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**STATE**

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**CORONER**

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**VICTORIA**

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13th November, 1995  
Case No: 1286/94

**RECORD OF INVESTIGATION INTO DEATH**

I, **Graeme Johnstone**, State Coroner,

**having Investigated** the death of Shane Balzan with inquest held at the Coronial Services Centre, South Melbourne on the 18th May 1995, 16th and 19th of June 1995.

**find that** the identity of the deceased was Shane Balzan and that death occurred on 15th May 1994 at the intersection of Bell Street and Gilbert Road, Preston from head injuries in the following circumstances:-

1.1 At approximately, 12.30 am on 15th May, the deceased who was the front seat passenger in a 1980 Holden Sedan Registered Number CMA110 being driven by Denis Katsoulakos when it was struck in the intersection of Bell Street and Gilbert Road, Preston by a 1979 Ford Falcon Sedan Registered Number APM861 being driven by Christopher Robert Raymond Perkins.

1.2 Shortly prior to the collision Perkins, aged 15, had been observed by police travelling west in Edwardes Street, Reservoir. On observing the vehicle police followed, identified it as having been stolen and a pursuit commenced.

1.3 Approximately 4.5 minutes after the commencement of the pursuit the collision occurred in the intersection of Bell Street and Gilbert Road. The Ford, driven by Perkins south on Gilbert Road, failed to stop at a red traffic control signal, entered the intersection at high speed, collided with Katsoulakos' Holden which was travelling west on Bell Street. Following the collision both vehicles rotated coming to rest in the south west corner of the intersection. The Ford ended up against a police vehicle and the Holden on a power pole. Katsoulakos did not hear the police siren.

1.4 The Ford Sedan, owned by Donald Baker, had been stolen from a rear parking lot of the Lakeside Hotel in Edwardes Street, Reservoir sometime between 7pm and 11.30pm on 14th May 1994. On discovering that his vehicle was stolen, at 11.30pm, Baker immediately reported the fact to the police. The vehicle was valued at about \$3000.

### **The lead up and Pursuit**

2.1 Perkins stole the Ford from the hotel car park shortly prior to midnight on 14th May. He entered via an unlocked back door and used a dipstick to start the vehicle. According to Perkins he then drove to Lalor and picked up a passenger Rodney Grant Doherty at his residence. Doherty confirmed the fact he was collected by Perkins. Doherty was aged 16. Perkins intended to strip the car of its wheels.

Following the incident both Perkins and Doherty were dealt with in the Children's Court. Perkins was charged with Culpable Driving, Recklessly Causing Serious Injury and Theft of a Motor Car [along with other traffic offences] receiving an aggregate sentence of two years in a Youth Training Centre. Doherty was charged and convicted of Theft of a Motor Car and sentenced to 9 months in a Youth Training Centre.

2.2 Perkins was a long term young offender with a number of Children's Court offences. He had been a client of Health and Community Services being managed by their Protective Services and Juvenile Justice sections from about 1987. At inquest Perkins admitted to having previously stolen 5 or 6 cars and described a difficult home background.

Having viewed all of the Department's files relating to Perkins, other than to generally say that he was a difficult management problem [with continuing criminal behaviour], there appeared to be no specific issues touching on the management that could have effected the outcome of this event [see later comments on *Health and Community Services - Injury Prevention and the Young Offender*].

2.3 On collecting Doherty from Lalor Perkins apparently drove back to Edwardes Street where they were first observed by Senior Constable Adam Curtis and Constable John Robert Kevin Cahill who were in a police car on route to a reported burglary. Cahill was driving with Curtis the observer. Cahill was the holder of a 'C' Class Police Driving Authority.

On route Curtis indicated to Cahill that he wished to check a vehicle which was turning from Edwardes Street to Gilbert Road. Cahill had noticed the driver and passenger appeared to be young. On observing the young appearance of the driver and passenger in the Ford Curtis had also become suspicious that the vehicle may have been stolen and directed Cahill to follow the vehicle.

2.4 The Police followed Perkins along Gilbert Road into Henty Street. On approaching a round-a-bout at Sprattling Street the blue flashing light on the police car was activated. Cahill flashed his headlights at the Ford. Perkins' vehicle then accelerated quickly partially mounting the round-a-bout. Cahill mentions that Perkin's vehicle became airborne when negotiating the round-a-bout. After some short delay in assessing the situation Curtis then notified D24 of a pursuit giving location as travelling north in Henty. The correct direction was in fact east and on notifying the correction to D24 the siren was activated.

Perkins speed was estimated to be between 60 and 80 kmph and he again mounted a round-a-bout at the intersection of Henty and Pine Streets. At this stage the registration number of the vehicle was identified, transmitted and another police vehicle acknowledged the vehicle as being stolen - having just taken the report over the counter [at Reservoir Police Station]. Perkins was observed to swerve from side to side within his lane as he approached Croft Crescent [still at speeds between 60 to 80 kmph] again mounting the round-a-bout at the intersection. The police vehicle was about 35 meters behind.

Within about 15-20 meters of the intersection of Spring Street Perkins' vehicle veered to the incorrect side of Henty. He cut the corner, turned left into Spring too fast and moved to the incorrect side of the road for about 30-40 meters. Cahill observed the occupants of the vehicle under the high beam of his lights and confirmed them to be 'very young'. Curtis observed vehicles travelling towards the Ford and then Perkins corrected his line of travel and moved to the correct side of the road. At this stage the Ford was travelling between 60 to 70 kmph with the police vehicle at a distance of 30 to 40 meters behind.

On approaching the intersection of Spring and Edwardes Streets Perkins operated his left indicator made various confusing manoeuvres, skidded, almost hit a pole on the median strip in the centre of Edwardes. Having stopped near the pole he then accelerated hard in a westerly direction down Edwardes. Curtis believed those in the pursued vehicle were going to exit the Ford and run off.

As the pursuit continued down Edwardes Perkins' Ford overtook another vehicle with the police vehicle about 30 meters behind. Perkins was alternating right/left indicators and swerving from right to left in the his lane. Cahill considered the driver of the Ford was

erratic. At this stage Curtis mentioned to Cahill 'Just hang back, take it easy, sit off him.' Also Curtis reported position to D24.

On approaching the intersection of Griffiths Street Perkins side swiped a Mercedes. Curtis commented in his statement 'This move appeared deliberate on the part of the Falcon driver.' The incident was immediately notified by Curtis to D24 - but the transmission did not get through [unbeknown to Curtis].

The Ford continued on Edwardes Street, turned left into Gilbert Road and travelled south. At a round-a-bout at the intersection of Gilbert Road and Henty Street Perkins drove on the wrong side of the road to avoid another vehicle negotiating the intersection. Continuing down Gilbert Road to Regent Street the speed of the police vehicle was 100 kmph. Perkins travelled on the wrong side of the road for about 20 to 30 meters with the police vehicle positioned about 40 meters behind. Curtis said to Cahill 'sit off him, keep sitting of him, he's gonna stack, take it easy, your doing well'. Cahill acknowledged these remarks.

Curtis' explains his remarks, at this stage, to mean 'By that I wanted John to keep his distance and not to push the driver of the Falcon. I also felt that John was driving well. He did not appear nervous or worked up and was handling the situation well.'

At this time the Ford was operating its indicators and swerving from side to side within the lane. Perkins drove through the red lights at the intersection of Gilbert and Regent apparently at about 110 kmph. The police vehicle almost came to a stop, both driver and passenger assessed that it was safe to proceed and travelled through the intersection. The Ford also travelled through the intersection of Cramer Street and Gilbert Road against a red light at a speed of about 60 kmph [from the statements of Cahill/Curtis there is some confusion on this issue]. A witness M/s Natalina Mangano's statement also tends to indicate the Ford travelled against a red light at Cramer.

The pursuit continued with the Ford drawing away to between 80 or 90 meters, the police vehicle then accelerating to close the gap to 50 meters. Curtis then commented 'take it easy, ease up, back off him, let him do the work, we'll just sit off him'. Cahill apparently was in full control of his vehicle at this time. Curtis assessed the traffic situation as extremely light with no vehicles in sight.

Perkins travelled through the intersection of Gilbert and Murray Road with a green light. As the vehicles approached the eventual point of the collision at intersection of Bell Street and Gilbert Road Curtis gave locational details to D24 and noted in his statement that the police vehicle was about 35 to 40 meters behind the Ford. The Ford was observed enter the intersection against the red light without speed reduction or breaking at about 100 kmph. At this stage other vehicles were observed to be travelling east to west through the intersection. Apparently Perkins braked on entry to avoid another vehicle, accelerated, and collided with Katsoulakos' Holden. Following the collision Perkins attempted to accelerate and finally came to a stop colliding with the police vehicle blocking its path.

Curtis comments, in his statement, to the effect the highest speed reached by the Ford was 110 kmph and that at most occasions it travelled at no more than 70 kmph.

2.5 In addition to the incident with the Mercedes during the pursuit a motorist, Mr. Gaetano Drago, was required to turn into a side street to avoid colliding with Perkins' Ford which was then travelling on the incorrect side of Gilbert Road. Drago observed the police vehicle following at distances varying between 100 to 150 meters behind the Ford. Drago who followed police vehicle for some distance [but did not observe the collision] stated -

`During the time I saw the police chasing the XD Ford, I was impressed at the way the police didn't tailgate behind the XD Ford. The police were well back from the XD Ford and the police slowed down every time they got to an intersection with red lights. I thought the police were very careful in the way they chased the XD Ford. They were obviously thinking of the general public as well as chasing the XD Ford. There is no way the police were going at 110 kilometres an hour or over. The XD Ford pulled away from the police as it was going south down Gilbert Road, so the XD Ford had to be going faster than the police were.'

Drago also illustrates one of the many dilemmas facing the police in the pursuit situation when he states, that on returning home he told his mother [with no knowledge of the eventual outcome] -

`...the guys in the XD Ford would probably kill some poor innocent person if the police didn't stop them first.'

and in his statement he further remarks - `If I hadn't been able to turn out of the way of the XD Ford, then I could probably have been killed.' In evidence Drago stated to the effect that he did not hear the police siren as the vehicles approached. Another motorist, Mr. Danny Smith, who heard a police siren approaching from the rear moved out of the way of both vehicles as he thought `the other car [Perkins] would have hit me'. His passenger M/s Michelina Rendina also commented on Perkins' driving `it drove through the right side of the round-a-bout and sped off quickly along Gilbert Road, with the police following....we were shocked and amazed and couldn't believe the blue vehicle had travelled through the wrong side of the round-a-bout and wasn't stopping'.

One driver, M/s Natalina Mangano, who approached the green traffic lights at Cramer/Gilbert Road intersection intending to turn into Gilbert stopped because she heard the siren. She stated `If I hadn't heard the police siren, I would have driven in front of the big car [Perkins].....the big car was travelling very fast, it went past like the wind.' Mangano comments on the police driving to the effect they `...didn't make any danger for the public and they were very careful how they followed the big car.'

Various other statements of witnesses [an additional 5] , both at the intersection and the approach confirm other descriptions of Perkins' driving. Although witnesses confirm police estimates of `light traffic' the dilemma is illustrated by the number of people negotiating the area and potentially at risk. Community attitudes to this type of driving behaviour can

effectively be summarised in the comments of a part time taxi driver, Mr. Angelo Marakis, to his passenger on observing the Perkins approach to the intersection where the collision occurred - 'Look at that idiot'.

2.6 From an examination of Curtis' and Cahill's statements an impression is gleaned of a tendency to follow Perkins at a far closer distance. Drago [and other witnesses] put an entirely different complexion on the event.

Unfortunately, both Curtis and Cahill were not cross examined and accordingly detailed information was not available. The type of detail available following thorough cross examination of the direct participants would probably have been a valuable tool in understanding the event, auditing and generally assisting other operating police officers future decision making processes in these problematic situations.

2.7 One of the problems, from a public safety point of view, is the apparent difficulty with motorists hearing approaching police sirens. In this case at least two drivers [Katsoulakos and Drago] did not hear the siren.

### **Perkin's and Doherty's Attitudes/Responses**

3.1 Perkins had stolen the Ford to strip it for parts and had apparently collected Doherty to assist in this process. Doherty denies this fact and states he was a passenger for the purpose of picking up a letter. Doherty's version of events was not tested as he was unavailable as witness being a fugitive from a youth detention centre.

3.2 On being asked [at inquest] what he would have done if the police car hadn't been there. Perkins answered - 'I would've drove normally.' Earlier In his Record of Interview to the police Perkins stated -

[Question 251 - 'If that siren noise had stopped, what would you have done?' [Answer] - 'Probably Stopped'

[Question 252] - 'Stopped strait away, or would you have continued to drive?' Answer 'No, I would've gone around the corner and stopped the car and got out and bolted.'

Further on the same issue at inquest....

[Question] - 'Were you going to keep going in the manner you were if the siren stopped?'

[Answer] - 'No'.

[Question] - 'Were you going to try and get somewhere to take the wheels off the car?'

[Answer] - 'No, I would've stopped and got out an ran.'

[Question] - 'So you do say that the reason you drove like you did was solely to get away from the police?' [Answer] - 'Yes.'

[Question] - 'You covered about five kilometres?' [Answer] - 'Yes'

[Question] - 'You weren't going to stop?' [Answer] - 'No.'

As to his understanding of the consequences of the event he appeared to be focussed on the consequences of being caught rather than the potential danger of his actions.

3.3 Doherty, in his Record of Interview stated that Perkins said 'I'm Pulling a chase.' This was denied by Perkins.

Doherty [in the statement] also stated that he was scared and 'telling' him to pull over that whole time.'

At inquest Perkins was questioned about Doherty's involvement during the pursuit and he said -

[Question] - 'Did he tell you to stop at any stage?' [Answer] - 'No.'

[Question] - 'Did he tell you he was scared?' [Answer] - 'No'

[Question] - 'Did he tell you to go faster?' [Answer] - 'No'

[Question] - 'Did he say anything to you, Mr. Doherty?' [Answer] - 'No.'

It is difficult to accept that no significant conversation occurred about the event as it was happening between driver and passenger. From observing Perkins responses to questions at inquest it is also difficult to have any confidence that he would have slowed down in the event the pursuit had been called off at an earlier stage.

### **Communication Issues**

4.1 It is generally acknowledged that communication between the pursuing police unit and command was less than adequate. Those in the 'primary' police vehicle informed command of much relevant information. However some of the crucial information was overridden by other demands on the radio system.

4.2 Advice was given that the Ford -

- had collided with the Mercedes,
- was on the wrong side of the road [part signal missing], and
- was approaching Regent Street at a speed of 100 kmph.

which was not received. Vital details about the driving by Perkins like -

- apparent age of the driver,
- the driving at round-a-bouts,
- regular speed checks, and
- proceeding against red lights at Gilbert/Regent and Gilbert/Cramer Streets.

were not given.

Other detail as to general directions of the pursuit and the Ford was on the wrong side of the road [on another occasion] was transmitted.

4.3 The problems with the communication prompted a comment in the Police Debriefing Report [dated 26th May 1994] -

`A tape recording was played of the pursuit and all members agreed that it was a low key event. There was no urgency or matters of concern relayed by the primary unit. The following points were deemed to be matters of notable significance

[a] That only one [1] speed check was audible during the pursuit.

[b] A broadcast of the first accident in Edwardes Street was not audible.

[c] That the two intersections where the offender disobeyed the red lights was not audible.

The observer gave all these situations over the air but were cut out either by the Operator or other units responding to the call.'

and in a comment which effectively summarises one of the main issues for this inquest -

`The information if available to the supervisor and D24 operators may have influenced their decisions on the night.'

4.4 Also whilst it could be said Curtis' advice on the event to D24 was missing some detail it must also be remembered there are many competing and difficult responsibilities [all operating rapidly] on those in the primary pursuit vehicle.

### **Command Control**

5.1 Up to 9 Officers [including those in the pursuing police vehicle] had potential decision making control in this event. One difficulty is determining who had the actual decision making role. At inquest there was some variance of opinion on this issue. In that regard it is useful to examine some of the evidence on this issue.

The D24 Operator, Sergeant Bruce Stringer on being asked questions as to whether he would have terminated the pursuit [given all of the relevant information] said `I don't believe it was ultimately my decision to allow the pursuit to continue..'

Inspector John Merritt [Operations Centre D24] indicated that once a Duty Inspector and supervising Sergeant are on line the pressure is off the D24 operator in relation to termination [and] - `He should really only concentrate on coordination, but once he - if he feels it is getting out of hand he can still make the decision if he wishes.'

Merritt later acknowledges in the affirmative the question `...although all of these people theoretically have the power to terminate, in practice it works that it does focus on the people in the car and perhaps the district senior office...'

Obviously those working in the Communication Centre are the first to receive advice on developing events. They must therefore have an initial command control role. However that role [as with other command areas] must be clear and defined. It does not appear to be as clear as it might.

Those in the police pursuit vehicle may have different impressions of the decision making support and command chain. However this is a matter of conjecture.

5.2 One of the real difficulties in this inquest relates to the issue of communication. As stated in the Debriefing Report the additional information may 'have influenced' command decisions 'on the night'. Without detailed information on developing events command decisions may not be optimal.

Primarily the technical operation of the radio communication system is of concern for the efficiency of command decisions. [*See Communication Issues*]

### **Police Pursuit Protocols [as at 14th May 1994]**

6.1 The instructions in the police manual advise that a pursuit must be terminated when it creates a unacceptable risk to any person. The criteria for that assessment are -

- the initial known reason for the pursuit;
- the apparent threat to the safety of any person;
- competence of the pursuit driver;
- whether the occupant of the target vehicle has been identified;
- likelihood of interception at a later time;
- all the circumstances of the situation, including speeds reached by the offending driver or police, road and weather conditions.

6.2 There is no difficulty with a number of issues. The reason for following Perkins and the commencement of the pursuit was appropriate. There was a clear difficulty for interception at a later stage as the suspected offenders had not been identified. During the early stages of the pursuit the vehicle was identified as having been stolen. Cahill's driving was competent and restrained [see later comments]. The weather was fine and the traffic was [apparently] 'light'.

6.3 However, once it was recognised by pursuing police that the offending driver was likely to crash [see Curtis' remarks - 'sit off him, keep sitting of him, he's gonna stack, take it easy, your doing well'.], a new decision making factor was needed in the assessment of the events - whether to call the pursuit off [or follow at a discrete distance]. From the available evidence that does not seem to have been a consideration.

It must be remembered that leading up to those remarks there was considerable dangerous driving behaviour by Perkins. That behaviour included erratic driving, speeding, failing to correctly negotiate round-a-bouts, driving on the wrong side of the road [causing another

vehicle to take evasive action] colliding with the Mercedes and proceeding against [at least one] red light. He was also identified as having been 'young' with a logical assessment that he may well be inexperienced [amongst many other potential negative factors] was open.

On reading the available material the 'call off' option at this stage does not appear to have been an operating factor. Rather the decision making process seems to have been concentrating on the driving behaviour of Cahill. At this stage the 'call off' option was relevant and an important part of the assessment of the developing situation. Whether it was reasonable for the operating police to continue in all the circumstances is another matter.

6.4 The 'Urgent Duty and Pursuit' driving material available for Victoria Police at the time covered the problems associated with this type of event in far more detail. Some of the issues addressed in the training material for officers were attitudes [maturity and experience, stress, peer group pressure], reasons for commencing a pursuit, control of pursuits, termination of pursuits, communication, the role of other units, de-briefings, etc. To focus only on the narrow procedures for commencing and continuing pursuits may give too limited an impression of police training and procedures at the time of this incident.

Mention has been made of a training video on pursuits viewed during the inquest. This video appears to concentrate on safety of police members. Whilst this video is only a small part of the entire driver training program it may give the wrong message. It is not known whether the video was seen by Curtis/Cahill during their training [or whether it effected their decision making].

### **Conclusions on the Pursuit**

The pursuit, on the protocols existing as at the date of the incident, was reasonably managed by Curtis and Cahill. There were, however, two other alternatives available - namely ceasing the pursuit at an earlier stage or deciding to follow the vehicle at a discrete distance [after commencement of the pursuit]. Each alternative has potential problems and the eventual result from the point of view of reducing the risk in this case is purely hypothetical. Each alternative comes from a different perspective of 'risk assessment'. The alternative operating on the night appeared to come from a 'policing' perspective and the other two come from a 'harm minimisation' view.

It is a vexed question as to precisely when the 'harm minimisation' approach should become the paramount rule in these events. Ideally (considering all factors) it should have been well before the collision. From the perspective of those officers in the pursuit vehicle the differences between the ideal and actions that were not unreasonable are matters of comment rather than criticism. The failure in the communication system and the need to improve the understanding of 'unacceptable risk' from a command perspective are matters of concern.

Perhaps those in the police vehicle should have attempted to relay more information on the pursuit. This has practical difficulties in view of all of the difficulties required to be managed by those in the pursuit vehicle [see Recommendations and Comments on

*`Training of Command and Operational Police - Closing the Loop' and `Critical Incident Review ]*.

There were other problems identified during the inquest as applying to this pursuit and these will also be dealt with in the `Recommendations and Comments'. Some of the main problems to be considered by the police are the methods of defining or assessing risk [*`unacceptable risk'*] [see Recommendations and Comments on *`Risk Assessment - What does it mean?'*] and the communication system [see *`Communication - The need for review'*]. Each of those difficulties may have effected the decision making process from the policing perspective.

It is interesting to note that in spite of coronial comment in two previous pursuit incidents [King/Underhill and Dolezal] apparently detailed guidelines were not in place as to the meaning of *`unacceptable risk'*. It is, however, in spite of that comment still not an easy issue to resolve - as there are many competing and legitimate issues to be balanced.

It is not possible to say categorically whether the identified problem in the operating radio system had any bearing on the eventual outcome. However it is reasonable to say that the police did not have the best available tools to assist in managing this incident. Both the operational police and command were hampered by a less than optimal communication system.

### **Contribution**

Christopher Raymond Perkins contributed to the death by his high risk driving of the vehicle. By continuing to drive the vehicle in an unsafe manner after it having been indicated to him by the obvious operation of the police lights/siren. Perkins not only put the lives of the public, police and his passenger at risk but also his own life.

He was young and untrained, an inexperienced, unlicensed, incompetent driver with apparently little understanding of risk and no regard for the welfare of others on the roads. The pursuit and its eventual resultant collision is of itself the proof of these statements. In the stolen car/police pursuit context Perkins generally conforms to one of the age group/maturity types.

The identified problems in police management of this event, namely communication combined with an apparently narrow perspective on the assessment of the risk do not amount to contribution. These issues are however matters of comment.

No other person contributed to the death.

### **Recommendations and Comments**

I propose to forward the Findings, Recommendations and Comments to the Attorney General for dissemination to the:

- Minister, Department of Justice,
- Attorney General, Victoria,
- Minister, Health and Community Services,
- Minister for Education,
- Chief Commissioner of Police,
- Director, Office of Corrections,
- Chief Magistrate, Victorian Magistrates' Court
- Senior Magistrate, Children's Court,
- General Manager, Transport Accident Commission,
- General Manager, VicRoads,
- Director, Health and Safety Organisation, Victoria,
- Chief Executive, Insurance Council of Australia,
- General Manager, RACV.,
- Federal Office of Road Safety,
- National Road Transport Commission,
- Australian Society of Automotive Mechanical Engineers,
- Australian Institute of Criminology,
- Department of Criminology, Melbourne University,
- National Injury Surveillance Unit,
- Accident Research Centre, Monash University, and
- The Council for Civil Liberties.

There may be a number of additional agencies which could usefully assist in developing a structured approach to countermeasures aimed at reducing or minimising the risk of 'pursuits'. In developing 'Beacon' the police consulted widely and accordingly it is open for the force [if considered appropriate] to involve agencies other than suggested above. The agencies have been selected as an indication of the breadth of the problem, and, where some considerable expertise may lie. There may be independent consultants in the injury/risk management area who may be useful.

Policing and law enforcement is a particular problem requiring specialist resources. In the pursuit context it is also a wider community problem requiring support and expertise from that area.

**Police Pursuits - general comments. 'Towards a culture of safety - a community responsibility.'**

As indicated, throughout out this inquest, pursuits create an extremely difficult balancing act for both operational police and command. With a force philosophy of public safety with an understandable focus on crime prevention and enforcement to pursue or not to pursue is a

dilemma. To commence a pursuit is an anathema to 'public safety' on our roads - invariably it will create a high risk situation. Not to pursue may permit continuation of a dangerous game played by an individual offender with no regard for public safety - another high risk situation.

More particularly, a policy directed at no pursuits may create a situation of general disregard, in the irresponsible areas of the community, for sound law and order policies. A 'no pursuit' policy, on the available evidence, is not appropriate.

It is understandable that many members of our community may have a reasonable argument that recovery of property cannot justify the cost of the loss of one life. This is clearly the case in this inquest - an innocent life has been lost to recover a \$3000 vehicle. The loss of Shane Balzan is clearly not acceptable from either the perspective of sound policing or the community. It is in this result there is no balance. Philosophically the loss of one life [whether a member of the public, police or the offender] in the furtherance of a law and order policy is unacceptable. Practically, but regrettably, in some situations loss may be unavoidable. What we as a community must look for are viable countermeasures to assist police in managing this difficult problem to reduce the death and injury rate.

As part of the process of developing these comments various reports [including coroners' findings] have been considered. Support for the changing philosophy in management of 'pursuits' by our police forces can be found in the October 1991 Report by the National Police Research Unit - '*Urgent Duty Driving by Australian Police; Facts and Recommendations*' [Dr. Gerry McGrath], the New South Wales Joint Standing Committee on Road Safety '*Staysafe - Traffic Stops, Police Pursuits of Motor Vehicles*' [November, 1994], and a 1995 '*Review of Police Pursuits*' by Sergeant C.J.Cunningham of the Victoria Police Policy and Review Unit. Each of these reports has been useful to assist in framing general recommendations. Many of the coronial recommendations on this case are mirrored in these various reports [which also contain discussion/recommendations in many other useful directions].

In Victoria since January 1993 there have been 8 deaths during police pursuits, five of which have occurred this year. For the 18 month period from January 1993 to June 1994 there have been 75 recorded injuries. Brief research of coroners files indicates there have been approximately 18 deaths associated with 'pursuits' in Victoria since 1988. As coroner's data has only been recorded from 1989 the figures are not necessarily complete. [There are two additional cases (Svane and McFarlane) which may have some 'pursuit' issues although they may not be considered to be related to the true 'pursuit' situation].

Of the 18 deaths 8 were non-involved civilian drivers, passengers or pedestrians. The balance were offending drivers or their passengers and one Police Officer. Additional Police deaths in 'urgent duty driving' have not been considered in these figures. From a coronial perspective all of the 'pursuit' related deaths have been treated on a 'case by case' basis. That may have meant that the extent of the problem has been hidden. In comparison with the recent 'Police Shootings' where no non-involved participant has been killed the 'pursuit' apparently has greater potential to harm innocent civilians.

Recently in Victoria we have seen how a cooperative approach between the general community, Police, VicRoads, the Transport Accident Commission and other agencies has succeeded in significantly reducing injury and death on the roads. Clearly, on the roads, a multi-disciplinary, multi organisational focus to solving the problem has worked and it may now be time to broaden the focus by utilising agencies outside policing to assist in finding countermeasures to reduce the incidents and risk of pursuits.

Each commenced pursuit is potentially a high risk venture - for the public, police and offenders alike. Generally the environment of the pursuit, unlike many other police confrontations is not controllable. Importantly it is not possible to control innocent members of the public from incursion into the direct vicinity of the pursuit path. For example, in the case under investigation each of the witnesses to the event [including operational police] were at risk of injury. In spite of 'light traffic conditions' there were a number of witnesses, some who narrowly missed becoming statistics by chance or by a degree of defensive driving.

More importantly the police data base on pursuits [commenced as from 1st January 1993] for the period to 30th June 1994 indicates for 778 pursuit incidents there were 261 collisions. Cunningham states this 'merely highlights the potential each pursuit contains for serious consequences' [Review p.48]. Without commenting on the circumstances recently we have seen another example, in suburban Melbourne, with four deaths.

Pursuits occur in a variety of situations from detection of the stolen car to traffic offences [both minor and major]. A small percentage of pursuits may result from major violent criminal offences. Pursuits occur in the city, suburbs or the country. Each situation has its particular risk problems. Generally the largest group of offending drivers are young risk taking males [average age 23]. However to specifically categorise one male age group may be to oversimplify the problem.

Recent Police and other research on pursuits shows that the problem is not just peculiar to Victoria. Countermeasures have been tried in other States. Generally each State or Territory Police Force in Australia have developed similar protocols relating to pursuits. In some overseas countries a 'no pursuit policy' has been found to be counter productive. Recent reviews of pursuit procedures have characterised the 'pursuit' as being potentially the most risky police incident management tool. Cunningham also refers to United States research which -

'...stresses the need for police to acknowledge a direct relationship between the potential degree of force used during a pursuit and that used during the discharge of a firearm. To support the NPRU assertion the following point was made -

*'...the police vehicle is 'the most deadly weapon in the police arsenal' - a view reflected in the demand overseas to attach to high speed pursuit a level of accountability similar to firearms use.'*

This 'link' is based on the potential for the serious injury [and/or death] of either the direct participants, or of innocent civilians, that may result from either activity. While there are few instances in which police can justify driving tactics that result in the death of a fleeing driver - it must be recognised that this is, in fact, the true potential of every pursuit....' [p.24]

In reality 'pursuits' are not generally controllable and thus have clear potential for innocent civilians to become part of the injury/death statistics. The recent introduction of 'Project Beacon' by the Victoria Police following a series of police shootings has seen a change in direction by the force from an apparent culture of 'risk taking' to a culture of 'safety'. This a positive direction heralding a clear message to that small element in our society seeing confrontation and violence as a way of resolving issues. The Police must be commended for examining and developing innovative technology and new management methods to reduce the potential for unsatisfactory outcomes.

Pursuits are but another aspect of the same problem. They are bred from a culture of risk taking within our society. They are by their very nature high risk events - to the public, police and offenders. The older police culture may be part of the problem in managing 'pursuit' situations. Peer group pressure and stress may also be critical factors with operational police in deciding to pursue or not to pursue. In some circumstances these factors may work against a safe and optimal outcome.

However, the innovative management methods currently being used by the force in the context of armed confrontation may be a useful key to assist in reducing the incidents of pursuits [or unsatisfactory outcomes]. It is understood police in Victoria are moving in this direction. Cunningham links firearms review to pursuit driving and the author states -

'It is believed that linking this review with Project Beacon has a sound philosophical basis that extends to a conviction that the principles encouraged by Force Command regarding the use of force should be expanded to encompass pursuit and urgent driving duty.' [p.57]

At the moment a single solution is not apparent. The problem is multi-faceted/multi-disciplinary, and accordingly we must look for solutions in a number of areas. It is not just a police problem but one for our entire community - for we are all at risk. The risk is small, but finite, however the overall cost to our community is far greater. Again it is just a symptom of the broader problem - irresponsible [and criminal] risk taking behaviour without regard to consequences. Accordingly significant resources need to be committed to assist the police [and other agencies] to develop countermeasures. Countermeasures may vary from effective planning to fully utilise our rapidly developing technology, more effective and targeted enforcement, to education to reduce risk taking behaviour [a total 'harm minimisation approach'].

It is likely that any program [s] which effectively reduce the incidents of pursuits will have broader spin offs in other areas of crime prevention and road safety.

### *Comments on the pursuit under investigation*

On one view, a reading of the statements of the operational police [in the pursuit car], leads to the conclusion that optimally the chase ought to have been called off at an earlier stage. However, it must be recognised, those officers were placed in a difficult balancing situation with little time to make assessments. At inquest we have the luxury of many minds minutely examining an incident that took place within the space of 4.5 minutes where operational concentration was directed towards not only driving control but communication and assessment of a rapidly developing dangerous situation. Also in this case unbeknown to Curtis and Cahill they did not have the full decision making command support structure to assist - for command [via the police radio] was not getting the complete picture of the developing events.

Counsel Assisting, Mr. David Hollowes, puts one of the central concerns of this pursuit `is the greater emphasis apparently placed on the safety of the police compared to the safety of the public which appears to be the emphasis in the video shown at the police driving school and I note the statement of Senior Constable Curtis to Constable Cahill at one stage `keep sitting off him, he's gonna stack' with no suggestion that was a reason to terminate.'

Perhaps an earlier shut down of the pursuit combined with a deliberate following rather than pursuit role may, possibly, have had a different result. However, against that, It could not be said, with any required degree of certainty, that had the pursuit been called off, Perkins would have obeyed the relevant traffic laws thereby avoiding the resultant tragic death of an innocent member of the public.

Accordingly, any comment, directed toward the optimum of an earlier ceasing of the pursuit, should be considered not as criticism of the individual officers involved, but as one of the potentially different methods of managing the incident after the luxury of detailed inquest examination. The dilemma is illustrated by the fact that had that option been taken the result may not have been different.

The difficulty of this assessment process is heightened when members of the public observing the incident are generally, and not unreasonably, supportive of the police management of the incident. Against this it must be remembered that the police have received detailed training for these type of events and are potentially aware of many other competing risk factors. Having examined the material in some detail one cannot, in general, disagree with those members of the public who observed various parts of the incident. That is not to say that there were no other alternatives for managing this incident and the failures in the communication system or lack of adequate guidelines on risk assessment are of no concern.

The assessments by the various civilian witnesses, however, do not take the debate any further and what is needed is broader community support for countermeasures to assist police in reducing the overall incidents of pursuits.

In conclusion, it must be remembered that the family of the deceased, in a remarkably balance approach to the incident, through their counsel, Mr. Anthony Isaacs, were at pains to say 'we hope that some lessons are learnt from the death of our son, and some good can come of it.'

### **Police Procedures, Communication and Training**

#### **• General**

There are a number of issues raised during this inquest that require further consideration. Some of these relate directly to the policing issues. Having considered Cunningham's Review its direction merits support and further work. It is understood that process is already underway. There are many issues raised in his report on which it is not necessary for me to comment.

Also both myself and the Deputy Coroner, Iain West, observed some of the training procedures for 'Urgent Duty Driving' [both theoretical/practical]. As Coroner West states in his most recent finding on a pursuit -

'I am satisfied that the program aims not only to equip personnel with motor skills necessary to properly control the pursuit vehicle, but to enable them to identify when a pursuit is justified, in the context of viewing it as an action of last resort. The program further aims to increase awareness as to whether continuance of a pursuit is worth the dangers associated with it.' [Sasha Ullal - C/N 1619/94]

In general [on my brief observations] the program is appropriately directed and raises many of the issues of concern. No doubt as a result of any procedural reviews [Cunningham/coroners' investigations, etc] there will be issues that may require addressing. The recent change in direction moving towards 'Beacon' principles may also effect the current training process. A view also could be taken that the input of outside expertise into the further development of training may be of assistance.

#### **• Critical Incident Review**

Following the incident a 'Debriefing Report' was prepared. That two page report was limited in its scope and did not critically assess the decision making process of the operational [pursuing] police. Nor did it look at pursuit protocols to see whether they were appropriate [or whether improvements could be made]. However the communication and resultant command decision making issues were appropriately critically raised. Recommendations coming from that debriefing report were limited.

For public safety and confidence it is essential that any problems following a pursuit situation be clearly identified and necessary changes made well before any coronial inquiry. To that purpose critical [and detailed] internal review is essential. That review must also be able to stand scrutiny.

It may be appropriate to consider a far more detailed review process following a major 'pursuit' incident [or death]. A useful model would be the Office of Corrections review procedure following a death in custody. Whilst it is not suggested that every 'pursuit' be subject to this procedure [as this may be impractical] major incidents [or deaths] may be a useful starting point. To ensure accountability and proper management of 'pursuits' random auditing [with detailed critical incident review] may be necessary for the balance of the incidents.

As coroners generally do not hear from the operational police directly involved [eg - driver/observer] that, of itself, means that any understanding of the event issue may be limited. Accordingly, it is essential that any incident review critically examine the actions of the operational officers to ensure a detailed understanding of the factors involved in their decision making process.

Balancing the rights of the individual officers in this process is recognised as being difficult. They are accountable at both court and internal disciplinary level. However it is also essential, if countermeasures and procedures are to be effective, we know as much of the operating difficulties and decision making process involved in an event as is possible. Unfortunately accountability and any focus on blame [whilst in some cases appropriate] may not elicit the best information in this regard. With any 'harm minimisation' or 'safety' approach it is crucial that all factors involved in an incident be examined [see for example the Bureau of Air Safety investigatory model] and the experience of those directly involved is vital in this regard.

### ***Recommendation 1***

***The police consider a critical incident review process as is used by agencies such as the Office of Corrections [in deaths in custody]. Such review process should be confined to deaths, major incidents and limited random auditing process for the balance of incidents.***

#### ***• Information systems***

It is understood that the Victoria Police are working on including pursuit information on the 'Lethal Force Data Base' as is being used for Beacon. There are a number of identified deficiencies in the way data is presently being collected [identified in Cunningham's Review] and these need to be addressed.

Defining a 'pursuit' is a problem for both the operation of protocols and procedures, accountability and data collection. There will be many traffic intercepts which are not perceived as a true 'pursuit' situation - yet if data on these incidents is properly reported, collected and assessed much may be learnt. On the other side to unnecessarily collect detailed information on routine police traffic/crime detection work on our roads may not assist effective management of the issue. It is necessary to find a balance in the reporting process.

With almost 800 pursuits over a 18 month period, there is potential for considerable detailed material on offender profile and circumstances surrounding the event to be accessed. Accordingly, with our rapidly developing technology, it should be possible to have the complete brief [and offender history, etc.] on the data base.

Whilst in general our society sees 'peer group pressure' as a factor in many events in the context of the 'pursuit' there is no data on this issue. Detail on passengers and their involvement in the incident is vital for research looking for effective controls and countermeasures. The current data base does not record this type of information.

In addition details of injury [severity, health sector cost, etc] are important for assessment of the extent of the problem for our society. With 261 recorded collisions for 18 months an accurate assessment also requires full and accurate details of the extent and cost property damage. The overall cost to our police force/legal system also needs to be transparent. With the police moving towards an accurate assessment of the events and a detailed review there may also be a need for this material to be on the data base.

Any internal Police critical assessment of an incident needs to be accessible. The same comment would apply to Coroner's Findings/Recommendations or an Ombudsman's Report. Up to date literature and research information might also be useful.

Cunningham's Review refers to the development of a National Information System on 'Pursuits' [or 'Urgent Duty Driving'] and it is important to ensure the data from any investigation on the issue is the best available if we are to develop effective countermeasures. A truly 'National' approach to information collection and sharing no doubt would be preferable for the problems are not peculiar to Victoria. With the move to develop a National Coronial Information System detail on deaths in pursuits might be seen to be adequate but it will not cover the many events where a fatality is not the result.

In the event the data is to be effectively used for research leading to a 'safer community' then all of these issues need to be considered. To limit the data collection to the criminal justice issues may be far to narrow for there are far wider public and occupational health and safety issues involved. All of these issues may apply in varying degrees to every 'pursuit'.

It must be remembered that 'the pursuit' is but one facet of 'Urgent Duty Driving' and its is essential that other events [not just 'pursuits'] associated with the broader issues of safety in police working with motor vehicles not be overlooked.

## ***Recommendation 2***

***Consideration be given to extending the information system on police pursuits to include detail on -***

- 1. Full police brief [and offender criminal/traffic history]***
- 2. Participating passengers [including criminal/traffic history]***

- 3. Injury detail [including severity and cost to the health sector]*
- 4. Property damage detail [including cost]*
- 5. Critical Incident Review, Coroner's Findings, Ombudsman's Reports, etc.*
- 6. Urgent duty police driving incidents [major incidents involving 'emergency services' may also be useful].*
- 7. Literature/research information [local/overseas].*

- *Communication - the need for review*

The technical communication to command via the police radio in the pursuit car was less than optimal. The system did not give the operating police [in the pursuit car] the required support. Nor did it relay vital information to command. In a significant number of instances the message delivered by the observer [Curtis] was overridden by other demands on the system. This is not satisfactory.

Operational police, like Curtis and Cahill, need the support of the best communications technology available, not only to relay their information on the developing events, but to ensure that the information is used to best advantage - to protect the public and police alike. It is both a public safety and an occupational health and safety issue.

Command/operational police need to be assured that the vehicle pursuing is not only delivering up to date information but has the full support of the technology. Command decisions also need to be made on the best information available. The high risk and fast nature of the development of a 'pursuit' requires the very best in assistance for all those involved - both at command and operational levels.

Because the messages were overridden much valuable information from the pursuit car was lost. Command did not have all the available information on which to make a decision. In this case, however, there is no difficulty in determining significant information directed from the pursuit car to D24 was lost. For example the information that Perkins crashed into the Mercedes did not get through. Small parts of messages did get through - thus enabling some reconstruction of the balance. In other cases, the issue may not be as easy to resolve.

It has been suggested that there is no better system available. With our developing communications technology it is difficult to accept that technological solutions cannot be found. No doubt improvements in procedures and training may assist.

With the possible future inclusion of inboard computers [mobile data terminals] in police vehicles there may be some relief for the communication system. Although this may some distance in the future, planning may be necessary, especially given the state of with our rapidly developing technology and communication systems. [see also Staysafe Report - Recommendation 16]

It should be noted this inquest has not examined current procedures available via the 'Intergraph' system.

### ***Recommendation 3***

***The police consider reviewing the operating radio system in view of the problems identified in this inquest. Any review should consider both procedures and available/developing technology. Because of the identified 'high risk' and frequency of pursuits any inadequacy in communications may adversely effect decision making and put lives [public, police and offenders] further at risk.***

***It should be noted that identified failures may not just apply to the pursuit situation but have the potential to be detrimental to the safety of the public/police in other rapidly developing events.***

***In the event the problem is not resolvable [in the short term] then procedures need to be in place that reflect the difficulty. Unfortunately, if command are not getting the full picture, then the integrity of the decision making chain is broken. In that case the effective decision reverts to those in the pursuit car. They may not be in a position to know their information is not being relayed and relying on command to assist - when they cannot. This is clearly not optimal.***

- ***Incident Control - the need for review***

In this case decision making structure meant that up to 9 police [including those in the pursuit vehicle] could have ceased the 'pursuit' at any time.

Whilst it is considered appropriate that a number of individuals within police command have the ability to call off a pursuit [including those in the pursuing vehicle] the sheer number may have a potential to be counter-productive. Also in a force structure that relies on a vertical chain of command for one particular area of operation to deal with the problem on a theoretical equal decision making basis may create problems.

The term 'counterproductive' is used in the sense that each person involved in the process may delay making a crucial and necessary decision because of the understandable belief others have decided to allow the pursuit to continue. There is no categorical evidence in support of this assertion - however the comment is made in order that management examine the issue.

It is difficult to critically assess the decision making process actually operating at the time of the event because all relevant information was not available via the police radio to command. Other than having knowledge of the fact of a pursuit [and the receipt of some information] - command were effectively working in the dark.

#### ***Recommendation 4***

***The decision making structure for 'pursuit' management be reviewed. In particular any review should consider the desirability and efficacy of a considerable number of officers with potential responsibility to 'call off' [or 'continue'] a pursuit.***

***In making this recommendation it should be noted that it is accepted that each of the officers in the pursuing vehicle should have that responsibility. The police driver has one of the most critical [and difficult] roles to play in that process. Also there should be other officers with overriding command responsibility to make those decisions.***

- ***Training of Command and Operational Police - 'closing the loop'***

One of the perceived difficulties for those who may have command control of an incident [whether at D24 or at Station Officer level] is their knowledge of 'the current 'Urgent Duty Driving' protocols and training and ability to assess 'risk'.

Following this inquest a view could be expressed that the quality of understanding of command directly involved was variable. That is not a criticism of any of the officers concerned but a comment on the then existing overall policy and training.

Risk assessment is a difficult and specialist area and one was left with the impression of individual difficulties at command level in determining what factors to take into account in terminating. There appeared to be no regular training for D24 operators relating to managing 'pursuits'. The D24 Operator did not know how to determine 'unacceptable risk'. The Inspector also had difficulties with this issue [see comments on '*Risk Assessment - What does it mean*'].

There was additional information that could have been transmitted from the pursuit vehicle potentially useful for effective command decisions. It is important that operational police be trained as to the type of information to be transmitted for that purpose.

Obviously any Critical Incident Review [or Debriefing] needs to be directed into the training process [the May 1994 'Debriefing' was forwarded to the Motor Driving School]. Issues raised [and solutions] also need to be addressed with all those directly involved in the incident from operational police to command and D24. If necessary the material needs to be fed back into training process for command.

It is noted that the Motor Driving School did not respond back to the author of the 'Debriefing Report' as to what [if any] action was taken. It is essential, if problems are identified, and action is taken [or not taken] all those involved in identifying the issues are advised of outcomes.

Any training process should address the issue from a command perspective. There are existing courses for command [ie: Sub Officers, Sergeant's Advanced Skills, Command and Control/Officers]. The development of policies and procedures on pursuits [and Urgent Duty Driving] will no doubt be ongoing and it is essential that those with command responsibility have access to the best information [and training].

It is also noted that the Police deal generally with 'pursuits' and 'urgent duty driving' in their general promotional/skills training courses. It may well come down to a question of emphasis in the training process.

As the 'pursuits' issue is a vexed problem for both the police and the community the involvement of outside expertise in training development and delivery may be of use. Considering the broader public safety issues and the need to develop the best system to assist in controlling pursuits it may be appropriate to use other expertise to assist in an area that has traditionally been regarded as a policing question.

#### ***Recommendation 5***

***That the police instigate a program to ensure regular review of training for command/D24 levels [as concerned with the management of 'pursuits/urgent duty driving'].***

#### ***Recommendation 6***

***That [as part of the training] 'debriefing' material be immediately fed back to all those involved in an incident.***

***In the event changes made following an incident are included in the driver training process it is essential that distribution of the material be as wide as possible. In all cases 'the information loop needs to be closed'. An audit process may be necessary to ensure maximum level of input of any new developments.***

#### ***Recommendation 7***

***Victoria police consider using outside experts in training development and delivery.***

- ***'Risk Assessment' - what does it mean?***

Whilst the focus of policing understandably balances community safety [on the roads] with the detection and prevention of crime there are tensions within the process which are evident in the 'pursuit' situation. In November 1994 the New South Wales Joint Standing

Committee on Road Safety 'Staysafe - Traffic Stops, Police Pursuits of Motor Vehicles' commented -

'The police ethos sometimes seems to find it difficult to arrive at a resolution of a perceived conflict in the primary corporate goals of ensuring public safety and preventing and investigating crime. The underlying difficulty is particularly emphasised when considering what constitute reasonable actions by a police officer in conducting a pursuit of a motor vehicle'. [Report p.9]

The case under investigation in the inquest is directly on point - there are major difficulties in assessing the actions of the individual officers when one may be faced with competing community, occupational, policing philosophies and definitions of 'safety'. How we look at 'risk assessment' and define 'unacceptable risk' in this environment is vital for proper management of the events.

In general it may be any 'risk assessment' should be considered not from a policing/law enforcement perspective but from a 'harm minimisation' direction. This would include assessment of 'policing issues' as one of the factors. In many cases a 'harm minimisation' model requires an early termination of a 'pursuit' (or not starting) and in rarer cases the model would mean that overriding 'public safety issues' require continuation of a pursuit [or other strategies] to ensure early apprehension of an offender. It must be remembered that the 'harm minimisation' model would also mean commitment from other sectors in our community to assist in reducing the incidents of the need to be involved in a pursuit in the first place.

Other coroners have raised the 'risk definition' issue. In King/Underhill [CNS 607/91 and 608/91] Deputy Coroner Wendy Wilmoth in dealing with 'the dilemma presented by police pursuits' before leading into problems of 'definition of risk' says -

'In their endeavours to protect the public, the police face the need, from time to time, to attempt to apprehend an offender or suspected offender in a motor vehicle. It is of course essential that police be trained to be proficient drivers under emergency conditions, but beyond training is the need for wisdom and experience to assess the need to pursue, and a need for expertise as a driver, which a young driver, no matter how well trained, may not possess, because of a lack of experience.'

As to 'risk' [and the then existing force guidelines] the coroner further remarks -

'A pursuit must be terminated if it creates an unacceptable risk to the safety of any person. Whilst ultimately the exercising of judgement cannot be avoided, and whilst an attempt to define or provide guidance on the meaning of unacceptable risk is undoubtedly difficult, it may be that this difficulty must be grappled with. The police force is not the only emergency service, and other services, faced with weighing an emergency against public safety, have had to make decisions about risk-taking which tilt the scales in favour of public safety.'

In Dolezal [CN 592/93] Coroner Jacinta Heffey said `...the Police Force Circular relating to pursuits makes it clear that the decision to pursue a vehicle involves the balancing many factors and making assessments of risk factors with little information for guidance.'

Without appropriate guidelines and adequate training for command and operational police as to what `unacceptable risk' means [and how to assess the `risk'] in the pursuit context the question will continue to be vexing. In this context the protocol operating in May 1994 is not necessarily adequate.

This finding will not attempt to define `unacceptable risk' but to suggest that the issue needs to be examined from a broader perspective involving agencies and specialists outside policing who generally deal with `risk management'. Agencies that might usefully be considered are VicRoads, Transport Accident Commission, Accident Research Centre [Monash University], Health and Safety Organisation Victoria and the Department of Criminology [Melbourne University]. Independent consultants in these areas might also be appropriate.

Again a word of caution - a degree of flexibility in the process is essential to allow for the unexpected and more difficult policing situations.

### ***Recommendation 8***

***That Victoria Police consult with outside agencies/specialists on developing the most effective definition/guidelines relating to `risk management' in the pursuit situation. Any definition/guidelines will no doubt have to take into account the particular responsibilities of policing.***

***Once adequate definition/guidelines are developed training to assist in the understanding and assessment process is vital. Ongoing development/audit is also essential. Outside expertise may be useful in this regard [see comments on `Training of Command and Operational Police - Closing the loop'].***

### **Offender/Passenger Behavioural Research**

There is a clear need to understand the myriad of factors leading to a pursuit. Ongoing research into the reasons for an offender or group of offenders becoming involved is vital to developing effective countermeasures. At this stage research appears to be `blame' focussed. That is not to say that a `responsibility' test is not appropriate. There may, however, be other factors which are capable of identifying and targeting leading to a reduction in the incidents associated with pursuits.

Any review of an incident [see `Critical Incident Review'] should also attempt to examine the offending driver's responses and motives. That may require assessments from both police and outside experts [such as behavioural psychologists, injury prevention specialists, criminologists, etc.,]. Whilst the material might be limited [because of legal difficulties], in

major incidents, such assessments may assist in developing effective countermeasures [see also Recommendations 13 to 16].

A detailed research project could be considered examining offending drivers/surviving passengers responses, attitudes and motives [where criminal proceedings have been completed].

A detailed examination of Perkins [and Doherty's] Record of Interview and inquest transcript [of Perkins only] may serve to assist in understanding of offending behaviour behind a `pursuit' event.

### ***Recommendation 9***

***In addition to any `critical incident review' the police include detailed assessment of offending behaviour and motives in major pursuit incidents to ensure ongoing countermeasures are appropriately directed.***

### ***Recommendation 10***

***A research project be undertaken to assess general offending driver /participating passenger responses, attitudes and motives to pursuits. Such a project should consider involving [with police] behavioural psychologists, criminologists and injury prevention specialists.***

### ***Enforcement - the need for Review***

Appropriately structured laws and enforcement policies must be seen as only part of any solution. Without other well planned policies in place to reduce risk taking behaviour [in the pursuit context] the law/penalty process will only be a band aid. However this does not mean that the law/enforcement area does not need revisiting.

A word of caution at the outset. We have seen problems with an approach aimed at one sector of the community in Western Australia following a series of deaths associated with pursuits in that state. It is not suggested that Victoria follow that track. Rather that the issue of the law [and penalties] associated with criminal/traffic offences following police pursuits be reviewed [with appropriate consultation].

At the moment offences may range from dangerous driving, conduct endangering life, culpable driving to manslaughter. It is worth examining whether one of the main potential target group of offenders [young risk taking males] appreciate the legal niceties [and consequences] of such offences. Accordingly, the question is - should consideration be given to a specific offence [with penalty recognising the seriousness of the event] of involvement in police pursuit? Consideration should be given to whether the use of a specific and clearly defined offence [involvement in a `police pursuit'] will send a sufficient message to the potential target group.

Also unless they are in a stolen car passengers are apparently generally not charged with any offence. As already indicated there may be an element of 'peer group pressure' in some pursuit related driving offences. There may be a need to research this area and investigate the desirability of introducing specific offences [or using existing offences - aiding and abetting, etc] relating to participating passengers in the police pursuit situation. Obviously this area needs to be tackled with some degree of caution [see also Recommendations 9 and 10].

In a submission by Mr. Ian Hill [for the operational police involved in the incident] comment was made -

'The importance of Perkins' criminal behaviour on the night in question should not be lost in an inquest which tended to focus on the behaviour of the police. It can only be hoped that persons such as Perkins can be deterred from such criminal behaviour by continuing education and community alertness and reprobation reinforced by appropriate judicial comments and sentences of detention/ imprisonment where appropriate.'

A similar comment [on sentencing] can be seen in the remarks of Coroner McCann in Western Australia -

'It is by early detection and by bringing alleged offenders before the courts for judgement that persons will be dissuaded from committing offences in the first place...' and... 'It is also important that young persons who have failed to comply with orders of the Children Court...be brought back before the court promptly if they fail to comply with such orders.'

### ***Recommendation 11***

***The Department of Justice undertake research with the view to a review of the criminal/traffic offence structure [and penalties] as applying to police pursuits. Any research should consider the desirability of creating a specific offence on 'pursuits' as relating to offending drivers/passengers [see also 'Staysafe' - Recommendation 26, suggesting a 'New offence of Aggravated Dangerous Driving']***

***[see also Recommendations 13 to 16 on the development of alternative educational and correctional type strategies].***

### **Technology - the need to develop and plan**

With our rapidly developing computer and communications technology there is enormous potential for effective policing and the wider issues associated with the health and safety of our community. Within the Department of Justice we have seen a planned approach via a 'Technology Strategy Review' to assess the short and long term needs of the Community within the justice system as regards to computer technology and information.

What is needed is a long term strategy, involving many sectors of our community, to harness technology to tackle the problems of the pursuit. By effectively utilising technology in the pursuit situation other community safety and law enforcement issues may be addressed.

No doubt this needs to be considered as a long term plan as, although the technology is now available, it may not be practical [or cost effective] at this stage. We have the technology to design security systems in vehicles [to prevent theft], identify, track and locate vehicles at a distance and finally to disable a pursued vehicle. In the event such a path is considered desirable there will be a number of areas which will need to be involved and these could include - VicRoads, the various emergency services, the vehicle manufacturing and insurance industries. Accountability and appropriate protocols would have to be considered at all stages of development.

In a 1990 finding involving four deaths during a pursuit involving a stolen car in Western Australia the Coroner. Mr. David McCann said of the ease of entry to vehicles -

‘ It is clear that those young people gained access to the [make deleted] vehicle with ease and were able to drive it away without difficulty. It seems to me outrageous that a vehicle manufacturer is able to design a motor vehicle capable of reaching speeds of up to 200 kmph but fails to design and install a security system to prevent its theft’...

No doubt with our current technology and the moves to develop anti-theft devices in vehicles the community needs to encourage manufacturers to be pro-active in this regard. The inclusion of effective anti-theft devices in vehicles at point of manufacture should become the norm and thereby cost effective. It should be seen not only as a crime prevention measure but a potential harm reduction strategy.

Whilst in the case under investigation the vehicle was not of recent manufacture and entry was gained via an opened rear door in the long term effective anti-theft devices will have results in crime [and injury] reduction. By making access to vehicles far more difficult there will be a likely reduction the incidents of young offenders being involved in the stolen car/ pursuit situation.

In November 1994 the New South Wales Joint Standing Committee on Road Safety ‘Staysafe - Traffic Stops, Police Pursuits of Motor Vehicles’ recommended -

‘The New South Wales Police Service monitor and assess emerging technologies associated with tracking or stopping stolen vehicles in order to;

- [i] establish contractual arrangements with companies which have been identified as marketing viable commercial products; and
- [ii] ensure that there is a compatibility in in-vehicle equipment associated with technologies for tracking or stopping stolen vehicles’. [Recommendation 21 - see also Recommendation 32 ‘Future Enforcement Technologies Task Force’]

The point needs to be made that we may not be maximising our existing road safety/vehicle design technology to best advantage. Innovative solutions need to be explored. Solutions may vary from improved communications, video cameras in police vehicles [for investigations, accountability and occupational safety], security and tracking technology to fully using our existing traffic control and monitoring systems.

### ***Recommendation 12***

***The Victoria Police consider establishing a committee to assist in identifying useful crime detection/prevention technology as it applies to motor vehicles and pursuits. Long term planning for appropriate implementation also needs to be considered.***

***Any consultation, to be effective needs to fully utilise all community agencies interested in the outcomes of such development. Such agencies could usefully include VicRoads, the various emergency services, the vehicle manufacturing and insurance industries. Developing accountability and protocols would also be essential.***

***As the Australian motor vehicle industry is relatively small, and affected by international standards and economic controls, close consultation with other Australian States police forces moving in the technology direction is essential. Overseas experience obviously needs to be considered.***

### ***Education, VicRoads, TAC, RACV, Health and Community Services and Corrections - the need to develop and coordinate alternative strategies***

One of the challenges for our society is to find effective 'harm reduction' strategies for many areas of injury. Police pursuits are no exception.

We have seen how the dedicated commitment of a number of agencies [including Victoria Police] have saved lives on our roads. There is no reason why the lessons learnt from that type achievement cannot be directed towards reducing injury in a particular area - police pursuits. Each of the subsequent comments is directed to this end.

It may be that all of the agencies coordinating an overall program directed towards modifying 'risk taking/offending' behaviour with motor vehicles would provide a far more constructive approach.

### ***Recommendation 13***

***That the Victoria Police [with the Justice System] consider developing a coordinated approach directed at modifying 'risk taking'/offending behaviour associated with young [or all] drivers and motor vehicles. Principal agencies to be involved should include, Courts, Health and Community Services, Corrections,***

***TAC, VicRoads and the Education system [see also Recommendations, 14, 15 and 16].***

***Community agencies such as the RACV also usefully be involved.***

- ***Education, VicRoads, TAC and the RACV***

In the area of education and behavioural modification road safety leads the way. Pursuits are another aspect of road safety. To address 'risk taking' behaviour on our roads necessarily means tackling the problem in the educational system. Whilst the police are committed to community safety, risk taking and crime prevention issues within the educational system the problem of 'pursuits' may require broader approach.

As the issue is also road safety related and may have a spin off effect in other areas of the road toll agencies such as VicRoads and the Transport Accident Commission need to be involved. The 'Victorian Traffic Safety Education - Action Plan' and TAC's new educational program 'RAW' may be useful.

***Recommendation 14***

***The Victoria Police consider developing additional educational strategies in association with VicRoads, TAC, RACV and the Education Department to address 'risk taking' behaviour in appropriately targeted groups. Any program, whilst it may need to be general in nature, should also deal with the 'pursuit' situation.***

***It should be noted that the Police are already involved in the Traffic Safety Education 'Action Plan' [see also Recommendations 15 and 16].***

- ***Health and Community Services - injury prevention and the young offender***

Health and Community Services may also need to be involved to assist in developing alternative strategies. It should be noted that Health has an overall coordinating role in injury prevention [Taking Injury Prevention Forward - Victoria's Injuries Prevention Strategy]. Also Health have a role in managing young 'risk taking' offenders [through its Juvenile Justice Programs and with the Children's Court in its Criminal/Family Division] and may need to develop alternative strategies to assist in the management of road safety issues associated with those offenders.

The recent introduction of the 'Hand Brake Turn' Juvenile Justice Program by Health directed towards young offenders who developed a pattern of misusing vehicles is a useful example of a step in the direction of addressing 'risk taking' and offending with cars. Other Juvenile Justice programs developed by Health [see 'Counsel's Submissions] may be useful.

***Recommendation 15***

*That Health and Community Services work with the Police to further develop programs dealing with `risk taking' behaviour with motor vehicles by young offenders [see also Recommendations 14 and 16].*

- *Potential for Corrections in driving behaviour programs.*

The Office of Corrections through Community Based Orders [community work and other programs] deal with offenders in the age group of 17 and above. As the limited statistics indicate the average age of offending drivers [in pursuits] is 23 the larger percentage may well be in this group - developing and targeting driver behaviour programs in this area may be useful. No doubt research on prior driving/criminal behaviour and pursuits is necessary to assess the potential efficacy of any countermeasures.

### ***Recommendation 16***

*The Police [with the assistance of the Office of Corrections and criminologists] consider undertaking research on the links between prior driving/criminal behaviour and `pursuits'. Research should be undertaken with a view to establishing the efficacy of developing programs within Corrections to modify offending behaviour linked with risk taking driving or `pursuits' [see also Recommendations 14 and 15].*

### **Coroners' Findings and other material**

A number of Victorian Coroners' findings are attached as a matter of reference. The findings relate to deaths occurring from 1988 to date. Principally they relate to `Pursuit' driving. Some findings relating to deaths following `emergency' driving by the Emergency Services are also included. Also included are the findings of the Western Australian Coroner, David McCann.

Also attached are the various submissions of counsel involved in representing the various parties in the inquest. From a number of perspectives their submissions may be useful for research.

It may be useful for the Victoria Police to research coroners' findings in Australian States and Territories on pursuit, urgent duty and other emergency driving.

### **In conclusion**

The words of Sergeant Cunningham at the inquest summarise the type of responses needed by police to manage these events -

`... increase in awareness and additional training is of great advantage.....that it is okay to be able to teach police drivers to drive extremely well, but in conjunction you must have regular restating of the force...mission statement and have members regularly tested to make sure their driving skills are up to standard and also reimplant the appropriate attitudes and make sure that they at all times see public safety and safety of themselves and the offender as being a priority.'

To leave the problem of `pursuits' just to the police is not appropriate as it is a far wider community issue. The Community [through its agencies] must accept that responsibility. The police need the required resources and broad agency support to assist in reducing the incidents of these events.

**GRAEME JOHNSTONE**  
State Coroner

Mr. David Hollows Assisting the Coroner,  
Mr. Anthony Isaacs for the Balzan Family,  
Mr. Basil Stafford for Mr.Christopher Perkins,  
Mr. Ian Hill for Sergeant Leslie Stringer, Senior Constable Adam Curtis and Constable John Cahill.  
Mr Peter Reordan [with Andrew Ramsay from 16/6/95] for Victoria Police,  
Mr. Peter Chadwick for Denis Katsoulakos, and  
Mr. Gilbert for Health and Community Services [until 16/6/95]

