



## **CORONER'S COURT OF NEW SOUTH WALES**

**Inquest:** Inquest into the death of Shaun Crighton-Cromb

**Hearing dates:** 12 to 14 March 2019 at Albury

**Date of findings:** 15 April 2019

**Place of findings:** Coroner's Court Complex, Lidcombe

**Findings of:** Magistrate Derek Lee, Deputy State Coroner

**Catchwords:** CORONIAL LAW – manner of death, NSW Police Safe Driving Policy, whether police pursuit occurred, traffic stop, activation of emergency warning devices, reasonableness of actions of police officers

**File number:** 2017/272539

**Representation:** Dr P Dwyer, Counsel Assisting, instructed by Ms K Lockery (Crown Solicitor's Office)

Mr D Evenden (NSW Legal Aid Commission) for Ms T Crighton and the Crighton-Cromb family

Mr R Hood for the NSW Commissioner of Police, instructed by Mr S Robinson (NSW Police Office of General Counsel)

**Findings:** I find that Shaun Crighton-Cromb died on 4 September 2017 at East Albury NSW 2640. The cause of Shaun's death was multiple injuries, smoke inhalation and carbon monoxide toxicity. Shaun died after a vehicle that he was driving, and which was being followed by a police vehicle in the course of a police operation, lost control, left the road, and collided with a tree. The resultant collision caused a fire in the vehicle during which Shaun suffered fatal injuries.

## Non-Publication Orders

1. With reference to **Exhibit 1**, that there be no publication of the following, including as referred to in the oral evidence:
  - Transcript of Directed Interview with A/Sergeant Johan Amaru Medina (**Tab 16**)
    - Answer 32;
  - Statement of Inspector Ian Bruce Youman (**Tab 23**)
    - Paragraph 4, line 4 from the word, “deemed” to the end of the paragraph;
  - Report of A/Senior Sergeant Kris Cooper (**Tab 40**)
    - Paragraph 17, line 6, from third word “is” to the end of paragraph;
    - Paragraph 31, from line 4 to the end of the paragraph ;
    - Paragraph 32, from line 4, from the fourth word up to and including the word “appropriate” on the fifth line;
  - NSWPF Safe Driving Policy Version 8.2 - July 2016 (**Tab 73**)
    - Page ii, “Vehicle categories”, lines 1 – 5;
    - Page iii, line 1;
    - Pages 18 – 19, paragraphs 5-1-4 to 5-1-8;
    - Page 19, in paragraph 5-4-2, line 2 from the word “the” up to and including the word “riding”;
    - Page 19, paragraph 5-4-4;
    - Page 20, paragraphs 6-2-4 and 6-2-6;
    - Page 20, in paragraph 6-3, all the words in dot point 3;
    - Page 22; in paragraph 7-1-4, line 3, from the second word “A” until the end of line 4;
    - Page 22, paragraphs 7-1-5 and 7-1-6;
    - Page 22, paragraph 7-2-2;
    - Page 23, paragraphs 7-2-4, 7-2-8, 7-2-10 and 7-2-13;
    - Page 23, paragraphs 7-4-1 and 7-4-2;
    - Pages 24 – 25, in paragraph 7-5-1 “Drivers and Escorts”, subsections (e) & (j), and dot points 4 – 11 inclusive, and dot point 15;
    - Page 28, paragraphs 7-6-2, 7-6-3, 7-6-5, 7-6-6, 7-6-7, 7-6-8 and 7-6-9;
    - Page 30, in paragraph 8-2 “Code Blue”, all the words in dot point 3;
    - Page 30, in paragraph 8-3 “Code Red”, all the words in dot points 3 and 4;
    - Page 30, paragraph 8-5-1;
    - Page 31, paragraph 8-6-2;
    - Page 34, Definition of “re-initiation”, second and third paragraphs of definition;

- Page 34, Definition of “terminate”, all the words from “A pursuit is not” to the end of the page;
- Page 37, Eleventh line under “C”;
- Pages 39 – 40, Re Duty Officer/Supervisor Pursuit Debrief Form:
  - All references to Category 1, 2, 3 or 4 vehicles
  - “Police Vehicle and Occupant Details” - all material contained in the shaded box on the right hand side of the document, except paragraphs 1 and 5;
  - “Supervisor Details” – paragraph 2 of the material contained in the shaded box on the right hand side of the document;
  - “Road Spikes” - paragraph 1 of the material contained in the shaded box on the right hand side of the document;
- NSWPF Safe Driving Policy Version 8.3 - July 2016 **(Tab 72)**
  - Page ii, “Vehicle categories”, lines 1 – 5;
  - Page iii, line 1;
  - Pages 18 – 19, paragraphs 5-1-4 to 5-1-8 up to and including the end of the first full paragraph after the last dot point;
  - Page 19, in paragraph 5-4-2, line 2 from the word “the” up to and including the word “riding”;
  - Page 19, paragraph 5-4-4;
  - Page 21, paragraphs 6-2-4 and 6-2-6;
  - Page 21, in paragraph 6-3, all the words in dot point 3;
  - Page 23; in paragraph 7-1-4, line 3, from the second word “A” until the end of line 4;
  - Page 23, paragraphs 7-1-5 and 7-1-6;
  - Page 23, paragraph 7-2-2;
  - Page 24, paragraphs 7-2-4, 7-2-8, 7-2-10 and 7-2-13;
  - Page 24, paragraphs 7-4-1 and 7-4-2;
  - Pages 25 – 26, in paragraph 7-5-1 “Drivers and Escorts”, subsections (e) & (j), and dot points 4 – 11 inclusive, and dot point 15;
  - Page 29, paragraphs 7-6-2, 7-6-3, 7-6-5, 7-6-6, 7-6-7, 7-6-8 and 7-6-9;
  - Page 31, in paragraph 8-2 “Code Blue”, all the words in dot point 3;
  - Page 31, in paragraph 8-3 “Code Red”, all the words in dot points 3 and 4;
  - Page 31, paragraph 8-5-1;

- Page 31, paragraph 8-6-2;
- Page 35, Definition of “re-initiation”, second and third paragraphs of definition;
- Page 35, Definition of “terminate”, all the words from “A pursuit is not” to the end of the page;
- Page 38, Eleventh line under “C”;
- Pages 40 – 41, Re Duty Officer/Supervisor Pursuit Debrief Form:
  - All references to Category 1, 2, 3 or 4 vehicles
  - “Police Vehicle and Occupant Details” - all material contained in the shaded box on the right hand side of the document, except paragraphs 1 and 5;
  - “Supervisor Details” – paragraph 2 of the material contained in the shaded box on the right hand side of the document;
- “Road Spikes” - paragraph 1 of the material contained in the shaded box on the right hand side of the document;

2. That there be no publication of the contents of **Exhibit 2**;
3. That there be no publication of the contents of **Exhibit 3**;
4. That there be no publication of the names or any other information which may identify [REDACTED] and [REDACTED].

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## **1. Introduction**

- 1.1 In the early hours of the morning on 4 September 2017 Shaun Crighton-Cromb was driving along a street in East Albury. Travelling behind him was a marked police vehicle containing two police officers. The two police officers were following Shaun in an attempt to ascertain whether the vehicle that he was driving matched the details of a vehicle which had been reported stolen earlier that night.
- 1.2 Approximately 60 seconds after the police officers first sighted the vehicle Shaun was driving it was seen to swerve, lose control, leave the road, and collide with a tree on a steep embankment. The collision resulted in flames which rapidly engulfing the vehicle. Shaun could not be extricated before succumbing to the effects of the collision and fire. Shaun was later pronounced deceased at the scene. Tragically, he was only 19 years old.

## **2. Why was an inquest held?**

- 2.1 Under the *Coroners Act 2009 (the Act)* a Coroner has the responsibility to investigate all reportable deaths. This investigation is conducted primarily so that a Coroner can answer questions that they are required to answer pursuant to the Act, namely: the identity of the person who died, when and where they died, and what was the cause and the manner of that person's death. All reportable deaths must be reported to a Coroner or to a police officer.
- 2.2 Due to the circumstances surrounding Shaun's death, he was regarded as having died in the course of a police operation. This meant that, according to the relevant section of the Act which applied at the time<sup>1</sup>, an inquest into Shaun's death was mandatory. Inquests are mandatory for these types of deaths to ensure that there is an independent and transparent investigation of the circumstances of the death, and the relevant conduct of any of involved police officers.

## **3. Shaun's life**

- 3.1 Inquests and the coronial process are as much about life as they are about death. A coronial system exists because, as a community, we recognise the fragility of human life and place enormous value on how precious it is. Recognising the impact that a death of a person has, and continues to have, on the family and loved ones of that person can only serve to strengthen the resolve we share as a community to strive to reduce the risk of preventable deaths in the future.
- 3.2 Understanding the impact that the death of a person has had on their family only comes from knowing something of that person's life and how the loss of that life has affected those who loved that person the most. Therefore it is extremely important to recognise and acknowledge Shaun's important life. It is hoped that the brief words below do so in a meaningful and respectful way.
- 3.3 Shaun was born on 15 August 1998 and was one of seven siblings to his parents, Toni Crighton and Dean Cromb. With the rest of his family, Shaun grew up in the Albury-Wodonga area and attended primary and high schools in the area. At an early age Shaun was

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<sup>1</sup> *Coroners Act 2009*, section 23(1)(c) (since amended).

diagnosed with a serious heart condition which required annual check-ups. Shaun continued with school until Year 8 and later commenced an external education program to assist him in developing his employability skills. Although Shaun did not have a full-time job he would perform casual work with his grandmother.

- 3.4 Shaun had a love for the outdoors and possessed a keen sense of adventure. He enjoyed camping and motorcycle riding and was known to try anything at least once on a motorcycle. Shaun also had a great love for all animals, but in particular reptiles. He was known to spend many hours reading and researching about them and taking part in one of his favourite past times, hunting for lizards in the bush.
- 3.5 With his adventurous spirit Shaun was known by his family to suffer the occasional mishap and accidental injury, although none were truly serious. It was because of these accidents that Shaun came to believe that his life would not be a long one. Despite this sense of foreboding from Shaun, his family could never have expected to lose him at the young age of 19.
- 3.6 Shaun's passing is all the more tragic because at the time of his death he was at a point where he planned to make some major life changes. He was preparing to move out of the family home and find a place of his own, as well as seek more permanent employment. It is most heartbreaking to know that Shaun was on the cusp of much potential that will, sadly, never be realised.
- 3.7 Despite his young age, Shaun was not unfamiliar with the pain that loss brings. He had lost an uncle, a cousin, and his beloved grandfather, who he was particularly close with. Shaun's sense of family, and the importance of it, only serves to underline what his loss means to those who loved him most. He leaves behind his loving parents and siblings, along with his extended family, all of whom are proud to call Shaun their son, brother, grandson, uncle, nephew and friend.

#### **4. The events of 3 and 4 September 2017**

- 4.1 On the evening of 3 September 2017 there was a 21st birthday party for Shaun's brother, Tristan, at the Boomerang Hotel in Lavington. At about 5:30pm Shaun left his family home at 381 Dale Crescent and drove to the party with [REDACTED]. The group of four young men travelled in a white Holden VT Commodore (**the Commodore**), which belonged to [REDACTED], and which was driven by [REDACTED].
- 4.2 Shaun and the group arrived at the hotel at around 6:00pm. During the course of the evening Shaun was seen to drink several cans of mixed spirits. The party finished at around 10:00pm. Shaun was not seen to be affected by alcohol at this time.
- 4.3 Shaun left the hotel with his father, one of his cousins, and his cousin's girlfriend. After dropping his cousin and his cousin's girlfriend home, Shaun and his father returned to 381 Dale Crescent. A number of other family members also returned there. They spent some time sitting around a fire chatting.
- 4.4 At about 12:30am on 4 September 2017 [REDACTED] decided to go for a drive in the Commodore. Whilst driving around, the group realised that the Commodore needed petrol.

████ rang Shaun to ask if he had any money for petrol. Shaun said that he did and so the group drove back to 381 Dale Crescent to pick up Shaun. Upon their arrival, Shaun got into the Commodore and sat in the rear driver's side seat. █████ was driving, with █████ in the front passenger seat and █████ in the rear passenger's side seat.

- 4.5 At this time Acting Sergeant Johan Medina and Senior Constable Luke Porritt were conducting patrols in the Lavington area in a marked police vehicle, a Toyota Camry sedan with call sign Albury 14 (**Albury 14**). As Albury 14 pulled into Dale Crescent, Acting Sergeant Medina saw the Commodore reverse from a driveway and noticed that it was not bearing any licence plates. Moments later, after the Commodore reversed, it sped off along Dale Crescent. Albury 14 commenced following but Acting Sergeant Medina saw that the Commodore was swerving onto the incorrect side of the road and that it did not have its headlights on. Having regard to these observations Acting Sergeant Medina decided not to initiate a pursuit.
- 4.6 Acting Sergeant Medina saw the Commodore turn onto Tracey Street. At 12:34am, Acting Sergeant Medina made the following broadcast over police radio (also known as **VKG**): *"Yeah radio we have just had a car take off from us, a white Commodore, Dale Crescent, no plates last seen heading off on Tracey, Lavington"*.<sup>2</sup> This resulted in a subsequent message being broadcast on VKG for any police vehicles in the Albury area to be on the lookout for the Commodore.
- 4.7 Leading Senior Constable Trent Williams and Senior Constable Andrew Sutherland were, at that time, in another police vehicle with call sign **Albury 16**. They had just conducted a random breath test on Bralgon Street, and were travelling east along Union Street, when they heard the broadcast in relation to the Commodore. In the distance Senior Constable Sutherland saw the Commodore turn out from Turner Street onto Union Street, and then make an immediate left turn onto Boronia Street. Albury 16 followed the Commodore down Boronia Street to the intersection with Wingara Street. Senior Constable Sutherland saw that the Commodore did not have its headlights on and later lost sight of it after it turned off Wingara Street at some point.
- 4.8 The Commodore proceeded to the United Petroleum petrol station on Melrose Drive in Wodonga. After filling up, the Commodore travelled a short distance to the corner of Magnolia Crescent and Wattle Court. Parked on Wattle Court was a white 1997 Ford Courier dual cab utility, Victorian registration QSM-405 (**the Courier**). The Courier was registered to Mark Korneluk and mainly driven by Mr Korneluk's wife. It had last been used, and parked by Mrs Korneluk, at about 3:00pm on 3 September 2017. The Commodore did a u-turn and parked next to the Courier. Shaun exited the Commodore and, by means unknown, entered the Courier without permission. A short time later, the Commodore left Wattle Court, followed by the Courier being driven by Shaun. Shaun did not hold, and had never been issued with, a valid driver's licence.
- 4.9 At about 1:09am Leading Senior Constable Kylie Clarkson and Senior Constable Daniel Braines, of the Victorian Police, were patrolling the vicinity of Magnolia Crescent, Wodonga in a police vehicle with call sign **Wodonga 311**. About 25 minutes earlier they had been informed by other Victorian police officers in the Wodonga area that Albury police had sighted the Commodore, and had been requested to keep a look out for it. The police officers in Wodonga 311 saw the Commodore and the Courier travelling east on Magnolia Crescent

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<sup>2</sup> Exhibit 1, Tab 27.



before turning into several other streets, and eventually come to be travelling north on Morrison Street. Leading Senior Constable Clarkson activated the emergency warning lights on Wodonga 311 in an attempt to intercept the Courier. Moments later, the Courier crossed to the opposite side of the road, causing Leading Senior Constable Clarkson to deactivate the warning lights and pull Wodonga 311 over to the side of the road. The police officers in Wodonga 311 saw the Courier turn onto Baelon Street and neither officer saw the Courier or the Commodore (which they presumed had been travelling in tandem with the Courier) again. Senior Constable Braines made a radio broadcast for Victorian and NSW police vehicles to remain on lookout for the Commodore and Courier.

- 4.10 A short time later █████ rang Shaun on his mobile phone and they made arrangements to meet at a location in Wodonga. However, Shaun subsequently told █████, “*The police are coming*”, and then made subsequent arrangements to meet at a location in Albury. At the time, Shaun told █████ that he was on High Street in Wodonga and making his way to the Hume Highway towards Sydney. Shaun later took the South Albury exit off the Hume Highway and turned onto East Street.
- 4.11 At about 1:20am the police officers in Wodonga 311 attended the registered address for the Courier and spoke to Mr Korneluk, who confirmed that the Courier had been stolen. Senior Constable Braines made a further radio broadcast for Victorian and NSW police vehicles with this information.
- 4.12 At this time Acting Sergeant Medina and Senior Constable Porritt were travelling on Dean Street towards Wodonga, and heard Senior Constable Braines’ broadcasts. They had earlier been patrolling the Lavington and North Albury areas. Acting Sergeant Medina decided to monitor the Hume Highway in case the Commodore and Courier travelled in that direction. Albury 14 travelled along Hume Street towards the South Albury exit from the Hume Highway. At this time Acting Sergeant Medina saw the Commodore exit the Hume Highway, about 30 to 40 metres away, turn right onto East Street, and noticed that it was “*driving fairly quick straightaway*”.<sup>3</sup> Moments later Acting Sergeant Medina saw the Commodore turn left from a roundabout onto Schuback Street. As this occurred, Acting Sergeant Medina looked ahead and saw the Courier on East Street, travelling up an incline.
- 4.13 Acting Sergeant Medina and Senior Constable Porritt had a brief discussion about whether the Courier was the same vehicle that had been broadcast over police radio as being stolen. Acting Sergeant Medina decided to continue in the same direction as the Courier along East Street. At 1:24:21am (according to the VKG timestamp) Acting Sergeant Medina made this radio broadcast: “*Just sighted, we just sighted the Commodore heading [sic] Schuback Street towards um south on Schuback. We think we have the other car going on East Street going across towards the hospital. We are just trying to ascertain if it’s the right car*”.<sup>4</sup>
- 4.14 As Albury 14 followed after the Courier, Shaun remained on his earlier phone call with █████. Shaun said to █████, “*The police are right up my arse*”.<sup>5</sup> █████ told Shaun to slow down and, as the Commodore by this time had turned onto Schuback Street and lost sight of the Courier, asked him where he was. Shaun said that he was still on East Street and, at some point, said, “*What do I do? I’m really scared. They’re right up my arse*”.<sup>6</sup> As █████ had placed the

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<sup>3</sup> Exhibit 1, Tab 16, Q/A 62.

<sup>4</sup> Exhibit 1, Tab 27, page 3.

<sup>5</sup> Exhibit 1, Tab 8 at [23].

<sup>6</sup> Exhibit 1, Tab 8 at [23].

phone call on speakerphone the other occupants of the Commodore were also able to hear the conversation. █████ recalled hearing Shaun say, “Coppers are up my arse, help”<sup>7</sup>, whilst █████ recalled Shaun saying, “I’m going up East Albury Hill. The cops are right behind me”.<sup>8</sup>

- 4.15 The Courier and Albury 14 continued travelling along East Street, with both vehicles travelling in excess of the designated 60 kilometres per hour speed limit. At a point along a downhill stretch of road the police officers in Albury 14 observed the Courier to swerve from side to side and lose control. Upon seeing the Courier start to lose control, Acting Sergeant Medina applied the brakes on Albury 14 and decreased its speed. Whilst still on the phone call with Shaun, █████ heard Shaun say, “Oh shit”,<sup>9</sup> followed by a loud bang, and then the phone went silent. The Courier left the road, mounted the kerb, and travelled down a steep embankment before impacting with a tree on the right hand side of the road. The Courier caught alight with flames engulfing its cabin within a short space of time. In a subsequent recorded interview, Acting Sergeant Medina described what he observed in this way: “...[The Courier] started swerving between both lanes. I could see the tail end of the car started sort of skidding. It’s had to tell but yeah it started swerving a bit and then he just completely lost control and yeah went on the side of the road and hit the tree”.<sup>10</sup>
- 4.16 After Albury 14 came to a stop, Acting Sergeant Medina made this broadcast at 1:25:11am: “Albury 14. Yeah this car has just collided. We are on um we are on East about two hundred metres from the hospital”.<sup>11</sup> Thirty seconds later, at 1:25:41am Senior Constable Porritt broadcast the following, “Yeah we need ambos and firies. It’s just come alight radio not sure if the occupant’s in the car still, it’s just caught on fire”.<sup>12</sup>
- 4.17 Senior Constable Porritt attempted to approach the Courier to see if any person remained in the cabin, or had been ejected from the cabin in the area surrounding the vehicle. However, as the flames were too intense he was unable to approach the Courier. Other NSW and Victorian police vehicles arrived at the collision site a short time later. Road blocks were established to prevent civilians from approaching the scene and to ensure the clear passage of emergency services. As this was occurring, and within about two minutes of the collision the Commodore was seen to travel along East Street, past the collision site at high speed.
- 4.18 NSW Fire and Rescue officers based at Albury Central Fire Station responded to the request for assistance and arrived at the scene at about 1:35am. At this time the Courier was well alight with flames engulfing the engine and cabin. One of the attending officers observed that flames were impinging a gas cylinder under the Courier’s utility tray area but that there was no visual or audible indication that the cylinder was leaking or had been damaged. Firefighting efforts commenced with a focus on preventing flames from impacting the LPG gas cylinder. One the flames were extinguished the firefighters observed that Shaun was still in the cabin, deceased.

## 5. What was the cause of Shaun’s death?

- 5.1 Shaun was later taken to the Department of Forensic Medicine in Newcastle where a postmortem examination was performed on 12 September 2017 by Dr Brian Beer, forensic

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<sup>7</sup> Exhibit 1, Tab 9 at [16].

<sup>8</sup> Exhibit 1, Tab 10, page 2.

<sup>9</sup> Exhibit 1, Tab 8 at [23].

<sup>10</sup> Exhibit 1, Tab 16, Q/A 134.

<sup>11</sup> Exhibit 1, Tab 27, page 3.

<sup>12</sup> Exhibit 1, Tab 27, page 3.

pathologist. Dr Beer noted that Shaun's body had been extensively incinerated, that he had sustained significant injuries to his chest and abdomen, and that there was evidence of smoke inhalation and a raised carbon monoxide level. In an autopsy report dated 27 October 2017, Dr Beer opined that Shaun's death was caused by multiple injuries, smoke inhalation and carbon monoxide toxicity.

## **6. What issues did the inquest examine?**

6.1 Prior to the inquest a list of issues was circulated amongst the interested parties. These issues are set out below:

- (a) Did the conduct of Acting Sergeant Medina amount to a "pursuit" for the purposes of the New South Wales Police Force's Safe Driving Policy?;
- (b) If it did amount to a 'pursuit', was the Policy followed by Acting Sergeant Medina, and if not, why not?
- (c) If the conduct did not amount to a "pursuit" for the purposes of the Policy, was it nevertheless appropriate in the circumstances, or should other action have been taken which would have minimised the risk of a collision?
- (d) Could NSW Police officers who attended the scene have rendered assistance to Shaun following the collision, so that he could be retrieved before the vehicle was alight?
- (e) Are there any recommendations that are "*necessary or desirable to make in relation to any matter connected with the death*", for example, should there be any amendment to the policies, procedures or training of NSW Police to minimise the risk of collision in these circumstances?

6.2 Each of these issues is considered in more detail below. Before doing so, it is convenient to describe the physical location at, and leading up to, the collision site as well as some matters relevant to consideration of the issues.

## 7. Relevant features of the location

- 7.1 East Street is a sealed asphalt road with marked road lines and a single lane of traffic in either direction. It commences at a roundabout which intersects with Atkins Street to the west of the Hume Highway and travels in a general northeast direction towards Albury Wodonga Health, Albury Campus (**the Hospital**), ultimately terminating at an intersection with North Street.
- 7.2 A number of commercial premises line both sides of the initial approximate 200 metre stretch of East Street between Atkins Street and a roundabout located at an intersection with Schuback Street (**the Schuback roundabout**). From the Schuback roundabout there is a long right-hand bend before a sharper left-hand bend towards the intersection with Hampton Court. From Hampton Court there is a straight stretch of road (**the straight**) until the road begins to approach a crest (**the first crest**) about 100 metres past the intersection of Heath Street (**the Heath Street intersection**). A number of residential premises line both sides of East Street from the Schuback roundabout to the Heath Street intersection. The section of road between this intersection and the collision site is generally through bushland which gradually thins out as the road approaches the collision site and the descent towards the Hospital.
- 7.3 The roadway from the first crest follows a moderate side-to-side undulation, with a gentle dip in the road at the intersection with Walsh Street (**the Walsh Street intersection**), before a moderate rise over a distance of approximately 100 metres to a second crest (**the second crest**). From the second crest there is a long but gentle right-left-right curve before the road straightens out, leading to the collision site and more level ground at the base of the descent. The roadway through the curve and straight section is at a gradient of almost 13 degrees.
- 7.4 There is intermittent street lighting from the Schuback roundabout to the Heath Street intersection, but only a single street light at the Walsh Street intersection between the first crest and second crest. There is no street lighting from the second crest to the collision site.
- 7.5 The subsequent police investigation identified that three premises along East Street were equipped with CCTV cameras which captured footage of the Courier and Albury 14 on 4 September 2017: two separate commercial premises at 206 and 315 East Street, and a residential premises at 331 East Street.
- 7.6 The police investigation was also able to establish the following approximate distances between points of interest along East Street:
- (a) The Schuback roundabout is located two kilometres from the collision site;
  - (b) 331 East Street is located 1.3 kilometres metres from the collision site;
  - (c) The first crest is located 700 metres from the collision site; and
  - (d) The second crest is located 400 metres from the collision site.

7.7 There had been some light rain earlier in the evening and the road conditions were described by Acting Sergeant Medina as being “a bit damp”.<sup>13</sup> Senior Constable Porritt described the road conditions in this way: “I did notice around the bend it was a bit more damp, where the car actually did crash was quite damp once you got around that, that bend. Um, just in this one little patch really, from what I thought I saw anyway”.<sup>14</sup>

## 8. What condition was the Courier in?

8.1 Information obtained from Mr Korneluk established that prior to September 2017 the Courier had been regularly serviced and was in good mechanical condition. Mr Korneluk described the vehicle as having a light body, particularly when there was no load in the rear tray, and therefore being light to drive. The Courier’s power steering only tended to add to its lightness whilst driving. Mr Korneluk went on to explain that in his experience the Courier had to be driven with care when there was moisture on the road as it had a propensity to lose traction due to its lightness and the fact that it was fitted with four light truck tyres.

8.2 Mr Korneluk expressed the view that the Courier was responsive to acceleration, particularly if being driven aggressively. However, because it was a four cylinder engine it was not as responsive as a six cylinder engine. Mr Korneluk described the Courier as driving “beautifully”<sup>15</sup> and indicated that it would only suffer a slight loss of speed when being driven up an incline, but was able to maintain its speed, or only experience a marginal decrease, when being driven on level ground or the approach to an incline.

## 9. Was Albury 14 engaged in a pursuit of the Courier on 4 September 2017?

9.1 The NSW Police Force Safe Driving Policy (**the Policy**) governs the conduct, role and responsibilities of police officers involved in the pursuit of a civilian vehicle. Part 7 of Version 8.2 of the Policy<sup>16</sup> (which was in force at the time of Shaun’s death) defines a pursuit in this way:

PURSUIT: A pursuit, regardless of speed, commences at the time you decide to pursue a vehicle that has ignored a direction to stop.

It is an attempt by a police officer to stop and apprehend the occupant(s) of a moving vehicle, regardless of speed or distance, when the driver of the other vehicle is attempting to avoid apprehension or appears to be ignoring police attempts to stop them.

A pursuit is deemed to continue if you FOLLOW the offending vehicle or continue to attempt to remain in contact with the offending vehicle, whether or not your police vehicle is displaying warning lights or sounding a siren.

9.2 Having regard to the definition provided by the Policy, the initial question to be answered is whether Acting Sergeant Medina or Senior Constable Porritt issued Shaun with a direction to stop the Courier at any time on 4 September 2017. If the answer to this question is in the affirmative, then the next question to answer is whether Shaun ignored such a direction.

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<sup>13</sup> Exhibit 1, Tab 16, Q/A 98.

<sup>14</sup> Exhibit 1, Tab 17, Q/A 126.

<sup>15</sup> Exhibit 13 at [7].

<sup>16</sup> Exhibit 1, Tab 73, page 22.

- 9.3 There is no evidence to suggest that Acting Sergeant Medina or Senior Constable Porritt issued Shaun with a verbal direction to stop the vehicle that he was driving. Therefore, the only means by which Acting Sergeant Medina or Senior Constable Porritt could have issued such a direction to Shaun is if either police officer activated the emergency warning devices on Albury 14; that is, if the warning lights and/or siren on the police vehicle were turned on.
- 9.4 An examination of the available evidence establishes that the emergency warning devices on Albury 14 were not activated at any stage on 4 September 2017. This is because:
- (a) Both Acting Sergeant Medina and Senior Constable Porritt maintained in their recorded interviews conducted after the incident, and in oral evidence given during the inquest, that they did not activate the emergency warning devices on Albury 14 prior to the impact;
  - (b) Indeed, Acting Sergeant Medina said that he was just about to activate the emergency warning lights on Albury 14 moments before the Courier lost control;
  - (c) █████ stated that as the Commodore turned onto Schuback Street, he saw Albury 14 continue along East Street without its warning lights or siren activated. Further, █████ recalled that he did not hear any sirens from a police vehicle in the background during his phone call with Shaun. █████ similarly recalled that he did not hear the sound of sirens in the background;
  - (d) There is no evidence that Acting Sergeant Medina or Senior Constable Porritt informed police VKG that a pursuit had been initiated, or provided VKG with certain information, which would have been required in accordance with the provisions of the Policy;
  - (e) Following the incident, investigating police conducted a canvass of residences along East Street. This canvass was unable to identify any resident who positively heard any sirens or saw any emergency warning lights prior to the collision. To the contrary, a number of residents positively told police that they did not hear any sirens prior to the collision;
  - (f) The CCTV footage taken from the three premises along East Street does not contain audio recordings. Therefore, it does not assist in determining whether the sirens on Albury 14 were activated prior to the collision. However, examination of the video footage captured by the CCTV cameras depicting Albury 14 indicates that it was travelling past each of the cameras without its emergency warning lights activated.
- 9.5 It was submitted on behalf of the Crighton-Cromb family that the events of 4 September 2017 may have amounted to a pursuit in another way. This submission referred to the provisions of Clause 8-6-3 of the Policy which relates to the performance of Traffic Stops (this topic is discussed in greater detail below). Clause 8-6-3 provides:

*“Should the driver of the other vehicle attempt to avoid apprehension or appears to be ignoring requests to stop and a decision has been made to pursue the vehicle, then a pursuit has commenced and the Safe Driving Policy pursuit guidelines must be adhered to”.*

- 9.6 It was submitted that because Acting Sergeant Medina and Senior Constable Porritt both suspected that the Courier had been stolen and because they knew that it was associated with the Commodore, that it should have been evident to both police officers that the driver of the Courier was attempting to avoid apprehension. If this was the case, then it was submitted that Clause 8-6-3 applied so as to render the following of the Courier by Albury 14 a pursuit.
- 9.7 The difficulty with this submission is that even if the evidence established that Acting Sergeant Medina and Senior Constable Porritt knew that the driver of the Courier was attempting to avoid apprehension, a pursuit would only have commenced if either police officer made a decision to pursue it. As explained already, the evidence establishes that neither police officer made such a decision.
- 9.8 For avoidance of doubt, it should also be noted that the evidence does not establish that either Acting Sergeant Medina or Senior Constable Porritt knew that the driver of the Courier was attempting to avoid apprehension. Acting Sergeant Medina rejected a suggestion that he possessed such knowledge as the Courier was being followed. Senior Constable Porritt similarly rejected such a suggestion. He summarised the situation best by explaining that whilst such an assessment might be available with the benefit of hindsight (and with knowledge of information, such as the phone call that Shaun was on, that could not have been known at the time), it was difficult to make any accurate judgement as to the speed that the Courier was travelling and changing distances between it and Albury 14 so as to give rise to such an assessment as the dynamic events were unfolding.

9.9 **Conclusion:** There is no evidence that the emergency warning devices on Albury 14 had been activated by Acting Sergeant Medina or Senior Constable Porritt at any time before the collision. This means that neither Acting Sergeant Medina nor Senior Constable Porritt issued Shaun with a direction to stop the vehicle that he was driving at the time. As no direction had been given (and, consequentially, Shaun had not ignored it), this means that the definition of a pursuit in the policy was not met. Further, there is no evidence to establish that the provisions of Clause 8-6-3 of the Policy were enlivened at any time. Accordingly, no pursuit took place on 4 September 2017

**10. Were the actions of police on 4 September 2017 appropriate in all the circumstances?**

- 10.1 Although it has been established that Part 7 of the Policy, relating to pursuits, did not apply to the events of 4 September 2017, there is a need to give consideration to another relevant part of the Policy. Part 8 of the Policy deals with the Coded System of Driving (**CSD**). The CSD sets out a number of parameters and obligations for police officers when the CSD applies.
- 10.2 The evidence established that by following after the Courier along East Street, Acting Sergeant Medina and Senior Constable Porritt were performing urgent duty response. This meant that, according to Part 8 of the Policy, Albury 14 was being driven under Code Red within the CSD. This in turn meant that, pursuant to Clause 8-3-1 of the Policy, Acting Sergeant Medina and Senior Constable Porritt had an obligation to advise VKG of their response code and provide an estimated time of arrival. However, evidence given by Senior Sergeant Kris Cooper of the Traffic and Policy Section of the Traffic & Highway Patrol Command, who conducted an internal police review to determine if the Policy had been complied with, established that the terms of Clause 8-6-1 of the Policy obviated the need for such advice to be provided to VKG.

10.3 Clause 8-6-1 provides:

*“It is permissible for police to perform traffic stop...or reduce the distance to an offending vehicle without informing VKG of a response code or activating warning device. However, police must take reasonable care and it must be reasonable that warning devices are not used...”*<sup>17</sup>

10.4 In evidence Senior Sergeant Cooper explained that the rationale behind Clause 8-6-1 of the Policy is grounded on the recognition that requiring all police vehicles performing a traffic stop to notify VKG in accordance with Clause 8-3-1 would be procedurally unmanageable.

10.5 The evidence established that in following after the Courier along East Street, Albury 14 was being driven in a manner in order to reduce the distance between it and the Courier. As Acting Sergeant Medina explained, this was done in an attempt to identify the licence plate of the Courier in order to in turn verify whether it matched the licence plate of the vehicle that had been broadcast by Victorian police as having been stolen. Therefore, in accordance with the terms of Clause 8-6-1, Albury 14 was not required to comply with the terms of Clause 8-3-1. However, a requirement remained for Acting Sergeant Medina and Senior Constable Porritt to take reasonable care, and for it to be reasonable to not use the warning devices on Albury 14, in seeking to reduce the distance to the Courier.

## **11. Was reasonable care taken by the police officers following after Shaun?**

11.1 Two questions relevant to this issue were raised for consideration during the course of the inquest:

- (a) How fast was Albury 14 travelling along East Street; and
- (b) In seeking to close distance, how close did Albury 14 actually get to the Courier.

11.2 Albury 14 was fitted with a mobile Computer Aided Dispatch (**CAD**) system. This system has an on board global positioning system (**GPS**) which is capable of sending vehicle waypoints, speed, direction and other data to the other parts of the Police CAD clients. This information is capable of being tracked either in real time, or retrieved from historical data (**the GPS data**).<sup>18</sup> An extraction of the GPS data for Albury 14 was later conducted and revealed certain information about Albury 14, most relevantly the speed that it was travelling.

11.3 The GPS data was subsequently plotted against a road map showing East Street and revealed that Albury 14 was travelling at the following speeds at the following points:<sup>19</sup>

- (a) 85 kilometres per hour at 1:24:17am as it passed 331 East Street;

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<sup>17</sup> Exhibit 1, Tab 73, page 31.

<sup>18</sup> It should be noted that a number of factors, such as signal strength, data coverage area, reduced reception due to surrounding structures, and irregular redirection of signals due to surrounding structures, may affect the reliability of the data collected by the GPS in the mobile CAD system. In evidence during the inquest Senior Sergeant Kris Cooper maintained that he was unconvinced that the GPS data, and in particular the speeds attributed to Albury 14, were accurate. This was because, Senior Sergeant Cooper explained, there was no evidence as to factors such as the strength of the GPS signal or the alignment of antennae. However, there is similarly no evidence to suggest that any factor adversely affected the reliability of the recorded GPS data. In these circumstances it has been accepted that although there may be an inherent margin of error in the recorded GPS data, there is no evidence to positively establish that this is the case so as to make the evidence unreliable.

<sup>19</sup> Exhibit 10.



- (b) 106 kilometres per hour at 1:24:26am as it travelled along the straight;
- (c) 114 kilometres per hour 1:24:32am as it approached first crest;
- (d) between 89 kilometres per hour (at 1:24:39am) and 106 kilometres per hour (at 1:24:53am) between approximately the first crest and second crest; and
- (e) 101 kilometres per hour shortly before the collision site.

11.4 The GPS data is broadly consistent with the evidence given by Acting Sergeant Medina. Although Acting Sergeant Medina explained in evidence that he only glanced at the speedometer in Albury 14, he estimated that Albury 14 was travelling at around 100 kilometres per hour at different times, and accepted that it reached a maximum speed of 114 kilometres per hour at one point.

11.5 In evidence Acting Sergeant Medina estimated that Albury 14 was about 400 metres behind the Courier when the Commodore turned left at the Schuback roundabout off East Street. The GPS data establishes that Albury 14 travelled at speeds of between 77 and 103 kilometres from the Schuback roundabout to 331 East Street. At this point the CCTV footage captures Albury 14 passing the frame of the camera seven seconds after the Courier. Therefore, despite travelling more than 40 kilometres over the speed limit at one point, Albury 14 had only come within seven seconds of the Courier by the time it reached 331 East Street.

11.6 **Conclusion:** The evidence established that the road condition along East Street was good, that there were no other vehicles travelling either direction, that there were no pedestrians along East Street, and that there was intermittent street lighting up to the point of the Heath Street intersection. In these circumstances it can be accepted that Acting Sergeant Medina and Senior Constable Porritt took reasonable care in following after the Courier, even though Albury 14 was being driven at high speed. This is because there is no evidence that the speed at which Albury 14 was being driven represented a direct risk to any pedestrian or other motorist at the time.

11.7 However, the more relevant question is whether the speed at which Albury 14 was being driven represented a risk to Shaun. Given the speed that Albury 14 was travelling up to the point of 331 East Street, and that it was still seven seconds behind the Courier, it may be inferred that the Courier was also travelling in excess of the speed limit. As will be discussed further below, both Acting Sergeant Medina and Senior Constable Porritt agreed in evidence that Albury 14 closed distance on the Courier along the straight, and that there was a gap of about 100 metres between the two vehicles at the first crest. Given that Albury 14 was travelling at speeds between 106 and 114 kilometres per hour along the second half of the straight, it may equally be inferred that the Courier was travelling at similar speed, if slightly lower, in order to maintain the distance between it and Albury 14 by the time of the first crest.

11.8 The evidence established that a number of factors likely contributed to Shaun's loss of control of the Courier, and it eventually leaving the road prior to impact:

- (a) The fact that it was being driven in excess of the speed limit;

- (b) The damp road conditions;
- (c) The relatively steep incline at the point where control of the Courier was lost;
- (d) Shaun's relative inexperience as a driver, having never held a driver's licence;
- (e) Shaun's unfamiliarity with the Courier and its handling characteristics, particularly in circumstances where it needed to be driven with care in damp conditions and the absence of any load in the tray contributed to its lightness;
- (f) The possibility that Shaun's attention may have been partially diverted by the phone call that he was engaged in with the occupants of the Commodore;
- (g) Shaun's state of mind in the sense that he told █████ over the phone that he was aware that Albury 14 was behind him and that he was "*really scared*", from which it may be inferred that Shaun believed that he was being pursued, likely in order to be apprehended. Given the fear that Shaun expressed and his likely belief as to the reason he was being followed, it may be inferred that his state of mind would likely have hindered his ability to control the Courier in a calm and rational manner.

11.9 The evidence suggests that there was a direct correlation between the speed which Albury 14 was travelling and the speed which the Courier was travelling. That is, the Courier was being driven at speed in order to maintain or increase distance from Albury 14 because of Shaun's likely state of mind as described above. However, it is not possible to know whether Shaun would have slowed down the speed of the Courier if he was aware that Albury 14 had decelerated. This seems an unlikely scenario given that Shaun did not slow down as urged upon him by █████ during their phone call. In other words, it is unclear whether the speed at which the Courier was travelling was attributable solely to the speed at which Albury 14 was travelling, or whether the speed of the Courier would be maintained even if Albury 14 had not increased its speed after sighting the Courier, or decreased its speed at some point along East Street.

**11.10 Conclusion:** Therefore, it could not be said that the speed at which Albury 14 was being driven represented an unreasonable risk to Shaun and that therefore Acting Sergeant Medina and Senior Constable Porritt did not take reasonable care in following after Shaun. Firstly, it is evident that there were a number of factors which contributed to loss of control of the Courier moments before impact, with excessive speed being only one of the identified factors. Secondly, even if it was accepted that Shaun was only driving at speed because Albury 14 was also being driven at speed, there is no evidence that, up until the point of loss of control, there was any indication that loss of control was likely.

11.11 In evidence Acting Sergeant Medina said that he had no concern that the speed at which both vehicles were travelling would cause Shaun to lose control. Acting Sergeant Medina explained that this is because he could see that Albury 14 was closing the distance to the Courier which meant that the Courier was driving at a lower speed than Albury 14. Further, Acting Sergeant Medina said that he did not think that Shaun was in significant danger by the mere fact that Albury 14 was following after the Courier. Senior Constable Porritt said in evidence that if he had observed the Courier suffer any loss of control he would have considered it inappropriate to continue follow it. Further, Senior Constable Porritt also explained that if he considered that there was any aspect of Acting Sergeant Medina's driving which raised a concern in his mind, he would have felt comfortable raising that concern with Acting Sergeant Medina.

11.12 One further point should be noted. There is evidence that Acting Sergeant Medina had, on two prior occasions on 4 September 2017, made an assessment of the risk associated with following after a vehicle which was being driven in an erratic manner. Following that assessment Acting Sergeant Medina made a decision, on each occasion, that it would be unsafe to follow the vehicle. The first occasion occurred when Acting Sergeant Medina first sighted the Commodore in Dale Crescent after it sped off without its headlights on. The second occasion occurred when the Commodore turned off East Street at the Schuback roundabout. Senior Constable Porritt described the second occasion in this way in his recorded interview: "*[The Commodore] turned down Schuback Street, ah and that [sic] sped off in that direction um, and I remember [Acting Sergeant Medina] saying that, um we're not going to bother pursuing him because he's going to drive like a dickhead anyway so there's no point...*".<sup>20</sup>

**11.13 Conclusion:** Having regard to the above evidence it could not be said that the speed at which Albury 14 was travelling demonstrated that Acting Sergeant Medina and Senior Constable Porritt were not exercising reasonable care in following after Shaun. The evidence establishes that Acting Sergeant Medina made an assessment of whether following the Courier in the manner that he did represented an unreasonable risk. It can be inferred, consistent with the two other assessments previously made by Acting Sergeant Medina, that if such any such risk existed, Albury 14 would not have continued following the Courier.

11.14 As already noted above, the evidence established that, at least from 331 East Street onwards, Albury 14 was closing the distance to the Courier. This raised the question of whether Albury 14 closed the distance to the point where its proximity to the Courier adversely affected Shaun's ability to safely control it.

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<sup>20</sup> Exhibit 1, Tab 17, Q/A 44.

- 11.15 In evidence Acting Sergeant Medina said that Albury 14 managed to close the distance to the Courier by the time it reached the first crest. However, Acting Sergeant Medina went on to explain that he then mostly lost sight of the Courier as it travelled through the undulating section of road between the first crest and the second crest. He went on to explain that he regained sight of the Courier after passing over the second crest, and that Albury 14 was within 60 to 80 metres of the Courier at the point that it began to lose control. This evidence was consistent with the version which Acting Sergeant Medina gave in his recorded interview where he said that Albury 14 was about 60 metres from the Courier when it lost control, with the second closest distance between the two vehicles (of about 80 to 100 metres) occurring near the Walsh Street intersection.
- 11.16 In his recorded interview, because of his unfamiliarity with the locale, Senior Constable Porritt expressed some difficulty in calculating how close Albury 14 managed to get to the Courier. However, he eventually estimated the closest distance between the two vehicles to be 200 metres, and maintained that at no stage could he see whether the Courier was bearing any registration plates. However in evidence Senior Constable Porritt accepted that it was possible that the closest distance between the two vehicles (according to estimates given by Acting Sergeant Medina) was between 60 to 100 metres, and that Albury 14 was about 100 metres behind the Courier when it suffered a loss of control. Senior Constable Porritt explained that was able to provide a better estimate of distances in evidence as he had driven the route along East Street since participating in his recorded interview.
- 11.17 The solicitor for the Crighton-Cromb family put to Acting Sergeant Medina in evidence that once Albury 14 drove past 331 East Street it was within 200 metres of the Courier. Acting Sergeant Medina rejected this submission and explained that at this point the Courier was approximately 200 to 300 metres away, approaching the first crest, and disappeared from view a short time later. It has been submitted on behalf of the Crighton-Cromb family that when Albury 14 passed 331 East Street it is likely that the Courier was no more than 165 metres ahead of it. This submission was grounded on a calculation using information taken from the CCTV camera at 331 East Street and the GPS data. That information established that Albury 14 was seven seconds behind the Courier at 331 East Street and travelling at 85 kilometres per hour; a mathematical calculation establishes that a vehicle travelling at 85 kilometres per hour will travel 165 metres in seven seconds.
- 11.18 However, the submission made is flawed for a number of reasons. Firstly, in order to establish the distance between Albury 14 and the Courier, one would need to know the speed that the Courier was travelling and, consequentially, what distance it travelled in the seven seconds after it passed the 331 East Street CCTV camera. There is no objective evidence as to the speed that the Courier was travelling at any stage along East Street. Secondly, the calculation of 165 metres is dependent on Albury 14 maintaining a constant speed of 85 kilometres per hour over seven seconds. The evidence instead establishes that the speed of Albury 14 increased to 106 kilometres per hour by 1:24:26am, some nine seconds after it passed 331 East Street. It can be inferred from this that in these nine seconds the speed of Albury 14 gradually increased from 85 to 106 kilometres per hour, indicating that its speed did not remain constant. Thirdly, any calculation of distance between the two vehicles using the speed at which Albury 14 was travelling would be dependent on both vehicles maintaining their speed. As noted already, there is no objective evidence as to the speed that the Courier was travelling.

11.19 The evidence also demonstrates that the estimates as to distance given by Acting Sergeant Medina in evidence were also incorrect. The evidence establishes that 331 East Street is located approximately 1.3 kilometres from the collision site and that the first crest is located approximately 700 metres from the collision site. Applying a simple calculation, this means that the distance between 331 East Street and the first crest is approximately 600 metres. If this is so then Acting Sergeant Medina's estimate of the Courier being near the first crest and 200 to 300 metres away when Albury 14 passed 331 East Street must be incorrect. If it is accepted that the Courier was near the first crest when Albury 14 passed 331 East Street, then it must have been closer to 400 to 500 metres away.

11.20 **Conclusion:** Ultimately, the above comments serve only to demonstrate the difficulty in performing a precise calculation as to the distance between the two vehicles using limited objective information. The best assessment that can be made of the objective evidence is that taking into account what is known about the engine capacity of the Courier and its ability to accelerate, and the acknowledgements given by Acting Sergeant Medina and Senior Constable Porritt, it is most likely that Albury 14 was able to close the distance to the Courier by the first crest. Exactly how far apart the vehicles were at that stage is impossible to determine.

11.21 However, there is no evidence to suggest that the distance between the two vehicles was sufficient close to allow Acting Sergeant Medina or Senior Constable Porritt to clearly see the Courier's licence plates. Further, there is also no evidence to clearly establish that Albury 14 remained inappropriately close to the Courier as both vehicles travelled between the first crest and second crest. The undulating and winding nature of the road along this section suggests that it would have been difficult to remain in such close proximity. There is therefore no evidence to establish that Acting Sergeant Medina and Senior Constable Porritt did not exercise reasonable care in following after the Courier.

## 12. Was it reasonable for the warning devices on Albury 14 to have not been activated?

12.1 In evidence Acting Sergeant Medina said that he did not activate the warning lights on Albury 14 because the police vehicle never got close enough to the Courier. He explained that, given the distance between the Courier and Albury 14, he did not know if the lights could be seen by the driver of the Courier; to activate the warning lights in such circumstances would have served no practical purpose. In evidence Senior Constable Porritt similarly said that he did not believe that the driver of the Courier could see Albury 14 because of the distance between the two vehicles and the fact that it was night time.

12.2 Acting Sergeant Medina said in evidence that he believed that where a police vehicle follows another vehicle to perform a traffic stop, or reduce distance, there is no minimum distance at which the warning lights of a police vehicle must be activated. It was submitted on behalf of the Crighton-Cromb family that this created a hypothetical situation where a police vehicle might follow another vehicle indefinitely without activating its warning lights. This submission was put to Senior Sergeant Cooper in evidence who agreed that the Policy does not stipulate that a traffic stop must be affected as soon as practicable, and that no aspect of the Policy prevents a police vehicle following another vehicle at speed without activating its warning lights or performing a traffic stop.

12.3 Having regard to Senior Sergeant Cooper's evidence it was submitted that it was unreasonable for the warning lights on Albury not to have been activated prior to the

collision. However, as Senior Sergeant Cooper explained, the decision to activate warning lights and effect a traffic stop is governed by a number of tactical considerations. As general examples, Senior Sergeant Cooper referred to the need for a police officer to ensure that a traffic stop is effected in a safe environment and in circumstances where a police officer is satisfied that he or she is capable of dealing with any occupants of the vehicle being stopped. In relation to the specific events of 4 September 2017 Senior Sergeant Cooper opined that it may not have been appropriate to conduct a traffic stop near the first crest (as was suggested to him in evidence) because the area was not lit by street lighting, because there was no shoulder on the side of the road to safely effect a stop, and because the reaction of the driver of the Courier to the stop was an unknown factor.

12.4 In evidence neither Acting Sergeant Medina nor Senior Constable Porritt made reference to the considerations referred to by Senior Sergeant Cooper. However, Acting Sergeant Medina said that, in not activating the warning lights of Albury 14, he did give consideration to the fact that it was the middle of the night, and that there were no other vehicles or pedestrians nearby who needed to be warned of the fact that two vehicles were travelling over the speed limit along East Street. Senior Constable Porritt gave similar evidence that he considered that it was reasonable for the warning lights on Albury 14 not to have been activated because of the time of night and the absence of other traffic and pedestrians.

12.5 In his recorded interview, Acting Sergeant Medina was asked whether he considered activating the warning devices of Albury 14 at any point during the ascent up East Street so as to effect a traffic stop. He responded in this way: *"I didn't really get a chance to think about it to be honest. I was just trying to catch up the [sic] car and see if it was the same"*.<sup>21</sup> Acting Sergeant Medina explained that he was aware from the broadcast made by Senior Constable Braines that the registration plate of the stolen car was QSM-405. However, Acting Sergeant Medina explained that Albury 14 never got close enough to the Courier for him to read the Courier's registration plate although he said that he saw that the first letter appeared to be "Q". Acting Sergeant Medina went on to explain that he only gave consideration to activating the warning lights once past the second crest and shortly before the Courier lost control. At this point Acting Sergeant Medina explained, *"we could see [the Courier] and we thought it might've been the same car so at that point we were about to hit the lights..."*<sup>22</sup>

12.6 **Conclusion:** Consideration of the application of Clause 8-6-1 of the Policy as it applies to the events of 4 September 2017 raises two questions: should the anticipated traffic stop have been discontinued, and should the warning lights on Albury 14 have been activated prior to the collision? The evidence establishes that the answer to both questions should be no.

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<sup>21</sup> Exhibit 1, Tab 16, Q/A 121.

<sup>22</sup> Exhibit 1, Tab 16, Q/A 89.

12.7 In consideration of the first question, it has already been established on the evidence that no aspect of the manner in which the Courier was being driven caused Acting Sergeant Medina or Senior Constable Porritt to consider that it was unreasonable or unsafe to continue to follow the Courier. It is accepted that Shaun was clearly frightened about the events that were transpiring; so much is clear from his conversation with [REDACTED] and from an objective assessment of the events from the point of view of a young 19 year old man. However, this would not have been known to either Acting Sergeant Medina or Senior Constable Porritt, who had no information at all about the occupant, or occupants, of the Courier. Further it should be remembered that Acting Sergeant Medina had twice previously demonstrated a willingness to discontinue following the Commodore in circumstances where he considered it unsafe to do so. There is no basis to infer that Acting Sergeant Medina would not have followed a similar approach if he had formed a similar view in relation to the circumstances involved in following the Courier. The fact that he did not follow such an approach supports the conclusion that it was not unreasonable for the anticipated traffic stop to be discontinued.

12.8 In consideration of the second question, there is no evidence to contradict the evidence given by Acting Sergeant Medina and Senior Constable Porritt that Albury 14 was sufficiently close to the Courier to allow for either the licence plate of the Courier to be verified, or for the Courier to see the warning lights on Albury 14. This is supported by the fact that it appears that by the time Albury 14 had closed distance to the Courier at the first crest, both vehicles were about to travel through the section of East Street between the first crest and second crest which was undulating and winding, and mostly unlit by street lighting. In such circumstances it could not be said that it was unreasonable for the warning lights on Albury 14 to not have been activated.

12.9 Two final matters should be noted. Firstly, even if the warning lights on Albury had been activated prior to the collision, it is not possible to know what reaction (if any) this might have prompted from Shaun. It may have caused him to slow or pull over the Courier; equally it might have caused him to seek to increase his distance from the police vehicle. Any response which Shaun may have had simply cannot be known. Secondly, it cannot be positively stated said that the non-activation of the warning lights contributed to loss of control of the Courier and the subsequent collision.

### **13. Could assistance have been rendered to Shaun immediately after the collision?**

13.1 Acting Sergeant Medina notified VKG of the collision at 1:25:11am. He explained in evidence that at this time the Courier was not alight. Thirty seconds later Senior Constable Porritt made a second broadcast, whilst still inside Albury 14, notifying VKG that the Courier was alight and that emergency services were required on scene. Acting Sergeant Medina said that he made his broadcast prior to exiting Albury 14. Although he was also carrying a portable radio, Acting Sergeant Medina said that he did not believe that it was possible that he made his broadcast after exiting Albury 14.

13.2 After exiting Acting Sergeant Medina said that his intention was to proceed towards the Courier to see whether any person, or persons, remained inside the vehicle, explaining that he had no knowledge as to its occupants. He said that within a few seconds of walking towards the Courier, and when he was within about five metres of it, he saw the flames at the front of the vehicle engulf the entire cabin. Acting Sergeant Medina explained that he had no time to do anything else.

13.3 Senior Constable Porritt said that he was also “fairly certain” that Acting Sergeant Medina made his broadcast before exiting Albury 14. Senior Constable Porritt was asked in evidence what was occurring in the 30 seconds before he made his broadcast. He said that he recalled that he was listening to VKG for information, and to provide information if it was asked for. After making his broadcast Senior Constable Porritt explained that he exited Albury 14 and started to approach the Courier, with Acting Sergeant Medina ahead of him. Senior Constable Porritt said that by this stage the right hand side of the Courier was already in flames and that his intention was to see whether there was any person or persons in the cabin, or whether any person or persons had been ejected from the Courier. However, Senior Constable Porritt explained that within seconds of approaching the Courier it became engulfed and there was no opportunity to check the cabin.

13.4 **Conclusion:** It can be accepted that Acting Sergeant Medina notified VKG of the collision moments after it had occurred, and after he had brought Albury 14 to a stop. The evidence establishes that Senior Constable Porritt exited Albury 14 about 30 seconds later and that within seconds of this the Courier became engulfed in flames, thereby preventing any assistance being rendered to Shaun. The question therefore is whether either Acting Sergeant Medina or Senior Constable Porritt could have done anything in the critical period of about thirty to forty seconds (the precise time being unknown) before the Courier became engulfed in flames.

13.5 It appears that the risk of the Courier catching alight, and then suddenly becoming engulfed in flames, may not have been fully realised by either Acting Sergeant Medina or Senior Constable Porritt. That said, there is no evidence to suggest that such a realisation was obvious or apparent on the events that either police officer had just witnessed. The evidence establishes that both police officers were acting in accordance with protocol in notifying VKG of the collision and providing information pertaining to it. The evidence also establishes that the police officers called for further assistance upon sighting flames, and that they acted out of concern for the welfare of any occupant of the Courier by seeking to check whether any person remained in the Courier or was in the vicinity of it, after being ejected.

13.6 Even if Acting Sergeant Medina or Senior Constable Porritt had been able to reach the Courier and access the cabin prior to it becoming engulfed in flames, it is most likely that the outcome would not have been altered. Upon the later arrival of emergency services, considerable time was required to extract Shaun from the crush effects of the collision. This indicates that, tragically, Acting Sergeant Medina and Senior Constable Porritt would not have any opportunity to extract Shaun from the Courier or provide any assistance.

#### **14. Findings pursuant to section 81 of the Coroners Act 2009**

14.1 Before turning to the findings that I am required to make, I would like to acknowledge, and express my gratitude to Dr Peggy Dwyer, Counsel Assisting, and her instructing solicitor, Ms Kate Lockery of the Crown Solicitor’s Office. Their assistance during both the preparation for inquest, and during the inquest itself, has been enormous. I also thank and commend Detective Sergeant Trent Swinton for conducting a thorough, detailed and independent investigation into Shaun’s death and for compiling a comprehensive initial brief of evidence. I thank all them for the sensitivity and empathy that they have shown in what has been a particularly distressing matter.

14.2 The findings I make under section 81(1) of the Act are:



**Identity**

The person who died was Shaun Crighton-Cromb.

**Date of death**

Shaun died on 4 September 2017.

**Place of death**

Shaun died at East Albury NSW 2640.

**Cause of death**

The cause of Shaun's death was multiple injuries, smoke inhalation and carbon monoxide toxicity.

**Manner of death**

Shaun died after a vehicle that he was driving, and which was being followed by a police vehicle in the course of a police operation, lost control, left the road, and collided with a tree. The resultant collision caused a fire in the vehicle during which Shaun suffered fatal injuries.

**15. Epilogue**

- 15.1 Shaun's potential, like his family's love for him, was unlimited. Although the former may have been extinguished in tragic and painful circumstances, the latter never will be.
- 15.2 On behalf of the Coroner's Court of NSW and the Assisting team, I offer my deepest heartfelt sympathies, and most respectful condolences to Shaun's parents and siblings, the other members of Shaun's family, and Shaun's many friends, for their most tragic loss.
- 15.3 I close this inquest.

Magistrate Derek Lee  
Deputy State Coroner  
15 April 2019  
Coroner's Court of NSW, Lidcombe