



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Andrew Stark
Hearing dates:	29 August – 1 September 2023
Date of findings:	24 November 2023
Place of findings:	Lidcombe
Findings of:	Magistrate Kennedy Deputy State Coroner
Catchwords:	CORONIAL LAW – police pursuit, death in police operation, decision to initiate police pursuit, relevance of seriousness of offending, conduct of driving, Safe Driving Policy (SDP)
File number:	2022/00280628
Representation:	Mr W De Mars, Counsel Assisting, instructed by Ms R Muniz (Crown Solicitor's Office) Mr C Penning and Mr N Baker, for the Stark family Mr C Norman and Mr A Mykkeltvedt, for the New South Wales Police Commissioner

<p>Findings:</p>	<p><i>The identity of the deceased</i> <i>The deceased person was Andrew Stark</i></p> <p><i>Date of death</i> <i>19 September 2022</i></p> <p><i>Place of death</i> <i>Wandobah Rd, Gunnedah</i></p> <p><i>Cause of death</i> <i>Multiple Injuries</i></p> <p><i>Manner of death</i> <i>Misadventure – single motor accident collision during the course of a police pursuit</i></p>
<p>Recommendations</p>	<p>To the Commissioner of the New South Wales Police Force (NSWPF):</p> <p>1. That consideration be given to making amendments to the NSWPF Safe Driving Policy (2019 v9.2) [<i>SDP</i>] in the following (or similar) terms:</p> <ul style="list-style-type: none"> a) Paragraph 7-2-1 of the <i>SDP</i> be amended to replace the words “<i>community and police</i>” with the words “<i>community, police and the offender</i>”. b) A new paragraph be inserted in the <i>SDP</i> between paragraphs 7-2-1 and 7-2-2 as follows: <ul style="list-style-type: none"> a. In weighing the need to immediately apprehend the offender, matters to be taken into account include: <ul style="list-style-type: none"> • The seriousness of the offence for which the police were initially attempting to stop the vehicle, and in particular; <ul style="list-style-type: none"> ○ the need to engage in the pursuit of a vehicle in relation to a road traffic offence without evidence that another offence, being of a serious nature, is likely to have been committed ○ in relation to offences other than road traffic matters, whether the police are satisfied

that a serious risk to the health and safety of a person exists

- the means that may be available to police to apprehend the offender at a later time (for example, the ability to use of a “form of demand” in relation to the registered owner, or where the identity of the driver is known).

c) Current paragraph 7-2-2 of the **SDP** be amended in the following terms:

- insertion of the words “*In weighing the degree of risk to the community, police and the offender*” at the commencement of the paragraph; and
- insertion of the additional factor as mater number (iv) under the second dot point:
- *uncertainties concerning the offending driver’s age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle*

d) Point (d) of paragraph 7-5-1 be amended so that the words “*reason for pursuit*” are replaced by the words “*the offence for which police attempted to stop the vehicle, and any other reason for the pursuit*”

2. That training provided by the NSWPF to officers who may become involved in the conduct of pursuits be updated and revised in the following respects:

a) to emphasise that in providing a “reason for pursuit” to VKG operators, what is required is a description of the offence for which the relevant vehicle stop was being attempted;

b) to reinforce the fundamental importance of officers turning their minds to the question of the need to immediately apprehend an offender as part of the weighing exercise under the SDP before initiating or continuing a pursuit, and that in doing so:

i) less serious offences (including most traffic offences) will in general carry a lower necessity to immediately apprehend; and

ii) that other means by which it may be possible to later apprehend the driver (including by utilising the ‘form of demand’) must be considered.

c) to provide education, based on statistics such as those in the 2013 report of the Australian Institute of Criminology, (*Motor vehicle pursuit-related fatalities in Australia, 2000–11*) concerning factors such as the extent to which drivers involved in pursuits are affected by drugs and alcohol, age, cultural background, and other characteristics that are frequently common to drivers involved in pursuit fatalities;

d) to discourage officers from making assumptions about the presumed “criminal intent” of drivers based on the mere fact of a failure to stop, and to appreciate the relevance of other factors such as age, mental state, cultural background, inability to pay fines and fear of loss of licence; and

e) to emphasise the need for officers to consider uncertainties *concerning the offending driver’s age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle* when assessing the danger of initiating or continuing a pursuit.

3. To the Commissioner of the NSWPF, the Minister for Police and the Attorney-General:

a) That, with the co-operation of the Commissioner of the NSWPF, research be conducted and a report be produced by the Bureau of Crime Statistics and Research (BOCSAR), or another appropriate government agency, preferably one independent of the NSWPF:

b) in order to understand the reasons for the significant increase in the number of pursuits conducted by the NSWPF over the last decade;

c) with a view to proposing measures, including by reference to policies in other Australian jurisdictions, that might be taken to substantially reduce the number of pursuits undertaken by the NSWPF; and

d) that the relevant report be provided to the Minister of Police, the Attorney-General and be made publicly available.

Non-Publication Orders

Non-publication orders prohibiting publication of certain evidence pursuant to the *Coroners Act 2009* have been made in this Inquest. A copy of these orders, and corresponding orders pursuant to section 65 of the Act, can be found on the Registry file.

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Introduction:

1. Mr Andrew Stark died on Monday 19 September 2022, aged 48 years old. At the time of his death, he was being pursued by police in his fifteen year-old Mitsubishi Lancer. In the course of the pursuit his speeds reached approximately 170 kilometres per hour. Minutes into the pursuit, Andrew lost control of his car on Wandobah Road, Gunnedah New South Wales. Andrew's car left the road, rolling several times before coming to a stop. The car came to rest upside down on its roof, and officers were required to cut him from the seatbelt that held him in place in order to successfully remove him from the car. Emergency services were called, however despite all efforts, he tragically could not be saved due to the serious injuries that he sustained as a result of the accident.
2. Andrew was a much-loved father to his three sons, brother to his two sisters and grandfather to his three grandchildren, and is greatly missed. It was with the assistance of his family that this inquest managed to explore matters relating to the manner of his death.

The role of the Coroner

3. This inquest is mandatory, pursuant to section 23(1) Coroners Act 2009 ("the Act"). An inquest is required to be held where it appears that the person has died as a result of police operations. That is the case here.
4. Coronial Practice Note 3 of 2021 provides that when a death falls within section 23 of the Act, the purposes of the coronial investigation are to signify a respect for life, to ensure as far as possible the full facts are brought to light. It is to ensure accountability by identifying any systems failure or conduct warranting criticism and to recommend any remedial action for any such matter. It is also the aim to reassure the family and friends of the deceased that lessons learned from these deaths may save lives in the future.
5. The State Coroners Protocol relating to section 23 deaths involving First Nations peoples are relevant to this inquest. The protocol committed this Court to maintaining effective cultural appropriateness at each stage of the investigation, particularly in ensuring the impact of this jurisdiction does not perpetuate grief and loss.
6. The role of the Coroner is to make findings as to the identity of the person, and the place and date of their death. It is to determine the manner and cause of the person's death. Recommendations can also be made arising from the evidence in accordance with the Act. It is not the role of the coroner to apportion blame.
7. To enable these findings to be made, and to explore the issue of any desirable recommendations evidence was taken over four days at Gunnedah Courthouse. Evidence was received in written form contained within three

volumes of material. This material included witness statements, maps, video footage and photographs. A viewing of the area in which the Police pursuit occurred, and Andrew was found, was also conducted.

8. The view included some of the journey taken in the minutes of the pursuit, ending at the site of the crash, including the dip in the road, which was the point that Andrew lost control of his car. It was very informative and helpful to gain a better understanding of the conditions of the road and surrounds.
9. I was also assisted by oral submissions on the final day. Recommendations were later generated and circulated by Counsel Assisting and further submissions were received in relation to those.

Insight into Andrew Stark

10. Andrew was a Kamilaroi man, and is survived by his three sons, and his two sisters and granddaughters. He was brought up by a single mother, who sadly passed away in the months preceding Andrew's death.
11. He initially lived in Tooraweenah, and then moved to Gunnedah when he was 11. In his late teenage years he moved to Sydney and worked on the railways for five years. He formed a relationship and had three sons. The boys grew up in Gunnedah and while he worked away they were cared for by his sister and mother. He would frequently visit his children and moved back permanently to Gunnedah in February 2022 where he spent some precious time with his family before his death.
12. He was a very hard worker in life, however as a result of this hard work developed carpal tunnel syndrome. He continued to work as a house painter when he could. He had relatively limited dealings with the law over the course of his lifetime.
13. This inquest analyses a mere three minutes and 22 seconds of Andrew's life. Approximately three minutes of a bad decision that he made, which in no way defines who he was as a person, or is any reflection on the hardworking life he led, and the dedication and devotion that he had for his family.
14. In a very generous moving and poignant family statement we saw the power of an inquest to also bring some healing. His sister told us that he was a very family-oriented man. Their family was brought up to respect authority, and she said inconsistently with their upbringing he made a mistake not to stop on this occasion. She said that he had other traffic stops in the past where he did stop when required by police. It was clear she was greatly saddened by this unusual and devastating decision that he made on this occasion.
15. She recalled his early working life. He started working as an electrician with a well-known electrician in Gunnedah. He was also a store manager, and was asked by his company to set up a shop in nearby township. He then moved

to Sydney and started with labouring jobs.

16. In Sydney he then returned to electrical work, and worked on railways fixing railway lines, and then moved into painting jobs. He was generous with his time, and when he visited home, he would do handyman jobs for his mum.
17. His sister described him as a cheeky story telling brother, who would bring everyone into his story, “so you felt like you were part of it, the way he told it.” He loved his favourite go-to stories. He often said when you go to work you go hard or you go home.
18. He was a devoted sports fanatic, and along with the Bulldogs he loved the Australian cricket team. As a result of his love for the Canterbury Bulldogs he encouraged his boys to play football, and indeed they were very good players. He was adored by his two granddaughters, and would have loved to meet his third, who was present at the inquest.
19. In inspiring generosity of spirit his sister told the police at the inquest that she has never apportioned blame to the police, and knows that it was Andrew’s choice, however she also noted that if policy can be improved so other people don’t have to suffer as her family has then that would be something of benefit.
20. It is hard to describe the moving nature of this family statement, but it was a moment when police and family were together in a room, and she spoke from the heart and directly to the officers present.
21. Andrew’s family attended the inquest each day. There was so much love and strength within the family that was evident from the close bonds apparent each day at court. There is no doubt that Andrew was much loved and adored by his family, and is painfully missed. As young men this process was particularly hard for his three sons. However the connection between them and the support they provided one another throughout the proceedings was very impressive to observe.

Policy considerations governing pursuits – Safe Driving Policy SDP

22. The current policy governing pursuits is version 9.2 published in 2019. Paragraph 7-2-1 provides that:

“the decision to initiate and /or continue a pursuit requires weighing the need to immediately apprehend the offender against the degree of risk to the community and police as a result of the pursuit.”
23. The matters that police are instructed to consider prior to engaging in a pursuit include the manner of driving and the speed of the offending driver. The road conditions, number of vehicles on the road and presence of pedestrians, weather conditions and time of day are all other important factors. The policy requires officers to continually assess these and other relevant matters as the pursuit continues.

24. At 7-2-3 the test then provides that :

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

25. There is a formal structure to pursuit responsibilities. At 7-5-6 and 7-5-7 a further senior officer is nominated as the pursuit manager and is to remotely manage the pursuit. In this case there was a pursuit manager Sergeant Elms and also a supervisor, in this case Sergeant Woods, who was monitoring the pursuit.

26. The pursuit manager and supervisor can also terminate the pursuit at any time, and the overriding control rests with the pursuit manager.

Background to police pursuits in New South Wales

27. Since 2011 the number of pursuits have almost doubled in New South Wales. The natural consequence of this fact, as will be explored below is that more people are at increased risk of being injured, with approximately 1 in 8 pursuits ending in an accident. The data from a 2011 study found that of these, approximately 30 percent of those injured were innocent bystanders. More recent data puts that percentage higher. That fact alone would suggest that great caution and care needs to be taken when deciding to enter into a pursuit or indeed continuing one. It is a particular issue of public safety, and is a difficult matter for police who are suddenly faced with the decision as to firstly commence a pursuit and secondly whether to continue the pursuit. There is obvious public interest in the police undertaking their work to keep roads safe and it is of great concern when an individual fails to stop when required to do so for a lawful traffic stop.

28. The evidence related to a police pursuit that took three minutes and twenty - two seconds. Statistics show that the average pursuit lasts only approximately this amount of time.

29. There have been many previous inquests concerning deaths that occur in pursuits. I have drawn from two such inquests, where helpful analysis of pursuits have been carefully considered and recommendations made that are relevant to this inquest. The commentary in those findings are equally applicable to Andrew's matter.

30. In December 2022 Deputy State Coroner Grahame made these important observations at paragraph 15 of The Inquest in relation to the death of Tyrone Adams:

“Over the years many in the community have been rightly concerned at the number of deaths and very serious injuries arising from or occurring in or just after the course of a police pursuit. The issue remains one worthy of careful consideration. The Court was provided with research into the tragic phenomena of motor vehicle pursuit related fatalities in Australia.

Unfortunately, the most recent full analysis of data available came from the years 2000-11. Nevertheless, I note that fatal pursuits most commonly involved males under the age of 25 years and that in almost nine out of ten cases the alleged offender driving the vehicle being pursued, like Ty, had consumed alcohol, drugs or a combination of both prior to the incident. One cannot help thinking that Police officers should be made aware of this information as a factor to take into account when deciding to commence a pursuit and when assessing the very real dangers involved.”

31. Further at paragraph 18 Her Honour Deputy State Coroner Grahame referenced the words of the former Commissioner of Police:

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

32. It is with these matters in mind that a review of this evidence was undertaken to consider if any further recommendations might be reasonably necessary to draw to the attention of Commissioner of Police for her consideration, in furtherance of the overall goal of the safety of all road users.

33. The facts of this matter are very sad. Andrew was not impaired by drugs or alcohol, and he was simply going to get his morning newspaper. He was being pulled over for driving an unregistered car, which carries an imposition of a fine only. He was in fact a disqualified driver, unknown to the police at the time. However, it was not his manner of driving that drew police attention initially. He made the decision to continue on and not stop when required, costing him his life, impacting his children, family, friends, community and police forever.

General overview of events leading up to Andrew’s death

34. Despite losing his licence in early 2022 it appeared that Andrew continued to drive to the local newsagency each morning. It was his habit to pick up the newspaper each day.

35. The day before the incident he went to see his sister, and she dropped him home at around 7.10 pm. He enjoyed dinner with his son, and fell asleep on the couch. The following morning he left to get the paper. The drive to the newsagency was just a five minute drive and it was during this drive that he came to the attention of police.

36. Two police officers were patrolling the local Gunnedah area, Senior Constable Wood who was the driver of the patrol car, and Senior Constable Judd who was the passenger, just prior to commencing tasks set for them that day.

They were very experienced officers in a highway patrol car. The police were alerted by the automatic number plate recognition system that Andrew's car was unregistered. They completed a U-turn and followed him, catching up to him in Jaegar Street. This was a residential area, with houses surrounding the streets. Police reached speeds of 108 km as they followed to catch up to him. It became apparent to them as he turned into George Street that he did not intend to stop. They proceeded with flashing lights followed by siren to effect a traffic stop. It quickly became apparent that he was non-compliant and a pursuit was called on police radio.

37. The police car followed Andrew at speed. Although evidence was given that it was essentially in a rural area with limited traffic and pedestrians, I had the benefit of a view. There were houses located very close to the road along the length of the left-hand side of Wandobah Road leading out of town. Andrew and the Police overtook three vehicles, and can be seen to be travelling up to 146 km in the 50 km zone. Once the 100 km zone was reached, the pursuit of Andrew had escalated to speeds of up to 174 km an hour. At that point Andrew hit a dip in the road which had water ponding and lost control of the car. During the pursuit a number of cars can be seen travelling in the other direction, and Andrew overtook three cars travelling on his side of the road.
38. It is relevant to note all this occurred around 9am on a Monday morning.

Issues for consideration at inquest

39. The issues for consideration at the inquest were as follows:

1. Was it appropriate to attempt a traffic stop?
2. What was the reason for the pursuit?
3. Was there a need to immediately apprehend the driver and if there was a need to do so, did the risk involved in initiating a pursuit outweigh any risk to the Police or the community. For reasons I will discuss below this was a high-risk pursuit, at speeds dangerous to the community and anyone involved in it, or in the immediate vicinity.
4. Did the officers assess the risks involved in continuing the pursuit on an ongoing basis in compliance with policy?
5. What factors should have been taken into account by officers in weighing up the risks involved and continuing to pursue?
6. Should the pursuit have been terminated at any stage?
7. Did the officers provide all relevant information to the VKG officer and was there compliance with the safe driving policy.
8. Finally, why did the car leave the road?

Analysis of the evidence

Evidence from the leading officer in charge – Detective Inspector Chapman

40. The senior officer in charge of this critical incident was Detective Inspector Chapman. He performed the difficult role of travelling down out of area and investigating. He prepared a careful brief of evidence, and undertook a detailed and thorough investigation bringing the independence of an out-of-area investigator, with a wealth of experience.
41. He managed to ensure that any relevant bystander CCTV capturing any part of the incident was located. He also obtained the in-car video from the police car. That provided essential and objective evidence of the pursuit.
42. That objective evidence was summarised in a table of details taken from both the ICV footage and the VKG audio, and relied upon in the inquest as an accurate summary of the evidence.
 - i. At the beginning of the drive with police following him, Andrew was indicating as he turned on several occasions. His speed increased as he travelled into George Street up to 99 km, and then considerably increased on Wandobah Road.
 - ii. He overtook a vehicle while the police speed was 100 km/hr, he then overtook another vehicle where police speed was 122 km/hr.
 - iii. The road turned to the left with a “50” painted on both sides of the road, with the police car travelling at 132 km/hr.
 - iv. The police car then increased to 144 km/hr still within the 50 km zone. He then passed an oncoming vehicle and overtook another vehicle.
 - v. He then entered the 100 km /hr zone and speeds increased. He slowed to pass on the inside left of a right turning vehicle who was travelling in the same direction.
 - vi. Speed then increased to 140 km/hr, a slower car then turned off to the left, and another car travelled past in the opposite direction.
 - vii. At 2 minutes 12 into the recording the police vehicle was approaching 172 km per hour. There was a floodway sign, speeds then increased to 174 km/hr.
 - viii. Andrew reached the dip, and police rapidly slowed down to 122 km/hr as they reached the water and dip.
 - ix. At 3.18-3.22 minutes into the pursuit, the Lancer passed into the dip and lost control.
43. When they came upon him, the officers were able to identify that it was Andrew in the drivers seat, from personal knowledge.

44. Detective Inspector Chapman noted that he arrived on the scene later that day. He saw some water on the road. He provided photographic evidence showing that the area of the dip was wet across the road with reasonably large areas of pooling water. When attending the view the dip was even more apparent, and potholes were evident within the dip in the road. The evidence was that the 100 km zone has since been reduced to an 80 km zone, although unambiguously there is an additional sign that reads “end 80” just prior to the area covering the crash site. This reduction, ambiguous though it is, may say something about the safety of that road in the context of the high speeds that were being travelled.
45. Detective Inspector Chapman should be thanked for the work he did to prepare this inquest. He very appropriately took the opportunity during the inquest to thank Andrew’s family for the way they assisted him in his investigations, and extended his personal condolences to them in a very compassionate and heartfelt manner. He indicated that he was aided greatly by family cooperation and expressed his appreciation for the way in which they worked with him.

Senior Constable Damien Wood, Gunnedah police - Oxley highway patrol.

46. The trauma suffered by SC Wood should also be acknowledged as a result of this matter. He was going about the usual performance of his duties when this tragedy occurred. He was first responder along with his partner Senior Constable Judd. Both rendered kindness and aid to Andrew. In particular SC Judd stayed close by Andrew’s side throughout. The inquest process is a necessary but difficult process for a serving officer to participate in, and yet he approached it with honesty and with a desire to assist. There will be no personal criticism of any officer in this inquest, they provided helpful insight as to how the SDP was being applied in practice, and it was as a result of this evidence that Counsel Assisting was able to identify areas for system improvements.
47. SC Wood is a long-term officer of 23 years and has been in Gunnedah for 13 years. He was very experienced in police pursuits. He believed that he had been in hundreds of pursuits. The majority of those occurred before he joined highway patrol. He said that he had been in a dozen or so since joining highway patrol. On 19 September 2022 he was preparing to leave Gunnedah to attend other local towns for duty, and a number of tasks had been assigned to the team. He noted that although the conditions of the day were fine, on preceding days there had been substantial flooding on the road.
48. There were a number of equipment malfunctions in the car that day, and he recalled that it was in the course of trying to fix an initial error screen on the radar by trying to fix the antennae when his partner noted the unregistered car being driven by Andrew. He then saw the vehicle take a turn right into High Street, so he did a u-turn, lost sight of it, and saw it again when he turned into Jaeger Avenue. He activated his lights button, and attempted to catch up, he

rounded the top bend in Jaeger Avenue and activated the alert siren button. On this occasion the usual back capture of the in car video did not activate. It became clear that Andrew was not stopping for the police stop. He believed that he said to SC Judd "I don't think he's going to stop". However, of interest to him was that Andrew continued to indicate on a number of the first turns, which was a sign to him that Andrew was at least obeying some rules.

49. He then believes he said "mate, call it. Call it now".
50. There was some discrepancy between his oral evidence and his account given during the interview by police in the days after the incident. These differences can be explained by the effect of the passage of time on memory. I preferred the contemporaneous evidence in general over the oral evidence where inconsistency arose.
51. Although he couldn't recall being told of the address of the vehicle in evidence, he had said in his interview that he was given the address during the pursuit, and that his partner told him that the vehicle was registered to 2 Lincoln street. SC Wood said he was aware the address mentioned was where the Stark family lived. He also noted that he knew Andrew's children were not old enough to drive. He thought he knew this information at around the start of the 100 km/h zone.
52. He was familiar with the matters that he should consider before deciding to pursue. There was no direct conversation about it with his partner in any detail. He had formed the view that Andrew was trying to avoid police at the point where Andrew first passed the police vehicle, even before they commenced following him. He made observations that Andrew made a right and left turn in quick succession, possibly to move immediately away from the vicinity of the police. He said he thought "it is probably going to be something more than unregistered motor vehicle."
53. He did not see who the driver was. He said "it heightened my awareness of this- this could potentially be more than just an unregistered vehicle. Why has he not just pulled over for an unregistered car? In my view, actively avoiding police by taking these back streets."
54. He noted the computer was malfunctioning during the pursuit, that is, it went blank. He initially agreed that he formed the view that it was being driven by someone associated with Andrew's home address. He did not consider the fact of that knowledge a relevant factor as to whether he should continue the pursuit. He then clarified that evidence and said the vehicle had the potential to be associated with the address, but may not have been. When asked about the likely outcome of the pursuit this exchange occurred.

Q How did you expect the pursuit to end?

A I have no idea.

55. SC Wood was very familiar with the roadway and said “I know the dip too. Like I know it is a good dip. You’ve got to hang on tight. So I think I even backed off my speed coming down to that dip.” He agreed that it was unusual for a pursuit to end with a car simply pulling over.
56. The first information given to the VKG about the nature of the offence was that Andrew “failed to stop”. However, SC Wood agreed that was not the reason for the pursuit. He did not consider that there was any difficulty saying “fail to stop” as opposed to “unregistered”. He said they were comparable.
57. He agreed that Andrew took the corner onto Wandobah road wide. He agreed after being shown the in-car video that he went onto the incorrect side of the road. However, there was an unwillingness in evidence to say that this turn was dangerous, remarking; “To who, there is not traffic there?”

Q As a highway patrol officer, you do not regard that as a dangerous piece of driving?”

A “If there was motorists or other pedestrians around. It is reckless.”

58. A theme through much of the evidence from several officers was that speed and manner of driving appeared to be distinguished. It was generally SC Wood’s evidence that the speed was less troubling as long as he could see that Andrew maintained control of the car. He did concede that at very high speed such as here, the margin for error was much reduced and acknowledged the speed continued to climb.
59. SC Wood agreed that he did not know the number of people in the car. “It would not matter if there is five people in the car, or one person in the car. The risk still there.”
60. He ultimately said that he did not give a great deal of weight to the seriousness of the original offence. In relation to alternative means of apprehending the driver, he was concerned about the ineffectual nature of a form of demand, and the difficulty in locating the person who had committed the offence in the first place.

Evidence of Senior Constable Judd

61. SC Judd gave similar evidence as the passenger in the police car. He was affected by the events that had occurred, and agreed that this was an opportunity to learn. Equally I acknowledge the trauma suffered by SC Judd who took the leading role in endeavouring to care for Andrew following the accident. He participated in a very helpful way in the inquest, giving us insight into the considerations generally applied by yet another very experienced police officer.

62. He was a police officer of 14 years, and in highway patrol for about 13 months at the time of this incident. He had been in ten or so pursuits within those 13 months. He became aware that the car was not registered on the alerts, but although further details were available to him, he did not scroll down to see who the registered owner had been. It should be acknowledged that the car was having some electronic problems with the onboard computer. It is highly relevant that the event took just over 3 minutes, and the officers were engaged in was a fast moving event, with very limited time to think through what was occurring.
63. His account was that after coming up behind Andrew with lights and sirens activated, it became apparent that he did not intend to stop. He believed that they said the same thing to each other "it's not going to stop".
64. There was no discussion between them about whether they would pursue the car. The need to immediately apprehend the person was considered by him as required by the policy. SC Judd said he considered the question of why Andrew wasn't stopping and he considered whether there were potentially more offences associated with the car and driver than just an unregistered vehicle. He thought it could have been a stolen vehicle, or that the driver may have had warrants. He considered that as this was an unregistered vehicle that had failed to stop they needed to immediately apprehend the driver. In his view this need outweighed the risk to the community.
65. He considered Andrew's driving ability and after watching the footage he said that it was his opinion that he was driving well as he turned onto George street. He only had an issue with the speed that he was travelling, as he started to accelerate. He did not believe speeds of 99 in a 50 km zone were excessive for the conditions which they found themselves in. He was taken to the fact that the car moved into the far right hand side of Wandobah Road, however he said this would have been for a short period of time.
66. SC Judd said he felt that the driver was in control of the car as there was very little traffic on the road, no pedestrian traffic and the road surface was very good as it was a sunny clear day. Notwithstanding the very high speeds, he considered that there was no danger, because of the level of control the driver was demonstrating.
67. He was taken to the fact that there were three vehicles passed, speeds were 99, 130, 146 and finally 151 in a 50 zone. Nonetheless he maintained there was no significant danger in the circumstances. He agreed that he did not know: who was driving the car, the number of people in the car, whether it was a young person driving the car, or whether it was a person with limited driving experience or whether the car was roadworthy. He stated:

"No no. Well I explained earlier I believe there was other factors involved in this. Why was he running? Is it a stolen car? Is...there a large quantities of drugs? Is there an offender with outstanding warrants? Did he just kidnap a child? I don't know."

He agreed that during the course of the pursuit he knew the Lincoln Street address was where the car had last been registered, but said he did not realise until after the pursuit that this was the Stark residence . In his evidence he did not accept that the car being registered to an address in town was a relevant factor in weighing the need to immediately apprehend. SC Judd did not accept that knowing the car was registered to an address in town meant he could, quite easily, locate the driver. He reasoned in his evidence that the car quite simply could have been stolen from that address.

68. He did not accept that the seriousness of the initial offence that prompted the traffic stop is a factor relevant to the need to immediately apprehend. However, he agreed that the policy did not state that the seriousness of the offence was a relevant consideration and he said if the policy did state that, it would have been of assistance to him.
69. He also agreed that there were additional matters he might have conveyed on the VKG such as the overtaking of other vehicles, although at the time of the pursuit he was having trouble with his computer. He agreed that as much information as possible should be shared on radio.
70. He would not concede that risk elevated with the overtaking of other vehicles. In reviewing other pursuits that he had been involved in, not one had ended with the driver simply pulling over.

Evidence of the Highway Patrol Supervisor, Sergeant Woods

71. Officer Woods was the Highway Patrol Supervisor. He monitored this pursuit from his office in Gunnedah Police Station. He did not consider termination of the pursuit, however it was clear on a review of the evidence he was not fully informed of details, such as the highest speeds and the overtaking of cars. His evidence was very reasonable. He indicated matters of improvement that he could have made, but also indicated that if he had the full picture, he may well have determined to change his view and terminate pursuit. He accepted the original offence was important to consider. Though reluctant to enter into areas of policy, he could see some benefit in the policy embracing reference to the seriousness of the offence as a relevant consideration.
72. He did indicate the number of stolen vehicles in Gunnedah were unusually excessive at that time, and that the last 18 months had seen an extraordinary amount of stolen motor vehicles, and therefore local police would have been very concerned about the prospect of a stolen vehicle.

Evidence of Team Leader rescue coordinator at the Tamworth communications Centre – Sergeant Elms

73. Sergeant Elms had completed the pursuit manager's course, and was frequently involved in numerous pursuits, over 150 in any given year. He was the Pursuit manager in this case.

74. He was not concerned about the reason for the initial stop and felt that the failure to stop was the information he needed, although he did agree that a pursuit is commenced after a failure to stop. In the context of matters to be considered in the decision whether to terminate the pursuit, he accepted that the policy provides that “the person is to consider that question based on analysis of the nature of the offence which the pursuit was initiated.”
75. Given that Sergeant Elms was very experienced overseeing hundreds of pursuits it was very helpful to get his understanding of the need, or lack of need, to consider the seriousness of the offence. His account was that the consideration is whether the need to apprehend that person immediately outweighs the risk to the community and the police pursuing.
76. Sergeant Elms did indicate that it is helpful to be informed if there is any anticipation that the person is likely to continue to commit further offences. He indicated that it is helpful to know the residential address of the registered owner of the vehicle. He noted that there is very limited time for conversation when a pursuit is taking place.
77. His evidence was that the more information that can be provided, the better in relation to allowing him to make decisions about the continuation of the pursuit. He also indicated that the pursuit was just minutes in, and that this would have impacted the decision making. He agreed that knowing the nature of the offence whether it was traffic, criminal, RBT or stolen vehicle was an important consideration. He ultimately agreed that knowing the reason for the stop was driving unregistered, would have been important factor in the decision making process both in terms of initiation and termination.
78. He made the observation that usually the initial pursuit occurs because there is a reason for a person to not want to pull over. In his experience people will self-terminate a pursuit very quickly, when they realise they cannot successfully flee police.

Officer Kristy Foster, Crash Investigator, Metropolitan Crash Investigation

79. Officer Foster was able to indicate that based on her experience and viewing the footage it was clear that there was an obvious loss of control from the car. This is because it went through the low point in the dip in the road, as it began to move from side to side before leaving the roadway. She also indicated that the change in gradient, the potholing and the water on the road would have been potential factors in that loss of control.

Evidence of Senior Sergeant George, Byron Bay Highway patrol

80. Senior Sergeant George gave evidence after preparing a report reviewing the pursuit. The purpose of SS George’s report was at the request of a designated strike force to review the incident and to consider the collision and actions of police against the requirements of the New South Wales Police Force Safe Driving Police for police review and report to the Coroner.

81. He was satisfied that the circumstance of the event met the threshold of reasonableness that is required to invoke the exemptions contained within Rule 305 of the Road Rules 2014. Although he noted on face value the high speeds, he took into account the marked police vehicle, the lights and siren activated, and SC Woods holding a silver response classification.
82. He came to the view that the pursuit was in accordance with policy after his review. He was taken in evidence to a few errors in his report, which contained the name of another officer and other facts that were not part of the current factual matrix. It was accepted that he may have used another template to prepare this report, with some errors therefore being present.
83. He also provided evidence that the information provided from Senior Constable Judd that the reason for the pursuit was “fail to stop” amounted to compliance with the requirement to state the reason for the pursuit. He agreed however that the original offence is essential information for those monitoring the pursuit. He agreed that the more updates and information that can be provided to the VKG the better for the overseeing officers. He agreed that it would have been helpful for further aspects of the nature of the driving to have been conveyed, including the manner of the wide turn that was taken from George Street onto Wandobah Road, and the number of cars being overtaken at high speeds.
84. He agreed that it would be sensible for the policy to refer to the original offence as being necessary information for police engaged in a pursuit to provide. He calculated the average speed for this pursuit was 147 km/hr. His conclusion was not whether or not the pursuit should have been terminated, but rather whether it was conducted within compliance with the policy and rules, which he found.
85. He agreed that there is a different analysis to be undertaken as to what dangers might result from the manner in which the police were driving their vehicle, as opposed to the dangers posed by the fleeing driver.
86. Senior Sergeant George also seemed to distinguish manner of driving from the speeds at which the car was travelling. He noted that in the in-car video, he did not see that Andrew was at any time not in control of his vehicle. He indicated, however, that 146 kilometres an hour in the 50 km zone was very reckless. He acknowledged that the police vehicle was capable of driving in such a manner but acknowledged there was a difference between the Lancer and the police car in relation to capability. He said it was hard to comment on the decision to continue the pursuit without being present during the pursuit.
87. He was taken to statistics from Trends and Issues paper by the Australian Institute of Criminology. In that study police pursuit statistics over a period of 11 years (2000-2011) were considered. Over 50% of deaths involved young males under the age of 25. 17% of the deaths were First Nations persons. The average speeds were in the 120-130 kilometre per hour range, and the

average pursuit time in New South Wales was 3.20 minutes. He was not aware specifically of these statistics, but was equally unsurprised.

88. Officer George noted that in his experience “not a lot of people engage in pursuit solely because they’re committing the offence of using an unregistered vehicle. There are quite often underlying issues, whether it be licence issues or other criminal issues involved. The police may not have concrete evidence....however it does raise the involved police’s suspicion as to the reason why the person may be attempting to evade police.”

Senior Sergeant Upton – Police Driver Training

89. Senior Sergeant Upton is the coordinator responsible for all driver training courses conducted by the police driver training, and the administration of the Safe Driver System.
90. He gave evidence of the initial training undertaken by police, and in particular highway patrol officers around pursuits. It is his experience that the training in relation to the reason for the pursuit relates to the original offence. In essence, the question is the power used to pull the vehicle over. He was able to clarify that fail to stop is a term used for the fail to stop for a random breath test only.
91. He noted that a pursuit should be the last resort. He agreed this could be within the wording of the policy. He was asked a number of questions about the education and training given around the data that is known about pursuits. This included; the overrepresentation of First Nations people, information about the profile of people who might become involved in pursuits, the proportion of people affected by drugs and alcohol and the proportion of young men aged 25 and under. These matters are not currently covered in the training program.

Autopsy Report

92. Dr Benjamin Harding, Forensic Medicine and Dr du Toit-Prinsloo, Chief Forensic Pathologist and Clinical Director completed the external post-mortem on 23 September 2022. The CT scan reported on by a Specialist Radiologist showed multiple major injuries to much of Andrew’s body. A finding as to the cause of death was made as Multiple Injuries.

Family Submissions

93. Submissions were made on behalf of the family and I would like to address these, along with the concerns that were raised. Understandably, these submissions have focused on the conduct of the police officers involved and the decision to initiate and proceed with a pursuit. As indicated I don’t make any criticism in this case of the two officers who were making urgent

decisions, in a sudden situation that arose and lasted for just over 3 minutes. They themselves recognised that there were some things could have been done better. They too, were under particular pressures and constraints, with a malfunctioning computer in the vehicle. For the most part, they were supported in their decision making by other officers giving evidence in this inquest.

94. Andrew's family have submitted that there should be more consideration and weight given to the nature of the offence, prior to a pursuit being initiated. I agree that the evidence, in the face of alarming statistics, does support the need for more consideration and weight being given to the original offence. There should be less focus on speculation. I also agree that the general public would find the speeds that Andrew travelled at 9am on a weekday, in an older car, on a road that had recently been the subject of heavy rain, through a 50km zone and with houses and other cars in the near vicinity, to be concerning.
95. The evidence suggests that too greater focus was placed on the capability of the experienced officers undertaking the pursuit and mere observation of the fact that a driver appears at one point in time to be "in control" of the vehicle. Instead, greater consideration should be given to the fact that the driver is unknown, with unknown driving capability, age, or experience, and who may well, on the strength of the statistics, be affected by drugs or alcohol and is unlikely to have professional experience of driving at high speed.
96. Greater consideration should also be given to whether the person can be located in another way.
97. Constable Judd agreed that he could have provided additional detail and updates, but he was also hampered by faulty equipment. It seems many officers were satisfied that there had been compliance with the SDP, even though Senior Sergeant Upton said that the original offence should always be the offence that is considered when engaging in a pursuit. Senior Sergeant George said it was difficult to comment on whether he would have terminated, given he was not present. Sergeant Woods gave very measured evidence, considered the speeds very high and said he may well have terminated the pursuit if he had all the relevant information. It was also noted by him that a pursuit should be the last resort. These are all matters in the evidence that prompt the recommendations.
98. On the balance of the evidence I cannot conclude that the actions of the officers were non-compliant with policy, given there is a wide discretion in relation to conducting a pursuit. However, there seemed to be misunderstanding by some officers of the parts of the policy. It is the pursuit policy in my view that deserves attention, supported by further research, and continuing and improved education.

Discussion

99. There is no doubt that Andrew should have stopped when the police attempted a road stop. He was disqualified as a driver as a result of a mid-range PCA. He was eligible to get his licence back in the month following his death. He had continued a routine each morning of driving his car to pick up the newspaper. This is what he was doing that morning. His car was unregistered, and the highway patrol officer received a warning notice of this and decided to effect a licence stop. This was appropriate.
100. The maximum penalty for unregistered vehicle is a fine. The police were unaware that Andrew was a disqualified driver. The police did not know who was driving the unregistered car. It could have been a child; it could have been a car with children in it. They decided to instigate a pursuit. Yet they had information available to them of who the car had only recently been registered to, and the address at which it was registered at
101. Very quickly Andrew's speeds began to climb. They were within a 50 km zone initially, and it was around 9 am on a Monday morning. There were houses for the most part on one side of the road, quite close to the road as was observed when a view was conducted. There were other cars on the road who Andrew and the police overtook at high speeds.
102. Statistics were provided to the inquest for the 2020-2021 period in relation to pursuits. The statistics from the New South Wales Police Force Annual Report for 2021-2022 record that in that year police undertook 3,398 pursuits. 857 of those were terminated by police. 324 ended in collisions, with 4 fatalities and 78 involving injuries to one or more individuals.
103. Of those injured, 17 were police officers, 51 were offenders and 20 were other persons. Of the 88 over 23 % of those injured were other individuals. 19% were police themselves. In total 42 of those injured were not the offender. The authorities provide that statistics must always be used with caution, as each case is an individual one and must be seen as such, but they do provide very powerful data on the serious consequences that may result from police pursuit.
104. 12.75 Percent or approximately 1 in 8 of the 2,541 pursuits that were not terminated ended in collision. 3.2 percent or 1 in 30 ended in either injury or fatality.
105. From 2011 to the nominated period there has been an increase in pursuits by some 90.8 percent. In essence pursuits have almost doubled in the last ten years.
106. 70 percent of pursuits commenced from a fail to stop for a random breath test, or a not stop for a traffic matter.
107. The research presented at the inquest showed that the approach worldwide has generally been to attempt to decrease the number of pursuits.

Other than Victoria it appears this trend has been followed by other States around Australia.

108. This inquest explored these considerations against the particular background facts of this matter. It was of note that most police involved in this pursuit or analysing it afterwards all considered that speeds of 150 in a 50km residential zone in this location was safe in the circumstances of this pursuit. It became very apparent that the officers were all focusing on their own ability, and observations that the driver of the other car appeared to be “in control of the vehicle” - a phrase used many times.
109. There seemed to be a transposing of their own ability, the fact that they were travelling in a custom built for purpose vehicle and had been specifically trained for such situations, onto the driver of the other car, without making the significant distinction about vehicle, training and driving competency. There was little, if any, reflection on what was known about the driver of the other vehicle at the time the pursuit was initiated. That driver was unknown to them, as was their skill, age and level of desperation. That person may or may not have been affected by drugs or alcohol. That person may have been a child. It seems an odd premise to rely on a driver’s apparent control of a car at high speeds, when undoubtedly other traffic would appear, obstacles could appear suddenly, or road surface change. It would be a better approach to consider that until known otherwise, the person in the other vehicle maybe inexperienced, panicking and possibly under the influence. That might assist in determining whether the pursuit should continue.
110. When the known statistics are that 1 in 8 pursuits not terminated by police will end in collision, and it is also known that 30 percent of injuries (on latter statistics increasing to 47%) will be to innocent persons, a very robust test should apply to ensure the safety of the public.
111. The other matter that was apparent from the evidence was the officers assumption that the persons failure to stop necessarily suggests the commission of some unknown more serious non-traffic offence. There was some very unusual evidence about that. The reality here was that Andrew had an unregistered vehicle which was a fine only offence. They knew his name and address as the last registered owner. They had access to his address had they wished to view that. They in fact drove past his house during the pursuit.
112. Submissions were made by Counsel Assisting that there was not anything dangerous about Andrew’s driving until he became aware that the police were following him and seeking to stop him. His driving changed from a normal safe manner of driving to the very dangerous driving that led to his death. I accept those submissions.
113. His Honour then Deputy State Coroner Dillon made some significant remarks that remain applicable today. In his findings from 2014 in the Inquest into the death of Hamish Raj his honour said as follows:

“If the general public and the legislators were aware that a particular law enforcement policy being applied by Australian Police Forces was not only resulting in a number of avoidable deaths and serious injuries, but also that one-third of victims were completely innocent bystanders, I believe it would cause great concern and an immediate demand for change. “

114. He also noted at paragraph 119:

“In my view, because of the great potential dangers to the general public to pursue drivers, and to police officers, the principle that pursuits are a last resort ought to be applied far more rigorously than it is at present. Consideration ought to be given by government to imposing a guideline that high speed police pursuits be undertaken only when (1) a serious offence is reasonably suspected of having been committed by the pursuit driver or a person in the pursuit vehicle and (2) the person is unidentified or there is no immediate prospect of locating him or her unless apprehended urgently,”

115. Further at paragraphs 58 and 59 he said this:

“In Mr Raj’s case, and this has been my experience as Coroner in other fatal pursuit cases, none of the involved police officers appeared to have given any serious consideration to the risk to their target, yet the pursuit offender and others who may be in the target vehicle are almost always the persons most at risk in a high speed pursuit. In my view risk to the pursued driver and any passengers in the pursued vehicle ought to be high on the order of priorities, especially as the initiating offence are in themselves more frequently than not, relatively minor that cause no immediate danger to other members of the community.”

Each of these statements by His Honour remain applicable to this case, many years after his careful analysis of the issue.

116. The approach by the Police in this matter has been thoughtful, and for the most, the proposed recommendations with some adjustments have been embraced. The main recommendation that relates to the decision to not terminate a pursuit is not agreed to. This is discussed more fully, below.

Proposed recommendations and response

117. Recommendations were raised by Counsel Assisting for consideration by the Commissioner of the New South Wales Police Force (NSWPF) that amendments be made to the NSWPF Safe Driving Policy (2019 v9.2) [*SDP*] in quite specific terms. Some of these were accepted in submissions for the Commissioner, and others were not.

118. In relation to these proposed recommendations 1 (a) “that Paragraph 7-2-1 of the *SDP* be amended to replace the words “*community and police*” with the words “*community, police and the offender*”. The Commissioner supported the inclusion of the offender in the test.

119. Proposed recommendation 1 (b) is not supported as set out below:

“b) A new paragraph be inserted in the **SDP** between paragraphs 7-2-1 and 7-2-2 as follows:

In weighing the need to immediately apprehend the offender, matters to be taken into account include:

- *the seriousness of the offence for which the police were initially attempting to stop the vehicle, and in particular;*
 - i) *that police should not ordinarily engage in the pursuit of a vehicle in relation to a road traffic offence without clear evidence that another offence, being of a serious nature, is likely to have been committed*
 - ii) *in relation to offences other than road traffic matters, whether the offence poses a significant risk to the immediate safety of another member of the public (the absence of such a risk should weigh against the initiation of a pursuit)*
- *the means that may be available to police to apprehend the offender at a later time (for example, the ability to use of a “form of demand” in relation to the registered owner, or where the identity of the driver is known).”*

120. The submissions note concern that there will be typically the greater need to immediately apprehend a person who is suspected of committing murder and who may commit further offences of violence than a person who has failed to indicate when turning left. It is said that the question of whether there is a need to immediately apprehend an offender is one that needs to be approached flexibly, and the concern with the recommendation 1 b (i) and (ii) is that it may unduly impinge upon such flexibility. In response to this I propose to make the recommendation in a slightly amended form. These are proposals that can assist in weighing the need to immediately apprehend the offender, and it seems to be clear that the intention of the policy was ensure minds do turn to the need to apprehend. The question should always be asked in light of 7-2-1 and 7-2-3 “Do I need to immediately make this stop? And at what risk to the community?”. As was clear from the evidence in these proceedings the seriousness of the offence wasn’t uniformly a factor in the decision-making process. This wording encourages a robust consideration on the word “need”.

121. Further, in relation to the words “clear evidence” (existing of another offence), the Commissioner submitted that this would be unlikely to ever be met. I have adjusted the words to reflect these submissions. However, again it was apparent that speculation played on the mind of some officers. Simply asking that an officer considers whether there is any evidence of such an offence asks for the question to be directly addressed. This is particularly in the case where the initial offence is a fine only offence or at the very lowest end of offending, such as the example given of failing to initiate a left hand turn signal. The statistics in relation to the prevalence of accident and injury to innocent people support the making of this finding.

122. In relation to a requirement for the offence giving rise to a pursuit to pose a significant risk to the immediate safety of another member of the public, the submission was made that again it would rarely be met. Examples

were given such as the need to apprehend a serious sex or violent offender the day following the allegation. As a result, I have adopted the wording from Deputy State Coroner Grahame as being equally relevant to these findings, and removed the word immediate.

123. The proposed wording of 1 c(i) , is embraced by the Commissioner as supporting the policy and useful.

“1(c)(i) Current paragraph 7-2-2 of the **SDP** be amended in the following terms:

i) insertion of the words “*In weighing the degree of risk to the community, police and the offender*” at the commencement of the paragraph;

124. However, 1(c)(ii) is not supported:

ii) insertion of the additional factor as mater number (iv) under the second dot point:

(iv) uncertainties concerning the offending driver’s age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle

125. In relation to the recommendation in 1 c (ii) the Commissioner of Police does not consider that the uncertainties of the type listed need to be elevated to express consideration in addition to the matters at 7-2-2(i)-(ii). The evidence in this inquest supports this recommendation, given that the evidence supported that limited attention was given to the unknown factors in relation to the vehicle being pursued. Much emphasis was placed on the observation that someone appeared “in control of the vehicle” even in the face of recently flooded roads, a dip in road, and extreme speeds that were increasing. The focus seemed to be more on what the capabilities of the police vehicle, as opposed to what may be the reality for the pursued driver. There was evidence that in the minds of the officers the unknown number of passengers in the car was not necessarily a change to the risk identifiable.

126. Recommendation 1d is supported and a different wording was proposed. There was much uncertainty in the evidence about the nature of the “original offence”, as opposed to the reason for the pursuit. Several officers believed the reason for the pursuit was generally the failure to stop. The point of this recommendation is to clearly make the distinction. This is how this issue is taught to officers, and such a change supports that teaching.

127. Recommendation 2 is not disputed, and it is noted training is regularly reviewed to ensure all officers are taking account of all relevant consideration in whether to commence and continue a pursuit. The Commissioner has indicated that should recommendations be made in relation to potential

amendments to training, these may be considered in tandem with any recommendations regarding the SDP.

128. As a general principle the Commissioner of Police supports the conduct of research that will provide useful insights into the conduct of police and provide information that may assist in the furtherance of community safety.
129. I thank the Commissioner of Police for engaging so positively with these recommendations, for the proposal of alternatives and engagement with the process.

Concluding remarks

130. Andrew’s pursuit provided another opportunity to review the general situation in relation to pursuit policy given the catastrophic results that can occur.
131. Senior Sergeant Upton reinforced the need for a pursuit to be a last resort. Senior Sergeant Woods provided impressive evidence about the need to ensure the supervising officers had as much detail as possible to enable effective oversight of the pursuit by senior experienced officers. Both embraced the need for the original offence to be known, the seriousness of the offending to be assessed appropriately, then to assess the necessity for the pursuit.
132. Helpfully the inquest conducted by Deputy State Coroner Dillion led to reports in the NSW police Force Annual report which provide at least some updating of data on pursuits. This now provides some capturing of data, although more information would be useful to allow police to continue to review the trends in pursuit and reasons for them. I consider the following data relevant:

Following a coronial investigation in 2014, the Coroner made a number of recommendations, which included publishing statistics for police pursuits in the Annual Report.

In 2021-22 the NSW Police Force undertook 3,398 pursuits. Of these 857 were terminated by police while 324 pursuits resulted in collisions. There were 4 fatalities and 78 injuries arising from pursuits.

The table below lists the reasons for these pursuits.

Reason for police pursuit	2017-18	2018-19	2019-20	2020-21	2021-22
Traffic	1,380	1,612	1,636	1443	1729
Criminal	272	325	347	320	377
Stolen vehicle	391	443	458	522	735
Non stop RBT	676	743	854	774	928
Other	6	5	6	5	14

Source: NSW Police Force Traffic & Highway Patrol Command

Note: Individual pursuits may have more than one reason recorded. Consequently, the sum of reasons is greater than the number of pursuits. There were 78 pursuits listed as ‘Injury Pursuits’ with the injured persons being 17 police officers, 51 ‘offenders’ and 20 ‘other’ people.

133. The review by the Australian Government Australian Institute of Criminology in the Trends and Issues Motor Vehicle Pursuit-related Fatalities in Australian, 200-11 provided a comprehensive review and analysis of pursuits at that time. It noted that police agencies are acutely aware of the risks associated with motor vehicle pursuits and “deciding whether to pursue a motor vehicle is among the most critical decision made by law enforcement officers”. It noted that as a result of coronial led reviews at that time Queensland determined to effect restrictive reforms re-focusing the pursuit policy on safety rather than law enforcement and discouraging officers from pursuing persons committing minor traffic and drink driving offences. They were implemented in December 2011. Similar reforms were undertaken by South Australian Police throughout 2011 and a more restrictive policy came into effect in January 2012.

134. It further referenced a report commissioned by the international Association of Chiefs of Police in the United States, Lum and Fachner (2008) found that:

“for the most part, police agencies have leaned towards restrictive policies believing that the costs (injury, damage, death, liability suits, loss of legitimacy with the community, financial costs of fleet repairs etc) far outweigh the benefits (arrest of the subject, deterrence, crime control.)

Further that report noted that introduction of such restrictions has been shown to reduce the number of pursuits.

135. The report was the first of its kind in Australia, and it would appear time for a further report to better understand the current situation, particularly given that the number of pursuits have increased so very significantly in New South Wales since that time. Approximately half of the pursuits involve a traffic offence (accepting that there may be more than one reason recorded in the table provided). It would be useful to better understand the nature of the traffic matters that led to the pursuit. Deputy State Coroner Graham’s recommendation that a record should be kept as to the initial reason for the pursuit would assist in the collection of that data and allow for better informing the direction of policy in the future.

Recommendations

136. To the Commissioner of the New South Wales Police Force (NSWPF):

1. That consideration be given to making amendments to the NSWPF Safe Driving Policy (2019 v9.2) [**SDP**] in the following (or similar) terms:

- a) Paragraph 7-2-1 of the **SDP** be amended to replace the words “*community and police*” with the words “*community, police and the offender*”.
- b) A new paragraph be inserted in the **SDP** between paragraphs 7-2-1 and 7-2-2 as follows:

In weighing the need to immediately apprehend the offender, matters to be taken into account include:

- The seriousness of the offence for which the police were initially attempting to stop the vehicle, and in particular;
- the need to engage in the pursuit of a vehicle in relation to a road traffic offence without evidence that another offence, being of a serious nature, is likely to have been committed;
- in relation to offences other than road traffic matters, whether the police are satisfied that a serious risk to the health and safety of a person exists
- the means that may be available to police to apprehend the offender at a later time (for example, the ability to use of a “form of demand” in relation to the registered owner, or where the identity of the driver is known)

c) Current paragraph 7-2-2 of the **SDP** be amended in the following terms:

- insertion of the words “*In weighing the degree of risk to the community, police and the offender*” at the commencement of the paragraph; and
- insertion of the additional factor as mater number (iv) under the second dot point:
- *uncertainties concerning the offending driver’s age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle.*

d) Point (d) of paragraph 7-5-1 be amended so that the words “*reason for pursuit*” are replaced by the words “*the offence for which police attempted to stop the vehicle, and any other reason for the pursuit*”

2. That training provided by the NSWPF to officers who may become involved in the conduct of pursuits be updated and revised in the following respects:

- a) to emphasise that in providing a “reason for pursuit” to VKG operators, what is required is a description of the offence for which the relevant vehicle stop was being attempted;
- b) to reinforce the fundamental importance of officers turning their minds to the question of the need to immediately apprehend an offender as part of the weighing exercise under the SDP before initiating or continuing a pursuit, and that in doing so:

- i) less serious offences (including most traffic offences) will in general carry a lower necessity to immediately apprehend; and
- ii) that other means by which it may be possible to later apprehend the driver (including by utilising the ‘form of demand’) must be considered.

c) to provide education, based on statistics such as those in the 2013 report of the Australian Institute of Criminology, (*Motor vehicle pursuit-related fatalities in Australia, 2000–11*) concerning factors such as the extent to which drivers involved in pursuits are affected by drugs and alcohol, age, cultural background, and other characteristics that are frequently common to drivers involved in pursuit fatalities;

d) to discourage officers from making assumptions about the presumed “criminal intent” of drivers based on the mere fact of a failure to stop, and to appreciate the relevance of other factors such as age, mental state, cultural background, inability to pay fines and fear of loss of licence; and

e) to emphasise the need for officers to consider uncertainties *concerning the offending driver’s age, abilities, state of mind, and the roadworthiness and number of occupants of their vehicle* when assessing the danger of initiating or continuing a pursuit.

3. To the Commissioner of the NSWPF, the Minister for Police and the Attorney-General:
- a. That, with the co-operation of the Commissioner of the NSWPF, research be conducted and a report be produced by the Bureau of Crime Statistics and Research (BOCSAR), or another appropriate government agency, preferably one independent of the NSWPF:
 - b. in order to understand the reasons for the significant increase in the number of pursuits conducted by the NSWPF over the last decade; and
 - c. with a view to proposing measures, including by reference to policies in other Australian jurisdictions, that might be taken to substantially reduce the number of pursuits undertaken by the NSWPF;
 - d. and that the relevant report be provided to the Minister of Police, the Attorney-General and be made publicly available.

Acknowledgments

136. To the Officer in Charge for careful preparation of the brief and the gathering of relevant evidence.
137. To the representatives of the parties, for their contributions and input and appropriate participation in the proceedings in a `respectful and caring manner.
138. To the family, I acknowledge their courage and bravery.
139. To Ms Lowe for assisting all parties, and ensuring appropriate cultural recognition in keeping with the agreed protocol.
140. Finally to the team assisting. Mr de Mars, Counsel Assisting for a very thorough presentation of the evidence and helpful research into the statistical data. To Ms Muniz for assisting and for organisation of the inquest. To Ms Tuialii for her assistance after taking carriage of the matter.

Formal Findings

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

- a) The findings pursuant to s81(1) of the Act:

The identity of the deceased

The deceased person was Andrew Stark

Date of death

19 September 2022

Place of death

Wandobah Rd, Gunnedah

Cause of death
Multiple Injuries

Manner of death
Misadventure – single motor accident collision during the course of a police pursuit

139. I again extend my most sincere condolences to Andrew's family and particularly his sons and for such a sudden and tragic loss of such significant from their lives.

140. I close this inquest.

A handwritten signature in black ink that reads "E. Kennedy". The signature is written in a cursive style with a large, looped initial "E" and a long, sweeping underline.

Magistrate E Kennedy
Deputy State Coroner
24 November 2023