

SOUTH



AUSTRALIA

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Port Augusta in the State of South Australia, on the 24th, 25th, 26th, 27th and 31st days of May and the 22nd day of July 2004, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Tyson Matthew Charles Lindsay.

I, the said Coroner, find that, Tyson Matthew Charles Lindsay aged 14 years, late of 64 Pybus Street, Port Augusta, South Australia died at Victoria Parade, Port Augusta, South Australia on the 3rd day of February 2001 as a result of a closed head injury.

1. Introduction

- 1.1. Tyson Matthew Lindsay was born on 11 June 1986. He died on 3 February 2001 as a result of injuries he received when the motor vehicle in which he was a passenger, which had been stolen, collided with a stobie pole and then a brick wall on the eastern side of Victoria Parade at Port Augusta.
- 1.2. Just prior to his death, the vehicle had been pursued by police officers in several marked police vehicles because the driver, Waylon Marcus Dodd, was attempting to evade apprehension.
- 1.3. The incident has been the subject of an extensive investigation by a team led by Chief Inspector (now Assistant Commissioner) Bryan Fahy at the direction of the Commissioner of Police. This process is known as a 'Commissioner's Enquiry'.
- 1.4. Tyson 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 Tyson 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 Tyson's death 'necessary' and 'desirable' within the meaning of Section 14(1)(a) of the Coroners Act.

2. Background

- 2.1. Tyson lived with his grandparents, Mr Arnold Dodd and his wife Maisie. Mr Dodd has been the Chief Executive Officer of the Aboriginal Legal Rights Movement, and has worked for that agency in the northern areas of the State for 16 years. He is very well-respected, and he has enjoyed good relations with South Australia Police (SAPOL) for many years.
- 2.2. Mr Dodd said that he dropped Tyson at his friend Brodie Lennon's house at about 6pm on 2 March 2001. He said:

'Don't get into mischief and be home early.'

(Exhibit C50a, p2)
- 2.3. Later in the evening, Tyson travelled by taxi with several of his friends to a party at Aaron Wilton's place in Trent Road, Port Augusta. During the evening, several of the boys present were playing a 'Sony Playstation' game called 'Driver 2'. Dylan Brady said:

'I had taken my Playstation over to the place on Trent Road and set it up. I had taken a couple of games over, one of them was Driver and the other was Grand Turismo. Tyson Lindsay asked me if he could play the Driver game and I told him that he could. The Driver game is a game where you get into High Speed Chases with police and you crash into police cars. I was playing that game with Tyson Lindsay that night.'

When we were playing that game Tyson asked me if I wanted to steal a car that night. I told him that I don't do crime anymore. I told him that I nearly got myself killed in a high speed chase with Cameron and Aaron. I am talking about Cameron Lennon and Aaron Wilton. After that I went outside for a drink and I don't know if he played it again.'

(Exhibit C41a, p2)

- 2.4. At some stage during the evening, a fight broke out between Tyson and Dylan which eventually spilled into the back lane behind the house. Many of the witnesses described quite a violent exchange, in which Dylan quickly gained the upper hand. Levi Khan said:

'Dylan had his back to me but I saw him punching Tyson lots of times in the head. Tyson was swinging as well. I think Tyson hit Dylan once. I saw Tyson fall on the ground. Tyson was crying, "leave me alone, I didn't do nothing, I'm sorry." Dylan kept punching Tyson and booting him in the head when he was on the ground. Then Jeremy Bilney pulled Dylan away. Tyson got up and ran away. As he ran away he yelled, "I'm going to steal a car and kill myself and youse mob will all be sorry".'

(Exhibit C37a, p3)

- 2.5. A number of the other witnesses also heard these threats (see the statements of Francis Sanders [Exhibit C39a], Dylan Brady [Exhibit C41a], Shondelle Coulthard [Exhibit C42a], Kahli Oldfield [Exhibit C47a]).
- 2.6. In the meantime, Cameron Lennon and Waylon Dodd had been spending the day at Waylon's mother's house in Domeyer Crescent, Port Augusta. Waylon usually resided with his grandparents in Maree. He was in Port Augusta because his grandfather Reginald Dodd had a photographic exhibition there. Waylon's mother, Mrs Gail Warren, said that Waylon and Cameron came home at about 11pm. Waylon had been with his cousins Jarryd and Jeromiah Warren earlier in the evening at Domeyer Street, where they had also played 'Driver 2' on the Playstation (see Exhibit C35a and C36a). When he gave oral evidence, Waylon denied that he had been playing the game (T193). I reject that evidence and find that he had been playing it.
- 2.7. Mrs Warren said that the three boys, Tyson, Waylon and Cameron, left her house just before midnight. Waylon told her that he was looking for Rowan Dodd, and that he would not be long. That was the last she saw of him until after the accident.
- 2.8. Waylon Dodd gave oral evidence at the inquest. Attempts to serve Cameron Lennon with a summons were unsuccessful.

- 2.9. Waylon told me that he had spent the morning of 2 March 2001 shopping with his grandparents, and that he met up with Cameron after lunch. The two boys stayed together during the afternoon, until Tyson arrived later in the evening. He said that Tyson was upset, and had been fighting.
- 2.10. The three boys went for a walk during which they decided to steal a car. Waylon could offer no better explanation than that they were bored (T216). I have some reservations about Waylon's assertion that it was a spur-of-the-moment decision to steal the car. All three boys had taken a spare pair of socks from home to put over their hands so that they would not leave fingerprints on the stolen vehicle (see Waylon Dodd's evidence at T193, T206). A screwdriver was also found in Tyson's pocket (see Detective Sergeant Goodwin's statement [Exhibit C60, p13]).

3. Events leading to the fatal incident

3.1. The pursuit

At about 12:13am on Saturday 3 February 2001, Matthew Smith heard the sound of his mother's 1987 Holden Commodore sedan (registration number WAX-586) being started. The car had been parked in the driveway of the house where he lived with his mother. He knew that it was his mother's vehicle because it had a broken exhaust system. By the time he ran outside, the vehicle had gone.

- 3.2. Almost immediately, Mr Smith telephoned the Port Augusta Police Station and reported the vehicle as stolen and gave its description. He said that he could hear the vehicle being driven in nearby streets (see Exhibit C7a, p2).

- 3.3. The call was received by Constable Carmen Miles at the Port Augusta Police Station. Mr Smith told her that he could hear the vehicle in the vicinity of the West Augusta Football Club. Constable Miles advised all patrols to keep a look out for the stolen vehicle over the radio.

- 3.4. At about 12:15am, Senior Constable Mark Foster was driving in a marked Commodore sedan with (then) Constable Tina Henderson along Gardiner Avenue, Port Augusta in the direction of the Shoreline Caravan Park. Foster was a Patrol Supervisor that evening. As they proceeded along Gardiner Avenue, they saw a blue Commodore sedan (to which I will refer as the 'stolen vehicle') being driven in the opposite direction along Gardiner Avenue. Henderson made a U-turn and

commenced to follow the stolen vehicle with the red and blue flashing lights and siren activated. Both officers stated that the tail-lights in the stolen vehicle were not working, even though the headlights were on high beam.

3.5. The stolen vehicle negotiated a right-hand bend in Gardiner Avenue and moved to the incorrect side of the road, with the off-side tyres running onto the dirt verge. The vehicle then turned left into Donaldson Terrace cutting across the near-side dirt verge during the turn. After travelling a short distance on Donaldson Terrace the vehicle turned right into Mildred Street, and then left into Mellor Street and then right into Burgoyne Street.

3.6. Ms Kristen Finlay was standing on the North-Western corner of Mildred and Mellor Streets with Ms Virginia Lloyd when they saw the stolen vehicle. She said:

'This vehicle was driving fast and driving erratically. When it turned the corners I could hear the wheels squeal, but it did not appear to be out of control. There was a police vehicle following this vehicle when it went past us. This was also a four door sedan and it had its revolving lights going, but no sirens. This vehicle was about twenty metres behind the first vehicle but I am not sure of this distance.'

(Exhibit C76a, p2)

3.7. Senior Constable Greg Fielden was in a marked police cage vehicle with (then) Probationary Constable Craig Ranger at about this time. They were stationary in Donaldson Terrace, a little further South from the junction of Donaldson Terrace and Mildred Street. When they heard Foster and Henderson advise base that they were pursuing the stolen vehicle, Fielden drove his vehicle down Donaldson Terrace and turned right into Burgoyne Street. As he was proceeding West along Burgoyne Street and approaching the junction with Mellor Street, the stolen vehicle was performing its right-hand turn from Mellor Street into Burgoyne Street. Fielden was forced to brake and swerve to the left to avoid colliding with the stolen vehicle. Because Fielden was unaware of the location of Foster and Henderson, he began pursuing the stolen vehicle (T345).

3.8. The stolen vehicle turned left from Burgoyne Street into the Eyre Highway, disobeying a red traffic light applicable for traffic travelling West on Burgoyne Street. Fielden and Ranger did the same, also disobeying the traffic light. They had their red and blue flashing lights and siren activated at the time.

- 3.9. Sergeant Richard Hobbs (who was then a Senior Constable) was performing a solo patrol in a marked police Commodore sedan in the Willsden area of Port Augusta. He heard Miles' call over the radio, and proceeded down Victoria Parade in the direction of the Great Western Bridge. When he was in the general vicinity of the junction of Mackay Street and Victoria Parade, he heard Foster and Ranger advise that they had sighted the vehicle and were pursuing it. He then activated his red and blue flashing lights and siren and proceeded across the bridge. He saw the flashing lights, presumably from Fielden and Ranger's vehicle, in Burgoyne Street, so he stopped his vehicle in the centre of the roadway, partially blocking both North and South-bound traffic. Unfortunately, he was not able to block the road completely, and there was room at either end of his vehicle for a vehicle to get past.
- 3.10. He said that his intention in blocking the road was that he hoped the driver of the stolen vehicle would stop and the occupants would run off rendering further pursuit unnecessary (T222).
- 3.11. The driver of the stolen vehicle braked harshly and locked the wheels as it approached Hobbs' vehicle, swerved to the right and went around the passenger side of his vehicle on the incorrect side of the road, and then swerved back to the correct carriageway, and then proceeded in a South-Easterly direction across the bridge. Both Hobbs and Fielden said that there was a line of traffic in the North-West bound lane of the bridge which was stationary behind the police vehicle.
- 3.12. The stolen vehicle continued across the bridge at an ever-increasing speed with Fielden and Ranger in pursuit. Several of the witnesses said that the distance between the two vehicles increased steadily as they proceeded across the bridge (see Kristen Finlay [Exhibit C76, p2], Fielden [T321], Ranger [T360], Cowling [T382]).
- 3.13. Fielden said that as he crossed the bridge, the stolen vehicle was pulling away steadily from his vehicle. He said that he was driving a standard Ford Falcon Utility with a heavy cage construction on the back. This is a considerably slower vehicle than a sedan, which is more appropriate for use as a pursuit vehicle.
- 3.14. By the time they reached the centre of the bridge, Fielden said that his vehicle was travelling at 120 kilometres per hour. He instructed Ranger to advise base of this fact. He said that they were on the South-Eastern edge of the bridge by the time Ranger complied (T321).

- 3.15. Foster heard Ranger's call, and decided that the risks to all concerned outweighed the seriousness of the offending and gave an instruction to Fielden and Ranger which (to use a neutral expression) was to the effect that he should cease the pursuit.
- 3.16. There are glaring discrepancies between the witnesses as to the precise language used by Foster in giving this instruction. In the metropolitan area, such a difficulty would not arise, since all such communications are recorded. I will refer to this issue later.
- 3.17. Having received Foster's instruction, Fielden said that he turned off the red and blue flashing lights almost immediately, and Ranger turned off the sirens. He said that he applied the brakes to the vehicle and slowed to 80 kilometres per hour. He then released the brakes and allowed the engine to slow the vehicle down to between 60 and 70 kilometres per hour (T327).
- 3.18. Fielden said that he lost sight of the stolen vehicle as it crested the rise in the vicinity of the intersection of Victoria Parade and Flinders Terrace. He said that he continued to drive the police vehicle along Victoria Parade at 'normal patrol speed' in order to investigate whether the vehicle had been dumped, so that they could make further inquiries as to the identity of the offenders. He said that when his car crested the Flinders Terrace hill, he could no longer see the vehicle (T324).
- 3.19. There are two bends in Victoria Parade between Flinders Terrace and Carlton Parade. The first is to the left, the second to the right. Ranger said that when they crested the hill at Flinders Terrace, he saw the tail-lights of the stolen vehicle disappearing around the left-hand bend (T362). There is some difficulty with this evidence since, as I have already mentioned, other witnesses said that the vehicle's tail-lights were not operating at the time.
- 3.20. The stolen vehicle proceeded along Victoria Parade having crossed the Great Western Bridge, negotiated the right-and left-hand bends in Victoria Parade, and then approached the intersection of Victoria Parade and Carlton Parade, which is controlled by traffic lights.
- 3.21. Ms Christene Pycroft was driving her vehicle in the opposite direction to the stolen vehicle along Victoria Parade when she saw it travelling towards her with its lights on high beam at an 'extremely fast' rate of speed. Victoria Parade in that area consists of two lanes for South-East bound traffic. As the stolen vehicle negotiated the left-hand

bend, it drifted from the left to the right lane as it approached the traffic lights at Carlton Parade. Mr Christopher Morgan, who was in Ms Pycroft's vehicle, saw the same thing. He estimated the speed of the stolen vehicle at 120 kilometres per hour, although he emphasised that this was merely a guess (T115). Both Ms Pycroft and Mr Morgan saw the police cage vehicle driven by Fielden following the stolen vehicle, Ms Pycroft estimating that it was 200 metres behind (T92) and Mr Morgan estimating 150-200 yards behind (T116). Significantly, both Ms Pycroft and Mr Morgan said that the cage vehicle did not have either its red and blue flashing lights or siren activated when they saw it (T100, T116).

- 3.22. Ms Kate Walsh was driving her Mitsubishi Magna sedan in a South-Westerly direction along Carlton Parade approaching the traffic lights at the intersection with Victoria Parade. She said that the lights applicable to her were red so she stopped, intending to turn right. When the lights turned green, Ms Walsh moved into the intersection. She saw a road train which was slowing down some distance down Victoria Parade to her left. As she entered the intersection she saw a car approaching her from the right which did not appear as though it was going to stop. Even though the lights applicable to her were still green, she stopped her vehicle about half its length over the white line (T131).
- 3.23. Ms Walsh said that the stolen vehicle was straddling the lane lines and was going 'very fast', she estimated at between 100 and 130 kilometres per hour (T140).
- 3.24. Ms Walsh said that the stolen vehicle swerved slightly to the right in order to miss her vehicle. She thought it clipped the traffic island in the centre of the intersection, (although she conceded that this was merely an impression). Waylon Dodd had no memory of having done so (T191-192). When she next looked in her rear vision mirror, Mrs Walsh saw a shower of sparks, and then a stobie pole fall into the road. She realised that the vehicle had crashed at a point slightly South-East of the intersection. She saw flames coming from the rear of the vehicle which quickly engulfed it (T152).
- 3.25. By the time Ms Walsh had completed her right turn and driven about twenty metres up Victoria Parade, she saw a police Commodore sedan pass her, followed by another Commodore sedan shortly after, and then a cage vehicle, and then another Commodore sedan (T134). Again, there were considerable discrepancies in the

evidence about the order in which these vehicles arrived at the scene. Having regard to the extremely stressful situation in which Ms Walsh had been, particularly since her infant son was in a baby seat in the rear of the vehicle, it would not be surprising if she was mistaken about that.

3.26. After the accident

As Fielden and Ranger proceeded down Victoria Parade, they saw a red glow emanating from the left-hand side of the road. They approached the intersection with Carlton Parade, and it became apparent to them that the stolen vehicle had collided with the wall of business premises known as 'Ivan and Couttsie's Automotive', at 3 Victoria Parade, Port Augusta.

3.27. Mr Darryl Joyce had been driving a road train in a North-Westerly direction along Victoria Parade when he saw what he described as a 'flash of light' as if a vehicle was quickly turning across his path from right to left. He described what happened next as follows:

'When I saw the car, it all happened very quick, but I thought it looked like it was going to turn left off of Victoria Parade. Now that I think of it, it could have been sideways and out of control rather than turning left. I was about 50 metres away at this stage. There was a flash of lights, and then a large amount of sparks came from where the car was. I started to slow down to come to a stop, as I got closer I saw the car had hit a brick wall and within seconds it burst into flames. I stopped my truck across the road about 15 metres back from where the accident was. I got out, ran across the road and noticed the car was on fire in the boot area. At this time police arrived at the scene of the accident, just one car to start with. It was a fair while before police arrived because I had time to park the truck and cross the road before they got there. I would say it was at least thirty seconds between when the car hit the wall and the police arrived. One of the officers jumped out with a fire extinguisher, I ran back across the road and grabbed a fire extinguisher from my truck. I then went back to the car and emptied the contents of my fire extinguisher, more police had arrived and were trying to put the fire out with extinguishers. The fire almost went out before all the extinguishers were emptied, it flared up a bit again when they were all out.'

(Exhibit C85, p2)

3.28. Fielden and Ranger said that they were the first police officers to arrive at the scene. Fielden said that when they arrived, the driver of the road train was returning to his vehicle to get his large fire extinguisher from the cabin (T328). Ranger's recollection was that he thought that the truck driver approached them and then went back to his vehicle to retrieve the fire extinguisher but nothing turns on this discrepancy.

3.29. Fielden's description of the scene was as follows:

'I could hear screaming emanating from this vehicle. I observed a male aboriginal person sitting in the drivers' seat. He had a bloodied face and socks over his hands. He was screaming, stating his legs were hurting and he wanted to get out. I approached this vehicle and attempted to remove bricks. The heat from the flames was too intense, I moved back. I could hear glass breaking from the heat. Ranger approached this vehicle and used the fire extinguisher in an attempt to extinguish the fire. The driver of the truck also assisted using his fire extinguisher. At this time Foster and Henderson also arrived. I also saw Sergeant Peter Franklin, Senior Constable Richard Hobbs, Probationary Constable Mark Roberts and Probationary Constable Gary Sporton on scene. Foster and Hobbs also helped in attempting to extinguish the fire. The fire was almost extinguished. I approached the vehicle and saw a male aboriginal person sitting in the drivers' seat, he appeared to be trapped. The vehicle was crushed and I saw that he had his head protruding out the window, as was his arms from just above the elbows. He had socks over his hands. I observed bricks around his body and torso in the cabin of the vehicle, which obstructed my vision. I moved some bricks away from the vehicle and moved a large iron pole off the roof before the fire flared up again. I had the following conversation with this person.

I said, "What's your name?"
 He said, "Get me out of here."
 I said, "Help's on the way, what's your name?"
 He said, "Just get me the fuck out of here, it hurts."
 I said, "How much petrol was in the car?"
 He said, "I don't know."
 I said, "What's your name."
 He said, "...Dodd"
 I was unable to comprehend what Dodd said.
 I said, "I can't hear you, what's your name?"
 He said, "Dodd, Whalan (sic) Dodd."
 I said, "Who else is in the car?"
 He said, "My two cousins."

(Exhibit C90, pp7-9)

3.30. Mr Malcolm Davies, who was the Chairperson of the Aboriginal Legal Rights Movement and Coordinator of the Aboriginal Visitors Scheme for Port Augusta, Port Pirie and Whyalla, was passing the scene of the collision at between 12:30 and 1:00am that morning. He saw the fire coming from the vehicle, and his young companion told him that he could see two heads inside the vehicle. Mr Davies said:

'I felt that the police officers there were trying their hardest to put the fire out and help the two persons in the car. I thought that if the car exploded then they were endangering their own lives. I feel that some sort of appreciation or commendation for their bravery

for each and every one of them who was there because it was above and beyond the call of duty.'

At the end of his statement he added:

'I want it noted because I feel very strongly about it, that I want each one of the police officers involved at the accident that night to be recognised and commended for their bravery and their support at the scene of the accident.'

(Exhibit C28a, pp3-4)

- 3.31. Mr R G Owen, the Officer In Charge of the Port Augusta Metropolitan Fire Service ('MFS'), said that they were called at 12:22am and arrived at the scene at 12:23am, a very fast response. The fire was quickly extinguished (Exhibit C29a, p2)
- 3.32. Ambulance officers attended at about 12:25am, also a good response time. Ambulance Officer Peter Carmen, who is qualified in advanced life support, checked the front passenger in the vehicle and found no carotid pulse, his pupils were fixed and dilated, and there were no respirations. He found that the driver of the vehicle was conscious, had a laceration across his forehead and appeared to be trapped by the legs. He described his demeanour as 'aggressive', although he said that this reaction was similar to other people he had seen trapped in motor vehicles (Exhibit C30a, p2).
- 3.33. Dr Donald McQuistan attended the scene between 12:30 and 12:45am. He examined the male person in the front passenger seat of the vehicle and found that he was deceased (Exhibit C33a, p2).
- 3.34. Dr Bill Roediger, Surgeon, also attended and gave advice as to the best and safest way of extricating the driver from the vehicle.
- 3.35. Dr McQuistan said that the driver of the vehicle was conscious, but in a decreased state of consciousness and in pain. He was trapped within the vehicle and suffering extensive crush injuries to his lower legs. He was administered oxygen and morphine and intravenous fluids were given because of blood loss and low blood pressure. The young male in the rear passenger seat had substantial injuries to his face and leg. He was also conscious and in considerable pain (Exhibit C33a, p2).
- 3.36. The MFS officers used cutting equipment to free the occupants from the vehicle. The statement of Mr Owen, Exhibit C29a, demonstrates that this was a very difficult and time-consuming process. Cameron Lennon, the rear seat passenger, was removed

within 45 to 60 minutes and conveyed by ambulance to the Port Augusta Hospital. The deceased was removed from the front passenger side of the vehicle about 30 to 40 minutes later. Waylon Dodd was removed from the driver's side of the vehicle about 2 hours after Dr McQuistan first arrived, and he was conveyed to the Port Augusta Hospital by ambulance.

3.37. The difficulties encountered by the emergency service workers at the scene should not be underestimated. The vehicle was severely damaged, and the three occupants were trapped inside and it was very difficult to extricate them. The vehicle was on fire and, as Mr Davies said, there was a risk of explosion. There was also a risk that the building may collapse further. Additionally, the vehicle had taken down an electricity pole, and there were live power lines laying in the street. A large crowd began to gather, some of whom were severely distressed. The word had quickly spread as to the identity of the young people in the vehicle. There is a suggestion that some of the vehicles parked in the vicinity were being looted. The difficulties involved with crowd control, dealing with highly distressed people who thought they were related to the young men in the vehicle, while at the same time pursuing rescue efforts to the best of their ability, must have created extreme difficulty for the police officers, fire officers and ambulance officers involved. I agree with Mr Davies that they should all be commended for their efforts.

3.38. Medical treatment

Waylon Dodd and Cameron Lennon were retrieved by aircraft to the Women's and Children's Hospital in Adelaide.

3.39. When Cameron Lennon presented at the Emergency Department, he had been intubated, ventilated and sedated. He had a fractured right femur, fractured right wrist and multiple facial fractures including a fracture of the right lower jaw. He also had soft tissue injuries and lacerations to his face, and bruising of the lung. There were signs that he was haemorrhaging in the right frontal lobe of his brain.

3.40. Cameron was admitted to hospital, his fractures were treated by surgeons and he made a steady recovery. The statement of Dr Anthony Slater, a Specialist in Paediatric Intensive Care, indicates that although Cameron is at risk of long-term neurological problems, they are likely to be minor in nature and that he should have a complete recovery from his orthopaedic injuries (see Exhibit C34a, p2).

- 3.41. Waylon Dodd was also retrieved to the Women's and Children's Hospital where he was admitted to the Intensive Care Unit. He remained there until 16 February 2001 when he was transferred to the General Surgical Ward. He had suffered right pelvic fractures, a fracture of the right femur, a right ankle laceration with tendon injury, a compound fracture of the left tibia and fibula with significant soft tissue injury (near amputation), a degloving injury to the scalp, and a laceration of the lower lip and damage to the left incisor tooth.
- 3.42. A report from Dr John Jureidini, Head of the Department of Psychological Medicine at the Women's and Children's Hospital, states that Waylon also suffered considerable psychological sequelae from the accident. Dr Jureidini noted that he felt intense guilt and shame as a result of the accident. He remained in hospital for several months and his time in hospital was particularly painful and unpleasant. Dr Jureidini said:

'Waylon experienced an event that involved serious injury and the threat of death to himself and death and injury to others. His understandable response involved intense fear, helplessness, and horror. Whilst in hospital he reexperienced the traumatic event through recurrent thoughts and dreams. He appeared to have some avoidance of stimuli that aroused recollections of the trauma (such as conversations about it). Waylon's physical condition in hospital involved many other experiences of trauma – repeated surgical procedures, daily wound dressings that required nitrous oxide sedation/analgesia, of being unclothed for more than a month, and pain precipitated by physiotherapy exercises. There were symptoms of anxiety such as difficulty sleeping, poor concentration, and some motor restlessness.'

(Exhibit C97, p3)

4. Cause of death

- 4.1. At about 4:45am on 3 February 2001, Ms Susan Dodd identified the body of her son Tyson Matthew Charles Lindsay to Sergeant Hobbs at the Port Augusta Hospital (see Exhibit C87, p6).
- 4.2. A post-mortem examination of the body of the deceased was performed by Dr J D Gilbert, Forensic Pathologist, on 5 February 2001 at the Forensic Science Centre in Adelaide. Dr Gilbert noted a 4cm laceration of the right lateral forehead, bruising around the right eye, a laceration of the cheek with compound fractures of the right maxilla, mandible and zygoma, right frontal and parietal scalp bruising (not visible externally), abrasions and bruising on the chest, shoulder, abdomen, hips, arms, left knee, right thigh, right shin, right hand and fingers.

- 4.3. Internally, Dr Gilbert noted a patchy subarachnoid haemorrhage. X-rays also demonstrated the presence of fractures of the radius, ulna and the medial epicondyle of the humerus of the right arm (see Exhibit C3a).
- 4.4. A neuropathological examination performed by Dr Grace Scott confirmed the presence of a subarachnoid haemorrhage, cerebral contusions and microscopic diffuse vascular injury (Exhibit C4a).
- 4.5. Dr Gilbert concluded that the cause of Tyson Lindsay's death was a closed head injury. He commented:
- '1. Death was due to a closed head injury associated with right sided scalp bruising, facial lacerations and fractures of the right zygoma, right side of maxilla and right side of mandible. There were no other life threatening injuries.
 2. There was a linear red bruise extending from the left upper anterior chest into the right lower abdomen consistent with use of a seat belt on the left hand or passenger side of the vehicle. An abrasion over the left anterior iliac crest and a bruise over the right anterior iliac crest may also have been caused by a seat belt.
 3. I was notified after completing the autopsy of allegations that the deceased had been involved in a fight a few hours before the accident. I re-examined the body at 0930 hours on 6/2/2001 and additional photographs were taken by Warren Lines, Physical Evidence Section. I detected no injuries that could not be attributed to the accident but minor bruising or abrasions resulting from an assault would be very difficult to distinguish from similar injuries resulting from a vehicle accident.
 4. Analysis of a specimen of blood obtained at autopsy reportedly showed a blood alcohol concentration of nil and no common drugs were identified.
 5. No natural disease that could have caused or contributed to the death was identified at autopsy.'

(Exhibit C3a, pp4-5)

- 4.6. I accept the opinions of Dr Gilbert and Dr Scott and find that the cause of Tyson Lindsay's death was a closed head injury.

5. Accident reconstruction

- 5.1. Senior Sergeant Graham England is a member of the Major Crash Investigation Unit, a specialist section of SAPOL dealing mainly with fatal motor vehicle accidents. Senior Sergeant England is a very experienced accident reconstructor. He examined the tyre marks left on Victoria Parade by the stolen vehicle, using a special frame to demonstrate which wheels of the vehicle were responsible for which marks, and the

attitude and angle of the vehicle at various stages after control was lost by the driver (see Exhibit C72d). Senior Sergeant England described his conclusions as follows:

'The physical evidence indicates that the Holden Commodore was travelling south along Victoria Parade prior to the collision. The tyre marks at the collision scene indicate that the vehicle rapidly developed a yaw with its right side leading immediately after crossing Carlton Parade. The most likely cause of development of the yaw was a steer input. I saw no evidence of a collision induced yaw.

The vehicle had been travelling south around a sweeping left hand bend prior to the commencement of the tyre marks, but there appeared to be no permanent physical structures, which would have caused a sudden, steer input to the right. I was supplied information that a vehicle had been travelling west on Carlton Parade and was about to enter the intersection as the Holden Commodore approached. This other vehicle apparently stopped partly within the path of the Holden Commodore and caused the Holden Commodore to move to its right to avoid a collision.

It is likely that the speed of the Holden Commodore, at the time it was steered sharply to its right around this other vehicle, caused the rear of the Holden Commodore to move to its left. A sudden movement back to the left to continue south along Victoria Parade would have caused the rear of the Holden Commodore to move to its right. Sudden movements such as this, at high speed, generally cause the rear of a vehicle to act like a pendulum, which swings out further with each change in direction. This movement would have put the Holden Commodore in the position indicated by the start of the tyre marks and would explain the rapid development of a yaw and the movement of the vehicle towards the eastern side of the road.

When the vehicle reached the eastern side of the road it moved onto the footpath where it eventually collided with a building and a stobie pole. The vehicle came to rest partly inside the building after demolishing a double brick wall. The stobie pole was also destroyed and was laid flat across the roadway.'

(Exhibit C72b, pp8-9)

- 5.2. Senior Sergeant England attempted to establish the speed of the stolen vehicle using the skid and scuff marks on the roadway, but his task was made difficult by the fact that the vehicle hit the kerb, the power pole and the building before coming to rest. The best he could estimate was that the vehicle was travelling at between 94 and 150 kilometres per hour (Exhibit C72b, p15). On the evidence of Waylon Dodd and the police officers, it seems likely that the speed was about 120 kilometres per hour.

6. Issues arising at inquest

- 6.1. Waylon Dodd told me that he and the other boys stole Ms White's vehicle from Knight Crescent and drove to Redbanks beach behind the Shoreline Caravan Park and did some 'burn-outs' (T217). It was on the way back from the beach as they drove

along Gardiner Avenue that they saw the police vehicle coming the other way. This was the vehicle containing Foster and Henderson. Waylon said that the police vehicle performed a U-turn and activated its red and blue flashing lights and siren. He decided to try and get away. He said he did not want to 'get into trouble' with the police so he decided to try and outrun them and get to a point where they could dump the vehicle and run away (T192).

- 6.2. In that context, Waylon said that even if the police vehicles dropped back, he would have kept going at that speed until they had the opportunity to get away.
- 6.3. Waylon said that the police vehicle which followed them from Burgoyne Street onto the Eyre Highway was a sedan (T189), and not the cage vehicle driven by Fielden as most of the other witnesses suggested. He said they were two car lengths behind, and the distance increased to about 3.5 car lengths after he swerved around (Hobbs') vehicle blocking the road (T199).
- 6.4. Waylon said that two police vehicles followed them across the bridge, one cage vehicle and one sedan. He said they were 2.5 car lengths behind throughout the trip across the bridge (T190).
- 6.5. Waylon said that he saw (Ms Walsh's) vehicle at the intersection with Carlton Parade. He said that her vehicle was almost all the way across the carriageway. This conflicts with Ms Walsh's evidence that only about one half the length of the car was over the white line when she stopped (T131).
- 6.6. Waylon said he did not know how fast he was driving, as the dashboard lights were not working, but he knew it was 'very fast' (T202). The lights were red for his direction of travel. He swerved to avoid Ms Walsh's vehicle, lost control and crashed.
- 6.7. Waylon had no memory of having been 'rammed' by the police vehicle. He agreed that the police vehicle did not come close enough to do so (T204).
- 6.8. Urgent Duty Driving
This is another case involving what is described in SAPOL General Orders as 'Urgent Duty Driving'. I discussed these orders in detail in my findings in relation to the death of Brenton Maurice Goldsmith (Inquest number 17/2003). Mr Goldsmith died

in a motorcycle crash on 2 May 2001, two months after Tyson's death. The applicable General Order (GO 210/01) was the same at the time of the two incidents.

6.9. For the purposes of these findings, I will summarise the relevant provisions as follows:

- driving which substantially increases the risk of injury to police, the public or suspects is Urgent Duty Driving;
- Urgent Duty Driving should not be disproportionate to the circumstances;
- risk must be continually re-assessed;
- Urgent Duty Driving may only be undertaken in response to an emergency situation involving obvious danger to human life, or where the seriousness of the crime warrants it;
- Urgent Duty Driving must be terminated when the necessity to immediately apprehend is outweighed by the danger if the pursuit is continued;
- 'terminate' means 'immediately slowing the police vehicle and complying with the area speed limit and other traffic requirements, turning off all emergency warning equipment, and resuming patrol' (Exhibit C101).

6.10. Was the pursuit effectively terminated?

It is very unfortunate that there is no record of the precise instructions given by Foster in relation to the pursuit. This can be contrasted with the evidence in Goldsmith, where all the radio transmissions were recorded. I was told by Assistant Commissioner Fahy that, since 10 December 2002, apart from a small area of the State (5%) not covered by the Government Radio Network, all such conversations are now recorded as a matter of routine.

6.11. There is a very wide disparity in the recollections of witnesses as to the precise words used by Foster. To add to the confusion, he made two radio calls, but only the second one was acknowledged by Fielden and Ranger. Foster said his first call was:

'Terminate, it's too dangerous now.' (T267)

He said his second call, after Fielden and Ranger reported that they were pursuing at 120 kilometres per hour, was:

'Terminate, it's only illegal use, back off and follow at a safe distance.' (T269)

Foster was adamant that he used the word 'terminate' (T277). He said that he saw the red and blue flashing lights on the cage vehicle go off immediately, and that the vehicle 'slowed visibly'. He said that the lights went off when the cage vehicle was at a point on the bridge corresponding with the South-Eastern edge of Spencer Gulf (T269). He conceded that the instruction to 'follow at a safe distance' was less than clear, in view of the GO which requires that the officers resume patrol (T283).

6.12. Henderson said that Foster's words were:

'Zero 1 - drop back, terminate the pursuit, we are only looking at illegal use at this stage.'
(T297)

Fielden said that Foster's words were:

'Pull away, pull away, terminate the chase, we only want him for illegal use at this stage.'
(T322)

Ranger said he did not remember the words clearly, but they were to this effect:

'Terminate, call it off, pull back to a safe speed and distance.' (T366)

Hobbs said that the words used were:

'Back off, back off, drop to a safe speed, it's only illegal use.' (T226)

Senior Constable Cowling said that he heard:

'Back off, right off, it's only illegal use, just follow at a safe distance.' (T383)

Franklin said that he recalled Foster using the words 'terminate' and 'back off'. Although he did not remember the whole instruction, the effect was:

'Terminate, call it off, pull back to a safe speed and distance.' (T366)

6.13. Conclusion

Although there is a wide disparity of recollections, the other evidence is sufficiently similar to that of Foster that it corroborates to some extent his version of what he said. I accept his evidence on that point.

6.14. In my opinion, Foster's instruction to terminate was clear to the extent that it was capable of being understood as an instruction that Urgent Duty Driving should cease forthwith. However, the instruction to 'follow at a safe distance' was inconsistent with the GO instruction to resume patrols.

6.15. Was Foster's instruction complied with?

Foster said that he saw the red and blue lights on the cage vehicle go off 'immediately' and the car 'slowed visibly' (T270). He said that the cage vehicle was about level with the South-Eastern edge of Spencer Gulf when this occurred (T269).

6.16. Henderson said that the cage vehicle was near Mackay Street, several hundred metres further on, when Foster gave the second instruction. She said she saw the lights and sirens go off, and the brake lights on the cage vehicle come on, as soon as Foster gave the instruction. She said she slowed their vehicle to 70-80 kilometres per hour. She said this was consistent with her terminating the pursuit, although she could not explain why she continued to drive at 70-80 kilometres per hour rather than complying with the speed limit (T307).

6.17. Fielden said he applied the brakes and turned off the red and blue flashing lights, and Ranger turned off the siren. He said they were slightly North of Mackay Street when this occurred. He said he released the brakes at 80 kilometres per hour, and allowed the engine to brake the vehicle down to 70 kilometres per hour (T322). He denied that they continued to follow the stolen vehicle. He said he 'resumed patrol' by heading down Victoria Parade to check the usual areas to see where the vehicle was dumped. He said that he lost sight of the vehicle when it crested the hill at Flinders Terrace, and by the time they reached the crest he could no longer see the stolen vehicle. He said he was driving at 60-70 kilometres per hour by then (T327).

6.18. Ranger's evidence was similar to Fielden's, except that he said that when they crested the hill at Flinders Terrace, he saw the lights of the stolen vehicle disappearing around the bend, about 400 metres ahead (T362).

6.19. There was a very wide disparity of evidence about how far Fielden and Ranger's vehicle was behind the stolen vehicle:

- As I have already noted, Waylon Dodd alleged that a police vehicle was 2.5 car lengths behind as they drove along Victoria Parade at very high speed;
- Ms Pycroft was driving West along Victoria Parade, in the opposite direction to the stolen vehicle. She said that the cage vehicle was approximately 200 metres behind the stolen vehicle as it rounded the bend near the oval. She said the next

police vehicle (Foster/Henderson) still had its red and blue lights flashing (T92). Foster admitted that he may have left them on inadvertently (T270);

- Mr Morgan said that the cage vehicle was 150-200 metres behind the stolen vehicle, with its lights and sirens off, but he said another police vehicle was travelling much faster than the cage vehicle, then passed it as they passed him (T118). In view of the other evidence, I do not think that Mr Morgan can be correct about that;
- Ms Walsh said that when she saw that the stolen vehicle had crashed, she then completed her right-turn into Victoria Parade and drove about 20 metres up the road before the first police vehicle passed her going the other way. Confusingly, she thought this was a sedan rather than a cage vehicle (T133);
- Mr Joyce was drawing his road train North-West along Victoria Parade towards the Carlton Parade intersection at about 40 kilometres per hour. He saw a flash of light, like a vehicle turning from right to left across his path. It was not until after it crashed that he realised that it was a car. He said he stopped the road train, ran across the road, saw the fire was developing so he turned back to get his fire extinguisher. As he was running back to his truck, the first police vehicle, which he also thought was a sedan, pulled up;
- A number of civilian witnesses saw the earlier stages of the pursuit. Their estimates of the distance of the police vehicle behind the stolen vehicle also varied widely. For example, Simone Schupelius thought it was 80-100 metres behind (T50). Nancy Reid thought it was one car length behind (T72). There were many others. This evidence is probably not important, though, because the critical time was after the pursuit was terminated, on the Eastern side of the bridge, when most of these witnesses would not have been able to see what happened.

6.20. Conclusion

The evidence, particularly that of Ms Walsh and Mr Joyce, clearly establishes that the police vehicle was a substantial distance, somewhere in excess of 200 metres, behind the stolen vehicle by the time it crashed. I accept that Fielden heard and complied with Foster's direction to terminate the pursuit. It is doubtful that Waylon could have seen the police vehicle once he had negotiated the bend near the oval. I therefore

reject Waylon's evidence that it was close behind throughout, and was intimidating him into continuing to drive dangerously. He may have been seen a flashing light in the distance. I suspect that he was so stressed by driving at such an outrageous speed, particularly in light of his inexperience, that he did not look in the rear view mirror after the pursuit commenced.

- 6.21. Having regard to the extent to which Fielden had dropped back in the space of only a few hundred metres, it is obvious to me that he complied with Foster's direction to terminate the pursuit.
- 6.22. It must be remembered that, at 120 kilometres per hour, the stolen vehicle was moving at 2000 metres per minute. At that rate, it would only have taken about 20 seconds to travel from Flinders Terrace, where Waylon probably last saw a police vehicle in his rear vision mirror to the accident scene, a distance of about 650 metres (see Exhibit C71a, p6).
- 6.23. In my opinion, having regard to this very short time interval, and Waylon's evidence that he would have kept going at high speed until he was sure he had evaded the police, it would have made very little difference if the police vehicle had slowed to 60 kilometres per hour rather than 60-70 kilometres per hour according to Fielden, and 70-80 kilometres per hour according to Henderson. Indeed, even if Fielden had stopped, when the 'terminate' order was given, at which stage his vehicle would have been somewhere between Mackay Street and Flinders Terrace, and obscured by the hill, it is likely that Waylon would still have been driving at 120 kilometres per hour when he went through the Carlton Parade intersection.
- 6.24. I therefore find that Fielden's actions as a result of Foster's instruction to terminate the pursuit had no effect upon the tragic outcome.
- 6.25. In my opinion, Waylon panicked when he saw the police vehicle do a U-turn and commence to follow him, and then when the other police vehicle attempted to block his passage onto the bridge. Once he got past Hobbs' vehicle, he drove the car 'flat out' until the accident occurred at very high speed.
- 6.26. This was the first time he had driven a vehicle on bitumen, the first time he had driven at night, and the first time he had driven at such outrageous speeds. In my opinion it

was his panic, inexperience, and desperation to get away from the police which caused the accident, not the actions of the police officers concerned.

- 6.27. I note in particular that Mr Bleechmore, Counsel for Tyson Lindsay's family, expressly abandoned the allegation that police 'rammed' the stolen vehicle before the accident (T547-548).

7. **Recommendations**

- 7.1. The evidence in this inquest demonstrates that there is still confusion among police officers about the correct procedure to be adopted when an episode of Urgent Duty Driving is to be terminated.

- 7.2. In my findings from the inquest into the death of Brenton Maurice Goldsmith, inquest number 17/2003), delivered on 7 November 2003, I said:

'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.

...

7.7 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.'

7.3. In this inquest I heard evidence from Assistant Commissioner Fahy who told me that the Senior Executive Group of SAPOL had not yet reached a decision about whether the draft policy should be implemented.

7.4. Mr Fahy acknowledged, for example, that the General Order also uses the word 'moderate' in the context of moderating a pursuit, which implies that the pursuit should continue at a more moderate speed. This is inconsistent with terminating the pursuit, in which, to use Mr Fahy's words, the police should 'forget it' (T481).

7.5. As I said in Goldsmith, the adoption of the draft policy should remove that confusion.

7.6. Assistant Commissioner Fahy told me that in his opinion, it is not possible to be so clear. He said:

' Again, I don't mean to be semi-political here. This will be a decision that comes up before the senior executive group, of which I am part, and, therefore, a decision will be made based on the project recommendations looking at the sound rational. From my own perspective, at this very given moment, without knowing what the project's research has shown, I think it is exceptionally difficult to provide such a definitive approach that everybody is going to be so clear in it, I really do. We either, as an organisation,

effectively say 'That's it. No more under any circumstances whatsoever', or we adopt a more balanced view, which may or may not be right down the track and determine our approach from there. I understand that there are some countries in the world that have simply said 'We're not going to get involved in it'. There are other countries in the world that have said 'No, we will always be involved in it'. Hopefully the research that comes before the senior executive group, based on comments from past coronial inquests and the likes, gives us sufficient information to be able to make a very sound decision on it because organisationally you could.' (T517)

- 7.7. I have since, on 5 July 2004, received a message from Assistant Commissioner Graeme Barton of Operation Support Service, SAPOL, that the Senior Executive Group had examined proposed changes to the Urgent Duty Driving policy during the week previous to that, and that the policy had been returned to the working group for further attention. It was expected to be back before the Senior Executive Group again in a fortnight, which would be about the time these findings are published.
- 7.8. It is not for me to dictate to the Commissioner of Police how he should frame his General Orders. I do, however, repeat the recommendation I made in Goldsmith, in the hope that these concerns can 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'

Key Words: Death in Custody; Motor Vehicle Accident; Stolen Vehicle; Urgent Duty Driving; Reckless Driving; Police

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

Seal the 22nd day of July, 2004.

Coroner