



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Into the death of Terence Gray
<b>File number:</b>	2020/7308
<b>Hearing dates:</b>	15-18 June 2021
<b>Date of findings:</b>	22 October 2021
<b>Place of findings:</b>	Coffs Harbour (via AVL from Lidcombe)
<b>Findings of:</b>	Deputy State Coroner E.Truscott
<b>Catchwords:</b>	Coronial Law - Cause and manner of death - NSW Trains removal of passenger - NSW Police Powers re intoxicated persons.
<b>Representation:</b>	<p><b>Counsel Assisting</b> Mr J. Harris instructed by Mr P. Armstrong of Crown Solicitors Office</p> <p><b>Commissioner of NSW Police</b> Ms A. Spies instructed by Ms E. O'Brien of CD&amp;SIL, Office of General Counsel, NSW Police</p> <p><b>Senior Constable A. Simeonidis</b> <b>Senior Constable W. Amos</b> Mr P Madden instructed by Mr G Willis, solicitor, Sydney</p> <p><b>NSW Trains and Ms Helen Bowling</b> Mr L Brasch instructed by Ms R. Parmegiani of Sparke Helmore Lawyers</p> <p><b>Mr Robert Beadman</b> Mr J Kelly of PGH Solicitors, Grafton</p>

<p><b>Findings:</b></p>	<p><b>Identity:</b> Terence Gray</p> <p><b>Date of Death:</b> 4 January 2020</p> <p><b>Place of Death:</b> Grafton Base Hospital</p> <p><b>Cause of Death:</b> Multiple Injuries</p> <p><b>Manner of Death:</b> Whilst intoxicated Mr Gray accidentally collided with a motor vehicle on the Princess Highway having been required to leave the southbound XPT NSW Train by a Passenger Service Supervisor who was not an authorised officer. Mr Gray had then been taken by NSW Police Officers from Grafton Train Station to a nearby truck-stop at McPhillips Creek to hitchhike home after 9 pm on 3 January 2020.</p>
<p><b>Recommendations</b></p>	<p><b>To the Commissioner, NSW Police Force</b></p> <p>and</p> <p><b>To the Chief Executive Officer, NSW Trains</b></p> <p>Consider developing aligned policies, training or guidance material to ensure that in areas not within the Police Transport Command locations, both NSW Trains and NSW Police Force have a common understanding about the following matters:</p> <ul style="list-style-type: none"> <li>• The powers that NSW Trains staff and NSW Police Force officers can exercise to require a person to leave a train.</li> <li>• The effect of NSW Trains policy as to the circumstances in which such powers will be exercised by NSW Trains staff.</li> <li>• The circumstances in which NSW Trains will request police assistance to remove a person from a train.</li> <li>• The desirability of NSW Trains staff and NSW Police Force Officers discussing the circumstances in which a</li> </ul>

	<p>person has been asked to be removed from a train, including any alternatives that are available, including the passenger remaining or reboarding the train.</p> <ul style="list-style-type: none"><li>• The preferred train stations at which such passengers should be disembarked, in light of the location, the time of day, the availability of services or amenities and the circumstances of the person.</li></ul>
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IN THE CORONERS COURT  
LIDCOMBE  
NSW

Section 81 Coroners Act 2009

## **REASONS FOR DECISION**

### **Introduction**

1. This is an inquest into the death of Terence Gray who died from injuries from being struck by a vehicle. The circumstances surrounding Mr Gray's death are such that an inquest is required under s27 and s23 (1) (a) of the *Coroners Act 2009*.
2. Mr Gray had been travelling south on the evening XPT train from Casino to his home in Macksville on the NSW North Coast. Mr Gray had bought a ticket online which included a seat on a bus from Tweed Heads to Casino and a seat on the train. He had received a SMS text message on his phone which advised him of his seat numbers without identifying which seat was for the train and which seat was for the bus. The text did not indicate whether the ticket had been paid for or not. Mr Gray was on a disability pension so accordingly the fare for the journey was \$2.50 which included both the bus from Tweed Heads and the train from Casino. Mr Gray boarded the bus at 6.30 pm which then connected with the train.
3. The train stopped at Grafton at about 9 pm and Mr Gray left the train though he was still 2 hours away from home. He left the train because shortly prior to it stopping, Mr Gray was advised by a train employee, Mr Beadman, that when the train arrived in Grafton he was required to leave it. The reason Mr Beadman purported to direct Mr Gray to leave the train and whether he had authority to do so were issues in the inquest. The first issue involved Mr Gray's level of intoxication, whether his behaviour was disruptive and whether he had a valid ticket. It was revealed in the inquest that Mr

Beadman lacked the requisite authority to direct Mr Gray to leave the train because despite nearly 40 years of experience Mr Beadman had not completed a required NSW Trains program (incepted in the preceding 2 years) which would have deemed Mr Beadman as an authorised person to give a passenger such a direction.

4. When the train arrived at Grafton two police officers were on the rail platform waiting for Mr Gray. They had attended as a result of NSW Trains staff placing a request to the Grafton police station to have police attend to remove an intoxicated passenger from the XPT. When the police officers arrived, a rail employee apparently told them that someone on the train had been “playing up”. The police officers met Mr Gray as he was stepping off the train and one officer took Mr Gray’s bag from his shoulder. The police directed Mr Gray to a location away from the platform so they could talk.
5. The police searched Mr Gray’s bag in which he had a couple of bottles of beer and some empty beer bottles. Mr Gray told them he kept the bottles to obtain refunds for recycling the glass. The police searched Mr Gray’s wallet and did not find a paper ticket. They did see bottle recycling receipts and a \$20 note. Mr Gray’s phone had run out of battery as had been indicated by Mr Gray when he was on the train. It is unknown whether Mr Gray told the police that had the ticket on his mobile phone. The police contacted intelligence and were advised that Mr Gray did not have any warrants but that he did have a history of self-harm. The police did not think that Mr Gray appeared to be in such a state of mind. Mr Gray told the police he did not know anybody in Grafton and did not intend to stay in Grafton preferring to hitch-hike the 2 hour drive to Macksville.
6. Mr Gray did not reboard the train and the police left him and returned to their car which was parked in the train station carpark. Mr Gray made his way to leave the train station and as the police were driving out of the carpark, they saw Mr Gray speaking to a couple of women. The police stopped their vehicle and asked if Mr Gray was harassing them. The women said that he was not, that he was merely asking for a light for his cigarette. The police then determined to drive Mr Gray out of Grafton. Mr

Gray was placed in the back of the police vehicle but was allowed to keep smoking his cigarette. They chose a location about 6 km south of Grafton called McPhillips Creek Truck Stop which was adjacent to the Pacific Highway which at that time and area was an 100kph undivided road.

7. The police dropped Mr Gray off at the truck stop pointing out to him that there was a toilet block and seating and told him that sufficient vehicles stopped so that he could ask for a lift. At this stage it was about 9.20 pm. The police returned to Grafton and about 40 minutes later heard over the radio that a pedestrian had been struck by a vehicle on the Pacific Highway near the location where they had left Mr Gray.
8. The police attended the accident site and learned that the pedestrian was Mr Gray. They assisted other police and the paramedics and Mr Gray was conveyed to hospital but sadly succumbed to his injuries a few hours later. The police declared a critical incident and an investigator was appointed from a command other than Grafton which is consistent with their Critical Incident Protocol. The two police officers who had attended the train station and dropped Mr Gray off at the truck-stop were deemed "directly involved officers" and were separately interviewed. Their interviews were tendered at the inquest.
9. Though each officer was subpoenaed to attend the inquest for examination one officer was excused from giving evidence because at the time of the inquest he was a voluntary patient in a psychiatric hospital. The other officer was examined as were a number of other witnesses including rail staff and passengers who had been in the same carriage as Mr Gray between Casino and Grafton.

### **Background**

10. Mr Gray was born on 4 October 1965 in Todmorden which is about halfway between Manchester and Leeds in the United Kingdom. He was the eldest son of Wendy and Jim and he had a brother James who is three years younger. The family immigrated to Australia in 1970 and settled in the ocean suburb of Maroubra where Mr Gray enjoyed beach, sun, surfing and

skateboards. Wendy, died in 2015, and his father, James, suffered from dementia. Mr Gray lived with his father for two years prior to moving into a unit at 3/12 Durkin Street, Macksville, in late 2019. Mr Gray had had a long relationship with Sharon Harvey and they had two children Hope and Ethan. They separated in 2000 but in 2009 Mr Gray and Ms Harvey and the children moved to northern NSW but separated again the following year.

11. Mr Gray became involved in permaculture and established the Mullumbimby Community Gardens and then later the Men's Shed. Mr Gray's family attended the inquest and Hope spoke of his love for his family, friends, gardening, sports and the outdoors. She spoke of his struggle with depression and alcohol but also his passion for the environment, his humour and his love for his family. She spoke of the loss that has not only affected their family but also many friends. I extend my sincere condolences to Mr Gray's family and friends.

### **Mr Gray's Mental Health**

12. Mr Gray left school after Year 9 and took up an apprenticeship as a butcher and then a baker, which he did not complete. He did not have regular work during his adult life.
13. Mr Gray had a long history of substance abuse. He commenced smoking cannabis aged 13. He began drinking to excess in his late teens. James believes Mr Gray became an alcoholic from his early 20s, and remained one through to the time of his death.
14. Mr Gray had poor mental health suffering from depression and possibly bipolar disorder. He made several threats or attempts at self-harm. He had multiple involuntary admissions to hospital in the context of threatened self-harm and alcohol abuse.
15. Despite this history, James, Ms Harvey and Hope all believe Mr Gray's threats of self-harm were attention-seeking and not serious. He would usually call an ambulance to say he was having thoughts of self-harm. For this reason, they also consider it likely that his death was an accident, rather than intentional.

16. Some of the significant hospital admissions are as follows.
17. On 11 November 2017, Mr Gray called an ambulance with thoughts of self-harm. He said he had attempted hanging the night prior, but the rope broke. He was taken to hospital. There, he told staff that if he left hospital, he would walk out in front of a car and kill himself.
18. On 27 Dec 2018, Mr Gray called an ambulance and reported he felt suicidal. He again said he had thoughts of jumping under a car or a train. He was admitted to hospital on a voluntary basis for a week. He appeared to be withdrawing from alcohol, but declined treatment. On discharge, he was referred for drug and alcohol counselling, but failed to attend for follow-up.
19. On 22 February 2019, he told a drug and alcohol counsellor in a phone call that he was thinking about hanging himself. An ambulance was dispatched, and he was admitted to hospital voluntarily for 4 days.
20. On 4 March 2019, police were asked to attend a location at Nambucca Heads, where Mr Gray was found lying in the roadway, saying he had been hit by a car. In fact, he had not been hit by a car. He was threatening to harm himself by running into traffic. He had been drinking. He was taken to hospital and admitted voluntarily for 3 days.
21. In April 2019, he was admitted to hospital for alcohol withdrawal.
22. At the end of July and again in early August 2019, he called an ambulance after having thoughts of self-harm after drinking alcohol. He was taken to hospital on both occasions.
23. On 27 November 2019, Mr Gray attended a drug and alcohol counsellor. However, he cancelled an appointment on 11 December 2019 and rescheduled it to 8 January 2020.
24. At the end of 2019, Mr Gray spent some time with Ms Harvey and Hope at Tweed Heads. He was reportedly well during this visit, but after he left, he sent Ms Harvey abusive texts, as he had done in the past.

## **Admission to Coffs Harbour Hospital on 30 December 2019**

25. On 30 December 2019, Mr Gray was back at home in Macksville. He again called an ambulance, saying he was having thoughts of self-harm. He was taken to Coffs Harbour hospital. He was assessed in the emergency department and admitted on an involuntary basis.
26. The following morning, he was reviewed by psychiatric registrar, Dr Phillip Marinucci. Mr Gray said he had relapsed and was depressed over Christmas about not seeing his kids. He was feeling suicidal and spoke of going into the bush and hanging himself. Dr Marinucci assessed that Mr Gray was not at acute risk of suicide, and that his main issue was alcohol misuse. The plan was to admit Mr Gray as a voluntary patient for 4 to 5 days for alcohol withdrawal and review him on 1 January 2020. Mr Gray was transferred to a medical ward, and given diazepam to manage symptoms of withdrawal.
27. The next morning, Mr Gray told nurses he wanted to discharge himself. He said he had a dentist appointment. Dr Marinucci was not on duty, and so the after-hours RMO, Dr Frances Gosewisch, reviewed him. Mr Gray told her he felt well and did not have any thoughts of self-harm. Dr Gosewisch assessed Mr Gray and noted that he did not appear confused or thought-disordered, he was clear and concise, and had no overt signs of withdrawal.
28. Dr Gosewisch discussed the situation with a psychiatric registrar and medical registrar. Mr Gray was not acutely suicidal and was a voluntary patient so he could discharge himself against medical advice. He was given a script for mirtazapine (his regular antidepressant), diazepam (for withdrawal) and warned about the risks. He was advised to contact his GP or attend the hospital if he had symptoms of withdrawal or thoughts of self-harm.
29. After discharge on 31 December 2019, Mr Gray travelled to Tweed Heads to attend his dentist appointment. It is not known where he stayed but it is presumed that he did attend the appointment.

### **Mr Gray's journey from Tweed Heads to Grafton**

30. Helen Barnier, a witness in the inquest, was a passenger on the same bus and in the same train carriage as Mr Gray. She saw Mr Gray as he walked past before he boarded the bus at about 4.40 pm. She thought to herself that he had had a couple of beers as he seemed to be swaying and he wasn't quite steady on his feet but she did not think he was particularly affected by alcohol. She did not observe him whilst on the bus which arrived at Grafton at about 6.30 pm.
31. Ms Barrier and Mr Gray boarded train carriage D at about 7 pm. Mr Gray sat in seat 57 which was the window seat which had apparently been reserved by Ms Barnier. She told him he was in her seat, he asked if she wanted him to move, but she said he could stay there as she was getting off first, at Grafton. Ms Barnier sat next to Mr Gray. She thought that Mr Gray appeared stressed and he told her that his phone battery had died and that his ticket was on the phone.
32. A NSW Trains passenger attendant, Michelle Bowling, working the Casino to Grafton leg, commenced checking passengers' tickets. She had the passenger manifesto which indicates seats and names of passengers. When Ms Bowling came to Seat D57 it was apparent to her that Mr Gray was not sitting in the correct seat. She asked Mr Gray for his ticket and he told her that he had paid for it. Ms Barnier said that Mr Gray told Ms Bowling that the ticket was on his phone but his phone had died. Ms Bowling did not include this in her statement but in her evidence she agreed that Mr Gray had told her that.
33. Ms Bowling said she asked Mr Gray for his name but she could not locate his name in carriage D, she told him he needed to go to the buffet and pay for his ticket and she continued checking carriage D passenger tickets. She then returned to Mr Gray and asked for his identification and when he provided her with his pension card she located his name relevant to a seat in another carriage but the passenger manifest indicated that he had yet to pay the fare.

34. Mr Gray insisted that he had paid for the ticket but Ms Bowling told him that he needed to attend the buffet car and pay and in response he tried to give her money from his pocket but she refused. Ms Barnier said that Mr Gray was talking in a normal voice and he was not aggressive. She said that Mr Gray kept saying he had paid for his ticket and that he wasn't going to pay for it again.
35. Ms Bowling thought that Mr Gray had been drinking; he was speaking slowly but not noticeably slurring. She said that Mr Gray never raised his voice at all and he was polite. She saw that his bag was opened at his feet and that he had some bottles of beer in it. She did not see Mr Gray drinking and she couldn't say if there was anything about his presentation other than his movements were slow and jolty and he spoke slowly to suggest he was intoxicated. She asked Mr Gray to hand her the bottles and Mr Gray refused. Ms Barnier said that he politely but adamantly said "I'm not going to give them to you". Ms Bowling continued checking other passengers' tickets and she later returned to Mr Gray and reminded him he was required to pay for his ticket at the buffet car. He did not respond. In her evidence Ms Bowling agreed that she did not observe any passenger, including Ms Barnier, to be worried about Mr Gray's behaviour. She said that no passenger complained to her about Mr Gray.
36. Mr Beadman had worked for NSW Trains for 42 years, the last eight as a Passenger Services Supervisor ("PPS"). That night, he, like Ms Bowling, was working the Casino to Grafton leg and he would hand over to the new southbound crew at Grafton. He was walking through D carriage when Ms Bowling told him that Mr Gray was without a ticket and that she had noticed alcohol in his bag. Ms Bowling said in her evidence that she probably told Mr Beadman that Mr Gray had offered to pay her for his ticket but that he had declined to do attend the buffet to do so. Ms Bowling continued her other duties and had not further contact with Mr Gray. At some stage Mr Beadman told her that Mr Gray would be disembarking at Grafton.
37. Mr Beadman approached Mr Gray. Ms Barnier left her seat and stood in the aisle so that Mr Gray and Mr Beadman did not speak across her. Mr

Beadman stood in the aisle and faced Mr Gray and told him he needed to buy a ticket and Mr Gray replied that he had bought a ticket and it was on his phone but his phone had died. Ms Barnier said that Mr Gray was again polite and never raised his voice. She said that Mr Beadman raised his voice and she wondered why he would do that.

38. At some stage Mr Beadman asked Ms Barnier if she would like to take another seat and her evidence was that there were a couple of empty seats and so she sat down in the one ahead on the other side of the aisle. She said she did so not because she was “frightened or anything”. She said that she didn’t sit in that seat for long before the train arrived in Grafton.
39. Ms Barnier said she did not hear or see anything relating to Mr Gray after that time until she saw him step off the train and the police take his bag. She saw some fluid leak from the bag. She said that from her observations of Mr Gray his presentation was that of a normal polite man, he was not aggressive to the train staff.
40. Mr Beadman said that over the previous eight years he had on many occasions asked passengers to leave a train because of intoxication or bad behaviour. Mr Beadman accepted that he did not hold a certificate as an authorised officer to direct passengers to leave a train. He had completed online modules but had failed to attend a workshop to become an authorised officer. He said that when he was working in January 2020 he did not understand that he was not an authorised officer. At the time of the inquest he learned of his misunderstanding and appreciated that only a train driver or an authorised officer (which can include a police officer) could direct a passenger to leave a train.
41. It would appear that Mr Beadman had some understanding that, though he held no authority to direct a passenger to leave the train, he could tell the passenger that they were leaving the train and that he would arrange for the police to attend to give effect to the direction. His evidence was that as far as he was aware NSW Trains management was aware of the practice of unauthorised PSS staff determining that a passenger leave a train but arrangements would be made for the police to attend to affect the removal.

42. Mr Beadman later said that he had completed training modules for a testing officer not an authorised officer. The legislation relating to the powers to be exercised by authorised officers came into effect in March 2017. Despite the passing of nearly three years, Mr Beadman though occupying the position of Passenger Services Supervisor had not acquired authorisation to make such a determination.
43. The power to direct a person to leave a train is found in cl. 55 of the *Passenger Transport (General) Regulation 2017*. It relevantly states as follows:
- (1) A driver of a public passenger vehicle or train or an authorised officer may direct a person to leave, or not to enter, a public passenger vehicle or train if the driver or authorised officer is of the opinion that—
- [(a)...]
- (b) the person is otherwise causing, or is likely to cause, inconvenience to other passengers or to the driver of the public passenger vehicle or train (whether because the person is under the influence of alcohol or another drug, or for any other reason), or
- (c) the person is committing an offence under this Regulation in or on the public passenger vehicle or train, or
- [ (d)...]
44. Failing to comply with such a direction is an offence carrying 10 penalty units (\$1100) (cl.55(3)) and can result in the passenger being (physically) removed by an authorised officer (cl 55 (5)). The passenger cannot return to or remain on railway premises for 2 hours following such a direction. (cl55(4))
45. Section 3 of the *Passenger Transport Act 2014* defines an authorised officer as a member of staff of a transport authority appointed by TfNSW or being a person of a class prescribed by the regulations - see s152. Section 3 also defines that a police officer is an authorised officer. Mr Beadman was not an authorised officer. The police officers who attended did not know they were authorised officers and apparently had no

understanding that they had any functions or powers under the Passenger Transport legislation.

46. Mr Beadman said that asking a passenger to leave the train was to be exercised as a last resort. He was then taken to the NSW TrainLink On-board Procedures Manual to which he responded "I've never seen it". Nevertheless he agreed that his understanding was consistent with the policy relevant to "3.6.3 Removal of customers from NSW TrainLink Services which says:

"Customer issues such as antisocial behaviour must be brought to the attention of the passenger services supervisor immediately. The passenger services supervisor will assess the situation. In all instances the PSS should seek to de-escalate the situation to restore order and control. If this de-escalation ceases to be effective, and/or the situation poses a risk to the health and safety of NSW TrainLink staff, customers, or the public, the PDD may decide the passenger is to be removed from the service or moved to another area of the train".

47. Mr Beadman said that "no ticket is probably the least reason to remove a passenger. He was then taken to policy 6.15.1 "Ticketing Irregularities":

Under no circumstances should a customer be:

1. Denied travel by on-board staff when the matter is a fare or ticketing, or concession card issue
2. Removed or asked to leave the train by on-board staff short of their booked destination where the matter is a fares, ticketing or concession card issue. Only police may remove customers from trains.
3. Is denied travel because they cannot produce the appropriate concession card. Under no circumstances should a train be delayed due to a ticket irregularity over a concession card.

48. Counsel Assisting asked Mr Beadman if he understood that the policy stipulated that under no circumstances should a passenger be removed short of their destination due to a fares, ticketing or concession issue. Mr Beadman then replied: "A lot of it bounds around the person's attitude to

the situation. If you confront somebody that hasn't got a ticket, they're not giving you the information that you need that if (he) had a ticket sent to him on his phone that he would have, and then he has to purchase a ticket".

49. Mr Beadman then explained that SMS messaging is sent with a reference number that manifests its evidence (of the existence of a paid ticket), has various notations in it with regards to passengers that need to purchase a ticket. Mr Beadman was then taken to an SMS message downloaded from Mr Gray's mobile phone during the course of the coronial investigation. He said he had never seen such a message in that format. The SMS advised Mr Gray that his seat allocation was D38 and E33. Mr Beadman said that passengers were often confused because the seat allocation doesn't indicate whether it is for the bus or the train. The train manifest had Mr Gray in E33 but the fact that he was in carriage D could be explained by his confusion in that regard.

50. Ultimately Mr Beadman agreed that Mr Gray would not have been asked to leave the train due to the ticketing issue, rather it was his behaviour that was of concern to Mr Beadman. Counsel Assisting took him to further policy that stipulates that rail staff are not to physically remove a customer from a train because that is to be carried out by the police to which Mr Beadman agreed. He also agreed that he was aware of the policy that:

"The police are only to attend in circumstances where a situation poses a risk to the health and safety of the TrainLink staff, customers or general public"<sup>1</sup>.

51. Mr Beadman said that Ms Bowling told him a number of things including: Mr Gray was sitting in the wrong seat, that she could not ascertain his name, he couldn't produce a ticket so she had advised him to attend the buffet to purchase one, Mr Gray was in possession of alcohol and that he appeared to be under the influence of alcohol or drugs. Mr Beadman said

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<sup>1</sup> Information Bulletin Issue no. 1035/2016

it was quite obvious that there were empty and full stubbies in plain view as Mr Gray's bag was opened.

52. Mr Beadman agreed that he may be mistaken that Ms Bowling had told him that Mr Gray was under the influence or intoxicated and that she may have just told him that Mr Gray was in possession of alcohol. He also accepted he was possibly mistaken that Ms Bowling had told him that Mr Gray had refused to give his name as she said he had given her his pension card. He did recollect being aware that the person whose seat Mr Gray occupied was only going to Grafton and that she could relocate to the seat opposite. He agreed that he may have learned that because Ms Barnier was standing (rather than being told that by Ms Bowling).
53. Mr Beadman said that he told Mr Gray that he didn't have a ticket and he had been given time to buy one, the buffet was about to close and that he needed to go there to buy a ticket. He said Mr Gray began mumbling and swearing under his breath. He thought he heard Mr Gray say in response to being told to buy a ticket words similar to "I font give a fucking rats arse I'm going to Macksville".
54. Mr Beadman left to complete other duties and came back to carriage D and asked Mr Gray "How did you go with that ticket?" and Mr Gray gave a response "that was like a bit of a tirade of sort of mumbling and sort of swearing under his breath". Mr Beadman then attended the buffet and was informed that Mr Gray had not attended to buy a ticket so he returned to Mr Gray and told him "You are under the influence of alcohol. You've got stubbies in your bag and some full ones there. You have made no effort to hand them over (to Ms Bowling) and I see no alternative that you may be asked to leave the train at Grafton" to which he says Mr Gray "told me to "Get the fucking cops" or something along those lines".
55. Mr Beadman agreed with Counsel Assisting the fact that Mr Gray could not establish he had paid for the seat identified in the Passenger Manifest (or SMS text he was shown in the inquest) and he had refused to attend the buffet cart to do so was not an issue sufficient to require him to leave

the train. Rather it was Mr Gray's behaviour that was of concern to Mr Beadman.

56. Mr Beadman was asked whether he gave a direction to Mr Gray to leave the train. In his evidence before the inquest he said he did not yet in his statement to the police which he made the day following the incident in which he said that he told Mr Gray "I am giving you a direction to leave the train at Grafton. If you don't leave the train, you may get a ticket. He (Mr Gray) then said "I don't care. Get the cops". In his evidence Mr Beadman denied giving Mr Gray this direction or indeed telling him that he was getting off the train in Grafton – suggesting that the police officer to whom he made the statement led him into what to say, though he conceded in his evidence that prior to speaking to Mr Gray he had already told the train driver to arrange for the police to attend Grafton train station.
57. Mr Beadman did not resile from his evidence that Mr Gray spoke with offensive language in spite of having heard Ms Barnier's evidence that she did not hear it. He conceded such words would be a regular occurrence for him to have heard as a passenger supervisor. He agreed that the first step would be to de-escalate the situation. When he was asked what he did to de-escalate he replied "Well, there is really, it was only my presence that created his antisocial behaviour. So by spending as little time as possible, I could already ascertain he was under the influence of alcohol regardless of what Helen Barnier said and it was quite obvious when he stepped off the train that like I said he wasn't moving...he made no effort to hide the empty bottles of alcohol. You've consumed four stubbies of alcohol and another two full ones. He wasn't complying with any requests that I made and they were reasonable requests..."
58. When asked by Counsel Assisting whether he agreed he did not take any steps to warn Mr Gray about his behaviour or move him to another seat at the back of the carriage Mr Beadman replied "He was non-coherent to an instruction in any manner...he was settled in he wasn't going anywhere he wasn't concerned about any ticket or alcohol issues. He just wanted me to fuck off...he had flushed red face, he wouldn't look at me...I may as well

have been talking to the glass window or curtain beside him. All I was was an inconvenience to him.” He also agreed that he had not asked Mr Gray to give him any of the bottles.

59. Mr Beadman was asked whether he formed a view that Mr Gray was a risk to health and safety of staff, passengers or the general public. He said yes, that he had been drinking and he had no – he certainly didn’t – he became agitated at anything that I tried to explain to him regarding his – I said to him “You’ve been drinking. You’ve had a considerable amount of alcohol. Is that all you’ve got in your bag? How much have you consumed?” and basically they were all questions of reasonable questions to ask a person, so”. He agreed that at no stage did he ask Mr Gray to hand him the bottles and at no stage had he seen him drinking alcohol. He agreed that no staff member or passenger told him that Mr Gray was drinking alcohol.
60. He agreed that Mr Gray was an inconvenience to him because he was not responding to him. Mr Beadman said that he didn’t give regard to the fact there wasn’t another train south until the next morning or that because Mr Gray had a pension card it was apparent that he had no money nor any apparent association with Grafton. Mr Beadman was unable to suggest anything he could have done to de-escalate the situation. He had no further dealings with Mr Beadman and was four carriages away when the train stopped and Mr Gray exited the train. He did approach the police when he saw them speaking to Mr Gray away from the platform but they apparently indicated to him that they did not need to speak with him as it appeared to him to be “just a move on situation”.
61. Counsel Assisting asked Mr Beadman whether he had considered that Mr Gray be allowed to get back on the train and he replied no because he had already told the supervisor of the replacement crew and they had seen the police there. He said that it wasn’t possible for Mr Gray to get back on the train because “He wasn’t in a fit state to travel”. He said that from his observations of Mr Gray after disembarking the train, Mr Gray was unsteady on his feet .

62. Though Mr Beadman was of the view that Mr Gray considered him an inconvenience who was getting off at Grafton, he did not give any consideration to let Mr Gray be and stay on the train. When he was asked why he replied "Because he was going to cause inconvenience to the other staff joining and other passengers and he's already showed signs of it". That answer suggests that Mr Beadman had given it consideration and determined against it.
63. Mr Beadman was examined by counsel for NSW Trains, Mr Brasch, and contradicted himself as to his knowledge of whether he had authority to direct a passenger to leave a train or whether he purported to direct or request Mr Gray to leave. Given that upon learning that Mr Gray had not attended the buffet to pay his \$2.50 fare, Mr Beadman instantly told the train driver to call the police it is difficult to accept Mr Beadman had determined to evict Mr Gray from the train for anything other than refusing to comply with his request to purchase the ticket and had refused to do so in an insignificantly recalcitrant manner. Mr Beadman's answers to Mr Brasch as to why he did not attend the training workshop to become an authorised officer to exercise duties he was previously authorised to do suggested some personal recalcitrance relating to his obligations and preferred to discharge authority he purported to hold rather than actually held. On this occasion he did so too quickly and in an intolerant and arbitrary fashion.
64. Further, I reject Mr Beadman's attempt in the inquest to resile from having purported to direct Mr Gray to leave the train. He had done so by his communication to the train driver which he conveyed to Mr Gray. Mr Beadman knew that the police were called despite there having been no basis for Mr Beadman to conclude that Mr Gray "was a risk to health and safety of staff, passengers or the general public" thus invoking the NSW Trains policy enabling an authorised officer to direct Mr Gray to leave the train.

## **The Police Attendance and their Powers to Direct and Remove Mr Gray**

65. Constable Simeonidis was excused from attending the inquest but his interview to police was tendered as evidence and Senior Constable Amos did attend and answered questions relating to police decision making and actions.
66. As at 3 January 2020, Senior Constable William Amos had been a police officer for over seven years and had been serving at Grafton Police Station some 18 months since August 2018. On the 3 January he was on duty at Grafton Police Station carrying out duties as custody manager. He was experienced with detaining intoxicated people who were under arrest for offences as well as detaining people due to the serious level of their intoxication. Under ss 206/205 *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) a police officer can only detain a person due to intoxication if the person is so seriously affected by alcohol that they are behaving in a disorderly manner or likely to cause injury to themselves or someone else or damage to property or that the intoxicated person is in need of physical protection because they intoxicated.
67. Separate to that power, the police also have a power under s 198 LEPRA to require an intoxicated person to move on. The exercise of the direction to move along requires a police officer to determine that the speech, balance, co-ordination or behaviour is a result of consuming alcohol and that such conduct is disorderly or likely to cause injury to themselves, others or property. A move along direction, if given, requires that a person not be at a certain location for a period of 6 hours and it requires the police to tell the police that if they fail to comply with such a direction they are committing an offence.
68. Senior Constable Amos said that during the time he spoke with Mr Gray at the train station he did not consider that Mr Gray fell within either of those categories to give the police cause to issue a direction to move along under s 198 or to determine to detain him under ss 206/205.

69. Senior Constable Amos attended the Grafton Train Station at the request of Constable Simeonidis because another constable who was working as car crew with Constable Simeonidis was busy at the police station. The message broadcast to the police about Mr Gray on what is known as the CAD system said :

“There is a drunk male without a ticket being abusive to staff on the inbound XPT train to Grafton. Staff request police assist to remove the POI [person of interest]. The train is due to arrive at 8.55 pm. The POI is located in car D seat 57”.

70. Senior Constable Amos was aware of this message as he read in in the police vehicle as they drove to the train station. Though Senior Constable Amos had attended other train stations in Sydney, this was the first time he had attended Grafton Train Station to deal with a passenger staff wished removed from a train.

71. Senior Constable Amos said that the usual process he would undertake would be to speak to a NSW Traina staff member to give him information and then speak to the passenger to get their side of the story and “make a decision based on that”. He said his options depended on the circumstances, whether offences are committed, who is intoxicated or violent or mentally ill, there would be different steps depending on the precise circumstances. He said that prior to the arrival of the train he spoke with a male staff member, whose name he didn’t know, who advised him that there was a gentleman on the train who hadn’t bought a ticket and he was “carrying on”. Senior Constable Amos said he asked the staff member what it was that the passenger had actually done the staff member said “I don’t know, he’s just carrying on”.

72. Senior Constable Amos was not aware of the regulations relevant to NSW Train staff in directing people to leave trains nor was he aware of what impact that had on whether people were allowed to reboard trains after they had been directed to leave.

73. When the train arrived the police officers were standing on the platform and passengers disembarked, they saw Mr Gray in the queue of passengers at the door waiting to get off. One passenger told him "It's the guy in the cowboy hat" and Senior Constable Amos saw Mr Gray about to step off the train. As he did so, the police officers approached him which is captured by CCTV footage. Senior Constable Amos said he introduced himself to Mr Gray and asked him to hop off the train which he did and was doing anyway. Constable Simeonidis took Mr Gray's bag and they spoke with him momentarily before they walked off the platform.
74. Senior Constable Amos said that Mr Gray's co-ordination seemed normal. He said that the police did not have any power to search Mr Gray so he asked Mr Gray to give his consent by asking "Do you mind if we look in your bag mate?" which Mr Gray apparently said "Yeah no worries". Neither police officer had worn a Body Worn Camera or had taken contemporaneous notes to record their dealings or conversations with Mr Gray. In his interview with the police, Senior Constable Amos did not indicate that he had sought or obtained Mr Gray's consent to look in the bag, when he said he had searched it.
75. Senior Constable Amos agreed that Constable Simeonidis had taken the bag from Mr Gray as he stepped off the train which is seen in the CCTV footage. After Counsel Assisting referred to the Senior Constable's evidence that he heard clinking he asked what it was the police were looking for and Senior Constable Amos replied "Well, I was worried that there was broken glass or something that might – he might have access to that could harm me or you know it was just an officer's safety point of view". Given that Constable Simeonidis had taken Mr Gray's bag as he began to take a step down from the train at no stage was Mr Gray thereafter in possession of the items for the police to consider that it was necessary for officer safety to search his bag. Further, Mr Gray did not ever display anything other than a co-operative demeanour. Accordingly, I take Senior Constable Amos's explanation as to why the bag was searched as being evidence given in hindsight to justify having done so. In his evidence Senior Officer Amos was clear to identify that he did not

have powers under s 21 to search the bag and Mr Gray was not under arrest. Having said that, I accept that Mr Gray did not indicate any opposition to the police searching his bag and he provided his wallet to them when requested.

76. Constable Amos indicated that during the walk from the platform down the ramp he observed Mr Gray to not to have any problems with balance in that he did not need to hold onto the handrail for support. Senior Constable Amos said “He wasn’t – he didn’t appear to be – his speech, balance, coordination were affected at all”...He was reminded of the train staff report that Mr Gray was drunk and Senior Constable Amos replied “Not drunk but yes I did notice a smell of alcohol coming from him and I did notice that his eyes were glazed. That was the only thing I noticed”. He said that there was not anything unusual about Mr Gray’s speech. As far as he was aware Mr Gray was talking normally. In contrast to that evidence in his interview the following day Senior Constable Amos had described that he had formed the opinion that Mr Gray was moderately intoxicated.
77. Despite saying in his interview the following day that he could not recall precisely how many bottles were in Mr Gray’s bag, Senior Constable had agreed that there were about six. He gave evidence that there were 4 empty and 2 unopened bottles. He said in his evidence that he asked Mr Gray how much he had consumed and Mr Gray responded to the effect that he had not consumed the four but that the bottles were for recycling. Senior Constable Amos located recycling refund receipts in Mr Gray’s wallet which corroborated such a practice.
78. Senior Constable Amos said that Mr Gray had told him that he had purchased a train ticket but did not mention that the ticket was on his phone or that his phone was uncharged. Senior Constable Amos said he was looking for some kind of proof that Mr Gray had bought a ticket and that there was no wallet in the bag so he asked Mr Gray for his wallet. Mr Gray took out it of his pocket and gave it to him. Senior Constable

Amos said he looked through Mr Gray's wallet to look for a ticket and some form of identification.

79. After finding Mr Gray's identification in his wallet, Senior Constable Amos gave it to Constable Simeonidis who made inquiries over the police radio about Mr Gray such as whether there were any outstanding warrants because if there had been they would have taken Mr Gray back to the Grafton Police Station. He said that Constable Simeonidis did not bring anything to his attention though he did not specifically inquire of what the request for information resulted in. Evidence contained in Constable Simeonidis' interview indicated that he had received some information that Mr Gray had a history of attempted self-harm. According to his interview Constable Simeonidis didn't think Mr Gray was in that frame of mind. According to Senior Constable Amos, Constable Simeonidis did not tell him about any information he had learned.
80. Senior Constable Amos said that Mr Gray told him he was headed for Macksville and Senior Constable Amos told him "Unfortunately mate you're not welcome, the staff are - you know you're not welcome back on the train, however you can wait here and catch the next train but it is not until tomorrow morning. You're welcome to stay inside the train station area". None of this conversation was relayed by Senior Constable Amos in his interview the following day about his contact with Mr Gray but he said in the inquest that a railway staff member had told him that Mr Gray could stay at the station. This must have been before Mr Gray disembarked because there is no evidence suggesting any liaison between the police and the railway staff after that time.
81. In any event, it seems at odds that NSW Trains having caused Mr Gray to leave the train would allow him to remain on the premises given the prohibition of 2 hours in cl 55 of the *Passenger Transport (General Regulation) 2017* referred to above.
82. Senior Constable Amos said that Mr Gray told him that he had to get back to Macksville that night and he asked if the police could give him a lift. Senior Constable Amos said "I'm sorry mate. Its two hours away, you

know, we can't give you a lift that far....you'll have to get your own way there...you're welcome to stay here and wait for the next train. Obviously so long as you're not harassing people". Given that according to Senior Constable Amos's evidence he considered Mr Gray 100% polite, not showing any particular signs of intoxication and hadn't learned what "passenger carrying on" had meant, it is unclear why Senior Constable Amos, at that stage of the evening would be concerned that Mr Gray might harass people. In any event, his evidence is that Mr Gray laughed and said in jest "The only way you, you guys will give us a lift is if I threaten to kill myself".

83. Senior Constable Amos said that despite his belief that Mr Gray was joking he asked him directly if he had thoughts of self-harm and Mr Gray had replied "No". He then asked Mr Gray how he would try if he did attempt self-harm and Mr Gray replied "I don't know, with a rope". Senior Constable Amos said that he had seen that there was no rope in Mr Gray's bag. Despite that conversation he did not tell Constable Simeonidis about Mr Gray's response nor did he ask if there were any warnings on the police information system that Constable Simeonidis was inquiring into, nor could he give an explanation as to why he did not ask though he explained that it was due to the NSW Police Force mental health training that he had undertaken that he had thought to ask Mr Gray the means by which he might self-harm. Senior Constable Amos explained that based on Mr Gray's answers and his own observations of Mr Gray he held no concerns about Mr Gray's mental health.

84. Senior Constable Amos said that the train started to leave at the point he had told Mr Gray that the police could not take him to Macksville. Mr Gray said that he would hitch-hike so Senior Constable Amos gave him directions on how to get to the Pacific Highway. Senior Constable Amos was asked questions about whether he considered that Mr Gray could re-board the train before it left. He agreed that his observations of Mr Gray as being polite, co-operative and not particularly drunk was in contrast to what had been conveyed on the police computer system, but that he did not talk to any train staff about Mr Gray continuing his journey because he

had already been told that Mr Gray wasn't welcome on the train. Senior Constable Amos thought that the issue with Mr Gray was "Primarily I thought the main concern was that he didn't have a ticket...he had the money in his wallet to pay for a ticket, he was able to go and buy one but he wasn't welcome to be on that particular train".

85. Counsel Assisting asked Senior Constable Amos if, on reflection, the police could have talked to the train staff about Mr Gray being able to reboard the train. Senior Constable Amos replied "I could have but my understanding was it's their business if they don't want him on the train. There's nothing I can say to prevent that, you know what I mean. They'll make the decision. It's got nothing to do with me".
86. Later he was asked to comment on Mr Beadman's evidence that Mr Gray was so intoxicated he was "not fit to travel" and Senior Constable Amos replied "Yeah, it's often my experience the train staff exaggerate circumstances in order to get police to attend and I believed that that's what was occurring. My assessment was that he was at most moderately intoxicated only". He was then asked "was there any reason why you didn't bring an independent mind to the task and broker his return to the train?" to which he replied "As I said I thought that them being in charge of that particular business in a sense that if they were refusing him entry onto the train there's nothing I could do or say about that. That's their decision and it has nothing to do with me. I certainly have no power to tell them to let him on the train...so I didn't think that was an option".
87. Though Mr Gray disembarked the train on his own accord in that the police did not have to physically remove him, he only did so due to the fact that he had been told to do so by Mr Beadman who also told him the police had been called. Mr Gray no doubt saw the police standing on the platform as the train came to a stop. That the police officers did not understand that they had authority and were effectively exercising that authority under the Passenger Transport legislation is of concern particularly in light of the fact they did not share Mr Beadman's opinion that Mr Gray was not fit to travel. On that assessment it may be due to his intoxication Mr Gray was

not fit to leave his seat and attend the buffet to pay for one. It is difficult not to think that the only reason Mr Gray was required to leave the train was due to his recalcitrance in not leaving his seat to buy a \$2.50 ticket and an irrelevant clash of personality with Mr Beadman's. That the police did not understand their role in requiring Mr Gray to leave the train and station (for 2 hours at least) was unfortunate as if they had it may have been an opportunity to return Mr Gray to the train given that there was no other train until the next morning.

### **The Police Decision to Take and Leave Mr Gray 6 km out of Grafton near the Pacific Highway**

88. After the train had left and the police had determined that there was no basis for their continued engagement with Mr Gray – he had no warrants and had apparently committed no offences and was not so intoxicated that they would give a direction to “move along” or detain him for his own or others protection – the police walked to their car in the carpark.
89. Mr Gray was still near the bus bay sitting on a brick wall near a garden bed. Ms Bella Miller was nearby and smoking a cigarette. Ms Miller had been in the same carriage as Mr Gray and disembarked in Grafton with her sister and son. They were waiting for transport near the garden bed. Ms Miller had seen the police talking to Mr Gray and searching his bag. She thought it was for about 10 minutes and noted that Mr Gray was quiet. Mr Gray asked Ms Miller if he could buy a cigarette. She asked him where he was going to and he said Macksville. She said that his bag was on the other side of the low wall in the garden and he leant over to get it and overbalanced but the wall stopped him from falling over completely. After putting his hands out to balance himself he picked up his bag and walked over to her. She noticed that he was swaying a bit. She gave him a cigarette and another for the road. She sympathised with him as she was aware that he had “kind of got in the situation where he was drinking and that’s where it got him to be kicked off the train...we were just trying to help him kind of find somewhere to go because he was just in the middle of nowhere ... there’s no trains coming until the next morning...”. Ms Miller

said that she thought he was intoxicated and that he didn't appreciate how far Macksville was. She didn't notice anything from his speech because he didn't speak much. She thought his intoxication was "a little bit over medium... he wasn't functional completely". She had said in her statement that she thought that he was well effected (one below seriously affected). In her evidence she agreed with that assessment and said he wasn't aggressive, just cruisy and quiet.

90. Ms Miller said that the police drove past them and stopped their car and asked her "Is he bothering you?" to which she replied "No, he's all good boys". The police then told Mr Gray "move on move on" and Ms Miller gave evidence that "I said "Why? Like he can't move on. Where is he going to go?" and that's when they offered to take him to where they dropped him off". She said that she had told the police that Mr Gray was not bothering them that he was fine. She said she was trying to help him because she knew he was stranded. In her statement she had said that Mr Gray "was drunk, though not wasted"...and..."I believe he was a risk to himself and the police should have known that too". In her evidence in Court, she said she stood by that comment 100%. She explained her point of view that had Mr Gray was unstable as evidence when he fell in the garden and that showed he could have fallen anywhere and that people who get kicked off the train for intoxication usually go into the (police) cell to sober up. She said that had Mr Gray been aggressive rather than nice and quiet he may have been arrested and sobered up in a police cell.
91. It appears that police in Grafton have from time to time regularly taken passengers removed from trains to other locations. Sergeant Wiles gave evidence that there used to be a house where a passenger in such a situation could stay as the occupants would accommodate them but that house no longer existed. Sergeant Wiles said that on occasion he had taken people to McDonalds for a coffee or to the BP Tornik service station which was on the Pacific Highway before the diversion freeway was operational (after January 2020). Sergeant Wiles said that when officers Simeonidis and Amos returned to the Grafton Police Station they told him they had taken Mr Gray out to McPhillips and he had remarked that BP

Tornik would have been better. In his evidence he said that was due to the distance McPhillips was from Grafton and as a supervisor he seeks to mitigate risks to his car crews and prefers them to stay closer to Grafton.

92. Senior Constable Amos was asked questions about why he and Constable Simeonidis decided to drive Mr Gray out of town. Senior Constable Amos said that after Ms Miller told her that Mr Gray was not harassing her she had a look on her face that suggested that or gave him the impression that he was annoying her. Having heard from Ms Miller any expression of being annoyed was probably due to the police interference rather than Mr Gray. In any event Senior Constable Amos left the police vehicle and said to Mr Gray "You're not going to be welcome here if you're going to harass people". He then asked Mr Gray if there was anywhere in Grafton the police could take him to and Mr Gray said "no". Senior Constable Amos then determined to offer Mr Gray a lift to get him away from the train station and out of Grafton to give Mr Gray a head start on his journey. Senior Constable Amos said he did not exercise s 196 LEPRA powers because he assumed that Mr Gray "would leave shortly but he didn't want him to harass other people that may have been waiting for a lift to try and get them to give him a lift to Macksville." Mr Gray agreed and he sat in the cage of the police truck but because he was well-behaved and polite Senior Constable Amos let him continue smoking his cigarette. The vehicle drove south and Senior Constable Amos and Constable Simeonidis talked about where they would drop him off. A motel was on the way but Senior Constable Amos determined that was unsuitable because Mr Gray might harass people coming and going for a lift. Ultimately he decided McPhillips because he thought Mr Gray could ask a truck driver rather than a car driver for a lift to Macksville. He did not notify police radio that they had taken Mr Gray from the train station or that they had left him at McPhillips truck stop. Later they told Sergeant Wiles that they had done so and he had told them that BP Tornik would have been a better place. Senior Constable Amos said that he had told Sergeant Wiles this over a mobile phone whereas Sergeant Wiles thought it was in person

at the station because they had a conversation about where BP Tornik was.

93. McPhillips Creek truck-stop is set back from the Pacific Highway a little. Senior Constable Amos did not consider that though Mr Gray was moderately intoxicated he would be at risk near a road with 100 km speed zone because he assumed that Mr Gray would wait at the truck stop rather than go onto the Pacific Highway. The time that that police left Mr Gray was 9.23 pm.
94. At about 10 pm, Ms Laura Blacklock was travelling south from Yamba with her daughter and two grandsons. They had stopped in Grafton for dinner and drove past McPhillips which she recalled seeing the signs but remarked that it was dark and there were no street lights there. She was driving at about 80 or 90 km an hour rather than at the speed limit of 100 km because she doesn't like driving fast at night due to the possibility of kangaroos. She was driving up a rise in the left hand lane with an overtaking lane to the right. Suddenly she said she saw a flash of white coming from the middle of the road on the driver's side. She said he was right in front of her headlight, less than a metre away. It was as if Mr Gray had come out of nowhere. He hit the windscreen of her car. Ms Blacklock applied the brakes immediately and pulled over. Other vehicles also stopped, called emergency services and gave assistance to Mr Gray. When the radio message was heard at Grafton Police Station officers Simeonidis and Amos feared that the pedestrian was Mr Gray and shortly learned that it was.
95. Police Superintendent Cameron Lindsay, prepared two reports for the Inquest, the first dated 13 May 2021 and the second dated 4 June 2021. Superintendent Lindsay was the senior critical incident investigator assisted by Detective Sergeant Mackie. In his first report he indicated that Senior Constable Amos and Simeonidis could have dealt with Mr Gray as an intoxicated person but he did not say that they should have due to the level of Mr Gray's intoxication. He said the police officers, in taking Mr Gray from the train station to McPhillips truck stop, had a duty of care

towards him – such duty arising once they had him in the truck as he was in their custody. He thought that with the benefit of hindsight they could have given him a move along direction at the train station or found a place where he could have been cared for. In relation to the police removing Mr Gray from the train station at Grafton where he might harass other people, Superintendent Lindsay says “That gives rise to consideration where...you would treat Mr Gray as an intoxicated person. That if he was to the level that he was harassing patrons...and a ...danger to himself or other persons”.

96. Superintendent Lindsay agreed with Counsel Assisting that there would be benefit in police actually communicating with train staff about what it is that they are attending to and the nature of the incident. He also agreed with the proposition that general duties officers would benefit from some training or information about the sorts of powers that can be exercised by train staff and the circumstances in which a person can be required to leave a train. Given that the police are being requested by NSW Trains staff to exercise those powers themselves it would be of significant benefit.
97. Superintendent Lindsay agreed that Constable Simeonidis, having ascertained that Mr Gray was in a positive frame of mind, had little cause to interrogate the police radio operator for more information about Mr Gray’s history of self-harm incidents. However, he also agreed that had Constable Simeonidis done so he would have learned that most of the incidents involved traffic and would have unlikely made the decision to drop Mr Gray to hitchhike on a freeway.
98. Superintendent Lindsay said that in regional areas police regularly assist members of the public to get to safe places and in dealing with intoxicated persons to get them to places where they will receive more care. However, he was not of the view that the McPhillips Creek truck stop fell within the category of such a place. However, Mr Gray had indicated his intent to hitch-hike and the police officers thought he would be in a better position to obtain relief from truck drivers than other people.

## **The Level of Mr Gray's Intoxication**

99. Mr Gray was conveyed to Grafton Base Hospital and blood samples were taken. One sample was later tested which indicated that at about midnight he had a blood alcohol content of 0.187 gm/100 ml. He also had a therapeutic level of diazepam (Valium) and mirtazapine, an anti-depressant. Dr Naren Gunja, a forensic toxicologist, gave evidence in the inquest further to a report which was tendered. He surmised that given Mr Gray's chronic use of alcohol he likely metabolised alcohol at a higher rate than the average person. He was asked to estimate Mr Gray's likely alcohol level at the time the police were speaking to him (on the basis that he did not consume any alcohol between that time and the time of the accident). Dr Gunja suggested a level of about 0.22 to 0.24 which even taking into account Mr Gray's chronic use of alcohol is a significant reading. In his report Dr Gunja describes a reading of 0.18-0.24% thus:

“When blood alcohol content is in this range, the effect on an individual would be significant psychomotor impairment including staggering gait, reduced situational awareness and responsiveness to surroundings, visual impairment and confused mentation”.

100. Dr Gunja said that Mr Gray would have appeared intoxicated. Dr Gunja said that he sees people in that condition a lot in hospitals and he said that would cause you to say to that person “You are not safe to go home. You should stay overnight”. Dr Gunja thought that if Mr Gray had consumed two more drinks after he spoke with police his behaviour would not have been noticeably different. He thought that to be at about 0.2 when he spoke with police Mr Gray had likely consumed eight standard drinks. As for when Mr Gray had taken the diazepam, Dr Gunja was unable to suggest a time other than the last 12 hours. I note that Ms Barnier commented that when she observed Mr Gray after he sat in her seat he was noticeably stressed. Dr Gunja said that the diazepam would have added to the sedative effect of alcohol and it would have made him even more drowsy and slurred speech than what the alcohol would have done. Ms Bowling's evidence that she observed that Mr Gray's speech was

noticeably slow. Ms Miller said that she thought that Mr Gray when quiet when the police were speaking to him. That Mr Beadman thought Mr Gray was not fit to travel is hard to categorise given that Mr Beadman's observations were likely adversely affected by his own reaction to Mr Gray's apparent recalcitrance refusing to go to the buffet car to get a ticket. If Mr Beadman exaggerated Mr Gray's intoxication, Senior Constable Amos and Constable Simeonidis may in hindsight have underestimated it.

101. Mr Gray may have been in a fit state to remain sitting on the train but he was not in fit state to be on a highway at night time to hitch-hike. There is no evidence at all that his collision with Ms Blacklock's vehicle was an act of self-harm. Rather it is likely that he was in the middle of the two lanes heading southbound on the highway because he was disoriented in where he was and at what speed and distance vehicles were from him. That he had left the truck-stop to try his luck on the highway may well have followed a driver refusing to give a drunken man a lift anywhere or that there were insufficient vehicles stopping at that location.

### **NSW Trains Removal of Passengers Policy and Training of Authorised Officers**

102. Mr Dale Merrick, the acting chief operating officer for NSW Trains gave evidence in the inquest. NSW Trains has business obligations under Work Health and Safety Act to ensure that as far as reasonably practicable, the health and safety of both staff and passengers is protected. Those obligations underpin most, if not all, of the NSW Trains' policies.
103. Mr Merrick confirmed that Mr Beadman did not hold accreditation as an authorised officer empowered to direct a passenger to leave a train. Though he had completed an online session he had not participated in a two-day face to face course which included undertaking role play exercises. The third and final element of the accreditation process involves competence and assurance of the accreditation. There were also refresher courses. A significant application of the policy involved de-escalation of a situation so that a rail staff member would not be involved

in the physical removal of a passenger but that the police would affect such.

104. Mr Merrick agreed with Counsel Assisting's description of the training regime to skill authorised officers to discharge their function as a quite sophisticated regime. Mr Merrick said that the train driver and the Passenger Service Supervisor were the two roles targeted for accreditation training. NSW Trains was walking towards having an authorised officer (other than the train driver) working on every service which involved 9,000 regional and 30,000-odd intercity train services a year.
105. Mr Merrick agreed that a person who hadn't undergone the accreditation training, such as Mr Beadman, were at a disadvantage in that they are not adequately trained to actually make the decision to remove someone from a train, for example what subjective factors relevant to the passengers situation should be taken into account including whether it was day or night time and what condition they were in.
106. Mr Merrick agreed that train staff should bring conduct of a passenger to the Passenger Services Supervisor's attention whose role is to then try to de-escalate the situation. If de-escalation was not possible the next consideration is whether there is a risk to the health and safety of other passengers, public or staff. Removal should be as last resort.
107. Mr Merrick appreciated that where only the train driver was an authorised officer any direction to leave a train which is needed to be carried out face to face provides operational difficulties. As far as the procedures ends, it is when the police are notified because it is only the police who are to affect a physical removal of a passenger (which mitigates the risk to the train staff and other passengers).
108. Mr Merrick thought that Mr Gray would not have had seats allocated to him unless he had paid for his ticket and indeed he would not have been able to be on the coach (bus) unless he had established payment.

109. Mr Merrick thought there would be merit in there being communication between the rail staff member and the attending police about what the incident involved and what the options are for the passenger. This would include whether the passenger should continue on their journey to their destination given the location time of day and incident.

## **Submissions regarding Findings and Recommendations**

### **Findings in relation to NSW Trains**

110. Mr Beadman did not comply with NSW Trains training and policy. He was not authorised to direct Mr Gray to leave the train. He did not attempt to de-escalate the situation with Mr Gray rather he seemed to escalate it. Mr Gray likely did use words such as “I don’t give a fucken rat’s arse” but given the circumstances of those words, they, with Mr Gray’s conduct, were insufficient to determine that he was a potential risk to the health and safety of passengers staff or public. Mr Beadman did not give sufficient, if any, proper consideration of whether Mr Gray presented an unacceptable risk to the health or safety of passengers staff or public. He did not give any regard to the NSW Train policy of removing Mr Gray as a last resort nor did he consider any other options in relation to Mr Gray’s travel. Mr Beadman did not provide any warning to Mr Gray that he could be removed if he failed to obtain a ticket. Mr Beadman was aware that removal for a ticketing issue was contrary to NSW Trains policy.
111. Mr Gray was not drinking alcohol on the train and was not committing any offence. The issue of his ticketing was insufficient in itself to trigger his removal from the train. Indeed the evidence is insufficient to show that Mr Gray either did not have a valid ticket and rather it suggests that he had good reason to believe that he had in fact paid for his \$2.50 fare given he had been given seat numbers for both the coach and the train. Mr Beadman lacked sufficient training to discharge an important function of a Passenger Services Supervisor and due to that lack of training was at a disadvantage to appropriately respond to Mr Gray’s behaviour and circumstances and comply with NSW Train policy. NSW Trains as an organisation was aware that unaccredited staff who had not engaged in

the appropriate training programme implement since March 2017 were rostered as Passenger Services Supervisors in January 2020.

### **Findings in relation to NSW Police**

112. Mr Madden submitted that I would not be critical of the police conduct as they sought to strike a balance between their role as law enforcement officers and their role to assist a member of the public. That submission would have more force if the police had determined to provide Mr Gray with that assistance prior to witnessing his engagement with Ms Miller. It was pretty clear from Senior Constable Amos's evidence that he had determined that it would be an effective police operation to remove Mr Gray from Grafton. In my view, that it was to be of assistance to Mr Gray to help him on his way to hitchhiking was secondary. I do not accept Mr Madden's submission that Mr Gray's intoxication fell "well short" from serious intoxication. Given the blood alcohol reading and Mr Gray's history of excessive alcohol consumption, I am of the view that it was likely "somewhat short" from serious intoxication. The circumstances of a high risk environment, namely a dark multi lane 100 km highway, was such that the level of Mr Gray's intoxication warranted the police to consider the risk of harm to him. The fact that the police officers apparently did not consider the prospect that Mr Gray would leave the truck stop and walk the short distance to the highway to increase his chances of getting a lift to Macksville indicate that they gave insufficient consideration to Mr Gray's circumstances. A moderately intoxicated person might not be at risk of harm if they are standing at an empty truck bay but certainly would be if hitchhiking on an unlit highway at night. In taking Mr Gray to the tuck stop the police, somewhat naively and without great foundation, assumed he would stay there. They placed him in a dangerous situation. There is no suggestion that they did so with any ill intent but they unfortunately did so without giving sufficient regard to the gravity of Mr Gray's situation. I reject Mr Madden's submission that the police could not have anticipated that Mr Gray would leave the truck-stop and enter the highway.

113. Mr Madden seeks to rely on Ms Barnier's assessment that Mr Gray looked like he had had a couple of drinks. She had formed that view when she saw him for a short period of time prior to him embarking on the bus at Tweed Heads. Mr Madden submitted that Mr Gray was a high functioning alcoholic giving few signs of the real level of his intoxication. Ms Miller's observation of Mr Gray included the time that he was being spoken to by the police, her short engagement with him and seeing him stumble and unbalanced. I think she correctly assessed him as well affected. It may be that the lack of levity associated with the apparent minor ticketing infraction and Mr Gray's affability and quiet demeanour disguised the degree of his intoxication from police assessment. There was also a lack of appreciation that Mr Gray was dealing with a serious interruption to his travel journey which could have serious implications to his welfare. Mr Madden submits that Mr Gray was not detained by the police because they allowed him to smoke a cigarette in the police wagon. I reject that submission as he was clearly detained the moment police took his bag and directed him off the train platform. He was not under arrest at the time nor was he under arrest when he was placed in the back of the police truck, however he was effectively detained and in any event, and more relevantly, he was in police custody and given that fact alone the police owed to him a duty of care.
114. For the Commissioner of Police, Ms Spies submitted that had the police and train staff communicated there may have been a consideration as to whether Mr Gray could have reboarded the train but that in the circumstances the police had constrained options, such that it may have been better to have left Mr Gray at the train station. She appropriately did not advance that the police officers had failed to exercise any powers under LEPR. The police officers who attended made an assumption that it was appropriate that Mr Gray was removed from the train for having no ticket and that he had been "carrying on" without making due inquiry as to what the circumstances were and what the options were available to appropriately resolve the situation. They incorrectly did not consider it

necessary to communicate with the appropriate personnel nor did they consider the option of Mr Gray reboarding the train.

115. There is no evidence as to why Constable Simeonidis did not inquire further of the police radio operator about Mr Gray's history of self-harm. The police had a lack of communication with rail staff and did not appreciate what their task with Mr Gray and the train journey was. Accordingly, Mr Gray's co-operation with the police and the situation's lack of gravity led to an apparent light-hearted approach which may have impacted on the police assessment of Mr Gray's intoxication and predicament.
116. Mr Gray was obviously intoxicated as evidenced by the observations of a number of witnesses, the blood alcohol reading, and the explanation of that evidence from Dr Gunja. I do not accept Mr Gray was unfit to travel but his level of intoxication was such that, had he been on the train station platform or other premises and had his behaviour been disorderly the police would have been entitled to have given Mr Gray a move on direction. However, his behaviour did not warrant such a direction to be given. The fact that Mr Gray was not aggressive or causing any problem to himself, other persons or property while detained by the police likely contributed to the police officers determining that Mr Gray was not so seriously intoxicated to be risk of harm, sufficient to detain him until such time as he was no longer so intoxicated.
117. Mr Gray had not harassed any person whilst on the public transport or on or off the premises of the train station. He was unlikely to be a risk of harassing people. Senior Constable Amos's view that if Mr Gray were to ask a person to drive him to Macksville that would amount to harassing conduct sufficient for police to move him from Grafton was misguided, especially since the police knew he intended to hitchhike at night to Macksville.
118. Mr Gray was significantly intoxicated but his behaviour in the environment where the police spoke with him was such that they reasonably did not consider that he was at risk of harm to himself or others as a result of the

intoxication. However, he was sufficiently intoxicated in that his judgment, balance and senses were likely significantly impaired and the police, in taking him to an isolated location south of Grafton to hitchhike on or near a fast speed multiple lane highway, at night, whilst under such impairment, placed Mr Gray at risk of serious harm. That risk involved being struck by a fast moving vehicle which occurred within a reasonably short period of time.

## **Recommendations**

119. Counsel Assisting advanced the following recommendation:

That the Commissioner, NSW Police Force and the Chief Executive Officer, NSW Trains consider jointly developing policy, training or guidance material to ensure that both NSW Trains and NSW Police Force have a common understanding about the following matters:

- The powers that NSW Trains staff and NSW Police Force officers can exercise to require a person to leave a train.
- The effect of NSW Trains policy as to the circumstances in which such powers will be exercised by NSW Trains staff.
- The circumstances in which NSW Trains will request police assistance to remove a person from a train.
- The desirability of NSW Trains staff and NSW Police Force Officers discussing the circumstances in which a person has been asked to be removed from a train, including any alternatives that are available, including the passenger remaining or reboarding the train.
- The preferred train stations at which such passengers should be disembarked, in light of the location, the time of day, the availability of services or amenities and the circumstances of the person.

120. The Commissioner opposes such a recommendation being made in relation to state-wide operations because there are specialised transport police within the NSW Police Transport Command (PTC). The PTC command structure has some 600 police officers operating across three sectors including North/Central (Central Sydney-Newcastle), North/West

(Parramatta-Penrith) and South/West (Bankstown-Cabramatta) primarily operating within the Metropolitan, Hunter and Illawarra areas. Sometimes the PTC provides support to Regional Commands.

121. The Commissioner's submissions set out that the PTC officers have a thorough knowledge and understanding of the relevant transport legislation and they are available to provide advice and support to general duties police officers. The Commissioner does not oppose the recommendation applying to non PTC areas but takes issue that the two agencies jointly prepare policy as that is not a practicable course.
122. The Commissioner particularly opposes any engagement of NSW police officers in questioning the power or appropriateness of NSW Trains staff having directed or requested a passenger off a train and requested police to attend to affect such removal. The only reasoning provided for that opposition is that "it should not be the role of the NSW Police Officers to question the authority or decisions of another agency in such circumstances". I do not accept that submission; under the Passenger Transport legislation the NSW Police are not agents of NSW Trains, they are authorised officers required to exercise their own judgement and decision making. That neither of the attending police officers were aware of their powers and role under that legislation, and particularly in circumstances that the NSW Trains staff member did not have the authority he purported to exercise, founds the necessity of the recommendation. However, I accept that the recommendation should only apply to non-PTC areas and that the development of the policy should be dealt with by each agency rather than on a joint basis.
123. NSW Trains joins the submissions of the Commissioner and submits that the recommendation should focus on improving or extending an already existing common understanding and operation apparently within both NSW Trains and the Police Force where the PTC operates.

Accordingly, I make the following recommendation:

**To the Commissioner, NSW Police Force**

and

**To the Chief Executive Officer, NSW Trains**

Consider developing aligned policies, training or guidance material to ensure that in areas not with the Police Transport Command locations, both NSW Trains and NSW Police Force have a common understanding about the following matters:

- The powers that NSW Trains staff and NSW Police Force officers can exercise to require a person to leave a train.
- The effect of NSW Trains policy as to the circumstances in which such powers will be exercised by NSW Trains staff.
- The circumstances in which NSW Trains will request police assistance to remove a person from a train.
- The desirability of NSW Trains staff and NSW Police Force Officers discussing the circumstances in which a person has been asked to be removed from a train, including any alternatives that are available, including the passenger remaining or reboarding the train.
- The preferred train stations at which such passengers should be disembarked, in light of the location, the time of day, the availability of services or amenities and the circumstances of the person.

S81 Findings

Identity: Terence Gray

Date of Death: 4 January 2020

Place of Death: Grafton Base Hospital

Cause of Death: Multiple Injuries

Manner of Death: Whilst intoxicated Mr Gray accidentally collided with a motor vehicle on the Princess Highway having been required to leave the southbound XPT Train by a Passenger Service Supervisor who was not an authorised officer. Mr Gray had then been taken by NSW Police Officers from Grafton Train Station to a nearby truck-stop at McPhillips Creek to hitch-hike home after 9 pm on 3 January 2020.



E Truscott

Deputy State Coroner

22 October 2021