



## A POLICE PURSUIT RELATED INQUEST

### INQUEST INTO THE DEATHS OF TRISTRAM RICH AND JOSHUA FRENCH

#### FINDINGS

The deaths of Tristram Rich<sup>1</sup> and Joshua French<sup>2</sup> occurred on 10th December 2001 at Hume Highway, Longwood. The cause of both deaths was head injuries.

#### Summary of circumstances

At about 12.37pm on 10th December 2001 a vehicle being driven south on the Hume Highway, Longwood by Master Rich (the car was his mother's and was reported to NSW Police as having been stolen) lost control during the conduct of a police pursuit and rolled over. The incident occurred about 1.1 kilometres south of Carters Lane. Rich was fatally injured in the collision. Rich had two passengers on board, one of whom, French was also fatally injured. The other passenger, Jason Spalding received serious injuries and was air lifted to the Royal Childrens' Hospital in Melbourne.

Master Rich was driving and French was in the front passenger seat. At the time of the collision Spalding was sitting on the right hand side rear, behind the driver and was wearing the seatbelt. Apparently Rich and French were also wearing seatbelts during the driving.

Shortly before the collision the vehicle, a stolen white 1998 VT Commodore Station wagon, Registered Number USP 708 (NSW), was travelling in a southerly direction along the Hume Highway at a maximum speed of up to 210 km/h. In the lead up to the collision Master Rich lost control he was travelling at about 150 km/h.

The pursuit involved a number of police vehicles, traversed about 61 kilometres on the Hume Freeway from a short distance south of Benalla to Longwood, and took about 20 minutes.

All of the individuals in the vehicle being pursued, the white Commodore Station wagon, were under 17 years and lived with their parents in Albury, New South Wales. Before the collision their identities and age were known by operators in Victoria Police Communications Centre, D24 Wangarrata (but not those directly involved in managing the pursuit).

On 10th December (the morning of the incident) the Commodore was reported to the NSW Police as having been stolen by Mrs. Michelle Bailey (Rich's mother). Later, at about midday Bailey realised that her son may have taken the vehicle and she telephoned the Albury police to advise them of this fact. There was relevant information concerning the identity, age and experience of all the young persons in the pursued vehicle that was either not broadcast or if it was because of communications difficulties did not get to operational police who were managing the incident. Had that information been delivered in a timely way the pursuit would have probably been abandoned and the outcome may possibly have been different.

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<sup>1</sup> Coroner's Case File Number 3763/01

<sup>2</sup> Coroner's Case File Number 3764/01

## Background and history of the individuals involved

### THE DRIVER AND PASSENGERS IN THE COMMODORE SEDAN

At the time of the incident the driver of the Commodore, Master Rich was aged 16 at the time of his death. French was 15. The injured rear seat passenger, Spalding, was aged 14. Spalding was in the Royal Childrens' Hospital for eight days with a broken right arm, split bowel and two punctured lungs.

## The lead up to the incident

### THE COMMODORE STATION WAGON

The 1998 white Commodore Station wagon, Registered Number USP 708 (NSW) was owned by Mrs. Michelle Bailey, the mother of Rich. It was taken without permission by Rich from his parents home in the early morning of 10th December. On attendance at the scene the principal police investigator, Sergeant Bradley McArthur, Accident Investigator, Major Collision Investigation Unit was *"advised that the Commodore station wagon that had been pursued was a stolen vehicle and had been the subject of a radio broadcast in the Albury-Wodonga area earlier in the day."* Later he was told that the Principal of St. Paul's College, Mr. John Brew-Bevan had stated that Rich had attended at the school and picked up the other two boys. Rich's mother had reported the car stolen sometime between 8:00 p.m. on the 9th of December, and 6:15 a.m. on the 10th of December. Apparently the stolen car report was made to Anne Kelleher of Albury Police.

In his observations at the scene Sergeant McArthur noted it was:

*"apparent that the vehicle had rolled a number of times before coming to rest in its final position. A large amount of personal items were strewn along the path that the vehicle had followed. Among those personal items, I found a New South Wales learner driver's licence in the name of Tristram Reigh Thomas RICH, date of birth 15/12/84 of 891 Pemberton Street, Albury, New South Wales. I also located a Medicare card in the name of Joshua Beau FRENCH, date of birth 13/6/86, of 918 Pemberton Street, Albury. I also found a St. Paul's College, Walla Walla, Student Identification card in the name of Jason SPALDING, date of birth 1/4/87."*

In more detail he described the scene as follows:

*"The ground was strewn with various car parts and personal items thrown from the vehicle as it rolled through this area. Further along were large scrape marks and trees with contact marks from the car. There were wooden posts of a fence that were broken. It appeared that the car was airborne for a distance as there were areas of ground with no disturbance from the vehicle. Further along I could see tyre marks in the gravel shoulder and sealed edge curving towards the north from which the vehicle had come."*

And:

*"the VT Commodore. I noted that it had massive damage: the body was twisted longitudinally; the engine mounts were broken; the bonnet, front and rear bumpers, and cooling fans had been torn off."*

The vehicle was first noticed speeding by a Victoria Police motorcyclist at the Midland Highway, Benalla. He then pulled the vehicle over. In his report Sergeant McArthur summarised the immediate events following the interception of the Commodore station wagon by the police motorcyclist:

*"The white Commodore had been intercepted earlier by Senior Constable EGAN 28764 at the Midland Highway, Benalla. He had taken a few steps towards the white Commodore when it suddenly sped away. Senior Constable EGAN then took up pursuit of the car on his police motorcycle, ZE945. EGAN's radio call sign was Knox 698. The pursuit varied between speeds of 200 kilometres per hour and 140 kilometres per hour."*

*The pursuit was taken over by the marked Commodore driven by Senior Constable Ian McDONALD 17014 of Knox Regional Traffic Tasking Unit (TTU), with Senior Constable Daryl JONES 21590 as his passenger. Their call sign was Knox 697."*

The Sergeant also summarised his investigation (in part) into the movements of the three occupants of the crashed vehicle and some aspects of the response of the police to parental information before the interception by the police motorcyclist as follows:

*"During the early hours of Monday the 10th of December, 2001, Tristram RICH obtained the keys to the family Holden Commodore station wagon, New South Wales registration USP708. Some time before 6.20 am., RICH took the Holden despite not having permission from his parents. It is not known where RICH went to during the morning.*

*Michelle and Paul BAILEY, RICH's mother and stepfather woke that morning to find that RICH had already left the house. At that time they assumed RICH had walked to work, which was not unusual. Around 6.20 am they discovered that their Holden Commodore was missing and shortly after Michelle BAILEY reported the car stolen to the NSW Police telephone reporting service. At that time she had a slight inkling that Tristram may have taken the car but she stated that she had some doubt as he had never done anything like that before.*

*Patricia HAZELL is a Customer Service Representative employed by the New South Wales Police, based at Tuggerah who spoke to BAILEY. She took the motor car theft report from her at approximately 6.30 am. HAZELL then made telephone enquiries with RICH'S employer at Kennedy Meats, Wodonga regarding the whereabouts of RICH. HAZELL was informed that RICH had not arrived at work and they had not heard from him. No further information was passed from HAZELL to the Albury Police regarding the possible identity of the driver of the vehicle.*

*The next time RICH was seen was at approximately 8.40 a.m. in the staff car park of St Paul's College, Walla Walla, New South Wales. At that time he was speaking to his friends, Joshua FRENCH and Jason SPALDING. Plans were made for the three of them to spend the day travelling to Melbourne to go bungee jumping. It was arranged that they would all meet up again in the car park at around 10.00 am. RICH then left the school and returned at about 10.00 am. to pick up FRENCH and SPALDING. It is not known where RICH went between 8.40 and 10.00 am.*

*At approximately 10.00 a.m. RICH returned to St Paul's College and picked up FRENCH and SPALDING. While SPALDING was getting into the vehicle, John BREW-BEVAN, the College Principal saw him and attempted to get close to the Holden in an effort to identify the driver. RICH accelerated the Holden away from BREW-BEVAN and BREW-BEVAN watched as it drove through the streets of Walla Walla before he lost sight of it.*

*In an effort to avoid detection by Police, RICH drove the Holden on the back roads towards Victoria. The exact route taken is not known. It is assumed that they crossed the Murray River at Howlong. SPALDING remembers at some point travelling through the township of Barnawartha where they began to travel south along the Hume Freeway. SPALDING stated that RICH had no trouble driving or controlling the car.*

*Meanwhile, Joshua FRENCH's mother, Ingrid FRENCH had spoken to Michelle BAILEY, regarding FRENCH's absence from school. At about the same time BREW-BEVAN ascertained that FRENCH and SPALDING were absent from school. He then contacted Ingrid FRENCH and informed her that he thought he had observed Joshua FRENCH get into a Holden station wagon earlier. At that time Ingrid FRENCH deduced that Joshua was with RICH in the Holden Commodore. BREW-BEVAN also ascertained from a student that SPALDING was with FRENCH and they all intended to travel to Melbourne.*

*At approximately 12.00 p.m. on the same day, Michelle BAILEY contacted the Albury Police regarding her confirmation and her concerns regarding RICH driving the Holden. BAILEY spoke to Anne KELEHER who subsequently initiated a Computerised Incident Dispatch System for NSW Police to keep a look out for the vehicle. At 12.06 pm., KELEHER also contacted Constable Bernard MURPHY at Wangaratta D24 with these details.*

*MURPHY took the details and completed a blue record card. At 12.09 pm., MURPHY broadcast a ?keep a look out for? on radio channels P1 and P2, which cover Police Region 4 of Victoria."*

In more detail the investigating Sergeant described the role of the police motorcyclist:

*"Senior Constable Paul EGAN of the Region 4 Traffic Tasking Unit was performing mobile patrol duties in the Benalla area on a police motorcycle. At 12.13 pm., EGAN observed the Holden on the Midland Highway near the intersection of Grant Drive, Benalla. He observed the vehicle to have two male occupants. He observed the vehicle travelling at approximately 95 kilometres per hour in an 80 kilometre-per-hour zone before accelerating up to approximately 120 kilometres-per-hour in a 100 kilometre-per-hour zone. EGAN then activated the blue flashing lights on the motorcycle and intercepted the Holden on the Hume Freeway entry ramp on the Midland Highway. At that time EGAN stated that he was unaware of the radio transmission from Constable MURPHY at D24 regarding the keep a look out for the Holden. EGAN informed D24 of his movements and requested a car check be conducted on the registration of the Holden, which he gave over the air to D24. EGAN parked his motorcycle behind the Holden and approached the vehicle on foot. He took three or four steps towards the vehicle before RICH accelerated the vehicle away heavily. EGAN remounted his motorcycle and took up pursuit of the Holden. He immediately informed D24 that he was in pursuit of the Holden. EGAN took up position approximately 200 metres behind the Holden as they travelled south along the freeway at 200 to 210 kilometres per hour."*

That once the pursuit was called a pursuit controller system was engaged and:

*"Acting Sergeant PRITCHARD was performing District Supervision duties for the area from the Benalla Police Station. He assumed control of the pursuit and was monitoring the police radio in company with Acting Inspector KLINGE. Senior Sergeant McCALLUM, from the Knox Region 4 Traffic Tasking Unit was also monitoring the pursuit. He took an active roll in issuing directions in the early stages of the pursuit."*

*Communications during the initial stages of the pursuit were poor. This may be because the pursuing unit was on the wrong radio channel for the area. The D24 operator and those monitoring had difficulty hearing the transmissions from Senior Constable EGAN. Senior Sergeant McCALLUM directed that EGAN terminate the pursuit if backup was not immediately available."*

A short time later a police car became involved in the pursuit as principal pursuit vehicle:

*"a Region 4 Traffic Tasking Unit, known as Knox 697, driven by Senior Constable McDONALD, took over the pursuit. Senior Constable JONES was the observer. Senior Constable EGAN continued the pursuit in a secondary role, travelling approximately 200 metres behind Knox 697. Later in the pursuit EGAN was directed to withdraw as a secondary unit. EGAN, it appears, did not comply with this direction and remained behind the primary unit, being 200 to 300 metres to the rear of the primary pursuing unit at the time of the collision."*

And police in the pursuit car:

*"observed the Holden straddling the broken white lines painted on the road surface as it travelled in a southerly direction. It gradually drifted laterally from left to right and gave the impression to the pursuing Police that the driver did not want to be overtaken."*

*The pursuit continued for approximately 61 kilometres, that distance taking approximately 20 minutes to travel."*

In describing the collision:

*"?...At a point approximately 1.1 kilometres south of Carters Lane the Holden overtook a fawn colored early model Ford Falcon sedan, which was travelling in the left lane. The Ford had just been overtaken by a vehicle towing a blue box trailer that was slightly in front of the Ford in the right lane. The Holden overtook the Ford and swerved to the left in between the two vehicles to the left lane. This manoeuvre caused the occupants of the Ford to think that the Holden was going to strike them and the rear of the box trailer, but it did not."*

*Pursuing Police described the movement of the Holden between the two vehicles as being sudden and abrupt, almost causing the side wheels of the Holden to lift off the ground. The Holden then over-corrected to the right and it almost collided with the blue Ford sedan towing the trailer. Pursuing Police also described this movement as abrupt which caused the side of the vehicle to rise, however on this occasion the wheels did not leave the ground."*

*The Holden then travelled along the freeway out of control as the driver again over-corrected the vehicle to the left, then right and left again. During the period that the vehicle was out of control, it was sliding across the road surface leaving yaw marks. The Holden continued off the left side of the freeway and careered through the road-side reserve. The vehicle rolled a number of times and struck a number of trees as it travelled through the reserve. Both RICH and FRENCH received fatal injuries and died in the vehicle. SPALDING received serious injuries and was treated at the scene before being air lifted to hospital."*

That on the issue of communication:

*"During the pursuit there was communication between D24 and the various persons involved or monitoring the pursuit. The reasons for the pursuit were raised and after some conversation it was established that the vehicle was a New South Wales vehicle listed as stolen. The female D24 radio operator, Constable LOVE conveyed over the air that the vehicle was the subject of a 'keep a look out for?' that had been broadcast earlier. However, she did not mention the fact that the identity of the driver was known. Both Constable LOVE and Constable MURPHY believed that due to the 'keep a look out for?' being broadcast only a short time before, the police units involved would have been aware that the identity of the driver was probably known."*

Master Jason Spalding gave Police a statement regarding the incident. He told Police that he:

*"met RICH at St Paul's College, Walla Walla on the morning of Monday the 10th of December, 2001. He told of making an agreement with RICH and FRENCH to travel to Melbourne for the day in the Holden. He described a conversation between RICH, FRENCH and himself about their belief that the school principal had seen them in the car and that they believed he was heading to the Police Station regarding their activities. Due to their concerns about being detected by police, they decided to take the back way from Walla Walla towards Victoria. SPALDING stated that RICH had no trouble driving or controlling the Holden and he had no concerns about being in the car with him driving. At the point where they were pulled over by Senior Constable EGAN, SPALDING stated that FRENCH and RICH were having a conversation with each other that he could not hear."*

Apparently, according to Sergeant McArthur's enquiries, during the pursuit:

*"Acting Sergeant PRITCHARD and Inspector SMITH gave consideration to various resolution strategies. Assistance from the Police Air Wing was sought and arrangements were put into place to utilise them, however the collision occurred before these plans could be actioned. Inspector SMITH had given consideration of having a roadblock set up further south along the Freeway."*

Sergeant McArthur also made some calculations and assessments as to average speeds over the distance. He stated in his report for the Coroner:

*"On the 13th of June, 2002, I attended at the Midland Highway entrance to the southbound lanes of the Hume Freeway, Benalla. At that location I reset the vehicle trip-meter to zero. I then drove from that location to the collision scene in Longwood. The distance measured was 61.3 kilometres."*

*The velocity of an object can be described as the distance travelled by an object divided by the time taken  $v = d / t$ . Therefore, to calculate the time a vehicle travelling at the speed limit would take to travel the distance of the pursuit can be calculated with the formula  $t = d / v$ , where  $t$  is in seconds, distance is in metres, and velocity is in metres per second. For a vehicle travelling at 110 kilometres per hour (30.6 metres per second), this gives a result of 2003 seconds, or 33 minutes, 23 seconds to travel the 61.3 kilometres (61300 metres) from the start of the pursuit to the collision scene.*

*To compare this with the speeds involved in the pursuit, I have made the following observations: Using the transcript of the D24 log, a 'talking clock' timestamp gives a time reference just before serial 29 in the log of 12:15:10. This is just before Knox 698 intercepted the vehicle RICH was driving.*

*At serial 141, a unit cuts over Violet Town 308 saying, 'left side of the road?', meaning USP708 has run off the left side of the road. This occurs just after 12:35:00. Therefore, the pursuit went from 12:15:10 to 12:35:00, being 19 minutes, 50 seconds, or 1190 seconds."*

That:

*"Using these figures, and the formula  $v = d / t$ , the average speed for the vehicle driven by RICH over the entire pursuit was  $61300 / 1190 = 51.5$  metres per second. This converts to  $51.5 \times 3.6 = 185$  kilometres per hour over the entire pursuit, which would corroborate the speeds reported by pursuing police over the radio."*

## **The road and weather conditions**

### **THE ROAD**

The road description and condition at the point of the incident (approximately 1.1 kilometres south of Carters Lane, Longwood) is described by the investigating police officer, Sergeant McArthur, Accident Investigator from the Major Collision Investigation Unit. The Hume Freeway at this point is:

*"a divided highway with provision for two lanes of traffic in each direction. The northbound and southbound lanes are a significant distance from each other at this location and due to trees and grade separation, are not visible from each other. On either side of the southbound lanes are sealed shoulders. The shoulder on the right hand side (as you head south) is reasonably narrow at approximately 1.9 metres wide. The left hand shoulder is approximately 3 metres wide. The traffic lanes are approximately 3.3 metres wide divided by a broken white line and bound by continuous white fog lines. The road surface is sealed with bitumen. The left lane shows some evidence of wear or 'polishing' in the wheel tracks, but the overall condition is very good. The location of the collision was just over a slight crest."*

The speed limit for this section of the Hume Freeway is 110 kph.

### **THE WEATHER CONDITIONS**

Weather conditions were fine and sunny with light cloud cover.

## **The detail of the evidence of the civilian witnesses**

Mr. Michael Vale, Solicitor, indicated in his statement that he was travelling south on the Hume Freeway just past the Castle Creek Bridge at Euroa in his Mercedes when he:

*"caught up to a dark blue coloured vehicle travelling in the left hand lane, and I was travelling slightly faster than that vehicle on cruise control. I believe I was travelling at 118 kph. I moved into the right hand lane to pass, and slowly drew level with that vehicle. As I did so, another vehicle passed me at a fast rate of speed on my right hand side. The vehicle was a white late model station wagon with NSW number plates. It passed very close to my vehicle, between my vehicle and the white post on the right hand side of the two lane carriageway. In doing so it had to straddle the solid white line defining the right hand edge of the carriageway, although its wheels did not leave the bitumen surface."*

Mr. Vale did see the Commodore before it went past his car but he had *"a good view of it for approximately two kilometres after it passed me."* He estimated its speed to be 180 kph. The Commodore:

*"appeared to maintain a constant speed, and did not speed up after it passed me. I have been driving a motor vehicle for 28 years and in my opinion the manoeuvre described was dangerous."*

Mr. Vale stated that immediately after the speeding vehicle passed him he looked in the rear vision mirror and:

*"saw a police car and behind it a police motor bike in the right hand lane, a distance back, which I would estimate to be 300 to 500 metres. I accelerated and moved to the left lane to let them pass. I watched them maintain an even distance behind the speeding vehicle of approximately 500 to 600 metres. I do not recall if they had their sirens turned on or not, but they had their emergency lights flashing. Shortly afterwards, another police car passed me."*

Mr. Edgar Snip, a Supervisor for a Private Organisation for the Disabled, stated that he was driving to Melbourne from his home in Beechworth in his Ford Falcon Sedan and towing a trailer. His wife was a passenger. The cruise control was set on 110.

At about 12.35 pm Mr. Snip was just past the Longford turn off and travelling in the left lane when he "gradually" came up behind a fawn coloured Ford Fairlane:

*"The Fairlane was travelling slightly slower than I was, I estimate about 105 kilometres per hour. As I slowly came up behind this car I realised that if I wanted to maintain my speed then I would have to overtake it. At the point where I believed it was safe to move into the right lane I checked to see if the right lane was clear and I found that it was. I did not see any cars in the rear view mirrors and as such I moved into the right lane and began to slowly overtake this other vehicle. It was a slow overtaking manoeuvre as the speed that both our cars were doing was not greatly different.*

*When I was approximately one and a half car lengths in front of the Fawn coloured Ford I noticed that we were travelling up a slight rise and were nearing the top of that rise. At this time, out of my peripheral vision, I suddenly noticed a white streak to my left. I immediately realised that it was a white car passing me on the left as my attention was drawn to it. My first impression was that this car was travelling at such a fast rate of speed that it made me feel as if I was at a stand still. It is the fastest that I have ever seen a car pass me. I am unable to guess the exact speed of the car as it passed me but it just shocked me to see how fast it was going. It felt to me as if this car was travelling at 100 kilometres per hour and that I was at a dead stop watching it pass."*

Mr. Snip described the incident:

*"As soon as it passed me and when it was, at a rough guess of five car lengths in front of me pulling away, the white station wagon (with NSW number plates) began to lose control. I saw the vehicle in the left lane and the rear end of the vehicle began to fish tail across the road. By that I mean that the rear of the vehicle was whipping from side to side as it travelled down the road. First the back end of the vehicle started to go to the left with the front of the vehicle heading to the right lane. The driver corrected and the vehicle then went the other way. The driver corrected again and the vehicle went back to the right. The driver corrected one more time and the vehicle went to the left and slid across the road surface and left the road. The vehicle went straight into the bush and as it left the road all I could see was a cloud of dust and debris. My thought then was that this vehicle might somehow come back out of the bush in front of me so I immediately began to slow down whilst looking straight ahead for this vehicle in case it came back onto the road. I was preparing myself to have to possibly avoid a collision with this vehicle so I was generally watching the road ahead of me whilst slowing down in the right hand lane."*

And Mr. Snip then stopped his car "generally opposite the rest position of the white station wagon." It was:

*"?at that time that I could see that the white station wagon had come to rest upside down in a paddock up against two trees. I got straight out of my car as did Elizabeth and she was immediately on the phone to the emergency authorities. I began to walk back behind my car to enable me to assess the situation better as it was a better view from that area. At that time I noticed that the fawn Ford Fairlane had also parked on the right hand side of the road about 3 car lengths behind my vehicle. My wife asked me where we were to be able to notify the persons on the phone of our location and it was at that time I saw the Police approaching. I estimate that the Police were approximately 100 metres away when I noticed them coming. At that time it dawned on me that the car that crashed was probably being chased by the Police that I saw approaching. There was firstly a Police car, followed by a Police motorcycle. Approximately five minutes later a couple more unmarked Police cars arrived."*

Mr. Snip commented that "the station wagon was travelling at an extremely excessive speed" and "realised that the car would have hit objects hard as it left the road." His immediate thoughts were that "the occupants of the car would have a slim chance of survival and I truly believed that anyone in the car would have been dead."

Mr. Snip observed that, at the time of the incident, the "weather was fine, the roadway was dry and traffic was light."

Mrs. Elizabeth Snip was sitting in the passenger seat beside her husband. She stated that:

*"this light coloured car passed us on the left hand side it got fairly close to us but it all happened so fast. I remember seeing it go out on to the gravel and grass on the left hand side and the back of the car swung right out to the left. I could see the driver fighting with the steering wheel trying to regain control. I could also see that Edgar was concentrating really hard on his driving, probably in anticipation of having to take some sort of evasive action. The light coloured car then began this huge fish-tailing from side to side and went further off the road to the left. It almost turned all the way around and faced us at one stage and I thought that they were going to come back across the road towards us. I could see the two people in the front seat facing us but I couldn't describe them because it happened so quickly. I can't exactly describe the car's movements but I remember that it went up in the air and it might have done a couple of rolls in the air. Its movements in the air were all sideways and then it hit a tree and came to a stop. It threw up a lot of dust and dirt as it was rolling over."*

Mrs. Snip stated that her husband immediately pulled up:

*"and off onto the centre median strip of the road. As he was pulling up I got out my mobile phone to call the ambulance because I knew that if the people in the car survived they would be severely injured. It was actually as I was getting out of the car that I got through to the ambulance people and I also saw a motorcycle policeman pulling up on the side of the road nearest to where the light coloured car had hit the tree. I told the ambulance people what had happened and they asked where exactly we were on the highway. I had no idea and Edgar told me that we were near Longwood. I then took my phone across the road to the policeman and he had conversation with them on my phone."*

Mrs. Snip was:

*"very surprised that the police got there so quickly. I know that I saw the motorcycle policeman first, because he came all the way down and stopped on the opposite side of the road to where we were stopped, he was travelling in the same direction as us. I later saw another police car stopped further back up the road at about where the light coloured car first ran off the road but when that police car got there."*

And:

*"At the time I first heard the light coloured car come up behind us I cannot recall hearing any police sirens or anything like that. My first knowledge of the police being there was when the police motorcycle pulled up shortly after we had stopped. It wasn't very long after we pulled up that the police motorcycle stopped. It was less than a minute but I was talking on the phone to the ambulance people so I was a little distracted?"*

Mrs. Snip stated that the weather was fine and the roads were dry. She viewed the "traffic on the highway" as being "light to moderate travelling towards Melbourne."

Mrs. Christine Massey-Chase was travelling to Warburton from her home in Wangaratta to see her daughter. She was driving a fawn colored Ford sedan and had a daughter, Chloe and grandson in the car with her. Chloe was in the front passenger seat. Massey-Chase said the traffic was fairly light, day was fine and visibility was good. She was travelling at around 105 kilometres per hour for most of the trip.

At about 12.20 pm Mrs. Massey-Chase was travelling in the left lane and remembered a blue Ford sedan towing a trailer that passed her vehicle to the right, was travelling around 110 kilometres per hour (as the overtaking was fairly slow). She stated that:

*"The blue Ford got to approximately two car lengths in front of us when all of a sudden a white station wagon flew past us in the right lane. At that point when the car passed us I was shocked at the speed that it was travelling and I said to Chloe something like, "He must be on a mission".? My impression was that this car would have been doing easily 200 kilometres per hour as it passed us as if we were standing still. The car made a whooshing sound as it passed us. As soon as it passed our car this station wagon swerved in front of us and it was so close to my car that it made me brake fairly heavily. I did not make our car skid but had to brake heavily as I thought I was going to hit this car. At around about the same time as I was braking I noticed a Police car that passed us at about the same speed or a little slower than the station wagon. The police car was only a couple of seconds behind the white station wagon. Almost straight after saying to Chloe about the driver being on a mission I realised why, due to the Police car following. I said to Chloe, "That's why" meaning that he was trying to get away from the Police. The*

*police car was slowing as it passed us and it stayed in the right lane behind the trailer. The motion of the white station wagon was what I would describe as a fairly sudden swerve to the left as it passed me. It then appeared that the white station wagon went too far over to the left of the road and hit the gravel slightly. I then watched as the driver corrected the car and it went back to the right and tried to overtake a car in the left lane up in front of me. I do not remember what colour or type of car it was in front of us and I also do not remember if the white station wagon got past that car. All I remember then is the white station wagon just losing control and fish tailing down the road. The car only did a couple of swerves from side to side before it left the road to the left. There was just a huge cloud of dust and debris as it went off the road and I could not see the car due to the dust. The dust even obscured my view of the road. I heard a loud thud and I knew that the car had crashed and I knew that the car was going so fast that it would be unlikely that the occupants would have been alive."*

And she:

*"...?immediately began to stop and once all the dust cleared I pulled over to the right lane and stopped on the right of the southbound lanes. I watched as a number of other Police cars turned up, with a motorbike arriving first and then two other cars arriving. We stayed at the scene observing what was going on and the Police immediately went over to the car to assist the occupants. I saw them drag one person from the back seat through the rear passenger door. I could tell that this person was a youth of about 17 years of age and he looked seriously injured as he was very limp. He tried to get up at one stage and he was told to lay down. We stayed at the accident for two and a half hours and gave our details to Police."*

Miss Chloe Massey-Chase, aged 16, was of the view that her mother was travelling at 105 km/h. She was in the left lane. Massey-Chase:

*"heard this roaring sound behind us that caused me to turn around to my right and look behind us. I looked over my right shoulder and saw a white coloured car coming up behind us really fast. It was in the same lane as we were in and was about 3 car lengths behind us. At the same time I saw a police car about a car length behind the white coloured car, I can't recall if the police car had its flashing lights and siren on. I do remember that later when the police car stopped it had its lights on."*

And the:

*"?...white car was travelling so fast, I reckon about 200 kilometres per hour, that I thought it was going to hit the back of our car but then it suddenly swerved across into the right hand lane and went past us. The police car passed us as well. When the white car just got past us it swerved back into the left hand lane and almost hit the front of our car. The white car swerved so hard in front of us that it went right across into the dirt at the left hand side of the road and went out of control. The back of the white car started going from side to side. The driver of the white must have then turned the steering wheel because it then headed further off the road and started to roll over. I lost sight of the white coloured car then because of all the dirt and dust that it was throwing up. The next time I saw it was on its side against a tree. The dirt and dust that was thrown up by the white car was so bad that we had to slow down and stop and we pulled off the road to the left and stopped."*

That the:

*"?police that had been chasing the white coloured car had also passed us after the white car went past. The police car also moved into the left hand in front of us but it didn't swerve across in front of us it just moved over and started slowing down straight away. This was happening as the white coloured car was rolling over so the police car was slowing down to stop too. The police car pulled off the road onto the dirt. We had to pull around the police car to the right and then wait for all of the dirt and dust to settle down."*

Miss Massey-Chase stated the weather was fine, the road was dry and visibility was excellent. Also:

*"There wasn't much traffic on the road at the time. We had been passed by another car towing a trailer just before the accident happened, it was the only other car on the road ahead of us."*

Mr. Lionel Grealy, Motor Mechanic and Tow Truck Operator was travelling from Wodonga to Melbourne. Grealy stated that he:

*"... had just come down off the part of the highway that crosses Flat Rock, which is south of Euroa. There is about a kilometre of straight road when you come down there and then it goes into a left hand curve and then into another straight. At that time there was a semi trailer in front of me also in the left hand lane and I was thinking about passing it. As I was going around the left hand curve in the road I checked in the my outside rear view mirror to see if it was safe to pass. I could back along the road all the way to flat rock and couldn't see anyone at all behind me. As I came out of the curve onto the second straight I went to put my blinker on to overtake the semi and had another look in my mirror. It was then that I saw a white coloured late model Holden Commodore station wagon with New South Wales number plates just about to pass me in the right hand lane."*

And then Mr. Grealy said he was:

*"...? just about to drift out into the right hand lane when it has gone past me like a rocket. The station wagon was going so fast that it looked like it was floating on the road. It was going from the fog line on the right hand side of the road to almost touching the sides of the cars in the left hand lane. My truck is speed limited to 100 kilometres per hour so I couldn't have been doing anymore than that and so was the truck in front of me. That's why I had to think about overtaking the other truck because it takes so long to do. I would estimate that the white Commodore station wagon was doing 200 kilometres per hour plus. As the station wagon went past me I couldn't see the front seat occupants but I could see a young kid, a male, sitting sideways in the centre of the back seat leaning towards the front seat. He was turning his head to look forwards and then turning to look backwards out the back window."*

Mr. Grealy was amazed at the speed and thought, *"Oh, yeah, what a wood duck."* He then looked in his rear view mirror to see if it was safe to pass the other truck and *"saw that there was a highway patrol car coming up behind me in the right hand lane. I had watched the Commodore station wagon ahead of me until it was almost out of sight and the patrol car was just passing me then. I would say that the patrol car was at least half a kilometre behind the Commodore station wagon."*

Mr. Grealy noted that when the patrol car passed him:

*"it was travelling at a similar speed to the Commodore station wagon but was being driven in a far more control manner. When it went past it was not floating it was rock solid on the road. The patrol car had its flashing lights on the roof operating but I didn't hear any sirens. The police car didn't appear to be making any ground on the station wagon, if anything the station wagon was pulling away from the police car."*

And:

*"After the patrol car went past me I had another look in the mirror and I could see that there was a police motor bike struggling along in the wind just tailing the police car. He was having a hard time of it. I continued on after they went past and through the next right hand bend. When I next looked in the mirror I could see another police car coming up behind me. This one was a town car because I could see it was set up differently. I kept in the left lane until he went past, I was then able to pull out and pass the other truck."*

Mr. Grealy commented that it was obvious to him *"when the white Commodore station wagon first passed me and then I saw the police car with its lights flashing that the police were chasing the station wagon."* He did not think *"there was anything in the way the police were chasing the station wagon that was dangerous apart from the speed at which they were travelling."* That, in his view, it did not appear that:

*"the police were putting any pressure on the driver of the station wagon. They certainly weren't pushing him along. They looked to me to be just following along behind just keeping him in sight."*

Mr. Charles Pithie, was travelling from Omeo to Melbourne, via Mt Hotham and the Hume Freeway. A *"white station wagon flew past me on the right hand side."* He noted that a *"car with a trailer had just passed me on the right and was only about two car lengths in front of me in the right hand lane."* Pithie described the circumstances thus:

*"The white station wagon was veering to the left hand lane as it passed me. I thought it was out of control as it passed me. I would have thought he was doing 150 - 160 km/h. As the white station wagon veered onto the left hand lane, it further lost control and looked like it over corrected to the right and then tried to straighten up."*

*It then spun 180° and was travelling sideways and ran off the road. There was an explosion of dust and I didn't see anything else except a mangled mess. I pulled up straight away as did other cars including the car with the trailer.*

*A Police car was along side me as the white station wagon left the road. Shortly after a motorbike and two Police cars turned up."*

## **The evidence of the surviving passenger in the pursued vehicle**

There was only one survivor and his evidence is important to gain an understanding of why these boys undertook to be involved in a "pursuit" with police and whether they understood the consequences and full nature of the risk they were running (to themselves and others). There is little comfort in the evidence of Master Spalding which would give any real heart to those who consider that pursuits are an effective way of managing the risk of poor driving behaviour and/or in solving problems from the point of view of the criminal justice system (stolen cars). Ultimately public safety or the consequences of their actions did not appear to have come into the thinking of the boys in the Commodore. It appears that they did not want to get caught by Police - it was as simple as that. Apparently they did not consider any safety issues for themselves, the public (or police) in their desperation to escape the pursuing police.

When giving evidence Master Spalding came across as an intelligent, articulate, quick thinking and relatively honest young individual who ought to have understood the risks and consequences of the actions he and his friends were taking during the run down the Hume Freeway. Clearly he did not - it was probably a question of gender, maturity and lack of life experience. It was only after the tragic event that some of the consequences appear to have dawned on him.

Master Spalding, aged 16 was a student at St Paul's College, Walla Walla. On the day of the incident he arrived at school via the bus at about 8.35am. On arrival he looked for his friend Joshua French. Spalding found French:

*"in the rear car park near the administration "B" building. He was with Tristram RICH, who is a friend that I know through Josh as he lived across the road from Josh. Josh was leaning against the drivers side of a white Holden Commodore station wagon, VT model. Tristram was sitting in the drivers seat with the door open and they were both talking. I went up to them and said hello and just talked to each other. I did not know Tristram well enough to know his age and I thought he was old enough to have his licence. There were "P" plates on the floor of the back seat and I thought that he was meant to be driving that car. During our conversation Tristram asked me if I wanted to go to Melbourne for the day and go bungie jumping and I told him that I would think about it. Josh told me that they had to wait until after first period which ends at 10.05 am. Josh wanted to complete his drama school certificate examination in that lesson."*

Master Spalding went to first lesson and during that lesson he decided to go to Melbourne with Rich. Three others also indicated that they would also be going, but eventually they decided against the journey. Spalding got into the Commodore and he and the driver, Rich waited for French. During this time they both drove down the street to turn around and Spalding was dropped off down the road so that he would not be seen by teachers. Spalding stated that:

*"Tristram went back to the school to get Josh. Whilst I was waiting for them I saw Tristram driving out of the school gates with Josh in the car. The school principal, John BREW-BEVAN was following Tristram in his car. This prompted me to duck into a driveway out of his sight. I hid behind a bin. The principal and Tristram drove past where I was so I just sat and waited. About five minutes later Tristram came back tooting the car horn to get my attention. He stopped outside the driveway where I was hiding and Josh reached back to the back door to unlock it. He opened the door and I dived into the back seat and we took off straight away."*

Master Spalding said that once in the car they:

*"had a discussion about the principal heading towards the Police Station about us so we opted not to turn towards Albury in case we got caught. I was only worried about being caught for wagging school but I know now that Tristram would obviously be worried about being caught with the car and being unlicensed. At that time I was unaware of Tristram's concerns. We decided to take the back roads to get around Albury so we could get onto the Hume to go to Melbourne."*

Apparently on the back roads they did not see a car until they were near the Murray River. They crossed the Murray River and took back roads to the Hume Highway. According to Master Spalding, during the time they were travelling on the back roads Rich:

*"had no trouble driving the car or controlling it. There was no time that I was worried about what he was doing and at no time did I become afraid that he was going to crash. He kept the car on the road all the time and kept within the speed limits. The roads were all mainly sealed roads that we travelled on."*

After they drove through Benalla Master Spalding became aware that their vehicle was being pulled over by a Motorcycle Police Officer. According to Spalding, Rich said *"something like 'oh it's the Pigs'."*

Apparently Master Rich then:

*"pulled over straight away and as he did, he and Josh were talking about something but I could not hear what they were saying. I was watching the Policeman getting off his bike in the rear view mirror. At that point, for some reason I was not scared or worried about what would happen to us as I thought that we were not doing anything wrong. The worst I thought we would get was something about Tristram not having his "P" plates displayed. The Policeman parked his bike only a couple of metres from the back of our car and I saw him walk to the back driver's side corner of the car when Tristram put his foot down and accelerated away from the bike. It was a quick acceleration but not with his foot right to the floor. There was no discussion with me about doing that. It might have been what Josh and Tristram were talking about earlier. When we took off we all had a bit of a laugh about the Policeman looking shocked and running back to his bike as it looked funny."*

And as they:

*"?...took off there was no conversation between us about doing what we were doing and neither Josh or myself told Tristram to stop. I was not worried about what we were doing and I was not scared at all. I did not have any feelings inside me that told me to tell Tristram to stop even though I knew we were doing the wrong thing. I did not think about the possible consequences of what we were doing - I mean I know what the consequences of our actions were in that we were going to get in trouble but I was not worried about that. I did not think that we could have crashed the car. It did not occur to me that we were endangering ourselves or anyone else."*

In his statement Master Spalding described the developing events thus:

*"Tristram accelerated the car on the Hume Freeway and we slowly crept the car speed up. I was aware of the speeds we were travelling at and so was Tristram and Josh as we were looking at the speedo and trying to get the most out of the car possible. Tristram told us at one stage to put the car windows up to reduce the drag on the car. We began to creep up towards 200 kilometres per hour and the sound of the wind drowned the sound of the Police siren behind us. The radio was not playing as earlier on in the day Tristram said that it broke his concentration. I was aware that the bike was still behind us and after a short a short time it dropped back to allow a marked Police car to keep following. When the bike was behind us it was close enough that I thought it was trying to slip stream us. When the marked Police car took over they stayed a little further back - a distance that I think would have given them time to react if we braked.*

*The pursuit went on for a while and Tristram was trying to maintain 200 kilometres per hour. We were trying to go faster than 200 but the car would not go any faster than that. During the chase both Josh and I did not speak to Tristram as we did not want to break his concentration. Nothing much was said between us at all for the length of the chase. During the time that we were being chased I still did not get scared or worried about what we were doing. The possibility of crashing still did not occur to me. I did not think about how the chase was going to end. I did not tell Tristram to stop and neither did Josh. There was some mention of road spikes and if we saw any that we should not brake at all. Tristram was just going to take his foot off the accelerator and coast to a stop so that he would not lose control with flat tyres.*

*The traffic was light at the time and I only remember passing three other civilian cars. I remember passing some police cars that were blocking the off ramps from the freeway. At one stage I remember coming up behind two the cars on the freeway. We could see them ahead and I saw one in the right lane and one in the left lane. As we approached the car in the right lane was ahead slightly of the car in the left lane. One of these cars has altered its*

*speed and they began to travel side by side as we got closer. Tristram said something like, "shit shit shit" and we knew we were going to have trouble getting past. Tristram did not slow down at all despite the cars in front of us and he overtook the car in the right lane to its right on the road shoulder. I do not know if our car hit the grass at all but we managed to get back into the right lane without any problems. Tristram maintained control of the car through that manoeuvre and I did not feel as if we were going to crash at that point. Josh and myself did not tell Tristram to slow down or stop but we also did not say anything to encourage him. Nothing much at all was said for the entire chase. Tristram kept on going at 200 kilometres per hour."*

Master Spalding noted that as they continued along the Freeway:

*"...?the Police car maintained the same distance behind us all the way. It was a safe distance behind us, a distance that I believed that if we braked then they could avoid us. I would guess that they maintained about 100 metres between us and them. At one point I again remember Tristram trying to perform a similar overtaking manoeuvre to the previous one. I still think we were doing 200 kilometres per hour as I do not remember slowing before this. I do not remember the cars that we were overtaking but I remember having the feeling of our car moving sideways to the right. I then remember the sound of the tyres screeching and it was then that it was the only time I thought of the possibility of crashing as that is what I realised was happening. I remember saying something to myself like "damn it" just before we lost complete control. I became aware that we were sliding across the road and at one point I heard a metallic crunch. I must have closed my eyes out of a reaction but then opened them again to find that the world outside was going around. At that time I realised that the car was rolling. I do not remember coming to a stop. The next thing I remember is finding myself upside down in the car and I remember seeing a knife going for the seat belt. I do not remember the knife cutting the belt I just remember voices and a flashing light in my eyes. I do not remember getting out of the car at all or anything else until I was in the helicopter. I remember someone shutting the helicopter door and being in pain. I then remember being treated in hospital."*

Master Spalding stated that as a result of the incident he received a number of injuries (already referred to) and, significantly although he had "a clear recollection of the events of the day" he could "offer no real reason why we did what we did." He stated that he:

*"did not fully think about or realise the possible results of our actions when we were doing them. I obviously now realise the seriousness of our actions but can still offer no real reason why we did what we did."*

## **Evidence of police officers directly involved in the pursuit**

There are a number of police officers that played a role in and were in various police pursuit vehicles and other police vehicles during the twenty minutes before the pursuit tragically ended. The primary vehicles are listed under the following call signs: **'Knox 697'** (Police Pursuit Car) and **'Knox 698'** (Police Motorcycle). The pursuit car was being driven by Senior Constable Ian McDonald with Senior Constable Darryl Jones as observer. Senior Constable Paul Egan was riding the motorcycle. Other police vehicles were also involved in the overall management (dealt with under the sub-heading to this section - **'Other Police Vehicles'**).

### **'Knox 697' (McDonald and Jones)**

Senior Constable Ian McDonald, was from the Knox Regional Traffic Tasking Unit and had been a member of the Victoria Police Force since 1971. Since 1978 he had been performing duties with the Traffic Operations Group and has been at Knox Regional Traffic Tasking Unit since May 2000. McDonald is older than his observer, Jones. McDonald said that since becoming a police officer he had undertaken numerous courses in traffic enforcement and driving courses. He holds:

*"a full Victorian car / heavy bus / heavy truck licence, number 18718067 current to 21/10/04. I have held a driver licence since I was 19. Within Victoria Police I hold current departmental licences, those being Class 'B', Class 'C' and Class 'D'. I did hold a provisional Class 'A' driver licence but I haven't ridden a departmental motor cycle since 1986. I completed the full driving courses to gain my 'A', 'B' 'C' and 'D' class licences. I consider myself to be a safe and competent driver and practice the teachings of the Police motor driving school. I am a confident and experienced driver of all types of Police pursuit vehicles, including Holden V8, 6 speed manual transmission sedans."*

Senior Constable McDonald explained that:

*"Knox Regional Traffic Tasking Unit is covered within Region 4 and our area extends to the New South Wales border at Wodonga. As part of our duties we are required to travel to the border to perform those duties. On Thursday the 6th of December 2001, 8 Police members from my office were tasked to perform duties regarding 'Operation R.A.I.D.' at Wangaratta and Wodonga. We performed 8 hour shifts daily from the date of our arrival. For the majority of the shifts up there I worked with Senior Constable Darryl JONES 21590. I was performing my duties for this week in a 2001 VX SS Holden Commodore sedan which had a 6 speed manual transmission. It was a marked Police sedan with the registration number of MBE-380."*

The issue of fatigue was referred to in Senior Constable Ian McDonald's statement:

*"On Sunday the 9th of December 2001 I performed duties from 1600 to 2400 with Senior Constable JONES. During this shift Senior Constable JONES was the driver and I was the observer. We performed our duties between Wodonga and Wangaratta. It wasn't a tiring shift. After completion of duties I returned to the motel and had a good nights sleep. I awoke at about 8.45 a.m."*

And his rostered shift for the day of the incident was:

*"1100 hours to 1900 hours and I was tasked to return to Melbourne prior to the completion of my shift but not before 1700 hours. I was tasked to perform normal traffic duties. Senior Constable JONES and I were tasked to perform our duties together."*

Senior Constable McDonald commenced duty at Wangaratta Police Station at 1100 hours with the call sign of 'Knox 697'. He was driving the Police vehicle MBE-380 with Jones as the observer. He and Jones had decided they would travel back to Melbourne along the Hume Freeway.

Senior Constable McDonald noted that on the return journey the SMR radio, set on Channel "P1", was audible to him. However he did notice that *"the quality of the transmissions left a lot to be desired."*

Senior Constable McDonald stated that they:

*"had been travelling south along the Freeway for approximately half an hour when I became aware of a distorted radio transmission where the words "pursuit", "south", "Freeway" and "Badaginnie" were overheard on the Police radio. I thought I recognised the voice of Senior Constable EGAN, who is also from region 4 R.T.T.U. and who is a 'solo' rider, using the call sign 'Knox 698'."*

And Senior Constable Jones reached for the Vic Roads map and he informed McDonald that they were south of Baddaginnie. McDonald formed the opinion that:

*"?...if there was a pursuit involving 'Knox 698', we were ahead of the pursuit, if it was south bound. I then heard a further, less distorted radio transmission of "white Commodore wagon" that sounded like "USP-708", then "still South" and "traffic light". At this time the cruise control was still set on the Police vehicle. About a minute or so later, I looked in the rear vision mirror and saw a white station wagon coming south, in the right hand lane. I was in the left lane. I also saw a single bright headlight behind this station wagon. I wasn't sure at this stage whether it was the Police bike behind the pursued vehicle or not. This was because the solo was about 500 metres behind me. The vehicle that I saw was about 200 metres away from behind me and was in the right hand lane. That vehicle was within the right hand lane and not changing lanes. This vehicle was approaching me and overtook me at a very fast speed, in the right lane. All I saw as this vehicle passed me was that it was a white Holden Commodore station wagon, reasonably current model, and it had New South Wales plates. I did not notice anything about the occupants because at the time I was more concerned with the safety of the motor cycle rider, who I possibly identified as Senior Constable EGAN. The single bright headlight I confirmed as being a Police motor cycle. I couldn't see any blue or red light activated on the motor cycle but that may have been due to the brightness of his headlight. I was concerned for the safety of EGAN as I didn't know if he was going to overtake us or not."*

Senior Constable McDonald noted that he:

*"?...remained in the left hand lane and accelerated to within approximately 300 metres from the rear of the white Commodore station wagon, which was still in the right hand lane. I then activated the blue and red rotating and strobe lights of the Police vehicle. Once these lights are activated I am aware that it activates the low beam headlights and the reversing lights of the police car so that they flash alternately. To accelerate I dropped back from 6th gear to 4th. I again checked my rear view mirror and saw that Senior Constable EGAN had dropped back some distance to the rear of the Police car, however stayed in the right hand lane."*

And:

*"...formed the opinion that Senior Constable EGAN would prefer for us to take up the role of primary unit in the pursuit. I then took up and maintained an even 300 - 350 metres behind the Commodore station wagon at a reasonably consistent 200 kilometres per hour. Traffic was light in the south bound lanes and for the majority of the time, there was just the station wagon, the Police car and the Police motor cycle on the freeway. Senior Constable JONES maintained the Police radio and at some point changed from channel 'P1' to 'P2'. After doing this the radio transmissions vastly improved."*

Senior Constable McDonald described the driving of the vehicle being pursued as follows:

*"The driver of the station wagon was straddling the broken white lines and was moving laterally left and right on quite a few occasions. The driver was not swerving the vehicle it was more a gradual move. The body language of the car was that the driver didn't want to be overtaken. At one stage we came up on the rear of an early model Mercedes sedan, also travelling south in the right lane and which was in the process of overtaking a slower vehicle. I do not know the specific make or colour of that particular car that was being overtaken by the Mercedes. My attention was focused on the white Commodore station wagon that braked heavily as it approached the rear of the Mercedes. I noticed that the brake lights came on and the front of the car dipped noticeably I braked as well, as I didn't know what the driver of the Commodore intended to do. The closest I came to the rear of the Commodore station wagon at this time was probably 150 to 200 metres (minimum). I then saw the Commodore station wagon move to the right and accelerate past the Mercedes by using the right hand shoulder of the freeway at about 140 kilometres per hour. The Mercedes moved smartly to the left and allowed me to overtake it in my correct lane. The driver of the Commodore station wagon again accelerated up to 200 kilometres and again straddled the white line dividing the two south bound lanes of the freeway, again moving laterally left and right."*

And he:

*"?...again left a 300 metre gap (minimum) between the front of the Police car and the rear of the white Commodore station wagon, which we were informed had been stolen from New South Wales. During the pursuit, Senior Constable JONES kept transmitting speeds of the station wagon, locations and traffic conditions to the D24 base at Wangaratta. At one of the Euroa turn-offs (possibly the second) I saw a marked Police car had part blocked the exit and the Commodore station wagon continued south along the Hume."*

Senior Constable McDonald described the incident as follows:

*"Somewhere between the Lockwood turn-off and about 2 kilometres south (I have been told between the 131 kilometre post and the 130 kilometre post) the Commodore wagon overtook a fawn coloured early model Falcon sedan, which was in the left lane. This early model Falcon sedan had just been overtaken by a vehicle towing a blue box trailer (with a caged cover on it). This vehicle was still in the right hand lane and was only a couple of car lengths in front of the Falcon sedan. Once the Commodore station wagon had just overtaken the fawn Falcon, the Commodore wagon veered sharply to the left, almost colliding with the right front of the Falcon sedan and the left rear of the box trailer. I had thought that the driver of the Commodore station wagon was going to do the same as with the Mercedes, that is overtake on the right shoulder. I can't remember seeing any brake lights come on in the Commodore station wagon as it did this manoeuvre. The move that the Commodore station wagon made was abrupt and it was so abrupt that the left hand side of the vehicle lifted up."*

*As soon as I had seen the Commodore station wagon approach the back of the box trailer I immediately started to brake firmly and slowed rapidly. I didn't lock the wheels whilst I was braking. I estimate that at that time I was still*

200 metres behind all three vehicles and was this distance away allowing myself enough room to stop safely if need be. At all times I was in full control of my vehicle.

When the driver of the Commodore station wagon veered to the left the brake lights of the Falcon came on as the driver braked noticeably heavily. The driver of the Commodore wagon then overcorrected to the right, almost colliding with the vehicle towing the trailer. Again this movement was abrupt enough to cause body roll and the driver side of the vehicle lifted but the wheels remained on the road, as far as I could tell. I formed the opinion that the driver of the Commodore station wagon was about to lose control of the vehicle dramatically. The driver of the Commodore station wagon has then over corrected again back to the left, then right and then left again. When this last over correction to the left occurred I realised the Commodore station wagon had gone onto the gravel shoulder off the left side of the road. The vehicle continued to keep going left and then disappeared into a paddock in a great cloud of dust billowing over an approximate 150 to 200 metre distance. I also heard 2 thumping noises."

And at this time Senior Constable McDonald's "attention was refocussed back to the road and the vehicles in front of me. I immediately stopped the police car and Senior Constable JONES was on the radio requesting an ambulance. I stopped my Police car in a firm, controlled stop, almost directly where the Commodore station wagon had gone off the freeway."

Senior Constable McDonald stated that:

"At the time of the pursuit traffic was light, the road surface was dry and in good condition. The weather was fine and visibility was good.

Whilst pursuing this vehicle I could only see two occupants. I later learned that there were three occupants.

During the pursuit, it was in the back of my mind that, if the safety of any other road user looked likely to be effected, I was prepared to terminate the pursuit, whether or not I was instructed by another Police member to do so.

My reason for maintaining the distance between my vehicle and the Commodore station wagon was that I did not want the driver of the Commodore station wagon to feel that I was pushing him along. I was simply keeping pace with it."

In evidence Senior Constable McDonald commented on information that would have significantly effected his decision:

"Question: Senior, you attended a de-brief conducted on 14 December 2001, did you not?

Answer: I did.

Question: You were then, that is, at the time of the de-brief, aware that the driver of the station wagon was an inexperienced learner driver?

Answer: Yes, sir.

Question: You were aware that the identity of the driver and the occupants of the white Commodore wagon were known to police at Wangaratta D24 prior to any pursuit commencing?

Answer: I learnt that, yes.

Question: Yes, you learnt that; and you also learnt, didn't you, that the vehicle had been stolen in that it had been taken by Tristram Rich from his parents?

Answer: Yes, sir.

Question: But you knew none of those things during the course of the pursuit?

Answer: No, sir, I did not.

Question: If you'd known those things during the course of the pursuit, would they have caused you to abandon the pursuit?

Answer: Yes, sir, most definitely.

Question: Most definitely?

Answer: Yes.

?

Question: If you'd known that information one of the important pieces of information which would cause you to abandon the pursuit was the knowledge that the driver was inexperienced?

Answer: That would be one consideration, yes.

*Question: The other consideration would be you'd take the view, would you not, that because the circumstances of the theft were as they were and the identity of the persons in the car was known, that a pursuit at such high speeds was not justified; correct?*

*Answer: Agreed."*

On an incident with a Mercedes (driven by Mr. Vale) that occurred about 15 kilometers from the point of collision:

*"Coroner: When we get back to the issue of passing the Mercedes, at that stage did you have any doubts in your mind about his abilities?*

*Answer: No, sir. It appeared to me to be a controlled manoeuvre.*

*Question: Was it a safe manoeuvre?*

*Answer: Not necessarily.*

*Question: Once that occurred, did you consider - did it go through your mind whether or not to call off the pursuit?*

*Answer: It was a very brief situation.*

*Question: But at 200 kilometres an hour, I would have thought that most situations are very brief?*

*Answer: With respect, sir, my statement indicates that that he was moving at a lot slower pace than that. He braked.*

*Question: So what speed are you saying he went at?*

*Answer: 150 kilometres an hour is my recollection.*

*Question: Do you think that was a point in time when the decision could have been made to terminate pursuit?-*

*Answer: It could have been.*

*Question: Are you able to explain to me why it didn't happen then?*

*Answer: It was over in such a brief instant that - and the traffic ahead was virtually non existent within my range of view.*

*Question: Do you recall as to whether or not your mind went to what would happen when you came up to the next group of cars or vehicles in view of your understanding of what happened with the Mercedes?*

*Answer: The next group of vehicles was behind when this unfortunate tragic incident occurred and I formed the opinion - I think my statement shows that - that I - that he would undertake once again to the right of the vehicle towing the trailer, but that didn't occur. It was an unexpected movement by him."*

He also commented on the use of the siren as follows:

*"Question: Did you hear Mr Jones' evidence that initially the siren wasn't activated because he thought that might heighten attention?*

*Answer: Agree.*

*Question: Did you consider that yourself at the time?*

*Answer: I did.*

*Question: Do you agree that as the pursuit continued the siren was only operated as a warning device when you were approaching and passing other road traffic?*

*Answer: That's correct.*

*Coroner: Mr Jones has told us there's some difficulty in hearing the radio traffic when you've got the siren operating; is that correct?*

*Answer: Yes, sir. The siren on the sedans is directly above your head on the outside of the car."*

Senior Constable Darryl Jones stated that he was "rostered to for a five day task at Wangaratta along with other members from the Region 4 Traffic Tasking Unit" from 6th December. He said that "Thursday was a travel day to move from Knox to Wangaratta combined with normal patrol duties enroute."

Senior Constable Jones stated that he had been a member of the Victoria Police for 22 years and involved in traffic enforcement for a total of 6 years. He had also had a further 14 years at the Police Air Wing, involved in Air Ambulance operations. He was aged 45 at the time of the incident. Jones had a B class licence from April 2001 (he had previously held this licence for about 5 years a number of years earlier before working in the Air Wing).

Senior Constable Jones noted that McDonald was the "driver and he was the observer for the shift on their way back to Knox?." They were:

*"conducting normal traffic patrol duties enroute. I was also to call by Radio Electronic Services for a small job. MacDonald and I decided to travel via the Hume Freeway to Melbourne and departed Wangaratta Police Complex at 11.40 am after collecting firearms and other equipment.*

*We entered the Hume Freeway via the southern exit from Wangaratta and travelled South at 110 to 115 Kilometres per hour. Traffic at this time was light with roughly a car approximately every 500 to 600 metres if averaged out. The weather was fine with scattered light clouds at about 3000 to 4000 feet. The road was dry as there had been no rain in the area for a few days and visibility could not have been better. At a point approximately half way between Baddaginnie and Violet Town I heard some radio transmissions which were very scratchy almost unreadable and I was not quite able to make out what was being said but I did recognise that these transmissions were apparently from our unit's solo, Senior Constable Paul Egan."*

That:

*"Shortly after I heard a further transmission which led me to think that there was a pursuit in progress but again I could not make out any details. I then heard the words 'just passing the Baddaginnie turn off'. I then grabbed the VicRoads directory and looked up the area of Baddaginnie and our location.*

*I became immediately aware that we were in front of this pursuit and advised MacDonald. I then turned in the seat to look to the rear and at this time saw a White Commodore coming towards us in the right lane followed by a Police Motor Cycle with it's headlight and blue lights flashing. I said, "Speed up they are catching up with us."*

Senior Constable Jones said that MacDonald accelerated and then moved in behind the white Commodore which he then saw was a station wagon. He was not able to read the registration number and asked MacDonald to close in so he could read it.

Senior Constable MacDonald then closed up and Jones observed the registration to be USP 708. He immediately advised D24 of involvement and the registration number of the vehicle and McDonald pulled back to a position approximately 200 to 300 metres behind this vehicle and maintained speed. The blue lights had been activated by this time but the siren was not. Jones made a conscious decision not to use the siren hoping not to heighten the situation any further. Jones stated that:

*"The white Commodore was travelling at 190 to 200 kilometres per hour and continued to maintain this speed with us behind. Traffic conditions were still the same, light and the right lane was mostly clear during this time."*

The Senior Constable was making radio calls, advising speed, traffic conditions and weather conditions but was, "unsure whether these calls were clear and almost all of the transmissions we received were very scratchy."

Senior Constable Jones stated that the:

*"?...situation continued and after a few minutes I advised that I was changing from channel P1 to P2. I immediately called on P2, advised a further update. Speed 200, traffic still light and passing a location. Shortly after we closed on a white Mercedes sedan passing another vehicle in the right lane. As the Commodore approached this Mercedes he moved to the right onto the emergency lane and passed the Mercedes. MacDonald braked and as the Mercedes moved to the left accelerated to continue following the Commodore.*

*Again we were maintaining 200 kilometres per hour and I continued to radio updates. Reception on P2 was much clearer and I could hear that other units were coming up to assist."*

Senior Constable Jones advised that units:

*"would be best to block exit ramps and not get involved in any other way. I believed that it would be much safer for this vehicle to be kept on the freeway where conditions were better for the speed at which he was travelling."*

Senior Constable Jones saw a Police vehicle blocking the second Euroa turn off. He was well clear and left an uninterrupted path for the Commodore and ourselves. Approximately 5 -10 minutes later:

*"the Commodore passed a fawn Ford sedan and approached a Mitsubishi 4x4 in the left lane and a car towing a Blue trailer in the right lane. These two vehicles had a gap between them of approximately 10 to 15 metres and the*

*Commodore sharply changed direction from the right lane to the left apparently in an effort to swerve in between the two other vehicles.*

*When the Commodore tried to straighten the rear end appeared to slide further to the left. I then saw the Commodore fishtail three more times before it slid off the road to the left sideways. The Commodore then struck an embankment approximately 1/2 a metre high and commenced to roll sideways onto the passenger side.*

*I was not able to see any more of the Commodore due to a large cloud of dust which arose as a result of the collision. MacDonald braked and almost stopped beside the point where the Commodore left the road. The dust was clearing and we could see that the Commodore was not at this point so MacDonald moved forward approximately 10 metres and we then sighted the Commodore."*

And the Commodore was:

*"upside down against some trees extensively damaged. I advised D24 immediately and then left the Police vehicle and EGAN and I made our way to the Commodore to check for injuries and assist. Further units arrived to assist and ambulance were called. I further assisted at the scene where possible until I cleared."*

The Senior Constable noted that the siren was switched off except when approaching other traffic (because of the difficulty of hearing radio communications). Briefly his vehicle reached a speed of 210 kp/h. On managing the incident and the reason for not asking whether the identity of occupants of the other vehicle was known:

*"Question: Were you concerned that the speeds of 200, even briefly 210, were getting too high?*

*Answer: I wouldn't say I was concerned they were getting too high, but they certainly were high.*

*Question: But not high enough for you to terminate?*

*Answer: Well, I - I'd say that in consideration of all the other factors, the good condition of the road, the good weather conditions, daylight conditions, that was one of the factors involved.*

*Coroner: Did you think to ask D24 about the people in the other vehicle, what the history was?*

*Answer: I didn't.*

*Question: Because when you're making an assessment you're making an assessment on the basis of what the occupants are doing?*

*Answer: Yes, Your Worship.*

*Question: So you're focussing on the occupants as well as focussing on what you're doing, aren't you?*

*Answer: Yes.*

*Question: Now if you're focussing on the occupants isn't the relevant question to ask yourself, "Who are they? What are they and what are they doing"?*

*Answer: Yes, I'd agree with that, Your Worship.*

*Question: Why didn't you feed that question back to D24?*

*Answer: Probably with everything else that was going on it was my understanding, or my feeling at the time, that having gotten the registration number of the car and conveyed that I suppose personally I had an expectation that if there was other information known that would be relayed back to me. I was confirming the registration of the vehicle and in the back of my mind hoping that there would - if there was other information known it would be passed on.*

*Question: But part of your safety assessment is what is the nature of the people or the risk to the people in the vehicle in front of you?*

*Answer: Yes, it is.*

*Question: So do you think you could have improved on that in the circumstances?*

*Answer: In the circumstances it's a hard call in hindsight. Probably I should've. Of course everything is happening at quite a quick pace and it was probably one question that hadn't quite entered my mind.*

*?...Part of the reason, yes, Your Worship. The other part being, as I said, that once I'd conveyed the registration number of the vehicle I did have an expectation that if there was anything else known it would be radioed back to me.*

*Question: I suppose on the other side there's an assumption that you might hear the general broadcast?*

*Answer: Yes, there can be an assumption of that, yes, Your Worship."*

Senior Constable Jones indicated that had he known the complete information the pursuit would have been terminated:

*"(Mr Hillman) Question: Senior, during the course of the pursuit you were unaware, weren't you, that the identity of the occupants of the vehicle being pursued were known?"*

*Answer: Yes, that's correct.*

*Question: You were unaware that the driver was a learner driver?*

*Answer: Yes.*

*Question: And you were unaware of the circumstances under which the car was stolen, it being the family car taken from home?*

*Answer: Yes, that's correct.*

*Question: If you'd been aware of those things during the course of the pursuit would you have terminated the pursuit?*

*Answer: Yes."*

On the incident with the Mercedes (driven by Mr. Vale) that occurred during the pursuit and well before the collision. This incident was relevant to risk assessment and whether or not the pursuit should have been continued:

*"Coroner: Did you come up on the Mercedes? Did you see the Mercedes?*

*Answer: Yes, Your Worship.*

*Question: When that occurred did you not consider that there was a problem, when he was passing the Mercedes?*

*Answer: Right at that moment, yes, Your Worship, I did consider it as a problem but it happened in a matter of a couple of seconds and we were back to our original risk assessment.*

*Question: But at this stage when you're doing that risk assessment you didn't know what was ahead of you in relation to traffic, other than the (indistinct) at the moment?*

*Answer: No, I do remember one of the local units actually calling on the radio and saying that traffic was very light on that day.*

*(Mr. Gipp) Question: There appears to be some conflicting evidence about what actually happened so far as that white Mercedes Benz was concerned?*

*Answer: Yes.*

*Question: Can you describe to His Worship what the Commodore station wagon did when it went past the Mercedes?*

*Answer: The white Commodore station wagon approached the Mercedes in the right-hand lane. I saw the brake lights come on. He slowed and I believe it was to approximately 150 kilometres an hour. He moved to the right of the Mercedes and travelled to the right of the Mercedes. The driver side wheels were still on the bitumen but over the tactile edging and the passenger side wheels were still actually in the right-hand lane as he went around the Mercedes.*

*Question: It was a dangerous manoeuvre, wasn't it?*

*Answer: For that speed I consider that it was dangerous, yes.*

*Question: And the Mercedes was in the process of passing another vehicle, is that right?*

*Answer: That's correct, yes?*

*Coroner: So at that point really haven't you got enough information to say you should be stopping the pursuit?*

*Answer: Right at the split second I would agree, yes, Your Worship, but it was... ?-*

*Question: Wouldn't it seem to you, as an experienced police officer, that at that point in time if you had come across any other vehicles in that situation that the same thing could occur?*

*Answer: It could have, yes.*

*(Mr Gipp) Question: But your reason for continuing the pursuit was that it happened in a very short period of time?*

*Answer: That's correct, and I did have that knowledge, as I explained, with the other units saying that the traffic was extremely light for that day.*

*Question: After that manoeuvre had occurred, after the Commodore station wagon had passed the Mercedes, what was the nature of the driver of the driving after that time?*

*Answer: The driving was as before. It appeared to be quite safe, quite in control."*

At this time there was an option of an alternative management strategy in place that was not used:

*"Question: You knew that Inspector Smith had a road block - a road block was being organised further south along the highway?*

*Answer: Yes.*

*Question: How much further down the highway?*

*Answer: I'm not sure how much further, no.*

*Question: But you knew that Inspector Smith was from Seymour?*

*Answer: Yes.*

*Question: Did you assume that the road block would be set up in the vicinity of the Hume Highway near Seymour?*

*Answer: I did, yes.*

*Question: Where you were pursuing this vehicle was not far from that area, was it?*

*Question: It was approaching that area, yes.*

*Question: Would it be fair to say it would have been approximately five or ten minutes away if the pursuit had continued that far and not come to an end in Longwood?*

*Answer: I would suggest so, yes."*

The two Senior Constables in the primary pursuit car were very experienced and mature police officers.

#### **'Knox 698' (Egan - motorcycle)**

Senior Constable Paul Egan was stationed at the Region 4 Traffic Tasking Unit and had been a member of the Victorian Police Force for over 11 years at the time of the incident. He was 30 years old and was granted an 'A' class authority to ride Police motorcycles in 1994 and has performed permanent motorcycle duties since shortly after that date. Recently (2000) there has been a requirement for annual review of this type of licence (Motorcycles). There is not a similar system for the motor vehicle high speed pursuit authority.

The Senior Constable also holds a 'B' class high-speed pursuit authority since early 1994. He had been working in the Wangarrata area since 6th December and was returning to Melbourne on the day of the incident.

On the day of the incident, before driving down the Hume Highway, Senior Constable Egan, noticed at about 12.15pm:

*"near Grant Drive, my attention was drawn to a white Holden VT Station Wagon, N.S.W. registration USP708. The wagon appeared to have 2 male occupants that I took to be about 20 years of age. The wagon was being driven in an erratic manner, several times crossing the left shoulder white line. I have then passed a car that was between us and took up position directly behind the wagon. I commenced to check its speed and noted it was travelling at approximately 95 kilometres an hour. At that point it was in an 80 km/h zone before passing into a 100 km/h zone shortly after. The vehicle speed has then increased up to approximately 120 km/h and I have then activated my blue and red lights in order in intercept the vehicle."*

Then:

*"It has slowed marginally before indicating right and it has then entered onto the Hume Freeway on ramp. The wagon has pulled into the left emergency lane and come to a stop. The vehicle was left in the drive gear and I radioed Wangaratta D24 to let them know that I was Code 4 with a vehicle. I dismounted but left my helmet on before taking 3 or 4 steps towards the car. It has then accelerated heavily away and I got back on motorcycle and commenced to ride after the wagon."*

Senior Constable Egan immediately notified Wangaratta D24 that he was in pursuit of the wagon. The vehicle that continued to accelerate away, *"reaching and holding speeds of 200 to 210 km/h."* The Constable noted that the *"traffic conditions were very light, only passing a vehicle every few kilometres. The road surface was dry and in excellent conditions, the weather was fine and slightly overcast with a slight wind."* Then the officer and the station wagon:

*"continued south down the freeway with the speed varying down to approximately 150 km/h but for the most part staying at about 200 km/h. On reaching approximately 4 km north of Violet town, I have observed ahead of us a marked pursuit vehicle driven by Senior Constable Ian MacDonald with Senior Constable Darryl Jones. They were in the left lane and the wagon has passed them in the right lane. I have then waved to the police sedan to tell them to take over the pursuit and become the primary unit, which they did. I then took up a position approximately 200 meters behind the police sedan in order to become the secondary unit and we continued on at approximately 200 km/h."*

As the pursuit continued:

*"On reaching the second Euroa turn off I observed a marked Police station sedan in the off ramp with its blue and red lights operating. It stayed in that position as we passed it, continuing down the Freeway. At one point the wagon has passed a vehicle utilising the right emergency lane. We continued until we reached the Longwood area. At that point the marked police sedan was about 200 to 300 meters behind the wagon and I was about 200 to 300 meters*

*behind them. At about the 131 km post the wagon has performed a sharp lane change from the right lane to the left lane and has lost control, fishtailing several times before running off the road to the left. I saw it as it hit an embankment and my vision was then obscured as a large cloud of dust flew into the air. I braked and rode through the dust until I could see where the wagon had come to rest. It was extensively damaged and appeared to have rolled several times. I stopped, dismounted and attended at the driver's side of the car that had come to rest on its roof. I saw that the driver was unresponsive and appeared to be deceased. I was unable to find a pulse on him and he had extensive injuries."*

The Senior Constable then assisted with rescue, recovery and support of the surviving passenger.

Senior Constable Egan noted that for *"the duration of the pursuit the road, weather and traffic conditions were excellent. The pursuit started at 12.18 p.m. and finished at 12.38 p.m., over a distance of approximately 63 kilometres."*

Senior Constable Egan said that he did not hear command from Sergeant McCallum (Knox 601): *"601. 698 stop the pursuit. Leave the marked TOG car to continue the pursuit. 698 is to withdraw"* and the next call from D24 *"Roger, did you receive that 698? You are to abandon the pursuit."*

## **Police incident (pursuit) controller and other supervisory management**

### **Introduction**

There were a range of police managers that had either a direct role, were aware of the pursuit or were in a supervisory position to change the outcome. The officers are an Acting Sergeant, Acting Inspector and an Inspector. All had some input into the management or had potential to further assist the pursuit controller.

### **Direct Control Management - the pursuit controller**

#### **Benalla 257 (Pritchard)**

Acting Sergeant Stuart Pritchard described his history and experience in his statement. He graduated as a police officer in 1989. He stated that he was performing duties as an Acting Sergeant at Benalla and that he has:

*"?... performed duties at Prahran Police Station (General Duties), Transport Branch (where I drove all manner of vehicles), and in 1992 I returned to Prahran Police Station (General Duties). In 1993 I transferred to Ringwood Police Station (General Duties) and worked there until 1997 when I moved to Wangaratta Police Station (General Duties). In 1998 I briefly performed temporary duties as the DFO at Benalla, before transferring to Benalla Police Station (General Duties). I was promoted to Senior Constable in 1998 and have successfully completed my Sergeant's examinations this year. I am due to attend Phase 1 of the Supervisory Training Course on January 14th 2002."*

On the day of the incident Acting Sergeant Pritchard was supervising *"as Benalla 257 (Acting Sergeant), which involved being in charge of the Uniform Members at the Benalla Police Station from 0700 hrs till 1500 hrs."* Pritchard became involved at about 12.16pm when he was:

*"?...checking members' paperwork in the Sergeant's Office. Another member had just entered the office with a query, when my attention was drawn to Knox 698 attempting to intercept a vehicle on the Hume Freeway, Benalla. I noted by the excessive static of the transmissions and the tension in the member's voice that the intercept was not routine. I quickly realised that the vehicle in question was avoiding interception and was continuing south-bound on the Freeway at a speed of about 150 km/h. I walked the short distance to the watch-house and sat directly in front of the Police radios."*

As the pursuit had begun in his sub-district Acting Sergeant Pritchard believed it was his responsibility to undertake the role of Pursuit Controller. Apparently Knox 698, *"again very scratchy, gave a sitrep"* which he barely understood. Pritchard advised *"D24 that the unit was being pursued past the Warrenbayne turnoff and asked for a sitrep."* Then:

*"Knox 698 responded, giving a sitrep that traffic was "very light", and that it was "pretty safe at the moment, conditions are good." I could barely understand 698's transmissions beyond "very light", but got a general impression that 698 was giving further confirmation of a low risk involved.*

*At this point Knox 601 came up saying "That's a solo. 698 is a solo unit. If he hasn't got any back-up, tell him to terminate the pursuit." I couldn't tell for certain that 601 was a Supervisor, but the way he spoke and the fact that he was evidently attached to the same TMU unit as the solo, had me thinking this was likely. 698 then gave another sitrep that the vehicle had slowed down to 170."*

Then:

*"Delatite 610 came up stating he was southbound on the Old Hume Highway, and would shortly enter the freeway at the Baddaginnie turnoff. I weighed the concerns raised by 601 against the availability of back-up, and I felt that back-up was at hand in the form of a marked TMU sedan, who would soon take over the pursuit. Therefore there was not an unacceptable risk in continuing the pursuit on a safety basis, reinforced when 698 gave his next sitrep that the suspects had slowed further to 150. He also gave the best description he could of the suspects, saying: "Two heads on board. Both males. They're around 20's mark, very short dark hair. That's all I got on them.?"*

Acting Sergeant Pritchard noted *"there had been no mention of the reason for the pursuit during this time,"* and he queried this at the next opportunity. He reported that he said: *"Benalla 257. What's the reason for the pursuit?"* As a result of this query:

*"A brief exchange between 698 and the female D24 operator established that the vehicle was a KALOF given to us via Albury. However, I needed to satisfy myself that the reason justified the pursuit.*

*I said, "Yeah, what's the offence?"*

*She said, "Yeah, 698, oh sorry, 257, apparently it's a stolen vehicle. I'll just do a check on it now."*

Then another situation report was given from the Motorcycle Police Officer (698) but Acting Sergeant Pritchard:

*"was unable to understand any more than "Very good?", "safety is fine"?, and "very scarce traffic on the freeway".? I believed he was also giving an indication that the suspect driver's actions were reasonable."*

Violet Town 308 (Senior Constable Saker) confirmed the traffic situation by stating, *"Traffic is very, very light at this stage.?"*

Acting Sergeant Pritchard made enquiries *"as to the availability of a Euroa unit, and was advised by D24 that he was tied up at Nagambie in a meeting" and "as to the availability of TMU units from Seymour."*

The Acting Sergeant noted that:

*"Seymour 141, who's voice I recognised as Inspector SMITH, came up stating he was 2-up en-route and 650 would be heading out shortly. I began formulating a resolution strategy involving the use of the Air Wing and K9 units.*

*My thoughts were interrupted by Knox 697 entering the pursuit. Initially I thought 697 was another solo unit given the similar call sign and static-ridden transmission. 697 identified the vehicle as a White Commodore Station Wagon.*

*I said, "Benalla 257. Who's the 697 unit? Their type of vehicle?"*

*She said, "257, apparently it's a solo. Received?"*

*697 came up pursuing the vehicle USP 708 past the Murchison exit at a speed of 190. The transmission was scratchy. Again I enquired as to the availability of a marked sedan to take over the pursuit."*

Acting Sergeant Pritchard was then advised that 697 unit was a marked TMU sedan with two police on board. He then became aware that *"Ace MacDonald was on that unit. I was also advised that he is an experienced TMU member."*

Then:

*"610 suggested that the Air Wing be contacted and I was under the impression that this would be done.*

*650 came up heading northbound on the Freeway. And Seymour 654 suggested that the Knox units change to channel P2.*

*698 came up unreadable."*

Significantly:

*"Knox 601 came up instructing ?698 to stop the pursuit, and leave 697 the marked TOG car to continue the pursuit. 698 is to withdraw?. This was re-stated by D24."*

Acting Sergeant Pritchard then became aware of the fact that *"697 came up passing Mahers Rd at a speed of 190."* Then Pritchard said:

*"257. Can we have confirmation from solo 698 to terminate the pursuit.....(cut over by 697).....697 maintain as Primary unit with Delatite 610 to take up Secondary vehicle status on his arrival."*

At this point 697 acknowledged the poor radio transmissions and switched to P2. It was established that 698 had dropped back behind 697, and the current speed was 200.

At this time the D24 Operator:

*"reiterated that ?"it is a NSW stolen vehicle."? To which 697 gave the description of "?2 heads on board, at this stage, and definitely not slowing" and ?"Traffic is very light. Currently passing the 10 km from Euroa sign at the moment...??"*

Acting Sergeant Pritchard noted that he *"was concerned with the speed reaching 200 but aware that the freeway can safely accommodate that sort of speed in that area."*

Apparently Acting Inspector Klinge then arrived. He had been monitoring the pursuit in the watch-house asked what the *"resolution strategy was."* Pritchard advised that:

*"?...the Air wing had been notified, and I would direct the vehicles to disengage upon their arrival. The Air wing could follow the pursued vehicle until it stopped, and then a cordon and contain approach would be undertaken whilst we waited the arrival of a K9 unit. Acting Inspector Klinge indicated his approval."*

Radio confirmation was received that the air wing had been advised and it was at this point that *"697" was "pursuing 2 km north of the Euroa turn-off."* The Acting Sergeant stated that:

*"697 Advised that they were ?just coming up to a little bit of traffic. He's braking, slowing down. Down to 150 at the moment.?"*

And he was:

*"?...concerned with the increase in traffic, yet encouraged by the fact that the driver was slowing for hazards. I did not believe there was an unacceptable risk here either."*

A hand-over to another police district was discussed in the following terms:

*"Seymour 141 came up requesting 650 meet him at the top of the Avenel straight, near the parking bays. I felt I might be called upon to ?hand-over? to 141 or 650 if the pursuit crossed into Mitchell District. This was discussed with Acting Inspector KLINGE, who advised me that 650 or 141 may wish to do a hand-over."*

Then "697 gave another sitrep stating they were "?2 heads on board, accelerating up to 170 at the moment...??" Pritchard stated that "697 replied that they were just passing Seven Creeks and speed was back up to 190, just past the 148 km post under the Euroa-Mansfield Rd." That 697 continued with the "sitreps":

*"?Just crossing Castle Creek. Speed now back up to 200. Traffic conditions still very light.?"*

At this point, Acting Sergeant Pritchard *"felt that nothing much had changed at present. It was now a matter of waiting for the Air wing, 697 keeping the sitreps coming, and monitoring the suspects."*

Additional information was requested by the Pursuit Controller (as to the weather conditions) and then:

*"697 came up stating they were still southbound on the freeway and suggesting whatever units south of their position block the off-ramps to keep the suspects on the freeway."*

*The female D24 operator then requested speed and traffic conditions from 697. Which is what I was after. 697 replied, "?Knox 697. Traffic is still very light, speed 200, oh about 202 at times. We're just passing the 139 Km post."*

*697 said, "?Knox 697. Just passed Creightons creek. Still 200+ and very light traffic conditions.?"*

Acting Sergeant Pritchard was

*"a little concerned with the speed passing 200 km/h, but the sitrep indicated also that the traffic conditions were still very light and the suspects had been acting reasonably in the circumstances by slowing for traffic and the like. I did not believe the pursuit posed an unacceptable risk."*

Then:

*"Knox 697 advised that they had "?crossed Nine Mile Creek, speed 210, and traffic still very light.?" This is the first notice I had received of the speed reaching 210."*

*697 said, "?Just passed Barry's Lane, still southbound on the freeway, speed still 200.?" I was thankful to hear that the speed was now back to 200, and evidently had peaked only briefly at 210 earlier."*

The Motorcycle Police Officer (698):

*"came up scratchy, ?698. He's had a big lose. He's off to the left hand side of the freeway.... My immediate reaction was concern for the condition of all persons involved."*

After dealing with the initial reaction to management issues for the incident Acting Sergeant Pritchard later stated:

*"697 came up urgent, "Knox 697. Ambulance as soon as possible, and you'd better get the helicopter on the way. This is extremely serious.?"*

*The situation had suddenly become very grave. I could only guess at the damage caused by the suspects' vehicle leaving the road at high speed and there had been no indication of why this had happened. The last sitrep given at Barry's Lane hadn't indicated anything beyond that already encountered and considered. And I had felt that everything was within acceptable risk limits. I was now receiving rapid instruction from Acting Inspector KLINGE to get a Supervisor to the scene ASAP?...."*

Significantly, Acting Sergeant Pritchard stated that, after dealing with some ambulance and rescue issues, he:

*"discussed the matter further with Acting Inspector Klinge, and later conversed with Inspector Smith, who asked me if I had heard the KALOF that had preceded the pursuit. I informed him that I had not, and my attention was first drawn to the matter by the solo in pursuit.*

*It was not until about this point that I became aware that there were three persons in the vehicle, two of which had died, and the third was in a serious, but not life-threatening condition."*

Acting Sergeant Pritchard was of the view that whilst *"performing the role of Pursuit Controller from the Watch-house at Benalla I was actively oversighted by Acting Inspector Klinge."* That:

*"Safety was always my biggest consideration, and had I felt that there was an unacceptable risk, at any stage, I would have terminated the pursuit immediately."*

On the reason for the pursuit, in evidence the Acting Sergeant was asked:

*"(Mr. Hillman) Question: And you knew that the car had been reported as stolen?*

*Answer: I did at this point, yes.*

*Question: And I think you agreed, you then assumed that that was the reason for the pursuit, namely, that it was a stolen car?*

*Answer: That's correct.*

*Question: From that point until the car being pursued crashed, that was your state of mind, wasn't it?*

*Answer: That we were - that we, as police, were in pursuit of a stolen vehicle, yes.*

*Question: And that that was the reason for the pursuit?*

*Answer: That's correct.*

*Coroner: Really, to be so satisfied, you still had limited information, didn't you about the full nature of the people driving the other car, or in the other car?*

*Answer: Obviously the longer the pursuit went on, the more information I was receiving by way of situation reports from the pursuing vehicles and what have you, and obviously the longer the pursuit went on, I was continuously assessing the risk based on what information I did have."*

On the nature of the speeds involved the following questions and answers ensued:

*"(Mr. Hillman) Question: At the point, and you can have a look at Items 127 and 128, you received information that the speed was either just over 200 or 200 kph plus?*

*Answer: That's correct.*

*Question: And that Item 132 at the foot of that page, you got a report, didn't you, of a speed of 210?*

*Answer: That's correct.*

*Question: You say in your statement that you were a little concerned with the speed passing 200 kph?.*

*Question: Do you see the report from 697, "Just past Bateman's Creek, still 200 plus and very light traffic conditions"?*

*Answer: Yes, I've found it, yes.*

*Question: And you go on to say in your statement, "Again, I was a little concerned with the speed passing 200 kph"?*

*Answer: Yes, that's correct.*

*Question: What was the concern at that point?*

*Answer: Concern is probably a - or it may be a poor choice of words but either way, obviously as the pursuit's going on I'm continuously conducting a risk assessment of it. With the increase in speed, obviously the increase in risk, again, I have to go back and weigh up what I know about the pursuit as to whether there's an unacceptable risk, there's certainly - there is a risk, but whether that poses an unacceptable risk and balances out against the duties we have to perform.*

*Coroner: Tell me, are there griffin barriers (sic: "Briffen" wire rope barriers) down the highway at this point?*

*?Answer: I normally come the back way to town, but I'm not sure exactly where the wire barriers are. There are some along the stretch of road, but I can't say for certain where they are.*

*Question: So when you refer to traffic being light, you're referring, presumably, to traffic going in the direction of travel because it's a (indistinct)?*

*Answer: There's a considerable median strip between the northbound and southbound lanes, so yes, when traffic is stated as light, my perception, of course, is that that's the traffic in the southbound lanes and also, obviously, any other adjoining roads that might come on to it.*

*Question: 210 kilometres an hour was the highest speed reports that you had received. Is that right?*

*Answer: That is right.*

*Question: Didn't that cause you concern, given that you really knew nothing about the driver of the vehicle being pursued?*

*Answer: The best indication I had from the pursued vehicle was that the driver was taking reasonable steps, ie. slowing down when he came to hazards. Certainly that was the reports I was getting back, that he was slowing to overtake and what have you. So I believe that the driver was acting reasonably in the circumstances.*

*Question: Was that based on - - -?*

*Answer: Sorry, when I say "reasonably", it is not reasonable that a driver should be doing 210 kilometres down the freeway, but reasonable within certain bounds.*

*Question: Is one of the things you took into account on that aspect the reports that you got that, for instance, speed had slowed to 150?*

*Answer: The speed fluctuated from time to time. It did slow again.*

*Question: But every time you got a reduction in speed there has been a later increase. Isn't that the position?*

*Answer: Yes. It has been up and down at least anyhow.*

*Question: The peak speed was 210?*

*Answer: That is right.*

*Question: You see, for instance, at item 105, you had a report there, didn't you, that the pursuing - that the vehicle being pursued had come up behind some traffic and slowed to 150?*

*Answer: Yes, that is correct. And obviously from that is where I am forming a mind that he is being reasonable, or taking reasonable steps to slow for hazards.*

*Question: But the very next speed report you get is 107 and it is back to 170?*

*Answer: And then obviously accelerating as he passed.*

*Question: And then it keeps going up, 113 it is up to 190?*

*Answer: Yes, that is right.*

*Question: 115 it is back up to 200?*

*Answer: That is correct."*

And in answer to questions from Mr. Brandt (for the family):

*"(Mr Brandt) Question: Senior Sergeant, on the speed limits, we have varied from 150 to 210. Senior Sergeant Klinge said the other days that speeds of up to 200 kilometres weren't an unacceptable risk. In other words it was an acceptable speed. When I asked him what was unacceptable, the inference was 200 plus. You were saying the same thing in your statement, at 210 you were concerned. Under 200 it wasn't an unacceptable risk. Is that a Force thing or was that just a gut reaction for you at the time?*

*Answer: That's specific to this incident. I think each and every - when you are talking about speed, each and every incident has to be taken on its own merits and the speed weighed against the weather conditions, the traffic conditions, the type of vehicle being pursued, the type of pursuit vehicle and any other information you can put together, how the manner the pursuit vehicle is being driven and things like that. But in this case I didn't believe that 210 posed an unacceptable risk in these circumstances.*

*Question: One of the primary purposes of your risk assessment, I suppose, would be safety, that is the safety of the travelling public, including the people being pursued and the safety of members of the force. Here we have got at least three vehicles, travelling at 200 plus on the Hume Highway, and yet this is an acceptable risk?*

*Answer: As I said, there is certainly a risk and I fully acknowledge that there is a risk involved in this sort of pursuit, but whether it is an unacceptable risk, I did not believe so.*

*Coroner: What is the consequence if something goes wrong, senior, for those in either of those vehicles. Just putting aside the members of the public for a moment. In any of those three vehicles, one being a motor cycle, what is the consequence of something going wrong at those sorts of speeds?*

*Answer: Well, there is every likelihood of serious injuries or death, but given these circumstances, I believe there was a lower risk of that happening to perhaps if the road was wet or something or there was a high traffic volume or it was a clapped out VB Commodore or something like that.*

*(Mr Brandt) Question: The reality is, that in making that assessment, it is made in a short period of time, not a snap decision but from time to time when you are reassessing the risk, it is an assessment you make on the information then available to you?*

*Answer: Yes, that's correct."*

He also intimated that his risk assessment was based on:

*Question: We've heard about questions being asked about speeds, and danger of speeds, and so forth; what considerations did you give to the speeds that were being transmitted to you that were being undertaken on the freeway?*

*Answer: As I've said, I believe the freeway is a - it's a wide road. The lanes themselves are wide. There's a large median strip in between the northbound and southbound directional traffic. The road was dry, the weather was clear. I don't know. The bucks call it a drag strip for obvious reasons. It's capable of accommodating high speed that stretch of road."*

The Acting Sergeant also noted that the unit engaged in the pursuit, the TMU (Traffic Management Unit) was made up of the most experienced officers for this type of operation. He said *"Well, the TMU, and then by extension the regional task unit, are the experts in traffic enforcement, and they've got the training and the vehicles, and what have you, to be the best we've got in pursuits."*

On the issue of correct information on those involved in the vehicle being pursued (and particularly the driver) and how vital correct and timely information is for accurate risk assessment during the management of the pursuit:

*"Question: In making your risk assessment, all other things being as they were, that is you were getting the report you were getting, if you had been made aware that the driver of the vehicle was a learner driver or a very inexperienced driver, you would have terminated the pursuit wouldn't you?"*

*Answer: Certainly with the benefit of hindsight, most definitely, and indeed it is something that would have formulated a large part of any risk assessment, and I likely would have terminated the pursuit.*

*Question: If on the day, in the circumstances that were then happening, so you haven't got the benefit of hindsight, if on the day you had been told that it was a learner driver, you had been told the circumstances of the theft, that is the car had been taken from the parents, and you had been told that the identity of the driver and the other occupants were known, wouldn't that have meant that you would have terminated the pursuit?"*

*Answer: That of course is not what happened, but hypothetically, yes.*

*Coroner: See if you look at the early stages of the report, that is that this young kid is headed up to school to pick up his mates and there is information they are heading towards Melbourne. This is Anne from Albury, item 13. Then item 16, "17 next week, he has only got his L plates." Item 19, "they have pinched mum and dad's car and gone for a drive," and then I think there is some other items that confirms all that. If you had known all that, and I think - you say you would have taken a different view?"*

*Answer: I believe so, yes, I would have likely terminated the pursuit.*

*Question: So the information you get as a police controller is vital for your decision making process?"*

*Answer: That is correct.*

*Question: How accurate it is and then how you source and cross check the information is also vital, isn't it?"*

*Answer: Yes, that is right. The temptation was there several times to come up again and again, but obviously you have to balance out the fact that the best information is going to come from the pursuing vehicle, and if I am cutting over their air time, I am going to hinder rather than make things better.*

*Question: But you are in the middle of managing this pursuit, or this incident?"*

*Answer: Yes.*

*Question: What do you need to help you be a better manager?"*

*Answer: Any information that's available to us and then after the immediate information is given then start seeking, actively seeking other information.*

*Question: But how do you do that while you're managing - sometimes a pursuit might last 40 seconds or 60 seconds? In this case?"*

*?it lasted something like 20 minutes, but how do you actually - how do you say you will be better equipped to do the job you're doing??"*

In this regard Acting Sergeant Pritchard indicated the importance of a supervisory training course (unfortunately the course happened post incident):

*"Question: Well you won't forget that lesson, will you?"*

*Answer: No. But having done a supervisory training course and what have you they teach you a few little bits and pieces on how to source that information and how to - and certain questions you should be asking which are concise and to the point and draw out that information.*

*Question: What sort of questions?"*

*Answer: Well one of the questions they teach you, of course is, "Is there any way we can establish the identity of the occupants?" And it's a question, obviously, that came to my mind after this pursuit and prior to doing the supervisory training course so I brought that up at the debrief, that I could have asked that question. I didn't think*

about it during the course of the shoot. I was - my mind was in 100 different - sorry, I was trying to formulate a plan and do all sorts of other things and I didn't actually think of that question, but certainly by the time the pursuit was over and the debrief and whatever I've looked at it, and the debrief being a purpose to learn I brought that up myself in the debrief that I could have asked that question and again when I went and did the supervisory training course that's one of the questions they tell you to ask.

*Question: Do you think the course ought to come before you actually become a pursuit controller?*

*Answer: I think that's more a matter of policy, but I would personally like to have had that sort of instruction.*

*(Mr Hillman) Question: Had you been the pursuit controller before?*

*Answer: No, this was the first time I'd ever been a pursuit controller.*

*Question: Have you been a pursuit controller since?*

*Answer: No, I haven't, other than at the supervisory training course where they take you through a couple of mock pursuits.*

*Question: You haven't been a pursuit controller in real life other than this one event?*

*Answer: No.*

*Question: These mock pursuit control exercises, what did they consist of?*

*Answer: There's - the supervisory training unit are predominantly your senior sergeants, and a number of them will sit in a different room and be on the same radios that we use. You'll have a map of Sinclair, they call it, and you're the Sinclair sergeant and you're given a list of your units and things like that. It's basically done as best conditions you can get to reality, and in amongst that, of course, they will throw in armed hold-ups and aggravated burglaries and you'll have to deal with them as you're going along as well, but it is a very good way of teaching someone how to control a pursuit, I believe.*

*Question: Does that go on the basis of you listening to radio broadcasts?*

*Answer: You do their pursuit component first and then you'll go through the mock pursuits and obviously do it in accordance with their guidelines and their instructions on how to elicit the right information and what have you and you've got to ask the right questions or the supervisors won't give you the right answers, basically.*

*Question: Is it done on the basis of the supervisors being the pursuing police officers and you being the controller in contact by radio? Is that the way it's set up?*

*Answer: That's correct. You're in a room but for all intents and purposes you may as well be sitting in a car or at an office or wherever. It's all done over the radio. You don't see the other instructors and they will play out various parts from the Dog Squad members down and what have you.*

*Question: And you are expected not only to ask questions but to make decisions based on the answers you get?*

*Answer: That's correct.*

*Question: When did you do that?*

*Answer: A few weeks after this pursuit. 14 January 2002 I did a supervisory training course.*

*Question: Have you done any other courses since then?*

*Answer: With regards to pursuits?*

*Question: Yes?*

*Answer: The regional training officer has come around and given a lecture to a couple of members of which I was one."*

Acting Sergeant Pritchard had been involved in a number of management courses and commented generally that "Risk assessment pops up in a number of different areas in the ten operational safety principles right throughout the commanding control module that you learn and what have you and also it is fairly specific with the pursuit policy. Yes, you could say that it raises its head quite a bit?." However, he had not undertaken any courses relating specifically to the management of pursuits. He agreed that during the management of this incident, from the moment he assumed responsibility as pursuit controller "until the conclusion of the incident" he was "undertaking risk assessment on an ongoing basis?." That:

*"Question: With the information that you had available to you, limited though it may be?*

*Answer: That is correct.*

*Question: You have indicated that one of the problems you had was there was difficulty in terms of communication?*

*Answer: Yes.*

*Question: Made apparent from the transcript and apparent from the tape?*

*Answer: Yes.*

*Question: Some difficulty in terms of the information flows, as we now know, because information that was known wasn't conveyed to you, and you may not have asked particular questions?*

*Answer: That is correct."*

Acting Sergeant Pritchard noted that under the current policy his view was this particular pursuit would not have continued (because of the communications difficulties). Although when questioned on this point some difficulties arose:

*"(Mr. Hillman) Question: ?Just one matter, Senior. Did I understand you correctly to say, I think to Mr Maguire, that if the Chief Commissioner's instructions of 30 June 2003 had been in force on the day of this pursuit, you would have terminated the pursuit?*

*Answer: Certainly if - if for no other reason then the communication problem would have put an end to it very quickly.*

*Question: You understand, don't you, that under those new instructions a pursuit must be terminated whenever police radio communications are not effective or are lost?*

*Answer: That's correct.*

*Question: Did you regard the communications as not effective on this day?*

*Answer: They were - I was still getting sufficient information to conduct my risk assessments. The transmissions were certainly scratchy and I was missing parts on some of the transmissions, but I did have sufficient information to conduct my risk assessments.*

*Question: The communications were not such that even under the current Chief Commissioner's instructions of June 2003, you would have terminated the pursuit?*

*Answer: I would've, based on past knowledge, obviously, from this and from - and on my read of the new instructions, I believe that it would suggest termination.*

*Question: You see, what I suggest to you, Senior, is with the benefit of hindsight really what you're saying is that it wasn't the effectiveness of the radio communications that caused a problem, it was rather the fact that important information that was available simply wasn't transmitted; isn't that the case?*

*Answer: Obviously there was a problem with the transmission of important information, but there was likewise a problem with the quality of the transmissions.*

*Question: But you don't suggest, do you, that the quality of the radio transmissions were such that under the current Chief Commissioner's instructions the pursuit had to be abandoned?*

*Answer: I don't know about had to be. Would I? Yes, certainly.*

*Question: You know that the instructions say a pursuit must be terminated whenever police radio communications are not effective or are lost; you know that, don't you?*

*Answer: Yes.*

*Question: Certainly police radio communications were not lost on this occasion?*

*Answer: No.*

*Question: But they were good enough for you to get continual reports as to increases, decreases in speed, state of the traffic and so on?*

*Answer: Yes.*

*Question: But when you look back at this matter, if any lesson is to be learnt from your point of view, it's this, isn't it: that you didn't have all the information that you could have had?*

*Answer: No, that's true, and I assumed - I assumed too much."*

The Acting Sergeant also noted that if the initiating reason for the pursuit involved a traffic offence his personal approach is to terminate the pursuit.

On the day of the incident Senior Sergeant Bruce Klinge who is the Officer In Charge of the Mansfield Police Station stated that he was performing duty in an up-graded capacity as an Acting Inspector. Klinge's role was that of *"the Delatite District Inspector at the Benalla Police Station"* and *"was in overall charge of the Delatite and Strathbogie Police Response Zones."* After 12.15pm Klinge left his office for the mess room at the station, and as he:

*"?approached the Watch House/Reception area I noticed a number of members standing at the counter. I inquired as to what they were doing. I was informed that they were monitoring a vehicle pursuit on the Hume freeway and that Acting Sergeant Stuart Prichard was the pursuit controller."*

Senior Sergeant Klinge went to the Watch House area and observed:

*"Acting Sergeant Prichard rapidly taking notes and issuing instruction over the radio system, I listened briefly and asked questions of members present in an effort to ascertain the situation. I was informed that a Traffic Management Unit from Knox was in pursuit of a stolen vehicle from New South Wales."*

Senior Sergeant Klinge "assigned a log keeper" to Pritchard "to relieve him of that task and inquired" of him as to "what his resolution strategy was." Klinge heard over the radio that:

*"Inspector SMITH from Seymour was arranging the setting up of a road block incorporating an escape route and that the Air wing had been notified. Acting Sergeant Pritchard informed me that he planned to have the air wing take over visual contact once overhead and once that was achieved then slow the pursuing vehicles. The overall plan was to stop the vehicle at the road block."*

Senior Sergeant Klinge was then:

*"actively listening to the conversations between units and was aware that the speed of the pursuit was between 150 and 200 kilometres per hour."*

The Senior Sergeant "was aware that the traffic was very light and that weather conditions were fine with a dry roadway?..." and indicated that none of "the conversations over the radio system indicated panic or concern over the speed."

Senior Sergeant Klinge indicated that at this stage:

*"the pursuit was nearing a point where a change-over of control may be required, this point was discussed with Acting Sergeant Pritchard."*

*Police units were strategically being directed points such as off-ramps and to assist with the proposed road block in order to prepare for containment and the cessation of the pursuit."*

*Throughout this strategy constant situation reports were being relayed concerning speed, weather and the manner in which the stolen vehicle was being driven."*

Senior Sergeant Klinge indicated that at "no time" did he "think that that the pursuit had reached an unacceptable risk" nor did he "direct termination." Klinge stated that it was only a short time after becoming involved that the pursuit concluded as the result of a collision.

In evidence at the inquest, Senior Sergeant Klinge was asked the question by the Coroner:

*"Q: ...?how things can be improved from your point of view as well? That's how I'm looking at it. Others may be looking at it differently, that's how I'm looking at it?"*

*A: There was a vast difference between current policy and previous policy. To clarify, I've been a supervisor for about 15 years. I've been a Senior Sergeant now for eight or nine years. I've been involved in a number of pursuits. I made leadership decisions minute, hourly and daily, every day. I have an ability to conduct a risk assessment in a very short period of time. But again that risk assessment can only be made on information that you have handy and current and to your particular knowledge at the time."*

*Q: Do you think you made any particular errors at the time?"*

*A: I don't think I made any errors. In hindsight the pursuit was of a high speed, but having said that, I know that the Hume freeway is capable of those speeds and it is not uncommon for police to be involved in checking vehicles at those high speeds."*

*Q: Do you think you could have asked of your officers, more detail as to the nature of the occupants of the vehicle being pursued?"*

*A: Your Worship I've thrown this around in my head daily. There's not a day goes by where I don't think about this, and I have asked myself all of those questions and yes, as I say, in hindsight, I could have inquired about that. I didn't at the time."*

*Q: Do you think that might be a lesson for future supervisors?"*

*A: It's certainly a lesson for me."*

And, significantly:

*"Q: No, I'm talking about future, I understand what you are saying, I'm talking about future supervisors?"*

*A: It has impacted on me to such an extent where I view pursuits entirely different and that could be a good thing for future supervisors.*

*Q: How do you view them now?*

*A: Whilst I'm a patrol officer, unless extreme situations exist, I will terminate every time and go to other options, which I did on Thursday night.*

*Q: What are those other options?*

*A: Static placement of vehicles to observe the vehicle coming from point to point. Thursday night was very lucky, I had the air wing overhead reasonably quickly. They were in a position to be able to follow the vehicle and utilise ground units to coordinate when the vehicle eventually stopped, some 30 odd minutes later. The helicopter was able to observe the offender with its fleur capabilities, head to a farm house where we had police members, ground units very quickly and were able to apprehend the offender.*

*Q: This is a night time operation?*

*A: It was, yes. As I say my attitude towards pursuits has changed dramatically.*

*Hillman: Do I understand you Sergeant to say that if you were placed in the same situation again, with the same information that you had on the day, you would terminate?*

*A: What I will say is with the ability of hindsight at the moment, that would have been a very strong consideration on the day. But with the luxury of hindsight only. I don't know that I would have changed my decision on the day.*

*Q: You appreciate, do you, that there's a change in the operating procedures that were operative at the time and the Chief Commissioner's instructions that were published on 30 June this year?*

*A: Correct.*

*Q: As part of the difference do you as a Senior Sergeant understand that under the now current Chief Commissioner's instructions the element of safety is paramount?*

*A: Correct."*

Senior Sergeant Klinge did not consider that speeds of 150 to 200 kilometres per hour constituted an unacceptable risk. The following questions and answers are illustrative:

*"Brandt: Senior Sergeant, given that 150 to 200 kilometres an hour at that time didn't constitute an unacceptable risk, what speed constitutes unacceptable risk?*

*A: I don't know that I could put a definitive answer on that.*

*Q: More than 200 obviously?*

*A: More than 200, yes."*

Inspector Ross Smith stated that on the day in question he was on duty at No 4 Division Headquarters Seymour and performing office and administration duties. He noted that at about 12.15pm his "attention was attracted to the police radio transmissions from D24 at Wangaratta." Smith heard a transmission from "a solo unit that he was involved in a pursuit in the area of Benalla and that the vehicle was travelling south on the Hume Freeway at fast speed."

That, almost immediately, Inspector Smith then heard "Benalla 257 (Sergeant supervisor at Benalla – Delatite District) radio to D24 seeking clarification and reason for the pursuit." It was apparent to Smith that "this supervisor was taking charge as the pursuit controller in accordance with force policy."

Inspector Smith noted that, only a short time after, he next heard:

*"Knox 601 a Senior Sergeant unit in charge of the solo, which I now had heard to be Knox 698. I knew the Senior Sergeant to be McCallum from the Regional Traffic Tasking Unit from Region 4 and OIC of the solo unit Knox 698. The Senior Sergeant transmitted that the unit involved was a solo and that the solo was to terminate if he did not have a back up unit. I presumed this to relate to a speed I had heard of 170 kph."*

And that:

*"Transmission continued between the units with traffic conditions and the like being requested by Benalla 257 who quite clearly in my mind was taking charge of the pursuit. In addition I had heard Knox 601 also oversighting the situation. Benalla 610 was travelling south in the vicinity."*

Inspector Smith then telephoned Euroa Police Station in order to alert that station and ensure officers went onto the Hume Highway. There was no answer and he later telephoned Nagambie. There was also no answer at Nagambie

(apparently both Euroa and Nagambie stations were at an Emergency Management meeting). He also overheard *"Benalla 257 ascertaining that the vehicle was a stolen vehicle - a Commodore."*

The Inspector then heard that another unit, Knox 697 taking up the pursuit as the primary unit. That unit identified itself as a marked sedan with two members on board. Smith overheard a *"mention of speed - of 200 kph and that Delatite 610 was being directed to assist."* He also heard *"the vehicle being pursued was in fact slowing down to 150 kph due to other traffic, and then increasing speed afterwards."*

Inspector Smith monitored the communication between *"Benalla 257 and D24, and the Knox units"* and *"felt the matter was adequately being controlled by both the Sergeant (Benalla 257) and Senior Sergeant (Knox 601)."*

Inspector Smith then telephoned Seymour Police Station and spoke with *"the Supervising Sergeant asking what units were available."* He was advised the:

*"van crew was tied up with offenders, and that there was a traffic member on duty but it was not known where he was. I advised he should be located and that he takes up a position on the Hume Freeway north of Seymour."*

Inspector Smith noted that he *"heard D24 mention Seymour be advised and the Seymour unit being called."* He then:

*"radioed to D24 that Seymour 650 should be going Code 1 shortly. In the absence of further resources being available in Mitchell District I decided that I would go code one. At this stage I commenced to consider the likelihood of a roadblock."*

*At this time I was of the belief that the pursuit was being controlled in line with force policy and that another officer was on duty in Delatite District. I believed if in fact the pursuit continued south to Seymour that in preparation I would travel to a location I considered safe in the circumstances and consider whether to establish a road block. In considering this my mind was consumed with what risks I would be required to address in setting up the road block, it's location etc, not actually the pursuit still well north of Mitchell District."*

Inspector Smith left the office to go to the highway but, in doing so he *"was not continuously monitoring the radio transmission of D24...?"* He travelled to the Hume Freeway and then towards Avenel and was:

*"attempting to raise the Seymour 650 unit on another channel to advise him of my plan. I did likewise with the Seymour Sergeant unit (257) who later went code 1 in response to this matter."*

*Together with the Seymour 650 and Seymour 257 I arrived at a location on the Hume Freeway south of Avenel. At that location the freeway travels in a straight line for about 2 or more kilometres up a steady rise. I consider the location as safe as anywhere to allow the pursuing vehicle to view the police cars staggered across the Freeway for that entire distance, but allowing (as he got closer) access for him to pass through if he chose. Hopefully the sight of the roadblock for that distance would allow him time to reconsider his conduct and stop. I advised D24 of my intention. It was also my intention to advise D24 to have units back off some distance and allow the stolen vehicle to approach the roadblock at a reduced speed. If he did not stop I would then take charge of the pursuit, issuing appropriate direction, most probably the termination of the pursuit, as to the south the traffic increases after the junction with the Goulburn Valley Highway."*

*It was only after a very short time from when we arrived at Avenel that I heard a radio transmission that the vehicle had crashed and that the situation at the scene was serious in relation to the injuries. I next heard that a fatality was involved and advised D24 that I was enroute and would take charge of the scene, approximately some 15 kilometres to the north."*

The Inspector noted that, from first becoming aware of the pursuit, he was not in *"direct contact with the radio transmissions, and did so in the knowledge that it was in another District and that Benalla 257 had expediently taken control as pursuit controller. Knox 601 had acted likewise, both taking charge and addressing the pursuit in line with force policy."*

After the incident Inspector Smith spoke by telephone with Superintendent Johns. Johns advised that he was away from the radio and had not heard the pursuit. Johns advised Smith that, a learner driver was possibly driving the car. Smith had not heard that broadcast as he believed he had *"been getting lunch at about that time."*

Inspector Smith stated that he spoke with the solo rider Egan and asked *"whether he was aware that D24 had given out a KALOF on this vehicle that it was being driven by a learner driver and he replied he had not heard that broadcast."*<sup>3</sup> He also spoke with Jones of the Knox 697 unit and was also advised that he had not heard this transmission.

Inspector Smith also stated that he spoke with Inspector Nugent (NSW Police at Albury who had notified the next of kin). Nugent mentioned that the mother of Tristram RICH the driver, had said to the effect *"?that would be him - he would make a run?."*

Inspector Smith commented that he had:

*"been a police member for just under 36 years and have been involved in a number of pursuits during my service. I have also directed pursuits be terminated due to the circumstances prevailing at the time. I am very familiar with the Hume Freeway and have witnessed many instances involving high speed in the vicinity of 200 kph - both pursuits and speed detection that have not resulted in accidents."*

And he:

*"was aware that the Knox members were experienced as road traffic police and that road and traffic conditions on the day were very good. I heard no radio transmission, other than the speed, that indicated the actions of the driver were jeopardising the safety of the pursuit on the dual carriageway. I later recall one of the members in Knox 697 telling me at the scene that the driver of the fleeing car was sitting in the centre of the road way, only moving out to the right when overtaking another vehicle, which were few in number on the day."*

That whilst:

*"200 kph is a very high speed, there was no radio transmission other than the speed that conveyed any indication or suggestion that immediate termination should be directed. I considered the establishment of a roadblock a possible strategy likely to bring the matter to a safe conclusion. If not I would have directed accordingly, having regard to my assessment of the safety at that point, as previously set out. I was aware the police helicopter was enroute from Melbourne."*

#### **'Knox 601' (McCallum)**

Senior Sergeant Ian McCallum was the Officer in Charge of the Region 4 Traffic Task Unit (Clayton to Cooryong, Suburban and Rural) at the time of the incident. He had been involved in traffic enforcement for about 13 years. He had spent three years as a member of the Accident Investigation Section. McCallum had experience with numerous vehicle pursuits during his career, as a driver, observer and supervisor.

Senior Sergeant McCallum noted that when he was:

*"some distance south of Seymour and approaching Wallan I advised D24 Wangaratta that I would be changing radio channels to a Melbourne UHF frequency shortly. At this time I was on SMR Radio Channel P1. A few seconds later I heard radio transmissions with the word "?pursuit?" and "?southbound?" included. I could not hear the entire transmission as the radio reception was very poor, and had been for some time. I remained on the channel and monitored the transmissions."*

*I heard the call sign Knox 698, which was one of my units, a BMW solo ridden by Senior Constable Egan 28764. I then heard south and a speed given of 155 kilometres per hour."*

And:

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<sup>3</sup> KALOF is an acronym for *"Keep a lookout for."*

*"Benalla 257 then came up as monitoring and requesting traffic conditions. The reply was very hard to understand. At this time I came up on the air and informed Wangaratta D24 that Knox 698 was a solo unit and that unless he had backup he was to terminate the pursuit. I heard D24 call 698 but no instruction was given over the air that I could hear. The radio reception at this time was very poor and I could barely hear D24 or the units involved. I formed the opinion that Benalla 257 was assuming the role of Pursuit Controller and I decided that due to my location I would not make any further comment regarding the conduct of the pursuit unless I considered it necessary. At the same time I decided to head north along the Hume Freeway to be in a position to assist if I was able to do so."*

Then a short time later Senior Sergeant McCallum heard Knox 697 come up on the radio and state they had joined the pursuit with 698. McCallum knew that Knox 697 was:

*"a marked "?pursuit?" vehicle, a 2001 Holden SS Commodore with 5.7 litre engine. I also know Senior Constable MacDonald, a member with over 20 years traffic experience, and one of the most experienced members in my unit was driving it. The observer was Senior Constable Jones, again a very experienced member."*

Senior Sergeant McCallum continued to monitor radio transmissions as he headed north along the Hume Freeway. McCallum noted that:

*"Due to some confusion over the types of vehicles involved I came up on the air and told D24 to instruct 698 to abandon the pursuit and allow 697, a marked TOG car, to continue the pursuit. Speeds at this time were reported as 190 kilometres per hour. Due to the traffic conditions and the type of road I did not consider this to be excessive at this time."*

*Benalla 257 repeated this instruction with the D24 operator and via 697 it was confirmed that Knox 698 had dropped back and was no longer taking an active part in the pursuit. Delatite 610 was to take up a role as secondary pursuit vehicle when he was in a position to do so. Requests were also made for Air Wing and Dog Squad assistance."*

Senior Sergeant McCallum indicated that:

*"Knox 697 continued to give situation reports with traffic reported as very light and speed 200 kilometres per hour. Further situation reports indicated that the stolen vehicle slowed to about 150 kilometres per hour as it approached other southbound traffic on the freeway."*

Senior Sergeant McCallum noted:

*"Seymour 141 and other units from Seymour indicated that they were setting up a roadblock on the Avenel straight. This would allow the driver of the stolen vehicle to have about two kilometres of clear vision prior to the roadblock and the opportunity to stop or continue safely if he wished to do so."*

Senior Sergeant McCallum became aware of the collision:

*"A short time later Knox 697 came on the air and indicated that the driver had lost control of the vehicle and gone off the left side of the road. A request was made for ambulance and fire brigade attendance. 697 indicated that at least one person was deceased and that another had serious injuries. As I continued to monitor usual services were requested for this type of event, including the MCIU and ESD. Traffic diversions were also put in place to preserve the scene."*

The Senior Sergeant attended the scene. He noted that:

*"During the conduct of the pursuit I was aware that traffic was very light and the weather was fine and clear with excellent visibility. I monitored the transmissions of members involved as best I could having regard to quality of the radio reception. I considered that the members were in control of their vehicles and the situation as best they*

*could be and that the road conditions and type of road they were travelling on did not make the speeds indicated excessive. I was aware of the experience of the RTTU members and of the vehicles involved in the pursuit."*

Senior Sergeant McCallum indicated that he was *"unaware of the 'Keep A Lookout For?' for the vehicle USP 708 put over the radio by Wangaratta D24"* as he did not hear the transmission. McCallum noted that *"this may have been due to the poor radio transmission quality or due to my being out of the vehicle at the time."* He said that all his decisions regarding this pursuit were based on the information of which he was aware, that is that the vehicle USP 708 was a stolen NSW vehicle with two persons onboard. He would have acted differently if he had been provided with the full information. McCallum also noted that there were 11 cross intersection for the section of the Hume relevant to the pursuit.

Senior Sergeant McCallum indicated his concerns about communications with the motorcycle officer. He had his own problems with hearing radio traffic:

*"(Mr. Hillman) Question: When you did hear a broadcast, as you say in your statement, you heard the words "pursuit" and "southbound"?"*

*Answer: Yes.*

*Question: But you couldn't hear the entire transmission because the reception was poor?"*

*Answer: Yes."*

And:

*"(Mr. Hillman) Question: Did you also have any concerns about the fact that there may be difficulties with radio communications with a police motor cyclist as compared to a police car with an observer?"*

*Answer: Yes.*

*Question: Have you been a motor cycle police officer?"*

*Answer: I have and I still hold a current A Class licence.*

*Question: Is the position that a motor cyclist can only communicate or hear transmissions on the radio through the crash helmet?"*

*Answer: That's correct.*

*Question: Now at that point at item 45 from what you heard shortly thereafter did you appreciate that radio communications coming from the motor cyclist, not 698, were not clear?"*

*Answer: Yes. They were - to me they were the standard of communications I would expect from a solo travelling at speed, but they were not - they were not clear.*

*Question: And from what you heard over the radio - - -*

*Coroner: What would the solo be hearing from the communications coming from the other end?"*

*Answer: If you - you turn the volume up as loud as you can so that you can hear the voices, Your Worship, but you still have lot of - you have a lot of wind noise, the engine noise as well, plus you get some electronic noise from the engine running, but you can still hear - but it just depends. Cross winds can affect your ability to hear. The fact that you're passing another vehicle even, and the noise of their engine and things can make a difference, so it is very difficult to hear on a solo at a speed at any time."*

The Senior Sergeant considered the TMU driver and observer who took over from the motorcyclist as an experienced driver and observer respectively. He regarded the circumstances *"to be better than they were before with the motor cyclist in pursuit."* McCallum made the decision to instruct the radio operator to tell Mr Egan (the motorcyclist) to abandon the pursuit. He noted that he:

*"would have expected him to have slowed right down. If he go that broadcast, to slow down and possibly still continue southbound but not to take up an active - a role as a back-up unit."*

And to drive at the speed limit and not to actually be pursuing. It did not surprise the Senior Sergeant that the motorcyclist did not get the information to abandon. That this was *"partly due to the difficulties with communication to a motor cyclist travelling at speed?"* The questions and answers illustrate the confused nature of the communication of the messages during the incident:

*"(Mr. Hillman) Question: Senior Sergeant, could you go to the transcript at Item 91?"*

*Answer: Yes.*

*Question: Did you understand from that transmission that Mr Egan was still in the pursuit but behind the car being driven by you say in your statement this - refers to Benalla 257. You say, "Benalla 257 repeated this instruction with the D24 operator and via 697, it was confirmed that Knox 698 had dropped back and was no longer taking an active part in the pursuit." Was that your belief at the time on the day?*

*Answer: That was my belief, yes.*

*Question: Do you understand now that that probably wasn't correct?*

*Answer: Yes.*

*Question: That Mr Egan was still continuing, albeit at a distance, behind the car being driven by McDonald?*

*Answer: Yes."*

Senior Sergeant McCallum also gave some evidence about the regular skills reassessment of solos (police motorcyclists) and commented that TMU members are not re-assessed on their skill levels to drive in the urgent duty (pursuit) situation. He also commented on the issue of informal peer review and senior officer of driving skills of TMU members. On the issue of motorcyclists:

*"Question: The requirements in relation to bikes are a little different, are they not, in that a licensed bike rider is required to undergo refresher courses?*

*Answer: That's correct."*

The Senior Sergeant gave the reason for the refresher course for all police motorcyclists is to ensure that:

*"your skills are still up to it, that things that you may not do all the time you're still capable of doing things, like slow speed manoeuvres and your breaking and cornering, your road craft is still OK, where you're positioning yourself on the road, things like that, just to make sure that that's all up to scratch and to see how you - how you're riding."*

And:

*"Question: ?the net effect is that it is in fact an assessment, is it?*

*Answer: It is an assessment, yes.*

*Question: So if you fail, you will no longer be permitted to ride solos?*

*Answer: That's my understanding, yes?....*

*?...Question: That assessment is generally directed towards your ability to handle a motor cycle in all the varying circumstances that may arise?*

*Answer: Yes.*

*Question: Is it recognised that the use of solos is a somewhat more dangerous activity than the use of a sedan and, in particular, a sedan that's been set up for pursuit purposes?*

*Answer: Yes.*

*Coroner: Why is that?*

*Answer: Just by the nature of the vehicle, Your Worship. You can have a minor mistake in a vehicle and end up with a crumpled bumper, but if you make the same mistake on a solo, you could end up underneath a car or on the road.*

*Coroner: But surely that applies to motor cars at 200 kilometres an hour as well as it does to motor cycles?*

*Answer: Well, yes, at 200 kilometres and hour, yes, that's - - -*

*Question: We'll come to that. The fact of the matter is that motorcycles are recognised as being inherently more dangerous than travelling in a vehicle?*

*Answer: Yes.*

*Question: It's in part for that reason that there are fewer motorcycles now being operated by Victoria Police than there have been in the past?*

*Answer: That would be one of the reasons I believe, yes.*

*Question: It's a Health and Safety issue as much as anything else, is it not?*

*Answer: Yes?."*

On the safety of the police pursuit vehicle and experience of its occupants:

*"Question: On the other hand, in contrast, a Victoria Police sedan operated by the TMU is a specially purpose built vehicle, is it not?*

*Answer: Yes.*

*Question: Which conforms, as you understand it, to certain national standards that have been agreed to by all of the Australian police forces?*

*Answer: That's my understanding, yes.*

*Question: So in fact there's been a regime put in place by all of the Australian police forces to ensure that there's a commonality of standard in relation to pursuit vehicles or to vehicles that will be used in pursuits?---Yes.*

*They are specially modified to enhance their safety?*

*Answer: Yes."*

And:

*"Question: The other members who you were supervising on this day are more operational oriented, are they not?-*

*Answer: They are.*

*Question: So they spend a considerable portion of their active time on the road?*

*Answer: Apart from necessary paperwork they're on the road all the time."*

That, during discussion about an informal process of supervision operating to check the driving skill and competency of TMU police:

*"Question: Is it also fair to say that the frequency of high speed driving undertaken by TMU members has the effect of reinforcing their skill level?*

*Answer: Yes.*

*Question: It's a bit like someone who's training up to be a formula 1 driver, the fact that they are driving on a regular basis as a formula 1 driver tends to improve their skill level in that function?*

*Answer: Yes, I'd agree with that."*

That the type of supervision undertaken is dealing with:

*"basic things like following too closely, their road positioning, how they - how they drive the car. There are things like cornering lines, acceleration, how they - gear selections. There's a number of things that - their road craft, for want of a better term, is something that you look at. And I can't say that it's a - I get into a vehicle and think, well, I'll watch what this person does, but it's something that you just do, because it's - as corny or cliché as it sounds, I like to go home at the end of the shift, and I'm responsible for looking after my own welfare as well, and it's something that you do. My sergeants do it, I do it to my sergeants, and they probably, without doubt, do it to me."*

On the issue of the types of speeds that occur in pursuits on the Hume (and how the risk is assessed):

*"Question: You've engaged in pursuits not only as a primary pursuit vehicle but also as a pursuit controller?*

*Answer: Yes.*

*Question: Whilst recognising that 200 kilometres an hour is a high speed which carries with it an inherent danger, is it your view that 200 kilometres an hour can in fact at times be a safe speed along the Hume Freeway?*

*Answer: For a police vehicle?*

*Question: For a police vehicle to start with?*

*Question: If one is pursuing a vehicle which is in fact travelling at 200 kilometres an hour you recognise that whilst it might be safe for the police vehicle there are inherent dangers for the person driving at that speed in the other vehicle?*

*Answer: Yes.*

*Question: One analysis it in terms of the nature of the vehicle that's being driven?*

*Answer: Yes.*

*Question: The observable facts about the way in which the driver is driving on that occasion?*

*Answer: Yes.*

*Question: Associated with the various conditions, including traffic, weather, road, et cetera that apply at that time?*

*Answer: Yes.*

*Question: It's a dynamic process, is it not?*

*Answer: It is.*

*Question: It's a process that you engage in and had engaged in on virtually a day to day basis over a fairly lengthy career?*

*Answer: Yes."*

## NSW and Victoria Police communication during the incident (radio and telephone)

### INTRODUCTION

Critically, significant information about the age, background and circumstances of those in the vehicle of interest is not given out on the radio by Wangaratta D24 to police in the area. That information had been given by police in New South Wales. Had information been accurately given to all police concerned in Victoria the outcome may have been different.

### COMMUNICATION - THE INVESTIGATOR'S SUMMARY AND CHRONOLOGY

Sergeant McArthur summarised the issues associated with the communications during the lead up to this incident. He noted a time discrepancy on witness Anne Kelleher's statement. The discrepancy is as follows:

*"In paragraph 4 she states that shortly before 12:26 p.m. on the 10th of December, 2001, she received a phone call from Michelle Bailey where Bailey told her that Tristram was driving the stolen car which she then passed on to Wangaratta D24. This contradicts the time stamp on the taped telephone call from Kelleher to Wangaratta D24 which gives the time of that call as being 12:06 p.m. I have queried this discrepancy with the witness Kelleher, and she states the time stamp would be the accurate time (that is 12:06 p.m.)."*

The Sergeant collated the sequence of events on the 10th of December, 2001 (all times are approximate):

- 06:20 am. Michelle BAILEY advised by her husband Paul that the Commodore USP708 was missing.
- 06:20 am. Michelle BAILEY rings Tristram's work place and ascertains he is missing.
- 06:30 am. Michelle BAILEY rings the Police Assistance Line and reports vehicle missing to Patricia HAZELL. HAZELL lists the car as stolen. She also rings Tristram's employer and is told he is missing.
- 08:25 am. John BREW-BEVAN observes RICH and the white Commodore USP708 parked outside St. John's College.
- 10:10 am. John BREW-BEVAN observes a student dash out from the school and enter the white Commodore. The station wagon then speeds off towards Burrumbuttock. BREW-BEVAN then starts making inquiries as to the identity of the student he saw getting into the car.
- 10:30 am. Michelle BAILEY rings Ingrid FRENCH inquiring into Tristram's whereabouts.
- 10:30 am. Ingrid FRENCH rings St. Paul's College. She is advised by John BREW-BEVAN that a boy was seen getting into a white Commodore wagon.
- 10:45 am. Ingrid FRENCH advises Michelle BAILEY that a boy was seen getting into a white Commodore wagon at the school.
- 11:00 am ~ 12:00 md. Michelle BAILEY rings Albury Police and speaks to Anne KELLEHER and advises her that it is her 16 year old son driving the Commodore wagon she reported stolen earlier in the day. KELLEHER advises local Albury units via a dispatch.
- 11:30 am. John BREW-BEVAN contacts Ingrid FRENCH and advises her that Joshua is missing, and so is another student, Jason SPALDING.
- 12:06 pm. Anne KELLEHER of NSW Police contacts Wangaratta D24 and advises them that Tristram RICH, Joshua FRENCH and Jason SPALDING are in a stolen Commodore station wagon registered USP708
- 12:09 pm. Constable MURPHY of Wangaratta D24 broadcasts a message to units on channels P1 and P2 along the Hume Freeway to keep a lookout for this vehicle.
- 12:15 pm. Knox 698, Senior Constable EGAN intercepts this vehicle at the Midland Highway entrance to the Hume Freeway. He advises D24 of this fact.
- 12:16 pm. Pursuit commences south along Hume Freeway. Knox 697 later takes over primary pursuit from Knox 698.
- 12:35 pm. USP708 crashes.

In relation to the issue of communication and the response of police, Sergeant McArthur noted:

*"On the 12th of December, 2001, I attended at the Coroner's Court, Melbourne. There I had conversations with Ingrid FRENCH and Sven BERG who had come to identify Joshua FRENCH's body, and Reigh RICH who had*

come to identify Tristram RICH's body. I was then advised that prior to the pursuit, Tristram's Aunt, Julie FRY and his mother, Michelle BAILEY had contacted Albury Police stating that Tristram was the driver of the stolen Commodore belonging to BAILEY. It became apparent to me that these people were concerned that this information had not been passed on to Victoria Police."

#### TRANSCRIPT OF TELEPHONE CONVERSATION BETWEEN ALBURY POLICE AND D24 (RADIO, WANGARATTA)

There are some matters which are considered not specifically relevant to the incident and its management that are not included in this summary.

12:06 and 10 seconds

Radio 1 Wangaratta communications Constable MURPHY.  
Anne Oh. Hi. Constable MURPHY its Anne from Albury Police Station.  
?...Anne That's good. Um we've just got a little request for a 'keep-a-lookout' for a stolen vehicle and a learner driver driving the vehicle with a couple of his mates from school?....

12:07 and 10 seconds

?  
Radio 7 Yep, so it's a 'Keep-a-lookout' for some young blokes in a car was it?  
Anne Yeah, it will be three.  
Radio ?8? Ok, yep.  
Anne Three males they are. They're in a white VT Commodore station wagon.  
Radio 9 White VT station wagon, yep.  
  
Anne 10 New South Wales rego.  
Radio Yep.

The number is then given and acknowledged as USP 708

Anne 13 And they were last seen at Wallwa, which is about an hour north of Albury at about quarter past ten. When this young kid turned up to the school to pick up his mates and there's information that they're heading towards Melbourne.  
Radio Okay.

The details of Tristram Rich are given and acknowledged, including:

Anne 16 He's um 16,17 next week and he's only got his 'L' plates.  
Radio Alright.

The details of French and Spalding are given and acknowledged (but not ages)?

Radio 23 Alright. Thanks. Okay, well, yeah, I'll get this one out.  
Anne Right Thank you very much.

12:09?.....

#### THE WANGARATTA POLICE RADIO BETWEEN D24 AND POLICE UNITS ON P1 AND P2

12:09 and 50 seconds

Radio 28 Wangaratta to all units on or around the Hume. Keep-a-lookout for a white VT Commodore station wagon, New South Wales reg. Unit is Uniform, Sierra, Papa 708. Should have three heads on board... ?Comes via Albury. Heading towards Melbourne, last seen in Walla at about 10:45. The three heads on board are all males. The driver should be a Tristram RICH and he is just a learner driver. To all units at 12:10.

12.10 and 40 seconds

*Knox 698 29 VKC Knox 698.*

*Radio Go ahead 698.*

*Knox 698 30 Fm Code 4 New South Wales plates, Uniform, Sierra, Papa 708 on the Hume, just south of the Midland off overpass.*

*Radio Roger.*

*(unidentified) Knox 698 31 (undecipherable) 698 in pursuit*

Coroner's note: It appears that Knox 698 (Motorcyclist) did not hear the broadcast delivered by Wangaratta D24 at 12.09. Knox 698 pulled the vehicle over on the basis of its speed.

### **The relevant documentation of the incident**

Constable Murphy made written notes on a blue "Card" in accordance with the usual procedure in operation at the Wangaratta Communications Centre.

#### **The Card**

*"KALOF. Stolen Veh.*

*3 Males Tristram Rich, Joshua French, Jason Spalding*

*White VT Commodore S/wagon*

*NSW Reg USP-708*

*Walla Last heading toward Melbourne"*

### **Evidence of police radio operators**

There were two police radio operators working at the Wangaratta Communications Centre. They were both Constables and had limited experience and training in communications and communications management. The training that they did both have was "on the job" and "hands on."

Constable Cheryl Love, Wangaratta Police, had been a police officer for about 2 ½ years at the time of the incident. She noted that when she:

*"arrived at Wangaratta there was a system in place whereby the general duties Police did a three month stint in D24. There are about 4 permanent staff at D24 and we used to work with them. However it did not naturally happen that you worked with an experienced member. Quite often two junior members would work side by side because no permanent members were available. Usually two people worked together which was not ideal because there was no way to take a break and sometimes it was just too busy for two people to handle."*

And when she came to D24, Constable Love stated that her training:

*"consisted of sitting down with a permanent person for an hour who just went through the card system and how to use the radios. I then spent the rest of the shift patched in with someone who was permanent and then I was on my own. I was told that the Standard Operating Procedures were behind me on the shelf. I was also told that if you got a pursuit on channel then I should get heaps of locations. Other than that there was no other training."*

*When I started at D24 it was written on my roster that I was receiving two days training but that never happened and I'm sure this was the case for Constable MURPHY as well. Up until that day (10th December) I had only been on air during one minor pursuit that was resolved without incident and nothing that was of a time critical or crisis nature."*

Constable Love said that on the day of the incident she had "been working at D24 for about six weeks." She noted that, at about 12.10pm she was on Channel P2. Channel P2:

*"covers south of the district down as far as Wallan. It had been a little bit slow. Constable Murphy had been on the phone and asked me if he could patch in to my channel to put out a call. I heard Murphy put out a call in relation to some sixteen year olds one of which had stolen his fathers car. He gave the number of the car over the air and a description. I remember it was a Commodore Wagon with N.S.W. registration."*

A short time later:

*"a Knox unit came up and said he was Code 4 (out with a motorist) and gave a location of Hume Freeway south bound at the Midland turn off. He gave the registered number as USP 708. I did not hear the part about New South Wales rego so I typed it up on the computer and it came naturally came up 'not on database' because I didn't specify New South Wales plates."*

Constable Love noted that the:

*"next thing there was a garbled transmission and I asked Constable Murphy to patch in because I couldn't understand what was being said and told Knox 698 to repeat his broadcast which he did. It was still not clear but I was able to deduce that 698 was now in pursuit of the vehicle he had pulled over."*

And:

*"Other units started to come up on the air with locations and directions of travel. About this time Benalla 257 came up on the air and asked for traffic and weather conditions which 698 said were fine and light or words to that effect. I then gave a situation report to Benalla 257 and informed him that the transmissions were very hard to understand."*

*About this time Knox 601 told me that Knox 698 was a solo and instructed him to terminate the chase unless he had back up. I asked 698 if he heard the transmission and he said that he could barely hear me and that the car had backed off to about 170 km/h. I continued to give locations and 698 told me that the car was now travelling at 150 km/h and traffic was light and I caught something about a description."*

A short time later Benalla 257 asked the reason for the pursuit. Constable Love indicated that there:

*"was garbled reply which I could not understand. Constable MURPHY tapped me on the hand and showed me the blue card with his earlier 'keep a lookout for' on it and I realised this must have been the car that was subject to the earlier transmission and I conveyed that fact straight away to Benalla 257 and anyone else on the channel."*

The pursuit then continued for some time and Constable Love continued to coordinate the transmissions between the units. The Constable noted that as soon as Murphy showed her the card she:

*"was satisfied that the car was the subject of the earlier broadcast. I was also satisfied that the units on the air were aware of this. It was confirmed by me that the car was a New South Wales stolen car a short time later."*

And that:

*"Although I was aware of the age of the driver and passengers I did not believe it was my job to terminate the pursuit. I did not believe I had the authority to do so. Nor was there anyone in the office with the authority to do so. I was aware of many senior members such as Benalla 257 and Seymour 141 (Insp SMITH) who were in such a position but they chose not to do so."*

During the management of the communication by Constable Love it is clear that she had, on a number of occasions, difficulty in hearing critical aspects of radio transmissions from police in the field. Inexperience also played a part. She was not supervised by an experienced officer. The following is but an example of how lack of supervision, poor transmission, information gathering (and dispatch) and inexperience played a part in the management. There are other examples throughout the evidence at the inquest.

*"Question: I take it that at that stage you didn't know the identity of Knox 601?"*

Answer: No.

Question: Did you at that stage know, however, that 601 was a supervising officer from the Knox TMU?

Answer: Yes.

Question: If you go over the page to item 34. Do you see the broadcast from Knox 698?

Answer: Yes.

Question: As you say there, "Your reception's pretty bad, just go again"?

Answer: Yes.

Question: Is that what you refer to in your statement, that you couldn't understand what was being said and told 698 to repeat his broadcast, which he did?

Answer: Yes.

Question: Certainly by the repetition that is item 35, 698 in pursuit, 180 Hume Highway south of (indistinct) turn off, when you heard that you then knew that there was a pursuit?

Answer: Yes.

Question: Did you then understand it that it was simply a pursuit by an unknown TMU unit of a speeding motorist?

Answer: Yes.

Question: Is that what you understood?

Answer: Yes.

Question: If you could go to item 51 on the transcript. Do you see there a broadcast from Benalla 257, "What's the reason for the pursuit?" Did you hear that broadcast?

Answer: Yes.

Question: And you personally responded to it?

Answer: Yes.

Question: When you heard that did you know who Benalla 257 was?

Answer: Just that he was a sergeant at Benalla but not who it actually was?.....

?

Question: Did you at that stage, because of what you were asked, "What's the reason for the pursuit?" assume that Benalla 257 was acting as the pursuit controller?

Answer: Yes.

Question: And you got a response from 698; is that right?

Answer: Yes.

Question: As we see there, in item 55 you say, "No, 698. What is the reason for you following this vehicle?" and you then got a message, part of which only you could understand; is that right?

Answer: That's right.

Question: You see in that response there, "I went Code 4 with it, New South Wales". Did you hear that part of that message?

Answer: Yes.

Question: Did you hear the, "Uniform Sierra Papa 708" part of it?

Answer: Yes.

Question: Was it about that time that Constable Murphy tapped you on the shoulder and showed the card?

Answer: Yes?....

?

Question: At that point you clearly knew that the car that was being pursued by Knox 698 was the same car that Mr Murphy had received a telephone call from Albury about?

Answer: Yes.

Question: And was it by reading the card that you first became aware that the vehicle was said to be stolen?

Answer: Yes.

Question: Prior to that, you didn't know that it was said to be a stolen vehicle?

Answer: No.

Question: I take it throughout the broadcast, while you were operating it during the course of the pursuit, from that point you knew the vehicle was stolen, but you didn't know anything about the circumstances of the theft?

Answer: No?....

?

Question: You did know, though, that the driver was said to be a learner driver?

Answer: Yes.

Question: That came solely from hearing the "keep-a-look-out" call?

Answer: Yes.

Question: Because that's not on that card, is it?

Answer: No, who was actually driving? No, not written on the card.

Question: There's nothing on the card to indicate the driver was a learner or inexperienced?

Answer: No.

*Question: By reading the card, you would have appreciated, wouldn't you, that the identity of the occupants of the car was known?*  
*Answer: Yes...."*

And Constable Love was also aware of some information that she did not get from the Card completed by Murphy (the fact he was a learner). The questioning continued:

*"Question: And you didn't get it from the "keep-a-look-out" call broadcast, except for the information that the driver should be a Tristram Rich and he is just a learner driver?*  
*Answer: Yes.*  
*Question: You, therefore, seem to have been in the position that, during the course of the pursuit, you did know the fact that the driver was said to be a learner driver?*  
*Answer: Yes.*  
*Question: You knew that the vehicle had been speeding?*  
*Answer: Yes.*  
*Question: And you knew that it had been reported as stolen?*  
*Answer: Yes.*  
*Question: And you knew that there were three males on board?*  
*Answer: Yes.*  
*Question: Is that all you really knew about the circumstances?*  
*Answer: Yes.*  
*Question: Other than the type of vehicle and the registration number?*  
*Answer: Yes.*  
*Question: Looking back on it now, do you consider that you should have broadcast the fact that the driver was a learner driver?*  
*Answer: Yes.*  
*Question: That wasn't done, no doubt because you didn't think of it on the day?*  
*Answer: No."*

Thus, unfortunately, the total of the information in the hands of D24 (Wangaratta) was not then given to the pursuit controller.

Constable Love was inexperienced. She had been working at D24 for only six weeks. On the issue of training the evidence at the inquest (in part) is as follows:

*"Question: As you say in your statement, when you started at D24, "It was written on my roster that I was receiving two day's training, but that never happened"?*  
*Answer: That's right.*  
*Question: Does that mean that when you moved to Wangaratta in January 2001, you were performing general duties?*  
*Answer: That's right."*

It was Constable Love's first posting.

*"Question: And at some stage, prior to the commencement of your six weeks at D24, somebody asked you, or told you to work as an operator?*  
*Answer: Yes.*  
*Question: When approximately was that?*  
*Answer: Well, my - I mean, if you're asking when these training days I was rostered for, it was at the very start of my three month stint, so I was told I was going up to D24 for three months?. And I was rostered - the first two days I was rostered up there were supposed to be training days.*  
*Question: Let's go back a step. You were told you were going to be a radio operator at D24 for a period of three months?*  
*Answer: Yes.*  
*Question: How much notice did you have of that?*  
*Answer: Maybe a month.*  
*Question: In that month, where were you in that month?*  
*Answer: Just working general duties downstairs (?Wangaratta)?.*

*Question: You had just arrived there virtually?*

*Answer: I had been there since January.*

*Question: In that month did you have any training at all about the operation of the radio at D24?*

*Answer: No.*

*Question: Had you been taken to the radio room to see how it was set up?*

*Answer: I think I had been in there once or twice since I had started in January.*

*Question: Was that just for some unrelated purpose?*

*Answer: Yes.*

*Question: Learning how it was done?*

*Answer: Yes."*

And:

*"Question: When the three month stint was to start you are told from the roster the first two days are training?*

*Answer: Yes.*

*Question: Is that what you expected, that you would get two days of training?*

*Answer: Yes.*

*Question: But as you say in your statement, that never happened?*

*Answer: That is right.*

*Question: In effect you were thrown in at the deep end, were you?*

*Answer: Yes.*

*Question: So that when you first started, the very first time you started to work as a radio operator in the D24 section of Wangaratta, who were you working with?*

*Answer: I think the first day that I was rostered there I spent an hour with one of the permanent members, and he went through the card system and how that worked. I then spent the rest of that afternoon working with Christine Sewell, and we just worked one channel and we had two other people working the other channel.*

*Question: What rank was Christine Sewell?*

*Answer: She is a reservist.*

*Question: Did she, as you understand it, have any experience with the Wangaratta D24 operations?*

*Answer: Yes, she had been there for some years.*

*Question: For some years?*

*Answer: Yes.*

*Question: Did you, in effect, get on the job training from her as things happened?*

*Answer: Yes.*

*Question: There was no formal training?*

*Answer: No."*

After the collision Sergeant Brad Johnson (the supervisor) returned to the room and took over the management of the subsequent collision. There was no supervision on the quality of communication and related information gathering and dispatch during the critical times of the management of this incident.

Constable Love knew that the driver was a learner driver, and to her credit acknowledged that she should have broadcast this fact. She had only been in the job for six weeks and she was posted to Wangaratta ( on general duties from January). Love was meant to have two days training in communications - unfortunately that never happened.

Constable Bernard Murphy, Wangaratta Police Station, worked in the Communication Centre and had been a police officer for three and a half years. Murphy noted that:

*"Whilst stationed at Wangaratta it is policy that the members at Wangaratta serve temporary postings at D24. I have served one posting commencing at New Years Eve 2001 to March 2001 and I served another posting from 8/12/2001 to mid January.*

*When a member is seconded to D24 usually members sit with an experienced operator who shows them how things run and who to ring if things don't go according to plan or unusual situations occur. I was not given any formal notes or instruction from a dedicated trainer as to what to do in a crisis. My training consisted of three days in my first stint sitting on a channel with another operator learning how to operate the radios, filling out specialised forms and generally getting to know how the place ran. There were never any standing plans for inexperienced members other than getting advice from more experienced members."*

That up until 10th December Constable Murphy stated that he:

*"had never really had any critical incidents such as pursuits or developing critical situations. I did help coordinate the search at Bright for a hand glider, but really that operation was not time critical like a police pursuit or similar incident."*

Constable Murphy stated that on "Monday the 10th of December" he was working with Constable Love who was junior to him by about six months. He noted that *"it had been a reasonably slow day and there hadn't been any big problems."* Murphy was in charge of the P1 channel which is from Wangaratta and Wodonga and outlying north stations. There was no supervisor working in the Communications area throughout the time of the pursuit. However there were a number of units monitoring the pursuit over the radio. The supervisor, a Sergeant, had a medical appointment during the time of the incident and was out of the station for most of the time.

At about 12.10pm. Constable Murphy received a call from the Police at Albury. He noted that:

*"a woman who called herself Anne, I can't recall if she was a Policewoman or a Public Servant. The woman informed me that she had a stolen car for me to circulate a keep a look out for. I grabbed a blue record card and took details of the car number and suspects for the theft."*

That basically, the:

***"?woman conveyed to me that a 16 year old male, Tristram Rich had stolen his father's car, a Holden VT Commodore station wagon registered number USP 708 and gone to his school to pick up two mates Joshua French and Jason Spaulding. It was believed they were heading towards Melbourne last being seen in Walla which is north of Albury." (in bold added by the Coroner)***

And that a few minutes after receiving this information Constable Murphy informed Love that he *"was going to patch in to P2 which was her channel, to give a broadcast to all units on or around the Hume."* He then gave the message out to all units in P1 and P2. He stated that basically P2 covers the area south to Broadford.

Constable Murphy said that, when he finished the broadcast he went back to P1 and continued with his work. He noted that *"although we work side by side we work separately and concentrate on the channel we are on."*

Constable Murphy stated that about *"5 minutes later Cheryl [Love] asked me to patch in because she had a broadcast she couldn't interpret. I did so."* He said that the first broadcast he heard was that *"a unit was pursuing a speeding vehicle. Cheryl was asking for locations and conditions of the road and the units replies were by and large indecipherable."* In evidence, Murphy noted that he was not aware, at this time, that this was the same vehicle reported earlier by him (as the vehicle had originally reported as having *"three heads onboard"*) and the more recent broadcast was for *"two heads."*

Constable Murphy later made the link between the two vehicles. He noted that:

*"Benalla 257 clarified the vehicle was near the Warrenbayne turn off heading south."*

*Cheryl was asked to inquire from the unit why it was pursuing the vehicle. The unit then gave a reply which contained the last three digits 708.*

*Basically the process is to assist the operator with the call by filling out her information cards so she can concentrate on the incident. I was doing that at the time Cheryl was asked by Benalla 257 what the car was being pursued for. She then had a conversation with the Knox solo unit in pursuit and he relayed the registered number of the vehicle to her.*

*I then realised straight away that the vehicle was the same one I had broadcast earlier. She had started to type the number into the computer when I tapped her arm and showed her the card I had earlier filled out. She immediately relayed this fact over the air."*

Constable Murphy noted that from that time on the pursuit progressed through various stages and locations we both continued to monitor fill the cards and update locations for the units on the ground. He said that:

*"Throughout the pursuit it never occurred to me that the members in the pursuit failed to hear my earlier broadcast telling members of the situation about the car being stolen by juveniles whose identity we knew. It is inconceivable to me that all the members did not here my call because during the course of the pursuit although at times reception was scratchy they heard all our other broadcasts."*

Constable Murphy stated that he knew:

*"the risks involved in pursuits however on the day in question there were far more senior members than me taking a direct part in the pursuit. I was of the belief and still am that I do not as a Constable/operator have the authority to call off a pursuit in those circumstances."*

At the inquest Constable Murphy described his training and experience in more detail:

*"Question: Prior to you first being posted at D24, Wangaratta, what training did you have in relation to the duties of a radio operator at D24, Wangaratta?"*

*Answer: I hadn't received any training.*

*Question: None at all?"*

*Answer: None.*

*Question: I suppose somebody told you how to operate the equipment or not?"*

*Answer: What happened was when I went up for my first three month tenure, I sat beside another police officer who had been up there for some months. I am trying to remember who it was, and I sat beside them, and I can't off hand, and basically I put the headset on, had a bit of a listen for a while, started to pick up on call signs. They were doing both P1 and P2, and if a car check came up or something like that, I could give the car check, I could type it out on the screen and then give that out. So that went on for I suppose half the shift, and then I came up for a couple here and there, and it just went from there.*

*Question: So would it be fair to say you picked things up as to what radio operators were expected to do on the job?"*

*Answer: ---Yes.*

*Question: On this particular day, 10 December 2001, as you say in your statement, you were working with Constable Love, who was junior to you by about six months?"*

*Answer: Yes.*

*Question: As you understood it you, at that stage, had more experience in the operations of D24, Wangaratta, then Constable Love?"*

*Answer: Yes."*

The evidence indicated that both D24 operators were inexperienced. There was no adequate training regime (with no training on accurate and critical message taking) and no supervision during the critical times of the management of this incident. Vital information was not fully documented (i.e.: age and experience of driver and other occupants of suspect vehicle) and/or distributed to those police in management and in the field who needed it for risk management purposes.

## **Review of the management of rural communications centres**

A review was conducted into the management of rural communication centres by Superintendent Lay of Wangaratta Police. The review is titled *"Review of Issues Surrounding the Management of Rural Communications and Police Pursuits"*, dated 20th of June, 2001. In the introduction Lay said (about two pursuit incidents involving three deaths (Rich, French and Repinski):

*"A review of these incidents identified a number of significant problems with police communications at Wangaratta. In addressing these shortcomings in the Police Pursuit Policy were also identified."*

The issue of cross-boarder pursuits was raised (discussed in Repinski).

The review identified a number of issues for Regional D24 offices including, staffing, training for rural communications operators, supervision and operating procedures. Other issues considered by Superintendent Lay are redesign of the layout of the D24 Office, trailing of remote radio headsets and the problem of using the radio and a separate telephone (at Wangaratta).

## Victoria Police Manual - Vehicle Pursuits as at December 2001

The Police Rules relating to Vehicle Pursuits are contained in the Victoria Police Manual which were issued on 29th November 1999 (and later updated to 03/06/02). The former were the instructions applicable at the time of the pursuit (new Chief Commissioner's Instructions were introduced on 30th June 2003). In this section of the finding the relevant rules applicable to this pursuit are considered. As a matter of information more detail on the relevant rules can be found in Appendix A to this finding.

The new instructions make it clear that where there are communications difficulties the pursuit must be terminated. In the old instructions there is little guidance on what to do where there are communications difficulties.

In the Manual a pursuit is defined as *"1.7.1...an attempt by the driver of a police vehicle to intercept another vehicle were the police driver believes on reasonable grounds that the other driver is avoiding interception."*

Paragraph 1.7.2 set out the rules relating to *"Pursuit Justification"* and provided that the *"Road Rules - Victoria do not apply to the driver of a police vehicle"* if:

*"In the circumstances:*

- *The driver is taking reasonable care; and*
- *It is reasonable that the provision should not apply; and*

*If the vehicle is a motor vehicle that is moving, the vehicle is displaying a blue or red flashing light or sounding an alarm. This does not apply if, in the circumstances, it is reasonable:*

- *Not to display the light or sound the alarm, or*
- *For the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm."*

It is noted that the siren was not being used in the pursuit car (except when approaching other traffic) as, in the opinion of the occupants, it interferes with the hearing of messages via the police radio.

And paragraph 1.7.2.2 provided various *"considerations"*:

*"General - a pursuit must only be initiated or continued where:*

- *It is necessary to undertake the pursuit to perform police duties; and*
- *The risk is justified in the circumstances."*

The issue of Risks is explained as follows:

*Risks - the risks involved must be balanced against the necessity for the pursuit. A pursuit may only be considered when:*

- *The pursuit is based on more than mere suspicion;*
- *Identifying or apprehending the occupant(s) of the pursued vehicle at a later time is unlikely; and*
- *The known circumstances are serious enough to justify a pursuit.*

Risk assessment must be considered:

*Risk assessments - must be conducted for every pursuit. The following must form part of the assessment:*

- *The apparent threat to the safety of any person.*
- *The competence of the police driver.*
- *The type of police vehicle.*
- *Whether the pursuing vehicle is marked and has flashing lights and siren fitted.*

- *The manner in which the pursued vehicle is being driven, including speed of both vehicles.*
- ***Whether the occupant(s) of the pursued vehicle have been identified.*** (bold added by the Coroner)
- *Any other relevant circumstances such as road, weather and traffic conditions.*

*The reasons for and risks involved must be assessed before initiating a pursuit, and be continually reassessed during the pursuit. The mandatory operating principle is "the safety of police, the public and offenders or suspects is paramount.*

It is noted that, unknown to the occupants of the police pursuit vehicle, the identity of the occupants of the pursued vehicle were known.

Generally Paragraph 1.7.3. provided the rules for "Conducting a Pursuit." On the 'Use of Warning Equipment', Section 1.7.3.3 states that:

*"For the duration of a pursuit, the driver of any pursuit vehicle must ensure that:*

- *Flashing lights and siren are operating, where fitted; or*
- *They give the best practicable warning, where flashing lights and siren are not fitted; See also section 1.7.2.1."*

The same note applies as for the earlier section relating the use of the warning siren.

Under section 1.7.4 'CONTROL AND COORDINATION - Responsibilities of Pursuit Controller' the old rules state that the Pursuit Controller must:

- *Take charge of the pursuit and, unless relieved of the duty, remain in charge until the situation is resolved even if the pursuit crosses Regional or Divisional boundaries.*
- *Ensure all police members involved comply with Force policy.*
- *Coordinate and direct assisting units. They should consider limiting the movement of normal traffic.*
- *Assess the justification, criteria, circumstances, and whether an acceptable resolution strategy has been developed.*
- *Maintain constant and effective radio communications.*
- *Constantly appraise the risks by oversighting and monitoring the progress of the pursuit.*
- *Continuously evaluate any risk to safety of police members, the public and offenders or suspects.*
- *Direct that the pursuit be abandoned immediately if it is evident that continuation of the pursuit creates an unacceptable risk to the safety of any person, or is no longer justified.*

*And that the "The Pursuit Controller is accountable for the operational tactics and resource deployment of police members involved during the pursuit."*

Under 1.7.4.3 The 'Role of the Police Communications Centre Operator' is set out as follows:

*"The primary role of the police communications centre operator, under the direction of the Pursuit Controller, is to:*

- *Assist in coordinating the police units involved in the pursuit.*
- *Consider positioning other units along the projected course of the pursuit. The need for safety must be emphasised at all times.*
- *Discourage all radio traffic from units not involved in the pursuit."*

Even under the old instructions it can be seen that there are critical management roles and each role relies very much on correct, timely information being delivered. Safety for police, public and the offender can best occur with training and systems aimed at ensuring this occurs (and being protective enough to allow for human error within the system). These were not in place when this incident occurred.

## Division 4 - Region 4, Pursuit De-Briefing Report, 14th December, 2001

There was a Pursuit De-Briefing Report. Acting Sergeant Pritchard was asked some questions about the document. His answers are illustrative of the understanding of the reasons behind such processes - to learn and improve practices:

*"Question: The debrief was a critical document. It wasn't entirely accurate in all parts, as we now know, but it was a critical review and it pointed to problems?"*

*Answer: That is right.*

*Question: That is part of the collective learning curve, as it were, of all of the members involved in this pursuit, and all the other members that they talk to about it?"*

*Answer: That is correct.*

*Question: I take it that your experience in this event, together with the changed circumstances, or the changed position adopted by the Chief Commissioner's instructions, is likely to lead to a much more critical view on your part of the initiation and termination of pursuits?"*

*Answer: Very much so.*

*Question: That is part of the learning process?"*

*Answer: Yes?."*

### Expert evidence relevant to the incident

#### ACCIDENT RE-CONSTRUCTION

##### The evidence and opinion of Major Collision Investigation Unit investigators

Sergeant Peter Bellion, Engineer and Re-construction investigator, Major Collision Investigation Unit attended the scene of this incident. He commented that the incident occurred:

*"on the southbound carriageway of the Hume Freeway, Longwood, about 400 metres north-east of the Melbourne 131 kilometre post. This location is between Carters Lane to the north and Oxenburys Road to the south."*

And that:

*"The vehicle involved in the collision had been involved in a police pursuit that commenced in Benalla. The nature of the collision was a loss of control from oversteering left off the carriageway, resulting in the vehicle coming into contact with an embankment and fencing on the eastern side of the freeway. The vehicle then rolled and had numerous ground and tree contacts before coming to rest on its roof, facing east away from the freeway."*

According to Sergeant Bellion the southbound carriageway of the freeway:

*"had a straight horizontal alignment and longitudinally a crest vertical curve alignment. In cross section the freeway consisted of two marked traffic lanes for southbound traffic with a sealed emergency lane on the east side and a sealed shoulder (emergency lane) on the west side. Adjacent to the emergency lane to the east was a small upward sloped embankment leading to fencing and then a grass and tree covered reservation."*

The speed limit of the freeway was 110 km/h defined by the erection of 110 km/h speed restriction signs.

Sergeant Bellion took a series of measurements with a laser distance measuring device, measured grades and crossfalls with a calibrated level and also took measurements of the friction of a tyre sliding on the road surface. He made a number of observations relating to damage and debris at the scene, which indicated to him that:

*"the vehicle involved barrel rolled from the embankment and the fence impact with rotation in a clockwise direction about its longitudinal axis. After striking the first narrow tree it landed on its bonnet and roof. From there on it continued with rotation now about its transverse and yaw axes being involved in further ground and tree impacts before coming to rest. The vehicle had travelled a distance of about 55 metres from the fence line to its rest position."*

On the road surface Sergeant Bellion noted:

*"the left portion of the right hand, southbound traffic lane, I observed a series of tyre scuff marks in the form of oversteer left, tyre yaw marks. The overall length of these marks from commencement to the fence was approximately 103 metres. The longest tyre scuff mark was from the right rear tyre of the wagon. The second longest tyre scuff mark was from the right front tyre. The third longest tyre scuff mark was from the left rear tyre and the shortest tyre scuff mark was from the left front tyre mark. Using a 30 metre chord on the right rear tyre scuff mark adjacent to the right front tyre scuff mark a middle ordinate of 0.480 of a metre was measured. From geometry this gave a radius of 234.61 metres."*

That:

*"Friction measurements taken gave readings of 0.778 on the left and right traffic lanes. The grade adjacent to these measurements was 0.3% (almost flat). Crossfall on the right lane was - 3.3% and on the left lane was +2.2% relative to the direction of travel."*

Accordingly Sergeant Bellion concluded using the principles of *"circular motion the speed of the Commodore wagon when it was oversteered to its left was calculated at approximately 150 km/h in the 110 km/h zone."* He explained:

*"The alignment of the tyre yaw marks at their start indicated that the Commodore wagon was probably initially in the left lane and diverged right to the centre of the carriageway before it was oversteered to its left leading to loss of control."*

The evidence of the investigating police officer, Sergeant McArthur (discussed earlier) needs to be considered along with Bellion's evidence.

#### **Opinion of the Forensic Pathologist**

##### **RICH**

As a result of the post mortem examination Dr. Matthew Lynch, Forensic Pathologist, established the cause of death as being from head injuries sustained in a motor vehicle accident. The toxicology report indicated that Master Rich had no alcohol or drugs in his system.

##### **FRENCH**

As a result of the post mortem examination Dr. Matthew Lynch, Forensic Pathologist, established the cause of death as being from head injuries sustained in a motor vehicle accident. The toxicology report indicated that Master French had no alcohol or drugs in his system.

#### **Conclusion on the incident**

At about 12.37pm on 10th December 2001 a vehicle being driven south on the Hume Highway, Longwood by Master Rich (the car was his mother's and was reported to NSW Police as having been stolen) lost control, during the conduct of a police pursuit and rolled over. The incident occurred about 1.1 kilometers south of Carters Lane. Rich was fatally injured in the collision. Rich had two passengers on board, one of whom, French was also fatally injured. The other passenger, Jason Spalding received serious injuries and was air lifted to the Royal Childrens' Hospital in Melbourne.

Master Rich was driving and French was in the front passenger seat. At the time of the collision Spalding was sitting on the right hand side rear, behind the driver and was wearing the seatbelt. Apparently Rich and French were also wearing seatbelts during the driving.

Shortly before the collision the vehicle, a stolen white 1998 VT Commodore Station wagon, Registered Number USP 708 (NSW), was travelling in a southerly direction along the Hume Highway at a maximum speed of up to 210 km/h. In the lead up to the collision Master Rich lost control he was travelling at about 150 km/h.

A little earlier the stolen vehicle had been pulled over by a police motorcyclist as it was travelling erratically and slightly in excess of the speed limit on a road in Benalla (80 km/h). The driver stopped and then sped off and the pursuit was commenced by the motorcyclist. A short time later a police Traffic Management Unit pursuit car took over and continued the pursuit for about 14 minutes until the collision.

The pursuit involved a number of police vehicles, traversed about 61 kilometers on the Hume Freeway from a short distance south of Benalla to Longwood, and took about 20 minutes. During the pursuit speeds varied between 150 to 210 kilometres per hour.

All of the individuals in the vehicle being pursued were under 17 years and lived with their parents in Albury, New South Wales. The vehicle was initially reported stolen to the New South Wales Police and then the information corrected by the owner with details that her son, who was unlicensed and under the driving age, had taken the vehicle. This information and details of the other occupants was relayed by New South Wales Police to Victoria Police (Communications Centre, D24, Wangaratta). However, the full information (on age and identity) was not given to by radio by D24 operators to supervisors or police operating in the field. Had that information been given it was likely that the pursuit would have been abandoned. Provided the young driver slowed down as a result of the calling off of the pursuit it is also likely that the outcome would have been different.

Importantly, after the motorcycle police officer was requested to terminate the pursuit it continued for another 14 minutes with the police sedan as the primary pursuit vehicle. The motorcyclist did not hear the radio instruction for him to terminate (because of a supervisor's concerns over his safety as a motorcyclist). During the remaining 14 minutes of the pursuit neither the police driver nor the observer in the sedan thought to ask any questions about the history of the occupants in the car they were pursuing. They were likely to be young. There was plenty of time for risk assessment to factor in questions about occupants.

The speed limit on the Hume Freeway was 110 kilometres per hour. Traffic was light and the weather fine with the road dry.

## 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), 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 in Victoria. 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 and suburban Melbourne involving the deaths of Piotr Repinski in the country incident and Simon Lovitt, Shaun Law and Carl Vo in Melbourne.

#### Potentially preventable nature of these deaths

The police officers in a supervisory position in this incident acknowledged, quite appropriately and to their credit, that had they had the correct background information on those in the pursued vehicle, the pursuit would have been abandoned. By way of example the Pursuit Controller (who had not been a controller previously) said:

*"?...with the benefit of hindsight, it's not something I considered throughout the pursuit, and I certainly didn't think to ask that particular question, "Can we identify them?" Had I, it might have been - who knows. But certainly with the benefit of hindsight and with training, that's certainly a question I would be seeking to address in future."*

Thus there was some significant potential (provided the young and inexperienced driver slowed down after the abandonment) that tragic outcome would have been very different. All of the lessons learnt from this inquest need to be fed into improvements in the management by police of this type of incident. In this regard, critically, Counsel for the family, Mr. Brandt noted:

*"At the very least if radio communications were operating properly and had the information received from Albury Police been broadcast in full, and had the broadcast been heard, it is clear from the evidence of all police officers involved that the pursuit would have been called off. In all probability two young lives would not have been lost. No doubt a certain amount of angst would not have been incurred by all parties."*

*The new Pursuit Policy still has to be fully implemented. It remains to be seen whether that will indeed reduce the number of deaths in these situations."*

All of the relevant information that would have helped supervisory police to make a more appropriate management decision for the ultimate safety of police, public and the offenders was with the Victoria Police in its communications

centre at Wangaratta. It was either not distributed or, if transmitted, was in a limited form or not adequately. The clarity of communications from operational police to the communication centre was variable as a result of the equipment.

## **Issues raised in this inquest**

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

- Communications equipment on police motor cycles and vehicles.
- Passing of information to those who need to make informed decisions eg. Pursuit controllers, senior supervising officers, police in pursuit vehicle.
- Need to seek information as to what is known about the driver of the pursued vehicle.
- Recognition of inherent dangers of speeds in order of 200 kph even on best roads such as Hume Freeway.
- Need to critically re-assess the risk when a "near miss" occurs; eg. the incident involving the pursued car and the Mercedes.
- Improved communications in rural areas.
- Pitfalls of inexperienced radio operators working without proper supervision.

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

- 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 authorities.
- 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).

## **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.?"*<sup>4</sup>

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 (in the Melbourne case) 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. The deaths of Masters Rich and French amply demonstrate the need.

As already indicated, with an appropriate note of caution Counsel for the family, Mr. Brandt wrote:

*"?The new Pursuit Policy still has to be fully implemented. It remains to be seen whether that will indeed reduce the number of deaths in these situations."*

### **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 <sup>5</sup>, 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 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*

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<sup>4</sup> West, Iain, Deputy State Coroner. Record of Investigation Into Death, Case No.63/01, 20 May, 2002, pp.2-3.

<sup>5</sup> Not recommending external review by risk management experts.

*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 complemented 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. For example Acting Sergeant Pritchard (the Pursuit Controller) undertook a supervisors course post this incident. He acknowledged that the course provided useful information that would have helped in the management of the incident.

In addition, the Assistant Commissioner acknowledged the lack of a State-wide structured training regime for police communications operators in regional areas (the communications issues in this case are discussed later under discrete headings). This is a critical issue in this case.

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 (or Accreditation Officers) 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.

The use of monitoring equipment can also improve the accurate collection of data on pursuits. For example consider the following exchange in this matter: The discussion arose out of the questioning of Acting Sergeant Pritchard:

*"Question: No, I appreciate that but I am referring to your role as one of the vehicles involved in a pursuit?"*

*Answer: Yes, I have been observer and driver in pursuits before and I have been an interested observer, listener, if you like, in other pursuits.*

*Question: Because it would be fair to say that these are, unhappily, not an uncommon even along the Hume Freeway from time to time?"*

*Answer: The Hume Freeway - I don't know the stats but I'd suggest that it does tend to attract a few."*

The questions lead to this telling discussion between the Coroner and Counsel for the Chief Commissioner:

*"Coroner: Will I be getting the stats, Mr Maguire.*

*Mr. Maguire: No, Your Worship, because we don't know what they would be. If they are formal pursuits, perhaps, but I am not sure about the ability of us to dig them out quickly, but if they are informal pursuits, matter where they have never been called in as a pursuit, then we just simply couldn't say. And that is a matter that is addressed in the review, as Your Worship will appreciate. I will see what I can do in terms of making an enquiry in relation to it but I really do think it may be beyond our ability to drag out that information.*

*Coroner: That of itself is a frank admission of a problem?"*

*?Mr. Maguire: That is the case, Your Worship. There are instances that occur where members have in the past not called in a pursuit, it is simple as that. We know it but we can't - there is a - the fact that you know that it occurs doesn't assist you in terms of the estimating the scope."*

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**

Critical Incident 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).<sup>6</sup>

### **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 likelihood 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 Coroner's 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 Coroner's recommendations.

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<sup>6</sup> See also additional comments in the matter of Lovitt, Law and Vo. See also discussion on the issue of cross-boarder incident reviews in Repinski.

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, the effectiveness of communication (as evident in the instant case) 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 the 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.*

## **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. Officers from interstate working in Victoria are covered by this State's law.

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 3***

*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.*

## **Communications systems and the general management of pursuits**

Some of the issues broadly involved communications systems and the general management of pursuits. These issues included (communications equipment in vehicles is considered under a separate heading in this finding):

- Passing of information to those who need to make informed decisions eg. Pursuit controllers, senior supervising officers, police in pursuit vehicle;
- Need to seek information as to what is known about the driver of the pursued vehicle;
- Improved communications in rural areas; and
- Pitfalls of inexperienced radio operators working without proper supervision.

There was no process to ensure that the supervisors (and those in the pursuit vehicle) actually received accurate information in a timely way. Because the information was broadcast it was assumed (incorrectly) this was all that was necessary. On the other hand the pursuit controller and those in the pursuit vehicle did not seek to ask any questions about those in the vehicle being pursued. Both these failures are indications of system problems. So too is the use of inexperienced, inadequately trained (for that particular job) radio and communications operators who were working without proper supervision.

The radio communications quality was described as "*scratchy*" and, although some vital information (on speeds) got through to supervisors, generally those in command viewed the communications problems as critical. Communications problems have caused serious difficulties in the management of many other incidents (i.e.: Linton Wildfire and deaths Inquest).

Accurate, efficient and timely communications undertaken by well trained and experienced operators (who are supervised in the communication centre) are critical for the safe management of any incident. In the high risk pursuit situation it is essential. The deaths in this incident is but one example of how, with poor systems management in the area of communications, things can go tragically wrong.

It goes without saying that for the new Chief Commissioner's Instructions (on termination in the event of communications problems) to work police officers must be actually aware that they are having difficulties with communication. The submission for the Rich/French family nicely summarises the problem:

*"1. That Constable Murphy at Wangaratta D24 received information from Albury Police that identified the vehicle (gave a full description of it); gave the full names of the occupants; indicated that the vehicle was stolen from one of the occupant's mother; and, stated that the driver was a learner driver aged 16 years.*

2. A KALOF (Keep a Look Out For) was broadcast over P1 and P2 channels to all units.

3. Constable Murphy said in his statement "throughout the pursuit it never occurred to me that the members in the pursuit failed to hear my earlier broadcast telling members of the situation about the car being stolen by juveniles whose identity we knew. It is inconceivable to me that all the members did not hear my call because during the course of the pursuit although at times reception was scratchy they heard all our other broadcasts".

Importantly (for the effectiveness of the current policy):

"4. Neither the driver of the primary pursuit vehicle, Senior Constable MacDonald nor the solo police motorcyclist, Senior Constable Egan nor the Pursuit Controller, Acting Sergeant Pritchard had heard the KALOF broadcast.

5. D24 Radio Operators have no way of knowing that the broadcast was not received by all units. Giving acknowledgements was stated as "merely logging the system"."

Accordingly, Counsel (Mr. Brandt) submitted:

"?it is basic that if communications cannot be heard then nothing more can happen. The new Pursuit Policy will not work if officers in pursuits are placed in the same position as officers in this matter and simply do not hear the broadcast. Officers will not know, for instance, a pursuit has been called off and accordingly will continue the pursuit."

Thus there is the real risk that circumstances (such as developed in Rich/French) could re-occur where the operational police are not aware of critical information within the knowledge of a police communication center.

#### **Recommendation 4**

As efficient, accurate and timely communication is a vital tool for the safe management of any pursuit (and other critical incidents) it is essential the following criteria are met:

- Fully trained and accredited operators (already the subject of general recommendation on training);
- Police use the best available equipment with appropriately designed work stations and environment;
- Procedures are designed to ensure that information is accurately collected and delivered (in a timely way) to those supervising and managing an incident;
- Supervision by experienced officers (who are trained supervisors) of the D24 operators; and
- Regular monitoring of training, equipment, practices and procedures to ensure that appropriate improvements are fed back into the system in a timely way.

### **Communications equipment in vehicles**

One of the issues was communications equipment in police motor cycles and vehicles. Part of the new prescriptive approach to urgent duty driving includes the requirement that a pursuit must be terminated when (omitting other parts):

"?...whenever police radio communications are not effective or lost - effective communication includes the giving of regular situation reports;?"

There must be a recognition of the difficulties, even with modern equipment, inherent in managing communications. In this case the two police units primary and secondary (the pursuit car and motorcycle respectively) had technical difficulties with communication (it is also noted that the operator in D24 (Wangaratta) could not hear aspects of important messages coming from the field). The motorcyclist did not hear the instruction to terminate the pursuit - this problem has real potential to affect safety.

It is also noted that the warning siren was not being used in the pursuit car as, in the opinion of the driver, it interferes with the hearing of messages via the police radio (although it was switched on as the vehicle approached other traffic). However, from a risk management point of view one of the core tools to reduce the risk to unsuspecting members of the

public, the siren, is not being used because it interferes with another essential tool (for police) in the safe management of a pursuit - accurate and clear communication. This is an unsatisfactory position for the police officer and the at risk public alike. This is of concern as there are potential situations where other vehicles not on the freeway ( i.e.: on side roads) would not have any warning of the police urgent driving situation as the siren was off.

Also there are safety issues with hand held microphones used by solo drivers in police pursuit cars (see discussion in Repinski).

### ***Recommendation 5***

*The Chief Commissioner ensure that, as far as is practicable, the technical quality of equipment used in police motor vehicles and motorcycles likely to be involved in pursuits is the best available in accordance with modern communications practice. In this regard, a process designed to regularly review available equipment and identifying best (timely) practice in selection is essential.*

*Also the system needs to ensure that problems with equipment (such as the difficulty with using the siren and, at the same time listening to radio communications) are identified and managed in a timely way.*

*There may be certain limits on technical quality of modern equipment which means that delivery of accurate communications between the pursuit vehicle and the communications centre might be compromised. In this event procedures need to be in place to manage this issue before pursuits commence. For example, it is clear there are recognised difficulties communicating with a police motorcyclist - therefore the question should be whether or not the motorcyclist should be involved in pursuits (because of likely communications difficulties and the potential to compromise safety).*

## **What speed is safe - the need for more work on the management of this potentially high risk situation**

Many of the experienced police witnesses who gave evidence in this case were of the view that 200 km/h in a properly set up police pursuit vehicle on a freeway such as the Hume was "Safe." Within the list of issues to be considered in this Inquest is a question - "Recognition of inherent dangers of speeds in order of 200 kph even on best roads such as Hume Freeway."

In taking the view that 200 km/h in the circumstances was safe, police witnesses did not appear to take sufficient account of the uncontrolled nature of a freeway (and the fact that debris, animals and the like may intrude to rapidly change already fast moving circumstances). Clearly a freeway is not the controlled environment of a race track and police vehicles are not equipped with the protective safety equipment fitted to racing sedans that operate to protect a driver in the event of a crash.

In addition, the general approach of police witnesses appeared to be very much based on the focus of the police driver who felt "safe" in all of the circumstances (provided the driver of the pursued vehicle seemed to be handling the vehicle safely [in spite of the speed] there was no real difficulty). In this case the officers in the pursuing vehicle had no knowledge of the actual abilities or ages of those in the car ahead. They made no checks on those in the pursued vehicle during the 14 minute pursuit.

The fact that a number of experienced police officers who were generally involved in the instant case had no difficulty in suggesting that such a speed was safe raises the question as to whether their view is correct or not. Critically, if such a speed was to be independently found not to be safe this may have consequences for some aspects of the police training and resultant understanding of risk assessment. It would also have significant consequences for the management of issues relating to occupational health and safety. It goes without saying that the risk increases with the speed (this States' road safety strategies are predicated on the expedient increased risk of death and serious injury coupled increasing speed). At speeds of up to 200 km/h the risk of death in the event of a collision following loss of control is almost certain.

To find a definitive answer to the question of whether or not (in general terms) the speed of 200 km/h on a freeway such as the Hume is safe in the pursuit situation it may be preferable for independent research work and assessment to be undertaken as part of the Chief Commissioner's new "*Safety First*" approach.

Obviously there are inherent and very serious risks for police (and others) in operating at very high speeds in the pursuit situation. However, there are a wide variety of parameters to consider such as; occupational health and safety, safety of and protective nature (mechanically and in the event of a crash) of the police vehicle, the condition of the roadway, weather, how the other driver is performing, (including the sometimes difficult to ascertain actual skill level of that driver) and nature of the vehicle being driven, etc.

It is understood that police operating at speeds approaching 200 km/h on this particular freeway in the pursuit of offenders is not uncommon.

### ***Recommendation 6***

*That the Chief Commissioner consider (as part of the new focus of Victoria Police on "safety first" in urgent duty driving) engaging independent expert consultants to review the safety of the upper end of operational speeds undertaken in some pursuits on freeways. Such consultants should be independent of the force and have expertise in road and occupational health and safety issues.*

### **The assessment of risk and the "near miss"**

The "*near miss*" incident during the running of a pursuit (whether that involves the police, the offender or a member of the public) provides the opportunity to re-evaluate risk. There is a need to critically re-assess the risk when a "*near miss*" occurs; eg. the incident involving the pursued car and the Mercedes. Had this incident been seen by the pursuing officers as the first example of the offender's driving putting the public at an unacceptable risk the pursuit might also have been abandoned.

The near miss incident needs to be carefully assessed as it may well be a real indicator of what is likely to happen when the pursued vehicle faces the next traffic situation.

Graeme Johnstone  
State Coroner  
29th January 2004

Mr. Tony Brandt for Mrs. Bailey (the mother of Tristram Rich),  
Mr. Gerard McGuire for the Victorian Chief Commissioner of Police,  
Mr. Philip Biggins for the New South Wales Commissioner of Police,  
Mr. Robert Taylor for Constable Love and Senior Constable Murphy,  
Mr. Ron Gipp for Senior Constables McDonald and Jones and Senior Sergeant McCallum,  
Mr. Martin Grinberg for Senior Constables Egan and Pritchard, and  
Mr. Colin Hillman S.C., Assisting the Coroner.

## Appendix A

The Police Rules relating to Vehicle Pursuits are contained in the Victoria Police Manual which were issued on 29th November 1999 (and later updated to 03/06/02). These were the instructions applicable at the time of the pursuit (new Chief Commissioner's Instructions were introduced on 30th June 2003). Below are selected parts of the old instructions.

In the Manual a pursuit is defined as "1.7.1...an attempt by the driver of a police vehicle to intercept another vehicle were the police driver believes on reasonable grounds that the other driver is avoiding interception."

Paragraph 1.7.2 set out the rules relating to "**Pursuit Justification**" and provided that the "Road Rules - Victoria do not apply to the driver of a police vehicle" if:

*\*In the circumstances -  
the driver is taking reasonable care; and  
it is reasonable that the provision should not apply; and*

*\*If the vehicle is a motor vehicle that is moving, the vehicle is displaying a blue or red flashing light or sounding an alarm. This does not apply if, in the circumstances, it is reasonable -  
. not to display the light or sound the alarm, or  
. for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm." <sup>1</sup>*

And 1.7.2.2 provided various "**considerations**":

**General** - a pursuit must only be initiated or continued where:

- \* *It is necessary to undertake the pursuit to perform police duties; and*
- \* *The risk is justified in the circumstances."*

The issue of **Risks** is explained as follows:

**Risks** - *the risks involved must be balanced against the necessity for the pursuit. A pursuit may only be considered when:*

- \* *The pursuit is based on more than mere suspicion;*
- \* *Identifying or apprehending the occupant(s) of the pursued vehicle at a later time is unlikely; and*
- \* *The known circumstances are serious enough to justify a pursuit."*

**Risk assessment** must be considered:

**Risk assessments** - *must be conducted for every pursuit. The following must form part of the assessment:*

- \* *The apparent threat to the safety of any person.*
- \* *The competence of the police driver.*
- \* *The type of police vehicle.*
- \* *Whether the pursuing vehicle is marked and has flashing lights and siren fitted.*

- \* *The manner in which the pursued vehicle is being driven, including speed of both vehicles.*
- \* ***Whether the occupant(s) of the pursued vehicle have been identified.*** (bold added by the Coroner)
- \* *Any other relevant circumstances such as road, weather and traffic conditions.*

*The reasons for and risks involved must be assessed before initiating a pursuit, and be continually reassessed during the pursuit. The mandatory operating principle is "the safety of police, the public and offenders or suspects is paramount".*

Paragraph 1.7.3. provided the rules for "**Conducting a Pursuit**" :

### **1.7.3.3 Use of Warning Equipment**

*For the duration of a pursuit, the driver of any pursuit vehicle must ensure that:*

- \* *Flashing lights and siren are operating, where fitted; or*
- \* *They give the best practicable warning, where flashing lights and siren are not fitted; See also section 1.7.2.1.*

The same note applies as for the earlier section relating the use of the warning siren.

## **1.7.4 CONTROL AND COORDINATION**

### **1.7.4.1 Designation and Responsibilities of Pursuit Controller**

**Allocation** - on becoming aware of a pursuit, a police communications centre operator must immediately ensure that:

- \* A police member within the police communications centre is alerted of the pursuit.
- \* An operational line supervisor (Divisional or District supervisor) is alerted to assume the role of Pursuit Controller. This must not be an occupant of the primary unit.

Where a Divisional or District supervisor is unable to take charge as the Pursuit Controller, a police member at the police communications centre must immediately:

- \* Notify the relevant Divisional Patrol Supervisor.
- \* Take charge and assume control of the pursuit. In such cases an operational line supervisor must take over as Pursuit Controller immediately on being advised of the pursuit.

**Responsibilities** - the Pursuit Controller must:

- \* Take charge of the pursuit and, unless relieved of the duty, remain in charge until the situation is resolved even if the pursuit crosses Regional or Divisional boundaries.
- \* Ensure all police members involved comply with Force policy.
- \* Coordinate and direct assisting units. They should consider limiting the movement of normal traffic.

- \* Assess the justification, criteria, circumstances, and whether an acceptable resolution strategy has been developed.
- \* Maintain constant and effective radio communications.
- \* Constantly appraise the risks by oversighting and monitoring the progress of the pursuit.
- \* Continuously evaluate any risk to safety of police members, the public and offenders or suspects.
- \* Direct that the pursuit be abandoned immediately if it is evident that continuation of the pursuit creates an unacceptable risk to the safety of any person, or is no longer justified.

#### **1.7.4.2 Responsibilities of the Divisional Patrol Supervisor**

##### **Monitoring the pursuit**

- \* Divisional Patrol Supervisors must oversight and monitor the progress of all pursuits initiated within, or which enter, their Division.
- \* Where a pursuit crosses a Divisional or Regional boundary, this responsibility passes to that Division's Divisional Patrol Supervisor. In such cases, responsibility for the pursuit does not transfer until the relieving Divisional Patrol Supervisor advises the police communications centre operator of the handover. If the pursuit concludes prior to the relieving Divisional Patrol Supervisor being notified or accepting responsibility, the relieving Divisional Patrol Supervisor must still be notified, take responsibility and perform the actions required by section 1.7.8.

##### **Giving advice**

- \* The Pursuit Controller is accountable for the operational tactics and resource deployment of police members involved during the pursuit
- \* The Divisional Patrol Supervisor must ensure police members comply with Force policy. This may include advising or directing the Pursuit Controller on any strategies that are proposed or adopted (including abandonment).

**Directing withdrawal from a pursuit** - if the Divisional Patrol Supervisor considers that any police member should cease involvement at any stage of the pursuit due to their conduct, demeanour, competence or other reason, they must direct the member to withdraw from the pursuit immediately.

#### **1.7.4.3 Role of the Police Communications Centre Operator**

The primary role of the police communications centre operator, under the direction of the Pursuit Controller, is to:

- \* Assist in coordinating the police units involved in the pursuit.
- \* Consider positioning other units along the projected course of the pursuit. The need for safety must be emphasised at all times.
- \* Discourage all radio traffic from units not involved in the pursuit.