

CITATION: *Inquest into the death of Damien Wayne* [2005] NTMC 072

TITLE OF COURT: Coroner's Court

JURISDICTION: Alice Springs

FILE NO(s): A0037/2004

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FINDING OF: Greg Cavanagh SM

CATCHWORDS: Death in Custody, police pursuit, motor vehicle accident, police pursuit policy.

REPRESENTATION:

Counsel:

Assisting:	Ms Helen Roberts
for Family	Ms Victoria Whitelaw (CAALAS)
NTAJAC	Mr Chris Howse
NT Police:	Mr Michael Grant

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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A0037/2004

In the matter of an Inquest into the death of

DAMIEN WAYNE
ON 18th May 2004
AT ALICE SPRINGS

FINDINGS

(Delivered 11 November 2005)

Mr Greg Cavanagh SM:

INTRODUCTION

1. Damien WAYNE (“the deceased”) was an Aboriginal male born 26 January 1979 at Yuendumu in the Northern Territory. He died at about 3:20am at the corner of South Terrace and Walker Street in Alice Springs, after he lost control of the motor vehicle he was driving and was thrown from the vehicle, suffering multiple injuries. At the time he lost control of the vehicle, he was being pursued by members of the NT Police Force, meaning that his death falls within the definition of a death in custody in the *Coroners Act* and the holding of this inquest is mandatory.

2. Pursuant to section 34 of the *Coroners Act*, I am required to find, if possible

“(1) A coroner investigating-

(a) a death shall, if possible, find-

(i) the identity of the deceased person;

(ii) the time and place of death;

(iii) the cause of death;

(iv) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*; and

(v) any relevant circumstances concerning the death;”

3. In addition, as this is a death in custody, section 26 of the *Coroners Act* applies. That section provides:

“(1) Where a coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the coroner –

(a) shall investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody; and

(b) may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.

(2) A coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody shall make such recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant.”

4. Ms Helen Roberts appeared as counsel assisting me in this inquest. M Whitelaw of the Central Australian Aboriginal Legal Aid Service (CAALAS) sought and was granted leave to appear on behalf of the family of the deceased. Mr Christopher Howse sought and was granted leave to appear for the Aboriginal Justice Advocacy Committee. Mr Michael Grant of counsel sought and was granted leave to appear for the Commissioner of Police, and the two police members involved in the pursuit.
5. Witnesses called to give oral evidence at the inquest were Senior Sergeant Potts, Senior Constable Hickey, Constable Burnett, Superintendent Godwin, Brevet Sergeant Ruzsicka, and Superintendent Jeffs. Several other witness statements and interviews were part of the brief of evidence tendered as Exhibit 2. Four additional police statements were Exhibit 3.
6. The evidence contained in the very thorough investigation brief prepared by Detective Sergeant John Nixon is sufficient for me to reach conclusions on all of the matters I am required to find as part of my formal findings in this

matter. The examination of witnesses called to give oral evidence was directed more toward some particular issues arising from the circumstances of this death, which I discuss in my findings below.

FORMAL FINDINGS

7. Pursuant to section 34(1) of the *Coroners Act*, I find:

- (a) the identity of the deceased person is Damien Wayne an Aboriginal male born on 26 January 1979 in Yuendumu in the Northern Territory;
- (b) the time and place of death was 3:20am on 18 May 2004 at the corner of Walker St and South Terrace in Alice Springs;
- (c) the cause of death was blunt head trauma occasioned when the deceased was thrown from a motor vehicle he was driving;
- (d) the additional particulars needed to register the death under the *Births, Deaths and Marriages Registration Act* are:
 - (i) the deceased was a male of Australian Aboriginal origin;
 - (ii) the death was reported to the Coroner;
 - (iii) the cause of death was confirmed by a post-mortem examination carried out on 25 May 2004 by Dr Terence Sinton, Forensic Pathologist at Alice Springs Hospital;
 - (iv) the deceased's father was Johnny Jungarai Wayne;
 - (v) the deceased's mother was Lydia Nangala;
 - (vi) the usual address of the deceased was House 3, Ilparpa Camp, Alice Springs;
 - (vii) the deceased was unemployed.

CIRCUMSTANCES

8. At about 3am on Tuesday 18 May 2004, Senior Constable Hickey and Constable Burnett set up a random breath testing station ("RBT") at the intersection of Palm Circuit and the Stuart Highway, Alice Springs. The

current practice was for a random breath testing station to be set up once per night shift. I heard evidence that traffic levels at that time on a Tuesday morning in Alice Springs are generally light, with between 1 and 5 vehicles in an hour passing, and being stopped, by the police operating the RBT.

9. The white Ford Telstar sedan driven by the deceased was the first car that morning to approach the RBT. The vehicle belonged to a Frankie Watson, an associate of the deceased. It was, however, still registered to Alice Motor Sale, a car yard in Alice Springs, as the ownership had not formally been transferred, it having been purchased less than a week previously. The deceased had been drinking alcohol throughout the day and evening of 17 May. He had at some point asked Frankie Watson if he could drive the car, and been told no; however early in the morning of Tuesday he obtained the keys from Watson's possession and drove the vehicle from the Trucking Yards Camp. Family members who attended the inquest said that he was out looking for his wife.
10. The deceased did not stop at the RBT when signalled to do so by the police. He neither slowed nor increased his driving speed, which was estimated by the officer to be 80km/hr, the speed limit for that section of road. He drifted slightly towards the centre of the road and continued driving. Sergeant Potts' opinion was that the deceased's focus was drawn to the police vehicle (thus the drift) but he may not have even noticed the officers signalling him to stop at that stage. Unknown to the officers at that time, the deceased was a disqualified driver and he was well over the legal blood alcohol concentration for driving (his BAC postmortem was 0.385%). In March 2003, he was convicted of driving under the influence of alcohol and was still under a suspended sentence of imprisonment for that offence as at May 2004. He was likely to be aware that he would be facing imprisonment if caught by the police that night.

11. The police then got into their vehicle, did a u-turn, activated their lights and sirens and followed the deceased's car. Senior Constable Hickey was driving and Constable Burnett was the passenger. The deceased turned on to South Terrace. Behind him, the police vehicle got close enough to see the registration number, and then increased the distance again. Constable Burnett gave the following information over the radio:

VKM903: VKM903 we have a pursuit of a white Ford Telstra he's just turned on to –

VKM903 (driver): South Terrace Highway

VKM903: South Terrace, off the South Stuart Highway, registration 655009, 655009. We're doing 60 kilometres an hour, he's weaving around on both sides of the road, crossed a couple of white lines.

VKM903: There's nil traffic, nil pedestrians.

VKM903: Vehicle has slowed now to forty kilometres an hour, failing to pull over.

VKM903: We've just passed at Kempe Street, he's (inaudible) just less than the 40 kilometres an hour, one occupant, he's now stopping right outside Abbots camp.

VKM903: Vehicle has just pulled into driveway of Abbots camp.

12. It is likely that the deceased's first episode of erratic driving (crossing the white lines) can be attributed to him looking in his rearview mirror at the police car behind him. Senior Constable Hickey formed the opinion that when the deceased slowed to 40km/hr he may have been looking for a place to stop his vehicle and flee on foot. He continued driving, however, and pulled into the driveway of Abbots Camp, stalling the vehicle in the driveway. The police officers prepared to get out of their car, and then the deceased got his Ford started again, and drove into the camp.
13. The single roadway through Abbots camp is in a "P" shape, with a playground/parkland area in the centre of the "P", and houses around the outside. Both vehicles started slowly up the back of the "P", the police

vehicle at least 15 metres behind the deceased's vehicle. During the entire time the vehicles were in Abbotts camp, no further radio transmissions from vehicle 903 were made to communications. (Constable Burnett had the 'transmit' button accidentally depressed for much of the time.) As the deceased drove slowly across the top of the "P" road, Senior Constable Hickey drove diagonally across the parkland area towards the opposite roadway, stopping with the "nose" of his vehicle just onto the road. At this point the deceased reversed his car, crashing into the fence behind him, and headed out in the direction he had come, to the exit of the camp again, and then right onto South Terrace. The police turned onto the roadway again, and followed him.

14. The deceased accelerated rapidly at this point, and travelled about 350 metres along South Terrace at speed, before losing control of his vehicle near the intersection with Walker Street. Sergeant Potts sets out several calculations in his report, which lead him to conclude that the Ford was travelling at a minimum speed of 119km/hr when it entered the yaw. The deceased, who was not wearing a seatbelt, was thrown from the vehicle, and suffered immediate fatal injuries.
15. There was some dispute between the witnesses as to how far the police vehicle was behind the deceased's vehicle, when the deceased left Abbotts Camp and commenced travelling at speed along South Terrace. A number of people were in a position to give the investigating police information about this aspect. In addition to Senior Constable Hickey and Constable Burnett, Constable Dupont and Carmody were approaching the scene in another police vehicle, along South Terrace in a northerly direction, at the time the deceased exited Abbotts camp. Mr Norris, a civilian resident of a unit on Stephens Rd, could see the lights of the two vehicles (being the deceased and police vehicle 903) travelling along South Terrace. Mr Norris initially estimated that the two vehicles were only 40-50 metres apart. Sergeant Potts took him through a re-enactment of what he had seen, and doing this he

varied his estimation to over 105 metres. While Mr Norris was endeavouring to be accurate, he was on the other side of the Todd River and about 300 metres away from what he was observing, and there were trees and bushes in the line of sight. I accept Sergeant Potts summation that his perceptions were not accurate.

16. As to the police witnesses, it is my view that all witnesses (including Constables Dupont and Carmody, who did not give evidence but gave records of interview) were making genuine attempts to be accurate. Sergeant Potts has very thoroughly analysed all of the available information, and I accept his reasoning and conclusions in his report on this point. In evidence, he said (page 22):

As the vehicles were leaving Abbotts camp I estimated that the distance between the two vehicles would have been at least 100 metres. Senior Constable Hickey suggested that the suspect vehicle was all the way down at Stephens Road. I don't give that credence in any way shape or form simply because it wouldn't have been possible for the police vehicle to observe the accident as it had, and to put their vehicle in the position that it was to make those observations. Constable Burnett and Dupont, his partner, suggested that perhaps the vehicle was more towards Kempe Street, which is only around about 100 metres away. So it is my view that the initial starting point of the vehicle and the suspect vehicle is about 100 metres apart as they leave the camp.

17. The final part of the pursuit, along South Terrace, lasted for only about 15 seconds. Tragically, once Mr Wayne started driving at excessive speeds, with a number of bends to negotiate ahead of him and impaired responses due to his blood alcohol concentration, the outcome was almost inevitable.
18. Superintendent Lance Godwin, who has more than fifteen years experience policing in the Alice Springs area, was the watch commander on shift that night. When the pursuit began, he made his way to the communications room, in order to monitor the pursuit. His role, as he described it, was (transcript p88):

Basically overseeing the pursuit and listening to what was occurring, basically to make sure that the communication from the members was complying in terms of road conditions, pedestrian conditions, the conduct of the driver, other information such as that, and also so that I was in a position that if the pursuit needed to be terminated I could do so immediately.

19. When he heard the radio call that the driver of the fleeing vehicle had pulled into the driveway of Abbott's camp, Superintendent Godwin formed the view that the vehicle pursuit was over and was going to involve a foot chase either into the camp or into the Todd River area. On that basis, he decided that it was necessary to have as many members as possible in the area for safety reasons, and he left the station himself. Once in his vehicle, he could then hear continued radio transmissions; the next relevant one he heard was that the vehicles had left the camp, followed by the call for the ambulance. As it happened, the period he missed on the radio was the same period that there were no transmissions from Constable Burnett, that is, the period that the vehicles were within Abbotts camp. Superintendent Godwin explained clearly in his evidence, that in hindsight, it would have been easier to monitor the pursuit had he remained in the communications room, but that he made the decision to go mobile based on his belief that the pursuit was going to be on foot from that point, and the need to ensure safety of his members. This was a reasonable decision based on his prior experience, both of pursuits in the Alice Springs area, and of incidents between police and residents in town camps, and it did not have any significant impact upon the events.
20. After the crash, appropriate investigative steps were taken. Both involved officers were interviewed briefly on tape, during which they expressed a desire to have some sleep and some legal advice prior to being interviewed. They then participated in recorded interviews with a lawyer present. Both officers were asked whether they would take part in a "re-enactment" of events, and both responded (either immediately or subsequently) that they would not do so, after obtaining legal advice. I asked Senior Constable

Hickey whether he gave a reason for saying no, and he said he “probably would have” given a reason, but could not now recall it. Constables Dupont and Carmody, who merely witnessed the final stages of the pursuit, were also asked to participate in a re-enactment. Constable Dupont initially said yes, and then later said that he and Constable Carmody “had spoken to a [police] Association representative and he’s just asked us to [respectfully] decline to participate in the re-enactment”.

21. At the relatively recent inquest into the death of an Aboriginal man in Katherine, who died when run over by a police vehicle (Albert Robbo [2005] NTMC 34), I made the following comments:

That there was no re-enactment of this incident performed by the involved officers is unfortunate. In my findings at the Inquest into the death of Eduardo Concepcion [2001] NTMC 25, a police shooting, I made comments about the use of re-enactments as an investigative tool. At paragraph 65, I said:

“Also, in my experience, it’s almost always the case that video re-enactments are carried out in investigations of these kind of deaths, however, in the current case the legal representatives of [the involved officers] determined that they would not be involved in such an exercise. In my view, if an experienced and trained Police investigator believes that re-enactments are necessary, and the Police investigator in this case would not have asked for such re-enactments if he did not think so, then the Police officers ought to have been ordered to do so. Of course, if they wanted to decline on the basis of their privilege against self incrimination, then so be it, however I understand that at no time did the officers exercise such privilege.”

Those comments are apposite here and I repeat them in relation to this investigation. Where any person, including a police officer, has information relating to a death which has been reported to the Coroner, he or she is required to provide that information when asked to do so. Sergeant Hill is a senior officer to each of the police officers involved in this incident. She could have directed them to participate in a re-enactment as she had formed the view that it would be helpful to her investigation. The only basis upon which they could have declined to cooperate would be by invoking their privilege against self incrimination. That privilege applies in the course of a witness giving evidence at a Coronial proceeding by virtue of s. 38 of the *Coroners Act* (NT). Whether by virtue of

allowing for the proper operation of that section, or by the operation of a common law privilege, in my view (without deciding the issue finally) that privilege would extend to an interview situation.

In any event, they did not seek to invoke the privilege. An assertion that a witness “does not feel comfortable” in answering a question or participating in a re-enactment is insufficient to absolve him or her of a duty and responsibility under the *Coroners Act* to assist in the investigation. Police investigating matters on my behalf ought not be swayed by vague references to “legal advice” and ought direct junior officers to participate in any aspect of the investigation that the investigator reasonably believes necessary to assist him or her in coming to conclusions about the circumstances of the death.

22. I do not criticise the officers under investigation for what they did, although I do not see that either of those officers had anything to fear from participating in a re-enactment, especially given that they had both willingly given full and honest accounts in lengthy recorded interviews. They are of course entitled to have legal advice and entitled to claim a privilege against self incrimination should it be applicable. Officers Carmody and Dupont, however, were in a different situation. They had simply witnessed an incident involving the death of a person, and were participating as witnesses in an investigation in which police actions were to be scrutinised. On the facts of this case, in my view there is no reason that either of those officers could provide that would entitle them to refuse to cooperate. It is no different from those officers witnessing an event involving civilians and being asked to provide information to assist investigators with what occurred. Again, I do not criticise those officers for the course they took. Those officers indicated their willingness to participate in a re-enactment, until speaking to a Police Association representative – a fellow police officer – who advised them to decline. The investigator accepted this. In my view these witnesses (being serving police officers) might simply have been ordered to do so by the investigating police officer.
23. I have said many times that in a situation where police, on behalf of the Coroner, are investigating the actions of other police, is of the utmost

importance that the investigation be perceived by family members of the deceased person and the public at large to be impartial. The principle is reflected in Police General Order D2: “Deaths in Custody and investigation of serious incidents and/or fatal incidents resulting from police contact with the public.” Involved police who may potentially be criminally liable for their actions are entitled to legal advice and all of the legal rights that an ordinary member of the community would have not to be compelled to incriminate themselves. However, if no privilege is claimed against self-incrimination, then I see no reason why police witnesses to a reportable death should not cooperate with investigators and provide re-enactments (where such are thought necessary by prudent investigators so as to provide a thorough and complete investigation brief).

Appropriateness of the Pursuit

24. The pursuit was commenced because the deceased failed to obey a police direction to stop, if not at the RBT, then when the police car came behind the deceased on South Terrace with the lights and sirens activated. At that point the deceased was driving within the speed limit, there were episodes of minor erratic driving (but certainly nothing indicating his extremely high BAC), there was no other traffic on the road, and the relevant details were being given over the radio by Constable Burnett. The first stage of the pursuit was appropriate, and consistent with the Urgent Duty Driving policy then applicable.
25. The pursuit continued within Abbots camp, which is where Senior Constable Hickey made the decision to drive across the playground area instead of following the deceased around the roadway. Sergeant Potts said that that driving manoeuvre was inappropriate, for a number of reasons. He explained that for reasons of safety to police drivers, they are taught not to come alongside or in front of a ‘suspect vehicle’, because this leaves the police vehicle open to aggressive action by the other driver. In addition, the

move gave the appearance of “cutting off” the path of the deceased’s vehicle. I accept Senior Constable Hickey’s evidence that he had no intention of driving into the path of the vehicle driven by the deceased. His intention was to be in the best possible position for the lights of the police car to enable him to see the deceased when he alighted from the vehicle (as Hickey thought he was about to do). However, as Sergeant Potts explained, from the deceased’s perspective, his option to drive forward was impeded, and so he made the decision to reverse, hitting the fence in the process.

26. Further, there was the possibility of intoxicated people sleeping in the playground area. Senior Constable Hickey discounted this possibility. He said that he did not traverse the parkland at speed, and that he was ‘aware of watching out for any obstacles that might have been left in the parkland’ and insisted that if people were there, he would have seen them. In my view, while the risk may not have been great, this was a risk of which a prudent driver would have taken notice. Only recently I held an inquest into the death of an Aboriginal man, lying asleep and drunk on a darkened driveway, who was run over by a police vehicle, in circumstances in which that driver also said he was keeping a proper lookout.

27. The potential risk in approaching (or seeming to approach) the deceased’s vehicle from the front or the side was put to Senior Constable Hickey in cross-examination. He denied any risk to the police vehicle because, as I have accepted, Hickey:

“had no intention of trying to form a block or anything like that there and I knew that he couldn’t get at me either once I was in there....he couldn’t drive at me.”

28. While I found him to be a truthful witness, I felt that Senior Constable Hickey displayed some lack of insight into the importance of continually assessing the risks during the pursuit, and taking into the account the perspective of the fleeing driver in so doing. He answered questions this way (transcript p60):

MS ROBERTS: What about the fact that you were approaching the fleeing vehicle from the front or the side, do you see that as a potential risk?---No.

THE CORONER: Is that because if it had have continued - - -?---I had no - I had no intention of trying to block him.

No, that's right. You're saying that if he hadn't stopped you would have let it go past before following him?---Yeah, yeah. I had no intention of trying to form a block or anything like that there and I knew that he couldn't get at me either once I was in there. I couldn't be - he couldn't drive at me.

MS ROBERTS: What about his perception, that is Mr Wayne's perception of your manoeuvre, do you consider that as a potential risk?---No.

You said you had no intention - - -?---We - we weren't going - - -

- - - going - - -?---Yes, okay, I see what you're saying. As I said we weren't traversing the parkland so quickly that he wouldn't from where he was be able to drive past us and around the side of us on the road.

In your mind, I understand your evidence, that you had no intention of driving, continuing to drive out in front of him had he continued to drive, but isn't it possible, I suggest to you, that he in his mind he may have perceived that was what - - -?

---That's possible, **I have no idea of what he thought.**

Well as a driver - when you're driving a pursuit vehicle you do need to think about what the fleeing vehicle driver may be thinking, would you agree with that?---Well you try to anticipate what he may do, yes, but other than that no. You can't remember (?) people's minds, you can tell by what they're doing, their actions maybe that and anticipate what they may do, but.

Senior Sergeant Potts this morning used an expression in evidence, he said something about, and my friends will correct me if I get this wrong, when you're driving a pursuit vehicle you need to drive for yourself and you also need to drive for the driver of the fleeing vehicle. Have you ever concept or idea, or?---He'd be referring to not placing them under pressure, I believe.

So do you think that manoeuvrer across the park placed Mr Wayne under some pressure?---No, I couldn't - I can't see how it could. He was that far that had he decided to continue driving there would be nothing I could do to stop him, and anyone could see that. There was no way I was going to make it up to where we would intercept if he had have continued to drive. I was just too far away from him.

Accepting that to be the fact, I just want to talk about what might have been in Mr Wayne's mind whether he - he was significantly intoxicated, we know that now?---Yes.

At the time you suspected that he may be intoxicated?---I suspected that he could be.

By that stage, that is the stage that you were driving across the park, you knew that he didn't want to stop for the police vehicle?---That's correct.

MS ROBERTS: And you don't think it's a possibility at all that he perceived that he was trapped?---I expected him to exit the vehicle and flee on foot, he had entered a place with only one exit, he knew we were there and yet he continued with that manoeuvre and I fully expected him to stop and flee on foot, he knew that we weren't stopping at the entrance to Abbots Camp, I fully expected him to stop somewhere in Abbots Camp and flee on foot.

29. In his recorded interview, Senior Constable Hickey said he had last read the pursuit policy in October 1993, and at that time he did not find it particularly easy to read. [He was referring to the previous policy, now superseded by the Policy gazetted on 20 May 2004]. He has never had any practical training in pursuit driving. During his interview, he sought to distinguish between 'pursuing' and 'following' a vehicle on the basis of speed, which demonstrated his unfamiliarity with the terms of the policy which clearly state that a pursuit is a following, at any speed. Appropriately, he did not maintain that distinction in his evidence.
30. Constable Burnett, who has been much more recently trained, demonstrated a much greater familiarity with the policy. He also acknowledged that his commentary could have been better, but at the time, with adrenalin, it was

more difficult to do than in theory. He demonstrated a mature consideration of what occurred. In his interview, he said (p60):

I've gone over this several hundred times in my head since the incident and um I can honestly say that there was nothing about what Senior Constable Hickey did that I would change other than possibly moving out when that vehicle was reversing, putting the nose out onto (inaudible) cause I just didn't know he was going to come forward again towards us fortunately he didn't but other than that there is nothing else that I would change about what Michael did.

31. The driving behaviour of the deceased changed markedly in Abbotts camp. I find it highly likely that he perceived that his option to continue driving forward was removed by the police vehicle cutting across the playground area. He reversed, hitting the fence, and exited the camp at speed, having dramatically escalated his risk-taking behaviour. It has been submitted that consideration ought to have been given to terminating the pursuit at this point, and certainly when the deceased starting driving very fast along South Terrace. I agree with that submission. However, I also accept what has been put to me by Sergeant Potts, that the very short amount of time that elapsed between the exit from Abbotts camp and the crash make it highly unlikely that a decision at that point to terminate would have altered the ultimate outcome.

Amendments to the Pursuit Driving Policy

32. In July 2003 I handed down findings in the inquest into the death of Annette Kunia [2003] NTMC 37. During the hearing of the matter, in late 2002, I heard that there was a review of the Urgent Duty Driving policy taking place and that review was going to take into account any recommendations I might make in that matter. Superintendent Mark Jeffs took on responsibility for the new policy, as set out in his statement dated 29 September 2005 and tendered in this inquest (Exhibit 3). In his statement, Superintendent Jeffs sets out the steps he took and the decisions he made in relation to the content of that policy.

33. In addition, Superintendent Jeffs was responsible for preparing the draft of a letter from the Commissioner of Police to the Attorney-General dated 17 December 2003 enclosing the new Policy. The purpose of that letter was to inform the Attorney-General of steps which had been taken in response to my recommendations in the *Kunia* inquest. Part 7 of the *Coroners Act* provides, inter alia:

46A (1) If the Attorney-General receives a report or recommendation from a coroner under section 27 or 35 that contains comment relating to an Agency or the Police Force of the Northern Territory, the Attorney-General must, without delay, give a copy of the report or recommendation to the Chief Executive Officer of the Agency or the Commissioner of Police, as the case requires.

...

46B (1) If a Chief Executive Officer or the Commissioner of Police receives a copy of a report or recommendation under section 46A(1), the Chief Executive Officer or Commissioner must, within 3 months after receiving the report or recommendation, give to the Attorney-General a written response to the findings in the report or to the recommendation.

(2) The response of the Chief Executive Officer or the Commissioner of Police is to include a statement of the action that the Agency or the Police Force is taking, has taken or will take with respect to the coroner's report or recommendation.

(3) On receiving the response of the Chief Executive Officer or the Commissioner of Police, the Attorney-General –

(a) must, without delay, report on the coroner's report or recommendation and the response to the coroner's report or recommendation;

(b) may give a copy of his or her report to the coroner; and

(c) must lay a copy of his or her report before the Legislative Assembly within 3 sitting days after completing the report.

34. As it turned out, the response to the Attorney-General from the Commissioner contained a copy of a new pursuit policy which was not that

which was eventually gazetted, and indeed the policy was not gazetted for some months after the date of the response. In my view, it is unfortunate that this response was not qualified by the fact that the new pursuit policy might take several months to come into force, and was still subject to change. The importance of this written response is manifest especially given that it would be tabled in parliament.

35. Senior Sergeant Potts has expressed the view that analysis of the facts of this particular pursuit would not vary whether the 1993 or the new Pursuit Policy were applied, and I agree. Indeed the major area of criticism of police driving was the manoeuvre across the park, something not expressly prohibited in either document. Drivers are expected to apply care and common sense, in assessing the risk to themselves and to the fleeing driver and other members of the public. Senior Constable Hickey said he had not read the policy since 1993. Obviously any new policy is only useful if it is read, understood and applied by police officers. In that regard, Superintendent Jeffs told me that it is proposed to include coverage of the Pursuit Policy in the biennial refresher training of all members in the use of defensive tactics.
36. Superintendent Jeffs was also asked questions about the driver training presently provided to police recruits in the Northern Territory. He confirmed that the practical pursuit training (where the recruits actually drive around a circuit in a mock pursuit environment) component of the previously 3 week course is no longer included. In addition, the police Force does not have “the capacity” to offer any post recruit driver training at the present time. He confirmed in answer to some questions from Mr Grant, that due to an increase in recruit numbers, some things had to be dropped from the course, and it was decided that practical pursuit training would be one of them. He then said that the rationale for that particular exclusion was that because pursuits are dangerous and to be avoided as much as possible, it was not the best thing to be teaching young recruits how to do them.

37. Mr Grant emphasised to me in submissions that recruits still do urgent duty driver training, which involves driving at speed with the lights and sirens on. Sergeant Ruzsicka, officer in charge of the Driver Training Unit at the Police College saw a significant distinction between the two types of driving:

They're very different. Mainly because generally if you're just driving lights and sirens for them to get very quickly from point A to point B, you tend to have the capacity to plan out what you're doing and think ahead. The difficulty with a pursuit situation can be that you're constantly reacting to the behaviour of the offending motorist and having to change or modify what you're doing to accommodate the changes they're making with their driving, be it where they're locating their vehicle on the road or their speed or a myriad of other considerations.

38. Further, he emphasised the benefit of practical training as compared with classroom discussions of the pursuit policy:

The mock pursuit exercise physically gets them to put it into practice. The adrenalin happens. The actual siren's going, wailing in their ears. They have to transmit things over the radio and also change what they do, depending on what we do and as much of it is to show them the risks associated with how inherently dangerous they can be and how the problem for police officers are that we're always reacting to what the offender does. And that makes it very, very difficult.

39. He also talked about the key attribute being the "attitude" of a police driver, and the importance of practical training as a means to assess, and if necessary, correct that attitude. He expressly disagreed with the suggestion that practical pursuit training ought be avoided in case it encouraged police to engage in pursuits once they were on the road. I agree. It lacks logic to suggest that one should not train police in the correct use of a dangerous weapon simply because they are also being taught to use it as a last resort.

RECOMMENDATIONS

40. **I recommend** that practical mock pursuit training be reinstated in the police recruit driver training module, or alternatively, that it be taught as an advanced driver training module which is regularly available to members who are likely to engage in driving duties as part of their general or specialist duties.

Dated this eleventh day of November 2005.

GREG CAVANAGH
TERRITORY CORONER