
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : PHILIP JOHN URQUHART, CORONER
HEARD : 23-25 FEBRUARY 2021 AND 12-13 APRIL 2021
DELIVERED : 21 DECEMBER 2021
FILE NO/S : CORC 162 of 2018
DECEASED : CHILD JP

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Ms R Collins assisted the Coroner

Ms E Langoulant and Ms R Belton (Aboriginal Legal Service) appeared on behalf of the family

Ms S Keighery (23-25 February 2021), Mr J Berson (12-13 April 2021) and Dr C Payne (State Solicitor's Officer) appeared on behalf of the Western Australia Police Force

Case(s) referred to in decision(s):

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

*I, Philip John Urquhart, Coroner, having investigated the death of a male child referred to as **Child JP** with an inquest held at Perth Coroners Court, Central Law Courts, Court 85, 501 Hay Street, Perth, on 23-25 February and 12-13 April 2021, find that the death occurred on 8 February 2018 at Great Eastern Highway, Hovea, from multiple injuries in the following circumstances:*

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SUPPRESSION ORDERS

1. **Suppression of the deceased's name from publication and any evidence likely to lead to the child's identification. The deceased is to be referred to as Child JP.**
2. **That there be no reporting or publication of the details of any of the versions of the WA Police Emergency Driving Policy and Guidelines, including, but not limited to, any cap on the speed at which police officers are authorised to drive.**
3. **That there be no reporting or publication of the details of the WA Police document titled TR-07.16 Automated Vehicle Locator Systems (AVLS).**

INTRODUCTION

- 1 In findings for an inquest in 2013 that involved a police pursuit, the Deputy State Coroner for New South Wales, Magistrate Hugh Dillon, stated:¹

By definition, a police pursuit that results in a fatal motor vehicle accident is a failure: it has not only failed to prevent dangerous driving or deter the commission of a serious offence, it has resulted in the very thing it is intended to avert – death and injury on the roads. A large number of pursuits also fail to apprehend offenders.

The question must be asked therefore when such a dangerous means of law enforcement should be undertaken?

This is an issue on which reasonable, intelligent and well-motivated minds might differ. **But if the solution to a problem is worse or potentially worse than the problem itself, the solution has become part of the problem.** (emphasis added)

- 2 The deceased (Child JP) died on 8 February 2018 at Great Eastern Highway, Hovea, after the car he was driving struck a tree by the side of the verge near Brooking Road (the crash). He was 16 years and 8 months old. At the time of his death, Child JP was being followed by two detectives from the Western Australian

¹ *Inquest into the Death of Hamish Raj*, State Coroner's Court of New South Wales, 7 April 2014, File number 2011/00389491 [78-80]

Police Force (WAPF) in an unmarked police car that had been pursuing the car being driven by Child JP for about 14 kms prior to the crash.

3 Child JP's death was a reportable death within the meaning of section 3 of the *Coroners Act 1996* (WA) (the Act) because it resulted from injury. By reason of section 19(1) of the Act, I have jurisdiction to investigate Child JP's death.

4 The death occurred during a police intercept incident (i.e. a police pursuit). Therefore, pursuant to section 22(1)(b) of the Act, an inquest into Child JP's death was mandatory as it "*appears that the death was caused, or contributed to, by any action of a member of the Police Force*".

5 Section 22(1)(b) of the Act is enlivened when the issue of causation or contribution in relation to the death arises as a question of fact, irrespective of whether there is fault or error on the part of the police officers involved.

6 On the basis that it would be contrary to the public interest, I made suppression orders in respect to any reporting or publication of the details of any versions of the WAPF document titled "*TR-07.04 Police Emergency Driving Policy and Guidelines*" and the details of the WAPF document titled "*TR-07.16 Automated Vehicle Locator Systems*". I also suppressed Child JP's name from publication and any evidence likely to lead to his identification. The terms of these orders are set out on page 3.

7 I held an inquest into the death of Child JP at Perth over the course of five days on 23-25 February and 12-13 April 2021. The following 11 witnesses gave oral evidence:²

- i. Senior Constable Bryan Evans, the driver of the police car involved in the first evade police incident;

² I have used the ranks of the police officers as at 8 February 2018, except for Inspector Hayes, whose cited rank was at the time he gave evidence at the inquest. Senior Constable Ryan was no longer a member of the WAPF at the time of the inquest.

- ii. First Class Constable Michael Ruffell, the driver of the police car involved in the second evade police incident;
- iii. Constable Darren Maher, the passenger in the police car driven by First Class Constable Ruffell;
- iv. Christine Jane Smoothy, an eye-witness to the crash;
- v. Senior Constable Andrew Baker, the police officer who deployed a tyre deflation device (stinger) across the east bound lanes of Great Eastern Highway, Hovea;
- vi. Detective Sergeant Stuart Mansell, the driver of the police car involved in the final evade police incident;
- vii. Detective Senior Constable Mark Andrew Sutton, the passenger in the police car driven by Detective Sergeant Mansell;
- viii. Detective Senior Constable Stephen Wallace, the investigating officer from the WAPF Major Crash Investigation Section;
- ix. Detective Acting Sergeant Ian Zuidema, the author of the WAPF Internal Affairs Unit (IAU) report;
- x. Senior Constable Brendan Ryan, the police officer who obtained CCTV footage relevant to the final evade police incident; and
- xi. Inspector Mick Hayes, an inspector from the WAPF State Traffic Operations.

8 The documentary evidence at the inquest comprised of one volume of the brief that was tendered as exhibit 1 at the commencement of the inquest and a further 11 exhibits (exhibits 2, 4-13) that were tendered during the inquest.³

9 At the conclusion of the inquest, I requested an additional statement from the police officer who was the Police Operations Centre Communications Controller (POCCC) at the time of the three evade police incidents involving the driving of Child JP. By covering letter dated 9 July 2021, Mr Berson, counsel for the WAPF, forwarded a signed typewritten statement dated 2 July 2021 from Inspector Robert Kirby (Inspector Kirby), who was the POCCC for the first two evade police incidents and a signed typewritten statement dated 9 July 2021 from

³ There was no exhibit numbered 3 as those two documents were only marked for identification

Senior Sergeant Stephen Jones (Officer Jones), who was the acting POCCC at the time of the final evade police incident. I have accepted these two statements into evidence.⁴

10 On 8 April 2021, counsel for the interested parties, Counsel Assisting and I visited the location of the crash and the location where the stinger was deployed by Senior Constable Andrew Baker (Officer Baker). The group was escorted by Detective Senior Constable Stephen Wallace (Detective Wallace) from the Major Crash Investigation Section. Counsel Assisting made notes of what was observed and also took eight photographs.⁵

11 My primary function has been to investigate the death of Child JP. It is a fact-finding function. Pursuant to section 25(1)(b) and (c) of the Act, I must find, if possible, how the death of Child JP occurred, and the cause of his death. Given the known circumstances in this matter, those findings can be made without difficulty.

12 Pursuant to section 25(2) of the Act, I may comment on any matter connected to the death of Child JP, including public health or safety, or the administration of justice. This is an ancillary function of a coroner.

13 Section 24(5) of the Act prohibits me from framing a finding or comment in such a way as to appear to determine any civil liability or suggest a person is guilty of an offence. It is not my role to assess the evidence for civil or criminal liability and I am not bound by the rules of evidence.

14 In making my findings, I have applied the standard of proof as set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (Dixon, J), which requires a

⁴ As occurred during the course of the inquest, these statements also use the description “Duty Inspector” to refer to the position of the POCCC. I have used the nomenclature “POCCC” in this finding.

⁵ Exhibit 6, notes and photographs from the site visit at 8 April 2021

consideration of the nature and gravity of the conduct when deciding whether a matter has been proven on the balance of probabilities (the *Briginshaw* principle):⁶

... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony or indirect inferences.

- 15 I am also mindful not to insert hindsight bias into my assessment of the actions taken by police in their dealings with Child JP on 8 February 2018.⁷ The need to adhere to that principle is particularly relevant in this matter as police officers directly involved in the pursuit of a driver who has failed to stop are often required to make quick decisions in an highly adrenalised environment.⁸
- 16 During the course of an inquest, and within the related finding, a coroner is permitted to make findings or comments that are adverse to the interests of an “*interested person*”, which includes a person who, by act or omission, may have caused or contributed to the death. Pursuant to section 44(2) of the Act, before I make any finding adverse to the interests of an interested person, that person must be given the opportunity to present submissions against the making of such a finding.
- 17 During the course of the inquest, I outlined to counsel for the interested parties that the following were particular aspects of the case I would invite submissions to be made: (i) whether there was compliance with the WAPF Emergency Driving Policy and Guidelines (the Policy) during the final evade police incident⁹ and (ii) the

⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361-362 (Dixon J)

⁷ Hindsight bias is the tendency, after the events, to assume the events are more predictable or foreseeable than they really were: Dillon, H & Hadley, M, *The Australasian Coroner's Manual* (2015) 10.

⁸ ts 13.4.21 (Hayes), p.502

⁹ ts, 24.2.21, p.249

adequacy of the IAU investigation into its analysis of the actions of the two detectives involved in the final evade police incident.¹⁰

CHILD JP¹¹

- 18 Child JP was born on 8 June 2001. He was the second of two sons to his mother and father. His father left the family shortly after Child JP was born and he had very little contact with his wife and sons from then on.
- 19 Due to his mother's itinerant lifestyle, Child JP attended a number of primary schools. He also attended several high schools, before he stopped going to school when he was 15 years old. However, he had plans to attend TAFE and complete his high school certificate, following which he would enter an apprenticeship as a chef or a boilermaker. At the time of his death, Child JP was working as an amusement ride operator.
- 20 From January 2015, Child JP lived with his aunt and her family. This environment provided Child JP with some much-needed stability, something that had been lacking in his life up until then and afforded him the opportunity to gain confidence and work towards the future he planned.
- 21 Child JP enjoyed being with his family and friends. He liked motorbike riding, swimming, watching movies and fishing. He also enjoyed cooking for his relatives and friends.
- 22 Despite the many setbacks he had experienced earlier in his life, Child JP had formed close connections with his family and friends. He had also developed a very close relationship with his girlfriend, and they had made plans to work and travel together.

¹⁰ ts, 13.4.21, p.525

¹¹ Exhibit 1, Volume 1, Tab 69, WAPF Victimology Information Form

THE EVENTS OF 8 FEBRUARY 2018

The occupants of the car driven by Child JP

- 23 Late in the afternoon of Thursday, 8 February 2018, Child JP was driving a 1999 model Nissan Pulsar (the Nissan). There were two others in the Nissan: Child JP's girlfriend, who was seated in the front passenger seat and a 16-year-old male friend, who was seated behind the driver's seat.
- 24 The Nissan had been bought by Child JP's girlfriend from a female friend on 2 February 2018.¹² As at 8 February 2018, the Nissan had not been transferred into the name of Child JP's girlfriend due to issues with the Notification of Change of Ownership documentation regarding a previous sale of the Nissan.¹³
- 25 Although Child JP's girlfriend had bought the Nissan, neither she nor Child JP held a valid driver's licence. Child JP did not even have a learner's permit.

*The first evade police incident*¹⁴

- 26 At about 5.30 pm on 8 February 2018, Senior Constable Bryan Evans (Officer Evans) was driving a marked police car with the call sign GL101 (GL101). First Class Constable Matthew Sheridan (Officer Sheridan) was in the front passenger seat of GL101 and he was responsible for operating the car's police radio communications system (VKI). Both these police officers were based at Kiara Police Station.

¹² Although the statement of Child JP's girlfriend says that the Nissan was bought on 2 January 2018 (Exhibit 1, Volume 1, Tab 29, Statement of Child JP's girlfriend dated 22 February 2018, p.1), the statement of the previous owner says it was 2 February 2018: Exhibit 1, Volume 1, Tab 29, Statement of Nirvana Osborne dated 23 February 2018, p.3.

¹³ Exhibit 1, Volume 1, Tab 14, Statement of Child JP's girlfriend dated 22 February 2018, p.1

¹⁴ Exhibit 1, Volume 1, Tab 39, Memorandum of Senior Constable Evans dated 21 February 2018; Exhibit 1, Volume 1, Tab 40, Memorandum of First Class Constable Sheridan (undated); Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018

- 27 As Officer Evans drove GL101 along Bottlebrush Drive, Kiara, both officers observed the Nissan drive east on Morley Drive at an estimated speed of 90 km per hour, in a posted 70 km per hour speed zone.
- 28 Officer Evans drove onto Morley Drive and pulled in behind the Nissan. When the emergency lights of GL101 were activated, Child JP slowed the Nissan down but did not stop. He then accelerated and turned left and drove north on Altone Road. As Officer Evans followed the Nissan, he activated the siren, in addition to the emergency lights. Officer Sheridan provided the necessary details to VKI, including the Nissan's registration details.
- 29 Child JP drove towards the intersection of Altone Road and Benara Road, which is controlled by traffic lights. He stopped the Nissan in the right turn lane at a red traffic light. However, once all the other cars at the intersection stopped (presumably due to the activated emergency lights and siren of GL101), Child JP drove the Nissan through the intersection contrary to the red traffic light and continued north on Altone Road. GL101 continued to follow.
- 30 At about this time, communications through VKI from the WAPF Perth Operations Centre (POC) conveyed the information that the Nissan was registered in the name of a previous owner of the Nissan. The POC also communicated through VKI that the Nissan was believed to be driven by a man, who had "*multiple revocations*" and was wanted by police for questioning.¹⁵ As GL101 was driving on Altone Road, the two police officers were authorised via VKI to engage in a priority pursuit of the Nissan. As it drove along Altone Road, the Nissan accelerated to a speed of about 130 km per hour. GL101 maintained a similar speed.
- 31 At the intersection of Reid Highway, the Nissan turned left at a Give Way sign, and drove west onto Reid Highway. When west bound traffic on Reid Highway became

¹⁵ This man was 31 years old at the time: Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.9

stationary due to some road works, the Nissan completed a U-turn over a gravel median strip and turned north back onto Altone Road. Officer Evans continued to follow the Nissan.

32 The Nissan drove at about 60-70 km per hour along Altone Road before it turned right onto Marshall Road and began driving east. On Marshall Road, the Nissan reached a speed of about 100 km per hour in a posted 80 km per hour zone. GL101 travelled at about 130 km per hour to close the gap between it and the Nissan.

33 As the Nissan approached the intersection of Lord Street, which is controlled by a roundabout, the east bound traffic on Marshall Road was heavily banked up. The Nissan then drove onto the incorrect side of Marshall Road and continued to drive towards Lord Street. When Officer Sheridan passed that information onto POC through VKI, GL101 was advised to terminate the pursuit. Although Officer Evans had followed the Nissan onto the incorrect side of the road for a short distance, when he was told to terminate the pursuit, he drove GL101 back to the correct side of the road.¹⁶ The Nissan turned right at the roundabout (on the incorrect side of the road¹⁷) and drove south on Lord Street towards Reid Highway. GL101 had no further involvement with the Nissan.

*The second evade police incident*¹⁸

34 At about 5.30 pm on 8 February 2018, First Class Constable Michael Ruffell (Officer Ruffell) was the driver of a marked police car with the call sign GE120 (GE120). With him was Constable Darren Maher (Officer Maher), who was the front seat passenger and, therefore, was responsible for radio communications. These two police officers were based at Midland Police Station. They were aware

¹⁶ Exhibit 1, Volume 1, Tab 18, Dash cam footage from the car driven by Vance De Jager

¹⁷ Exhibit 1, Volume 1, Tab 17, Statement of Vance De Jager dated 9 February 2018; Exhibit 1, Volume 1, Tab 18, Dash cam footage from the car driven by Vance De Jager

¹⁸ Exhibit 1, Volume 1, Tab 41, Memorandum of First Constable Ruffell dated 27 February 2018; Exhibit 1, Volume 1, Tab 42, Memorandum of Constable Maher dated 27 February 2018; Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018

of the VKI communications regarding the first evade police incident and that it had been terminated.

35 As these two police officers knew the Nissan had been sighted travelling towards Reid Highway, Officer Ruffell decided to position GE120 in an 'Emergency Vehicle U-turn' area on the centre median strip of Reid Highway near Bandyup Prison in case the Nissan came in that direction.

36 At 5.42 pm, the two police officers observed the Nissan drive past on Reid Highway travelling east. They were able to observe there were three occupants inside the Nissan; a male driver, a female in the front passenger seat and a male in the rear passenger seat behind the driver. It was travelling at the same speed as other cars. Officer Ruffell drove onto Reid Highway behind the Nissan and activated the emergency lights and siren of GE120.

37 The Nissan did not stop. Instead, it accelerated, changing lanes on two occasions to pass other cars. Officer Maher provided some details of their location over VKI.

38 After about 1.4 km, the Nissan and GE120 slowed down behind other cars that had stopped at the intersection of Reid Highway and Great Northern Highway due to a red traffic light. Officer Ruffell was able to manoeuvre GE120 so that it was positioned on the right-hand side of the Nissan.

39 Once GE120 had stopped, Officer Maher got out and opened the driver's door of the Nissan in order to grab the key from the ignition. As he attempted to do that, the cars in front of the Nissan began to move. Child JP then drove the Nissan forward, causing Officer Maher to let go of the driver's door. As Child JP began to drive the Nissan through a small gap between two cars, the front driver's side of the Nissan made contact with the left-hand side of one of the other cars. Once clear, he then turned right at the traffic lights and drove south on Great Northern Highway.

40 Due to the collision between the Nissan and the other car, Officer Ruffell terminated his pursuit of the Nissan. He and Officer Maher attended to the driver of the car that had been struck. That driver was not injured.

41 Officer Ruffell advised POC via VKI of the minor incident and that the Nissan was now travelling south on Great Northern Highway. GE120 had no further involvement with the Nissan.

*The final evade police incident*¹⁹

42 On the afternoon of 8 February 2018, Detective Sergeant Stuart Mansell (Detective Mansell) and Detective Senior Constable Mark Sutton (Detective Sutton) were at Midland Detectives Office attending to administrative duties.

43 At about 5.40 pm, they overheard the VKI radio communications relating to the Nissan's failure to stop. The two detectives stopped their administrative duties and left the office in an unmarked police car with the call sign GM411 (GM411). Their intention was to attempt to intercept the Nissan. Detective Mansell drove GM411 and Detective Sutton was in the front passenger seat of the vehicle and had the responsibility of communicating over VKI.

44 As they had overheard the Nissan had been seen by police at the intersection of Great Northern Highway and Reid Highway in Middle Swan, the two detectives decided to drive north from Midland along Great Northern Highway.

45 After not seeing the Nissan, they turned right from Great Northern Highway onto Toodyay Road and drove east towards Roe Highway. At about 5.45 pm, as they

¹⁹ Exhibit 1, Volume 1, Tab 32, Statement of Detective Sergeant Stuart Mansell dated 19 February 2018; Exhibit 1, Volume 1, Tab 33, Statement of Detective Senior Constable Mark Sutton dated 21 February 2018; Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018; Exhibit 1, Volume 1, Tab 14, Statement of Child JP's girlfriend dated 22 February 2018; Exhibit 1, Volume 1, Tab 15, Statement of Christine Smoothy dated 8 February 2018; Exhibit 1, Volume 1, Tab 24, Statement of Brittany Hin dated 22 February 2018; Exhibit 1, Volume 1, Tab 26, Statement of Janice Rhodes dated 22 February 2018; Exhibit 1, Volume 1, Tab 56, Major Crash Investigation Section: Initial Collision Assessment Report dated 12 February 2018

approached the intersection of Roe Highway, they saw the Nissan stopped at a red traffic light in the right turning lane. Detective Mansell pulled up behind the Nissan and Detective Sutton confirmed through VKI that they had correctly identified the Nissan.

46 As the traffic light turned green, the Nissan drove south onto Roe Highway. GM411 followed the Nissan and when it began to speed up and move through traffic, Detective Mansell concluded the driver must have recognised that, despite being unmarked, GM411 was a police car. The emergency lights and siren of GM411 were then activated, however the Nissan did not stop and began to pass other cars at a speed of about 120 km per hour. The posted speed limit was 90 km per hour.

47 The Nissan continued to drive south along Roe Highway before it drove onto the off ramp for Great Eastern Highway. It then turned left onto Great Eastern Highway, so that it was now travelling east. GM411 continued to follow the Nissan.

48 At about 5.48 pm, as the Nissan approached the intersection of Great Eastern Highway and Farrall Road (which was controlled by traffic lights), it cut across two lanes of traffic and drove through the forecourt of a Caltex service station (the Caltex forecourt). Detective Mansell followed the same route of the Nissan, a short distance behind.

49 The Nissan drove through a vacant block next to the Caltex service station. The Nissan then turned right onto Farrall Road, driving on the incorrect side of the road. It remained on the incorrect side of the road before turning left back onto Great Eastern Highway, contrary to a red traffic light facing cars on Farrall Road. Detective Mansell continued to follow the Nissan and he also drove GM411 on the incorrect side of Farrall Road and entered Great Eastern Highway against the red traffic light.

- 50 At about 5.49 pm, as GM411 continued to follow the Nissan east along Great Eastern Highway, authorisation was given via VKI for the two detectives to proceed with an evade police intercept.
- 51 The pursuit of the Nissan by GM411 continued for about another 10 km and lasted for approximately another five minutes. During that time the Nissan travelled at speeds of up to 130-140 km per hour in an area where the posted speed limit was 80 km per hour. It also overtook a number of cars, drove past a Multanova camera at 5.53 pm located on Great Eastern Highway, Hovea, near Park Road, at a registered speed of 128 km per hour, and then avoided a stinger which had been placed across the east bound lanes of Great Eastern Highway, near Bailey Road in Hovea. This avoidance was done by Child JP driving the Nissan onto the gravel verge at an estimated speed of 70-80 km per hour. Detective Mansell drove GM411 around the stinger in the same manner and followed the Nissan, which had accelerated after it had avoided the stinger. In order to catch up with the Nissan, Detective Mansell drove at a speed in the vicinity of 150 km per hour.
- 52 In his efforts to get away from GM411, Child JP then drove between two cars that were in both lanes of the dual carriageway of Great Eastern Highway.
- 53 Shortly after that overtaking manoeuvre, and at about 5.54 pm, Child JP began overtaking another car which was in the right-hand lane and travelling at about 80 km per hour. As there was another car in the left-hand lane, Child JP drove the Nissan onto the gravel verge on the right-hand side of the car he was overtaking. As the Nissan overtook this car, it suddenly turned sharply to the left, and back onto the road from the verge. At this stage, Child JP lost control of the Nissan. It slid sideways across both lanes before it entered the gravel verge on the left-hand side of the road. The front of the Nissan struck one tree and then collided with a

larger tree. The point of impact with the second tree was to the right-hand “B” pillar of the Nissan.²⁰

54 Almost simultaneously with the crash, the POC had advised over VKI that the pursuit of the Nissan by GM411 was to be terminated due to there being no resolution strategy in place following the Nissan’s avoidance of the stinger. Detective Mansell had already begun decelerating when he saw the Nissan drive onto the gravel verge to overtake the car as he considered that action to be dangerous.

55 Both detectives witnessed the crash and Detective Sutton immediately advised the POC that ambulance and fire brigade services were urgently required. Detective Mansell pulled over to the side of Great Eastern Highway and both detectives attended the crash scene to assist the Nissan’s occupants.

56 Although he was wearing a seatbelt, Child JP died at the scene. Given the speed of the Nissan when it crashed and the extent of Child JP’s injuries, it was most likely he died on impact. Child JP was later certified life extinct by an attending paramedic.²¹ The two passengers in the Nissan received serious injuries. Child JP’s girlfriend was airlifted by helicopter to hospital and the other passenger remained trapped in the Nissan for some hours before being extricated by emergency services.

²⁰ The vertical roof support pillar located in a car’s midsection.

²¹ Exhibit 1, Volume 1, Tab 4, Life Extinct Certification dated 8 February 2018

CAUSE AND MANNER OF DEATH

*Cause of death*²²

- 57 Dr Clive Cooke, a forensic pathologist, conducted a post mortem examination on Child JP's body on 13 February 2018.
- 58 That examination showed that Child JP had sustained severe and widespread injuries. He had fractures to his skull and fractures to his spine at the top of his neck and in his lumbar region. There were also fractures to his ribs, pelvis and both legs. There was also bruising with some lacerations to parts of Child JP's brain, lungs, heart, liver, spleen and urinary bladder.
- 59 Toxicological analysis of Child JP's post mortem blood samples detected tetrahydrocannabinol at a level of 17 ug/L, which was consistent with recent cannabis use. Paracetamol, pseudoephedrine and chlorpheniramine were also detected at levels consistent with Child JP having taken medication for the flu he had at the time.²³ No alcohol or other drugs were detected.
- 60 At the conclusion of his examination, Dr Cooke was of the view that Child JP had died from multiple injuries.
- 61 I accept and adopt the conclusion expressed by the forensic pathologist that the cause of Child JP's death was multiple injuries.

Manner of death

- 62 Shortly prior to the crash, Child JP's girlfriend had been talking to a friend of Child JP (the friend) on a mobile phone that belonged to Child JP. Just before the

²² Exhibit 1, Volume 1, Tab 7, Post Mortem Report of Child JP by Dr Clive Cooke dated 13 February 2018; Exhibit 1, Volume 1, Tab 8, Toxicology Report for Child JP dated 28 March 2018

²³ Exhibit 1, Volume 1, Tab 69, WAPF Victimology Information Form, p.4

friend heard the sound of the crash through his mobile phone, he heard Child JP's girlfriend say, "*Bub, look out for the pole.*"²⁴

- 63 A scaled plan of the crash scene displayed as an aerial view (the plan) was prepared by a police officer from the WAPF Forensic Surveying Unit.²⁵ The plan shows the tyre marks of the Nissan as it drove on the right-hand side gravel verge and then the direction of the Nissan as it veered across the two east bound lanes of Great Eastern Highway and crashed into the two trees on the left-hand side gravel verge. The plan also depicts the location of a broken guide post on the right-hand side gravel verge that was in the path of the Nissan as it drove along the gravel verge. Following the crash, red marks similar to the paint colour of the Nissan were visible on the side of the guide post facing the direction of the Nissan.²⁶ Just after the broken guide post, the tyre marks of the Nissan begin to veer left onto the road.²⁷
- 64 In addition, the plan shows a larger diamond-shaped road sign on the gravel verge with a pictorial representation of a left-hand curve of a road with an intersection ahead.²⁸ Below the sign is a smaller rectangular sign with the words "*Brooking Rd*". This road sign is about 55 metres further east from the guide post. The tyre marks from the Nissan as it re-enters Great Eastern Highway is about 30 metres from this road sign.²⁹ A car travelling at 120 km per hour will cover the distance of 30 metres

²⁴ Exhibit 1, Volume 1, Tab 16, Statement of Child JP's friend dated 23 February 2018

²⁵ Exhibit 1, Volume 1, Tab 44, Statement of Senior Constable Corey Dibello dated 13 March 2018; Exhibit 1, Volume 1, Tab 61, Scaled Plan prepared by Senior Constable Dibello

²⁶ See photographs marked PJW_8441 and PJW_8442 taken of the crash scene by Senior Constable Paul Woolsey, Major Crash Investigation Section, on 8 February 2018

²⁷ Exhibit 1, Volume 1, Tab 65, Preliminary Crash Investigation Form 07.17 dated 19 February 2018, Photo 6 described as "*75 m west of final resting location looking east*". As this photograph was taken on 19 February 2018, the broken guide post seems to have been repaired. See also photograph marked PJW_8438 taken of the crash scene by Senior Constable Paul Woolsey, Major Crash Investigation Section, on 8 February 2018.

²⁸ Exhibit 1, Volume 1, Tab 61, Scaled Plan prepared by Senior Constable Dibello

²⁹ Exhibit 1, Volume 1, Tab 65, Preliminary Crash Investigation Form 07.17 dated 19 February 2018, Photo 9 described as "*30 m west of final resting location looking east*"; Exhibit 1, Volume 1, Tab 61, Scaled Plan prepared by Senior Constable Dibello

in less than one second. It was this road sign that the driver of the overtaken car surmised was the reason why the Nissan suddenly turned left back onto the road.³⁰

65 I find that Child JP undertook a dangerous overtaking manoeuvre of another car, at a speed well in excess of the posted speed limit of 80 km per hour, by driving onto the right-hand side gravel verge of Great Eastern Highway, just before the intersection of Brooking Road in Hovea. He did so in order to evade GM411, which was still actively and visibly pursuing him at the time he made that manoeuvre. I also find that just after overtaking the other car, Child JP made a sudden turn to the left to get back onto the road from the gravel verge. It would seem his reason for making that very risky manoeuvre was to avoid hitting either the guide post or the road sign (or both) that were on the gravel verge. As he got back onto the road, Child JP lost control of the Nissan, and it crashed into two trees that were on the other side of the road. Child JP was fatally injured in the crash.

66 Accordingly, I find that Child JP's death occurred by way of accident.

THE CANNABIS IN CHILD JP'S SYSTEM

67 As already referred to, Child JP had tetrahydrocannabinol in his post mortem blood samples at a level of 17 ug/L. The report prepared by Detective Wallace from the Major Crash Investigation Section concluded that the crash, "*occurred as a result of speed, drug impairment and driving inexperience.*"³¹ During his evidence at the inquest, Detective Wallace clarified that his conclusion drug impairment was a contributing factor to the crash was due to reports he had read in other investigations that said a level of tetrahydrocannabinol of 17 ug/L was above the equivalent of a blood alcohol level for DUI (driving under the influence).³²

³⁰ ts 23.2.21 (Smoothy), p.93

³¹ Exhibit 1, Volume 1, Tab 9, Report of Detective Senior Constable Wallace dated 1 May 2018, p.12

³² ts 12.4.21 (Wallace), p.353

68 A physician in clinical pharmacology and toxicology did not prepare a report with respect to the level of tetrahydrocannabinol found in Child JP's system.³³

69 I am aware from evidence provided by expert witnesses in other coronial matters as to the adverse effects of cannabis intoxication. I am able to find from this evidence that cannabis intoxication can manifest itself in a number of ways. These include impaired judgement, impaired capacity for understanding and thinking out situations (impaired cognitive capacity) and loss of natural caution and self-restraint. With respect to a report prepared for another inquest where the tetrahydrocannabinol levels were 8.8 ug/L and 18 ug/L in two adolescents similar in age to Child JP, Professor David Joyce stated,³⁴

The impairments of judgement, self-restraint and cognitive function are most relevant to a cannabis user's decision to participate in an imprudent activity. Impairments to coordination, speed of response and cognitive function degrade performance in any activity that requires coordinated, focussed, and appropriate physical activity in response to a challenge.

70 I am of the view that these observations would have application to Child JP's decision to drive the Nissan in a dangerous manner to avoid police and also to potentially affect his ability to drive the car. A tetrahydrocannabinol level of 17 ug/L would suggest that cannabis intoxication was most likely to have had some effect on Child JP during the time of the three evade police incidents.

71 Accordingly, I am able to find that the effect of the cannabis that Child JP had consumed was very likely to have influenced his decision not to stop for police. However, I do note that there did not appear to be any significant impairment to his coordination. I have formed that view given his manner of driving. The only time Child JP lost control of the Nissan during the three evade police incidents was when he was faced with the one, or potentially more, unanticipated obstacles that were

³³ ts 12.4.21 (Wallace), p.353

³⁴ *Inquest into the deaths of Master Simpson and Master Drage*, [2021] WACOR 36, p.42

in his path as he overtook a car just before the crash. Prior to that, his ability to drive the Nissan in the manner he did so did not suggest any impairment. I note Child JP's driving as observed by the detectives involved in the final evade police incident did not, in their opinions, suggest he was affected by drugs.³⁵

- 72 For those reasons, I find that the most notable contributions to Child JP's death was his motivation to avoid apprehension by police and the excessive speeds he drove and dangerous manoeuvres he undertook to achieve that objective.

THE ROLE OF POLICE OPERATIONS CENTRE COMMUNICATIONS CONTROLLER

- 73 If police officers try to pull over a car driven by a member of the public and the driver fails to stop, the matter becomes an evade police incident. Only appropriately qualified police officers, in specified police cars, are able to participate in an evade police incident. The three drivers involved in the evade police incidents with the Nissan were all appropriately qualified drivers and were all driving the specified police cars for intercept driving.
- 74 The conduct of police officers involved in an evade police incident is governed by the Policy. The relevant version of the Policy for this matter was dated 30 November 2016.³⁶
- 75 Once an evade police incident occurs, the decision-making of the individual police officers involved extends to include specially trained staff at the POC. These staff, with oversight from the POCCC, coordinate the police response, which includes the organising of additional resources to assist in resolving the incident if required.

³⁵ ts 24.2.21 (Mansell), p.221; ts 12.4.21 (Sutton), p.317

³⁶ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines

76 In retaining the oversight function of an evade police incident, the POCCC can instruct that it be terminated at any stage.

77 The Policy sets out a range of factors that impact upon the ongoing risk assessment which must be taken into account by police involved in the evade police incident, including the POCCC. These factors govern the decision by police to engage in the incident and continue for the entire period of the driving.

78 Once a matter becomes an evade police incident, the Policy specifies the conditions to be met, [REDACTED]

79 The providing of ongoing situation reports during an evade police incident is of critical importance. As explained by Inspector Mick Hayes:³⁷

The reason for communicating that outside the vehicle is to take away that subjectivity [and] to have a person who's not intimately engaged in the vehicle at the time. Normal human response is your adrenaline levels will be elevated, you become tunnel visioned in situations of high risk. So talking to POCCC, the VKI duty inspector, and have a third party review that's part of then a consistent risk assessment, not just purely as subjective as I [the driver] might be a daredevil; my partner might be. But that's also why everybody involved in it has the capacity to call it to an end or cease it or terminate it.

80 The existence of the Policy and the requirement for an ongoing risk assessment is so that police officers, "*conduct ourselves in a manner which doesn't put anybody else at any greater risk than is required to achieve an outcome*".³⁸

81 The primary consideration for this inquest was to determine if the response by police to the manner in which Child JP drove the Nissan on 8 February 2018 was appropriate and in accordance with the Policy.

³⁷ ts 13.4.21 (Hayes), p.479

³⁸ ts 13.4.21 (Hayes), p.479

ISSUES RAISED BY THE EVIDENCE

The first evade police incident

- 82 I am satisfied that Officers Evans and Sheridan complied with the Policy at all relevant times in their dealings with the Nissan.
- 83 The length of time from Officer Sheridan's first communication over VKI to the time when the instruction from POC to terminate the evade police incident was just over four minutes.³⁹
- 84 Officer Sheridan provided an appropriate initial situation report, which enabled the POCCC to properly consider the risk assessment before authorising GL101 to engage in a priority pursuit. Thereafter, Officer Sheridan's updates were timely, including the critical information that Child JP had commenced driving the Nissan on the incorrect side of the road. The dashcam footage from a nearby car confirmed that Officer Evans' driving of GL101 at this time was in a manner that complied with the Policy and with the instructions from the POC.⁴⁰
- 85 The speeds of GL101 provided by Officer Sheridan to the POC through VKI were consistent with the speeds of GL101 recorded on the Automated Resource Locator (ARL)⁴¹ data for that police car.⁴² None of the speeds recorded exceeded the speed cap set out in the Policy.

³⁹ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.11

⁴⁰ Exhibit 1, Volume 1, Tab 18, Dash cam footage from the car driven by Vance De Jager; Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018

⁴¹ Also known as "AVL", for the balance of the finding I will refer to this data as "AVL data".

⁴² Exhibit 1, Volume 1, Tab 68, AVL Data dated 8 February 2018

The second evade police incident

- 86 The duration of this evade police incident by GE120 from the time that Officer Maher notified POC via VKI that they had sighted the Nissan, to when Officer Ruffell advised the Nissan had hit the side of another car, was about one minute.⁴³
- 87 An examination of the VKI recordings regarding the situation report provided by Officer Maher indicated he had not conveyed sufficient information to ensure compliance with the Policy.⁴⁴ However, there were explanations for this:
- 88 First, GE120 was only involved with the Nissan for a very short period of time. Secondly, Officer Maher was a probationary constable, and was only three months into his 12-month probationary period at the time.⁴⁵ Thirdly, this was the first evade police incident he had been involved in.⁴⁶
- 89 In those circumstances, I am satisfied there are reasonable explanations for Officer Maher not providing some of the details required by the Policy when he gave his situation report via VKI.
- 90 The relevant AVL data extract for GE120 indicated that Officer Ruffell drove GE120 at speeds underneath the cap imposed by the Policy.⁴⁷
- 91 I am therefore satisfied that Officers Ruffell and Maher adequately complied with the provisions of the Policy during the short period they were involved with the Nissan. Their actions in terminating the evade police incident on their own volition, following the Nissan's contact with the other car at the intersection of Reid Highway and Great Northern Highway, was appropriate.

⁴³ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, pp. 19-20

⁴⁴ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018; Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.836

⁴⁵ ts 23.2.21 (Maher), p.67

⁴⁶ ts 23.2.21 (Maher), p.71

⁴⁷ Exhibit 1, Volume 1, Tab 68, AVL Data dated 8 February 2018

Alleged ramming of the Nissan by GE120

92 In her statement to police, Child JP's girlfriend alleged that GE120 rammed the rear driver's side of the Nissan when it was stationary at the intersection of Reid Highway and Great Northern Highway.⁴⁸ In contrast, the two police officers in GE120 maintained that the only contact involving the two cars occurred when Officer Maher open the front passenger door of GE120, "*causing it to hit near the right rear quarter panel of the Pulsar*".⁴⁹

93 Based on the evidence before me, I am satisfied that the two cars only made slight contact and did so in the manner described by the two police officers. A subsequent examination of GE120 showed only small scrape-like damage to the edge of the front passenger door. The colour of this scrape was very similar to the red colour of the Nissan and was entirely consistent with the transference of paint from the Nissan following minor contact with the door, rather than a "*ram*" as described by Child JP's girlfriend.⁵⁰

94 I am prepared to accept that the noise made by this contact may have given Child JP's girlfriend the impression that it was more forceful than it actually was.

The suspected driver of the Nissan was not Child JP

95 As already referred to, during the first evade police incident, the POC had advised over VKI that the Nissan was believed to be driven by a 31-year-old man who was wanted for questioning. This was at about 5.35pm.⁵¹

96 This man was wanted for two matters at the time; a stealing matter, which was an apparent shoplifting, and a family violence matter. These matters were alleged to

⁴⁸ Exhibit 1, Volume 1, Tab 14, Statement of Child JP's girlfriend dated 22 February 2018, p.3

⁴⁹ Exhibit 1, Volume 1, Tab 42, Memorandum of Constable Maher dated 27 February 2018, p.2; see also Exhibit 1, Volume 1, Tab 41, Memorandum of First Class Constable Ruffell dated 27 February 2018, p.2

⁵⁰ Exhibit 1, Volume 1, Tab 62, Photographs of GE120 numbered 1-7

⁵¹ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.11

have taken place in January 2018 and were still active as at 8 February 2018.⁵² The man was later charged for the stealing matter, and although he was arrested for the more serious family violence matter,⁵³ he was not charged.⁵⁴ The text of the Police Incident Report regarding the family violence matter linked the man to the possession of the Nissan.

- 97 The alert category for this man was graded "*Very High*".⁵⁵ Of course, he was not the driver of the Nissan on 8 February 2018, nor was he even a passenger. The question arises as to whether those police officers involved in the evade police incidents ought to have been aware that the driver of the Nissan was not the much older male who was wanted for questioning.
- 98 During the first evade police incident, Officer Sheridan advised the POC that the driver of the Nissan "*looks like a young male driver.*"⁵⁶ The IMS⁵⁷ alert for the Nissan that was available on the computer screen in GL101 had the date of birth details for the suspected driver.⁵⁸ Officer Evans agreed that the actual driver of the Nissan did not look to be aged in his early thirties.⁵⁹
- 99 Of all the police officers involved in the three evade police incidents, Officer Maher had the best opportunity to determine Child JP's age during the second evade police incident. Although Officer Maher did not think Child JP looked like a child, he did say that he appeared to be "*around 18*".⁶⁰ Officer Maher however, did not update VKI as to his assessment of the age of the Nissan driver.⁶¹ His explanation for failing to do so was because of the duties he had to perform after the Nissan drove

⁵² Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, pp.9-10

⁵³ Which allegedly involved the man threatening his partner to get into his car and take her from her home.

⁵⁴ This was because the complainant refused to provide a statement and the man made no admissions to police; Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.9

⁵⁵ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.9

⁵⁶ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018, p.2

⁵⁷ Integrated Management System

⁵⁸ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.9; ts 23.2.21 (Evans), p.17

⁵⁹ ts 23.2.21 (Evans), p.15

⁶⁰ ts 23.2.21 (Maher), p.78

⁶¹ ts 23.2.21 (Maher), p.78

away, including negotiating traffic around the car that the Nissan had damaged.⁶² However, he agreed that, with the benefit of hindsight, he should have informed the POC shortly after completing those duties that the Nissan driver appeared to around 18 years old.⁶³

100 Given the contents of the Policy,⁶⁴ I find that Officer Maher should have advised the POC of his estimate of Child JP's age. It was relevant information regarding the ongoing risk assessments should another evade police incident occur. However, I am satisfied of his explanations for his failure to do so. I also take into account his relative inexperience at the time.

101 Even though Child JP was only 16 years old, I also make no criticism of Officer Maher's estimate of Child JP as being "*around 18*". Child JP had a moustache, which I find did make him look older than 16.⁶⁵ His height (174 cm) and weight (85 kg) may also have given the impression he was older than he actually was.⁶⁶

102 As to the final evade police incident, I accept that neither Detective Mansell nor Detective Sutton had the opportunity to make a visual assessment of Child JP's age during the incident. I also accept they did not hear Officer Sheridan's description that Child JP "*looks like a young male driver*".⁶⁷ In those circumstances, I accept that Detective Mansell and Detective Sutton were entitled to assume that there was a likelihood the driver of the Nissan was the man wanted for questioning.

103 Detective Mansell also recalled that the alert for the suspect driver of the Nissan referred to weapons, which he believed included firearms.⁶⁸ Detective Mansell's

⁶² ts 23.2.21 (Maher), pp.78-79

⁶³ ts 23.2.21 (Maher), p.85

⁶⁴ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832 and p.837

⁶⁵ Exhibit 12B, Photograph of Child JP taken on 7 February 2018.

⁶⁶ These measurements were taken at Child JP's post mortem examination: Exhibit 1, Volume 1, Tab 7, Post Mortem Report of Child JP by Dr Clive Cooke, dated 13 February 2018, p.2

⁶⁷ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2019, p.2

⁶⁸ ts 24.2.21 (Mansell), p.130; Exhibit 1, Volume 1, Tab 32, Statement of Detective Sergeant Mansell, dated 19 February 2018, p.2

recollection is correct in that regard as the suspected driver did have an entry on the IMS alert screen (that was created on 5 January 2018) advising that this individual *“was in possession of a pistol on 8 February 2016 and believed to be in possession of another pistol.”*⁶⁹

104 At the inquest, Detective Mansell agreed that the information regarding the firearms and the domestic violence matters persuaded him to become involved as, *“they appeared to be on the face of it quite serious offences.”*⁷⁰ Detective Mansell then volunteered that this information, *“definitely had a bearing on the whole situation for sure.”*⁷¹ When he was later asked whether the high alert on the suspected driver was in the forefront of his mind, Detective Mansell answered, *“It was a big consideration, yes.”*⁷²

105 I am therefore able to find that, at about 5.40 pm, Detective Mansell left the administrative duties he was performing at Midland Detectives Office with the mindset of becoming involved in the apprehension of a man wanted for at least one serious offence, who was failing to stop for police. That is the most likely explanation for the way in which Detective Mansell and his partner, Detective Sutton, subsequently behaved during the final evade police incident. They were to become relentless in their pursuit, not of a man with a police alert listed as *“very high”*, but of a 16-year-old boy who was too scared to stop because he did not have a driver’s licence and did not want a car he and his girlfriend had just purchased to be impounded.⁷³

⁶⁹ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2018, p.10

⁷⁰ ts 24.2.21 (Mansell), p.132

⁷¹ ts 24.2.21 (Mansell), p.132

⁷² ts 24.2.21 (Mansell), p. 229

⁷³ Exhibit 1, Volume 1, Tab 14, Statement of Child JP’s girlfriend dated 22 February 2018, pp. 8-9

Did GM411 require authorisation before engaging in the final evade police incident?

- 106 The question arose at the inquest whether Detective Mansell and Detective Sutton were required to obtain authorisation from the POCCC before they engaged in their evade police intercept driving. Inspector Hayes was of the view that authorisation was required before GM411 engaged with the Nissan.⁷⁴
- 107 On the other hand, Inspector Kirby, who was the POCCC on 8 February 2018, was of the view that authorisation was not required.⁷⁵
- 108 The wording of the relevant provision of the Policy at the time was somewhat ambiguous.⁷⁶
- 109 That provision was amended in April 2019 so that it now more accurately captures the intent of the Policy with respect to this particular matter.⁷⁷
- 110 Accordingly, I do not find that it was inappropriate for Detective Mansell and Detective Sutton to commence their engagement of the Nissan without authorisation from the POCCC.

The obligations of Officer Baker

- 111 In his evidence at the inquest, Inspector Hayes noted that Officer Baker did not transmit over VKI what had occurred when the Nissan avoided the stinger and/or that it was his view the risk was so high that the pursuit by GM411 ought to be terminated.⁷⁸ Inspector Hayes also noted that this communication could have been dispatched quickly by Officer Baker by using his personal two-way radio, without having to return to his parked police car.⁷⁹

⁷⁴ Exhibit 10, Memorandum of Inspector Hayes dated 24 February 2021, p.3

⁷⁵ Statement of Inspector Robert Kirby dated 2 July 2021, pp.2-3

⁷⁶ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, TR-07.04.2.4 at n, p.837

⁷⁷ Exhibit 10, Memorandum of Inspector Hayes, p.3

⁷⁸ ts 13.4.21 (Hayes), p.496

⁷⁹ ts 13.4.21 (Hayes), p.497

- 112 Notwithstanding Inspector Hayes' observations, I am not prepared to criticise Officer Baker's failure to transmit his observations and/or opinion on whether the involvement of GM411 ought to be terminated. As Inspector Hayes acknowledged, Officer Baker had to tend to the two cars that had their tyres delated by the stinger moments after the Nissan had avoided it.⁸⁰
- 113 Officer Baker was also entitled to assume that the POC would have received appropriate situation reports by the passenger in GM411, including the latest manoeuvre by the Nissan around the stinger. Indeed, when asked whether he reported the driving of the Nissan to VKI, Officer Baker stated that he did not, "*because it was in an evade situation, it was already reported.*"⁸¹
- 114 Regrettably, for the reasons I have outlined below, and through no fault of Officer Baker, that seemingly safe assumption turned out to be a very unsafe one to make.

ISSUES RAISED BY THE EVIDENCE REGARDING THE FINAL EVADE POLICE INCIDENT

What to consider when making a risk assessment

- 115 I accept that there will inevitably be dangerous elements in regard to the driving of a person who has failed to stop and to the driving of any police car involved in a subsequent evade police incident. I also accept that the drivers of police cars in an evade police incident, depending on the circumstances, are not prohibited from taking actions such as contravening a red traffic light, driving on the incorrect side of the road or exceeding the posted speed limit.⁸²
- 116 Furthermore, I understand that the risk assessment made by police officers involved in an evade police incident is always ongoing and fluid, in that it may easily change

⁸⁰ ts 13.4.21 (Hayes), p.497

⁸¹ ts 23.2.21 (Baker), p.107

⁸² ts 23.2.21 (Ruffell), p.64

from being safe to maintain the pursuit to being a situation where it is entirely unsafe to continue the pursuit. I also accept that due to their subjective nature, a risk assessment by one police officer may be different from another's.

117 However, any potential dangers arising from the subjective nature of risk assessments are safeguarded by police officers not directly involved in the incident having the authority to terminate the pursuit at any time; most notably the POCCC. However, that safeguard can be ineffective if the situation reports to the POC are delayed, deficient or lacking in relevant detail.

118 As a risk assessment is always a dynamic situation, each manner of driving by the pursued car should never be looked at in isolation when making the risk assessment. After noting that the risk assessments by Detective Mansell and Detective Sutton seemed to focus on individual aspects of Child JP's driving, Inspector Hayes stated:⁸³

The risk assessment is an ongoing accumulation of all incidents that fill the picture of driver behaviour, and likelihood – if a stinger is employed – what he's going to do, the driver. So if you add together all the little bits and pieces, this paints a picture of a driver who was intent on, at all costs, avoiding police. So the risk then starts to elevate, because then we can't control what he's going to do.

Yes. And specifically, he's doing everything to avoid the vehicle that's pursuing him? --- Correct. And there's an antecedent there from the initiating pursuit and the second incident that shows a propensity not to stop no matter what is in front of him, including parked cars.

119 Although the Policy sets out the factors police officers must consider in determining if the risk is acceptable,⁸⁴ Inspector Hayes correctly summarised it as being, "*a basic risk assessment which we do every day as humans; that is, likely consequences for a particular action and what that outcome is likely to be.*"⁸⁵ Examined in this way, the Policy as it relates to risk assessments is not a particularly

⁸³ ts 13.4.21 (Hayes), p.484

⁸⁴ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832

⁸⁵ ts 13.4.21 (Hayes), p.478

difficult concept to grasp. Nor should it be for police officers who are trained to always undertake a risk assessment whenever they perform operational duties.

- 120 It should also not be difficult for experienced police officers to understand that just because no one has been injured, or no cars have been hit by a person who is objectively engaged in hazardous driving, it does not mean there is a low risk of causing potential harm to someone if that manner of driving was to continue.⁸⁶
- 121 Evaluating the risk assessment during an evade police incident should never be measured by “good luck”. As Inspector Hayes accurately put it, *“I don’t believe in good luck, your Honour. I am not in the business of good luck. Good luck is something you can’t rely on. You need to have observational skills.”*⁸⁷
- 122 Regrettably, Detective Sutton felt he was very much in the business of good luck when it came to his evaluation of the risk assessment during the final evade police incident. That was clearly evident in his answers to these questions I asked him:⁸⁸

So again then, using that last example of pedestrians, was it more good luck that no pedestrian came into danger during that manoeuvre [of the Nissan] through the Caltex service station? --- I would say that all pursuits that don’t end badly is good luck.

Yes. So there’s a manoeuvre through the Caltex service station that had the potential to put a pedestrian at risk, i.e., someone using the service station. But am I right in saying that you formed the view that because – by good fortune – there was no pedestrian in harm’s way, as it were, that the pursuit could therefore continue? --- Yes. And that forms part of the risk assessment.

But – I’m just exploring this a little bit further, if that’s okay, Detective? --- Yes, of course.

But that’s only by good luck there hasn’t been an injury to a pedestrian? --- That’s right; you’re exactly right.

...

⁸⁶ ts 12.4.21 (Wallace), p.343

⁸⁷ ts 13.4.21 (Hayes), p.493

⁸⁸ ts 12.4.21 (Sutton), pp.281-282

So the next time a potentially dangerous manoeuvre was to occur, were you relying on good luck for there to be no potential danger to another road user? --- Yes. If – if you want to put it like that, then yes.

Yes. Is that the appropriate way of applying the guidelines? --- That’s – that’s just the way that the whole thing unfolds in every single – every single one of them.

Detective, the question is, is that the appropriate way of applying the guidelines? --- Yes. It’s the way that the risk – that I apply the risk assessment and that most other police officers apply the risk assessment.

123 Those answers were extremely troubling to hear.

124 In contrast, Detective Mansell agreed that a police officer should not assess whether a situation was dangerous or not by the outcome, but rather on what could happen when the situation is entered into.⁸⁹ He went on to say, “*that is generally the way we do risk assessments.*”⁹⁰ Unfortunately, the evidence at the inquest does not support the contention that this textbook answer was the way he and Detective Sutton approached the risk assessment during the pursuit of the Nissan by GM411.

Were risks assessments undertaken by the detectives during the final evade police incident?

125 Both detectives maintained in their evidence at the inquest that they undertook risk assessments throughout their pursuit of the Nissan. As to what they discussed about their assessments of the risk during the pursuit, Detective Mansell could not recall specifically, other than “*just comments about how it was surprising how calm and controlled the driver was being.*”⁹¹ Although Detective Sutton testified that whether a pursuit should be terminated was “*something that’s always considered*”,⁹² he could not remember discussing with Detective Mansell, at any stage, if the pursuit should be terminated.⁹³ When it was suggested that could mean

⁸⁹ ts 24.2.21 (Mansell), p.213

⁹⁰ ts 24.2.21 (Mansell), p.214

⁹¹ ts 24.2.21 (Mansell), p.183; see also Exhibit 1, Volume 1, Tab 32, Statement of Detective Sergeant Mansell dated 19 February 2019, p.5

⁹² ts 25.2.21 (Sutton), p.257

⁹³ ts 25.2.21 (Sutton), p.257

a termination was not even considered, Detective Sutton answered, “*Well, I can’t speculate what happened in the car three years ago.*”⁹⁴

126 In light of this testimony, Mr Berson, counsel for the WAPF, properly accepted that there was no evidence the two detectives had any discussions amongst themselves regarding a termination of the pursuit.⁹⁵ It would appear that if either detective did actually consider terminating the pursuit, it was done privately, without collaboration and then kept to himself.

127 I regard the lack of evidence that there were discussions between the detectives about terminating the pursuit somewhat concerning. One would have expected that, given the manner of Child JP’s driving, it would have, at the very least, been raised as an option by one of the detectives. This then leads to the question of whether the two detectives did actually undertake ongoing risk assessments.

128 Applying the *Briginshaw* principle, and in the absence of direct evidence to the contrary, I am not prepared to find that the two detectives failed to conduct ongoing risk assessments during the final evade police incident. However, whether their risk assessments that led them to continue the pursuit were made in accordance with the Policy is an entirely different matter.

Should GM411 have voluntarily terminated after the Nissan’s manner of driving at the Caltex forecourt and on Farrall Road, Midvale?

129 Approximately three minutes into the evade police incident involving GM411, Child JP deployed the first of a number of dangerous manoeuvres during this particular incident. As noted already, they began when he drove the Nissan through the Caltex forecourt and then turned right onto the incorrect side of Farrall Road,

⁹⁴ ts 25.2.21 (Sutton), p.257

⁹⁵ ts 14.4.21 (Closing Submissions by Mr Berson), p.562

before turning left back onto Great Eastern Highway, contrary to a red traffic light. Detective Mansell drove GM411 in exactly the same manner.

130 The signed statements to the Major Crash Investigation Unit from the two detectives regarding this part of the final evade police incident were conspicuous by the absence of the relevant facts needed to determine whether they complied with the Policy.

131 Detective Mansell's statement read:⁹⁶

The Pulsar turned left onto Great Eastern Highway, indicated to turn left into Farrell [sic] Road, Midvale before moving into the left-hand slip lane then into a driveway of the Caltex service station.⁹⁷

The Pulsar immediately came back out onto Great Eastern Highway and continued in an Easterly direction.

132 Detective Sutton's statement read:⁹⁸

The red Nissan continued along Great Eastern Highway, before indicating left and entering the driveway of Caltex, Midvale.

The vehicle exited the driveway, turned right onto Farrell [sic] Road and left back onto the Great Eastern Highway.

133 Neither statement referred to the driving on the incorrect side of Farrall Road by both cars, or the driving back onto Great Eastern Highway by the two cars contrary to a red traffic light. CCTV footage from the Caltex service station and from a Bridgestone outlet on Farrall Road clearly show the two cars driving on the incorrect side of Farrall Road and also contravening the red traffic light as both cars turned left onto Great Eastern Highway.

134 Detective Mansell admitted that his statement with respect to this part of the evade police incident was "*missing some significant details*".⁹⁹ He further stated that until

⁹⁶ Exhibit 1, Volume 1, Tab 32, Statement of Detective Sergeant Mansell dated 19 February 2019, pp.4-5

⁹⁷ At the commencement of his evidence at the inquest, Detective Sergeant Mansell clarified that the Nissan did not actually move into the left-hand slip lane before entering the Caltex forecourt: ts 24.2.21 (Mansell), p.127

⁹⁸ Exhibit 1, Volume 1, Tab 33, Statement of Detective Senior Constable Sutton dated 21 February 2018, p.9

⁹⁹ ts 24.2.21 (Mansell), p.165

he saw the CCTV footage the week before he gave evidence at the inquest, he had not actually recollected that he had driven onto Farrall Road on the incorrect side.¹⁰⁰

135 As to why his statement did not refer to the Nissan and GM411 contravening a red traffic light, Detective Mansell answered, “*I didn’t actually think about the red light when I wrote my statement. I don’t even recall necessarily looking at the lights.*”¹⁰¹ When pressed as to why this fact was omitted, Detective Mansell answered, “*I guess I didn’t consider it a pertinent factor at the time of writing the statement.*”¹⁰²

136 Detective Sutton’s explanation for not referring to the contravention of the red traffic light in his statement was that he did not remember seeing what colour the traffic lights were at the time.¹⁰³

137 Detective Sutton agreed that it was merely coincidental that the statements both he and Detective Mansell provided had said nothing about the Nissan and GM411 driving on the incorrect side of Farrall Road and then going through a red traffic light onto Great Eastern Highway.¹⁰⁴ Without any direct evidence to suggest otherwise and having to acknowledge that coincidences can occur, I am obliged to accept that explanation.

138 The fact that Detective Mansell could not recall that he even looked at the traffic lights facing him as he entered onto Great Eastern Highway from Farrall Road and that Detective Sutton “*just didn’t notice it*”,¹⁰⁵ provides just one of several examples of the cavalier approach these two very experienced police officers took in their attempted intercept of the Nissan.

¹⁰⁰ ts 24.2.21 (Mansell), p.166

¹⁰¹ ts 24.2.21 (Mansell), p.167

¹⁰² ts 24.2.21 (Mansell), p.168

¹⁰³ ts 24.2.21 (Sutton), p.232

¹⁰⁴ ts 24.2.21 (Sutton), p.248

¹⁰⁵ ts 24.2.21 (Sutton), p.246

139 Another example of this cavalier approach was the following explanation from Detective Mansell regarding the driving of the Nissan on the incorrect side of Farrall Road:¹⁰⁶

So in – in this situation where it has occurred in a two-second sort of timeframe and - and like I said, it wasn't really considered by myself as a contraflow of the traffic because there wasn't traffic in that lane. It was more of a entering an intersection at a strange place, at – at an angle sort of thing from the corner.

140 [REDACTED]

[REDACTED] Detective Mansell completed a Pursuit Return for the evade police incident on 13 February 2018.¹⁰⁸ Detective Sutton approved its contents the following day.¹⁰⁹

141 Just like his statement, Detective Mansell's Pursuit Return does not accurately describe what occurred at the Caltex forecourt or at the intersection of Farrall Road and Great Eastern Highway. The relevant portion of the Pursuit Return read:¹¹⁰

The [Nissan] then indicated to turn left into Farrell [sic] Road slip lane and moved into that lane. It then turned into a carpark behind the Caltex service station briefly before returning to Great Eastern Highway and continuing in an Easterly direction up the hill.

142 Neither detective considered that the driving of the Nissan at the Caltex forecourt or on Farrall Road required their attempted evade police intercept to be terminated. Detective Mansell's explanation for continuing the pursuit after the Nissan drove onto Great Eastern Highway against the red traffic light was, "*I didn't feel it was unsafe.*"¹¹¹ Detective Sutton did not agree with the proposition that the Nissan's manner of driving through the Caltex forecourt and back onto Great Eastern Highway "*at that stage presented an unacceptable risk to the public, yourselves or*

¹⁰⁶ ts 24.2.21 (Mansell), p.210

¹⁰⁷ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.839

¹⁰⁸ Exhibit 5, Pursuit Return completed by Detective Sergeant Mansell, p.4

¹⁰⁹ Exhibit 5, Pursuit Return completed by Detective Sergeant Mansell, p.5

¹¹⁰ Exhibit 5, Pursuit Return completed by Detective Sergeant Mansell, p.2

¹¹¹ ts 24.2.21 (Mansell), p.172

to Child JP.”¹¹² Unfortunately for these two detectives, the relevant CCTV footage paints a very different picture, as does the opinions of four police officers with vastly different ranks and experiences.

- 143 Contrary to the statements from the two detectives, the Nissan did not indicate as it turned into the Caltex forecourt.¹¹³ The CCTV footage also clearly shows the Nissan travelling at an unsafe speed through the Caltex forecourt. Data from the AVL for GM411 suggests that the speed may have been in the vicinity of 32 km per hour.¹¹⁴ However, the number of cars and pedestrians in the forecourt area rendered that speed as clearly unsafe. There was a near miss involving the Nissan and a silver car exiting the forecourt to turn left onto Great Eastern Highway. A potential T-boning incident was avoided when the silver car was able to move further forward and out of the potential path of the Nissan.¹¹⁵
- 144 Although the CCTV footage does not show any other near misses, what the footage does show is that traffic on Great Eastern Highway and Farrall Road was busy. That was hardly surprising, as it was a week day at about 5.45 pm and involved one of the major thoroughfares in the area.
- 145 Officer Evans, the driver of the police car involved in the first evade police incident, was very clear as to his views on what a pursuing police car should do when the target car starts driving on the incorrect side of the road.
- 146 Regarding his risk assessment when Child JP began driving the Nissan on the incorrect side of Marshall Road, Officer Evans was asked:¹¹⁶

So you were going to stop, no matter what instruction [from the POCCC] you got? ---
No matter what. There's no way I was ever contemplating continuing chasing that vehicle.

¹¹² ts 24.2.21 (Sutton), p.245

¹¹³ Exhibit 1, Volume 1, CCTV footage from Caltex service station, Midvale, Channel 18

¹¹⁴ Exhibit 1, Volume 1, Tab 68, AVL Data for GM411 dated 8 February 2018

¹¹⁵ Exhibit 1, Volume 1, CCTV footage from Caltex service station, Midvale, Channels 19 23

¹¹⁶ ts 23.2.23 (Evans), pp.26 and 28

Down the wrong side of the road? --- No way.

...

Would you normally expect the passenger to know things like, if they [the target car] go on the wrong side of the road, that's an automatic terminate? --- Yes. Yes. It's fairly well-known within WA Police.

147 As to his opinion when there ought to have been a voluntary termination of the evade police incident involving GM411 at this stage, Inspector Hayes stated, "*the forecourt was an unacceptable risk; it should have stopped there.*"¹¹⁷

148 The two police officers performing the role of POCCC during the final evade police incident shared similar views to Inspector Hayes. Officer Jones stated:¹¹⁸

If a SITREP¹¹⁹ describing the target vehicle's manner of driving in the vicinity of Farrell [sic] Road, namely driving through the Caltex forecourt, I would very likely have terminated the evade police incident.

...

Similarly, if a SITREP describing the target vehicle's contra flow on Farrell [sic] Road and the entry onto Great Eastern Highway against the traffic control light was provided, I would have terminated the evade police incident.

Although the driving of the target vehicle and GM411 through the Caltex forecourt, contra flow onto Farrell [sic] Road and through the intersection on Great Eastern Highway, did not of itself appear to be dangerous, there is an inherent risk in the circumstance.

Further, my view that I would have terminated the evade police incident at that point in time is influenced by the two previous incidents involving the target vehicle, particularly the incident where the target vehicle engaged in contra flow driving earlier. This might indicate that contra-flow driving is a tactic that the driver is prepared to engage in to stop police chasing him.

149 Inspector Kirby expressed this view:¹²⁰

If information had been communicated that GM411 was travelling through a Caltex forecourt in pursuit of the vehicle, I would not necessarily have terminated the pursuit. If the SITREP was that the vehicle was travelling 10 km/hour through the forecourt

¹¹⁷ ts 13.4.21 (Hayes), p.48

¹¹⁸ Statement of Senior Sergeant Stephen Jones dated 9 July 2021, pp.4-5

¹¹⁹ Situation report

¹²⁰ Statement of Inspector Robert Kirby dated 2 July 2021, p.3

(and no indication that the target vehicle was heading towards the bowsers), I would probably not terminate the evade police intercept driving incident.

If the SITREP was the same, but the speed through the forecourt was 30 km/hour then I may well have terminated the evade police intercept driving incident. Before doing so, I would have tried to get more information and cannot say with any certainty whether I would have, in fact, terminated the evade police intercept driving incident.

...

If I had been informed that the vehicle was turning right up the wrong side of Farrell [sic] Road and towards a red light, I would have terminated the incident. However, this would be based on a 'big picture' view of the incident based on those general facts, and without having the advantage of sitting in the police vehicle and seeing events exactly as they unfold. In coming to that view, I would also have taken into account the two previous incidents, particularly the contra-flow driving in the first incident. This is because, in my view, two instances of contra-flow driving indicate a repetitious and conscious act by the driver of the target vehicle which creates an unacceptable risk to the driver of the target vehicle, passengers in the target vehicle, police, other road users and the community in general.

150 After careful consideration of all the available evidence,¹²¹ and applying the *Briginshaw* principle, I find (albeit by the merest of margins) that it was not inappropriate for GM411 to continue its pursuit of the Nissan through the Caltex forecourt. However, once the Nissan had driven onto the incorrect side of Farrall Road and then made a left hand turn onto a major thoroughfare against a red light during a peak traffic period, a proper risk assessment that complied with the Policy ought to have meant the pursuit should have been voluntarily terminated immediately.¹²² In making that finding, I have accepted the evidence of Inspector Hayes, Inspector Kirby, Officer Jones and Officer Evans and rejected the evidence of Detective Mansell and Detective Sutton. Although I am prepared to accept that the two detectives personally believed it was safe to continue their pursuit at this

¹²¹ This included consideration of the statement from an eye-witness who described GM411 at this time of the evade police incident as "*being driven in a very controlled manner*" and that it never appeared to put any pressure on the driver of the Nissan "*to do anything silly*": Exhibit 1, Volume 1, Tab 23, Statement of Bernard Rowles dated 17 February 2018, p.3. However, this witness makes no reference in his statement to the Nissan driving on the incorrect side of Farrall Road or contravening the red traffic light as it turned onto Great Eastern Highway.

¹²² The relevant provision of the Policy reads, [REDACTED]

[REDACTED] Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832

stage, that belief was clearly an unreasonable one given the objective facts and the contents of the Policy.

- 151 It will be noted that Officer Jones and Inspector Kirby based their opinions on the premise that certain information was conveyed to the POC regarding the Nissan's manner of driving at the Caltex forecourt and on Farrall Road. Their opinions were sought on that hypothetical basis as Detective Sutton's situation report to POC did not contain some information that Inspector Hayes described as being "*critical and vital to decision-making*."¹²³ I will address that issue now.

Was Detective Sutton's initial situation report adequate?

- 152 It is obvious why the initial situational report in an evade police incident must be accurate and convey all relevant information to the POC. The passenger in the police car responsible for these situational reports becomes 'the eyes and ears' of the POCCC. Although the POCCC has a live feed of the AVL speed data for police cars involved in evade police incidents,¹²⁴ this does not provide a complete picture. Given that evade police intercept driving is of the highest risk, "*There's a greater emphasis on the driver and the passenger to conduct that in a suitable manner, and also a far greater requirement to report to POCCC what is going on at the time and how.*"¹²⁵
- 153 As Inspector Hayes further testified, "*the system is very reliant on timely, accurate information from the passenger of the vehicle.*"¹²⁶ Regrettably, such information was not forthcoming from Detective Sutton regarding the driving by the Nissan through the Caltex forecourt and on Farrall Road.

¹²³ ts 13.4.21 (Hayes), p.480

¹²⁴ ts 13.4.21 (Hayes), p.479

¹²⁵ ts 13.4.21 (Hayes), p.477

¹²⁶ ts 13.4.21 (Hayes), p.482

154 After advising the POC that GM411 had activated its lights and sirens and the Nissan was heading towards Great Eastern Highway after failing to stop, the following conversation took place between Detective Sutton and the POC operator:¹²⁷

POC Operator: Golf Mike 411, your class and quals, please.

Sutton: Class 1 vehicle. Priority pursuit driver. 9339. Just approaching the intersection of Great Eastern. He's going to make a left turn, left turn towards the hills on Great Eastern Highway.

POC Operator: Roger, roger. And traffic conditions?

Sutton: We've got medium traffic. He's sitting in the middle lane at the moment. The driver appear appears very calm and controlled. He's still heading towards the hills and about to turn onto Farrall Road.

POC Operator: Golf Mike 411. Just for the inspector, reason we are attempting to stop him?

Sutton: I believe this is the car that was wanted for the alert, wasn't it?

POC Operator: Affirmative.

Sutton: Yeah. Roger. We're still heading up the hill on the Great Eastern. Current speed is 80 kilometres an hour. We're in the right lane. He's still driving very casual.

POC Operator: Golf Mike 411 is an evade police approved.

155 I accept Detective Sutton's evidence that his description to the POC that the Nissan is "*about to turn onto Farrall Road*" was at the time of the Nissan's lane change on Great Eastern Highway in order to enter the Caltex forecourt.¹²⁸ I also accept that this lane change from the middle lane to the left hand lane would have given the impression the Nissan was about to enter into the left hand slip lane onto Farrall Road that was a short distance beyond the entrance to the Caltex forecourt.

156 At the inquest, Detective Sutton was asked the following questions regarding his above conversation to the POC:¹²⁹

You're sparse on the details there to VKI. Would you agree with that? --- Yes, I would.

¹²⁷ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018, pp.7-8

¹²⁸ ts 24.2.21 (Sutton), p.242

¹²⁹ ts 24.2.21 (Sutton), pp.242-244

Would you have had the opportunity of providing more detail? --- Do you mean at the time?

Yes, at the time? --- Had I not been getting asked questions and answering questions, then, yes, that information would have been provided.

...

He [the POC operator] hasn't been told that the car has gone off Great Eastern Highway through a Caltex Service Station narrowly missing a car? --- Yes.

Driving at a speed that – faster than was expected, coming out onto Farrall Road on the incorrect side of the road and going through a red light. I know your evidence now is that you didn't know you had gone through a red light, but you had known about the other information. So should it not have been important to convey that information to POC? --- At the time it would have been important.

But it wasn't conveyed to it? --- No, because I was answering other questions.

...

With the benefit of hindsight, should you have told POC about the fact that it [the Nissan] had veered off and driven through a service station at a speed that was quicker than it should have ---? --- Yes, that would have been information that ---

Yes, and had gone against the traffic flow, against contra lane onto Farrall Road and then through a red light? --- Yes, that would have been information that would have been provided.

And are you saying you did not have the opportunity to provide that further information? --- Because I was answering those other questions.

You agree with me it paints an incomplete picture of what's taking place? --- It completes a portion of a picture.

Yes. And it's missing some significant details? --- Yes, but like I said before, he [the POCCC] could have just aborted us because we were chasing the wrong car. He still needs to confirm that that was the vehicle and the reason as to why we were stopping it and the reason that he was going to allow the pursuit to continue – sorry, to authorise the pursuit.

157 I do not accept that Detective Sutton did not have the opportunity to provide information that was clearly critical to the question of whether the POCCC was going to authorise the pursuit.

158 At the time of Detective Sutton's last communication to the POC, that is quoted above, less than 30 seconds had passed since the Nissan's driving through the

Caltex forecourt and onto Farrall Road and then the contravention of the red traffic light. There was nothing preventing Detective Sutton from providing that information after he had answered the one question from the POC operator regarding the reason for attempting to stop the Nissan.

159 The description of the Nissan's manner of driving by Detective Sutton paints an even more misleading picture of how the Nissan was being driven. Included in the information being conveyed to the POC was that the driver of the Nissan "*appears very calm and controlled*" and that "*he's still driving very casual.*" Following that last description, the POC operator advised that approval had been given for GM411 to continue the evade police intercept.

160 When Inspector Hayes was asked whether the POC was provided with enough information by Detective Sutton to conduct a proper risk assessment, and to determine whether the level of risk was acceptable, he answered, "*no, they weren't provided enough information is the simple answer*".¹³⁰ I agree with that assessment.

161 As Inspector Hayes further explained:¹³¹

A situation developed – in this case driving through a forecourt, [driving] contrary to the traffic flow, [driving] through a red light. It's irrelevant whether you can say it then, or 30 seconds later. It's as simple as pressing the button and saying, "We've just done this"; give the guy the opportunity – the duty inspector the opportunity to say yes or no to continuing the pursuit.

Okay. And you think that would have been important in this situation for that? --- Critically important.

Critically. Because POC may have aborted at that stage? --- If I was fulfilling that role as a duty inspector, I certainly would have aborted it.

162 I am satisfied, after considering all the evidence relevant to this matter and applying the standard required in the *Briginshaw* principle, that Detective Sutton failed in his obligations to provide an initial situation report to the POC that was adequate

¹³⁰ ts 13.4.21 (Hayes), p.482

¹³¹ ts 13.4.21 (Hayes), p.482

- 166 As I have already referred to, a Multanova camera on Great Eastern Highway, near Park Road in Hovea registered the Nissan as travelling at 128 km per hour. It also registered that GM411 was driving close behind, at a speed of 127 km per hour.¹³⁷ For the next minute, the AVL data for GM411 showed it was travelling (with one exception) in excess of 130 km per hour, before it slowed down to go around the stinger. The posted speed limit was 80 km per hour. I find that the Nissan was travelling at similar speeds during this period.¹³⁸
- 167 This evidence has caused me some disquiet. However, there is no evidence before me that the Nissan was overtaking cars in an unsafe manner along this stretch of Great Eastern Highway. Officer Baker observed the Nissan overtake some cars and other than it travelling “*considerably quicker*” than those cars, he did not observe any “*bad driving*” by the Nissan before it reached the stinger.¹³⁹ I also note that one portion of Detective Sutton’s situation report during this period stated, “*Vehicle has chopped and changed lanes a couple of times, but nothing that’s inherently dangerous.*”¹⁴⁰
- 168 In addition, arrangements had been made for a stinger to be deployed across the east bound lanes of Great Eastern Highway a short distance ahead, near the intersection of Bailey Road.¹⁴¹ In those circumstances, and not without some hesitation, I do not find that the Nissan’s excessive speed alone during this period of the evade police incident required a voluntary termination by GM411 in accordance with the Policy. However, this speed had to be taken into account when evaluating the ongoing risk assessment. Given that they failed to voluntarily

¹³⁷ Exhibit 1, Volume 1, Tab 64, Deployment Verification Deployment Details and Incident Image

¹³⁸ There is a statement from another road user who witnessed the driving of the Nissan and GM411 before and after the location of the Multanova camera: Exhibit 1, Volume 1, tab 21, Statement of David Dubbelboer dated 12 February 2018. Although this witness described the manner of both cars as “*almost benign*”, I have noted the estimates he gave of the speeds of the Nissan and GM411 are considerably lower than the speeds recorded by the AVL data for GM411 and the speeds recorded by the Multanova camera.

¹³⁹ ts 23.2.21 (Baker), pp.98-99

¹⁴⁰ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018, p.9

¹⁴¹ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018, p.9

terminate their pursuit until it was too late, it is clear to me that Detective Mansell and Detective Sutton did not place sufficient weight to this aspect of Child JP's driving when undertaking their ongoing risk assessments as to whether it was safe to continue their pursuit.

Should GM411 have voluntarily terminated after the Nissan's avoidance of the stinger?

169 As already outlined above, the Nissan was able to avoid the stinger by driving onto the right-hand side gravel verge of Great Eastern Highway. It did so at a speed estimated by Officer Baker of about 70-80 km per hour and drove within about one metre of his police car parked on the verge. Detective Mansell drove GM411 around the stinger in similar manner and, relying on the AVL data for GM411, at a similar speed to the Nissan.¹⁴²

170 Officer Baker agreed that the manner of driving by the Nissan to avoid the stinger was dangerous, saying, "*it was dangerous because there was the stinger, the car – other cars, going at – speeding, hitting the gravel, yes.*"¹⁴³

171 Detective Mansell said it was "*possible*" that the Nissan was travelling at about 70-80 km per hour on the gravel as it went around the stinger,¹⁴⁴ but he did not think the Nissan's manoeuvre around the stinger was dangerous, stating "*it wasn't erratic or dangerous*".¹⁴⁵

172 Detective Mansell did not agree that the driving of the Nissan around the stinger was "*dangerous enough to abort at that point*" as "*it was still controlled driving*".¹⁴⁶

¹⁴² Exhibit 1, Volume 1, Tab 68, AVL Data for GM411 dated 8 February 2018, p.11, entry for GM411's speed at 5:54:05 pm (86 km per hour)

¹⁴³ ts 23.2.21 (Baker), p.105

¹⁴⁴ ts 24.2.21 (Mansell), p.93

¹⁴⁵ ts 24.2.21 (Mansell), p.93

¹⁴⁶ ts 24.2.21 (Mansell), p.193

173 After agreeing (i) that the manoeuvre around the stinger by the Nissan was an important consideration to take into account as to whether the pursuit should continue and (ii) that he did factor this into his risk assessment at the time, Detective Mansell was of the view:¹⁴⁷

It wasn't significantly dangerous and it didn't change my assessment at that point. We had gone from I think – I think we were just saying we that had gone from about 135 to 140 sort of kilometres [per hour], down to 70 or 80, if that was what it was. So again, he – there was some control and restraint in that manoeuvre that I felt didn't change my risk assessment.

174 Detective Mansell nevertheless agreed that the manner in which the Nissan drove around the stinger “*was still a very risky manoeuvre.*”¹⁴⁸

175 Detective Sutton also did not initially agree with Officer Baker's assessment that the manoeuvre around the stinger was dangerous.¹⁴⁹ He instead described the manoeuvre as “*risky but controlled.*”¹⁵⁰ When asked in what way the driving of the Nissan around the stringer was controlled, Detective Sutton answered, “*Well, we also entered the gravel and successfully navigated, and the driver has done the – exactly the same thing*”.¹⁵¹ Detective Sutton was of the view that the manner of driving around the stinger did not place the occupants of the Nissan, or other road users, or other police, or other people at a risk high enough to abort the pursuit at that point in time.¹⁵² However, he did agree that the level of danger inherent in the manner of Child JP's driving had now increased as a result of the manoeuvre around the stinger.¹⁵³

176 By this stage of the evade police incident, Officer Jones was the acting POCCC. That was because Inspector Kirby was required to attend to a serious life-

¹⁴⁷ ts 24.2.21 (Mansell), pp.194-195

¹⁴⁸ ts 24.2.21 (Mansell), p.228

¹⁴⁹ ts 25.2.121 (Sutton), p.254

¹⁵⁰ ts 12.4.21 (Sutton), p.276

¹⁵¹ ts 12.4.21 (Sutton), p.276

¹⁵² ts 12.4.21 (Sutton), p.280

¹⁵³ ts 25.2.21 (Sutton), p.256

threatening incident.¹⁵⁴ In his capacity as the acting POCCC, Officer Jones had already made the decision that he would terminate the evade police incident if the stinger was not effective.¹⁵⁵

I had already made a conscious decision that if the stinger was not effective, I would terminate the evade police incident [so] as to not allow it to proceed to the Mundaring town site.

Although I had made the decision at that point in time, there is necessarily a delay between me giving the instruction, and the instruction being issued across the radio. There is the initial delay that results from the dispatcher repeating my instructions to the vehicle in the evade police incident.

177 This delay was regrettable. Detective Sutton had advised the POC that the stinger had been avoided at 5:54:03 pm. The decision by Officer Jones to terminate was not transmitted until over half a minute later, at 5:54:37 pm.¹⁵⁶ By then the crash had either just occurred or was actively occurring.

178 When Inspector Hayes was asked for his view as to whether the manoeuvre around the stinger was a sufficient basis for GM411 to voluntarily terminate, he answered.¹⁵⁷

From my personal point of view, yes. I wasn't there to see the [sic - it] live. And if it is what is described, a near miss of a police vehicle ..., if a vehicle's wheels are predominantly on the gravel, it's not going to end well. So to answer your question, personally, I would have aborted.

And if [there was] correct adherence to the policy and guidelines, was there more than sufficient reason for these two police officers to terminate the chase or the pursuit? --- I think with the -- the accumulation of all the incidents, without a doubt.

And confining it to the accumulation of incidents involving this particular vehicle [i.e. GM411], do you still maintain that view? --- Yes.

179 Nevertheless, Detective Mansell gave these answers to questions at the inquest.¹⁵⁸

It just appears to be an accumulation of incidents up until this point in time, in which he has driven on the incorrect side of the road at Farrall Road, gone through the red

¹⁵⁴ Statement of Inspector Kirby dated 2 July 2021, pp.1-2

¹⁵⁵ Statement of Senior Sergeant Jones dated 9 July 2021, pp.5-6

¹⁵⁶ Exhibit 1, Volume 1, Tab 11, IAU Report dated 23 April 2020, p.31

¹⁵⁷ ts 13.4.21 (Hayes), pp.498-499

¹⁵⁸ ts 24.2.21 (Mansell), p.198

light at Great Eastern Highway, driven at speeds, as I've said to you before, 50 kilometres in excess of the speed limit, or thereabouts ... doesn't it reach a point where your pursuit of that vehicle is not really achieving the end result, namely, the interception of the car? --- It certainly can reach that point.

Yes? --- But I don't believe we had reached that point. Not within -- between myself and Detective Sutton we hadn't reached that decision.

180 Detective Sutton was asked a similar question as to whether the requirement of the ongoing risk assessment entitled GM411 to pursue the Nissan after it avoided the stinger:¹⁵⁹

Up until the manoeuvre through the Caltex Service Station, travelling on the wrong side of Farrall Road, contravening the red light on Great Eastern Highway and going at speeds, it would seem judging by the speeds of your vehicle, well in excess of 40 kilometres of the posted speed limit on Great Eastern Highway and then that manoeuvre. [With] the culmination of those factors you still maintain the view that you could continue that pursuit in accordance with the guidelines? --- Based on my previous experience I've had, yes.

181 Detective Sutton was also asked the following question:¹⁶⁰

... would you agree with me that a risky manoeuvre, whilst it may be controlled, there's a higher prospect of it becoming uncontrolled? --- Yes.

182 I find that Detective Mansell and Detective Sutton abjectly failed to apply that basic concept to their risk assessment of Child JP's driving once he had driven through the Caltex forecourt. If a manner of driving is controlled, but nevertheless risky, then it only requires a minor event which is unanticipated by the driver to render it extremely dangerous. Such a circumstance could have been an inattentive person at the Caltex forecourt or a sign post on the gravel verge near the stinger or a guide post or road sign on the gravel verge where the Nissan made its last overtaking manoeuvre. It was only a matter of good fortune that neither of the first two scenarios occurred when the Nissan drove through the Caltex forecourt and later

¹⁵⁹ ts 12.4.21 (Sutton), pp.279-280

¹⁶⁰ ts 12.4.22 (Sutton), p.277

drove around the stinger at excessive speeds. However, the third scenario did eventuate with the catastrophic fatal outcome that followed.

183 The failure by these two detectives to identify the potential for Child JP's "*risky but controlled*" driving to suddenly become uncontrolled due to an unanticipated event was illustrated by Detective Mansell's evidence regarding the final overtaking by the Nissan which he saw: "*And even – even to the point of being in the gravel, he was still straight. It wasn't until there was a sudden veering to the left. And I don't know what that was from, but it struck me as odd.*"¹⁶¹

184 That a detective with over 20 years' experience as a police officer and eight years' experience as a qualified Priority Pursuit driver (as at 2018) would think it was "*odd*" that there would be potential obstacles in the path of a car driving at speed on the gravel verge of a major highway is extremely concerning.

185 Applying the *Briginshaw* principle, and considering all available evidence, I find that had Detective Mansell and Detective Sutton complied with the Policy, their pursuit of the Nissan should have been voluntarily terminated as soon as it avoided the stinger. [REDACTED]

[REDACTED] Instead, and even though there was no other resolution strategy in place, Detective Sutton was requesting permission to exceed the speed that GM411 was authorised to drive at.¹⁶³ That simply demonstrated the poor judgement and lack of insight to potential outcomes, being exhibited by these two detectives in their risk assessment of Child JP's driving. Their explanation for requesting that permission was so that they could catch up with the Nissan.¹⁶⁴ With respect to the pursuit of a car being driven in a very risky

¹⁶¹ ts 24.2.21 (Mansell), p.206

¹⁶² Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832

¹⁶³ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018, p.10

¹⁶⁴ ts 24.2.21 (Mansell), p.196; ts 12.4.21 (Sutton), p.296

manner, that was clearly refusing to stop and with no immediate resolution strategy in place, the logical purpose that could possibly serve escapes me entirely.

186 Detective Sutton was asked the following questions:¹⁶⁵

But was it obvious to you once the stinger was evaded that the driver of this vehicle was not going to stop for you? --- I think that that determination would have been made a long time ago.

Yes. So it was highly unlikely that you were able to have him voluntarily pull over by the side of the road, yes? --- Yes. True. Yes.

Yes. So the identity of the target had already been known, albeit it wasn't the driver of the vehicle, but the identity was known, and we [sic - you] had the vehicle registration details. Yes? --- Yes.

So the prospect of that target being apprehended at a later date by police must have been regarded as reasonable? --- Yes, it would have been reasonable. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

188 Detective Sutton was of the opinion that even though there was no further resolution strategy in place, the mere possibility of such a resolution caused him to form the view that it was reasonable to continue the evade police incident.¹⁶⁷ For the reasons I have outlined above, I do not agree that this reasoning process entitled the detectives to continue with the evade police incident and still be in compliance with the Policy.

189 Although I am prepared to accept that the two detectives personally believed it was safe to continue their police evade intercept after the Nissan avoided the stinger,

¹⁶⁵ ts 12.4.21 (Sutton), p.288

¹⁶⁶ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832

The target who the detectives suspected to be the driver of the Nissan was the 31-year-old man wanted for questioning

¹⁶⁷ ts 12.4.21 (Sutton), p.290

that belief was clearly an unreasonable one given the objective facts and the contents of the Policy.

Was Detective Sutton's situation report after the avoidance of the stinger adequate?

190 The only information Detective Sutton provided to the POC regarding the manoeuvre around the stinger by the Nissan was, "*he avoided the stinger VKI. So we're still heading towards Mundaring, right lane. Current speed is 140.*"¹⁶⁸ The question that arises is whether that conveyed all information required by the Policy to the POC.

191 With respect to that, Detective Sutton was asked the following:¹⁶⁹

Do you accept with the benefit of hindsight that you ought to have provided more information regarding the manoeuvre around the stinger other than, yes, he avoided the stinger? --- We don't normally provide any more than that. It's probably beneficial in hindsight to provide more information. But normally, that's just -- we don't give out any more than that kind of information.

Not even if it was a dangerous manoeuvre? --- No, it's just an avoidance of the stinger. Every stinger avoidance is dangerous because they usually cover the entire road.

Yes, but in this instance here, he could have just gone around it onto the gravel at a very safe speed. But he hasn't because you -- you've agreed that it was a dangerous manoeuvre that he was travelling too quickly on the gravel, and that you must have seen that he came within close proximity of a police car? --- Sure.

So in those circumstances, it's a bit different to him slowing right down and just driving around the stinger at an appropriate speed, yes? --- Yes, but no one ever does that. Once again, I'm sorry, I have to go back to the -- back to the experience of the stinger covers the entire road. People have to go onto the verge to avoid them.

So you want the duty inspector to, what, make what inference from that description? --- Well, it's an extra pair of eyes in the -- in the car, isn't it, and then he can also assess the risk.

But wouldn't the assessment of the risk be assisted if he was told he has avoided the stinger, he's just nearly hit a parked police car, he's travelling way too fast through the gravel? --- Yes.

¹⁶⁸ Exhibit 1, Volume 1, Tab 13, Transcript of Police Communications dated 8 February 2018, p.10

¹⁶⁹ ts 12.4.21 (Sutton), pp.292-293

And again, hypothetically – and that’s hypothetically – but if that information was conveyed to the duty inspector, would you have been at all surprised if you were told there and then to terminate? --- Yes, it would not surprise me.

192 In light of those answers, and upon applying the *Briginshaw* principle, I find that it was incumbent upon Detective Sutton to provide more details than he did in his situation report regarding the avoidance of the stinger by the Nissan. [REDACTED]

[REDACTED]

[REDACTED].¹⁷⁰ Detective Sutton should have therefore advised the POC that the Nissan had been driven very close to a parked police car (if he had seen this) and that the driver had travelled at an excessive speed through the gravel.

193 There is no evidence before me that Detective Sutton would not have been able to convey that additional information. There was no issue with the VKI communications, the POC operator was not asking him any questions and there were not any other police officers interrupting his communications with the POC.

194 Instead, Detective Sutton sought permission for GM411 to exceed the speed cap set by the Policy after it had avoided the stinger in order to catch up to the Nissan. This request simply reinforces my view that the detectives were simply not complying with the Policy, [REDACTED]

[REDACTED]

[REDACTED].¹⁷¹ The pursuit by GM411 had demonstrably failed by this stage and the two detectives had no hope of effectively managing the risk associated with the Nissan’s dangerous driving once it had driven through the gravel at a very

¹⁷⁰ : Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.837

¹⁷¹ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832

dangerous speed and continued to speed excessively after it had been driven back onto Great Eastern Highway.

The overtaking of Ms Hin's car by the Nissan

195 After the Nissan had driven around the stinger, Child JP performed a particularly dangerous overtaking manoeuvre of a car being driven by Ms Brittany Hin and a second car. Ms Hin described it as:¹⁷²

I was driving in the right lane around 80 km per hour. There was another car in the left lane, it was a little ahead of me.

Suddenly a little red car came up on my passenger side and was very close to my car. It was going pretty fast. It then squeezed through the narrow gap between my car and the car in the left lane.

196 At my request, Ms Hin provided a second statement which clarified that this manoeuvre did take place after the location where the stinger had been set. In that statement, she also added the following:¹⁷³

The little red car was so close to mine that if my gran who was sat in the passenger seat had opened her window she could have reached out and touched it.

197 Ms Hin's grandmother was Ms Janice Rhodes. She described the Nissan's overtaking manoeuvre as:¹⁷⁴

This red car was so close to us on my left I could have reached out and touched it.

I didn't see who was in the car or how many.

The red car squeezed through a gap between our car and one in front of us in the left lane.

It was a tight gap.

198 In a second statement which I had requested, Ms Rhodes provided these details:¹⁷⁵

The red car suddenly appeared at my side approximately 20 to 30 seconds after we passed [where] the police officer carrying a stinger stood.

¹⁷² Exhibit 1, Volume 1, Tab 24, Statement of Brittany Hin dated 22 February 2018, p.1

¹⁷³ Exhibit 13, Statement of Brittany Hin dated 23 March 2021, p.1

¹⁷⁴ Exhibit 1, Volume 1, Tab 26, Statement of Janice Rhodes dated 22 February 2018, p.1

¹⁷⁵ Exhibit 13, Statement of Janice Rhodes dated 23 March 2021, pp.1-2

I got such a fright that I shouted out a swear word.

The red car was so close that if I wound down my window I could have easily reached out and touched it.

199 Neither detective recalled seeing this manoeuvre. At the site inspection on 8 April 2021, I drove east along Great Eastern Highway between Bailey Road (which was near to where the stinger was placed) and Brooking Road. As the site inspection notes by Counsel Assisting recorded:¹⁷⁶

It was observed that there were at least two spots between the stinger and the crash site where you could lose sight of vehicles that were ahead.

There is a bend in the road not long after where the stinger was situated.

The road dips down around Marri Road.

200 Accordingly, I am prepared to accept that the two detectives may not have seen the Nissan overtake the car being driven by Ms Hin. However, I was deeply disturbed by the answers given when both detectives were asked what they would have done if they had recalled seeing this overtaking manoeuvre. The relevant portions of the first statements of Ms Hin and Ms Rhodes had been read to both detectives, before the questions that are cited below were asked.

201 Detective Mansell agreed that the way in which the overtaking manoeuvre had been described “*sounds dangerous*”.¹⁷⁷ But he then gave the following answers to my questions:¹⁷⁸

But now I’m asking you about it, if in fact it happened in that way, with this vehicle going 80 kilometres [per hour], another one going far in excess of that, passing them unexpectedly, so close to them that this lady says that she could reach out and touch the car as it passed. It’s so obviously dangerous, isn’t it? --- No.

No? --- No.

...

It’s clearly a dangerous manoeuvre by the driver of the Nissan? --- Well, as I said before, if – if a car travelled that sort of distance apart, I don’t think that’s – I don’t

¹⁷⁶ Exhibit 6, Site Inspection Notes, p.1

¹⁷⁷ ts 24.2.21 (Mansell), p.204

¹⁷⁸ ts 24.2.21 (Mansell), pp.205-207

think it's dangerous. It's – that's almost what – the distance between a car would be if you're overtaking in the next lane.

...

She's saying if she just reached out like that,¹⁷⁹ she could have touched it. All right?
--- Entirely possible.

And if they're going 80 and this other car is going a speed of around 130, then that clearly is a dangerous manoeuvre, is it not? --- I don't know if it was doing 130 at that

No. I'm asking you hypothetically again? --- If it was, certainly. It could be dangerous. It could be.

...

So, Detective, if you had seen a manoeuvre by the driver of the Nissan in the way that has been described by those two witnesses, right, at a point just before the crash, if you had seen that, you would not have regarded that as too high a risk assessment to terminate your pursuit? --- No. Like I was saying before, we probably moved within that distance of vehicles up the hill.

If you had seen that, you still would have continued your pursuit? --- Overtaking a car within a metre.

Within arm's length. If the passenger ---? --- Yes, I would have continued.

--- could reach out and touch it? --- Yes.

And then in the entire context of the driving that you had observed up until that point in time, that would not have changed your assessment of the risk involved so much that you would terminate your pursuit? --- No. If nothing else, the rest of the driving had been calm and controlled, so no.

202 Detective Sutton was asked the following:¹⁸⁰

So had you seen that manoeuvre would the assessment of the risk change at all? --- No, I don't think so.

No? --- No.

Even if, in fact, this had happened within a very short time after the dangerous manoeuvre, to use your words, you had agreed, to avoid the stinger, this has happened, it would seem, within a kilometre of that manoeuvre: a car driving well above the speed limit overtaking a car in that manner? --- Mmm.

That wouldn't have altered your risk assessment of the situation? --- No, because I was making my risk assessments the entire time.

¹⁷⁹ I then demonstrated with my arm outstretched.

¹⁸⁰ ts 12.4.21 (Sutton), pp.299-300

Yes. So if you had seen that manoeuvre --- ? --- Well, I'm not saying that I did not see this, like, I'm looking at the broad picture of everything that's happening. So it's not just this one car, there's a large -- well, not a large quantity, but there's other cars on the road that are getting viewed for their potential risk. Sidewalks, animals, everything gets taken into account, not just this one particular car.

No. But in light of the culmination of events and the dangerous manoeuvres that you had observed this pursued vehicle make, even if you had seen that manoeuvre, that wouldn't have altered your assessment of the risks involved in pursuing this car? --- Well, no, because I had never saw a car passing within that distance there.

No, no, but I'm saying if you did? --- If I did?

Yes? --- Yes.

Yes what? --- Then, yes, the risk assessment would have been reassessed and a consideration for an abort would have been done.

And a consideration. And would an abort have been made? --- It's quite possible.

You put it no higher than that? --- That's hypothetical.

Yes, I know that, but you put it no higher than "it's quite possible" that you would have advised Detective Mansell that his pursuit and your pursuit should be aborted? --- Yes.

203 Given the contents of the Policy, I am at a complete loss to understand how either detective could contemplate continuing their pursuit if they had seen that manoeuvre. [REDACTED]

[REDACTED]
[REDACTED] 181

Even when taken in combination with the previous driving of the Nissan, the only concession made by Detective Sutton was that a voluntary termination would have been "*quite possible*".¹⁸²

The overtaking of Ms Smoothy's car by the Nissan

204 Ms Christine Smoothy, a registered nurse who was able to provide assistance after the crash, was the driver of the car that Child JP overtook just before the crash.

¹⁸¹ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.832

¹⁸² ts 12.4.21 (Sutton), p.300

Aside from making that manoeuvre on the gravel verge, there were striking similarities between the overtaking of Ms Smoothy's car and the overtaking of Ms Hin's car just moments earlier. Ms Smoothy described how the Nissan had appeared "*out of nowhere.*"¹⁸³ Like Ms Rhodes, Ms Smoothie described that she "*could have put my hand on it if I had my window down.*"¹⁸⁴ She also noted that the Nissan "*was just going really fast.*"¹⁸⁵ The shock she felt at the time was vividly described by Ms Smoothy at the inquest:¹⁸⁶

I actually have to say my heart is racing right now thinking about that. It was – it was truly profound. It was not something I actually expected to see on that side of me in the bush. It took my breath away.

You mean the closeness of the vehicle? --- Absolutely, yes.

205 In his statement to the Major Crash Investigation Section, when describing the manner of driving by the Nissan before it commenced its overtaking of Ms Smoothy's car, Detective Mansell had said, "*up to that point, the driver of the Pulsar had not done any erratic manoeuvres and had driven calmly and in control.*"¹⁸⁷

206 Just before the overtaking of Ms Smoothy's car, Detective Sutton described the manner of driving of the Nissan in his statement in almost identical terms, saying "*up to that point, the driver of the Pulsar had not done any erratic manoeuvres and had driven calmly and in control.*"¹⁸⁸

207 Neither of those descriptions were an accurate account of the manner in which Child JP had driven the Nissan. These descriptions made in statements shortly after the crash mirrored the situation reports that Detective Sutton had supplied to the POC as the evade police incident was taking place. As I have already outlined

¹⁸³ Exhibit 1, Volume 1, Tab 15, Statement of Christine Smoothy dated 8 February 2018, p.5

¹⁸⁴ ts 23.2.21 (Smoothy), p.92

¹⁸⁵ ts 23.2.21 (Smoothy), p.93

¹⁸⁶ ts 23.2.21 (Smoothy), p.92

¹⁸⁷ Exhibit 1, Volume 1, Tab 32, Statement of Detective Sergeant Mansell dated 19 February 2018, p.8

¹⁸⁸ Exhibit 1, Volume 1, Tab 33, Statement of Detective Senior Constable Sutton dated 21 February 2018, p.37

above, those situation reports failed to describe the risky manner of driving that Child JP was undertaking during critical parts of the final evade police incident.

A concluding comment

208 Notwithstanding being shown (through CCTV footage) and told of evidence that clearly demonstrated the risky manner of Child JP's driving, both detectives maintained in their evidence at the inquest the previous versions they had provided regarding the pursuit. Those versions comprised of their statements to the Major Crash Investigation Section, the version by Detective Sutton in his situation reports and the version by Detective Mansell in his Pursuit Return. In doing so, they did a grave disservice to their credibility. This double-downing, despite cogent evidence to the contrary, was aptly illustrated when Detective Sutton maintained at the inquest that, up until the final overtaking manoeuvre by the Nissan, "*the entire time, the – I didn't consider any of the driving to be that hazardous.*"¹⁸⁹

209 The central theme in the version of events provided by the two detectives was that Child JP's driving of the Nissan was at all times, until the overtaking of Ms Smoothy's car, "*calm and controlled*". However, as noted by Inspector Hayes, this failed to convey what was actually happening, and that the description of Child JP's driving as being controlled just meant there had not been a negative outcome.¹⁹⁰ It also meant that the POCCC was unable to conduct an effective risk assessment of the matter as, "*He has no information; he doesn't have a crystal ball. He can't see what's happening in the car; yes, his hands are tied.*"¹⁹¹ I agree entirely with this assessment by Inspector Hayes.

¹⁸⁹ ts 24.2.21 (Sutton), p.257

¹⁹⁰ ts 13.4.21 (Hayes), p.480

¹⁹¹ ts 13.4.21 (Hayes), p.481

THE INVESTIGATION BY THE INTERNAL AFFAIRS UNIT

Introduction

- 210 As Child JP died during an evade police incident, the matter was deemed a critical incident and the subsequent IAU investigation examined the actions of police officers directly involved in the three evade police incidents to determine whether there had been any non-compliance with the Policy.¹⁹²
- 211 Although the IAU identified six “subject officers” and named the three drivers and their passengers involved in the three evade police incidents, only three issues were listed at the start of the IAU report as having been investigated. Those three issues were confined to whether the drivers of the police cars involved had breached the Policy.¹⁹³ Oddly, the provisions of the Policy that had been investigated as being potentially breached were not identified in the report. The outcome of the investigation was that the three issues were “unfounded”.¹⁹⁴
- 212 Although I am relevantly informed by the contents of the IAU report, I am not bound by the IAU findings. It is already clear from my findings regarding the final evade police incident that I do not accept there had been no breach of the Policy by Detective Mansell or Detective Sutton.
- 213 In fact, for the reasons I have outlined below, the IAU report was deficient in a number of areas. It fell well short of what should be expected of an IAU investigation that concerns a fatality that would become the subject of a mandatory inquest.

¹⁹² Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.5

¹⁹³ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.5

¹⁹⁴ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.5

Changing hands

214 The IAU investigation was initially allocated to Detective Sergeant Chris Boudewyns, who attended the scene on the night of the crash. The file was then passed onto Detective Sergeant Craig Martin (Detective Martin) in about October 2019. It changed hands for a third time when it was given to Detective Acting Sergeant Ian Zuidema (Detective Zuidema) on 8 April 2020.¹⁹⁵

215 Detective Zuidema had only joined the IAU in March 2020.¹⁹⁶ Nineteen days before the file was given to him, an Evidentiary Assessment Meeting was held involving five senior ranking detectives within the IAU, including Detective Martin. As Detective Zuidema explained, an Evidence Assessment Meeting is where, “*all the evidence is discussed and decisions are made about which way the investigation will go and whether it will go to report and in which [sic – this] case, it did.*”¹⁹⁷

216 The Evidentiary Assessment Meeting concluded that, “*An analysis of the evidence was presented and deliberated and the outcomes as previously stated were agreed upon.*”¹⁹⁸ The “*previously stated outcomes*” were that the three issues investigated were unfounded. It was therefore not surprising to initially hear Detective Zuidema say at the inquest, “*My role in investigative actions was very limited, the file had been completed up to a point when I received it.*” He was then asked:¹⁹⁹

Wasn't it the case, Sergeant, that everything had pretty much been done in so far as whether any allegations had been substantiated or not or anything of the matters that had to be investigated were substantiated or not? --- Yes, yes.

217 Notwithstanding the above answers, Detective Zuidema then went on to emphatically deny that, given the outcome of the Evidentiary Assessment Meeting

¹⁹⁵ ts 13.4.21 (Zuidema), p.381

¹⁹⁶ ts 13.4.21 (Zuidema), p.378

¹⁹⁷ ts 13.4.21 (Zuidema), p.385

¹⁹⁸ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.35

¹⁹⁹ ts 13.4.21 (Zuidema), p.385

before the file was even allocated to him, his hands were effectively tied.²⁰⁰ He maintained that if he had identified something that he thought needed further explanation, he would have raised it and he would not have felt uncomfortable about doing that.²⁰¹ I harbour some doubts whether that would have been the case, given that the Evidentiary Assessment Meeting included the superintendent in charge of the IAU and two inspectors attached to the IAU.²⁰²

218 When asked whether his investigation could have been more thorough, Detective Zuidema responded, “*No, I don’t think so.*”²⁰³ He also did not agree that the overall IAU investigation could have been done a lot better.²⁰⁴ By maintaining these positions, Detective Zuidema must be included amongst those IAU detectives who are to be held accountable for the contents of the IAU report and the findings from the IAU investigation.

219 I do not take issue with the IAU’s findings regarding its investigation of the police officers involved in the first and second evade police incidents. However, for the reasons I have outlined below, it was patently obvious that those responsible for the IAU investigation failed to undertake obvious investigative procedures and failed to properly analyse evidence regarding their examination of the final evade police incident.

Failure to interview the two detectives

220 IAU investigators may interview a police officer the subject of an IAU investigation, even if that police officer does not wish to be interviewed. This investigative tool is described as a compulsory interview. Any answers given in such an interview are inadmissible with respect to criminal offences. However, they

²⁰⁰ ts 13.4.21 (Zuidema), pp.398-399

²⁰¹ ts 13.4.21 (Zuidema), p.399

²⁰² Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.35

²⁰³ ts 13.4.21 (Zuidema), p.450

²⁰⁴ ts 13.4.21 (Zuidema), p.404

can be used to determine any breaches of WAPF policies. Neither of the two detectives took part in interviews with IAU investigators. Instead, the statements they provided to the Major Crash Investigation Section were used for the purpose of the IAU investigation.

221 The problem with that approach was the statements of the two detectives were lacking details that were critical to an analysis of whether any provisions of the Policy had been breached.

222 The IAU did have the relevant CCTV footage from the Caltex service station and the Bridgestone outlet. A viewing of this footage ought to have immediately identified the absence of any details in the detectives' statements regarding the portion of the evade police incident through the Caltex forecourt and in and around the intersection of Farrall Road and Great Eastern Highway. Yet, for some inexplicable reason, Detective Zuidema did not regard the footage as warranting even a mention in the IAU report. When asked why he did not insert a description of the CCTV footage in the report, Detective Zuidema replied, "*I assessed the footage at the time of the review and had no issue with the footage ... That didn't strike me to be an issue and, therefore, I didn't put it in, [is] the basic explanation*".²⁰⁵

223 The IAU also had access to the VKI recordings. As I have already noted, the situation reports by Detective Sutton did not pass on critical information to the POC. His statement to the Major Crash Investigation Section gave no explanation as to why he did not provide this information to the POC.

224 Detective Zuidema was asked the following:²⁰⁶

With the advantage of hindsight now, and having heard the matters raised during the questioning of Detectives Sutton and Mansell, would you agree that it might well have

²⁰⁵ ts 13.4.21 (Zuidema), p.379

²⁰⁶ ts 13.4.21 (Zuidema), p.399

been appropriate for IAU or whoever was conducting the investigation at the time to clarify matters with them in an interview? --- In hindsight, I - and having sat at the back of the court, and listening to their evidence, I've found their evidence enlightening. So, yes, in hindsight, I would say perhaps it would have been appropriate.

225 It was Detective Zuidema's experience that police officers are particularly honest in a compulsory interview where their integrity is brought into question.²⁰⁷ After he gave that evidence, I said to Detective Zuidema that this actually supported the contention that there should have been compulsory interviews of the two detectives. Detective Zuidema responded, "*I don't disagree with your Honour. No.*"²⁰⁸ Nevertheless, a short time later, he disagreed with the proposition that the investigation was not thorough because the two detectives were not interviewed.²⁰⁹

226 It was disconcerting to hear Detective Zuidema contradict himself when giving evidence. Unfortunately, this occurred not infrequently. With respect to this matter of the failure to interview the detectives, there were two occasions when this happened. The first was when I had the following exchange with Detective Zuidema:²¹⁰

The descriptions given by the two officers in their statements,²¹¹ with respect to the manoeuvre through Caltex station, and then onto Farrall Road and the Great Eastern Highway, did not have some fairly significant details. Would you agree with that? --- Yes.

And one could readily glean the absence of those significant details, just from viewing the CCTV footage that we've played at the inquest? --- Yes.

Now, well ---? --- However we also had the Pursuit Return, which does describe the manoeuvre through the Caltex, to a certain extent.²¹²

²⁰⁷ ts 13.4.21 (Zuidema), p.424

²⁰⁸ ts 13.4.21 (Zuidema), p.425

²⁰⁹ ts 13.4.21 (Zuidema), p.425

²¹⁰ ts 13.4.21 (Zuidema), p.400

²¹¹ These statements were those provided to the Major Crash Investigation Section

²¹² The Pursuit Return completed by Detective Sergeant Mansell does not describe the manoeuvre through the Caltex service station. The only reference to the Caltex service station was in this sentence: "*It then turned into a car park behind the Caltex service station before briefly returning to Great Eastern Highway and continuing in an Easterly direction up the hill*": Exhibit 5, Pursuit Return completed by Detective Sergeant Mansell, p.2

Yes. But there were matters there that ought to have been clarified with the two detectives, given the fact that these details were missing from their statements? --- I don't see it that way. No.

You don't? --- No.

227 The second exchange concerned the overtaking manoeuvre of Ms Hin's car by the Nissan:²¹³

Which now comes back to something I have broached with you a number of times already now; this is yet another example of where IAU should have, not could have, but should have interviewed the police officers as to whether they saw that particular manoeuvre, is that fair to say? --- I can't disagree with that, your Honour, no.

So there's another deficiency in the investigation with respect to that particular matter, is there not? --- I wouldn't call it a deficiency.

An oversight? --- No. Because it was – it was discussed in the Evidence Assessment Meeting. So, no. It's not an oversight.

No, no. No, no. Was it discussed as to whether these detectives should be interviewed? --- Not directly.

No? --- But that would only occur if there was an issue identified, in my view.

All right. So do you agree or disagree with me that this was an oversight of the IAU investigation not to interview the police officers regarding whether they had seen this incident? --- No.

No? --- No.

Why not? --- Because it was, as I said, discussed and the decision made was not to - not to interview them.

Yes. But that might be so. But as I understand your evidence – and correct me if I'm wrong – they ought to have been questioned about whether they saw this incident because that would have had an impact on whether their risk assessment was the correct one? --- It would have beneficial to interview them in relation to the incident, yes.

Yes. Obviously? --- But it's not – I wouldn't say it's an oversight not to do so.

With everything you've heard now during the course of this inquest, do you now accept, with the benefit of hindsight, it was an oversight? --- No.

²¹³ ts 13.4.21 (Zuidema), pp.446-447

Do you at least accept it should have happened? --- I accept it's beneficial that it would have happened, yes. It would have provided more information.

Do you accept – do you accept that it should have happened? --- No, I don't.

So it was an oversight that wasn't particularly significant in your view? --- In my view, it wouldn't have provided much more information than what was available.

- 228 Applying the *Briginshaw* principle and upon a consideration of all the available evidence relevant to this matter, I find that a proper investigation by the IAU regarding the final evade police incident required the conducting of compulsory interviews with the two detectives. There was a range of questions, in a number of important areas, that required explanations from the two detectives as to why they did not voluntarily terminate their pursuit. This included the driving through the Caltex forecourt by both cars, the driving on the incorrect side of Farrall Road by both cars, the contravention of the red traffic light by both cars as they re-entered Great Eastern Highway, the Nissan's manner of driving as it evaded the stinger and whether the detectives saw that the driver appeared to be very young²¹⁴ or saw the dangerous overtaking manoeuvre of Ms Hin's car. Detective Sutton should have also been questioned about the lack of relevant information in his situation reports.
- 229 Interviews with the detectives could have also elicited what their understanding of the Policy was, whether there were deficiencies in the Policy and whether there was any evidence of a deliberate decision not to comply with the Policy.²¹⁵
- 230 The statements from the two detectives to the Major Crash Investigation Section had no details regarding any of the matters outlined in the above two paragraphs. These areas needed to be explored for the IAU to be properly satisfied whether there had been any breaches of the Policy by either of the detectives.

²¹⁴ Which would have been inconsistent with the age of the suspected driver

²¹⁵ ts 13.4.21 (Hayes), p.500

- 231 As Inspector Hayes pointed out, “*the compulsive interview is not about attributing blame or finding fault. It’s about getting to the truth of the matter. And that’s why we have compulsive interviews because we need to learn what they were thinking, why they did it and learn from it.*”²¹⁶
- 232 For the IAU not to interview the two police officers in the pursuing car that led to a 16-year-old unlicensed driver dying in a horrific high speed crash when attempting to evade that car, suggests an apparent lack of intent to undertake a proper and transparent investigation. Unfortunately, this failure was not the only example.

Failure to obtain a policy expert’s opinion

- 233 A police officer with expertise in the WAPF policy that is relevant to an IAU investigation can be obtained by the IAU if required.²¹⁷ However, no policy expert was sought in this investigation to provide their opinion as to whether there had been any breaches of the Policy by the two detectives.²¹⁸ Neither of the POCCC on duty at the relevant time were even spoken to.
- 234 This failure meant that Detective Zuidema placed himself in the position of the two detectives in his determination of the appropriateness of their risk assessments and their compliance with the Policy.²¹⁹ Although he said he made assumptions based upon his experience as a police officer,²²⁰ there is no evidence before me that Detective Zuidema (or any of the other IAU detectives with carriage of the investigation) had any specialised knowledge of the Policy.

²¹⁶ ts 13.4.21 (Hayes), p.511

²¹⁷ ts 13.4.21 (Zuidema), p.383

²¹⁸ ts 13.4.21 (Zuidema), p.383

²¹⁹ ts 13.4.21 (Zuidema), p.403

²²⁰ ts 13.4.21 (Zuidema), p.403

- 235 Given the evidence from the three policy experts that the inquest heard from,²²¹ it is obvious that the IAU investigation should have obtained a report from a police officer with expertise in the application of the Policy's provisions. As Inspector Hayes said at the inquest, "*if they [the IAU] involved me in the investigation of it, the outcome might have been different as to – like, the investigation would have been different for a start*".²²² I entirely agree with that observation.
- 236 Applying the *Briginshaw* principle, and upon a consideration of the relevant evidence, I find that a proper investigation by the IAU regarding the final evade police incident required the obtaining of a police expert's opinion regarding compliance with the Policy by the two detectives. Had that been done, the IAU findings may well have been very different with respect to the final evade police incident.

The decision not to rely on AVL data

- 237 It is evident from the IAU report that very qualified and limited use was made of the AVL data that was available to measure the speeds of GM411 and the two other police cars involved in the earlier evade police incidents. The supposed unreliability of this data was briefly dealt with in the IAU report by stating, "*The inaccuracies of speeds provided by the ARL²²³ system have been addressed in numerous other reports and does not require repeating in this instance...* ".²²⁴
- 238 The company that provides the systems for AVL data has stated there can be a difference of up to +/- 2.5 km per hour from the verified recorded speed.²²⁵ There is also a known issue that readings that do not have a Data Age identified as "*2 (Fresh)*" should be classed as "*unreliable*". Furthermore, "*if there is a number of*

²²¹ Inspector Hayes, Inspector Kirby and Senior Sergeant Jones

²²² ts 13.4.21 (Hayes), p.516

²²³ That is, AVL

²²⁴ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.12

²²⁵ Exhibit 7, ARL Data Verification, p.1

lines with these errors it may indicate a fault with the unit, or that the device is no longer communicating with satellites.”²²⁶

239 The WAPF has a policy relating to what use may be made of AVL data in its investigations.²²⁷

240 Of the 118 recordings of the speeds of GM411 from 5:43:09 pm to 5:59:58 pm on 8 February 2018, only seven readings did not have a Data Age that read “2 (Fresh)”²²⁸ Accordingly, those seven readings should be regarded as unreliable. That represented an average of about one out of 17 readings. Notwithstanding that low number, Detective Zuidema regarded the other 111 entries as “possibly unreliable”²²⁹ He was of the view that that was “a reasonable stance” for him to take.²³⁰ Given the other evidence that supported the reliability of these other readings, I am of the view this stance was entirely unreasonable.

241 TR-07.16 Automated Vehicle Locator Systems (AVLS) provides:²³¹

[REDACTED]

²²⁶ Exhibit 7, ARL Data Verification, p.1

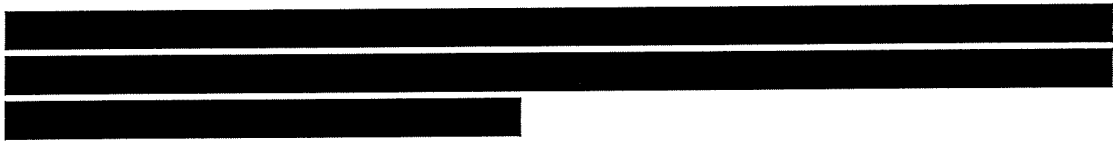
²²⁷ Exhibit 8, TR-07.16 Automated Vehicle Locator Systems (AVLS)

²²⁸ See shaded recordings in Exhibit 9, Version of Data in tab 69 containing AVL data for GM411

²²⁹ ts 13.4.21 (Zuidema), p.417

²³⁰ ts 13.4.21 (Zuidema), p.417

²³¹ Exhibit 8, TR-07.16 Automated Vehicle Locator Systems (AVLS), pp.2 and 4



- 242 The highest speed that the AVL data recorded GM411 travelling at was 151 km per hour. This occurred for two consecutive readings after the stinger had been driven around and very shortly before the crash. Detective Zuidema was of the view there was insufficient corroboration of those readings to regard them as reliable.²³²
- 243 I do not agree with that conclusion. There was sufficient circumstantial evidence that corroborated and/or verified this speed. There was also direct evidence from Detective Mansell that supported the accuracy of it.
- 244 This speed was first recorded 11 seconds after GM411 slowed down to the AVL recorded speed of 86 km per hour (at the AVL timestamp of 5.54.05 pm).²³³ This would have been at or about the time GM411 drove around the stinger. GM411 then began accelerating to bridge the gap between it and the Nissan. By 5.54.12 pm on its timestamp, AVL data had GM411 travelling at 133 km per hour.²³⁴
- 245 At 5.54.03 pm (based on the VKI timestamp²³⁵), Detective Sutton advised the POC that the Nissan had avoided the stinger. A short time later, he advised that the current speed of GM411 is “140” km per hour. He then sought permission to exceed the speed that GM411 was then authorised to travel at.²³⁶ At 5.54.16 pm and 5.54.20 pm, the AVL data had the speed of GM411 at 151 km per hour.²³⁷ At 5.54.23 pm,

²³² ts 13.4.21 (Zuidema), p.423

²³³ Exhibit 1, Volume 1, Tab 68 AVL Data dated 8 February 2018, p.11

²³⁴ Exhibit 1, Volume 1, Tab 68 AVL Data dated 8 February 2018, p.12

²³⁵ Although the VKI timestamp and the timestamp from the AVL data are derived from different systems and not guaranteed to be synchronised, “*While the time difference between the two could be expected to be broadly consistent, and in practice typically within two seconds of one another, there have been instances where the differential has been up to 20 seconds. Further, it is not the case that one of the timestamps is necessarily ahead of the other at all times*”: Letter from Mr Berson to Counsel Assisting dated 9 July 2021

²³⁶ Exhibit 1, Volume 1, Tab 13 Transcript of Police Communications dated 8 February 2018, p.10; Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.31

²³⁷ Exhibit 1, Volume 1, Tab 68, AVL Data dated 8 February 2018, p.12

the AVL reading is 133 km per hour.²³⁸ That is entirely consistent with GM411 reducing its speed, having caught up to the Nissan.

246 After he was taken through the above, Detective Mansell was asked these questions.²³⁹

It seems to match up with what Detective Sutton is saying on the VKI communications?
--- Yes.

That just before he asks for an increase in the cap. This is around the time he is seeking that? --- Yes.

And he says that the speed of your vehicle is 140, just a couple of seconds before that reading of 151? --- Yes.

So bear in mind there would seem to be an acceleration by you because you've just gone through the stinger. You need to catch up to him. The reading before that 151 km reading, if you just have a look on the AVL data, you can see is 133. And three seconds before that it's 115? --- Yes.

Yes. So it doesn't look like – when you look at all the evidence – like a bizarre aberration with the speed that the AVL is attributing to your vehicle, if you look at all the circumstances? --- Yes.

Yes. But as I understand your evidence, it may well have been the case that you were going at that speed? --- Yes. It is possible. And like you say I'm not sure if that time matches up with the – our accelerating past the stinger, but of course that is entirely possible and that doesn't necessarily reflect that the Pulsar was going 150. That might just have been what I got up to whilst trying to catch up to him.

247 Notwithstanding the circumstantial evidence as outlined above and Detective Mansell's concession, Detective Zuidema maintained that more corroboration was required before it could be found that GM411 was travelling at or about 151 km per hour.²⁴⁰ He agreed that the corroboration required to satisfy him would be evidence either (i) from one of the detectives in the car saying that he looked at the speedometer at that precise moment and it read 151 km per hour or (ii) from dashcam footage within the police car that had a display of the speedometer or (iii)

²³⁸ Exhibit 1, Volume 1, Tab 68, AVL Data dated 8 February 2018, p.12

²³⁹ ts 24.2.21 (Mansell), p.199

²⁴⁰ ts 13.4.21 (Zuidema), p.427

that the police car had driven through a Multanova camera at or about the same time which recorded a similar speed.²⁴¹ That, in my view, places a far too high a bar on the type of evidence that could be regarded as corroborative.

248 Inspector Hayes stated that the small number of unreliable readings from the AVL data for GM411 was “*quite normal*”²⁴² and that with respect to the other readings “*it doesn’t taint them to the point of being unusable.*”²⁴³ Of course, had the IAU investigators obtained a report from Inspector Hayes they could have found that out.

249 Mr Berson, counsel for the WAPF, correctly noted in his closing submissions that the speeds of GM411 relayed to the POC by Detective Sutton were, “*largely consistent with the AVL data for GM411*”.²⁴⁴ The AVL recorded speed of GM411 at about the time it passed the Multanova camera was also consistent with its speed measured by the camera.

250 The IAU investigation should never have concluded that the two consecutive AVL readings that GM411 was travelling at 151 km per hour were “*unusual readings*”, simply because of the speeds of 133 km per hour that were recorded before and after those readings.²⁴⁵ These readings were not unusual at all as they were entirely consistent with other evidence that actually corroborated their accuracy, namely that it was at the time when GM411 was accelerating heavily to catch up with the Nissan and then reducing its speed once it had done that.

251 In my view, this aspect of the IAU investigation regarding the weight it attached to the AVL data for GM411 lacked a proper analysis of all the evidence that actually

²⁴¹ ts 13.4.21 (Zuidema), pp.427-429

²⁴² ts 13.4.21 (Hayes), p.519

²⁴³ ts 13.4.21 (Hayes), p.520

²⁴⁴ ts 14.4.21 (Closing Submissions by Mr Berson), p.586

²⁴⁵ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.31

corroborated the accuracy of those 111 readings that were not regarded as “unreliable” due to their Data Age description.

Was the adequacy of Detective Sutton’s initial situation report investigated?

252 There is nothing in the 35 page IAU report that states it investigated the adequacy of the initial situation report to the POC by Detective Sutton. Although there is a summary of the radio communications with the POC,²⁴⁶ there is no reference to any analysis of the situation reports from Detective Sutton in the section titled “Investigator’s Analysis – Issue Three”.²⁴⁷ Whatever analysis was carried out for Detective Sutton’s actions is not detailed and the final two sentences in this section simply read: “There are no adverse findings against either Mansell or Sutton for this matter for breaching Emergency Driving Policy TR-07.04. Issue 3 Outcome - Unfounded.”²⁴⁸

253 Detective Zuidema accepted that the IAU report failed to outline which specific portions of the Policy had been analysed with respect to both detectives. When he was asked whether there was a reason for that, he replied, “No. That’s just the way the report was done.”²⁴⁹ I sincerely hope this oversight is an aberration and not a regular feature of IAU reports.

254 When questioned whether the adequacy of Detective Sutton’s initial situation report was investigated, Detective Zuidema said that it was. He was then asked:²⁵⁰

Where is that in your report, these conclusions? --- Which bit, your Honour?

About Detective Sutton? --- That’s not in there.

Was it investigated? --- Yes.

Then it should be in the report, shouldn’t it? --- As I said before, if I put everything that I investigated in the report, it would be three lever arch files full.

²⁴⁶ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.31

²⁴⁷ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, pp.33-34

²⁴⁸ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.34

²⁴⁹ ts 13.4.21 (Zuidema), p.448

²⁵⁰ ts 13.4.21 (Zuidema), pp.430-431

No. But this is a specific investigation regarding whether Detective Sutton complied with the policy and guidelines regarding SITREPS? --- Yes.

Yes. So ---? --- It's not in the report.

No. And it should have been, shouldn't it? --- Whether it should have been or not, I don't know.

Well, it's a matter you investigated and it's a conclusion that you've drawn that was presumably unfounded? --- Yes.

...

So you reached the same conclusion as Detective Sutton's evidence regarding the reasons why he did not provide more detail to the VKI about the Caltex incident? --- Yes.

255 I have some doubt, notwithstanding Detective Zuidema's evidence, whether this matter was actually investigated by the IAU. If it had been, then logically the IAU report would have referred to it being investigated, then outlined the facts and recorded the outcome of the investigation. If it was accurate for Detective Zuidema to say he did not know whether the investigation into the initial situational report should have been referred to in the IAU report, then that evidence is absolutely astonishing.

256 The adequacy of Detective Sutton's initial situation report was a critical matter that ought to have been at the very core of the IAU's investigation into the final evade police incident; namely, whether the incident should have been terminated before it eventually was. A reading of the IAU report gave no indication it had even been investigated.

257 Applying the *Briginshaw* principle, and not without some considerable hesitation, I am not able to reject Detective Zuidema's sworn evidence that this matter was actually investigated. However, what I do find is that the IAU report was substantially deficient in its failure to outline how it came to the conclusion that Detective Sutton's initial situational report to the POC did not breach the relevant

provisions of the Policy.²⁵¹ I also find, for the reasons already outlined, that the IAU investigation erred in concluding that there was compliance with the Policy regarding the initial situation report.

A concluding comment

258 I was not the only one who was alarmed at the inadequacy of the IAU investigation into this matter. Inspector Hayes was disarmingly frank when he said, “*Given the matter was always bound for the Coroner’s Court, I’m surprised at the lack of information in the final report ... I am surprised that more wasn’t explored.*”²⁵²

259 It is clear the IAU investigation into this matter was lacking in a number of significant areas. It is never in the best interests of the IAU, or an individual police officer who has signed the IAU report, for that officer to defend an investigation that was as deficient as this one. Detective Zuidema did precisely that at the inquest, despite being given a number of opportunities to concede that the IAU investigation into the final evade police incident was inadequate. Even on those rare occasions where he appeared to make an appropriate concession, Detective Zuidema would often revert back to defending that part of the IAU investigation, thereby contradicting himself. This evidence was most unedifying to hear.

COMMENT ON PROPOSED RECOMMENDATIONS

260 Four draft recommendations were forwarded to counsel for the WAPF on 10 December 2021. The WAPF was invited to provide a response to those proposed recommendations by 17 December 2021. That response (the Response) was provided by Mr Berson, counsel for the WAPF, via an attachment to an email on that date.²⁵³

²⁵¹ Exhibit 1, Volume 1, Tab 12, TR-07.04 Emergency Driving Policy and Guidelines, p.837

²⁵² ts 13.4.21 (Hayes), p.512

²⁵³ Response to Proposed Recommendations dated 17 December 2012

261 Draft recommendation 1 concerned the installation of ‘dash-cam’ technology in all police vehicles that undertake emergency driving.

262 Inspector Hayes told the inquest that he had already recommended that there be in-car dash cameras with live feed for all police vehicles in 2020, however, that has remained subject to government funding.²⁵⁴ These cameras would provide a live feed straight to the POC and also capture conversations inside the police car as well. They could be activated whenever the lights and sirens of the car are activated and, in those circumstances, there would be no difficulty with storage.²⁵⁵ As Inspector Hayes stated, “*The technology is there and the capacity is there*”.²⁵⁶ In my view, another advantage would be if the live feed to the POC could also provide the speedometer reading of the police car.

263 A recommendation to this effect was recently made by the Deputy State Coroner Linton in *Thorsager* [2021] WACOR 20, which was delivered on 27 June 2021.

264 The WAPF made the following comments in the Response regarding this recommendation:

As noted by the Court, Proposed Recommendation No. 1 was previously made in the Inquest into the death of Jordan Alexander Thorsager. Following the making of that recommendation, the WAPF is currently exploring funding options and the viability of implementing the installation of ‘dashcam’ technology in all police vehicles that undertake emergency driving (being Class 1, Class 2 and Class 4 vehicles).

265 Draft recommendations 2 and 3 regarded the manner in which IAU investigations should be conducted.

266 Draft recommendation 2 concerned the IAU obtaining a report from a relevant policy expert whenever it is investigating fatalities that may be the subject of a mandatory inquest under section 22(1)(b) of the Act. As already outlined, no such

²⁵⁴ ts 13.4.21 (Hayes), p.489

²⁵⁵ ts 13.4.21 (Hayes), p.490

²⁵⁶ ts 13.4.21 (Hayes), p.489

report was obtained by the IAU in its investigation of this matter. The evidence that emerged at the inquest clearly demonstrated why such a report should have been obtained. In light of the evidence at the inquest, I am of the view that the outcome of the IAU investigations into the final evade police incident would have been very different if it had access to a report containing an expert's opinion whether the Policy had been complied with.

- 267 The Response advised that the IAU "*considers that the input of a policy expert beneficial in the majority of investigations*". However, the Response went onto submit that the draft recommendation was "*overly prescriptive and overly inclusive insofar as it applies to **all** fatalities investigated by the IAU that are the subject of a mandatory inquest under section 22(1)(b) of the Coroners Act 1996 (WA)*". The WAPF submitted that the recommendation ought to be framed in such a way that the IAU should "*always consider obtaining a report or opinion from a relevant policy expert*".
- 268 Draft recommendation 3 concerned a requirement that all subject police officers be compulsorily interviewed by the IAU whenever it is investigating a fatality that may be the subject of a mandatory inquest under section 22(1)(b) of the Act. The failure to interview the two detectives in this matter was an error. It should have been done as the matters requiring investigation by the IAU were either not addressed or inadequately addressed in the statements of the two detectives to the Major Crash Investigation Section and in the Pursuit Return by Detective Mansell. Unless there are compelling reasons not to do so, these interviews should always take place, whether or not the subject police officers have already provided statements to another section of the WAPF.
- 269 In the Response, the WAPF accepted that for this matter, compulsory interviews of the subject officers would likely have elicited more facts. The Response went onto say:

On a case by case basis, the IAU considers the value of reports or statements that may have been provided, and supports the recommendation that, generally, all subject officers are to be compulsorily interviewed unless it is reasonable not to do so. However, the WAPF considers that it is not appropriate to fetter the conduct of IAU investigations through an overly prescriptive recommendation, which requires a compulsory interview in all but 'compelling' circumstances.

- 270 The WAPF then cited two examples of where a compulsory interview of a subject officer is not appropriate: for investigative reasons or for reasons related to the health of the subject officer. However, the Response stated that, irrespective of any recommendation that I make, the IAU supports “*the position that the best evidence may be obtained via an interview and will continue to prioritise interviews of officers in matters that are the subject of a mandatory inquest under section 22(1)(b) of the Coroners Act 1996 (WA).*”
- 271 Draft recommendation 4 concerned changes to be made to the WAPF communications systems (i.e. VKI) that would enable the POCCC to speak directly to police officers undertaking emergency driving. The reason for this proposed recommendation was because of the delay encountered when Officer Jones (the acting POCCC at the time) advised the POC dispatcher to communicate to GM411 that the final evade police incident was to be terminated.²⁵⁷ This delay was over 30 seconds after GM411 had advised the POC that the stinger had been avoided by the Nissan.²⁵⁸ Had the decision been directly communicated by the acting POCCC to GM411 immediately after the advice that the stinger had been avoided, the crash may not have occurred.
- 272 The WAPF did not support this recommendation as such a recommendation “*requires further investigation, assessment and analysis to ensure that no unintended consequences follow as a result.*” The Response also stated, “*while it may be technically possible to have the Duty Inspector log onto an alternative VKI*

²⁵⁷ Statement of Senior Sergeant Jones dated 9 July 2021, p.6

²⁵⁸ Exhibit 1, Volume 1, Tab 11, Report of the IAU dated 23 April 2020, p.31

console, this is not an efficient, practical or appropriate way of performing the Duty Inspector role”.

- 273 The Response also stated that once a situation report had advised the POC a target vehicle had avoided a stinger, the POCCC is *“required to undertake a risk assessment and consider what other operation strategies are available to resolve the incident before determined [sic-determining] whether the Evade Police Incident should be terminated”*. It was added that this *“will often lead to a time delay between the most recent communication of a vehicle engaged in an Evade Police Driving Incident and the communication of a decision to terminate such an incident”*. However, I note that that there would have been no such time delay in this instance as the acting POCCC had already made the decision that he would terminate the pursuit if the Nissan was to avoid the stinger.²⁵⁹

RECOMMENDATIONS

- 274 Ms Langoulant, counsel for the family, submitted there was a need for a full review of the Policy.²⁶⁰ After carefully considering that submission, I have concluded that it is not necessary to make a recommendation to that effect.
- 275 In making that decision, I have relied on Inspector Hayes’ evidence that out of the *“6,500/7,000 of us I don’t see that frequency [of extraordinary driver behaviour] as out of the ordinary statistically, that you would see with a working population. You’ll always get one, two, the odd one here or there. We’re not all perfect”*.²⁶¹
- 276 I have also relied on the evidence before me of the exemplary driving of the police cars in the first and second evade police incidents which complied with the Policy at all times.

²⁵⁹ Statement of Senior Sergeant Stephen Jones dated 9 July 2021, pp.5-6

²⁶⁰ ts 14.4.21 (Closing Submissions by Ms Langoulant), p.5

²⁶¹ ts 13.4.21 (Hayes), p.502

277 I am therefore prepared to accept that the behaviour of the two detectives in the final evade police incident was an aberration of what is otherwise a very good level of compliance with the Policy. I am also of the view that the Policy, if followed, offers the appropriate degree of protection for all road users who become involved, either directly or indirectly, with an evade police incident.

278 Nevertheless, if there is one matter that should be drilled into the training of police officers in emergency driving (if it is not already in place), is that in the absence of a compelling reason, a pursuit should always be aborted whenever the car being pursued is being driven dangerously and shows no signs of stopping. Future training should also use, as a case study of what to do, the actions of police officers in the first and second evade police incidents involving Child JP. A case study of what should never be done by police would be the final evade police incident.

Recommendation No.1: Installation of “dashcam” technology in police cars that undertake emergency driving

279 Having noted that the WAPF is in support of this recommendation, I adopt the same recommendation made in June 2021 by the Deputy State Coroner. Now that this recommendation has been made for a second time by this Court, I hope the WAPF will hasten its search for funding options to make this recommendation a reality. I have a firm view that it is crucial this technology is funded and implemented as a matter of urgency in order to minimise a repeat of what happened during the final evade police incident where the POCCC was effectively left in the dark as to what was taking place.

Recommendation No.2: The obtaining of a relevant policy expert’s report by the IAU

280 The failure by this IAU investigation to obtain input from a policy expert in this matter was a serious oversight that should never have occurred. I have carefully

considered the Response of the WAPF to my draft recommendation regarding this matter and have slightly amended my proposed recommendation.

Recommendation No.3: Compulsory interviews of subject officers by the IAU

281 The WAPF, and more particularly, the IAU, has said in the Response that it supports the proposition that the best evidence can be obtained via a compulsory interview in matters that fall within section 22(1)(b) of the *Coroners Act 1996* (WA). I remain of the view that such interviews should be mandatory unless exceptional reasons exist. I am also of the view that the two examples cited in the Response by the WAPF would be regarded as “*exceptional*” instances where a compulsory interview need not take place.

Recommendation No.4: The ability for the POCCC to speak directly to police officers

282 I am convinced that had the decision by the acting POCCC to terminate the final evade police incident been conveyed to Detective Mansell and Detective Sutton more quickly, the fatal outcome of this pursuit may have been avoided. Nevertheless, I have accepted what the WAPF has submitted in the Response to my proposed recommendation for this matter and have amended the recommendation accordingly. I would urge the WAPF to undertake its investigation into this matter as quickly as possible.

The Evade Police Intercept driver qualifications for Detective Mansell

283 If Detective Mansell still has his qualification as a Priority Pursuit driver, I would expect my findings will persuade the WAPF to undertake a review of his suitability to hold that qualification.

Recommendation No.1

That the WA Police Force give priority to seeking funding to implement the installation of 'dashcam' technology in all police vehicles that undertake emergency driving, along with the associated infrastructure and personnel to manage and review footage. The technology should, where possible, provide for real-time, live feed footage to the Police Operations Centre, so that this information can be used by the Duty Inspector as part of his or her decision making when running an evade police incident.

Recommendation No.2

That for IAU investigations involving a fatality that may be the subject of a mandatory inquest under section 22(1)(b) of the *Coroners Act 1996 (WA)*, the IAU always obtains a report or opinion from a relevant policy expert, unless there are exceptional reasons not to do so.

Recommendation No.3

That for IAU investigations involving a fatality that may be the subject of a mandatory inquest under section 22(1)(b) of the *Coroners Act 1996 (WA)*, all subject officers are to be compulsorily interviewed (whether or not they have already provided statements to another section of the WA Police Force), unless there are exceptional reasons not to do so.

Recommendation No.4

That the WAPF investigate the feasibility of enabling a Duty Inspector, who has decided to terminate an evade police incident, to directly communicate that decision to police officers in vehicles that are involved in the evade police incident.

CONCLUSION

- 284 Child JP was a 16-year-old boy who died after he lost control of the car he was driving when performing an extremely dangerous overtaking manoeuvre of another car at excessive speed. He did not hold a driver's licence or a learner's permit.
- 285 He had earlier driven in a dangerous manner in order to evade an unmarked police car with two detectives in it which had pursued him for seven minutes over a distance of about 14 kilometres. At no stage during that pursuit did Child JP give any indication he was going to stop and his manner of driving became more dangerous the longer the pursuit continued. Unlike two earlier evade police incidents involving other police officers, the two detectives pursuing Child JP did not voluntarily terminate their pursuit until it was too late to prevent the catastrophic crash that killed Child JP.
- 286 As Detective Mansell and Detective Sutton were in the habit of reminding me during their evidence at the inquest, all police pursuits are dangerous. I did not need to be constantly told that as it is self-evident that all pursuits substantially increase the danger to persons who are directly and indirectly involved. This danger is an immediate and obvious intrinsic risk with all police pursuits, and one that has materialised with tragically fatal outcomes on a number of occasions.
- 287 If police officers comply with the Policy, it does not automatically follow that they will not cause or contribute to a death arising from their pursuit. Although compliance with the Policy does not guarantee that outcome, it clearly will significantly reduce the risk of police officers causing or contributing to the death.
- 288 While most drivers called on by police to stop will react rationally and comply, the minority who do not and are then pursued are more concerned with the consequences of being caught than with the uncertain risks of fleeing. If pursuing

police officers are affected by “*red mist*”,²⁶² then once the pursuit has begun in earnest, the speed, danger and anxiety of the pursuit and risk of arrest must similarly diminish the pursued driver’s capacity to make rational decisions.²⁶³ It therefore becomes too simplistic to argue that, as the pursued driver could simply stop, there is no causal link between the pursuit and the crash. That is to conflate cause with responsibility.²⁶⁴

289 I have found that Child JP was travelling at excessive speeds and driving dangerously because he did not want to be caught by the two detectives pursuing him.²⁶⁵ I have also found that but for the pursuit, Child JP would not have been travelling at excessive speeds, overtaking cars in a dangerous manner or performing other risky manoeuvres. This is not to transfer blame or responsibility to the two detectives, but to recognise their behaviour as a link in the causal chain.

290 Based on all the available evidence before me, I have found that if the two detectives involved in the final evade police incident had complied with the Policy then they would have voluntarily terminated the pursuit before Child JP began the final overtaking manoeuvre that resulted in the crash.

291 Accordingly, I have found that the behaviour of Detective Mansell and Detective Sutton, in failing to comply with the Policy and actively disengaging from their continued pursuit of Child JP before his last overtaking manoeuvre, contributed to his death.

²⁶² ts 13.4.21 (Hayes), p.502: “‘Red mist’ is a term used to describe a complex emotional situation affecting the state of mind of drivers who become so focused on an objective or outside influence, their ability to accurately assess driving risk is severely reduced. The consequence ... is a significant increase in the risk of a collision.”: Association of Chief Police Officers of England, Wales and Northern Ireland, *The Management of Police Pursuits Guidance*, London, 2009, [5.7] – [5.8].

²⁶³ *Inquest into the Death of Hamish Raj*, State Coroner’s Court of New South Wales, 7 April 2014, File number 2011/00389491 [185]

²⁶⁴ *Inquest into the Death of Hamish Raj*, State Coroner’s Court of New South Wales, 7 April 2014, File number 2011/00389491 [186]

²⁶⁵ As he had done during the first and second evade police incidents.

292 Furthermore, based on all the available evidence before me, I have found that if Detective Sutton had complied with the Policy by conveying all relevant information when delivering his situation reports to the POC, then the pursuit would have been terminated by the POCCC before the final overtaking manoeuvre by Child JP that resulted in the crash.

293 Accordingly, I have also found that this failure by Detective Sutton to comply with the Policy contributed to Child JP's death.

294 I have also found that the IAU investigation failed to pursue proper lines of inquiry into the final evade police incident which contributed to it concluding that potential breaches of the Policy by Detective Mansell and Detective Sutton were "unfounded". These lines of inquiry included the failure to conduct compulsory interviews of the two detectives and the failure to obtain a report from a senior police officer with expertise in the application of the Policy. Had the IAU investigation been conducted more thoroughly then I expect its outcome regarding the two detectives would have been very different.

295 I am satisfied that with respect to evade police incidents, the WAPF is aware of the need to balance the risks of harm to others against the benefits of apprehending offenders. I am satisfied that the Policy does that appropriately. Had the Policy been complied with in the final evade police incident, it is almost inevitable that the crash would not have occurred. Apart from when the Nissan was observed exceeding the speed limit just before the first evade police incident, the evidence before me indicated that Child JP's manner of driving, when he was not being pursued, complied with the road traffic rules.

296 Child JP was a 16-year-old boy who was only just getting his life back into order after some turbulent years. Notwithstanding his young age, he was in a committed relationship with his girlfriend and had plans to further his education. He also had

the support of his aunt and her family who had provided him with a stable accommodation and safe family life. Child JP's girlfriend and family members attended the inquest and their continuing grief at the loss of Child JP was palpable. They conducted themselves with dignity throughout the six days of the inquest, even though some of the evidence would have been very difficult to hear.

297 I have made four recommendations aimed at addressing the issues I have identified during the inquest. It is my hope that these recommendations will provide some small consolation to Child JP's family for their sad loss.

298 I offer the family and friends of Child JP my sincere and heartfelt condolences.

PJ Urquhart
Coroner
21 December 2021