



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Tyrone Adams
Hearing dates:	3-12 May 2022 Coffs Harbour Local Court
Date of findings:	9 December 2022
Place of findings:	Byron Bay Local Court
Findings of:	Magistrate Harriet Grahame, Deputy State Coroner
Catchwords:	CORONIAL LAW – Safe Driving Policy (SDP); Police Pursuit; whether re-initiation of pursuit; vehicle stop
File Number:	2018/297261

<p>Representation:</p>	<p>Counsel Assisting: Andrew Wong instructed by Amber Doyle, Crown Solicitor’s Office</p> <p>Bonnie Thomas and Lesley Larkin: Hannah Donaldson, Aboriginal Legal Service</p> <p>Scott Adams: Neal Funnell instructed by Legal Aid NSW</p> <p>Commissioner of Police: Christine Melis instructed by Stuart Robinson, NSWPF Office of the General Counsel</p> <p>Senior Constable Paul Barrenger and Constable Danielle Osbourne: Paul Madden instructed by Ken Madden, Walter Madden Jenkins</p> <p>Brett Crossan and Sergeant David Stevens: Jehane Ghabrial, instructed by Michael Burns, McNally Jones Staff Lawyers</p> <p>Sergeant Troy Hamilton: Terence Ower instructed by Michael Pont, Cardillo Gray Partners</p> <p>Inspector Claudia Allcroft: Misha Hammond instructed by Harrison Foulcher, Cardillo Gray Partners</p>
<p>Non publication orders:</p>	<p>The court made specific non-publication orders pursuant to sections 65 and 74 <i>Coroners Act 2009</i> (NSW). The orders relate to sections of the NSW Police Safe Driving Policy. The orders cover documents tendered and evidence given in relation to specific sections in the policy. The orders are available through the Court Registry.</p>
<p>Findings</p>	<p>Identity</p> <p>The person who died was Tyrone Raymond Adams.</p> <p>Date of death</p> <p>He died on 27 September 2018.</p> <p>Place of death</p> <p>He died on the median strip separating the northbound and southbound lanes of the M1 Motorway proximate to the Kirkwood exit, at Tweed Heads</p> <p>Cause of death</p>

He died from multiple injuries to the chest, abdomen and limbs

Manner of death

He died as a result of injuries received when he lost control of the motor vehicle he was driving and collided with a tree. The accident occurred shortly after he had been involved in a police pursuit. He was affected by methylamphetamine at the time.

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Introduction

1. This inquest concerns the death of Tyrone Raymond Adams, known as Ty to his family and friends. Ty was just 22 years of age at the time of his tragic death. He was described as generous, kind and affectionate. It was clear to me that he was well loved by those around him.
2. Ty's mother, Bonnie Thomas, told the Court of her extreme pain since her son's death. She feels Ty's presence in the wilderness and by the creek where he used to fish. She told the Court he was more than just a son to her; he was also her best friend, and she will always miss him. I acknowledge her profound grief and offer her my sincere condolences.
3. Ty's father Scott and his partner Ami also attended much of the inquest. Scott's grief was also palpable in the courtroom, and I respect his decision to participate in those circumstances. He also has my sincere condolences.
4. Ty's Grandmother, Lesley Larkin, attended the inquest each day. Her strength and commitment to family was always obvious. I understand that she had a special bond with Ty, and I saw the support she offered Bonnie and Ty's family and many friends during the difficult inquest process.
5. Ty's death was tragic and premature. His family were united in their desire to fully understand all the events leading up to the accident. In particular they were interested in whether any change to police policy or practice could reduce the number of pursuit related deaths in NSW in the future. Their pain was extremely personal, but it must also be seen in the context of the broad inter-generational trauma facing many First Nations people in NSW. The Court was informed that indigenous Australians are substantially over-represented among pursuit deaths.¹ The pain reflected in these statistics affects whole communities and I accept Ty's family participated in this inquest not just to understand the circumstances of Ty's death and the pain their family has experienced but in the hope of future policy change.
6. I thank Ty's family and friends for participating in this process. They showed great courage and enormous grace under very difficult circumstances.

The role of the coroner and the scope of the inquest

7. The role of the coroner is to make findings as to the identity of the nominated person and in relation to the place and date of their death. The coroner is to address issues concerning

¹ Trends and Issues in crime and criminal justice: Motor vehicle pursuit-related fatalities in Australia, 2000-11 Australian Institute of Criminology, Volume3, Tab 104, page 5

the manner and cause of the person's death.² A coroner may also make recommendations, arising from the evidence, in relation to matters that have the capacity to improve public health and safety in the future.³

8. At the time of the accident which killed Ty, he was driving a vehicle which had recently been followed by members of the NSW Police Force (NSWPF). While there remains some dispute about what occurred just prior to Ty's death, it is common ground that police vehicles in the area were still tasked to be on a look out for him after an earlier pursuit had been terminated. In my view it is unnecessary for me to take a concluded view on whether or not Ty died "*as a result of a police operation*" pursuant to section 23 of the *Coroners Act* which would make an inquest conducted by a senior coroner mandatory. Given the circumstances surrounding Ty's death there are strong discretionary considerations which would, in any event, persuade me to undertake the inquiry. The public must have confidence that all deaths which occur during police operations or in close proximity to a pursuit are scrutinised carefully and independently so that any opportunities for improving police practice are properly identified.
9. It is always important to remember that the purpose of an inquest is not to apportion blame. Nevertheless, a fearless examination of the circumstances of the death is called for and I acknowledge that this can be extremely difficult for all involved. Counsel for Leading Senior Constable Crossan and Sergeant Stevens made lengthy submissions attempting focus the blame for Ty's death on his own conduct. While there had been no suggestion whatsoever that her clients were personally to blame for the accident, she vigorously denied that their actions were the reason Ty behaved in the manner he did. It appeared to me that her forceful submissions were inappropriate and quite out of touch with the manner in which Counsel Assisting, Ty's family and others at the bar table approached this inquest. It was unfortunate. She appeared to misunderstand one of the purposes of my inquiry, which was never to apportion blame on individual officers, but rather to examine the difficult policy issues surrounding the discretion to conduct a pursuit and the guidance currently given to officers in relation to driving in a variety of very dangerous circumstances. Such an inquiry necessarily involves looking at the conduct of the individuals involved and, in my experience, full disclosure almost always has a therapeutic value.

The evidence

10. The Court took evidence over eight hearing days. The Court also received extensive documentary material in three volumes, plus additional material in electronic form. This

² Section 81 *Coroners Act 2009* (NSW).

³ Section 82 *Coroners Act 2009* (NSW).

material included witness statements, medical records, maps, video footage and photographs. The Court heard oral evidence from 13 witnesses and received detailed submissions from all parties after evidence closed.

11. On 2 May 2022, I undertook a view led by the Officer-in-Charge, Detective Inspector Peter O'Reilly. The assisting team and legal representatives of the interested parties attended. The view incorporated the site of the initial traffic stop conducted by Senior Constable Barrenger, the site of the crash on M1, and the likely route taken by Ty in the time between these two events. Detective Inspector O'Reilly devised the route thought to be taken by Ty from evidence obtained during the coronial investigation, including CCTV footage. While Detective Inspector O'Reilly was unable to confirm precisely every aspect of the route Ty took, inferences were able to be drawn based upon the locations Ty was known to have been and the times at which he was present at those locations.
12. While I am unable to refer specifically to all the available material in detail in my reasons, it has been comprehensively reviewed and assessed.
13. A list of issues was prepared before the proceedings commenced. These issues guided the investigation on the following topics:
 - (1) The reasons why NSWPF officers initiated or engaged in any pursuit of the vehicle Ty was driving and the appropriateness of those decisions.
 - (2) Whether NSWPF officers complied with the NSWPF Safe Driving Policy when the pursuit was instituted, and if the pursuit was re-engaged, was it re-engaged properly.
 - (3) Whether Ty's use of drugs played a role in the accident.
 - (4) Whether or not the absence of road spikes and officers trained in their use is a systemic issue.
 - (5) Whether anything could have been done to improve the time it took to extricate Ty from his vehicle.
 - (6) The basis for, and appropriateness of, Senior Constable Barrenger's decision to attempt to stop the Mazda 121 to check "bona fides".
 - (7) Whether the use of body worn video cameras by officers attending the accident scene was in accordance with the applicable NSWPF policies and procedures in place at the time.

The importance of examining the Safe Driving Policy (SDP)

14. In recent times, the complex issues surrounding police pursuits have been widely debated in public and have been the subject of significant research and investigation throughout

many parts of the world. A number of the issues as they relate to NSW have previously been examined by this Court.⁴ The issues clearly have a wide public interest. The question of whether and in what circumstances police should pursue a vehicle is a complex one and one that is currently approached very differently in various jurisdictions. There are no obvious or easy answers and reasonable people may differ on the correct approach to take. Ultimately, it involves a careful balance between interests that at times conflict. Providing police with sound and accessible guidance on the operation of their discretion to pursue becomes a difficult but necessary task, particularly when decisions to pursue are so often made quickly and in stressful circumstances. Unfortunately, the cases indicate that there is frequently confusion or dispute about whether a course of driving was in fact a pursuit or whether the circumstances suggested urgent duty driving was required. This apparent confusion may be suggestive of a need to clarify and review existing policy.

15. Over the years many in the community have been rightly concerned at the number of deaths and very serious injuries arising from or occurring in or just after the course of a police pursuit. The issue remains one worthy of careful consideration. The Court was provided with research into the tragic phenomena of motor vehicle pursuit related fatalities in Australia. Unfortunately, the most recent full analysis of data available came from the years 2000 - 11.⁵ Nevertheless, I note that fatal pursuits most commonly involved males under the age of 25 years and that in almost nine out of ten cases the alleged offender driving the vehicle being pursued, like Ty, had consumed alcohol, drugs or a combination of both prior to the incident. One cannot help thinking that Police officers should be made aware of this information as a factor to take into account when deciding to commence a pursuit and when assessing the very real dangers involved.
16. The SDP is the NSWPF internal policy document which guides police driving practice and strategies, including the conduct of police pursuits. There have been numerous iterations of the policy over the years. Police driving policies in some other jurisdictions are open source documents, but the NSWPF has frequently sought, and been provided by the courts, with protection of some aspects of its policy from public scrutiny, making a full public discussion of the issues somewhat difficult.
17. In this inquest the Court had access to the policy in force at the time of Ty's death ("SDP

⁴ See for example Deputy State Coroner Dillon's findings in the *Inquest into the death of Hamish Raj* (7 April 2014) and more recently *Mauceri v Deputy State Coroner MacMahon* [2017] NSWSC 545, Inquest into the death of Benjamin Collier, 23 August 2021, Inquest into the death of Brooke Carroll, 22 May 2020, Inquest into the Death of Andrew Ngo, 28 January 2020; Inquest into the Death of Xavier Burke, 25 July 2019; Inquest into the Death of Terry Ah-See, 21 May 2019; Inquest into the Death of Ryan Auton, 30 April 2019; Inquest into the Death of Shaun Crighton-Cromb, 15 April 2019; Inquest into the Death of Bryce Doyle, 21 February 2019; Inquest into the Death of Geoffrey Richardson, 6 July 2018; Inquest into the Death of Caillie Scott-Lewis, 26 June 2018; Inquest into the Death of Corey Kramer, 9 April 2018

⁵ Trends and Issues in crime and criminal justice : Motor vehicle pursuit-related fatalities in Australia, 2000-11 Australian Institute of Criminology, Volume3, Tab 104.

version 8.3”⁶, and the current policy (“SDP version 9.2”)⁷. While much of the policy is identical across versions, there have been some significant changes. Relevantly, Parts 7.2.1, 7.2.3 and 7.2.9, which were of particular interest in this inquest, are in the same form in both versions of the SDP. The definition of a pursuit has also not relevantly changed between the two versions. The Court was also informed that version 9.2 is now under review.

18. In the foreword to SDP version 9.2, the former Commissioner of Police stresses the potential harm at play, stating “*decisions you make in the use of that vehicle...can lead to devastating outcomes. Collisions resulting in serious injuries or death can have catastrophic impacts on victims, their families, yourself, your colleagues, your friends and your families*”. He tells his officers that “*you must be able to justify your actions and your driving should not place members of the public, or indeed offenders, at greater risk of harm than that which you are trying to prevent.*” They are in my view important words to keep in mind from the outset.

Background and family history

19. Ty was born on 4 March 1996 and was 22 years of age at the time of his death.
20. Ty’s family informed the court that his bloodline came from Central Australia. His skin name was Jungala and his tribe was Allyawarre. He was born in Murwillumbah and was also accepted as a Bundjalung man.
21. In his early years, Ty lived with his mother Bonnie and father Scott.
22. On New Years’ Day in 1997, Bonnie was involved in a serious car accident. During the period of her hospitalisation, Scott looked after Ty and his older sister Shannon. When Bonnie was released from hospital, she stayed with her sister and her children in Kingscliff. Around this time, Bonnie and Scott’s relationship came to an end.
23. When Ty was due to start school, he, Shannon and Bonnie moved to the Northern Territory where Bonnie was born. They returned to Murwillumbah in around 2000.
24. Ty had a number of younger siblings. Bonnie has two other daughters Narla and Layla. Scott has another son, Jarred.
25. Ty’s grandmother Lesley remembers Ty as a beautiful caring boy, who was respectful and well-mannered, and whose culture meant his love extended to his wider family, including his uncles, aunts and cousins.

⁶ SDP version 8.3 dated December 2017

⁷ SDP version 9.2 is dated June 2019

26. Drugs and alcohol affected Ty's life and as a result he was exposed to the criminal justice system in his teenage years. It is likely this experience only exacerbated his exposure to drugs.
27. In 2015, Ty was involved in the forced entry of a brewery in Murwillumbah in order to steal alcohol. While on remand he participated in the Balunda residential program in Tabulam, aimed at reducing re-offending and Aboriginal incarceration.
28. After completing the Balunda program, Ty returned to Murwillumbah and entered into a relationship with Rebecca Hourn. Ty seemed to settle down. They lived together and Ty found employment at Southside Wreckers.
29. Sadly, Ty's employer, Greg Beggs, passed away on 31 May 2018 and Ty stopped working at the wreckers. His relationship with Ms Hourn ended around the same time, although a strong connection clearly remained.
30. Ms Hourn has fond memories of Ty, recalling his passion for his job at the wrecker's yard and how he would spend his weekends bushwalking, crystal hunting, fishing, working on cars with mates and spending time with his siblings.
31. Ms Larkin told the Court that Ty felt lost without work and his relationship. She recalled him telling her about four weeks before he passed, "*I know the life I want to live but I know that I can't do it.*" At the time of his tragic death, Ty had his whole life ahead of him, he was greatly loved and had shown some insight and capacity for change. Sadly the chance to make those changes was lost.

The car Ty was travelling in on the evening of 27 September 2018

32. The vehicle that Ty was driving on the evening of 27 September 2018 was a white Mazda 121, registered CK90RT ("the Mazda 121"). Ty did not own the Mazda 121 or any other registered vehicle. He did not hold a driver's licence. The Mazda 121 had been leased by a friend of Ty's, Blake Ling.
33. On 25 September 2018, Ty informed Mr Ling, over Facebook messenger, that he was struggling with money and needed to borrow Mr Ling's car.
34. Mr Ling had leased the Mazda 121 from a business operated by Phillip Taylor, which Mr Ling described as "*a dodgy car lease business*".
35. Phillip Taylor owns and operates a car sales and hire business called "Taylor Made Car Sales and Hire" in Murwillumbah. He is known to lease motor vehicles at a very low rate compared to major vehicle hire companies. This is mainly due to the quality and age of the vehicles. Mr Taylor is known to record only minimal details in relation to each hire and his records have been found to be inaccurate on occasions.

36. Mr Taylor is well known to NSWPF in the Tweed-Byron Police District. Senior Constable Mitchell Evans states that Mr Taylor's business model promotes the use of his vehicles to people otherwise unable to hire vehicles. This has resulted in a number of Mr Taylor's vehicles being the subject of investigations, including in relation to drug supply, property crime, traffic offences, arson and deceased persons.
37. Senior Constable Evans states that due to the association of Mr Taylor's vehicles with these types of incidents, vehicles registered to Mr Taylor are often subjected to vehicle stops.
38. Between 1 January 2015 and 1 July 2020, 14 incidents were recorded on the NSWPF CAD system where NSWPF had attended "Taylor Made Car Sales and Hire". The incidents related to stolen vehicles, traffic complaints, business checks, an assault, animal cruelty and concern for the welfare of a person with a vehicle belonging to Mr Taylor.
39. On 11 April 2018, Senior Constable Mitchell Evans conducted a business inspection upon "Taylor Made Cars", which resulted in Mr Taylor being issued infringement notices for compliance offences relating to vehicles owned by Mr Taylor and the conduct of his business.
40. Mr Taylor gave evidence before me and disputed any suggestion that he kept inadequate records. He also told the Court that he always cooperated with police and welcomed, indeed encouraged, NSW Police to stop his vehicles. I gained the distinct impression that he would have had no special loyalty to his hirers if police demanded specific information.

Ty's activities prior to the police pursuit

41. On the evening of 27 September 2018, Ty attended a housing complex at 14 Margaret Street. Ashley Hulse was staying at that complex with his partner Taylor Blundell. Ty arrived there in the Mazda 121 at around 8:48pm. There is evidence to suggest that while at Mr Hulse's home, Ty was involved in a violent incident.
42. I note that there is no evidence that any of the events that occurred at 14 Margaret Street were known by NSWPF on 27 September 2018. No report was made to NSWPF until *after* Ty had died.
43. No individual has been convicted of *any* offence in relation to this incident and I am unable to be certain about what occurred. The evidence I have received in relation to the incident at 14 Margaret Street is however relevant, as what occurred there is likely to have played some role in Ty's decision making during the later parts of that evening and night. While I cannot be certain of the details or exactly what role Ty played, I accept he was involved in a series of events that may have caused him to become especially fearful later in the evening when he was followed by NSWPF. It is certainly possible that he thought the NSWPF were trying to apprehend him in relation to serious criminal events at the Margaret

Street address. In my view it appears likely that fear of apprehension related to these events impacted on his capacity to make sound decisions that night.

44. Mr Hulse recalls Ty attending the unit and telling him that “Simo” had robbed someone in Murwillumbah earlier that evening. Ty asked Mr Hulse to come to his car and help him get a stereo. Mr Hulse saw, in the boot of the Mazda 121, a variety of items including drills, speakers and computer monitors. Mr Hulse states that Ty told him the items were stolen and that he told Ty that he could not bring the speakers into the apartment.
45. As they walked back to the apartment Mr Hulse saw around five or six men in the bedroom he was sleeping in with Ms Blundell. She was crying. Mr Hulse recalls Ty pushing him into the bedroom before Mr Hulse was punched and hit with things. According to the account given by Mr Hulse, the men, including Ty, assaulted him and demanded money. They stole his wallet and mobile phone.
46. Ms Blundell states that while Ty and Mr Hulse were looking in his car, three people walked in. One hit her on the face. Soon after that Mr Hulse re-entered the apartment and was also assaulted and then robbed.
47. CCTV footage depicts the Mazda 121 leaving 14 Margaret Street at 9:00pm.

The stopping of the Mazda 121

48. Around 20 minutes after the Mazda 121 departed 14 Margaret Street, it was spotted in Enterprise Avenue by Senior Constable Paul Barrenger. Enterprise Avenue is located in an industrial area of Tweed Heads. It is a cul-de-sac with a grassy area at the end, which, on the evening of 27 September 2018, was being used by Senior Constable Barrenger to exercise two police dogs.
49. Senior Constable Barrenger was assigned a NSWPF vehicle with the call sign DOG34.
50. As Senior Constable Barrenger was putting the dogs back into the police vehicle, he saw the Mazda 121 travel towards him down Enterprise Avenue. Senior Constable Barrenger said he could not see the driver, but he saw the vehicle’s right indicator turn on, and the Mazda 121 enter the driveway of an industrial complex. He lost sight of the vehicle momentarily, but then saw it exit from a different driveway further away from where Senior Constable Barrenger was located. Senior Constable Barrenger thought that, in turning around and driving out of Enterprise Avenue, the Mazda 121 was seeking to avoid him.
51. Senior Constable Barrenger then got into his police vehicle and followed the Mazda 121. While following the Mazda 121, Senior Constable Barrenger conducted a “transport”, which he told the Court involves relaying over the police radio to VKG the state of the vehicle’s registration and its registration number. Senior Constable Barrenger was advised

by VKG, that the vehicle was registered to Phillip Taylor until 27 October 2018. At that point, Senior Constable Barrenger decided to stop the Mazda 121 to “*check his bona fides*”.

52. In his directed interview, Senior Constable Barrenger was asked whether the information he had received from VKG in response to his request for a “transport”, that is, that the Mazda 121 was registered to Mr Taylor, aroused suspicion. Senior Constable Barrenger replied “*Uh, it did at the time, yeah*”. Senior Constable Barrenger was then asked if he wished to elaborate any further on that, to which he replied “*Uh, no. Not at the moment.*”
53. Senior Constable Barrenger was also asked in his directed interview about his use of the term “*check his bona fides*”. He said that it was “*a police jargon term that we used when forming reasonable cause to suspect that, you know, again property crime or drugs in relation to a Phillip Taylor car*”. He also said it meant there was something he needed to look at.
54. Senior Constable Barrenger gave evidence that he relied on the power under s. 36 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) to execute the traffic stop.
55. Section 36 of LEPRA provides:

Power to search vehicles and seize things without a warrant

(1) A police officer may, without a warrant, stop, search and detain a vehicle if the police officer suspects on reasonable grounds that any of the following circumstances exist—

- (a) the vehicle contains, or a person in the vehicle has in his or her possession or under his or her control, anything stolen or otherwise unlawfully obtained.
- (b) the vehicle is being, or was, or may have been, used in or in connection with the commission of a relevant offence.
- (c) the vehicle contains anything used or intended to be used in or in connection with the commission of a relevant offence.
- (d) the vehicle is in a public place or school and contains a dangerous article that is being, or was, or may have been, used in or in connection with the commission of a relevant offence.
- (e) the vehicle contains or a person in the vehicle has in his or her possession or under his or her control, a prohibited plant or prohibited drug in contravention of the *Drug Misuse and Trafficking Act 1985*.
- (f) circumstances exist on or in the vicinity of a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers may lessen the risk.

56. Senior Constable Barrenger gave the following evidence in relation to his reasonable

suspicion for the purposes of s. 36 of LEPRA. His suspicion was based on the following: the time at which he saw the Mazda 121 in the location it was in; that he considered the Mazda 121 to be avoiding his police vehicle; and, the identity of the person to whom the car was registered. Additional factors included the Mazda 121 being in an area where businesses were closed at the time and the vehicle being a small civilian car as opposed to a ute or truck.

57. Senior Constable Barrenger suspected there may have been drugs in the vehicle, given *“the ongoing history of Mr Taylor and his criminal associations of who he loans his vehicles and the “jobs” some of his vehicles had been involved in”*. He said the mere fact that the Mazda 121 was registered to Mr Taylor would be sufficient to form a reasonable basis to stop a vehicle.
58. Senior Constable Barrenger could not recall conducting searches on the COPS database in relation to Mr Taylor before 27 September 2018. He had however, conducted searches since, including on the day he gave evidence in this inquest.
59. Senior Constable Barrenger agreed that he formed a suspicion that there may have been unlawfully obtained goods in the vehicle and suspected they were power tools given the surrounding businesses. However, he could not recall the last time, prior to that evening, that he was aware of a report in that vicinity of a break in where power tools were stolen.
60. Senior Constable Barrenger agreed that many people may have hired Mr Taylor’s vehicles and that the more important factor was who was driving the vehicle as opposed to who it is registered to.
61. Senior Constable Barrenger gave evidence that he had attended intelligence briefings in which Mr Taylor’s name would regularly come up in relation to his vehicles being the subject of investigations concerning property and drug supply offences. Senior Constable Barrenger could not recall specific examples of such intelligence and was not certain whether the intelligence he was referring to pre-dated 27 September 2018.
62. However, when shown a NSWPF intelligence tasking sheet he agreed he was familiar with such documents and his knowledge on 27 September 2018 accorded with the content of the sheet which referred to property offences between 9:00pm and 2:00am in the relevant vicinity.
63. Senior Constable Barrenger agreed that when he stopped the Mazda 121, he was not aware of any alleged offending in the five to ten streets around Enterprise Avenue.
64. Counsel Assisting submitted that, based on all the evidence, at the time Senior Constable Barrenger decided to stop the Mazda 121, he did not have sufficient information that would constitute reasonable grounds to suspect the Mazda 121 contained stolen or unlawfully

obtained property or drugs, as required by s. 36(1)(a) of LEPR.

65. In making this submission Counsel Assisting directs my attention to the cases of *R v Rondo* [2001] NSWCCA 540 (*Rondo*) and *R v Yana Orm* [2011] NSWDC 26 (*Yana Orm*).

66. In *Rondo*, Smart JA set out the following propositions in relation to reasonable suspicion (at [53]):

(a) A reasonable suspicion involves less than a reasonable belief but more than a possibility. There must be something that would create in the mind of a reasonable person an apprehension of fear ... A reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence.

(b) Reasonable suspicion is not arbitrary. Some factual basis for the suspicion must be shown.

(c) What is important is the information in the mind of the police officer stopping the vehicle or making the arrest at the time he did so. Having ascertained that information the question is whether that information afforded reasonable grounds for the suspicion that the police officer formed. In answering that question regard must be had to the source of the information and its content, seen in the light of the whole of the surrounding circumstances.

67. Smart J said (at [51]) *"the mere fact that the appellant was driving a car which he did not own or lease or hire is not sufficient to give rise to a reasonable suspicion"*.

68. In *Yana Orm*, the Court said *"it is one thing for a police officer to use his common sense and experience to seek out and investigate leads ... In my view, it is quite another for an officer to make value judgments about the actions of a suspect and to translate those value judgments to the level of a reasonable suspicion of offending. This is especially so when the officer appears to make little effort to consider any innocent explanation for such actions. This approach may indicate a closed rather than an open and inquiring mind and may suggest that the officer's intention was to gain evidence inculcating the accused."*

69. In relation to the issue of any reasonable suspicion held by Senior Constable Barrenger, Counsel Assisting notes the following:

- Even if the make, model, and appearance of the Mazda 121 justified a reasonable suspicion, once the transport was conducted, any suspicion arising from these factors could no longer stand, as Senior Constable Barrenger knew the car was a hire car and as such, the driver was not responsible for its upkeep or appearance.
- The fact Ty drove into the industrial complex at night and conducted a U-turn, combined with the NSWPF tasking sheet, could not give rise to a suspicion that Ty had stolen/unlawfully obtained property in the car. Ty did not loiter in the area; there

were no reports of break in in the industrial complex that evening; and there was nothing to suggest Ty had committed any crime.

- The mere fact that the Mazda 121 was a Phillip Taylor hire car could not justify a reasonable suspicion as per *Rondo*.
- The factors referred to by Senior Constable Barrenger, even when looked at in combination, do not appear to ground a reasonable suspicion in circumstances where there is a myriad of innocent reasons as to why a Philip Taylor hire car may have been driving in that area at night.
- Ty's vehicle did not contain any prohibited drugs. Power and hand tools were located, however, there is no evidence they were stolen or unlawfully obtained or associated with any businesses in Enterprise Avenue. While a knife was found in Ty's backpack, possession of a knife in and of itself is not illegal.
- With respect to any suspicion based on the fact that Ty was driving a Philip Taylor hire car the following evidence is relevant:
 - Senior Constable Barrenger could only give general examples of intelligence relating to Phillip Taylor hire cars.
 - Senior Constable Barrenger could not recall if the intelligence pre-dated September 2018 when the traffic stop occurred.
 - Senior Constable Barrenger gave evidence that he last checked the COPS events in relation to Phillip Taylor the day he gave evidence to refresh his memory but could not recall if he had checked such COPS reports prior to 27 September 2018.

70. It is submitted on behalf of the Commissioner of Police that the combination of factors relied upon by Senior Constable Barrenger would ground a reasonable suspicion, particularly where there was no plausible explanation for Ty driving to that location at that time of night in a vehicle he took without permission of the person who leased it from Mr Taylor. I note that this submission misses the fact that Senior Constable Barrenger was not aware that the vehicle had been hired by someone else and is an example of the hindsight reasoning involved in some of the submissions made on this point.

71. It was submitted on behalf of Senior Constable Barrenger that there was no breach of a police power.

72. In relation to reasonable suspicion, it was submitted that Counsel Assisting elevates the reasonable suspicion threshold and invites this Court to apply a far too demanding and narrow approach to the test. It is submitted any reasonable and right minded member of the community would expect a police officer in the position of Senior Constable Barrenger

(with his state of knowledge) to stop the unkept car belonging to Mr Taylor, in that area, at that time of night, when everything about its movements were clearly seeking to leave the area and avoid coming into closer contact with Senior Constable Barrenger's vehicle by performing a U-turn where and when it did.

73. In relation to the relevant case law on "reasonable suspicion" Counsel for Senior Constable Barrenger directs my attention to the principles summarised by McColl JA in *Hyder v Commonwealth of Australia* [2012] NSWCA 336 at [15], which establish that:

(a) the objective circumstances required to show a state of belief (like that applicable under s. 36 of LEPRA) is "*relatively undemanding*".

(b) an assessment of whether a suspicion was held is to be made from the "standpoint" of the police officer at the time the suspicion crystallised.

(c) Senior Constable Barrenger's satisfaction "*must be formed reasonably and on a current understanding of the law. However, the ultimate criterion is that there be a satisfaction, lawfully formed, at the time the power was exercised; and error is not established merely because the Court itself would not have reached that satisfaction*".

(d) it must be borne in mind that "*the court is considering a preliminary stage of the investigation, rather than one requiring evidence amounting to prima facie proof.*"

74. In relation to *Yana Orm*, Counsel for Senior Constable Barrenger draws my attention to the statement of Lakatos DCJ (at [118]) that "*the last matter is, the resort by an investigating officer to stereotypes and generalisations in forming adverse views of a suspect, without any critical analysis, that in the present case such generalisations may be wrong, should, in my view, be discouraged*".

75. In relation to "generalisations" in *Azar v DPP* [2014] NSWSC 132, Adamson J said at ([38]-[39]):

"In forming a suspicion the officer is, in effect, drawing upon his or her training and experience and the whole of his or her observations of the relevant events.

Where generalisations are based on nothing more than prejudice they could not amount to a basis for a reasonable suspicion but where they are ... potential indicia of criminal conduct they are capable of so doing. The fact that only a minority of hire cars are used for drug trafficking does not preclude the fact that hire cars are not uncommonly used for that purpose ... being used to ground a reasonable suspicion."

76. Counsel for Senior Constable Barrenger submits that Counsel Assisting ignores the relevance of police experience and that Senior Constable Barrenger undertook a critical analysis of all the information and observations of the Mazda 121 and used the benefit of

his years of police experience and training to form a reasonable suspicion.

77. In relation to Counsel Assisting's submission that it cannot be ruled out that Ty simply conducted a U-turn to avoid driving further down the road to the cul-de-sac, it is submitted that the only reasonable explanation on all the evidence, including the evidence regarding Ty's movements that evening, the contents of the Mazda 121, Ty's licence status, and Ty being under the influence of ice and not wanting to be stopped and subjected to a roadside drug test, is that Ty panicked when he saw Senior Constable Barrenger and performed a U-turn to get away from him.
78. I have considered the evidence and submissions carefully in relation to whether the initial stop was correct at law. In my view it was not. Senior Constable Barrenger told the Court he made the decision to stop the car on the basis that he had reasonable cause to suspect the car contained stolen goods or drugs. On all the evidence, *at the time* Senior Constable Barrenger decided to stop the Mazda 121, he did not, in my view have sufficient information to constitute reasonable grounds to suspect the Mazda 121 contained stolen or unlawfully obtained property or drugs, as required by s. 36(1)(a) of LEPR. Some of the explanations put forward seemed infected by hindsight reasoning. It is crucial to remember that at the time Senior Constable Barrenger noticed the vehicle, police knew nothing about the earlier events at Margaret Street, there was nothing about Ty's speed or manner of driving which appeared dangerous or could indicate that he was affected by drugs, the car did not linger or loiter, and there had been no report of a break and enter in the immediate vicinity. Senior Constable Barrenger told the Court that he did not see the driver and aside from knowing it was a Phil Taylor car, there was no particular intelligence attaching to the vehicle. After hearing from Senior Constable Barrenger, it remained unclear to me what he actually knew about Phil Taylor at that time and what he had learnt subsequently. I accept that he had a feeling the car was possibly suspicious. Further, I accept he used his experience as a police officer to come to that conclusion. However, I do not accept this feeling constituted a reasonable suspicion at law.
79. A police pursuit will, by definition, have been preceded by an earlier decision by police to stop a vehicle. Counsel Assisting drew my attention to the importance of supporting police to make sound decisions when exercising their discretion to stop a vehicle, because the flow on consequences, should a pursuit subsequently ensue, can be tragic. I accept his submission that there is a strong interrelationship between the broader exercise of police powers and police pursuits. This is particularly the case in circumstances where, as discussed further below, it appears that the prevailing view among NSWPF officers is that a failure to stop when directed, in and of itself, can justify the initiation of a pursuit. I accept Counsel Assisting's submission that police must be mindful that exercising a power as simple as a routine traffic stop must be done with great care, given the potential for danger.

I reject any submission that the position put seeks to blame individual police for Ty's death.

The initial police pursuit

80. Having decided to stop the Mazda 121, Senior Constable Barrenger activated the warning devices on his vehicle and the Mazda 121 stopped in Greenway Drive.
81. Senior Constable Barrenger got out of his vehicle and walked towards the Mazda 121. As he did so the Mazda 121 drove away. Senior Constable Barrenger then got back into his vehicle and called pursuit over the police radio. This occurred at 9:26pm.
82. Sergeant Troy Hamilton was on duty in Tweed Heads and driving an unmarked sedan bearing call sign TH14. Sergeant Hamilton heard Senior Constable Barrenger's broadcast indicating a pursuit had been engaged. He exited the Police Station and, in his vehicle, headed urgent duty, that is, with lights and sirens activated, towards Banora Point.
83. On Dry Dock Road, Sergeant Hamilton saw the Mazda 121 driving towards him with Senior Constable Barrenger in pursuit. Sergeant Hamilton executed a U-turn and took up position behind DOG34 and advised VKG that he was the secondary vehicle in pursuit.
84. Upon exiting Dry Dock Road, the Mazda 121 travelled onto the wrong side of Minjungbal Drive. Senior Constable Barrenger thought that that occurred as a result of the Mazda 121 entering the intersection at speed and Ty having under-steered.
85. Sergeant Hamilton saw the Mazda 121 enter the intersection at Minjungbal Drive [REDACTED]
[REDACTED]
he decided to terminate the pursuit as it was too dangerous for the driver and the general public. He radioed VKG to that effect and the pursuit was terminated at 9:30pm. The pursuit lasted approximately four minutes and 15 seconds.
86. There is no dispute that pursuit of the Mazda 121 was engaged in by Senior Constable Barrenger, as the primary vehicle, and Sergeant Hamilton, as the secondary vehicle. And there is no dispute that the pursuit commenced when called by Senior Constable Barrenger at 9:26pm and terminated by Sergeant Hamilton at 9:30pm.
87. An issue for the inquest was whether the conduct of this pursuit was in accordance with the SDP and whether any recommendations should be made to the SDP in relation to the conduct of police pursuits.
88. Of particular interest in this matter, were Parts 7.2.1, 7.2.3, and 7.2.9 which relate to initiating and engaging in a pursuit. Those Parts provide:

Part 7.2.1

"The decision to initiate and/or continue a pursuit requires weighing the need to

immediately apprehend the offender, against the degree of risk to the community and police as a result of the pursuit.”

Part 7.2.3

“If after consideration of the circumstances of the pursuit prior to it being engaged concludes that the need to immediately apprehend does not outweigh the degree of risk to the community, police or offenders the pursuit should not be engaged.”

Part 7.2.9

“When engaging in a pursuit you should ensure there is reasonable cause to believe that the person being pursued has committed or has attempted to commit an offence and the offender is attempting to evade apprehension.”

89. A number of NSWPF officers gave evidence as to how they applied those clauses on 27 September 2018.
90. Senior Constable Barrenger gave evidence that, pursuant to Part 7.2.9, at the time he engaged in the pursuit he had reasonable cause to believe that the driver of the Mazda 121 had committed or attempted to commit a crime. In relation to the crime, or attempted crime, he said:

“So again we’re looking at the extensive history of Phil Taylor and his associations with criminals and those vehicles being used to commit crime. Further to that, in my mind, his attempt to evade me initially when in first sight the vehicle. He had ample space and time to conduct a U-turn on the road. He chose then to go behind the hedges and buildings, in my mind, to evade me plus during the vehicle stop again in my mind he’s put himself at the most advantageous position and me at a disadvantage in that I exit my vehicle and almost approach his and he’s chosen that moment to then take off from by directed vehicle stop. So in putting me at a disadvantage, again raising my suspicion that he’s trying to given himself the best opportunity to get away from me.”

91. Senior Constable Barrenger was asked by VKG what the original offence was for the purposes of initiating the pursuit and he said, *“I just sighted the vehicle and tried to stop it and it took off on me”*. It was put to him that when answering VKG he did not make reference to stolen property or drugs. He said this was because he could not establish those offences. When questioned further, Senior Constable Barrenger agreed he decided to pursue the vehicle because it had ignored a direction to stop. I found Senior Constable Barrenger’s evidence on this issue somewhat confusing. It appeared to me that he was trying to reconstruct a thought process, rather than being able to clearly explain his contemporaneous rationale.

92. In relation to the reference in Parts 7.2.1 and 7.2.3 to the need to immediately apprehend the driver, Senior Constable Barrenger said the following factors supported the need to do so: the history and intelligence surrounding Mr Taylor; the fact Mr Taylor did not keep good records and regularly reported his vehicles as stolen; the time, place and location of the vehicle; the driver wanting to avoid him by entering the driveway in Enterprise Avenue; and, the driver waiting for him to exit his vehicle before taking off. Senior Constable Barrenger said he did not consider whether there were other means available to apprehend the driver, before initiating the pursuit.
93. Sergeant Hamilton gave evidence that even though the pursuit had already been engaged he gave independent consideration to Part 7.2.3. He took into account that he was aware the Mazda 121 had failed to stop and that there wasn't any high-level danger to the driver or the public.
94. Sergeant Hamilton was not aware of any other offence the driver of the Mazda 121 had committed beyond failing to stop. In his view, the SDP does not require an offence additional to the failure to stop in order for a pursuit to be legitimately initiated. At no stage did Sergeant Hamilton consider whether there were alternative means to locate and apprehend the driver.
95. Inspector Claudia Allcroft was responsible for monitoring the pursuit. When asked whether NSWPF officers should take into account the seriousness of the offence when considering whether to initiate or continue a pursuit she said, "*not necessarily*" and observed that "*if an offence is being committed you've got the power to pursue.*" She did not consider that the seriousness of an offence was a relevant factor that needed to be considered when deciding to continue a pursuit, noting that the SDP does not refer to the seriousness of the offence and the SDP is what she is bound by.
96. Sergeant David Stevens was working in the NSWPF Radio Operations Unit on the night of 27 September 2018 and was the pursuit manager for the pursuit initiated by Senior Constable Barrenger. Sergeant Stevens was in the same room as the VKG dispatcher and had over-arching control of the pursuit.
97. Sergeant Stevens agreed that the seriousness of the offence was an important factor when considering whether to continue a pursuit. When he was informed by Senior Constable Barrenger that he had tried to stop the Mazda 121 and it just took off, he assumed Senior Constable Barrenger was going to breath test the driver. This evidence was somewhat alarming, given that Sergeant Stevens was in control of the pursuit. The lack of clarity about why an inherently dangerous course of driving was being undertaken is cause for concern.
98. Sergeant Stevens was of the view that failing to stop when directed was a sufficient basis to initiate and continue a pursuit. When asked about the risk the driver of the Mazda 121

posed to public health and safety, Sergeant Stevens considered the main risk to be the fact that the driving ability of the driver was unknown, and that *“nearly the only risk is a car accident, so you take into account the surrounding circumstances”*.

99. Sergeant Stevens considered that the need to immediately apprehend the driver arose from the failure to stop. He gave evidence that *“if we can manage to safely do it, we still have an obligation to try and stop the driver to see what they might be up to and, if there is anything else going on.”* Sergeant Stevens agreed that a pursuit could often result in a pursued driver engaging in more dangerous driving as compared to when there was no pursuit.
100. The Court also received evidence from Sergeant Nicholas Dixon of the Traffic and Highway Patrol Command. Sergeant Dixon was not involved in the events the subject of this inquest but reviewed the evidence relating to the conduct of the relevant NSWPF officers. Sergeant Dixon also gave evidence about his understanding of aspects of the SDP.
101. Sergeant Dixon was of the view that in order to comply with Part 7.2.9, it was sufficient for NSWPF officers to be satisfied that a driver had committed an offence of failing to stop and that the act of failing to stop could also satisfy the reasonable belief that the driver was evading apprehension.
102. Sergeant Dixon agreed that Part 7.2.9 makes no reference to the seriousness of an offence, and as such, if a person were suspected of possessing one gram of cannabis, or stealing a chocolate bar, once NSWPF were of the view the driver was evading apprehension, the SDP would authorise a pursuit. This evidence concerned me greatly. Sergeant Dixon was the senior officer tasked with explaining the policy to me and he was unequivocal in his view that a trivial original offence was not, in itself, a barrier to the decision to pursue a vehicle.
103. Sergeant Dixon was asked whether, when weighing the need to apprehend the driver against the risk to the community and police as a result of the pursuit, for the purposes of Parts 7.2.1 and 7.2.3, NSWPF officers should consider the seriousness of the offence for which apprehension is sought. He told the Court, *“that’s not the policy we have”*. When asked whether the seriousness of an offence informs the need to immediately apprehend the driver he said *“An offence is an offence. If somebody’s wanted for an offence or they’ve committed an offence and police are exercising their powers lawfully to apprehend that offender, then that is permitted under the policy.”*
104. Sergeant Dixon said that factors that would be relevant to the need to immediately apprehend a driver would include the powers of arrest, the protection of evidence, and the need to stop further offences occurring.
105. Sergeant Dixon was asked whether a wide discretion to pursue, such as the discretion currently in place, raised possible difficulties in circumstances where the officer required to

exercise that discretion will often have adrenaline flowing or be experiencing “*red mist*”. Sergeant Dixon stated:

“an experienced seasoned officer will be able to work within those parameters. Junior officers, it is going to come down to their personality type, how well they coped under stress ... which is why our system of education and the silver response courses try to recreate that scenario to see what they perform like under pressure.”

106. The Court also received evidence from Senior Sergeant Nick Beresford of the Police Driver Training Unit located in Goulburn. The Police Driver Training Unit is responsible for the theoretical and practical training NSWPF officers in relation to police pursuits. Senior Sergeant Beresford said that the training focuses on identifying the actual offence that has been committed; was it a minor traffic offence or a more serious offence. It might be inferred from this evidence, that, despite the evidence given by other NSWPF officers on this issue, the seriousness of an offence has, or should have, some potential role to play in the exercise of the discretion to initiate a pursuit. Students are also instructed to consider, when deciding whether to initiate a pursuit, whether you can follow up the matter at a later stage.
107. Counsel Assisting made a number of observations in relation to the evidence as to the application of Parts 7.2.1, 7.2.3 and 7.2.9 of the SDP:
108. First, he contends that there is a risk that NSWPF officers conflate s. 36 of LEPRA (which requires a reasonable suspicion) with Part 7.2.9 of the SDP (which requires a reasonable belief). Senior Constable Barrenger’s evidence provided an example. When asked what offence he had in mind when turning his mind to Part 7.2.9, he referred to s. 36(1)(a) and (e) of LEPRA and said it was property crime or drugs.
109. Secondly, there is a real question as to whether Part 7.2.9 is ambiguous in its meaning and authorises pursuits in too wide a circumstance. Despite Sergeant Dixon’s evidence that it was sufficient for NSWPF to be satisfied that an offender had committed the offence of failing to stop and that the failure to stop demonstrates an attempt to evade apprehension, it is arguable that use of word “and” in Part 7.2.9 suggests NSWPF officers need to reasonably believe a driver has committed or attempted to commit an offence and that offence should be different to an offence that constitutes an attempt to evade apprehension such as a failure to stop. Accordingly, Part 7.2.9 is, on its face, ambiguous leading to potential difficulties with its interpretation. When one considers Part 7.2.9 and the way it was applied in this matter, any possible benefit in apprehending a driver only for the offence of failing to stop, is likely to be outweighed by the dangers inherent in engaging in a police pursuit.
110. Thirdly, there is a question as to whether NSWPF officers, in applying Parts 7.2.1 and 7.2.3, properly account for the need to immediately apprehend the driver. When considering the

evidence of the various officers, it appeared little weight was given to whether it was necessary to immediately apprehend the driver. Further, when contemplating whether there is a need for immediate apprehension an obvious consideration would be seriousness of the offence for which apprehension is sought. The evidence in this matter suggests NSWPF officers are not required to, or in any event do not, turn their mind to this factor.

111. Fourthly, there is a possible ambiguity in the SDP in relation to the terms “initiate” and “engage” which appear at times to be used interchangeably and on other occasions to be referring to separate actions.

112. Accordingly, Counsel assisting submitted the following, in relation to Parts 7.2.1, 7.2.3 and 7.2.9 of the SDP:

(a) There is a real risk that NSWPF officers conflate the requirement of “reasonable suspicion” as stated in s. 36(1) of LEPRA with the requirement of a “reasonable belief” as stated in Part 7.2.9. Where NSWPF officers are trained to stop vehicles when they have a reasonable suspicion and s. 36 authorises this, it is not surprising that those officers may also believe that a reasonable suspicion is all that is required to stop a vehicle by way of a police pursuit.

(b) On its face, Part 7.2.9 is unclear as to whether NSWPF are required to have a reasonable belief that a pursued driver has committed or attempted to commit an offence separate from an offence of failing to stop/evading apprehension.

(c) On the basis of the evidence in this matter as to how Part 7.2.9 is applied, a pursuit is authorised where NSWPF only have a reasonable belief that a driver has failed to stop when directed. This allows for a very wide scope to initiate pursuits and this wide scope is not in the public interest given the serious risks to health and safety associated with police pursuits.

(d) NSWPF officers, when applying Parts 7.2.1 and 7.2.3 do not appear to give proper weight to whether there is a need to immediately apprehend the offender.

(e) There is a possible confusion in the SDP, with the words “initiate” and “engage” being used interchangeably and it not being clear if they mean entirely the same thing.

113. On those bases, Counsel Assisting submitted I make the following recommendation:

That the Commissioner of Police:

(a) Amend the SDP to mandate that a pursuit can be commenced only if police are satisfied that a serious risk to the health and safety of a person existed before the decision to intercept or stop the vehicle.

(b) Make clear in the terms of the SDP, and in any relevant training, that the above test is the threshold test for a police pursuit

(c) Amend the SDP to expressly provide that upon a pursuit being called the relevant pursuit supervisor must, as soon as practicable, ask the pursuing officer to identify the serious risk to health or safety of a person that existed before the decision to intercept or stop the vehicle, and give independent consideration to whether that threshold is met.

(d) Ensure that state-wide mandatory training be provided to all NSWPF officers on the threshold test for police pursuits.

(e) Mandate that the serious risk to the health and safety of a person that existed before the decision to stop or intercept a vehicle be recorded for every police pursuit.

114. Counsel Assisting submitted that the arguments in favour of the proposed recommendation include:

- (a) the test as set about above is easy to apply, requiring satisfaction only of there being a serious risk to the health or safety of a person and that being the reason why the pursuit is being initiated
- (b) the test recognises that police pursuits are inherently dangerous and give rise to a serious risk to the health and safety of the pursued driver, NSWPF, and the public, and as such, before engaging in a pursuit there must be a pre-existing risk to the health or safety of a person, as it is this risk that justifies police engaging in a pursuit with all its inherent dangers.
- (c) the test is not overly prescriptive and allows NSWPF to consider, for example, whether the driver has committed, or is suspected of committing, serious offences of violence.
- (d) requiring the pursuit supervisor to ask the pursuing officer to identify the serious risk to the health and safety of a person, and to record that risk, ensures all NSWPF officers will turn their mind to the actual risk to health and safety they are trying to prevent.
- (e) in the present case no NSWPF officer turned their mind to whether Ty actually posed a danger to the health and safety of others. In circumstances where a pursuit poses a myriad of dangers to the health and safety of the public, NSWPF, and the pursued driver, NSWPF officers should be required to consider whether the dangers inherent in a pursuit, are greater than the danger they are trying to prevent by apprehending the driver by way of pursuit.
- (f) the recommended amendments better reflect the foreword to SDP version

9.2, which states “*You must be able to readily justify your actions and your driving should not place members of the public, or indeed offenders, at greater risk of harm than you are trying to prevent.*”

(g) the recommended changes address any possible confusion between the words “initiate” and “engage”.

115. Counsel Assisting’s proposed recommendation is endorsed by Ty’s family.

116. In relation to the proposed recommendation, the Commissioner of Police, in her submissions, indicated that the Traffic and Highway Patrol Command is presently conducting a review of the SDP and will consider all parts of the proposed recommendation as part of that review. While I was disappointed in the lack of open engagement with the proposed recommendation, I remain hopeful that the issues will be fully considered in due course.

117. In my view there is compelling evidence to support the making of the recommendation proposed by Counsel Assisting. As the former Commissioner says in the foreword to the current edition of the SDP, there is a need for officers to consider whether their driving is placing members of the public *or offenders* at greater risk than the harm they are trying to prevent. Mandating that officers are satisfied that a serious risk to the health or safety of a person exists *before* the decision to stop or intercept a vehicle, in order to justify a pursuit, puts an appropriate focus on public safety. All pursuits carry inherent danger. If this is the threshold test, the number of pursuits conducted for minor property or traffic offences will automatically decrease. Further, oversight of this threshold decision by the relevant pursuit supervisor will provide greater clarity around whether there is actually a need for the pursuit in circumstances where the judgement of an officer in the field may be affected by operational stress.

118. As we have seen Senior Constable Barrenger told the Court that he suspected stolen property or a drug offence but stated that he could not establish those offences. He told VKG that he tried to stop the vehicle and it “*took off*”. I accept that the proposed amendment is likely to mean that Senior Constable Barrenger would not have had grounds for a pursuit and that as a result he may have been hampered in his investigation of the suspicions he said he held. While he knew where to contact the owner of the hire car business, it is always possible that he would be unable to establish who the driver was or what was in the car at the relevant time. Nevertheless, I am comfortable that enormous public risk would have been averted.

119. I have decided to make the recommendation proposed.

Was there a second pursuit – the possible re-engagement near Kennedy Drive and the M1

120. On the night of 27 September 2018, Leading Senior Constable Brett Crossan was partnered with Constable Danielle Osborne. They were attached to a police vehicle with the call sign TH15. Leading Senior Constable Crossan was the driver and Constable Osborne the observer.
121. Like TH14, TH15 had left Tweed Heads Police Station in response to the broadcast of a pursuit by Senior Constable Barrenger. TH15 travelled urgent duty to provide assistance to Senior Constable Barrenger.
122. Constable Osborne told the Court that she could not recall if she discussed the decision to engage in urgent duty driving with Senior Constable Crossan or if it was a joint decision, although she later said as the passenger, she would have played no role in the decision. Unfortunately, Senior Constable Crossan was not available to give evidence on this issue and it was not raised explicitly in his directed interview. Constable Osborne told the Court that she believed there was a life threatening or emergency situation afoot that justified engaging in urgent duty driving. This situation was the fact that another officer was engaged in pursuit and needed help and assistance and the fact that *“Tweed can become quite isolated as radio reception can be quite bad”*.
123. While it is difficult to come to a firm conclusion, without hearing from Senior Constable Crossan, I remain troubled by the idea that another vehicle being in pursuit would automatically ground a decision for all following cars to commence urgent duty driving. In any event before TH15 came upon the pursuit, it was terminated by Sergeant Hamilton. At that point TH15 was near the intersection of Dry Dock Road and Minjungbal Drive. TH15 continued to travel north towards Tweed Heads. Upon hearing a VKG broadcast that the vehicle was heading west on Kennedy Drive, TH15 drove in that direction.
124. Shortly before coming upon the Mazda 121, TH15 was asked by TH14, to communicate with Queensland Police to request air support. TH15 was equipped with a Queensland radio. Constable Osborne tried to use the radio. Apparently, the radio cords became tangled, and she dropped her clipboard. She asked Leading Senior Constable Crossan to assist with radioing Queensland. By this point, TH15 was on Kennedy Drive.
125. Ebony Keene was driving south on Ducat Street when she stopped at the lights at the corner of Ducat Street and Kennedy Drive. She heard a loud bang behind her and saw a small light-coloured car (the Mazda 121) coming upon her at about 90 – 100km/h. She thought the car was going to hit her, however, when it came close it changed lanes and travelled three to four car lengths down the lane of oncoming traffic. She saw the car turn right into Kennedy Drive when the light may still have been red.

126. When TH15 reached the traffic lights at Ducat Street, Constable Osborne said "*There it is*". Leading Senior Constable Crossan looked up and saw the Mazda 121 "*hooting*" through the intersection. The Mazda 121 was travelling quite fast and TH15 had to brake harshly so as not to collide with it.
127. The Mazda 121 turned in front of TH15 and headed west to the M1 which was about 20 metres away. The Mazda 121 then drove between two cars and collided with one of them.
128. The car that the Mazda 121 collided with belonged to Sarah Geoghegan. Ms Geoghegan recalls driving on Wharf Street and seeing a police car, one or two cars behind her. She described the vehicle as a white four-wheel drive type police car which had lights on top. At that time, the lights were not on. From Wharf Street she drove to Kennedy Drive with the police vehicle (TH15) about two or three cars behind her.
129. When Ms Geoghegan reached the roundabout near the M1 onramp she stopped. She was in the left lane so as to turn onto the M1. She noticed the police were still behind her.
130. A car (the Mazda 121) then came up into the right-hand lane and sideswiped her vehicle. Ms Geoghegan turned left at the roundabout and pulled onto a strip of road on the side of the ramp and called her mother.
131. Ms Keene had turned onto Kennedy Drive and headed towards the M1. She says she saw a police car behind the small light-coloured car and only noticed it because they hit their lights grabbing her attention. Ms Keene then witnessed the Mazda 121 collide with Ms Geoghegan's car.
132. After seeing the collision between the Mazda 121 and Ms Geoghegan's vehicle she pulled up behind Ms Geoghegan to check on her. She waited with her until Ms Geoghegan's parents arrived.
133. The Mazda 121 then headed southbound on the M1 onramp. TH15 then manoeuvred around Ms Geoghegan's car and headed towards the M1. TH15 then lost sight of the Mazda 121.
134. Richard Crawford was travelling with his daughter along the northbound on the M1. He was in the left lane as they crossed the Terranora Inlet Bridge. At this point he saw the blue and red lights of a police car down on Kennedy Drive. He said that he saw the police vehicle (TH15) come up the ramp and stop at the entrance of the motorway. They pulled over into a chevron area and the lights were turned off.
135. Mr Crawford said that when he saw the blue and red lights of the police vehicle, he also saw a white Mazda come across the southbound lanes of the M1. He said it was travelling quite fast and cars were darting all over the place to get away from it. Mr Crawford estimated there was about 100 – 200m between the Mazda 121 and TH15.

136. Mr Crawford said he was pretty sure that TH15's lights were on when it and the Mazda 121 were about 100 – 200m apart. He told the Court *"I'm pretty sure they were on, and they turned them off, I think, and ended the pursuit at the top of the ramp."* Mr Crawford said he believed that at the time the lights were turned off, the Mazda 121 was heading southbound on the northbound carriageway.
137. TH15 continued along the M1 and took the Kirkwood Road exit. After pausing for a short time, TH15 drove back onto the M1. TH15 noticed a truck had stopped in the northbound lane. Leading Senior Constable Crossan saw smoke and saw the Mazda 121 amongst tree branches on the median strip dividing the north and southbound lanes of the M1.
138. Leading Senior Constable Crossan approached the Mazda 121 with his firearm drawn. He called out to Ty who did not respond. Leading Senior Constable Crossan re-holstered his firearm and he commenced efforts to try to extricate Ty from the vehicle.
139. A recording of the VKG broadcasts is in evidence. Constable Osborne can be heard on the recording of the VKG transmission as follows:
- i. She first states "Urgent" at approximately 9:36pm;
 - ii. Approximately 15 seconds later she states "We've located the Mazda 121";
 - iii. She then states "Terminating. Terminating" followed by VKG reminding TH15 that permission was needed to re-engage.
 - iv. Constable Osborne then states "We've terminated. He's on the wrong side of the motorway" at 9:37pm.
140. An issue examined in the inquest was whether the actions of TH15, in travelling up towards the M1 in the same direction as the Mazda 121, constituted a re-initiation or re-engagement of the pursuit.
141. Part 7.1.4 of the SDP provides that:
- "Re-initiation is where a pursuit of a motor vehicle that has been terminated by any police officer, including the driver involved in the pursuit, is then engaged in a second or subsequent pursuit. A pursuit is not to be re-initiated by any vehicle unless approval is FIRST granted by the DOI or VKG Shift Coordinator. **NO OTHER OFFICER MAY AUTHORISE RE-INITIATION.**"
142. Part 7.1.5 provides that "approval to re-initiate a pursuit will only be considered if pertinent information is received which indicates that the circumstances of the pursuit have changed significantly".
143. It is not in dispute that TH15 did not seek approval to re-initiate a pursuit. Rather, the issue is whether the actions of TH15 constituted a re-initiation in circumstances where approval

was not sought, contrary to the requirements of the SDP.

144. In relation to her VKG transmissions set out above, Constable Osborne said she said “*urgent*” in order to get airtime as a matter of urgency. She said the words “*terminating, terminating*” were used in error, and she had meant to simply convey that TH15 had stopped. Constable Osborne used the word “*terminate*” or “*terminating*” on three occasions, she said, because VKG kept saying TH15 needed to re-engage and she was frustrated as they were not in pursuit. Constable Osborne gave evidence that at the time she was making the VKG transmissions, she felt panicked, and the adrenaline was rushing.
145. Constable Osborne told the Court that at no stage was TH15 following the Mazda 121 and that they were already heading onto the M1. Constable Osborne said it was a coincidence that the Mazda 121 was turning south onto the M1 at the same time as TH15. When asked why they were travelling south, Constable Osborne said they were just going about their duties. She could not recall what those duties were.
146. The evidence before me included footage recorded by Constable Osborne on her body worn video camera (“BWV”). At the end of the footage, Inspector Allcroft can be seen approaching Constable Osborne at the collision site. Inspector Allcroft can be heard asking Constable Osborne “*So when you came out of Ducat Street and saw him, did you call pursuit?*”. Constable Osborne can be heard to reply, “*Yeah*” or “*I think yeah*”. The camera is then switched off.
147. Constable Osborne said that she was agreeing with Inspector Allcroft’s proposition, as earlier that evening Inspector Allcroft told her that she had heard her call pursuit on the radio so when she was asked later about it, she simply agreed. She did not want to question a more senior officer.
148. Constable Osborne was asked if it was possible that, given she was feeling flustered, she was not sure whether there was a second pursuit or not. Constable Osborne said:
- “Well that’s exactly right ... my quite senior officer at the scene had told me that you had called pursuit on the radio ... I don’t recall that then, but if that’s what you’re saying I’ve said ... that’s my subordinate, or I’m you know, I have to go with what’s been said. I was a very junior officer at the time.”*
149. Leading Senior Constable Crossan did not give evidence at the inquest. He was excused on the basis that he was medically unfit. Leading Senior Constable Crossan did participate in a directed interview, conducted on 28 September 2018.
150. Leading Senior Constable Crossan denied pursuing the Mazda 121. He could not recall if he had activated his lights and sirens but said that if he did so, it was for the purpose of

going around the vehicle that belonged to Ms Geoghegan.

151. Inspector Allcroft gave evidence that she spoke to Leading Senior Constable Crossan at the collision site, and he told her TH15 were never in pursuit. He told her that they never sped up and that his lights and sirens were not on.
152. Inspector Allcroft gave evidence that a vehicle's warning lights can be used in a wide variety of circumstances including to manoeuvre around a vehicle or indicate a hazard. Their use is not indicative in and of itself of a pursuit.
153. Sergeant Stevens gave evidence that he was the person who directed the VKG dispatcher to remind TH15 that they needed authority before re-engaging in a pursuit. He said he did so because he had heard TH15 transmit words to the effect that they were terminating because the Mazda 121 was on the wrong side of the motorway, and he believed TH15 might have re-engaged.
154. Because he had heard words suggesting re-engagement in a pursuit, Sergeant Stevens created a second pursuit form and allocated it Pursuit Number 18/2017.
155. Sergeant Hamilton spoke with Constable Osborne at the collision site. On the basis of the VKG transmissions, he too thought, at least initially, that the pursuit had been re-engaged. However, after speaking with Constable Osborne he changed his mind on the basis of what she told him about what had occurred.
156. Ms Geoghegan gave oral evidence about TH15's use of its warning lights. She said:
- “so after the car side-swiped me and took off, I'm pretty sure that's when the lights came on. I don't remember if there was a siren, but I know their lights came on and that they took off and they went around me too, so I didn't go through the roundabout yet because I saw their lights come on, so I waited for the police to go around me and then I pulled up.”*
157. Ms Geoghegan further said that *“So they put their lights on and so they kind of went around into the right lane around the other cars and then they drove around turning left onto that ramp up onto the M1 and then they followed, following the car down there.”*
158. However, Ms Geoghegan later agreed that in her statement she said she only saw the lights on TH15 come on after the Mazda 121 went onto the M1 and was out of sight. She agreed that the making the statement was closer in time to the collision and for that reason it was more likely to be correct.
159. The Court received evidence from two NSWPF officers who reviewed the actions of NSWPF officers directly involved in the events of 27 September 2018, Sergeant Nicholas Dixon and Sergeant Jennifer McWhinnie.

160. Sergeant Dixon gave evidence that, in his view, TH15 had not re-initiated the pursuit of the Mazda 121. Sergeant Dixon's opinion was based, first, on the intent behind cl. 7.1.2 of the SDP, which was that a pursuit is deemed to continue if the follow occurs soon after the pursuit has occurred.
161. Secondly, following a vehicle that had been part of an earlier pursuit would not constitute re-initiation if a gap in time existed between the termination and the following. He considered that a re-initiation would need to immediately follow a pursuit.
162. Thirdly, where a pursuit has been terminated but five minutes later another police vehicle saw the offending vehicle and continued to follow or remain in contact a pursuit was not necessarily re-engaged. Sergeant Dixon considers the indicia of a re-engagement to include increased speed, the activation of warning lights, or an attempt to stop the vehicle.
163. Sergeant McWhinnie was also of the view that TH15 had not re-engaged in a pursuit with the Mazda 121. Her reasons for that view were: there was no direction to stop given by TH15; there was no increase in speed by TH15; TH15 was present for a lawful purpose, being to keep a lookout; and, both Leading Senior Constable Crossan and Constable Osborne stated they were not in pursuit.
164. It is not clear to me that Sergeant Dixon's reading of Part 7.1.4 is correct in suggesting that a re-initiation can only occur when it happens soon, or perhaps immediately, after the initial pursuit.
165. It is clear that, pursuant to Parts 7.1.4 and 7.1.5, there is a higher threshold for the re-initiation of a pursuit than for a pursuit at first instance. Unlike a pursuit at first instance, a re-initiation requires approval from an officer who is geographically removed from the situation on the ground and its inherent stressors. Further, it requires that officer to be satisfied that the circumstances of the pursuit have changed significantly before they can authorise re-engagement.
166. This makes sense if one accepts that a re-initiation will necessarily follow a termination, and that a termination will often involve a situation in which a pursuit has become particularly dangerous, including, for example, like here, where a pursued driver has engaged in high risk or dangerous driving.
167. A higher threshold is a logical policy response to the need for police to manage a heightened degree of risk.
168. It would follow from Sergeant Dixon's evidence, however, that that risk, which the re-initiation clauses of the SDP seek to manage, necessarily dissipates soon or immediately after a pursuit ceases and will not manifest again should a pursuit be re-initiated several minutes later. I find that somewhat difficult to accept. It is not at all clear to me that a driver

who has engaged in driving risky enough to force a termination of the pursuit would, seconds or indeed minutes later, no longer present the same heightened risk in relation to his or her manner of driving if the pursuit were re-initiated. If the risk remains heightened, then it would follow that the higher threshold should still be applicable. Sergeant Dixon's evidence is also difficult to reconcile with Sergeant Stevens' VKG direction that TH15 would require permission to re-engage several minutes after the initial termination.

169. Counsel Assisting submits that the following evidence supports a finding that the pursuit was re-initiated:

- a. The content of Constable Osborne's radio broadcasts as set out above. The fact that Constable Osborne uses the word "*terminating*" twice, followed by "*We've terminated*" suggests she believed TH15 was in pursuit.
- b. While Sergeant Stevens was unsure, he thought a pursuit may have been re-initiated given Constable Osborne's use of the word "*terminate*", and consistent with that belief he created the paperwork for a second pursuit and allocated it pursuit number 18/2017.
- c. It appears that TH15 activated its warning lights on Kennedy Drive and the lights were only turned off on the M1. The activation of the lights is evidence of a pursuit occurring, however, there is another reason that might explain their activation, being the manoeuvring around Ms Geoghegan's vehicle.
- d. Bearing in mind the terms of Part 7.1.2, and, particularly, the use of the term "*follow*", Ms Geoghegan's evidence that TH15 activated their lights and turned left "*onto that ramp up onto the M1 and then followed down, following the car down there*". Her evidence indicates she considered that TH15 was following the 121.
- e. Mr Crawford's evidence that "*I'm pretty sure [TH15's warning lights] were on and they turned them off, I think, and ended the pursuit at the top of the ramp*". While the evidence of a civilian witness is of less weight given their lack of familiarity with the definition of pursuit in the SDP, it is clear that, like Ms Geoghegan, Mr Crawford considered that TH15 was following the Mazda 121.

170. Counsel Assisting submits that the following evidence militates against a finding that the pursuit was re-initiated:

- a. The decision to pursue is largely in the hands of the driver and, in his directed interview, Leading Senior Constable Crossan explicitly denied that TH15 were ever in pursuit.
- b. Sergeant Hamilton spoke with Constable Osborne at the accident scene and,

while he initially thought TH15 might have been in pursuit given the VKG broadcasts, however, he changed his mind after that conversation.

- c. Inspector Allcroft's evidence that she asked Constable Osborne whether she had called pursuit and she said something along the lines of "*Yes, I think, but we were never in pursuit*" and told her she used the wrong words.
- d. Sergeant Dixon's opinion that there was no re-initiation of the pursuit and the reasons for that view as set out above.
- e. Sergeant McWhinnie's opinion that TH15 had not re-engaged in a pursuit with the Mazda 121 and the reasons for that opinion set out above.

171. Counsel Assisting submits that it would be difficult for me to make a finding that TH15 had re-initiated the pursuit in circumstances where Leading Senior Constable Crossan was not cross-examined.

172. Counsel for Scott Adams submits that the following evidence, taken together, demonstrates that TH15 engaged in a second pursuit, albeit briefly:

- a. In circumstances where TH15 was actively patrolling to "*keep a look out for*" the Mazda 121, Constable Osborne's assertion that it was just a "*coincidence*" that TH15 turned onto the south bound ramp of the M1 after the Mazda 121 lacks credibility and should be rejected. It makes sense that, in the circumstances, TH15 would respond to their sighting of the Mazda 121.
- b. Constable Osborne's assertion that she did not see the Mazda 121 turning out of Ducat Street was lacking in credibility and was inconsistent with Leading Senior Constable Crossan's directed interview in which he stated that as TH15 reached the lights at Ducat Street he heard Constable Osborne say "*There it is*" before seeing the Mazda 121 "*hooting*" through the intersection.
- c. Constable Osborne's VKG broadcast stating "*Terminating, terminating*" and the subsequent reminder by VKG that permission was needed to re-engage the Mazda 121. Constable Osborne then stated over the radio "*We've terminated, he's on the wrong side of the motorway*".
- d. Constable Osborne's assertion that she repeated the word "*terminating*", "*because the radio kept saying that we need to re-engage*" is unsupported by the documentary evidence.
- e. On the night of 27 September 2018, Sergeant Stevens instantly knew that the word "*terminate*" had a particular and special meaning: to end a pursuit.

- f. Leading Senior Constable Crossan activated the warning lights on TH15 after the Mazda 121 turned right out of Ducat Street and whilst TH15 was still on Kennedy Drive and didn't turn them off until TH15 was on the M1. While Counsel Assisting notes there may have been another explanation for the activating the lights – to go around a vehicle – that does not explain why they were trying to go around it.
- g. Constable Osborne's body worn video camera recorded Inspector Allcroft asking her "*So when you came out of Ducat Street and saw him did you call pursuit?*". Constable Osborne replied "*Yeah*" before the camera was turned off.

173. Similarly, the legal representative of Ms Thomas and Ms Larkin invites me to find that a re-initiation of the pursuit occurred. The activation of the lights on TH15 is evidence that a pursuit was re-initiated. Even if there were dual purposes for the activation of the lights, to manoeuvre around Ms Geoghegan's vehicle and to direct the Mazda 121 to stop or to follow or pursue it, that would suffice for a finding that the lights were evidence of the pursuit being reinitiated.
174. Further, it is submitted that it would be difficult for the Court to accept that the sole purpose of TH15 travelling onto the M1 was, as stated by Constable Osborne, to continue "*just going about our duties*". The entire factual scenario would make it difficult to accept that TH15 was not following or continuing to attempt to remain in contact with the Mazda 121. This is particularly so where TH15 did not stop to check on Ms Geoghegan. The most rational explanation of the scenario is that TH15 have attempted to re-engage the Mazda 121 as they encountered it on Kennedy Drive and have followed into onto the M1 in pursuit for a very short distance without approval by the DOI or VKG shift co-ordinator as required by Part 7.1.4 of the SDP.
175. It is noted that neither Counsel for Mr Adams or the legal representative for Ms Thomas and Ms Larkin submit that, were I to find the pursuit had been re-initiated, I should find that there was a causal connection or direct nexus between the re-initiation and the crash of the Mazda 121 on the M1.
176. I have considered all the evidence and submissions relating to the possibility of a second pursuit very carefully. I find many of the arguments put forward by both family representatives compelling. I do not accept Constable Osborne's evidence that when TH15 travelled onto the M1 they were "*just going about our duties*". Later she agreed that she was so flustered she may not have been sure whether a pursuit had occurred or not. Overall, I found her to be an unimpressive witness and her explanations around why she informed VKG they were terminating both confusing and implausible. Further I am perplexed about the reasons she gave for telling her senior officer that she had called pursuit. I have no doubt whatsoever that Constable Osborne believed TH15 was in pursuit for a short time on

27 September 2018. The more difficult question is whether that view was shared by the driver, Leading Senior Constable Crossan during the stressful period in question.

177. I accept Counsel Assisting's submission that my task is made more difficult by the fact that Senior Constable Crossan was unable to give evidence before me. Nevertheless, I am persuaded that it is likely that he too believed himself to be in a pursuit, however briefly, whether or not it had been properly notified to VKG at the time. It is important to remember the period of time under review is around one minute. Senior Constable Crossan stated in his directed interview that he recalled Constable Osborne first saw Ty's vehicle as they got to the lights at Ducat Street. In my view it is most unlikely that it was then wholly coincidental that TH15 turned onto the M1 after Ty's vehicle very shortly afterwards. The fact that TH 15 did not stop to check on Ms Geoghegan and that its lights were activated all suggest Senior Constable Crossan was driving in a manner aimed at following the Mazda 121. In my view, on the balance of probabilities, at that moment, Senior Constable Crossan made a decision to pursue and an unauthorised second pursuit had commenced.
178. Perhaps even more importantly, others in the area appear to have assumed a pursuit was taking place. I was particularly struck by Mr Crawford's evidence in this regard. He was a calm and measured witness. He described seeing TH 15's red and blue flashing lights and described the vehicle "*ending its pursuit*" at the entrance to the freeway. Given where Mr Crawford's vehicle was travelling at the time and given what we know from other witnesses I think it possible that Ty was also aware of TH15 and believed he was being pursued. However, it is clear that Ty was *already* travelling in a risky manner and it is quite impossible to guess the precise effect this knowledge could have had on his conduct. Whether this was an important factor in him deciding to cross over to the wrong side of the M1 Motorway in order to make good his escape I cannot be sure. What is certain, and a fact agreed to by Sergeant Stevens in oral evidence, is that a pursuit can often result in a pursued driver engaging in more dangerous driving compared to when there is no pursuit.
179. In some ways whether a second pursuit actually took place is less important than the fact that such significant confusion and dispute about it exists. One hopes the current review of the SDP will provide further clarity for officers involved in this kind of situation.
180. I note for completeness, that Counsel for Senior Constable Barrenger and Constable Osborne submitted that the submissions on behalf of Ms Thomas and Ms Larkin, and the submissions on behalf of Mr Adams, contravene legal principle, at least in some respects, in that they go beyond matters that may be the subject of adverse findings against Ty or the family personally. Submissions by the family on the issue of whether or not the pursuit was re-initiated are an example, Counsel submits, of such a submission.

181. In making this submission Counsel relies on *Annetts v McCann* (1990) 170 CLR 596, in particular, the following passage (at 601):

“It needs to be stressed that, although the appellants [the family members of the deceased] are entitled to make submissions concerning matters which are identified as a possible source of adverse findings concerning their interests, they have no right to make submissions on the general subject matter of the inquest. Their legal entitlement is confined to making submissions in respect of matters which may be the subject of adverse findings against them personally or the deceased”.

182. I accept that, per *Annetts v McCann*, the family’s *entitlement* or *right* to make submissions extends only to matters which are identified as a possible source of adverse findings personally or against Ty; that is, those are the matters upon which I have a duty to afford the family procedural fairness. I do not accept, however, that I am precluded from choosing to hear from the family on matters that go beyond what procedural fairness strictly requires. In this inquest I was greatly assisted by submissions made by counsel for family members on a number of issues.

The Body Worn Camera issue

183. As noted above, the evidence in this matter included BWV footage recorded by Constable Osborne. That footage provided valuable evidence, particularly in relation to the extrication of Ty from the vehicle, which was an issue examined in the inquest.

184. In that footage, Inspector Allcroft can be seen approaching Constable Osborne at the collision site. Inspector Allcroft can be heard asking Constable Osborne “*So when you came out of Ducat Street and saw him, did you call pursuit?*” Constable Osborne can be heard to reply, “*Yeah*” or “*I think yeah*”. The camera is then switched off.

185. The NSWPF Body Worn Video Standard Operating Procedures (“SOPs”) relevantly provide:

Part 2.3 (relevant sections only):

A BWV camera should be used in the following circumstances:

- *When police would normally use their official police notebook to record information*
- *To capture evidence or record something of relevance*

All recordings should be treated as having evidentiary value until confirmed otherwise. The primary investigating officer at the scene of an incident should activate their BWV camera to record any evidence relevant to the investigation. Other BWV users attending the same incident should consider using their camera to collect their own evidence.

Part 2.6.1

BWV should not be used to record general police conversation, for example, when patrolling in a police vehicle. Police are reminded that appropriate language should always be used and commentary that may amount to opinion or hearsay evidence (which may be prejudicial) should be avoided.

Part 2.6.2

Police should not record images or conversations dealing with strategy, methodology, tactics and lines of enquiry or other case-related issues. Officers should, where possible, avoid recording police specialist equipment, preparation and execution of tactical activities, discussions with other police or personnel from other agencies at incidents or major operations. If in doubt about such content, BWV users should seek advice from a Supervisor.

186. Inspector Allcroft gave evidence that, when dealing with a situation in which she was obtaining information from a fellow police officer, such as a version of events concerning a police pursuit, she would be likely be guided by Part 2.6.2 of the SOPs.
187. When asked why she had turned her camera off at the time Inspector Allcroft asked her whether she called a pursuit, Constable Osborne stated that it was because “*it was a private conversation between an inspector and a constable ... It wasn't related to the scene itself or capturing the scene in situ, it was a private conversation.*”
188. Counsel Assisting submits that, as the SOPs state that BWV should not be used to record general police conversation (Part 2.6.1) and discussions with other police (Part 2.6.2), it cannot be said that, in turning off her BWV camera, Constable Osborne breached the SOPs.
189. However, Counsel Assisting, further submits that there is an ambiguity within the SOPs arising from, on one hand, the identification of BWV as a useful investigative tool and the direction that it should be used to gather evidence, and on the other, the direction that BWV not be used to record conversations between NSWPF officers. There may be circumstances where, like in the investigation of a police pursuit, NSWPF officers may be eyewitnesses or may be a position to provide crucial evidence. In those circumstances it is unclear, on the face of the SOPs, whether those conversations should be recorded using BWV.
190. Accordingly, Counsel Assisting has submitted I make the following recommendations:
- That the Commissioner of Police give consideration to amending the Body Worn Video Standard Operating Procedures with a view to providing further clarity in relation to the recording of conversations between police officers in circumstances where those conversations have evidentiary value; for example, where a police officer is a witness to an incident to be investigated by police.*

191. The Commissioner of Police does not support the recommendation for the following reasons:
- (1) The decision by an individual, including a NSWPF officer, as to when and how they wish to provide evidence is a matter for that individual.
 - (2) Private conversations between NSWPF can take place whilst an officer is not under caution. It follows that if an officer, or a party to a private conversation is found to have acted in a manner contrary to policy or legislation a requirement to record that private conversation would amount to a miscarriage of the processes afforded to any suspect or accused person.
 - (3) An officer involved in a private conversation, or a party to the conversation, may be in an altered emotional, physical or psychological state based on the nature of the incident, particularly if the incident has resulted in cause trauma to the officer.
 - (4) In any rank-based organisation there may exist an imbalance of power between parties to a conversation. If a more senior officer conversed with a more junior officer, the officer may feel compelled to discuss matters they may not otherwise be prepared to discuss without the benefit of legal advice.
 - (5) Sufficient provisions and oversight exist under the provisions of the *Police Act* and the *Law Enforcement Conduct Commissioner Act* to deal with any real or potential misconduct by officers.
192. I was not persuaded by the submissions put forward by the Commissioner of Police on this issue which appear to take an unnecessarily defensive position. The proposed recommendation calls for a *consideration of providing further clarity* in relation to the recording of conversations between police officers in circumstances where those conversations have evidentiary value; for example, where a police officer is a witness to an incident to be investigated by police. In situations where police may have acted contrary to policy or legislation, there may be issues raised in relation to the admissibility of the recording at later proceedings, but it would not necessarily suggest the recording should not be made. Similarly concerns about power imbalance appear misplaced when police regularly use BWV with members of the public who may feel a power imbalance exists.
193. In my view the issue is one which calls for further consideration and I intend to make the recommendation.

The Tyre Deflation Device issue

194. Tyre Deflation Devices (“TDDs”) or road spikes are a tool available to NSWPF officers to stop or assist in stopping a vehicle. A police pursuit is one scenario in which TDDs may be deployed.
195. TDDs can only be carried in a fully marked police vehicle, and NSWPF officers must undertake a training course in order to be certified to deploy them.
196. During the initial pursuit, the VKG operator made an inquiry about the availability of “*spikes*”. Inspector Allcroft confirmed she had TDDs in her vehicle but was not certified to deploy them. Sergeant Hamilton was the only accredited officer able to deploy TDDs in the area at the time of the pursuit, however, as he was himself engaged in the pursuit, he was not in a position to deploy them.
197. This evidence gave rise to a question as to the availability of TDDs as a resource to be deployed by NSWPF officers in the Tweed-Byron Police District.
198. Inspector Matthew Woods is the District Inspector of the Tweed-Byron Police District. He gave evidence about the changes that had occurred since 27 September 2018, in relation to the availability of TDD’s and the certification of officers in relation to their use.
199. In August 2018, only 15 NSWPF officers in the Tweed-Byron Police District had been certified to deploy TDDs. That number had risen to 43 as at 9 May 2022. In addition, all 16 officers in the Traffic and Highway Patrol Command housed at Tweed and Byron Bay Police Stations are certified. Further, all frontline operational vehicles (general duties vehicles) are now equipped with TDDs.
200. Inspector Woods gave evidence that given the increase in the availability of TDDs, and the great number of NSWPF officers trained to deploy them, the scenario that occurred on 27 September 2018, is now less likely to occur.
201. In all the circumstances I am satisfied that there is little utility in making any recommendation given the local changes already made.

The role of VKG and monitoring of the pursuit

202. Following a police pursuit, the pursuit manager, is required to complete a “Police Pursuit Form”. The pursuit manager in this instance was Sergeant David Stevens.
203. In performing his role, Sergeant Stevens created two forms. The first, for the pursuit initiated by Senior Constable Barrenger, and the second, for the possible re-initiation of the pursuit by Leading Senior Constable Crossan and Constable Osborne.

204. To assist with his completion of the forms, Sergeant Stevens telephoned Sergeant Hamilton for the purpose of obtaining further information about what had occurred. Sergeant Hamilton had been involved in two pursuits on 27 September 2018, and Sergeant Stevens sought information in relation to both.

205. Sergeant Stevens made that call from the facility of the Newcastle Radio Operations Group. That facility is declared to be an Emergency Services Facility pursuant to the *Telecommunications (Interception and Access) Act 1979*. Accordingly, that telephone conversation was recorded, as are all calls made to and from that facility.

206. A recording, and transcript, of that conversation was tendered in evidence. In that conversation the following exchange occurred:

Sergeant Stevens: *Alright, so that's all good. So you said that crashed in Queensland did it, that bike?*

Sergeant Hamilton: *Yeah up in Palm Beach but it was some, some time after we terminated. Um.*

Sergeant Stevens: *Yeah, that's alright. Was he fucken injured or anything? Do we know or?*

Sergeant Hamilton: *Yeah, he's in hospital ... one of our big grubs.*

Sergeant Stevens: *Oh that's no great loss then.*

Sergeant Hamilton: *No, and then with this other one, that's two out of the picture. So ...*

Sergeant Stevens: *Is he a grub too?*

Sergeant Hamilton: *Yeah both of them mate.*

Sergeant Stevens: *Do they know each other? Was it related you reckon?*

Sergeant Hamilton: *Oh mate I wouldn't be surprised. Like, it's, they're just fucken idiots.*

207. The second person being referred to in this conversation was Ty.

208. Applications were made on behalf of both Sergeant Hamilton and Sergeant Stevens to have the recording and transcript excluded from the evidence. I determined that application on the third day of the inquest and gave reasons for my decision. In those reasons I indicated that I considered the conversation to be relevant to the issues before me. Given the exact reason for the pursuit had not, at that time, been fully explained, the attitude of Sergeant Hamilton, who participated in the pursuit, was of some interest. I indicated that a discussion that would seem to suggest that someone's death was no great loss was alarming and was

something that may need further exploration if it factored into earlier decision making in any way.

209. Sergeant Stevens gave evidence that when he used the term “*grub*” he meant a person police regularly come across. He said that when he said “*that’s no great loss*” he meant that he was glad a member of the public was not injured and in hospital as opposed to the offender. Sergeant Stevens denied that he considered the safety of the public differently to the safety of an offending driver.
210. Sergeant Stevens said that he regretted the conversation, and his evidence suggested that he forgot that it was being recorded. Accordingly, he did not inform Sergeant Hamilton that the conversation was being recorded.
211. Sergeant Hamilton was the only NSWPF officer who directly participated in the events the subject of this inquest that attended to give evidence in person. At the outset of his evidence, he stated “*I would like to say that I do regret those words now, they’re not nice for the family to hear, but at the same time it was soon after the hospital. I’d been present when Ty passed, and I was quite angry.*”
212. Sergeant Hamilton said that “*grub*” was a word used in informal conversations to refer to criminals. When asked what he meant by “*that’s two out of the picture*” he said he had been involved in another high-speed pursuit earlier that day before the pursuit involving Ty and to him it was just a waste of life. Sergeant Hamilton denied that his use of words impacted upon how he applied the SDP and as soon as he saw there was a danger, he terminated the pursuit.
213. Sergeant Hamilton said he did not know the call was being recorded and if he had known those words would be heard by Ty’s family, he never would have used them.
214. Having carefully considered the issue I am satisfied that the offensive and derogatory language used does not clearly indicate that either officer held views which impacted on the conduct of the pursuit. I commend Sergeant Hamilton for facing the family and for his genuine apology. The gracious way it was received by family members was to their great credit.
215. As indicated from the evidence set out above, at the time at which the telephone conversation took place neither Sergeant Hamilton or Sergeant Stevens contemplated that the conversation was being recorded; Sergeant Stevens, because he had forgotten that calls from his place of work were recorded, and Sergeant Hamilton, because he was entirely unaware that such a call would be recorded.
216. I am concerned that the fact that the officers had forgotten, or did not know, they were being recorded and that the conversation subsequently came to light caused great and

unnecessary hurt to Ty's family and indeed to the officers who spoke the offensive words themselves. Reminding officers of the practice may result in officers being more careful and professional about what they say.

217. Counsel Assisting submitted that I make the following recommendation:

That the Commissioner of Police consider instituting an alert to callers to, and recipients from, locations declared to be Emergency Services Facilities, informing them that their phone calls are being recorded.

218. It was submitted on behalf of the Commissioner of Police, that as the Radio Operations Group and PoliceLink are declared Emergency Services Facilities, notices are placed upon the entrances to those facilities advising that the recording and listening of phone calls and radio broadcasts occurs within those centres.

219. The Commissioner of Police expressed concern that if there was a warning or alert for every call, it may be quite onerous, particularly when the information being relayed could be vital or time sensitive in respect of an ongoing emergency or incident.

220. The Commissioner of Police submitted that it would, however, be a reasonable for a notification to be made via Police Communications and/or by a Nemesis message to all police reminding officers that their calls are being recorded when contact is made with those facilities.

221. I accept the Commissioner's view on this issue and intend to make a recommendation requesting a notification is made via Police Communication and/or by Nemesis reminding officers of this issue. I accept that the issue is not one which should delay calls in an emergency context.

222. I note that Counsel for Sergeant Stevens submits that any recommendation related to the conversation between Sergeant Hamilton and Sergeant Stevens could not be lawfully made pursuant to s. 82 of the *Coroners Act 2009*, as the conversation between Sergeant Hamilton and Sergeant Stevens could not be said to be "*connected with the death*" as required by s. 82. I reject that submission. The conversation relates directly to the circumstances of Ty's death and arises from the evidence I heard. I note the submission was not shared by the Commissioner of Police.

Training and the evidence of Senior Sergeant Beresford

223. A police pursuit is an inherently risky activity. The risks of a pursuit to health and safety attach to the driver being pursued, the police officers engaged in the pursuit, and the general public. Pursuits are often conducted when adrenaline is flowing, and an officer may be experiencing "*red mist*". These matters may make the decision-making tasks involved in a

police pursuit, including the exercise of the discretion to pursue a vehicle itself, challenging, in particular, for less experienced, more junior officers.

224. As such, the training police officers receive in the conduct of police pursuits, at both a practical and theoretical level, assumes particular importance.
225. NSWPF officers receive the bulk of their training in police pursuits in the early stages of their career as part of the Silver Response Classification Course undertaken at the driver training facility in Goulburn. By way of example, Senior Constable Barrenger gave evidence that the practical training he received on police pursuits was at the Goulburn Driver Training Facility and occurred early on in his career. He could not recall when he had last familiarised himself with the contents of the SDP.
226. Evidence about the training conducted at the Goulburn Facility was given by Senior Sergeant Beresford. Senior Sergeant Beresford stated that the Silver Response Classification Course occurs over three days. On the second day, a 30 minute presentation is given regarding the guidelines, roles and responsibilities of NSWPF officers when undertaking a pursuit as outlined in the SDP.
227. Participants receive practical pursuit training on day three. They undertake one-directional circuit driving to assess vehicle control and balance at a maximum speed of 140km/h. Pursuit scenarios are conducted including the use of warning devices and “in-car” radio calls. They involve participants pursuing each other in marked and unmarked sedans under the guidance of an instructor.
228. The pursuit scenario involves the exercise of the power under the *Road Transport Act 2013* to direct a vehicle to stop for a random breath test (RBT). In the scenario, the driver fails to comply with the direction to stop. Senior Sergeant Beresford gave evidence that the failure to stop for the RBT is a traffic offence that justifies police engaging in a pursuit.
229. In relation to this scenario, Counsel Assisting submits that it risks creating a misapprehension in the minds of junior police, that where a person fails to stop for an RBT, a pursuit will always be justified. Counsel Assisting submits that in many cases, a failure to stop for an RBT may not necessarily mean a pursuit is appropriate applying Parts 7.2.1 and 7.2.3 of the SDP. The scenario used for training should be a practical scenario that, in the normal course, when applying the SDP, would justify engagement in a pursuit.
230. Accordingly, Counsel Assisting submitted that I make the following recommendation:
- “That the Commissioner of Police give consideration to amending the practical mock trial training exercise for police pursuits in the Silver Certification Classification Course. The amendment involves changing the course so the mock example of pursuing a driver who fails to stop for a random breath test, is replaced by participants engaging in a pursuit of a*

pursued driver who is wanted for offences of a violent nature.”

231. The Commissioner of Police has indicated that she will give consideration to the proposed recommendation. In my view it is a recommendation worthy of full consideration.

232. Senior Sergeant Beresford was asked about the availability and potential use of driver simulators as part of the NSWPF driver training. Senior Sergeant Beresford gave evidence that simulators are not used to train police in NSW or any other Australian jurisdiction.

233. Senior Sergeant Beresford had last used a driving simulator in 2017. He noted, that when driving a simulator, the driver would not get the same impact of the physical forces that are felt when operating a vehicle, such as those felt when breaking or accelerating or turning a corner. However, simulators may be of some benefit as a supplementary tool, and may assist in the areas of hazard perception, multi-tasking and decision-making.

234. Counsel Assisting submitted that in circumstances where, for the most part, the practical driver training undertaken by NSWPF occurs in the early stages of an officer's career, a simulator program may assist with the ongoing training of police in relation to police pursuits.

235. For that reason, Counsel Assisting submitted that I make the following recommendation:

“That the Commissioner of Police further investigates the use of driver simulators to supplement the practical training currently provided to NSW Police Force Officers on urgent duty driving and police pursuits.

236. The Commissioner of Police has indicated that she will give consideration to the proposed recommendation. In my view it is a recommendation worthy of full consideration.

237. After the completion of their final assessment, participants watch a video entitled “No Second Chances”. The video contains interviews with officers who have been involved in serious motor vehicle accidents while engaged in urgent duty driving or a police pursuit. Being made in 1992, the video focusses on physical injury and sought to be excused from giving evidence does not address the adverse mental health consequences that can result to NSWPF officers from a pursuit resulting in serious injury or death.

238. Counsel Assisting observes that in this matter, at least three officers suffered adverse mental health consequences, at least in part, from their involvement in the circumstances relating to Ty's death. This points to a real need to make officers aware that such consequences can result from police pursuits.

239. Counsel Assisting submitted that I make the following recommendation in relation to the video shown to participants:

“That the Commissioner of Police incorporate within the video shown to NSWPF recruits or officers undertaking driver training at the Goulburn Academy, current information on the

adverse mental health impacts that can arise for NSWPF officers as a result of participating in a police pursuit that involves death or serious injury.”

240. The Commissioner of Police has indicated that she will give consideration to the proposed recommendation. I accept that a number of officers involved in the police operation prior to Ty's death suffered adverse psychological impacts. One was unable to attend court and two others sought to be excused from giving evidence. New recruits would benefit from hearing these stories and I intend to make the recommendation suggested.

The role of drug use in the accident

241. Toxicological testing of Ty's blood, undertaken during the post mortem process, detected the following:

- Amphetamine 0.31mg/L
- Delta-9-tetrahydrocannabinol (“THC”) 0.006mg/L
- Delta-9 THC acid 0.045mg/L
- Methylamphetamine 1.8mg/L

242. An expert report was obtained from Dr Judith Perl, forensic pharmacologist, to assist the Court in understanding what role, if any, Ty's drug use played in the accident.

243. Dr Perl expressed the view that she expected that the amphetamine in Ty's system was a result of the metabolism of methylamphetamine.

244. The concentration of methylamphetamine, which she described as “high”, was suggestive of very recent use of methylamphetamine, and combined with the amphetamine concentration, suggests Ty had either been on a binge (using doses repeatedly in the 24 – 48 hours prior) or that he was a regular user.

245. The acute effects of methylamphetamine use frequently result in driving behaviours such as driving at excessive speed, overtaking, and aggressive and risk-taking behaviour.

246. In her view, given the very significant concentration of methylamphetamine detected in Ty's blood, it is highly probable that Ty's driving was impaired. Further, his manner of driving prior to the collision was highly suggestive of aggressive risk-taking driving behaviours that are often associated with the acute effects of methylamphetamine use.

247. In relation to Ty's cannabis use, in Dr Perl's view, the blood concentration of THC and delta-9-THC acid suggests Ty had used cannabis prior to his death, most likely within six hours. The concentration of delta-9-THC acid suggests, however, that he was not a regular, daily or heavy user of cannabis.

248. Contrary to the effects of methylamphetamine, cannabis use generally results in sedation and a sense of well-being or relaxation, with the user less likely to engage in aggressive driving.
249. While a THC concentration of 0.006mg/L would be expected to result in some impairment, there was insufficient information to conclude, with any degree of certainty, whether the use of cannabis contributed to any impairment at the time of driving.
250. I am well satisfied that Ty's decision making and driving ability was adversely affected by methylamphetamine. As we have seen intoxication of one sort or another is implicated in the vast majority of police pursuits. Armed with this knowledge police need to factor in the very real risk of driver impairment when deciding to pursue a vehicle.

Was the accident caused by a fault in the motor vehicle Ty was driving ?

251. As part of the coronial investigation, an examination of the Mazda 121 was undertaken by Leading Senior Constable Peter Mason of the Engineering Investigation Section of the NSWPF.
252. Leading Senior Constable Mason's examination encompassed the accelerator system, the steering and suspension system, the wheel alignment, the braking and electrical systems, and the wheels and tyres.
253. Leading Senior Constable Mason's examination did not divulge any mechanical fault or defect that may have contributed to the collision.

Retrieval and First Aid at the scene

254. A further issue examined at the inquest was whether anything could have been done to improve the time it took to extricate Ty from the Mazda 121 following its collision with a tree in the median strip.
255. The evidence indicates that Ty went into near cardiac arrest at 10:00pm, within 23 minutes of the collision occurring, and full cardiac arrest at 10:15pm, within 38 minutes of the collision.
256. The evidence further indicates that it took approximately 25 minutes to extricate Ty from the vehicle.
257. An expert report was obtained from Mark Gibson, Commissioner of the VRA. In his view, the extrication, and access to Ty, were made difficult by Ty being trapped by compression, the extensive damage to the driver's side of the car, and the tree being embedded in the car.

258. Mr Gibson formed the view that no other actions, or utilisation of other rescue equipment, could have been used to speed up the extrication and that, when considering all the relevant factors, release of Ty from the vehicle occurred in a timely manner.
259. An expert report was also obtained from Professor Anthony Brown, Senior Staff Specialist in the Emergency and Trauma Care Centre, Royal Brisbane and Women's Hospital. In Professor Brown's opinion extrication in less than 23 minutes is unlikely to have improved Ty's chances of survival. Significantly, and tragically, the only way Ty could have been saved is if a massive blood transfusion process had been started prior to the onset of near cardiac arrest at 10:00pm, however, this was not feasible as such a process is "*only really available in a hospital and takes time to set up with the Blood Bank*".
260. After reviewing the expert evidence, I am satisfied that even if Ty could have been removed from the car more quickly, his death was inevitable.

Autopsy and cause of death

261. Dr Hannah Elstub performed a limited autopsy by way of external examination and toxicology. A post mortem CT scan was also performed.
262. The post mortem CT scan showed multiple injuries of the chest, abdomen and limbs. These included multiple rib fractures and associated bilateral haemopneumothoraces, blood present within the abdominal cavity, fractures of the C7 and T1 vertebral transverse processes and multiple limb fractures, including multiple fractures of the pelvis, fracture of the right ulna and right femur. External examination showed multiple superficial injuries of the head, thorax and limbs.
263. As discussed above, toxicology detected methylamphetamine and its metabolite amphetamine. Low levels of THC and delta-9-TCH acid were detected, indicating recent exposure to cannabis.
264. Dr Elstub determined the cause of Ty's death to be multiple injuries of the chest, abdomen and limbs due to a motor vehicle collision. I accept her opinion on this matter.

Findings

265. The findings I make under section 81(1) of the *Coroners Act 2009 (NSW)* are:

Identity

The person who died was Tyrone Raymond Adams

Date of death

He died on 27 September 2018

Place of death

He died on the median strip separating the northbound and southbound lanes of the M1 Motorway proximate to the Kirkwood exit, at Tweed Heads

Cause of death

He died of multiple injuries to chest, abdomen, and limbs.

Manner of death

He died as a result of injuries received when he lost control of the motor vehicle he was driving and collided with a tree. The accident occurred shortly after he had been involved in a police pursuit. He was affected by methylamphetamine at the time.

Recommendations pursuant to section 82 Coroners Act 2009

266. Section 82 of the *Coroners Act 2009* confers on a coroner the power to make recommendations that he or she may consider necessary or desirable in relation to any matter connected with the death with which the inquest is concerned. It is essential that a coroner keeps in mind the limited nature of the evidence that is presented and focuses on the specific lessons that may be learnt from the circumstances of each death.

267. For the reasons discussed above, I recommend:

(1) That the Commissioner of Police:

- (a) Amend the SDP to mandate that a pursuit can be commenced only if police are satisfied that a serious risk to the health and safety of a person existed before the decision to intercept or stop the vehicle.
- (b) Make clear in the terms of the SDP, and in any relevant training, that the above test is the threshold test for a police pursuit.
- (c) Amend the SDP to expressly provide that upon a pursuit being called the relevant pursuit supervisor must, as soon as practicable, ask the pursuing officer to identify the serious risk to health or safety of a person that existed before the decision to intercept or stop the vehicle, and give independent consideration to whether that threshold is met.
- (d) Ensure that state-wide mandatory training be provided to all NSWPF

officers on the threshold test for police pursuits.

- (e) Mandate that the serious risk to the health and safety of a person that existed before the decision to stop or intercept a vehicle be recorded for every police pursuit.
- (2) That the Commissioner of Police give consideration to amending the *Body Worn Video Camera Standard Operating Procedures* with a view to providing further clarity in relation to the recording of conversations between police officers in circumstances where those conversations have evidentiary value; for example, where a police officer is a witness to an incident to be investigated by police.
- (3) That the Commissioner of Police direct that a notification is made via Police Communication and/or by Nemesis reminding officers of that telephone calls made to and from NSWPF sites that are declared to be Emergency Services Facilities are recorded.
- (4) That the Commissioner of Police give consideration to amending the practical mock trial training exercise for police pursuits in the Silver Certification Classification Course. The amendment involves changing the course so the mock example of pursuing a driver who fails to stop for a random breath test, is replaced by participants engaging in a pursuit of a pursued driver who is wanted for offences of a violent nature.
- (5) That the Commissioner of Police further investigates the use of driver simulators to supplement the practical training currently provided to NSW Police Officers on urgent duty driving and police pursuits.
- (6) That the Commissioner of Police incorporate within the video shown to NSWPF recruits or officers undertaking driver training at the Goulburn Academy, current information on the adverse mental health impacts that can arise for NSWPF officers as a result of participating in a police pursuit that involves death or serious injury.

Conclusion

- 268. Tyrone's death is a heart-breaking tragedy that has affected many lives. Anything that can be done to avoid such incidents occurring is worth considering. I hope the next iteration of the Safe Driving Policy reflects what has been learnt during these proceedings.
- 269. I offer my sincere thanks to Counsel Assisting Andrew Wong, and his instructing solicitor during the inquest, Ms Amber Doyle. Their assistance during proceedings and in the preparation of these reasons has been invaluable. They assisted with skill and compassion and their work is greatly appreciated.

270. I thank the Aboriginal Coronial Information and Support Program social worker, Nicolle Lowe for her invaluable work. The Court always relies on her great assistance and is grateful to receive it. I note the family was ably assisted during the inquest by Lizzie Jarratt from the Aboriginal Legal Service and I thank her too.
271. I thank Officer-in-Charge, Detective Inspector Peter O'Reilly for a thorough investigation of these events and for the compassionate way he dealt with Ty's family during proceedings.
272. Finally, once again I offer my sincere condolences to Ty's family and friends, and I thank them for their participation in these difficult proceedings. Their input was crucial in assisting me with my task and their attendance protected the integrity of the work completed.
273. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner, NSW State Coroner's Court
9 December 2022