncertainty about who is in control of the incident from a supervisory standpoint. In this instance, there appears little doubt that the control of the incident should have come from the officers in ComCen.

*Key Words: Death in Custody, Police Investigation, Urgent Duty Driving;  
Motor Vehicle Accident; Head Injuries*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 7<sup>th</sup> day of November, 2003.*

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*Coroner*