

CITATION: *Inquest into the death of Annette Kunia* [2003] NTMC 037

TITLE OF COURT: Coroner's Court

JURISDICTION: Alice Springs

FILE NO(s): A0008/2002

DELIVERED ON: 31 July 2003

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HEARING DATE(s): 4 – 6 November 2002
5 – 6 December 2002

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS:

CORONERS – INQUEST
Police Pursuit

REPRESENTATION:

Counsel:

Assisting: Mr Ben O'Loughlin

Solicitors:

For Commissioner of Police: Mr John Stirk
Family: CAALAS, Mr David Woodroffe
AB Justice Advocacy Committee: Mr Chris Howse

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

No. A0008/2002

In the matter of an Inquest into the death of

**ANNETTE KUNIA
ON 1 FEBRUARY 2002
AT ALICE SPRINGS AIRPORT ROAD**

FINDINGS

(Delivered on 31 July 2003)

Mr GREG CAVANAGH SM:

THE NATURE AND SCOPE OF THE INQUEST

1. This inquest is into a death in custody as defined by the *Coroners Act* ("the Act"). On 1st February 2002 Annette Kunia ("the deceased") was a passenger in a vehicle, which was being pursued by the police. During the pursuit the driver lost control, the vehicle crashed and the deceased suffered a severed spine as a result of being thrown from the car.
2. The deceased was a person who was in the process of being taken into custody or control of the police and therefore ought be regarded as a "person held in custody" in accordance with s.12 (1) of the Act.

12. Obligation to report deaths

- (a) In this section –

.....

"person held in custody" means –
a person in the custody or control of –

- (a) (i) a member of the Police Force;

.....

and includes a person in the process of being taken into or escaping from
– (c) the custody or control of a person referred to in paragraph (a)....

3. Given that the deceased was a “person held in custody”, s 12 (1) deems her death to be a reportable death:

(a) "reportable death" means –
being a death –

(vii) of a person who, immediately before death, was a person held in care or custody;

(viii) that was caused or contributed to by injuries sustained while the person was held in custody..

4. Section 14 (1) provides me with jurisdiction to investigate the death and s. 15 (1) (b) compels me to hold an inquest where various findings must be considered pursuant to s. 34 and 35.

5. Further I am required by s. 26 of the Act to investigate the care, supervision and treatment of the deceased and also make recommendations to prevent further deaths:

(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.

CORONER’S FORMAL FINDINGS

6. Pursuant to s. 34 of the Act, I find the following:

(a) Identity: The deceased was Annette Kunia, a female Aboriginal

Australian, born on 30 December 1972 at Docker River settlement in the Northern Territory:

- (b) Time and Place of death: The deceased died on 1 February 2002 at 6.24 pm on the Alice Springs Airport Road some 200 meters east of the airport entrance.
- (c) The cause of death: The deceased suffered a severed spinal cord between the first and second cervical vertebrae when she was thrown from a vehicle.
- (d) Particulars required to register death:
 - (i) the deceased was a female;
 - (ii) the deceased was of Australian Aboriginal origin;
 - (iii) the cause of the death was reported to the coroner;
 - (iv) the cause of death was confirmed by post-mortem examination;
 - (v) a severed spine caused death;
 - (vi) the pathologist viewed the body after the death;
 - (vii) the pathologist was Derek Alan Pocock;
 - (viii) the deceased's father was Paul Kunia (deceased)
 - (ix) and her mother is Munatji Brumby;
 - (x) the usual address of the deceased was Areyonga Community via Hermannsburg, Northern Territory;

(xi) the deceased's was not employed.

7. The inquest into the death of the deceased was heard from 4 to 6 November 2002 and resumed for a further two days on 5 and 6 December 2002. Mr O'Loughlin appeared as counsel assisting me. Mr John Stirk sought and was granted leave to appear on behalf of the Commissioner of Police. Mr David Woodroffe of Central Australian Aboriginal Legal Aid Service appeared on behalf of the family of the deceased, and Mr Chris Howse appeared on behalf of the Aboriginal Justice Advocacy Committee. Some of the deceased's family gave evidence and her mother was in attendance for part of the inquest.
8. The inquest heard oral evidence from a total of 10 witnesses, including the driver and two passengers from the pursued vehicle, the two police officers in the pursuit vehicle, and other senior officers providing direct and/or expert's opinion. I also received into evidence an extensive report prepared by the Investigating Officer, Supt. K Vanderlaan.

RELEVANT CIRCUMSTANCES CONCERNING DEATH

I find pursuant to evidence adduced at the inquest as follows: -

9. The deceased was a 29 year old Aboriginal woman born at Docker River on 30 December 1972. The deceased had three children to Stephen Coulthard the driver of the vehicle. The children are Michael Coulthard (DOB 22/3/91), Clive Coulthard (DOB 28/7/95) and Claudia Coulthard (DOB 6/1/02). All three children were in the vehicle at the time of the accident and the youngest Claudia was sitting on the deceased's lap.
10. At approximately 1820 on Friday 1st of February 2002, Sgt Michael Potts and Constable Luke Tamblyn were travelling in a marked police vehicle in a westerly direction along Commonage Road within the township of Alice Springs. Sgt Potts was the driver of the police vehicle with Const. Tamblyn as the passenger and operator of the radio. Sgt Potts is an officer of

considerable traffic experience whereas Const. Tamblyn had two years General Duties experience.

11. A 1986 manufactured white Ford XF Falcon passed the police officers from the opposite direction. The vehicle was driven by Steven Coulthard who had a total of 10 passengers, 3 of which were the young children already mentioned. The deceased was sitting in the middle of the rear seat. Mr Coulthard had been drinking beer and spirits since 10 am on that day and was intoxicated. It was later discovered that the rear brakes on the Ford had been disconnected and that the car was unroadworthy.
12. As the Ford passed the police vehicle slowed so the officers could assess the vehicle. It was before dusk and the light was good.
13. The officers only had a brief opportunity to examine the Ford and Constable Tamblyn gave evidence that he thought there were 7 people in the vehicle where Sgt Potts said he thought there were about 6 people. In any event they both saw passengers in the rear cargo section of the station wagon and were therefore aware that at least some of the passengers were unrestrained. The statements from the passengers suggest that apart from two adults in the rear there were two other children sleeping in the rear section but the police could not be expected to see these two children.
14. As the Ford passed the two police officers heard a scream or a loud voice come from this car. Sgt Potts described it as “like a distressed call coming from a female” and “yelling ..someone trying to get our attention”. Sgt Potts on hearing the scream turned the police car around and followed the vehicle. There was no conversation between the officers as each independently agreed that the Ford deserved further investigation.
15. Mr Coulthard made a right hand turn onto the Stuart Highway (heading south) and in doing so failed to stop at a stop sign. The emergency lights on the police vehicle were then activated.

16. Mr Coulthard began to accelerate and after a further 300 metres the police activated the sirens. Mr Coulthard, still heading south, increased the speed to approximately 120 km/h with the police following. The posted speed limit for this area of the Stuart Highway was 80 km/h.
17. In his statement Mr Coulthard stated that he was aware that he was being pursued “at the bridge” and he appeared to indicate that this was the crossing over the railway line near the intersection of Commonage Road and Stuart Highway. If this is correct then Mr Coulthard was aware of the pursuit as soon as it began. In any event I find that Mr Coulthard was aware that he was being pursued shortly after the sirens were activated.
18. At about this time Constable Tamblyn radioed in to Communications to report the pursuit. In that first radio call he told Communications that their vehicle was involved in a pursuit and provided Communications with their location, traffic conditions, and the speed of the other vehicle. He did not report the reason for initiating the pursuit, nor did he mention that the pursued vehicle contained more than five passengers, and that some of the passengers were unrestrained. This issue is discussed further below.
19. Near the racecourse, the vehicles approached two slower southbound vehicles and a third heading in the opposite direction. The northbound vehicle prevented Mr Coulthard from passing the slower southbound vehicles on the right hand side and Mr Coulthard decided to pass the two vehicles on the left hand side, ie. the wrong side.
20. This passing manoeuvre was the only point on which there was a substantial divergence of evidence. The police stated that the Ford remained on the bitumen whereas the driver of the north bound vehicle, Ms Stapleton, stated that the Ford was on the grass or dirt, that it was bouncing and generally not in complete control. As this evidence relates to the degree of danger in the driving and therefore the possibility that the pursuit should have been terminated earlier, it deserves some analysis.

21. Photographs and other evidence showed that the Stuart Highway was particularly wide at the point of the passing manoeuvre with a 1.65 metre bitumen verge in addition to the 3.5 metre width of the marked lane.
22. Sgt Potts and Const Tamblyn gave evidence that they were directly behind the Ford and were in a good position to see it move to the left and pass the southbound van whilst remaining on the bitumen.
23. This evidence is to be contrasted with that of Ms Stapleton, who stated the Ford travelled completely off the bitumen and was bouncing on the dirt or grass and that she could see rising dust. Ms Stapleton was initially adamant that all four wheels of the Ford had travelled off the bitumen however when pressed toward the end of her giving evidence she stated that “at least some of” the wheels were off the bitumen.
24. The driver of the southbound van being passed could not say whether the Ford was on bitumen or dirt but in his statement he said that he was about to turn right and was therefore close to the centre line. This driver stated that the Ford was very close to his van as it passed. Given the width of the road and the available lane and verge space, this suggests that there was room for the Ford to pass on the left and remain on the bitumen.
25. Robin Kunia, a passenger in the Ford was called to give oral evidence at the request of the deceased’s family. His evidence suggested that he did not have a great view but he nevertheless thought that the Ford remained on the bitumen.
26. The police had a longer and better view of the Ford than Ms Stapleton, and I prefer the evidence of the police. I find that the Ford in fact stayed on the bitumen during the passing manoeuvre and I find that Mr Coulthard retained relatively good control of the vehicle. Although, no doubt dust and debris would have been thrown up during the passing manoeuvre and thereby obscuring the view to some extent.

27. During the remainder of the pursuit, the police did not radio back to Communications that the Ford had passed vehicles on the wrong side of the highway.
28. After this manoeuvre the pursuit continued where Mr Coulthard increased the speed of the Ford, reaching up to 160 km/h. At this and other stages of the pursuit the passengers in the Ford asked Mr Coulthard to slow down or stop the car.
29. Mr Coulthard slowed the vehicle a little later and Sgt Potts managed to position the police vehicle within 6 feet of the Ford and using the PA system directed Mr Coulthard to stop the vehicle. Mr Coulthard ignored this direction. This occurred at or near the bend near the Maryvale turn-off. This bend had a tight radius much like the following bend where the accident occurred. The evidence showed that Mr Coulthard negotiated this bend at a moderate speed. Mr Coulthard then accelerated to 120-130 km/h and was approaching the second bend, only 200 metres east of the entrance to the Alice Springs airport.
30. Prior to the bend the posted speed limit was 80 km/h but this was reduced to 60 km/h for the bend. Sgt Potts slowed the police vehicle to 80 km/h to negotiate the bend and in doing so increased the gap between the two vehicles. Sgt. Potts maintained a “4 second” gap.
31. Mr Coulthard did not slow down and subsequent expert analysis suggests that the Ford was travelling at a speed of approximately 127 km/h as it entered the bend. This speed was excessive causing the rear of the Ford to slide, the rear tyre to blow out and the car to roll after colliding with the kerb.
32. The deceased was thrown from the car and was not breathing when first attended to by Sgt Potts. The police car was missing some emergency equipment but this did not prevent both officers spending considerable time performing CPR on the deceased. CPR continued after the arrival of the

ambulance. Further attempts to resuscitate the deceased continued and a heartbeat was detected. The deceased was transported to the hospital but failed to respond to treatment and was declared dead at 8.14 pm on 1 February 2002.

33. The subsequent autopsy stated that the cause of death was a severed spinal cord between the first and second cervical vertebrae. The autopsy report states that “death would have been instantaneous” due to this injury and the detected heartbeat would only have been due to the vagus nerve. The report states that the injury is consistent with the deceased being thrown from the vehicle.
34. The pursuit occurred over a 3 to 4 minute period and covered a distance of 9.2 km. Mr Coulthard was subsequently breath tested and returned a reading of .172% alc/vol. On 15 May 2002 he was sentenced to 3 yrs imprisonment with a non-parole period of 18 months after pleading guilty to the crime of Dangerous Act under s. 154 of the Criminal Code.
35. Amazingly there were no serious injuries amongst the surviving 10 occupants.
36. Mr Coulthard alleged that at one stage the police vehicle collided with his Ford. I do not believe this to be the case; it was denied by the police witnesses, there were no dents or scratches on the police vehicle, and the other passengers stated that no collision occurred.
37. While most of the evidence at the Inquest explored the actions of the police officers, it should not be forgotten that the factors that had the most direct contribution to this unfortunate death were the intoxication of Mr Coulthard and his reckless driving at excessive speed. Indeed, the sadness of this tragedy was made manifest by the evidence of family members in the form of their pleas to Coulthard to stop.

Initiation of the Pursuit

38. The expert police witnesses generally agreed that in determining whether a pursuit should be initiated or continued one should evaluate the risks versus the benefits of the pursuit. This in essence is what is required by the Northern Territory Police Urgent Duty Driving Policy. It is accepted then that the factors that ought to be taken into account are:

- the seriousness of the reason or offence for which the police wish stop the other vehicle; and
- the risk to the police, the other driver, passengers and/or other road users.

39. The pursuing police must make this evaluation not only when deciding to initiate a pursuit but also throughout the pursuit as events unfold.

40. As to the seriousness of offence or reason on this occasion, it appears the primary reason for wanting to apprehend the Ford was because the two officers heard a scream coming from the vehicle. Although it was later suggested that the person who called out was simply drunk and “just yelling out”, I have no reason to doubt that the two officers were legitimately concerned for the safety of a person in the vehicle. I find that they were justified in believing that some serious crime may be, or may be about to be, committed and this belief was sufficient to initiate the pursuit.

41. Although the failure to stop at a stop sign may have triggered the pursuit, the officers rightly conceded that this could not of itself justify a pursuit in these circumstances. Similarly, that the police identified excessive and unrestrained passengers was correctly regarded by Potts as an insufficient reason to pursue the vehicle.

Termination of the Pursuit

42. Although the circumstances were such as to justify the police initiating the pursuit the more vexing question was whether the police should have terminated the pursuit at a stage prior to the death.
43. As stated above, the police officers were rightly concerned about the possibility of a serious crime being committed when they heard a scream coming from the Ford. This concern, and the desire to stop the vehicle to investigate needed to be weighed against the risks of the pursuit.
44. Some of the circumstances point to a low risk. The traffic was light with only two vehicles going in the same direction and two travelling in the opposite direction. There were no pedestrians in the vicinity and Mr Coulthard had right of way in relation to all intersections after the pursuit began. I accept the police evidence that apart from the final bend, Mr Coulthard appeared to have adequate control of the vehicle.
45. Other circumstances point to a high risk of injury or death, viz., Coulthard was willing to make a dangerous left hand side manoeuvre, passing two vehicles which indicated that he was willing to take risks.
46. Sgt Potts stated that he did not form any view that the driver might have been intoxicated and certainly there was no evidence during the pursuit to support this conclusion. At pages 43 and 44 of Sgt Potts' statement he said that if he had reason to believe that the driver was intoxicated he would have stopped the pursuit earlier given the known risk factors (eg. unrestrained passengers).
47. Other factors pointing to a high risk, that were known to the police at the time, were the large number of passengers in the vehicle, and that some were unrestrained, and that Mr Coulthard had willingness to travel at high speed namely 160 km/h. It was also apparent to Sgt Potts that the bend was approaching and that it was followed by the round-about leading into the airport.

48. Sgt Potts agreed in oral evidence that pursuits are highly dangerous and agreed with the following proposition put by Mr O'Loughlin, Counsel Assisting (transcript P.42):

“And is it your understanding that as far as likelihood of serious injury or death that high speed pursuits are perhaps second only to shootings as to the likelihood of causing injury or death?---I would agree with that.”

49. It is a difficult task for the police to weigh up the valid concern that a crime may be committed against the inherent and particular risks outlined above. Sgt. Potts told me in evidence and I quote (Transcript P.69/70): -

“THE CORONER: No.

Mr Potts?---Yes, Your Worship?

I'm not here to be nice to you; I'm not here to be rude to you; you understand that don't you?---Yes, I do, sir.

I'm here to get to the truth of what happened and also to give you - do the fair thing by you because some people here today might get up in submissions and criticise you. I don't know. It might be suggested the very fact that you are experienced as you are, as trained as you are, as knowledgeable as you are in traffic matters, high speed chases and the like, that you may have been over confident in your own ability. Has anyone suggested that to you before?---No.

Okay. Have a think about it, that suggestion, and tell me what your reaction is; in terms of this particular chase?---In this particular chase I did what I was trained to do. I felt fully confident in my decision-making processes. I didn't feel as though I was over confident. In the scale of pursuits I've been involved in the past I would say this would be down towards the lower end in relation to speed and severity of actions in relation to the offending driver. My training is such that I'm fully aware that I have to re-evaluate every step of a pursuit from beginning to end and those three basic criteria I have to run around in my head as the pursuit goes down the

road. And I have to make a conscious decision that if I, for example, decide to now to terminate, what happens to those people in the car. Do they lose the safety I can afford them? If I make that decision and then they're involved in a major T-bone and all the people in the car are killed then I have to live with that decision and justify it at some later stage. The decision to undertake the pursuit - - -

Are you suggesting to me - I wouldn't be suggesting or criticise that in fact sometimes it's more courageous to go on with a pursuit than to - than not, given the possibilities of some people getting killed; I don't know?---I have to go by what I teach in the classroom and that is simply at the end of the day you still have to come home to your family and your number 1 responsibility is to yourself. If at any stage you've got any doubts as to your limitations or that of your vehicle or you're incapable of maintaining that warning device behind a vehicle with compromise, then you're just going to have to terminate. And that is a very, very hard decision for people to make. And there are police officers in this country that have made that decision and they've had to live with the fact that vehicle's continued on with the chase and has been involved in a major accident and innocent parties have got killed. When you talk about being over confident in pursuits, I don't see myself as being over confident, in fact I'm quite the other way. I'm very, very critical of what I do, the decisions that I make and it's a very, very hard decision to say, 'Well, if I back off now, what's going to happen to these people in the car; is it the right place to do it now or do I continue?' And those processes that are going through my mind every step of the way. And at the end of the day this pursuit took all of around about 3 to 4 minutes to take, and in that 3 or 4 minutes there are a lot of things I need to take into account. And it's not just a matter of one overtaking manoeuvre that the - Mr Coulthard has gone and done, there are other issues that I took into account in relation to continued speed, in relation to the risk to other road users. And the number of people in the car was probably the number one issue that I had in the back of my mind because the one thing I didn't want to have was that car being involved in a T-bone accident somewhere. I needed to get that vehicle to an area where that - when I did decide to terminate, that driver had enough room - enough time to settle down where the chances of a conflict were acceptable, a low risk. So in summary, I would say, 'No, I wasn't over confident. I was fully in control of all my thoughts from beginning to end'. And those sort of processes may be difficult for some people

to understand but they're quite complex. There are a number of issues that need to be taken into account. And at the end of the day, as the driver of the car, those decisions I'm fully accountable for; I'm fully aware of that.”

50. Constable Tamblyn who told me in evidence in relation to the pursuit and I quote (Transcript P.94/95): -

“Constable, let me wind this up. What I am putting to you and I ask you to think fairly about this; I merely put it to you that there was good reason for you to think that the - to pursue the fugitive car into those series of bends before the airport roundabout, had - was dangerous; what do you say to that?---No, no, I don't think - dangerous, yes, but not unfeasible, no, because his driving - like I said, his driving up until that stage had been, you know, quite in order and like he was in full control of the vehicle. There's nothing to indicate to me that he wasn't in control of the vehicle and that he wasn't - it wasn't a possibility that he was going to negotiate that corner properly or the roundabout properly or the next corner after the roundabout, without any hassles.

One more question on the matter of danger. If he was prepared to do something as silly as overtaking a bus on the left, wasn't it fair to think that he might take one of those slow bends at too high a speed?---Again, no, because he'd slowed down enough to negotiate both the cars quite all right and he'd slowed down to negotiate the bend all right, so you know, if he had done anything silly on those, then that would indicate, you know, red lights would flash and you'd think, 'Hang on, how is he going gauge these next corner or roundabout or whatever?' But it hadn't, you know, hadn't indicated to me that he wasn't able to or he wasn't thinking clearly enough to negotiate the hazards properly.”

I found the evidence of these two officers credible and reliable and not tainted by reconstruction or disingenuity.

51. Queensland Police traffic expert Sgt Webb stated that given the circumstances of the pursuit described above, he would have terminated the pursuit after the Maryvale bend but before the next bend (T 162). By

terminate he said he would drop to a lawful speed and turn off the sirens and lights (T 188.5) but continued to follow the fleeing vehicle.

52. Supt. Jeffs stated that he would have ordered a termination if he was the supervisor in Communications but that he may or would have continued if he was the driver. He explained this apparent inconsistency on the basis that he is more cautious as a supervisor and as driver he would have greater understanding, more confidence and conceded that adrenaline may also come into play.
53. The police were in a continually changing situation and were required to make a difficult decision. Hindsight now shows that death occurred at the second bend and it is much easier to be critical of a persons actions with the benefit of hindsight. The seriousness of the possible offence was unknown but the risk factors were clear in that the Ford was crowded, speeding, and the driver was willing to take risks. The risks were sufficiently great to terminate the pursuit before the last bend, perhaps as early as where the police observed the Ford travelling at 160 km/h after the passing on the left hand side of the road. In making this comment it is not to say that earlier termination of the pursuit would have prevented the deceased's death as Mr Coulthard may well have maintained his excessive speed for some time and crashed as a result.

Pursuing to Warn Other Road Users

54. In Sgt Potts interview on the night of the accident he indicated that although his primary reason for pursuing the Ford was because he heard the scream he also continued the pursuit so as to warn other road users about the speeding vehicle. Sgt Potts' reasoning was that other road users would see the flashing lights or hear the sirens and thereby be alerted to the speeding vehicle.
55. This explanation was repeated in oral evidence where Sgt Potts indicated that he was going to terminate the pursuit only *after* they had passed the airport round-about because he wanted to warn other road users. When challenged as why this reasoning was not mentioned in the Urgent Duty Driving Policy, Sgt

Potts stated that he had recommended that this be included in the policy, however his recommendation had been ignored.

56. This motivation of warning other road users was not shared by Queensland traffic expert Sgt Webb and Supt. Jeffs. Sgt Webb doubted the effectiveness of sirens to warn other drivers. Both stated that this factor was not mentioned in any of the Urgent Duty Driving policies they had examined from other jurisdictions.

57. I find that there is a degree of circular logic where the offender is speeding because he/she is being pursued by police, and the police are continuing the pursuit because the offender is speeding. This reasoning should not be a justification to continue a pursuit and in my view it is sensible that it does not form part of a Urgent Duty Driving Policy.

Whether the Police Officers followed the Urgent Duty Driving Policy

58. The Urgent Duty Driving Policy provides that amongst others the Communications supervisor could direct that the police in the vehicle terminate the pursuit. This is a sensible provision as the supervisor should be more experienced and better able to calmly analyse the competing risks and benefits of the pursuit.

59. Such supervision requires all relevant information being provided to the supervisor and this is why the Urgent Duty Driving Policy (at page 7.3) requires pursuing police to radio all relevant details back to Communications.

60. Superintendent Katherina Vanderlaan (the officer in charge of the Coronial investigation) gave evidence that she was an experienced police officer not only generally but in relation to high speed police pursuits including as supervising officer monitoring the pursuit by radio (with the authority to order cessation of a pursuit). She told me in evidence (Transcript P.17):-

“If you were supervising this - the supervisor who had the authority to terminate this pursuit, I take it you would like to have all relevant information about the pursuit? --- Yes.

And - so that - the speed that the vehicles are travelling?---Yes.

The degree of traffic whether heavy or light; if there were ten passengers in the vehicle or a large number of passengers in the vehicle, ie more than five, would you like to be - if you are supervisor, would like to be told that information?---Yes.

And that there were two in the back section of a - of the station wagon?---Yes.

And if it was known by the pursuing officers that at least some of the passengers in the pursued vehicle were not restrained by seat belts would you, as supervisor, like to be told that?---Yes.

And the manoeuvre that Mr Coulthard took relatively early on in - at some earlier stage of the pursuit where he passed two cars on the left-hand side of the road rather than the right, you as supervisor and deciding whether or not termination should be ordered, would you like to know that information?---Yes.”

61. In this matter Communications were told of the location, traffic conditions and speed. Communications were not told of the large number of people in the vehicle, that some were unrestrained, nor were they told of the dangerous passing on the left hand side. To evaluate the benefit of the pursuit, Communications should also have been told the reason for wanting to apprehend the vehicle.

62. In the circumstances it is clear that the pursuing police failed to provide relevant material to Communications.

63. It was also agreed by Sgt Constable, Sgt Webb and Supt Jeffs that this information is necessary and should be conveyed to Communications. Sgt Constable, the supervisor at the time of the pursuit, said that if he had been

told that there was unrestrained people in the vehicle he believes he would have considering ordering a termination of the pursuit prior to the crash.

64. Sgt Webb indicated (T 160.6) that the Queensland police recruits suffered from a lack of training in relation to use of the radio. Sgt. Webb told me in evidence (Transcript P.160):-

“Is it up to the police officer in the vehicle to give this information or the supervisor to ask the questions?---That - that probably comes down to a training issue in relation to police in the vehicles. I know that in Queensland we get a number of recruits come out and they don't know how to talk on the radio; they just don't know and they're not trained. And it's a very important part of police work and this has been raised in Queensland. I do believe that the crews should be able to provide more feedback but then again, the supervisor too if he's not getting the feedback should ask for that information or the radio operator should be asking for that information.”

65. It is not clear whether this is an ongoing problem in the Northern Territory but I would recommend that the NT Police put greater emphasis in training on the information that should be provided to Communications during pursuits. The NT Police should also consider whether the current NT draft policy ought include more specific details on the importance of the information provided (as is in the QLD policy).

Emergency Equipment

66. This Inquest is the third over the recent few years in which I as Coroner have heard that a police vehicle was missing safety/resuscitation equipment. This failure had no bearing on this particular death however the Northern Territory Police should reconsider their current systems to ensure that each vehicle is regularly checked that it has the correct equipment.

Urgent Duty Driving Policy

67. The Urgent Duty Driving General Policy is very clear in its caution to officers where it states that pursuits “*should not be regarded as routine or ordinary and should only be undertaken where there is good reason to do so*” and .. “*only after the member driving the police vehicle has determined that the increase risk to himself or herself and to others is justified*”.
68. Given that pursuits are second only to shootings as the activity most likely to result in injury or death to officers or civilians, I presume these words of caution will be heeded.
69. In my view, multi-page documents issued by Senior police relating to “Urgent Driving Policy” are not of much use to (often) junior officers (such as Const. Tamblyn) in the “heat of the moment”. At one stage during the Inquest I was told that a draft instruction was in existence at Police Headquarters and it was 16 pages long. I do not believe that police officers could possibly be expected to calmly and properly consider and obey all the dictates mandated in such long and wordy policy documents during a high speed pursuit, (both driver or supervising officers in radio contact).
70. In my view, a short blunt resume of what is to be expected is necessary and the starting premise should be that such pursuits ought be rare, exceptional and to be avoided if at all possible. This recommendation is made not only for the safety of the public, those pursued but also the pursuing police officers. The work place safety of such police officers (who are mostly junior) is not to be glossed over.
71. In my view, the policy in relation to Alice Springs at least, should be pragmatic and reflect the unfortunate fact that many Aboriginal drivers are unlicensed, from remote communities with not much experience in driving in built up areas, are often driving old and unroadworthy vehicles, and more than occasionally are affected by alcohol. That is to say the risks in embarking on

high speed pursuits of such vehicles should be recognised. This is not to have regard to cultural stereotyping but rather to the fact that in Alice Springs the problems caused by alcohol in the Aboriginal communities are manifest, vast, serious and simply should not be ignored. Mr Woodroffe (counsel for the family) seemed to suggest such an approach in his questioning of Super. Vanderlaan and I quote (Transcript P.20):-

“And have you personally been involved with the amendments or the suggested changes to the policy?---As a result of this investigation I was asked to look at it in the light of this accident and did make some recommendations, which is in my supplementary report.

And in fact - so there's been some discussions about whether - I believe you were terming it as negative assumptions?---Yes.

And basically that's simply just taking in - well common sense approach; it's about -
- ----Yes.

- - - the types of vehicles and the personalities of the driver as well?---Yes.

So do you have extensive experience in Central Australia?---Yes, I have.

And to meet with the communities and - - - ?---Yes, I do.

- - - Aboriginal communities - - - ?---Yes.

- - - and the populations. And as it's reported in your report, discussed about, there's a high well itinerant travel and between communities and - - - ?---Yes.

Aboriginal people generally purchase older vehicles and the like?---Yes.

And those things can be factored in. Now you speak about - well, there have been some assumptions to take into account the - it seems to be mainly focused upon the driver; is that right?---Yes, and the police driver, yes.

Sorry, just in those changes to the policy, it seems to be focused on the driver. You can assume perhaps the driver's intoxicated?---Yes.

Perhaps - could you also assume, you know, like from a cultural perspective that Aboriginal people are more frightened interactions, dealings with the police?---Yes.

Yes. But that could also apply to passengers as well - Aboriginal passengers? ---Yes.

Aboriginal passengers also being intoxicated?---Yes.

And that seemed to be the scenario in this incident here as well?---Yes.

And a high possibility that they were also frightened themselves?---Possibility.”

72. Indeed, Mr Woodroffe final submissions indicated concern that these pragmatic considerations be taken into account.

73. Mr Howse of counsel asked similar questions and I quote (Transcript P.25):-

Yes?---But that's one of the recommendations I made in my report that we have to assume, in the Northern Territory, that Aboriginal vehicles travel a lot of miles and do become defective a lot easier - quicker and there is that bush mechanics that they do tend to try and fix it themselves so it can keep going, yes.

Which suggests then that if you're on a high speed pursuit of a car driven by an Aboriginal person in this area and it's an old car then one of the considerations you take into account in terms of whether to pursue it or not is a danger presented by the fact that it may be old and unsafe?---Yes.

Yes?---Yes.

MR HOWSE: That has cut - that's the point I wanted to reach, sir.

Now with respect to – now numbers of people in the car; there's ten people in this car, I think?---Eleven.

Eleven, yes, thank you, sorry. And let me get this right; I count - I'm sorry, yes, eleven. My mistake. So now there's actually four in the back, unrestrained, that's how it's turned out?---Yes.

There's a baby in the passenger seat unrestrained?---Being held by the deceased, yes.

The deceased herself is unrestrained?---Yes.

And it's fair to say, just as a general assumption again, that when you get a car full of people - Aboriginal people - you might fairly make the assumption that there's going to be people in there who haven't got their seat belts on?---Yes.

And that is something that should be taken into account, as a matter of common sense, as to whether you chase them at high speed?---Yeah, it should be one of the considerations, yes.

Yes. And the reason for that consideration is that there's concern for members of public and their safety when you undertake a high speed chase; that's correct, isn't it?---Yes.”

74. Obviously, and in hindsight, it would have been preferable for the pursuit to have been terminated prior to the crash. Indeed, more than one police witness indicated that they themselves would have terminated the pursuit at a point prior to the crash, however, they would not criticise Sergeant Potts decision making as wrong or ill conceived. Simply put there were several options available, Sgt. Potts was the officer “in the spot”, rapidly digesting the evolving

situation and it could not be said (and I find it not to be the case) that his decision making was reckless, stupid, or tinged with bravado.

75. It is to be noted that Constable Tamblyn was sitting next to Sgt. Potts and he had the task of radioing details of the pursuit to superior officers at Alice Springs police station. It is unfortunate that he did not communicate all relevant details of the pursuit to the supervising officer, which, on the evidence before me, would have seen the pursuit terminated prior to the crash. In making this finding I do not adversely criticise Tamblyn, he was junior, not experienced in such matters and I am not sure that his training adequately dealt with such matters (hence the need for a recommendation in this regard).

76. In my view the pursuit of the vehicle was fully justified and the detention of the driver necessary. The reasons for the cry of distress heard emanating from the vehicle could reasonably be thought to be indicative of serious crime and, accordingly, for Sgt. Potts to make all the efforts in the way he did to stop the vehicle was proper especially in circumstances where the driver fled breaking traffic laws. This behaviour suggested serious wrongdoing that required police action.

77. This death was tragic and it is to be hoped that at the very least, it will result in an ongoing review of **(a)** the need for such dangerous practices as high speed pursuits, **(b)** the method of such pursuits, **(c)** the supervision of such pursuits, **(d)** the training of police in such pursuits, and I recommend that this occur.

78. Finally, I commend the thorough investigation carried out by Superintendent Vanderlaan, and support her suggestions as to the make up of any new “Urgent Driving Policy”.

Dated this 31st day of July 2003

GREG CAVANAGH
TERRITORY CORONER