



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Tateolena Tauaifaga
Hearing dates:	27 – 30 April 2021; 3 – 7 May 2021; 17 – 21 May 2021; and 5 November 2021
Date of findings:	13 April 2022
Place of findings:	NSW Coroners Court - Lidcombe
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – death of a child in the course of a police pursuit – should the police’s covert investigation of the driver have been allowed to continue – was the planning for an intercept of the driver adequate – should police vehicles have followed the driver through a residential property and park – was police action in the subsequent pursuit appropriate and in accordance with NSW Police Force policies – recommendations.
File number:	2015/7720

<p>Representation:</p>	<p>Counsel Assisting the Inquest: A Casselden SC with M Dalla Pozza of Counsel i/b NSW Crown Solicitor's Office</p> <p>The Tauaifaga family: S Climo of Counsel i/b Legal Aid.</p> <p>Commissioner of NSW Police Force: L Gyles SC with Dr C Palmer of Counsel i/b Office of General Counsel, NSW Police Force</p> <p>Officers of NSW Police Force: L Gyles SC with C Palmer of Counsel i/b Office of General Counsel, NSW Police Force</p> <p>Detective Acting Inspector D Law: D Nagle of Counsel i/b Greg Willis.</p> <p>Senior Constable R Jones: P Madden of Counsel i/b Walter Madden Jenkins</p>
<p>Findings:</p>	<p>Identity of deceased: The person who died is Tateolena Tauaifaga.</p> <p>Date of death: Tateolena Tauaifaga died on 8 January 2015.</p> <p>Place of death: Tateolena Tauaifaga died at Constitution Hill, NSW.</p> <p>Cause of death: Tateolena Tauaifaga died as a result of blunt head injuries.</p> <p>Manner of death: Tateolena Tauaifaga died when a car which was the target of a police operation drove into her backyard and hit her, causing fatal injuries.</p>
<p>Non publication order</p>	<p>Orders for non publication of certain evidence have been made in this inquest.</p> <p>Copies of the orders may be found on the Registry file.</p>

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Introduction

The role of the Coroner

1. Section 81(1) of the *Coroners Act 2009 (NSW)* [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death.
2. A Coroner presiding over an inquest is required to confirm that a particular death occurred, and make findings as to the identity of the person who died, and the date and place, cause and manner of their death.
3. In addition, under section 82 of the Act a Coroner may make recommendations that are considered necessary or desirable in relation to any matter connected with the death, including in relation to health and safety.

The inquest

4. This is an inquest into the tragic death of a little 17 month old girl, Tateolena Tauaifaga.
5. Tateolena died on 8 January 2015. It was a summer evening and she was playing in the backyard of her home with three of her sisters. The four little girls were all aged between 17 months and 6 years.
6. All of a sudden a car smashed through their front fence and into the backyard. Moments later two police vehicles followed it. The first car hit Tateolena and crushed her head, leaving her lying motionless on the ground.
7. The three vehicles continued through Tateolena's backyard, scattering children's play equipment and bicycles in their wake. The first car reached the rear fence of the house, smashed through it, then drove into the adjoining recreational park. It was closely followed by the two police vehicles.
8. In the park more children were playing, watched by their parents. Children ran from the path of the first car as it ploughed through the park, followed by the two police vehicles. All three vehicles drove into the adjoining residential streets.
9. Meanwhile, Tateolena lay critically injured in her backyard. Her distraught mother and father could do little but watch as police officers and then paramedics tried to save her. They could not save her, and she died at Westmead Hospital an hour later.

The reason for this inquest

10. The driver of the car which took Tateolena's life was Christopher Chandler. He had previously committed many crimes of dangerous driving, assault, and robbery.

11. A police investigation tracked Mr Chandler down, and on 14 February 2015 he was charged with an offence of murder. On 20 October 2017, ten days before his trial was fixed to commence, the NSW Director of Public Prosecutions accepted his plea of guilty to an offence of manslaughter. On 14 December 2017, Mr Chandler was sentenced by Johnson J in the Supreme Court of NSW to a head sentence of 19 years, commencing on 12 August 2017 and expiring on 11 August 2036, with a non-parole period of 13 years, expiring on 11 August 2030.
12. The fact that Mr Chandler will be in prison for many years can never console Tateolena's family for the loss of their little girl. However the man responsible for her death has been brought to justice. Why then has there been an inquest into Tateolena's death?
13. The reason is that an inquest is mandatory when a person dies as a result of a police operation.
14. In this inquest I do not lose sight of the fact that it was Christopher Chandler who took the life of Tateolena in this violent and senseless way. Mr Chandler had done great harm to many people, and police rightly felt a strong duty to bring him to justice. But throughout that day NSW police officers had been closely following Mr Chandler's movements. The decisions they made form part of the network of circumstances which surround Tateolena's senseless death, and raise questions as to whether things might have turned out differently that day.
15. One such question is whether police officers were right to decide, earlier that day, that they would not arrest Mr Chandler when there were opportunities to do so. This was an issue of great importance, for obvious reasons. Had Mr Chandler been arrested earlier in the afternoon of 8 January, he could not have committed the terrible offence which took the life of an innocent little girl later that day. This knowledge remains a source of great pain for Tateolena's mother, father, sisters and brothers.
16. Another question is whether later that day, police officers were right to decide they would follow Mr Chandler when he crashed his car into Tateolena's backyard. Three other little girls were playing alongside Tateolena. It is terrible to think of the danger to which these other little lives were exposed by this decision.
17. Every day we rely upon NSW police officers to protect us from harm and to help bring offenders to justice. In the course of their work police officers make decisions every day, sometimes within a split second.
18. But we are a society which also recognises the need to review police decisions when people may have been harmed by their consequences. Police officers deserve to be supported by high quality systems and training which will help them to perform their very important role with the lowest possible risk of harm to others.

19. Because of Tateolena's death, the Commissioner has commenced a review of the policies and procedures which underlay the decisions made that day. She has told this court that protecting people from the risks associated with police activities is '*paramount*'. To this end, she has said she '*recognises the value of this important review by the Coroner, particularly as to any improvements to the current systems which may be identified*'.
20. I am encouraged by the Commissioner's response. Certain policing decisions that day put members of the community at very high risk of harm. I look forward to the Commissioner's review of those policies and training which in my view contributed to this tragedy.

Tateolena's life

21. Tateolena was the youngest daughter of the Tauaifaga family. She was adored by her mother Helena Tauaifaga, her father Topaz Hunia, and her eight brothers and sisters.
22. Tateolena and her family lived at 5 Bessbrook Way in Constitution Hill. The children ranged in age from 10 years down to only two weeks old. Tateolena was the second youngest of the family, at 17 months.
23. At the close of the inquest Tateolena's mother told the court of her sorrow and her longing to hold her little daughter once again. She spoke lovingly of Tateolena, a beautiful, active and curious little girl who learned fast because she was determined to catch up with her older sisters and brothers.
24. Tateolena loved singing and dancing, and brought great joy to her family. Helena recalled Tateolena's attempts to breakdance, which she said always had the family in fits of laughter and usually ended in a dance battle with her siblings. Helena and Topaz have struggled to remember the joyfulness of those times, in the dark days and years that have followed.
25. Helena also spoke of how, despite her own heartbreak at Tateolena's death, she has had to '*dig deep*' and stay strong for the sake of her much loved children. As Helena spoke these words in court it was very moving to see Tateolena's sisters and brothers surround and support their mother.
26. The grief felt by Tateolena's mother, father, sisters and brothers is still raw. They have a deep need to understand how Tateolena's terrible death could have been allowed to happen.

The post mortem report

27. There is no dispute as to the cause of Tateolena's death.
28. A post mortem examination was performed by forensic pathologist Dr Istvan Szentmariay. He found the cause of Tateolena's death to be blunt head injuries. Tateolena had suffered extensive skull fracturing, and abrasions to the right side of her face and body.

29. Dr Szentmariay concluded that Tateolena's injuries were consistent with her having been crushed by the underside of a car of similar make and model to the car which was being driven by Christopher Chandler that day.

The issues examined at inquest

30. My findings into the circumstances of Tateolena's death are structured into two parts.

31. The first deals with issues arising from events earlier on the day of 8 January 2015. During this time officers of NSW Police Force's Metropolitan Robbery Unit were involved in a covert investigation into the activities of Mr Chandler. He was a suspect for a number of serious offences they were investigating. The issues arising out of these events are: The principal issues arising out of these events are:

- whether the covert investigative strategy was appropriate; and
- the adequacy of the risk assessment undertaken for the covert investigative strategy.

32. The second part deals with issues arising from events later that day, when operatives attached to the Tactical Operations Unit attempted to intercept Mr Chandler. It was in the course of this operation that Mr Chandler crashed his car through the front fence of the Tauaifaga's home, killing Tateolena seconds later. The issues arising out of these events are:

- the adequacy of planning for the attempted intercept of the Audi being driven by Mr Chandler;
- whether Bessbrook Way was a suitable location for the attempted intercept;
- the appropriateness of the police operatives' actions in following the Audi through the Tauaifaga's fence, through their backyard, and into and through Richill Park;
- whether those actions were in accordance with NSW Police Force policies and procedures; and
- the appropriateness of the actions taken by police officers in the subsequent pursuit of the Audi.

33. I will first briefly describe the two specialist police units involved.

Background

The specialist police units

34. The Metropolitan Robbery Unit [MRU] was a specialised unit within the NSW Police Force. It was tasked with preventing robbery-type offences from occurring, and investigating these when they did occur. The MRU has since been disbanded, apparently for reasons unrelated to this case.
35. In December 2014 the MRU formed a taskforce codenamed 'Strikeforce Hawick'. A series of armed robberies and break, enter and steal offences had been committed that month, which I will refer to as 'the December 2014 offences'. These offences, which are further described in paragraph 46 below, were transferred to the MRU for specialist investigation.
36. The members of Strikeforce Hawick had credible information that Christopher Chandler was involved in the December 2014 offences. They developed a covert investigative strategy, which culminated on 8 January 2015 in an attempt by other police to intercept him.
37. The MRU officers who were closely involved in Strikeforce Hawick were:
 - Detective Senior Constable (now Sergeant) Bennett Nolan, the officer in charge of Strikeforce Hawick.
 - Detective Senior Constable Brett Harris, Detective Nolan's supervisor at the time.
 - Detective Sergeant (now Inspector) Darren Law, the acting Commander of the MRU at the time.
38. The Tactical Operations Unit [TOU] is a specialist command of police. Its task is to provide expert operational support to all police *'with the intent of resolving high risk incidents without loss of life, injury to persons or damage to property'*.
39. Late in the afternoon of 8 January 2015, operatives of the TOU were asked to arrest Mr Chandler in Bessbrook Way, the small cul de sac street where Tateolena lived. Their attempt to intercept him was not successful, as Mr Chandler accelerated his car away from the TOU vehicles and crashed it through the front fence of the Tauaifaga's home.
40. The attempt to intercept Mr Chandler's car was primarily made by two TOU vehicle teams codenamed Alpha and Bravo. They were supported by two other vehicle teams codenamed Charlie and Delta, whose role was to pursue the Audi in the event that the HRVI was not successful.
41. In these findings, the involved TOU operatives have been given pseudonyms to protect their identity.

The MRU Operation

42. I will now examine the issues which arise out of the involvement of the MRU in the events of 8 January 2015.
43. In examining these issues, I have been assisted by the evidence of the involved MRU officers, as well as the expert evidence of Mr Stephen Leane, a former Assistant Commissioner of Victoria Police who retired in 2019. Mr Leane had held that rank for six years across three portfolios: Professional Standards Command, Regional, and Road Policing.
44. I have also been assisted by the opinions expressed by the Officer in Charge of the coronial investigation, Detective Chief Inspector Brendan Bernie. Chief Inspector Bernie led a team which performed a comprehensive investigation into Tateolena's tragic death.

The December 2014 offences

45. As noted, Strikeforce Hawick was tasked with investigating a series of offences which had been committed in December 2014. They consisted of:
 - i. a break, enter and steal from a residence in Seaforth on 11 December
 - ii. the fraudulent use of credit cards which had been stolen in the Seaforth offence
 - iii. an armed robbery in Constitution Hill on 19 December
 - iv. a robbery in Lethbridge Park on 20 December
 - v. a robbery from a residence in Duffys Forest between 22 and 23 December
 - vi. a theft of a BMW car from Strathfield between 25 and 26 December
 - vii. a robbery in Constitution Hill on 27 December
46. Offences iii, iv and vii all involved the use of a firearm.
47. Although the members of Strikeforce Hawick had information that Christopher Chandler was involved in the above offences, they did not believe they had sufficient evidence with which to arrest him. They therefore decided to employ a covert strategy aimed at gathering further evidence of his involvement.
48. At the inquest it was accepted that there was no basis to query the assessment of the MRU officers, that as at 8 January 2015 they had insufficient evidence with which to arrest Mr Chandler for the December 2014 offences.

Mr Chandler's criminal background

49. Christopher Chandler was born on 9 June 1992. He had a lengthy criminal history which commenced when he was eleven years old. His criminal record included convictions for stealing and driving cars, dangerous driving, breaking and entering, robbery, and assault.
50. Although Mr Chandler had never held a drivers licence, he had been convicted of engaging in police pursuits on a number of occasions. During these incidents he had driven at high speed through residential areas, collided with other vehicles, and run through red lights. Notably an offence in 2007 involved him trying to evade police by driving through a recreational park in an area near Constitution Hill, crashing into a metal fence, and then colliding with a police car.
51. As at January 2015 Mr Chandler was facing charges of breaking into a home with an associate, punching its occupant in the face and tying her to a chair, then stealing her car. He was refused bail, but received conditional bail in a NSW Supreme Court review on 16 July 2014. A warrant issued when he breached that bail by failing to report to Redfern Police Station.
52. Mr Chandler was familiar with Constitution Hill and its surrounding areas, having lived there during parts of his life.

The covert investigative strategy

53. The covert investigative strategy devised by the members of Strikeforce Hawick aimed to gather further evidence which might support an arrest of Mr Chandler for the December 2014 offences. It also aimed to identify possible co-offenders, and to find and seize the firearm which had been used in some of the robberies.
54. With the approval of the acting MRU Commander, on 7 January 2015 Detective Nolan obtained warrants to intercept communications to and from a mobile phone service used by Mr Chandler. Approval was also given to obtain a car tracker device, which could be installed should the team identify a vehicle which Mr Chandler was using.
55. The court heard that within the MRU it was a reasonably common investigative practice to place tracker devices inside stolen cars. Generally, offenders did not commit robbery-type offences using cars to which they were linked, preferring to use stolen cars which they later dumped.
56. Over the course of 7 and 8 January 2015, the strikeforce members received intelligence that Mr Chandler may be planning a further serious offence. On 7 January 2015 he was heard on his phone telling another person that he had '*a beast*'. The investigating team inferred that this referred to a dark coloured Audi that had been reported stolen in the Constitution Hill area that morning. They surmised that Mr Chandler may be preparing to commit another serious offence using the stolen Audi.

57. That evening Mr Chandler could be heard talking to a woman, referring to a firearm which he had in his possession and threatening to use it against her parents.
58. On the morning of 8 January 2015 the team intercepted significant texts to Mr Chandler's phone. The first text, from a person signing themselves with the unlikely name of '*Robin Banks*', told Mr Chandler to '*be ready*'. A second text referred to '*bundles*'.
59. Police inferred that Mr Chandler, and an associate, were planning to commit a robbery that day, with the use of the stolen Audi. Further texts intercepted in the early afternoon indicated that Mr Chandler may be planning to collect '*Robin Banks*' from Strathfield Railway Station.
60. Detective Nolan instructed members of his team members to search the Constitution Hill area for the stolen Audi, then seek an opportunity to covertly place the tracker device in it.

The finding and tracking of the Audi

61. At 11.20am on 8 January 2015, MRU officers located the stolen Audi in a street in Northmead, a suburb which adjoins Constitution Hill. A male fitting Mr Chandler's description was driving it.
62. Detective Nolan and his colleagues arrived at the scene in unmarked police cars, and followed the Audi to a nearby McDonalds store. There Mr Chandler picked up a friend, Ms Katie Tuite. Ms Tuite remained with Mr Chandler throughout the events of 8 January 2015.
63. At about 2.00pm Mr Chandler drove the Audi into an underground car park at a Coles Supermarket in Westmead. Mr Chandler and Ms Tuite exited the car and walked into the shopping centre. While the Audi was unattended for approximately twenty minutes, Detective Nolan and an MRU colleague installed the tracking device into it.
64. Over the next four hours police monitored the movements of the Audi with the guidance of the tracking device. Police officers in unmarked police cars also conducted physical surveillance of it. During this time Mr Chandler drove to different locations in the areas of Pendle Hill and Wentworthville. He also spent some time sitting in the Audi, which he had parked in Bessbrook Way.
65. At about 4.50pm the Audi entered the underground carpark of the Wentworthville Shopping Plaza. Mr Chandler and Ms Tuite exited the car and remained away from it until about 5.37pm.
66. It is to be noted that by midday of 8 January 2015, the MRU had evidence that Mr Chandler was driving a stolen car. Clearly this provided a basis to charge him with a relevant offence. In addition there was evidence that Mr Chandler may have been in possession of a firearm.

67. Why did the strikeforce members not use the opportunity to arrest Mr Chandler while he was away from the car? This was a key issue for examination at the inquest, and will be addressed later in these findings.
68. Suffice to say at this stage, that an early arrest of Mr Chandler was not the focus of the MRU's investigative strategy. Detectives Law, Harris and Nolan were of the view that substantial public benefits would flow from deferring his arrest while they gathered evidence of his involvement in more serious offences.
69. Detectives Law, Harris and Nolan also believed that the inherent risks of allowing Mr Chandler to remain at large with a stolen car could be mitigated by measures which they had put in place. These included maintaining '*control*' of the Audi's movements by means of the tracker device and physical surveillance. In addition, the interception of calls and texts on Mr Chandler's phone service was providing real time information as to who he was communicating with and what his plans were.
70. There was a further risk mitigation strategy. This was a request to the TOU for a team to be placed on standby, to assist with an arrest of Mr Chandler should that become necessary.

The TOU become involved

71. The involvement of the TOU commenced with a phone call from Detective Harris to a senior TOU operative shortly after 11.00am on 8 January 2015.
72. Detective Harris' purpose was to foreshadow a possible deployment of the TOU, to effect a high risk vehicle intercept if it appeared that Mr Chandler was about to commit an offence which the MRU team was unable to prevent, or if he became aware of the police presence and attempted to flee in the Audi.
73. At about 2.00pm TOU operatives were given an initial briefing by another senior operative within the TOU, whom I will refer to as Operative 20. Operative 20 has since retired from the NSW Police Force. At the time however he held the position of Operations Coordinator within the TOU. At the briefing he advised the TOU operatives that the MRU were involved in 'a developing operation', and that TOU assistance may be needed to intercept a stolen Audi and to arrest its driver, a suspected armed robber.
74. Shortly after 3.14pm Detective Harris contacted Operative 20 to provide the following update:
 - a tracker device had been fitted to the Audi
 - Mr Chandler's calls were being intercepted
 - Mr Chandler had access to a firearm

75. Operative 20 agreed to *'move some members of the TOU out to Parramatta to provide assistance'*.
76. The TOU operatives received a second briefing at about 4.00pm, at which they were all given access to certain information about Mr Chandler.
77. At about 4.15pm Operative 20 spoke by phone to Assistant Commissioner Denis Clifford. Although he is now retired, Assistant Commissioner Clifford was at that time the Commander of the North West Metropolitan Region of the NSW Police Force. His advance authorisation was required, in the event the TOU sought to use specialised weapons and tactics within that region.
78. Assistant Commissioner Clifford gave his permission. At the inquest however he said that he was not informed that the Audi had a tracker fitted to it, or that Mr Chandler may have been in possession of a firearm.
79. At 5.00pm on 8 January 2015 Detective Law considered that the strikeforce's covert operation was going well. Mr Chandler's mobile phone communications were being monitored, electronic and physical surveillance of the Audi was in place, and the TOU were on standby to perform an arrest if need be. Detectives Law and Harris felt confident that they would soon have evidence to charge Mr Chandler with an offence of conspiracy to commit armed robbery.
80. Shortly afterwards however, they were forced to take the operation in a very different direction.

The intervention of Assistant Commissioner Clifford

81. At about 4.55pm Assistant Commissioner Clifford received a phone call from the Operations Manager within his region, Detective Superintendent Dean Smith. According to Assistant Commissioner Clifford, in this phone call he learnt for the first time that the Audi which Mr Chandler had been driving for several hours was a stolen car, and that a tracker device had been placed in it.
82. This information disturbed Assistant Commissioner Clifford. He told Superintendent Dean Smith that it was *'too risky to let it run'* and that the Audi was to be stopped and Mr Chandler arrested as soon as practicable. At the inquest Assistant Commissioner Clifford said that in his opinion, the risk to the community of allowing police to follow a stolen car was too high. As he described it at the inquest: *'My intention was to prevent what tragically did happen'*.
83. Superintendent Smith rang Detective Law at 5.06pm, relaying Assistant Commissioner Clifford's direction that Mr Chandler was to be arrested as soon as practicable *'as it was too risky to let it run'*. Superintendent Smith did not discuss with Detective Law how soon the arrest was to be effected, or by whom. His understanding was that it was to be carried out in the safest way possible in the circumstances.
84. In their evidence at the inquest, Detectives Nolan and Harris described feeling *'confused'* by the direction from Assistant Commissioner Clifford that

Mr Chandler be arrested. For his part Detective Law said he had felt 'disappointed' by it. An offence did not appear to be imminent, and all three believed the covert strategy offered a real prospect of gathering cogent evidence against Mr Chandler. Detective Harris told the court that he had not previously experienced such an intervention in an operation being run by a specialist unit.

85. Nevertheless, Detectives Law, Nolan and Harris were in no doubt they were obliged to comply with Assistant Commissioner Clifford's direction. They discussed the available options to give effect to it.
86. By 5.30pm or shortly afterwards, Detectives Law, Harris and Nolan had decided to attempt what they called a '*soft arrest*' of Mr Chandler. Their plan was that Mr Chandler would be arrested by MRU officers, and not TOU operatives. Their reasoning was that if Mr Chandler could be arrested without the involvement of the TOU, and charged with the relatively minor offences of breaching bail and driving a stolen car, there was a chance he would remain ignorant that he was the target of their larger investigation into the robbery offences. This might allow the strikeforce to continue gathering evidence in that investigation.
87. It was clear however that a '*soft arrest*' could only be effected at a time when Mr Chandler was on foot, and not in the Audi. The MRU officers acknowledged they were not trained or equipped to arrest Mr Chandler while he was driving the car. Detectives Nolan and Harris told the court they were also aware that there were inherent risks in a '*soft arrest*'. An offender's reaction was rarely predictable and there would always be a risk of harm to the public.
88. At 5.48pm Detective Harris discussed with Operative 20 the plan of arresting Mr Chandler while he was on foot and away from the Audi. It was agreed that the MRU would attempt such an arrest and the TOU operatives would assume a support role.
89. Surveillance police officers were instructed to notify Detectives Nolan and Harris immediately if they saw Mr Chandler leave the car.

The attempt to make a 'soft arrest'

90. As it happened, a '*soft arrest*' of Mr Chandler did not take place.
91. At the inquest Detective Harris was asked why the MRU officers did not manage to arrest Mr Chandler as planned. There appeared to be an opportunity to do so when he left the Audi unattended at the Wentworthville Shopping Plaza.
92. Detective Harris told the court he did not have sufficient numbers of MRU officers in place to arrest Mr Chandler at that time. In addition, he explained that such an arrest would still have required planning. An obvious risk associated with arresting a person within a shopping centre was the presence of members of the public, who could be harmed or even taken hostage by the target. Typically shopping centres also had numerous points of exit.

93. By 5.37pm the opportunity to arrest Mr Chandler in the shopping centre had passed. Mr Chandler returned to the Audi and drove away in it. Over the next hour he travelled to different locations, but he did not get out of the car.
94. Then at 6.35pm the situation changed again. A phone call was intercepted, suggesting that 'Robin Banks' was on his way to the Constitution Hill area. Detective Law apprehended an escalation of the risk that Mr Chandler would meet up with his associate and commit a serious offence. He told the court that at that point, he felt he had no choice but to abandon the strategy of waiting for a chance to perform a soft arrest.
95. At 6.40pm Detective Harris advised Operative 20 that his team had been unable to arrest Mr Chandler. He requested that the TOU team do so.
96. At this point the Audi with Mr Chandler and Ms Tuite inside it was stationary, parked towards the end of Bessbrook Way. Operative 20 agreed with Detective Law that this location was a suitable one for a HRVI.
97. Thereafter, MRU officers played no significant part in the events that unfolded. I will therefore now consider the issues arising from their role.

The appropriateness of the covert investigative strategy

98. A key issue at the inquest was whether it was appropriate for the MRU officers to have pursued their covert investigative strategy. Closely related to this issue is the question why the MRU officers did not take the opportunity to arrest Mr Chandler prior to the direction given by Assistant Commissioner Clifford.
99. I have mentioned that this was an issue of great importance. An earlier arrest of Mr Chandler would have meant that the attempted intercept by the TOU, and its tragic consequences, did not become necessary.
100. Secondly, as acknowledged by Detectives Law, Nolan and Harris, there was a high risk of harm to the public in allowing Mr Chandler, a suspected robber with access to a firearm, to remain at large in a stolen car and with an apparent plan to commit a further serious offence. To these risks to the public, Detectives Law and Harris added the likelihood that Mr Chandler would not willingly stop his car and submit to arrest. There was thus a risk that people would be harmed if he decided to flee in the Audi.
101. Counsel Assisting have submitted that in light of these risks, the court would conclude that it was not appropriate for the MRU officers to have pursued their covert investigative strategy. It was submitted that the court would prefer the assessment of Assistant Commissioner Clifford, that the strategy was simply too risky to allow it to run.
102. I will first consider the evidence as to the benefits and risks of the covert investigative strategy.

The benefits of the covert investigative strategy

103. From the outset it must be acknowledged that strategies involving covert elements are a legitimate and necessary part of police investigations. I accept the evidence of Mr Leane, and of the Officer in Charge Chief Inspector Bernie, that it was consistent with contemporary investigative practice for the members of Strikeforce Hawick to develop and implement an investigation strategy similar to the one in this case.
104. The covert investigative strategy had clear and legitimate aims, the realisation of which would have been in the public interest. These were enumerated in the submissions of Counsel Assisting as follows:
- to gather sufficient evidence against Mr Chandler to enable his arrest for his suspected involvement in the December 2014 offences, and his suspected planning of future ones.
 - to identify any likely co-offenders.
 - to identify and secure the firearm used in the December 2014 offences.
105. As Mr Chandler was a strong suspect for the December 2014 offences, there was clearly a powerful public interest in gathering available evidence to charge him with these offences, and to establish if he intended to commit further offences. Likewise, there was a compelling public interest in securing the firearm suspected of being used in those offences, and identifying and arresting co-offenders.
106. It was also consistent with contemporary investigative practice for the Strikeforce Hawick officers to obtain a warrant to intercept phone services, and a device to track the movements of the stolen car. Conventional methods of investigating Mr Chandler were unlikely to have been productive. As he was transient, the use of search warrants was not likely to yield evidence. Other strategies of identifying co-offenders and encouraging their assistance were lengthy processes, which held no guarantee of success. By contrast, according to Detective Harris, Mr Chandler was unusually candid when using his mobile phone. This created real opportunities for police to gather evidence against him and his associates.
107. Furthermore, if Mr Chandler was aware he was under investigation it is likely he *would 'go underground'*, making it more difficult to gather evidence. He would also dispose of the phone and the Audi, removing these means of tracking his movements and plans.
108. For these reasons, I accept Mr Leane's opinion that overall, *'the covert investigation plan was valid and a reasonable first start to identify the offender/s.'*
109. I note further that in his reports and evidence Mr Leane was not critical of the experience and expertise of the three key MRU officers, Detectives Law, Harris and Nolan. He accepted that Detectives Law and Harris had considerable experience investigating armed robbery offences. Nor in his opinion had too

much responsibility had been given to Detective Nolan. I accept his opinion in this regard.

The risks associated with the covert investigative strategy

110. In his report Mr Leane noted that this investigation strategy was one which the MRU had used many times before, reportedly with success. However, as he went on to observe, a number of risks to the public were associated with it.
111. The principal risk arose from the fact that pursuing the covert strategy meant Mr Chandler's arrest would have to be deferred until its aims were achieved: that is, until sufficient evidence had been gathered to charge him with the December 2014 offences and perhaps a planned offence as well.
112. In Mr Leane's opinion, which Chief Inspector Bernie shared, the decision to defer Mr Chandler's arrest involved a high level of community risk. Mr Chandler was an active offender who had committed violent offences. He was being permitted to remain at large with a stolen car, which he was apparently planning to use in a further offence. Furthermore, he had a history of dangerous driving and of not surrendering to police.
113. At the inquest Detectives Harris and Nolan acknowledged these risks were present, but told the court that an early arrest of Mr Chandler was not their operational strategy. They had concluded that an early arrest of Mr Chandler posed a greater risk to the public than allowing him to remain at large.
114. Detectives Nolan and Harris explained that an early arrest of Mr Chandler would have put an end to their plan, which was to gather evidence to link him to very serious offences. Their hope and expectation was that once charged with these offences, he would be placed in custody for a significant period of time.
115. By contrast, in the opinion of the three officers, an early arrest of Mr Chandler on the available but relatively minor charges of breaching bail and driving a stolen car would very possibly, even probably, not result in a court revoking his bail. He would then be free to endanger the public by continuing to commit offences.
116. At the inquest Detectives Law, Harris and Nolan also pointed to the steps they had taken to mitigate the community risk in allowing Mr Chandler to remain at large. They were receiving real time information about Mr Chandler's plans by means of information from the phone intercept and tracker device, as well as physical surveillance. In addition, they had placed the TOU on standby if the risk escalated.
117. The key MRU officers therefore concluded that the risk to the public in allowing Mr Chandler to remain at large was justified, when regard was had to the benefits to public safety which their covert investigative strategy would yield.

Assistant Commissioner Clifford's view to the contrary

118. The conclusion of the MRU officers was at odds with that of Assistant Commissioner Clifford. At the inquest he said:

'I think the notion of police following a stolen car is fraught with danger. There's just so many things that can go wrong. ... I would take a lot of convincing to let someone drive around in a stolen car with or without a tracking device.'

119. Counsel Assisting has submitted that on the question of risk, the court would prefer the opinion of Assistant Commissioner Clifford to that of the key MRU officers. In addition to his greater seniority and experience, it was submitted that his role as the Commissioner's most senior representative was to 'make a high level and independent assessment of the risks the police operation was presenting based on the information with which he had been supplied'.

120. In response, it was acknowledged that Assistant Commissioner Clifford was authorised to put an end to the covert investigative strategy if he considered this was appropriate. However, it was submitted that the court did not need to make a choice between the opinion as to risk which he had formed, and that of the MRU officers. Notwithstanding Assistant Commissioner's views on the matter, it was open to the MRU officers to consider that the advantages of the strategy outweighed its risks.

121. In my view, the opinion as to the competing risks which Assistant Commissioner Clifford held does not compel me to conclude that the MRU officers ought not to have pursued their strategy.

122. Assistant Commissioner Clifford acknowledged that it was not uncommon for officers to hold different but reasonably held views on the appropriateness of a policing strategy.

123. More importantly, Assistant Commissioner Clifford did not purport to have made a comprehensive risk assessment of the covert investigative strategy in this case. He was not in a position to do so: as submitted on behalf of the MRU officers, an awareness of the details of the strategy was not necessary to the performance of his role. As Commander of the North West Metropolitan Region, his operational objectives and responsibilities were distinct from those of the strikeforce members. As Commander of that region he made it clear that he did not intend to permit a convicted offender to drive a stolen vehicle within it.

124. Since Assistant Commissioner Clifford's decision was not based on a comprehensive risk assessment, his opinion on the competing risks has some relevance but is not conclusive.

The opinion of Mr Leane as to the risks

125. Mr Leane was cautious in expressing an opinion as to whether the covert investigative strategy ought to have been pursued throughout the afternoon of

8 January 2015. Like Assistant Commissioner Clifford, he acknowledged that there was *'room for different views'* when it came to assessing whether the risks of an operation justified it continuing.

126. Nevertheless, he reached a similar conclusion to that of Assistant Commissioner Clifford:

'The focus on the balance of community risk, reading through the nature of the antecedents of the target they were looking at and the behaviour that had already occurred, that he was in the possession of a stolen car and was using it across the streets and had a history of driving. If there was an opportunity to arrest him and bring it to an end then, I would – I agree with the Assistant Commissioner, they should do that'.

127. Unlike Assistant Commissioner Clifford, Mr Leane was able to base his opinion on detailed information about the covert strategy, its potential benefits, its inherent risks, and the steps taken by the MRU officers to mitigate these. His opinion therefore carries substantial weight.
128. It is significant that in Mr Leane's opinion, the risk posed by Mr Chandler's previous history of dangerous driving was 'a critical issue that appears not to have been considered' by the MRU officers. This opinion was shared by Chief Inspector Bernie.
129. This brings me to the risk assessment which the MRU officers undertook, and the question of whether it was adequate.

Was the risk assessment undertaken by the MRU officers adequate?

130. The court heard that members of Strikeforce Hawick developed an investigation plan and terms of reference on 22 December 2014. However, these documents did not incorporate a formal risk assessment.
131. In the opinion of Mr Leane, one of the primary advantages of a structured and written risk assessment is that it imposes a discipline and focus to the task. In his view, the MRU officers did not focus upon the community risk involved in allowing Mr Chandler to drive the stolen car throughout the hours of 8 January 2015. This, in his opinion, was because they had not undertaken a comprehensive risk assessment process:

'The approach taken by the investigators should have considered these broader risks to the community and formal risk assessment processes should have been adopted as part of the investigation strategy'.

132. At the inquest Detectives Nolan and Harris were asked how they had gone about the task of assessing the risks inherent in their operation. Both replied that they had held multiple discussions with Detective Law in which risk factors featured. They had discussed Mr Chandler's criminal antecedents, the nature of the December offences, whether weapons of violence had been used, and the risk to the public that Mr Chandler would drive away in the Audi.

133. Nevertheless, it is fair to characterise this process as *'largely unstructured'*, as submitted by Counsel Assisting. Was the level of risk such that a more structured process ought to have been undertaken?

134. Mr Leane thought so. In his evidence he concurred with the opinion expressed by Chief Inspector Bernie in his statement, that:

' ... [before] an operational plan of this nature is implemented a comprehensive risk assessment process with senior police approval should be undertaken to ensure that all the risks are considered'.

135. When questioned about this, Detective Nolan told the court that the MRU did not normally perform written risk assessments when planning investigative strategies. He offered two reasons why they did not perform one in this case.

136. The first, according to Detective Harris, was that there was insufficient time to document an operation plan and risk assessment, and to have it approved through the chain of command.

137. I accept that there will be many policing situations where the urgency is such that a written risk assessment cannot be performed. But there is no cogent evidence that this was the case on 8 January 2015. As noted in the submissions of Counsel Assisting, throughout that day Detective Harris was back at headquarters monitoring the intercepted telecommunications. Furthermore, Mr Chandler had been identified as a suspect for the December offences for a number of days. By 7 January 2015, information about his criminal and driving history was available which could have formed the basis of a formal risk assessment.

138. The second explanation was that a formal risk assessment was not necessary, given the experience and expertise of the key MRU officers. At the inquest Detective Harris told the court of the extensive experience he and Detective Law had accumulated investigating crimes such as these, and making risk assessments in relation to them:

'By having that experience between the three officers that are key involved – Detective SC Nolan, myself and Detective Acting Inspector Law – that experience and knowledge in those areas allowed us to make those risk assessment in our heads, so to speak'.

139. Notwithstanding the experience of the key officers, there were significant gaps in their information about Mr Chandler. None for example was aware that in 2007 he had driven through a fence and a park in an attempt to evade police. I accept Mr Leane's opinion that this event, in conjunction with Mr Chandler's other dangerous driving antecedents, was highly relevant to an assessment of the community risk in allowing him to drive in a stolen car throughout the day.

140. I conclude that although the covert investigative strategy developed by Strikeforce Hawick officers had the potential to deliver significant benefits, it

carried a very significant risk of harm to the public. It required careful assessment as to whether that level of risk, even with steps to mitigate it, was outweighed by its potential benefits. The risk assessment performed by the key MRU officers was not of this character.

141. This is not a judgement made with the benefit of hindsight. Information about the extent and nature of Mr Chandler's dangerous driving history was clearly available at the time.
142. I accept the opinion of Mr Leane and Chief Inspector Bernie, that had a structured risk assessment been conducted it is likely it would have provided the officers with a more complete understanding of the risks inherent in their strategy. This may well have led to a decision that the risk to the public associated with allowing Mr Chandler to remain at large was too high.
143. Notwithstanding my finding that the risk assessment process was deficient, I accept that it would not be appropriate to criticise the key MRU officers on this account. It seems clear that in January 2015, conducting formal risk assessments was not an established practice within the MRU. In failing to conduct one therefore, the key MRU officers were not acting outside the general operating principles which applied within their unit.
144. This was a systemic deficiency within the NSW Police Force, which justifies the making of Recommendation 4 as proposed by Counsel Assisting.

Should consideration have been given to an earlier arrest?

145. Relatedly, it was submitted by Counsel Assisting that the key MRU officers did not give sufficient consideration to the potential benefits of arresting Mr Chandler earlier in the day, either as an alternative to, or as part of, the covert investigative strategy.
146. Regarding this, Mr Leane commented:

'...as matters progressed, and Mr Chandler was identified as a suspect and found in possession of the Audi the plan should have shifted and thoroughly explored the opportunity to arrest Chandler at the first opportunity.'
147. On behalf of the MRU officers, it was submitted that they ought not to be criticised for not planning for an early arrest. It was clear that an early arrest of Mr Chandler was not their operational strategy. I accept that this was the case.
148. Nevertheless, the absence of such a plan meant that by the time Assistant Commissioner Clifford directed that Mr Chandler be arrested, the MRU officers had lost the opportunity to arrest him out of his car, and had little choice but to deploy the TOU operatives to perform a high risk vehicle intercept.
149. In hindsight it can be seen that the strong focus of the MRU officers upon their investigative strategy left little room for consideration of any alternative to it. Counsel Assisting have proposed a recommendation that more emphasis be

placed on the importance of planning arrest strategies when investigation plans are developed. The Commissioner does not oppose this recommendation, albeit in an amended form.

150. I propose to make the recommendation, in the amended form proposed on behalf of the Commissioner.

The future use of covert investigative strategies

151. Counsel Assisting have further submitted that there is a need for the Commissioner to consider when it is appropriate for an investigative strategy such as this one to be deployed. This submission acknowledges that there will be circumstances when such a strategy is a legitimate investigative response.

152. As noted, both Mr Leane and Chief Inspector Bernie observed that strategies similar to this one are consistent with contemporary investigative practice. As Mr Leane commented in his report:

‘ ... allowing a stolen vehicle to stay in the possession of a suspect is not uncommon’.

153. I agree that it would be desirable for the Commissioner to provide guidance as to whether, and if so when, it is appropriate to deploy a strategy of using a stolen vehicle, as part of an ongoing investigative plan to obtain more information about a suspect’s involvement in other crimes. In this case, the divergence of opinion as to risk held on the one hand by Mr Leane, Chief Inspector Bernie and Assistant Commissioner Clifford, and on the other by the key MRU officers, indicates there would be benefit in the Commissioner providing her officers with guidance upon it

154. Counsel Assisting has proposed two recommendations which are intended to address this issue. The Commissioner does not oppose them.

155. I make the two recommendations, with the adoption of a minor amendment to recommendation 2 which was proposed on behalf of the Commissioner.

The TOU operation

156. I will now examine the involvement of the TOU operatives in the circumstances of Tateolena’s death, and the issues that arise from it.

157. Firstly, however I need to describe the physical environment within which this tragedy unfolded. I will then briefly outline what happened when the TOU operatives attempted their intercept.

Bessbrook Way and the Tauaifaga family’s home

158. The Tauaifaga family lived at number 5 Bessbrook Way in Constitution Hill.

159. Bessbrook Way is a cul de sac lined on both sides with homes. It is narrow, and when cars are parked on each side of the street only one car is able to drive down it. At its cul de sac end there is a high soundproofing fence and an embankment which leads up to the Cumberland Highway.
160. The home in which the Tauaifaga family lived is the last building on the eastern side of the street. Behind the houses on that side is a recreational area called Richill Park.
161. The layout of the Tauaifaga family's backyard is of some importance. The backyard is a narrow grassed space and is in fact to the right side of the home, and not at its rear. As one faces the house from Bessbrook Way, the yard is bordered on its left by the side brick wall of the home, and on its right by the embankment and soundproofing fence referred to above. A green colourbond fence with a gate formed the front boundary of the property. The fence was almost two metres in height. A similar colourbond fence formed its back boundary, on the other side of which was Richill Park.
162. As at 8 January 2015, a children's cubby house and play equipment abutted the side wall of the Tauaifaga home, together with some green wheelie bins of the sort commonly used in residential places. In the middle of the yard were metal framed bicycles belonging to the children. To the right as one faced the home there was a green garden shed, and to the back was a clothesline.
163. The yard is a narrow one, and it may be accepted that as the Audi and the two TOU vehicles passed through it, their occupants would have been in close proximity to each of the items referred to above. The brick wall would have been to the left of the vehicles, and the garden shed to their right.

The arrangements for the high risk vehicle intercept

164. While Tateolena and her sisters were playing in their yard that evening, the Audi was stationary in Bessbrook Way and the TOU operatives were a few streets away, preparing for their operation to intercept it.
165. The TOU team was organised into four vehicle teams with the call signs Alpha, Bravo, Charlie and Delta. In accordance with TOU procedure, each vehicle team would have a distinct role to play in the manoeuvre which they planned to use, known as a high risk vehicle intercept [HRVI].
166. Alpha and Bravo vehicles were [REDACTED]. Alpha's team leader and driver were Operatives 134 and 206 respectively. They occupied the front seat. In the back seat was Operative 203.
167. Bravo's team leader and driver were Operatives 188 and 189. In the back seat were Operative 201 and an officer attached to the Dog Squad, Senior Constable Jackson Pollak, with his police dog Horace.
168. Charlie and Delta vehicles were both unmarked police cars. Their drivers were attached to Highway Patrol units and were trained to drive under pursuit

conditions. Charlie's driver was Sergeant Mark Falconer. He and Senior Constable Cole Brenchley occupied the front passenger seat. In the back seat was TOU Operative 193.

169. Delta's driver and passenger were Constable Michael Johns and Senior Constable Pagonis.
170. In preparation for the intercept, Operative 20 had arranged for a loose cordon of police cars to be stationed in the surrounds of Bessbrook Way. They were intended to provide support if Mr Chandler managed to evade the HRVI and a pursuit ensued. In particular, a marked highway patrol car, call sign MEOC 203, was stationed a short distance away on the opposite side of Richill Park.
171. Operative 20 had overall command of the TOU operation. As he was not physically at the scene, once he had given the order to commence the HRVI he handed over command to Alpha's team leader Operative 134, who was the next most senior TOU officer.

The attempted HRVI

172. At 6.44pm the four TOU vehicle teams departed the area where they had assembled, not far from Constitution Hill. Bravo headed the convoy, followed by Alpha. Charlie and Delta took third and fourth places.
173. At 7.02pm Operative 20 directed that the HRVI commence.
174. The four vehicles entered Bessbrook Way with Bravo in the lead. The Audi could be seen about halfway down the street, facing towards the end of the cul de sac. It was stationary, with parked cars to its right and left sides. This meant that no vehicle would be able to get around it.
175. Suddenly the Audi reversed towards Bravo, contacting it slightly. The Audi then accelerated harshly away from the TOU vehicles, towards the end of the street. This surprised the TOU operatives as they had assumed that Bessbrook Way, being a cul de sac, had no other exit route. They described the speed with which the Audi accelerated as very rapid.
176. Bravo and Alpha cars followed in the path of the Audi.
177. The Audi's driver followed the left bend of the street, then crashed the car through the front fence which enclosed the Tauaifaga family's home and yard. The impact caused a panel of the fence to dislodge and land on the windscreen of Bravo, momentarily obscuring the vision ahead of its occupants.
178. Bravo, followed by Alpha, drove through the gap in the fence that had been created by the Audi. They followed it through the Tauaifaga's yard.
179. The Audi reached the second colourbond fence which formed the yard's boundary with Richill Park, and crashed through that as well. This took it into Richill Park, where a number of people including children were present. The Audi,

followed by Bravo and Alpha, drove through Richill Park and exited onto adjoining Lurgan Street.

180. The Bravo and Alpha teams were unaware that Tateolena had been hit and severely injured when the Audi drove through her backyard. Two of Tateolena's sisters were also injured, when one of the vehicles struck the garden shed where they were playing. The impact caused one little girl to be thrown in the air, while the other sister was pushed backwards.
181. Tateolena's parents were inside the house when they heard and saw the three vehicles driving through their yard. Both ran out, with Helena holding her newborn son. It was Helena who found Tateolena, lying critically injured under the wreckage of her play equipment.
182. The Charlie and Delta vehicle teams did not follow Bravo and Alpha into the Tauaifaga's yard.
183. Delta's driver performed a U-turn and drove into Richill Park using a pedestrian access way. The Delta team did not see any of the involved vehicles, and played no further role in the operation.
184. Charlie's driver brought it to a halt as they approached the broken colourbond fence, and did not drive in. Charlie's driver explained that the vehicle was not suitable to be driven over broken surfaces.
185. For a few seconds the Charlie team members were unable to see through the dust which had been thrown up in the wake of the Audi and the two police vehicles. But when the dust settled they saw children's play equipment and a shed. Senior Constable Brenchley shouted: '*Stop, stop, there's some children*'. When Sergeant Falconer saw two little girls near the shed, he realised with shock that the other three vehicles had driven through the yard to a private home.
186. The Charlie team members got out and saw Tateolena lying on the ground, severely injured. They immediately commenced first aid and called an ambulance.
187. Tateolena's two sisters were treated by ambulance officers, and later taken to hospital for assessment. They were able to be discharged later that night.

The issues arising out of the TOU's involvement

188. I will first consider whether the TOU operatives planned appropriately for the attempted HRVI. In particular, did they properly consider whether Bessbrook Way was a suitable place to attempt it, and did they have sufficient intelligence about their target, Mr Chandler?
189. I will then consider whether it was appropriately safe for the TOU operatives to follow the Audi through the front fence of the Tauaifaga's home, and thence through Richill Park.

190. Finally, I will consider the appropriateness of the actions of the police officers who were involved in the subsequent pursuit of the Audi. These were the Bravo and Alpha vehicle teams, and the officers of MEOC 203.

Did the TOU properly consider whether Bessbrook Way was a suitable place to attempt a HRVI given its lack of width and the possibility it had other escape routes?

191. Operative 20 had determined that Bessbrook Way was a suitable place to effect the HRVI. His main reasons were first, that as Bessbrook Way was a cul de sac the Audi would be unable to escape except via its main vehicular access, and secondly, as the Audi was stationary at the time, this offered a safer opportunity to perform an intercept.

192. As the ensuing events demonstrated, Bessbrook Way proved not to be a suitable place for the HRVI.

193. Counsel Assisting asserted that this ought to have been evident to the TOU operatives when they were planning their intercept. Proper attention was not given to its lack of width, and the possibility that it had other escape routes.

Bessbrook Way's lack of width

194. [REDACTED]

195. There can be no dispute that this is correct, so I do not need to go into details of what this particular manoeuvre involves, and why it could not have been executed in these circumstances.

196. In the submission of Counsel Assisting, this fact would have been evident to the TOU operatives as soon as they entered Bessbrook Way. It ought to have caused them to reassess its suitability as a location.

197. In my view however, the impossibility of effecting a [REDACTED] in Bessbrook Way did not mean that the TOU operatives ought to have discontinued their plan. The court heard that TOU operatives are trained to be flexible when performing intercepts, and to adapt quickly to different environments. At the inquest Operatives 134 and 188 expressed confidence that despite this manoeuvre being unavailable they would have been able to employ, as Operative 134 put it, *'some other formation that we do in training'*.

198. In his report Mr Leane shared this opinion, noting that alternative tactics existed to stop a vehicle, and that he believed the operatives would have been able to *'adapt their tactics to suit their environment'*.

199. Having regard to this evidence, in my view Bessbrook Way's [REDACTED] did not mean that it was unreasonable for Operative 20 to have considered it a suitable location for the HRVI.

Did the TOU properly consider the possibility of other escape routes?

200. Counsel Assisting submitted further that the TOU operatives ought to have made more enquiries to test their assumption that Bessbrook Way did not have any escape routes.

201. The character of Bessbrook Way as a cul de sac was a key factor in the assessment of Operatives 20 and 134 that it was a suitable location. As it was a dead end street, they assumed it could not afford Mr Chandler any escape routes other than its one vehicular access.

202. At the time, none of the involved operatives was aware if there were any laneways or other escape routes in Bessbrook Way. In fact, not far from the entrance into Bessbrook Way a pedestrian route gave access to Richill Park. Furthermore, it appears the existence of Richill Park behind the eastern row of houses was not known to the Bravo and Alpha team leaders, or to the Bravo driver.

203. This is not surprising. The TOU operatives did not examine Bessbrook Way and its surrounds in any extensive or detailed way. Operative 134 took what he described as an *'extremely quick'* look at a street directory. Others looked at Google Maps or the map function on their information system. Overall, they knew little more than that Bessbrook Way was a cul de sac with houses.

204. In his report Mr Leane considered that the TOU's enquiries regarding Bessbrook Way and its geographical surrounds were limited. He noted that none of the operatives appeared to have accessed satellite imagery of the area, which he considered was essential for situational awareness.

205. Nevertheless, Mr Leane considered it was reasonable for Operative 20 to have assessed that Bessbrook Way was a suitable place. As it was a cul de sac, it was *'reasonable to assume [Mr Chandler] had nowhere to escape to'*. This was because in Mr Leane's opinion, Mr Chandler's decision to drive through that Tauaifaga fence:

' ... would not have been expected and would not have been something I would have expected to see as any part of any HRVI risk management plan'.

206. Mr Leane added that given the size of Sydney, it would have been difficult to find a place of intercept that was not a residential street.

207. In all the circumstances, I accept that the TOU gave adequate consideration to Bessbrook Way as a suitable location for the planned HRVI.

208. In reaching this conclusion I have taken into account that the TOU operatives apprehended a need to intercept Mr Chandler as soon as a favourable

opportunity presented itself. In the preceding hours Mr Chandler had moved between several different locations. The operatives had no way of knowing for how long he intended to remain stationary in Bessbrook Way. It is clear that they wished to take advantage of these relatively favourable circumstances.

209. I note further that few of the operatives, perhaps only Operatives 20 and 188, were aware that the Audi's movements were able to be monitored by the tracker device which had been installed. Had they known this, it is unclear if this would have tempered their sense of urgency.
210. However, Counsel Assisting are correct to assert that the geographical surrounds of Bessbrook Way received minimal attention from the TOU operatives. More information about this may have assisted when they were forced to respond to Mr Chandler's flight.
211. Counsel Assisting have noted that the current HRVI procedures do not emphasise the importance of obtaining geographical intelligence when a HRVI is being planned. It seems self evident that this should form an integral part of the planning for a safe and effective HRVI.
212. Therefore, it was encouraging to learn that the TOU intends to develop a training session for recruits which will be based on the circumstances of this attempted HRVI. At the inquest the Commander of the Tactical Operations Group, Superintendent David Waddell, said that the session will highlight the importance of not making assumptions that there are no escape routes in areas that are proposed for an HRVI, in particular cul de sac streets.
213. This is a welcome improvement.
214. Relatedly, the inquest heard that in January 2015 certain intelligence resources were not available to the TOU operatives, in particular access to satellite imagery. In addition, some of the operatives did not have access to the TOU's i-Surv system or to iPads, which would have assisted their understanding of the area's geography.
215. These are deficiencies which needed to be rectified. The court heard that since these tragic events, TOU operatives have access to satellite imagery when planning for HRVIs, and their vehicles have multiple devices to access geographical information.

Did the TOU operatives have sufficient intelligence about Mr Chandler?

216. A further issue for examination was whether the TOU operatives had sufficient information about Mr Chandler's dangerous driving history. In his report Mr Leane identified this as a gap in the TOU's planning for the HRVI.
217. At around 4.00pm on 8 January 2015 the TOU operatives received a formal briefing at their base, during which an intelligence profile about Mr Chandler was distributed. This provided a summary of Mr Chandler's criminal history, including his offences of reckless and dangerous driving. It also warned that he 'may

attempt to run from police to avoid arrest'. There was a further informal briefing later that afternoon.

218. At the inquest however none of the involved TOU operatives could recall what they knew on 8 January 2015 about Mr Chandler's driving history. In particular, of the four Bravo and Alpha team leaders and drivers, only Operative 134 thought he *'would have been aware'* of Mr Chandler's tendency to drive dangerously and to avoid arrest.
219. I accept that the passage of time since these events has likely affected the TOU operatives' recollection on this point. Nevertheless, there was no evidence that Mr Chandler's history of dangerous driving received emphasis in the briefings they received, or in their own assessment of the risks of the operation.
220. On behalf of the TOU operatives, it was submitted that it is unreasonable to expect that there would have been a briefing about *'each and every criminal incident connected with Mr Chandler'*. His criminal history was very lengthy.
221. Self evidently however, a focus upon each of Mr Chandler's criminal offences was not required. What would have been of high relevance was his history of dangerous driving and attempting to avoid arrest. The lack of emphasis on these matters was a deficiency in the planning for this operation.
222. It is presumably for this reason that the Superintendent Waddell told the inquest of steps taken since Tateolena's death, to ensure that the following matters are included in intelligence reports about the targets of a HRVI:

'...an analysis of driving history, especially relating to pursuits and erratic, dangerous and predatory driving. Information relating to attempts to resist arrest and avoid apprehension must also be included.'

223. I will now examine the issues which arise from the action of the TOU operatives in following the Audi through the Tauaifaga's front fence, through their yard, and then through Richill Park. Were their actions appropriately safe and in accordance with NSW Police Force policies and procedures?
224. I will commence with a brief outline of the policies and procedures with which the TOU operatives were bound to comply.

Relevant policies and procedures

225. The principal policies which applied to this operation at that time were:
- the NSWPF's Safe Driving Policy version 7.2 [the SDP]
 - the HRVI Standard Operating Procedures version 2.0 [the HRVI SOPs]
226. These documents have been superseded by later versions. In these findings I reference the versions that were applicable as at January 2015.

Pursuits: The Safe Driving Policy [SDP]

227. Part 6 of the SDP dealt with pursuits, which were defined as:

'... an attempt by a police officer in a motor vehicle to stop and apprehend the occupant(s) of a moving vehicle when the driver of the other vehicle is attempting to avoid apprehension or appears to be avoiding police attempts to stop them.'

228. Part 6 of the SDP mandated that a pursuit be terminated where:

'...the danger to the pursuing police or the public outweighs the need for the immediate apprehension of the offender(s).'

229. Importantly, Part 5 prohibited [REDACTED] vehicles [REDACTED] from engaging in pursuits, except for:

'... urgent duty in matters that are life threatening or in an emergency ...'

230. In Part 7, police officers were cautioned that 'high speed urgent duty driving' was to be undertaken only as a 'last resort':

'It will only be engaged when the gravity and seriousness of the circumstances requires such action and there are no other immediate means of responding.'

The HRVI SOPs

231. [REDACTED]

232. [REDACTED]

233. The HRVI SOPs acknowledged that an attempted HRVI may result in a pursuit. Paragraph [REDACTED] provided:

234. Importantly, [REDACTED] of the HRVI SOPs enabled TOU tactical commanders, team leaders and drivers to terminate an attempted HRVI, as follows:

[REDACTED]

[REDACTED]

235. [REDACTED]

236. [REDACTED]

237. [REDACTED]

238. [REDACTED]

239. [REDACTED]

[REDACTED]

240. [REDACTED]

[REDACTED]

241. A key issue of the inquest is whether in taking this approach, the TOU operatives were acting in accordance with NSW Police Force Policy.

242. Relatedly, in holding fast to this position did they give sufficient weight to the consequences of their actions, in particular the risk it involved for members of the public and police?

Should Bravo and Alpha have followed the Audi through the first fence, then through the Tauaifaga’s yard and through Richill Park?

Outline of the submissions of Counsel Assisting and the family

243. In the submissions of Counsel Assisting and those on behalf of the Tauaifaga family, all the above actions were not appropriately safe and were not in accordance with NSW Police Force policy and procedures.

244. [REDACTED]

245. [REDACTED]

[REDACTED]

246. I focus here upon the period of time between when the Audi accelerated away from the TOU vehicles, and when it crashed through the Tauaifaga’s fence.

247. [REDACTED]

[REDACTED]

248. [REDACTED]

249. [REDACTED]

[REDACTED]

250.

[REDACTED]

251.

[REDACTED]

252.

[REDACTED]

The response of the TOU operatives in following the Audi through the Tauaifaga's fence

253. Was it appropriately safe for the TOU operatives to have followed the Audi through the fence into the Tauaifaga's property?

254.

[REDACTED]

[REDACTED]

255.

[REDACTED]

256.

[REDACTED]

257. Counsel for the TOU operatives have urged that the actions of the TOU operatives did not represent a breach of any polices. This was because the TOU operatives did not have reason to believe that the area beyond the fence was a residential yard.

258. Very relevant to this question, is what the evidence disclosed about the state of mind of the Bravo and Alpha operatives at this point.

Did the TOU operatives appreciate, or ought they to have appreciated, what lay behind the first colourbond fence?

259. Prior to their entry into Bessbrook Way, all the TOU operatives were aware that it was a residential street. On entering the street they could see houses, and some observed residential-type fences, including Operative 189 who saw colourbond fences.
260. Nevertheless, all said that as they followed the Audi around the bend and towards the Tauaifaga's front fence, they did not know that it enclosed the yard to a home. At the inquest they offered various surmises as to what they had thought might have been on the other side of the fence.
261. Operatives 189 and 188 said they had believed that the area behind the fence was vacant land. Operative 189 based this on his general experience that most houses have their yards behind them, not to their side. Operative 188 said he had assumed the area to be an open verge between the house and the Cumberland Highway. When questioned about this assumption, he said he had seen other locations which had that type of area between houses and infrastructure.
262. For his part Operative 134 said he had assumed that parkland or a reserve lay behind the fence. He acknowledged he had not based this assumption on any objective information. Rather, he knew Mr Chandler had local knowledge of the area, and thought he would never drive through a space which he knew to be a part of a residence. This was despite Operative 134's acknowledgement that at the time, he was aware Mr Chandler was a dangerous and unpredictable driver.
263. In my view, it would be more accurate to characterise the states of mind described by the operatives as speculation. None had previously been in Bessbrook Way or its surrounds. In their preparation for the HRVI they had not looked at material which focused on the area beyond its eastern row of houses. Contrary to the submissions advanced on their behalf, their knowledge was incapable of supporting the assumptions they made.
264. Importantly, their knowledge was insufficient to provide them a basis to assume that the area was *not* a residential yard. The possibility that it was, ought at the least to have occurred to them, given the features they had observed as they entered and drove down Bessbrook Way.
265. At the inquest, Operatives 134 and 188 were asked whether they had considered the potential risks in following the Audi through the Tauaifaga's fence. Both replied that they had. According to Operative 134, there was an urgent need to arrest Mr Chandler in the interests of public safety. In his assessment, this outweighed the risks involved in following the Audi into an unknown space.
266. It is undeniable there was a strong need to apprehend Mr Chandler. But it is self-evident there is a very high risk to the public and to police in pursuing a car through a fence in a residential area, with no knowledge of what lies in the area

behind it. Given the unambiguously residential character of the street, the TOU operatives were not justified in assuming that passing through the broken fence line ahead would not pose a very significant risk of harm to members of the public. I characterise the level of that risk as extreme.

267. At the inquest Mr Leane was asked his opinion on the appropriateness of police officers taking such action. In his response Mr Leane noted that Victoria Police *'have a different risk appetite'* in regard to issues of pursuits. Within that context he said:

'I would've expected my police not to go through that fence, if they had no idea what was on the other side.'

268. I see no reason why Mr Leane's opinion on this point would not be applicable to the NSW jurisdiction, in the circumstances I have described [REDACTED]

269. Operatives 134, 188, 189 and 206 ought to have terminated the attempted HRVI at that point. Without having any proper basis to assume that the area ahead was not part of a residential property, they chose to drive their vehicles through an enclosed space where four little girls were playing. They took an appalling risk in proceeding.

270. Tateolena's death is a tragedy enough. It is simply horrifying to think of the risk to which her little sisters were exposed by the actions of the Bravo and Alpha teams.

271. That they did not terminate their operation at this point was a very significant error of judgement on their part, [REDACTED]

Should the TOU operatives have appreciated that they were driving through a residential yard?

272. In his report Mr Leane expressed this opinion:

'If [the involved TOU officers] were of the belief that at the time of entering the yard or at any time while in the premises that they were in fact in the yard of a private dwelling, it is my opinion that the risk posed to the community was so high the HRVI attempt should have been terminated'.

273. He observed that determining whether the involved operatives held this belief at the time would be a matter for the court, after hearing the evidence.

274. I make the comment here, that assessing the evidence of the TOU operatives on this issue has been made more difficult due to the fact that their vehicles are not equipped with In Car Video systems. Had footage derived from this source been available it would have assisted in determining the extent to which, if at all, the

operatives were aware that they were driving through a private property. I will return to this issue later in these findings.

275. It was submitted on behalf of the TOU operatives, that their actions in continuing to drive through the Tauaifaga's property were justified, because they had no basis to realise the true nature of their surrounds.
276. Counsel Assisting and the family have urged that the court reject this submission.
277. With the possible exception of Operative 203, the evidence of the Bravo and Alpha operatives was that when their vehicles passed through the first fence, they did not realise they had entered a residential yard.
278. Operatives 189 and 201 said that as Bravo passed through the yard, they saw none of the items or structures referred to in paragraph 163 above. According to Operative 189, the first time he realised it was a yard was when he was driving Bravo through Richill Park. By then, he said, he was preoccupied with the safety of the children in the park.
279. Operative 188 said that as Bravo passed through the Tauaifaga yard he was aware only of the side brick wall. He realised this belonged to a residence, but said that he did not appreciate until well afterwards that their car had passed through the yard to that residence. He offered this explanation for his belated realisation:

'My vision was focused on the vehicle at the time, with taking in some of the surroundings to the right which are talking about the embankment'.
280. Seated in the backseat of Bravo, Senior Constable Pollak recalled seeing a clothesline when Bravo was at the rear of the yard. In his interview he said that at that point he realised it was a residential yard, but had not had that realisation when Bravo entered the yard.
281. From the front passenger seat of Alpha, Operative 134 said that as his vehicle passed through the yard, he saw with his peripheral vision a building and a garden shed. He also saw a clothesline as Alpha was exiting the second fence. It was only when Alpha was driving through Richill Park that he 'processed' that they had travelled through a residential yard.
282. Operative 206 said that he had seen none of the items or structures referred to in par above, and understood he had driven Alpha through a residential yard only 'later in the operation'.
283. According to Operative 203, he also had not seen any of the items referred to in paragraph 163 as Alpha passed through the yard. He had however seen some play equipment as Alpha was exiting the yard. I note that in his interview he said that he had also seen '*a clothesline or clothes*'. He had felt this was 'not normal', but did not realise they were travelling through a residential yard until Alpha was almost all of the way through the yard.

284. To summarise:

- all the Bravo and Alpha occupants, with the possible exception of Operative 203 and Senior Constable Pollak, said they did not realise they were passing through a residential yard while they were still within the yard.
- Operative 203 and Senior Constable Pollak said they reached this realisation at the rear of the yard, or as they were exiting the yard into Richill Park.
- Operatives 189 and 134 said they reached this realisation when they were in Richill Park. the remaining operatives said they did not realise this 'until later in the operation'.

The submissions on this point

285. Counsel Assisting and the family have submitted that that despite their evidence, the TOU operatives:

'... must at least have harboured suspicions that, once they had crossed the first Colourbond fence, they had entered a residential yard. At a minimum, they should reasonably have realised that this was the case'.

286. Counsel Assisting relied on the following:

- the surrounding area was clearly residential with similar colourbond fences.
- there were many visible indicia of a residential yard, in particular the clothesline observed by Operatives 134 and 203, and Senior Constable Pollak.
- there is evidence that Bravo paused prior to crossing the first fence line, offering its occupants an opportunity to observe what lay beyond the fence.
- those in Bravo at least would have had a relatively good view of what lay ahead, [REDACTED]

287. Of the submissions on behalf of the TOU operatives disputing this, the most persuasive is the extremely short space of time within which Bravo and Alpha were inside the Tauaifaga's yard. The transit time was variously described as *'in the space of a second'*, *'a matter of seconds'*, and *'two to three seconds'*. There is no reason to doubt this evidence.

288. Taking into account this very short timeframe, in my view it is feasible that as they were driving through the Tauaifaga's yard the operatives would not have fully appreciated the true nature of their surroundings.

289. In reaching this conclusion I have given careful consideration to the evidence of Operative 203, that he heard Operative 134 refer to a child while Alpha was driving through the Tauaifaga's yard.
290. In his interview, Operative 203 said that *'just before we exited the yard'* he heard Operative 134 call out the words *'Oh there was a kid on some play equipment there'*. He also said that Operative 206 responded with the words *'where?'* or *'what do you mean?'*
291. However, Operative 134 strongly denied having seen a child inside the Tauaifaga's yard. He said further that he had no recollection of having said those words, but suggested that if he had this was probably a response to having sighted children playing in Richill Park. A number of children were in fact playing in Richill Park.
292. For his part, Operative 206 denied having heard the words, or of having responded to them.
293. If the evidence of Operative 203 is accepted, it strongly supports an inference that Operative 134 was able to appreciate that he was in a residential yard, while Alpha was still within the yard. However, the court would need to be satisfied that these words were spoken *before* Alpha crossed the second fence and was moving into Richill Park.
294. In submissions, Counsel for the TOU operatives have noted that Operative 203's evidence is equivocal on this point. In his interview he described hearing the words as Alpha was *'entering the park area'*. In his oral evidence he said they were spoken as *'Alpha was approaching out ... into the park'*, and when *'we were at the threshold'*.
295. Operative 203's evidence is not sufficiently clear for me to determine exactly where Alpha was when Operative 134 said the words attributed to him. I am not able to be satisfied that they were said while Alpha was still entirely within the Tauaifaga property.
296. Accordingly, I remain of the view that it is feasible that the operatives would not have fully appreciated the true nature of their surroundings while they were still within the Tauaifaga's property.
297. However, this conclusion does not alter the finding I have made, that the TOU operatives should not have driven through the Tauaifaga fence in the first place. This action presented an extreme risk to public safety, and was a serious error of judgement on the part of the TOU team leaders and drivers.
298. Furthermore, although I accept that the TOU operatives did not fully appreciate the true nature of their surroundings while they were inside the Tauaifaga's property, this state of mind cannot have been maintained for more than a few seconds at most.

299. It is simply implausible that as Bravo and Alpha were entering Richill Park, the operatives did not appreciate they had passed through a private property. This was the point at which Operatives 189 and 134 reached this realisation. For Operative 203 and Senior Constable Pollak, it appears this realisation came a little earlier.
300. Despite the extreme risk to human safety that their action had involved, none of the operatives terminated the operation at this point. There is no evidence that this course of action was even discussed. I accept the submission of Counsel Assisting, that this action involved '*an unjustifiable level of recklessness*' and a serious error of judgement.
301. To make matters worse, the two TOU vehicles were now following the Audi through a recreational park within which adults and children could clearly be seen.

Should the TOU vehicles have followed the Audi through Richill Park?

302. As Bravo and Alpha exited the Tauaifaga's property, there is no dispute that they immediately realised they had entered a recreational park.
303. It was a summer evening, and a number of people were present in the park. While estimates vary, there is general consensus among the witnesses that there were up to 20 people present, many of these children who were playing on park equipment and in a game of cricket.
304. Counsel Assisting submitted that the risk posed to the public when the three vehicles drove into and through Richill Park was at such a level that the TOU operation ought to have been terminated. The TOU operatives were in breach of NSW Police Force policies, regardless of whether they were to be regarded as in pursuit or in tactical deployment.
305. This assertion is rejected by those representing the TOU operatives. In their submission, the TOU drivers drove safely through the park and were in control of their vehicles. Furthermore, there continued to be the prospect of an intercept of the Audi.
306. But the inquest heard evidence from a number of witnesses about the manner in which the three vehicles travelled through the park, and their proximity to the people within it. In my view, their evidence establishes that the passage of the Audi and the two TOU vehicles through the park placed the people present at very significant risk of harm.
307. According to information obtained from the tracker installed within the Audi, it is likely its speed as it travelled through Richill Park was between 30-39kph. This is consistent with the estimate of Senior Constable Pollak, that the Audi's speed at this time was approximately 40kph.
308. As a result of the formal '*view*' of Richill Park conducted at the opening of this inquest, I am able to concur with the description of Counsel Assisting, that the

terrain of the park is undulating and very uneven. Despite this the Audi drove through it at a speed of at least 30-40kph. Driving at this speed in such an environment presented a very significant risk of harm to the car's occupants and to those nearby.

309. Furthermore, the evidence establishes that the Audi's route took it very close to the children in the park. Two MRU officers described children screaming, crying, and jumping out of its way. Operative 189 told the court that he had seen children playing a game of cricket close to the Audi's route, and children moving away out of its path. A civilian witness, Ms El-Khoury, described the Audi driving '*directly in the direction of the children who were playing cricket*', while others observed the Audi travelling over the cricket equipment.
310. Detective Shayne Woods was seated in a Highway Patrol vehicle in adjoining Lurgan Street, as part of the loose cordon directed by Operative 20. He first heard and then saw the three vehicles as they crossed the park. He described the Audi's manner of driving as '*very erratic and fast ...it got a bit airborne*'. He also saw small children running. Although at the inquest he said the children were running on one side of the vehicles, when taken to his interview in which he had described seeing them moving on both sides of the vehicles, he said that his recollection had '*most definitely*' been better at that earlier time.
311. In light of these accounts, it is impossible to accept the assertion of Operative 206 at the inquest, that the Audi's manner of driving in the park did not put anyone in danger.
312. As for the speed at which the TOU vehicles travelled, the occupants of Bravo agree that Operative 188 directed their driver to slow down as they entered the park, and that he had already done so. This was in response to their sighting of children. However, this may not have been the case with Alpha car: Operative 206 said their car was travelling at about the same speed as the Audi's, '*maybe faster*', in an effort to close the gap between them.
313. There is strong evidence that Bravo's route took it close to where children were present. Operative 189 asserted that Bravo came to within 10 metres of equipment where children were playing. Operative 188 estimated that their car got to within 15 metres of children, and that he saw some of them '*moving from in front of us to our left, towards that equipment*'. In addition, as noted, Detective Wood and Ms El-Khoury described seeing children close to both sides of the TOU vehicles.
314. The above evidence strongly contradicts, at least with regard to Bravo, the submission made on behalf of the TOU operatives that '*neither Alpha nor Bravo drove in close proximity*' to children.
315. Nor do I accept the evidence of Operative 134, that as Alpha drove through the park '*there was no persons anywhere in close proximity to the vehicles...*'. Similarly, I reject the submission made on his behalf, that the evidence '*demonstrates that he carefully balanced the risk*' as Alpha drove through the

park. His decision to continue driving through Richill Park in the conditions described indicates that his assessment of the risks was seriously flawed.

316. At the inquest the TOU operatives were asked if they had considered terminating the operation at that point, given the risk to the community. None of the TOU operatives assessed that this was required. Operative 189 acknowledged that the community risk had heightened, but:

'I felt I could – I was confident that I could negotiate the park without being a risk to anyone in that park'.

317. Similarly, operative 206 said:

'I do recall there being people in the park, but they weren't close [enough] to us to warrant me being concerned for their safety'.

318. This was despite his acknowledgement that a number of people were present, that the Audi driver had behaved in an unpredictable manner, and that he (Operative 206) had no idea in which direction Mr Chandler would take the car.

319. Some of the TOU operatives said that they continued to entertain the hope of effecting a HRVI in the park. Operative 188 explained that they thought the Audi might suffer damage or hit a drain while crossing the park, which would cause it to stop or to slow down. Others said they had hoped they might catch up with the Audi once they had left the park.

320. If the operatives still entertained a hope of intercepting the Audi as they drove through the park, it appears that they had very little basis to do so. They acknowledged the Audi had got too far ahead to intercept him. And it was surely more a hope than an expectation that the Audi would break down, either in the park or in the adjoining streets.

321. Mr Leane did not agree with the conclusion of the TOU operatives regarding the level of community risk, or the prospects of a HRVI.

322. As regards risk, Mr Leane noted that members of the public including children were forced to get out of the Audi's path. The TOU operatives:

'... should have stopped their vehicles and not [followed] Mr Chandler any further once entering the park.'

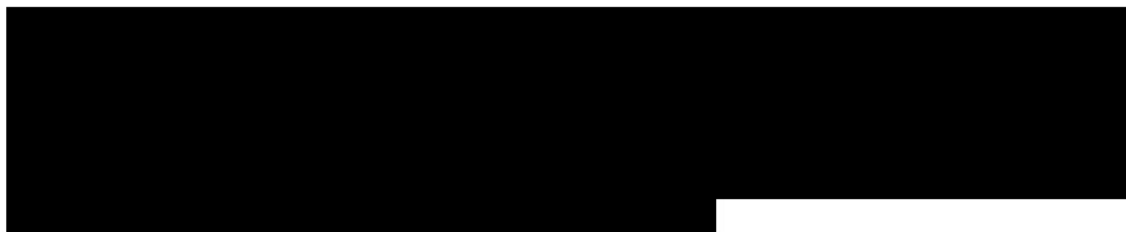
323. In his further opinion, the TOU operatives should have considered the extreme driving behaviour they had just witnessed. Mr Chandler had reversed his car into Bravo, crashed it through a fence into a residential property, then driven it through a park where people were present. Mr Leane regarded the risk to the public as *'extreme'*. The appropriate action would have been for them to terminate their operation and move slowly onto the road. Their resources might then be used to assist the Highway Patrol vehicles, at the discretion of the TOU Tactical Commander.

324. Nor did Mr Leane accept that there remained any prospect of a HRVI. In his opinion, this prospect had certainly come to an end once the vehicles entered Richill Park. The Audi put too much distance between itself and the more slow moving TOU vehicles to allow it to be intercepted.
325. At the inquest Mr Leane noted that even if the TOU operatives had believed there was still the possibility of an HRVI, they were nevertheless bound to balance this with the risk to the community in proceeding. His summation was as follows:

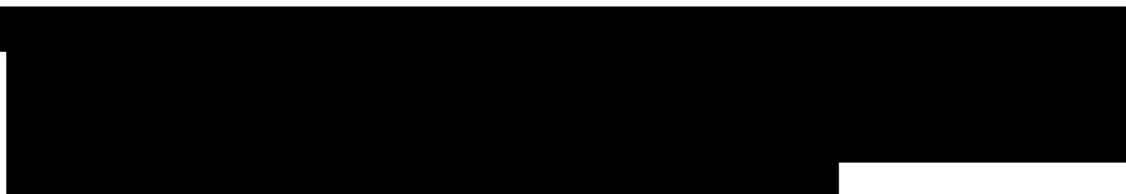
'If it is considered the HRVI was continuing into the park, the risks to the community ... would reach the threshold requiring the attempt to be terminated consistent with NSW Police Policy. If on the other hand it is accepted that the police driving in the park was in fact a police pursuit, again the risks to the community were to such level that the pursuit should have been terminated consistent with NSW Police Policy.'

326. I accept Mr Leane's opinion on these points.

327.



328.



The subsequent pursuit of the Audi

329. After crossing Richill Park, the Audi and the two TOU vehicles exited onto Lurgan Street on the other side of the park.
330. Highway Patrol vehicle MEOC 203 had been deployed in nearby Ferndale Close. Its role was to operate as a secondary pursuit vehicle to the Charlie team, if the Audi evaded the HRVI and drove away. MEOC 203's driver was Senior Constables Rhys Jones, with Senior Constable Lachlan Teasel in the front passenger seat.
331. At about 7.04pm, officers Jones and Teasel saw the Audi drive at speed along Ferndale Close and onto the Cumberland Highway. They activated MEOC 203's lights and siren, and commenced a pursuit of it.
332. There is no dispute that thereafter, MEOC 203 was in pursuit of the Audi. The pursuit lasted for some eight to nine minutes, during which MEOC 203 pursued the Audi along the Cumberland Highway, Old Windsor Road, Seven Hills Road,

and adjoining streets. Bravo and Alpha vehicles followed in the wake of MEOC 203 for the entirety of the pursuit.

333. I will now examine whether the actions taken throughout the pursuit by the Bravo and Alpha teams, and by MEOC 203, were in accordance with NSW Police Force policies.
334. Determining this question depends to some extent on which set of NSW Police Force policies applied to them.

How should the role of Bravo and Alpha during MEOC 203's pursuit be characterised?

335. All agree that throughout the pursuit the two TOU vehicles were being driven at speed, and for the purpose of catching up with the Audi. Bravo's driver estimated that the average gap between his vehicle and MEOC 203 was between 40 and 50 metres.
336. Counsel Assisting has submitted that given the above features, the court should find that Bravo and Alpha were in pursuit of the Audi, performing the role of secondary pursuit vehicles. This was consistent with the opinion of Mr Leane.
337. However, the Bravo and Alpha operatives resisted any suggestion that they were performing a pursuit role. Rather they were driving 'in support' of MEOC 203. They noted that the MEOC 203 officers had no tactical training or equipment, in the event that the pursuit ended in a confrontation with Mr Chandler.
338. Intermingled with or related to this purpose, was the persistence of an intention to intercept the Audi if the opportunity arose. Thus Operative 189 said:

'I accept we were supporting the highway patrol vehicle but more so to effect a high risk vehicle intercept if the opportunity arose'.

The submission that Bravo and Alpha were 'acting in support'

339. In his evidence at the inquest the Commander of the Tactical Operations Group, Superintendent David Waddell, agreed that the Bravo and Alpha operatives were not in tactical deployment when they were following MEOC 203. Neither however did he consider they were engaged in a pursuit. Rather, they were acting 'in support' of MEOC 203.
340. At the inquest Superintendent Waddell offered sound reasons why it was in the public interest for Bravo and Alpha to have adopted a support role to MEOC 203.
341. First, if there was a confrontation with Mr Chandler (and noting that he may have been armed), MEOC 203's officers were not equipped or trained to deal with this situation. It was therefore important, in the interests of community and officer safety, that specialist TOU operatives were available to support them.

342. All agreed that this was an important consideration. In his supplementary report Mr Leane said that:

'The ongoing nature of this incident continued to create high risk to both responding police and the community. I am sympathetic to the TOU officers' proposition ... that there was a need to be available to support their colleagues on 'officer safety' grounds ... These police had the higher-level training and equipment needed if the police pursuit resulted in a confrontation with other police or members of the community ..'

343. In their submissions Counsel Assisting adverted to the above, and concluded that:

'... there may be a justification, at least in circumstances where a HRVI has failed, for TOU vehicles to be able to pursue as secondary pursuit vehicles ..'

344. Secondly, Superintendent Waddell pointed out that the HRVI SOPs anticipated that TOU vehicles may remain involved, [REDACTED] and a pursuit develops. Paragraphs [REDACTED] and [REDACTED] of the HRVI SOPs authorised [REDACTED] vehicles to make a further attempt to effect a HRVI if an opportunity arose. Implicitly, to take advantage of such an opportunity TOU vehicles would need to remain in some degree of proximity to the target vehicle. In his evidence Superintendent Waddell said that if, during the pursuit such an opportunity presented itself, Operative 134 would have been able to seek authorisation to effect an HRVI, and the HRVI SOPs *'would have been enlivened'*.

345. It is correct that the HRVI SOPs authorised [REDACTED] vehicles to assume a primary pursuit role, in two circumstances:

i. [REDACTED]

ii. [REDACTED]

346. I accept that in circumstances where an initial HRVI has not been able to be effected, it makes practical sense for TOU operatives to have the capacity to make a further attempt, if the opportunity arises. There are also sound reasons in the interests of public safety for TOU vehicles to be able to provide support to pursuit vehicles, if a pursuit eventuates from a failed HRVI.

The policy inconsistencies

347. Unfortunately, however, the policies which apply to TOU operatives in this important area of their work contain inconsistencies, and do not offer clear

guidance either to those operatives or to supporting police officers. This was acknowledged in the submissions of Counsel Assisting, and those on behalf of the Commissioner.

348. The policy versions which have superseded the 2015 ones replicate these problems.

349. In brief, the existing policy framework does not make clear which set of policies applies to a [REDACTED] vehicle, where it has been unable to effect a HRVI but seeks to remain involved in a subsequent pursuit so as to:

- provide tactical support to Highway Patrol vehicles
- take advantage of a subsequent opportunity to effect a HRVI.

350. The lack of clarity is illustrated, when one examines the competing propositions that were advanced as to which policy applied to Bravo and Alpha while they were following MEOC 203.

Were the TOU operatives engaged in tactical deployment?

351. [REDACTED]

352. [REDACTED]

353. [REDACTED]

354. [REDACTED]

355. [REDACTED]

Were the TOU operatives engaged in a pursuit?

356. Were Bravo and Alpha to be regarded as driving *'in pursuit'* during this period? This was the position put by Counsel Assisting. [REDACTED]

357. But as noted by Counsel Assisting, the SDP (then and now) prohibits the use of [REDACTED], except in restricted circumstances that in all likelihood were not present in the circumstances of this case. Part 5 of the SDP forbade the use of [REDACTED]. The current iteration is in substantially the same terms.

Were the TOU operatives engaged in urgent duty driving?

358. Counsel for the Commissioner submitted that during this phase of the operation, Bravo and Alpha were driving under *'urgent duty driving'* conditions. This also appeared to be the opinion of Superintendent Waddell.

359. Part 6 of the SDP applicable in 2015 defined *'urgent duty'* as *'duty which has become pressing or demanding prompt action'*. It was submitted that these terms accurately described the circumstances when MEOC 203 commenced its pursuit of the Audi.

360. However, Part 7 of the SDP also directed officers to:

'...consider high speed urgent duty driving as a last resort ... It will only be engaged when the gravity and seriousness of the circumstances require such action and there are no other immediate means of responding'.

361. Arguably the terms used in Part 7 require a higher standard to be met before an officer is justified in driving under *'urgent duty'* conditions, than do the terms employed in Part 6.

The contradictions between the SDP and the HRVI SOPs

362. These interpretative difficulties highlight a lack of clarity in relation to a significant area of police operations. It is unclear how and when [REDACTED] vehicles may participate in a pursuit when a HRVI has been unsuccessfully attempted.

363. On the one hand, clause [REDACTED] of the current HRVI SOPs permits a TOU vehicle which is a [REDACTED] vehicle to resume an attempt to effect a HRVI, if an appropriate opportunity arises. In such cases it is to take the role of a 'primary pursuit' vehicle.

364. Yet clause [REDACTED] of the HRVI SOPs stipulates that when [REDACTED]. And clause [REDACTED] of the [REDACTED]

current SDP prohibits [REDACTED] vehicles from [REDACTED], except in the restricted circumstances of Part 5 of the SDP.

365. In his supplementary report, Mr Leane noted this '*tension between the seemingly competing policies of the SDP and the HRVI SOPs*'.
366. As I have noted, a review of the SDP and HRVI SOPs is currently underway. The Commissioner has said that she will have regard to the findings in this inquest, in determining what changes are needed.
367. Noting that there are sound reasons in the public interest why TOU vehicles may need to participate in a pursuit when a HRVI has been unsuccessful, I intend to make Recommendation 17 proposed by Counsel Assisting. It is both desirable and appropriate that there be clear guidance as to when and how a [REDACTED] vehicle may participate in a pursuit when a HRVI has been unsuccessful.
368. Regarding the actions of the Bravo and Alpha operatives in following MEOC 203, there can be no criticism of their conduct. There existed sound reasons in the public interest for them to follow. If their actions represented a breach of the SDP and/or the HRVI SOPs, this is readily excused by the absence of clarity in the application of these policies.

Further guidance where a HRVI has been unsuccessful

369. I also intend to make Recommendation 16 proposed by Counsel Assisting. This recommendation has been guided by evidence given by Superintendent Waddell, as to how more clarity might be provided to TOU operatives in circumstances where a HRVI attempt has not succeeded.
370. In his evidence Superintendent Waddell said that when TOU operatives had been unable to perform a HRVI, [REDACTED], then if a further opportunity for a HRVI presented itself, they should seek authorisation from the Tactical Commander to re-enliven their [REDACTED]
371. In his evidence Mr Leane appeared to concur that an unsuccessful HRVI did not preclude another attempt. He appeared to share the opinion of Superintendent Waddell, that in such circumstances it was appropriate for the TOU operatives to seek authorisation for a second tactical deployment.
372. Where an attempted HRVI can no longer be performed, the purpose of Recommendation 16 is to enable clear communication of that fact to all other officers involved in the operation. The further purpose is to make clear that once this point has been reached, any further attempt to apprehend a vehicle will be deemed to be a pursuit.

The pursuit conducted by the officers of MEOC 203

373. Finally, I consider the appropriateness of the actions of the two MEOC 203 officers, in their pursuit of the Audi.

374. As mentioned, Highway Patrol vehicle MEOC 203 commenced a pursuit of the Audi when Senior Constables Jones and Teasel saw it turn into the Cumberland Highway against a red traffic signal.
375. The In Car Video system installed in MEOC 203 captured the entirety of the pursuit until its termination some eight to nine minutes later.
376. At about the same time, Senior Constable Jones switched the car radio onto the local police channel and heard a broadcast that a child had just been run over. This news reinforced his sense of the need to apprehend the Audi and its driver.
377. The first part of the pursuit was relatively brief. On Old Windsor Road Mr Chandler drove the Audi onto the incorrect side of the road at least twice while travelling at an estimated speed of 135-137 kph. Oncoming traffic was forced to swerve to avoid it. At this point Senior Constable Teasel called a termination of the pursuit, consistent with SDP policy.
378. Very shortly afterwards however Senior Constable Jones decided to accelerate and follow the Audi, which he could no longer see ahead because of foliage. Senior Constable Jones explained that having heard a bang and seeing smoke ahead, he feared the Audi had collided with oncoming cars. He saw an urgent duty to provide aid.
379. I accept there is no basis to criticise Senior Constable Jones for his decision to accelerate. He responded correctly to a potential need for police assistance, in accordance with his duty as a police officer.
380. Counsel Assisting has however submitted that in this situation Senior Constable Jones was required to activate his car's lights and siren. This was because he was in reality driving 'urgent duty' at that point. It was not disputed that Senior Constable Jones' failure to do so represented a breach of the SDP. I accept that this failure was of a minor nature given the short period involved.
381. Soon afterwards MEOC 203 was granted permission to re-engage in the pursuit of the Audi. This request was properly grounded: the Audi had returned to the correct side of the road, and Senior Constable Jones had good reason to suppose that the Audi's driver had run over a little girl. Appropriately, he perceived an increased need to apprehend its driver.
382. MEOC 203 pursued the Audi along Old Windsor Road, Seven Hills Road, Baulkham Hills Road and adjoining streets. At the intersection with Seven Hills Road Mr Chandler turned the Audi with such speed and at such an angle that it spun 180 degrees, bringing it face to face with MEOC 203.
383. Senior Constable Jones told the court that at this point, he thought there might be an opportunity for the TOU vehicles to perform an intercept. He was aware that Bravo was about 50 metres behind MEOC 203. However, the Audi managed to drive around MEOC 203 and the opportunity passed.

384. As the pursuit progressed, Mr Chandler weaved the Audi between traffic and drove onto the wrong side of the road on numerous occasions, forcing oncoming drivers to brake heavily or to pull away to avoid him. He took the Audi through further red lights and on one occasion, side swiped another car.
385. At another point Mr Chandler drove the Audi onto the grass median strip, and then across a residential front yard. Again, Senior Constable Jones hoped this action would damage and disable the Audi, presenting an opportunity for Bravo to intercept it. Again, this did not prove possible.
386. Having returned onto Seven Hills Road the Audi drove at speed through a red traffic control light, narrowly missing another car. At this point the DOI directed that the pursuit terminate. Senior Constable Jones turned off MEOC 203's warning devices and slowed down. The Audi was last seen travelling east along Seven Hills Road.
387. Mr Chandler continued to drive at speed, taking the Audi towards Sydney. He abandoned it shortly afterwards in Bourke Street Darlinghurst. He and Ms Tuite were eventually found and arrested.

Should the MEOC 203 officers have terminated the pursuit at an earlier stage?

388. As can be seen from the above description, there were occasions when, consistent with the SDP, the Audi's dangerous manner of driving ought to have triggered a termination of the pursuit notwithstanding the public interest in apprehending Mr Chandler.
389. At the inquest Senior Constable Teasel candidly acknowledged that he should have considered taking this action at the above points, due to the level of public risk. I agree with Senior Constable Teasel's retrospective assessment.
390. However Senior Constable Jones did not agree that these circumstances required a termination of the pursuit. He said he had felt a strong need to apprehend the driver due to his propensity for violence. I infer that Senior Constable Jones was here referring to Mr Chandler's criminal record, and to what he had heard over the radio about him running over a small child.
391. Consistent with the requirements of the SDP, Senior Constable Jones ought to have terminated the pursuit at an earlier stage.
392. Importantly however, neither Senior Constable Jones nor Senior Constable Teasel was aware at the time of the pursuit, that a tracker device had been installed in the Audi and that its driver's mobile phone service was being intercepted. At the inquest they were asked whether knowing about the vehicle tracker would have affected any of their decisions.
393. Senior Constable Jones replied that had he been aware of the tracker, he would not have sought permission to re engage the pursuit once he had called for its termination at Old Windsor Road. Senior Constable Teasel said that if he had known, he might not have sought to engage in the pursuit at all.

394. On Senior Constable Jones' behalf, it was submitted that his decision to continue the pursuit was not fully informed because he had not been made aware of the tracker device. I accept that Senior Constable Jones' actions should be considered within that context. Had he been aware of it, his decisions may well have been different. This context tempers the criticism that would otherwise be made of his actions.
395. At the inquest Senior Constable Teasel acknowledged that in the course of the pursuit he had not relayed to the VKG supervisor information that was required to be communicated under the SDP. Mr Leane also made this observation. I accept the submission of Counsel Assisting, that criticism of Senior Constable Teasel in this regard is not called for given his reflection on this deficiency.
396. Nevertheless, Counsel Assisting has recommended that all police receive further training and instruction about the importance of communication throughout a pursuit. The Commissioner has responded that she has no objection to this recommendation, and will consider it once the current review of the HRVI SOPs and the SDP is completed.
397. I intend to make this recommendation. I accept that under pursuit conditions, complying with the obligation to keep the VKG supervisor informed is not an easy task. Police engaged in a pursuit have to maintain a strong focus on what the offender's vehicle is doing, and on controlling their own vehicle. Nevertheless, communication is critical to the effective management of the pursuit. Without it, the VKG supervisor is unable to assess whether the pursuit can safely be continued.
398. Furthermore, deficiencies in communication of information are a recurring feature when pursuits are the focus of an inquest. A recent example is in the Inquest into the death of Andrew Ngo (NSW Coroners Court, 28 January 2020).
399. This being so, I propose to make Recommendation 15.

Should TOU vehicles be fitted with In Car Video systems?

401. None of the TOU vehicles deployed in this operation were fitted with electronic systems which could record their involvement in this attempted HRVI and its aftermath.
402. In Car Video footage is designed to capture real time video information about an incident as it unfolds. The absence of any such evidence in this case increased the difficulty of determining what actions the involved officers took, and whether their decisions were reasonable and appropriate in light of the surrounding circumstances, in particular, how the Audi was being driven.
403. For this reason, Counsel Assisting submit that the Commissioner should investigate the feasibility of installing In Car Video [ICV] systems in TOU vehicles.

404. At the inquest Mr Leane expressed his support for this measure, opining that the introduction of this technology has brought *'far greater benefit for police and the community than the negatives'*.
405. Mr Leane noted that the use of this technology not only assist the exercise of fact finding. It can also help to establish whether complaints about police conduct are founded.
406. To this Mr Leane added the important advantage that such technology can:
- '... provide a level of accountability to police in understanding that what they do is recorded and therefore they need to act appropriately at all times'*.
407. Mr Leane noted that there is a need to consider how this technology could be applied in a way which protects police methodology. Overall however, he considered that digital technologies such as In Car Video and Body Worn Cameras should be explored *'wherever they can be applied'*.

The submissions on this issue

408. At the inquest, the Commander of the Tactical Operations Group, Superintendent Waddell, did not support the installation of ICV in TOU vehicles. His concerns included that there would be difficulty fitting an ICV system inside a TOU vehicle, due to the size of the ICV system; and that the camera system would be visible and would therefore identify the vehicle as a police vehicle.
409. Superintendent Waddell provided a subsequent statement advising that the TOU will review the outcome of a current project within the Traffic and Highway Patrol. This project aims to identify a 'next generation' ICV system to overcome some of these technical difficulties. Superintendent Waddell stated that once the review was complete, the TOU would consider whether the new technology was suitable to be incorporated into TOU vehicles.
410. Regardless of technical issues however, the position put on behalf of the Commissioner was that she did not currently support a recommendation that TOU vehicles be fitted with ICV systems. The principal concern was the risk that highly confidential material going to police methodology would enter the public domain, compromising public safety and the safety of TOU operatives.
411. The importance of protecting the confidentiality of police methodology is acknowledged. For this reason it is not at all uncommon for coroners to use a range of protective orders in coronial proceedings.
412. However, the Commissioner has submitted that the risk of prejudice to TOU methodology could not be mitigated with the use of protective orders such as non publication orders, or even exclusionary public interest immunity orders. But as noted in the submissions of Counsel Assisting, these concerns have been expressed in very general terms which do not assist the court in determining their validity.

413. Taking into account the substantial benefits which will potentially flow from the introduction of ICV technology in TOU vehicles, I intend to make Recommendation 18.

Should TOU operatives be equipped with a device to be carried on their persons, which can visually and audially record their operations?

414. Body Worn Video cameras [BWV] are used by police to support their policing activities. Their purpose is to provide a contemporaneous record of incidents or events in the field.

415. The NSWPF Standard Operating Procedures in relation to Body Worn Video Camera direct police officers to use their judgement in deciding whether it is appropriate to activate their BWV camera. Among other matters, they are to consider the need to capture evidence, accountability, and community expectations.

416. In this case, none of the involved TOU operatives wore BWV cameras. Counsel Assisting has proposed a recommendation that the Commissioner investigate ways in which TOU operatives could be equipped with these. The reasons for this recommendation are similar to those advanced in support of Recommendation 18.

417. The Commissioner currently does not consider that TOU operatives should be required to wear a BWV camera. She adopts the evidence of Superintendent Waddell, who opposed this measure on the grounds of practical difficulties as well as security issues.

418. As regards the practical challenges however, the Commissioner has advised that the TOU will conduct a trial of a BWV camera that is currently in development, which may resolve some of those difficulties.

419. Nevertheless the Commissioner endorses the concerns of Superintendent Waddell, that use of BWV will prejudice the confidentiality of the TOU's specialised tactics, equipment and methodology. She therefore does not support the recommendation.

420. I am not persuaded that confidentiality concerns will not be able to be met with the use of protective and/or suppression orders. Furthermore, as with the recommendation that the Commissioner explore ways of enabling ICV to be installed in TOU vehicles, it appears to me that there is a legitimate community expectation that police officers understand they are accountable for their actions.

421. I therefore make Recommendation 19.

Should other vehicles involved in a HRVI or in a support role be required to activate their ICV system?

422. The inquest heard evidence that Charlie vehicle, although fitted with an ICV system, did not activate it at significant points during the attempted HRVI.
423. Counsel Assisting has submitted that other vehicles involved in a HRVI, including in a support role, should be required to activate their ICV systems if they are fitted with these. The reasons advanced in support of this recommendation are in the same terms as those for Recommendations 18 and 19.
424. Similarly, the Commissioner's opposition to this recommendation is based on similar reasons to those in relation to Recommendations 18 and 19.
425. For the reasons I have given in relation to Recommendations 18 and 19, I consider this proposal to be desirable and appropriate.

The question of recommendations.

426. Counsel Assisting have proposed a number of recommendations arising out of the circumstances of Tateolena's tragic death. These are set out below, with my comments.

Recommendations arising from the MRU covert investigative strategy

Recommendation 1

The Commissioner should give further consideration to the question whether the investigative strategy of utilising a stolen vehicle as part of an ongoing investigative strategy, so as to obtain more information about a suspected offender's involvement in other crimes, is a strategy that is appropriate.

Recommendation 2

If, having given further consideration to Recommendation 1, the Commissioner considers the investigative strategy of utilising a stolen vehicle as part of an ongoing investigative strategy so as to obtain more information about a suspected offender is a strategy that is appropriate, the Commissioner should:

- a. consider the circumstances in which that investigative strategy should and should not be deployed; and
- b. provide appropriate guidance to members of the NSWPF as to the circumstances in which that investigative strategy should and should not be deployed, and include, if considered appropriate, such guidance in the NSWPF Handbook.

427. I make Recommendations 1 and 2. I have adopted a minor amendment to Recommendation 2 proposed on behalf of the Commissioner.

Recommendation 3

The Commissioner should consider the training and instruction of police involved in criminal investigations and ensure that emphasis is placed on the importance of considering, from the outset of an investigation, what arrest strategies may ultimately be available and appropriate if a decision to arrest the person of interest is made during the course of investigation.

428. I make this recommendation, adopting a minor amendment proposed on behalf of the Commissioner.

Recommendation 4

The Commissioner should ensure that an appropriate procedure is in place to ensure that the risks of any investigative strategy are appropriately assessed and that the perceived benefits of that investigative strategy are weighed against those risks.

429. I make this recommendation.

Recommendations arising from the TOU operation**Recommendation 5**

The Commissioner should review the training and instruction provided to TOU operatives, to ensure that it covers the following matters:

- a. The importance, prior to attempting a HRVI, of considering the criminal and driving history of the person who is the subject of the planned HRVI;
- b. the importance of considering the geographical area surrounding the planned HRVI and, in particular, of any means of leaving that area;
- c. the importance of obtaining as much information about the geographical area surrounding a planned HRVI as is reasonably possible in the circumstances;
- d. the importance of considering contingencies in the event that the HRVI does not proceed as planned; and
- e. the importance of considering the possibility that members of the public might enter the area of operation of a planned HRVI.

430. I make this recommendation, adopting the amendment proposed on behalf of the Commissioner.

Recommendation 6

The Commissioner should amend the policies governing the manner in which a HRVI is to be planned, attempted and/or executed so as to include a statement requiring those involved in effecting (or attempting to effect) a HRVI to obtain, prior to attempting a HRVI, as much information of the geographical area surrounding the planned HRVI (and, in particular, of any means of leaving that area) as is reasonably possible in the circumstances.

431. I make this recommendation.

Recommendation 7

The Commissioner should review the training and instruction provided to those officers involved in effecting a HRVI, to ensure that it covers the following matters:

- a. When those vehicles with access to the tactical radio channel should switch from the tactical radio channel to the local radio channel;
- b. the importance of monitoring the local channel in the event that an initial attempt to effect the HRVI is unsuccessful; and
- c. the importance of communicating updates of relevant information over the tactical channel in a timely way.

432. I make this recommendation, adopting an amended form proposed on behalf of the Commissioner.

433. I make Recommendation 8 adopting 8(a) and 8(d) as proposed by Counsel Assisting (with minor amendments).

434. As regards 8(b) and 8(c) as proposed by Counsel Assisting, I accept the submission made on behalf of the Commissioner that the issues these paragraphs seek to address are substantially dealt with, in clause 10.5 of the HRVI SOPs. However to be effective, clause 10.5 needs to broaden its scope so as to extend to all vehicles involved in a planned HRVI including those conducting a pursuit.

435. Therefore, I make Recommendation 8 as follows:

Recommendation 8

The Commissioner should amend the policies governing the communications between the vehicle teams involved in a planned HRVI and any other vehicles in support of the HRVI as follows:

- a. So as to include a statement requiring the team leaders of every vehicle team involved in a planned HRVI to switch over to the local channel as soon as reasonably practicable upon an attempt to effect a HRVI being unsuccessful.

b.

c.

Recommendation 9

The Commissioner should amend the policies governing the manner in which a HRVI is to be planned, attempted and/or effected:

a. so as to ensure that specific consideration is given as to when a HRVI is to be discontinued because the risks associated with it outweigh the benefits; and

b.

436. I make this recommendation in the amended form proposed on behalf of the Commissioner.

Recommendation 10

Clause 5.1 of the HRVI SOPs should be amended by the deletion of the struck through words and the inclusion of the underlined words in their place as follows:

437. I make this recommendation. I have amended the wording to reflect a minor change proposed on behalf of the Commissioner.

Recommendation 11

438. After careful consideration I have decided not to make Recommendation 11 proposed by Counsel Assisting. [REDACTED]

439. Proposed recommendations 10 and 9(a) are drafted in sufficiently broad terms to ensure that the risk to public safety [REDACTED] in circumstances where a TOU operative is considering whether to drive onto private property.

Recommendation 12

Prior to being permitted to engage in any future operational HRVIs, Operatives 188 and 189 each undertake further training and instruction in the performance of HRVIs, with a particular emphasis on situational awareness and be required to demonstrate a capacity to take in their surroundings in urgent circumstances.

440. I make this recommendation (noting that Operatives 134 and 206 are no longer attached to the Tactical Operations Unit).

441. The Commissioner opposes the recommendation. However, I consider it desirable and appropriate.

442. I have found that Operatives 188 and 189 made significant errors of judgement when they decided to drive through the Tauaifaga's property and thence through Richill Park. Their evidence at the inquest did not acknowledge this.

Recommendation 13

All Operatives involved in effecting or attempting to effect a HRVI should receive further training and instruction regarding the importance of assessing the risks involved in attempting the HRVI against the need or desire to effect the immediate apprehension of the offender or to stop the vehicle.

443. I make this recommendation.

444. The Commissioner has advised she will consider this recommendation as part of an education package to be designed after the current review of the HRVI SOPs and the SDP is completed.

Recommendation 14

445. It is not necessary to make this recommendation. The Commissioner has advised that Operative 134 is no longer attached to the TOU.

Recommendation 15

All police should receive further training and instruction regarding the importance of communicating all relevant information about a pursuit to the VKG supervisor in a timely way, as required by clauses 7.5.1 and 7.5.2 of the SDP.

446. I make this recommendation.

447. The Commissioner has advised that she will consider this recommendation as part of an education package to be designed after the current review of the HRVI SOPs and the SDP is completed.

Recommendation 16

The Commissioner should amend the policies governing the manner in which a HRVI is to be planned, attempted and/or effected so as to provide expressly that:

a. If it appears to the Tactical Commander or the team leader of Alpha vehicle team that a HRVI can no longer be performed (for any reason, including [REDACTED] the Tactical Commander and/or the team leader of Alphavehicle team must, unless it is impossible or impracticable to do so, immediately communicate this over the tactical radio channel;

b. [REDACTED]

c. [REDACTED]

448. I make this recommendation. The Commissioner has advised that she will consider this recommendation as part of an education package to be designed after the current review of the HRVI SOPs and the SDP is completed.

Recommendation 17

The Commissioner should clarify what the intended relationship is between clause 12.4 of the HRVI SOPs and clause 7.4.2 of the SDP and, in particular, whether [REDACTED] which arises in circumstances after a HRVI has been unsuccessfully attempted.

449. I make this recommendation.

Recommendation 18

The Commissioner should investigate all ways in which TOU vehicles could be fitted with a device which visually and audially records their operations.

450. I make this recommendation.

Recommendation 19

The Commissioner should continue to investigate the ways in which TOU operatives could be equipped with a recording device to be carried on their person, which has the capacity to visually and audially record their operations.

451. I make this recommendation.

Recommendation 20

The Commissioner should amend the policies governing the manner in which a HRVI is to be effected, so as require any vehicles involved in a HRVI or in a support role which are equipped with a ICV system to activate that system during the period in which the HRVI is being attempted.

452. I make this recommendation.

Conclusion

453. I will close by expressing to Tateolena's family my deepest sympathy for the loss of their beautiful girl in such tragic circumstances. They will never stop grieving for Tateolena, but I hope that time will lessen some of their pain.

454. I express my thanks to Counsel Assisting and to the NSW Crown Solicitor's Office for their outstanding assistance. My thanks also to Chief Inspector Bernie for his comprehensive investigation, and to the legal representatives of the interested parties.

Findings required by s81(1)

455. As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

Identity of deceased

The person who died is Tateolena Tauaifaga.

Date of death

Tateolena Tauaifaga died on 8 January 2015.

Place of death

Tateolena Tauaifaga died at Constitution Hill, NSW.

Cause of death

Tateolena Tauaifaga died as a result of blunt head injuries.

Manner of death

Tateolena Tauaifaga died when a car which was the target of a police operation drove into her backyard and hit her, causing fatal injuries.

Recommendations pursuant to s82

Recommendations arising from the MRU covert investigative strategy

Recommendation 1

The Commissioner should give further consideration to the question whether the investigative strategy of utilising a stolen vehicle as part of an ongoing investigative strategy, so as to obtain more information about a suspected offender's involvement in other crimes, is a strategy that is appropriate.

Recommendation 2

If having given further consideration to Recommendation 1, the Commissioner considers the investigative strategy of utilising a stolen vehicle as part of an ongoing investigative strategy so as to obtain more information about a suspected offender is a strategy that is appropriate, the Commissioner should:

- a. consider the circumstances in which that investigative strategy should and should not be deployed; and
- b. provide appropriate guidance to members of the NSWPF as to the circumstances in which that investigative strategy should and should not be deployed, and include, if considered appropriate, such guidance in the NSWPF Handbook.

Recommendation 3

The Commissioner should consider the training and instruction of police involved in criminal investigations and ensure that emphasis is placed on the importance of considering, from the outset of an investigation, what arrest strategies may ultimately be available and appropriate if a decision to arrest the person of interest is made during the course of investigation.

Recommendation 4

The Commissioner should ensure that an appropriate procedure is in place to ensure that the risks of any investigative strategy are appropriately assessed and that the perceived benefits of that investigative strategy are weighed against those risks.

Recommendations arising from the TOU operation

Recommendation 5

The Commissioner should review the training and instruction provided to TOU operatives, to ensure that it covers the following matters:

- a. The importance, prior to attempting a HRVI, of considering the criminal and driving history of the person who is the subject of the planned HRVI;
- b. the importance of considering the geographical area surrounding the planned HRVI and, in particular, of any means of leaving that area;
- c. the importance of obtaining as much information about the geographical area surrounding a planned HRVI as is reasonably possible in the circumstances;
- d. the importance of considering contingencies in the event that the HRVI does not proceed as planned; and
- e. the importance of considering the possibility that members of the public might enter the area of operation of a planned HRVI.

Recommendation 6

The Commissioner should amend the policies governing the manner in which a HRVI is to be planned, attempted and/or executed so as to include a statement requiring those involved in effecting (or attempting to effect) a HRVI to obtain, prior to attempting a HRVI, as much information of the geographical area surrounding the planned HRVI (and, in particular, of any means of leaving that area) as is reasonably possible in the circumstances.

Recommendation 7

The Commissioner should review the training and instruction provided to those officers involved in effecting a HRVI, to ensure that it covers the following matters:

- a. When those vehicles with access to the tactical radio channel should switch from the tactical radio channel to the local radio channel;
- b. the importance of monitoring the local channel in the event that an initial attempt to effect the HRVI is unsuccessful; and
- c. the importance of communicating updates of relevant information over the tactical channel in a timely way.

Recommendation 8

The Commissioner should amend the policies governing the communications between the vehicle teams involved in a planned HRVI and any other vehicles in support of the HRVI as follows:

- a. So as to include a statement requiring the team leaders of every vehicle team involved in a planned HRVI to switch over to the local channel as soon as reasonably practicable upon an attempt to effect a HRVI being unsuccessful.
- b. So as to amend Clause 10.5 of the HRVI SOPS by deleting the struck through words, and including the underlined words in their place as follows: ██████████

[REDACTED]

c.

[REDACTED]

Recommendation 9

The Commissioner should amend the policies governing the manner in which a HRVI is to be planned, attempted and/or effected:

a. so as to ensure that specific consideration is given as to when a HRVI is to be discontinued because the risks associated with it outweigh the benefits; and

b.

[REDACTED]

Recommendation 10

Clause 5.1 of the HRVI SOPs should be amended by the deletion of the struck through words and the inclusion of the underlined words in their place as follows:

[REDACTED]

Recommendation 11

Prior to being permitted to engage in any future operational HRVIs, Operatives 188 and 189 each undertake further training and instruction in the performance of HRVIs, with a particular emphasis on situational awareness and be required to demonstrate a capacity to take in their surroundings in urgent circumstances.

Recommendation 12

All Operatives involved in effecting or attempting to effect a HRVI should receive further training and instruction regarding the importance of assessing the risks involved in attempting the HRVI against the need or desire to effect the immediate apprehension of the offender or to stop the vehicle.

Recommendation 13

All police should receive further training and instruction regarding the importance of communicating all relevant information about a pursuit to the DOI-VKG in a timely way, as required by clauses 7.5.1. and 7.5.2 of the of the SDP.

Recommendation 14

The Commissioner should amend the policies governing the manner in which a HRVI is to be planned, attempted and/or effected so as to provide expressly that:

- a. If it appears to the Tactical Commander or the team leader of Alpha vehicle team that a HRVI can no longer be performed (for any reason, including [REDACTED] the Tactical Commander and/or the team leader of Alpha vehicle team must, unless it is impossible or impracticable to do so, immediately communicate this over the tactical radio channel;

- b. [REDACTED]

- c. [REDACTED]

Recommendation 15

The Commissioner should clarify what the intended relationship is between clause 12.4 of the HRVI SOPs and clause 7.4.2 of the SDP and, in particular, whether [REDACTED] which arises in circumstances after a HRVI has been unsuccessfully attempted.

Recommendation 16

The Commissioner should investigate all ways in which TOU vehicles could be fitted with a device which visually and audially records their operations.

Recommendation 17

The Commissioner should continue to investigate the ways in which TOU operatives could be equipped with a recording device to be carried on their person, which has the capacity to visually and audially record their operations.

Recommendation 18

The Commissioner should amend the policies governing the manner in which a HRVI is to be effected, so as require any vehicles involved in a HRVI or in a support role

which are equipped with a ICV system to activate that system during the period in which the HRVI is being attempted.

456. I close this inquest.

Magistrate E Ryan

Deputy State Coroner
Lidcombe

Date 13 April 2022