



A POLICE PURSUIT RELATED INQUEST

INQUEST INTO THE DEATHS OF SIMON JAMES LOVITT, SHAUN RYAN LAW, AND CAO (CARL) TRI VO

FINDINGS

The deaths of Simon James Lovitt¹, Shaun Ryan Law² and Cao (Carl) Tri Vo³ occurred on 19th June 2002 in Malvern Road, Glen Iris. Both Law's and Lovitt's cause of death was head and neck injury. The cause of Vo's death was head injury.

The lead up to the incident and a summary of the circumstances of the collision

THE LEAD UP TO THE INCIDENT

The white EA Ford falcon sedan registered number OHW 378, that was to be eventually involved in this incident, was stolen from outside an address in East St. Kilda at some time after 10.pm on 18th June 2002. The vehicle had not been reported as stolen and the owner was unaware that the car was missing until police spoke to him about 6am on 19th June.

It appears that the actions of the individuals involved during the evening in the lead up to police involvement can be best summarised as follows (see summary in the Police Brief for the Coroner):

"A receipt for a purchase at the 7-11 at the St. Kilda Junction at 12.01 a.m. on the morning of the collision shows that Rongoniu's Keycard was used at that time for that purchase, so it is believed that he was there then. It is not known if he was on his own or with others; and...

Shaun Law, and two other males, one of them Asian appearance, was briefly spoken to by police at the corner of Chapel and Inkerman Streets in St. Kilda at about 12.20 a.m. on Wednesday 19 June 2002. It is not known who these other two males were, but it is reasonable to assume that they were in fact Lovitt and Vo.

In a later taped interview conducted with Higginbotham and Rongonui, they both indicate that they were in a park in Prahran with each other drinking, when VO rang them, and they met in High Street near Centrelink and then got into the stolen car being driven by Lovitt. Law and Vo were already in the vehicle.

The five have then travelled to Osborne Avenue in Glen Iris in the stolen white Ford Falcon sedan, where at least two of them have broken into a car in what appeared to be an attempt to steal it. A witness, Billy Chronopoulos watches the suspects and rings police. As Chronopoulos describes what he has seen, the Malvern Police Divisional Van is dispatched to the locality. The Divisional Van crew is nearby and it does not take them long to arrive at the location."

¹ Coroner's Case File Number 1822/02

² Coroner's Case File Number 1821/02

³ Coroner's Case File Number 1823/02

At about 3.00am on 19th June a report was made to police about the occupants of the Ford sedan who were seen near the intersection of Osborne Avenue and Malvern Road, Malvern attempting to break into a parked car. A police divisional van being driven by Senior Constable Wayne Williams with Constable Rebecca Duncan as the observer were dispatched to investigate. Apparently the Ford was being driven by Mr. Simon Lovitt who was aged 28. The passengers included Shaun Law who was aged 16, Carl Vo (18), Tane Rongonui (17) and Justin Higginbotham (16).

THE FIRST PURSUIT

The stolen Ford sedan was later to be the subject of a police pursuit by Constables Williams and Duncan in the divisional van. This pursuit occurred in a westerly direction along High Street commencing a short distance east of Toorong Road, Malvern and terminating in the vicinity of Williams Road, Prahran. A summary of the lead up to that part of the incident is as follows (taken from the opening remarks of Counsel Assisting, Mr. Hillman):

"At about 3.10am as the police divisional van drove along Osborne Avenue from High Street, the Ford sedan was travelling in the opposite direction. The police officers decided to intercept the vehicle and made the necessary turn to follow it. The Ford sedan commenced to travel west along High Street at a fast rate of speed. The pursuit was then commenced, the police divisional van having its red and blue flashing lights and siren activated.

Between Glenferrie Road and Kooyong Road, the police vehicle was travelling at about 120 kilometres per hour but the engine was cutting in and out. At that stage the Ford was travelling at at least 130 kilometres an hour. The Ford sedan travelled through the intersection of Orrong Road against a red traffic light applicable to it at a speed of about 100 kph. At that point Williams says that he abandoned the pursuit. The speed limit of course was 60 kph.

Shortly before the abandonment of this pursuit Sergeant Tracey O'Neill from Prahran Police Station had assumed the role of pursuit controller. When she was advised that the Ford sedan was travelling towards Williams Road at about 120 kilometres per hour, she directed that the pursuit be abandoned. Constable Duncan in a statement made to investigating police says that the direction to abandon the pursuit was given when the divisional van was approaching Williams Road. In any event it is clear that the pursuit was terminated at some point prior to Williams Road. At the time the police divisional van was being followed by an unmarked Holden station wagon driven by a Sergeant John Fitzpatrick of the Victoria Police Dogs Squad, known K9 253. This vehicle also had the flashing lights and siren operating."

THE FOLLOWING OPERATION

After the pursuit had been terminated the divisional van continued to travel west along High Street. The white Ford sedan was observed to turn left into Chapel Street and then disappeared from the sight of the police members in the divisional van. The divisional van also turned left at Chapel Street and then left into Dandenong Road. In the distance the tail lights of a vehicle apparently travelling in excess of the speed limit were observed and the divisional van attempted to catch up to that vehicle. The tail lights were those of the white Ford sedan driven by Mr. Lovitt. The car was seen in Waverley Road and then to turn left to travel north in Malvern Road. The divisional van followed. The occupants of the stolen Ford sedan were aware that the police were following their vehicle.

THE SECOND PURSUIT

Senior Constable Williams stated that when the lights and sirens were activated in Malvern Road, the Ford sedan was about 200 metres ahead. He also stated that the lights and siren were turned off when the Ford sedan had passed Darling Road and the divisional van was at a point prior to Darling Road. The observer, Constable Duncan, says the lights and siren were activated when the van was near Winton Avenue which is about 600 metres from Darling Road, and the Ford sedan was at least 100 metres ahead. She says that the flashing lights and siren were turned off after the van had passed a 7-Eleven store at Darling Road and in the vicinity of Moira Street. The police officers say that the police divisional van flashing lights were certainly not operating when the divisional van approached the scene of the collision. A contrary account is given by the driver of the car travelling south, Donna Holley, who says that the flashing lights of the divisional van were operating but no siren was heard when the van came into sight from Wattletree Road. She also stated that the van was then travelling at an estimated 100 kilometres per hour. Rongonui told police that the red and blue lights on the divisional van remained operating.

THE COLLISION

At about 3.21am on 19th June the stolen vehicle being driven by Mr. Lovitt collided with a power pole in Malvern Road, Glen Iris which is about 186 meters west of Wattletree Road. Lovitt was fatally injured in the collision. Lovitt had four passengers on board, two of which, Law and Vo were also fatally injured. One of the two surviving passengers, Justin Higginbotham received serious injuries and was hospitalised for about a month and a half, had leg and shoulder injuries, punctured lung and head injuries. The other passenger, Tane Rongonui was not injured.

Mr. Law was in the front passenger seat, Rongonui in the left hand rear passenger seat, Vo in the centre of the rear seat and Higginbotham was sitting on the right hand side, rear.

In summary, shortly before the collision the stolen Ford was travelling in a northerly direction (having been involved in a pursuit by a police vehicle) along Malvern Road at an approximate speed of 112 on the incorrect side of the road when the driver swerved to avoid a vehicle proceeding in the opposite direction. That driver also had to swerve to the left and brake to avoid a collision. The Ford lost control and collided with a power pole positioned on western side of the road on the nature strip outside 1738 Malvern Road, Glen Iris, and then into the front fence of that property. It impacted with the pole at about 82 kph.

At the time of the collision the Ford motor car was being followed by a marked police divisional van from Malvern Police Station known as "Malvern 311." This vehicle was being driven by Senior Constable Williams with Constable Duncan as observer. Shortly before the collision the red and blue flashing lights and siren on the police divisional van were activated. This was done apparently in an effort to cause the driver of the Ford sedan to stop. This action had the opposite effect. The driver sped away. It appears that the divisional van did not then actively pursue the Ford sedan at the same high speed (but it followed with its warning lights activated, apparently from the evidence of the civilian witness, at an estimated speed of 100). The presence of the divisional van with its flashing lights and siren operating in Malvern Road was no doubt a factor which caused the driver of the Ford sedan to accelerate and drive at a fast rate of speed.

Messrs. Rongonui, Higginbotham and Law had all consumed alcohol. Vo did not have any drugs or alcohol detected in his system. Lovitt had consumed cannabis, methamphetamine and a drug known as clonazepam used for the treatment of some forms of epilepsy. In the opinion of Forensic Physician, Dr Morris Odell, that it is likely that the presence of those substances in the blood of Lovitt may have exerted a negative effect on his driving skills. Whether they in fact did so to an extent that would have affected the events of 19 June 2002 is, according to Odell, impossible to determine.

At the time Simon Lovitt was a disqualified driver and all the occupants of the Ford sedan had a criminal history.

The distance that had been travelled by the Ford sedan from Osborne Avenue to the collision was approximately 14 kilometres.

It was a cold still morning, the road was dry, street lights were operating, visibility was good, driving conditions were good. The applicable speed limit for the road was 60 kph.

Some of the detail of the evidence of the civilian witness

Ms. Donna Holley, Receptionist, indicated that the white car was *"twice as fast as I was travelling and maybe more."* Also Holley was of the view that the police car was travelling fast, but not as fast as the white car. The white car was completely on her side of the road. After the crash she travelled around the bend and that is when she saw the police car.

In the early hours of the morning of 19th June Ms. Holley was driving her red Mazda Metro from Collingwood to Carnegie. She travelled on the South-Eastern Freeway and then turned off at High Street and into Malvern Road. She stated that visibility and street lighting was good. There were no other cars on the road when she entered Malvern Road. It was about 3.10am when she was driving along Malvern Road with her headlights operating at about 50 kmh. Holley was of the view that there *"would have been at least half the width of my car between my right side and the centre line."* She stated that she had:

"not travelled very far after turning left onto Malvern Road, when as I was approaching the start of a slight left - for me - bend, I saw a white vehicle coming right towards me on my side of the road. It appeared suddenly and alarmed

me very much. I swerved my car suddenly to the left because if I hadn't the other vehicle was going to connect with me.

As I was approaching the bend the car appeared suddenly in front of me travelling excessively fast. It was almost on top of me so I think it was two or three car lengths in front of me.

The car's headlights were on, not on high beam, and the car was coming straight at me, so I believe the whole car was on my side of the road. I saw only that it was a bigger car, and because I was not going fast, I did not have to brake - I just veered to the left side of the road.

At this time there were no other vehicles in sight, either behind me, or in front."

And:

"The driver of the other car swerved sharply to his left because he obviously didn't expect to see me. That was at the same time as I swerved.

I was able to steer my car easily because of my speed, but when the other car swerved left there was screeching from his tyres and very quickly after that there was a very loud crash – two crashes, which sounded of metal and glass, and I realised immediately that the car that had been coming straight at me had crashed. I knew it was definitely on his side of the road. I knew it would be a serious crash because of the speed the car was going when it came at me. It was more than one hundred and twenty kilometres per hour - very high speed. The was the lowest speed I think he was going - it could have been more, but I don't believe it was less."

Ms. Holley stated that:

"When the other car swerved away from mine my next immediate thought after fear, was, 'What are you doing? Bloody idiot!', and I looked in the rear vision mirror where I saw the car swerving and then heard the crash.

And that when Ms. Holley looked back she saw "a police paddy wagon coming into sight" and said to herself, "That's what they're doing."

Ms. Holley said when she saw the "paddy wagon" she:

"was then more into the bend and I could see further ahead to the intersection of Wattletree Road and beyond. The paddy wagon was on the other side of that intersection still approaching it. I am not good with distances in metres, so I can't say how far before the intersection it was. In car lengths it was probably one or two. The blue and red flashing lights were on, but I did not hear a siren. The paddy wagon was speeding but not nearly as fast as the white car. The speed was probably about a hundred I reckon."

Ms. Holley considered that she "had stopped when the police came in sight" but as she was a bit shaken it could be that they stopped at the scene at the same time as she stopped on the left side of the road.

Ms. Holley considered that she was lucky to be alive and thought that at:

"the time I saw the white car coming toward me, he was speeding, he was on my side of the road, and I saw my daughter, I saw my son, and I thought he was going to collide with me and I would be dead.

I only have a small car and the speed he was going was much too fast for me to survive. I would describe the driving as dangerous and careless."

Ms. Holley also noted that:

"The police paddy wagon did not have to screech tyres or swerve to pull up. They just pulled up smoothly at the scene and their flashing lights were still on. They were still on when I drove away.

I am not aware of the state of the traffic lights at the Malvern Road / Wattletree Road intersection at the time the paddy wagon approached. It could be that the driver of the paddy wagon put his lights on to go through that intersection but I couldn't say. I couldn't say if they were still on as they pulled up, but they were on when I left."

Ms. Holley did not hear the sound of any police car before she swerved to the left. She then continued on for a few car lengths and then pulled up when she heard the crash.

The evidence of the surviving passengers in the pursued vehicle

There were two survivors of the crash, Messrs. Rongonui and Higginbotham, and their evidence is important to gain an understanding of how the incident occurred. As the two police officers directly involved (and who were in a position to give the inquiry a considerable amount of information) did not give evidence, the survivors' account becomes even more critical for an understanding of the immediate lead up to the collision.

Mr. Tane Rongonui was aged 17 at the time of the incident and had shared a half a bottle of vodka with Higginbotham during the night indicated that sometime after turning into Chapel as a result of the police car having "caught up" the vehicle in which he was a passenger "took off" in Malvern Road.⁴ He said that when both vehicles were in Dandenong Road there was about 2 blocks distance between them. They felt the police car was behind them at various distances and "at Malvern Road they put the sirens back on and stuff and at Dandenong Road they put the high beams on and that's when we took off again." He also said the police vehicle was at varying distances and it got closest in Malvern Road (this appears to agree with the evidence of the police in the pursuing vehicle):

"...Just at, we turned the left turn, the sharp left turn.

Question: And what sort of warnings were you aware of then?

Answer: The red and blue lights.

Question: Anything else?

Answer: The high beams?

?Question: Was it your impression that the lights, or rather the warning signals, stayed on right up until the point that the car collided?

Answer: Yes."

Mr. Rongonui described how his impression was that the police car was "getting closer" at this stage and that in Malvern Road the distance between the vehicles reached six or seven car lengths up to the point of collision. Rongonui also commented, in effect, that the blue and red lights (put on by the police to cause the driver to stop) had the opposite result and caused them to "take off again." The focus of all those in the pursued vehicle was to get away from the police. He noted that he did not hear any siren at this time.

Mr. Rongonui assumed the vehicle following in Dandenong Road was a police vehicle because it "hadn't gone away." That he was not sure that it was a police vehicle until he saw the red and blue flashing light in Malvern Road.

Mr. Justin Higginbotham gave evidence that he had been smoking cannabis and that, as a result of the collision, he only remembered some aspects of the incident; the lead up and pursuit in High Street, some limited aspects of high beams from a following vehicle in Dandenong Road and a little detail of what happened in Malvern Road. He said that "they were chasing us and we crashed" and the "red and blue lights were flashing and they were following us." Also his impression was that the high beam lights in Dandenong Road came from a police car. He agreed that they were prepared to take any chance to get away and:

"Question: You really didn't care about anyone, did you?

Answer: No."

The evidence of the pursuit controller and other police involved in management

⁴ Rongonui had a blood alcohol reading recorded at the Alfred Hospital of .028.

Sergeant Tracey O'Neill, Prahran Police Station, was the Pursuit Controller. O'Neill had been in the Police Force for 16 years. She stated that she was "conversant with the Victoria Police Force Policy and Procedures relating to vehicle pursuits and also with the Operational Safety Principles." On 18th June O'Neill commenced duty at 10.30pm, as the District Patrol Supervisor, and at about 3.10am on 19th June she was in at Prahran Police Station when she:

"monitored an Intergraph call to Malvern van unit 1MV311, containing Leading Senior Constable Wayne Williams 27753 and his observer Constable Rebecca Duncan 32556. The call was to attend near the intersection of Osborne Avenue and Malvern Road, Glen Iris in response to call of 'possible offenders trying to break into cars'. The complainant had heard glass breaking in the vicinity and four males, aged between 18 and 21, were believed to be involved.

I then asked the Intergraph Operator for confirmation that the job was an 'offenders on'. She responded that theoretically it was, but she was still receiving updates. There were no descriptions of the offenders given at the time. I told the operator that I would be monitoring the situation and asked for a sit-rep from the Malvern unit, if they required assistance.

The Intergraph operator then stated that the offenders were still present and relayed the information to 1MV311."

Sergeant O'Neill said that Constable Duncan responded that they had:

"just observed a vehicle go past them in Osborne Avenue and were going to check them out. The Intergraph operator asked if the vehicle was a White EA Falcon and Constable Duncan confirmed this. The Intergraph operator then indicated that this was the vehicle that was involved?...Constable Duncan then informed Intergraph that they were following the vehicle west along High Street. The Falcon then took off from the Malvern unit."

And:

"At approximately 3.14 a.m., Constable Duncan called 'urgent' over the radio and stated they were in pursuit. The unit's warning siren was clearly audible in the background.

I immediately adopted the role of 'Pursuit Controller' and requested speed, direction of travel and traffic conditions. Via Intergraph, Constable Duncan responded that there was no traffic, they were still travelling west on High Street. At the time, I was unable to understand the speed given. However the Intergraph operator requested the speed again. Constable Duncan responded they were west in High Street, heading toward Williams Road and their speed was 120 kmh at this time.

Due to the excessive speed, I immediately called for the pursuit to be abandoned, for safety reasons. Constable Duncan acknowledged the direction and it was apparent that the warning siren on the van had been deactivated."

Sergeant O'Neill "then requested a broadcast of K.A.L.O.F" (Keep a lookout for) in relation to "the offending vehicle's last direction of travel." O'Neill noted that at this time "the vehicle had been observed by 1MV311 members turning left into Chapel Street, Prahran. 1MV311 had lost sight of the vehicle."

Sergeant John Fitzpatrick, (K9253), then informed Intergraph that he was in the area, if members located the vehicle again. Fitzpatrick noted that, a short time later he requested the Malvern unit to rendezvous with him at Prahran Police Station and "Constable Duncan acknowledged the request and my driver proceeded to return to Prahran Police Station."

Sergeant Fitzpatrick noted that, at approximately 3.19am, "Constable Duncan informed Intergraph that they were behind the vehicle again, travelling East in Waverley Road." He stated that he was "initially concerned about the distance they had travelled in the short time frame, as I believed they were still patrolling in the immediate area. However, from the information being transmitted by Constable Duncan, it was apparent that they were following the vehicle from some distance behind." That "responding to inquiries from the Intergraph Operator, Constable Duncan stated that they were unable to obtain a registration number of the vehicle and did not think the occupants were aware of the police presence."

Sergeant Fitzpatrick then proceeded in the direction of Duncan's position. He noted that:

"There was also some confusion in relation to IMV311's exact location. Constable Duncan informed Intergraph that they were now travelling West in Waverley Road, heading toward Glen Iris.

I believed that they were in fact in Malvern Road, and continued travelling East, so that I would be in a better position to assess the situation and provide assistance in the event that the vehicle was intercepted.

At some point, a male member mentioned the 'Airwing' and another male member mentioned the 'TMU'.

Intergraph responded that the 'On Line Supervisor' was contacting the Air Wing, and she made attempts to call IMC611, without success."

And at:

"?... no time did I receive the impression that the Malvern Unit were in pursuit with the Falcon. Constable Duncan had frequently responded that the vehicle was unaware of police presence and they were obviously not close enough to the vehicle to obtain a registration number. The unit's warning siren was not present during any of these transmissions."

That:

"I have known Leading Senior Constable Williams for approximately two years and have never had cause to question his ability or competency. He recently obtained the rank of Leading Senior Constable at Malvern, and prior to this he was seconded to Malvern as an upgraded sergeant. I know he has passed his sergeant's theory examination and is waiting for a position on the supervisors' course. He would therefore be conversant with Force Policy in relation to vehicle pursuits and would know that he would require my authorisation, being the pursuit controller, to resume the pursuit. Had authorisation been sought, under the circumstances, it would have been denied. I never received the impression that Leading Senior Constable intended to resume the pursuit."

Sergeant Fitzpatrick stated that it was his *"intention to utilise the units heading to the area and the Air Wing, depending on their availability, to attempt to safely intercept the offending vehicle and its occupants. In the event that the resumption of the pursuit was deemed necessary, I was hoping that the Air Wing would be available to act as the Primary Pursuit Vehicle."*

Then at:

"3.21 a.m., Constable Duncan came up as 'urgent' and informed Intergraph that the offending vehicle had 'come to grief' at 1742 Waverley Road. She also requested an ambulance. There was some initial confusion in relation to which vehicle was involved, the police vehicle or the offending vehicle. This was eventually clarified by the Intergraph Operator."

Sergeant Fitzpatrick stated that he *"reviewed" his "actions on the night"* and did not believe he *"could have, or would have, done anything differently in relation to abandonment of the pursuit."* That from *"the conversation Constable Duncan had with Intergraph, I am sure that the driver of the pursued vehicle had no idea the police were behind them, and from that same conversation, I am also of the opinion that the police did not re-engage in a pursuit with the vehicle."* He noted that at the time he left the Prahran Police Station just before the pursuit, the weather was clear although it was very cold. That the:

"streetlights were on and the roads were dry. The traffic in the area that I was in at that time was light, and knowing the area where they were, the traffic would have been light in that area as well. I considered all of these factors, the speed of the vehicle, and the general circumstances led me to the decision to abandon the pursuit."

Sergeant Fitzpatrick also made an additional statement and noted:

"At 2.50 a.m. on the 19th of June I attended at the Malvern Police Station to complete paperwork. At 3.10 a.m. I left Malvern Police Station. Whilst I was sitting in my vehicle I heard Malvern 311 radio Intergraph in relation to a white

Ford EA sedan they were following west in High St. I was aware that the occupants of the vehicle may have been involved in thefts from motor vehicles a short time earlier.

I then commenced to travel south in Glenferrie Road to High St and turned left and commenced to travel east in High Street. As I turned into High Street I saw a white EA Ford approaching me with its lights on high beam.

The EA Ford passed me with the police divisional van some distance behind it, at this stage they were approximately 150 metres from the intersection of Glenferrie Road travelling in a westerly direction. I would estimate the speed of the Ford at between 70 to 80 kilometres an hour, I could not see how many occupants were in the vehicle.

After the divisional van passed me I executed a "U" turn and commenced to follow the divisional van and the EA west in High Street. As the police van passed through the intersection of Glenferrie Road and High Street, the observer came up in pursuit of the Ford, I also saw the emergency warning lights operating and I heard the siren to the police van activated. The police van was approximately 100 metres in front of me at this stage with the Ford at least 400 metres in front of that. The EA Ford was travelling at a fast speed but was travelling in a straight line; it is difficult to estimate the speed of the Ford because of the distance between vehicles. I was travelling at about 120/125 kilometres per hour; I had my warning lights and siren operating. The traffic at this stage was light.

As I passed through the intersection of Kooyong Road and High Street I could only just see the white Ford in the far distance ahead of me, the divisional van was in front of me about 150 metres. As I travelled over Orrong Road, I was aware that we were now in the Prahran sub-district where the traffic has the potential to be more concentrated. I was continually checking for vehicles entering High Street from side streets and pedestrians. I was monitoring the observer of the divisional van, she was constantly giving updates of direction and approximate speed of the white Ford.

After passing through the intersection of Williams Road and High Street I heard Prahran 252 say to abandon the pursuit, I also heard the tone used when pursuits are abandon, I was about 150 metres behind the divisional van. I turned off the lights and siren to my vehicle, simultaneously I saw the warning lights to the divisional van terminated and the brake lights to the van operate.

I slowed to the speed limit and continued towards Chapel Street I thought that the vehicle would be abandoned around the area and that I may be of assistance if that occurred. I radioed and told Intergraph that I was in the area and if the vehicle were located I would deploy the dog. I saw Malvern 311 continue south in Chapel Street towards Dandenong Road, I patrolled the side streets off Chapel Street looking for the vehicle."

That:

"Sometime later the observer from the Malvern 311 radioed that they had sight of the vehicle in Waverley Road, East Malvern. I made my way towards that area in case the vehicle was abandon and the occupants ran from the vehicle, I also requested that the Air Wing be notified. Whilst I was travelling toward the general area I heard Malvern 311 radio that the vehicle had crashed and they need assistance. I made my way to the area and when I arrived there were a number of police vehicles at the scene, the Ford had crashed on a bend, police where around the car attending the injured. Whilst the police attended the injured the other concern I had was rendering the scene safe from other vehicles coming around the bend and colliding with the police cars. I told Prahran 252 Sergeant O'NEIL that I would divert traffic at the intersection of High Street and Malvern Road until a marked police vehicle could get to my location."

In evidence, Sergeant Fitzpatrick said that he was travelling behind the Divisional Van during the first part of the pursuit (High Street). He heard the pursuit controller's call to abandon the pursuit. He turned off his lights and siren and then turned down a side street with a view to looking for the offending vehicle (if it had taken a similar course). He was of the view that, at this stage, it was "unsafe" to continue a pursuit because the vehicle was entering the Prahran area with the likelihood of increased traffic volumes.

Sergeant Fitzpatrick agreed that O'Neill who was listening to the unfolding events on the radio and not on the spot as he was, made the correct decision to abandon the pursuit. In fact O'Neill made that decision in under a minute. Fitzpatrick stated, when questioned on the issues to take into account when managing risk during a pursuit situation:

"Question: If I could take you now back to what you said about the risk assessment. As I understand what you were saying is that risk assessment, as you perceive it, is based not only on formal directives, but also based on experience?"

Answer: Yes, it's only - I mean, the police department put out policy, and it's specific policy. Whilst it has to be adhered to, it's policy, and there are other that you gain through experience that I believe are just as important as that policy.

Question: Do you agree with this that in conducting a risk assessment for a pursuit, particularly in deciding whether a pursuit should be terminated or not, these factors should be taken into account; one, the apparent threat to the safety of any person; do you agree with that?

Answer: Yes.

Question: Two, the competence of the police driver?

Answer: Yes.

Question: The type of police vehicle?

Answer: Yes.

Question: Whether the pursuing vehicle is marked and has flashing lights and siren fitted?

Answer: Yes.

Question: The manner in which the pursued vehicle is being driven, including the speed of both vehicles?

Answer: Yes.

Question: Whether the occupants of the pursued vehicle have been identified?

Answer: Yes.

Question: And any other relevant circumstances, such as road, weather, traffic conditions?

Answer: Yes.

Question: And one of the factors that you would have taken into account, given your knowledge of that area as a factor favouring abandonment would have been, for instance, the fact that there are tram tracks in High Street at that point?

Answer: Yes. Yes.

Question: Also particularly because of what you perceived to be the likelihood of other traffic and pedestrians being in that area?

Answer: That certainly outweighed the tram tracks, yes.

Question: If you compare that area of High Street, Prahran with the area of Malvern Road between Waverley Road and Wattleree Road, would you say, for instance, that the road surface would have been regarded as a better - - ?

Answer: It is.

Question: ? at Malvern Road, rather than High Street?

Answer: Yes.

Question: One of the reasons being it's a good smooth road with no tram tracks?

Answer: Yes.

Question: Also you'd expect, wouldn't you, the same time of morning that given the nature of the area, although you couldn't guarantee it, you'd expect there'd be less traffic than pedestrians about than in that area of High Street?

Answer: I don't think there's any doubt about that, that is the case.

Question: Yes; whilst there are all sorts of other factors to take into account, if you just consider the nature of the road, the nature of the particular area it is in, and the likelihood of other traffic and pedestrians, the decision to terminate in High Street is one which is much easier to make than if the circumstances were the same in Malvern Road?

Answer: Yes."

And on how Sergeant O'Neill managed the incident:

"Question: As I understand what you said, if you were in Sergeant O'Neill's position, and you received the information that she received as appears from that transcript of the radio broadcast, you would have done exactly what she did, that is abandon the pursuit?

Answer: Yes, I would have.

Question: Would you have done that particularly on the matters that I just went through based on the speed at which both the car and the van were being driven, and the particular road conditions and location where that was happening?

Answer: Yes.

Question: And would they have been the main things that would have influenced you to reach the same conclusion as Sergeant O'Neill to abandon the pursuit?

Answer: Yes.

Question: And the speed concerned was 120, maybe 130, but even 120 in the area of High Street that the vehicles were in?

Answer: Yes."

Sergeant Fitzpatrick also discussed the issue of a resumed pursuit during his evidence. The approach to this issue is important as his view is that it was not a resumed pursuit. In this context it is noted that Sergeant O'Neill broadcasted over the radio that *"When Malvern is finished, could they rendezvous with me at Prahran?"* and the operator says to MV311: *"When you're clear of your patrols, re this last, if you want to meet the 252 back at Prahran Watchhouse."* Fitzpatrick agrees that there is *"Nothing urgent in that?"* and:

"Question: It is not right now, it is not, do nothing else?"

Answer: No, I think it says when they are clear.

Question: If it had taken them a little while, if they had gone onto some other things and then radioed to the 252 and said, look, we're clear, can we meet you at Prahran in an hour's time, for example, that wouldn't have necessarily caused you any difficulty, or surprise?"

Answer: No.

Question: So, is there anything in your view, Sergeant Fitzpatrick, inconsistent with the requirement to resume normal patrol or other relevant pre-pursuit duties, for the divisional van crew to have either been heading in the general direction of Malvern to go and have a look at that location, or to be travelling along Dandenong Road, with a view to seeing whether or not they could spot the car again?"

Answer: I don't see anything wrong with it, no."

And on the Police Manual:

"Question: Can I take you to the next part of the police manual and that is the one set out at 1.7.6.4, "The resumption of a pursuit." It says: "A pursuit can only be resumed when the reasons for disengaging from or abandoning the original pursuit, had significantly changed, same justification and considerations as the original pursuit apply and it is authorised by the pursuit controller?"

Answer: Yes.

Question: You understand that. So, let's go now to Malvern Road, if what Sergeant Williams and Constable Duncan did amounted to the resumption of the pursuit, you aren't aware, in terms of any radio broadcast, are you, of permission to do that being granted by Sergeant O'Neill?"

Answer: I didn't hear it, no.

Question: And nobody else, according to those guidelines, has the authority to authorise that do they?"

Answer: No."

Sergeant Fitzpatrick then was involved in a discussion about when a pursuit is resumed in the context of this matter.

"Question: When, as far as you're concerned, is a pursuit resumed? When would be the resumption of an abandoned pursuit or the commencement of an entirely new one; what might be the differences between the two?"

Answer: What might be the differences; well, they would you know some distance behind the vehicle with their light and siren operating, and coming up on the air in pursuit.

Coroner: Do you have to say (indistinct) pursuit, on the air, to resume the pursuit?"

Answer: I believe you do.

Question: If you do all the actions of pursuing a vehicle?---If you do all the actions of pursuing a vehicle- - - but don't call it in, what is it?"

Answer: What is it? Well, I suppose it's a pursuit.

Mr. Taylor: Which at paragraph 1.7.1 of the manual is defined as this, "At attempt by the driver of a police vehicle to intercept another vehicle where the police driver believes on reasonable grounds that the other driver is avoiding interception." If sometime later a vehicle is come across that may be the one previously pursued and the driver operates the red and blue lights and the siren and the vehicle doesn't stop but continues, or accelerates away, and the driver extinguishes the lights and siren, would that be a resumption of the pursuit?"

Answer: In my view, no.

Question: If, however, the lights were left on, perhaps the siren extinguished, and the driver continued to maintain pace with the Falcon, the pursued vehicle, previously pursued, would that be a resumption of the pursuit?"

Answer: How closely are we?"

Question: Let's say something up to but not exceeding 206 metres?"

Answer: My view again, no?."

?Question: If the contact, that is the distance remained the same over something between five and 600 metres, would that be a resumption of the pursuit?"

Answer: I'm unclear what you - - -"

Question: Let me make it a little clearer. If the driver of the police vehicle operated the red and blue lights and the siren; it then became apparent that the driver of the other vehicle was not going to stop, accelerated away or took a

*turn and made it very clear that they were not, you would expect, wouldn't you, that to avoid it being classed as a resumption of the pursuit, or a pursuit, that the police driver would extinguish the lights and the warning siren?
Answer: Yes."*

And when re-examined by Mr. Hillman, Fitzpatrick answered as follows:

"Question: Sergeant, just on a matter you were asked about a short while ago, that is the resumption of pursuit, do I understand you to say, on the information you were given, that you wouldn't have regarded what occurred as a resumption of pursuit?

Answer: In my view, no.

Question: What factors cause you to come to that view?

Answer: Well, it's based on what I heard over the - over the radio, and it was, without going to the exact chronology on the - it was, we're following a similar vehicle in Malvern Road.

Question: If the position was reached where the van, the police van, was about 200 metres behind the car that had previously been pursued, the red and blue lights and siren are activated, the police van headlights are flashed on to high beam, the car accelerates and pulls away and the driver of the police van accelerates to around 90 kilometres per hour in a 60 kilometre zone, would you regard that as a resumption of the pursuit?

Answer: Depends on whereabouts they are on the road. With - if - in my view, no. I mean there's - there's guidelines that I believe that you either determinate whether to pursue it or not and in my view that's not."

The statements of the police in the pursuit vehicle

There were two police in the vehicle that initially followed and then pursued the stolen vehicle until the pursuit was promptly called off by the Pursuit Controller, O'Neill (Leading Senior Constable Wayne Williams, as driver and Constable Rebecca Duncan, as observer). Williams and Duncan immediately proceeded to follow the vehicle and later became involved in the incident where the vehicle crashed. Whilst both Williams and Duncan made statements to the police investigating the matter on behalf of the Coroner, neither gave evidence on legal grounds.

Leading Senior Constable Wayne Williams had been in the police force for *"about 13 years, and stationed at Malvern for about 7 months in various capacities."* In a statement given to police investigators said that he held *"a full Victorian driving licence and a police driving authority."* Williams commented that the authority allows him to drive police vehicles including divisional vans, station vehicles and 4 wheel drives. That:

"In order to obtain my driving authority I was required to attend a week long police driving course. After that, all that was necessary was a drive to assess my suitability to drive police vehicles. I believe I am an experienced police driver. I have been operational all my career and have experienced all types of driving. I have driven for work in rural Victoria, metropolitan areas and in all type of traffic situations. I have driven police vehicles in emergency situations with lights and siren operating. I have never been a police driver of a primary pursuit vehicle until this incident."

On the morning of the incident he was with Constable Duncan and as he *"had never worked a divisional van shift with Constable Duncan before"* he made the decision to drive. He did this so he was able to assess her as an observer and the way she completed the running sheet. Once he knew that she was competent in that area, then he would allow her to drive and watch her and teach her to drive. Williams stated that he did this:

"because I wish to assess each member before I allow them to drive. I have had experiences with investigating a number of police collisions, so like to assess the competence of junior members under my control."

Senior Constable Williams stated that they commenced their patrol at about 11.20pm the previous evening. He had:

"checked the vehicle and all the lights were operating correctly, as was the emergency warning equipment. It was a fairly quiet night, and prior to receiving the call that led to this incident, we had only one other call. From memory, that call was for a suspect vehicle in Osborne Avenue around 42 and when we arrived, the vehicle was gone. I remember that we maintained a general patrol throughout the night. It was very cold and there were few cars out and about. We probably intercepted about 8 to 10 cars during the course of the evening. In fact we booked one vehicle for speeding along Waverley Road."

At about 3.10 a.m, we intercepted a vehicle in High Street Armadale between Glenferrie and Kooyong Roads. This was just for a licence check."

And:

"It was a couple of young blokes in a car and we wanted to check them. As we were doing this, we received a call from Intergraph to attend in Osborne Avenue in Glen Iris. The call was for youths breaking into a car or youths around a car and the sound of breaking glass. In any event, we interpreted the call as youths in Osborne Avenue breaking into a car at that time. We immediately allowed the car we had stopped to leave and proceeded to travel east along High Street to Osborne Avenue. It actually runs north off High Street about 2 kilometres east from where we were stopped."

That:

"We proceeded towards Osborne Avenue. As we left the vehicle we had stopped we had our red and blue lights on, and turned them off just after we went through Glenferrie Road. At no time did we have the siren on. We got to Osborne Avenue and turned left and travelled north. As soon as we entered the street we saw a vehicle travelling south bound. I saw the normal headlights and thought that a vehicle being in that street at night was highly likely to be involved in the offence for which we were called. We slowed down and the vehicle passed us. It was not speeding and not doing anything untoward at that time. I recognised the vehicle to be a white Ford EA Falcon sedan. I was unable to obtain the registration number of the vehicle but saw what I thought to be 4 male occupants in the vehicle. I cannot say exactly who was in the car, but I was fairly confident there was 4 males in the car. There would be no doubt that they would have seen our vehicle and recognised it as a police vehicle.

As we were still near High Street, we were still going slowly. I slowed but did not brake only decelerated. I was allowing the van to roll slowly until I was able to see which way they went in High Street.

I saw the Ford execute a right hand turn to travel west in High Street. I cannot recall whether the driver used an indicator or not. Immediately both of us knew that this vehicle was suspect and worthy of a check. Simply where it was and how it looked made the occupants reasonable suspects for the call. I executed a U turn to take after the car and pull it up and check the occupants. At this time Intergraph called us and asked for a situation report. Rebecca advised them that we were not proceeding immediately to the scene and that we had seen a suspect vehicle which we intended to intercept. Intergraph asked us if it was a white Ford Falcon and indicated that it was part of the original complaint. Rebecca said that we intended to check the vehicle.

I turned right into High Street to travel west. By this time the Ford had continued west and was already over Tooronga Road by this time. He was travelling at a fast rate of speed which I would estimate at about 80 kilometres per hour. At this time I still thought that the vehicle was suspect although I did not know exactly what for, apart from the association to the call about youths possible breaking into cars. That coupled with the recent cars being broken into led me to the conclusion that the car was very worthy of a check. It was still my intention to check the vehicle at this time, so I accelerated to catch up to the vehicle. At no time during this period did the vehicle show any outward signs that the driver was fleeing from us. I started to close the gap on this vehicle as we were approaching Glenferrie Road. I don't know exactly how close we got to the vehicle but at no stage were we close enough to get the registration number. I would estimate that we would have been able to get no closer than about 400 metres. It is very difficult to estimate distances at speed at night using only tail lights as a reference.

We would have got to a speed of about 90 k.p.h. The Ford at that time was probably doing about 80 still. The vehicle has proceeded through a green light at Glenferrie Road. I think that it is about this time that the driver has accelerated very hard and dramatically increased his speed. He started pulling away from us at this time. At this time I believed the driver knew we were behind him and was intending to evade us. I activated the siren and police lights and informed Rebecca that we were in a pursuit and to call it through to Intergraph, which she did. I accelerated the divisional van heavily, but was slower in accelerating than the Ford so it achieved a greater distance ahead of us. When we got up to a speed of just over 120 kilometres per hour, the divisional van engine was cutting out and cutting back in. The car was behaving like it was governed and would go no faster. At this time Prahran 252 was calling for further situation reports and the speed involved. Rebecca asked me what speed the offending vehicle was travelling at and I told her at least 130. It was still pulling away from us at this time. By now we would have passed Kooyong Road and were heading towards Orrong Road. I recall that there was a green light at Kooyong

Road. By this time he had achieved quite a distance in front of us. By the time we got to Kooyong Road he was passing through Orrong Road, the distance was quite substantial.

As he got to Orrong Road, I believe the traffic lights were red. I think it had been red for sometime. There was minimal braking from the Ford and I would say that he travelled through the red light at 100 kilometres per hour or more. Up until this point, his driving was in a straight line. It was quite fast once he accelerated. He was not wandering in the lane and was holding a straight course.

There was nothing available to me that his driving was impaired in any way, for whatever reason. I had not seen him turn the corner or commit any traffic offence other than speeding. Up to Orrong Road, the traffic was very light. I recall only 1 or 2 cars that we passed during this drive. There were no pedestrians. Because I have been in the area for some time, I am aware of drunks walking out onto roads. I also know where the 7-11 is and am aware of the possibility of people being around the area, so paid particular attention to any pedestrians that may have been around.

When he went through the red light at speed, I became quite concerned. I have been to a high speed fatality previously, and what he had done was enough for me. I immediately abandoned the pursuit at this time. Rebecca was advising Intergraph of the speed of 130, and I heard Sergeant O'NEILL also tell us to abandon the pursuit. This was almost simultaneous as me making my decision to abandon. Immediately I made the decision to abandon the pursuit, I turned the lights and siren off. There was no delay. I also braked to slow down. I was approaching the red light at Orrong Road, and my slowing was for that as well as abandoning the pursuit. I slowed down to 80 k.p.h. and the lights went to green at Orrong Road, so I continued west still slowing down. I was still in sight when I turned the light and siren off, so if he was looking he would have seen us do that and fall further back behind him."

After this Constables Williams and Duncan "advised Intergraph of the present situation and gave them the last direction of travel." That just as they were "getting towards Williams Road, I recall that Rebecca told me that the vehicle had turned left into Chapel Street. I didn't actually see it turn. We continued west in High Street, and were travelling at about 60 at this time."

Senior Constable Williams commented that the "pursuit was over, so there was no need to continue travelling at any speed." They turned left at Chapel Street and travelled south. Williams stated that he:

"had no sight of the vehicle in Chapel Street at all. There had been broadcasts to keep a look out for the vehicle on the radio, but it was gone. It was my intention to have a look around the streets in the vicinity of Chapel Street, Dandenong Road, High Street area in case the vehicle was dumped. I didn't know that the vehicle was stolen at any time, but strongly suspected that it was. When I went down Chapel Street I would have been travelling no more than 60. We were looking up the side streets for signs of a dumped vehicle or car lights. Knowing this area, I believe the likely scenario was for the driver to go to Dandenong Road. I say this because the side streets are small and if a vehicle was still travelling at speed it would be more likely that he would use the larger Dandenong Road. As soon as we had finished a brief look around we were to attend at Prahran for a debriefing.

I got to Dandenong Road, and turned left. When I did this, I saw 3 vehicles tail lights in the distance. I know this stretch of road well. Often I have operated a radar in this area. When I saw these tail lights they were in the vicinity of Orrong Road. I knew that these vehicles were not travelling at the speed limit of 70, more likely 90, so decided to check them. If one was the suspect vehicle involved I was hoping that he would pull up at a red light without knowing we were there, and be able to stop him at the light. If one of these vehicles were not him, then I would consider their speeding may be worthy of the issue of a penalty notice. It was then my intention to book these cars the go to Prahran as directed by Sergeant O'NEILL. I have accelerated the police van up to a speed of about 110 k.p.h. I was not prepared to go any faster because of the issue with the engine cutting in and out.

There was no need to go faster because Dandenong Road is a main road, wide and it goes for a long way. On prior occasions to intercept speeding cars on Dandenong Road, I allow the other traffic or red lights to cause them to slow so I can catch and intercept them. There is no necessity to travel at high speeds on this road. I continued east bound on the highway. I lost sight of the vehicles near Kooyong Road where the road bends. There were other cars on the road that these vehicles were passing. I recall that one of the vehicles had slowed to remain with the group of cars, but the other two were still travelling quite fast. As the road straightened getting towards Glenferrie Road, I could still see the two cars were travelling quickly. I formed the impression that these two cars were travelling together. We have quite a problem with drag racing in this area, and that is what appeared may have been happening.

Rebecca and I discussed whether one of these vehicle may have been the Ford we had previously been after, but were still too far away to be able to identify a type of car."

Senior Constable Williams further noted:

"As we travelled under the railway overpass we lost sight of these vehicles. By the time we came through the underpass, the vehicles were passing Tooronga Road, still travelling at speed. I would estimate they were travelling at between 90 to 100. We were able to make a bit of ground on them, but not a lot. Just after Tooronga Road, I recall that one of these vehicle was a blue wagon like a Subaru Impreza or similar. I also recall that I saw a left hand indicator of the other vehicle flash a couple of times. I recognised this then to be a white sedan. I then thought that this vehicle may have been the one we were after previously. These vehicles continued east around the left hand bend and passed out of our sight again. This bend is near the shops north of the railway station and racecourse.

As I came around the bend some time later, I slowed down so I could get a good look up the side streets Boardman, Clarence and Finch Streets. Because of the indicator, I thought the vehicle may have turned left. As we approached Waverley Road, we were discussing the fact it may be the vehicle we wanted, and whether it took Waverley Road or continued along the Dandenong Road. Rebecca believed they had turned onto Waverley Road, so I followed her suggestion and turned off the highway and continued east along Waverley Road. When we turned I could not see the vehicle and thought that we had lost both the vehicles. There is a bit of a dip near Burke Road, and as we continued east, I spotted a set of tail lights. The vehicle was travelling about 75 - 80 along Waverley Road at this time. I was not catching the vehicle and was probably about 500 metres behind it. It travelled through a green light at the intersection of Darling Road. Rebecca had radioed that we had sight of the vehicle again. The vehicle was passing street lights and I was able to ascertain that it was a white Ford sedan. I strongly suspected that this was the vehicle that had run from us earlier, but didn't know for a certainty. It is my view that the driver of this vehicle had absolutely no idea that it was a police car behind him. I say this because he had performed no outwardly aggressive manoeuvres or tried to evade us. Although his speed was still over the speed limit, he had continued to slow down. All these factors led me to the conclusion we were just a set of headlights behind him."

Senior Constable Williams stated that, knowing the area he was aware:

"when Waverley Road meets Malvern Road, there is an extremely sharp left hand bend and quite a tight right hand bend. I thought that as he slowed to turn, I could approach slightly faster and go a bit harder into the bend and be close enough on exit to read the registration number.

Intergraph had been asking us for a registration number. Prahran 252 had been advised that we had come across the vehicle again and advised that she was heading our way."

Senior Constable Williams then described the lead up to the incident:

"The Ford has slowed and executed a left hand turn to travel west in Malvern Road. I cannot recall whether an indicator was used or not, but there was no hesitation in which way he turned. As I approached the corner, I also executed a left hand turn into Malvern Road. We had closed the gap considerably, but were still too far away to read the registration number. We were probably no closer than 200 metres behind him. As we turned, I accelerated heavily to try to close on the vehicle. At this time I was able to see that there were 3 people in the back seat. They were not looking at me. When I saw that there were 3 people in the back seat, and that the vehicle was not speeding up or trying to evade us, I began to have doubts whether this was the vehicle we had been after earlier. As I was thinking this, the vehicle accelerated away heavily. I then knew that it was the same vehicle. In the first instance I activated the light and siren again and flashed the high beam at him. We were the closest we had been at 200 metres or so, so I considered that this move may cause him to stop as the police had not been close to him at all. He continued accelerating and pulled away from us at a fast speed. I accelerated up to around 90 k.p.h. I was concerned because we were coming up to the intersection with Darling Road and there is a busy 7-11 at that corner which may have had vehicular and pedestrian traffic around. I disengaged from this vehicle, turned off the lights and siren. I would have done this after he has passed through Darling Road, and just before we got to the green light at Darling Road. They were only on for a very short time to get him to stop. It didn't work so I turned them off again. I had already been told to abandon the pursuit earlier and thought that he would continue in his previously reckless driving."

That when:

"I put the light and siren on again, I was saying to him to stop. I did not pursue him, and had no intention of it. It was simply to let him know that we were here and wanted him to stop. What I did was even less than what I would do for a normal traffic intercept. There was no point in taking it further as we did not have the ability to get him to stop. To do so would be dangerous. Again I had slowed down and watched him pull away from us. The last I saw of this vehicle was that he was travelling around the right hand bend near the intersection with Wattletree Road. There was no other traffic around at this location at all. From where we were I could not tell where the car was positioned on the road when he disappeared around the bend.

And as they approached Wattletree Road, they "went around the bend and saw dust settling on a white Ford Falcon on the left hand side which had collided with a brick fence. This would have been between 150 and 200 metres west of Wattletree Road. I do not think there were any lights on in this vehicle at all."

Constable Williams noted that, throughout this entire episode, it was dark. Street lights were present for most of the journey, and were operating. Visibility was clear and it was a very cold still night. The roads were dry and driving conditions were good. He stated that:

"The roads where we pursued and followed the vehicle were all major arterial roads, mostly more than one lane. Although Waverley Road now has only one lane, it is wide enough for 2 cars in each direction. As I have said throughout this statement, the traffic was always very light both vehicular and pedestrian. The speed limits on the roads used are 60 k.p.h. with the exception of Dandenong Road which is 70 k.p.h."

Constables Williams and Duncan proceeded in that direction and, as they turned left into Osborne Street, Duncan observed headlights coming towards them. Duncan thought that these could be the offenders driving away from the scene and said to Williams *"this could be them"*. The car was an EA Ford. In her statement to police investigators Duncan said she was:

"... ?familiar with this model as a friend owned one. As we passed each other I looked into the vehicle and observed at least 4 people. The person in the back driver's side definitely looked at us as we went past. I said to Wayne words to the effect of 'there are a few guys on board. I bet that's them'. Wayne turned into the next driveway to turn around. It was then that the operator gave us an update, firstly stating that the offenders were still there and secondly stating that there was a white Ford involved. To me this confirmed that the car we saw was the offenders. When Wayne had turned the van around, I saw them turn right into High Street and head west. We were about 100 to 200 metres from High Street when they turned. I told Intergraph that we had just sighted the vehicle and that we were about to follow them."

Constable Duncan said that Williams drove up to the intersection of High Street and Osbourne Avenue and also turned right. She could still see the white Ford:

"It was going up the hill and accelerating away. It was a considerable distance away but still close enough to see the rear of the car clearly. Wayne continued to follow the vehicle. I told the operator that we were following the vehicle west on High street. Shortly after that, Wayne activated the blue and red lights, then the siren. He yelled at me it was a pursuit. I came up on the radio and informed the operator that we were in pursuit. We were in the area between Spring Street and Glenferrie Road at this point. She confirmed my transmission and asked whether we were still travelling west on High Street and the speed. I replied that we were still west on High Street and that our speed was 90 kph. The distance between us was getting bigger. This was between Glenferrie and Kooyong Roads. The other vehicle continued to accelerate and the gap between us got bigger. Prahran 252 asked for direction of travel, speeds and traffic conditions.

I replied 130, still west and nil traffic. We were just crossing Orrong Road heading towards Williams Road at this point. I had estimated 130 as our speed. It looked like about 130 as I glanced over at the speedo. I recall Wayne telling me that the white Ford had just run a red light. I was just concentrating on the radio transmissions. I think it was at Orrong Road. I don't recall any other cars on the road when they went through the red light. We hadn't got above 120 –130 kph, but they were still pulling away. As we reached Williams Road, I gave another sit rep of 120 kph. Wayne had yelled that speed to me when the operator asked for a sit rep. I was becoming concerned about the speed of the other car at about the same time as Sergeant O'NEILL came up to abandon the pursuit. From memory, I

think Wayne had already started to back off prior to me confirming we had abandoned. The instruction to abandon was clear and Wayne complied immediately, reducing speed and turning off the lights and siren."

Constable Duncan then *"gave a report on the last direction of travel, stating that the vehicle had turned left onto Williams Road,"* (shortly corrected to Chapel Street), when she realised she had said the wrong street. Williams and Duncan then turned left onto Chapel Street:

"As we entered Chapel Street we could see were a number of cars in the distance travelling south. They were at such a distance that all I could see was tail lights. I could not distinguish what type of cars they were, or if any of them were the car we had been pursuing.

We drove south along Chapel Street at the speed limit. I could see in the distance that the traffic lights at the intersection with Dandenong Road were green and thought we would have little hope of finding the car."

That:

"Sergeant O'NEILL asked the operator to put out a general broadcast for units to keep a look out for the vehicle, which she did. Someone came up on the air and suggested for the operator to notify St. Kilda to keep a look out for it. This was necessary because that area operates on a different radio channel to us. After we heard this, we were at Dandenong Road."

And Senior Constable Williams:

"turned left and we headed back towards our area to resume our normal duties. Due to the broadcast advising all units to keep a look out for the vehicle, we were still observing vehicles in the distance in case we saw it again whilst patrolling, however our aim was to head back into our area to perform our Malvern patrol duties. I recall that I was looking up streets and along the side of the road in case I saw the car dumped somewhere. I really didn't think we would see the car again because I thought it had gone straight ahead along Chapel Street to St.Kilda. Also the speeds that it was doing, I thought that it would be long gone. At some time whilst we were on Dandenong Road, I heard Sergeant O'NEILL request that we attend at Prahran Police Station for a debrief when clear. I acknowledged this request.

Whilst travelling on Dandenong Road I observed a white vehicle in the left-hand lane in the far distance. It was where the road curves slightly to the right at the intersection with Wattletree Road. I think I pointed it out to Wayne. I was unable to tell what type of car it was because it was too far away. There were a number of cars travelling on Dandenong Road at the time. The only reason we took notice of this one in particular was because it was white. I wouldn't say that it was excessively speeding but I do recall that it was going a bit faster than the other traffic because I recall it passing a slower car on Dandenong Road. It was hard to tell speed from that distance."

That Senior Constable Williams:

"kept driving in that direction. I remember going past Glenferrie Road and not being able to see the white car ahead. I remember I was still looking up the side streets to see if any cars had turned off. Dandenong Road then goes down the hill, around to the left and under the railway bridge. Once we came out from under the bridge we veered around to the right and I could see up the straight towards the intersection with Tooronga Road. I could see a group of cars up ahead near the intersection with Tooronga Road. I could not see if the white car was amongst them. I recall looking in the left-hand lane for it, but I couldn't see because they were still too far away. They were still about the same distance away that they had been when we first saw them near Wattletree Road. I recall that we seemed to make up some distance on the group of cars as we drove towards Tooronga Road. I don't know if they had slowed down or they might have had a red light, but the gap between us reduced. We had slowed down at the bend under the railway line and then accelerated again on the straight stretch towards Tooronga Road. I wasn't looking at the speedo but I think we were only travelling at about 70 to 80 kph along this stretch of road. Even at this speed we were able to gain on these cars because I clearly recall the gap getting smaller."

And after Tooronga Road Constable Duncan:

"again lost sight of this group of cars because of the bend in the road and the shrubs all along the side of the left-hand lane. As we came around the bend and onto the straight part I observed a white car veering left onto Waverley Road. When I saw this vehicle it was almost side on to me and it looked like it might be the same one we had pursued earlier.

When I saw it side on I could see that it wasn't a small car. I thought to myself at this point that there was a good chance that this was the car. It was just a gut feeling.

I said to Wayne words to the effect of, 'I bet that's it, that car that just went left onto Waverley Road'. I don't know whether Wayne saw the car turn or not, but when I looked at him I got the impression that he wanted to go straight ahead. I said "go left, go left". He did and we turned onto Waverley Road. As we got on to Waverley Road, the road straightens out and I could see only one car tail lights heading east. This vehicle was past Burke Road. It wasn't flying, but it was travelling above the speed limit. It was still a couple of hundred metres ahead of us. It was still too far away to be sure what type of car it was other than a large white one. There were no other cars I remember seeing in the distance, only the one."

Then, according to Constable Duncan, Williams:

"accelerated in an attempt to get closer to this vehicle to confirm if it was the same one as earlier. All we wanted was to get close enough to get the rego. When I say accelerated, we were just trying to close the gap a bit. It wasn't fast because it was like we were trying to sneak up behind the car without drawing attention to ourselves.

Between Burke Road and Darling Road we closed the gap enough to tell that it was a white EA Ford that we were following. I couldn't tell how many people were in the car but I could see that there were people in the back seat. We still were not close enough to get a registration number. Having suspected that this was in fact the same car that we had pursued earlier, I came up on the air and informed the operator that we had sighted the car and that we were travelling behind it. I stated it was travelling east on Waverley Road and had just crossed Darling Road.

The operator asked me if they were aware we were following them, to which I replied, "That's negative at this stage, I think".

Constable Duncan stated that she *"didn't think they knew we were behind them because they did not accelerate and no one inside the vehicle appeared to turn around and look at us. They were probably still about 100 metres away from us and I still could not read the registration."* At this stage the:

"vehicle slowed down as they approached the intersection of Malvern Road. I kept concentrating on this car to see if they went left onto Malvern Road or went right onto the continuation of Waverley Road. I recall we were both discussing which way they might turn. I then saw them turn left. It is a very sharp corner and they didn't turn it at any great speed but I think they may have gone wide as they went around. I do recall that the driver did not indicate as he turned the corner. There was nothing in the driving to give us the impression that they knew we were behind them. Also at that intersection, if you wanted to get away from someone you would have turned right, because the road flows better that way and you do not have to slow down as much.

We also slowed for the corner and went around normally. Once we were around on Malvern Road I could see the car in the distance. They still did not appear to be travelling at a high speed, but they were probably a little bit over the limit. We were still at least 100 metres behind the car.

I saw Wayne reach down to the console where the lights and siren switches were, as if he intended to turn them on. I thought that we were still too far back to turn the lights on as we still did not have a rego.

I can not recall whether I said this to Wayne or whether he decided that as well, but he didn't turn either the lights or siren on at this point.

Wayne accelerated and I think the gap might have closed a little bit but I can not be sure. To me they still seemed to be a long way away. The gap was still really big and I still could not read the registration. I recall that we were travelling at a speed that was above the limit but I can't say what speed we were doing. My eyes were just glued to the car in front and I was concentrating so hard on it.

Somewhere around Winton Road, either just before or just after it, Wayne activated the blue and red lights. I remember thinking we were a long way behind them. They were probably still at least 100 metres behind them. Then I thought Wayne knows what he's doing. Almost immediately after the lights went on, Wayne activated the siren. I think it was the fast one. The lights and siren are operated by two separate switches. I recall the white car taking off. I can not remember if it was straight after the lights went on or straight after the siren came on, but whichever it was they reacted almost immediately. They accelerated at a fast rate of speed and pulled away from us. Wayne initially accelerated for a second as if it was a reflex action. Almost immediately after he took one hand off the wheel and

gestured like 'I give up' and said words to the effect of 'Fuck them', and I could see the gap increase, I don't know if it was because they were accelerating away or because we were slowing down. It was obvious to me that Wayne had given up any thought that we could intercept them and that they were going to stop.

We had just passed the 7-11 store at Darling Road and were near Moira Street when Wayne turned off the siren and lights. I can't recall in what order he did it but they both were turned off."

That if:

"the lights were still operating I would have seen their reflections on the dark night. We felt like we were still slowing down as Wayne turned them off. I have no idea what speed we were travelling at but it was not excessively fast. The white car was around Wattletree Road when the lights and siren went off. They would have been just about to go around the corner."

Significantly, Constable Duncan stated that she:

"was not surprised they took off, nor was I surprised Wayne did not try to pursue them. It was as if he was testing the waters to see if they would stop for us. He may have even said this to me at the start when he was about to turn the lights and siren on. Wayne's nature is such that he is not really gung ho like some people. I never thought that he was going to pursue them, I just thought he'd try and see if they would stop. I didn't think they would stop but you have to have a go and give them an opportunity to stop. That's what Wayne did and they kept going."

That:

"I last saw the vehicle heading around the corner on Malvern Road, at Wattletree Road at a very fast rate of speed. We kept heading towards the intersection and had slowed to normal speed. We entered the intersection and I recall wondering if the white car would still be in sight when we came around.

As we had gone round the bend and through the intersection I saw either smoke or dust off the left-hand side of the road. I recall seeing headlights facing us and my immediate thought was that they had run someone off the road. I had the worst feeling of fear go through me that someone had been hurt. I felt sick. Wayne drove over to where the car was and pulled up in the left lane."

Constable Duncan then requested an ambulance. Duncan described her experience as a police officer:

"During the 20 months I have been a sworn member, I have been in one other pursuit. On that occasion I was the driver of the Malvern Divisional Van and I terminated the pursuit of my own accord after the vehicle I was pursuing reached high speeds and ran a red light. As I was the driver in that pursuit, this occasion was the first time that I have been the observer in a pursuit."

Constable Duncan:

"With Wayne's driving in the pursuit along High Street, I did not feel at any stage that my safety was an issue. To me he was very competent at what he was doing. As I said before, with his nature he is a cautious, level headed person. I have worked with him on numerous occasions, and have confidence in his skills, knowledge and judgement."

And:

"After the pursuit along High Street, and before we saw it again in Dandenong Road, we were having a talk about the way that the white car was driven through the red light. I remember Wayne had voiced his concerns about the manner in which the driver sped and ran the red light. I could tell that Wayne was genuinely concerned about our safety, the safety of those in the other car and anyone else that may have been around."

Constable Duncan summarised the weather, road and traffic conditions:

"On the night of the collision it was a fine, very cold night. It was clear and visibility was fine. On both occasions when we were following the vehicle, the roadway was dry.

During the pursuit up High Street, the traffic was light. I recall that we did go past a couple of cars.

When we were following the car along Malvern Road, there were no other cars that I remember seeing."

Victoria Police Manual - Vehicle Pursuits

The Police Rules relating to Vehicle Pursuits are contained in the Victoria Police Manual which were issued on 29th November 1999 and updated to 03/06/02. These were the relevant instructions applicable at the time of the pursuit.

In the Manual a pursuit is defined as *"an attempt by the driver of a police vehicle to intercept another vehicle where the police driver believes on reasonable grounds that the other driver is avoiding interception."*

Also under the heading *"Resumption of a Pursuit"* the Manual states:

"A Pursuit can only be resumed when:

- The reasons for disengaging from or abandoning the original pursuit have significantly changed.*
- The same justification and consideration as the original pursuit apply.*
- Authorised by the pursuit controller."*

Expert evidence relevant to the incident

ACCIDENT RE-CONSTRUCTION

The evidence and opinion of a Police Major Collision Investigation Unit investigator

Sergeant Peter Bellion, Engineer and Re-construction investigator, Major Collision Investigation Unit and has extensive qualifications and lengthy experience in accident investigations and road safety. He prepared a plot of the scale plan of the collision scene. He noted that:

"Malvern Road at this location had a right curve for vehicles heading north-west towards the City or High Street. The radius of the curve centre line was approximately 313 metres. The speed limit was 60 km/h defined by the erection of 60 km/h speed signs. The road was adequately lit by high pressure sodium type street lamps. The width of the road from kerb to kerb was 13.6 metres. In cross section from left to right heading towards the city the lane widths were: parking lane 2 m, bicycle lane 1.5 m, city bound lane 3.3 m, out bound lane 3.5 m, bicycle lane 1.5 m and parking lane 1.8 m.

The curve had negative camber or superelevation measured at 2.3%. The road also had a downgrade of 2% heading towards the city. The friction of a tyre sliding downhill on the sealed bituminous road surface was measured at the scene at approximately 5.00 a.m. and found to be 0.625."

Sergeant Bellion described the position of the crashed vehicle. It was a:

"white coloured, 1989 EA Ford Falcon sedan, registered number OHW389. This vehicle had collided with a wooden electricity pole and the corner fence post between No. 1742 and 1738 Malvern Road located off the western side of the road. The pole was about 3.8 metres from the edge of the city bound traffic lane. The corner fence post was about 6.8 metres from the edge of the city bound traffic lane. The driver's side rear corner of the Ford sedan had clipped the electricity pole on its south-eastern side. The driver's side middle section of the Ford had collided with the corner fence post resulting in penetration into the centre console of the vehicle. Running parallel with the road the fence of property 1738 Malvern Road was constructed of brick. This brick fence was destroyed by the impact. Running perpendicular to the fence post the fence bordering 1742 and 1738 Malvern Road was constructed of timber rails and wooden palings. The first couple of metres of this fence were also damaged."

The indications were:

"Preceding the impacted pole and fence was a set of tyre, scuff marks in the form of yaw marks. These marks commenced around the centre line of Malvern Road about 32.2 metres prior to the impacted pole and 33.4 metres prior to the impacted corner fence post. These tyre marks indicated that the Ford sedan had been travelling towards the city on the incorrect side of Malvern Road and had been oversteered to its left, resulting in it following a curved path to the left or western side of the road with rotation about its vertical axis. As a result the Ford travelled sideways off the western side of the road leading into impact. Deceleration striations were present within the tyre scuff (yaw) marks indicating the driver had backed off the accelerator once control was lost and was possibly applying partial but not locked wheel skidding prior to impact.

The radius of curvature of the path followed by the Ford sedan whilst leaving the pre-impact tyre scuff (yaw) marks was determined from the survey at 152.658 metres."

And that:

"Using the speed from yaw equation with inputs of radius, friction and cross fall gave a calculated speed of the Ford sedan of 112 km/h at the start of the pre-impact tyre marks. Validation tests indicate the actual speed of the Ford prior to loss of control could have been greater than this.

Data for the crash was input into the collision simulator software program PC Crash 5.1. This included vehicle dimensional and specification properties, surface friction properties the scene survey and calculated speed.

The simulation confirmed the calculated speed at the start of the tyre, scuff marks and indicated the initial impact speed around the pole and fence impacts was approximately 82 km/h. Graphics of the simulation are attached."

PATHOLOGY AND TOXICOLOGY

Dr. Michael Burke, Forensic Pathologist, Victorian Institute of Forensic Medicine examined all of the deceased who were killed in this incident. The following is a summary of his findings at post mortem.

Lovitt

Dr. Burke established the cause of death as being from head and neck injury. The toxicology report indicated that Mr. Lovitt had Amphetamines, Benzodiazepine and Cannabinoids within his blood.

Dr. Morris Odell, a Forensic Physician, Victorian Institute of Forensic Medicine, indicated that the drugs detected in Lovitt could have exerted a negative effect on his ability to drive but cannot say to what extent.

Law

Dr. Burke established the cause of death as being from head and neck injury. The toxicology report indicated that Mr. Law had a blood alcohol reading of .07 gram/100mL.

Vo

Dr. Burke established the cause of death as being from head injury. The toxicology report indicated that Mr. Vo had no alcohol or other drugs within his system.

The surviving passengers

The surviving passengers had the following drugs and or alcohol within their systems:

Rongonui: .028 per centum alcohol as tested by the Alfred Hospital.

Higginbotham: .115 per centum alcohol as tested by the Victoria Forensic Science Centre.
Also detected .004 ug/mL, Tetrahydrocannabinol .02 ug/mL, 11-nor-9-tetrahydrocannabinol carboxylic acid (free).

Conclusion on the incident

At about 3.21am on 19th June Mr. Simon Lovitt was driving a stolen Ford Falcon sedan in Malvern Road, Glen Iris at high speed (about 112 kmph) on the wrong side of the road when he swerved to miss an oncoming car, lost control and struck a power pole. Lovitt and two of his passenger, Shaun Law and Cao Vo were killed in the collision. Two other passengers survived, one being seriously injured and the other unscathed.

The incident occurred during the resumption of a police pursuit which had previously been called off by the police pursuit controller when Mr. Lovitt had driven through a suburban intersection against red lights and at high speed. The police officers involved in the earlier pursuit then continued their duties (coincidentally in the same direction) and ended up following the stolen vehicle, albeit, at a distance. Apparently they lost sight of the stolen vehicle for a short distance. The following police vehicle was observed by passengers in the vehicle driven by Lovitt.

Mr. Lovitt had a number of opportunities to stop and avoid the obvious high risk situation that he was placing himself and his fellow passengers in. However, he chose not to do so.

It should be noted that the police officers in the pursuit vehicle were the same officers ordered to cease the earlier pursuit. There was a reasonable likelihood that the offending behaviour that resulted in the first pursuit being abandoned would continue in the event that the pursuit was resumed. When the police and the stolen vehicle closed to somewhere between 100 and 200 metres the driver of the stolen vehicle pulled away and police pursuit vehicle accelerated, put on lights and siren and flashed his headlights. The driver of the stolen vehicle continued to accelerated away and the police slowed and, according to the officers' statements the lights and siren were switched off (the driver of the civilian vehicle, Ms. Holley noticed the police flashing lights operating about the time the crash occurred and she estimated that the police vehicle was doing 100 kmh). Holley's evidence conflicts with the police statements and confirms some of the evidence of the surviving passengers in the crashed vehicle.

Before attempting to intercept, the officers in the police vehicle did not contact the original pursuit controller for authorisation. This should have been done in accordance with the Rules on "Resumption of Pursuits" in the Poilce Manual.

It is noted that the driver of the police pursuit vehicle, Senior Constable Williams stated:

"The Ford has slowed and executed a left hand turn to travel west in Malvern Road. I cannot recall whether an indicator was used or not, but there was no hesitation in which way he turned. As I approached the corner, I also executed a left hand turn into Malvern Road. We had closed the gap considerably, but were still too far away to read the registration number. We were probably no closer than 200 metres behind him. As we turned, I accelerated heavily to try to close on the vehicle. At this time I was able to see that there were 3 people in the back seat. They were not looking at me. When I saw that there were 3 people in the back seat, and that the vehicle was not speeding up or trying to evade us, I began to have doubts whether this was the vehicle we had been after earlier. As I was thinking this, the vehicle accelerated away heavily. I then knew that it was the same vehicle. In the first instance I activated the light and siren again and flashed the high beam at him. We were the closest we had been at 200 metres or so, so I considered that this move may cause him to stop as the police had not been close to him at all. He continued accelerating and pulled away from us at a fast speed. I accelerated up to around 90 k.p.h. I was concerned because we were coming up to the intersection with Darling Road and there is a busy 7-11 at that corner which may have had vehicular and pedestrian traffic around. I disengaged from this vehicle, turned off the lights and siren. I would have done this after he has passed through Darling Road, and just before we got to the green light at Darling Road. They were only on for a very short time to get him to stop. It didn't work so I turned them off again. I had already been told to abandon the pursuit earlier and thought that he would continue in his previously reckless driving."

By contrast Constable Duncan was of the view the closest distance was at least 100 metres.

It is noted that a civilian driver, Ms. Holley, was travelling in the opposite direction to the stolen vehicle and had to swerve to the left to avoid a collision. Holley was lucky to escape being directly involved in a collision.

There was no critical incident review undertaken by the police into this incident. Clearly there should have been.

The relevant speed limit for Malvern Road was 60 kph.

COMMENTS AND RECOMMENDATIONS

The findings, comments and recommendations will be sent to the:

- Attorney General,
- Minister for Police and Emergency Services,
- Minister for Transport
- Minister for WorkCover,
- Minister for the Transport Accident Commission,
- Chief Commissioner of Police (Victoria),
- Chief Commissioner of Police (New South Wales) [as a matter of information], and
- The Director, Australian Institute of Criminology.

Introduction

The context and concern

From July 2001 until September 2003 there have been a number of deaths associated with police pursuits. The total number of deaths was 24 that occurred in 16 incidents. The first incident involved two deaths and occurred on July 2001 at Connaware near Geelong. The last death occurred in September 2003 near Robinvale in North Western Victoria. When this inquest started there were 23 deaths.

These deaths are indicative of a high rate as compared with previous history. It is in the broad context of a serious problem for the Victoria Police and the community that this inquest should be viewed.

Other relevant inquests heard at the time of this hearing include the investigations into two separate incidents occurring in country Victoria involving the deaths of Piotr Repinski in one incident and Tristram Rich and Joshua French in the other.

A perspective from the families

A letter was written to the Coroner on behalf of Shaun Law by a family friend, Ms. Christine Woods. His mother died when he was about 2 years of age. The letter summarises some difficulties in Shaun's life. His father was sent to prison when he was 9 and Shaun and his sister went to live with Woods. At 14 Shaun was involved with graffiti and other minor offences and was placed on a good behaviour bond. Unfortunately, at this stage in his life Shaun did not have a male role model. In the letter Woods writes:

"most of the group he started hanging around with had no homes, no discipline or were living in government funded flats and that he thought that this was the way to go. The government set him up in a rent subsidised flat in St. Kilda because he told them "I was too strict and he couldn't do what he wanted or as the other kids were doing." As soon as this happened, I lost total control and lost a loving child. As the police and everyone who dealt with Shaun have told me, he wasn't a bad boy but was easily led and heading down the wrong track?."

The letter goes on to say, that had Ms. Woods been able to keep Shaun at home things may have turned out differently and that his death has had "a major impact" on his only surviving sibling, his sister.

Mr. Lovitt's mother, Susan Lord-Milnes read a statement in court (aspects of the statement have been edited where a particular reference may breach Section 19(3) of the Coroners Act 1985):

"?I am the mother of Simon James Lovitt who died in the same accident with Shaun Ryan Law and Carl Cao Vo. Words cannot express how this has affected me and cannot capture my anger at the way in which these young men died.

In my opinion these boys died as a result of a pursuit initiated by police. This pursuit was abandoned by Sergeant Tracey O'Neill and independently reinstated by Officers Wayne Williams and Rebecca Duncan against all sound judgment. Indeed, Rebecca Duncan, the junior officer, had the power to stop the chase but chose not to use her power. In the spirit of disobedience chose a cat and mouse chase.

This, I feel, has been validated by the evidence given earlier in this inquest by Donna Holly who witnessed the pursuit, and indeed the end result of that pursuit. It was also confirmed in the evidence given courageously by Tane Rongonui and Justin Higginbotham.

As I have sat through these proceedings I am angered that there was a lot about drinking in a park and a stolen car. However, I have not heard anything about police wrong-doing. I know that my son and his friends were wrong in stealing a car, but this was not known to the police at the time, and in no way justifies their deaths.

I admire the woman who owned the stolen car, in which my son and his friend's bodies came to rest. She commented in the newspaper after the tragedy, as follows: 'We do not care about the car being stolen. Our concern is that three young lives were lost. We can replace the car. Our hearts go out to their family. This must capture the community's attitude on pursuits, and that these lives cannot be restored, however cars can be.

My hope is that this inquest recognises that at this point in time a ban is called for of police pursuits. Already in the last two years 23 people have died because of procedures that are so obviously inadequate. The only thing pursuits achieve is death, take away children from parents, and ruin many lives. I will never recover from this.

My only option is to now campaign for justice so as to honour my young son's memory. I am a mother and all I can do is express to Your Worship my feelings of how totally senseless I believe these police initiated pursuits are. The boys who died were just that, boys, who had their whole lives ahead of them, and they are now stripped of that right to life.

I believe the police officers, Rebecca Duncan and Wayne Williams, did not follow procedure and were in total breach of police procedural guidelines. As a result my son was killed, so too Shaun Law and Carl Vo.

?I am outraged that this keeps happening. I am angry that I have buried my son and that the families of Shaun and Carl had to experience a parent's worst nightmare, the death of their own children.

The police have covered up this incident. They would not give evidence and hid behind their right to silence. I believe I have witnessed a great deal of cover up in this inquest, as well as avoidance, dishonesty and transparency on the part of Wayne Williams and Rebecca Duncan, and there has been no review.

Your Worship, I ask you to please assess this as critically as possible. Death should never, ever occur, especially in the course of apprehension and especially in the course of unauthorised pursuit.

If these boys had been given the chance to dump the vehicle, finger-printing could have taken place, which would have led to an ultimate arrest. I am so positive many other issues could have been addressed and concluded effectively, thus avoiding the tragedy of multiple death?.

?Nothing can bring back my son, Simon, Shaun or Carl, but I am sure that you and the court realise that I must live with this tragedy that has eaten into my heart and will do so for the rest of my days."

Mrs. Kelly Higginbotham, the mother of a surviving passenger, Justin, described some of her family's trauma and stated that in her opinion it is "important that police policy regarding pursuits be changed?." However, she did not:

"feel anything has significantly changed. If I remember correctly this situation has repeated itself three or four times since?"

Mrs. Higginbotham stated that:

"High speed pursuits take the lives of people. I fail to understand any justification of them..."

Issues raised in this inquest

In addition to the 48 recommendations in the Police Pursuit Review 2002, this inquest (Law, Lovitt and Vo) has raised a range of issues that may need further emphasis or new consideration. In summary these are:

- Training regarding resumption of abandoned pursuits - likelihood of previous dangerous driving being repeated by pursued driver.
- Did the deaths occur in the course of a pursuit?
- Need for some amendment to be made to Coroners Act 1985 so that essential witnesses can be required to give evidence and not seek to rely on being excused on "*self-incrimination*" grounds.

The following general issues have been raised (in this case or the two other inquests run back-to-back with the incident at Glen Iris):

- Emphasis on safety first approach.
- Consultation with outside agencies/specialists on development of "*risk management*" in the pursuit situation (Recommendation 8 of Balzan Inquest - see p.90 of Appendix C to Police Pursuit Review 2002).
- Comprehensive training on pursuits as per "*Beacon*" firearms training.
- Consideration of how Occupational Health and Safety issues fit in with law enforcement requirements in the pursuit situation.
- Periodic re-assessment of police officers to determine suitability to continue to hold police driving authority.
- Training and accreditation of pursuit controllers.
- Use of technology:
 - (i) Video cameras in police vehicles;
 - (ii) "*Black Box*" devices;
 - (iii) Dynamic vehicle recorders;
 - (iv) More easily managed radio equipment in police vehicles. (note: added difficulties for solo drivers especially when having to manage two separate sets of radio communications which are not '*hands free*'.)
- Improved communications (equipment and staffing) in rural areas.
- Research on effects of stricter procedures for pursuits eg. Western Australia and Tasmania.

An important issue, the role of occupational health and safety policy, has also raised its head in the context of pursuit management by police. Occupational health and safety policy is a matter not only for the police directly involved as well as police management but also how the policy interacts to effect the safety of the public (and offenders).

These issues are considered throughout these comments and recommendations (if relevant to the case in hand).

Did these deaths occur in the course of a pursuit?

The question as to whether the deaths in this incident occurred in the course of a "Pursuit" has clearly been answered in the affirmative. It was a resumed pursuit, albeit for a very short distance. It was a risky operation and correct procedures were not followed.

The prescriptive "Safety First" approach

Pursuits; a dilemma that needs concentrated risk management, training and audit

The nature of the dilemma - to pursue or not to pursue

As a result of concerns over a number of recent deaths associated with Police Pursuits the Victoria Police have undertaken an extensive review. The Review with Appendices is 135 pages and is titled, "Police Pursuit Review 2002." The Review was co-authored by Superintendent P. Keogh, Inspector B. Stork, Sergeant G. Moloney, Senior Constables D. Pallot and R. Njegac.

As the Review team acknowledged, recently, Deputy Coroner Iain West conducted an inquest into the death of Antonio Robert Macaro (who died as a result of a pursuit related collision at Thomastown on 7 January, 2001). And that Coroner West was:

"critical of police and stated that; ?A large number of high speed chases end in an accident, with people injured or killed as a result. In order to minimise the potential risk associated with such incidents, it is recommended that police do not attempt to intercept motorists for traffic breaches, by going after them at speeds in excess of prescribed limits.?⁵

Deputy Coroner West's recommendation is one, albeit not unreasonable, way of managing the risk associated with pursuits. However, Police have chosen not to follow Coroner West's recommendation. They have opted for a more prescriptive approach. For that approach to have a chance of working both in the short, medium and longer term there will need to be a considerable number of changes in areas such as training, retraining, accreditation, audit and the use of monitoring and safety technology.

It should also be noted that, understandably and not unreasonably, some of the families have called for a ban on the use of the pursuit as a law enforcement tool. However, in spite of this observation, this suggested direction is not the one that these coronial comments and recommendations are following. That is not to say that more work on the issue of managing safety in the area of pursuits by Police Command is not necessary - clearly it is.

Introduction - a fresh look at the issue; the necessity for prescriptive controls

Throughout the development of the "Police Pursuit Review 2002" there was extensive consultation with Police Command. Whilst there may be some shortcomings in the Review Report ⁶, Victoria Police are to be complimented for this approach as a reading of the report would indicate an ability to be self-critical and to come up with valuable solutions.

In the Executive Summary for the Review the authors make the following pertinent points about the vexing issue of pursuits. In general the authors say that whilst:

"the primary purpose of this report is to examine the issues associated with pursuits, there is also a need to examine and address other related issues that have the potential to become problematic in the future. The current pursuit policy is relatively suitable for all intents and purposes, but has not evolved with changing community expectations. As policing needs are similar worldwide, there is a general trend to adopt practices from other policing agencies

⁵ West, Iain, Deputy State Coroner. Record of Investigation Into Death, Case No.63/01, 20 May, 2002, pp.2-3.

⁶ Not recommending external review by risk management experts.

interstate and internationally. This practice has prevented Victoria Police from formulating and developing policy that is based on local issues and needs which address problems specific to our police force. This report attempts to identify these local issues and formulate a draft policy that will address areas that require attention. Demands that are placed on operational police to make critical judgements in pursuits need to be addressed within the policy to reflect and assist the requirements in these situations rather than to complicate the decision making process. Victoria Police will look at ways of reducing the number of pursuits and consider the alternatives to pursuing."

Significantly, the authors identify a critical issue for risk management:

"It has been identified that a contributing factor to the impetus of pursuits has been the lack of risk assessment resulting from the embedded attitude of police officers towards this area of policing. This has essentially been derived from the complexity and conflict associated with the need to protect life and property and detect and apprehend offenders, further fuelled by the adrenalin rush which has a marked effect on the decision making process for all those involved. From the need to initiate pursuits, for whatever reason, it is important that police are trained to a level of exacting standards and professionalism that will reduce the risk to the public, the offender and all police involved. This is perhaps best achieved by formulating a policy that is prescriptive in its directives with emphasises for continuous risk assessment."

Now, as a result of this Review the Chief Commissioner has recently introduced a new set of prescriptive rules. No doubt, if pursuits are to continue as a police management and law enforcement tool then very tight and strictly monitored prescriptive rules should apply. The new Chief Commissioner's instructions hopefully will operate to significantly reduce the death and injury rate.

For the first time there is a concentration on "*Safety First*" which is underscored in the Chief Commissioner's new Instructions.

Counsel Assisting, Mr. Hillman, in his opening remarks, made the observation:

"In the course of this inquest some consideration no doubt will be given to the Chief Commissioner's instructions of 30 June 2003 which now govern the safe driving of police vehicles, urgent driving and pursuits. It should be noted that those instructions acknowledge that there are inherent risks associated in all urgent driving and particularly in pursuits. The instructions at paragraph 26 state "Any decision to terminate a pursuit on the grounds of avoiding an unacceptable risk will be supported by Victoria Police. Any action taken to limit the risks for the public including offenders and police will be viewed as a decision that displays sound professional judgment. It is to be hoped that that stated policy may cause police officers involved in pursuits to concentrate on the safety aspects and the need to avoid unacceptable risks in the future."

And that the:

"new Chief Commissioner's instructions may have been the result of some recommendations made by coroners in previous inquests. This inquest is I suggest an occasion to consider the manner in which the coroners' recommendations concerning police pursuits have been considered, particularly by Victoria Police. The circumstances are that in the last two years from 1 July 2001 there have been unfortunately 23 deaths from 15 pursuits by police. And it's for that reason I say that this is an occasion to consider the manner in which previous recommendations have been considered by the Victoria Police Force...?"

Training, retraining and accreditation

Critically, if limited pursuits are to continue, and deaths and injuries are to be minimised, there is a need to focus on both tried and true, as well as innovative, risk management techniques. Innovative, focussed and constant training has recently altered a high level of deaths from police shootings in this State. Victoria Police must be complimented on the long term results of the original Beacon Program (now called Operational Safety and Tactics Training - OSTT). The training in this area has been intensive, ongoing and has resulted in significant changes in approach and management. In a small part, the OSTT training has historically focused on the pursuit and, more broadly it teaches police how to safely manage an incident (a "*pursuit*" is but one of the many "*incidents*" police are required to manage).

However, the level of specific and ongoing training for work in pursuits and pursuit operational management does not appear to have been given the same much needed focus (as have shootings) in view of the high level of risk of death and injury to police, the general public and offenders when this acknowledged law enforcement management tool is being used. Victoria Police, to its credit, acknowledges this fact. By way of example Assistant Commissioner Noel Ashby gave evidence to the effect that the pursuit issue has been resolved by the Victoria Police Force adopting proscriptive approach along with a higher degree of accountability. According to Ashby this focus is one that gives Victoria Police *"the best opportunity to change culture in respect to our response."* This new policy is in the development stage and Ashby, whilst generally acknowledging shortcomings in the loss of experience as a result of attrition in the mid to late 1990's, said that pursuits is now one of the four important areas identified to be addressed and:

"?...we've got training packages being developed by education department that align with the national training standards of other policing jurisdictions so that we meet minimum standards. They are being developed and that is a - that is an integral strategy to - part of the strategy to go down the path of changing the organisational culture in respect to our response to pursuits."

Counsel Assisting, Mr. Hillman commented, in the process of examining the statistics, that if *"you start with the first one, on 21 July 2001"* from *"then on, there are 15 separate events. So there's 15 pursuits, involving 23 deaths."* Ashby agreed and acknowledged that this was *"obviously a factor that would be of concern to the Victoria Police."* Further:

"Question: The recommendations made by the 2002 Pursuit Review team indicate, do they not, that there needs to be a different training regime for not only pursuits, but also of urgent police driving?"

Answer: Yes, urgent duty driving, yes.

Question: The most serious aspect of urgent duty driving is the pursuit?"

Answer: No question.

Question: That's the most dangerous?"

Answer: Yes.

Question: And that's the part of urgent duty driving that requires the best training. Correct?"

Answer: Most intense.

Question: One of the matters relating to training, as I understand your evidence, is this; that there are some attempts presently being made to improve the training packages relating to pursuits. Is that right?"

Answer: That's right, yes.

Question: Is the position that, as at present, however, no new training packages for pursuits, have in fact been implemented?"

Answer: No, they're being developed.

Question: They haven't yet been implemented?"

Answer: No.

Question: You say, do you, that the delay in implementation is, in part, as a result of the need to properly develop the training?"

Answer: Properly develop it, and find the time to get across the eight and a half thousand members, in as short a time as possible. Which is why we - the OSTT regime would be the best.

Question: So the decision's been made to incorporate specific pursuit training in the OSTT program; is that the position?"

Answer: Yes. And then to expand that to other existing training regimes, throughout Victoria Police, which include the Supervisory Training Course, Constable Skills.

Question: The OSTT training would have been regarded, would it not, as having been very successful in relation to changing the attitudes of police officers in relation to firearms and other uses of force?"

Answer: Yes, I think all - I think it's reasonable to say all use of force has changed considerably, in our operational response."

And:

"Question: Do you therefore see the OSTT training program as the best vehicle to pursue the improved pursuit training, when, in fact, it's developed?"

Answer: To - I think it's the only regime to reach the existing operational police in a coordinated way, and I also think it gives us the opportunity to leverage off the success of OSTT as a vehicle as - for use of force issues, and linking - linking these policies with that regime is a makes sense operation.

Question: Do you have any indication for His Worship as to when any improved pursuit training could be incorporated in the OSTT program?"

Answer: I think it is anticipated to start in the first part of next year - I was just looking for it, a minute ago - for the regime which starts in January. That six-month period?...

Coroner: You see, Mr Ashby, the problem that faces me, although there's not that much (indistinct), if the death rate continues at the rate it has over the last 24 months or so, it's really of serious concern - well, it's of serious concern as it is, but if it continues?-

Answer: I don't disagree with that, but the new policy was promulgated on 30 June 2003; that is now in place, that is now - so it's the - the education processes, of themselves, aren't the only thing - only aspect of applying them; there is the policy, which now has the full force of policy within Victoria Police, and breach of that policy has significantly (indistinct)

Mr. Hillman: That's been introduced in the absence of any new or enhanced training regime. Correct?

Answer: Yes, it has. It was brought in as the Chief Commissioner's instruction, and it clearly spells out definitions like "terminate", what units are, et cetera."

The need for specialised training of Pursuit Controllers was also discussed.

In addition, the Assistant Commissioner acknowledged the lack of a State-wide structured training regime for police communications operators in regional areas. (See inquests of Repinski; Rich and French).

There is no doubt that, up to now, there has been an inadequate focus on ongoing and regular training for police in pursuit management (both practical and theoretical). Victoria Police, through the evidence of Assistant Commissioner Ashby, have quite appropriately, acknowledged this fact. Because of the high risk of injury or death to police, innocent members of the public and offenders a high level of training and regular re-training is required. At the very least, a similar level of focus as is given to firearms and related issues needs to be given to pursuits and pursuit management.

As safety in the management of pursuits should be the paramount consideration, regular accreditation of police drivers who are qualified to be involved in pursuits should be the norm. That accreditation should be undertaken by skilled and independent assessors in accordance with an agreed standard. From a practical point of view the assessors may also be police officers, ideally from another region or station, to the officer being assessed. Assessors too should be trained.

Clearly there needs to be a significant and concerted upgrading of training (including regular and concerted re-training), accreditation, equipment and risk management, along with proactive audit processes if the deaths (and injuries) flowing from police operations in pursuits are to be minimised. Some of that training may need to be specialised (ie: Regional Police Communications Officers, Pursuit Controllers, Accreditation Officers, Training Officers, etc).

The need to use modern technology in a proactive way

Technology provides a potential for monitoring controls in police vehicles that can help to lead to a better understanding of how incidents occur (thereby enhancing audit capacity and look at improving countermeasures) and provide an essential brake on actions that may be peremptory or not carefully considered having regard to the developing circumstances and potential risk. Video cameras in police cars linked to black box technology recording a snapshot of the police vehicle's movements (speed, braking, warning systems, etc) in the minutes prior to an incident is essential. Some aspects of this technology is regularly seen on our television and used by other police forces (video cameras) and black box recording equipment is commonly available to monitor crashes in the aviation and transport industry. Taxis also now use Global Positioning Systems to help identify and manage movements.

It is noted that we regularly see in the media the use of the onboard video camera in police vehicles from overseas jurisdictions.

The need to regularly undertake comparative research and use coronial findings

Police need to ensure that there is a process in place to conduct research on effects of stricter procedures for pursuits (eg. Western Australia and Tasmania). This should be undertaken in the context of regular reviews of practices and procedures in this area (comparative research work would help to ensure that systems are regularly tested and challenged to ensure best practice). Coronial findings need to be used in a timely, positive and proactive way to inform procedures. By way of example, the following comments in **Balzan** (whether from a police occupational health and safety or a public safety perspective) are still apposite:

"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." (Sentences in bold added by the Coroner).

All of the recommendations in **Balzan** need to be carefully considered in the context of this and other recent deaths during pursuits.

Critical Incident Reviews are essential

Apparently there was no Police critical incident review into this incident. Clearly there should have been. Such reviews should be undertaken into all pursuit related incidents where death or serious injury is involved. Reviews should also be conducted by independent officers to a strict standard (by way of example the Victorian Correctional Services Commissioner's Office has long been monitoring detailed critical incident reviews into the deaths of prisoners. These

reviews have contributed to regular changes in practices and procedures within the Correctional system and should be considered as a model by Victoria Police).

It is noted that under the relevant Commissioner's instructions at the time of this incident, a review was required to be undertaken.

Under the new Commissioner's Instructions a pursuit debrief must be conducted after any pursuit. It is noted that the level of debrief is dependent on the outcome of the pursuit:

"Full debrief

35 Where the pursuit results in death or life-threatening injuries, the debrief must be convened by an Assistant Commissioner or Commander. In other situations requiring a full debrief, the debrief is convened by the pursuit controller or other police member nominated by the Divisional Superintendent from the division where the pursuit concluded.

36 A full debrief is one that is held in accordance with section 1.12 Operating Procedures. With regard to a pursuit, a full debrief must be held whenever:

- A person is killed or injured as a result of the pursuit. This includes where a pursuit has been terminated prior to the death or injury.*
- A collision results, regardless of extent of property damage. This includes where a pursuit has been terminated prior to the collision and a nexus can be established between the collision and the pursuit (see paragraphs 45-46).*
- The pursuit was likely to create undue criticism of police or attract significant media attention.*
- The pursuit was a cross-border pursuit.*
- The pursuit controller, divisional patrol or response manager, regional response officer or other supervisor deems it necessary. Reasons must form part of the debrief report.*

37 In relation to a full debrief, debrief reports and any related documents must be made into a Force file to ensure they are available if needed for any later review, investigation or inquiry."

The new instructions provide that Findings and Recommendations arising from pursuits that are the subject of a full debrief will be forwarded to the Assistant Commissioner (Education) for further attention and the:

"Officer in Charge, Use of Force, will assess all Incident Fact Sheets and Use of Force reports and enter relevant details onto the Pursuits Database. Any issues arising that should be highlighted, including recommendations or comments on successful pursuits, must be entered onto the Pursuits Recommendations Database by the Use of Force office and forwarded to the Organisational Development Department for appropriate action, via the Assistant Commissioner (Education). Where necessary, these reports will be considered in conjunction with any full debrief findings."

Provided the debrief process is thorough and where necessary self-critical this seems to be a step in the right direction.

Summary

The Review, if all of its recommendations are adopted in a timely and well resourced way, is a positive and proactive step. However, it must be emphasised that concentrated and regular training for operational police officers is but one element (albeit a major one) of a package of measures that is essential if the pursuit related death and injury rate is to be kept at bay. Other elements, as indicated, are well-elucidated and regularly audited procedures combined with modern technology designed to monitor speeds and circumstances in the driving and immediate environs.

The current issue facing the Victoria Police and the community is a most serious one and new measures need to be introduced to improve safety for police, the public and offenders alike. It is to be hoped that the new prescriptive procedures (already introduced) have immediate effect and significantly alter the continuing and troubling death rate. It is noted that the authors of the Review clearly and candidly, in part, recognise some aspects of the problem existing at the time these deaths occurred when they say:

"If Victoria Police continues to operate under the existing pursuit policy and members continue to adopt practices which are in contradiction with the policy, there is a likely hood [sic] that more deaths and injuries will occur as a result of pursuits. This will inevitably draw further criticism from the coroner and the community. To avoid the ramifications of any further death or injury related pursuits, Victoria Police has an obligation to the public to evolve with community expectations. There is a real need to shift the emphasis from apprehending the offender to balancing

the risks with the associated outcomes. This is best achieved by educating those involved with a view to changing the approach and mindset of practices that have been ingrained for many years."

The authors cite the Coroner's comments and recommendations in the Balzan incident and examine how those recommendations have been adopted by Victoria Police. They also note that the Coroner did not then recommend a "no pursuit" policy. However, the Coronial recommendations and comments made in Balzan should be seen in the context of a lower rate of deaths during police pursuit related incidents at that time. **The Coroner was not then facing a death rate of 24 in 26 months (July 2001 to September 2003).** It should be noted that Mr. Balzan was an innocent third-party, not involved in the pursuit. The community needs to be aware that not only offenders and their passengers are at risk during a pursuit but also police and the general public.

In future, the deaths, injuries and pursuit related incidents will need to be very carefully monitored and the lessons learnt from each incident used in a timely way to improve outcomes. Up to now this does not appear to have been case, as evidenced by a general failure over a period of years, to implement the Coroner's recommendations as evidenced following the finding in the matter of Balzan. The Review has also commented on Balzan and the failure to implement the recommendations.

It should be noted that the recommendations in this inquest are interlinked. By way of example: training, re-training and accreditation are linked together. So too is the ability to accurately monitor what has happened in a pursuit by means of technology which gives the ability for more accurate assessment of what happened in an incident and feed the lessons back into the practices, procedures and training (if required). The occupational health and safety of police officers involved in pursuits is linked to the clarity and effectiveness of the operating practices and procedures, the quality and safety of equipment being used and of course, training. All of this has potential to effect and the issue of public safety where a pursuit is involved. Accurate and, if necessary self critical, internal incident reviews also help to underpin dynamic procedures and policies.

The new "Safety First" approach is, at this time, supported provided it is fully implemented with a range of additional but necessary management tools ranging from occupational health and safety, a significantly increased focus on operational training to safety equipment and thorough monitoring. Any new prescriptive approach to the safer management of high risk pursuits, to have a good chance of being effective, must have all of the necessary tools to enable that work to occur. Whilst the Commissioner's new approach is commendable there is still a good deal of work to be undertaken to reach the level of safety management required.

Recommendation 1

That there should be a significantly increased focus on training, regular re-training and attendant accreditation for officers to be involved in pursuits. Such training also should include dealing with specialist areas such as Pursuit Controllers, Communications Officers (in regional areas) and those responsible for accreditation.

After the training regime has been implemented only accredited officers should be involved in pursuits.

Recommendation 2

That Victoria Police and the Department of Justice investigate the installation of linked video and dynamic monitoring system in all operational police vehicles (that may potentially be used for pursuit related duties).

The consideration of this recommendation is essential to ensure accurate monitoring of the offender's vehicle and the response of the police pursuit vehicle. It is an essential tool for the audit of public and occupational safety responses and will help to accurately identify areas for improvement in practices and procedures.

Recommendation 3

That Police Command should undertake a critical incident review in all cases where a pursuit (or potential pursuit) has resulted in death or serious injury. Consideration should be given to any such review being undertaken to a defined standard. By way of example - the internal reviews in deaths in prison undertaken under the supervision of the Correctional Services Commissioner should be considered as a potential model.

This appears to be required under the Chief Commissioner's new Instructions.

The role of occupational health and safety policy in the management of pursuits

Clearly occupational health and safety law applies to the police workplace and, in particular, to pursuits. Once a pursuit commences there is a high risk of serious injury or death to police, the public or offenders, accordingly, under current occupational health and safety law the risk management processes operated by the police in this area of their work will come under thorough scrutiny.

Where these type of incidents occur there will be scrutiny in such areas as: general risk management procedures and practices, particular work practices and rules; training and re-training; accreditation and re-accreditation; monitoring equipment and associated technology; the design and safety of vehicles used by police (protective nature in the event of a collision at speed); audit processes; incident rates and investigation; comparative practice in other jurisdictions; etc. These questions are normally asked in any serious workplace related incident and policing in the area of pursuits is no exception to this rule.

Thus the occupational health and safety issue needs to be at the forefront of the minds of those responsible for developing systems of work relating to managing the risk associated with "police pursuits."

Significantly, there was one recommendation made by the Coroner in the matter of Balzan that has not been taken up by the Review Team - it relates to the use of outside risk management consultants (although at the time this recommendation was not specifically linked to occupational health and safety). The importance of outside and independent review can be seen in the exercise of the coronial inquest process which invariably identifies additional safety and management issues. So too would the use of outside specialists in the area of risk management and occupational health and safety. Independent risk managers specialising in occupational health and safety would, most likely, bring a new way of thinking into the process and help improve the risk management techniques and approaches in a most difficult and vexing area. This should still be done in the light of the large number of fatality related incidents and the serious occupational health and safety and public safety related issues that are faced by Victoria Police in managing this aspect of its work.

Recommendation 4

That the Chief Commissioner re-consider an earlier Coronial recommendation in the matter of Balzan that, on a reasonably regular basis, independent specialists in risk management be involved in reviewing police work practices and procedures in the area of police pursuits.

This recommendation is aimed partially at an audit checking process and partially ensuring that new ideas in risk management be regularly fed into the system. More particularly it is aimed at constantly improving practice and ensuring that occupational health and safety issues are regularly reviewed. Accordingly, it is essential, in view of the range of potential occupational health and safety issues evident in pursuits, that any such specialists have widespread experience in occupational health and safety issues as well as risk management.

Investigations and systems improvements - require evidence and questioning

It is noted that the inquiry was required to draw conclusions about what occurred without the benefit of viva voce evidence from two important players - the police officers in the pursuit car. Understandably, the family of the deceased driver (for a number of reasons) expressed their own concerns that evidence was not given at the inquest by the two officers.

The two officers directly involved did not give evidence on legal advice. It should be noted that it is not appropriate for the Coroner to criticize that decision as both officers are entitled as of right (as is any other citizen) to take the point, in appropriate cases, on self-incrimination. However notwithstanding that rider, a general comment may be made that, without the viva voce evidence and resultant questioning of police directly involved in an incident, the dilemma is that valuable information may not be gathered. This information could potentially lead to better identification and understanding of the factors operating in the incident under investigation and also ensure that potential improvements in safety for police, the public and offenders are not missed.

As the Coroner's process is now focussed on establishing facts (and not blame) it should be obvious that procedures that result in excluding principal players from giving evidence (even though legally appropriate) have potential to limit the effectiveness of that goal.

Accordingly, consideration should be given in any review of the Coroners Act to inserting a similar provision to Section 33AA of the Coroners Act 1980 (NSW) which provides that where a witness may give evidence tending to prove that the witness has committed an "*offence or is liable to a civil penalty*" the Coroner may give a certificate in respect of the evidence. The certificate means that the evidence cannot be used against the witness.

This issue may need to be considered by the Victorian Law Reform Commissioner as there are a number of potential problems flowing from any such process.

Recommendation 5

That the Attorney General consider a reference to the Victorian Law Reform Commission on the use by witnesses of the right to refuse to give evidence on the grounds of self-incrimination and how that right effectively operates in the context of a Coronial Inquiry.

This reference should be seen in the context of the potential for reform of this area of the law to improve the accuracy of factual information coming before a coroner.

Resumption of pursuits - a risky operation

It is significant that the Glen Iris incident occurred in the context of an unsupervised, re-commenced pursuit (where the earlier pursuit had been appropriately called off by the prompt and efficient actions of a pursuit controller). The officers involved in the called off pursuit continued to follow (albeit at a distance) and re-commenced the pursuit for a short distance in the hope that the driver of the pursued vehicle would stop. Such action, in the light of the previous behaviour of the subject driver, carries an even greater risk of poor outcome. Resumed pursuits are even more risky and need a degree of focus in any new training regime.

It is noted that the new Chief Commissioner's Instructions state that "*when a direction to terminate a pursuit has been transmitted*" the drivers of all police vehicles involved must:

- *Immediately stop the police vehicle.*
- *Acknowledge the termination.*
- *State that they are stationary and give their location.*
- *Turn off any flashing blue/red lights and/or siren.*
- *Seek further direction from the pursuit controller. The pursuit controller may:*
 - *Direct resumption of duties conducted before initiation of pursuit,*
 - *Co-ordinate debrief, or*
 - *Direct police to patrol the last known location.*

A number of other rules apply to terminated pursuits.

However, it is obvious that any resumed or "*new*" pursuit following one that has been previously terminated is most likely to have greatly increased risk and should be treated in this light (whether being managed by previously involved or a new

team of police). This case has underscored the risks involved. Consideration should be given to amending the Chief Commissioner's Instructions to further highlight the risk associated with pursuits following a previously terminated event.

Alternative Options - from engineering to diversion

"Joint Crime Prevention Victoria - Victoria Police submission to the Coroner's Inquiry into Police Pursuits."

An explanation for a late submission to the Inquest

After the close of evidence and submissions an additional submission was received from "Joint Crime Prevention Victoria - Victoria Police submission to the Coroner's Inquiry into Police Pursuits." In the introduction to the submission it was explained that:

"This submission to the State Coroner's police pursuit inquiry is a joint initiative of Crime Prevention Victoria and Victoria Police. It outlines current Victorian Government efforts to reduce motor vehicle theft and a proposal to implement a compulsory vehicle immobilisation scheme in Victoria."

This late submission was permitted as it was considered to have potential community benefit and would not be likely to cause other parties undue concern. However, all parties were sent a copy of the submission and asked if they wished to comment.

Much of the material in the submission is quoted verbatim as the submission makes a strong and compelling case for significant change. Society would clearly benefit from the changes suggested by the joint submission of the Crime Prevention Committee and Victoria Police.

Introduction and background - relevance to pursuits

By way of "Background" the Joint Crime Prevention Victoria - Victoria Police submission said that:

"Victoria Police data indicate that of the 960 police pursuits which occurred between 1 January 2002 to 18 November 2003, 196 (or 20.4 per cent) involved a stolen motor vehicle⁷. In Queensland, this figure is 48 per cent.⁸

Once a pursuit has commenced, the situation is often very difficult for the police to control in order to avert a collision and subsequent injury. Far better is the option of preventing the car from being stolen in the first instance, to preclude the necessity for police involvement in a pursuit."

The extent of the problem - the history

Whilst very careful control and pursuit management techniques ought also be one of the primary focuses of police systems and training, the use of new and emerging technology in motor vehicle theft prevention is a sound and sensible precursor to avoid the tragic event in the first place. It is noted that the submission commented:

"In 2001⁹, Australia was recorded as having the highest rate of motor vehicle theft in the western world. For many years, until 2002, Victoria's rate of recorded motor vehicle theft was well above the national average.

From 2001/02 to 2002/03, the rate of theft of motor vehicles in Victoria fell by 23.9 per cent.¹⁰ The recent reduction in motor vehicle theft is believed to be due to a number of factors, including:

⁷ Victoria Police's Use of Force Unit statistics

⁸ Criminal Justice Commission (1998) "Police Pursuits in Queensland Resulting in Death or Injury?", Towong

⁹ Latest international figures.

¹⁰ According to Victoria Police crime statistics 2002/03.

- demographic shifts (e.g. baby-boomer children entering their late 20s/early 30s – thus reducing the pool of potential opportunistic motor vehicle thieves);
- the heroin drought;
- Operation Vehicle Watch, a State-wide Victoria Police motor vehicle theft reduction initiative; and
- publicity generated by organisations like the National Motor Vehicle Theft Reduction Council and Victoria Police."

The submission noted that:

"Victoria cannot, however, be complacent about these figures. The factors believed to be contributing to the decline in motor vehicle theft are always subject to change. The heroin drought, for example, is predicted to be coming to an end, while funding for motor vehicle theft operations is cyclical. In addition, in 1994/95, Victoria experienced a significant decline in motor vehicle theft followed by an increase over the next few years to the highest level of motor vehicle theft experienced in the State in 2000/2001 (the most recent decline in motor vehicle theft comes from a very high base)."

And:

"It is estimated that of all theft of motor vehicle offences, approximately 75 per cent are opportunistic, while the other 25 per cent are undertaken by professional thieves.

Opportunistic theft occurs where thieves steal cars for convenient transport, for personal excitement or to strip it for parts. Opportunistic thieves invariably use 'low-tech' methods of entering and starting motor vehicles, and thus target vehicles with limited security features. Theft from motor vehicle offences, often involving the smashing of windows or the forcing of car doors, are also thought to be far more opportunistic. Opportunistic theft is principally undertaken by young males. Drivers of stolen vehicles involved in police pursuits are also often young males"

That:

"Professional theft is said to occur when the thieves (and their associates) make a financial profit from the theft of vehicles and their parts (while 25 per cent of motor vehicle theft is attributed to professional theft, it accounts for almost half of all financial loss due to vehicle theft, as a result of the relatively greater cost of the cars which are professionally stolen)."

And with respect to opportunistic theft:

"conventional door, ignition and steering locks are not regarded as effective security as they can all be easily bypassed by even the most inexperienced opportunistic thief. On this basis, 1.8 million vehicles are without effective security on Victorian roads. Seven out of every 10 vehicles stolen in Victoria in 2002 were manufactured prior to 1990, while six out of 10 were manufactured in the 1980s. Vehicles manufactured before 1990 are less likely to have been stolen by professional thieves, due to their age. Vehicles of this vintage are most commonly stolen by opportunistic thieves. This view is reinforced by the fact that the common characteristic of all makes and models in this group of vehicles is the absence of any form of effective security included as original equipment by the manufacturer."

The submission noted that in a 1990 case involving the deaths of four people during a police pursuit involving a stolen car, the Western Australian Coroner, Mr David McCann, questioned the ease with which cars could be broken into, decrying the fact that *"it seems to me outrageous that a vehicle manufacturer is able to design a motor vehicle capable of reaching speeds of up to 200kmph, but fails to design and install a security system to prevent its theft?"*¹¹. That:

"During the 1990s, the motor vehicle immobiliser was refined to the point where the National Motor Vehicle Theft Reduction Council considers it to be the only effective form of vehicle security. The immobiliser is an electronic device that interrupts the power supply to two or more systems required to start a vehicle's engine (i.e. the fuel pump,

¹¹ Quote cited in the Victorian coronial case of Balzan (1286/94) conducted by the State Coroner, Graeme Johnstone.

starter motor or ignition). Unless the correct electronic signal is provided to the system by the ignition key (or a unique transponder or coded plug), the vehicle will not start. The system is de-activated by a constantly changing signal that is virtually impossible to decode."

The Submission goes on to further explain the extent of the problem and say:

"According to the 2002 Victorian Parliamentary Drugs and Crime Prevention Committee's report into motor vehicle theft, engine immobilisers are considered the best form of vehicle security to deter opportunistic thieves.

The protection afforded by Australian Standards (AS) electronic immobilisers against opportunistic vehicle theft has been well established. Research into the theft of late model vehicles fitted with AS immobilisers indicates that:

- up to 70 per cent are stolen via access to the original key and transponder;
- a further 20 per cent are potentially fraudulent insurance claims; and
- a small number (around 10 per cent) are stolen by unknown methods, which would include towing the vehicle away and involve professional theft.

As a result of their demonstrated success, electronic engine immobilisers were progressively fitted to new vehicles by manufacturers from 1991 onwards until July 2001, when all new passenger vehicles were required by Australian Design Rules to be fitted with an AS equivalent electronic immobiliser as original equipment. Of the 3.2 million passenger and light commercial vehicles on Victorian roads, 1.4 million were manufactured prior to 1991 and are not fitted with electronic security. Of the 1.8 million that were manufactured post-1991:

- 43 per cent have AS immobilisers;
- 21 per cent have non-AS immobilisers; and
- 36 per cent have no effective security."

One potential solution "the immobiliser" - a Voluntary or Compulsory System?

On the issue of "Voluntary and compulsory immobiliser schemes" the submission comments on history:

"In the Victorian coronial case of Balzan (1286/94), the State Coroner, recommended that (t)he Victoria Police consider establishing a committee to assist in identifying useful crime detection/prevention technology as it applies to motor vehicles and pursuits? (Recommendation 12). The Coroner recommended that consultation with key agencies be undertaken in the development of such technology, including VicRoads, the various emergency services, the vehicle manufacturing and insurance industries.

In July 2002, the Minister for Police And Emergency Services, the Hon. André Haermeyer, established the Victorian Motor Vehicle Crime Reduction Council (VMVCRC), with senior representation from VicRoads, Victoria Police, the Victorian Automobile Chamber of Commerce, the Insurance Australia Group, the RACV, Neighbourhood Watch, the National Motor Vehicle Theft Reduction Council and Crime Prevention Victoria. The VMVCRC is currently developing a State-wide Motor Vehicle Theft Reduction Strategy, due for launch in April 2004, which is focusing on:

- an analysis of the nature and extent of motor vehicle theft in Victoria;
- progress to date on motor vehicle theft reduction initiatives;
- enhanced security of the motor vehicle fleet in Victoria;
- reduction in the fraudulent registration of vehicles;
- reduction in the incidence of vehicle-related fraud; and
- strategies to divert offenders and assist victims.

As part of the Strategy development, the VMVCRC has undertaken an analysis of the efficacy of engine immobilisers, which included consideration of the voluntary Immobilise Now! scheme in Victoria, and a cost-benefit analysis into the feasibility of implementing a compulsory immobiliser scheme in Victoria."

Research was conducted into Voluntary and Compulsory schemes. On the Voluntary scheme the submission comments:

"In 1999/2000, the NMVTRC conducted extensive consumer research in order to better understand motorists' attitudes to vehicle theft and security. Key findings of the research included:

- motorists greatly underestimated the risk associated with older vehicles, believing that most thieves targeted newer, more valuable cars;*
- motorists had very poor knowledge of immobilisers and their effectiveness as a theft deterrent; and*
- most motorists saw the (then) average cost of immobilisers of \$300-\$350 as excessive and preferred to rely on insurance as protection in the event that their car was stolen.*

These findings led the NMVTRC to develop the Immobilise Now! voluntary immobiliser program to reduce the opportunistic theft of older cars by securing as many vehicles as possible with affordable, AS approved engine immobilisers. Immobilise Now! is a program run by the NMVTRC under its CAR-SAFE trademark for community education programs, which involved the NMVTRC establishing a national network of immobiliser suppliers and installers who would fit AS approved immobilisers for between \$160 and \$200. The NMVTRC utilised extensive advertising that aimed to correct motorists' perceptions and provided a call centre to direct enquirers to participating installers.

However, an on-going evaluation of the program has revealed that those most at risk of vehicle theft (i.e. young people and owners of very low value vehicles) are the most resistant to voluntary schemes - the people most likely to take up voluntary installation are in the older, more security conscious demographic."

And on a Compulsory scheme in Western Australia the submission states (positively):

"In the mid-1990s, the Western Australian Government introduced a voluntary immobiliser program, after recording the highest vehicle theft rate in Australia. This problem was exacerbated by a series of high-profile stolen car pursuits which culminated in a number of innocent road deaths. Over the following two years, the program delivered only moderate results, with owners of the most vulnerable vehicles electing not to take advantage of the scheme. Not satisfied with the take up during the voluntary program, the Western Australian Government passed legislative amendments in July 1999 making the installation of an immobiliser a pre-requisite for transfer of the ownership of a passenger vehicle.

At the outset of the compulsory scheme, Western Australia's passenger and light commercial vehicle fleet (approximately 1.3 million vehicles) had an estimated immobilisation rate of 45 per cent - this percentage had grown to over 70 per cent by late 2001, an increase accompanied by an almost lineal reduction in theft over the same period. Between 1998 and 2001, motor vehicle theft in Western Australia fell by 34 per cent. By contrast, in the same period, motor vehicle theft reports increased in Victoria by over 30 per cent.

An independent evaluation of the Western Australian immobiliser scheme was commissioned by the National Motor Vehicle Theft Reduction Council in 2002 to examine the operation of the scheme and to provide a high level cost-benefit analysis. Extrapolated over a 10-year period, benefits of the Western Australian scheme are expected to exceed costs by a positive \$13 million (in net present value) and the program is expected to deliver an overall cost-benefit ratio of 1.3 (i.e. for \$1 spent, \$1.30 worth of benefits accrued).

The evaluator extrapolated the benefits of the scheme to other States and Territories, determining that Victoria would also experience a positive benefit-cost ratio of 1.3, which is a conservative estimate, as it is based exclusively on the calculated value of stolen vehicles alone, without including a number of additional cost savings, including police time, reduced road trauma, decreased costs to the motorist, etc. The cost to the Victorian Government over 10 years is estimated to be \$2.7 million, while the total cost savings to the community over this time are estimated to be almost \$300 million.

Far more important are the corollary benefits to the community with the reduction in motor vehicle theft, one of which must be a reduction in high-speed and reckless driving of stolen vehicles. There was no change in the number of police pursuits recorded in the early stages of the compulsory immobiliser scheme in Western Australia. Despite this, given the considerable reduction in opportunistic motor vehicle theft which occurred during this period, intuitively one would expect to observe a subsequent, concomitant reduction in police pursuits.

A paper outlining the benefit of a compulsory vehicle immobilisation scheme in Victoria is currently being finalised for Government consideration."

Other Strategies: Youth Diversion

The submission to the Coroner also deals with additional matters under the heading "*Other strategies: Youth Diversion.*" The submission states:

"In the Victorian coronial case of Balzan (1286/94), State Coroner also recommended 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."¹²

Given that approximately 75 per cent of all motor vehicle theft is opportunistic and often committed by young males, successful diversion of these at-risk youths will inevitably lead to a significant reduction in motor vehicle theft (and thus police pursuits), as well as leading to more positive outcomes for the young people targeted by the programs.

Traditional justice responses often do little to reduce the rate of youth offending. Recidivist offenders require skills and support which will enable them to abandon their criminal lifestyle. An effective diversionary program should engage the young people for long enough to enable them to appreciate the personal benefits they can derive from breaking out of their offending cycle.

Evidence from the United Kingdom and Australia suggests that diversionary programs which use mechanics and motor sport as a 'hook' can be successful in breaking the cycle of recidivist behaviour.

As part of the VMVCRC's State-wide Motor Vehicle Theft Reduction Strategy, in 2004/05, Crime Prevention Victoria - in conjunction with the VMVCRC - will seek to implement a best practice youth diversion program based on vocational training in motor vehicle repair and maintenance. Its key components include:

- *case management and personal development;*
- *recreational activities;*
- *links to employment, work experience and further education;*
- *post-course mentoring, case management and referral to other support mechanisms; and*
- *where appropriate, literacy and numeracy education, and assistance in acquiring a drivers' licence.*

It is proposed that the program will operate for one year, at which time the program will be evaluated to determine its efficacy."

Recommendation 6

That, in light of the experience in Western Australia (and the joint research work of the Crime Prevention Committee and Victoria Police), consideration be given by the Victorian Government to the introduction of a compulsory immobiliser scheme to operate on the transfer of ownership of passenger and light commercial motor vehicles.

Recommendation 7

That the Victorian Government consider providing and supporting a pilot program specialising in "Youth Diversion Programs" as suggested by the research work and submission to the Coroner by Crime Prevention Committee and Victoria Police.

It is noted that the general thrust of this submission (Joint Crime Prevention Victoria) is supported in the Recommendations of the "*Police Pursuit Review 2002*".

¹² Balzan (1286/94), page 29

Graeme Johnstone
State Coroner
29th January 2004

Ms. Carolyn Burnside for the family of Simon Lovitt,
Messrs Gerard McGuire (Darren Bracken on 28th July only) for the Victorian Chief Commissioner of Police,
Mr. Philip Biggins for the New South Wales Commissioner of Police,
Mr. Robert Taylor for Sergeant Wayne Williams and Constable Rebecca Duncan, and
Mr. Colin Hillman S.C., Assisting the Coroner.